

**CITY OF BOULDER
SPECIAL MEETING
Municipal Building, 1777 Broadway
Boulder, Colorado 80302
Thursday, November 10, 2016
5:30 p.m.**

AGENDA

1. CALL TO ORDER AND ROLL CALL

2. PUBLIC HEARINGS

- A.** City Council public hearing to **consider an Area II public request for 3261 3rd Street for map changes to the Boulder Valley Comprehensive Plan (BVCP)**

- B. Concept Plan and Review:** Request for **citizen, staff and City Council comment** on a proposal for a **new three-story apartment complex Eastpointe Apartment Homes, consisting of 236 proposed units in five buildings** with below grade parking and on-site recreational amenities; reviewed under case review no. LUR2016-00043

- C. Introduction, first reading** and motion to publish by title only an **Ordinance 8154 amending the city's code provisions regulating short-term rentals, by amending Title 3 "Revenue and Taxation," amending Section 3-15-2 "Imposition and Rate of Tax,"** by changing the rentals to which the tax is applicable amending Title 10 "Structures," amending Section 10-1-1 "Definitions," **by adding a new definition of "Principal Residence," amending Section 10-3-2 "Rental License Required before Occupancy and License Exemptions," and amending Section 10-3-19 "Short-Term Rentals,"** and setting forth related details

3. MATTERS FROM CITY MANAGER

- A.** Review of **"Policy on Acquisition and Maintenance of Public Art by the City"** (Internal Policy)

4. ADJOURNMENT

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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November 10, 2016

AGENDA TITLE: City Council public hearing to consider an Area II public request for 3261 3rd Street for map changes to the Boulder Valley Comprehensive Plan (BVCP).

REQUESTING STAFF:

David Driskell, Executive Director, Planning, Housing + Sustainability (PH+S)
Susan Richstone, Deputy Director for Planning (PH+S)
Lesli Ellis, Comprehensive Planning Manager (PH+S)
Jay Sugnet, Senior Planner (PH+S)
Caitlin Zacharias, Planner I (PH+S)

The purpose of this item is for the City Council to hold a hearing on a public request for changes to the Boulder Valley Comprehensive Plan (BVCP) Land Use and Area maps. This is part of a series of hearings and meetings scheduled for Aug. 30 through early 2017 that address Area I requested map changes (requires approval by the two city bodies) and Area II requested map changes (requires approval by City Council, Planning Board, Board of County Commissioners and Planning Commission).

The **Nov. 10 hearing** is a continuation of the joint City Council/Planning Board public hearing that was held on **Oct. 13**. Although the Oct. 13 hearing focused on the four Area I requested map changes (i.e., Naropa, 385 Broadway, Mt. Calvary Church, and Table Mesa Shopping Center), it was also technically the first hearing for the Area II requests. The **Nov. 10 public hearing will focus on the 3261 3rd St.** request that requires approval by four bodies and for which the county Planning Commission and Board of Commissioners have already taken action. Planning Board is scheduled to hold a public hearing, deliberate, and vote on Nov. 17. City Council is then scheduled to deliberate and vote on Dec. 13.

The other Area II requested map changes regarding **Twin Lakes** is on hold until the County Planning Commission reconsiders their decision from Sept. 27. A joint public hearing with the Planning Board and City Council to consider the Twin Lakes request is not expected until early 2017.

Attachment A is the staff report and recommendation for the 3261 3rd St. request. The full staff memo for all the requested land use changes is available [here](#).

Staff Recommended Map Change:

3261 3rd St. (#25)	Change to Low Density Residential and Open Space – Other Change to Area II – This recommendation creates a more logical service area boundary while ensuring compatible redevelopment for the single-family home site (see Attachment A).
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County Action on 3rd Street

On Sept. 21, the County Planning Commission approved the staff recommended land use changes. A meeting summary is available [here](#)¹. On Sept. 27, the Board of County Commissioners also approved the staff recommended land use changes. A meeting summary is available [here](#)². Below is a high level summary of the issues discussed by both Planning Commission and the Board of County Commissioners regarding 3261 3rd St.:

- **Density** – supportive of the staff recommendation because it would not result in additional housing units on the site.
- **Blue Line amendments** – recognition that a comprehensive review of potential changes in Area II / III mapping would take place for this and about a dozen other properties, if a November ballot measure to shift the Blue Line is approved.

The BVCP, jointly adopted by the city and county and updated at least every five years, guides development and preservation in the Boulder Valley. The BVCP articulates a vision for the future and details policies that represent long-standing community values. The public map change request process is one track within the much larger BVCP update. Each phase entails extensive community dialogue and engagement. The webpage for the project, www.BoulderValleyCompPlan.net, includes the full project schedule and a link to the 2010 plan and maps.

STAFF RECOMMENDATION

Suggested Motion Language:

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

A. Motion to approve a Boulder Valley Comprehensive Plan Land Use Map change to Low Density Residential and Open Space – Other for 3261 3rd St. (Request #25) as shown and described in **Attachment A**

B. Motion to approve a Boulder Valley Comprehensive Plan Area I, II, III Map change to Area II for a portion of 3261 3rd St. (Request #25) as shown and described in **Attachment A**:

¹ <http://www.bouldercounty.org/doc/landuse/bvcp150001staffrec20160927.pdf>

² <http://www.bouldercounty.org/doc/landuse/bvcp150001boce20160927.pdf>

NEXT STEPS

- The schedule for the Area II request for **Twin Lakes** is pending the outcome of the County Planning Commission reconsideration of the Twin Lakes decision. A city hearing is not likely occur until early 2017.
- Nov. 17 – **Planning Board public hearing and vote** on the Area II request for 3261 3rd St.
- Dec. 13 – **City Council deliberate and vote** on the Area II request for 3261 3rd St.
- January 24, 2017 – **Joint Study Session of City Council and Planning Board** to review scenarios, analysis, community engagement results from fall, survey results, and CU South.
- Spring 2017 – **City Council Study Session** to review the Draft Plan and Focus Areas.

ATTACHMENTS

- A. 3261 3rd St. (Request #25) Staff Report

Request #25

3261 3rd Street

Existing BVCP Land Use Map



Existing Planning Area Map



Site Photos



Request Summary

- Requester: Margaret Wilson et al. (Wilson family)
- Type of Request: Area II/III boundary change
- Brief Description of Request: Area III to Area II (**Minor Adjustment to the Service Area Boundary**)
- Approval Required: Four-body

Existing Conditions

- BVCP Designation: LR
- Zoning (county): Rural Residential (RR) & Forestry (F)
- Lot Size: 32,278 sq. ft. (0.741 acres)
- Existing Buildings: 1,818 sq. ft. residence; 1,416 sq. ft. agricultural outbuilding

Jobs and Housing Assumptions

- Current Estimated Dwelling Units: 1- 4 with LR
- Future Estimated Dwelling Units: 1-2 with only the portion of property east of blue line designated as LR
- Future Estimated Jobs: 0



STAFF RECOMMENDATION FOR REQUEST #25

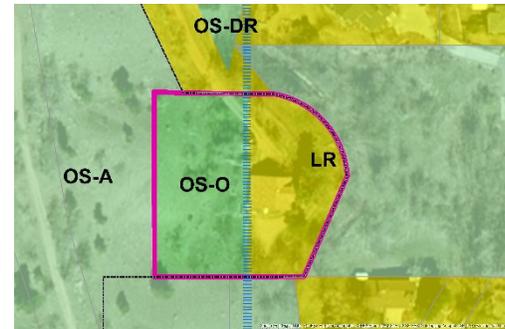
Staff recommends approval of the proposed area change for the parcel from Area III to Area II only for the portion of the property east of the blue line. Staff recommends that the

portion of the property west of the blue line remain in Area III and receive an open space designation.

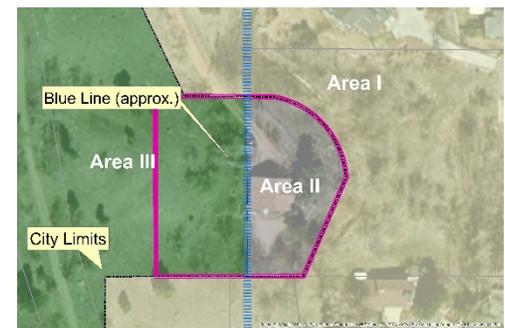
Staff recommends 1) approval of the proposed area change from Area III to Area II for the portion of the property east of the blue line and 2) a land use designation change on the western portion of the property to Open Space - Other for the following reasons:

- Creation of a more logical service area boundary: an Area III to Area II change for the portion of the property east of the blue line is consistent with other “western edge” properties along 3rd St.
- Compatibility with the surrounding area: The existing use is a single-family home and the developable area of the property will not be expanded with a change from Area III to Area II under county zoning. The proposed land use designation change for the portion of the property west of the blue line ensures the preservation of open space and neighborhood character along the western edge and is consistent with other western edge properties along 3rd St.
- Correction of a mapping error: analysis of previous comprehensive plan maps indicates that the Area II/III boundary may have originally bisected the property and was moved in error to the eastern edge of the property during the 1997 digitization of maps.

Recommended Land Use Designation



Recommended Planning Area Boundary



The current proposed blue line ballot measure may have implications for this property. Proposed changes to the blue line would require voter approval. Staff recommends an open space land use designation on the portion of the lot currently west of the blue line regardless of any potential shifts in the blue line. Furthermore, the corresponding zoning on the property should not create any additional building lots.

OVERVIEW

The Board of County Commissioners previously reviewed a Subdivision Exemption request for this property (SE-14-0006: Wilson Lot Recognition) on Aug. 5, 2014 and Mar. 10, 2015. The purpose of this request was to gain recognition as a legal lot. Per Resolution 2015-59, the Board approved the request with the condition that the applicant first pursue a re-designation from Area III to Area II and subsequent annexation to the city.

SITE DESCRIPTION

The property is located in unincorporated Boulder County and comprises 0.741 acres. It lies to the south of Hawthorn Rd. and west of 3rd St. The property abuts the foothills, is surrounded directly by open space and also has contiguity with neighboring residential uses. The Silver Lake Ditch runs along the eastern boundary. Access to the property is provided by an easement that

connects it to Hawthorn Ave.

The blue line bisects the property. From Kalmia down to Alpine, the description of the location of the blue line is indicated as “Low Confidence,” as it is defined in this area as located “150 feet west of the center of 3rd Street” (Sec. 128A, Charter of the City of Boulder). This description does not specify the point along the street from which that measurement should be taken, e.g. from the street centerline or curb edge.

The property is considered a “western edge” property, which refers to properties along the western boundary of the city’s Service Area. The City of Boulder *Guidelines for Annexation Agreements* of “mostly developed residential properties in Area II,” which includes guidelines for the western edge properties, does not apply to this property, as it is in Area III in its entirety. This area designation is atypical for western edge properties along 3rd St., all of which have a portion east of the blue line in the Service Area (either in Area I or II).

Site History

3261 3rd St. is owned by the Wilson family. The property was formed in 1956, when it was sectioned off from a larger parcel. In that process, it became a substandard lot by Boulder County’s standards, as it did not meet the minimum size requirement of 1 acre. The property has a 1,818 sq. ft. residence and a 1,416 sq. ft. agricultural outbuilding. The latter structure collapsed and is currently unusable.

The Wilson family first applied for a Subdivision Exemption process to gain recognition as a legal lot in 2012 (SE-12-0009) as well as a Limited Impact Special Use Review for approval of the residence as a historic accessory dwelling unit (LU-12-0014). The prior docket had a conditional approval based on the landmarking of the historic home on the property that was built in the late 19th century, and the latter docket was denied. The requirement expired after one year, and the applicants resubmitted a Subdivision Exemption request in 2014, noting that the historical designation requirement is not appropriate due to the structural damage to the residence and prospective cost of repairs. The request was conditionally approved subject to the Board of County Commissioners resolution (2015-59) described above.

Planning Area Designation

The Area III – Rural Preservation designation of this property refers to the planning area where the city and county intend to preserve existing rural land uses and character. Staff believes the designation of this property as Area III in its entirety represents a mapping error for the following reasons: maps from the 1990 Boulder Valley Comprehensive Plan (BVCP) major update and before reveal that the property was bisected by the blue line, as is the case today, and that the Area II/III boundary followed the blue line on the western edge of the city. In 1997, the comprehensive plan maps were digitized and show the Service Area boundary along the eastern edge of the property, where it remained through the most recent update of the BVCP in 2010. The 1997 map also defined the blue line as the western boundary of the city’s Service Area. The position of the blue line as defined in the City Charter did not change in this period. Therefore, the shift of the Service Area boundary to the eastern edge of the property created a misalignment between the blue line and the western boundary of the Service Area. Staff was not able to find evidence that this shift took place through an amendment process; a digitizing error as part of the

conversion of maps to digital media is a possibility.

Land Use Designation

3261 3rd Street has a designation of Low Density Residential. Earlier BVCP maps prior to 1990 appear to show the property as split between “Open Space & Other Parks” and “Low Density Residential” along the same boundary as the blue line. The designation of this property as Low Density Residential in its entirety is traceable back to the 1989-1990 annual review of the comp plan, when the parcel is shown without an open space designation. This may have occurred through minor map corrections to the BVCP land use map regarding open space designations for developed properties at the west end of Hawthorn.

Blue Line

The changes to the blue line under consideration would entail a shift in the line to include western edge properties in the Service Area, including 3261 3rd St. On Aug. 16, City Council approved the blue line ballot measure for the ballot this fall. The November election results will determine the status of approval or denial of the blue line amendments. The implications for this property of the potential shift in the blue line are discussed in the “Analysis” section below under “Compatibility with Surrounding Land Uses.”

COMMUNITY INPUT

One comment was received at the Aug. 8 open house on land use change requests. The commenter expressed concerns about the number of houses that may be built on the property.

In 2014 and 2015, several comments received by the county regarding SE-14-0006: Wilson Lot Recognition generally concerned the following topics:

- Importance of maintaining existing footprint of the house.
- Protection of views.
- Compatibility with the adjacent neighborhood and open space.

Other individual opinions expressed include the following: support for the historic preservation of the existing home; concern regarding the environmental sensitivity of the area in light of the impact of the 2013 flood on Hawthorn Ave., the Silver Lake Ditch and the base of the foothills; and concerns regarding the condition of the house as a potential hazard.

ANALYSIS

Criteria for minor adjustments to the Service Area Boundary

The property meets the requirements for a minor adjustment to the Service Area boundary, as outlined in Sec. 2.b.(1) of the Amendment Procedures:

Maximum size and minimum contiguity. The property is less than 10 acres in size and therefore meets the size requirement. The property demonstrates 70 percent contiguity of its perimeter with city limits, and therefore meets the requirement for 1/6 contiguity with the existing service area.

Logical Service Area boundary. Moving the eastern portion of the property to Area II results in a more logical Service Area Boundary. The portion east of the blue line of all other western edge properties along 3rd St. is in the Service Area (Area I or II).

Compatibility with the surrounding area and overall intent of the comprehensive plan.

Maintaining the eastern portion of the property as Low Density Residential and changing the existing western portion of 3261 3rd St. to Open Space - Other would be consistent with the adjacent low density residential neighborhood and open space lands, as described in detail below.

The area and land use designation changes are consistent with the overall intent of the comprehensive plan. The changes recognize the existing development on the property and therefore include that portion of the property within the growth boundary of the city. The changes are furthermore consistent with the preservation of open space, as the portion of the property west of the blue line will remain in Area III and receive an Open Space - Other designation. The portions west of the blue line of all other western edge properties along 3rd St. either have an open space designation or a conservation easement.

Other criteria

Due to the size of the property, moving 3261 3rd St. to Area II would not 1) have major negative impacts on transportation, environment, services, facilities or the budget or 2) materially affect land use and growth projections, service provision to the immediate area or overall Service Area, or the city's Capital Improvements Program. Finally, the proposed area change should not create development potential for land that logically should be considered as part of a larger Service Area expansion.

Compatibility with Surrounding Land Uses

The property is contiguous with both open space and residential uses. The use of the property has been residential since the late 19th century, when the house currently on the property was built. Density is one factor in an assessment of neighborhood compatibility. The current Low Density Residential land use designation of 3261 3rd St. allows only residential development and specifies two to six housing units per acre. With 0.741 acres, the property could therefore accommodate up to four dwelling units. Per city regulations, however, only the portion of the property east of the blue line would be eligible for development. Under current conditions, this area comprises roughly .34 acres, or 15,000 sq. ft.

The current draft proposed shift of the blue line to the western edge of the property would result in the entirety of the property, or 32,278 sq. ft., lying to the east of the blue line and thus eligible for development. Staff recommends designating the portion of the property west of the current location of the blue line as Open Space - Other. This land use designation would ensure compatibility with other western edge properties, open space and the character of the surrounding neighborhood.

Staff recommends maintaining the current land use designation of Low Density Residential on the remaining portion of the property east of the current location of the blue line. In addition, should the owner pursue annexation, staff recommends limiting the following: potential for

additional building lots, overall house size and number of units. Potential options to explore include: 1) allowing one unit total with size limitations or 2) allowing one additional unit with size limitations that also offers community benefit, e.g. permanently affordable housing.

Final determination of developable area on the property per city regulations would result from technical staff analysis as part of the annexation process. Factors that could affect the developable area of this property include, but are not limited to the following: slope, soil, height, side yard bulk plane, side yard wall articulation and solar access.

Availability of Services

The site is in proximity to existing development and infrastructure.

Access

The existing width of access per platted easement most likely meets city standards and would be resolved in the annexation process.

Water, Wastewater, and Sanitary Sewer

City water lines and sewer mains exist in the surrounding neighborhood. The map to the right shows the existing sewer system mains. See **Attachment E-1** for additional information.

The site has electrical and gas service but no well or water service and relied upon a cistern to supply water needs until 2009, when the property became vacant. The septic system on the property is in need of replacement. Connecting to the system and any needed upgrades would be the responsibility of the owner.



Figure 1: Existing Sewer Mains
Source: Wastewater Utility Master Plan, 2009

The options for consideration for access to nearby utilities from this property include the extension of water and sewer

1) from Hawthorn Ave. along the driveway access or 2) through adjacent properties. The properties to the southeast of the subject property are privately-owned and would therefore require the provision of a public utility easement. The properties due east and south of the subject property are owned by city open space.

Environment

Open Space

Considerations regarding connectivity with open space and appropriate sensitivity to open space resources should be coordinated with the city should this property be reviewed for annexation. Due to its location next to the foothills, changes to the property could have visual impacts to surrounding open space. Any redevelopment of the property should respect the scenic qualities of the surrounding OSMP lands and not cause greater impacts on ecological systems or water delivery infrastructure than those which exist already in this area (e.g., fences friendly to wildlife movement and ongoing access to the Silver Lake Ditch).

Slope

The extreme slope on the property in addition to the geologic conditions identified by the Pendleton Maps which designate the property as in an area of “Potential Mass Movement Hazard and Consolidation/Swell Constraint” would require geotechnical investigations and engineered drainage plans. These potential constraints could affect the requester’s ability to carry through the expressed desire for redevelopment.

There is a potential that engineering treatments including but not limited to structural shoring and hillside stabilization may be necessary; further analysis to determine what treatments might be necessary would be conducted in the annexation process.

Hydrology, Wetlands and Floodplain

The property is not in a floodplain and does not contain wetlands. There are no known hydrological issues with the property.

Other

Historic Preservation

Research indicates the frame house at 3261 3rd St. was built sometime between 1870 and 1900. At the time of annexation, the historic significance would need to be evaluated.

Summary of Analysis

The recommendation for approval of the proposed area change from Area III to Area II for the portion of the property east of the current location of the blue line acknowledges that the existing development on the property should lie within the growth boundary of the city. This area change creates a more logical service boundary consistent with other western edge properties along 3rd Street. In addition, the recommendation for a land use designation change on the western portion of the property to Open Space - Other ensures the preservation of open space and neighborhood character along the western edge and is also consistent with other western edge properties along 3rd St.

ATTACHMENTS

A-1. Availability of Services

Water

All properties east of 3261 3rd St. that are within the city service area (Area I and II) are connected to the city's water line. The closest water line to the site is found along 3rd St. to the south. Two large pipes, with a diameter of 20 and 24 inches, are located east of the site along 4th St. The site is served by Water Pressure Zone 3, which generally serves areas above an elevation of 5,450 feet.



Figure 2: Existing Water Mains

Stormwater

The major drainage way (or creek) associated with this site is Goose Creek. In looking at the site at a closer detail, the majority of the stormwater near the surrounding site is channeled to an irrigation canal that runs north along the east side of site. This irrigation canal continues to travel north and meets the Mesa Reservoir. The existing storm drains are sized for existing levels of development and any new development may require new storm sewers or up-sizing of existing systems. A 12-inch culvert is located directly east of the site, which channels the water onto Forest Ave. Redevelopment of the site may require up-sizing this culvert to maintain adequate hydraulics.



Figure 3: Existing Storm Mains

Waste Water

City sewer mains are found in the surrounding neighborhoods of the site and the closest main to the site is found along 3rd St. to the south. Only local sewer mains surround the site; collector sewer mains are found further east along Balsam Ave. and North St.

LINKS: City of Boulder Public Works Department Master Plans

- [Comprehensive Flood and Stormwater Plan, 2004](#)
- [Stormwater Master Plan, 2007](#) – update in progress
- [Water Utility Master Plan, 2011](#)
- [Wastewater Utility Master Plan, 2009](#)
 - [Wastewater Collection System Master Plan](#) – update in progress
 - [Wastewater Treatment Plant Master Plan](#)
 - [Water Quality Strategic Plan](#)



Figure 3: Existing Sewer Mains



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November, 10, 2016

AGENDA TITLE: CONCEPT PLAN REVIEW AND COMMENT: Request for citizen, staff and City Council comment on a proposal for a new three-story apartment complex Eastpointe Apartment Homes, consisting of 236 proposed units in five buildings with below grade parking and on-site recreational amenities; reviewed under case review no. LUR2016-00043.

PRESENTER/S

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Planning, Housing & Sustainability
Susan Richstone, Deputy Director for Planning of Planning, Housing & Sustainability
Kurt Firnhaber, Deputy Director for Housing of Planning, Housing & Sustainability
Charles Ferro, Land Use Review Manager
Elaine McLaughlin, Senior Planner
Beth Roberts, Housing Planner

On Aug. 18, 2016, Planning Board reviewed the Concept Plan for the subject site; the staff memo is provided as Attachment A and the minutes from that hearing are provided as Attachment B. The key issues discussed by the Planning Board were the consistency of the plans with the Concept Plan review criteria and the responsiveness to existing surrounding residential context

On Sept. 6, 2016 City Council voted to call-up the Concept Plan for review and discussion. In calling up the Concept Plan, council members indicated interest in considering the plans to both demolish the existing residential as well as the plans for redevelopment of the site. Because questions arose regarding affordable housing on the site, staff is providing Attachment C, Supplemental Information Regarding Affordable Housing.

Per Section 9-2-13, B.R.C. 1981, the purpose of the concept plan review step is to determine a general development plan for the site, including, without limitation, land uses, arrangement of uses, general circulation patterns and characteristics, methods of encouraging use of alternative transportation modes, areas of the site to be preserved from development, general architectural characteristics, any special height and view corridor limitations, environmental preservation and enhancement concepts, and other factors as needed to carry out the objectives of this title, adopted plans, and other city requirements. This step is intended to give the applicant an opportunity to solicit comments from the reviewing authority early in the development process as to whether the concept plan addresses the requirements of the city as set forth in its adopted ordinances, plans, and policies. Comments on a concept plan are not binding, but are meant to inform any subsequent site review application.

Attachments:

Attachment A: Planning Board memo with Exhibits

Attachment B: Aug. 18, 2016 Planning Board Minutes

Attachment C: Supplemental Information Regarding Inclusionary Housing.

CITY OF BOULDER
PLANNING BOARD AGENDA ITEM
MEETING DATE: Aug. 18, 2016

AGENDA TITLE: CONCEPT PLAN & REVIEW - Redevelopment of the existing seven-acre apartment site located at 1550 Eisenhower Drive with a new three-story apartment complex Eastpointe Apartment Homes, consisting of 236 proposed units in five buildings with below grade parking and on-site recreational amenities under case review no. LUR2016-00043.

Applicant: Jeffrey Smith
 Developer: Aimco Eastpointe LLC

REQUESTING DEPARTMENT:

Community Planning & Sustainability
 David Driskell, Executive Director
 Susan Richstone, Deputy Director
 Charles Ferro, Development Review Manager
 Elaine McLaughlin, Senior Planner

OBJECTIVE:

1. Hear applicant and staff presentations
2. Hold public hearing
3. Planning Board discussion of Concept Plan. No action is required by Planning Board.

SUMMARY: CONCEPT PLAN & REVIEW – Proposal for five new three-story apartment buildings, a fitness building and associated site amenities with below grade parking. A total of 236 apartment units are proposed where 140 units exist today.

Project Name: Eastpointe Apartment Homes
Location: 1550 Eisenhower Drive
Size of Tract: Seven acres
Zoning: Residential – High 4 (RH-4)
Comprehensive Plan: High Density Residential
Key Issues: Staff has identified three key issues for consideration:

- Consistency with the BVCP (per Concept Plan Review Criteria);
- Concept Plan responsiveness to existing context

I. INTRODUCTION AND BACKGROUND

The site is located on a property at the southeast corner of Arapahoe Avenue and Eisenhower Drive. The site is developed with seven buildings and 140 apartment units and was built in 1973. Additional background information is provided in the Concept Plan Review Criteria (section ---- of this memo).

II. PROJECT DESCRIPTION

As shown in **Figure 2** below, the Concept Plan consists of 236 units in five, three-story buildings with a range of unit sizes from 33 Efficiency Living Units; 120 one-bedroom units, 59 two-bedroom units 15 two+ bedroom units, and 12 three-bedroom units. The proposal includes 6,800 square feet as “amenity space” that includes a

1,200 square foot leasing office. Approximately 263,400 square feet is planned as open space including at-grade open space, roof decks and balcony spaces. The open space areas are planned as, "outdoor rooms" that include a "great lawn" an alley of trees with a reflecting pool, and orchard; community garden, pool area with an outdoor kitchen and barbeque; an area for a family or children's garden; and flower garden. A dog park is also planned in the southwest corner of the site.

All units proposed are proposed to be market rate, and the applicant has indicated that the plan to provide Cash-in-Lieu funds to meet Inclusionary Housing requirements. The buildings are located close to the streets in a more urban configuration than exists today and there is one level of below grade parking proposed, with site access planned for Eisenhower Drive as depicted in **Figures 2 and 3** respectively. A link to the full Concept Plan submittal is provided in **Exhibit A**.

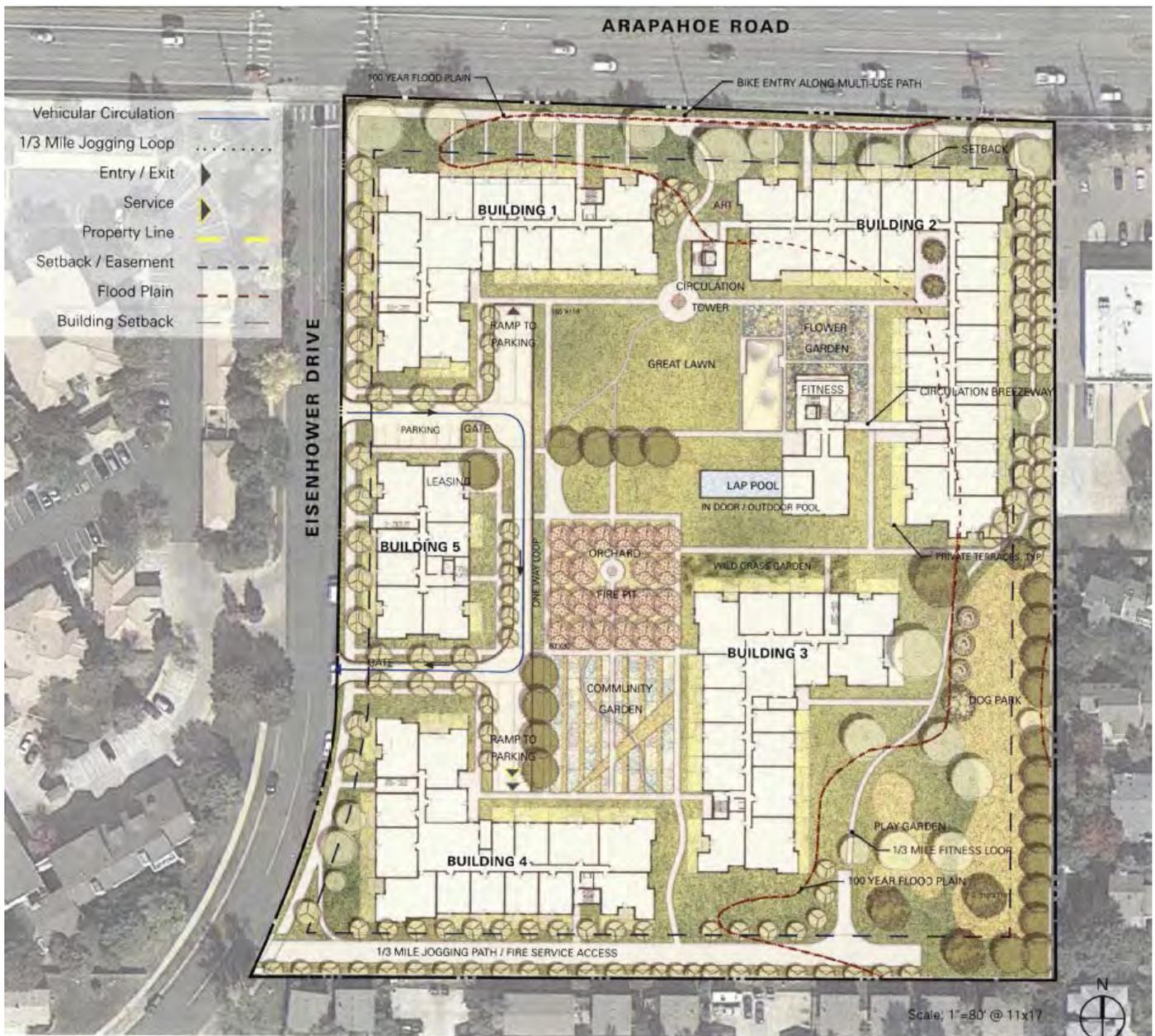


Figure 1: Concept Plan Proposal for Eastpointe Apartment Homes

Proposed Building Massing

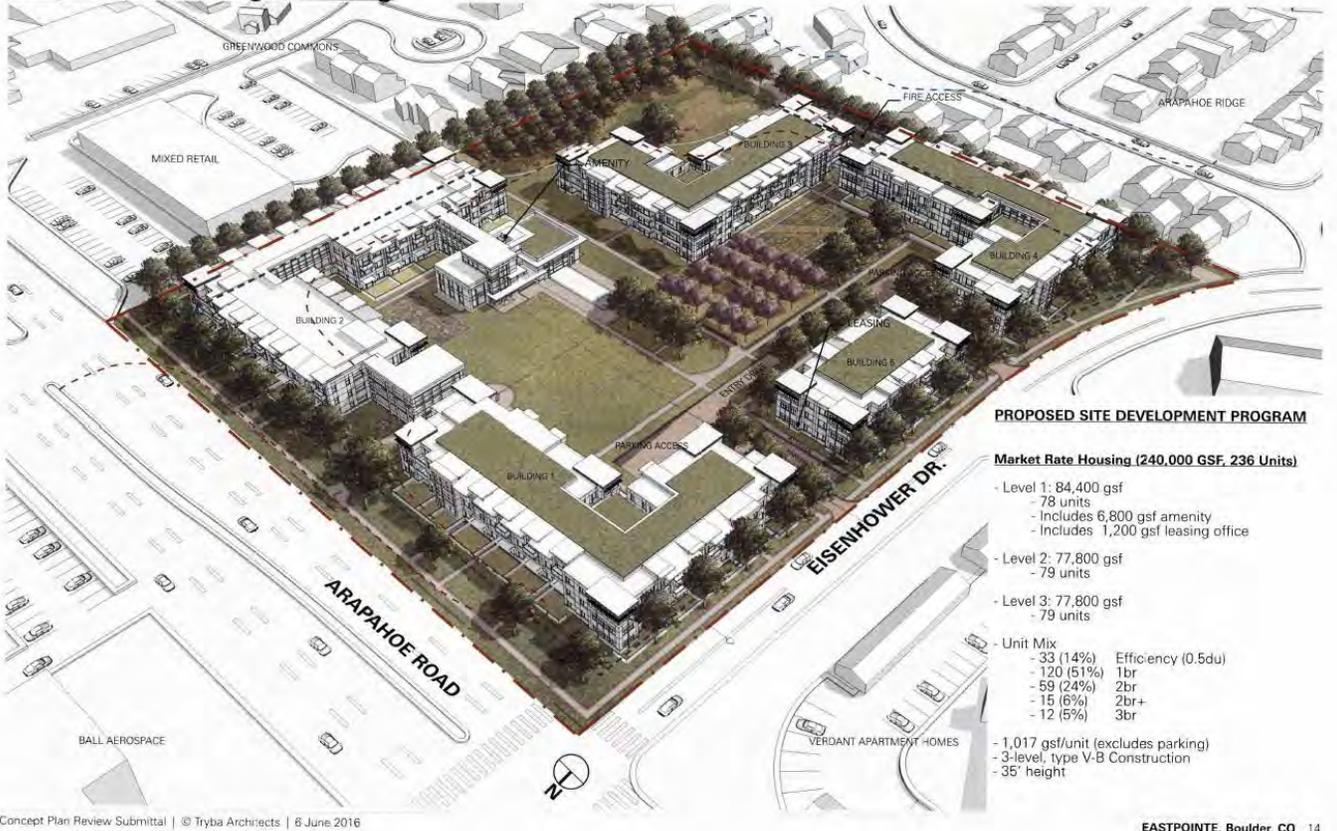


Figure 2: Birds Eye Perspective of Proposal looking Southeast

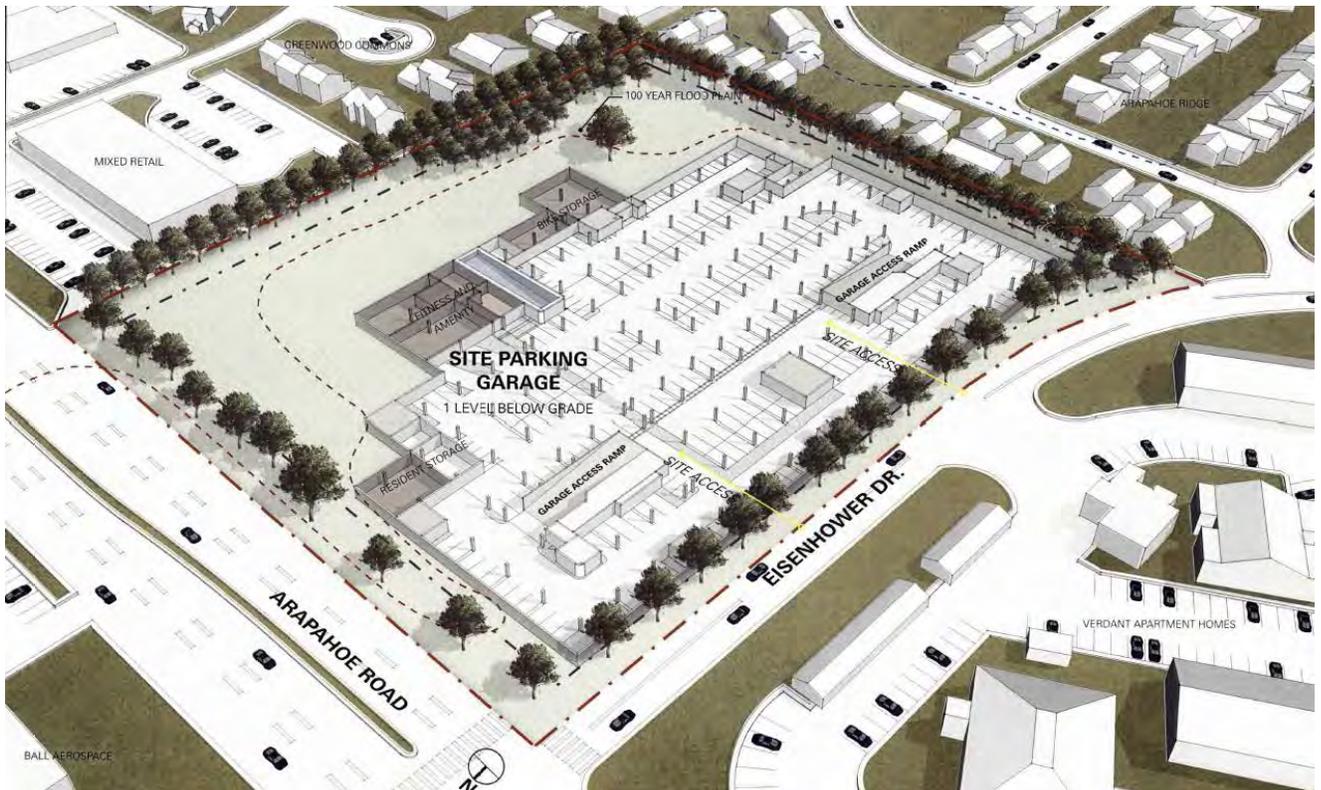


Figure 3: Proposed Below Grade Parking looking Southeast

III. CONCEPT PLAN REVIEW AND COMMENT per Section 9-2-13 and Key Issue 1 Discussion

(g) Guidelines for Review and Comment: The following guidelines will be used to guide the planning board's discussion regarding the site. It is anticipated that issues other than those listed in this section will be identified as part of the concept plan review and comment process. The Planning Board may consider the following guidelines when providing comments on a concept plan:

(1) Characteristics of the site and surrounding areas, including, without limitation, its location, surrounding neighborhoods, development and architecture, any known natural features of the site including, without limitation, mature trees, watercourses, hills, depressions, steep slopes and prominent views to and from the site;

The site is located at the southeast corner of Arapahoe Avenue and Eisenhower Drive in East Boulder. The site itself contains an existing 140-unit, (258 total bedroom count) apartment complex built in seven buildings with a clubhouse, pool and tennis courts. While the site, built in 1974 is well maintained, the buildings appear tired. The property has a distinctly suburban site layout, reminiscent of its vintage. The buildings are setback from the public rights of way and "ringed" by surface parking lots. Refer to Figures 4a and 4b of the site that illustrate an aerial photo of the site and a street view photo, respectively.



Figures 4a (Aerial – above) and 4b (ground level view) of existing apartment complex.



Existing Site Conditions. As shown in the Tree Inventory (Figure 5) there are a number of existing, mature trees on the site, and an open lawn area in the middle. The applicant provided a tree inventory which concluded that there are “a number of valuable trees around the perimeter of the site as well as several internal specimen trees.” The inventory also concluded that “many of the building foundation plantings were planted close to the building and have developed foliage on half of the trees making them undesirable for preservation as specimen trees

Existing On-Site Tree Inventory



Upon completion of the site tree inventory and analysis, it has been concluded that there are a number of valuable trees around the perimeter of the site as well as several internal specimen trees. Many of the building foundation plantings were planted close to the building and have developed foliage on half of the trees making them undesirable for preservation as specimen trees. Additionally, the site plant palette does not offer wide species diversity.

Predominant tree species currently on site include the Thornless Honeylocust, Scotch Pine, Ash, Colorado Blue Spruce and Russian Olive. Limited numbers of Norway Spruce, Hawthorne, Linden, Cherry, Maple, Crabapple, Austrian Pine and Boxelder also exist. Several of the evergreen species are over 30' in height and can cause sight obstructions (City of Boulder Tree Planting Program 2012).

Trees were classified in three groups:

Good - Better than average vigor. Little corrective work needed, but not quite perfect form.

Fair - Average condition and vigor for the area. May be in need of some corrective pruning or repair. May lack desirable form characteristics of the species. May show minor insect injury, disease or physiological problem.

Poor - General state of decline. May show severe mechanical, insect or disease damage. Death not imminent. May require major repair or renovation.

For the purposes of the survey, only trees classified as “Good” are indicated as High Value Species.

- High Value Tree Species
- ⊕ Low Value Tree Species

Figure 5: Tree Inventory

Surrounding Land Use. The immediate surroundings create essentially a “horizontal mix” of land uses which vary from high density residential apartments and condominiums to townhomes and single family residential to retail, restaurants, and offices including the major employer of Ball Aerospace and Boulder Community Hospital, both located across Arapahoe Avenue from the site. The surrounding context is shown in Figure 6, on the following page.



Figure 6:
Photos of Site Surroundings



- (2) Community policy considerations including, without limitation, the review process and likely conformity of the proposed development with the Boulder Valley Comprehensive Plan and other ordinances, goals, policies, and plans, including, without limitation, sub-community and sub-area plans;

As shown in Figure 7a, the site is designated under the Boulder Valley Comprehensive Plan (BVCP) as "High Density Residential" land use for which the comprehensive plan identifies as "more than 14 units per acre." The zoning, in turn, is RH-4 (Residential – High 4) and aligns Arapahoe Avenue, as shown in Figure 7b. The RH-4 zoning is defined in section 9-5-2, B.R.C. 1981 as:

"High Density residential areas primarily used for a variety of types of attached residential units, including without limitation, apartment buildings, and where complementary uses may be allowed."

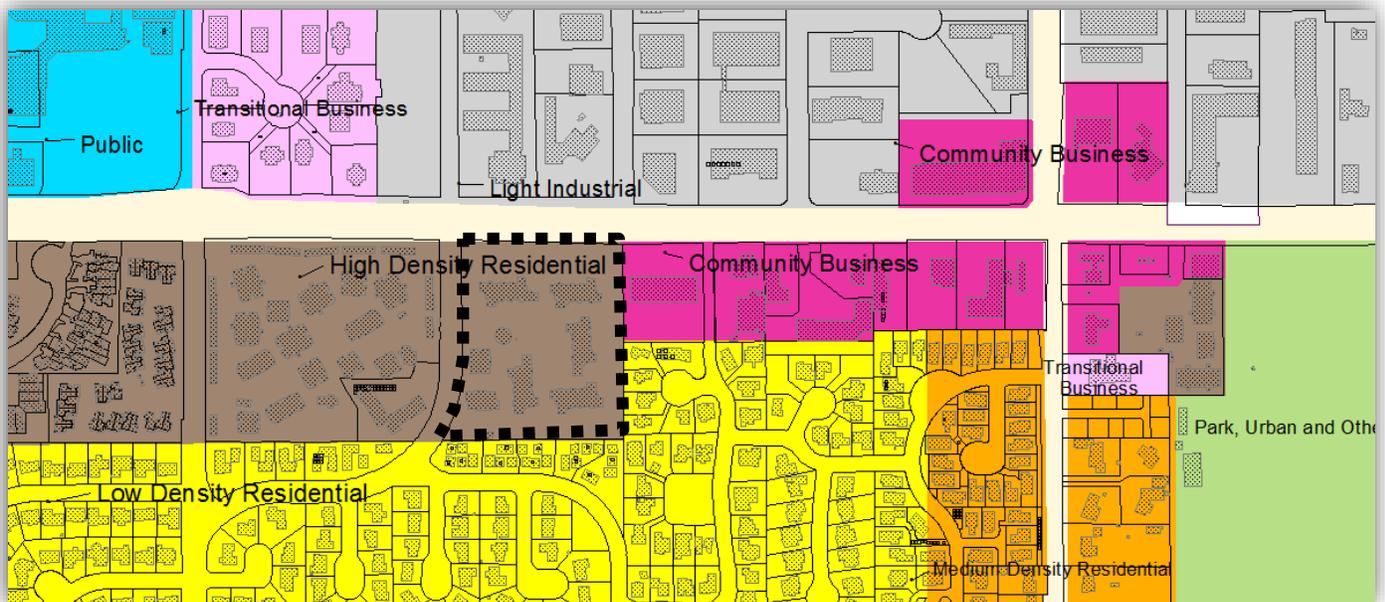
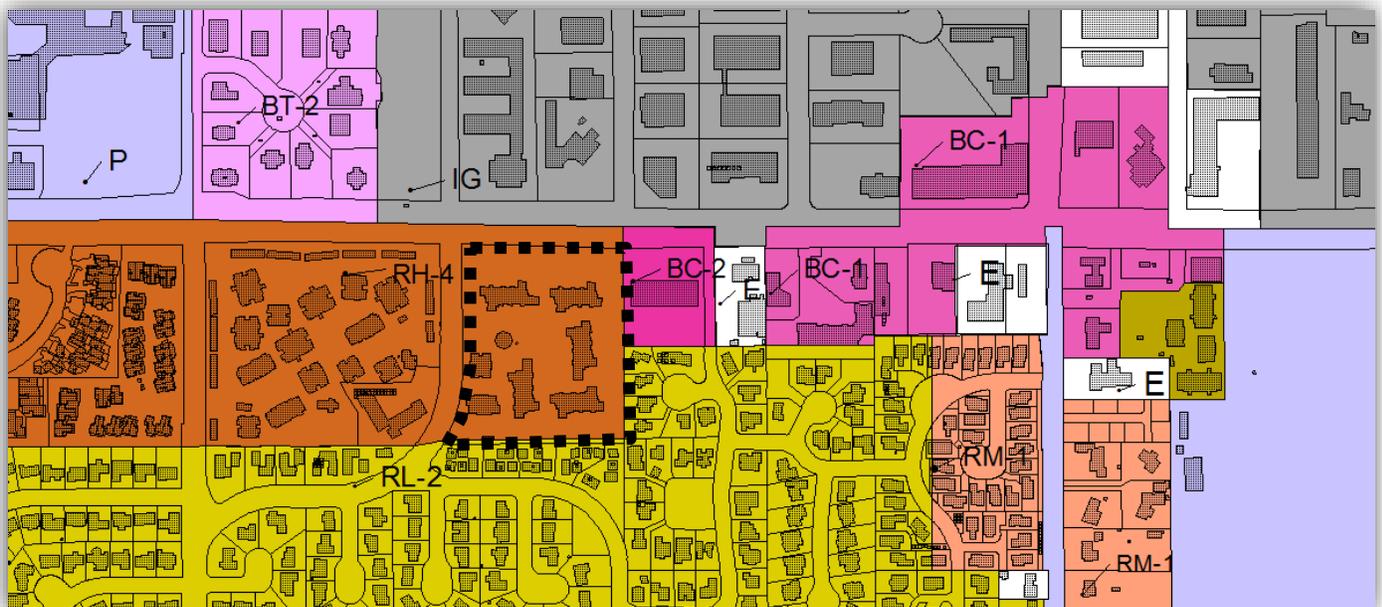


Figure 7a (above): BVCP Land Use and Figure 7b (below): Zoning



The policies of the BVCP (*found in entirety [here](#)*) help to inform redevelopment on this site are related to residential land use including:

- 2.03 *Compact Development Pattern*
- 2.09 *Neighborhoods as Building Blocks*
- 2.10 *Preservation and support for Residential Neighborhoods*
- 2.13 *Protection of Residential Neighborhoods Adjacent to Non-Residential Zones*
- 2.15 *Compatibility of Adjacent Land Uses*
- 2.16 *Mixed Use and Higher Density Development*
- 2.30 *Sensitive Infill and Redevelopment*
- 2.32 *Physical Design for People*
- 2.37 *Enhanced Design for the Building Environment*
 - a) *The context*
 - b) *The public realm*
 - c) *Transportation connections*
 - d) *Human scale*
 - e) *Permeability*
 - r) *On-site open spaces*
 - g) *Buildings*
- 7.07 *Preserve the Existing Housing Stock*
- 7.09 *Housing for a Full Range of Households*
- 8.05 *Diversity*

Concept Plan and Site Review applications are required for projects located in the RH-4 zoning district that are over two acres in size or have a minimum of 20 dwelling units. Given that, an application for Site Review is required, the applicant must demonstrate compliance with all applicable Site Review criteria found in section 9-2-14(h), B.R.C. 1981. If moving forward with a Site Review application, consideration should be given to the following with regard to site and building design:

Because the RH-4 zoning is based upon 1,200 square feet of Open Space per Dwelling Unit, the applicant must ensure that the open space is designed to meet the criteria for "useable open space" as found in section 9-9-11, B.R.C. 1981 found [here](#). Note that there are several considerations in this regard:

- Rooftop decks do not count 100 percent toward useable open space rather; they can only count toward 25 percent of the required open space.
- Per the land use code section 9-9-11(e)(3), B.R.C. 1981, an outdoor garden or landscaped courtyard (as shown central to the plan) must include several elements including southern exposure, hard surface areas gathering areas; visible from public sidewalks and: "*all spaces shall provide a minimum of one tree per one thousand square feet of space, planed in the ground or accommodated in tree vaults over parking garages.*" While the Concept Plan does illustrate tree plantings, they are shown over the below grade parking garage. As project plans move forward to Site Review, the applicant must demonstrate that the tree vaults are adequate to ensure long term viability of large maturing trees – for the interior courtyard space to count toward open space.

As can be seen in a "thumbnail" the comparison of the existing site and the proposed Concept Plan in **Figures 8a and 8b**, the applicant is improving the amount of open space on the site, both by agglomerating the open space to a more meaningful central area and by moving the parking below grade; and further, by supplementing open space on roof decks.



Figures 8a (left): Existing Site and Figure 8b (right) Proposed Concept Plan

Table 1 below provides a comparison of the required, the existing, and the proposed open space and unit mix on the site.

Table 1:
Comparison of Required, Existing and Proposed Open Space and Unit Mix

	Required	Existing Site Condition	Proposed Concept Plan
Open Space	1,200 sf / dwelling unit	171,078 sf for 140 units = 56 percent of the site = 1,221 sf / dwelling unit	293,400 sf for 236 units = 77 percent of the site = 1,243 sf / dwelling unit
Unit Mix	n/a	Efficiency = 0 = 0 bdrms 1 bdrm = 30 = 30 bdrms 2 bdrm = 102 = 204 bdrms <u>3 bdrm = 8 = 24 bdrms</u> 140 units = 258 bdrms	Efficiency = 33 = 17 bdrms 1 bdrm = 120 = 120 bdrms 2 bdrm = 71 = 142 bdrms <u>3 bdrm = 12 = 36 bdrms</u> 236 units = 315 bdrms

Notes:

Efficiency Living Units = 0.5 bedroom
 Net Increase in Units = 96 (68%)
 Net Increase in Bedrooms = 57 (40%)

As can be noted in Table 1, there is a net increase in open space as well as number of units and number of bedrooms with the proposed project. While parking is proposed to move below grade, thus increasing open space on the site from 56 percent of the site to 77 percent of the site, the increase in the number of units slightly increases the Open Space per Dwelling Unit proportion above the required.

(3) Applicable criteria, review procedures, and submission requirements for a future Site Review;

- Site Review Criteria of the Land Use Code section 9-2-14(f), B.R.C. found [here](#).
- Boulder Valley Comprehensive Plan policies
- Transportation Demand Management (TDM) plan consistent with section 2.03(l) of the DCS and section 9-2-14(h)(2)(D)(iv) and (v) of the Boulder Revised Code (BRC) which outlines strategies to mitigate traffic impacts created by the proposed development and implementable measures for promoting alternate modes of travel.

(4) Permits that may need to be obtained and processes that may need to be completed prior to, concurrent with, or subsequent to site review approval;

Assuming the applicant pursues a Site Review application after Concept Plan, other types of permits may be necessary as the project plans progress:

- CDOT Access permit onto the State Highway (Arapahoe Avenue)
- Technical Document for final plans (i.e. landscape, irrigation, architecture, lighting, transportation and engineering)
- A Building Permit application

(5) Opportunities and constraints in relation to the transportation system, including, without limitation, access, linkage, signalization, signage, and circulation, existing transportation system capacity problems serving the requirements of the transportation master plan, possible trail links, and the possible need for a traffic or transportation study;

The site is located on Arapahoe Avenue, categorized as both a Major Arterial and as a State Highway with no on-street parking. Eisenhower Drive on the west side of the site is considered a collector. The site is centrally located to a number of services including retail services, medical offices, professional offices and cafes and restaurants. Currently the site design is that of a large super block. Staff recommends provision of an access point through the center of the site for future opportunity for connection to the east. Refer to staff Development Review Comments found in **Exhibit C**.

(6) *Environmental opportunities and constraints including, without limitation, the identification of wetlands, important view corridors, floodplains and other natural hazards, wildlife corridors, endangered and protected species and habitats, the need for further biological inventories of the site and at what point in the process the information will be necessary;*

Environmental Opportunities: The has been fully developed since 1974 and therefore there are no wildlife corridors, endangered and protected species and habitats on site. The site has broad views of the mountains to the west. To the extent possible, views could be captured and preserved through careful site design and building orientation. In addition, the size of the subject site is over two acres,

which presents opportunities for creative landscaping and open space particularly related to stormwater runoff quality. The applicant must also consider various green building technologies and other forms of on-site alternative energy such as rooftop solar to meet the rigorous City of Boulder energy efficiency standards equivalent to the International Energy Efficiency Code 2012 plus 30 percent greater efficiency.

Environmental Constraints: The site has minimal vegetation, but does contain a number of mature deciduous trees to the south of the existing buildings. Additional information is required to determine whether the existing trees should be preserved. At the time of Site Review, it will be necessary to submit a tree inventory that includes the location, size, species and general health of all trees with a diameter of six inches and over measured fifty-four inches above the ground on the property or in the landscape setback of any property adjacent to the development.

This site is impacted by the 100-year floodplain of South Boulder Creek and the Proposed Site Plan shows the northeastern corner of Building 1 and all of Building 2 to be located within the floodplain. A floodplain development permit will be required for all development within the 100-year floodplain. The floodplain development permit shall contain certified drawings demonstrating:

- Any person constructing a new residential structure shall elevate the lowest floor, including the basement, to or above the flood protection elevation.
- The proposed buildings will have structural components capable of resisting projected hydrostatic and hydrodynamic loads and the effects of buoyancy, and be constructed with materials resistant to flood damage.
- Any proposed structures or obstructions in the floodplain, including trash enclosures and raised planters, will be properly anchored to prevent flotation, collapse, or lateral movement and be capable of resisting hydrostatic and hydrodynamic loads.
- The buildings will be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities that are designed and located (by elevating or floodproofing) so as to prevent water from entering or accumulating within the components during conditions of flooding.

The East-West Site Section on page 17 of the Concept Plan package, the Proposed Site Plan seem to indicate a proposed connection between Building 2 and the circulation tower. Building 2 must be completely disconnected from all other structures on the site. A connection to a structure that is located within the floodplain will cause the entire structure to be considered within the floodplain, requiring elevation of all levels, including the below grade parking structure to a minimum of two feet above the base flood elevation.

(7) *Appropriate ranges of land uses;*

The site is designed as 100 percent attached residential in buildings with stacked flat configurations. While the surroundings do provide a strong horizontal mix of uses, greater variety of unit types should be proposed on the site, rather than a "monoculture" of stacked flats. Among the Boulder Valley Comprehensive Plan policies intended to guide future development are the following:

7.06 Mixture of Housing Types The city and county, through their land use regulations and housing policies will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities, to meet the housing needs of the full range of the Boulder Valley population.

As noted, the intent of the policy is to encourage a mix of housing types with varied prices, sizes and densities. This policy in combination with the density restrictions based on open space per dwelling unit, leads to the conclusion that fewer, and different types of units such as townhomes, may be necessary. Similarly, provision of a mix of units on the site should also include affordable units on-site.

(8) *The appropriateness of or necessity for housing.*

There is a city-wide need for housing. The BVCP policy 7.06 noted above points to provision of a variety of housing types, and noted above, there is a need for a variety of housing types in the city and not simply apartment units. The applicant is highly encouraged to explore other unit types on the site, not only for residential purposes, but to better meet the density requirements of open space per dwelling unit. As noted in the comments, the open space shown as green roofs currently does not meet the city's definition for 100 percent of useable open space. Therefore, density must be reduced, and in doing so, other unit types should be considered. Refer to Site Design Comments.

Key Issue 2: Concept Plan responsiveness to existing surrounding residential context

The Boulder Valley Comprehensive Plan policy 2.10 provides direction for future development to be in a compatible scale to existing residential neighborhoods.

2.10 Preservation and Support for Residential Neighborhoods The city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock. The city will seek appropriate building scale and compatible character in new development or redevelopment, appropriately sized and sensitively designed streets and desired public facilities and mixed commercial uses. The city will also encourage neighborhood schools and safe routes to school.

Recognizing the high density land use and zoning on the site and the typology of Arapahoe Avenue, the northern portion of the site can accommodate bigger buildings and a greater degree of intensity however, the proposed site plan should consider the existing surrounding residential uses that are smaller in scale and stature, particularly the single family detached homes to the south. The Site Plan should consider the following to better address the context and surroundings, and as shown in the graphic on the following page in **Figure 9**:

- Break up the superblock by creating a distinct transition to a less massive building type and units on the south side of the site, with the transition being a complete street as shown in **Figure 9**.
- Improve the building's relationship to the street, and circulation and architectural response as the buildings could create more of an urban edge to the broad right-of-way of Arapahoe Avenue, rather than be setback by approximately 50 feet as shown on the Concept Plan, with private yard space along Arapahoe Avenue.
- Limit individual unit entries off of Arapahoe Avenue, given the high volume arterial, and instead provide for overall building entries off Arapahoe and individual unit entries off of Eisenhower.

- As discussed with the applicant in a review of the comments, staff and the applicant concurred that some edges or portions of buildings should be converted to two-story massing. Similarly, while the early proposal for exterior materials (shown in **Figure 11**) does appear to be durable and of high-quality, staff recommends reconfiguring the finish materials distinctly on different buildings, such that the buildings don't appear as a duplications of one another.
- The building typology on the south end of the site should consider more of a townhome configuration to transition to the adjacent single family residential and smaller apartment buildings.
- Setback units from southeast property line and perform a viewshed analysis from adjacent neighborhood to preserve view corridors to the northwest.

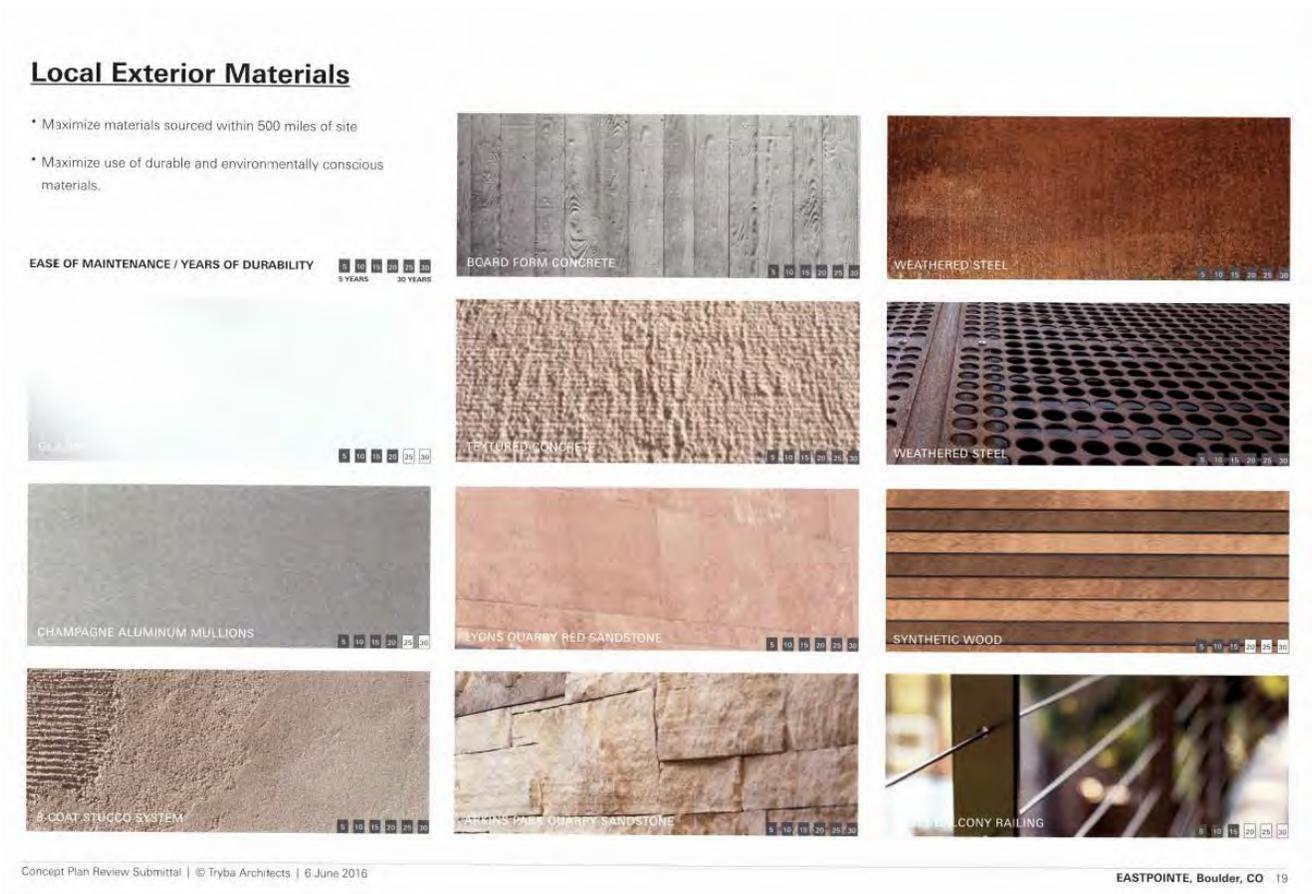


Figure 11: Exterior Material Proposal

Supplemental Information from the Applicant. After staff provide the comments to the applicant, as found in the link in *Exhibit C*, the applicant requested staff accept "Supplemental Information" intended to address key comments about two points of access; greater transition to townhomes to the south; viewshed impacts and other impacts from the dog park to existing single family residential to the south east. While Concept Plan is intended to provide a single staff review prior to Planning Board with no expectation or requirement for response to comments, staff notes that the applicant's responses do help to address some of the comments. However, staff notes that there remains questions about the supplemental information that could be discussed at Planning Board including:

- Where would a dog park be relocated in lieu of original location adjacent to single family residential?
- In addition to a 60 foot setback from the south property line, could the applicant design the building mass to transition to two stories along the south side of Building Four?
- Additional on-site viewshed analysis should be performed from impacted single family residential units.

CONCLUSION:

The use of the site for high density residential is consistent with the BVCP Land Use designation of High Density Residential and the zoning of Residential - High 4. However, additional analysis must be done by the applicant to ensure compatibility with the surrounding residential neighbors in terms of massing, scale and adjacent uses on the site.

PUBLIC COMMENT AND PROCESS:

Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject site and a sign posted on the property for at least 10 days. Therefore, all notice requirements of section 9-4-3, B.R.C. 1981 have been met. Staff received emails from four different neighbors, as provide in **Exhibit B**. Concerns expressed in the emails included issues about the location of the dog park adjacent to the neighbors and potential impacts to the view shed.

STAFF FINDINGS AND RECOMMENDATION:

No action is required on behalf of the Planning Board. Public comment, staff, and Planning Board comments will be documented for the applicant's use. Concept Plan Review and comment is intended to give the applicant feedback on the proposed development plan and provide the applicant direction on submittal of the Site Review plans.

Approved by:

David Driskell, Executive Director
Community Planning & Sustainability

Exhibits

A: [Link to Concept Plan Submittal and Recent Supplemental Information](#)

B: [Comments Received](#)

C: [Link to DRC Comments](#)

[Exhibit A](#)

From: Linda Levy [<mailto:levy.linda@me.com>]
Sent: Thursday, June 30, 2016 4:14 PM
To: McLaughlin, Elaine
Subject: Comments re Arapahoe / Eisenhower Proposal

Hi,

I have comments about the proposed re-development at Arapahoe / Eisenhower. I live in the adjacent neighborhood and hope the developer and city will consider neighbor's concerns.

My concerns are:

1. Not enough buffer between houses bordering development. Now there is a parking lot and grass backing up to houses, proposed plan calls for a dog park adjacent to the houses. That is really not acceptable for those residents, who could have foot traffic and dogs right next to their property at all hours of the day and night.
2. Proposed development is higher than what is currently in place. Please don't block the neighbor's existing views!
3. Increased density and not enough parking in plans. This is already a busy area. Please do not stress existing streets any more!

Thank you. Feel free to contact me with questions.

Linda
Linda G. Levy
1460 Patton Drive, Boulder CO 80303
720-839-8999

From: Jean Rachubinski [<mailto:j.rachubinski@comcast.net>]
Sent: Thursday, June 30, 2016 8:32 PM
To: McLaughlin, Elaine
Subject: Re: East point Apartment plan

Hi Elaine,

Thank you for your response. Sorry to hear about the emergency - family always come first- so no worries! I have a few more concerns about the project.

*Density issue - Currently Eastpointe has 140 units, will be increased by 96 then up to 236 units. Table 8-1 Intensity standards indicate 1200 sq. ft. minimum of open space per unit. Open space is for everyone's enjoyment, right? The 'green roof' idea as was explained to us at the June 14th meeting will have limited access. I fail to see compliance with the intensity standards set with limited access with open space requirements with this number of units.

*According to dog park regulations the nearest residence is 150 feet away. The location of their dog park on the other side of the fence is clearly much closer than 150 feet.

*Who monitors the areas around the development?

*The impact of a dog park affects health from bacteria/feces/air quality,etc.. I do not want to jeopardize my quality of life or my neighbors and standard of living by having a dog park over the fence.

*There are many healthy, mature trees on the property. Could some of the existing trees be spared?

From: Jean Rachubinski [<mailto:j.rachubinski@comcast.net>]
Sent: Monday, June 20, 2016 8:46 PM
To: McLaughlin, Elaine
Subject: East point Apartment plan

Hi Elaine,

I am writing in response to your notice sent on June 7, accepting comments about the plan review. My home is located at 1535 Patton Circle, one of the homes on the other side of the fence from Eastpointe Apartments. I did attend the information meeting last week at the EBRC. One of the people involved with the project commented to me that "We didn't have to have this meeting, you know".

Our neighborhood is quiet and I would like to keep it that way. I am most not in favor of the dog park on the other side of the fence. I do not want to hear dogs at all hours of the day, smell the poop or want this close to my backyard. In reviewing the layout - could the dog park be part of the Great Lawn area?

I appreciate your attention and I hope the dog park location is up for discussion and relocation.

Thank you,
Jean Rachubinski
cell # 720-371-3982

On Wed, Jun 15, 2016 at 4:34 PM, olly1002@yahoo.com
<olly1002@yahoo.com> wrote:

Hi Elaine,

Well where do I begin, after living here for 20 years plus I'm really scared that what I've enjoyed about my house will be compromised with this redevelopment. I am worried that I will loose my view of the mountains, the peace and quiet I've had, because they want to put a dog park and a playground on the other side of my backyard fence. Our house is oriented towards the west so, my kitchen, family room, living room, a couple of bedrooms, our deck and even my dog will not be aloud to use the backyard with dogs barking on the other side, not to mention the smell and the fact it will be used 24 hours a day.

The light pollution, we don't have street lights in our neighbor hood, it's dark and yet safe. All the cars (like Boulder doesn't already have enough.) What's really sad is our property value will decrease substantially, who would want to live next to a dog park!

What I would like to purpose, is that they make this area a " quiet open space" so my three neighbors and myself can retain what we've had for the past 20 years plus.

If they could move building #4 10-20 feet to the north, I would be able to have that amazing view that has inspired me each and every day throughout my life here. Part of our view could be maintained if they are considerate with where they plant trees near our fence.

I appreciate any help you can give us in making this project work with the existing neighborhood.

-John and Janet Ryden

On Tue, Jun 14, 2016 at 12:03 PM, olly1002@yahoo.com

<olly1002@yahoo.com> wrote:

Hi Elaine,

We spoke this morning about the concept plan for eastpointe and how for the past 25 years I have had the attached view from my kitchen window and deck. It's much better in the winter when the trees loose their leaves!

I would also like to request that they don't work on the weekends given the proximity to our properties

Thanks again look forward to receiving the pre concept plans.

Janet

[Sent from Yahoo Mail on Android](#)

From: Graeme R Forbes [mailto:graeme.forbes@colorado.edu]

Sent: Thursday, June 16, 2016 1:11 PM

To: McLaughlin, Elaine

Cc: Marilyn Ruth Brown

Subject: Re: quick question on Eastpointe

Dear Elaine:

Here is a comment to be considered for the City's initial response to the applicant.

One of our neighbors went to a meeting about the proposed development and reports that it includes a dog park on the southeast corner, which touches the northwest corner of our property. We have heard from other people who live near dog parks that dog owners exercise their pets in them at all times of night, and the noise is considerable. We therefore strongly object to the inclusion of such a facility in the development.

Best,
Graeme

On Jun 15, 2016, at 9:44 AM, McLaughlin, Elaine <McLaughlinE@bouldercolorado.gov> wrote:

Hello Graeme-

Thanks for your inquiry. I requested that information specifically of the applicant and he responded with the following below. There are 258 bedrooms in 140 units and they are proposing 315 bedrooms in 236 units. The intent is to redevelop the site, removing what's there and existing and building new structures. It's my understanding that the units will be market rate.

I hope this helps for now, please feel free to call or email with any further questions or comments.
All the best-
Elaine

Elaine McLaughlin

Senior Planner

<image001.png>

ph. 303-441-4130

mclaughline@bouldercolorado.gov

Department of Planning, Housing + Sustainability
1739 Broadway | PO Box 791 | Boulder, CO 80306

Bouldercolorado.gov

From: Jeff Smith [<mailto:jsmith@TrybaArchitects.com>]

Sent: Wednesday, June 15, 2016 9:00 AM

To: McLaughlin, Elaine

Cc: kim@packarddierking.com; Leonhardt, Brett (Denver)

Subject: RE: quick question on Eastpointe

Elaine:

Here is the bedroom comparison assuming that efficiencies constitute 0.5 dwelling units:

Existing Property Unit Mix and Bedroom Count:

• 1BR	= 30	= 30br
• 2BR	= 102	= 204br
• 3BR	= 8	= 24br
Total	= 140 units	= 258br

Proposed Project Unit Mix and Bedroom Count:

• Efficiency (0.5)	= 33	= 17br
• 1BR	= 120	= 120br
• 2BR	= 71	= 142br
• 3BR	= 12	= 36br
Total	= 236 units	= 315br

Net Increase in Units = 96 (68%)

Net Increase in Bedrooms = 57 (40%)

Please let me know if you need any additional information.

Thanks,

Jeff

Jeff Smith, AIA, LEED AP

Associate Principal

Email: jsmith@trybaarchitects.com

<image006.png>

1620 Logan Street
Denver, CO 80203
Direct: 720.947.5408
Main: 303.831.4010
Fax: 303.894.5363
www.trybaarchitects.com

-----Original Message-----

From: Graeme R Forbes [<mailto:graeme.forbes@colorado.edu>]
Sent: Tuesday, June 14, 2016 12:03 PM
To: McLaughlin, Elaine
Subject: eastpointe redevelopment

Dear Ms. McLaughlin,

We recently received notification from the City that there's going to an application for redevelopment of the Eastpointe Apartment Homes at 1550 Eisenhower Drive. The proposal is for 236 dwelling units. However, I wasn't able to determine from the letter how, if it all, the redevelopment will change what's already there. Specifically, is 236 units a jump from the current number, or about the same? And what will be the character of the redevelopment? That is, is the intention simply to renovate existing units and rent them for about the same as they currently fetch, or will the new units be less expensive, or more expensive, than what's currently there?

Thank you for your time,
Graeme Forbes
1487 Patton Drive
Boulder, CO 80303-1258

Exhibit C

CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
August 18, 2016
1777 Broadway, Council Chambers

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

John Gerstle, Chair
Liz Payton, Vice Chair
Bryan Bowen
John Putnam
Leonard May
Harmon Zuckerman

PLANNING BOARD MEMBERS ABSENT:

Crystal Gray

STAFF PRESENT:

Charles Ferro, Development Review Manager
Hella Pannewig, Assistant City Attorney
Cindy Spence, Administrative Specialist III
Chris Meschuk, Senior Planner
Kathy Haddock, Senior Assistant City Attorney
Elaine McLaughlin, Senior Planner

1. CALL TO ORDER

Chair, **J. Gerstle**, declared a quorum at 6:04 p.m. and the following business was conducted.

2. APPROVAL OF MINUTES

On a motion by **B. Bowen** and seconded by **L. Payton** the Planning Board voted 6-0 (**C. Gray** absent) to approve the August 4, 2016 minutes as amended.

3. PUBLIC PARTICIPATION

1. **Kari Palazzari** invited the Planning Board members to participate as judges at the Chili Bowl event on September 17, 2016 at the Pottery Lab.

4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS

- A. Call Up Item: University Place Replat D Subdivision (LUR2016-00017) located at 747 12th Street: Final Plat to replat the existing site into two lots.

This item was not called up.

5. PUBLIC HEARING ITEMS

- A. AGENDA TITLE:** Public Hearing and recommendation to City Council regarding annexation of enclaves in the vicinity of 55th Street and Arapahoe Avenue.

Staff Presentation:

C. Meschuk and **K. Haddock** presented the item to the board.

Board Questions:

C. Meschuk and **K. Haddock** answered questions from the board.

Public Hearing:

1. **Gaetano Iannacone** spoke in opposition to the annexation.
2. **Karin Lazarus** spoke in opposition to the annexation.
3. **Ian Barringer (pooling time with Kelly Barringer)** spoke in opposition of the annexation.
4. **Dan Anglin** spoke in opposition of the annexation.
5. **Mark Hartwig (pooling time with Megan Knies)** spoke in opposition of the annexation.
6. **Thomas Kee** spoke in opposition of the annexation.
7. **Grace Guittierrez** spoke in opposition of the annexation.
8. **Ken Morris, Esq.** spoke in opposition of the annexation.
9. **Keith Hoffman** spoke in opposition of the annexation.
10. **Ed Byrne** spoke in opposition of the annexation.
11. **Allyson Feiler** spoke in opposition of the annexation.
12. **Paul Danish** spoke in opposition of the annexation.

Board Questions:

C. Meschuk and **K. Haddock** answered additional questions from the board following public comments.

- The Planning Board took a short recess to review the proposed Draft Ordinance with no recommendation presumed.
- The Planning Board returned from recess and agreed to continue deliberation.

Board Questions:

C. Meschuk and **K. Haddock** answered additional questions from the board pertaining to the proposed Ordinance.

Board Comments:

Key Issue #1: Is the proposed annexation consistent with State of Colorado statutes pertaining to the annexation of a property into the City of Boulder?

- **H. Zuckerman** stated for the record the definition of the purpose of the annexations in the Colorado Revised State Statutes. He argued that the state law looks at the equitable distribution of costs of municipal services. He stated that he is not saying he disagrees

with the staff recommendation; however, this should be considered. The interpretation of the Ordinance will be key.

- **J. Putnam** agreed with **H. Zuckerman** that his argument could be made. He is in support of staff's view. From the perspective of municipal services, all properties are accessible by city streets. These are enclaves from a service perspective and it makes sense to keep within the city.
- **L. May** supported **J. Putnam's** comments and generally supports staff's recommendation. **B. Bowen** and **L. Payton** stated the same.
- **H. Zuckerman** questioned the fairness of this annexation since it was done so quickly, yet the city has the right to annex enclaves at any time. Since proper notice was given, he is in support of staff's recommendation.
- **J. Gerstle** supports the staff recommendation and added that the Comp Plan has recognized these enclaves before the present industries existed.

Key Issue #2: Is the proposed annexation consistent with the Boulder Valley Comprehensive Plan (BVCP)?

- **L. May** agreed with staff's recommendation.
- **B. Bowen** disagreed. According to Comp Plan (*Item 1.24, Item C*), he stated that he is not sure this annexation is a public safety improvement issue. While he supports the annexation of enclaves, he does not like the impact it will have on the present businesses within those enclaves. He stated that it does not meet with the Comp Plan.
- **L. May** argued that his interpretation of *Item 1.24* in the Comp Plan is that it would apply to residents rather than businesses.
- **L. Payton** supports staff's recommendation.
- **H. Zuckerman** agreed with **B. Bowen** and added that there are no dangerous qualities to the counties regulations toward marijuana or safety issues. He proposed different language in the Ordinance with different timing to be consistent with the BVCP.
- **J. Putnam** agreed with **H. Zuckerman**. The annexation of the enclaves is needed, however, we need conformity with the Comp Plan, specifically *Item 1.24*.
- **J. Gerstle** agreed with **J. Putnam** and **H. Zuckerman**. While this is consistent with the BVCP, the language of the Ordinance needs to be modified.
- **B. Bowen** added that if the Ordinance was rewritten to work with the existing business, it could be in compliance with the Comp Plan. He suggested creating a timeline.

Key Issue #3: Is the initial zoning of each property consistent with the Boulder Valley Comprehensive Plan (BVCP)?

- All board members agreed with staff recommendations.

Key Issue #4: Should the Planning Board recommend annexation based on the Boulder Valley Comprehensive Plan (BVCP)?

- **J. Putnam** stated that changes are warranted to the proposed Ordinance but the board is not prepared to do it tonight. He proposed to recommend denial of the annexation at this time unless specific provisions are developed prior to decision by Council that would address many of the concerns of the existing businesses as long as they are consistent with the health and safety of the city.

- **H. Zuckerman** agreed and proposed that a solution that is in the state law be added. He offered the state law (32.12.106.1.1, *Exceptions to Enclaves*) as a solution which discusses an Annexation Transition Committee.
- **B. Bowen** agreed.
- **L. Payton** would not support a denial of the recommendation. So much is at stake and she supports municipalization. She would support recommending to Council the annexation but with directing staff to work out the difficulties with the businesses.
- **B. Bowen** stated he would be more in favor of denying recommendation but he strongly supports municipalization.
- **L. May** supports **L. Payton**. He stated that he would support the recommendation to Council to approve the annexation but with conditions. He suggested that the board be specific regarding the board's concerns. The board needs to address the timeline for compliance and the extent to which people need to comply with the current city regulations.
- **B. Bowen** added that the provision that strikes the distance between business should be kept and that the reinforcement of cost negotiations needs to remain favorable for the affected people. Force annexation implications need to be considered.
- **J. Gerstle** disagreed with **B. Bowen's** comment of "*forced annexation*" and stated it is not appropriate. It is clearly established and legal. Appropriate for the board to recommend to Council that the Ordinance be revised, to be more acceptable to business, to have more time and relax non-safety conditions of operation. The board can do this by recommending the annexation move ahead with additional recommendations.
- **J. Putnam** added that it would be important to have these businesses within the utility because they are very carbon intensive. Be better to have these businesses on a utility that is moving toward carbon improvement. However, the annexation needs to be done correctly.

Motion:

On a motion by **J. Putnam** seconded by **B. Bowen** the Planning Board voted 3-3 (**C. Gray** absent) to recommend denial to City Council of the proposed annexations of the 15 parcels with the initial zoning as shown in the staff memorandum unless staff and Council can develop provisions in the Ordinance that would ensure continuity of existing businesses where consistent with health and safety of the city. This should include more flexibility in the timeline for compliance and potential waivers of existing city rules. Motion Failed.

Friendly amendment made by **L. May** to recommend to City Council to approve the proposed annexations of the 15 parcels with the initial zoning as shown in the staff memorandum. Friendly amendment Fails.

On a motion by **J. Putnam** seconded by **L. Payton** the Planning Board voted 6-0 (**C. Gray** absent) to recommend approval to City Council of the proposed annexations of the 15 parcels with the initial zoning as shown in the staff memorandum assuming that staff and Council can develop provisions in the Ordinance that would promote continuity of existing businesses where consistent with health and safety of the city. This should include more flexibility in the timeline for compliance and potential waivers of existing city rules.

Friendly amendment made by L. May to change the above motion to read “only if” rather than “assuming that”. Accepted by J. Putnam and L. Payton.

5. PUBLIC HEARING ITEMS

B. AGENDA TITLE: CONCEPT PLAN & REVIEW - Redevelopment of the existing seven-acre apartment site located at 1550 Eisenhower Drive with a new three-story apartment complex Eastpointe Apartment Homes, consisting of 236 proposed units in five buildings with below grade parking and on-site recreational amenities under case review no. LUR2016-00043.

Applicant: Jeffrey Smith
Developer: Aimco Eastpointe LLC

Staff Presentation:

C. Ferro introduced the item.

E. McLaughlin presented the item to the board.

Board Questions:

E. McLaughlin answered questions from the board.

Applicant Presentation:

Patti Shwayder and **Brett Leonhardt**, representing Aimco Eastpointe, LLC, and **Collin Kemberlin** with Tryba Architects, presented the item to the board.

Board Questions:

Leslie Ewy with The Sanitas Group, **Brett Leonhardt** with Aimco Eastpointe, LLC, and **Collin Kemberlin** with Tryba Architects, answered questions from the board.

Public Hearing:

1. **Martha Andrews** spoke concerning the parking and the dog park of the proposed project.
2. **Janet Ryden** spoke concerning the parking and the preservation of the trees of the proposed project.
3. **John Ryden** spoke concerning the density and lighting of the proposed project.
4. **Diane Bergin** spoke concerning the parking of the proposed project.
5. **Jean Rachubinski** spoke concerning the southeast corner of the proposed project.
6. **Tom Rachubinski** spoke concerning the construction process of the proposed project and the possible implementation of a memorial for Officer Haynes who lost her life on that site.
7. **Mike Krietzman** spoke concerning the parking, potential flooding and drainage of the project.
8. **Keith Hoffman** spoke concerning the thorough way along the Arapahoe corridor of the proposed project.
9. **Douglas Ertz** spoke concerning the drainage along Eisenhower and Arapahoe and the

lack of affordable housing needs of the proposed project.

10. **John Andrew** spoke concerning the thorough way along the Arapahoe corridor of the proposed project.

11. **Robert Kiser** spoke concerning the construction process and affordable housing needs of the proposed project.

Board Comments:

Key Issue #1: Consistency with Concept Plan Review Criteria

- **B. Bowen** stated overall it is a good project. Would like to see as many at-grade level entries as possible to the units to create better circulation patterns. He likes the patios outside the ground level units and would like to see at the main streets. Traditional style 8-foot deep porches to allow for a buffer should be included. The revised vehicular circulation scheme is a good improvement. Do not approve of the looped drive through the site. Approved of the termination of views at the entrance. Could include a trellis shade structure and a kitchen feature. He proposed splitting Building #4 into two buildings for pedestrian access. Connections to the property to the south should be considered. In regards to the parking below grade, it should be more of a plaza-like place. He encouraged an art program on site and the memorial for the officer who was shot on site. In the below grade parking area, the bike space could be a gathering space and could be designed as such. The applicant should look at a district-wide energy system. And he encouraged the protection of specimen trees.
- **L. May** said that the project is generally consistent with BVCP. He has concerns regarding the affordability component and diversity of housing unit types. He agrees with **B. Bowen** and staff's comments. Building #4 would work better as two buildings. He supports the parking reduction. The project is consistent with city policies.
- **L. Payton** stated that if the city was serious regarding resilience, sustainability and affordability, then incentives and regulations would be in place to rehabilitate the units and not demolish them. She encouraged moving Building #2 out of the floodplain if possible. She agreed with staff's comments regarding the BVCP *Policy 7.06*. She also agreed with staff that some edges should be converted to two-story massing and that the building typology on the south end of the site should be considered a townhome configuration. Green roofs should be converted to PV roofs. Along Arapahoe Avenue, the path should be made to be a multi-use efficient path with trees on both sides. The site needs playground. She agrees regarding the preservation of mature healthy trees. Agrees with **B. Bowen** regarding the memorial for the officer, breaking up Building #4, and the terminal vista from Eisenhower. Ground water studies are needed. Finally, the six-foot wide tree wells over the parking structure are inadequate.
- **H. Zuckerman** would like to see mixed use on site, permeability on site, to connect with the east commercial properties, height transitioning down to the single-family residential and address plans for affordability. These were also as mentioned in **C. Gray's** emailed comments. He stated that the project is a great design. Arapahoe Avenue is currently so wide so can get away with taller buildings. Taller buildings along Arapahoe and smaller to the south such as townhomes and additional streets makes sense. He stated that he would like to see street parking restored along Eisenhower. On-site affordable housing would be ideal for this site.

- **J. Putnam** agreed with making Arapahoe an effective transportation corridor for bikes and pedestrians. Curb greenery would be beneficial. Good design and good use for the site. Accomplish high density site. There are many opportunities to have on-site affordable housing and that is missing. He suggested the applicant look for partnerships. In regards to architectural styles, it would be helpful to reduce the repetition. Need to do a lot with the street face of Arapahoe and this would be a good opportunity with the design and landscaping. He suggested looking for creative opportunities such as putting in a community center, residential art for street interest, or shops. In regards to Building #2 in flood plain, he is less concerned. He recommended building more of a buffer than what is required, put in more elevation and flood proofing. He is in favor of roof decks and would be good amenity. It would be critical to have EV charging stations and PB on the roof. The board would like to see how the applicant intends to comply with the tough energy code and possibly exceed it. Finally, he asked the applicant to look at opportunities regarding sub-metering and have residents participate in the renewable energy aspects.
- **J. Gerstle** agreed with most everything. Encouraged mixed use along the Arapahoe corridor. Consider more on-site affordable housing and he encouraged the applicant work with institutions in Boulder. He stated that the site does need a dog park, but does not have an opinion as to where. Also, he stated he approves of green roofs. In regards to roof decks, he is in full support. Permeability of project is very important and passage to the south property with a path is very important.
- **B. Bowen** stated that there is some board support for along Arapahoe for mixed use buildings and elevating out of the flood plain. Those two items may make the board amenable to a height modification for those buildings along Arapahoe.
- **L. May** suggested parking not be a part of the rent or come with the unit.

Key Issue #2: Concept Plan Response to Surrounding Residential Context

- The board had no comments on this Key Issue.

Board Summary:

J. Gerstle gave a summary of the board's recommendations. Since this is a Concept Review, no action is required on behalf of the Planning Board. The board felt that the proposed plan was generally consistent with the Comp Plan and responsive to the neighborhood. Specifically, it would be beneficial to have grade level entrances and defensive spaces for individual apartments. The board suggested dividing Building #4 into two separate buildings. The board also suggested connecting to south the proposed site to the adjacent site with foot paths. The board had concern about making the egress from the sub-surface garage attractive and usable and at the same time providing daylight to the sub-surface garage. The proposed landscape plans were attractive, but the board asked the applicant to consider innovative energy systems in terms of renewable and in addition to what the Code requires. There was general support for the requested parking reduction. On-site affordable housing should be seriously considered. Building #2 should be moved out of the 100-year flood plain if possible. The board propose the convert the buildings to two-stories along the south and east elevations. Some board members showed a lack of enthusiasm for the proposed "green roofs" and suggested PV roofs. The board expressed concern regarding the multi-use path along Arapahoe Avenue and that it provides sufficient capacity but

The Division of Housing has reviewed the application for the re-development of Eastpointe. This exhibit discusses three topics which may be useful in assessing the proposed development:

- 1) What is the current and future affordability of this site?
- 2) What are the trade-offs for the Inclusionary Housing approaches?
- 3) What options are available for the relocation of current residents?

Eastpointe Apartments – Current and Future Affordability

The existing Eastpoint Apartment complex has 140 apartments with a combination of one, two and three bedroom units. Table 1 below provides the unit mix by type, size and range of rents.

**Table 1:
Current Eastpointe Unit Mix by Type, Size and Range of Rents**

EastPointe Apartments								
Existing Property Mix and Bedroom Count								
140 units								
beds	baths	unit count	avg sq ft	Current Market Rents		AMI Range		
				low rent	high rents	low AMI	high AMI	
1	1	30	690	\$ 1,126	\$ 2,421	63%	136%	
2	1.5	102	912	\$ 1,254	\$ 2,153	59%	101%	
3	2	8	1025	\$ 1,746	\$ 2,885	71%	117%	
		140						

As can be noted in Table 1, current rents serve households whose incomes range from 59% AMI to 136% AMI, depending on location, market dynamics and general condition of the unit, with an average rent serving tenants who earn 92% of the AMI. In looking at the total cost of housing, however, these apartments are likely serving households with AMIs higher than 100% as the cost of utilities and energy are not included in the rents. Staff has not conducted an in-depth analysis of the current energy costs of these apartments, however, the type of construction and age of the buildings would indicate high overall energy usage and costs. These units would currently be considered “market rate affordable” to middle income households and there is no mechanisms in place to ensure affordability is preserved in the future. In comparison, the recently constructed apartment complex, Solana, which has similarly sized units was required to meet the requirements of the city’s green point program and would therefore be expected to have lower per unit energy usage and costs.

Solana Apartments at 3100 Pearl, a recently built existing rental apartment complex in Boulder with , is comparable to the proposed redevelopment of Eastpointe Apartments, e.g.unit type and size, on-site amenities, proximity to multi-modal transportation, and including unbundled parking (cost of parking is

separate from the cost of the rent). Table 2 below provides a listing of the unit mix by type, size and range of rents.

Table 2:
Solana Unit Mix by Type, Size and Range of Rents

Solana 3100 Pearl 319 market rate units					low rent	high rent	low AMI	high AMI	Rents 100% AMI
0	1	36	622	\$ 1,590	\$ 1,815	96%	109%	\$ 1,660	
1	1	158	774	\$ 1,776	\$ 2,124	100%	119%	\$ 1,778	
2	2	125	1100	\$ 1,995	\$ 2,590	93%	121%	\$ 2,135	

As can be noted in Table 2 the current rents range from 93% AMI to 121% AMI, with an average rent of 106% of AMI. These rents do not include energy costs. This table is intended to be illustrative of potential rents at Eastpointe apartments once redeveloped.

In conclusion, the current housing cost at Eastpointe, serving households earning approximately 92% of AMI on average is lower than some newer comparable market rate apartments of similar size, such as Solana with an average rent serving households earning on average 106% of AMI, but not significantly lower. The difference in energy costs between older less energy efficient buildings and newly constructed energy efficient buildings is likely to result in similar housing costs overall.

Inclusionary Housing Trade-offs

Per Section 9-13, B.R.C.1981 Inclusionary Housing requires that new residential development contribute toward the city's affordable housing goal. The general Inclusionary Housing (IH) requirement is that all residential developments must dedicate 20 percent of the total dwelling units as permanently affordable housing for low and moderate income households. For rental projects this requirement may be met through: 1) the provision of on-site affordable rental or for-sale units, 2) the dedication of comparable existing or newly built off-site permanently affordable rental or for-sale units, 3) the dedication of land appropriate for affordable housing or 4) through a cash-in-lieu contribution or 5) any combination of the options listed. Note that for-sale developments must provide a minimum of half of the required affordable units on-site or pay a CIL premium.

Because rental developments are subject to a state statute which prohibits rent control by municipalities and counties, C.R.S. §38-12-301(5), they do not have a similar on-site minimum or CIL premium.

Of note, a stated objective of [B.R.C. 9-13 Inclusionary Housing](#) is to encourage on-site permanently affordable housing units but allows applicants to select from one of the options. For-sale outcomes over the life of the program have been almost exactly half of the requirement met on-site and half with CIL. Rental

developments, such as Eastpointe, have typically chosen CIL due to the complications of the State Statute which requires that any affordable rental units be owned all or in part by a Housing Authority or similar agency. The applicant's determination of the preferred option is not subject to Concept Plan or Site Review. With all proposed residential development, Staff meets with the applicant at the beginning of the process to encourage on-site affordable housing and provide technical assistance. The representatives for Eastpointe have not at this time indicated definitively which option they intend to implement for their IH requirement, which is not uncommon at the early stage of Concept Plan. The IH option is generally refined during Site Review and finalized prior to building permit submittal. The applicants for Eastpointe have indicated they are leaning towards the cash-in-lieu option but are also considering off-site options.

If the cash-in-lieu option is selected, these funds will be awarded to a community partner to build, rehabilitate or acquire permanently affordable housing. Cash-in-lieu funds when leveraged and combined with the city's community partner's funding sources such as tax credits, private activity bonds, results in a greater number of affordable units than the 20% that would have been provided on-site. The cash-in-lieu contribution provides additional affordable housing in terms of the number of units and can also result in deeper levels of affordability. When on-site affordable rental units are provided, per the Inclusionary Housing Ordinance, they serve tenants earning 60% of the AMI. Off-site units, funded with CIL funds and constructed by an affordable housing partner, often serve tenants earning between 30% and 60% of the AMI.

Examples of affordable development projects funded all or in part with CIL:

1. Boulder Housing Partners
 - a. Red Oak Park, 59 duplexes, triplexes and single family homes serving households with incomes ranging from 30% up to 50% AMI
 - b. High Mar, 59 one and two bedroom units for people 55 years and older serving household with incomes up to 40% AMI
2. Element Properties
 - a. Nest Communities, 151 studios, one, two and three bedroom units serving households with incomes up to 60% AMI
 - b. SPARK West, 45 two and three bedroom units serving households with incomes ranging from 50% up to 60% AMI
3. Imagine Smart Home
 - a. A group home with 8 bedrooms serving individuals with incomes ranging from 30% up to 50% AMI

The Eastpointe Apartments are currently all offered at market rents. A rehabilitation of the existing buildings would not trigger IH and would likely result in higher rents for market units. The proposed redevelopment of Eastpointe would trigger the IH requirement of 47 affordable units or an estimated cash-in-lieu amount of \$4,660,000. If cash-in-lieu is received, based on previous experience, it would likely create approximately 62 affordable housing units serving incomes of a range of 30-60% of AMI.

Relocation Options for Current Residents

Upon redevelopment at Eastpointe, current residents would be required to relocate. Several affordable housing developments could house Eastpointe residents who income qualify for affordable housing. Those who do not income qualify for affordable housing but cannot afford an increase in rent would likely relocate to other market housing in or near Boulder. The table below provides some re-location options including some affordable housing options that will be constructed within the next 24 months This table does not include all market rate housing that will be constructed within the next 24 months.

**Table 3:
Relocation Housing Options**

	Nest at Thunderbird	Nest on 30th	Nest on Osage	SPARK_west	Ciclo	2121 Canyon
Location	4917 Thunderbird Drive	2995 Eagle Way	4990 Osage Drive	3155 Bluff	3390 Valmont	2121 Canyon
Rent/Income Range	50-60% AMI	60% AMI	50-60% AMI	50-60% AMI	60% AMI	Market Rate (~\$1,400-\$2,000/month)
Availability	Renovation Complete in January 2017	Available Now	Available Now	Construction complete in January 2018	Construction complete in summer 2018	Available Now
Studio	0	1	0	0	2	3
1BR	18	23	61	0	30	41
2BR	33	11	87	26	6	15
3BR	1	1	2	19	0	1
Total Units	52	36	150	45	38	60

Conclusion

The current apartments at Eastpointe are slightly more affordable than similar, but much newer market rate units, however, when energy costs are included Eastpointe may not result in lower overall housing costs. The current redevelopment proposal would likely have an outcome of higher market rents and lower energy usage. Through this proposed development an additional 93 housing units over and above the current number of units would be constructed and available to the market. This development would also result in an estimated 47 to 62 permanently affordable housing units that would be created depending on the IH approach implemented on this project. The relocation of current residents is unclear and will depend on the timing of construction, however, there are housing options available at various affordable and market projects around the city over the next 18 months.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November 10, 2016

AGENDA TITLE

Introduction, first reading and motion to publish by title only an ordinance amending the city's code provisions regulating short-term rentals, by amending Title 3 "Revenue and Taxation," amending Section 3-15-2 "Imposition and Rate of Tax" by changing the rentals to which the tax is applicable amending Title 10 "Structures," amending Section 10-1-1 "Definitions" by adding a new definition of "Principal Residence," amending Section 10-3-2 "Rental License Required before Occupancy and License Exemptions," and amending Section 10-3-19 "Short-Term Rentals" and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Bob Eichen, Chief Financial Officer
Maureen Rait, Executive Director, Public Works
David Driskell, Executive Director, Planning Housing and Sustainability
Kurt Firnhaber, Deputy Director, Housing
Dave Thacker, Chief Building Official
Sara Easton, Administrative Services Manager

EXECUTIVE SUMMARY

The purpose of this council agenda item is to amend the city's code provisions relating to short-term rentals. Council passed Ordinance 8050 on September 29, 2015. The ordinance became effective January 4, 2016. After an education period, staff began significant enforcement efforts in June 2016. With ten months of experience, staff has identified several areas where updates would be helpful. The proposed ordinance includes the following proposed changes:

- Defines “Principal Residence”
- Allows for short-term rental of homes held in a living trust.
- Clarifies that the sabbatical exemption and the roomer exemption do not apply to short-term rentals.
- Clarifies that a property with an accessory dwelling unit can have a rental license for either the main house or the accessory unit, but not both.
- Aligns the short-term rental definitions in Sections 10-1-1 and 3-15-2.
- Prohibits any rental that would require a person to sleep in an uninhabitable area.
- Requires any advertisement to include the license number and the occupancy limitation.
- Exempts not-for-profit corporations from the principal residence requirement.

DISCUSSION

Staff began issuing short-term rental licenses on January 4, 2016. As of September 1, 2016, licensing statistics are as follows:

Total License Applications Received:	395
Licenses Issued:	342
Incomplete Applications Pending:	9
Applications Being Processed:	13
Applications Moved to Enforcement:	20
Denied/Withdrawn (<i>could not meet requirements</i>)	35

Generally, staff allows a period for education before issuing citations for violation of a new ordinance. With respect to short-term rentals, this period ended as of June 1, 2016. To date, staff has received complaints about 33 properties and undertaken pro-active investigations of another 120 properties. The chart in Attachment B breaks down enforcement data by neighborhood for both long-term and short-term rentals.

Prior to June 6, 2016, the city had only one compliance specialist for both long-term and short-term rentals. After that date, the city has had a dedicated compliance specialist for long-term rentals and another for short-term rentals. This has naturally increased enforcement activity. In the six months prior to June 6, staff initiated 12 pro-active short-term rental enforcement cases. In less than five months between June 6 and October 31, staff initiated an additional 108 pro-active short-term rental enforcement cases. Staff expects to see increased compliance throughout the remainder of the year.

PROPOSED CHANGES

With ten months experience, staff has developed a few recommendations for potential changes.

1. Principal Residence

Council limited short-term rentals to the owner's principal residence. Council was concerned with balancing the desire of residents to earn extra income by using their homes for short-term rentals with a concern that short-term rentals could further exacerbate housing conditions in Boulder by encouraging the conversion of long-term rentals into short-term rentals. Council reasoned that an owner-occupied home was not available for long-term rental and therefore short-term rental of such homes would not affect the long-term rental market.

Ordinance 8050 did not define principal residence. Originally council considered limiting rentals to a number of days, but decided that such a limitation would be difficult to enforce. Staff has required that applicants prove that the property is their principal residence by showing a driver's license, voter registration or other documentary proof of residence in the property at issue. Unfortunately, several individuals have attempted to circumvent this requirement. Staff and council have received several complaints about individuals renting properties for short-term that appear not to be the owner's principal residence.

Defining principal residence is difficult. The most obvious definition is the place where a person principally resides, which is little help. For example, the Internal Revenue Code does not include a definition of principal residence. Instead IRS Publication 523 includes the following:

If you own or live in more than one home, the test for determining which one is your main home is a "facts and circumstances" test.

The most important factor is where you spend the most time. However, other factors can enter the picture as well. The more of these that are true of a home, the more likely it is your main home:

- The address listed on your:
 1. U.S. Postal Service address,
 2. Voter Registration Card,
 3. Federal and state tax returns, and
 4. Driver's license or car registration.

- The home is near:
 1. Where you work,
 2. Where you bank,
 3. The residence of one or more family members, and
 4. Recreational clubs or religious organizations of which you are a member.

I.R.S. Publication 523.

Simply adding a statement that the principal residence is the one where a person spends the most time, did not seem to be helpful. Instead, staff proposes that the definition establish a standard that the home is one in which the person lives more than half the time, combined with rebuttal presumptions that based on experience thus far tend to indicate that a property is not a person's principal residence. The proposed ordinance includes the following definition of principal residence:

Principal Residence means the dwelling unit in which a person resides for more than one half of the year. However, if (1) the entire unit is offered and available for rental for more than 20 days in any month; or, (2) the person owns another dwelling unit in Boulder County that is not licensed for rental; (3) the person's spouse or domestic partner has a different principal residence; (4) the person's driver's license, voter registration or any dependent's school registration shows a different residence address, or (5) the Boulder County Assessor lists a mailing address different from the dwelling unit address it shall be presumed that the dwelling unit in question is not a principal residence. Provided, however, no presumption shall apply in any criminal proceeding.¹

These presumptions are rebuttable, but each must be rebutted by credible evidence from the party claiming that the dwelling is a principal residence.

The presumptions are rebuttable, because there may be an explanation to support a claim that a particular property is a person's principal residence. For example, a recent move might result in a driver's license with an old address. A person would simply need to demonstrate that he or she no longer holds a property interest in the former address. This new definition should give both licensing and enforcement staff additional tools to address this issue.

2. Living Trust

Section 10-3-19 requires that short-term rental licenses only be issued to "natural persons." This provision was intended to limit investors from purchasing properties through limited liability corporations and using them for short-term rentals. As the licensing program was implemented a few people applied for short-term licenses for properties held in living trusts. Generally, people place properties in living trust for estate planning purposes and not as an investment. Although the individuals involved have been vocal, these properties are a subset of the six that have been denied licenses because they are not qualified. Thus, a change may not affect a significant number of properties. The proposed ordinance would allow a short-term rental license to be issued to a trust, if the beneficiary is a natural person and the property is the beneficiary's principal residence.

¹ Under Colorado law in any criminal proceeding the prosecution bears the burden of proving each element of an offense beyond a reasonable doubt. Presumptions are not permitted in criminal cases. Enforcement of short-term rental violations is through notices of violations that can be appealed to the municipal court. These appeals are civil in nature and not restricted by the criminal burden of proof.

3. The Sabbatical and Roomer Exemptions

Short-term rentals are licensed under the code provisions relating to long-term rentals. Section 10-3-2(b) includes exemptions from the long-term rental licensing program. One, allows an owner to rent to two “roomers.” The second allows an owner to rent a property for up to a year, in a two-year period, if during that time, the owner is living outside of Boulder County and occupies the property both before and after the rental. Neither of these exemptions was intended to apply to short-term rentals, but because of the structure of the code, they could be read to apply. The proposed ordinance clarifies that neither exemption applies to short-term rentals.

4. Auxiliary Dwelling Units

Council specified that an owner could have a short-term rental license for either an accessory dwelling unit or the principal dwelling unit, but not both. Ordinance 8050 included this prohibition, but referred only to short-term rental licenses. This caused some individuals to argue that one of the units could be licensed for long-term rental and the other for short-term rental. The proposed ordinance clarifies that there can be only one rental license per property.

5. The definitions in Sections 10-1-1 and 3-15-2

There is an inconsistency in the definitions between title ten and the tax code. The relevant language is as follows:

10-1-1. – Definitions.

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 thirty 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.

3-15-2. – Imposition and Rate of Tax.

There is and shall be paid and collected an excise tax of seven and one-half percent on the price paid for the leasing or rental of any dwelling unit for a period of *thirty days or less*. This tax does not apply to any person subject to Chapter 3-3 "Public Accommodations Tax," B.R.C. 1981.

6. Uninhabitable Areas

The proposed ordinance clarifies that no person is permitted to sleep in an area that would be considered uninhabitable under the International Property Maintenance Code.

7. Advertisements

The proposed ordinance would include a provision in the section relating to short-term rentals that would require all advertisements for short-term rentals to include the license number and the maximum number of unrelated occupants permitted. Enforcement staff requested that the requirement for the license number be included in the short-term rental section, to highlight it for licensees. The occupancy limitation is important because most advertisements include the number of guests that the property “sleeps.” One of the most common complaints has been that large parties of unrelated guests have been disruptive to neighborhoods. This provision is intended to assist with that issue.

6. Non-profits

The operator of the Highland School property has approached staff about a potential exemption for their property. The organization rents out units. They have requested an exemption for non-profits. The proposed ordinance includes such an exemption.

ATTACHMENTS

Attachment A – Proposed Ordinance

Attachment B – Enforcement Data by Neighborhood

ORDINANCE 8154

AN ORDINANCE AMENDING TITLE 3 “REVENUE AND TAXATION,” AMENDING SECTION 3-15-2 “IMPOSITION AND RATE OF TAX” BY CHANGING THE RENTALS TO WHICH THE TAX IS APPLICABLE, AMENDING TITLE 10 “STRUCTURES,” AMENDING SECTION 10-1-1 “DEFINITIONS” BY ADDING A NEW DEFINITION OF “PRINCIPAL RESIDENCE,” AMENDING SECTION 10-3-2 “RENTAL LICENSE REQUIRED BEFORE OCCUPANCY AND LICENSE EXEMPTIONS,” AND AMENDING 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 3-15-2 is amended to read as follows:

3-15-2. – Imposition and Rate of Tax.

There is and shall be paid and collected an excise tax of seven and one-half percent on the price paid for the leasing or rental of any dwelling unit for a period of less than thirty days ~~or less~~. This tax does not apply to any person subject to Chapter 3-3 "Public Accommodations Tax," B.R.C. 1981.

Section 2. Section 10-1-1 is amended to add the following:

10-1-1. – Definitions.

...

Principal Residence means the dwelling unit in which a person resides for more than one half of the year. However, if (1) the entire unit is offered and available for rental for more than 20 days in any month; or, (2) the person owns another dwelling unit in Boulder County that is not licensed for rental; (3) the person’s spouse or domestic partner has a different principal residence; (4) the person’s driver’s license, voter registration or any dependent’s school registration shows a different residence address, or (5) the Boulder County Assessor lists a mailing address different from the dwelling unit address it shall be presumed that the dwelling unit in question is not a principal residence. Provided, however, no presumption shall apply in any criminal proceeding.

These presumptions are rebuttable, but each must be rebutted by credible evidence from the party claiming that the dwelling is a principal residence.

...

1 Section 3. Section 10-3-2 is amended to read as follows:

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

3 (a) No operator shall allow, or offer to allow through advertisement or otherwise, any person
4 to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration
5 unless each room or group of rooms constituting the rental property has been issued a valid rental
6 license by the city manager. Any advertisement shall include the rental licensing number
7 assigned by the city manager.

8 (b) Buildings, or building areas, described in one or more of the following paragraphs are
9 exempted from the requirement to obtain a rental license from the city manager, provided
10 however that the exemptions in subsections (b)(1) and (b)(2) below shall not apply to short-term
11 rentals.

12 (1) Any dwelling unit occupied by the owner or members of the owner's family who
13 are at least 21 years of age and housing no more than two roomers who are unrelated to the
14 owner or the owner's family. An owner includes an occupant who certifies that the occupant
15 owns an interest in a corporation, firm, partnership, association, organization or any other group
16 acting as a unit that owns the rental property.

17 (2) A dwelling unit meeting all of the following conditions:

18 (A) The dwelling unit constitutes the owner's principal residence;

19 (B) The dwelling unit is temporarily rented by the owner for a period of time
20 no greater than twelve consecutive months in any twenty-four-month
21 period;

22 (C) The dwelling unit was occupied by the owner immediately before its
23 rental;

24 (D) The owner of the dwelling unit is temporarily living outside of Boulder
25 County; and

 (E) The owner intends to re-occupy the dwelling unit upon termination of the
temporary rental period identified in subparagraph (b)(2)(B) of this
section.

 (3) Commercial hotel and motel occupancies which offer lodging accommodations
primarily for periods of time less than thirty days, but bed and breakfast facilities are not
excluded from rental license requirements.

 (4) Common areas and elements of buildings containing attached, but individually
owned, dwelling units.

1 Section 4. Section 10-3-19 is amended to read as follows:

2 **10-3-19. – Short-Term Rentals.**

3 (a) Short-term rentals are prohibited unless the city manager has issued a valid short-term rental
4 license for the property. except:

5 (b) The City Manager shall only issue a rental license for short-term rental to

6 (1) A natural person, whose name appears on the deed to the property;

7 (2) A trust, if the beneficiary of the trust is a natural person;

8 (3) A not-for-profit corporation licensed pursuant to section 501(c) of the Internal
9 Revenue Code, provided, however, the City Manager shall have discretion to reject any
10 application for a not-for-profit corporation if the City Manager deems the application to be
11 inconsistent with the goals of this chapter;

12 (c) Any application for a rental license for short--term rental shall include the following:

13 (1) If the applicant is a natural person, the application must include a sworn statement
14 that the dwelling unit to be licensed is the applicant's~~if the rental is of the operator's~~ principal
15 residence;

16 (2) If the applicant is a trust, a sworn statement that the dwelling unit is a beneficiary's
17 principal residence;

18 (3) If the applicant is a not-for-profit corporation, the application shall include proof of
19 the corporation's status under section 501(c) of the Internal Revenue Code and a statement of the
20 manner in which short--term rentals serve the organization's charitable purpose; and

21 (4) A certification that the dwelling unit is equipped with operational smoke detectors,
22 carbon monoxide detectors and other life safety equipment as may be required by the city
23 manager.

24 (5) The names and telephone numbers of two contacts who for owner-operated rentals
25 can be permanent residents on the property and who are capable of responding to the property
within sixty minutes.

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

(e3) If a dwelling unit is licensed for short-term rental, then no accessory unit on the same
property may be licensed or used as issued a short-term rental license;

1 ~~(f4)~~ If the applicant operator is a natural person, and the applicant's operator's name must appears
2 on the deed to the property on which the dwelling unit to be rented is located;

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

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

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

15 ~~(g)~~ (8) The City Manager shall not issue an license for short-term rental of If the rental property
16 is not a permanently affordable dwelling unit.

17 ~~(hb)~~ Short-term rentals, ~~other than short term rentals of,~~ shall not be subject to the inspection
18 requirements of Section 10-3-3(a)(1)(A), “Licenses,” B.R.C. 1981 except:

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

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

24 (j) The occupancy of a dwelling unit rented as a short-term rental shall not exceed the
25 occupancy permitted pursuant to Section 9-8-5, “Occupancy of Dwelling Units,” B.R.C. 1981;
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 accessory unit shall be limited to
a family or two unrelated persons;

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

(l) No person shall rent a dwelling unit in a manner that requires or encourages a person to sleep
in an area that is not habitable as that term is used in the International Property Maintenance

1 Code as adopted in § 10-2-2, “Adoption of the International Property Maintenance Code with
2 Modifications,” B.R.C. 1981.

3 (m) No person shall advertise a short-term rental, unless the advertisement includes the license
4 number and the maximum unrelated occupancy permitted in the unit.

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

8 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
9 TITLE ONLY this 10th day of November, 2016.

11 _____
12 Suzanne Jones
13 Mayor

14 Attest:

15 _____
16 Lynnette Beck
17 City Clerk

18 READ ON SECOND READING, PASSED, AND ADOPTED this 6th day of December,
19 2016.

20 _____
21 Suzanne Jones
22 Mayor

23 Attest:

24 _____
25 Lynnette Beck
City Clerk

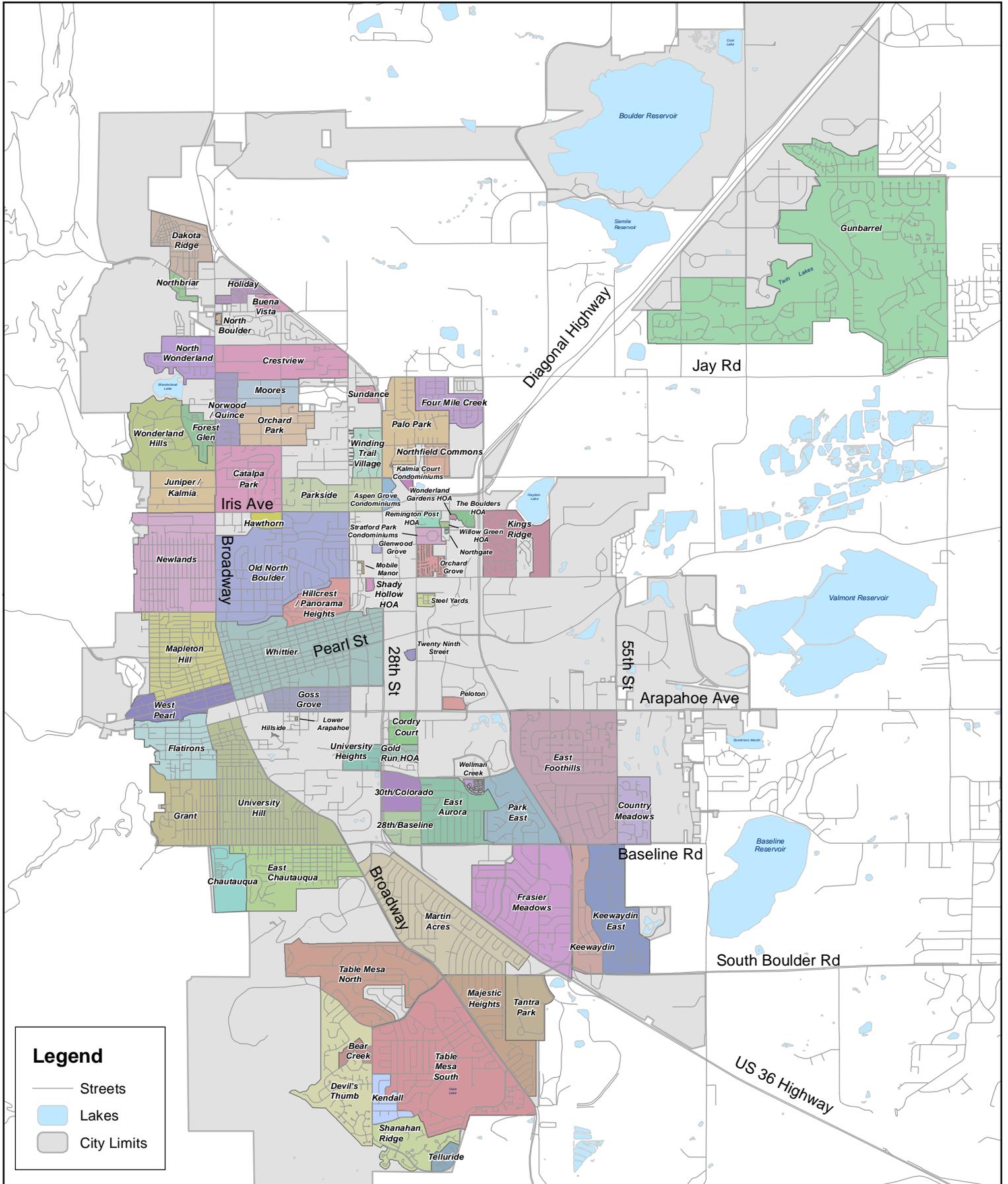
Attachment B – Enforcement Data by Neighborhood

Rental License Enforcement Reporting Areas	Standard Rental		Short-Term Rental		Total
	By Complaint	ProActive	By Complaint	ProActive	
28TH/BASELINE	4	3			7
30TH/COLORADO		2			2
ASPEN GROVE CONDOMINIUMS	1	7			8
BEAR CREEK		2			2
BUENA VISTA		1		2	3
CATALPA PARK	2	4			6
CHAUTAUQUA		3			3
CORDRY COURT				2	2
COUNTRY MEADOWS		8			8
CRESTVIEW	3	3	1	3	10
DAKOTA RIDGE		11	1	1	13
DEVIL'S THUMB	1	1	1	2	5
EAST AURORA	4	11		1	16
EAST CHAUTAUQUA		7			7
EAST FOOTHILLS	5	10	3		18
FLATIRONS	1	12	2	2	17
FOREST GLEN				1	1
FOUR MILE CREEK		1		1	2
FRASIER MEADOWS	5	6	1	1	13
GLENWOOD GROVE		3	1		4
GOLD RUN HOA	1	4			5
GOSS GROVE	5	15		1	21
GRANT	2	6		1	9
GUNBARREL	6	9	1		16
HAWTHORN	1	1			2
HILLCREST / PANORAMA HEIGHTS		4	1	3	8
HILLSIDE		1			1
HOLIDAY		17	1	4	22
JUNIPER / KALMIA	1				1
KALMIA COURT CONDOMINIUMS		1			1
KEEWAYDIN ASSOC		6		4	10
KEEWAYDIN EAST		5	1		6
KENDALL	1	1		3	5
KINGS RIDGE	1	10		1	12
LOWER ARAPAHOE		3			3
MAJESTIC HEIGHTS	3	11			14
MAPLETON HILL	5	24	4	10	43
MARTIN ACRES	5	25		4	34
MOBILE MANOR		1			1
MOORES	1	10		2	13

Attachment B – Enforcement Data by Neighborhood

NEWLANDS	8	18		9	35
NONE IDENTIFIED		1			1
NORTH BOULDER		2			2
NORTH WONDERLAND		4	3	3	10
NORTHBRIAR		1			1
NORTHFIELD COMMONS	2	1	3	1	7
NORTHGATE CONDOMINIUMS		1			1
NORWOOD / QUINCE	1	3		1	5
NOT APPLICABLE		2		2	4
OLD NORTH BOULDER	4	18	2	5	29
ORCHARD GROVE		1			1
ORCHARD PARK	1	2			3
PALO PARK	1			1	2
PARK EAST	2	12		4	18
PARKSIDE		13			13
PELTON		2			2
REMINGTON POST HOA	1	4			5
SHADY HOLLOW HOA		2			2
SHANAHAN RIDGE	1	6			7
STEEL YARDS		1			1
STRATFORD PARK CONDOMINIUMS	3	11			14
SUNDANCE		5		1	6
TABLE MESA NORTH	1	5			6
TABLE MESA SOUTH	5	23		4	32
TANTRA PARK		11			11
TELLURIDE	1	2	1	1	5
THE BOULDERS HOA		3	1		4
TWENTY NINTH STREET		1			1
UNIVERSITY HEIGHTS		4		1	5
UNIVERSITY HILL	9	35		9	53
WELLMAN CREEK		1		1	2
WEST PEARL	3	6		1	10
WHITTIER	11	54	3	24	92
WILLOW GREEN HOA		2			2
WINDING TRAIL VILLAGE	5	10		1	16
WONDERLAND GARDENS HOA		3			3
WONDERLAND HILLS	4	3	2	2	11
Total	121	522	33	120	796

Attachment B – Enforcement Data by Neighborhood



Legend

- Streets
- Lakes
- City Limits

NORTH
 Packet Page 61
 1 inch = 5,000 feet

Rental Housing Licensing Reporting Areas

The information depicted on this map is provided as graphical representation only. The City of Boulder provides no warranty, expressed or implied, as to the accuracy, completeness, or timeliness of the information. www.cityofboulder.com Page 14





**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November 10, 2016

AGENDA TITLE:

Matters from CMO: Review of “Policy on Acquisition and Maintenance of Public Art by the City” (Internal Policy)

PRESENTER/S

Jane S. Brautigam, City Manager
David Farnan, Library and Arts Director
Matt Chasansky, Office of Arts and Culture Manager

EXECUTIVE SUMMARY

The purpose of this item is to provide an update on progress to implement the Community Cultural Plan and to inform council of content and processes the City Manager’s Office plans to adopt in the 2016 internal “Policy on Acquisition and Maintenance of Public Art by the City” (**Attachment A**). This updated policy would replace the current “Revised Interim Policy on Public Arts” (effective 8.1.2011; revised 8.25.15).

The Community Cultural Plan was adopted by council on Nov. 17, 2015. Now, with nearly a year of implementation, the community has its first opportunity to look at the impact and preview next steps. To review the full Community Cultural Plan or an executive summary, please visit the following website:

<http://boulderarts.org/community-cultural-plan>.

Of the eight strategy areas recommended in the Community Cultural Plan, the focus of staff has been on two priorities: 1) “Support our Cultural Organizations,” including the cultural grants program, and 2) “Reinvent our Public Art Program.” Below are a few highlights of progress on these priority strategies

- > The new Boulder Arts Commission cultural grants program was launched, focused around a substantial restructuring of the funds, process and evaluation in order to best support the city's existing marketplace of cultural organizations. Of the \$450,000 distributed, nearly 85 percent was assigned to general operating support grants for 18 organizations. This cornerstone initiative has already shown great benefits; not only are the funds being used to ensure organizational stability, but new projects are underway and new employees have been hired thanks in part to these grants.
- > The Arts Commission has distributed scholarship funds to support professional development of cultural leaders. As of the writing of this memo, 13 creative professionals from Boulder have visited a wide range of conferences, workshops and events -- everything from the Americans for the Arts annual conference to the Moog Festival, from the COP22 Climate Conference to an elite cobbler training.
- > A sponsorship fund was used to fill in the gaps of the grants program: to address projects that do not fit in the criteria of the grants and to ensure that every opportunity to advance the cultural plan is explored. Sponsored programs in 2016 included the Dairy Center Honors, a Hackfest at the Boulder Museum of Contemporary Art, John Geiger's sculpture *Roam* presented by Black Cube, and eTown's 25th Anniversary events.
- > The *Experiments in Public Art* series got off to a great start with five projects designed to spark conversation about what public art can mean to our community. This art-facilitated dialogue will pave the way for thoughtful inclusion of the community in the future of the public art program. These temporary projects took the form of engaging, unusual interventions in public spaces. More information and a few videos are available at the following website:
www.experimentsinpublicart.org.

New projects in the *Experiments in Public Art* series are planned for the coming months and throughout 2017.

- > The Office of Arts and Culture convened Boulder's cultural leadership on several occasions. These regular "Cultural Summits" invited the staff and board members of our cultural organizations to gather, share learning and participate in conversations important to that community.

In addition to the two priority strategies, staff has spent the year breaking new ground in other aspects of the Cultural Plan:

- > Staff is engaged in several research projects in the community. Most significant is Arts and Prosperity 5, which will establish the contribution of Boulder's culture and audiences to the economy and compare that to hundreds of cities across the country.

- > The third Boulder Arts Week was sponsored in part by the Office of Arts and Culture with the goal of expanding cultural audiences, encouraging collaboration, and highlighting the remarkable levels of community participation in the arts.
- > Staff is collaborating with the Bonfils Stanton Foundation and Arts & Venues Denver on a feasibility study to determine if the Denver-Boulder Metro Area might benefit from a regional cultural alliance. That study will continue into 2017.
- > The manager of the Office of Arts and Culture was honored to take part in an elite national convening hosted by Americans for the Arts. This “executive leadership forum” invited 20 of the country’s most innovative local arts agencies for collaborative sessions on the National Art Policy Roundtable, workshops on the most pressing issues in cultural affairs, and a think tank on an upcoming advocacy campaign.
- > The Office of Arts and Culture has piloted a few initiatives to serve as the foundation for robust programs for artists and creative professionals. A sponsorship for Boulder County Arts Alliance has expanded its Business of the Arts professional workshops. Twice, staff has facilitated gatherings of professional artists. Also, the Office of Arts and Culture has hosted conversations about how to build meaningful improvements to support the ability of artists to live and work in Boulder. This included a field trip to Loveland and Fort Collins to research artist live/work developments in those communities.
- > Staff has been working to integrate the vision and community priorities from the Cultural Plan horizontally across many aspects of government including participation in the Boulder Valley Comprehensive Plan Update, the Civic Area project, the University Hill coordination team, the Alpine/Balsam project, the Climate Commitment Task Force, the Library Master Plan update, and other projects.
- > With consultation from the Boulder Arts Commission, the Office of Arts and Culture has adopted a Statement on Cultural Equity.

Work continues to make these strategies successful. In particular, though the first round of cultural grants was very successful, the process exposed a need for the program to mature. After interviewing applicants to the grants, and in consultation with the members of the Arts Commission over the course of several months, staff has fine-tuned the structure and process for the 2017 grants cycle to significantly improve the city’s ability to meet the goals of the program. Among the many improvements that have been made, the more important vulnerability that was identified by the community and the members of the Arts Commission was the fact that the program was significantly underfunded.

Other improvements to the grants include the extension of general operating support and the implementation of a jury panel. Also, staff has begun discussion with the

administration of Boulder Valley School District to begin awarding cultural field trip scholarships. This new program will help clear the barriers, especially among students in Title 1 schools, to that first, formative arts experience.

Further action on recommendations in the cultural plan are underway as part of the work plan for 2017:

- > A proclamation will be recommended to City Council from the Office of Arts and Culture and the Community Vitality Department to officially recognize the NoBo Art District and begin collaborating in support of the concentration of artists in North Boulder.
- > Staff will collaborate with the Neighborhood Services Office to pilot a few of the recommended concepts for deploying cultural affairs at a neighborhood level.
- > With the Statement on Cultural Equity as a springboard, staff will partner with the Boulder Arts Commission to mobilize a task force on Equity and Authentic Diversity. Over the next two years, the task force will investigate ways that the recommendations of the Cultural Plan can be best deployed for underserved communities.
- > New programs for artists will be launched, including a fellowship and an artist-in-residence project. Also, a census of practicing artists will be launched to establish a baseline for the long-term study of the impacts artists have on our community.
- > In anticipation of the results of Arts and Prosperity 5, as well as new economic data from the Colorado Business Committee for the Arts and data collected from grant recipients, staff will initiate a new engagement campaign around the benefits of cultural participation for the economy, public safety, civic engagement and climate action.
- > The public art program will begin in dramatic fashion with the selection of an artist for a major work in the Civic Area. Other public art projects funded by the Community Culture and Safety Tax also will be rolled out. And, temporary projects in the *Experiments in Public Art* series will continue through the year.
- > Discussions will begin in 2017 to establish sustainable funding for the public art program. For consideration will be a municipal model, for instance a percent-for-art requirement on capital construction, as well as the continuation of a feasibility study for public art in private developments.

The work to fully implement recommendations for the public art program relies on the critical first step of a final, permanent public art policy to govern the municipal commissioning process. Council's advice on this policy is sought in this meeting.

The need for a new policy is articulated in the Community Cultural Plan, and supported by the city manager. Using the former Temporary Policy on Public Art as a foundation, new content was added to ensure a streamlined, transparent and effective process.

Improvements include:

1. An enhanced purpose;
2. Streamlined administration;
3. A more strategic acquisition process with increased community engagement;
4. Processes for unconventional opportunities, temporary art, donations, relocations, and deaccessions; and
5. Better clarity and organization of language.

The Public Art Policy will guide all city departments in the acquisition and maintenance of public art, and will be administered by the Office of Arts and Culture. The Public Art Policy is an internal policy, and does not extend beyond the city manager. However, this document was written to be public-facing to contribute toward increased transparency.

Once adopted by the city manager, the “Policy on Acquisition and Maintenance of Public Art by the City” will go into effect immediately.

STAFF RECOMMENDATION

Suggested Motion Language:

Motion to recommend the City Manager adopt the Public Art Policy.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economically Vital Community – Cultural investment affects Boulder’s workforce. The programs offered by the Office of Arts and Culture are designed to enhance the vitality of the creative economy and support artists and creative professionals. In the case of the public art program, the investment in artists goes further than supportive programs to directly invest. Commissioned artists earn a design fee, and government spending on art directly translates to economic activity when those artists hire contractors (including engineers, fabricators, construction contractors, electricians, and others); purchase services and materials (including legal, insurance, design, and others); and spend concentrated time in our community (including investment in lodging, restaurants, facilities, and others).

In a recent study, the National Endowment for the Arts reinforced this idea that artists matter to the economic well-being of a community. The endowment’s Creativity Connects Report examines the place of artists in the workforce.

Among their findings is that Boulder continues to be a place that artists choose to live and work. Three percent of Boulder’s workforce are practicing, professional artists, and ranks third behind only Santa Fe and Los Angeles. For more details on this report, please visit the following website:

<https://www.arts.gov/50th/creativity-connects/report>.

In addition, the programs of the Office of Arts and Culture invest in are complementary assets for cultural tourism in Boulder: a powerful and innovative mix of exhibitions, performances, artworks, events and festivals. The Office of Arts and Culture supports the organizations and individuals that are creating this portfolio of remarkable experiences for visitors. The public art program adds additional capital, directly investing in physical assets that can add texture to a vibrant visual environment and create place-making sculptures and other forms of art that attract visitors.

Recently, the economic impact of cultural investment has been evaluated by the Colorado Business Committee for the Arts. In its 2016 Economic Activity Study, the committee found that the metro-area’s cultural attractions generate \$1.8 billion in total economic activity and \$512.8 million in direct spending. The programs of the Office of Arts and Culture help to ensure that Boulder’s share of the benefits of this sector continue to flourish. For more details on the 2016 Economic Activity Study, please visit this website:

<http://cbca.org/programs/economic-activities-study/>.

- Environmentally Sustainable Community – The public art program includes initiatives to create interesting places, which includes addressing “visual deserts.” This encourages citizens to explore their community as pedestrians or cyclists, helping support alternatives to single-occupancy vehicle usage as a primary mode of transport.
- Livable Community – The urban environment comes alive for residents when public spaces are thoughtfully filled with arts experiences. The Office of Arts and Culture contributes to a variety of aesthetic offerings, including the commissioning of public art on a civic scale.

These and other direct connections between the programs of the Office of Arts and Culture and the Sustainability Framework can be found in **Attachment B**.

OTHER IMPACTS

- Fiscal – This policy does not introduce any new budgetary impacts, except those that have already been identified as part of capital projects or in the Community Culture and Safety Tax. However, the discussion to identify sustainable funding for public art has been acknowledged as a consideration for future years.

Therefore, staff at the Office of Arts and Culture is working across city departments to help project managers anticipate that impact now.

- Staff time – With approval and implementation of the policy, current staff in the Office of Arts and Culture will reallocate time to implement the public art program. Staff in departments that have previously managed public art commissions will likely need to spend less time on the projects than they have in the past. Also, the policy identifies a “Technical Review Committee” of city employees to inform successful project development. Participation in this committee will be minimal, and generally assigned to staff members who would have already been identified as spending part of their time on the project team.

BOARD AND COMMISSION FEEDBACK

In a meeting on Oct. 29, 2016 the Boulder Arts Commission expressed its support for the Public Art Policy.

PUBLIC FEEDBACK

The Community Cultural Plan engaged with thousands of residents to determine the community’s priorities and needs for a public art program, which are captured in the policy.

Over the course of several months, public feedback was gathered at meetings of the Boulder Arts Commission and informally during 20 public art events occurring across the city in summer and fall of 2016.

BACKGROUND

The organizing principles and community priorities that affect the Public Art Policy were explored through the extensive engagement phase of the Community Cultural Plan in 2014 and 2015. The specific process to rewrite the policy took place over the course four months. A stakeholder team with representatives from 10 city departments participated in the process, along with representatives from the Boulder Arts Commission and members of the community. The engagement included a series of focus group discussions, individual interviews with key staff, a public engagement event at the Boulder Farmer’s Market, and a table-top exercise.

ANALYSIS

Staff is recommending support of the internal Policy on Acquisition and Maintenance of Public Art by the City.

MATRIX OF OPTIONS

The following options are open for action by City Council:

1. Council may decide to support this policy and recommend that the city manager adopt it.

2. Council may decide that the policy requires certain specific revisions, and ask the city manager to work with staff to redraft those elements. Staff would need detailed directions from council to take these steps.

ATTACHMENTS

- Draft Policy on Acquisition and Maintenance of Public Art by the City
- Connections to the Sustainability Framework from the Community Cultural Plan

CITY OF BOULDER

POLICIES AND PROCEDURES

EFFECTIVE DATE:

Policy on Acquisition and Maintenance of Public Art by the City

Jane S. Brautigam, City Manager

I. GENERAL POLICY

It is the policy of the City of Boulder ("City"), as a form of government speech, to commission, accept, display, and maintain public art on City-owned or managed property consistent with the procedures outlined below.

II. PURPOSE

The City will acquire works of art which encourage creativity, contribute to a sense of place, spark conversation, tell our shared stories and capture our moment in time, foster the enjoyment of diverse works of art, and are thoughtfully designed contributions to the urban environment of our vibrant city.

The purpose of this policy is to establish procedures for the acquisition and maintenance of public art for the City.

The intent of this policy is to commission a wide variety of artworks representing the most innovative approaches to contemporary practice in the arts, commission works of enduring value, and cultivate a diversity of artists and arts experiences within the city of Boulder.

This Public Art Policy addresses the many facets of a public art collection, with the goal of building a collection that embraces depth and quality of concept, interpretation and execution. This policy is supported by the Boulder Valley Comprehensive Plan, and specific goals articulated within the Boulder community (See Appendix B: Reference to City Policies and Plans, p 20). This policy additionally reflects priorities found within the Community Cultural Plan (see Appendix C: Community Cultural Plan Public Art Excerpts, p 21-22). In particular:

Focus on the expression of culture and creativity in the public realm through public art, the urban landscape, culture in the neighborhoods, and serendipitous encounters with the arts.

III. **SCOPE**

This policy applies to all works of art that are commissioned or acquired, including both temporary and permanent works, and meet all of the following criteria:

- A. Funded in whole or in part through City funds or under the agreement that maintaining the artwork is the responsibility of the City;
- B. Sited on City property, building, or right-of-way;
- C. Consistently accessible to the public.

IV. **LIMITATIONS**

The policy does not extend to:

- A. Artworks on display within City offices or City buildings that have restricted public access or regulated access. This includes artworks acquired for the sole purpose of office adornment and not for overall public experience.
- B. Temporary exhibitions of artworks (such as gallery displays, booth displays at art festivals, individual artworks, or museum exhibits) displayed on City-owned or –managed property where the owner of such artwork has or intends to: retain ownership of the work; assume all responsibility associated with that display; remove it after an agreed upon duration has concluded, which shall not exceed two years.
 - 1. One-time, temporary exhibitions require a Temporary Art Permit which shall be obtained through the Office of Arts and Culture. These permits will be vetted for feasibility through an internal Technical Review Committee.
 - 2. Ongoing programming and exhibitions in City-owned cultural venues are at the discretion of the facility operator.

V. **APPLICABILITY**

The placement of public art on public property is a form of government speech and as such, is not subject to scrutiny under the Free Speech Clause. Therefore, the City has broad discretion to make decisions related to public art on public property.

The City shall honor other local, state and federal laws that may apply, including but not limited to the Colorado Fair Campaign Practices Act. The City shall exercise final approval authority over all decisions regarding public art on City property.

VI. **DEFINITIONS**

For full definition list, see Appendix A: Definitions (pp 17-19)

For the purposes of this policy, public art is defined as, but need not be limited to, unique, one-of-a-kind artwork conceived with its site in mind and of the following:

- A. Sculpture
- B. Painting
- C. Mixed Media, Collage
- D. Earth works, Environmental Art, Installations
- E. Sound Art
- F. Time-based Media, Film/Video, Digital Art, Web-based Art, Projections
- G. Light-based Art Installations
- H. Temporary Art, Conceptual Art, Social Practice Events
- I. Music
- J. Performance Art, Dance, Movement
- K. Literary Works
- L. Original Printmaking and Photography, Original Graphics
- M. Fiber Arts, Textile, Stained Glass, Metalwork, and Other Crafts
- N. Ceramic Arts, Mosaics

For the purposes of this policy, the following are not considered public art:

- A. Directional Elements, Wayfinding, Signage, Color-Coding (except where these elements are an integral part of the artwork.)
- B. Donor Bricks and Plaques
- C. Decorations
- D. Non-Original Works of Art of All Media, including reproductions
- E. Public Improvements for Safety such as area or path lighting, protective railings, etc. (except where these elements are an integral part of the artwork.)
- F. Landscape Design or Gardens (when used for decoration unless designed by an artist and are an integral part of the artwork.)

VII. ADMINISTRATION

Oversight and coordination of the City of Boulder Public Art Program and all works of public art acquired by the City of Boulder, including their budgets, are the sole responsibility of the Library & Arts Department Office of Arts and Culture, and its Public Art Program staff. The Office of Arts and Culture will additionally serve as the leading expert commissioning and overseeing the maintenance of the public art collection. The Boulder Arts Commission (Arts Commission) will serve as an advisory, engagement group in support of the execution of this policy.

A. **Public Art Implementation Plans** – Commonly known as public art master plans, these Public Art Implementation Plans are supplemental strategic documents that provide guidance to all City staff on planned public art projects. Project Managers are encouraged to notify the Office of Arts and Culture of capital projects that have a potential for public art as early as possible for successful integration. Project Managers will support the Office of Arts in Culture in the creation of the Public Art Implementation Plans. These Plans will provide direction to the following:

1. Project(s) Goals
2. Site Context, Narrative and Themes
3. Project Budget
4. Project Timeline
5. Selection Process
6. Anticipated Artwork Lifespan
7. Project Site and Anticipated Scale
8. Selection Panel Participants
9. Technical Review Committee Participants
10. Public Inquiry Process

These plans are generated biennially by the Office of Arts and Culture, and may occasionally be generated to serve individual projects of significant size or special significance to the community.

VIII. FUNDING FOR ACQUISITIONS:

Except in the case of donated services, donated funds or donated public art, a variety of operating City budget sources may be used to fund public art at the discretion of City staff. Regardless of source, all public art commissions will be overseen by the Office of Arts and Culture. Upon the assignment of funding for any individual public art project, those funds will be transferred into a special account set aside specifically for the public art program. The public art process can begin any time following the allocation of a budget, and should be allocated as early as possible. As a general guideline, capital projects should consider assigning 1% or more of a capital project construction budget for the purposes of commissioning or acquiring public art that will enhance and be associated with the project.

IX. PROCEDURES FOR THE ACQUISITION OF PUBLIC ARTWORK

A. **Acquisition Criteria** – The following criteria shall be used when considering acquisition of artwork by purchase, commission or donation, and additional criteria may be established at the discretion of the Office of Arts and Culture to meet the needs of individual projects.

1. **Inherent Artistic Quality** – The assessed aesthetic merit of the piece as an artwork, independent of other considerations.
2. **Context** – The compatibility of the artwork in scale, material, form and content with its surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
3. **Ability to Install and Maintain** - The anticipated ability of the artist to complete the artwork and considerations towards the City's ability to provide maintenance and conservation to maintain the asset over time. Considerations shall also apply to temporary projects.
4. **Time Horizon of Artwork** – The anticipated lifespan of the project and/or its host site.
5. **Diversity** – The City is committed to commissioning and acquiring artworks that reflect diverse perspectives and approaches to art. To that end, the City shall seek opportunities accessible to a broad audience. The City shall seek artwork from artists of diverse racial, gender and cultural identities, and strive for diversity of experiences through a variety of styles, scales, narratives, and media. The City shall also encourage both experimental and established art forms.
6. **Uniqueness** – To ensure that the artwork will not be duplicated, the City shall require the artist to warrant that the work is unique and limited to an edition of one unless stated to the contrary in a contract.

B. **Selection Process** – The City may choose from several selection processes to solicit a public art opportunity. These include but not limited to:

1. Open Call via Request for Qualifications (RFQ)

2. Open Call via Request for Proposals (RFP)
 3. Open Call to Establish an Artist Roster
 4. Limited Call / Invitational Call
 5. Direct Commission
 6. Direct Purchase
- C. **Acquisition Process Participants** – The following participant groups will be formed for each project. The composition, roles, and meeting structure of each group may need to be adjusted to meet the individual needs of each project:
1. **Public Art Program Staff** – The director of the Library & Arts Department delegates responsibility of the Public Art Program, and full responsibility for the execution of this policy, to the manager of the Office of Arts and Culture (Manager).
 2. **Selection Panel** – A selection panel shall be convened to recommend the appropriate artist for the project to staff. It is recommended that the panel include at least the following voting members:
 - a. One Artist,
 - b. One Arts Professional/Educator,
 - c. Two Community Members and/or Facility Users, and
 - d. One Member of the Arts Commission.

The panel shall be moderated by the Manager or his/her delegate. All selection panel meetings are considered public meetings: an announcement of the meeting must be made, reasonable access to the public must be provided, and minutes and meeting records maintained.

Exclusions – Staff of the City of Boulder may not be appointed as voting members of a selection panel. See Roles and Responsibilities of Selection Panel Members (Appendix D, pp 23-25)
 3. **Technical Review Committee** – The Technical Review Committee (TRC) is a project-specific, advisory committee comprised of individuals with technical knowledge of the project, materials or techniques that will contribute to the success of the selection process. Members of the TRC are invited to participate as advisory, non-voting members of the selection panel. TRC members will consult on public art projects at

several points, including Public Art Implementation Plans, project proposal, design and construction. It is recommended that the TRC include the following members:

- a. Capital Project Management Team Representative(s),
- b. Representatives of City Departments,
- c. Risk Management Representative(s),
- d. Representative(s) of the City Attorney’s Office,
- e. Project Architect(s),
- f. Project Engineer(s),
- g. Conservator(s),
- h. Art Fabricator(s),
- i. Arts Professional(s),
- j. Technical Engineer(s),
- k. and Member(s) of Advising Boards and Commissions, as applicable and nominated by the appropriate department.

Internal participants will be identified by departmental directors and/or their liaisons.

D. Art Selection Approval Process – Below is the recommended selection process. At the discretion of the Manager, aspects of this process may be altered to meet the needs of the project. In the case of public art projects associated with capital projects, it is recommended that the timeline of the selection process be set by the Manager to best align with the design and construction timeline of the capital project to ensure the overall success of both the public art and capital project.

1. Project Initiation

- a. Budget Identified
- b. Selection Panel Proposed
- c. Public Art Implementation Plan Drafted and Approved – must follow the following process to inform the City Manager for approval:
 1. Review from City Staff and, as needed, Boards and Commissions,
 2. Preliminary Public Input,
 3. Presented to Arts Commission,
 4. Memo of recommendation from the Arts Commission to the City Manager

2. **Selection Panel Orientation** – review the goals of the public art implementation plan and advise the Manager on the details of the RFQ or other selection process.
3. **Call for Artists** – solicit applications through criteria identified in Section IX.B. The call must include project goals addressed within the Public Art Implementation Plan.
4. **Selection of Semifinalists** – once the application window has closed, the selection panel will convene to review all applications. The selection panel will narrow the candidates to a reasonable group of semifinalists. Semifinalists will be invited to:
 - a. **Site Visit and Proposal Development**
 - b. **Participate in a Public Inquiry** –Public inquiry opportunities include, but are not limited to, the following formats:
 1. Public Forum
 2. Public Lecture
 3. Town Hall Meeting
 4. Online Platform

The public inquiry process is intended only to inform the artist, selection panel, and TRC. The public inquiry process does not include voting on finalists or decision authority.
 - c. **Preparation of Proposals**– Proposals will be submitted prior to presentations for a preliminary analysis by the TRC.
5. **Finalist Selection and Recommendation to the Arts Commission** –The selection panel will review the proposals, interview the semifinalists, and review the analysis of the TRC. The selection panel will select a finalist as a recommendation to the Arts Commission. One-to-two alternate artists may also be identified.
6. **Arts Commission Process Approval and Recommendation to the City Manager**– The recommendation of the selection panel shall be made to the Arts Commission. The Arts Commission shall review the acquisition process and determine if all aspects of this policy were appropriately executed. The Arts Commission may a) approve the acquisition process and recommend that the City Manager give final approval, b) deny approval and ask that the Manager revisit a part of the process, or c) delay approval and ask for additional information. After the approval of the acquisition process, the Arts Commission shall review the

finalist and proposal to give advice on the successful completion of the public artwork.

7. **Final Approval** – It is the sole authority of the City Manager to approve the selection of an artist and direct staff to proceed with a contract. The recommendations of the selection panel and Arts Commission shall be forwarded in writing to the City Manager. Upon review of the recommendations, the City Manager may choose to a) approve the selection, b) deny the selection and return the decision to the Manager for reconsideration, or c) delay approval until such time as more information is provided.
8. **Contracts** – A contract, waiver, or other agreement between the City and the Artist shall be executed before acquisition process is finalized. Contracts will follow all rules and guidelines following appropriate City policies and laws. Contracts shall be initiated within 30 days of final approval by the City Manager. The Artist or the City has the right to terminate the contract at any time, with final settlement between the parties as set forth in the contract. Some projects may warrant that the artist(s) enter into a design-only contract; in such cases, with specific oversight from the artist(s), the City will issue separate contracts for fabrication and installation.

Contracts will name staff from the Office of Arts and Culture to manage all remaining phases of design, construction and installation of artwork in accordance with the contract.

E. **Public Art Selection for Unique Opportunities, Donations, Relocations, and Deaccessions** – A standing public art panel will be assembled at the discretion of the Manager for the purposes of reviewing and approving:

1. **Unique Opportunities** – Opportunities will arise that may not be suitable to the process describe above due to timeline, budget size or other considerations. Qualification of a project as being a “unique opportunity” will be determined through the recommendation of the Arts Commission. These unique opportunities will follow the above process as much as is possible, at the discretion of the Manager. In addition to the Acquisition Criteria (see Section IX.A), the panel will consider a project’s feasibility within its existing parameters, including timeline and budget.
2. **Donations** (see Section X)
3. **Relocations** (see Section XII.B)
4. **Deaccessions** (see Section XII.A)

The Arts Commission will review and approve staff recommendations for membership to the standing public art panel participants. Members of the standing public art panel

will serve a two-year term, up to three terms. Thereafter, a one-year lapse must occur before reappointment. Additional roles and responsibilities are identified in Roles and Responsibilities of Selection Panel Members (Appendix D, pp 23-25)

X. **DONATIONS AND UNAUTHORIZED OR ABANDONED ARTWORK**

A. **Criteria for Proposal of Donations** – Works of art are occasionally offered to the City of Boulder. All proposals to donate works of art to the City must be submitted to the Office of Arts and Culture by the party proposing donation (Donor). Any worked proposed for exhibition exceeding two years will be considered a donation. The donation request shall contain the following:

1. Provenance – includes artwork information, conservation history, and transfer of ownership
2. Maintenance Recommendations – all pending donations shall be required to include maintenance recommendations that outline how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
3. Proposed Site, if any.
4. Community Feedback – the Donor will provide community feedback about the proposed donation. If a site is proposed, the community feedback must represent the views of residents adjacent to the site or other stakeholders to the site. The method of community feedback is identified at the discretion of the Manager, and may include a) a petition, b) notes from a public meeting, c) letters of support, d) online comments to a video or website, or other methods. Depending on the nature of the project, further public engagement may be required according to the specific requirements for permit application or development review.
5. Selection Process Description, if any.
6. Images or Renderings, if any.
7. Budget and Funding Strategy.

Donations will also enter into a contracting process as described above in Section IX.C.8.

B. **Coordination with the Office of Arts and Culture**

The Donor must maintain communication with the Manager regarding fundraising, design, construction, maintenance planning, and full coordination. The Manager will facilitate a project team of staff from across all affected City departments.

C. Sequence for Donation

1. Reviewed by Office of Arts and Culture staff for compliance with this policy. The Manager will consult with the Donor on the refinement of their proposal for a period of no more than three months after receipt of the proposal.
2. Analysis by the TRC for feasibility and compliance with all regulations.
3. Submitted to the standing public art panel for review, which will take into account considerations listed above in Section IX.
4. Review by the Arts Commission for compliance with this policy and recommendation to the City Manager.
5. Appeal of Arts Commission Recommendations – Appeals for reconsideration will only be accepted from the Donor. Appeals will be made in writing to the Manager within 30 days of the decision of the Arts Commission. Appeals will be forwarded to the Arts Commission for their review and consideration. Additional appeals are not accepted.
6. Presented to the City Manager for final approval.
7. Upon approval, the Donor will enter into a contract or other agreement with the City.

D. Limitations

1. Compliance with the Approved Proposal, Contract, Policies and Laws – It is the sole authority of the City Manager to cancel the project in writing at any time if the Donor or any participant in the process has been determined to be violating the terms of the approved proposal, the contract, or any pertinent City policies or laws.
2. Completion Deadline – Approved proposals for donation must complete the full process, including installation of the artwork, by no more than one year after final approval. The Donor may request an extension to the deadline of no more than one additional year. The extension request must be submitted to the Manager for review and approval by the City Manager. Fundraising requests will only be considered if there are new circumstances that have affected the ability of the Donor to complete the project on time.

- E. Unauthorized and abandoned artwork** - The City is under no obligation to consider for acquisition unauthorized and abandoned art. Instead, the City Manager may choose, at his or her full discretion, to remove and/or dispose of it or consider the work for acquisition consistent with the donation process outlined in Section X.A.

XI. PROCEDURES FOR PUBLIC ARTWORK MAINTENANCE AND CONSERVATION

The City is committed to maintaining the financial value, safety, and effectiveness of these public assets, and preserving the enduring value of the collection of public artworks to the community. Additionally, the City will carefully consider aspects of the Visual Artists Rights Act (VARA), copyright, and licensing agreements articulated in the Artist(s) contract. It is the goal of the Office of Arts and Culture ensure proper stewardship and conservation of the collection through regular maintenance, conservation and inventory and condition assessment.

- A. **Maintenance plan for new acquisitions** – All public art commissions shall be required to include maintenance recommendations that outline how the artwork is to be maintained and conserved, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork. A maintenance plan will include the following elements:
1. Materials, and sources of the materials, used in the artwork;
 2. Methods of fabrication and the name of any individual other than the artists who was involved in the construction or creation of the artwork;
 3. Installation specifications;
 4. Method and frequency of required maintenance, and;
 5. Additional contacts for maintenance issues, if warranted.
- B. **General maintenance** – maintenance of the artwork, as distinguished from technical maintenance, conservation, restoration or repair, shall be the responsibility of the host department. This may include cleaning schedules and protective measures against normal wear, weather, and vandalism.
- C. **Technical Maintenance and Conservation**- The City will, by its own qualified staff in the Office of Arts and Culture and through professional services contract with art conservation specialists, be responsible for the following:
1. Maintain a comprehensive Collection Database of all existing artwork in the City's public art collection. This inventory will include but not be limited to:
 - a. an accession number unique to the specific artwork;
 - b. artwork information – title, year of commission, location of artwork;
 - c. artist information – artist name, contact information, artist copyright;
 - d. maintenance and conservation information – materials, fabrication methods, installation specifics, ongoing photographic documentation, additional parties contact information, material-specific warranties;

- e. commissioning information – commission amount, contract reference number, contract amendments, final contract amount, funding source, additional departments or organizations involved, warranties and insurance.
2. The Office of Arts and Culture will conduct biennial condition reports and periodic conservation/preservation assessment of its public art collection.
3. The Office of Arts and Culture will annually identify restoration and repair needs for the public art collection that surpass general maintenance. This reporting will be used in creating annual work plans and appropriating funding.

XII. PROCEDURES FOR DEACCESSION OR RELOCATION OF PUBLIC ARTWORK

- A. **Grounds for deaccessioning** – The City may consider deaccessioning of artwork for one or more of the following reasons:
1. Damage beyond reasonable repair – the public art has been damaged or deteriorated beyond the point where repair is practical or feasible.
 2. Excessive maintenance – the artwork requires excessive maintenance or has faults of design, material, or workmanship and repair or remedy is impractical or unfeasible.
 3. Significant changes in use, character, or design of the site have occurred, which affect the integrity of the work:
 - a. Site alteration – for site-integrated or site-specific works of art, the site for which the public art was specifically created: i) is structurally or otherwise altered and can no longer accommodate the artwork; ii) is made publicly inaccessible as a result of new construction, demolition, or security enhancement, or; iii) has its surrounding environment altered in a way that significantly and adversely impacts the public art.
 - b. Site acquisition or sale – for site-integrated or site-specific public art, the site for which the public art was specifically created is sold or acquired by an entity other than the City, which affects the integrity of the artwork.
 4. Safety – the artwork endangers public safety in its current location.
 5. Security – the condition and security of the artwork cannot be reasonably guaranteed.
 6. Theft – a piece was stolen from its location and cannot be retrieved.
 7. Disassociation under VARA – the artist legally exercises the right of disassociation granted by VARA, preventing the use of his or her name as the creator of the public art.

8. Provenance – at the time of accessioning, complete information on the provenance of the public art was not available and additional information has since become available indicating that the public art should not be part of the City's public art collection.

B. Grounds for relocation – The City may consider relocation of artwork for one or more of the following reasons:

1. Safety – the artwork endangers public safety in its current location.
2. Site acquisition for sale – For site-integrated or site-specific public art, the site for which the public art was specifically created is sold or acquired by an entity other than the City, which affects the integrity of the artwork and accessibility to the public.
3. Significant site changes or alterations.
4. Written request from the artist.
5. More appropriate location for the artwork has been determined.

C. Sequence for Deaccession or Relocation

1. Request for Review – submitted to the manager of the Office of Arts and Culture.
2. Notice to Artist – Artists whose works are being considered for relocation or deaccession will be notified by all diligent means, including a legally-verifiable means of communication.
3. Review by the Standing Public Art Panel – The standing public art panel will provide recommendations in the form of a report including the following information:
 - a. The grounds for the proposed deaccessioning;
 - b. Identification of the existence or non-existence of legal limitations including issues of copyright and ownership as determined by the City Attorney's Office;
 - c. Acquisition method, cost and estimated current value;
 - d. Written evaluation from a disinterested and qualified professional such as an engineer, conservator, architect, safety expert or art historian;
 - e. Written recommendations from the TRC
 - f. Written recommendations of the artist or documentation of correspondence with the artist regarding the deaccession or relocation;
 - g. Photo documentation of site conditions (if applicable);

- h. In the case of damage, a report that documents the original cost of the public art, estimated value and the estimated cost of repair;
 - i. In the case of theft, an official police report and a report prepared by the department responsible for the site of the loss, and;
 - j. Proposed removal, relocation, and/or demolition work plan and justification for that option.
4. Public Engagement – The Office of Arts and Culture will facilitate the opportunity for the public to provide feedback on the decision with the purpose of informing the decision of the standing public art selection panel and the Arts Commission.
 5. Review by Arts Commission – The Arts Commission may request the involvement of other Boards & Commissions as is necessary to the project. The Arts Commission will review the recommendations of the standing public art selection panel for compliance with this policy and other considerations. Approval is considered a recommendation by the Arts Commission for final review by the City Manager.
 7. Appeal of Arts Commission Recommendations – Appeals for reconsideration will only be accepted from the artist or their representatives. Appeals will be made in writing to the Office of Arts and Culture within 30 days of the decision of the Arts Commission, and must be based on new information that was not considered during the process. Appeals will be forwarded to the Arts Commission for their review and consideration. Additional appeals are not accepted.
 8. Final Decision – A decision to relocate or deaccess public art shall be made by the City Manager. The City Manager may decide to a) accept the recommendations, b) reject the recommendations, or c) delay the decision and request more information.
- D. Removal from the Collection** – Any contractual agreements between the artist and the City regarding removal or resale will be honored. To the extent removal is not addressed by a contract, the City may choose to use any of the following methods to remove public art that was either deaccessioned:
1. Return of the Work to the Artist, including all ownership of the material and copyright of the artwork. This method is preferred, and the artist shall have first right to refuse the offer. Other methods of removal from the collection, below, will be considered only after notice of this refusal by the artist is received.
 2. Trade through artist, gallery, museum, or other institutions for one or more other public art(s) of comparable value.
 3. Donation to a museum collection or other caretaker.

4. Sale through art auction, art gallery, dealer, or direct bidding by individuals. Any revenue generated from such sale shall be directed to the budget of the Office of Arts and Culture.
5. Destruction or recycling of materials comprising the public art. This method should only be used as a last resort after considering all other possible methods. If this method is used, it is recommended that no piece be recognizable as part of that public art.

E. **Deaccessioning File** – Documentation of the above grounds, decision and removal option should be preserved in the inventory of the public artworks.

XIII. **FORTHCOMING: Public Art Funding**

XIV. **FORTHCOMING: Public Art in Private Development**

XV. **FORTHCOMING: Art in Public Places Policy**

XVI. **INTERPRETATION AND APPLICATION**

Employees who have questions concerning the interpretation of application of this policy should be directed to the City Manager's Office or the library/arts director.

XVII. **EXCEPTIONS/CHANGE**

This policy supersedes all prior editions of this policy and conflicting provision of other policies covering the same or similar topics. Only the City Manager may grant exceptions to this policy. The City Manager may review and change this policy at any time.

APPENDIX A: DEFINITIONS

As referenced in this policy plan, the following terms are defined as follows:

Accession: The steps taken to officially acquire and designate an artwork as part of an art collection.

Acquisition: The inclusion of an artwork in the permanent collection of the City, whether by commission, purchase, donation or other means.

Art in Public Places: Any artwork with a site that is visible from public places, but not funded or commissioned by the City of Boulder (in whole or in part) and therefore not applicable to the City of Boulder's "Policy on Acquisition and Maintenance of Public Art by the City." This includes temporary and permanent artwork commissioned by an entity other than the City of Boulder including, but not limited to: individuals, businesses, non-profit organizations, education organizations, parochial organizations, private developers, districts including transportation districts, the state government including universities, the Federal government, and others. Though not applicable to the City of Boulder's "Policy on Acquisition and Maintenance of Public Art by the City", there is still public interest in the success of Art in Public Places projects. Therefore, staff of the Office of Arts and Culture will take an active role in advocating for good practices and results in these projects. Art in Public Places projects may be subject to other ordinances and policies of the City of Boulder.

Artist Roster: A compilation of artists working within an appropriate realm conceptually, materially, and scale to be considered for a public art commission. This is a standing roster of local, national and international candidates and may be used in addition to a solicitation or Request for Qualifications.

Artwork: Refer to VI for a full definition of "artwork".

Boulder Arts Commission (Arts Commission): The City of Boulder's Arts Commission, which consists of five members appointed by the city council serving five-year staggered terms.

FORTHCOMING New Capital Projects:

City's Public Art Collection: Artwork that has been acquired and approved through the City's acquisition process with the specific intention of being physically placed in a public setting and accessible to the community

Collection Database : A currently existing or future database or physical record of the City's public art collection. This may include photo documentation of the artwork, title, artist, dimensions, media, value, provenance, display location, maintenance information, and any other pertinent details about the artist and/or artwork.

Commission/commissioning: Artwork created at the request of the City—in which the funds to design and produce the art are provided by the City and acquired through the process outlined in the Policy on Acquiring and Maintenance of Public Art by the City.

Conservation: preservation, repair, and prevention of deterioration of public artworks and artifacts.

Deaccessioning: The act of removing artwork from the City's public art collection through any method (i.e. sale, return to the artist, donation, auction, demolition). This includes the removal from its public site,

APPENDIX A: DEFINITIONS, CONTINUED

removal from a maintenance cycle, and transferring of all associated records, both hard copy and electronic, into the City's deaccessioned collection file.

Direct Commission: The approval of a specific artist by the Technical Review Committee and the Arts Commission, commissioned based on merit and not proposal.

Direct Purchase: Unique circumstances of limited funds where it is reasonably more practical to purchase an existing artwork than commit limited funds to the selection and design process. This threshold will be determined by the Technical Review Committee and/or the Selection Panel.

Donation: Existing artwork that has been given to, and accepted by, the City, free and clear of any liens, for inclusion in its art collection.

Joint Venture: Commissioning process which includes City funds in addition to outside municipal commissioning funds or private contributions. This selection process could vary slightly as determined by the procedures of the additional partners (RTD, Colorado Creative Industries, private partners, etc.), but will follow City procedures as consistently as possible.

Limited Call: Advertisement of a public art opportunity limited by specific criteria (such as artist's place of residency, specific material, etc). These criteria will be determined by the Selection Panel and/or the Technical Review Committee.

Maintenance: An ongoing approach to conserve architecture, paintings, drawings, prints, sculptures, and objects of the decorative arts (furniture, glassware, metal ware, textiles, ceramics, and so on) that have been adversely affected by negligence, willful damage, or, more usually, the inevitable decay caused by the effects of time and human use on the materials of which they are made.

Open Call: A process in which a public art opportunity is promoted broadly within a region or nationally. A selection process is used to determine an artist to commission. This method can employ an RFP or RFQ process, however RFPs are no longer considered ethical by most artists.

Public Art: Artwork displayed in a location consistently accessible to the public; sited on City property, building, or right-of-way; and funded in whole or part through City funds or under the agreement that maintaining the artwork is the responsibility of the City.

Public Art Implementation Plans: A biennial document that governs the use of public art funds with specificity: the sites, the selection processes, funding levels, schedules and detailed goals of each project written annually by the Office of Arts and Culture with guidance by the Technical Review Committee and appropriate departmental stakeholders.

Public Art Program: A program within the Office of Arts and Culture charged with administering the development and management of public art. The methods used to build a public art program include—but are not limited to—commissioning artwork for permanent display, commissioning artwork for temporary installation, purchasing existing artwork for permanent or temporary display, placing artists on project design teams, and creating artist-in-residence opportunities. In addition to creating new work, the public art program is charged with maintaining the public art collection, developing educational programming, creating public art resources including printed materials and websites, seeking out partnerships and opportunities with public and private organizations, and acting as a source for public art information.

Request for Proposal (RFP): As used in this Policy, a term for competitive projects, in which applicants must submit a description of their idea or concept for consideration.

APPENDIX A: DEFINITIONS, CONTINUED

Request for Qualification (RFQ): As used in this Policy, this process, involves the submission of work samples, resumes and letters of interest to determine a small group of finalists. Once finalists are selected, they will be paid an honorarium to develop proposals, followed by the selection of an artist or team to be commissioned.

Restoration: The attempt to conserve and repair architecture, paintings, drawings, prints, sculptures, and objects of the decorative arts (furniture, glassware, metal ware, textiles, ceramics, and so on) that have been adversely affected by negligence, willful damage, or, more usually, the inevitable decay caused by the effects of time and human use on the materials of which they are made.

Site-Specific: This term refers to public works of art or projects that take into account, interface with, or are otherwise informed by the surrounding environment. The physical limitations of a site, weather

conditions, history, audience demographics and usage, lighting and additional aspects all inform the specificity of a project thus deeming the project a site-specific work of art.

Temporary Public Art: Commissioned, original works of art in public places for which it is the intention to display the work of art for no more than 2 years. The City is encouraged to commission temporary public art as such installations can be significant assets for a dynamic program, can allow for more experimental or controversial works of art that elicit community conversation, and add to the vibrancy of the city. Each temporary public art project will include a plan for documenting the project and retaining that documentation and making it available to the public. For the purposes of this policy, temporary public art is distinct from temporary exhibitions of artwork which is described in section IV.B.

Unauthorized and Abandoned Public Art: The surreptitious and anonymous, creation and installation of public art on City-owned or -managed property without the City's approval. This can consist of reclaiming space and changing its dynamics with images or counter images, such as the placement of sculptures in public squares or images on walls.

Visual Artists Rights Act of 1990 (VARA): 17 U.S.C. §106A, as amended. Federal copyright legislation which grant protections to moral rights. VARA entitles authors of works of art, that meet certain requirements, additional rights in the works regardless of any subsequent physical ownership of the work itself, or regardless of who holds the copyright to the work. Specific VARA rights will be articulated in individual artist contracts.

Appendix B: Reference to City Policies and Plans

- a. **City of Boulder Charter**
https://www.municode.com/library/co/boulder/codes/municipal_code
- b. **FORTHCOMING: 2015 Boulder Valley Comprehensive Plan**
<https://bouldercolorado.gov/bvcp>
- c. **2015 Community Cultural Plan**
<http://boulderarts.org/about-us/community-cultural-plan/>

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Appendix C: 2015 Community Cultural Plan – Public Art Program Excerpts

The following excerpts are pertinent language from the Boulder’s Community Cultural Plan, adopted November 17, 2015. The full Cultural Plan is available at: <http://boulderarts.org/about-us/community-cultural-plan/>

Strategy: Reinvent Our Public Art Program

Community Priority – Focus on the expression of culture and creativity in the public realm through public art, the urban landscape, culture in the neighborhoods, and serendipitous encounters with the arts.

Goal – Many individuals, businesses, organizations, and developers will be encouraged to invest in improvements to public spaces through the addition of meaningful, innovative, and quality works of art. The municipal investment in public art will be a model, using a system of publicly transparent, sustainable, and innovative practices to commission artworks of enduring cultural value.

Program Areas:

- a. Public Art Commissioning – a fully managed program to commission many permanent and temporary works of public art. The program will govern public spending on art in public places across all city agencies and be considered strategically through a series of Public Art Implementation Plans.
- b. Maintenance and Conservation – asset management systems to maintain the permanent collection of public artworks as an enduring legacy for future generations.
- c. Interpretation, Communications, and Legacy Initiatives – a set of tools for staff to promote the public art collection as an important part of daily life in Boulder including tours, signs, online programs, and continuing relationships with artists.
- d. Mural Program / Facilitation of Urban Art and Design – partnerships and collaboration with private individuals, businesses, organizations, and state or Federal government agencies who wish to install art in public places.

Priority Recommendations:

A Sophisticated Program – In considering the full lifecycle of a public art project, the Office of Arts + Culture will build a high-performing public art program that is an industry leader. In terms of process, this involves a thorough updating of practices, among them: a high standard of public inquiry, strategic and thoughtful selection processes, sustainable funding, and carefully executed design review. In addition, the collection itself must meet the highest of standards and represent the most important developments in contemporary practice. This pursuit of quality works of art implies variety and diversity, not necessarily popular taste. It is important for the city to be confident in this measure of success; no work of art will be universally loved. The ability to take risks is important to the program. The public art program will actively seek temporary and permanent public art in traditional media, yes. And, also, in time-based media, performance, music, interactive projects, design, social practice, conceptual art,

web-based art, and all emerging forms of public art. The collection of public artworks will be successful when it is diverse, thought-provoking, and vibrant.

Sustainable Funding – After the initial launch of the public art program, the Office of Arts + Culture will explore a source and mechanism for permanent public art funding in the 2018 budget. An important consideration will be the ability to create a robust program through commissioning several new works of art every year. Public art needs to be considered in terms of decades, with a funding structure to achieve a vibrant public art program well after the time horizon of this plan. To do this, a diverse portfolio of various sources of funding is needed. It should be secure, flexible, and at an adequate level to acquire and maintain new works of art on a regular basis.

Unified Approach – There have been substantial investments in public art over the years, particularly by the Transportation, Parks, and Parking Services divisions of the City of Boulder. However, a strategic and consistent process is needed to advance the investments in public art. The Office of Arts + Culture will assume leadership in the public art process while maintaining close collaborations with those agencies that are most affected by the public art program.

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Appendix D: Roles and Responsibilities of Selection Panel and Technical Review Committee Members

1. Protocol

Selection Panel Members, including the Technical Review Committee, play a critical role in the selection of public art for the City of Boulder. The members of the Selection Panel select the best possible artist for a public art project, and will create a lasting legacy for the citizens of Boulder which will be appreciated long into the future.

Full participation from each member of the Selection Panel is required to take the best possible advantage of the selection process. The required number of meetings throughout the full life of the selection process for a project has been kept to a minimum, generally no more than three. It is important that each member attend all of the scheduled meetings. While your role as a member of the Selection Panel is one that should be taken seriously, it is also one that can be enjoyable and rewarding.

At the discretion of the Manager, it is recommended that each public art project have a unique selection panel, with a minimum of five voting members. Voting members include, at minimum: one artist, one arts professional/educator, two community members and/or facility users, and one member of the arts commission. Staff of the City of Boulder may not be appointed as voting members of a selection panel. With the exception of the arts commissioner, individuals may only participate on one selection panel per year.

2. Confidentiality

While all meetings are open to the public, everything discussed in the Selection Panel meetings is to remain confidential. Each panelist is free to express any opinions throughout the selection process and must feel confident that such opinions are expressed in confidence.

The names of members of each Selection Panel are publicly available information. The names of Selection Panel members are made available to artists who may be under consideration. However, such artists are not to contact member of the Selection Panel outside of regularly established meetings in regard to any selection process or decision. All correspondence by and between artists and members of Selection Panel is to be directed through the Office of Arts and Culture to ensure fairness in the selection process. Any other communication may disqualify an artist from consideration.

3. Roles of Members

Each Selection Panel is comprised of approximately five *voting* members and the project's Technical Review Committee.

Roles of TRC Members

- a. Provide background information and technical advice to the selection panel to ensure that the decisions are made by voting members with the best information possible.
- b. To advise the Manager on how the process can best fulfil the criteria of the Public Art Implementation Plan. To advise on considerations that may affect the success of the commissioning, contract, design, fabrication, installation, and maintenance of the project.
- c. To participate in discussions during the selection process and to produce a recommendations document which can be used by the Manager to ensure the best success of the selection panel, and to better inform the review by the Boulder Arts Commission and the City Manager.

Roles of the Voting Selection Panel Members

- a. To review and consent to a final commissioning process including site details, the number of semi-finalists to be selected, whether the review is open or blind, the selection method, the criteria to be included in the prospectus, and the aesthetic criteria.
 - b. To attend all meetings and participate in discussions with the full selection panel in order to ensure fully informed and thoughtful decisions.
 - c. To fully consider and vet applications and semifinalist proposals, as is relevant, to provide the Manager with advancement of artists through the stages of the process.
 - d. Ultimately, to make a final recommendation to the Boulder Arts Commission on the best artist for the project.
4. **Review Criteria** - The following considerations must be taken into account by the above mentioned entities when considering acquisition of artwork by purchase, commission or donation:
- a. **Inherent artistic quality:** The assessed aesthetic merit of the piece as an artwork, independent of other considerations.
 - b. **Context:** The compatibility of the artwork in scale, material, form and content with its surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
 - c. **Ability to Install and Maintain:** The anticipated cost required to install the artwork as well as the anticipated cost and amount of maintenance and repair and the City's ability to provide that maintenance. Particular consideration will be given toward whether or not the proposed artwork includes an adequate maintenance plan. Any proposed artwork that is determined to require extraordinary operations or maintenance expense is subject to prior review by the appropriate department director.
 - d. **Diversity:** The City is committed to acquiring artworks that reflect diverse cultural communities and perspectives. To that end, the City shall seek artwork from artists of diverse racial, gender and cultural identities, and strive for diversity in style, scale, and media. The City shall also encourage both experimental and established art forms and recognize emerging artists whenever feasible.
 - e. **Uniqueness:** The City shall require the artist to warrant that the work is unique and limited to an edition of one unless stated to the contrary in a contract.

5. **Conflict of Interest**

As its policy on conflict of interest, the City of Boulder acknowledges that members of the Arts Commission and members of subcommittees, panels or any other ad hoc committees should be alert to avoid any action which could possibly be interpreted as a use of membership. Panel or group participation to further his or her interest or the interest of any organization with which he or she is affiliation is prohibited.

It is expected that selection panel members may be aware of the work of some artists and arts organizations who submit to be considered for public art projects. Such awareness alone does not constitute a conflict of interest, nor does owning a piece of work by a submitting artist. A conflict of interest is deemed to exist if a panelist is related to an artist, either through family or marriage, any other relationship of economic dependence, a business relationship such as representing the work of an artist as a gallery owner, or if a panelist stands to gain direct benefit, whether financial or otherwise, from the selection of a particular artist. If you are related to a particular artist under consideration in one of the ways mentioned above, you are asked to state that you have a conflict of interest and to refrain from discussing or voting on any decisions regarding that artist.

In furtherance of this policy, each person covered by the policy shall act according to the following guidelines (these guidelines are not exclusive and the policy shall also apply to situations not necessarily covered by the guidelines):

- a. A selection panel member is expected to serve the City at large and represent the best interests of the City and its cultural development.
- b. Individual artists who serve as selection panel members may participate in and/or receive benefit from City of Boulder public art projects if they do not participate in the review and decision-making process on such projects.
- c. A selection panel member may take part in activities supported by the Arts Commission fund. The propriety of receiving remuneration will depend on the nature of the activity and other relevant factors, and the Arts Commission shall determine that propriety at the time funds are awarded.
- d. A selection panel member shall excuse himself or herself from deliberation and recommendation on any application with respect to which the selection panel member cannot or believes that he or she cannot exercise an unbiased judgment, even if not otherwise required to do so by this policy.
- e. A selection panel member shall leave the room during the discussion and voting on any application room, or any action affecting, any organization by which he or she is employed or with which he or she is affiliated.
- f. No selection panel member shall receive a benefit of any kind whatsoever in exchange for taking action in his or her membership capacity, nor shall he or she receive any remuneration whatsoever from any source as payment for services in that capacity, provided however he or she shall receive reimbursement from the Arts Commission or the Library and Arts Department for actual expenses advanced in relation to those services.
- g. A selection panel member shall bear in mind his or her close personal relationships, such as marriage, so as to avoid any appearance of a conflict of interest arising from those relationships.

Selection Panel members will sign a document acknowledging all of the above.

APPENDIX TEN: SUSTAINABILITY FRAMEWORK & PRIORITY BASED BUDGET

Community Cultural Plan: Connections to the City of Boulder Sustainability Framework

The City of Boulder uses the “Sustainability Framework” as a tool to guide staff and City Council for budget decisions. These “priorities” were set in 2010 during an extensive community engagement process, and are used in a system of evaluation called “Priority Based Budgeting”.

Boulder’s Sustainability Framework
 The City of Boulder is continuously working to provide service excellence for an inspired future and this effort, the sustainability framework helps to provide a common language for community and City Council goals and priorities and ensure consistency. The framework uses seven broad categories as outcomes necessary for Boulder’s vision of a great community. Strategies to achieve those outcomes are developed and advanced in the annual budget as well as strategic and master plans.

- 

Safe Community

 - Enforces the law, taking into account the needs of individuals and community values
 - Plans for and provides timely and effective response to emergencies and natural disasters
 - Fosters a climate of safety for individuals in homes, businesses, neighborhoods and public places
 - Encourages shared responsibility, provides education on personal and community safety and fosters an environment that is welcoming and inclusive
- 

Healthy & Socially Thriving Community

 - Cultivates a wide-range of recreational, cultural, educational, and social opportunities
 - Supports the physical and mental well-being of its community members and actively partners with others to improve the welfare of those in need
 - Fosters inclusion, embraces diversity and respects human rights
 - Enhances multi-generational community enrichment and community engagement
- 

Livable Community

 - Promotes and sustains a safe, clean and attractive place to live, work and play
 - Facilitates housing options to accommodate a diverse community
 - Provides safe and well-maintained public infrastructure, and provides adequate and appropriate regulation of public/ private development and resources
 - Encourages sustainable development supported by reliable and affordable city services
 - Supports and enhances neighborhood livability for all members of the community
- 

Accessible & Connected Community

 - Offers and encourages a variety of safe, accessible and sustainable mobility options
 - Plans, designs and maintains effective infrastructure networks
 - Supports strong regional multimodal connections
 - Provides open access to information, encourages innovation, enhances communication and promotes community engagement
 - Supports a balanced transportation system that reflects effective land use and reduces congestion
- 

Environmentally Sustainable Community

 - Supports and sustains natural resource and energy conservation
 - Promotes and regulates an ecologically balanced community
 - Mitigates and abates threats to the environment
- 

Economically Vital Community

 - Supports an environment for creativity and innovation
 - Promotes a qualified and diversified work force that meets employers’ needs and supports broad-based economic diversity
 - Fosters regional and public / private collaboration with key institutions and organizations that contribute to economic sustainability
 - Invests in infrastructure and amenities that attract, sustain and retain diverse businesses, entrepreneurs and the associated primary jobs
- 

Good Governance

 - Models stewardship and sustainability of the city’s financial, human, information and physical assets
 - Supports strategic decision-making with timely, reliable and accurate data and analysis
 - Enhances and facilitates transparency, accuracy, efficiency, effectiveness and quality customer service in all city business
 - Supports, develops and enhances relationships between the city and community/ regional partners
 - Provides assurance of regulatory and policy compliance

Below is a chart which describes the connections between each element of the Sustainability Framework, a concept in the Community Cultural Plan, and the applicable Cultural Plan Strategy.

