

**Council Meeting
Tuesday, November 1, 2016**

**ERRATA SHEET ITEM 3C – THIRD READING AND CONSIDERATION OF A
MOTION TO AMEND AND ADOPT BY EMERGENCY ORDINANCE 8139 and
ORDINANCE 8140**

The attached new Ordinance 8139 has all changes from the version in the council packet and the proposals from Mary Young's 10/31/16 e-mail are redlined as follows:

Young Proposal #	Description	Page # on attached	Line	Change/Addition
1	Allow the enclave businesses to transfer licenses within the two-year period	7	6-7	Change to except the enclave businesses from the general licensing provisions of Chapter 4-1. It does not include the city getting involved in the sale terms and applies to the licenses issued to marijuana businesses existing lawfully.
1.a.	Develop a process for managing the transfer			Propose be done by city manager rule
2.	Exempt the enclave businesses from city background checks, criminal acts, suspension and revocation of licenses for the two-year period	Pg 6 – subsection 6.H.	1-4	Change to except the enclave businesses from Sections 6, 13 and 14.a. of the Recreational and Medical Marijuana Codes until 11/1/18.
3.	City grant a conditional license on Day 1	Pg 7	4-8	Directs the city manager to issue conditional licenses to the lawfully existing enclave businesses on the effective date of the annexation.
3.a.	City develop a process for enforcing state code	Pg 6	5-9	Must be done by ordinance so provision added making it unlawful for any person to violate any applicable state law, rule or regulation or so operate a marijuana business.
4.	City will re-convene MAP to address licensing for laboratory and other items identified between now and the meeting.	Pg 7	8-13	Amends the MAP Charter to add a new requirement to meet the proposal MAP Charter attached behind ordinance
5.	Permanently grandfather existing building layouts	Pg 2	21	Add "building layouts" to the list of items subject to the Nonconformance Standards of Chapter 9-10. Not sure what "building layouts" is.

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6.	Allow for permanent grandfathering of existing building layouts	Pg 7	20-21	Adds the request as another definition of what construction does not include. Not sure what words of request mean or how to apply.
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ORDINANCE 8139

AN EMERGENCY ORDINANCE ANNEXING TO THE CITY OF BOULDER ENCLAVES IN THE VICINITY OF 55TH AND ARAPAHOE, WHICH PARCELS ARE SHOWN ON THE MAP INCORPORATED INTO THIS ORDINANCE, WITH AN INITIAL ZONING FOR EACH PARCEL SHOWN ON THE CHART INCORPORATED INTO THIS ORDINANCE AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE SAID PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT; CONSENTING TO THE INCLUSION OF THE PROPERTY INTO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT AND ITS SUBDISTRICT; AND SETTING FORTH RELATED DETAILS.

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

COLORADO:

Section 1. The city council of the City of Boulder, Colorado, finds:

- A. All of the parcels depicted in **Exhibit A** (the "Property") may be annexed by the city council as enclaves without a hearing or notice other than by publication; however the city has mailed individual notices to the property owners, and is holding a public hearing on this ordinance.
- B. The parcels within the Property include 15 parcels in the vicinity of 55th and Arapahoe that are completely surrounded within the boundaries of the city, all of which are described more particularly on **Exhibit B**.
- C. All of the parcels have more than one-sixth contiguity with city boundaries as required by Colorado law.
- D. It is the intent of the city to include in this annexation all of the Property from the abutting incorporated property so that there is no gap of unincorporated property between the parcels of the Property to be annexed and the boundaries of the adjacent incorporated property.
- E. The requirements of the Colorado Constitution and the Colorado Revised Statutes regarding annexation have been satisfied.
- F. All of the parcels included in the Property are located within Area II as designated in the Boulder Valley Comprehensive Plan (BVCP).

1 G. The initial zoning proposed for the 10 properties at 5421 and 5485 Western Ave, and 5565,
2 5575 and 5595 Arapahoe and 1700, 1750, 1780, 1830 and 1840 N. 55th St is "IG" and for
3 the four properties located at 5320 and 5472 Arapahoe Ave and 1530 and 1595 N. 55th St
is "BC-1", and the property at 1415 No. 55th St is "RM-1" all as defined in Title 9, B.R.C.
1981.

4 H. Annexation of the parcels of the Property in Area II and as enclaves is consistent with the
5 BVCP, and the annexation policies in Section 1.24 of the BVCP.

6 I. The city is not proposing a land use designation change for any of the Property.

7 J. The Planning Board has recommended annexation of the Property to the City of Boulder
8 and that the Zoning District Map adopted by the City Council be amended to the zone
district specified in this ordinance, as provided in Chapter 9-5, "Modular Zone System,"
9 B.R.C. 1981.

10 K. The initial zoning of the Property is consistent with the Boulder Valley Comprehensive
11 Plan, and bears a substantial relation to and will enhance the general welfare of the
Property and of the residents of the City of Boulder.

12 L. The City Council has jurisdiction and the legal authority provided in C.R.S. § 31-12-
13 106(1) to annex and zone the Property as enclaves of the city without a hearing and with
notice only by publication.

14 Section 2. The Property shown on the map attached as Exhibit A, and more
15 particularly described in Exhibit B be, and the same hereby is, annexed to and included within the
16 corporate boundaries of the City of Boulder.

17 Section 3. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the Zoning District
18 Map forming a part thereof, be, and the same hereby are, amended to include each parcel of the
19 Property in the zoning district specified in this ordinance. Uses existing on the properties on the
20 date of adoption of this ordinance, or uses "existing lawfully" as defined under Section 6 of this
21 ordinance, or building layouts, shall be considered non-conforming uses pursuant to Chapter 9-10
22 "Nonconformance Standards" B.R.C. 1981.

23 Section 4. Businesses operating on the parcels to be annexed within the Property must
24 obtain any city licenses that apply to the particular businesses. Businesses requiring a business
25

1 license under Section 3-2-11 "Sales and Use Tax License" B.R.C. 1981 must obtain such licenses
2 within 30 days of adoption of this ordinance.

3 Section 5. Existing marijuana businesses within the Property to be annexed are
4 required to obtain a marijuana business license in conformance with either Chapter 6-14 "Medical
5 Marijuana Businesses" or 6-16 "Recreational Marijuana Businesses" B.R.C. Each marijuana
6 business within the Property shall submit a complete application to the City for such license
7 within 90 days of the adoption of this ordinance. Such businesses shall meet all requirements for
8 issuance of such license and have been issued such license within six months of the adoption of
9 this ordinance, unless a building permit from the city is required to meet the requirements for the
10 license. If a building permit is required to meet the requirements for a marijuana business license,
11 completed application for such permit(s) must be submitted to the city within 90 days of the
12 adoption of this ordinance. The deadline for issuance of a marijuana business license from the
13 city for those requiring a building permit to qualify shall be one year from the date of adoption of
14 this ordinance. Either the date for submission of a completed application or the dates for meeting
15 all requirements for a license may be extended by the city manager in the event of extenuating
16 circumstances that are not caused by action or inaction of the applicant. All businesses applying
17 for a marijuana business license shall diligently pursue completion of all work, including
18 construction, necessary to meet the requirements for such license and each business shall provide
19 written reports to the Marijuana Licensing Authority every three months from the date of
20 application to the issuance of the license, describing the progress made towards meeting the
21 licensing requirements.
22

23 Section 6. Application of Boulder Revised Code to Marijuana Businesses existing
24 lawfully:
25

1 A. Marijuana businesses existing lawfully within the Property shall not be subject to
2 the density restrictions contained in Section 6-14-7(f) "Location of Recreational Marijuana
3 Businesses- Separation From Schools, Day Care Centers, Addiction Recovery Facilities, or Other
4 Medical Marijuana Uses," B.R.C. 1981 or Section 6-16-7(e) "Location of Recreational Marijuana
5 Businesses- Separation From Schools and Other Facilities," B.R.C. 1981, but must comply with
6 all other requirements of Chapter 6-14 "Medical Marijuana Businesses" or Chapter 6-16
7 "Recreational Marijuana Businesses," B.R.C. 1981, as appropriate. Such businesses are
8 governed by the provisions Section 9-10-2(a) "One-Year Expiration of Nonconforming Uses"
9 B.R.C. 1981.

10 B. An "agent" as defined in 6-14-5(a)(2)(C) and 6-16-5(a)(2)(C) shall not include a
11 person leasing equipment to the marijuana business or providing other services or equipment that
12 are provided to non-marijuana businesses, so long as the payment for the use of such services or
13 equipment is not based on income or profits of the marijuana business.

14 C. Neither marijuana-infused product manufacturing facilities nor marijuana testing
15 facilities existing lawfully shall be subject to 6-16-8(j) "Limitations on Inventory," B.R.C., until
16 that subsection is amended.

17 D. Testing facilities shall follow the requirements for marijuana infused product
18 manufacturers except where there is a conflicting requirement specifically applicable to marijuana
19 testing facilities.

20 E. "Existing lawfully" shall mean:

- 21 i. businesses that are in compliance with all applicable laws and regulations of
22 the state and the Colorado Department of Revenue Marijuana Enforcement
23 Division ("MED"), and
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25

- 1 ii. businesses that submitted completed applications for approval of new licenses
- 2 or modification of premises to MED on or before August 16, 2016, and
- 3 iii. businesses and properties in compliance with the codes adopted by Boulder
- 4 County for building requirements; or
- 5 iv. businesses and properties who had obtained land use approvals from Boulder
- 6 County on or before August 16, 2016 and are pursuing those approvals through
- 7 the building permit process; or
- 8 v. properties for which the owner or tenant had obtained a building permit from
- 9 the county prior to August 16, 2016 and was diligently pursuing construction to
- 10 completion.

11 F. The provisions of Section 6-16-6 “Persons Prohibited as Licensees and Business
12 Managers,” B.R.C. 1981 in subsections (9) and (10), regarding limits on the number of marijuana
13 business licenses that can be held by any person, shall not apply to any business existing lawfully.

14 G. The provisions of Sections 8 “Requirements Related to Operation of Medical
15 Marijuana Business,” 9 “Right of Entry - Records to Be Maintained,” 10 “Requirements Related
16 to Monitoring and Security of Restricted Areas and Inventory,” and 11 “Requirements for Public
17 Health and Labeling,” in both Chapter 6-14 “Medical Marijuana,” and 6-16 “Recreational
18 Marijuana,” B.R.C. 1981 shall not apply to lawfully existing marijuana businesses until
19 November 1, 2018. Between the time of annexation and October 31, 2018, in addition to
20 complying with all applicable requirements of the state of Colorado, the requirements of
21 subsections (a) “Hours of Operation,” (b) “Odor Control,” (c) “Business Conducted within
22 Building,” (d) “Direct Sales,” (e) “Giveways,” (f) “Advertising,” and (g) “Sponsorship” of Article
23 8.5 “Operation Requirements” of the Boulder County Marijuana Licensing Regulations dated
24 January 1, 2016 shall apply to all marijuana businesses within the area to be annexed.
25

1 H. The provisions of Sections 6 “Persons Prohibited as Licensees and Business
2 Managers,” 13 “Prohibited Acts,” 14.a. “Suspension or Revocation of License; Imposition of
3 Fines in both Chapter 6-14 “Medical Marijuana,” and 6-16 “Recreational Marijuana,” B.R.C.
4 1981 shall not apply to lawfully existing marijuana businesses until November 1, 2018.

5 G-I. It shall be unlawful for any person to be in violation of any applicable state law,
6 rule, or regulation regarding medical marijuana or recreational marijuana, or to operate a
7 marijuana business, or cultivate, possess, distribute or produce marijuana in violation of any
8 applicable state law, rule, or regulation regarding medical marijuana or recreational marijuana.

9 Section 7. The property owners of the Property shall not be required to pay any city
10 annexation application costs or fees. Utility fees, including connection and plant investment fees,
11 and requirements to connect to city water or wastewater facilities shall be deferred to the time of
12 (a) connection to the utility, (b) or construction that increases the square footage of existing
13 development upon a parcel of the Property, or (c) construction for which the value on the building
14 permit application(s) for the same project after August 16, 2016, exceeds 25% of the assessed
15 value of the building, whichever occurs first. For purposes of subsection (c), “construction” shall
16 not include: (i) routine maintenance that includes without limitation the repair or replacement of
17 exterior building materials such as roofing, siding, or HVAC equipment, or painting, or
18 equipment that supports the building such as plumbing, heating, air conditioning, or lighting, or
19 (ii) changes to building layouts if the proposed layout moves towards conformance with code and
20 that such conformance does not affect the two year conditional license.

21 Section 8. The city hereby consents to the inclusion of each parcel of the Property into
22 the Northern Colorado Water Conservancy District (the “District”) and the Municipal Subdistrict
23 of the Northern Colorado Water Conservancy District (the “Subdistrict”); pursuant to C.R.S. 37-
24 45-136(3.6), to the extent such parcels are not already included in said District, Subdistrict or
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1 both. Upon inclusion into the District and Subdistrict, said Property shall be subject to the same
2 mill levies and special assessments as are levied or will be levied on other similarly situated
3 property in the District and Subdistrict, respectively.

4 Section 9. The city manager is directed to issue conditional marijuana business
5 licenses to all the lawfully existing marijuana businesses on the Property on the effective date of
6 the annexation. Notwithstanding the provision of Section 4-1-4 "Transferability of Licenses,"
7 B.R.C. 1981, such licenses may be transferred to another person before November 1, 2018.

8 Section 10. The Charter of the Marijuana Advisory Panel adopted by the City Council
9 on January 5, 2016, is amended to add a new paragraph 11 as follows:

10 The committee shall re-convene to address licensing requirements within the city
11 for laboratory operation, and other items that may be identified between now and
12 the meeting re-convening.

13 Section 11. The City Council approves any variations or modifications to the Boulder
14 Revised Code or other City ordinances consistent with this ordinance.

15 Section 120. The annexation and zoning of the Property is necessary for the protection
16 of the public health, safety, and welfare.

17 Section 131. The City Council deems it appropriate that this ordinance be published by
18 title only and directs the city clerk to make available the text of the within ordinance for public
19 inspection and acquisition.

20 Section 142. This ordinance is necessary for the preservation of the public peace, health,
21 and property. An emergency exists in that the city has an application pending before the
22 Colorado Public Utilities Commission that includes the properties that are the subject of this
23 ordinance as annexed to the City. The legislative process for this annexation effort has taken
24 longer than anticipated, and given the pendency of the application before the Colorado Public
25 Utilities Commission, it is necessary to complete the annexation in a timely manner.

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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 16th day of August, 2016.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk

READ ON SECOND READING AND AMENDED this 18th day of October, 2016.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk

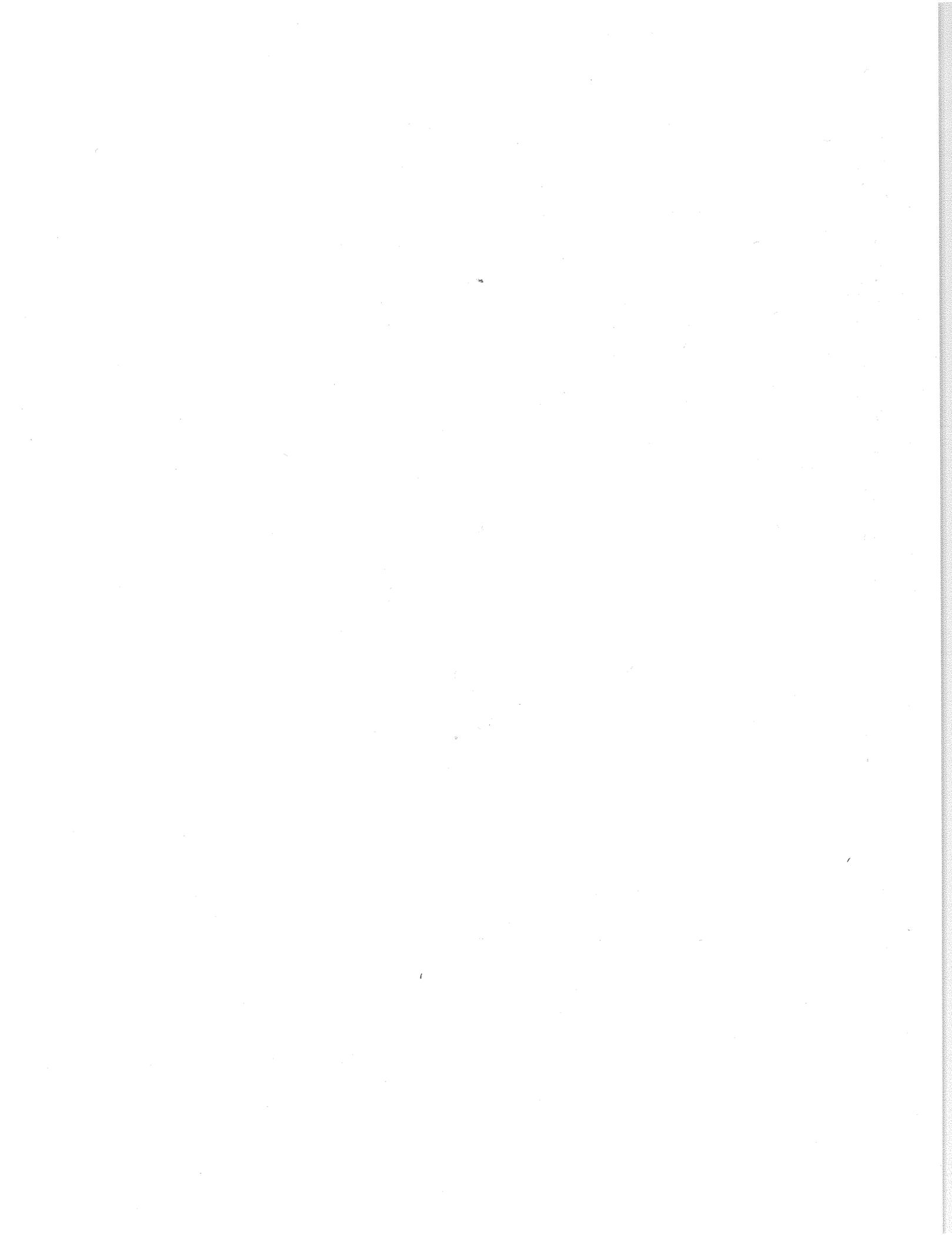
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READ ON THIRD READING, AMENDED, PASSED, AND ADOPTED AS AN
EMERGENCY MEASURE BY TWO-THIRDS COUNCILMEMBERS PRESENT this 1st day
of November 2016.

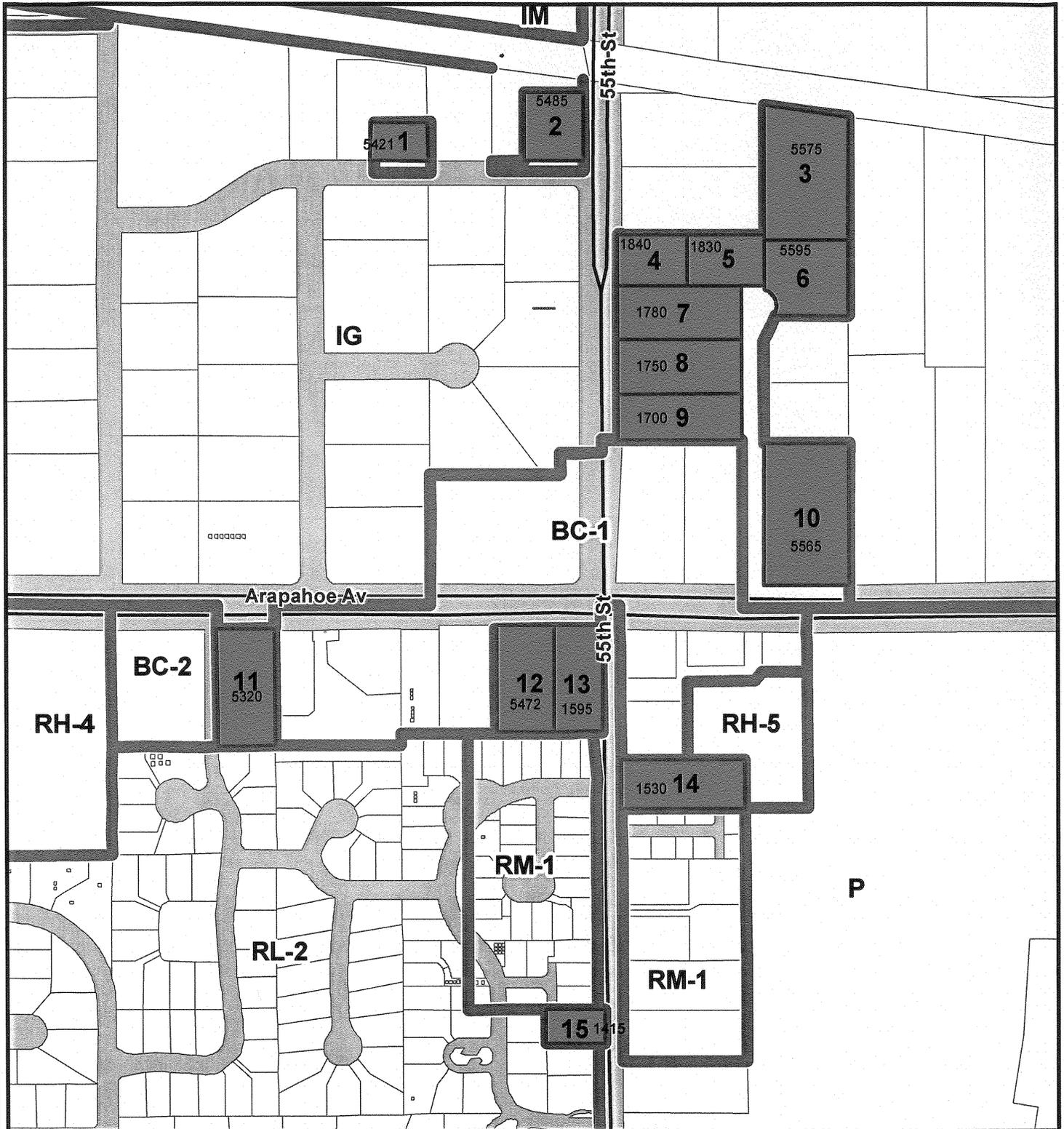
Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk



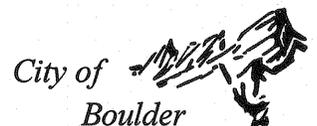
City of Boulder Vicinity Map



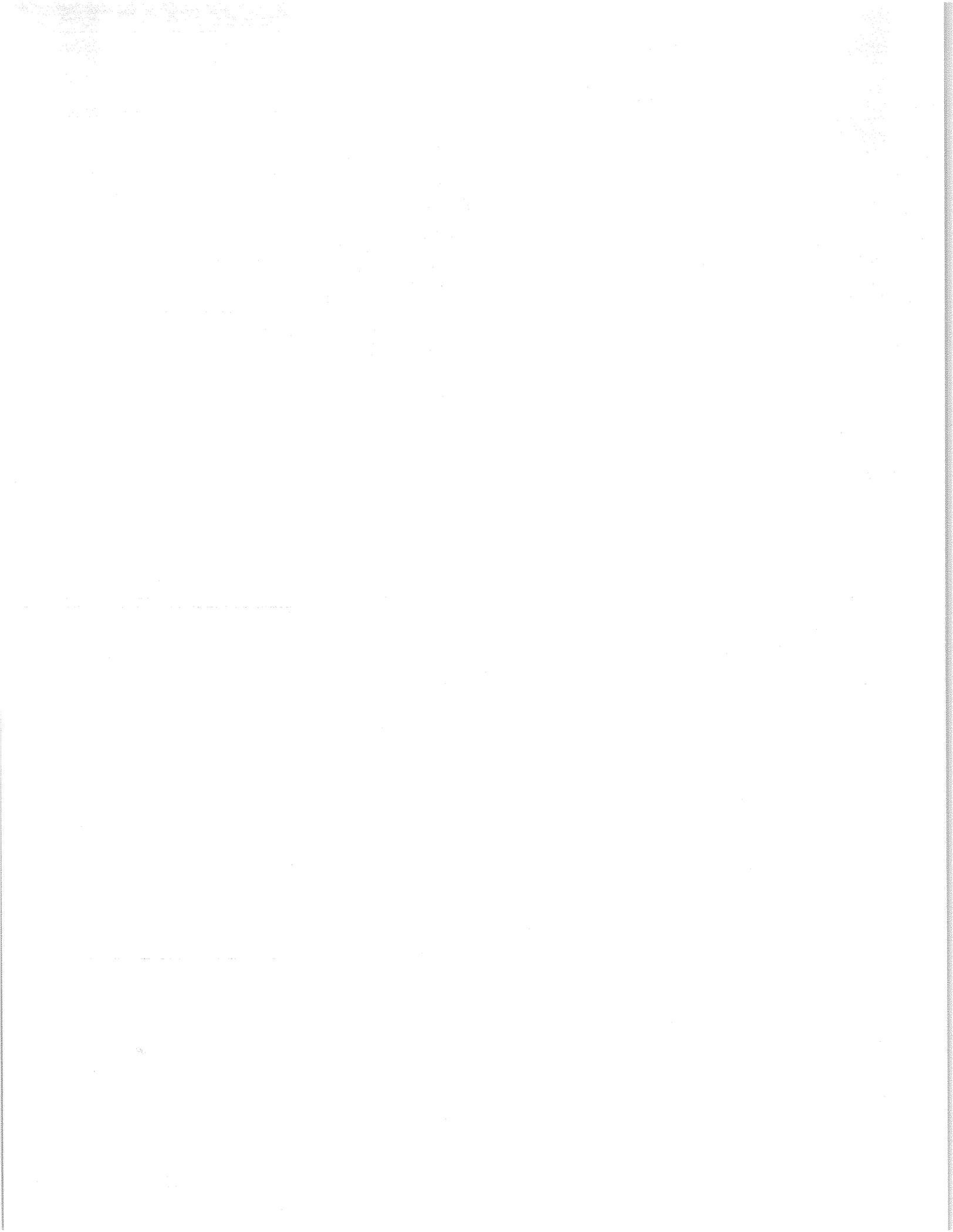
**55th and Arapahoe
Enclave Annexations**



1 inch = 350 feet



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 and/or completeness of the information contained hereon.



Property to be Annexed
(References are to Exhibit A-Map)

#1 – 5421 Western Avenue

Property described in Deed recorded at Reception #02934271 on June 4, 2008, in the records of the Boulder County Clerk and Recorder's Office, together with all that part of the Western Avenue right-of-way between Conestoga Street and 55th Street that is not currently annexed to the City of Boulder.

#2 – 5485 Western Avenue

Property described in Deed recorded at Reception #02459482 on June 23, 2003, in the records of the Boulder County Clerk and Recorder's Office, together with all that part of the Western Avenue right-of-way between Conestoga Street and 55th Street that is not currently annexed to the City of Boulder.

#3 – 5575 Arapahoe Avenue

Property described in Deed recorded at Reception #03514292 on April 27, 2016, in the records of the Boulder County Clerk and Recorder's Office.

#4 - 1840 55th Street

Property described in Deed recorded at Reception #03051194 on Jan. 4, 2010, in the records of the Boulder County Clerk and Recorder's Office.

#5 – 1830 55th Street

Property described in Deed recorded at Reception #03508527 on March 29, 2016, in the records of the Boulder County Clerk and Recorder's Office.

#6 – 5595 Arapahoe Avenue

Property described in Deed recorded at Reception #03196632 on Jan. 17, 2012, in the records of the Boulder County Clerk and Recorder's Office.

#7 – 1780 55th Street

Property described in Deed recorded at Film #2074, Reception #01544560 on Sep. 1, 1995, in the records of the Boulder County Clerk and Recorder's Office.

#8 – 1750 55th Street

Property described in Deed recorded at Reception #03415159 on Nov. 26, 2014, in the records of the Boulder County Clerk and Recorder's Office.

#9 – 1700 N. 55th Street

Property described in Deed recorded at Reception #03196633 on Jan. 17, 2012, in the records of the Boulder County Clerk and Recorder's Office.

#10 – 5565 Arapahoe Avenue

Property described in Deed recorded at Reception #03196631 on Jan. 17, 2012, in the records of the Boulder County Clerk and Recorder's Office.

#11 – 5320 Arapahoe Avenue

Property described in Deed recorded at Film #1605, Reception #01016212 on Dec. 1, 1989, in the records of the Boulder County Clerk and Recorder's Office.

#12 – 5472 Arapahoe Avenue

Property described in Deed recorded at Reception #03002018 on May 26, 2009, in the records of the Boulder County Clerk and Recorder's Office.

#13 – 1595 55th Street

Property described in Deed recorded at Film #2058, Reception #01524944 on June 20, 1995, in the records of the Boulder County Clerk and Recorder's Office.

#14 – 1530 55th Street

Property described in Deed recorded at Film #2035, Reception #01496348 on Feb. 6, 1995, in the records of the Boulder County Clerk and Recorder's Office.

#15 – 1415 15th Street

Property described in Deed recorded at Reception #02481604 on Aug. 1, 2003, in the records of the Boulder County Clerk and Recorder's Office.

RIGHTS-OF-WAY

56th Street ROW

All that part of the 56th Street right-of-way south of the south right-of-way line of the Colorado and Southern Railroad and north of the north right-of-way line of Arapahoe Avenue, that is not currently annexed to the City of Boulder.

55th Street ROW

All that part of the 55th Street right-of-way south of the south right-of-way line of the Colorado and Southern Railroad and north of the north right-of-way line of Lodge Lane, that is not currently annexed to the City of Boulder.

Arapahoe Avenue ROW

All that part of the Arapahoe Avenue right-of-way east of Range Street and west of Old Tail Road that is not currently annexed to the City of Boulder.

**CREATION OF A CHARTER FOR A MARIJUANA ADVISORY PANEL FOR
ANALYSIS OF, SOLICITATION OF PUBLIC INPUT ON
AND DISCUSSION OF POSSIBLE CHANGES TO CITY OF BOULDER
MARIJUANA CODE PROVISIONS**

This is a Charter for a committee for analysis of, solicitation of public input on and discussion of possible changes to the City of Boulder code provisions.

1. The committee shall be appointed by the City manager with the advice and consent of the city council to provide a balanced representation of the variety of interests related to medical and recreational marijuana.
2. The committee shall include, but not be limited to, the following members:
 - a. Representatives of marijuana consumers, including both recreational and medical users.
 - b. A representative of the Boulder Valley School District.
 - c. A representative of the University of Colorado.
 - d. Representatives to provide physical and mental health perspectives, including youth development theory and best practices in harm reduction/health promotion.
 - e. A representative of the Chamber of Commerce.
 - f. Representatives of marijuana businesses, sufficient to represent the interests of businesses engaged in businesses associated with medical marijuana, recreational marijuana, cultivation, retail sales and infused products manufacturing.
 - g. An attorney experienced in representing marijuana businesses.
 - h. A person familiar with state regulations, preferably a person from the state marijuana enforcement division, who, if unable to attend all meetings, may be an ex-officio member and not counted toward the limit on the number of members.
3. One person may represent multiple interests described above. The committee shall have no more than 11 members.
4. All meetings of the committee shall be held only after public notice of the date, time and place.
5. All meetings shall be open to the public. The committee shall allow time for public comment at each meeting.

6. The city manager and the city attorney are directed to provide staff support to facilitate the committee's work.

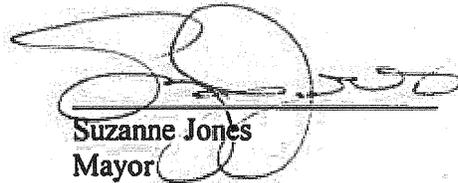
7. The city shall provide a professional facilitator to assist with the committee's work at the outset. The committee shall decide whether a facilitator is necessary at future meetings.

8. The committee shall provide regular updates to the city council about the committee's work. The committee is encouraged to prioritize time-sensitive issues and provide council with any appropriate recommendations on such matters during the first quarter of 2016.

9. The committee shall review both state regulations and city code to determine what specific city code provisions would be appropriate.

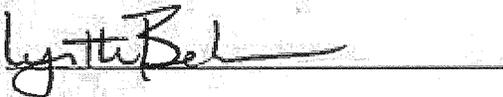
10. Council intends that the committee will complete its work by the end of June 2016.

APPROVED this 5 day of January, 2016.



Suzanne Jones
Mayor

ATTEST:



City Clerk