

**Council Meeting  
Tuesday, October 18, 2016**

**ERRATA SHEET ITEM 5H – CONTINUED SECOND READING OF ORDINANCE  
8139 and ORDINANCE 8140**

Changes from Packet for Ordinance No. 8139

Packet Page #	Item #	Page #	Ord #	Line	Change/Addition
201	5H	14	8139	4 and 9	Change “60 days” to “90 days” so applications are not due right after the holidays
204	5H	16	8139	12	<p>Addition to allow any existing businesses that own more than the number of licenses allowed in Section 6-16-6 shall not apply to prevent an business existing lawfully from qualifying for a city marijuana business license. Add a new G to Section 6 as follows:</p> <p>G. The provisions of 6-16-6 “Persons Prohibited as Licensees and Business Managers” B.R.C. 1981 in subsections (9) and (10), regarding limits on the number of marijuana business licenses that can be held by any person, shall not apply to any business existing lawfully.</p>

ORDINANCE 8139

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER ENCLAVES IN THE VICINITY OF 55<sup>TH</sup> 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 55<sup>th</sup> 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).
- G. The initial zoning proposed for the 10 properties at 5421 and 5485 Western Ave, and 5565, 5575 and 5595 Arapahoe and 1700, 1750, 1780, 1830 and 1840 N. 55<sup>th</sup> St is "IG" and for

1 the four properties located at 5320 and 5472 Arapahoe Ave and 1530 and 1595 N. 55th St  
2 is “BC-1”, and the property at 1415 No. 55<sup>th</sup> St is “RM-1” all as defined in Title 9, B.R.C.  
1981.

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

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

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

9 K. The initial zoning of the Property is consistent with the Boulder Valley Comprehensive  
10 Plan, and bears a substantial relation to and will enhance the general welfare of the Property  
11 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. § 31-12-106(1)  
13 to annex and zone the Property as enclaves of the city without a hearing and with notice  
14 only by publication.

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

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

24 Section 4. Businesses operating on the parcels to be annexed within the Property must  
25 obtain any city licenses that apply to the particular businesses. Businesses requiring a business  
license under Section 3-2-11 “Sales and Use Tax License” B.R.C. 1981 must obtain such licenses  
within 30 days of adoption of this ordinance.

1           Section 5. Existing marijuana businesses within the Property to be annexed are required  
2 to obtain a marijuana business license in conformance with either Chapter 6-14 “Medical Marijuana  
3 Businesses” or 6-16 “Recreational Marijuana Businesses” B.R.C. Each marijuana business within  
4 the Property shall submit a complete application to the City for such license within **9060 days** of  
5 the adoption of this ordinance. Such businesses shall meet all requirements for issuance of such  
6 license and have been issued such license within six months of the adoption of this ordinance, unless  
7 a building permit from the city is required to meet the requirements for the license. If a building  
8 permit is required to meet the requirements for a marijuana business license, completed application  
9 for such permit(s) must be submitted to the city within **9060** days of the adoption of this ordinance.  
10 The deadline for issuance of a marijuana business license from the city for those requiring a building  
11 permit to qualify shall be one year from the date of adoption of this ordinance. Either the date for  
12 submission of a completed application or the dates for meeting all requirements for a license, which  
13 date may be extended by the city manager in the event of extenuating circumstances that are not  
14 caused by action or inaction of the applicant. All businesses applying for a marijuana business  
15 license shall diligently pursue completion of all work, including construction, necessary to meet the  
16 requirements for such license and each business shall provide written reports to the Marijuana  
17 Licensing Authority every three months from the date of application to the issuance of the license,  
18 describing the progress made towards meeting the licensing requirements.

20           Section 6. Application of Boulder Revised Code to Marijuana Businesses existing lawfully:

21           A. Marijuana businesses existing lawfully within the Property ~~on the date of adoption~~  
22 ~~of this ordinance~~ shall not be subject to the density restrictions contained in Section  
23 6-14-7(f) “Location of Recreational Marijuana Businesses- Separation From  
24 Schools, Day Care Centers, Addiction Recovery Facilities, or Other Medical  
25 Marijuana Uses,” B.R.C. 1981 or Section 6-16-7(e) “Location of Recreational

1 Marijuana Businesses- Separation From Schools and Other Facilities,” B.R.C. 1981,  
2 but must comply with all other requirements of Chapter 6-14 “Medical Marijuana  
3 Businesses” or Chapter 6-16 “Recreational Marijuana Businesses,” B.R.C. 1981, as  
4 appropriate.

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

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

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

16 E. “Existing lawfully” shall mean:

17 i. ~~(a)~~ businesses that are in compliance with all applicable laws and regulations of  
18 the state and the Colorado Department of Revenue Marijuana Enforcement  
19 Division (“MED”), and

20 ii. ~~(b)~~ businesses that submitted completed applications for approval of new  
21 licenses or modification of premises to MED on or before August 16, 2016, and

22 iii. ~~(c)~~ businesses and properties in compliance with the codes adopted by Boulder  
23 County for building requirements; ~~and~~  
24

1 iv. (d)-businesses and properties who had obtained land use approvals from Boulder  
2 County on or before August 16, 2016 and are pursuing those approvals through  
3 the building permit process-; ~~or and~~

4 v. (e)-properties for which the owner or tenant had obtained a building permit from  
5 the county prior to August 16, 2016 and was diligently pursuing construction to  
6 completion.

7 F. The continuation and expiration of marijuana businesses existing lawfully that do  
8 not comply with the requirements of Chapter 6-14 “Medical Marijuana” or 6-16  
9 “Recreational Marijuana” B.R.C. 1981 are governed by the provisions Section 9-10-  
10 2(a) “One-Year Expiration of Nonconforming Uses” B.R.C. 1981.

11 G. The provisions of 6-16-6 “Persons Prohibited as Licensees and Business Managers”  
12 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  
14 existing lawfully.

15  
16 Section 7. The property owners of the Property shall not be required to pay any city  
17 annexation application costs or fees. Utility fees, including connection and plant investment fees,  
18 and requirements to connect to city water or wastewater facilities shall be deferred to the time of  
19 (a) connection to the utility, (b) or construction that increases the square footage of existing  
20 development upon a parcel of the Property, or (c) construction for which the value on the building  
21 permit application(s) for the same project after August 16, 2016, exceeds 25% of the assessed value  
22 of the building, whichever occurs first. For purposes of subsection (c), “construction” shall not  
23 include routine maintenance that includes without limitation the repair or replacement of exterior  
24 building materials such as roofing, siding, or HVAC equipment, or painting, or equipment that  
25 supports the building such as plumbing, heating, air conditioning, or lighting.

1           Section 8.     The city hereby consents to the inclusion of each parcel of the Property into  
2 the Northern Colorado Water Conservancy District (the “District”)– and the Municipal Subdistrict  
3 of the Northern Colorado Water Conservancy District (the “Subdistrict”); pursuant to C.R.S. 37-  
4 45-136(3.6) ~~upon provision of water to that parcel. The parcels at 5565 Arapahoe Ave. and 1840~~  
5 ~~55th St. are receiving water from the city currently and the staff is directed to take the steps~~  
6 ~~necessary to complete inclusion of those parcels into the District and Subdistrict. Contemporaneous~~  
7 ~~with this annexation, the City hereby consents to the inclusion of the parcels at 5565 Arapahoe Ave.~~  
8 ~~and 1840 55<sup>th</sup> St. into the Northern Colorado Water Conservancy District (the “District”)– and the~~  
9 ~~Municipal Subdistrict of the Northern Colorado Water Conservancy District (the “Subdistrict”);~~  
10 ~~pursuant to C.R.S. 37 45 136(3.6) Upon inclusion into the District and Subdistrict, said property).~~  
11 ~~to the extent such parcels are not already included in said District, Subdistrict or both. Upon~~  
12 ~~inclusion into the District and Subdistrict, said Property~~ shall be subject to the same mill levies and  
13 special assessments as are levied or will be levied on other similarly situated property in the District  
14 and Subdistrict, respectively.

16           Section 9.     The City Council approves any variations or modifications to the Boulder  
17 Revised Code or other City ordinances consistent with this ordinance.

18           Section 10.   The annexation and zoning of the Property is necessary for the protection of  
19 the public health, safety, and welfare.

20           Section 11. The City Council deems it appropriate that this ordinance be published by title  
21 only and directs the city clerk to make available the text of the within ordinance for public  
22 inspection and acquisition.

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

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4  
5 Attest: \_\_\_\_\_ Mayor  
6  
7 \_\_\_\_\_  
8 City Clerk

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

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12 Attest: \_\_\_\_\_ Mayor  
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14 \_\_\_\_\_  
15 City Clerk

16 READ ON THIRD READING, PASSED AND ADOPTED this 1st day of November,  
17 2016.

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20 Attest: \_\_\_\_\_ Mayor  
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22 \_\_\_\_\_  
23 City Clerk

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EXHIBIT A TO ORDINANCE 8139

Map of 15 parcels of Property to be Annexed  
(This map contains group number references also noted in the property descriptions in Exhibit B.)

*(Map goes here)*

**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 55<sup>th</sup> 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 55<sup>th</sup> 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 55<sup>th</sup> 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 55<sup>th</sup> 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 55<sup>th</sup> 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 55<sup>th</sup> 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. 55<sup>th</sup> 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.

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**#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 55<sup>th</sup> 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 55<sup>th</sup> 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 15<sup>th</sup> 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

**56<sup>th</sup> Street ROW**

All that part of the 56<sup>th</sup> 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.

**55<sup>th</sup> Street ROW**

All that part of the 55<sup>th</sup> 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.