

**BOULDER CITY COUNCIL MEETING  
MUNICIPAL BUILDING, 1777 BROADWAY  
SPECIAL MEETING  
Tuesday, September 29, 2015  
6 PM**

**AGENDA**

**1. CALL TO ORDER AND ROLL CALL**

**2. CONSENT AGENDA**

- A. Third reading** and consideration of a motion to adopt and order published by title only, **Ordinance No. 8050 amending Title 10 “Structures”** for the purpose of allowing and regulating short-term rentals by amending Section 10-1-1 “Definitions” by amending the definition of “Operator,” amending the definition of “Rental Property,” adding a new definition of “**Short-Term Rental,**” adding a new Section 10-3-19 “Short-Term Rentals” and setting forth related details  
**(Public hearing on this item was held and closed at the August 27 meeting)**

**3. MATTERS FROM THE CITY MANAGER**

- A. Update and staff recommendation on Folsom Street Pilot Project**

**4. PUBLIC HEARINGS**

- A. Second reading** and consideration of a motion to adopt **Ordinance No. 8071, amending Title 10, “Structures,”** B.R.C. 1981 to add a new Chapter 10-7.7 “Commercial and Industrial Energy Efficiency” and amending Section 10-1-1 “Definitions” by adding definitions and setting forth related details  
**(Building Performance)**

**B. Consideration of the following items related to Medical and Recreational Marijuana:**

- 1. Introduction, first reading and consideration of a motion to order published by title only Ordinance No. 8081 amending chapters 6-14 “Medical Marijuana” and 6-16 “Recreational Marijuana;” and**
- 2. Request for Council consideration and direction regarding potential amendments to the City of Boulder’s Recreational and Medical Marijuana Codes.**

**3. ADJOURNMENT**

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**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 29, 2015**

**AGENDA TITLE:** Third reading and consideration of a motion to adopt and order published by title only, Ordinance No. 8050 amending Title 10 “Structures” for the purpose of allowing and regulating short-term rentals by amending Section 10-1-1 “Definitions” by amending the definition of “Operator,” amending the definition of “Rental Property,” adding a new definition of “Short-Term Rental,” adding a new Section 10-3-19 “Short-Term Rentals” and setting forth related details.

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Bob Eichem, Chief Financial Officer

**EXECUTIVE SUMMARY**

The purpose of this council agenda item is to amend the city’s rental licensing code to expressly permit short-term rentals. At the February 10, 2015 study session, the Council directed staff to bring forward a draft ordinance incorporating concepts from Council’s discussion. The intent is that the Council will use the legislative process to receive public input on various policy questions. At first reading on June 2, 2015, Council held a public hearing at which approximately 40 individuals testified regarding the ordinance. Council adopted the first reading ordinance as proposed, with the expectation that there could be substantial changes on second reading. Council held a second public hearing on August 27, 2015. Council engaged in an extensive discussion of the proposed ordinance and provided direction regarding potential changes to the ordinance. Council continued second reading for further consideration. On September 15, 2015, council adopted an amended version of ordinance 8050. This agenda item is for council consideration and potential adoption of ordinance 8050 on third reading.

## STAFF RECOMMENDATION

### Suggested Motion Language:

Staff requests Council consideration of this matter and action in the form of the following motion:

Motion to adopt on third reading and order published by title only, Ordinance No. 8050 amending Title 10 “Structures” for the purpose of allowing and regulating short-term rentals by amending Section 10-1-1 “Definitions” by amending the definition of “Operator,” amending the definition of “Rental Property,” adding a new definition of “Short-Term Rental,” adding a new Section 10-3-19 “Short-Term Rentals” and setting forth related details.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Short-term rentals provide an alternative to hotels and motels. They may provide increased tourist activity. Short-term rentals also could provide revenue to city residents. Short-term rentals could have an adverse economic effect on hotels and motels.
- Environmental: Increased visitation generated through short-term rentals could also increase the city’s carbon footprint.
- Social: Short-term rentals provide increased opportunities for residents to interact with visitors from other parts of the country or the world. Short-term rentals could adversely affect the neighborhoods in which they are located.

## OTHER IMPACTS

Fiscal – Regulation of short-term rentals will require the expenditure of city funds for which there is no budget. Staff intends to bring forward a proposed tax measure for the fall 2015 ballot that would provide revenue to support the regulatory program.

Staff Time – Regulation of short-term rentals will require additional staff.

## BOARD AND COMMISSION FEEDBACK

None

## BACKGROUND

The ordinance passed on September 15 includes the following provisions:

- The ordinance would be effective thirty days after final passage, but would not be implemented until January 4, 2016. Boulder voters will be considering a tax on short-term rentals at the November 3, 2015 election. If the tax does not pass, the

ordinance allowing short-term rentals will not go into effect. Instead, there will be an express provision prohibiting short-term rentals.

- Short-term rentals will only be allowed at the owner's principal place of residence. This means where the person is registered to vote, has his or her car registered or has other indications that this is the place where the person lives.
- There is no limit on the number of days that a residence can be rented in a year. There is also no requirement that the owner be present during the rental. An owner can rent a room, while the owner is present or the entire home while the owner is away on vacation. An accessory unit may only be rented for up to 120 days in a year.
- The rental can be of an accessory unit on the same parcel, but the owner may only have a short-term license for either the principal residence or the accessory unit, but not both. The accessory unit must be legal to be rented.
- The owner must be a natural person and not any type of corporation or partnership. The owner's name must be on the deed to the property.
- An owner can rent to a group of related people of any number or to three or four unrelated people, depending on where the house is. If there is a family in the house at the time of the rental, the family will count as one person, so they can rent to two or three additional people, again depending on where the house is.
- Short-term rentals will not be required to have rental licensing inspections. All accessory units are already required to have a long-term rental license, so those will be inspected under that provision. The owner will be required to certify that the home has smoke detectors, carbon monoxide detectors and possibly other safety equipment.
- Short-term rentals will be required to comply with the city's SmartRegs program when it goes into effect in January 2019, except for attached accessory units.
- The owner will be required to provide the city and any guests with the name and telephone number of a contact person who can be at the property in 60 minutes. The contact person can be the owner. If the owner is planning to rent the home while the owner is away on vacation more than 60 minutes away, the owner should provide the name of someone who will be in town.
- The home cannot be part of the city's permanently affordable housing program.

## **ATTACHMENT**

### **Attachment A - Ordinance 8050 as passed on second reading**

ORDINANCE NO. 8050

AN ORDINANCE AMENDING TITLE 10 "STRUCTURES" AMENDING SECTION 10-1-1 "DEFINITIONS" BY ADDING A NEW DEFINITION OF "ACCESSORY UNIT," AMENDING THE DEFINITION OF "RENTAL PROPERTY," AMENDING SECTION 10-3-2 "RENTAL LICENSE REQUIRED BEFORE OCCUPANCY AND LICENSE EXEMPTIONS," ADDING A NEW DEFINITION OF "SHORT-TERM RENTAL," ADDING A NEW SECTION 10-3-19 "SHORT-TERM RENTALS" AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 10-1-1 is amended to read as follows:

**10-1-1. – Definitions.**

...

Accessory Unit means an accessory unit permitted under Section 9-6-3(a), B.R.C. 1981 ("Accessory Units").

...

Rental Property means all dwellings, dwelling units, and rooming units located within the city and rented or leased for any valuable consideration, but excludes dwellings owned by the federal government, the state, or any of their agencies or political subdivisions and facilities licensed by the state as health care facilities. Rental Property includes any property used as a short-term rental.

...

Short-term rental means any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit, room rented or leased for valuable consideration for periods of time less than 30 days, but excludes commercial hotels, motels or bed and breakfasts. A short-term rental is a use that is accessory to such dwelling, dwelling unit, rooming unit, or room.

...

Section 2. Section 10-3-2(a) is amended to read as follows:

**10-3-2. - Rental License Required Before Occupancy and License Exemptions.**

(a) No operator shall allow, or offer to allow through advertisement or otherwise, any person to occupy any rental property as a tenant or lessee or otherwise for a valuable

1 consideration unless each room or group of rooms constituting the rental property has  
2 been issued a valid rental license by the city manager. Any advertisement shall include  
the rental licensing number assigned by the city manager.

3 Section 3. A new Section 10-3-19 is added to read:

4 **10-3-19. – Short-Term Rentals.**

5 (a) Short-term rentals are prohibited except:

6 (1) If the rental is of the operator’s principal residence;

7 (2) If the rental license is for an accessory unit, only the accessory unit and not any  
8 other dwelling unit on the same property may be a licensed or used as a short-term  
rental;

9 (3) If a dwelling unit is licensed for short-term rental, then no accessory unit on the  
10 same property may be issued a short-term rental license;

11 (4) If the operator is a natural person and the operator’s name appears on the deed to  
the property on which the dwelling unit to be rented is located;

12 (5) If the operator certifies that the dwelling unit is equipped with operational smoke  
13 detectors, carbon monoxide detectors and other life safety equipment as may be  
required by the city manager;

14 (6) If the occupancy during any rental period does not exceed the occupancy  
15 permitted pursuant to Section 9-8-5, B.R.C. 1981 (“Occupancy of Dwelling Units”);  
16 provided, however, for the purposes of this section only, the operator and people  
related to the operator shall be counted as one person. The occupancy of any  
17 accessory unit shall be limited to a family or two unrelated persons;

18 (7) If the operator provides to the city manager as part of a short-term rental license  
any guest and posts on the property the name and telephone number of a contact  
19 person, who for owner-operated rentals can be a permanent resident on the property  
and who is capable of responding to the property within sixty minutes; and

20 (8) If the rental property is not a permanently affordable unit.

21 (b) Short-term rentals, other than short-term rentals of, shall not be subject to the  
22 inspection requirements of Section 10-3-3(a) B.R.C. 1981 (“Licenses”) except:

23 (1) Accessory Units, permitted under Section 9-6-3(a), B.R.C. 1981 (“Accessory  
24 Units”) if such Accessory unit is in an Accessory Structures, as that term is defined in  
Section 9-16-1, B.R.C. 1981(“General Definitions”).

1 (c) An accessory unit may not be rented as a short-term rental for more than 120 days in  
2 any calendar year.

3 (d) Notwithstanding the provisions of § 10-2-2 B.R.C. 1981 (“Adoption of the  
4 International Property Maintenance Code with Modifications), Appendix C, effective  
5 January 2, 2019, the energy efficiency requirements set forth in § 10-2-2, Appendix C  
6 section shall apply to Accessory Units, permitted under Section 9-6-3(a), B.R.C. 1981  
7 (“Accessory Units”) if such Accessory unit is in an Accessory Structures, as that term is  
8 defined in Section 9-16-1, B.R.C. 1981(“General Definitions”).

9 Section 4. In the event that the ballot measure set forth in Ordinance Number 8065,  
10 known as the “Short-Term Rental Tax,” does not receive a majority of the votes cast, Section 10-  
11 3-19 shall be amended to read as follows:

12 **10-3-19. – Short-Term Rentals.**

13 Short-term rentals are prohibited.

14 Section 5. The City Council deems it appropriate that this ordinance be published by title  
15 only and orders that copies of this ordinance be made available in the office of the city clerk for  
16 public inspection and acquisition.

17 Section 6. This ordinance shall be effective thirty days after final passage. The city  
18 manager is directed to begin implementation no earlier than January 4, 2016.

19 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
20 TITLE ONLY this 2nd day of June, 2015.

21 \_\_\_\_\_  
22 Mayor

23 Attest:

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25 City Clerk

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READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY  
TITLE ONLY this 15<sup>th</sup> day of September, 2015.

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Mayor

Attest:

\_\_\_\_\_  
City Clerk

READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
BY TITLE ONLY this 29<sup>th</sup> day of September, 2015.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: Sept. 29, 2015**

**AGENDA TITLE:** Update and staff recommendation on Folsom Street pilot project

**PRESENTERS:** Jane S. Brautigam, City Manager  
Maureen Rait, Executive Director of Public Works  
Michael Gardner-Sweeney, Acting Director of Public Works for Transportation  
Kathleen Bracke, GO Boulder Manager  
Dave (DK) Kemp, Senior Transportation Planner  
Marni Ratzel, Senior Transportation Planner  
Bill Cowern, Transportation Operations Engineer  
Shannon Young, Transportation Engineer

**INTRODUCTION**

As part of the implementation of Boulder's 2014 Transportation Master Plan (TMP), the Folsom Street Living Lab pilot project was installed in July 2015 to test and evaluate whether a new street configuration and design treatments would enhance multimodal access and travel safety. Throughout the planning, installation and ongoing evaluation of the pilot project, the City of Boulder has received extensive and valuable community feedback about how the pilot is affecting people's ability to get around Boulder. The city has also conducted significant technical analysis of the multimodal evaluation criteria to gauge initial results of the initiative.

The purpose of this update to City Council is to provide a summary of the Folsom Street qualitative and quantitative analysis since the Aug. 25 City Council Study Session and provide a staff recommendation regarding next steps for council consideration.

At the Aug. 25 study session, staff presented potential options for council feedback that ranged from continuing the Folsom Street pilot project as planned, implementing various levels of refinements/modifications along the corridor, or removing some or all of the corridor treatments. Council feedback from the study session supported Option 2, which

was to refine/modify the Folsom Street corridor and/or intersections, particularly along the segment between Pearl Street and Canyon Boulevard, and continue to evaluate the corridor on a weekly basis, with frequent updates to the Transportation Advisory Board (TAB) and council.

Since the Aug. 25 study session, the Transportation Division has continued to evaluate the corridor and provide weekly updates to City Council. Several [refinements along the Folsom Street corridor](#) were completed the week of Sept. 8 to improve the operation of the Folsom Street pilot project in response to community concerns.

In response to continuing community sentiment and emerging information regarding upcoming, interrelated conditions, the Transportation Division has developed a staff recommendation to make more substantial modifications to the corridor, including the Pearl and Canyon intersections. This approach is more in alignment with Option 3 presented at the Aug. 25 study session and is intended to proactively address changes occurring along the corridor related to construction impacts of new development as well as recent predictions for a more severe winter weather season. This staff recommendation is presented for council consideration and direction.

### **STAFF RECOMMENDATION**

Restore a four-lane street configuration along Folsom Street between Spruce Street and Canyon Boulevard to improve the operational capacity of the Pearl and Canyon intersections and the overall vehicle operations in this stretch of the corridor. This may include additional restriping to provide adequate transitions between the two-lane and four-lane sections north and south of the intersections. The city would maintain green pavement markings at the intersections and continue evaluating the effectiveness of these treatments. This recommendation maintains the protected bike lanes along the northern segment to Valmont Road and the buffered bike lanes south of Arapahoe Avenue to Colorado Boulevard.

### **BACKGROUND**

To understand the recommendation, it may be helpful to remember the origins and objectives of Folsom Street pilot. The vision of the city's [Transportation Master Plan](#) (TMP) is to create and maintain a safe and efficient transportation system that meets the sustainability goals of the community. The TMP's Complete Streets focus area specifically strives to accommodate people walking, biking, riding buses and driving as city transportation facilities are planned, designed, constructed and maintained. This approach emphasizes the value of a balanced and complete multimodal transportation system to enhance safety and increase access while shifting trips away from single-occupant vehicles. An emphasis is to increase walk and bike trips made by women, older adults and families.

One action item of the TMP implementation plan is to install Complete Street projects through the Living Lab program. Introduced during the TMP update process, the Living Lab program approach installs pilot projects to test new roadway designs, allow experimentation, and gather community feedback on the user experience.

The Folsom Street pilot project reallocated a through travel lane in each direction from Valmont Road to Canyon Boulevard and enhanced bicycle facility treatments along the corridor from Valmont Road to Colorado Boulevard. The pilot project treatments installed along Folsom are primarily comprised of signing, striping and markings, and they do not include major capital improvements. The temporary nature makes them relatively simple to modify or remove.

Primary objectives of the pilot project have been to collect empirical data and evaluate the effectiveness of enhancing existing street space to more safely and comfortably accommodate people walking, bicycling and driving. The city envisioned that the pilot project treatments would reduce motor vehicle speeds and the frequency and severity of motor vehicle collisions while minimizing impacts to vehicular travel time and flow.

The pilot project evaluation has included a before/after analysis of technical data, observational surveys conducted by staff, and the collection of user experience feedback from community members. It is envisioned that the results will inform the development of a network of low-stress bicycle routes, enhance transit access and create a more pedestrian friendly community.

It may also be helpful to understand the options council has considered to date. Based upon the early data and community comments, staff developed options for how to proceed with the Folsom Street pilot project, including staying the course, making different levels of corridor refinement/modifications, and removing the project. These are detailed below and were presented for council feedback at the Aug. 25 study session.

1. Continue the Living Lab Phase II project as planned with monthly check-ins with TAB and council with in-depth evaluation at one-, three-, six-, and 12-month milestones.
2. Based on initial feedback and evaluation, refine/modify the Folsom corridor and/or intersections, particularly in the segment between Pearl Street and Canyon Boulevard. Continue evaluation weekly, with more frequent updates to TAB and council. Revisit Folsom in fall 2015.
3. Make more substantial modifications to corridor/intersections, including the potential removal of individual segments.
4. Remove the Folsom corridor Living Lab project.

Council on Aug. 25 supported “Option 2,” which included refinements to the corridor and/or intersections, particularly in the segment between Pearl Street and Canyon Boulevard, and continuing with weekly evaluations and updates to TAB and City Council. Additionally, council received a staff briefing at the Sept. 8 meeting.

Since the installation of the Folsom Street project, staff has been collecting and reporting data on a weekly basis. Links to these are provided below and posted on the project website.

- [Sept. 18 Email to City Council - Folsom Street Living Lab Update](#) 
- [Sept. 12 Email to City Council - Folsom Street Living Lab Update](#) 
- [Sept. 4 Heads Up for City Council - Folsom Street Pilot Project Update](#)

## **BOARD FEEDBACK SINCE AUG. 25:**

### ***Transportation Advisory Board (TAB)***

On Sept. 14, the Transportation Division briefed the TAB on the council direction received at the Aug 25 study session, the status of the Folsom Street evaluation, corridor refinements completed to date, ongoing community feedback, and upcoming community engagement events.

The proposed staff recommendation on additional suggested refinements that is now before council for consideration was not presented to the board. This was due to the recent timing of the information on the impacts anticipated to the Folsom corridor from the adjacent construction activity, as well as the news regarding severe winter weather predictions.

TAB discussion on Sept. 14 focused on suggestions to improve key messages related to data metrics, to reduce jargon and to explain evaluation methodology. TAB members also recommended clarification that the travel time impacts are not uniform across the day and requested that staff continue to identify options to address the evening rush hour impacts. **Attachment A** provides the draft Sept. 14 TAB meeting minutes.

The TAB has received the weekly Living Lab update summaries provided to council regarding the Folsom Street pilot project. Staff also has provided this memo to TAB and is following up with TAB members to address any of their questions.

## **DATA EVALUATION**

The evaluation of the Folsom corridor pilot project has been ongoing since installation in July. The results have been shared with the council, TAB and the community weekly. The most recent data available is from Week 8 (the week of Sept. 14). This data reflects the installation of the corridor refinements made during Week 7, which were based on the council feedback at the Aug. 25 study session.

Staff continues to evaluate the corridor on a weekly basis using five primary evaluation criteria: weekday vehicle volume and speed, weekday bicycle volume, vehicle travel times during the evening peak period (4:45 to 6 p.m.), and collisions. An [infographic](#) of the primary evaluation criteria provides a snapshot, and more detailed data points for Weeks 1 through 8

are available in the Living Lab Phase II [data summary](#). Both of these documents are available for review at the Living Lab program website, [www.boulderlivinglab.net](http://www.boulderlivinglab.net).

#### *Vehicle Volume (measured north of Canyon Boulevard)*

Since installation, vehicle volume has fluctuated +/- 500 vehicles per day each week, from a high of 16,590 to a low of 15,790. In comparison, there were approximately 18,970 vehicles per day recorded along the corridor before the pilot project was installed. Weekday vehicle volume decreased from approximately 16,590 vehicles per day during Week 7 to 16,200 vehicles per day during Week 8.

#### *Vehicle Speed (measured at Bluff Street)*

The 85<sup>th</sup> percentile speed in the section of Folsom north of Pine remained constant at 36 mph from Weeks 5 to 8. Since installation, the 85<sup>th</sup> percentile weekday speed in this section has been reduced by 3 mph compared to the before data. The posted speed is 30 mph.

#### *Bicycle Volume*

Bicycle volume north of Pine Street slightly decreased compared to Week 7 data. Week 8 data represents a 58 percent increase from the before data. This increase is consistent with the increase that the city typically experiences when school is back in session.

#### *Vehicle Travel Times*

During Week 8, the average travel time for northbound vehicles during the evening peak hour was 1 minute, 42 seconds faster than the modeled average travel time. This is 27 seconds faster than the before condition. The average travel time for southbound vehicles during evening peak hour was six seconds slower than the modeled average travel time. Compared to before installation travel times, the average southbound travel time during the evening peak hour is 1 minute, 16 seconds slower.

#### *Collisions*

During Week 8, two collisions occurred along the Folsom Street corridor within the pilot project segment. One involved a vehicle colliding with another vehicle. The second involved a vehicle colliding with a bicyclist that resulted in a serious injury. Since installation, this is the first crash that has involved serious injury. Since installation, eight collisions have occurred: five involving vehicles colliding with vehicles and three involving vehicles colliding with bicycles. Since the experiment began, collisions are averaging one collision per week, compared with 1.6 per week between 2012 and 2014.

Staff currently is collecting secondary evaluation criteria data and will evaluate it in September and October. Staff anticipates reporting secondary evaluation criteria results in mid-October. The secondary evaluation criteria include traffic diversion; intersection analysis; analysis of turning movements on/off of the corridor including delays; pedestrian data; bicycle demographics; emergency response; and maintenance, including snow/ice removal.

Ongoing data collection is planned to continue through the duration of the pilot project based on council guidance.

## **PUBLIC OUTREACH AND FEEDBACK**

Community feedback received through this week [is posted](#) on the website and features the most recent feedback at the top of the document. The Transportation Division is offering a variety of public engagement opportunities to share information about the Folsom Street pilot project and gather community feedback.

The [www.BoulderLivingLab.net](http://www.BoulderLivingLab.net) webpage provides project information and an online comment form. Stakeholders interested in receiving emails may sign up for the Boulder Living Lab email newsletter, which includes upcoming engagement opportunities and updates.

Outreach efforts include use of digital platforms such as social media, videos and data visualization tools, as well innovative events including Walk, Bike and Drive audits, Pop-Up events at retail storefront locations, Lunchtime Listening Sessions for businesses in partnership with the Boulder Chamber of Commerce, targeted meetings with specific stakeholders, and an online survey. These engagement tools have enhanced the city's ability to reach a broad audience, including businesses, employers/employees, the University of Colorado Boulder, Naropa University, and youth and families through coordination with Growing Up Boulder.

In response to community input received to date, the city developed a [Folsom Street User Guide](#) to raise awareness of the bicycle lane treatments being testing along Folsom. This guide demonstrates the intended operations and use by motor vehicle drivers and cyclists. These informational materials are posted on the project webpage and are being presented and distributed at public engagement events. In addition to a poster format, staff is creating videos to assist bicyclists and motorists with how to use the new corridor treatments. This educational work would likely continue regardless of whether council adopts the staff recommendation.

## **ANALYSIS**

Folsom Street is a north-south arterial roadway that serves a variety of land uses along the corridor including single- and multi-family residential uses in the north section of the corridor, businesses in the center section of the corridor, and connections to Naropa University and CU Boulder in the southern section of the corridor. The changes implemented as part of the Folsom Street pilot project have sparked considerable community interest.

As City Council prepares for a discussion on how best to proceed, it is valuable to consider a variety of factors. These should include the recent refinements and some of the immediate results of these, as described above, as well as the limited data (about a week and a half's worth of information) since the changes were made. At the same time, meaningful assessments typically take the form of both quantitative and qualitative measures. It is with this broader perspective in mind that staff recommends adjusting the scope of this pilot at this time.

The City of Boulder continues to receive a high volume of valuable community feedback

about how the Folsom Street Living Lab is affecting people's ability to get around Boulder. The magnitude of feedback has been far greater than originally anticipated and mostly expresses points of view that are polarized, ranging from those who love it to those who hate it.

The staff recommendation attempts to strike a balance. The proposal is to reinstall a four-lane configuration between Spruce Street and Canyon Boulevard. This will restore operational capacity to the Folsom and Canyon and Folsom and Pearl intersections. In support of this objective, staff would complete additional restriping as necessary to provide an adequate transition between the two-lane and four-lane cross-section. Staff also supports maintaining the protected bike lane treatments north of Pine Street to Valmont Road; the buffered bike lanes south of Arapahoe Avenue to Colorado Boulevard; the green pavement markings and intersection treatments; and to continue evaluating the effectiveness of these treatments.

As noted in a recent study session and subsequent [Information Packet \(Sept. 15\)](#), meteorologists are expecting a strong El Niño that could lead to a harsh winter. In addition, the same geometrics and physical constraints along the Folsom Street corridor that currently restrict vehicles attempting to queue for left turns could impact snow plow maneuvering. In light of these factors, staff thinks a more modest and measured test of the snow response along a more limited portion of Folsom is prudent.

Beyond the challenges posed by upcoming weather forecasts, private development and associated construction traffic in the vicinity of this corridor are having considerable impacts. The Residence Inn, to be located on the south side of Canyon Boulevard and immediately west of 26<sup>th</sup> Street, has received both site review and technical document approval, and the building permit application is currently under review. Construction is expected to begin later this year. This will impact approximately 172 parking spaces at the nearby Village Shopping Center, potentially causing more congestion in the area as shoppers search for parking options. The city is working with shopping center representatives on parking management strategies, including employee EcoPasses. However, the city needs to anticipate increased demand from local shoppers as we approach winter and the holiday season and strive to minimize further disruption along this corridor.

The larger community context also remains a backdrop. Staff should have recognized the importance of considering the proposed pilot in the context of all that has occurred in the community during the last few years. Thanks in part to the improving economy, there has been an increase in major private and public construction projects, including transportation projects. Combined, these have made traveling through Boulder temporarily more challenging, and staff should have been more sensitive to the potential for frustration related to traffic disruptions.

Restriping the four-lane section along Folsom between Canyon and Pearl would restore the operational capacity to the most congested intersections in the corridor and mitigate the evening rush hour congestion issues associated with this pilot project. These

additional refinements would allow the pilot project to continue in the corridor with a reduced level of rush hour congestion.

This recommendation should not be viewed as a rejection of trying new ideas. Innovation remains a strong value and expectation within our community and city organization. The city has always viewed the Folsom Street effort (and other Living Lab treatments) as a trial to test how we implement different elements of complete streets – and with pilot programs, it is not unusual to discover unintended consequences or factors that should have been given greater consideration.

The Folsom Street pilot project has resulted in many important lessons that apply both to this particular project as well as to potential future projects. The need for a more effective public engagement process and a more comprehensive evaluation of potential issues and impacts are top among these. Staff is committed to doing better in these areas in future projects.

Other lessons the city can apply to future projects include:

- Better ways to design protected bike lanes that offer greater safety to cyclists while also allowing drivers to access driveways
- Clearer ways to mark the transitions near intersections for bicyclists and motorists
- Improved ways to reduce visual clutter to make streets with protected bicycle lanes easier for drivers to navigate and more attractive.

Sometimes the most meaningful lessons are around what not to do and understanding the contexts in which innovation might not work well. These might include:

- Ways to avoid trouble spots, such as where concrete medians narrow the roadway available for drivers and cyclists
- Understanding the impacts of mid-block pedestrian crossings on operational changes in a corridor
- More proactive community engagement earlier in the process and offering more ongoing opportunities for information exchange with the community and those most impacted depending on the location of the pilot.

In the future, these lessons will result in more and faster progress and better transportation projects than what would have occurred otherwise.

The staff recommendation addresses the community's concerns regarding operational capacity at the intersections of Folsom and Pearl and Folsom and Canyon. At the same time, Boulder remains committed to facilitating all modes of transportation and other goals associated with being a sustainable community. Very important motivations, including quality-of-life factors related to both climate change and traffic congestion, propel the city to seek and consider bold approaches. Based on best practices, the city will continue to evaluate innovative ideas for infrastructure improvements that benefit

pedestrians, cyclists, transit users and motorists. All future projects will benefit from and be informed by the Living Lab process and lessons learned.

The results of the ongoing Folsom Street pilot project and other Living Labs projects will inform the development of bikeway design installation guidelines and refine multimodal access policy, as identified in the update of the 2014 Transportation Master Plan.

## **NEXT STEPS**

Depending on City Council direction, staff is prepared to schedule and complete these additional project refinements. The city would coordinate the related roadwork with existing special events and travel needs in order to mitigate any potential conflicts.

The remainder of the Folsom corridor project would continue as part of the city's Living Lab program, and include ongoing community outreach along with continual evaluation to encourage public participation and input throughout the remainder of the pilot project. The evaluation would determine if the remaining corridor improvements should be kept in place more permanently, be modified or be removed.

Staff is planning to return to council sometime in the second quarter of 2016 with conclusions about the data and analysis conducted in the first eight weeks of the entire corridor's operations, as well as subsequent weeks and months with the refined corridor being in place. No steps will be taken to implement similar treatments in other locations until that assessment is complete. The goal is to allow the community and council some time and the benefit of more information before deciding whether to proceed with additional Phase II initiatives.

Staff will continue to track the data and to update the website on a weekly basis until the update to City Council in the second quarter of 2016. Staff proposes to provide City Council with a progress report by email on a monthly basis. Data reporting needs for the duration of 2016 will be discussed with council as part of the second quarter update.

Please visit [www.BoulderLivingLab.net](http://www.BoulderLivingLab.net) for more information.

## **ATTACHMENTS:**

Attachment A – Draft Sept. 14 TAB meeting minutes

Attachment B – Folsom Corridor Infographic (Weeks 1-8)

Attachment C – Living Lab Phase II evaluation summary (Weeks 1-8)

**CITY OF BOULDER  
BOULDER, COLORADO  
BOARDS AND COMMISSIONS MEETING  
MINUTES**

<b>Name of Board/ Commission:</b> Transportation Advisory Board	
<b>Date of Meeting:</b> 14 September, 2015	
<b>Contact Information Preparing Summary:</b> Kaaren Davis 303.441.3233	
<b>Board Members Present:</b> Zane Selvans, Andria Bilich, Dom Nozzi, Daniel Stellar, <b>Board Members Absent:</b> Bill Rigler	
<b>Staff Present:</b> Michael Gardner-Sweeney, Interim Director of Public Works for Transportation Molly Winter, director, Downtown and University Hill Management Division and Parking Services (DUHMD/PS) Kurt Matthews, parking Manager, DUHMD/PS Kathleen Bracke, GO Boulder Manager Jean Sanson, Senior Transportation Planner Chris Hagelin, Senior Transportation Planner David "DK" Kemp, Sr. Transportation Planner Randall Rutsch, Senior Transportation Planner Natalie Stiffler, Transportation Planner II Kaaren Davis, Board Secretary	
<b>Consultants Present:</b> none	
<b>Type of Meeting:</b> Advisory/ Regular	
<b>Agenda Item 1: Call to Order</b>	<b>[6:03 p.m.]</b>
The meeting was called to order at 6:03 p.m.	
<b>Agenda Item 2: Approval of minutes from 10 August 2015</b>	<b>[6:03 p.m.]</b>
<b>Move to approve August 10, 2015 minutes as presented.</b>	
<b>Motion: Nozzi Second: Bilich</b>	
<b>4:0:0 Motion Passes</b>	
<b>Agenda Item 3: Public Participation</b>	<b>[6:04 p.m.]</b>
<ul style="list-style-type: none"> <li>• <b>Sara Mitton: LL Phase I</b> - Cycle track (Living Labs Phase I – University). Has been riding bikes in Boulder for 41 years. Rode on the first bike paths. Not averse to bikes and is very concerned about safety for all users of all modes of transportation. Respecting this and educating the public will reduce conflict on our roads. Safe, clean lanes everywhere is also key. Board should represent all modes of transportation, not just the board member's personal preferences. There is already good access to the path on the Hill. Enforcement for all modes is lacking. Connector traffic lanes need to flow as designed. This project has obstructed that.</li> <li>• <b>Celeste Landry:</b> Lives on the part of University unaffected by the Living Lab Phase I experiment, but commutes through the Phase I section. Has contacted the Board before regarding ice accumulation in the road and bike lanes. Currently there is glass in the road and in the lanes. This makes a not great environment for bikers. Folsom right-sizing... not sure that the survey of bike counts and users was adequately done. Recommend to put it back the way it was, preferably before winter. A good alternative would be something like the bike/pedestrian separated path by CU on Broadway.</li> <li>• <b>Peter Richards:</b> Have lived on university for 25 years. Has lived west of 6<sup>th</sup> street for all of the 42 years he has lived in Boulder. The Cycle track sucks and needs to be ripped out right now. Several neighbors who are either elderly or somewhat handicapped and cannot ride a bike really dislike this project. Fraternity and sorority nearby and CISCO delivers all the time. The treatment may be in the way for these. Need comments from other agencies in the City such as Police and Fire.</li> </ul>	
<b>Agenda Item 4: Public hearing and consideration of a recommendation to the City manager regarding expansion of the Mapleton, Whittier and West Pearl Neighborhood Parking Permit (NPP) zones and the creation of a new NPP zone: Aurora</b>	
<b>[6:20 p.m.]</b>	
Molly Winter and Kurt Matthews gave the presentation to the board.	
<b>Executive Summary from Packet Materials:</b>	

The purpose of this memorandum is to seek a recommendation from the Transportation Advisory Board regarding expansion of the Mapleton, Whittier and West Pearl Neighborhood Parking Permit program (NPP) Zones and the creation of a new zone: Aurora. The recommended zone additions and new zone qualify under the program guidelines including petition and parking occupancy requirements and have neighborhood support.

The expansions include:

Mapleton Hill NPP (Attachment A)

East & West sides of the 2300 block of 9th St.  
East & West sides of the 2400 block of 8th St.  
East & West sides of the 2400 block of 7th St.  
East & West sides of the 2200 block of 6th St.  
North & South sides of the 500 block of Pine St.  
North & South sides of the 500 block of Highland Ave.

West Pearl NPP (Attachment B)

East side of the 1900 block of 6th St.  
North and South sides of the 300 block of Pearl St.

Whittier NPP (Attachment C)

North & South sides of the 2000 block of Mapleton Ave.

New Zone – Aurora (Attachment D)

North & South sides of the 3500 and 3600 blocks of Madison Ave.  
East & West sides of the 1000 and 900 blocks of 35th St.  
East & West sides of the 1000 and 900 blocks of 36th St.

**SUMMARY OF STAFF PROPOSAL:** Staff recommends the expansion of the following NPP zones as presented in the following attachments:

- Mapleton Hill, (See Attachment A)
- West Pearl (See Attachment B)
- Whittier (See Attachment C)
- Aurora (See Attachment D)

**Requested Action from TAB:**

Staff requests Transportation Advisory Board consideration of this matter and action in the form of the following motion: Motion to recommend to the city manager the expansions of the Mapleton, Whittier and West Pearl NPP's and the creation of a new NPP, Aurora.

**Public Comment:**

- **Judy McKeever:** Has lived in her house for 38 years. Her neighborhood is neither pleasant nor safe currently. Commuter students are parking in the neighborhood and busing to campus. Drivers she sees are so focused on finding a place to park that they are not looking for children, dogs, cars pulling out, etc. They are typically speeding. The stop sign at the corner of 35<sup>th</sup> and Madison gets run frequently. Erratic U-turns to catch a space on the other side of the street are common. Parking is bumper to bumper. Parking frequently encroaches on intersections which interferes with the sight lines. Saw a fire truck call which could not make the turn into the church. Police officer could not get through with two way traffic. Car cut us off.
- **Rod McKeever:** Until a few years ago the neighborhood was a good mix of owner occupied and student housing. Mostly students now with some owner occupied with children. Has seen issues with emergency vehicles not being able to get through. Sometimes people get parked into their driveways. Upswing largely due to Carruthers Biotech Building. The lot there is expensive. Many employees choose to park off site. SEEC building is near completion and will be similarly large. If its parking operates similarly to Carruthers then the congestion will get worse. Free College Parking.com website lists their neighborhood as the only free one in the area. The number of cars has increased by at least an order of magnitude. Adults and children are exposed to increased hazard. Neighbors have commented and object to the current situation.

- **Paul Barchilon:** Born in Boulder, lived here all his life. He is a ceramic artist and sometimes comes home with 400 pounds of clay and has to park a block away and carry it in. The biotech building is definitely a major cause of the current issue. Cars will park so close to driveways that even if you have one, you cannot get in and out. Has stopped people to ask where they are coming from or going to. Many are coming to and from the biotech building. Many are CU. Their neighborhood is being used as an RTD Park-n-Ride. Many times, he has customers coming to visit and has to tell them to park in the church lot a couple of blocks away as it is the only sure parking. We would just like our space back.
- **Kristin Jahn:** Has lived on Mapleton for 13 years. They are the first block in the Whittier neighborhood on the east side of 20<sup>th</sup> that does not have permitted parking. Many are driving to their neighborhood and then bike or bus commuting in. Half the families on the block have children of elementary age or younger. Trying to get them and their gear to and from the cars is difficult as the residents cannot park near their homes. Only needed 5 signatures but got 20. Their block is very very interested in getting this program implemented on their block.
- **Ernest Porps:** Touched by the compassion it takes to be on the Board and listen to all the states of mind that come in. Here in support of the Mapleton expansion. Has been there for 44 years. A retired CU professor. Wants to support the children and families with children. Has observed and can identify with the struggle to get to and from a vehicle that must be parked far away from one's home. Has had double hip replacements and has had difficulties getting to and from his vehicle. The secret to youthfulness is openness. Teaches a course in problem solving. First stage is openness. Salute to the board for their openness.

**Board discussion and comments included:**

**[6:42 p.m.]**

- Concerns about spillover into non NPP zones expressed. Questions regarding whether tools exist to mitigate this issue.
- Opinion that this program should be universal throughout the city.
- Questions regarding the cost of the permits and how the revenues relate to the cost of the program.
- Suggestions for more code enforcement and traffic calming to aid the issues being experienced by the residents.
- Expressions of broad support for the program.
- Questions regarding the timing of mailing and community meeting.
- Questions regarding how the community input affects the program.
- Concerns around the policy mechanism that will be addressed in the AMPS item later this year.
- Questions as to how enforcement relates to revenue and the recommendations in the item (6<sup>th</sup> Street).
- Clarifications that the program is about enforcement and not about balancing the revenue to the enforcement costs. The community benefit is the driving force.
- Questions as to the results of discussions with CU regarding the impact of the research park on the neighborhoods and program.
- Questions regarding whether the proposed new Aurora district is as extensive as it should be. Whether all parts of the area met the criteria for formation of a new district.
- Questions about turnaround time for expansion if new block faces want to be added in after the implementation of a new district.

**Motion: Motion to recommend to the city manager the expansions of the Mapleton, Whittier and West Pearl NPP's and the creation of a new NPP, Aurora as per the staff recommendation.**

**Motion: Bilich Seconded: Nozzi**

**Vote: 4-0 Motion Passes**

**Agenda Item 5: Staff briefing and TAB input regarding Phase I living Laboratory evaluation update and next steps.**

**[7:11 p.m.]**

Mike Sweeney, Bill Cowern, Kathleen Bracke, Marni Ratzel and DK Kemp gave the presentation to the board.

**Executive summary from packet materials:**

This memo provides a status report, check-in and opportunity for the Transportation Advisory Board (TAB) to provide input on the Bicycle Living Laboratory (Living Lab) Phase I evaluation and next steps.

The first phase of Living Lab projects is providing a forum for testing new, innovative facilities and contemporary treatments to improve Boulder's existing bicycle infrastructure. Phase I projects began in 2013 as part of the community

engagement process for the Transportation Master Plan (TMP) update and have been opportunistic and primarily bicycle-related. User feedback is an integral element of the evaluation process coupled with technical transportation data and field “before and after” behavior observations. Living Lab Phase I experiences have informed Phase II.

The Sept. 14 TAB meeting will include an update on the Living Lab Phase I pilot projects underway and additional community engagement proposed in fall 2015 to gather user feedback on the treatments as well as next steps for the location specific pilot projects.

Staff is seeking feedback from TAB on the Living Lab projects from Phase I technical data as well as TAB input to help shape the proposed public engagement process this fall.

**TAB action requested:**

Provide feedback on the Living Laboratory Phase I projects and input on the proposed community outreach process and next steps.

**Board discussion included:**

- Questions about crash statistics before and after the treatments.
- Questions regarding whether the two year after data will provide statistically useful numbers.
- Request for before and after safety and car speed data for all treatments.
- Questions regarding whether there are ways to make stop bars more effective?
- Support for community engagement that is as extensive and diverse and “in your face” as possible. Just mailings are not enough.
- Questions about whether the comments for University have been quantified according to a “negative” versus “positive” evaluation.
- Feedback that the packet was a bit cumbersome and a recommendation to be clearer about what the important takeaways are going forward. Avoid unnecessary data (such as what the position of the bikes in the bike lane are).
- Questions regarding whether feedback from emergency responders had been collected and what was its content.
- Questions regarding ways to visually narrow buffered bike lanes and what options had been considered.
- Concern regarding restricted left turn movements for bicycles in protected/buffered bike lanes.
- Support for the “shared street” treatments.
- Questions regarding snow maintenance and how it affected preferences for using the bike lanes and whether it has been adequately planned for with the Folsom corridor.
- Questions regarding how a similar level of protection as in the long stretches of bike lanes can be provided for intersections.
- Questions regarding the appearance of the treatments in a permanent form.
- Recommendations for outreach to those using it and those who live along it.
- Recommendations to do thorough outreach but not necessarily with much more effort than has already been expended. The board recognizes the time staff has put into this already.

**Agenda Item 6: Staff briefing and TAB input regarding Phase II living Laboratory evaluation update, Corridor refinements and upcoming community engagement events. [7: 57 p.m.]**

Mike Sweeney, Bill Cowern, Kathleen Bracke, Marni Ratzel and DK Kemp gave the presentation to the board.

**Executive summary from packet materials:**

This memo provides an update on the Living Lab Phase II evaluation, corridor refinements, and upcoming community engagement events for the Folsom Street corridor project.

During the August 25<sup>th</sup> City Council Study Session, council provided feedback to staff to proceed with the option of refining the Folsom Street corridor and/or intersections, particularly in segment between Pearl and Canyon and continuing to evaluate the corridor on a weekly basis, with frequent updates to TAB and Council.

Since the study session, staff has implemented several operational refinements to address community concerns and continues to monitor and evaluate the Folsom Street project on a daily and weekly basis.

Additionally, staff has scheduled several community outreach and listening events in the coming weeks to continue

gathering public feedback regarding how the corridor is functioning from a multimodal user perspective.

**TAB action requested:**

Please review and provide feedback regarding the Living Lab Phase II Folsom corridor evaluation results from weeks 1-5 and planned community outreach activities.

**Board discussion included:**

- Recommendations to clarify that increased travel times are during p.m. peak and not uniform across the day.
- Recommendation for more data to get to statistically significant data. It is too early in the collection to have data that is meaningful. The increased bike statistics should reference the fact that the “before” data was collected before the students had returned for fall semester.
- Recommendation to better delineate what the “adjustment factor” is and how it works.
- Questions about how the partnership with BTC and the Chamber is going.
- Request for clarification of certain technical terms in the packet materials.
- Concerns that too many of the bollards were pulled out last week and that speeds will begin to rise again.
- Commendations for tightening the metrics between visits to the board.
- Request for some simplification of some terminology to align with terms that are more familiar to the public.
- Request for more information regarding how public outreach is going in the future.
- Find a way to make business outreach more productive.
- Recommendation to make communications less reactive and wait for more data.
- Find a way to address the peak.

**Agenda Item 7: Matters**

**[9:00 p.m.]**

**A.) Matters from the Board Included:**

Board member Selvans brought up the below matter(s)

- **Resolution:** TAB resolves to support staffs request to the RTD board regarding the need for more time, more public process, a working group and a limitation of 13.3% maximum for an increase to ECO Pass costs.  
**Motion:** Stellar: **Second:** Nozzi  
**Vote:** 4-0 **Resolution Passes**

**B.) Matters from staff/Non Agenda:**

**[8:43 p.m.]**

- **Chautauqua Pedestrian Improvements:**
- Outline of Chautauqua pedestrian improvements including path improvements, connections to Open Space paths, addition of transit stops, ADA ramp installations. Public process has begun. Boards which are involved will be visited first and then public open houses before refinement and return for public hearings.
- **Regional studies update:** Update on the proposed RTD fare increases and minimal public process being conducted. Staff will go to next RTD meeting to provide input and suggestions on a better way to proceed. More time, more public process, a working group and a limit to the increase to 13% which is the prior agreed upon max.

**Agenda Item 8: Future Schedule Discussion:**

**[9:11 p.m.]**

Combined with Matters from Staff

**Agenda Item 9: Adjournment**

**[9:11 p.m.]**

There being no further business to come before the board at this time, by motion regularly adopted, the meeting was adjourned at 9:11 p.m.

**Motion:** moved to adjourn; Selvans, seconded by: Bilich

**Motion passes 4:0**

**Date, Time, and Location of Next Meeting:**

The next meeting will be a regular meeting on Monday, 12 October, 2015 in the Council Chambers, 2<sup>nd</sup> floor of the Municipal Building, at 6 p.m.; unless otherwise decided by staff and the Board.

APPROVED BY:

ATTESTED:

\_\_\_\_\_  
Board Chair

\_\_\_\_\_  
Board Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

An audio recording of the full meeting for which these minutes are a summary is available on the Transportation Advisory Board web page.

DRAFT



# Living Lab - Phase II Corridor Evaluation

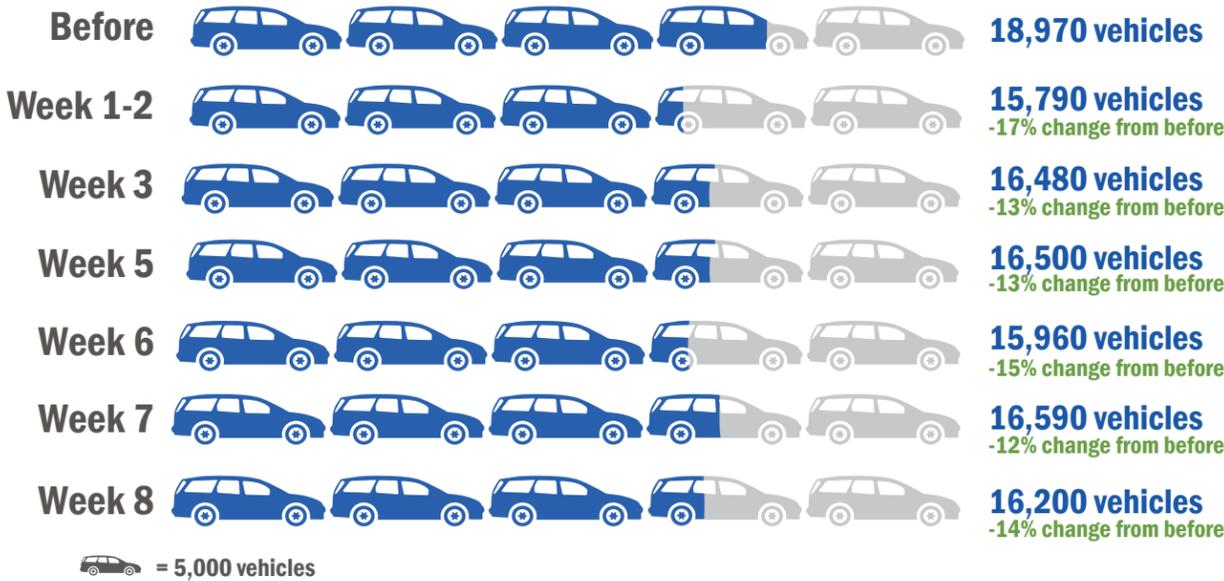
## FOLSOM STREET



Updated: 9/23/2015

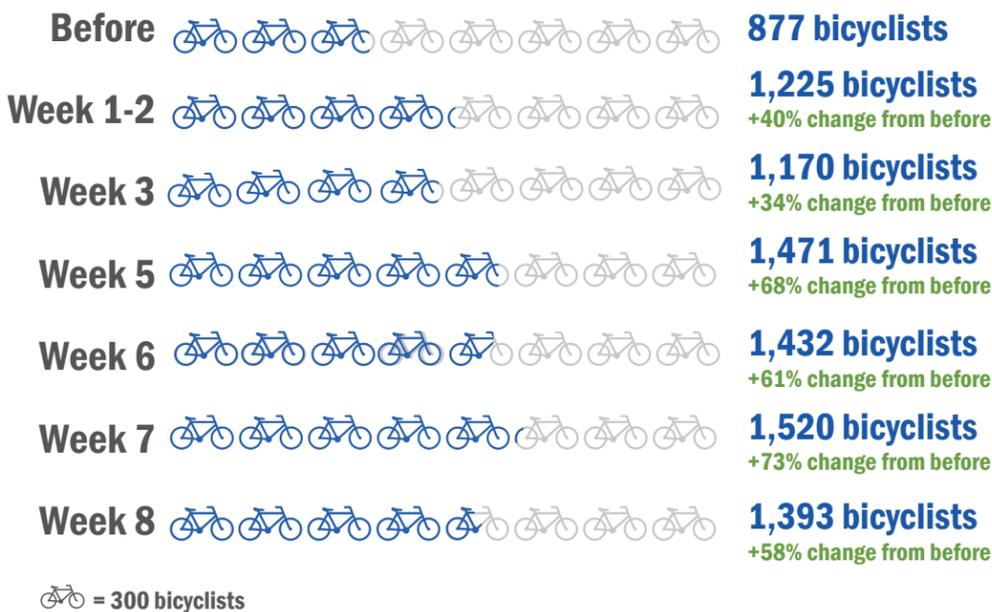
### P.M. Vehicle Travel Time

#### Weekday Vehicle Volume

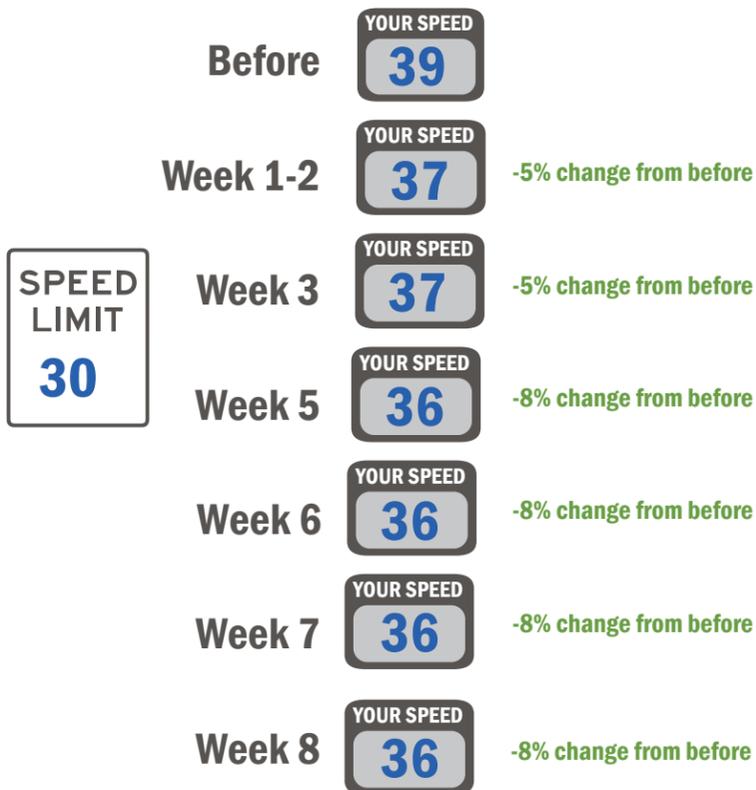


	Northbound	Southbound
Before	High: 4m 52s	3m 44s
	Avg: 3m 32s	3m 20s
	Low: 2m 46s	2m 13s
Modeled	Avg: 4m 47s	4m 30s
	High: 6m 48s	8m 14s
Week 1-2	Avg: 4m 15s	5m 36s
	Low: 2m 40s	3m 53s
	High: 5m 15s	5m 58s
Week 3	Avg: 4m 02s	4m 41s
	Low: 2m 49s	3m 35s
	High: 6m 33s	6m 15s
Week 5	Avg: 4m 37s	4m 52s
	Low: 2m 57s	3m 53s
	High: 6m 47s	7m 50s
Week 6	Avg: 4m 13s	5m 19s
	Low: 2m 38s	3m 52s
	High: 5m 25s	7m 31s
Week 7	Avg: 4m 13s	4m 52s
	Low: 3m 03s	3m 43s
	High: 5m 01s	7m 28s
Week 8	Avg: 3m 05s	4m 36s
	Low: 2m 40s	3m 33s

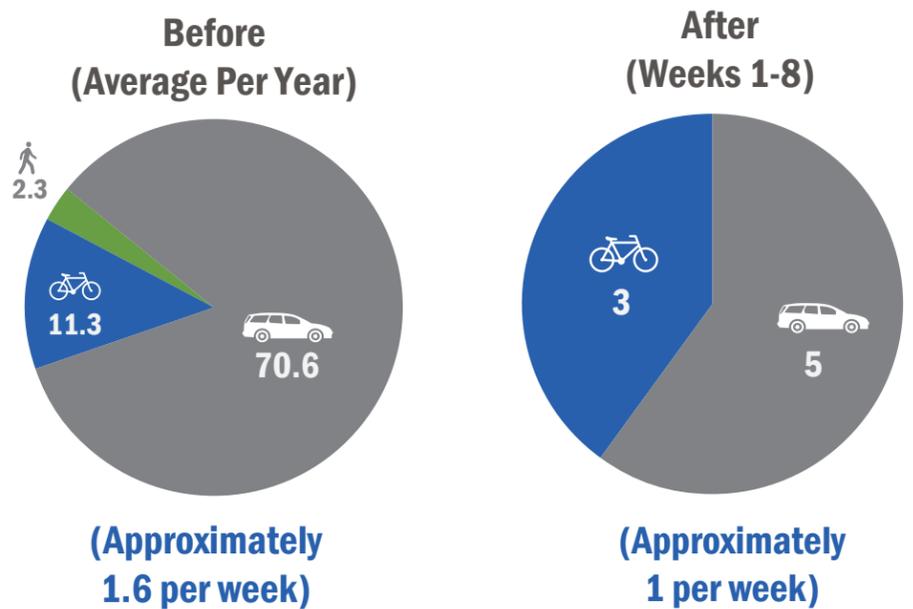
#### Weekday Bicycle Volume



#### Weekday Vehicle Speed



#### Collisions





# Living Lab - Phase II Corridor Evaluation

## FOLSOM STREET



Updated: 9/23/2015

## NOTES

- Week four data: vehicle volume, vehicle speed, and travel time data were not collected during the University of Colorado Boulder (CU) move-in, as traffic patterns during that week do not represent normal conditions.
- “After” data collection timeframes:
  - Week 1-2 is July 27 to August 9.
  - Week 3 is August 10 to August 16.
  - Week 4 is August 17 to August 23.
  - Week 5 is August 24 to August 30.
  - Week 6 is August 31 to September 6.
  - Week 7 is September 7 to September 13.
  - Week 8 is September 14 to September 20.
- Weekday vehicle volume is measured at Folsom north of Canyon.
- Weekday bicycle volume is measured at Folsom north of Pine.
  - The bicycle volume increase along the corridor is consistent with the increase the city typically sees when school is back in session.
- Weekday vehicle speed is the 85th percentile at Bluff.
- “Before” collisions are the average frequency per year from 2012 to 2014.
- Weekday P.M. vehicle travel time is measured between Arapahoe and Valmont.
- Additional data on the secondary evaluation criteria, including demographics, pedestrians, vehicle traffic diversions and transit will be added as more data is available to report.



Date: September 24, 2015

# Folsom Street Living Lab

## Weeks 1-8 – Primary Evaluation Criteria



As part of the Living Laboratory Phase II Folsom Street project, data on vehicle and bicycle volumes, vehicle speed, vehicle travel time, collisions, and bicyclist demographics was collected before the installation of protected bicycle lanes, during weeks 1-8 after the installation, and will continue to be collected as part of the ongoing evaluation process. While the after data from these early weeks is valuable, it is important to note that it is still considered preliminary; ongoing data collection and analysis in the coming weeks will continue to inform the evaluation of the project.

Secondary evaluation data is also being collected as part of the evaluation process. This summary includes preliminary bicycle demographic data. Additional details about the secondary evaluation criteria and the collection time periods for each can be found at [www.BoulderLivingLab.net](http://www.BoulderLivingLab.net).

Before data collection time periods vary by criteria and are noted in the individual tables below. After data collection time frames are:

- **Weeks 1-2:** July 27 to August 9, 2015
- **Week 3:** August 10 to August 16, 2015
- **Week 4:** August 17 to August 23, 2015
- **Week 5:** August 24 to August 30, 2015
- **Week 6:** August 31 to September 6, 2015
- **Week 7:** September 7 to September 13, 2015
- **Week 8:** September 14 to September 20, 2015

## Vehicle Volume and Speed

The city has been collecting average weekday traffic volume and speed at two locations along Folsom Street, north of Bluff and north of Canyon. The data is collected using Miovision technology and is recorded for a three-day period, and reported as the average of the three days, or average daily traffic (ADT). Note that Boulder Valley School District (BVSD), University of Colorado –Boulder (CU) and Naropa schools have been in session during some, but not all, of the before and after data collection periods (noted in the tables below).

### **Folsom Street north of Bluff Street – Posted Speed Limit = 30 mph**

<b>Evaluation Period</b>	<b>Date Collected</b>	<b>ADT-Weekday (vpd)</b>	<b>Average Speed (mph)</b>	<b>85th Percentile Speed (mph)</b>	<b>School In Session</b>
<b>Before</b>	4/27-5/1/15	15,780	35	39	Yes
<b>After-Week 2</b>	8/5-8/7/15	13,790	33	37	No
<b>After-Week 3</b>	8/12-8/14/15	13,930	33	37	No
<b>After-Week 5</b>	8/26-8/28/15	14,310	32	36	Yes
<b>After-Week 6</b>	9/2/15-9/4/15	14,100	32	36	Yes
<b>After-Week 7</b>	9/8/15-9/11/15	14,210	32	36	Yes
<b>After-Week 8</b>	9/15/15-9/17/15	13,570	33	36	Yes

### **Folsom Street north of Canyon Blvd. – Posted Speed Limit = 30 mph**

<b>Evaluation Period</b>	<b>Date Collected</b>	<b>ADT-Weekday (vpd)</b>	<b>Average Speed (mph)</b>	<b>85th Percentile Speed (mph)</b>	<b>School in Session</b>
<b>Before</b>	6/30-7/2/15	18,970	29	34	No
<b>After-Week 2</b>	8/3-8/5/15	15,790	25	30	No
<b>After-Week 3</b>	8/10-8/12/15	16,480	24	29	No
<b>After-Week 5</b>	8/25-8/26/15	16,500	24	29	Yes
<b>After-Week 6</b>	9/2/15-9/4/15	15,960	24	29	Yes
<b>After-Week 7</b>	9/9/15-9/11/15	16,590	26	30	Yes
<b>After Week 8</b>	9/16/15-9/17/15	16,200	26	30	Yes

- **ADT** = Average Daily Traffic
- **VPD** = Vehicles per Day
- **MPH** = Miles per Hour

## **Corridor Travel Time**

The travel time it takes to drive the Folsom corridor end-to-end from Valmont to Arapahoe in the northbound and southbound directions was measured by driving the corridor before and after the installation of the protected bike lanes. The project team used the before travel time measurements to help calibrate the VISSIM modeling software, and then to forecast the expected travel time after the installation.

### **Average PM Peak Hour Travel Times (in minutes: seconds)**

<b>Evaluation Period</b>	<b>PM Northbound</b>	<b>PM Southbound</b>
Before (Nov. 2014)	3:32	3:20
Modeled	4:47 <sup>1</sup>	4:30
Week 1-2	4:15	5:36
Week 3	4:02	4:41
Week 5	4:37	4:52
Week 6	4:13	5:19
Week 7	4:13	4:52
Week 8	3:05	4:36

### **Northbound PM Peak Hour Travel Time Variability (in minutes:seconds)**

<b>Evaluation Period</b>	<b>Average</b>	<b>High</b>	<b>Low</b>	<b>Variability</b>
Before	3:32	4:52	2:46	2:06
Week 1-2	4:15	6:48	2:40	4:08
Week 3	4:02	5:15	2:49	2:26
Week 5	4:37	6:33	2:57	3:36
Week 6	4:13	6:47	2:38	4:07
Week 7	4:13	5:25	3:03	2:22
Week 8	3:05	5:01	2:40	2:39

### **Southbound PM Peak Hour Travel Time Variability (in minutes:seconds)**

<b>Evaluation Period</b>	<b>Average</b>	<b>High</b>	<b>Low</b>	<b>Variability</b>
Before	3:20	3:44	2:13	1:31
Week 1-2	5:36	8:14	3:53	4:21
Week 3	4:41	5:58	3:35	2:23
Week 5	4:52	6:15	3:53	2:22
Week 6	5:19	7:50	3:52	3:58
Week 7	4:52	7:31	3:43	4:12
Week 8	4:36	7:28	3:33	3:55

**Collisions**

Collision data for the Folsom corridor from Valmont to Colorado is being compiled from police reports. The totals include all crashes at the intersections and in segments along the corridor. The following summarizes the average collision frequency (1.6 per week) from 2012 to 2014 for vehicle-vehicle, vehicle-bicycle, and vehicle-pedestrian collisions. The collisions reported for Weeks 1-8 are also summarized below by mode.

**Summary of Before Collisions Along Folsom Street from Valmont to Colorado from 2012-2014**

Before Time Period	Vehicle-Vehicle	Vehicle-Bike	Vehicle - Pedestrian	Total
2012-2014	212	34	7	253
Average per Year	70.6	11.3	2.3	84.3

**After Collisions Along Folsom Street from Valmont to Colorado**

After Evaluation Period	Vehicle-Vehicle	Vehicle-Bike	Vehicle-Pedestrian	Total
Week 1-2	1	1	0	2
Week 3	1	0	0	1
Week 4	1	1	0	2
Week 5	0	0	0	0
Week 6	0	0	0	0
Week 7	1	0	0	1
Week 8	1	1	0	2
<b>Total</b>	<b>5</b>	<b>3</b>	<b>0</b>	<b>8</b>

## **Bicycle Volume**

Daily bicycle volumes are being collected at three locations along Folsom using permanent 24-hour counters: Boulder Creek, South Street, and Pine Street. BVSD, CU and Naropa were not in session during the before data collection period. Before and after volumes at Boulder Creek were collected by a permanent 24-hour counter. The before volumes at South and Pine streets were collected from 6 a.m. to 9 p.m. on June 30, 2015, and after volumes are being collected by permanent 24-hour counters installed in late July 2015. The after data includes bicycle volumes while BVSD, CU and Naropa were both in and out of session. Note that the validation of the counters is currently in progress, and volumes may later be adjusted to account for potential variances.

Bicycle volumes at all three locations increased during Weeks 4 and 5 from before conditions and Week 3 volumes. As noted previously, BVSD classes started during Week 4 and CU and Naropa classes started during Week 5, likely influencing the bicycle volumes.

**Daily Weekday Average Bicycle Volumes Along Folsom Street at Pine Street**

<b>Evaluation Period</b>	<b>Northbound</b>	<b>Southbound</b>	<b>Total</b>	<b>School in Session</b>
Before	437	440	877	No
Week 1	620	655	1,275	No
Week 2	551	625	1,176	No
Week 3	554	616	1,170	No
Week 4	603	651	1,254	No
Week 5	705	766	1,471	Yes
Week 6	684	748	1,432	Yes
Week 7	754	766	1,520	Yes
Week 8	681	713	1,393	Yes

**Daily Weekday Average Bicycle Volumes Along Folsom Street at South Street**

<b>Evaluation Period</b>	<b>Northbound</b>	<b>Southbound</b>	<b>Total</b>	<b>School in Session</b>
Before	388	389	777	No
Week 1	497	578	1,075	No
Week 2	512	556	1,068	No
Week 3	406	500	906	No
Week 4	570	600	1,169	No
Week 5	706	791	1,497	Yes
Week 6	725	799	1,524	Yes
Week 7	730	813	1,543	Yes
Week 8	692	769	1,461	Yes

**Daily Weekday Average Bicycle Volumes Along Folsom Street at Boulder Creek**

<b>Evaluation Period</b>	<b>Northbound - Adjusted</b>	<b>Southbound – Adjusted</b>	<b>Total - Adjusted</b>	<b>School in Session</b>
Before	592	483	1,076	No
Week 1	683	521	1,204	No
Week 2	607	497	1,104	No
Week 3	603	478	1,081	No
Week 4	782	602	1,384	No
Week 5	1,060	880	1,940	Yes
Week 6	1,226	855	2,081	Yes
Week 7	1,212	945	2,157	Yes
Week 8	1,248	926	2,174	Yes

**Notes:**

- “Before” volumes at Pine and South were collected from 6 a.m. – to 9 p.m. on June 30, 2015, and converted to daily volumes using the average hourly distribution from the permanent counter data.
- “Before” volumes at Boulder Creek are an average of weekday volumes from the last week of July and first two weeks of August from 2012 to 2014.
- “After” volumes are an average of daily volumes on Tuesday, Wednesday, and Thursday during the corresponding week.
- Volumes from Folsom at Boulder Creek have been adjusted using previously determined adjustment factors. Volumes from Pine and South have not yet been adjusted.
- The increase in bike volume from Week 4 to Week 5 is attributed to school in session. The increases in this volume along this corridor so far are consistent with the increases the city typically sees when school is back in session.

## **Bicycle Demographics**

Bicycle demographic data has been observed and recorded along the Folsom corridor before and after the installation of pilot project. The before data was collected on April 28, 2015, for two hours. After data was collected on July 29, August 3, August 12-13, August 25-27, Sept. 1-3, Sept. 8-10, and Sept. 15-17 for a total of 18 hours. Observations have been taken during weekday AM, noon, and PM rush hours. Observers record the total number of male and female bicycle riders on the roadways. In addition, the number of children and adults riding with children is recorded and comprises the “family” category (see table below).

**Bicycle Weekday Demographic Along Folsom Street**

<b>Evaluation Period</b>	<b>Male</b>	<b>Female</b>	<b>Family</b>
Before	72%	28%	4%
Week 1-2	78%	22%	6%
Week 3	67%	33%	5%
Week 5	66%	34%	4%
Week 6	66%	34%	4%
Week 7	67%	33%	2%
Week 8	70%	30%	1%



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 29, 2015**

**AGENDA TITLE:** Second reading and consideration of a motion to adopt and order published by title only **Ordinance No. 8071**, amending Title 10, “Structures,” B.R.C. 1981 to add a new Chapter 10-7.7 “Commercial and Industrial Energy Efficiency” and amending Section 10-1-1 “Definitions” by adding definitions and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Driskell, Executive Director of Community Planning and Sustainability

Susan Richstone, Deputy Director of Community Planning and Sustainability

Kendra Tupper, Energy Services Program Manager

Elizabeth Vasatka, Business Sustainability Coordinator

**1. EXECUTIVE SUMMARY**

The purpose of this item is the second reading of a “Building Performance Ordinance” that would require commercial and industrial (C&I) building owners in Boulder to annually rate their building’s energy use and report energy metrics to the city, and to implement periodic energy efficiency measures. Rating, or benchmarking, is the process of measuring and comparing energy performance metrics such as the normalized energy use of a building to other similar buildings. Minor modifications have been made since the first reading of the ordinance; therefore two ordinance versions are attached: **Attachment A** (the ordinance language as adopted on first reading) and **Attachment B** (revised ordinance language for adoption in underline/strikeout format to indicate changes).

This agenda item follows the [May 12, 2015](#) study session and [September 1, 2015](#) council meeting. At these meetings, council affirmed the goals of the proposed ordinance and provided feedback on the options presented. The proposed ordinance presented here is based on the feedback provided by council.

The proposed ordinance requires building owners to do the following:

1. Annually rate and report<sup>1</sup> the energy use of their buildings;
2. Perform periodic energy assessments;<sup>2</sup>
3. Perform periodic retrocommissioning (RCx)<sup>3</sup> and implement cost effective measures; and
4. Implement one-time lighting upgrades.

The city plans to publicly disclose building energy ratings after a two year grace period to provide owners time to improve their buildings' rating. Any information submitted to the city, including information shared during the grace period, will be subject to the Colorado Open Records Act (CORA). CORA exempts "Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data . . ." C.R.S. § 24-72-204(3)(a)(IV). If a business can demonstrate that the information fits within this exemption, the city will withhold the information from a CORA request.

High performing, energy efficient buildings will still be required to rate and report annually, but will be exempt from the other efficiency requirements outlined in the proposed ordinance.

Large industrial or manufacturing campuses where multiple buildings are served by a central plant or single utility meter will be subject to custom requirements that differ in the following ways:

- Owners will report energy use for the entire campus versus on a building by building basis;
- A third party (the local energy utility) will aggregate the energy use for all campuses, and the city will only receive the aggregate usage values; and
- The retrocommissioning requirement is replaced by a requirement to implement cost effective measures identified in the energy assessment. This reflects the fact that continuous monitoring systems are standard in these types of large industrial campuses.

A City Manager Rule will be published for public comment following ordinance adoption, and it will include the implementation details for rating and reporting, energy assessments, retrocommissioning and lighting upgrades. **Attachment C** contains the outline of the City Manager Rules.

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<sup>1</sup> Rate the energy use of their buildings through the [ENERGY STAR Portfolio Manager](#) free online tool and report the usage and associated metrics to the city and tenants.

<sup>2</sup> For buildings larger than 50,000 square feet, this must be equivalent to a Level II energy audit, as defined by the American Society for Heating, Refrigeration and Air-Conditioning Engineering (ASHRAE). For buildings smaller than 50,000 square feet, this must be equivalent to an ASHRAE Level I energy audit.

<sup>3</sup> Retrocommissioning is a process that improves the efficiency of existing building operations by "tuning up" and calibrating existing functional systems to run as efficiently as possible through low- or no-cost improvements.

## 2. STAFF RECOMMENDATION

**Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

**Motion to order published by title only and adopt Ordinance No 8071, amending Title 10, “Structures,” B.R.C. 1981 to add a new Chapter 10-7.7 “Commercial and Industrial Energy Efficiency” and amending Section 10-1-1 “Definitions” by adding definitions and setting forth related details contained in Attachment B.**

Furthermore, council directs the city manager to establish rules setting conditions of compliance and providing guidance on implementation.

## 3. COMMUNITY SUSTAINABILITY ASSESSMENT AND IMPACTS

- **Economic:** After employees, utilities are typically the largest non-fixed business expense. These proposed requirements provide a way for owners and tenants to understand energy use and identify cost-effective opportunities to cut energy waste and costs. This would redirect energy spending away from the utility and back to the local community, driving job creation and increased demand for energy efficiency services.

Based on the benchmarking data from other cities, staff has estimated the net economic benefit of improving energy performance across the commercial building stock. Other cities (with at least one year of benchmarking data) have calculated potential future savings that could be achieved if the average energy use intensity<sup>4</sup> (EUI) of the buildings in the *highest* quartile of energy use were improved to match the average EUI for the *average* or *lowest* quartile energy users. Correcting these EUIs for our local climate and square footage, the city estimates that Boulder’s local economy could save the following in annual energy costs:

<b>\$8.5 million</b>		<b>\$14 million</b>
saved each year if all buildings with <i>high</i> energy use improved to <i>average</i> energy users		saved each year if all buildings with <i>high</i> energy use improved to <i>low</i> energy users

- **Environmental:** The proposed ordinance is an important step toward achieving Boulder’s proposed climate commitment goal of reducing greenhouse gas emissions 80 percent by 2050 (compared to 2005). The city’s recently completed 2012 greenhouse gas inventory (included in the [July 30, 2015](#) study session memo) shows that private sector commercial and industrial buildings are responsible for 41 percent of Boulder’s total emissions.<sup>5</sup>

<sup>4</sup> Total annual energy use per square foot of floor area (thousand British Thermal Units per square foot per year)

<sup>5</sup> While institutional, or public sector, C&I buildings are responsible for 12 percent of emissions, a municipal ordinance would only cover private sector and city owned buildings.

Fully implemented, the proposed ordinance is projected to save between 70,000 and 100,000 metric tons of carbon dioxide equivalent emissions per year. This equates to a 4.5 to 6 percent reduction in Boulder's total greenhouse gas emissions.

- Social: The intent of the proposed requirements is to transform the real estate market by increasing the transparency of building energy data and increasing energy efficiency. These requirements will provide potential tenants and buyers with information to help them evaluate operational costs and will recognize and reward high efficiency buildings.

#### 4. OTHER IMPACTS

- Fiscal: Implementation of the proposed ordinance will be funded through the Climate Action Plan (CAP) tax. The estimated ongoing expenses for ordinance implementation, including staffing, are approximately \$330,000 per year (less than 20 percent of the annual CAP budget). Almost half of those expenses will be used towards new rebates to offset the costs to building owners. This is explained in more detail in the budget section of this memo. If the CAP tax sunsets (currently March 31, 2018), council will be asked to determine how this program will be funded and administered through the budget process.
- Staff time: Ordinance implementation and assistance represent significant work plan items in the coming years, and have been incorporated into the existing work plans of city staff and contractors. Additionally, a vacant position funded in the CAP tax budget is being used to hire a new employee to administer the program and the new incentives associated with it.

#### 5. BACKGROUND

Please refer to the [May 12, 2015](#) study session memo and the [September 1, 2015](#) council packet for the following background information relevant to the Building Performance Ordinance:

- Greenhouse gas emissions from commercial and industrial buildings in Boulder;
- The city's history with energy efficiency and rating and reporting programs;
- Estimated capital costs, operational savings, and payback estimates associated with these requirements;
- National context with information on the other cities and counties that have adopted similar requirements, as well as efforts at the federal government level;
- Coordination with other city programs and requirements, including commercial building energy codes and outdoor lighting codes; and
- Estimated energy savings from existing rating and reporting programs across the country.

Please refer to **Attachment D** for an infographic developed to assist building owners and tenants in understanding the proposed ordinance and program and how it may impact them.

## 6. BOARD AND COMMISSION FEEDBACK

The Environmental Advisory Board reviewed the options presented to council at the May 12 study session and was supportive of staff's recommendations, which have formed the basis of the proposed ordinance. The EAB also reviewed the materials for the proposed ordinance on August 5, 2015 and have written a letter of support (see **Attachment E**). In addition, members of EAB had the following feedback:

- Engagement: One member suggested that staff further engage with trade allies and service providers to help with outreach and compliance for these requirements.
- Program Tracking: In addition to tracking energy savings, members expressed a desire for staff to track public and private investment in energy projects, lease rates over time, and net community economic benefit.
- Incentives: One member recommended that the incentives be spread out among various building owners and property managers (i.e., do not allow a single large owner to receive the majority of incentives).
- Fines for Non-Compliance: Members recommended that fines be imposed on a per square foot basis, to make it more equitable for smaller buildings, and to ensure that the large industrial campuses that include multiple buildings are fined an amount equivalent to the amount and size of buildings within the campus. Staff has incorporated this into the proposed ordinance.
- Capital Costs: A few members expressed concerns about building owners passing through all of the costs to their tenants in a bulk assessment and recommended that the ordinance require that costs be passed through to tenants over the length of the payback period for each investment. Staff will consider incorporating this into the proposed city manager rules.

## 7. PUBLIC ENGAGEMENT AND FEEDBACK

During the past year, staff has conducted a broad community stakeholder engagement process that has informed the development of options and recommendations for a potential ordinance. This process consisted of three phases:

Phase 1 – Working Group (October 2014 to January 2015): Staff convened and facilitated a working group of potentially affected stakeholders (building owners, property managers, service providers, commercial brokers, etc) to help develop options for a commercial energy ordinance. This was an important process to identify aspects of the requirements that cause the most concern for the commercial building stakeholders. The project's website ([www.BoulderBuildingPerformance.com](http://www.BoulderBuildingPerformance.com)) provides access to all presentations and meeting notes from this working group. Additionally, a summary of feedback and recommendations is included in the [May 12, 2015](#) study session memo.

Phase 2 – Broader Outreach to the Business Community (January to April 2015): Following the working group completion, staff presented to a number of business groups in the community including:

- Downtown Boulder Inc. - Feb. 4, 2015;
- Boulder Tomorrow - Feb. 25, 2015;
- The Boulder Group of the International Facility Management Association (IFMA) - April 2, 2015;
- Boulder Chamber Community Affairs Council – April 9, 2015; and
- Commercial Brokers of Boulder - April 13, 2015.

The city also hosted a one-hour webinar on March 18, 2015, for all potentially affected building owners. Approximately 55 participants attended the webinar and a recording was posted on the [project website](#) for future viewers.

Phase 3 – Specific Outreach Following May 12 Study Session (May to July 2015): Following the May Study Session, staff facilitated additional targeted outreach around two key issues: large industrial campuses and split incentives.

- Large Industrial Campuses – Between the study session and first reading, staff has engaged with Boulder’s four large industrial companies - IBM, Medtronic (formerly Covidien), Corden Pharma, and Ball Aerospace) - to discuss their unique situations and craft custom requirements. Please refer to the **“Summary of Ordinance Provisions”** section for more details regarding how the circumstances of these large industrial campuses are addressed in the proposed ordinance.
  - Feedback: Although these companies appreciate the opportunity to provide input on these requirements, they still oppose the ordinance for a few key reasons. Primarily, these large companies said that the proposed ordinance would cause them to “sub-optimize” how they allocate limited capital funding. These requirements could cause them to divert money from projects in non-Boulder locations where the capital could have a greater positive impact to business and a larger impact in reducing greenhouse emissions. Because of this, some of the companies said that the proposed ordinance could be counter to Boulder’s goal to reduce emissions. Additionally, some companies are concerned that these requirements will impact local companies’ ability to be profitable and competitive in the global market.
- Split incentive issues – Between the study session and first reading, staff reconnected with the [Institute for Market Transformation](#) and cities that have passed similar ordinances. Staff then held a focus group discussion with some of Boulder’s largest property owners and their tenants. Please refer to the **“Analysis”** section for more details.

Through this community engagement, there has been significant cooperation and dialogue with many owners, property managers and service providers. Nevertheless, members of the commercial building community have expressed concerns regarding data privacy and the number of new city regulations. In addition to having the most stringent energy codes in the country for new commercial construction (and major remodels and additions), the city has just adopted a Universal Zero Waste Ordinance and an affordable housing linkage fee for new commercial buildings – all of which affect businesses and property owners.

## 8. ANSWERS TO FIRST READING QUESTIONS

- *The Building Performance Ordinance was approved on first reading on Sept. 1 as item 3J. For second reading, I'd like to better understand why LEED certification suffices in several circumstances to meet our criteria. I'm not up on LEED Building Operations and Maintenance, but in other flavors of LEED it seems to me that, while the certification is valuable, it does not necessarily equate to the requirements we are trying to apply. I have a similar question relating to Energy Star certification. And, over time, as our requirements may increase, these other two certifications may not keep pace.*

The ordinance allows these exemptions because both ENERGY STAR and LEED (Leadership in Environmental Design) for Buildings Operations and Maintenance (LEED O+M) require on-going verification of efficient energy performance and periodic recertification to stay current.<sup>6</sup> ENERGY STAR certification is based on a single year of energy performance and must be achieved each year in order to maintain the certification. For LEED O+M, buildings can apply for recertification as frequently as each year but must file for recertification at least once every five years to maintain their status.

The most common and widely used version of LEED, LEED for New Construction and Commercial Interiors (LEED NC), focuses largely on the construction and/or major renovation phase of a building. A building can achieve this one-time certification right after initial occupancy, regardless of how much energy it actually consumes.<sup>7</sup> In contrast, the intent of LEED O+M is to certify the operations and maintenance of the building and create a plan for ensuring high performance over time. The rating system captures both a building's physical systems (equipment, design, land use, etc.) and the way the building is occupied and operated by its managers (mechanical system control and optimization, waste management, commuting programs, etc.).

A key goal of LEED O+M is to institutionalize a process of reporting, inspection and review over the lifespan of the building. The following are all prerequisite requirements to achieving LEED O+M certification – since they mirror the requirements of the ordinance, staff concluded that this certification is sufficient for exemption:

- Conduct an energy audit that meets both the requirements of the ASHRAE preliminary energy use analysis and an ASHRAE Level 1 energy assessment.
- Prepare and maintain a current facilities requirements and operations and maintenance plan that contains the information necessary to operate the building efficiently.

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<sup>6</sup> The other versions of LEED do not require this, which is why the ordinance specifically references LEED O+M.

<sup>7</sup> In the past, the LEED NC certification did not necessarily translate into low energy buildings, since it was possible to accumulate enough points in other categories, such as Water Efficiency and Materials and Resources. The current rating system for LEED NC requires a minimum number of points in the energy use credit to address this issue.

- Based on 12 months of metered energy data, show that the building has an ENERGY STAR rating of at least 75, or that the building is at least 25 percent more efficient than the median energy performance of similar buildings. If national data is not available for the building type, show at least a 25 percent improvement in energy performance compared to the past five years.

## 9. SUMMARY OF ORDINANCE PROVISIONS

Please refer to **Attachment B** for the complete ordinance language.

The proposed Building Performance Ordinance will contribute to Boulder’s greenhouse gas reduction goal, helping to address the significant gap between where we are today and our city’s goal of an 80 percent reduction in GHG emissions by 2050. The proposed ordinance would require buildings owners of specified sizes to do the following:

- Annually Rate and Report<sup>8</sup> the energy use of their buildings through the [ENERGY STAR Portfolio Manager](#) free online tool and report the usage and associated metrics to the city and tenants.
- Perform Periodic Energy Assessments (every ten years) to identify cost effective efficiency measures. For buildings larger than 50,000 square feet, the assessment must be equivalent to a Level II energy audit, as defined by the American Society for Heating, Refrigeration and Air-Conditioning Engineering (ASHRAE). For buildings smaller than 50,000 square feet, the assessment must be equivalent to an ASHRAE Level I energy audit.
  - ASHRAE Level I: Site Assessment or Preliminary Audits identify no-cost and low-cost energy saving opportunities, and a general view of potential capital improvements. Activities include an assessment of energy bills and a brief site inspection of the building.
  - ASHRAE Level II: Energy Survey and Engineering Analysis Audits identify no-cost and low-cost opportunities, and also provide efficiency measure recommendations and potential capital-intensive energy savings opportunities. Level II audits include an in-depth analysis of energy costs, energy usage and building characteristics and a more refined survey of how energy is used in the building.
- Perform Periodic Retrocommissioning (RCx)<sup>9</sup> (every ten years) and implement cost-effective (payback of less than two years) RCx measures within two years of the RCx study. The scope for required retrocommissioning will be reduced for buildings smaller than 50,000 square feet.
- Implement One Time<sup>10</sup> Lighting Upgrades to bring all interior and exterior lighting up to certain requirements of the current International Energy Conservation Code (IECC). The requirements will

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<sup>8</sup> Rating (or benchmarking) is the process of measuring and comparing energy performance metrics (such as the normalized energy use of a building) to other similar buildings.

<sup>9</sup> Retrocommissioning is a process that improves the efficiency of existing building operations by “tuning up” and calibrating existing functional systems to run as efficiently as possible through low- or no-cost improvements.

cover maximum allowed wattage for interior and exterior lighting and exit signs, and also require basic, cost effective lighting controls (automatic time switch control devices and occupancy sensors). The date of required compliance for implementing the one-time upgrades varies by building size, but is two years after the first required energy assessments.

### **9.a. Custom Requirements for Large Industrial Campuses**

Large industrial or manufacturing campuses where multiple buildings are served by a central plant or single utility meter will be subject to the following custom requirements. These requirements reflect the fact that it is not feasible to determine building level energy use due to the central plant and metering configurations. They also address some of the security concerns expressed around releasing energy data and reflect the fact that continuous monitoring systems (essentially on-going RCx) are standard for these types of campuses.

- Annually Rate and Report total campus energy use (broken out by fuel type). The campuses must give the local energy utility permission to aggregate total energy use across all campuses and provide that to the city. The city will then receive only the aggregate energy use (by fuel type).
- Participate in a Utility Process Efficiency Study or conduct an Energy Assessment<sup>11</sup> (every ten years) that covers at least seventy-five percent of the total campus energy use, and Develop a Plan for achieving future energy savings.
- Implement Cost Effective Measures that will pay back in less than one year as identified in the assessment, within two years of the completion of the Utility Process Efficiency Study or Energy Assessment.
- Implement One Time Lighting Upgrades to bring all interior and exterior lighting up to certain requirements of the current International Energy Conservation Code (IECC). The requirements will cover maximum allowed wattage for interior and exterior lighting and exit signs, and also require basic, cost effective lighting controls (automatic time switch control devices and occupancy sensors). The date of required compliance for implementing the one-time upgrades is 2025.

### **9.b. Public Disclosure**

The ordinance specifies that the city will publically disclose building energy use and ratings after a two year grace period, to provide owners time to improve their ENERGY STAR Portfolio Manager ratings or related energy use metrics. Although any information submitted to the city will be subject to

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<sup>10</sup> At the May 12 Study Session, staff recommended that lighting upgrades occur every ten years. However, since then staff has done additional research and is now recommending that lighting upgrades are a one-time requirement because the newer lighting technologies have lifetimes (and depreciation schedules) around 20 years.

<sup>11</sup> Equivalent to a Level II energy audit, as defined by the American Society for Heating, Refrigeration and Air-Conditioning Engineering. This audit includes an energy end use breakdown for the building, and detailed cost and savings analysis for efficiency measures.

Colorado Open Records Act (CORA) at any time. However, building owners with significant concerns around security, trade secrets, and confidential competitive information, will be given the opportunity to provide that information to the city. If it is sufficient, the city will withhold the exempt information. More details are noted under the “**Analysis**” section discussion of data privacy issues.

### 9.c. Exemptions

Buildings will be exempt from the rating and reporting requirement if the building is unconditioned and unlit, or if the building does not have a full year’s worth of utility data.

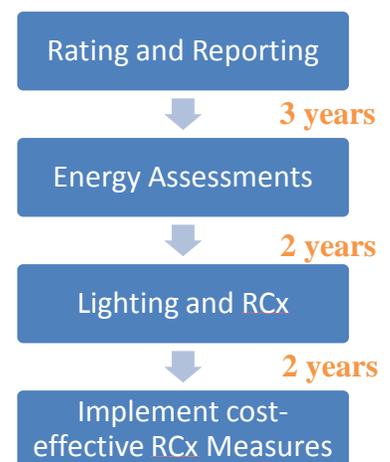
High performing, energy efficient buildings will still be required to rate and report, but will be exempt from the other efficiency requirements. Buildings will be considered for the efficiency exemption if they meet any of the following criteria:

- Current ENERGY STAR certification;
- Current LEED (Leadership in Environmental Design) Building Operations and Maintenance (LEED O+M) certification;
- A demonstrated pattern of significant and consistent improvements in energy efficiency or greenhouse gas emissions (approved by the city manager); or
- Others upon review and request.

There is also an exemption from the energy assessment requirement if a building owner can demonstrate that he or she conducted an equivalent energy assessment within ten years of the first deadline for energy assessments, and implemented the cost-effective actions that were recommended.

### 9.d. Proposed Compliance Schedule

The proposed Building Performance Ordinance features a phased compliance schedule to allow time for the city to develop systems/processes and for the private sector to plan for and absorb costs. Under the recommend compliance timeline, only large commercial and industrial (C&I) buildings (> 50,000 sf), newly constructed C&I buildings (>10,000 sf), and city- owned buildings (> 5,000 sf) would have to comply in 2016. Over time, smaller existing private sector buildings (> 20,000 sf) and efficiency requirements would be phased in. In general, energy assessments are required three years after the first rating and reporting deadline. Lighting upgrades and retrocommissioning (RCx) are required two years after the first required energy assessment, except for large industrial campuses which have until 2025 to comply with the lighting requirements because of scale of those retrofits.



The table below summarizes the recommended phasing strategy.

**Table 1: Proposed Timeline for Ordinance Implementation**

Existing Buildings > 50,000 sf New Buildings > 10,000 sf City Buildings > 5,000 sf	Existing Buildings > 30,000 sf	Existing Buildings > 20,000 sf	Large Industrial Campuses*
<u>2016</u> : Require rating and reporting (R&R) <u>2019</u> : Energy Assessments <u>2021</u> : Lighting upgrades and RCx <u>2023</u> : Implement cost effective RCx measures	<u>2018</u> : R&R <u>2021</u> : Energy Assessments <u>2023</u> : Lighting upgrades and RCx <u>2025</u> : Implement cost effective RCx measures	<u>2020</u> : R&R <u>2023</u> : Energy Assessments <u>2025</u> : Lighting upgrades and RCx <u>2027</u> : Implement cost effective RCx measures	<u>2016</u> : R&R <u>2019</u> : Energy Assessments and plan for future savings <u>2021</u> : Implement cost effective measures identified in the assessment <u>2025</u> : Lighting upgrades
<i>* Multiple buildings served by a central plant or single utility meter</i>			

**9.e. Changes to the Ordinance Since First Reading**

Staff is proposing minor changes to the ordinance adopted on first reading, primarily to correct typos and numbering references. Beyond those small clean-up items, the following changes were made:

- o Adjusted the dates for the first reporting requirements in 2016 (because the second reading was rescheduled in lieu of more pressing items),
- o Added an exemption for (and defined) financial hardship,
- o Clarified that the energy use data will be aggregated across the large industrial campuses before being reported to the city, and
- o Edited the exemption language to be consistent across all sections.

**10. ANALYSIS**

At the May 12 study session, the following concerns were raised by council and have been analyzed further.

**10.a. Data Privacy Issues**

As a city government, all information in its possession is public and subject to the Colorado Open Records Act (CORA). For industrial or manufacturing buildings with significant concerns regarding security, trade secrets, and confidential competitive information, the ordinance allows the owner to demonstrate that the information fits within an exemption to CORA. If the submission is sufficient, the city will withhold the information from any CORA request. If sued, the city will provide the business with the opportunity to defend the nondisclosure.

CORA includes the following exemptions:

(3)(a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person;

C.R.S. § 24-72-204(3)(a)(IV). The courts have interpreted this section to limit disclosure of information the disclosure of which would likely either (1) impair the government's ability to obtain such information in the future; or (2) cause substantial harm to the competitive position of the party submitting the information. *International Brotherhood of Electrical Workers Local 68 v. Denver Metropolitan Major League Baseball Stadium District*, 880 P.2d 160 (Colo. App. 1994).

Thus, there is clearly an argument that some information submitted as part of an energy assessment or rating and reporting could be considered exempt from a CORA request. It appears that courts will make a case by case analysis of whether the information requested meets the statutory criteria. As it will be difficult to establish the first prong of the test, because submission of the data is in response to a city mandate, building owners desiring exemption will need to demonstrate that disclosure would cause substantial harm to their business's competitive position.

With this in mind, any building owner that wishes data to be withheld from public disclosure, both during the initial grace period for CORA purposes and after, must submit a document detailing why this disclosure would cause substantial harm to their competitive position. Concern that potential tenants might shy away from renting or buying buildings with poor energy performance will NOT qualify for this exemption.

To provide further protection for the city's large industrial and manufacturing campuses that have security concerns in addition to threats to their competitive position, the city will only require them to report their total campus energy use to their local energy utility who will then aggregate total energy use (by fuel) across all of the campus. The city will only receive the total aggregate energy use.

## 10.b. Split Incentive Issues

The proposed ordinance will require building owners to pay for capital improvements, but the business tenants would benefit from the utility bill savings, since most of Boulder's commercial leases are triple-nets.<sup>12</sup> How can these costs be shared to alleviate this misalignment?

Since the study session, staff re-connected with the [Institute for Market Transformation](#) and other cities that have passed similar ordinances. Staff learned that most commercial leases treat energy assessments and efficiency as "operating expenses," which can be passed through to tenants. Further, the majority of commercial leases have a clause which allows costs for anything required by law to be passed through to tenants.<sup>13</sup>

Staff then held a focus group discussion with some of Boulder's largest property owners and their tenants. The general consensus was that it would be possible to pass these costs through to tenants over time. Owners asked that the city provide them with educational materials designed to help them discuss these requirements with their tenants, and this has been included in staff's implementation plan.

Following this meeting, members from EAB expressed concern that owners would simply pass the full cost through to tenants, rather than spreading it out over the expected payback period. This would put a financial burden on small business tenants. To prevent this, the ordinance is written to allow a city manager rule that may specify parameters related to how owners pass through related costs to their tenants, potentially including requirements for amortizing costs over time. Under this procedure, tenants' annual costs should stay roughly the same, as they will benefit from reduced utility bills while seeing a similar annual increase in lease costs to cover the capital investments to realize these savings.

Further, there are a few special cases where the tenants actually own and maintain the building equipment (i.e. strip malls where each tenant space has its own rooftop heating or cooling unit) and the owners don't have the ability to implement the efficiency requirements. The city will handle these cases through the exemption process and create a custom pathway where these tenants can comply by participating in the Partners for a Clean Environment (PACE) program, getting a free energy assessment and then implementing cost-effective efficiency measures.

## 10. IMPLEMENTATION PLAN

The proposed ordinance will create new requirements and a new ongoing program in the city, resulting in a commensurate need for staffing resources to develop, implement and enforce the ordinance and program. In addition to developing and administering the program requirements, the city will need to manage any new incentives that are outside commercial EnergySmart, and set up future systems for

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<sup>12</sup> In a triple-net lease, tenants pay set monthly rent and estimated share of building operating expenses (including utility costs). At year's end, tenants pay additional adjustment for true cost of operational expenses

<sup>13</sup> This is how costs were shared for requirements stemming from the Americans for Disability Act in 1990.

outcome-based energy code enforcement (should the city move in that direction). The timeline for implementation through the end of 2016 is outlined below, assuming an October 2015 adoption schedule.

**Table 2: Proposed Timeline for Ordinance Implementation**

<b>Key Effort</b>	
<b>Education and Outreach</b>	On-going, but a targeted effort will occur from Nov 2015 – March 2016
<b>Develop webpage for the requirements, housing support materials and webforms for exemption requests, etc</b>	Sept – Nov 2015
<b>Publish the list of buildings required to rate and report (R&amp;R) in 2016</b>	
<ul style="list-style-type: none"> <li>Publish a draft list</li> <li>Require building owners to “claim” their buildings through a webform, assign a point of contact, and update information</li> <li>Publish the revised list</li> </ul>	Nov 2015 – Jan 2016
<b>Develop support materials for building owners and tenants</b>	
<ul style="list-style-type: none"> <li>How-To Guides</li> <li>Handouts summarizing the requirements</li> <li>Tool to help owners estimate the costs of various efficiency projects</li> </ul>	Sept 2015 – Jan 2016
<b>New custom rebates offered under EnergySmart</b>	Jan 31, 2016
<b>Setup compliance tracking system and create business process for program administration</b>	Jan – April 2016
<b>First R&amp;R compliance deadline for city owned buildings</b>	May 1, 2016
<b>Create an online certification course for Energy Assessors and Retrocommissioning Professionals</b>	March - May 2016
<b>First R&amp;R compliance deadline for large private sector buildings</b>	August 1, 2016 (will be June 1 <sup>st</sup> for all future years)
<b>Setup framework for early adopter rebates for Energy Assessments</b>	July – Aug 2016
<b>Develop Rating and Reporting Case Studies</b>	4 <sup>th</sup> Quarter 2016
<b>Write the Annual Rating and Reporting Report</b>	4 <sup>th</sup> Quarter 2016

### **10.a. Options for Cost Recovery**

Many cities charge a filing fee to comply with their benchmarking and energy audit requirements. This is not recommended for the first two years, as our businesses already contribute to the CAP Tax, which will fund this program through 2017. When the CAP Tax expires (March 31, 2018; or later if extended), the staff recommends that a modest filing fee (in the range of \$50 to \$150 per building) be instituted.

### **10.b. Fines for Non-Compliance**

The city explored a number of enforcement strategies to ensure high compliance rates. Best practices from other cities show that a combination of outreach and education, written and verbal reminders,

coupled with monetary fines are the most successful. With these strategies, Seattle was able to achieve a 93 percent compliance rate in its first year of program implementation. The city will continue to invest in outreach and education efforts for the building community. In addition, the proposed ordinance includes a fine of \$0.0025 per square foot<sup>14</sup> per day for violation, with a maximum of \$1000 per day. A warning will be issued prior to any fines.

City staff will serve as the program administrator, staying in regular communication with the affected building owners. The program administrator will issue verbal and written reminders and warnings. If compliance is still not met, the program administrator will work with the code compliance specialist to begin the enforcement process.

### **10.c. Training and Support**

Following the passage of the ordinance, the city will design and implement education and training programs to assist building owners with ordinance compliance. It will be important that the city provide support and resources, such as: a website, call center, green lease templates, in-person and online training of the ENERGY STAR Portfolio Manager Tool, and general assistance and support with understanding the rating and reporting and energy assessment information. The city will also coordinate with EnergySmart advisors and call center operators to ensure that they are able to answer questions related to the ordinance and its requirements.

### **10.d. Working with Xcel Energy to Ensure Building Owners have Access to Data**

Within the last few months, the Public Utilities Commission changed the rules on data access and privacy, making it easier for building owners to access whole building energy use data required for rating and reporting. The key changes are:

- Data Privacy Rules Changed from a 15/15% Standard to a 4/50% Standard: a utility shall provide whole-building energy use data to a property owner if there are at least 4 customers or tenants (may include the property owner), and no one may be more than 50% of the data (except the property owner)
- Electronic Access: the utility shall provide the energy data electronically and utilities are now allowed to offer electronic consent forms (required for tenants when the 4/50% data privacy rule isn't met)

Additionally, Xcel Energy's 2015 DSM Plan commits to providing automatic, electronic data uploads directly into ENERGY STAR Portfolio Manager by the end of 2015. City staff will need to coordinate with Xcel Energy to ensure that these changes are made and appropriately communicated to building owners and property managers.

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<sup>14</sup> The fine is on a per square foot basis to avoid placing a disproportionate burden on small buildings, and to ensure that the Large Industrial Campuses face a large enough fine to encourage compliance.

#### **10.e. Support for Process-Load Dominated Buildings (Industrial and Manufacturing)**

As part of the rating and reporting requirement, for buildings that are dominated by process loads (i.e. manufacturing buildings), the city or its designated third-party contractor would work with owners to develop, track and report an additional metric of their choosing that makes the most sense for their business process. Under this path, this agreed upon metric would be disclosed publically (if applicable) instead of Site and Source energy use intensity (EUI,) which are not the best metrics for process-dominated facilities.

The [Colorado Industrial Energy Challenge](#) is a voluntary program managed by the Boulder based, Southwest Energy Efficiency Project and funded by the U.S. Department of Energy's Advanced Manufacturing Office. The Colorado Industrial Energy Challenge program challenges manufacturing companies to develop and set a five-year energy efficiency goal, provides networking and training opportunities, and offers public recognition from the Colorado Energy Office. The program is open to industrial facilities in Colorado with more than \$200,000 in annual energy costs. Beginning with the 2016 budget process, staff recommends that the City of Boulder provide \$10,000 per year to the Colorado Industrial Energy Challenge program to offer these services to Boulder-based manufacturing companies that are below the annual energy cost threshold. These funds would allow this program to provide support services to ten Boulder-based manufacturing companies each year.

#### **10.f. Partners for a Clean Environment and Commercial EnergySmart**

The [Partners for a Clean Environment](#) (PACE) program provides a one-stop shop for businesses and building owners to get free technical assistance, resources and financial incentives to implement sustainability best practices (energy, waste, water and employee transportation options). PACE/EnergySmart advisors currently provide free rating and reporting assistance at no charge, and this support will be available to any city of Boulder building owner subject to these proposed requirements.

Under PACE, [Commercial EnergySmart](#) is a suite of energy efficiency services to create awareness and to provide technical assistance (ASHRAE Level I energy assessments and an energy advisor service) and incentives to implement cost-effective energy efficiency improvements. Current Commercial EnergySmart rebates are prescriptive in nature, and applicable for equipment upgrades and replacements. To help support the more diverse and custom efficiency measures that will be identified through the required energy assessments, the City of Boulder is developing new, custom rebates that will be added in 2016. These custom rebates will be available for cost effective efficiency measures that don't fall into the existing prescriptive rebate categories, such as building controls and automation systems.

The free energy assessments and advising services offered through PACE/EnergySmart will satisfy the requirements for the Level I audit for buildings smaller than 50,000 sf. These free Level I assessments will also be utilized as an alternative pathway for compliance for larger buildings when applicable. An example of this would be a strip mall that is a single building larger than 50,000 square feet, but is

actually made up of small individual shops where the tenants own and maintain their own rooftop heating ventilation and air-conditioning (HVAC) units. These custom cases will be handled on an individual basis through the exemption process.

### 10.g. Incentives

In determining the allocation of 2016 CAP funds, staff will ensure the provision of financial incentives for early adopters for any efficiency requirements approved by City Council and expand the city’s Commercial EnergySmart rebate funds.

**Table 3: Proposed Rebates and Incentives**

	Incentive	Annual Budget (2016 and 2017)
<b>Early Adopter Incentive: Subsidizes the cost of the required periodic energy assessments<sup>15</sup></b>	Still be studied, but would likely be something like 25% of cost (up to \$5,000 per building)	\$150,000/year (funded by reallocation of CAP Tax dollars)
<b>EnergySmart Rebates for custom efficiency measures</b>	Case by case basis <sup>16</sup>	\$200,000/year (funded by reallocating Commercial EnergySmart Funds and using carryover dollars)

### 10.h. Colorado Property Assessed Clean Energy Financing

At the May 12 Study Session, there were questions regarding the status of Colorado Property Assessed Clean Energy Financing (Co-PACE) in the city and county of Boulder. The Colorado Energy Office is now taking the lead role of administering Co-PACE financing for commercial and multi-family properties across the state of Colorado. On June 23, 2015, Boulder County became the first county in the State to opt into this program. This means that any commercial, industrial, or multi-family property owners in Boulder can finance qualifying energy and water improvement projects through the Co-PACE program.

Co-PACE is an innovative financing mechanism that helps commercial, industrial and multi-family property owners access affordable, long-term financing for energy upgrades to their buildings. Co-PACE allows building owners to finance (for up to 20 years) qualifying energy efficiency and clean energy improvements through a voluntary assessment on their property tax bill. Property owners pay for the improvements over time through this additional charge on their property tax bill, and the repayment obligation transfers automatically to the next owner if the property is sold. Capital provided under the Co-PACE program is secured by a lien on the property, so low-interest capital can be raised from the private sector.

<sup>15</sup> Rebates will only be available for ASHRAE Level II assessments, since PACE/EnergySmart provides free ASHRAE Level I assessments.

<sup>16</sup> Staff has hired a consultant to develop the framework and process for custom rebates.

While there is no official minimum on the loan amounts, investors are unlikely to invest in projects smaller than \$200,000. At this time, the city and county are exploring options to develop or modify a financing mechanism that would be feasible and available for smaller businesses/property owners and their projects.

## 11. BUDGET

Ordinance implementation and assistance represent significant work plan items over the coming years, and will be incorporated into the work plans of city staff and contractors. Additionally, a vacant position funded in the CAP tax budget is being used to hire a new employee to administer the program and the new incentives associated with it.

Funds will be needed for personnel, incentives, outreach and training materials, and other program administration needs. Staff is recommending that the CAP tax be used to fund this program, for as long as the tax is active. In order to fund this program through CAP tax, the city will reallocate existing resources and utilize carryover funds from previous years. If the CAP tax expires, the city will need to determine how this program will be funded and administered. One possibility would be the new municipal electric utility (if formed), as this would be part of a comprehensive energy services plan.

The city anticipates that ongoing program costs will be about \$330,000 per year (less than 20 percent of the annual CAP budget), including personnel costs. Almost half of these costs will go to providing new rebates to offset the costs to building owners. While this amount can be covered by current CAP tax funds, staff will explore additional potential avenues for funding to increase the budget for new rebates in later years when the efficiency requirements are phased in.

**Table 4: Proposed Budget for Ordinance Implementation**

	2015	2016
<b>Personnel</b>	\$165,000	\$125,000
<b>Ordinance outreach and training sessions</b>	\$5,000	\$5,000
<b>Early adopter rebates for Energy Assessments</b>	-	\$150,000 <sup>17</sup>
<b>Development of how-to guides and other support materials for owners and tenants</b>	\$30,000	\$7,000
<b>Case Studies</b>	-	\$5,000
<b>Funding for CIEC program to support Industrial buildings</b>	-	\$10,000
<b>Data analysis, quality control, and Annual Report</b>	-	\$28,000
<b>New custom rebates offered under EnergySmart</b>	<i>Covered under the EnergySmart Budget within CAP</i>	
<b>TOTAL</b>	<b>\$200,000</b>	<b>\$330,000</b>

<sup>17</sup> Funds may carry over to 2017 and 2018 as we approach the first compliance deadline.

## **12. NEXT STEPS**

If council adopts this ordinance, staff will draft the City Manager Rules, post them for public comment, and notify and encourage affected parties to review and provide feedback. Staff will report to council on an annual basis regarding any compliance, tracking or enforcement issues. If necessary, staff will return to council with any recommended future modifications to the ordinance based on any compliance or enforcement issues that might arise.

## **13. ATTACHMENTS**

- A: First Reading Ordinance No. 8071 Language
- B: Alternative, Second Reading Ordinance No. 8071 Language
- C: City Manager's Rule Outline
- D: Infographic
- E: Letter from the Environmental Advisory Board

ORDINANCE NO. 8071

AN ORDINANCE AMENDING TITLE 10 "STRUCTURES" ADDING A NEW CHAPTER 10-7.7 "COMMERCIAL AND INDUSTRIAL ENERGY EFFICIENCY" AMENDING SECTION 10-1-1 "DEFINITIONS" BY ADDING DEFINITONS OF "COMMERCIAL OR INDUSTRIAL," "FLOOR AREA" AND "RETRO-COMMISSIONING" AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

**Section 1. A new chapter 10-7.7 is added to read as follow:**

10-7.5-1. - Scope

(a) Scope. The provisions of this chapter apply to building owners or tenants of the following:

(1) Any commercial or industrial building with at least 20,000 square feet of floor area.

(2) All commercial or industrial portions of any mixed-use building where a total of at least 20,000 gross square feet is devoted to any commercial or industrial use.

(3) Any commercial or industrial building with at least 10,000 square feet of floor area for which an initial building permit was issued on or after January 31, 2014.

(4) Any commercial or industrial building with 5,000 gross square feet or more that is owned by the City of Boulder. Provided, however, no building with less than 10,000 square feet shall be subject to the provisions of sections 10-7.7-3, B.R.C. 1981 "Energy Assessment" or 10-7.7-5 "Retrocommissioning."

(5) Provided, however, no report shall be required in the first twelve months after issuance of an initial certificate of occupancy.

10-7.7-2 Rating and Reporting Requirement

1 (a) Any owner subject to this chapter shall rate and report their buildings' energy use in a  
2 manner prescribed by the city manager on the following schedule:

3 (1) Any building with 5,000 or more square feet owned by the city of Boulder by May 1,  
4 2016 and on or before May 1 of each year thereafter. The city manager may grant a reasonable  
5 extension as may be necessary.

6 (2) Any building with 50,000 or more square feet of floor area by June 1, 2016 and on or  
7 before June 1 of each year thereafter.

8 (3) Any building with at least 10,000 square feet of floor area for which an initial  
9 building permit was issued on or after January 31, 2014 by June 1, 2016 and on or before June 1  
10 of each year thereafter.

11 (4) Any building with 30,000 or more square feet of floor area, but less than 50,000  
12 square feet of floor area by June 1, 2018 and on or before June 1 of each year thereafter.

13 (5) Any building with 20,000 or more square feet of floor area, but less than 30,000  
14 square feet of floor area by June 1, 2020 and on or before June 1 of each year thereafter.

15 (b) Owners of the following buildings are exempt from the requirements of this chapter:

16 (1) Any building, regardless of size, which has minimal energy use, because the building  
17 is unlit and has no heating or cooling systems. Any such exemption must be approved by the  
18 city manager; or

19 (2) Any buildings in a large industrial campus. Such buildings are subject to the  
20 provisions of section 10-7.7-6, B.R.C. 1981 "Large Industrial Campus."

21 (c) Any owner who is unable to complete a report due to a tenant's refusal to provide  
22 requested information shall input alternative values provided by the city manager.  
23  
24  
25

1 (d) The city manager may exempt other buildings from these requirements at his or her  
2 discretion.

3 (e) All managers shall maintain and make available for inspection by the city manager,  
4 all required records for a period of three years.

5  
6 10-7.7-3 Energy Assessment

7 (a) Any owner subject to the reporting requirements of this chapter shall conduct an  
8 energy assessment within three years of the date of the owner's first energy report and at least  
9 once every ten years thereafter, except:

10 (1) Any building with a current U.S. Environmental Protection Agency ENERGY STAR  
11 certification;

12 (2) Any building with a current Leadership in Energy and Environmental Design  
13 Building Operations and Maintenance certification from the U.S. Green Building Council;

14 (3) Any building whose owner can demonstrate to the city manager a pattern of  
15 significant and consistent improvements in energy efficiency or greenhouse gas emissions;

16 (4) Any building whose owner can demonstrate to the city manager that the owner  
17 conducted an equivalent energy assessment within ten years of the first deadline for energy  
18 assessments, and implemented the cost effective actions that were recommended;

19 (5) Any buildings in a large industrial campus. Such buildings are subject to the  
20 provisions of section 10-7.7-6, B.R.C. 1981 "Large Industrial Campus;" or

21 (6) Any other building whose owner applies for and receives a special exemption from  
22 the city manager.

23 (b) The energy assessment shall be conducted by a qualified professional energy assessor,  
24 as defined by the city manager.  
25

1 (c) The owner shall provide to the city manager a copy of the energy assessment report  
2 along with a statement of which recommendations from the assessment will be implemented and  
3 in what timeframe.

4 (d) The city manager may establish rules regarding the recovery of costs associated with  
5 energy assessments.

6  
7 10-7.7-4 Required Lighting Upgrades

8 (a) Within five years of the first reporting requirement, each owner shall:

9 (1) Replace or upgrade any interior or exterior lighting fixtures identified as not meeting  
10 the lighting power allowances for interior and exterior lighting, set forth in the current version of  
11 the International Energy Conservation Code.

12 (2) Comply with the requirements for automatic time switch control devices, occupancy  
13 sensors, and exterior lighting controls, set forth in the current version of the International Energy  
14 Conservation Code.

15 (3) Comply with the maximum allowed wattage for internally illuminated exit signs, set  
16 forth in the current version of the International Energy Conservation Code.

17 (4) Provide to the city manager a summary of any actions taken pursuant to this  
18 subsection.

19  
20 (b) The manager of any building meeting any of the following requirements shall not be  
21 required to comply with subsection (a):

22 (1) Any building with a current U.S. Environmental Protection Agency's ENERGY  
23 STAR certification;

24 (2) Any building with a current Leadership in Energy and Environmental Design  
25 Building Operations and Maintenance certification from the U.S. Green Building Council;

1 (3) Any building whose owner can demonstrate to the city manager a pattern of  
2 significant and consistent improvements in energy efficiency or reduction of greenhouse gas  
3 emissions;

4 (4) Any buildings in a large industrial campus. Such buildings are subject to the  
5 provisions of section 10-7.7-6, B.R.C. 1981 "Large Industrial Campus;" or

6 (5) Any other building whose owner applies for and receives a special exemption from  
7 the city manager.

8 (c) The city manager may establish rules regarding the recovery of costs associated with  
9 lighting upgrades.

10  
11 10-7.7-5 Retrocommissioning

12 (a) Within two years of any energy assessment, and every ten years thereafter, each  
13 owner shall:

14 (1) Conduct retrocommissioning.

15 (2) Provide to the city manager a copy of the retrocommissioning report and report any  
16 actions taken pursuant to this subsection.

17 (b) Within one year from the retrocommissioning report submittal, the owner shall  
18 implement any retrocommissioning measure identified in the retrocommissioning report as likely  
19 to produce energy and maintenance savings in a two year period in excess of the cost of  
20 implementing the measure, less the value of any rebates.

21 (c) The retrocommissioning shall be conducted by a retrocommissioning professional, as  
22 defined by the city manager.

23 (d) The city manager may establish rules regarding the recovery of costs associated with  
24 retrocommissioning.  
25

1  
2 (e) The owner of any building meeting any of the following requirements shall not be  
3 required to comply with subsections (a), (b) or (c):

4 (1) Any building with a current U.S. Environmental Protection Agency's ENERGY  
5 STAR certification;

6 (2) Any building with a current Leadership in Energy and Environmental Design  
7 Building Operations and Maintenance certification from the U.S. Green Building Council;

8 (3) Any building whose owner can demonstrate to the city manager a pattern of  
9 significant and consistent improvements in energy efficiency or greenhouse gas emissions;

10 (4) Any buildings in a large industrial campus where multiple buildings are served by  
11 single meters. Such buildings are subject to the provisions of section 10-7.7-6, B.R.C. 1981  
12 "Large Industrial Campus;" or  
13

14 (5) Any other building whose owner applies for and receives a special exemption from  
15 the city manager.

16 10-7.7-6 Disclosure

17 (a) Any owner subject to provisions of this chapter shall provide to any tenant a copy of  
18 any energy report or energy assessment within sixty days of receipt by the owner.  
19

20 (b) Any tenant of an owner subject to the provisions of this chapter shall, within 30 days  
21 of a request, provide to the owner any information that cannot otherwise be acquired by the  
22 owner and that is needed to comply with the provisions of this chapter.

23 (c) Any owner submitting information to the city manager that includes trade secrets,  
24 privileged or confidential commercial information shall specifically identify such information  
25 and provide a statement of the manner in which public disclosure would cause substantial harm

1 to the owner's competitive position. Any information submitted without such a statement may  
2 be disclosed publically. Inefficient energy usage alone will not be considered confidential  
3 commercial information.

4  
5 10-7.7-7 Large Industrial Campus.

6 (a) The owner of a large industrial campus shall on or before June 1, 2016 and on or  
7 before June 1 in each year thereafter submit to the city manager, or to an organization designated  
8 by the city manager, a report in a form approved by the city manger the following information:

9 (1) The total energy use for the large industrial campus, including electrical use, use of  
10 natural gas and use of other fuels;

11 (2) A narrative description including the following:

12 (A) A qualitative comparison of energy usage in the reporting year with the preceding  
13 year and an explanation of the reason for any changes;

14 (B) The industrial campus energy usage and emission reduction goals, both at the site  
15 and at the corporate level;

16 (C) A summary of energy efficiency or on-site renewable energy projects implemented  
17 in the reporting year; and

18 (D) Using a formula supplied by the city manager, a calculation of the percentage of total  
19 energy savings during the reporting year.

20  
21 (b) The owner of a large industrial campus shall on or before June 1, 2019 and at least  
22 once every ten years thereafter, shall

23 (1) Conduct an energy assessment that covers at least seventy-five percent of the total  
24 energy usage on the large industrial campus;

1 (2) Within two year of the assessment, the owner must implement any measures  
2 recommended that are projected to produce monetary savings over a one year period equal to or  
3 in excess of the cost of implementation, less the value of rebates; and

4 (3) Develop a plan for achieving one of the standards set forth in subsection 10-7.7-7(d),  
5 within three years.

6 (c) By June 1, 2025, each owner of a large industrial campus shall:

7 (1) Replace or upgrade any interior or exterior lighting fixtures identified as not meeting  
8 the lighting power allowances for interior and exterior lighting, set forth in the current version of  
9 the International Energy Conservation Code.

10 (2) Comply with the requirements for automatic time switch control devices, occupancy  
11 sensors, and exterior lighting controls, set forth in the current version of the International Energy  
12 Conservation Code.

13 (3) Comply with the maximum allowed wattage for internally illuminated exit signs, set  
14 forth in the current version of the International Energy Conservation Code.

15 (4) Provide to the city manager a summary of any actions taken pursuant to this  
16 subsection.

17 (d) An owner of a large industrial complex shall be exempt from the requirements of this  
18 section, if:

19 (1) The owner submits proof acceptable to the city manager demonstrating that energy  
20 efficiency measures or on-site renewable energy sources produced a reduction of total energy  
21 usage of at least two and a half percent, annualized over four year; or

22 (2) If in the opinion of the city manager, the large industrial campus has established an  
23 energy or emission reduction goal that is equivalent to that established by the city and the large  
24  
25

1 industrial campus is making adequate progress toward that goal after at least two years of  
2 compliance with subsection (a) above.

3 10-7.7-8 Exemptions:

4 (b) Applications to exempt any building from the requirements of this Chapter must be  
5 made by the building's owner. Exemptions shall be subject to the following limitations:  
6

7 (1) Any exemption shall be for a period of one year. Owners may re-apply for one  
8 additional exemption at the expiration of the initial exemption period;

9 (2) Applications must be received sixty days before the start of the applicable compliance  
10 period established in this Chapter;

11 (3) An application must demonstrate the owner has considered all reasonable options  
12 that would bring the building into compliance and must explain to the satisfaction of the city  
13 manager why none of these options are viable.  
14

15 (c) The city manager may issue additional rules that govern the conditions under which  
16 an application for an exemption may be submitted and granted.

17 (d) Applications for an exemption may require submission of an application processing  
18 fee.  
19

20 10-7.7-9 Administrative Remedy.

21 (a) If the city manager believes that a violation of any provision of this chapter exists,  
22 the city manager shall issue a warning to the person alleged to be in violation. The person shall  
23 be given 14 days to correct the violation.

24 (b) If 14 days after a warning is issued the city manager finds that a violation of any  
25 provision of this chapter still exists, the owner, after notice to the person and an opportunity for

1 hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981,  
2 may take any one or more of the following actions to remedy the violation:

3 (1) Impose a civil penalty of

4 (a) \$0.0025 per square foot per day, not to exceed \$1,000 per day; and

5 (2) Issue any order reasonably calculated to ensure compliance with this chapter and  
6 chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

7 (b) If notice is given to the city manager by the owner at least forty-eight hours  
8 before the time and date set forth in the notice of hearing on any violation that the violation has  
9 been corrected and the city manager finds that the violation has been corrected, the city manager  
10 may cancel the hearing.

11 (c) The city manager's authority under this section is in addition to any other  
12 authority that he or she has to enforce this chapter, and election of one remedy by the city  
13 manager shall not preclude resorting to any other remedy as well.

14 (d) The city manager may, in addition to taking other collection remedies, certify due  
15 and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12,  
16 "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for  
17 Collection," B.R.C. 1981.

18 (e) To cover the costs of investigative inspections, the city manager will assess  
19 owners a \$250.00 fee per inspection, where the city manager performs an investigative  
20 inspection to ascertain compliance with or violations of this chapter.  
21

22  
23 Section 2. Section 10-1-1 Definitions is amended to add the following definitions.

24 *Base Building Systems* mean the systems or sub-systems of a building that use energy  
25 and/or impact energy consumption including but not limited to:

- 1           1.     HVAC (heating, ventilation, air conditioning) systems;
- 2           2.     Conveying systems;
- 3           3.     Domestic hot water;
- 4           4.     Electrical and lighting systems.

5           Base building systems shall not include equipment used for industrial processes.

6           *Building* for the chapter 10-7.7 only, is based on a building list developed from the  
7 Boulder County Tax Assessor's database that will be provided by the city manager at least six  
8 months in advance of each reporting deadline.

9           *Commercial or industrial* means any structure or portion of structure used exclusively  
10 for, or designed as and capable of being used for, office, commercial, industrial, or governmental  
11 occupation, or the temporary lodging of persons for periods of less than thirty days, including  
12 hotels, motels, emergency shelters, and overnight shelters but excluding dormitories, fraternities,  
13 and bed and breakfasts.

14           *Energy assessment* means a comprehensive review of energy usage and emissions  
15 conducted in a manner established by the city manager.

16           *Floor area* means the total square footage of all levels included within the outside walls  
17 of a building or portion thereof, but excluding courts, garages useable exclusively for the storage  
18 of motor vehicles and uninhabitable areas that are located above the highest inhabitable level or  
19 below the first floor level.

20           *Industrial processes* means any business related process supported by mechanical or  
21 electrical systems other than base building systems.  
22  
23  
24  
25

1            *Large Industrial Campus* means a facility in which three or more buildings, at least  
2 partially used for manufacturing uses, are served by a central power plant or a single utility  
3 meter.

4            *Manufacturing means* any building which has a primary use of assemblage, processing,  
5 and/or manufacturing products from raw materials or fabricated parts OR one that has the  
6 majority of its energy usage come from process loads.

7            *Owner* means any person who is a commercial or industrial building owner, or is an  
8 owner's representative, such as a property manager, who has charge of, or controls any building  
9 or parts thereof.

10           *Rate* means process of measuring and comparing energy performance metrics (such as  
11 the normalized energy use of a building) to other similar buildings, in a manner specified by the  
12 city manager.

13           *Retrocommissioning* means identifying and correcting building system issues to achieve  
14 optimal building performance, in a manner specified by the city manager.

15           *Retrocommissioning measure* means a corrective action or facility improvement  
16 identified during the investigation or evaluation phase of retrocommissioning.

17           *Retrocommissioning report* means a report prepared and certified by a  
18 retrocommissioning professional, covering the scope provided by the city manager.

19  
20  
21           Section 3. This ordinance is necessary to protect the public health safety and welfare of  
22 the residents of the city and covers matters of local concern.

23           Section 4. The city council deems it appropriate that this ordinance be published by title  
24 only and orders that copies of this ordinance be made available in the office of the city clerk for  
25 public inspection and acquisition

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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 1<sup>st</sup> day of September, 2015.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this 29<sup>th</sup> day of September, 2015.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

ORDINANCE NO. ~~\_\_\_\_\_~~8071

AN ORDINANCE AMENDING TITLE 10 “STRUCTURES” ADDING A NEW CHAPTER 10-7.7 “COMMERCIAL AND INDUSTRIAL ENERGY EFFICIENCY” AMENDING SECTION 10-1-1 “DEFINITIONS” BY ADDING DEFINITONS OF “COMMERCIAL OR INDUSTRIAL,” “FLOOR AREA” AND “RETRO-COMMISSIONING” AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

**Section 1. A new chapter 10-7.7 is added to read as follow:**

10-7.~~7~~5-1. - Scope

(a) Scope. The provisions of this chapter apply to building owners or tenants of the following:

(1) Any commercial or industrial building with at least 20,000 square feet of floor area.

(2) All commercial or industrial portions of any mixed-use building where a total of at least 20,000 gross square feet is devoted to any commercial or industrial use.

(3) Any commercial or industrial building with at least 10,000 square feet of floor area for which an initial building permit was issued on or after January 31, 2014.

(4) Any commercial or industrial building with 5,000 gross square feet or more that is owned by the City of Boulder. Provided, however, no building with less than 10,000 square feet shall be subject to the provisions of sections 10-7.7-3, B.R.C. 1981 “Energy Assessment” or 10-7.7-5 “Retrocommissioning.”

(5) Provided, however, no report shall be required in the first twelve months after issuance of an initial certificate of occupancy.

(b) Owners of the following buildings are exempt from the requirements of this chapter:

1           (1) Any building, regardless of size, which has minimal energy use, because the building  
2 is unlit and has no heating or cooling systems. Any such exemption must be approved by the city  
3 manager

4           (2) Any building with proof of financial hardship.

5  
6           10-7.7-2 Rating and Reporting Requirement

7           (a) Any owner subject to this chapter shall rate and report their buildings' energy use in a  
8 manner prescribed by the city manager on the following schedule. The city manager may grant a  
9 reasonable extension as may be necessary.

10           (1) Any building with 5,000 or more square feet owned by the city of Boulder by May 1,  
11 2016 and on or before May 1 of each year thereafter. ~~The city manager may grant a reasonable~~  
12 ~~extension as may be necessary.~~

13           (2) Any building with 50,000 or more square feet of floor area by ~~August~~June 1, 2016  
14 and on or before ~~May~~June 1 of each year thereafter.

15           (3) Any building with at least 10,000 square feet of floor area for which an initial  
16 building permit was issued on or after January 31, 2014 by ~~August~~June 1, 2016 and on or before  
17 June 1 of each year thereafter.

18           (4) Any building with 30,000 or more square feet of floor area, but less than 50,000  
19 square feet of floor area by June 1, 2018 and on or before June 1 of each year thereafter.

20           (5) Any building with 20,000 or more square feet of floor area, but less than 30,000  
21 square feet of floor area by June 1, 2020 and on or before June 1 of each year thereafter.

22           (b) Owners of the following buildings are exempt from the rating and reporting  
23 requirements ~~of this chapter~~:  
24  
25

1 ~~(1) Any building, regardless of size, which has minimal energy use, because the~~  
2 ~~building is unlit and has no heating or cooling systems. Any such exemption must be approved~~  
3 ~~by the city manager; or~~

4 (1) Any buildings in a large industrial campus. Such buildings are subject to the  
5 provisions of section 10-7.7-~~76~~, B.R.C. 1981 “Large Industrial Campus.”

6 (2) Any other building whose owner applies for and receives a special exemption from  
7 the city manager.

8 (c) Any owner who is unable to complete a report due to a tenant’s refusal to provide  
9 requested information shall input alternative values provided by the city manager.

10 ~~(d) The city manager may exempt other buildings from these requirements at his or her~~  
11 ~~discretion.~~

12 (e) All ~~managers~~ owners shall maintain and make available for inspection by the city  
13 manager, all required records for a period of three years.

14 (f) At the time any building subject to this ordinance is transferred, the seller shall  
15 provide to the buyer all information necessary for the buyer to rate and report for the entire year.

16  
17 10-7.7-3 Energy Assessment

18 (a) Any owner subject to the reporting requirements of this chapter shall conduct an  
19 energy assessment within three years of the ~~date of the owner’s first energy report~~ first reporting  
20 requirement and at least once every ten years thereafter, except:

21  
22 (1) Any building with a current U.S. Environmental Protection Agency ENERGY STAR  
23 certification;

24 (2) Any building with a current Leadership in Energy and Environmental Design  
25 Building Operations and Maintenance certification from the U.S. Green Building Council;

1 (3) Any building whose owner can demonstrate to the city manager a pattern of  
2 significant and consistent improvements in energy efficiency or greenhouse gas emissions;

3 (4) Any building whose owner can demonstrate to the city manager that the owner  
4 conducted an equivalent energy assessment within ten years of the first deadline for energy  
5 assessments, and implemented the cost effective actions that were recommended;

6 (5) Any buildings in a large industrial campus. Such buildings are subject to the  
7 provisions of section 10-7.7-76, B.R.C. 1981 “Large Industrial Campus;” or

8 (6) Any other building whose owner applies for and receives a special exemption from  
9 the city manager.

10 (b) The energy assessment shall be conducted by a qualified professional energy assessor,  
11 as defined by the city manager.

12 (c) The owner shall provide to the city manager a copy of the energy assessment report  
13 along with a statement of which recommendations from the assessment will be implemented and  
14 in what timeframe.

15 (d) The city manager may establish rules regarding the recovery of costs associated with  
16 energy assessments.

17  
18 10-7.7-4 Required Lighting Upgrades

19 (a) Within five years of the first reporting requirement, each owner shall:

20 (1) Replace or upgrade any interior or exterior lighting fixtures identified as not meeting  
21 the lighting power allowances for interior and exterior lighting, set forth in the current version of  
22 the International Energy Conservation Code.  
23  
24  
25

1 (2) Comply with the requirements for automatic time switch control devices, occupancy  
2 sensors, and exterior lighting controls, set forth in the current version of the International Energy  
3 Conservation Code.

4 (3) Comply with the maximum allowed wattage for internally illuminated exit signs, set  
5 forth in the current version of the International Energy Conservation Code.

6 (4) Provide to the city manager a summary of any actions taken pursuant to this  
7 subsection.

8 (b) The ~~manager~~ owner of any building meeting any of the following requirements shall  
9 not be required to comply with subsection (a):

10 (1) Any building with a current U.S. Environmental Protection Agency's ENERGY  
11 STAR certification;

12 (2) Any building with a current Leadership in Energy and Environmental Design  
13 Building Operations and Maintenance certification from the U.S. Green Building Council;

14 (3) Any building whose owner can demonstrate to the city manager a pattern of  
15 significant and consistent improvements in energy efficiency or reduction of greenhouse gas  
16 emissions;

17 (4) Any buildings in a large industrial campus. Such buildings are subject to the  
18 provisions of section 10-7.7-~~76~~, B.R.C. 1981 "Large Industrial Campus;" or

19 (5) Any other building whose owner applies for and receives a special exemption from  
20 the city manager.

21 (c) The city manager may establish rules regarding the recovery of costs associated with  
22 lighting upgrades.

23  
24  
25 10-7.7-5 Retrocommissioning

1 (a) ~~Within five years of the first reporting requirement~~~~Within two years of any energy~~  
2 ~~assessment~~, and every ten years thereafter, each owner shall:

3 (1) Conduct retrocommissioning.

4 (2) Provide to the city manager a copy of the retrocommissioning report and report any  
5 actions taken pursuant to this subsection.

6 (b) Within ~~one~~two years from the retrocommissioning report submittal, the owner shall  
7 implement any retrocommissioning measure identified in the retrocommissioning report as likely  
8 to produce energy and maintenance savings in a two year period in excess of the cost of  
9 implementing the measure, less the value of any rebates.

10 (c) The retrocommissioning shall be conducted by a retrocommissioning professional, as  
11 defined by the city manager.

12 (d) The city manager may establish rules regarding the recovery of costs associated with  
13 retrocommissioning.

14 (e) The owner of any building meeting any of the following requirements shall not be  
15 required to comply with subsections (a), (b) or (c):

16 (1) Any building with a current U.S. Environmental Protection Agency's ENERGY  
17 STAR certification;

18 (2) Any building with a current Leadership in Energy and Environmental Design  
19 Building Operations and Maintenance certification from the U.S. Green Building Council;

20 (3) Any building whose owner can demonstrate to the city manager a pattern of  
21 significant and consistent improvements in energy efficiency or greenhouse gas emissions;  
22  
23  
24  
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1 (4) Any buildings in a large industrial campus where multiple buildings are served by  
2 single meters. Such buildings are subject to the provisions of section 10-7.7-76, B.R.C. 1981  
3 “Large Industrial Campus;” or

4 (5) Any other building whose owner applies for and receives a special exemption from  
5 the city manager.

6  
7 10-7.7-6 Disclosure

8 (a) Any owner subject to provisions of this chapter shall provide to any tenant a copy of  
9 any energy report or energy assessment within sixty days of receipt by the owner.

10 (b) Any tenant of an owner subject to the provisions of this chapter shall, within 30 days  
11 of a request, provide to the owner any information that cannot otherwise be acquired by the  
12 owner and that is needed to comply with the provisions of this chapter.

13 (c) Any owner submitting information to the city manager that includes trade secrets,  
14 privileged or confidential commercial information shall specifically identify such information  
15 and provide a statement of the manner in which public disclosure would cause substantial harm  
16 to the owner’s competitive position. Any information submitted without such a statement may  
17 be disclosed publically. Inefficient energy usage alone will not be considered confidential  
18 commercial information.

19  
20 10-7.7-7 Large Industrial Campus.

21 (a) The owner of a large industrial campus shall on or before June 1, 2016 and on or  
22 before June 1 in each year thereafter give permission to the local energy utility to aggregate and  
23 provide to the city manager the total energy use, separated by fuel type, for all large industrial  
24 campuses subject to this requirement. If the local energy utility will not provide this service, the  
25

1 [city manager may designate another third party aggregator that is approved by the large](#)  
2 [industrial campuses.](#)

3 (ba) The owner of a large industrial campus shall on or before June 1, 2016 and on or  
4 before June 1 in each year thereafter submit to the city manager, or to an organization designated  
5 by the city manager, a report in a form approved by the city manager the following information:

6 ~~(1) The total energy use for the large industrial campus, including electrical use, use of~~  
7 ~~natural gas and use of other fuels;~~

8 ~~(12)~~ A narrative description including the following:

9 (A) A qualitative comparison of energy usage in the reporting year with the preceding  
10 year and an explanation of the reason for any changes;

11 (B) The industrial campus energy usage and emission reduction goals, both at the site  
12 and at the corporate level;

13 (C) A summary of energy efficiency or on-site renewable energy projects implemented  
14 in the reporting year; and

15 (D) Using a formula supplied by the city manager, a calculation of the percentage of total  
16 energy savings during the reporting year.

17 (b) The owner of a large industrial campus shall on or before June 1, 2019 and at least  
18 once every ten years thereafter, shall

19 (1) Conduct an energy assessment that covers at least seventy-five percent of the total  
20 energy usage on the large industrial campus;

21 (2) Within two year of the assessment, the owner must implement any measures  
22 recommended that are projected to produce monetary savings over a one year period equal to or  
23 in excess of the cost of implementation, less the value of rebates; and  
24  
25

1 (3) Develop a plan for achieving one of the standards set forth in subsection 10-7.7-7(d),  
2 within three years.

3 (c) By June 1, 2025, each owner of a large industrial campus shall:

4 (1) Replace or upgrade any interior or exterior lighting fixtures identified as not meeting  
5 the lighting power allowances for interior and exterior lighting, set forth in the current version of  
6 the International Energy Conservation Code.

7 (2) Comply with the requirements for automatic time switch control devices, occupancy  
8 sensors, and exterior lighting controls, set forth in the current version of the International Energy  
9 Conservation Code.

10 (3) Comply with the maximum allowed wattage for internally illuminated exit signs, set  
11 forth in the current version of the International Energy Conservation Code.

12 (4) Provide to the city manager a summary of any actions taken pursuant to this  
13 subsection.

14 (d) An owner of a large industrial complex shall be exempt from the requirements of this  
15 section, if:

16 (1) The owner submits proof acceptable to the city manager demonstrating that energy  
17 efficiency measures or on-site renewable energy sources produced a reduction of total energy  
18 usage of at least two and a half percent, annualized over four years; or

19 (2) If in the opinion of the city manager, the large industrial campus has established an  
20 energy or emission reduction goal that is equivalent to that established by the city and the large  
21 industrial campus is making adequate progress toward that goal after at least two years of  
22 compliance with subsection (a) above.  
23

24  
25 10-7.7-8 Exemptions:

1 | [\(a\) Any exemption must be approved by the city manager.](#)

2 | (b) Applications to exempt any building from the requirements of this Chapter must be  
3 | made by the building's owner. Exemptions shall be subject to the following limitations:

4 | (1) Any exemption shall be for a period of one year. Owners may re-apply for one  
5 | additional exemption at the expiration of the initial exemption period;

6 | (2) Applications must be received sixty days before the start of the applicable compliance  
7 | period established in this Chapter;

8 | (3) An application must demonstrate the owner has considered all reasonable options  
9 | that would bring the building into compliance and must explain to the satisfaction of the city  
10 | manager why none of these options are viable.

11 | (c) The city manager may issue additional rules that govern the conditions under which  
12 | an application for an exemption may be submitted and granted.

13 | (d) Applications for an exemption may require submission of an application processing  
14 | fee.

15 | 10-7.7-9 Administrative Remedy.

16 | (a) If the city manager believes that a violation of any provision of this chapter exists,  
17 | the city manager shall issue a warning to the person alleged to be in violation. The person shall  
18 | be given 14 days to correct the violation.

19 | (b) If 14 days after a warning is issued the city manager finds that a violation of any  
20 | provision of this chapter still exists, the owner, after notice to the person and an opportunity for  
21 | hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981,  
22 | may take any one or more of the following actions to remedy the violation:  
23 |  
24 |  
25 |

1 (1) Impose a civil penalty of

2 (a) \$0.0025 per square foot per day, not to exceed \$1,000 per day; and

3 (2) Issue any order reasonably calculated to ensure compliance with this chapter and  
4 chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

5 (b) If notice is given to the city manager by the owner at least forty-eight hours  
6 before the time and date set forth in the notice of hearing on any violation that the violation has  
7 been corrected and the city manager finds that the violation has been corrected, the city manager  
8 may cancel the hearing.

9 (c) The city manager's authority under this section is in addition to any other  
10 authority that he or she has to enforce this chapter, and election of one remedy by the city  
11 manager shall not preclude resorting to any other remedy as well.

12 (d) The city manager may, in addition to taking other collection remedies, certify due  
13 and unpaid charges to the Boulder County Treasurer for collection as provided by section 2-2-12,  
14 "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for  
15 Collection," B.R.C. 1981.

16 (e) To cover the costs of investigative inspections, the city manager will assess  
17 owners a \$250.00 fee per inspection, where the city manager performs an investigative  
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25 2. Conveying systems;

1 3. Domestic hot water [systems](#);

2 4. Electrical and lighting systems.

3 Base building systems shall not include equipment used for industrial processes.

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5 Boulder County Tax Assessor's database that will be provided by the city manager at least six  
6 months in advance of each reporting deadline.

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9 occupation, or the temporary lodging of persons for periods of less than thirty days, including  
10 hotels, motels, emergency shelters, and overnight shelters but excluding dormitories, fraternities,  
11 and bed and breakfasts.

12 *Energy assessment* means a comprehensive review of energy usage and emissions  
13 conducted in a manner established by the city manager.

14 [\*Financial hardship\* means the building meets one of the following criteria:](#)

15 [1. The building is the subject of a qualified tax lien sale or public auction due to](#)  
16 [property tax arrearages;](#)

17 [2. The building is controlled by a court appointed receiver;](#)

18 [3. The building has been acquired by a deed in lieu of foreclosure.](#)

19 *Floor area* means the total square footage of all levels included within the outside walls  
20 of a building or portion thereof, but excluding courts, garages useable exclusively for the storage  
21 of motor vehicles and uninhabitable areas that are located above the highest inhabitable level or  
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12           *Rate* means process of measuring and comparing energy performance metrics (such as  
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14 city manager.

15           *Retrocommissioning* means identifying and correcting building system issues to achieve  
16 optimal building performance, in a manner specified by the city manager.

17           *Retrocommissioning measure* means a corrective action or facility improvement  
18 identified during the investigation or evaluation phase of retrocommissioning.

19           *Retrocommissioning report* means a report prepared and certified by a  
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23           Section 3. This ordinance is necessary to protect the public health safety and welfare of  
24 the residents of the city and covers matters of local concern.  
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1 Section 4. The city council deems it appropriate that this ordinance be published by title  
2 only and orders that copies of this ordinance be made available in the office of the city clerk for  
3 public inspection and acquisition

4 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
5 TITLE ONLY this 1st day of September, 2015.

6  
7  
8 \_\_\_\_\_  
9 Attest: Mayor  
10 \_\_\_\_\_  
11 City Clerk

12 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
13 PUBLISHED BY TITLE ONLY this \_\_\_\_<sup>st</sup> 29th day of \_\_\_\_\_, September, 2015.

14  
15  
16 \_\_\_\_\_  
17 Attest: Mayor  
18 \_\_\_\_\_  
19 City Clerk

## Outline for City Manager Rule

### **I. Definitions** Interpreting Subsection 10-1-1 – **Definitions**

- (1) “Current Facility Requirements”
- (2) “Energy”
- (3) “Energy Performance Score”
- (4) “ENERGY STAR”
- (5) “ENERGY STAR Portfolio Manager”
- (6) “Energy Use Intensity (EUI)”
- (7) “Project Website”
- (8) “Rating and Reporting Tool”
- (9) “Retrocommissioning Professional”
- (10) “Site Energy”
- (11) “Source Energy”

### **II. Rating and Reporting Requirements and Process** Interpreting Subsection 10-7.7-2 – **Rating and Reporting Requirement**

- Guidance on how a building owner should rate and report the energy use for their buildings
- A summary of the information that will be reported to the city and publically disclosed after the 2 year grace period
- Alternate benchmarking tools available for use for Manufacturing Buildings

### **III. Energy Assessments Requirements and Process** Interpreting Subsection 10-7.7-3 – **Energy Assessment**

- Requirements for the Energy Assessor
- Required scope for Energy Assessments and the associated report
- Description of what must be submitted to the city manager

### **IV. Lighting Requirements and Process** Interpreting Subsection 10-7.7-4 – **Required Lighting Upgrades**

- Description of what must be submitted to the city manager
- Other clarifications as needed

**V. Retrocommissioning Requirements and Process** Interpreting Subsection 10-7.7-5 –  
**Retrocommissioning**

- Required scope for Retrocommissioning (for buildings larger and smaller than 50,000 square feet) and the associated report
- Description of what must be submitted to the city manager

**VI. Large Industrial Campus Requirements** Interpreting Subsection 10-7.7-7 – **Large Industrial Campuses**

- Third-Party Process for Data Aggregation
- How to calculate annualized percentage savings from energy efficiency and renewable projects
- Reporting requirements for narrative and annualized percentage savings
- Other clarifications as needed

# BOULDER BUILDING PERFORMANCE

## Proposed requirements for existing commercial and industrial buildings

To help achieve our community energy goals, this ordinance would require owners to:

- Rate and report building energy use every year
- Complete building energy assessments every 10 years
- Implement basic efficiency measures (building system tune-ups every 10 years and one-time lighting upgrades)

\* High performance buildings are exempt from the required energy assessments and efficiency measures

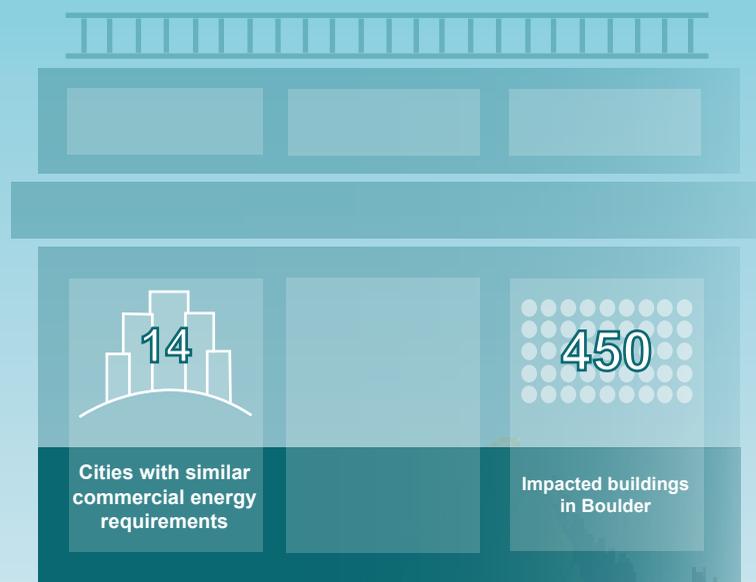
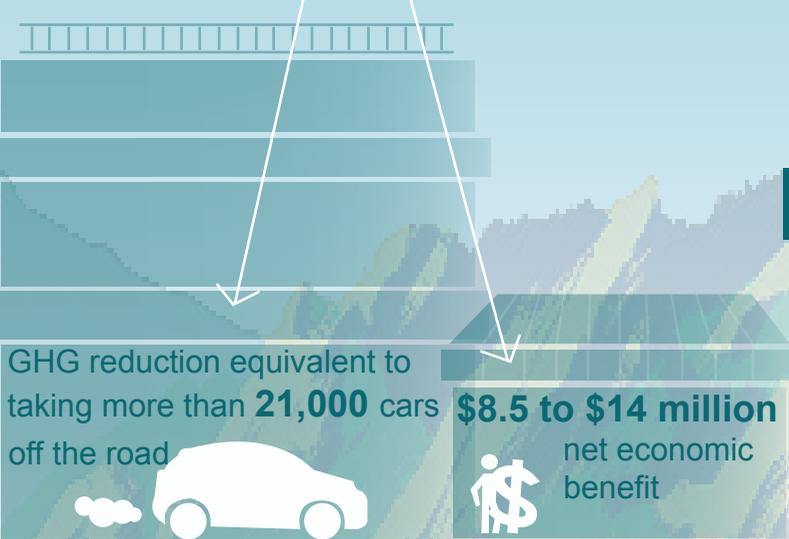
### RATING & REPORTING (R&R)

Measuring and comparing building energy performance metrics

Providing energy use and associated metrics to the city and tenants of the building

### COMMUNITY AND ECONOMIC BENEFIT

Estimated **annual** impact of efficiency improvements as a result of the proposed ordinance:



**53%** of Boulder's total GHG emissions come from commercial & industrial buildings

Buildings that rate their energy performance typically attain an average annual

# ENERGY SAVINGS of 2 to 3%

## WHO WOULD BE IMPACTED?

Building Owner



Business Tenant



## WHAT WOULD BE REQUIRED?

- Collect whole building energy use data each year
- Enter this data into ENERGY STAR Portfolio Manager (ESPM)
- Share ESPM data with the City of Boulder and your tenants
- Implement required efficiency measures
- Work with your building owner to share your energy bills and allow access to your space
- Better understand the energy performance of your space/building
- Collaborate with owner to reduce energy waste

## ORDINANCE BENEFITS



**IMPROVE** the quality of Boulder's commercial building stock



**SAVE MONEY** through cost-effective efficiency measures



**HELP** building owners understand and manage their buildings' energy use



**EDUCATE** tenants and real estate professionals about building energy performance



**INFORM** future energy programs and services



**MARKET** buildings in compliance as efficient and high performing

## KEY

● Existing buildings > 50,000 sq ft  
 ● New buildings > 10,000 sq ft  
 ● City-owned buildings > 5,000 sq ft

● Existing buildings > 30,000 sq ft

Building efficiency continuously improves

● Existing buildings > 20,000 sq ft



August 10, 2015

To Boulder City Council:

The Environmental Advisory Board would like to present this letter of support for the proposed Building Performance Ordinance (BPO). The Board recognizes the economic, environmental and social benefits which will be created by increasing the quality of the building stock via the proposed ordinance. We support the phased adoption timeframe which should allow for sufficient time for both business' to incorporate the requirements and for the city's staff to support the initiative.

We encourage staff to continue its diligent and proactive communication with affected parties to ensure compliance requirements are understood. We are encouraged and support the effort to ensure that energy saving projects that have a 2 year payback are prioritized. We believe this type of win-win proposal is positive for the commercial market and the Boulder community.

We welcome any questions the Council may have in reference to our support.

With regards,

The Environmental Advisory Board

Steve Morgan, Chair  
Tim Hillman  
Morgan Lommele  
Brad Queen  
Karen Crofton



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 29, 2015**

**AGENDA TITLE:**

1. Introduction, adopting on first reading and order to publish by title only of an ordinance amending chapters 6-14 “Medical Marijuana” and 6-16 “Recreational Marijuana”
2. Request for Council consideration and direction regarding potential amendments to the City of Boulder’s Recreational and Medical Marijuana Codes.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Bob Eichen, Chief Financial Officer  
Kathy Haddock, Senior Assistant City Attorney  
Mishawn Cook, Licensing and Collection Administrator

**EXECUTIVE SUMMARY**

The last update to the city’s marijuana codes was in December 2014. Representatives of the marijuana industry have sent several requests to the city council to adopt changes in the marijuana code. In addition, staff also would recommend several changes. Council directed staff to bring forward staff’s proposed changes for first reading at the September 29, 2015 council meeting. The plan is for council to consider staff’s proposal and to have a discussion about the bigger picture of marijuana regulation. The attached ordinance includes the changes staff recommends. This memorandum addresses both the attached ordinance and the requests to city council by representatives of the marijuana industry. Staff seeks council direction regarding which additional changes to the city’s marijuana code the council seeks to have drafted for future consideration.

## **STAFF RECOMMENDATION:**

Staff requests council consideration of this matter and action in the form of the following motion:

Introduction, first reading and consideration of a motion to order published by title only an ordinance amending Chapter 5-10 "General Offenses," regarding marijuana offenses; Sections 6-14-2 "Definitions," and 6-14-8 "Requirements Related to Operation of Medical Marijuana Businesses" regarding medical marijuana production and transportation; and Sections 6-16-2 "Definitions," and 6-16-8 "Requirements Related to Operation of Recreational Marijuana Businesses" and 6-16-13 "Prohibited Acts" regarding production and transport of recreational marijuana.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

- Economic: Between January 1, 2015 and July 31, 2015 total reported sales for marijuana businesses in Boulder were \$34,001,865.28. Of this \$16,314,067.36 were medical marijuana sales and \$17,687,797.93 were recreational marijuana sales. Annualized this would be expected to represent \$58,288,911.92 in total sales by December 2015.
- Environmental: The most significant impacts are associated with cultivation facilities and marijuana infused product manufacturers (MIPs). The state now allows for testing facilities which will have similar impacts. Boulder's code currently requires that marijuana cultivation facilities use only pesticides deemed safe for food production. Marijuana businesses face a challenge to control the odor associated with growing, processing and possessing marijuana.
- Social: It remains to be seen whether the federal government will continue their hands-off approach when it comes to recreational use, but indications are that they will not separately enforce if the federal priorities are upheld, mainly keeping marijuana products out of the hands of those persons under 21 years of age. The Rocky Mountain HIDTA issued a 187 page report on the impacts of marijuana legalization in Colorado. The Boulder Police Department is a participant in Rocky Mountain HIDTA. The report can be downloaded at <http://www.rmhidta.org/html/2015%20FINAL%20LEGALIZATION%20OF%20MARIJUANA%20IN%20COLORADO%20THE%20IMPACT.pdf>

## **OTHER IMPACTS:**

- Fiscal: In the period between January 1, 2015 and July 31, 2015 the city received \$3,374,092 in marijuana tax revenue. Of this, \$629,723 was from medical marijuana businesses and recreational marijuana businesses paid \$2,744,369.
- Staff time: All work is expected to be handled within existing workplans, except on-premise consumption locations and changes to city hearing processes.

## **BACKGROUND & ANALYSIS**

The state's first medical marijuana code was effective July 1, 2010. The City Council adopted interim regulations regarding medical marijuana on November 10, 2009. It adopted the city's first medical marijuana code, as Chapter 6-14, B.R.C. 1981, on May 18, 2010. The medical marijuana code was amended on February 1, 2011, September 20, 2011, November 1, 2012, November 12, 2013 and June 3, 2014 and December 16, 2014. The recreational marijuana code was adopted, as Chapter 6-16, B.R.C. 1981 on November 12, 2013. It was amended on June 3, 2014 and December 16, 2014.

### Overview of the City Regulation

The city's regulations reflect distinct policy choices made by council over the years. Council's intent has been to limit diversion to the black market, limit access to youth, limit the impacts on other Boulder businesses and limit the impact on residents. Virtually everything in the city's marijuana code is directed at one of these four policy goals. It is fair to say that Boulder's regulations have helped the city achieve all of these goals.

#### a. Limit Diversion

Council adopted security requirements, including the requirement that all licensees have a security plan. The security plan requires providing for safe storage of marijuana and cash and security cameras. The city requires background checks for business owners, managers and financiers. This helps keep organized criminal elements out of the city's marijuana businesses. In fact, the state licensed one business that the city rejected based on criminal history. The business ultimately was closed by the federal drug enforcement administration as a result of infiltration by South American drug cartels.

#### b. Limit Access by Youth

It is very challenging to prevent youth from accessing legalized marijuana. Boulder's requirement for physical separation is intended to help keep people under 21 years of age out of recreational marijuana stores. The Boulder Police Department has run several compliance checks of businesses – much as it does for liquor businesses – to test the adequacy of identification checks. To date the results have been somewhat disappointing, demonstrating little training or apparent interest in accurately checking identification. Nevertheless, without the physical separation requirement between medical and recreational marijuana, it is likely that there would be significantly more access by youth.

#### c. Limit Impacts on Other Businesses

Council has been concerned about maintaining Boulder's historic identity. Other communities have several marijuana businesses grouped together creating a marijuana district or block. Other communities have not limited the size of marijuana businesses. Medicine Man in Denver recently opened a 40,000 square foot facility. That is, a marijuana business roughly the size of the average supermarket. Boulder limits

marijuana business to no more than three within 500 feet. Boulder limits businesses to no more than 3,000 square feet in size. The city's code also prohibits street level marijuana businesses on the Pearl Street Mall and in the University Hill shopping district. The size and separation requirements have allowed the marijuana industry to fit into the Boulder business community without overwhelming it. It may well be time to reconsider these limitations. Hazel's Beverage World is in a 35,000 square foot facility. It is important to consider, however, the benefits associated with the existing limitations.

#### d. Limit Impacts on Residents

Boulder's code includes a prohibition on marijuana businesses in residential neighborhoods and a restriction on new businesses in mixed use neighborhoods. The code also includes requirements that businesses be separated from schools, day care centers and addiction recovery facilities. The city originally adopted a 500 foot separation requirement. The United States Department of Justice threatened to close any store within 1000 feet of a school. The city thereafter adopted the 1000 foot separation requirement. The code also includes prohibitions on allowing the odor of marijuana from a business to any other premise, prohibits the distilling of marijuana in residential areas, and to meet safety requires when done in a marijuana-infused production facility.

#### State vs. Local Regulation

The state and local governments have different interests in their respective regulation of the marijuana industry. The state code focuses on licensing at the state level, tracking marijuana from seed to sale, transportation of marijuana throughout the state, and implementing the constitutional amendments as they specifically require of the legislature. The state does not have land use powers and is not responsible for the day-to-day protection of the public safety. The state code cannot be enforced by city police or licensing because it is a state civil process.

Local government marijuana codes focus on the local impacts of marijuana businesses, including the effect on neighboring people, businesses and property, zoning codes, and law enforcement. The state does not have the power to adopt laws about locations of marijuana businesses and does not enforce issues related to public safety or community impacts.

#### Regulation by Other Cities

The police, licensing and city attorney's office regularly receive calls from their equivalents in other cities. Boulder's regulations are seen as a model and more and more cities are adopting provisions similar to Boulder's. Currently several metro area cities are recommending that the security requirements of the city be adopted within their jurisdictions. Staff has also been asked by several cities in other states for advice about marijuana regulations, and several have traveled to Boulder to meet with the city staff.

## Revenue to Boulder Marijuana Businesses is More than Two Times the Revenue Received by Denver Marijuana Businesses

Council has received requests from four different representatives of the marijuana industry. Copies of these requests are in attachment B. Staff's analysis and recommendations are in attachment C.

A common theme throughout the requests is that the city's strict marijuana code places marijuana businesses in Boulder at a competitive disadvantage to businesses in less regulated communities. Boulder's code is strict. It is modeled after regulations in other heavily regulated industries. However, it may be that Boulder's strict code creates a more favorable business environment than other more lax regulatory environments. A recent staff comparison showed that, on average, marijuana businesses in Boulder generated twice the revenue as marijuana businesses in Denver.

Staff used sales tax revenue for the year 2014 as the basis for comparison. Staff multiplied the tax rate by the tax received to get total revenue and then divided by the number of businesses. Total marijuana business revenue for 2014 in Denver was \$330,228,168.45. Denver has 1017 licensed marijuana business resulting in per business revenue of \$324,708.13. Total marijuana business revenue for 2014 in Boulder was \$53,792,247.19. As of December 31, 2014, Boulder had 77 licensed marijuana businesses, resulting in per business revenue of \$698,600.61. The revenue per business figures do not accurately reflect actual business revenue. Revenue was calculated using sales tax payment data. The bulk of sales tax revenue comes from retail sales. Production facilities and marijuana infused product facilities would not be represented in these figures because they do not conduct retail sales generating tax revenue. Those businesses do pay use tax, so it would not be accurate to exclude them. Nevertheless, considering the large difference between average revenue in Boulder and Denver, it is fair to say that Boulder businesses are not at a competitive disadvantage at least as compared to Denver.

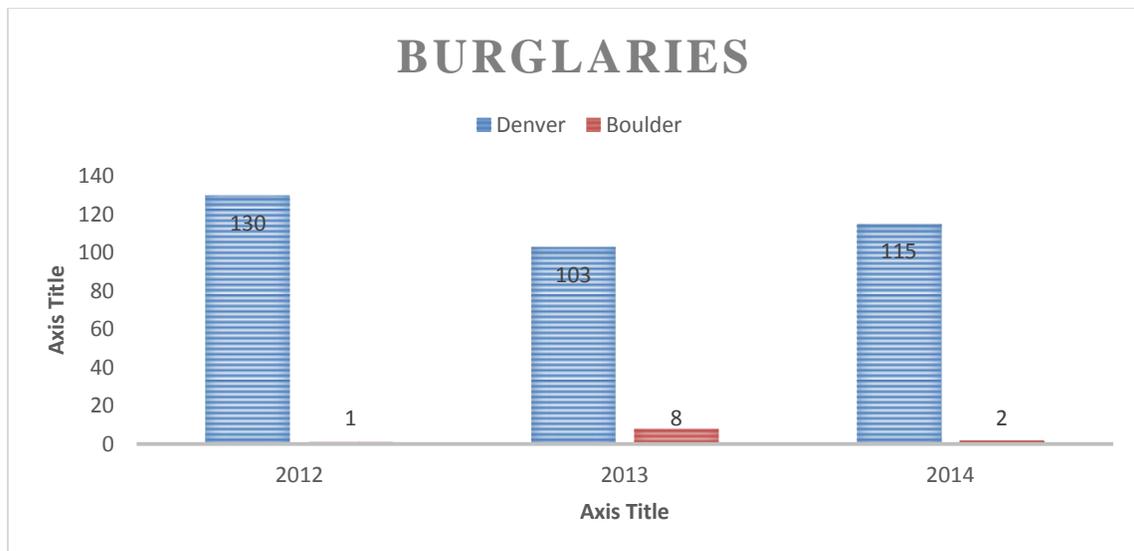
### Should the City Eliminate its Marijuana Code?

A recent hotline post from Council Member Cowles called for elimination of the city's marijuana code and "adopt a new ordinance that addresses only the processing of applications, the performance of inspections, a schedule of fines and provides a hearing officer type of administrative review that does not require lawyers for challenges to the exercise of authority by Tax and Licensing." Council has adopted and amended the city's marijuana code over a period of five years after extensive deliberation. A complete overhaul should be the product of rationale study and a careful examination of data. Staff does not support this suggestion.

#### 1. Safety

One of the most important functions of local government is public safety. For reasons outside of the city's control, marijuana businesses are operated on a cash basis. Their

product is very popular and the subject of many criminal acts around the country. Beginning with the city’s original marijuana code adopted through ordinance number 7716 on May 18, 2010, the city has always required a safe for storage of marijuana and cash when the businesses were closed. The city also requires a detailed security plan including burglar alarms and security cameras. This does impose a cost on the businesses. In the long term, however, there is a savings to both the businesses and the community by eliminating the burglaries that are quite common in other jurisdictions. The following chart compares Denver’s marijuana burglary record with Boulder’s. Even controlling for differences in number of businesses and population, Boulder’s record demonstrates a much safer environment for our community. This is directly attributable to the city’s stricter security requirements, including the requirement that marijuana and cash be stored in a safe when the business is closed. Other jurisdictions have adopted Boulder’s requirements and Denver may be contemplating adopting Boulder’s requirements.



A closer look at Boulder’s burglary data provides an even more drastic contrast. In Denver, marijuana businesses have the highest burglary rate of any type of business in the city. In 2014, approximately 20% of all licensed business locations experienced a burglary. In Boulder of the 11 burglaries between 2012 and 2014, nine were either attempts or entries where nothing was taken because the marijuana and cash were secured in safes. Only three burglaries resulted in the diversion of marijuana. All of those occurred in 2013. Two involved one business, which did not have a safe as required by the city’s code. The third was at a warehouse at which marijuana that had been harvested, but was still drying so it was not required to be secured under the city’s code.

One of council’s main focuses over the last five years has been the importance of limiting youth access to marijuana. Requirements such as the physical separation of medical and recreational businesses, limitations on advertisements directed at youth and restricted access to recreational marijuana establishments were all intended to support this important community goal. By at least one measure these restrictions appear to be

working. The following chart compares minor in possession charges for alcohol and marijuana. While not a perfect measure, it does demonstrate that far fewer persons under 21 are being caught with marijuana than with alcohol.

<b>Dates</b>	<b>Alcohol</b>	<b>%</b>	<b>Marijuana</b>	<b>%</b>
<b>2014</b>	896	85%	163	15%
<b>2015 thru 08/31/2015</b>	595	83%	120	17%

2. Due Process

On September 20, 2011, the city council, by unanimous vote, added the following provision to the medical marijuana code:

Decisions on Application or Revocation Final. The decision of the city manager on an application for a medical marijuana business license or revocation thereof pursuant to this chapter shall be the final decision of the city subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4), unless the notice of the decision includes an opportunity for a hearing as provided in Section 1-3-3, "Notice of Agency Action," B.R.C. 1981. No defense or objection may be presented for judicial review unless it is first presented to the manager prior to the effective date of the decision.

§ 6-14-4 (e), B.R.C. 1981 (“General Provisions”) Council adopted this section to exempt city decisions regarding denial or revocation of marijuana business licenses from the city’s administrative hearing requirement. Staff recommended this change, because at the time the city was licensing already operating businesses. Thus, in the case of a denial or a revocation, the business could remain open while going through the administrative hearing process. Many of these businesses were operating in potentially dangerous violation of the city code. The prior law provided an economic incentive to challenge a decision to deny or revoke no matter how egregious the violation at issue. Before this change, the applicant could keep his or her business open after the city manager decided to deny or revoke the license, regardless of the merits of the appeal. In situations where it truly was inappropriate for the applicant to be running a marijuana business, this put the community at risk.

The system adopted in 2011, retained the right for the business to seek judicial review. The city allows the record that is reviewed by the district court to include items submitted by the business in defense of the violations found by the city. The businesses also have the right to seek a temporary restraining order or other stay of the city’s action pending the final determination of the district court. To obtain such an order, the applicant would need to show a likelihood of success on the merits. Thus, only businesses with meritorious appeals could remain open. While several businesses have attempted to obtain temporary restraining order to remain open, none have been successful. Several businesses have taken advantage of the opportunity to provide additional documents for

consideration on appeal, but none of them have disputed that the alleged violations occurred.

It is noteworthy that this change did not apply to fines, which can still be challenged by seeking an administrative hearing.

#### City Enforcement Actions

The city has taken 26 enforcement actions in the last two years. A chart summarizing the enforcement actions is attachment D.

The Rocky Mountain High Intensity Drug Trafficking Area ([www.rmhidta.org](http://www.rmhidta.org)) recently published a 187 page report on the impact of marijuana legalization in Colorado. This is the third year that the RMHIDTA has published this report. Officer Beverley Bookout of the Boulder Police Department is on the Colorado Association of Chiefs of Police (CACCP) marijuana working group and was involved in providing information for the report. The CACP marijuana working group was created to bring together the various law enforcement, regulatory and policy implementers across the various agencies and to coordinate the sharing of information. Boulder has been one of the leading, innovative agencies in dealing with all aspects of marijuana including data collection.

The report provided data regarding the effect of recreational marijuana in Colorado, particularly related to youth. The report includes the following information:

- Traffic fatalities involving operators testing positive for marijuana have increased 100 percent from 2007 to 2012.
- Toxicology reports with positive marijuana results for driving under the influence have increased 16 percent from 2011 to 2013.
- In 2012, 10.47 percent of youth ages 12 to 17 were considered current marijuana users compared to 7.55 percent nationally. Colorado, ranked 4th in the nation, was 39 percent higher than the national average.
- Drug-related suspensions/expulsions increased 32 percent from school years 2008/2009 through 2012/2013. The vast majority were for marijuana violations.
- From 2011 through 2013, there was a 57 percent increase in marijuana-related emergency room visits.
- Hospitalizations related to marijuana have increased 82 percent from 2008 to 2013.
- In 2012, the City of Denver rate for marijuana-related emergency visits was 45 percent higher than the rate in Colorado.
- Marijuana-related exposures for children ages 0 to 5 on average have increased 268 percent from 2006–2009 to 2010-2013.
- Highway interdiction seizures of Colorado marijuana destined to 40 other states increased 397 percent from 2008 to 2013.

- In 2013, there were 12 THC extraction lab explosions and in the first half of 2014 the amount more than doubled.
- In 2013, there were 18 injuries from THC extraction labs and in the first half of 2014 there were 27 injuries.

The marijuana industry has been sharply critical of the report. The report is available publically so that anyone can draw their own conclusions.

### **Changes Proposed by the Marijuana Industry**

Attachment B addresses specific requests for changes that have been requested by consultants to marijuana businesses. The changes staff recommends are part of the proposed ordinance that is Attachment A.

#### **Staff Recommended Changes in the proposed ordinance:**

##### **A. Clarify that Seeds Can be Sold.**

Some attorneys for marijuana businesses have asserted that the city's code bans the sale of seeds. Without the clarification included in this ordinance, the code was interpreted to prevent the sale of seeds by recreational businesses. However, at the request of the businesses, staff looked at an alternative interpretation that allowed the sale of seeds and has been applying the less restrictive interpretation for many months. No business has ever been cited with a violation for selling seeds. The change in Section 5 of the proposed ordinance would remove any arguable conflict, by amending the definition of Recreational Marijuana Plant.

##### **B. Regulation of Home Extraction of THC.**

One of the safety problems encountered by city staff and neighbors of marijuana grows relates to the production of marijuana products by volatile means. The explosions that have occurred were related to the use of butane to distill THC from the plants. Common methods of extraction also include: propane, compressed COs, ethanol, and other volatile materials. Council previously addressed this issue with respect to MIPs by requiring an industrial hygienist to certify that the process used by the MIPs could be done safely as part of the application for a MIP license. However, that does not help the enforcement of the improper use of volatile means to extract THC in homes or other areas not licensed as MIPs. The changes in sections 1, 2, 5 and 9 of the proposed ordinance would make it a violation for any person to use such practices, or have a combination of materials that would allow such practice, without a license as a marijuana-infused product manufacturer.

##### **C. Allowing Transport between Cultivation Facilities.**

Sections 3 and 7 of the attached ordinance make it clear that either a medical marijuana business or a recreational marijuana business can transport marijuana between cultivation facilities.

**D. Clarifying that the Sale of Logo Items is Permitted.**

In December 2014, the council decided to allow businesses to sell items including the business’s name or logo. Such sales have been permitted since then. Section 6-16-7(g)(2) limits what can be sold in a recreational marijuana establishment. To clarify, section 5 of the proposed ordinance would amend 6-16-7(g)(2) to clarify that recreational marijuana businesses are permitted to sell items with the business’ name or logo. This section has never been interpreted by staff to prohibit the sale of such items.

**E. Clarifying Carbon Offsets**

Sections 3, 4, 6 and 7 of the proposed ordinance include changes recommended by the Local Environmental Action Division. The changes in sections 3 and 6 remove the specific reference to the “Windsorce” program and would allow the purchase of any carbon offset. The proposed changes in sections 4 and 7 would require all marijuana businesses to submit quarterly reports of energy usage.

**Other Changes that Council May want to Consider**

**A. Square Footage Limitation for Medical Marijuana Dispensaries and Recreational Marijuana Centers**

The city’s code limits medical marijuana dispensaries and recreational marijuana centers to no more than 3000 square feet. Recreational marijuana centers are further limited to a 1000 square for display of marijuana or marijuana-infused products. Council adopted this limitation for several reasons. One was to prevent the growth of marijuana super stores and to allow marijuana businesses to fit better into the community. With growth, several businesses are bursting at the seams. Less scrupulous operators have changed their floor plan without city approval to stretch these limitations. It may be time for council to reconsider the size limitations. The city’s land use code provides several different mechanisms for limiting size, most commonly through limitations on floor area ratio. There are a few specific size limitations, which are as follows:

Use	Size Limit
Convenience store, personal service or restaurant use in a residential development	2500 square feet
Restaurants, brewpubs, and taverns on University Hill	4000 square feet
Restaurants in the IMS zone district	1000 square feet
Restaurants in Breweries, Distilleries, and Wineries	1000 square feet
Restaurants in a neighborhood business center	1500 square feet
Offices in a neighborhood business center	1000 square feet

## B. Advertising

The city's advertising limits were adopted to support public health, particularly with respect to youth. Council has already decided to eliminate the prohibition on advertising through the sale of clothing with a business's logo. Council may want to consider reducing the restrictions. Some businesses are already ignoring these provisions, placing staff in a difficult enforcement position.

## C. Sale of other goods.

The city's code prohibits marijuana businesses from selling virtually anything other than marijuana and marijuana products. This restriction derives from the language of amendment 64, which allowed for the sale of marijuana and marijuana products. Amendment 64 did not, however, prohibit marijuana businesses from selling other products.

This restriction has significant financial implications for marijuana businesses. Federal law prohibits marijuana businesses from deducting business expenses associated with the sale of marijuana. If businesses were permitted to sell other products, they might be permitted to deduct costs associated with such sales.

State law prohibits liquor stores from selling non-liquor products, except as permitted by state rule. The following products or services can be provided in liquor stores:

- ATM Machines
- Bar Towels
- Bartender Guides
- Beer Brewing Kit (Equipment)
- Beer Brewing Kit (Ingredients)
- Blenders
- Books or Magazines-primarily about alcoholic liquors or the industry
- Bottle Openers
- Bottle Neck Greeting Cards
- Can Openers
- Coasters
- Cocktail Garnishes
- Coolers
- Cork Screws
- Devices purporting to measure breath or blood alcohol
- Dispensers-all types
- Drink shakers
- Drip rings
- Flasks

Fresh lemons  
Fresh limes  
Fruit squeezers  
General bar equipment  
Gift Baskets that contain alcohol beverage products and any of the permitted items  
Glass holders  
Glass washing equipment  
Glasses-Mugs  
Hangover remedy  
Herb bitters  
Ice Buckets  
Ice Crushers  
Ice Machines  
Liquor filled candy  
Liquor travel cases  
Liters-Carafes-Decanters  
Maraschino Cherries  
Milk  
Mixes  
Nutrahol  
Olives  
Party Clips (attaches wine glass to plate)  
Pitchers portable bars (homeuse)  
Prost and similar beverage magazines  
Shot measures  
Soda syphons or mixers  
Stir sticks  
Trays  
Tipsy Teasers – gift-wrap ribbon  
Video Tape-if part of a special promotional carton and non-reusable  
Wine Making Kits  
Wine Racks  
Wine Inventory software (home use)

Council could consider adopting a similar list for marijuana businesses. Of course, council should also consider whether there should be different lists for medical marijuana dispensaries and recreational marijuana businesses.

### **Staff Recommended Next Steps**

Unless council decides to abandon the marijuana code in its entirety, staff recommends that any changes other than the clarifications in the attached ordinance be vetted by affected parties before being drafted by staff or considered by council. To do so, council could direct the city manager to form an advisory committee comprised of industry representatives, health advocates, and community members to advise staff on drafting any changes directed by council.

**Attachments:**

- A: Proposed Ordinance
- B: Copies of Requests
- C: Responses to Marijuana Industry Questions
- D: Chart of Enforcement Actions for Marijuana
- E: Chart of Enforcement Actions for Liquor

ORDINANCE NO. 8081

AN ORDINANCE AMENDING CHAPTER 5-10 "GENERAL OFFENSES," REGARDING MARIJUANA OFFENSES; SECTIONS 6-14-2 "DEFINITIONS," AND 6-14-8 "REQUIREMENTS RELATED TO OPERATION OF MEDICAL MARIJUANA BUSINESSES" REGARDING MEDICAL MARIJUANA PRODUCTION AND TRANSPORTATION; AND SECTIONS 6-16-2 "DEFINITIONS," AND 6-16-8 "REQUIREMENTS RELATED TO OPERATION OF RECREATIONAL MARIJUANA BUSINESSES" AND 6-16-13 "PROHIBITED ACTS" REGARDING PRODUCTION AND TRANSPORT OF RECREATIONAL MARIJUANA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,  
COLORADO:

**Section 1.** Chapter 5-10 "Marijuana Offenses," B.R.C. 1981, is amended by the addition of new sections 5-10-7 and 5-10-8 as follows:

**5-10-7. Unlawful to Transport Marijuana.**

It shall be unlawful for any person to distribute, or contract to distribute, as such terms are defined in Section 6-16-2 of this Code, any marijuana using any freight or package service, community rideshare, or other commercial transportation network, not including the United States Postal Service.

**5-10-8. Unlawful to Produce Marijuana Without a License.**

It shall be unlawful for any person to:

(1) Produce any marijuana without a license from the city for a marijuana-infused product manufacturer;

(2) Possess extraction vessels, and butane, propane, compressed CO<sub>2</sub>, ethanol, isopropanol, acetone, heptane, hexane, or any other volatile materials used in the production of solvent-based marijuana concentrate, in the same premise as marijuana without a license from the city as a marijuana-infused product manufacturer.

For purposes of this section, the terms "produce," "distribute," and "marijuana," shall mean as defined in Section 6-16-2 "Definitions" of this Code.

**Section 2.** Section 6-14-2 “Definitions,” B.R.C. 1981, is amended as follows:

**6-14-2. Definitions.**

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

\* \* \*

*Medical marijuana business* means (i) any person that cultivates, produces, distributes, possesses, transports, or makes available more than six marijuana plants or two ounces of a usable form of marijuana for medical use, or (ii) any person that produces any amount of medical marijuana. The term medical marijuana business shall not include the private possession, ~~production,~~ or medical use of no more than six plants, or two ounce of a useable form of marijuana by a patient or caregiver in the residence of the patient or caregiver.

**Section 3.** Section 6-14-8 “Requirements Related to Operation of Medical Marijuana Businesses,” B.R.C. 1981, is amended as follows:

**6-14-8. Requirements Related to Operation of Medical Marijuana Businesses.**

\* \* \*

(i) **Renewable Energy Usage Required.** A medical marijuana business shall directly offset one hundred percent of its electricity consumption through the purchase of renewable energy or carbon offsets~~in the form of Wind source~~, a verified subscription in a Community Solar Garden, or renewable energy generated onsite, or an equivalent that is subject to approval by the city. For medical marijuana businesses licensed by the city on October 22, 2013, this requirement shall apply at the time of renewal of the medical marijuana business license following October 22, 2013.

\* \* \*

(m) **Delivery Between Medical Marijuana Businesses.** It shall be unlawful for any person to transport medical marijuana, except as specifically allowed by applicable law, unless the medical marijuana being transported meets the following requirements:

\* \* \*

(4) Unless otherwise specifically allowed by applicable law, medical marijuana may be transported only:

(A) From a medical marijuana cultivation facility to a medical marijuana center; and

1 (B) Which medical marijuana business is owned by the same person as owns the  
2 cultivation facility; or

3 (C) Between one medical marijuana center to another medical marijuana center, or from  
4 a medical marijuana cultivation facility to another medical marijuana cultivation  
5 facility, with proper bill of sale completed before transport.

6 \* \* \*

7 **Section 4.** Section 6-14-9 “Right of Entry – Records to be Maintained”

8 (g) Reporting of Energy Use and Carbon Offset ~~Renewable Energy Credit (REC)~~ Purchases.  
9 The records to be maintained by each medical marijuana business and submitted to the city  
10 on a quarterly basis, shall include, without limitation, records showing on a monthly basis  
11 the use and source of energy and the number of certified Renewable Energy Credits (RECs)  
12 purchased, or the subscription level for another renewable energy acquisition program  
13 approved by the city manager. A statement of the projected daily average peak electric load  
14 anticipated to be used by the business and certification from the building owner or landlord  
15 and utility provider that the premises are equipped to provide the required electric load, or  
16 necessary upgrades will be performed. Such records shall include all statements, reports, or  
17 receipts to verify the items included in the report of the business. By application for a  
18 medical marijuana business license from the city, the medical marijuana business grants  
19 permission to providers of the energy or point of origin of the RECs or other renewable  
20 energy acquisition program to disclose the records of the business to the city. For medical  
21 marijuana businesses that cultivate medical marijuana, the report shall include the number of  
22 certified Renewable Energy Credits (RECs) purchased, or the subscription level for another  
23 renewal energy acquisition program approved by the manager.

24 **Section 5.** Section 6-16-2 “Definitions,” B.R.C. 1981, is amended as follows:

25 **6-16-2. Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

\* \* \*

*Recreational marijuana business* means (a) any person that cultivates, produces, distributes, possesses, transports, or makes available more than six marijuana plants or one ounce of marijuana, or (b) any person that sells any amount of marijuana, or (c) any person who possesses marijuana openly or publicly. The term recreational marijuana business shall not include the private cultivation, possession, ~~production,~~ or use within a person's residence of no more than (a) six plants in an enclosed, locked space, or (b) one ounce of marijuana, or (c) the marijuana derived from ~~produced by~~ no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed, locked space.

\* \* \*

1 *Recreational marijuana plant* means a marijuana seed that is germinated and all parts of the  
2 growth therefrom, including, without limitation, roots, stalks, and leaves, so long as the flowers,  
3 roots, stalks, and leaves are all connected and in a growing medium. For purposes of this chapter,  
4 any part of the plant removed is considered harvested and no longer part of a recreational  
marijuana plant, but marijuana.

5 **Section 6.** Section 6-16-7(g) “Locations of Medical Marijuana Businesses,” B.R.C. 1981  
6 is amended as follows:

7 (g) Limitations on Recreational Marijuana Centers and Co-Located Marijuana Center.  
8 The following shall be the minimum requirements for a recreational marijuana center and a co-  
located marijuana center:

- 9 (1) The area of the business is less than or equal to three thousand square feet, and the  
10 restricted area components of the required security and all paper and electronic records  
are one thousand square feet or less;
- 11 (2) The business does not sell or distribute anything other than marijuana and marijuana  
12 products or marijuana accessories except as permitted by section 6-16-8(p)(2)(C); and
- 13 (3) There is a separate reception area for verification of age.

14 **Section 7.** Section 6-16-8 “Requirements Related to Operation of Recreational  
15 Marijuana Businesses,” B.R.C. 1981, is amended as follows:

16 **6-16-8. Requirements Related to Operation of Recreational Marijuana Businesses.**

17 \* \* \*

- 18 (i) Renewable Energy Usage Required. A medical marijuana business shall directly offset one  
19 hundred percent of its electricity consumption through the purchase of renewable energy or  
20 carbon offsets~~in the form of Windsoree~~, a verified subscription in a Community Solar  
21 Garden, or renewable energy generated onsite, or an equivalent that is subject to approval by  
22 the city. For a recreational marijuana center that has converted pursuant to Subsection 6-16-  
3(f) or co-located pursuant to Subsection 6-16-3(g), or a marijuana-infused product  
23 manufacturer licensed by the city on October 22, 2013, this requirement shall apply at the  
time of renewal of the marijuana business license following October 22, 2013.

24 \* \* \*

1 (m) Delivery Between Recreational Marijuana Businesses. It shall be unlawful for any person to  
2 transport recreational marijuana, except as specifically allowed by applicable law, unless the  
recreational marijuana being transported meets the following requirements:

3 \* \* \*

4 (4) Unless otherwise specifically allowed by applicable law, recreational marijuana may be  
5 transported with proper bill of sale completed before transport only:

6 (A) From a cultivation facility to a recreational marijuana center or marijuana-infused  
7 product manufacturer, and which recreational marijuana business is owned by the  
same person who owns the cultivation facility;

8 (B) From a cultivation facility to another recreational marijuana cultivation facility;

9 (C) Between one recreational marijuana center to another center; or

10 (D) Between a marijuana-infused product manufacturer and a medical or recreational  
11 marijuana center.

12 \* \* \*

13 **Section 8.** Section 6-16-9 “Right of Entry – Records to be Maintained”

14 \* \* \*

15 (g) Reporting of Energy Use and ~~Renewable Energy Credit (REC)~~Carbon Offset Purchases. The  
16 records to be maintained and submitted to the city on a quarterly basis, by each recreational  
17 marijuana business shall include, without limitation, records showing on a monthly basis the  
18 use and source of energy and the number of certified Renewable Energy Credits (RECs)  
19 purchased, or the subscription level for another renewable energy acquisition program  
20 approved by the city manager. A statement of the projected daily average peak electric load  
21 anticipated to be used by the business and certification from the building owner or landlord  
22 and utility provider that the premises are equipped to provide the required electric load, or  
23 necessary upgrades will be performed. Such records shall include all statements, reports, or  
24 receipts to verify the items included in the report of the business. By application for a  
recreational marijuana business license from the city, the recreational marijuana business  
25 grants permission to providers of the energy or point of origin of the RECs or other  
renewable energy acquisition program to disclose the records of the business to the city. For  
recreational marijuana businesses that cultivate recreational marijuana the report shall  
include the number of certified RECs purchased, or the subscription level for another  
renewable energy acquisition program approved by the manager.

24 **Section 9.** Section 6-16-13 “Prohibited Acts,” B.R.C. 1981, is amended as follows:

25 **6-16-13. Prohibited Acts.**

1 (a) Prohibited Acts. It shall be unlawful for any person to:

2 \* \* \*

3 (36) Produce any marijuana without a license from the city for a marijuana-infused  
4 product manufacturer;

5 (37) Distribute, or contract to distribute, marijuana using any freight or package  
6 service, community rideshare, or other commercial transportation network,  
7 not including the United States Postal Service; or

8 (38) Possess extraction vessels, and butane, propane, compressed CO<sub>2</sub>, ethanol,  
9 isopropanol, acetone, heptane, hexane, or any other volatile materials used in  
10 the production of solvent-based marijuana concentrate, in the same premise as  
11 marijuana without a license from the city as a marijuana-infused product  
12 manufacturer.

13 **Section 10.** This ordinance is necessary to protect the public health, safety, and welfare  
14 of the residents of the city, and covers matters of local concern.

15 **Section 11.** The city council deems it appropriate that this ordinance be published by  
16 title only and orders that copies of this ordinance be made available in the office of the city clerk  
17 for public inspection and acquisition.

18 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
19 TITLE ONLY this 29th day of September, 2015.

20 \_\_\_\_\_  
21 Mayor

22 Attest:

23 \_\_\_\_\_  
24 City Clerk  
25

1 READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY

2 TITLE ONLY this \_\_\_\_ day of \_\_\_\_\_, 2015.

3

4 \_\_\_\_\_  
Mayor

5 Attest:

6 \_\_\_\_\_

7 City Clerk

8

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To: Boulder City Council (Council@bouldercolorado.gov, cowelsm@bouldercolorado.gov)  
From: VS Strategies  
Date: August 10, 2015  
Re: Comments and Recommendations for Boulder Ordinance

## Introduction

This memo provides an analysis of the City of Boulder’s retail marijuana ordinance (“Boulder Ordinance”) and compares it to state and typical local regulation in the field. It summarizes some of the issues we have identified in the Boulder Ordinance and the manner in which the Boulder Ordinance deviates from the norm. Given the size constraints on this memorandum, it does not provide a comprehensive analysis of all provision that would need to be amended to resolve the issues identified. Instead, it provides examples in broad categories developed to demonstrate the various issues contained in the Boulder Ordinance.

## Executive Summary

The Boulder Ordinance substantially deviates from the regulatory approach taken by the State and other local jurisdictions in a manner that creates a number of issues for local businesses and citizens.

The structure of the Boulder Ordinance creates systemic issues throughout by seeking to regulate licensed and unlicensed conduct within the same code and establishing several definitions that are inconsistent with state law and other local jurisdictions. More problematic, the Boulder Ordinance includes numerous provisions that could be found to violate the due process and constitutional rights of licensees and regular citizens. Furthermore, various provisions throughout the Boulder Ordinance impose costly regulatory burdens upon licensed businesses not imposed by the state or other local jurisdictions.

We recommend that a full analysis of the Boulder Ordinance be conducted to identify any potential issues related to structure, due process and constitutional rights, operability, and nexus to public safety.

## Section 1: Structural Issues

### Structural Issue 1

The Boulder Ordinance is different structurally than every other cannabis regulatory structure in Colorado and, as far as we are aware, across the country. All cannabis regulatory structures set forth the rules governing the regulated industry but none seek to address conduct by non-licenses, as does the Boulder Ordinance through its definition of the term “recreational marijuana business.” This structural deviation creates issues throughout the Boulder Ordinance, such as the constitutional rights issues raised below relating to provision 6-16-4(g). Additionally, the definition attempts to carve out those rights protected under Amendment 64 but does not appear to address the rights protected under Amendment 20. As such, it may be simpler to follow the traditional approach of regulating licensed and unlicensed conduct separately.

### Structural Issue 2

The majority of the definitions contained in 6-16-2 are inconsistent with state law and/or typical local ordinances in the field. These deviations fall into three categories: (1) complete change from state law; (2) overly broad defined terms left undefined in state law; and (3) different term but same definition as state policy. The following is a non-exhaustive set of examples for each of these types of issues.

#### *Complete Change from State Law*

##### Example #1: 6-16-2 – Definitions: Advertise.

State law contains a thorough and comprehensive definition of advertising that was painstakingly drafted to narrowly tailor the language to what is typically considered commercial speech, and thus entitled to more limited free speech protections. By using its own definition, Boulder fails to take advantage of the efforts of the Attorney General’s Office and potentially creates differences in the advertising restrictions imposed on Boulder licensees by the state and by the city. In turn, it will be more difficult to operate a Boulder licensed cannabis business in compliance and could place Boulder businesses at a competitive disadvantage.

##### Example #2: 6-16-2 – Definitions: Recreational Marijuana Plant.

State law does not define the term marijuana plant, only an immature plant, because all marijuana plants fall within the definition of Retail Marijuana. Furthermore, the Boulder definition of Recreational Marijuana Plant exceeds the scope of the definition of marijuana found in Amendment 64 to the Colorado State Constitution. For example, the Boulder definition considers the stalks removed from a plant to be “marijuana” whereas Amendment 64 explicitly carves them out of the definition. Similarly, the Boulder Ordinance does not appear to contain a carve-out for industrial hemp, which is also not marijuana pursuant to Amendment 64.

##### Example #3: 6-16-2 – Definitions: Restricted Area.

The term Restricted Area in the Boulder Ordinance encompasses both the Limited Access Area and Restricted Access Area found in state law. Essentially, the Restricted Access Area is the sales floor and Limited Access Areas constitute the remainder of the activities authorized to occur in

Restricted Areas from the Boulder Ordinance. State law defines these terms separately because a portion of the public can generally access a Restricted Access Area but Limited Access Areas are reserved for Licensees and escorted visitors; resulting in different regulatory requirements.

*Overly broad defined terms left undefined in state law*

Example #1: 6-16-2 – Definitions: Business Manager.

State law and typical local ordinances do not include a definition of managers. While State law does require Licensees to identify managers in METRC and notify the MED of a change in managers within 7 days of occurrence, it is not understood to include every individual who has access to the safe, can lock the business, or set the alarm. There are reasonable situations in which a business may be interested in having a lower level employee secure the business, which would be prohibited under this rule.

*Different term but same definition as state policy*

While the use of these terms does not create any substantive issues, it creates unnecessary conflict with state law and other local jurisdictions. The following is a list of terms in the Boulder Ordinance that have the same meaning as another term found in state law and other typical local ordinances:

- Marijuana Establishment
- Marijuana Infused Product Manufacturer
- Marijuana Testing Facility
- Recreational Marijuana
- Recreational Marijuana Amendment
- Recreational Marijuana Center
- Recreational Marijuana-Infused Product

## **Section #2: Due Process and Constitutional Concerns**

There are several provisions in the Boulder Ordinance that raise concerns about due process and constitutional rights categories. They can be divided into two categories: (1) too little guidance is provided to regulators and the industry and (2) significant concerns are raised about the Boulder Ordinance’s impact on rights of licensees and non-licensees. The following are examples of each of these issues.

Example #1: 6-16-14: Suspension or Revocation of License; Imposition of Fines.

This provision of the Boulder Ordinance provides the regulators with the authority to suspend or revoke licenses without any guidance or limitations on appropriate enforcement, even allowing for suspension based merely upon a licensee being charged with any violation of the Ordinance. In contrast, the state has enacted extensive guidelines in their rules for when suspension of a license is appropriate versus revocation or fines. Also, while the MED does retain the authority to summarily suspend a license, this authority is only given in emergency circumstances..

Example #2: 6-16-4(g) – Landlord Duty.

Since the definition of recreational marijuana business includes non-licensees, this provision authorizes the search of private property based solely upon an “articulable reason.” While the state and other local jurisdictions authorize regulators to search a licensed facility without a warrant, none authorize the search of unlicensed private property based solely upon an “articulable reason” to believe that commercial marijuana activity is occurring. In short, the application of the Boulder Ordinance to non-licensees could be considered a violation of the Fourth Amendment to the United States Constitution.

Example #3: 6-16-13(b) Prima Facie Evidence.

This provisions of the Boulder Ordinance set forth *prima facie* evidence of impairment or being under the influence of marijuana, all of which have alternative causes. Since the Boulder Ordinance uses the disjunctive form, it means that even a single one of the examples listed is sufficient for the presumption to be imposed. Even more concerning, the Boulder Ordinance states that “any other indicator of impairment” without any explanation or limitation also is sufficient, in and of itself, to constitute *prima facie* evidence. Finally, the Boulder Ordinance fails to set forth whether the presumption of impairment or being under the influence is rebuttable.

Typically, states or local jurisdictions set forth indicia of impairment based upon scientific principles and facts, such as one’s blood alcohol content. The indicia set forth in the Boulder Ordinance includes nothing more than mere observations that fall short of the type of evidence usually afforded a presumption of validity. For example, the state has imposed a rebuttable presumption of impairment at 5 nanograms of THC per liter of blood.

### **Section #3: Regulatory Issues**

In general, the Boulder Ordinance imposes regulations on the cannabis industry that are substantially more restrictive and onerous than those at the state level and other local jurisdictions. These regulations create confusion amongst licensees, complicate compliance efforts, and increase costs for business owners in a heavily regulated industry. These burdens place Boulder business owners at a significant competitive disadvantage in the market.

Our broad recommendation is that the Boulder Ordinance be amended to generally conform to state law and laws of other jurisdictions. To the extent deviation is necessary in order to accommodate the community, it should be limited to situations with a close nexus to significant public safety concern.

*Regulatory Issue Area #1: Restraints on Trade / Competitive Disadvantages*

The following are examples of provisions that impose a restraint on Boulder marijuana business that is not imposed on licensees in other jurisdictions.

Example #1: 6-16-3(e) – License is non-transferable regarding owner and premises.

Denver, the state, and other location jurisdictions allow for transfers of ownership and location within restrictions set forth in the Colorado Retail Marijuana code and local time, place, and manner concerns.

Example #2: 6-16-7(g)(2) – Prohibited to sell/distribute anything but marijuana, marijuana products and accessories.

The Retail Marijuana Code restricts licensees from selling non-infused consumable products due to public safety concerns but expressly authorizes the sale of non-consumables, such as apparel.

Example #3: 6-16-7(h) – Mandatory inter-city vertical integration for manufacturers.

Although the state’s vertical integration requirement for Retail Marijuana Establishments was repealed, it did not apply to products manufacturers even when it was operative. Similarly, the State Medical Marijuana Code imposes vertical integration requirements on Medical Marijuana Businesses but does not require manufacturers to be vertically integrated. Furthermore, no regulatory structure requires manufacturers to have a cultivation facility located within its jurisdictions and there are only a couple jurisdictions that require a cultivation to have a retail store in the jurisdiction.

Example #4: 6-16-7(i) – Limit on Cultivation Facility Licenses.

Neither the state, nor any local jurisdiction in Colorado, places an arbitrary limit on the number of licenses that an individual may possess in aggregate. Further, based upon a plain reading of the Ordinance, it appears that this limitation applies beyond Boulder’s jurisdictional control and limits a Boulder Licensee’s ability to expand his or her business anywhere in the world.

Example #5: 6-16-8(j) – Limitations on Inventory.

The state and other local jurisdictions do not impose restrictions of these kinds on its licensees. First, Retail Marijuana Stores are not only permitted to possess immature plants under state law, but their sale to consumers was also implicitly authorized in Amendment 64. Further, no jurisdiction places arbitrary limits on a licensee’s on-hand inventory because every license’s inventory is tracked completely through METRC – from seed to sale. Finally, local jurisdictions do not typically adopt plant limitations, as that is handled through the tiers set forth in state regulation.

Example #6: 6-16-8(o) – Possession of Mature Flowering Plants.

The state excludes immature, non-flowering plants in its restrictions on the total plants a licensee may possess because licensees tend to destroy a large percentage of all immature plants produced. The imposition of a conflicting rule creates confusion amongst the regulated industry and further reduces the cultivation capacity of Boulder licensees, who are already operating at a disadvantage because of the city’s 1,000-plant limitation.

Example #7: 6-16-8(p)(4) – Coupons Prohibited.

The state and local jurisdictions permit cannabis businesses to offer and accept coupons, provided no Retail Marijuana is given out for free by a Retail Marijuana Store. This provision creates an obvious competitive disadvantage for Boulder licensees, since no other neighboring jurisdiction imposes a similar limitation upon its licensees.

*Regulatory Issue Area #2: Deviation from State Law or Federal Law*

The following are examples of provisions that create possible or definite conflicts with the state’s laws and regulations:

Example #1: 6-16-8(g) – Use of Pesticides.

The Federal Environmental Protection Agency (“EPA”) and the Colorado Department of Agriculture (“CDA”) regulate the use of pesticides. CDA has developed a list detailing which pesticide’s use on marijuana would not be a violation of its EPA-approved label, the standard for all pesticide use. By adopting a different standard, this regulation is in conflict with the manner in which pesticides are regulated.

Example #2: 6-16-8(m)(5) – Manifest and confirmation email required for transport.

The MED does not provide confirmation emails for manifests.

Example #3: 6-16-8(m)(8) – Delivery allowed only during hours of operation.

The state permits transportation and delivery provided it is initiated between the authorized hours of operation: 8:00AM to 12:00AM. The determination to restrict only the initiation of transport was made to address public safety, such as inclement weather, long deliveries routes, and traffic.

*Regulatory Issue Area #3: Costly Regulatory Burdens*

The following are examples of provisions that impose additional regulatory costs on Boulder cannabis businesses:

Example 1: 6-16-7(g)(1) – Area of marijuana center must be no more than 3,000ft.

The state and other localities have not enacted not established any restrictions on the total size of a Licensed Premises marijuana centers in terms of their total area. Further, these types of restrictions are more typically imposed through zoning regulations that apply equally to all business types.

Example 2: 6-16-8(i) – Renewable energy use required.

The state and other localities do not require cannabis businesses to use of renewable energy or the purchase of renewable energy credits. Similarly, this restriction is imposed exclusively on cannabis businesses and no other business types.

Example 3: 6-16-8(k) – Reporting Requirements.

The state does not require advance reporting of changes to managers because it is not a practical expectation for operators. Further, the reporting of all infractions or potential violations of any state or local law exceeds state and typical local self-reporting requirements. Finally, generally advance financial disclosures are required through an approval process as opposed to a reporting requirement, which is handled by the MED.

Example #4: 6-16-8(m)(6) – Email receipt from B.P.D. Required for Delivery.

No other localities require email receipts from their local police departments with each delivery because licensees are required to use METRC manifests for this purpose. This provision places a duplicative administrative burden on licensees and the Boulder Police Department.

Example #5: 6-16-8(h) – Ventilation required.

Denver and other localities usually do not include a ventilation requirement, as local nuisance laws and state tort law already provide adequate remedies to any situation in which one’s enjoyment of their property is impeded.

Example #6: 6-16-8(r)(1), (2) – Shared operations, ventilation, security prohibited; Firewall separation required.

The Colorado Retail Marijuana Code requires only certain operations to remain separate, excluding certain internal operations such as surveillance. Furthermore, requirements related to ventilation, fire suppression system, and firewalls are left to the building and fire code.

Example #7: 6-16-10(a) – Cameras.

The state requires all cameras to be recorded through an onsite DVR and only four hours of battery life in the event of a power outage. These additional requirements impose regulatory costs on Boulder licensees not imposed upon competitors in other jurisdictions and the deviation leads to confusion in the regulated community.

Example #8: 6-16-9(a) – Right of Entry – Records to Be Maintained.

The state and other local jurisdictions do not impose similar record keeping requirements. The state has already set forth extensive recordkeeping requirements for licensees that local jurisdictions typically follow. In addition, the state requires licensees to use METRC to account for much of the information required under the Boulder Ordinance. Further, no regulatory body we are aware of delineates the manner in which licensees must keep its records.

Example 9: 6-16-10(b) – Use of Safe for Storage.

The state requires that all licensees store marijuana securely. The regulations provide flexibility to businesses to determine what secure means within the context of their facility and community. Nor does it require authorization for the manner in which refrigerators or freezers are locked. Additionally, the state’s requirement is limited to marijuana and allows businesses to adopt their own appropriate cash handling procedures.

## **Section 4: Application Process Issues**

Despite operating as an open licensing system, the Boulder Ordinance establishes an application process that is more similar to a merit-based application process, whereby the regulatory agency is selecting amongst multiple applicants for limited pool of licenses. As a result, it requires the submission of a significant amount of information that is unrelated to the qualifications for licensure set forth in the Boulder Ordinance. In addition, certain application requirements are unique to the Boulder Ordinance and generally not found in other cannabis regulatory structures. Some of most significant issues are described below:

Example #1: 6-16-4 (f) – Requirement for commencing operations within 30 days.

There are a variety of reasons beyond a Licensees control that will delay its ability to commence operations. While some jurisdictions, particularly those outside Colorado, have imposed some type of operational requirement, it generally extends longer than six months and includes some type of reasonableness standard to account for circumstances beyond the Licensees control.

Example #2: 6-16-5(2)(a), (c) – Party/Persons Information to be provided on Application.

It is unclear whether there may be only one business manager or multiple managers at a given premises. Also, the phrase “agents who provide advice” is overbroad and creates confusion

because the term “agent” generally means an individual acting on behalf of a company as opposed to advising a company.

Example #3: 6-16-5 (6) – Operating Plan.

There is a considerable amount of information required by this section that is not relevant to the decision of licensure or necessary for enforcement of regulations related to public safety. The provision imposes requirements substantially beyond the state and other local jurisdictions except those with a competitive license application processes.

Example #4: 6-16-5 (d) – Inspection Requirements.

The state allows businesses to commence operations prior to inspection and randomly inspects the facility shortly after it opens. This allows business owners to avoid costly delays while awaiting an inspection and provides regulators a better window into the operation of a facility.

Example #5: 6-16-5(e)(ii) – Fingerprints.

This may not be necessary due to the state’s requirement that fingerprints be submitted for a criminal background and history check prior to license issuance.

Example #6: 6-16-5(f) – Application Approval Requirements.

An approval of a license that is based on plans for the operation of a business will prohibit businesses from changing their operating procedures if necessary later on.

Example #7: 6-16-6(a) – Persons Prohibited as Licensees and Business Managers.

This provision is likely unnecessary given the overlap and scope of the suitability requirements that the state already has in place.

Example #8: 6-16-6(b)(4) – Good Moral Character Determination Based on Ability to Refrain from Using Controlled Substances.

A similar provision is not imposed on the owners of liquor licenses. Further, the phrase “lack of evidence” implies that there is a presumption that applicants are incapable of refraining from using controlled substances that must rebutted.

Example #9: 6-16-15(b)(6) - Term of License - Renewals - Expiration of License.

The time periods established here create inconsistency with the state, which allows a renewal application up to 90 days after the expiration of the previous license (the business may not operate during that 90-day period).

**36 SOLUTIONS**  
PUBLIC AFFAIRS AND CONSULTING  
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**MEMORANDUM**

**TO:** Boulder City Council

**FR:** Shawn Coleman

**RE:** Incongruent State and Boulder Marijuana Regulations

Members of Council, on Wednesday May 6, the General Assembly passed Senate Bill 115, the Medical Marijuana Sunset Review bill. Due to Boulder's unique in the State departures from state regulations, the passage of new state statute often requires revision by ordinance of the Boulder coded. Most communities are not faced with constant code revision as their codes focus on time, place and manner concerns but follow the state with regard to operations, regulations and compliance. As a result their codes follow through without the need for legislation. Council has previously had to pass new ordinance based on adoption of new state rules for the same reason. The council can anticipate at least one additional round of marijuana ordinance revision this year based on planned Department of Revenue rule making regarding edible labeling (Boulder has unique the state requirements) as well as another ordinance around this time next year as the state Retail Marijuana Code comes up for sunset in 2016.

Below is a key provision that has changed at the state and requires immediate action by Boulder to retain the status quo with respect to compliance and license privileges. This may not be exhaustive. Further, find an updated chart of areas where Boulder uniquely regulates different than the state. Each of those provisions leaves council exposed to needing further ordinances when the state takes statutory or rule action. The chart is likewise non-exhaustive but provides a basis for discussion as to what, if any public safety good, do Boulder's unique policy provisions serve or is such deviation from state more likely the source, rather than solution to confusion and distrust between City and State regulators and licensees.

It cannot be stated strongly enough that in addition to the changes Council must make before the state law goes into effect July 1, Council must move forward with major revisions to the code as the deviations between State and City code have created an untenable situation for Boulder licensees as well as Council. The industry citywide was led to understand by the statements of Council and Staff that these major concerns discussed in December would be addressed in June, not in February as originally anticipated. Industry agreed with staff that June made for a better time as we would know the results of the legislative session.

Boulder's marijuana industry is known across the state as the industry standard. Boulder businesses are frequently used for training by state officials although they face the highest tax

rate and most rigorous, in some cases archaic regulatory code in the state. Boulder's community supported Amendment 64 by 3-1. Our businesses are community engaged, are members of the Chamber of Commerce, offer employee eco-passes, are unique in the state for renewable energy and carbon offsets, are compliant and serve our community well. Our businesses are not targets for or contributors to crime. The marijuana community has only been a 2% contributor to our city's tax base in addition to the broader economy. Council must consider now, if the industry in Boulder deserves broadly inferior treatment to their business peers in the city and industry competitors in the state and the confidence that they can receive a fair hearing and timely relief from their elected officials.

### **Supply Chain**

The policy focus of the sunset process was to bring the retail and medical codes in line with each other to the extent possible. Chief among this is supply chain. SB 115 establishes the wholesale supply chain in medical marijuana will now be the same as retail with respect to wholesale transfer. Effective July 1, Medical Marijuana Cultivation Centers will deliver Medical Marijuana directly to a Medical Marijuana Center REGARDLESS of common ownership. Boulder code prohibits this and in fact only allows the transfer from Center to Center which will be PROHIBITED under state law. Council had to address this issue through ordinance previously because of this unique in the state municipal supply chain regulation. Below is the provision of SB 115 and the now in conflict provision of 6-14 B.R.C.

### SB 115

**12-43.3-403. Optional premises cultivation license.** (2) Optional premises cultivation licenses may be combined in a common area solely for the purposes of growing and cultivating medical marijuana and used to provide medical marijuana to more than one licensed medical marijuana center or licensed medical marijuana-infused product manufacturer so long as the holder of the optional premise cultivation license is also a common owner of each licensed medical marijuana center or licensed medical marijuana-infused product manufacturer to which medical marijuana is provided. In accordance with promulgated rules relating to plant and product tracking requirements, each optional premises cultivation licensee shall supply medical marijuana only to its associated licensed medical marijuana centers or licensed medical marijuana-infused product manufacturers; EXCEPT THAT AN OPTIONAL PREMISES CULTIVATION LICENSEE ASSOCIATED WITH A LICENSED MEDICAL MARIJUANA CENTER MAY ***TRANSPORT MEDICAL MARIJUANA DIRECTLY TO ANY OTHER LICENSED MEDICAL MARIJUANA CENTER FOR A TRANSACTION PURSUANT TO SECTION 12-43.3-402 (4) OR A LICENSED MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURER FOR A TRANSACTION PURSUANT TO SECTION 12-43.3-404 (3) IF THERE IS A CORRESPONDING DOCUMENTED POINT-OF-SALE TRANSACTION PRIOR TO TRANSPORTING THE MEDICAL MARIJUANA FROM THE OPTIONAL PREMISES***

### 6-14-8 current provision

(4) Unless otherwise specifically allowed by applicable law, medical marijuana may be transported only:

(A) From a medical marijuana cultivation facility to a medical marijuana center; and

(B) Which medical marijuana business is *owned by the same person as owns the cultivation facility*; or

(C) Between *one medical marijuana center to another medical marijuana center*, with proper bill of sale completed before transport.

Current Boulder code prohibits what will be prospectively required under state law and conversely state law will prohibit the only lawful wholesale transfer mechanism under municipal code. Current State and City code requires bulk pounds of medical marijuana to be transported on public roadways twice. The new state language reduces this to one trip the same as retail marijuana. Boulder's businesses will be out of compliance with either the City or the State on July 1 without a municipal policy change. Below find a non-exhaustive list of policies unique to Boulder that leave council exposed to potential ordinance changes if state law or rule substantially changes. Items that could be subject to substantial rule change this year per DOR's current agenda listed with an asterisk\*

**Boulder Regulations as Compared to State and Peer Communities**

	State of Colorado	Boulder	Boulder County	Breckenridge	Lyons	Louisville	Lafayette	Nederland	Aurora	Denver	Edgewater
<b>Coupons</b>	Allowed	Banned	Allowed	Allowed	Allowed	Allowed	Allowed	Allowed	Allowed	Allowed	Allowed
<b>Dual Use</b>	Allowed	Ends 12/31/15	Required	Allowed	Allowed	Allowed	Allowed	Allowed	No Medical	Allowed	Allowed
<b>Deadline for Conversion</b>	None	12/31/15	None	none	None	None	None	None	None	None	None
<b>Hours of Operation</b>	8a.m.-12 a.m.	8a.m.-7 p.m.	8a.m.-7p.m		8a.m.-10p.m.	8a.m.-8p.m	8a.m.-7p.m	8a.m.-7p.m	8a.m.-10p.m.	8a.m.-7p.m	8 a.m.-12 a.m.
<b>Cultivation Requirement for infused products manufacturers (70/30 rule)</b>	none	yes	none	none	none	none	none	none	none	none	none
<b>Virtual Separation</b>	Allowed	Banned	Required	Allowed	Allowed	Allowed	Allowed	Allowed	Banned	Allowed	Allowed
<b>Grandfather of Use</b>	N/A	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
<b>Special Tax in addition to ordinary state and local sales tax</b>	15% Excise 10% Sales	1 3.5% special 5% excise	None	3.5% Excise	3.5% Sales	None	5% Sales 5% Excise	None	2% Sales	3.5% Sales	None
<b>Additional labeling requirements****</b>	N/A	YES	none	none	none	none	none	None	none	none	none
<b>Appeals Process</b>	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Separate Chapter of Municipal Code for retail and medical marijuana</b>	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO
<b>Renewable Energy Requirement</b>	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO
<b>Limit on licenses available to an individual</b>	NO	YES	NO	NO	NO	NO	No	No	No	No	No
<b>Ability to sell cultivation facility with inventory</b>	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
<b>"70/30" rule for infused products</b>	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO

	State of Colorado	Boulder	Boulder County	Breckenridge	Lyons	Louisville	Lafayette	Nederland	Aurora	Denver	Edgewater
"70/30 rule for Medical Marijuana Center	NO* Pursuant to SB15-115	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO
Regulation of Medical Supply Chain	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO
Requirements for width of aisle in a cultivation facility	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO

The City of Boulder has adopted a policy of analysis based on three key areas of impact, Economic, Environmental and Social. Below each of the above Boulder unique regulations are discussed through those lenses. The council should take this opportunity to decide if, as a matter of policy, the exposure to state changes requiring legislative change by council and the attendant uncertainty and inequity for Boulder licensees and consumers are justifiable in the context of the excellent record of the licensees.

### **Coupons**

Economic: The inability to offer coupons places Boulder businesses at a regional disadvantage as businesses in other communities in the county who are direct competitors can use coupons and place them in Boulder periodicals.

Environmental: The price difference may cause Boulder consumers to travel to other jurisdictions to make purchases that would have otherwise been made in Boulder.

Social: The rationale for the coupon ban was to reduce cannabis commerce. Although lawful Cannabis consumption is not itself an activity there is a public interest in preventing, there has not been evidence to support that the cannabis industry is causing significant increases in adult or minor consumption patterns. The ban does negatively impact Boulder consumers who already pay the highest cannabis tax rate in the state as well as businesses who do not have a tool available to their direct competitors in adjacent jurisdictions.

### **Dual Use**

Economic: Limiting the ability of a business to serve both the medical and retail market may prevent business from adding retail thus reducing potential revenues to the city from the special tax. This also reduces the ability of Boulder businesses to compete regionally and may over time cause some businesses to fail. This provisions also causes businesses to site cultivation facilities outside of the City where they can consolidate their medical and retail cultivation under one roof,

the result for the City being product sold in the City that was grown outside not subject to the excise tax.

Environmental: The impracticality of having a co-located physically separated cultivation facility due to the confluence on total size (15,000 sq. ft.), the reduction in useable square footage (prescriptive aisles), and the total limit being 15,000 sq. ft. per licensee in the entire City, businesses are forced to find cultivation facilities outside of the city where there are no renewable energy requirements. This also increases the distance product is transported.

Social: The inability to become dual use or go back and forth between medical and retail has negative impacts on businesses and the communities they serve. Medical marijuana patients are particularly impacted as certain products are not available in the retail market as well as retail prices being significantly higher. This is especially problematic for patients with limited incomes as medical marijuana is not covered by insurance.

### **Deadline for Conversion**

Economic: Converting to or adding a retail marijuana license is a large expense. Because of Boulder's unique requirements for dual use force many businesses to choose only medical which results in lost retail sales tax for the city or retail only which creates a price and product access burden for medical patients in the community. The inability to serve both markets may cause the failure of smaller businesses.

Environmental: N/A

Social: The ability to convert or switch between retail and medical is important for consumer choice in the city.

### **Hours of Operation**

Economic: Cannabis is a product for adults. State law permits businesses to open from 8 a.m. to Midnight subject to municipal code. Several communities have hours of operation to 10 p.m. including Lyons. 7 p.m. was the statutory closing time for medical marijuana -which the sunset review committee for the medical marijuana code has recommended by harmonized with the retail code this year. As evidenced by consumer purchase patterns in communities such as Aurora and Edgewater, the City and the Businesses lose significant revenues with the inability to serve customers after 7 p.m. Extended hours also provides more employment opportunity. The state recently extended hours for medical marijuana to mirror retail.

Environmental: The varied hours of operation does cause additional vehicle travel as extended hours of operation are available in reasonable drives from Boulder (Louisville 8 p.m. Lyons 10 p.m.)

Social: Hours of operation that are incompatible with working hours is inherently inequitable for cannabis consumers in general, those who work for a living and have to attended to children after

school in particular. The state is likely to repeal the 7 p.m. closing time for medical marijuana. Extending hours is an issue of consumer equity. Extended hours also reduces opportunity for the black market.

### **Cultivation Requirement for Infused Products**

Economic: Although the intention of this provision is to ensure infused products manufactures are contributing tax by paying excise tax, the requirement that a manufacturer must source 70% of their material from their own cultivation in Boulder makes it impossible to produce enough products for a statewide market. This provision makes it impossible for any kind of infused products manufacturer except producers of hash oil from being able to be successful in Boulder.

Environmental: In order to comply with this provision, an infused products manufacturer would have to bring online another cultivation facility which are the largest energy consumers in the industry.

Social: This provision reduces consumer choice and almost ensures that Boulder companies with Boulder values are not participating and informing the edible cannabis market.

### **Virtual Separation**

Economic: Virtually separated retail/medical is the standard statewide. Boulder prohibits this a great cost to the city and its businesses. The ability to serve both markets provides stability for the businesses, greater consumer choice and more revenue for the city.

Environmental: N/A

Social: Virtual Separation would actually REDUCE opportunities for minors to lawfully possess cannabis as under the current physical separated model, medical marijuana patients aged 18-20 may purchase in their own right. Virtual separation requires that any person on the premises is aged 21 and above.

### **Grandfathering of Use**

Economic: The current grandfathering provisions makes it impossible for most business to sell assets of the business and in some cases the entire business. This has negatively impacted the value of Boulder businesses.

Environmental: N/A

Social: A value of a business is embedded in its location and customer base. The inability of a premises to be a cannabis business for a new owner not only prevents the current owner to sell or in many cases do ordinary business transactions, it also impacts the character of community if a certain activity consumers are used to can not continue in that use.

### **Special Tax**

Economic: The city *may* be receiving additional revenues, however it cannot be easily determined if this is at the expense of activity that is remaining in the medical or black markets because of the significant price difference.

Environmental: Excessively high taxes encourages lawful home cultivation as well as extremely energy intensive and unregulated black market cultivation operations.

Social: As with any regressive tax, the cannabis taxes negatively impact those with the fewest means the most. Although the medical marijuana program remains in tact, there are myriad conditions for which cannabis can be used medically that are not qualifying conditions. These patients must continue to pay the very high retail taxes which is problematic as medical applications generally require larger quantities.

### **Additional Labeling Requirements**

Economic: The Boulder specific edibles labeling causes manufacturers to throw away thousands of dollars of labels, forces stores to lose product removed from their shelves and has caused some manufacturers to pull out of the Boulder market which negatively impacts Boulder businesses and consumers.

Environmental: N/A

Social: The Boulder specific labeling requirements do not provide customers with additional useful information but does deprive consumers of products available outside of the city.

### **Appeals Process**

Economic: The inability to appeal devalues businesses and provides a chilling effect against new business. The reputation Boulder has earned has also negatively impacted the ability of Boulder business owners to sell their operations.

Environmental: N/A

Social: Not having an appeals process has created distrust between the industry and the city.

### **Regulation of supply chain**

Economic: This is the second time that council will be forced to address this unique in the state provision of Boulder's code. The previous iteration of this provision made wholesale transactions for medical marijuana businesses virtually impossible. The change in state statute -intended to facilitate both business and enforcement by streamlining the process and reducing the amount of times products must be transported in bulk- will make wholesale transfers for Boulder licensees unlawful. Boulder and the State provisions are in direct conflict. This will have devastating negative impacts on Boulder medical marijuana licensees.

Environmental: N/A

Social: Without a change to the Boulder code by July 1, patients in Boulder may find their medicine entirely unavailable.

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July 10, 2015

**VIA ELECTRONIC MAIL:**  
[council@bouldercolorado.gov](mailto:council@bouldercolorado.gov)

Boulder City Council  
P.O. Box 791  
Boulder, CO 80306

Re: Proposed changes to City of Boulder Marijuana Laws: 12/31/15 Conversion Deadline

Dear Council and Mayor:

It has come to our attention that that this Council will soon be considering changes to several aspects of Boulder's medical and retail (often referred to as recreational) marijuana ordinances. This council should amend the City of Boulder ordinances to remove the required conversion date, and reassess the physical separation requirement between medical and recreational marijuana businesses.

Currently, Boulder Municipal Code 6-16-3 (f) requires any medical marijuana business to choose to convert to a recreational or dual-license business by 12/31/2015. This is an unnecessary requirement that burdens Boulder businesses unreasonably. Because the City of Boulder requires physical separation between medical and recreational marijuana businesses, businesses that want to convert have a large initial investment in converting to dual-license. They were required to construct walls, add entrances, buy additional surveillance equipment, furniture, and anything else to comply with the laws and regulations. This is a significant expenditure for marijuana businesses and the City of Boulder is unique with regard to the physical separation requirement

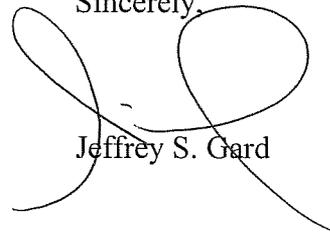
The 12/31/15 conversion deadline requires medical marijuana businesses to act arbitrarily without sufficient market research (deciding to switch from medical to recreational) or permanently lose the ability to change from a medical to recreational facility. Without the benefit of future conversion, many businesses may not be grandfathered into zoning laws, essentially trapping them as a medical-only business. This is not good for Boulder business, as it does not allow business owners to make informed decisions, but punishes them if they do not act by 12/31/15.

Further, there is no justification for this conversion deadline. This does not dispose of the issue, it only makes it more difficult for businesses to make changes in the future. This also places an immediate burden on the City of Boulder licensing authority and the marijuana businesses effected. Zoning restrictions have worked essentially to saturate the city and has resulted in a lack of new business applications in the City of Boulder. The work for the licensing manager is limited to license renewals and investigations of existing businesses. Removing this deadline would not burden the licensing authority in the future.

Accordingly, we request that the Boulder City Council get rid of the conversion deadline completely and allow current medical marijuana businesses to convert when they decide it is what is best for their business.

Thank you for your consideration of this matter. We would look forward to working with you further going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Gard". The signature is stylized with large loops and a long horizontal stroke.

Jeffrey S. Gard

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July 9, 2015

**VIA ELECTRONIC MAIL:**  
[council@bouldercolorado.gov](mailto:council@bouldercolorado.gov)

Boulder City Council  
PO Box 791  
Boulder, CO 80306

Re: Proposed changes to City of Boulder Marijuana Laws: Physical Separation Requirement

Dear Council and Mayor:

It has come to our attention that that this Council will soon be considering changes to several aspects of Boulder's medical and retail (often referred to as recreational) marijuana ordinances. This council should amend the City of Boulder ordinances to allow dual-licensed marijuana businesses to keep virtual separation rather than physical separation.

The physical separation requirement set by B.R.C. 6-16-8(r) is a burden on businesses wishing to serve medical and retail clients. This provision requires dual-licensed marijuana businesses to keep the medical and retail parts of the business completely physically separate, as if it were two stores. Requiring separate entrances, security systems, and new walls is a burden on small marijuana businesses. Some locations cannot support this physical separation at all if there is not enough room to divide the premises. Virtual separation was envisioned by the legislature, as seen in C.R.S. 12-43.4-401:

(2) (a) A person may operate a licensed medical marijuana center, an optional cultivation facility, a medical marijuana-infused products manufacturing facility, and any retail marijuana establishment at the same location if the local jurisdiction permits a dual operation.

(c) A dual cultivation business operation shall maintain either physical or virtual separation of the two facilities and the plants and inventory of the two facilities.

Most municipalities have chosen to allow virtual separation since it works to allow businesses to serve both medical and retail clients without overburdening the business. Denver is one of the jurisdictions allowing virtual separation. Denver Code of Ordinances 2-6-5 Sec. 6-211 (f) "Licensing requirements—Retail marijuana stores" reads:

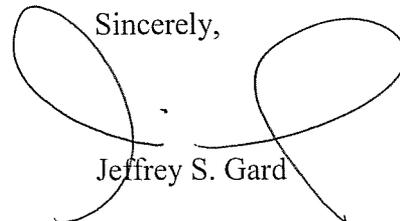
*Co-location of retail marijuana store and medical marijuana center.* A retail marijuana store in common ownership with a medical marijuana center may be licensed in the same location and may share the same licensed premises, to the extent allowed by the CRMC and regulations promulgated by the Colorado Marijuana Enforcement Division.

Allowing marijuana businesses to be dual-licensed and virtually separated does not harm consumers since virtually-separated businesses can only serve adults twenty-one or older. By not allowing Boulder businesses to be virtually-separated, Boulder businesses are at a significant competitive disadvantage. They must either serve one group, or spend significant resources to physically separate. Denver businesses are not bound by these limitations.

The Boulder City Council should amend B.R.C. 6-16-8(r) to mirror the Denver ordinance and allow Boulder marijuana businesses to convert to a dual-license business using virtual separation. This, coupled with removing the conversion deadline, will help Boulder businesses stay competitive with surrounding markets.

Thank you for your consideration of this matter. We would look forward to working with you further going forward.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a horizontal line, positioned over the printed name Jeffrey S. Gard.

Jeffrey S. Gard

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July 9, 2015

**VIA ELECTRONIC MAIL:**  
council@bouldercolorado.gov

Boulder City Council  
P.O. Box 791  
Boulder, CO 80306

Proposed changes to City of Boulder Marijuana Laws: Restore Due Process Hearings

Dear Council and Mayor:

It has come to our attention that that this Council will soon be considering changes to several aspects of Boulder's medical and retail (often referred to as recreational) marijuana ordinances. This council should amend the City of Boulder ordinances to include greater due process for marijuana businesses.

It is axiomatic and well established in law that all businesses have a right to due process in the licensing process. This due process includes adequate notice of opposing claims, an opportunity to defend against these claims, and a fair and impartial decision maker. Snyder v. Colorado Podiatry Board, 100 P.3d 501 (Colo.App. 2004). This is important to the fairness of the legal process, as it keeps the same individual or entity from charging and deciding on the matter. This due process is currently missing for City of Boulder marijuana businesses. In the City of Boulder, the City Manager makes the licensing violation allegation, investigates the business, and makes the final licensing decision. Currently, these tasks are delegated by the City Manager to the licensing Manager, Ms. Mishawn Cook.

As it stands, marijuana businesses in Boulder can have their business licenses revoked without the required due process. This can be seen in B.R.C. 6-16-4(e) which reads:

The decision of the city manager on an application for a recreational marijuana business license or revocation thereof pursuant to this chapter shall be the final decision of the city subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4), unless the notice of the decision includes an opportunity for a hearing as provided in Section 1-3-3, "Notice of Agency Action, B.R.C. 1981. No defense or objection may be presented for judicial review unless it is first presented to the city manager prior to the effective date of the decision.

Without a guaranteed neutral hearing process, the businesses are left without recourse if notice is not given properly or if the decision by the city manager is not fair or

impartial. CRCP 106 (a)(4) is available to seek judicial review of the denial, but there is no opportunity in a CRCP 106(a)(4) review for the business to present evidence.

This lack of due process can be remedied by changing the law to require notice to businesses of all reasons their application was denied, an opportunity to present and challenge evidence, and by providing a hearing before a neutral party. This hearing gives businesses the opportunity to present evidence to a neutral hearing officer and the ability to fairly defend against the claims given in the notice. This process also has the benefit of producing a record if the decision is appealed.

Boulder Revised Code 1-3-3 "Notice of Agency Action" already protects all other businesses in this way, including alcohol sales. Boulder Revised Code 1-3-3(a) reads:

Except as provided by Section 1-3-4, "Exception for Emergencies," B.R.C. 1981, no agency may take final agency action subject to this chapter unless, before taking such proposed action, the agency has given all known interested persons notice by hand delivery, posting on the property subject to agency action, regular mail, or publication once in a newspaper of general circulation in the city of:

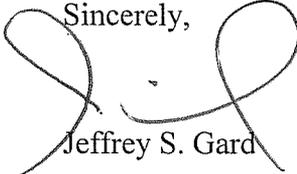
- (1) The proposed agency action;
- (2) The legal authority under which it is proposed to be taken;
- (3) The opportunity for any interested person to submit written data, views, and arguments with respect to such proposed action; and
- (4) Either:
  - (A) The date of a hearing if city charter, ordinance, or code, or state or federal constitution or law requires a hearing without a request therefor before proposed agency action; or
  - (B) The opportunity for any interested person to request a hearing on such proposed agency action by filing a written request therefor that is received by the agency no more than ten days after the date the notice is deposited in the mail, hand delivered, posted, or published.

As you know, it is the City's policy to regulate marijuana like alcohol, but here marijuana is not being given the same due process as alcohol sales. The problem is that marijuana businesses are expressly excluded from the process by the language in B.R.C. 6-16-4(e), which makes the hearing optional at the discretion of the City Manager. To date, no such hearing has ever been afforded to any marijuana business. When originally passed B.R.C. 6-16-4(e) was not included and this allowed marijuana businesses to get a fair notice and hearing process in the application process. If B.R.C. 6-16-4(e) is removed from the ordinance, marijuana businesses would again be afforded the same due process given to alcohol sales and other businesses by B.R.C. 1-3-3(a).

It is our request that the Boulder City Council remove B.R.C. 6-16-4(e) to make due process hearings guaranteed and protected through BRC 1-3-3 like any other business. This change would align The City of Boulder's due process with that afforded

by the Marijuana Enforcement Division on the state level, and with the due process given to alcohol businesses at the city level.

Thank you for your consideration of this matter. We would look forward to working with you further going forward.

Sincerely,  
  
Jeffrey S. Gard

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July 9, 2015

**VIA ELECTRONIC MAIL:**  
council@bouldercolorado.gov

Boulder City Council  
P.O. Box 791  
Boulder, CO 80306

Re: Proposed changes to City of Boulder Marijuana Laws: Other Products

Dear Council and Mayor:

It has come to our attention that that this Council will soon be considering changes to several aspects of Boulder's medical and retail (often referred to as recreational) marijuana ordinances. This council should amend the City of Boulder ordinances to allow marijuana businesses to sell products other than the "marijuana and marijuana products or marijuana accessories" currently allowed. Boulder Municipal Codes 6-16-7 (g)(2).

This current law restricts marijuana businesses from selling products that their customers may be interested in. While they are allowed to sell heavily regulated marijuana and the accessories to use it, they cannot sell items that are allowed in any other store. This is an unfair and needless restriction. Similar restrictions are not found in the Medical Marijuana section of the Boulder Code, in the MED regulations, or in the Denver Municipal Code.

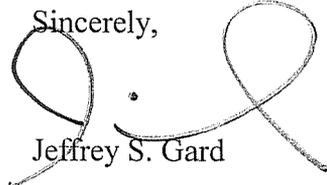
Marijuana businesses do not represent competition for other retail outlets since they cannot match the prices, convenience, and selection offered by others. Allowing marijuana businesses to sell hemp lotion, stickers, sunglasses, etc. allows Boulder marijuana businesses to grow without negatively impacting customers or surrounding businesses.

By restricting the range of products that can be sold by marijuana businesses in Boulder, Boulder businesses are at a competitive disadvantage compared to businesses in surrounding areas that do not have similar restrictions. Customers at other dispensaries can expect a wider variety of products that cannot currently be met by Boulder businesses.

Further, the way the MED regulation is composed eliminates the chances of customers accidentally consuming THC. By restricting marijuana businesses from selling only *consumable* products, customers will not be confused or misled when choosing between any food, drink, or smoking products at marijuana businesses. This is a model way to handle the problem while still allowing the marijuana businesses to meet customer demands and compete with surrounding markets.

The Boulder City Council should amend BMC 6-16-7 (g)(2) to be in-line with the MED Rule 402 (I), which allows for the sale of products and merchandise by marijuana businesses as long as the item is not consumable (i.e. food, drink, alcohol, and tobacco).

Thank you for your consideration of this matter. We would look forward to working with you further going forward.

Sincerely,  
  
Jeffrey S. Gard

## **RESPONSES TO MARIJUANA INDUSTRY QUESTIONS**

Attached are various memos and letters sent to Council from four consultants to marijuana businesses asking that the city remove several requirements from its marijuana laws. Following, each of the points in each letter is addressed separately providing the reasons for adoption of the laws and the consequences of removing the requirements on marijuana businesses:

### **A. Requests from Jeffrey Gard.**

#### **Section 6-16-2 (Alleged prohibition of sale of seeds)**

Attorney Jeffrey Gard, representing 14er Holistics and Helping Hands Herbals has proposed amending the definition of “Recreational Marijuana Plant” set forth in 6-16-2. Mr. Gard asserts that because the current language does not include the word “germinated” it precludes the sale of seeds. According to Mr. Gard:

“Recreational Marijuana Plant” is defined as “a marijuana seed and all parts of the growth therefrom, including, without limitation, roots, stalks, and leaves, so long as the flowers, roots, stalks, and leaves are all connected and in a growing medium. For purposes of this chapter, any part of the plant removed is considered harvested and no longer part of a recreational marijuana plant, but marijuana.”

§ 6-16-2, B.R.C. 1981.

Staff has addressed this issue in a proposed ordinance.

#### **Section 6-16-5(16) (70/30 rule for MIPs)**

Mr. Gard, in this case representing the three Marijuana Infused Product (MIP) companies in Boulder, requested a change to section 6-16-5(a)(16), which requires such businesses to purchase 70 percent of their source marijuana from a cultivation facility in Boulder owned by the same licensee.

Council adopted this requirement because the recently-adopted excise tax applies only at the point of transfer of a plant from a cultivation facility to a MIP or a retail business. If MIPs could locate in Boulder without having the majority of the marijuana used grown in Boulder, the city would receive no tax benefit from those businesses, but have all of the impact. At the time of adoption of this requirement, all of the MIPs existing in the city had their cultivation facilities in the city so no city business was negatively affected by the requirement. Both MIPs and cultivation facilities are allowed in the same zone districts. There have been complaints that Boulder’s distance restrictions limit the number of businesses allowed in that zone district. This requirement also prevents all of the available sites from becoming MIPs while cultivation operations are forced out of the city. If council is no longer concerned about receiving the excise taxes related to

MIPs located in the city, or the balance in the zone district created by the 70/30 rule, the requested change can be drafted.

**Section 6-16-7(g)(2) (Sale of ancillary products)**

Mr. Gard suggests that council should modify the city’s restriction on sale of other products by prohibiting only the sale of consumable products. Council adopted these restrictions originally as part of the medical marijuana regulatory program. The medical marijuana program was focused on a wellness model. The sale of ancillary products, other than what is defined as marijuana accessories in the constitutional amendment, is not consistent with such a model. In creating a recreational marijuana regulatory scheme, staff modeled marijuana dispensaries along the lines of liquor stores. Colorado state law prohibits liquor stores from selling products unrelated to liquor, although the state has established a list of approved products. Amendment 64 limits what a retail marijuana store can sell to “marijuana and marijuana products.” Amendment 64 includes the following language:

“Marijuana accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

Staff recommends that this prohibition be maintained.

**Section 6-16-4(e) (Hearing Procedure)**

Mr. Gard requests that the city change its hearing procedures to allow for a full administrative hearing for license violations. The city originally had such a procedure and found it was very labor intensive for staff, and always resulted in an appeal on the record to the district court. The city’s positions have been upheld by the court, even if they had not been upheld by the hearing officer.

It is not true that the licensee is not permitted to present evidence as suggested by Mr. Gard. The city’s current code provides for an efficient and legal method for addressing violations by delaying the effective date of any revocation or other enforcement action or final decision of the city manager to allow the business to submit any documents it wants considered as part of the record on appeal. As a result, the city and the business both have the opportunity to make sure the documents supporting their position become part of the record considered by the district court without the labor and cost intensive process of an intermediary hearing.

The Boulder District Court has upheld the city's existing process against a due process challenge. A licensee has a right to challenge any decision by the city manager in court. The court reviews the city manager's decision based on the record that was before the manager as well as any additional information the business wants the court to consider. Mr. Gard's proposal would require the city to create a larger bureaucracy without providing any better results. More than 12 decisions of the city manager denying an application or revoking a marijuana license have been challenged in court. The court has upheld the city manager's decision every time except once. In that case, the court ruled that a business owner could name a business manager to act while he was in jail by a power of attorney. While the court agreed with the city that a power of attorney had the effect of avoiding the background checks required for business managers, it determined that because the state statute that exempts powers of attorney from being used in regulatory proceedings did not list "ordinance" with "statute." The power of attorney was sufficient. The city has since amended its code so that a business cannot avoid the background check process by designating business managers by power of attorney. Staff recommends against any change to section 6-16-4(e).

**Section 6-16-8(r) (Physical Separation)**

Mr. Gard requests that the council reconsider its decision to require physical separation of recreational marijuana facilities from medical marijuana facilities. The requirement arose for two reasons. First, there are different restrictions for medical and recreational marijuana. Recreational marijuana is only available to those over 21 and they can only buy up to one ounce at a time. It is also subject to an additional sales tax approved by the voters. Medical marijuana is available to anyone of any age with a patient card and can buy up to two ounces at a time and is not subject to the additional sales tax. With a physical separation requirement, the city can and does enforce each code to allow patients to receive medicine but to prohibit anyone under 21 from entering a recreational marijuana retail establishment, and to ensure that the city is getting the appropriate tax revenue, and to facilitate proper recordkeeping for city conducted audits. The requirement allows enforcement without the gamesmanship that occurs in a virtual rather than physical separation environment. Physical separation also addresses the council's concern regarding limiting youth access to recreational marijuana.

The second reason for the separation requirement was the council's focus on a wellness model for medical marijuana dispensaries. Allowing recreational sales in a medical facility would undermine the wellness model and be tantamount to allowing liquor sales in a doctor's office. Further, to the extent Amendment 64 reflects the intent of the voters, it specifically does not authorize a retail marijuana store to operate in the same premises as a medical marijuana center.

Another consideration is the outlaid costs to Boulder businesses that have already been invested in creating separate facilities in compliance with the current code and Amendment 64. Council may wish to seek input from these businesses before eliminating the separation requirement.

Staff does not recommend eliminating the physical separation requirement. From a law enforcement and auditing perspective, such a change would severely limit the city's ability to enforce the marijuana laws.

**Section 6-16-3(f) (Conversion Deadline).**

Mr. Gard asks that council eliminate the December 31, 2015 deadline for conversion of co-location of marijuana businesses. On June 3, 2014, council passed ordinance number 7970 amending Chapters 6-14 and 6-16. The main purpose for ordinance number 7970 was to address issues identified with the medical marijuana and recreational marijuana code. In the original proposed ordinance, staff recommended that the ability for existing medical marijuana businesses to convert terminate as of May 31, 2014. The reason for the recommendation was that until June 1, 2014, individuals not holding medical marijuana licenses could not apply for recreational marijuana licenses. After June 1, 2014, the market was open to those that had not previously held a medical marijuana business license. The application requirements are different for new as compared to converted or co-located recreational marijuana businesses. To avoid confusion, staff recommended that as of June 1, 2014 all businesses be subject to the same requirements. Council amended the proposed ordinance to impose a cut off of December 31, 2014. On December 1, 2014, council passed ordinance number 8020 extending the deadline to December 31, 2015. The reason behind this limitation was to allow the city's licensing staff to have some date for closure of its processes for conversion or co-location. In the last twelve months, the city has received 42 applications for co-location or conversion. There are only five medical marijuana wellness centers left in the city who sell only medical marijuana and who have not filed for co-location. One wellness center is not zoned appropriately for conversion, two would not be allowed to co-locate due to ownership restrictions, one wellness center has advised that they will not be allowed to convert to recreational marijuana by their landlord, and the last of the five wellness centers has advised that they are committed to medical marijuana sales and consider their premise too small to facilitate physical co-location.

**Section 6-16-7(f) & Section 6-16-7(e). (500 foot rule)**

Staff recommends that code not be changed to measure distances by looking at the distance a pedestrian would travel. The straight line "as the crow flies" measurement in the code provides an undisputable measurement that can be determined by anyone with a map. A pedestrian travel route requires case-by-case determinations. Moreover, such a measurement requires rules to determine whether whether crosswalks need to be used,

or parking lots can be crossed, and other variables resolved. A pedestrian route must be measured on the ground rather than a map. The subjective standard involves more staff time and allows for greater uncertainty. The city established the 1,000 foot separation from schools and other designated facilities to bring the city's code into line with a requirement enforced by the federal government. At the time, several marijuana businesses that the city had approved using the city's 500' limit were forced to close or relocate because the federal government threatened prosecution. It seemed unfair for the city to issue licenses if the federal government was likely to take action against those licensees.

## **B. Requests from Jordan Wellington**

### **Structural Issue Number 1 (Separation of Licensed from Unlicensed Regulation)**

Boulder's marijuana code was designed to be a comprehensive scheme for regulating the marijuana industry in Boulder. Mr. Wellington objects to regulating both licensed and non-licensed activities in the same code. He does not explain, however, why this is a problem. Having one place in which all of the regulations can be found has a utility that is not outweighed by a legal construct separating based on regulatory status. Staff does not recommend re-writing the code at this point.

### **Structural Issue 2**

Boulder's marijuana code predates both state legislation and most other marijuana regulatory schemes around the state and in the country. It also addresses land use issues and impacts to citizens that are not addressed by the state. It is not surprising, therefore that it differs from other regulatory schemes. Boulder's code represents policy choices made by the elected leaders of a home rule city. It would not be appropriate for Boulder to surrender its right of self determination in such an important matter for the sake of uniformity. Doing so would abdicate the city's responsibility for use of its zoning and law enforcement powers. Staff does not recommend adopting state law as Boulder's marijuana code.

Mr. Wellington identifies what he describes as "a non-exhaustive set of examples." These are as follows:

#### **1. Section 6-16-2 Definition of "Advertise."**

The Colorado state legislature has not adopted a definition of advertising. There are published rules that include such a definition. Boulder's definition of "advertise" is as follows:

Advertise means the act of drawing the public's attention, whether on print, signs, or electronic means, to a recreational marijuana business in order to promote the sale of marijuana by the business.

§ 6-16-2 B.R.C. 1981 ("Definitions")

The state rules include the following definition of “advertising:”

“Advertising” means the act of providing consideration for the publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any Person to patronize a particular a Retail Marijuana Establishment, or to purchase particular Retail Marijuana or a Retail Marijuana Product. “Advertising” includes marketing, but does not include packaging and labeling. “Advertising” proposes a commercial transaction or otherwise constitutes commercial speech.

1 Colo. Code Regs. § 212-2.103 The state’s rule includes some additional elements. For example to prove advertising under state law, a prosecutor would have to show that the defendant provided “consideration.” It is not clear why this should be necessary. In addition, the state rule includes a separate sentence at the end referring to a “commercial transaction” and “commercial speech.” Boulder’s code addresses the same issue with the simple phrase “to promote the sale of marijuana by the business,” which limits the application to commercial speech.

## **2. Section 6-16-2 Definition of “Recreational Marijuana Plant.”**

Boulder’s code defines “marijuana” as follows:

Marijuana for this Chapter 6-16 means:

- (1) The same as set forth in the Recreational Marijuana Amendment; or
- (2) As may be more fully defined in any applicable state law or regulation.

§ 6-16-2 B.R.C. 1981 (“Definitions”). The definition of “Recreational Marijuana Plant” is a limited definition for a limited purpose. It is used only twice in the Boulder code. Sections 6-16-8(o) and 6-16-13(a)(22) limit the number of flowering plants that a person or business can maintain, consistent with both Amendments 20 and 64 The state regulations define “immature plant” as a non-flowering plant, but limit the term to plants no more than eight inches tall. Thus, Boulder’s definition of “Recreational Marijuana Plant” is more permissive than state law.

## **3. Section 6-16-2 Definition of “Restricted Area”**

The state regulations create two different types of areas: “Restricted Access Areas” and “Limited Access Areas.” Customers are allowed in the former, but not the latter. This distinction is necessary, because state law must accommodate businesses that allow persons under 21 into Recreational Marijuana dispensaries. Boulder does not. Thus, the Boulder definition of “Restricted Area” is the functional equivalent of the state definition of “Limited Access Area.” That is, areas in the business in which customers are not permitted. If the council decides to allow sales of both medical and recreational

marijuana without physical separation of the premises, the city will need to adopt separate definitions as the state has done.

#### **4. Section 6-16-2 Definition of “Business Manager”**

The Boulder code defines the “Business Manager” as an owner or employee with access to the safe, who can open in the morning, lock up at night and who can set or disable the alarm, other than the owner. This was a policy choice by council. This effectively limits the number of people who can access the cash or marijuana stored at the business after hours, and requires that those people have a background check by the city prior to being approved as a business manager. This provides a level of safety for our community, because it helps to prevent diversion. Under the Boulder code the business manager is required to meet higher standards than are regular employees.

#### **5. Section 6-16-4(g) Landlord Duty**

This section provides in relevant part as follows:

In the event that the city has an articulable reason to believe that a recreational marijuana business is being operated in a building, it shall be unlawful for the owner of the building to refuse to allow the city access to the portion of the building in which the suspected recreational marijuana business is located to determine whether any marijuana is on the premises.

§ 6-16-4(g). The United States Supreme court has long recognized a less significant expectation of privacy in commercial property as compared to residential property. On June 15, 2015, the Court announced a decision in a case involving the ability of police to demand and review hotel registers. *City of Los Angeles, Calif. v. Patel*, 135 S. Ct. 2443 (2015). The Court held that even in commercial areas, a person has a right to have an impartial third party review the right to search. The Court recognized, however, that there is still an exception for heavily regulated industries, such as liquor sales, gun sales, mining and running a junkyard. There is no question that the marijuana industry is heavily regulated. Thus, the question is whether a landlord who is renting to an unlicensed marijuana business has a reasonable expectation of privacy. City staff believes that the language is defensible as written, although council may want to consider requiring the issuance of an administrative subpoena to comply with the Supreme Court’s decision in *Patel*.

The City recently successfully prosecuted a landlord for leasing to an unlicensed business. The business was discovered by the city when the fire department was called because a fire erupted in the electric meter housing. As the fire department arrived, several people were running from the building in various directions; no one was attempting to prevent the smoldering meter housing from turning into flames. Xcel removed the meters supplying the power to the illegal units to prevent further damage. The police found about 20 pounds of finished product on the site as well as hundreds of marijuana plants. The unit was locked by the city until the site could be declared safe; however it was broken into several times and marijuana plants removed. The landlord

leased the building to both licensed and unlicensed businesses. He was aware of the city’s law preventing him from leasing to non-licensed marijuana businesses. The fire was contained without excessive damage to neighboring businesses and other buildings, but only because of the quick response of the fire department. The city does not have a means of finding illegal businesses until disaster happens unless others are responsible for reporting. This law puts the responsibility of reporting illegal businesses to the people benefitting from leasing to illegal businesses before people or property are hurt.

**6. Section 6-16-13(b) Prima Facie Evidence**

The Boulder Code prohibits persons from operating a recreational marijuana facility while under the influence of alcohol or drugs. Section 6-16-13(b) provides guidance on what would be considered “prima facie evidence” of impairment.

Prima facie indicia of impairment or being under the influence of marijuana includes bloodshot eyes, watery eyes, eyelid tremors, green particulate on tongue, dilated pupils, mental confusion, slowed responses, rigid muscles, body tremors, or dry mouth, or any other indicators of impairment.

Under Colorado law “Prima facie evidence is evidence that, unless rebutted, is sufficient to establish a fact.” *Stamp v. Vail Corp.*, 172 P.3d 437, 449 (Colo. 2007). Thus, if a person has another reason for having watery eyes, for example, a head cold, he or she can offer that as proof. It would be impractical to require employees suspected of being impaired to take a blood test. Since marijuana stays in the blood stream for as long as four weeks, it is inconclusive evidence of impairment at a particular time while THC appears in a blood test.

**7. Section 6-16-3(e) License Non-transferable**

Neither the city nor the state allows the unregulated transfer of marijuana licenses. The state has adopted a detailed procedure for transfer. *See* 1 Colo. Code Regs. § 212-2.205 (“Transfer of Ownership and Changes in Business Structure: Retail Marijuana Establishments”). The city code prohibits transfer of all other city licenses. The only exception is liquor licenses which are required to be transferable under state law because they are considered a property interest. Marijuana licenses are defined NOT to be property interests. The city simply makes the new owner file a new application. In either case, the new owner must meet all applicable licensing requirements.

**8. Section 6-16-7(g)(2) Prohibited to sell/distribute anything but marijuana, marijuana products and accessories.**

This restriction is discussed above. It is adopted from state law regulating liquor stores. In December 2015, council amended section 6-16-8(p)(1)(C) to allow for advertisement on apparel. Staff is recommending amending this section to clarify that sale of apparel

with the business's name or logo is permitted. This section has never been viewed as a prohibition of such sales.

**9. Section 6-16-7(h) Mandatory inter-city vertical integration for manufacturers.**

See second response to Jeff Gard's list above.

**10. Section 6-16-7(i) Limit on Cultivation Facility Licenses**

The city limits any licensee from holding more than five cultivation licenses in Boulder. Council imposed this limit to prevent monopolization of cultivation licenses by a few big businesses.

**11. Section 6-16-8(j) Limitations on Inventory**

This section merely limits the licensee to an inventory equal to the amount of marijuana stated on the business' license application. The requirements that the business disclose on its application the amounts of marijuana and means of operation is one of the enforcement tools to make sure the business is operated as represented in its application. This does not appear to be an unreasonable restriction.

**12. Section 6-16-8(o) – Possession of Mature Flowering Plants.**

This section provides that no more than fifty percent of all plants in a business can be mature flowering plants. This limitation is in the constitutional amendments for both medical and recreational marijuana so the city could not adopt something less restrictive. It could adopt something more restrictive.

**13. Section 6-16-8(p)(4) – Coupons Prohibited.**

The city prohibits coupons for marijuana sales. The state liquor code has intricate regulations relating to coupons for liquor stores. *See* 1 Colo. Code Regs. § 203-2:47-316. The additional work needed to regulate marijuana coupons in the same manner as alcohol, did not seem justified at the time that the city's marijuana code was adopted. Council may wish to revisit this restriction.

Experience from alcohol and tobacco sales provide significant evidence of the effectiveness a higher price point has on limiting availability and accessibility of substances to youth. Coupons and discounts reduce the price point, which can contribute to the likelihood of use. Boulder is not the only jurisdiction to refuse redemptions of coupons; Louisville has a similar provision in their marijuana regulations.

**14. Section 6-16-8(g) – Use of Pesticides**

This section requires marijuana businesses to comply with federal, state and city rules relating to pesticides used for edible products. It imposes no obligation not imposed on

any other business in Boulder that is growing or creating products for human consumption.

**15. Section 6-16-8(m)(5) – Manifest and confirmation email required for transport**

The confirmation e-mail is the mechanism used when police stop a vehicle with marijuana. If we eliminate this requirement, the police either don't question anyone with marijuana, or delay the driver until contacts with the owner can be made. The e-mail confirmation is automatic, not done by a person, and streamlines the process for the driver transporting marijuana. The state requirement for the manifests remains in effect.

**16. Section 6-16-8(m)(8) – Delivery allowed only during hours of operation.**

This is one of several provisions intended to limit the diversion of legal marijuana onto the black market. Safety concerns dictate that marijuana only be transported when a business is open. State law includes a similar provision. The difference is that the state allows businesses to be open until midnight, while Boulder requires them to close at 7:00 p.m.

Although the state allows businesses to operate between 8:00 a.m. and Midnight, many jurisdictions have opted to reduce the hours of operation for marijuana businesses. Boulder, Boulder County, Lafayette, and Denver permit businesses to operate between 8:00 a.m. and 7:00 p.m. The town of Louisville allows operations between 8:00 a.m. and 8:00 p.m. Reducing hours of operation locally supports enforcement activities and reduces the likelihood of sales to impaired individuals.

**17. Section 6-16-7(g)(1) – Area of marijuana center must be no more than 3,000 square feet.**

Boulder's marijuana model is intended to facilitate the operation of neighborhood-size stores rather than big box retail stores. Limitation on size is important to this goal.

**18. Section 6-16-8(i) – Renewable energy use required.**

Requiring marijuana facilities to use renewable energy is consistent with the city's sustainability goals. The introduction of an entirely new industry, which in the case of cultivation facilities involves significant energy usage, provided an opportunity to facilitate these goals through the renewable energy requirement.

**19. Section 6-16-8(k) – Reporting Requirements**

The city's reporting requirements are intended to provide for safe operation of marijuana businesses. Requiring a business to report a change of manager facilitates the city's oversight and prevents unqualified individuals from holding positions of trust.

**20. Section 6-16-8(m)(6) – Email receipt from B.P.D. Required for Delivery**

This provision is intended to prevent diversion. This back up information is also helpful to double check the taxable shipment of product in city audits. It is also allows both the police and the driver to proceed without delay if a vehicle is stopped with marijuana in it, but the marijuana is being transported legally. (see 15 above).

**21. Section 6-16-8(h) – Ventilation required**

The most common complaint received by the city relates to the smell associated with marijuana businesses. This provision was adopted to address the community's concerns. Requiring adequate ventilation is intended to prevent the problem. Tort and nuisance law would only redress injuries caused by the problem and puts the burden of solving the problem on the neighbor rather than the business causing the problem.

**22. Section 6-16-8(r)(1), (2) – Shared operations, ventilation, security prohibited; Firewall separation required.**

This section implements the city's requirement that medical and recreational facilities be separate as well as the requirement that cultivation facilities be separate from dispensaries. This is an issue that is addressed above. Practical experience has shown that fire is a higher than normal risk for cultivation facilities and MIPs. Because the fire department is limited in its ability to enter such facilities because of the volatility of the facilities, this requirement protects people and property. The one hour firewall requirement was added to the code previously to provide businesses with an understandable definition of what a separating wall must be.

**23. Section 6-16-10(a) – Cameras**

The city's camera requirement is as follows:

The recreational marijuana business shall install and use security cameras to monitor and record all areas of the premises (except in restrooms), and where persons may gain or attempt to gain access to marijuana or cash maintained by the recreational marijuana business. Cameras shall record operations of the business to the offsite location, as well as all potential areas of ingress or egress to the business with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of forty days in a secure offsite location in the city or through a service over a network that provides on-demand access, commonly referred to as a "cloud." The offsite location shall be included in the security plan submitted to the city and provided to the Boulder

Police Department upon request, and updated within seventy-two hours of any change of such location.

§ 6-16-10(a) B.R.C. 1981. The state regulations include six separate sections with thirty-one subsections. It is difficult to see how the city’s regulations can be considered more complex and burdensome than the state’s rules.

**24. Section 6-16-9(a) – Right of Entry – Records to Be Maintained**

The city has an active marijuana inspection program. Requirements associated with maintaining adequate records in a particular form simplifies the inspection process. It is particularly necessary for a cash business in a highly regulated industry.

**25. Section 6-16-10(b) – Use of Safe for Storage.**

The city adopted its security requirement in recognition of the fact that any business that operated on a cash basis and stored quantities of marijuana could be a tempting target for criminals. The city’s record speaks for itself. In five years of regulating marijuana only one business in Boulder has been burglarized after hours and that business had failed to comply with the city’s security requirements. In contrast, Denver marijuana businesses reported over 100 burglaries last year alone.

**26. Section 6-16-4 (f) – Requirement for commencing operations within 30 days**

The city’s process requires that all construction be completed and subject to inspection before a final license is issued. Thus, it is not unreasonable to require that a business begin operations within thirty days of license issuance.

**27. Section 6-16-5(2)(a), (c) – Party/Persons Information to be provided on Application**

The section requires that the application include the names of all business managers. The word “managers” is plural and therefore allows multiple individuals to be qualified as managers.

**28. Section 6-16-5 (a)(6) – Operating Plan.**

The city’s operating plan requirement is not onerous and is reasonably related to the city’s need to operate safe marijuana businesses. The operating plan required includes things like a floor plan, the maximum amount of marijuana that will be on hand, a neighborhood responsibility plan and safety requirements for extraction processes. Several of these are required for any business submitting an application to change the internal part of a building.

**29. Section 6-16-5 (d) – Inspection Requirements**

The state allows businesses to operate before passing an inspection. The city does not. The city's experience is that it is better to catch a problem before a business begins operating. Moreover, problems are often associated with safety and security requirements. It would not be a good practice to allow businesses to operate before demonstrating that they can meet these requirements.

**30. Section 6-16-5(e)(10) – Fingerprints**

Until the state begins doing complete background checks on all owners, managers and financiers, staff believes that this requirement is necessary.

**31. Section 6-16-5(f) – Application Approval Requirements**

This section is intended to insure that applicants do not deviate from approved plans. For example, there have been occasions in which a safe was present at the time of the first inspection, but removed shortly thereafter. City staff believes that any changes to an operation plan should be approved before implementation.

**32. Section 6-16-6(a) – Persons Prohibited as Licensees and Business Managers**

This provision includes reasonable limitations intended to prevent those with significant criminal backgrounds from operating marijuana businesses in Boulder. It is clear that the state has not achieved this goal in the manner in which it reviews marijuana applications.

**33. Section 6-16-6(b)(4) – Good Moral Character Determination Based on Ability to Refrain from Using Controlled Substances**

This is similar to a requirement for liquor licenses. The state liquor code requires an applicant to “submit evidence of its citizenship, residence, and good character and reputation.” 1 Colo. Code Regs. § 203-2:47-310

**34. Section 6-16-15(b)(6) - Term of License - Renewals - Expiration of License**

The city requires that an applicant submit a renewal application at least forty-five days before a license expires. The city accepts late renewal application, but imposes a \$5000 late filing fee. The city provides written notice to each business 90 days before its city license renewal application is due.

**C. Requests from Shawn Coleman**

**1. Section 6-14-8 Limitation on Transfer of Marijuana**

In the 2015 legislative session, the legislature added a provision allowing for transfer of medical marijuana by holders of an optional premises cultivation license. To accommodate this change, the council should amend section 6-14-8. The city does not have an “optional premise” license like the state. From the state's perspective both the grow and the sales parts of the business have to be in Colorado.

However, that is not true within cities. Therefore, Boulder has always required a separate license for cultivation facilities. The attached recommended changes clarifies that marijuana can be transferred between cultivation facilities.

**2. Section 6-16-8(f) Hours of operation**

The city restricts marijuana businesses to operating hours of 8:00 a.m to 7:00 p.m. This was a policy decision by council. It may have resulted in fewer regulatory issues with marijuana businesses. The state allows marijuana businesses to operate until midnight.

**3. Section 6-14-7 Grandfathering of Uses.**

The code permits businesses that were in operation on October 22, 2013 to operate in locations that would not be permitted under current code. This provides a benefit to those businesses. It is difficult to understand the disadvantage to which these businesses are subjected.

**4. Chapter 3-14 Recreational Marijuana Taxes**

The city’s recreational marijuana tax was imposed after a vote of the people and a significant policy discussion by council. It is not unusual for businesses to oppose taxes.

**5. Section 6-16-11. - Requirements for Public Health and Labeling.**

The city’s labeling requirements require compliance with state law as follows:

(a) Recreational Marijuana-Infused Products. The production of any marijuana-infused product shall be at a marijuana-infused product manufacturer that meets all requirements of a retail food establishment as set forth in § 25-4-1601, et seq., C.R.S., the Food Protection Act. The production of any product containing marijuana shall comply with all health and safety standards thereof. The licensee shall comply with all applicable state and local health regulations related to the production, preparation, labeling, and sale of prepared food items as if the recreational marijuana-infused products were food items.

(b) Labeling and Packaging Requirements. All recreational marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in a manner that advises the purchaser that it contains marijuana and specifies the amount of marijuana in the product, and that the marijuana is intended for use solely by a person lawfully possessing recreational marijuana. The label shall be in compliance with all applicable requirements of the State of Colorado.

§ 6-16-11(a)-(b). This section does not create a conflict with state law.

6. Mr. Coleman also addresses coupons, dual use, the cultivation requirement for MIPs and the conversion deadline, which are addressed above.

**D. Requests from David Threlfall**

Mr. Threlfall is the owner of Trill Alternatives. Mr. Threlfall advocates for adding locking display cases as an alternative to having a safe. Staff does allow for locked equipment when the locking mechanism is equivalent to the security provided by a safe. The staff does not support reducing these requirements for several reasons, including the evidence shown by the differences in statistics of burglaries between Boulder and Denver. He also advocates for allowing coupons, which is addressed above.

Attachment D - Chart of Enforcement Actions

<u>No.</u>	<u>Enforcement Letter Date</u>	<u>Trade Name</u>	<u>Type</u>	<u>Summary of Violation Counts</u>	<u>Enforcement Action Taken</u>
1	9/5/2013	Boulder MMJ	Medical	No approved business manager on-site	\$2,000 fine letter
2	10/31/2013	Liv Well	Medical	No approved business manager on-site	\$2,000 fine letter
3	9/18/2014	14ers Gardens	Medical	Not making MJ unusable and unrecognizable, storing MJ in an unlicensed area, not locking dumpster	\$3,500 fine letter
4	3/11/2014	Greenest Green	Recreational	Not locking product in safe overnight, grow unlocked so not properly securing grow, storing plants and product in unlicensed area.	Revocation letter issued, negotiated settlement for sale of business reached
5	6/12/2014	Lightshade Labs	Medical	Not making MJ unusable and unrecognizable, not locking in safe for overnight storage, misrepresentation to law enforcement	\$5,000 fine letter
6	10/1/2014	North Boulder Wellness	Medical	No approved business manager on-site, uncooperative with law enforcement	\$2,500 fine letter
7	6/23/2014	Options Medical Center	Recreational	Allowing someone under 21 into Rec MJ dispensary, failed compliance check for sale to minor	\$7,500 fine letter sent, condition set that responsible manager must no longer manage. Store fired manager.
8	9/17/2014	Root Organic MMC	Medical	Not making unusable and unrecognizable	\$2,500 fine letter
9	2/11/2015	Helping Hands	Medical	Video unavailable and not backed up for 30 days as required	\$6,000 fine letter
10	2/11/2015	Native Roots	Recreational	Not making unusable and unrecognizable and not storing MJ in safe overnight	\$5,000 fine letter

Attachment D - Chart of Enforcement Actions

No.	<u>Enforcement Letter Date</u>	<u>Trade Name</u>	<u>Type</u>	<u>Summary of Violation Counts</u>	<u>Enforcement Action Taken</u>
11	2/20/2015	North Boulder Wellness	Medical	MJ possessed by employee not sealed, Business conducted by manager while intoxicated as employees were using MJ on patio at store, manager and owner not on-site at all times, video not recording, video not available for 30 day backup	Revocation letter issued, store closed
12	4/2/2015	Colorado Healing and Headquarters Emporium	Recreational	Production of bubble hash in RMB grows- two counts	\$6,000 fine letter
13	4/29/2015	The Station	Recreational	Illegal store sign for Rec MJ	\$1,000 fine letter
14	4/29/2015	Green Room	Recreational	Illegal ad- card in exchange for discount	\$500 fine letter, with immediate mitigation
15	4/29/2015	Boulder MMJ	Recreational	Illegal banner for Rec MJ	\$750 fine letter, with immediate mitigation
16	4/30/2015	Altermeds	Recreational	Not locking product in safe overnight	\$1,500 fine letter, with immediate mitigation received
17	5/22/2015	Fresh Baked	Recreational	Acceptance of sample by employee without transport document	\$900 fine letter, immediate mitigation received
18	5/22/2015	Village Green Society	Recreational	Acceptance of sample by employee without transport document	\$1100 fine letter
19	6/1/2015	Southwest Alt Care	Recreational	Not making unusable and unrecognizable and not locking in dumpster	\$1500 fine letter, with immediate mitigation received
20	7/8/2015	Green Dot Labs MIP	Recreational	Not making unusable and unrecognizable and not locking in dumpster	\$1,500 fine letter, with immediate mitigation received

Attachment D - Chart of Enforcement Actions

<u>No.</u>	<u>Enforcement Letter Date</u>	<u>Trade Name</u>	<u>Type</u>	<u>Summary of Violation Counts</u>	<u>Enforcement Action Taken</u>
21	7/9/2015	Helping Hands	Recreational	Illegal ad-card in exchange for discount, acceptance of sample by staff without transport documents, other goods sold instead of just MJ and MJ accessories, unapproved locking storage not safe used, MJ loads processed at store, illegal store sign at location	\$12,000 fine letter sent and condition set that any other violations will result in revocation
22	19-Aug-15	Boulder MMJ	Recreational	Failed compliance check for sale to minor, scanner not used for ID, business manager not on-site in each store, sold other goods other than MJ and MJ accessories, store did not use safe for overnight storage, video not properly stored for 30 days back up	3rd violation in 1.5 years, Revocation letter sent, Negotiated settlement for sale of business
23	19-Aug-15	Terrapin Care Station	Recreational	Unapproved change of restricted sales area, inadequate restriction of sales area for Iding, MJ viewable from outside of location, use of unapproved locking storage not safe	\$7,000 fine letter sent with condition that plan be provided to the city in 30 days of how to remedy operational violations
24	26-Aug-15	Native Roots by the Dandelion	Recreational	Violation of Boulder ads code by use of friends and family card and use of neon sign with green crosses and arrows	\$1,000 fine letter sent with direction to correct immediately
25	3-Sep-14	Helping Hands Herbals	Recreational	Failed compliance check for sale to minor	Penalty yet to be determined
26	3-Sep-14	The Farm	Recreational	Failed compliance check for sale to minor	Penalty yet to be determined

# Attachment E - Chart of Liquor License Violations

Applicant	Location	Type	Trade Name	License Number	Address	City	State	Zip	Hearing Date	Violations
3 Margaritas XXX, Inc	3390 28th St	Hotel-Restaurant Liquor	3 MARGARITAS XXX	42-91004-0000	3390 28th St	Boulder	CO	803011411	12/18/2013	Failed to have receipts on premise and over amount of annual purchases from retail liquor store sources
A-M Holdings, LLC	1651 Broadway St	Retail Liquor Store	ALFARO'S MARKET	42-57274-0000	1645 BROADWAY ST	Boulder	CO	803026318	5/17/2015	Service to a minor
Austin & Ambrose LLC	1005 Pearl St	Tavern Liquor	PRESS PLAY	47-00764-0000	1005 Pearl St	Boulder	CO	803025110	10/30/2014	Sale of alcohol to a visibly intoxicated person (2 counts)
Back Country Pizza and Tap House, LLC	2319 Arapahoe Ave	Hotel-Restaurant Liquor	BACK COUNTRY PIZZA AND TAP HOUSE	42-85819-0000	2319 Arapahoe Ave	Boulder	CO	803026605	9/17/2014	Sale to a minor
Bohemian Biergarten Inc	2017 13th St	Hotel-Restaurant Liquor	BOHEMIAN BIERGARTEN	47-01698-0000	2017 13th St	Boulder	CO	80302	12/18/2013	Sale to visible intoxicated person, conduct of establishment, allowance of disorderly conduct
Boulder DT LLC	1100 13th St	Hotel-Restaurant Liquor	CORNER, THE	47-01680-0000	4314 9th St	Boulder	CO	80304	3/18/2015	Sale to a minor - December 12, 2014 violation
Boulder Sundown Saloon, Inc	1136 Pearl St Basement	Tavern Liquor	SUNDOWN SALOON	41-48692-0000	1136 Pearl St Basement	Boulder	CO	803025112	3/19/2014	Sale of alcohol to a visibly intoxicated person and permitting an intoxicated person to loiter without an acceptable purpose.
Boulder Wine Merchants, Ltd	2690 Broadway	Retail Liquor Store	BOULDER WINE MERCHANT	10-33806-0000	2690 Broadway	Boulder	CO	803043542	5/20/2015	Sale to a minor
BRE Select Hotels Opt LLC & White Lodge	2660 Canyon Blvd	Hotel-Restaurant Liquor	BOULDER MARRIOTT	47-01832-0000	701 East 83rd Ave	Merrillville	IN	464102200	8/19/2015	Sale to a minor
Buffalo Spirits Liquor, LLC	4481 N Broadway	Retail Liquor Store	REDS LIQUOR	42-52527-0000	PO Box 1408	Evergreen	CO	804371408	3/19/2014	Sale of alcohol to a person for off-premise consumption during hours retailers are prohibited from selling alcohol
Casarrubias, Inc	1430 Pearl St	Hotel-Restaurant Liquor	TRATTORIA ON PEARL	42-09023-0000	1430 Pearl St	Boulder	CO	803025307	2/19/2014	Sale to a minor
Casarrubias, Inc	1430 Pearl St	Hotel-Restaurant Liquor	TRATTORIA ON PEARL	42-09023-0000	1430 Pearl St	Boulder	CO	803025307	2/19/2014	failure to pay taxes on time
Cattani, Ltd	3075 Arapahoe Ave, Unit B	Beer & Wine Liquor	IL PASTAO	41-48342-0000	3075 Arapahoe Ave, Unit B	Boulder	CO	803031062	7/15/2015	Sale to a Minor: C.R.S. §12-47-901(1)(a,5) and C.R.S. §12-47-901(5)(a)(i)
Chau Tam Pho 75 Inc	2770 Pearl St, Suite B	Hotel-Restaurant Liquor	BLACK PEPPER PHO	47-04905-0000	2770 Pearl Street, Suite B	Boulder	CO	80302	5/20/2015	Sale to a minor
Chipotle Mexican Grill Inc (28th)	1650 28th St Suite 1224	Hotel-Restaurant Liquor	CHIPOTLE MEXICAN GRILL [28TH]	24-71530-0066	1401 Wynkoop St Suite 500	Denver	CO	802021720	6/17/2015	Service to a minor
Cicala, Inc	921 Pearl St	Hotel-Restaurant Liquor	BACARO	05-45323-0000	921 Pearl St	Boulder	CO	803025108	11/20/2013	Service to a minor
Circle K Stores Inc	3185 28th St	3.2% Beer Off Premise	CIRCLE K STORE 2709866	21-65089-0076	1199 S BELTLINE SUITE 160	COPPELL	TX	75019	6/17/2015	Service to a minor
Conor O'Neill's of Boulder, LLC	1922 13th St	Hotel-Restaurant Liquor	CONOR O'NEILL'S	40-07041-0000	1922 13th St	Boulder	CO	803025205	12/18/2013	failure to have food during hours required and unsanitary conditions found
Cuba Cuba Sandwicheria LLC	2525 Arapahoe Ave Unit E-1A	Hotel-Restaurant Liquor	CUBA CUBA SANDWICHERIA	42-93622-0000	2525 Arapahoe Ave Unit E-1A	Boulder	CO	803026729	8/20/2014	sale to a minor and sale of alcohol by person under 18
Dillon Companies, Inc	1650 30th St	3.2% Beer Off Premise	KING SOOPERS 61	01-10779-0020	PO Box 305103	Nashville	TN	372305103	4/15/2015	Sale to a minor
Dillon Companies, Inc	3600 Table Mesa Dr	3.2% Beer Off Premise	KING SOOPERS 33	01-10779-0044	PO Box 305103	Nashville	TN	372305103	4/15/2015	Sale to a minor
Dillon Companies, Inc	6550 Lookout Rd	3.2% Beer Off Premise	KING SOOPERS 28	01-10779-0031	PO Box 305103	Nashville	TN	372305103	8/20/2014	sale to a minor
Do Sook Kim	655 30th St	Retail Liquor Store	WILLIAMS VILLAGE LIQLORS	28-10491-0000	655 30th St	Boulder	CO	803032310	5/20/2015	Sale to a minor
Fresh Thymes Eatery LLC	2500 30th St Suite 101	Beer & Wine Liquor	FRESH THYMES EATERY	47-01800-0000	2500 30th St # 101	Boulder	CO	80301	3/18/2015	Sale to a minor - December 12, 2014 violation
Integrity Retail Partners LLC	1955 28th St	Retail Liquor Store	HAZEL'S BEVERAGE WORLD	42-98511-0000	2595 Canyon Blvd Suite 200	Boulder	CO	80302	5/20/2015	Sale to a minor
Jay Corp	2795 Iris Ave	Retail Liquor Store	WILLOW SPRINGS LIQUOR	40-49026-0000	2795 Iris Ave	Boulder	CO	803042433	4/15/2015	Sale to a minor
Larkburger of Colorado LLC	2525 Arapahoe Ave Unit H006	Beer & Wine Liquor	LARKBURGER	42-90984-0000	621 Kalmarth Street	Denver	CO	80204	10/15/2014	Sale to a minor
leapfrog, llc	1964 13th St	Hotel-Restaurant Liquor	BLACK CAT/BRAMBLE AND HARE	35-07424-0000	5093 Nelson Rd	Longmont	CO	80503	1/15/2014	Sale to a minor
Less Filling, LLC	1047 Pearl St	Hotel-Restaurant Liquor	SALT	28-62148-0000	1047 Pearl St	Boulder	CO	803025110	12/18/2013	Unapproved modification, failure for receipts on premise, licenses/warning sign not posted/visible, & contaminated liquor
McBride Boulder Broker Inn, LLC	555 30th St	Hotel-Restaurant Liquor	BOULDER BROKER, THE/RODEWAY INN & SUITES	42-13567-0000	PO Box 260248	Lakewood	CO	802260248	8/20/2014	Food unavailable and subleased kitchen
Native Foods Boulder LLC	1675 29th St Suite 1272	Hotel-Restaurant Liquor	NATIVE FOODS CAFE	47-01021-0000	500 N Dearborn Unit 1000	Chicago	IL	60654	9/16/2015	sale to a minor
Out the Bottle-Boulder # 1 LLC	675-679 30th St	Hotel-Restaurant Liquor	MOE'S ORIGINAL BAR B QUE	42-97367-0000	675 30th St	Boulder	CO	80303	11/20/2013	Service to a minor
PDQ Development Inc	5200 Manhattan Cir	3.2% Beer Off Premise	PDQ GAS AND FOOD	10-62622-0000	5200 Manhattan Cir	Boulder	CO	803034258	6/17/2015	Service to a minor
Pearl LLC	1125 Pearl St	Brew Pub Liquor	WEST FLANDERS BREWING COMPANY	47-00613-0000	1165 13th St	Boulder	CO	803027015	9/18/2013	Service to a minor on May 31, 2013
Pearl Street Pub and Cellar, LLC	1108 Pearl St	Tavern Liquor	PEARL STREET PUB AND CELLAR	23-90361-0000	1108 Pearl St	Boulder	CO	803025112	1/15/2014	Sale of alcohol to a visibly intoxicated person
Pho Basil at Boulder LLC	3380 28th St Suite 2	Hotel-Restaurant Liquor	PHO BASIL	43-02421-0000	5451 N Mesa Dr	Castle Rock	CO	801089357	1/15/2014	Sale to a minor
R & F Corp	1325 Broadway, Unit 108	Hotel-Restaurant Liquor	COSMO'S PIZZA	40-66454-0000	1325 Broadway, Unit 108	Boulder	CO	803036237	5/21/2014	Sale of alcohol to a visibly intoxicated person
Radomil R Cerny Irrevocable Trust	1739 Pearl St	Hotel-Restaurant Liquor	L'ATELIER RESTAURANT	12-61282-0000	PO Box 282	Niwot	CO	805440282	9/16/2015	sale to a minor
Red Robin Express, LLC	2700 Arapahoe Ave, Unit 370	Hotel-Restaurant Liquor	RED ROBIN BURGER WORKS	47-00080-0000	6312 S Fiddler's Green Cr., Suite 200N	Greenwood Village	CO	801113012	12/18/2013	Sale to Minor
Restaurante 100% Mexicano LLC	2850 Iris Ave Suite H	Hotel-Restaurant Liquor	RESTAURANTE 100% MEXICANO	42-84630-0000	2850 Iris Ave Suite H	Boulder	CO	803011498	9/18/2013	Service to a minor on June 29, 2013
Rhymer Retail Inc & 7 Eleven Inc	1091 13th St	3.2% Beer Off Premise	7-ELEVEN STORE 35069 A	42-95465-0000	PO Box 219088	Dallas	TX	752219088	5/20/2015	Sale to a minor
Smashburger Acquisition-Boulder, LLC	1650 28th St, Suite 1226	Hotel-Restaurant Liquor	SMASHBURGER	42-79707-0000	3900 E Mexico Ave, Suite 1200	Denver	CO	80210	6/17/2015	Service to a minor
Sugo, Inc	2785 Iris Ave	Hotel-Restaurant Liquor	ARIGULA BAR RISTORANTE	12-77400-0000	2785 Iris Ave	Boulder	CO	803042433	12/18/2013	Sale to Minor
SUPER AMERICA, LLC	1275 13th St	3.2% Beer Off Premise	EVERYDAY STORES	18-26348-0002	7990 N Federal Blvd	Westminster	CO	800304204	6/17/2015	Service to a minor
The Noodle Shop Co - Colorado, Inc	2602 Baseline Road, Suite 150	Hotel-Restaurant Liquor	NOODLES & COMPANY 150	24-84839-0010	520 Zang St, Suite D	Broomfield	CO	800218223	9/16/2015	Sale to a minor
The Rib House, LLC	1335 Broadway Unit B	Hotel-Restaurant Liquor	RIB HOUSE, THE	47-00612-0000	1335 Broadway Unit B	Boulder	CO	803025387	2/19/2014	Sale to a minor
Vishnu, Inc	2630 Baseline Rd	Hotel-Restaurant Liquor	TAI INDIAN CUISINE	23-57895-0000	12729 Anhawa Ave	Longmont	CO	80503	7/15/2015	Sale to a Minor: C.R.S. §12-47-901(1)(a,5) and C.R.S. §12-47-901(5)(a)(i)
Vishnu, Inc	2630 Baseline Rd	Hotel-Restaurant Liquor	TAI INDIAN CUISINE	23-57895-0000	12729 Anhawa Ave	Longmont	CO	80503	1/15/2014	Sale to a minor
Walnut Walrus, Inc	1911 11th St	Tavern Liquor	ORIGNAL WALRUS SALOON, THE	10-50751-0000	2475 Broadway Street #305	Boulder	CO	80304	3/19/2014	Permitting an intoxicated person to loiter without an acceptable purpose

# Attachment E - Chart of Liquor License Violations

Sanctions	Effective Date	Suspended Days	Days in Abeyance	Fine	Other Information
Suspended		24	16	\$886.15	2 suspension days served on Dec. 23 and 24, 2013, fine accepted for 6 days in total of \$886.15, and non-admin. renewal for 2014
Suspended		9	7	\$842.28	A fine in lieu of 2 days served was accepted by the Authority.
Suspended		12		\$0.00	Suspension days to be served from November 9, 2014 to November 14, 2014
Suspended		14	11	\$0.00	3 suspension days to be served from October 6, 2014 at 12:01 AM to October 8, 2014 at 11:59 PM.
Suspended		44	26	\$0.00	18 suspension days to be served from Jan. 2 to Jan. 19, 2014 and non-admin. renewal for 2014
Suspended		14	12	\$0.00	2 suspension days served: March 23 to March 24, 2015
Suspended		18	12	\$0.00	6 days to be served from March 24 - March 29, 2014
Suspended		9	8	\$0.00	One day to be served on June 1, 2015
Suspended		14	9	\$0.00	Five suspension days to be served from September 3 to September 7, 2015.
Suspended		6	4	\$0.00	2 days to be served from March 24 - March 25, 2014
Suspended		14	10	\$0.00	Suspension March 2, 2014 to March 5, 2014.
Suspended		5	5	\$0.00	5 days held in abeyance for a period of one year from 02/19/2014. Licensee, within 60 days from 02/19/2014, shall make and keep a consultation appointment with the Small Business Development Center.
Suspended		15	9	\$0.00	6 SUSPENSION DAYS: THURSDAY, JULY 23 TO - THURSDAY, JULY 30, 2015
Suspended		14	11	\$0.00	Three days to be served from June 1, 2015 to June 3, 2015
Suspended		30	15	\$0.00	Suspension days: June 29 to July 13, 2015
Suspended		14	9	\$0.00	5 Suspension dates: November 24, 2013 to November 28, 2013
Suspended		14	11	\$0.00	Suspension days: June 22 to June 24, 2015
Suspended		15	5	\$4,953.49	2 suspension days served on Jan. 6 and 7, 2014 and fine in lieu accepted for 8 days in total of \$4,953.49
Suspended		21	14	\$0.00	7 days suspension from September 1, 2014 to September 7, 2014
Suspended		14	11	\$0.00	Three suspension days to be served from April 23, 2015 to April 25, 2015
Suspended		14	10	\$0.00	Four suspension days to be served from April 23, 2015 to April 26, 2015
Suspended		24	10	\$0.00	14 days of suspension from September 4, 2014 to September 17, 2014
Suspended		9	6	\$0.00	Three days to be served from June 8, 2015 to June 10, 2015
Suspended		14	9	\$0.00	5 suspension days served: March 23 to March 27, 2015.
Suspended		9	8	\$0.00	One day to be served on June 15, 2015
Suspended		9	7	\$0.00	Two suspension days to be served from April 25, 2015 to April 26, 2015
Suspended		24	10	\$0.00	14 days of suspension will take place on October 17, 2014 until October 30, 2014. 10 days shall be held in abeyance.
Suspended		14	13	\$0.00	Suspension to be served on February 2, 2014.
Suspended		12	5	\$2,624.36	2 suspension days served on Jan. 6 and 7, 2014 and fine in lieu of 5 days served in total of \$2,624.36
None					BLA agreed to surrender of license as part of stipulation to the facts of the violation. Surrender sent to state on 8/20.
Suspended		14	9	\$0.00	5 suspension days from September 18 to September 22, 2015
Suspended		14	9	\$0.00	5 suspend dates: December 8 - December 12, 2013
Suspended		14	8	\$0.00	Suspension days: June 21 to June 26, 2015
Suspended		14	10	\$470.80	Fine in lieu for 1 day was accepted; 3 days of suspension from Sept. 30, 2013 to Oct. 2, 2013
Suspended		21	13	\$0.00	8 days suspension to be served February 4, 2014 - February 11, 2014
Suspended		14	10	\$0.00	Suspension to be served January 19, 2014 - January 22, 2014.
Suspended		14	9	\$0.00	Suspension days to be served from June 7, 2014 at 12:01 a.m. until June 11, 2014 at 11:59 p.m.
Suspended		14	10	\$0.00	A fine in lieu of four suspension days.
Suspended		14	11	\$0.00	3 suspension days to be served on Dec. 23 to Dec. 26, 2013.
Suspended		14	9	\$0.00	Five days of suspension served September 30, 2013 from 12:01 am until October 4, 2013 at 11:59 pm.
Suspended		14	10	\$0.00	Four days to be served on June 1, 2015 to June 4, 2015
Suspended		14	9	\$0.00	Suspension days: July 5 to July 9, 2015
Suspended		14	12	\$0.00	2 suspension days served on Jan. 5 to Jan. 6, 2014
Suspended		22	14	\$0.00	Suspension days: June 22 to June 29, 2015
Suspended		14	10	\$0.00	5 suspension days from September 20 to September 23, 2015
Suspended		14	12	\$0.00	Suspension February 27, 2014 to February 28, 2014
Suspended		30	20	\$0.00	10 SUSPENSION DAYS FROM MONDAY, JULY 20 TO WEDNESDAY, JULY 29, 2015
Suspended		14	9	\$0.00	Suspension to be served on January 19, 2014 - January 23, 2014.
Suspended		18	10	\$0.00	8 suspension days to be served from March 24 - March 31, 2014.