**BOULDER CITY COUNCIL**
**MAYOR: Susan Osborne**
**DEPUTY MAYOR: Ken Wilson**

**COUNCIL MEMBERS:**

**Suzy Ageton**
**Matt Appelbaum**
**KC Becker**
**Macon Cowles**
**Crystal Gray**
**George Karakehian**
**Lisa Morzel**

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| **City Manager:** | **Jane S. Brautigam** |
| **City Attorney:** | **Tom Carr** |
| **Municipal Judge:** | **Linda P. Cooke** |
| **Deputy City Manager:** | **Paul J. Fetherston** |
| **DIRECTORS:** | |
| **City Clerk/ Support Services:** | **Alisa D. Lewis** |
| **Executive Director of Community Planning & Sustainability** | **David Driskell** |
| **Downtown, University Hill Management & Parking Services:** | **Molly Winter** |
| **Chief Financial Officer:** | **Bob Eichem** |
| **Fire Chief:** | **Larry Donner** |
| **Housing and Human Services:** | **Karen Rahn** |
| **Human Resources:** | **Eileen Gomez** |
| **Information Technology:** | **Don Ingle** |
| **Library Director:** | **Valerie Maginnis** |
| **Municipal Court Administrator:** | **Lynne C. Reynolds** |
| **Open Space and Mountain Parks:** | **Michael Patton** |
| **Parks and Recreation:** | **Kirk Kincannon** |
| **Police Chief:** | **Mark R. Beckner** |
| **Public Works, Executive Director:** | **Maureen Rait** |
| **Public Works, Transportation:** | **Tracy Winfree** |
| **Public Works, Utilities:** | **Ned Williams** |

**Economic Vitality Team:**
**Molly Winter - Downtown and University Hill**
**David Driskell - Community Planning & Sustainability**
**Liz Hanson - Business Liaison**
**Patrick von Keyserling -Communication Manager**
**Jennifer Miles - Arts and Culture**

Updated: 6/23/2011

**BOULDER CITY COUNCIL MEETING**
**MUNICIPAL BUILDING, 1777 BROADWAY**
**Tuesday, October 4, 2011**
**6:00 p.m.**

**AGENDA**

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

2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE** (limited to 45 min.) Public may address any city business for which a public hearing is not scheduled later in the meeting (this includes the consent agenda and first readings). After all public hearings have taken place, any remaining speakers will be allowed to address Council. All speakers are limited to three minutes.

3. **CONSENT AGENDA:** (to include first reading of ordinances) Vote to be taken on the motion at this time. (Roll call vote required.)

   A. Consideration of a motion to approve the **September 6**, 2011 City Council **meeting minutes.**

   B. Consideration of a motion to accept the **summary of the August 23**, 2011 **Study Session on the Update on SmartRegs Implementation and Rental Housing Licensing Enforcement.**

   C. Consideration of a motion to accept the summary **of the September 13**, 2011 **study session on the 2012 Recommended Budget.**

   D. Consideration of a **motion to approve a 20-year lease of city-owned land to** Public Service Company of Colorado **(Xcel Energy) for** the **location of underground utilities** adjacent to Pearl Parkway on a parcel of land that is located on the northeast corner of the intersection of 30$^{th}$ Street and Pearl Parkway right-of way.

   E. Second reading and consideration of a motion to adopt **Ordinance No. 7816** repealing and re-enacting Section 11-1-19, "Water and Ditch Rights," B.R.C. 1981, **to address agreements for right of first refusal, purchase and sale of water or ditch rights and resulting adjustment of water budget.**

4. **POTENTIAL CALL- UP CHECK IN:** Opportunity for Council to indicate possible interest in the call- up of an item listed under agenda Item 8-A1.

## ORDER OF BUSINESS

5. **<u>PUBLIC HEARINGS</u>**:

A. Consideration of the following **items relating to the 2012 Budget:**

1. Public hearing on the proposed 2012 City of Boulder Budget; and

2. Introduction, first reading, and consideration of a motion to order published by title only an **ordinance that adopts a budget for the City of Boulder,** Colorado, for the fiscal year commencing on the first day of January 2012 and ending on the last day of December 2012, and setting forth details in relation thereto; and

3. Introduction, first reading and consideration of a motion to order published by title only an **ordinance that establishes the 2011 City of Boulder property tax mill levies** which are to be collected by the County of Boulder, State of Colorado, within the City of Boulder in 2012 for payment of expenditures by the City of Boulder, County of Boulder, State of Colorado, and setting forth details in relation thereto; and

4. Introduction, first reading and consideration of a motion to order published by title only **an ordinance that appropriates money to defray expenses and liabilities of the City** of Boulder, Colorado, for the 2012 fiscal year of the City of Boulder, commencing on the first day of January 2012, and ending on the last day of December 2012, and setting forth details in relation thereto; and

5. Introduction, first reading and consideration of a motion to order published by title only **an ordinance**, that amends Chapters 2-6, 3-9 and 4-20 B.R.C. 1981 **changing certain fees** and setting forth details in relation thereto.

B. Consideration of a **motion to authorize the City Manager to dispurse $960,292 of** the city's **education excise tax revenue to support the purchase of a property for the Wilderness Place Project**, a center to provide comprehensive services related to early childhood **and,** in connection thereto, to **enter into a shared appreciation loan agreement to secure the city's investment** in that project.

6. **<u>MATTERS FROM THE CITY MANAGER:</u>**

None.

7. **MATTERS FROM THE CITY ATTORNEY:**

A. Consideration of a **motion authorizing** the City Manager to enter into **a settlement agreement in the litigation** brought against the city and its employees **by Sylvia Asten.**

B. Consideration of a **motion authorizing** the City Manager to enter into **settlement agreements in the disputes with Honeywell International**, Inc. **and Tusco,** Inc. **for** their roles in the **environmental remediation efforts on the Valmont Butte property.**

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **Potential Call-ups:**

1. **Final Plat Approval for 1215 Cedar (Washington Village),** (#TEC2011-00014). Information Packet date, September 28, 2011. Last opportunity for call-up is October 4, 2011. Planning Board Approval 5-0 with W. Johnson and D. Powell absent)

B. **US 36 Update.**

9. **PUBLIC COMMENT ON MATTERS:** (15 min.) Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

11. **ADJOURNMENT**

This agenda and the meetings can be viewed at www.bouldercolorado.gov / City Council. Meetings are aired live on Municipal Channel 8 and the city's Web site and are re-cablecast at 6 p.m. Wednesdays and 11a.m. Fridays in the 2 weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library. Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's office at (303) 441- 3002, 8am – 5pm Monday through Friday. ***48 hours notification prior to the meeting or preparation of special materials IS REQUIRED.*** If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least 3 days prior to the meeting. *Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 días antes de la junta.* Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 5:30pm at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.

**CONSENT ITEM – 3A**

**CITY COUNCIL PROCEEDINGS**

**September 6, 2011**

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

Mayor Osborne called the regular September 6, 2011 City Council meeting to order at 6:07 p.m. in Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Cowles, Gray, Karakehian and Morzel.

Council Members Appelbaum and Becker were absent.

2. **OPEN COMMENT and COUNCIL/STAFF RESPONSE** – 6:07 p.m.

1. Shannon Burke with the Fairview Net Zero club spoke in support of a ban on single use plastic bags and a fee on single use paper bags.
2. Kira Headrick with the Fairview Net Zero club also spoke in support of a ban on single use plastic bags and a fee on single use paper bags.
3. Rachael Pryor spoke to medical marijuana licensing denials and suggested Council was passing legislation on an industry it didn't fully understand.
4. Stacy Hsu from Summit Charter School and part of the Net Zero club urged Council to place a ban on plastic bags.
5. Emil VonDungen raised concern about the health hazards related to Xcel energy trunk lines near Baseline and 35th Street.
6. Daniel Williams representing Southwest Alternative Care spoke to a medical marijuana license denial and suggested the City had not taken action to hear an appeal. He urged Council not to change the rules midstream.
7. Carl Savitz with Flower of Life urged Council to re-examine the separate "tenant space" provision of the medical marijuana ordinance.
8. Jenny Harvey pooling time with Sophie Chen and Sarafin Castellino with Summit Charter School's Net Zero Club strongly urged Council to place a 5 cent fee on single use bags.
9. Jennifer Zhu from Fairview's Net Zero Club also supported a fee or ban on plastic bags.
10. Vivian Chen from Fairview's Net Zero Club also supported a ban on plastic bags in Boulder.
11. Michelle Tucker urged Council to keep the fundamental American right to appeal available for medical marijuana dispensaries.
12. Brett Barney a medical marijuana attorney suggested the denial of an appeal didn't offer the opportunity for administrative correction and review of factual data. This didn't provide due process for medical marijuana businesses.
13. Mike Stengel the property owner of where a party recently occurred on University Hill offered that he was available for any questions from Council.
14. Seth Brigham commented that McCarthyism was alive in Boulder and associated it with his recent arrest.
15. Michael Hannan representing the Flower of Life medical marijuana business spoke to how the new legislation could impact local businesses.
16. Richard Demuth raised concern about cars driving illegally with no license plates or

dark license plates.

17. Stephen Keenan raised concern about the aggressive behavior and angry outbursts at Council meetings. He indicated he would like to show President Eisenhower's farewell address at a future council meeting. He also supported Council Member Cowles' view on GMO's on open space.
18. Elizabeth Allen urged Council to send Item 3G back to Planning Board and commented that more office space was not needed in Downtown.
19. Peter Richards complained that the City Council agenda was not placed in the Sunday newspaper.
20. Miriam Paisner raised concern about a diminishing middle class, traffic and construction in Boulder. She also complained about the Valmont Dog Park being a mess.
21. Corey Donohue suggested Council was playing around the constitution with medical marijuana legislation. He also did not like how Council treated Mr. Brigham.
22. Hillary Rosner a University Hill Homeowner suggested behavior on the Hill was getting worse. She urged Council to make Hill issues a priority.
23. Philip Higgs also voiced his extreme displeasure with the Police Chief's comments in the newspaper regarding the University Hill area. He also urged Council to make University Hill issues a priority.
24. Jay Czarkowski a licensed medical marijuana business owner urged Council not to deny due process to licenses that were denied. Regarding advertisement he provided examples of other drugs and cigarettes and did not feel this was an issue Council could address.
25. Diana Caile spoke in support of restricting medical marijuana advertisements to the medicinal benefits and not allowing them to promote recreational use. She raised concern about marijuana use among the youth in Boulder.

**City Manager Response:**
City Manager Brautigam indicated there would be a study session on October 11 regarding the Zero Waste Master Plan which would include information about plastic bag use. Regarding Xcel energy and the trunk lines, she would forward that information to staff for a response.

**City Attorney Response:**
City Attorney Tom Carr indicated that pending medical marijuana applications would receive appeals and "retroactivity" could certainly be included in the ordinance language. Some delay occurred with the hearings due to the need for businesses to be inspected.

**City Council Response:**
Council Member Gray asked staff to respond to the public's comments on medical marijuana (vertical integration, etc..) as first reading questions.

Council Member Cowles suggested CAC should discuss the 2 minute limit and being more consistent with speakers.

Council Member Gray responded to Mr. Dumuth and indicated that the Police do ticket individuals who drive without proper license plates.

3. **<u>CONSENT AGENDA:</u>** - 7:09 p.m.

A. **CONSIDERATION OF A MOTION TO APPROVE THE AUGUST 2, 2011 CITY COUNCIL MEETING MINUTES.**

B. **CONSIDERATION OF A MOTION TO APPROVE THE AUGUST 16, 2011 CITY COUNCIL MEETING MINUTES.**

C. **CONSIDERATION OF A RESOLUTION SUPPORTING DRCOG'S GRANT APPLICATION FOR HUD'S SUSTAINABLE COMMUNITIES REGIONAL PLANNING GRANT (SCRPG).**

D. **CONSIDERATION OF A MOTION TO ACCEPT THE WATER UTILITY MASTER PLAN.**

E. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7809 AMENDING TITLE 11, "UTILITIES AND AIRPORT" B.R.C. 1981 RELATED TO SECTION 11-1-15, "OUT-OF-CITY WATER SERVICE," B.R.C. 1981 AND SECTION 11-2-10, "OUT-OF-CITY SEWER SERVICE," B.R.C. 1981.**

F. **CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO A DEVELOPMENT PROJECT PROPOSED FOR A BOULDER COUNTY PROPERTY IDENTIFIED AS 6400 ARAPAHOE:**

1. **A RESOLUTION FINDING THE ANNEXATION PETITION IN COMPLIANCE WITH STATE STATUTES AND ESTABLISHING OCT. 18, 2011 AS THE DATE FOR A PUBLIC HEARING.**

2. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE ANNEXING A 2.79 ACRE PORTION OF ARAPAHOE ROAD FROM 62ND STREET ON THE WEST EXTENDING EASTWARD TO A POINT ALONG THE NORTH PROPERTY LINE OF 6400 ARAPAHOE ROAD WITH AN INITIAL ZONING CLASSIFICATION OF INDUSTRIAL GENERAL (IG).**

3. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE ANNEXING A 9.56 ACRE OF LAND GENERALLY LOCATED AT 6400 ARAPAHOE WITH AN INITIAL ZONING CLASSIFICATION OF INDUSTRIAL GENERAL (IG).**

4. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, AN ORDINANCE ANNEXING A 0.25 ACRE PORTION OF**

**ARAPAHOE ROAD, GENERALLY LOCATED NORTHWEST OF 6400 ARAPAHOE ROAD WITH AN INITIAL ZONING CLASSIFICATION OF INDUSTRIAL GENERAL (IG).**

**G. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING TITLE 9, LAND USE CODE, B.R.C. 1981:**

1. **SECTION 9-7-1 TABLE 7-1 "FORM AND BULK STANDARDS" ADDING A 65-FOOT SUPPLEMENTAL SETBACK FOR ZONE DISTRICTS DOWNTOWN-5 (DT-5) AND PUBLIC (P) ALONG CANYON BLVD. FROM 9TH TO 16TH STREETS.**
2. **SECTION 9-8-2 TABLE 8-2 "FLOOR AREA RATIO ADDITIONS" ADDING A FLOOR AREA ADDITION FOR COMMERCIAL USES IN THE DT-5 ZONE DISTRICT.**

H. **ITEMS RELATED TO MEDICAL MARIJUANA:**

1. **CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION AFFIRMING THE CITY'S COMMITMENT TO DEFEND IN THE EVENT A CITY EMPLOYEE IS CHARGED WITH VIOLATING FEDERAL LAW FOR IMPLEMENTING OR ENFORCING THE CITY'S MEDICAL MARIJUANA LAWS; AND**

2. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE TO AMEND PROVISIONS OF CHAPTER 6-14 "MEDICAL MARIJUANA."**

<u>Council Member Gray moved, seconded by Karakehian to approve consent items 3A through 3H. The motion carried unanimously 7:0; Appelbaum and Becker absent.</u>

Deputy Mayor Wilson spoke to item 3D and asked staff to seriously consider the comments by the Water Resources Advisory to be vigilant about keeping facilities up to par and suggested the new Director could oversee this in the coming year.

Council Member Karakehian requested clarification on the inflation rates provided on page 7 of the agenda memo for item 3D and suggested this be incorporated in the Water Utility Master Plan document.

4. **<u>CALL- UP CHECK IN:</u>** - 7:14 p.m.

None.

**ORDER OF BUSINESS**

5. **<u>PUBLIC HEARINGS</u>**: - 7:15 p.m.

A. **CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO A DEVELOPMENT PROJECT TITLED HARPER HOLLOW LOCATED ON A BOULDER COUNTY PROPERTY IDENTIFIED AS 3015 KALMIA AVENUE:**

1. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7806 TO ANNEX AND ZONE THE SUBJECT PROPERTY TO FLEX DISTRICT ZONING PER SUBSECTION 9-5-2 (C)(7), B.R.C. 1981;**

2. **SITE REVIEW TO PERMIT A TOTAL OF 57 DWELLING UNITS (29 SINGLE-FAMILY, 16 DUPLEX UNITS, AND 12 FOURPLEX UNITS), WHICH INCLUDES AN EXISTING HOUSE PROPOSED FOR LANDMARKING, AND**

3. **REQUEST FOR VESTED RIGHTS PURSUANT TO SECTION 9-2-19, B.R.C. 1981.**

**APPLICANT/PROPERTY OWNER: HARPER HOLLOW, LLC**

Charles Ferro introduced the item. Karl Guiler presented the site context, history and noted the proposal included 57 attached and detached units. Andy Proctor spoke to the community benefit of 45.6% affordable housing at the site and indicated staff was still negotiating with the applicant on the affordable housing piece.

Council Member Gray clarified that the goal was to get between 40-60% affordable housing and staff clarified that this was in the range of what was done at the Northfield Commons site.

Council Member Morzel clarified that in annexations, the amount of housing was based on the negotiations for the amount of affordable housing. Mr. Proctor clarified that staff works with applicants in annexation scenarios to obtain the best possible package for the City.

Mayor Osborne clarified with staff that the applicant could withdraw his application after Council made its motion or if Council wanted changes, negotiations could continue and come back to Council.

Council Member Ageton asked about the ditch water rights and whether there were outstanding issues associated with that. Mr. Guiler responded that the city had paid for those rights and the applicant was currently holding the check.

Richard Lopez, attorney for the applicant, introduced the project architect Peter Stewart. Mr. Stewart then described the project objectives for Harper Hollow including making the development compatible with the existing adjacent neighborhoods and preserving the Harper family home. He spoke to density, connectivity, the site design and character and the affordable housing community benefit. He highlighted a lower density character as compared to the surrounding properties and the diversity of building types, wide range of affordability and pocket parks throughout. He closed with comments related to community benefit which included community park areas, diversity of building types and incomes and the project completing the neighborhood pattern.

Council Member Gray asked how the parks would be used recreationally. Mr. Stewart outlined the park sizes and indicated they were large enough for outdoor activities such as football, Frisbee etc…

Council Member Cowles asked about transportation and pedestrian connections. Mr. Stewart indicated a path would connect to Northfield and there was also the Wonderland Creek Connection.

Richard Lopez then spoke to the need for Harper Hollow to wait on development of the Kalmia property due to the economic downturn and changes to the requirements during the mean time. The applicant's desire was to move forward with annexation and development of the property but sought the ability to expand the pool of potential buyers for the affordable units by modifying the HUD income limits for the affordable duplexes from HUD +35% to HUD +47% and for the two affordable single family homes from HUD +47% to HUD +50% OR the applicant requested that council provide them with the option to pay cash in lieu of $50,000 per each required affordable dwelling unit if they can't be sold after 6 months. He urged Council to approve the project with 45.6-percent of the homes as permanently affordable housing but allow them to expand the pool of potential buyers to the aforementioned income limits or alternatively, to approve the exit strategy of cash in lieu.

Council Member Morzel asked Mr. Lopez to review the HUD percentages to clarify which was duplex vs. single family. Mr. Lopez explained that the applicant perceived a gap between the income limits in the affordable housing program which qualified buyers and the selling price of the affordable homes.

Council Member Gray asked what the HOA fees would be for the properties. Rich Lopez indicated those would be between $180 to $225 per month.

Council Member Cowles clarified that Mr. Lopez hoped the HUD income limits would be moved from 35% to 47% for the affordable duplexes and from 40% to 50% for the two affordable single family homes Without these changes, he would prefer to see the $50,000 cash in lieu in order to proceed with the development.

Council Member Cowles asked Michelle Allen to speak to the income limit. She indicated this was really a Council policy decision concerning the income limit and that the current income limits of HUD plus 40% made the affordable homes available to three person households earning up to $91,000 annually, and HUD plus 35% would be affordable to households earning up to $87,000 Staff hoped to see a range of affordability for the middle-income priced affordable homes on the site and noted that the requested changes c ould push the income limit close to $100,000 which in certain circumstances would be over the maximum middle income threshold of 120% AMI.

Council Member Morzel asked Mr. Proctor to describe the affordable housing programs that had been used to help get properties sold.

Council Member Karakehian requested an explanation of how the HUD limits move and the impacts on the affordability. Michelle Allen responded that the Area Median Income, set by HUD, can change over time. In 2010 the HUD "low income" limit was 71.9% of AMI so adding 50% would bring it to 121.9%, or over the 120% AMI middle income limit. For this reason, keeping the income limit at HUD plus 40% would ensure that the 120% AMI threshold was not exceeded in the future.

The public hearing was opened at 8:20 p.m.

1. Daniel Ziskin spoke in support of the community benefit that would be gained from annexing the property however he did not feel it was transit friendly and suggested a small market in the area might be helpful and reduce car traffic.
2. Gary Calderon, co-developer of the project, indicated what they were asking Council for was an exit strategy. They were fine with the number of affordable units and mix of affordable housing types but hoped for some sort of help from the city if the units weren't selling within 6 months.

There being no further speakers the public hearing was closed at 8:25 p.m.

<u>Council Member Gray moved, seconded by Cowles to adopt Ordinance No. 7806 to annex the property located at 3015 Kalmia Ave. and zone the subject property to Flex District zoning per subsection 9-5-2 (c) (7), B.R.C. 1981 and approve Site Review application #LUR2007-00032 to permit a total of 57 dwelling units (29 single-family, 16 duplex units, and 12 fourplex units), which includes an existing house proposed for landmarking, and approve the request for vested rights pursuant to section 9-2-19, B.R.C. 1981.</u>

<u>No vote as substitute motion carried.</u>

Council Member Cowles indicated he would support the motion and would prefer to stick with the HUD requirements recommended by staff on page 38 of the memo.

Council Member Morzel asked why certain limits were allowed at Northfield Commons that would not be considered now. Michelle Allen indicated that Northfield was a different community benefit scenario with different area median income levels. Ms. Morzel agreed that more investment in infrastructure and pedestrian/bike path were important. She also noted in response to comments from Mr. Ziskin, that there had been efforts by the city in the early 1990s to consider a three acre parcel that would have included both commercial and retail.

Council Members Gray and Osborne suggested they would support the main motion.

Council Member Karakehian asked if it ever made sense to pre-agree (incent) on unsold units. He thought if this was agreed upon in advance (i.e. down payment assistance programs etc…) that it would be more of a guarantee for the applicant. He thought there were other opportunities to help the buyers move forward and provide the applicant more assurance that they would be able to sell the affordable units in a reasonable time period.

Council Member Gray expressed that this would also depend upon the amount of funding available in the programs. Mr. Proctor indicated the funding came from a variety of sources and availability of funds could not be ensured in the future.

Deputy Mayor Wilson indicated this discussion could be informing the Affordable Housing Task Force discussion (which seemed backward). He asked if there were anything coming out of the Task Force discussion that would help in this situation. Mr. Proctor indicated many conversations were specific to inclusionary housing rather than annexation, but there were similar policy discussions taking place. Discussions about annexation situations weren't that direct.

Council Member Ageton offered a substitute motion, seconded by Morzel to continue the item to a date to be determined later. Direction to staff was to work with the applicant to provide some options to expand the eligible buyer pool and alternatives in case the affordable homes would not sell in a reasonable time period.

Vote was taken on whether to vote on the substitute motion. The motion carried 5:2; Cowles and Gray opposed; Appelbaum and Becker absent.

Vote was taken on the substitute motion. The motion carried 4:3; Cowles, Gray and Osborne opposed; Appelbaum and Becker absent.

## 6. **MATTERS FROM THE CITY MANAGER**: - 9:13 p.m.

### A. **REPORT FROM CHIEF OF POLICE MARK BECKNER ON BACK TO SCHOOL OPERATIONS.**

City Manager Brautigam provided an introduction to the item. Questions about the Municipal Court and fireworks would also be discussed by Municipal Court Judge Linda Cooke. Police Chief Mark Beckner provided a report on back to school operations on University Hill. Mr. Beckner reported that feedback from the community and experience of officers were also reviewed when looking at resources and needs. He provided various statistics related to crime rates in Boulder and noted that crime was on a downward trend (8% for 2010). Calls for service had been trending upward. This spoke to the Police getting calls for more things/services that were not always related to serious crime. Misdemeanor and disorderly type crimes seemed to be no worse than in previous years according to officer experience. The data suggested that MIP tickets were down and the number of nuisance parties were also down. Fireworks enforcement had been trending upwards. Overtime officers were hired around the Fourth of July timeframe to address this issue. Education and problem solving efforts had significantly increased rather than just enforcement efforts. Back to school efforts on August 26 consumed 27% of the police staffing. Calls for service that evening were 61 on University Hill for a total of 143 calls in the City.

Council Member Morzel clarified that Boulder received support from the CU Police department. Mr. Beckner commented that they were supported by CU with 5 or 6 officers.

Deputy Mayor Wilson asked what percentage of the calls were related to alcohol? Mr. Beckner commented that at that particular time of the evening approximately 80% of the calls were alcohol related. Mr. Wilson then spoke to some of his perceptions of why things were changing on the Hill such as neighborhoods that used to have NO rental properties that now have one or two and this has led to parties and issues spreading further throughout the area. He suggested more efforts were needed and Mr. Beckner agreed. Progress would be slow as the community underwent a culture shift.

Mr. Beckner noted that City Manager Brautigam had been very supported of the efforts to resolve issues on University Hill.

Council Member Karakehian asked Mr. Beckner to respond to the couple who spoke during open comment that had issues with a party and police response. Mr. Beckner indicated he was working on this issue which seemed to be a misunderstanding with dispatch about the nature of the problem. Mr. Karakehian also requested a future discussion about darker areas on the Hill where there were limited street lights. Ms. Brautigam indicated this was something that was being looked at. Mr. Karakehian asked if there was any increase in the Police budget for the next year. Ms. Brautigam indicated that Police was taking over code enforcement and would be receiving additional FTE's and funding associated with taking over that responsibility.

Council Member Ageton asked Mr. Beckner to describe whether medical marijuana was having an impact on any of the statistics. Mr. Beckner indicated there was no information to suggest that it had any impact on crime statistics; it may be too early to tell. Ms. Ageton indicated this would be interesting to know.

Council Member Gray suggested Council keep in place the land use/hours for bars and restaurants and suggested the City should lobby the state to be able to regulate their hours. She also suggested a night time parking district where it was residents only it would keep some of the cruisers out of the neighborhood. In addition, more on campus CU housing may be an area to look at.

Council Member Cowles asked how officers catch people who set off fireworks. Mr. Beckner responded that typically officers had to be there to catch someone. This was resource intensive for the police department.

Judge Linda Cooke reported that no plea bargains were offered anymore. It was recommended that she impose a $750 fine and suspend $500 on the condition that another similar violation was not received in a one year period. There was also a recommendation of 16 to 28 hours of community service. Restorative Justice was also being conducted on many of those cases. Many of the cases were not CU students (about 60% were students).

B. **UPDATE ON THE CAPITAL INVESTMENT STRATEGY STAKEHOLDER COMMITTEE PROCESS AND SCHEDULE.**

City Manager Brautigam

## 7. <u>MATTERS FROM THE CITY ATTORNEY:</u>

None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

None.

9. **PUBLIC COMMENT ON MATTERS:** (15 min.) Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

11. **ADJOURNMENT**
There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 9:38 P.M.

APPROVED BY:

______________________

ATTEST:

Susan Osborne,
Mayor

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Alisa D. Lewis,
City Clerk

# CONSENT ITEM – 3B

**CITY OF BOULDER**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 4, 2011**

**AGENDA TITLE:** Consideration of a motion to accept the summary of the August 23, 2011 Study Session on the Update on SmartRegs Implementation and Rental Housing Licensing Enforcement

**PRESENTERS:**
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
David Driskell, Executive Director of Community Planning and Sustainability
Maureen Rait, Executive Director of Public Works
Mary Ann Weideman, Deputy Director of Operations for Community Planning and Sustainability
Kara Mertz, Local Environmental Action Manager
Janet Michels, Assistant City Attorney III
Aimee Kane, Acting Administrative Services Manager
Yael Gichon, Residential Sustainability Coordinator
Kirk Moors, Acting Chief Building Official
Megan Cuzzolino, Residential Sustainability Specialist
Kelle Boumansour, Contracts and Data Manager

## EXECUTIVE SUMMARY

This agenda item provides a summary of the Aug. 23, 2011, City Council Study Session on the Update on SmartRegs Implementation and Rental Housing Licensing Enforcement. The objective of this study session was to provide council an update on the status of the SmartRegs energy efficiency ordinance, implementation of a pilot rental housing licensing enforcement program and provide information on program-related suggestions and issues not addressed by ordinance changes to date.

**Attachment A** is a summary of council's discussion of the issues and questions that were presented at the study session.

**STAFF RECOMMENDATION**

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| **Suggested Motion Language**:<br>Staff requests council consideration of this matter and action in the form of the following motion:<br><br>Motion to accept the study session summary **(Attachment A)** of the Aug. 23, 2011, Study Session on the Update on SmartRegs Implementation and Rental Licensing Enforcement |

**NEXT STEPS**
**SmartRegs Implementation & Rental Housing Licensing Enforcement and Housing Code**

The next update is scheduled for November 2011. At that time, staff will update Council on the following:

- Update on Xcel rebates as related to natural gas versus electric;
- SmartRegs Compliance and Rental License Enforcement Statistics;
- Future steps in enforcement and RLCS pilot program; and
- Information to be included on the SmartRegs Web portal.

**ATTACHMENTS**
**A:** Summary of the Aug. 23, 2011 Study Session on the Update on SmartRegs Implementation and Rental Housing Licensing Enforcement.

**City Council Study Session Summary**
**Update on SmartRegs Implementation and Rental Housing Licensing Enforcement**
**October 4, 2011**

**PRESENT:**

**City Council:** Mayor Susan Osborne, Deputy Mayor Ken Wilson, City Council Members Crystal Gray, Matt Appelbaum, George Karakehian, and Suzy Ageton

**Staff Members:** Jane S. Brautigam, City Manager; Paul Fetherston, Deputy City Manager; David Driskell, Executive Director of Community Planning and Sustainability; Maureen Rait, Executive Director of Public Works; Kara Mertz, Local Environmental Action Manager; Aimee Kane, Acting Administrative Services Manager; Yael Gichon, Residential Sustainability Specialist; Kirk Moors, Acting Chief Building Official; Megan Cuzzolino, Residential Sustainability Specialist; Sara Finfrock, Acting Administrative Supervisor; Jeff Arthur, Engineering Review Manager and Interim Code Enforcement Supervisor.

**PURPOSE:**

The purpose of the Aug. 23, 2011 City Council study session was to update the council on the status of the SmartRegs energy efficiency ordinance, implementation of a pilot rental licensing enforcement program and provide information on program-related suggestions and issues not addressed by ordinance changes to date.

**PRESENTATION:**

**SmartRegs Implementation**

Residential Sustainability Specialist Megan Cuzzolino explained the intention of a footnote in the study session memo and clarified that the $1032 amount in question was referring to the average cost of upgrades after rebates. Ms. Cuzzolino continued the discussion by providing an update on the SmartRegs program since its implementation in January 2011 and offered information about the relationship between the SmartRegs and the EnergySmart programs, a concierge service geared toward assisting property owners in making energy efficiency improvements to their properties. Program highlights include quick install items that help raise Prescriptive Pathway point totals at time of inspection, the use of dashboard technology for reporting information, the achievement of exceeding SmartRegs implementation set during the program design, average costs incurred to homeowners ($1732/unit), outreach and next steps in the program.

**COUNCIL DISCUSSION:**

**SmartRegs Implementation**

Council's discussion focused primarily on the success of the SmartRegs and the EnergySmart programs. The general sentiment that it was, "not as bad as expected" and is now being supported by prior skeptics were noted. Having used the EnergySmart service to obtain

SmartRegs compliance on some of their own properties, council members requested clarification on the program, expressed concerns and provided input for program enhancements.

Council asked if there were benefits in reaching SmartRegs compliance during the rental license renewal process. Ms. Cuzzolino explained that combining inspections does increase efficiency for homeowners' and tenants' sake and it is ideal for maximizing rebate opportunities during the early phases of the program. A few council members raised the issue of the fairness of the rebate system. Council questioned why rebates seem to be increasing as the program continues, rather than allowing early adopters the opportunity to reap the benefits, as discussed during program development. Staff indicated that the initial $100 rebate was not inspiring owners to make changes. However, increasing the rebates to $300-500 yielded a higher participation rate. From May to July, when rebate amounts were increased by 100 percent, rebate participation doubled. The city is currently attempting to create a "step-down effect" from the double-rebate program that was offered over the summer.

Concern was expressed that rebates distributed by the City of Boulder as well as EnergySmart tend to take longer to receive than other offered rebates. Ms. Cuzzolino acknowledged the time frame associated with the EnergySmart rebate process. The countywide EnergySmart team is aware of this issue and is working to shorten this turnaround time. However, the wait time is a direct result of the many steps each rebate must go through during processing. EnergySmart advisors have been instructed to tell their customers that rebates may take up to 10 weeks.

Council requested clarification as to why single-family homes appear to be in need of more energy upgrades and have a higher cost to obtain compliance. Also, council members were curious as to why there are a high percentage of affordable housing units already in compliance. Ms. Cuzzolino informed council that, in general, multi-family units are more energy efficient via the design of shared walls and ceilings. Affordable housing units are often multi-family units, which also benefit from this inherent energy efficient design.

Additionally, council made suggestions about education and outreach efforts for SmartRegs implementation, not only for landlords, but also for tenants. The suggestion was made for SmartRegs information to be distributed when rental license renewal notices are sent to landlords. It was noted that the city is in the process of implementing this suggestion during the notification for the next rental license renewal cycle. It was also recommended that tenants be made more aware of how their behaviors affect energy efficiency and climate change. Ms. Cuzzolino indicated that staff is working with the University of Colorado Greek Advocates, Off Campus Student Services and HOA groups to emphasize the link between occupant behavior and energy savings. Also, a brochure created by the city is being distributed to inform property owners and residents about the EnergySmart pathway to SmartRegs compliance. The City of Boulder will also launch a web portal where residents can search for SmartRegs compliant rental properties. The site will contain information like total prescriptive points and other basic information collected during the inspection. Other outreach efforts are being explored including web and print ads in local papers, target outreach during student rental search periods, broadcasting SmartRegs statistics on Channel 8 and the creation of educational videos to be shared with tenants.

In response to one of the case studies, council discussed the potential for conflicts of interest when a contractor inspects for SmartRegs compliance and offers his services for performing energy efficiency upgrades. On one hand, having one approved entity for inspecting and performing improvements can be more efficient. However, concern was expressed about contractors overselling their services for compliance with a city program. The program has several features that help prevent the property owner from being taken advantage of by contractors. The property owner has the option of using another contractor, has the time afforded by the deferred compliance date and has the support of the EnergySmart concierge service to help make an informed decision about improvements made to their property. Staff suggested the potential conflict of interest issue be one of the program quality assurance measures evaluated. If the quality assurance evaluations suggest that more restrictions are necessary, then the program can be adjusted accordingly.

At this time, SmartRegs and the EnergySmart programs are exceeding the city's participation goals. As these are new programs and the first of their kind in the country, it is recognized that there are program and administrative issues that may need to be addressed. However, with no complaints from residents combined with the program exceeding benchmarks, council views this program as a success.

**PRESENTATION:**

**Rental Housing Licensing Enforcement and Housing Code**

Acting Chief Building Official Kirk Moors gave a brief history on the Housing Code and the Rental Licensing Program. Mr. Moors continued by updating council on past enforcement priorities for environmental enforcement officers, and the successful creation and hiring of a Rental License Compliance Specialist pilot position. The self-funded position began addressing a backlog of rental license enforcement cases on June 1, 2011. Mr. Moors highlighted the immediate success of this work, discussed next steps and confirmed the next report to council will be November 2011.

**COUNCIL DISCUSSION:**

**Rental Housing Licensing Enforcement and Housing Code**

After providing council with background information on the formation and previous enforcement of the rental housing licensing program and the housing code, Kirk Moors continued the discussion by providing an update on the self-funded Rental License Compliance Specialist (RLCS) position. The RLCS began investigating a backlog of more than 500 rental license enforcement cases on June 1, 2011. These cases were primarily created based on resident complaints of properties that allegedly do not have a valid rental licenses. At the time of the Aug. 23 study session, only 361 properties (of the 500) were still under investigation, resulting in a more than 30 percent reduction of the back log. The pilot position is funded based on assessed investigative fees, when the RLCS must investigate properties for a valid rental license. At this point in the program, the RLCS has been able to cover the costs of the position. Council expressed concern about the position being a pilot program. Council indicated that the success of the Rental Housing Licensing program is dependent on the enforcement function. After the back log of cases has been addressed, the RLCS will be investigating alternative methods for assessing Rental License Compliant properties.

Staff explained the difference between Environmental Zoning and Enforcement of Rental Housing Licensing.  Jeff Arthur indicated that the RLCS will focus solely on rental license compliance enforcement.  Other code enforcement functions will soon be transitioned to the Boulder Police Department (PD), that were previously handled by the Environmental Zoning and Enforcement Office.  Beginning in October 2011, code enforcement of weeds, trash, noise and nuisance parties will be the responsibility of the PD.  Code enforcement of illegal dwelling units, over-occupancy and building safety will continue to be responsibilities of Planning and Development Services.

Mr. Moors explained that civil penalties are assessed to property owners who refuse to obtain a rental license.  Penalties are per unit, not per owner or per building.  Council expressed concern that the enforcement penalties are not high enough and that some owners may decide to take the risk of not getting a rental license.  Mr. Moors indicated that, in this instance, a criminal summons path can be pursued.

**CONSENT ITEM – 3C**

**CITY OF BOULDER**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 4, 2011**

**AGENDA TITLE:** Consideration of a motion to accept the summary of the September 13, 2011 Study Session on the 2012 Recommended Budget

**PRESENTER/S**
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichem, Chief Financial Officer
Eric Nickell, Budget Director
Peggy Bunzli, Budget Manager

**EXECUTIVE SUMMARY**
The Purpose of the September 13 Study Session was to present information on the 2012 Recommended Budget and receive council's feedback.

The first reading of the 2012 budget ordinances will be held at the October 4, 2011 City Council Meeting.

**STAFF RECOMMENDATION**

**Suggested Motion Language**:

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

Motion to accept the summary of the September 13, 2011 study session related to the 2012 Recommended Budget. The summary is included as Attachment A and Attachment B to this agenda item.

**ATTACHMENTS**

A. Summary of the September 13, 2011 City Council Study Session
B. Answers to Council's questions on the 2012 Recommended Budget at the September 13, 2011 Study Session

# Attachment A

**September 13, 2011**
**City Council Study Session Summary**
**2012 Recommended Budget**

**PRESENT**
**City Council:** Mayor Susan Osborne, Deputy Mayor Ken Wilson, Council Members Matt Appelbaum, Macon Cowles, Crystal Gray, George Karakehian and Lisa Morzel

**Staff Members:** City Manager Jane S. Brautigam, Budget Director Eric Nickell and Budget Manager Peggy Bunzli

**PURPOSE**
The purpose of this study session was to present information on the 2012 Recommended Budget and receive Council feedback in preparation for the first reading of the 2012 budget ordinance on October 4, 2011. The study session had the following agenda:

- Introduction
- Economic Climate
- 2012 Recommended Budget
- Next Steps
- 2012 Changes to City Fees

**PRESENTATION**
**Introduction**
City Manager Brautigam opened the meeting by giving a brief overview of the agenda for the evening. She then began by introducing the City's Budget Director and Budget Manager, acknowledging that the 2012 Recommended Budget was put together with the efforts of many people throughout the city. She emphasized that staff has been focused on preparing a transparent budget document with a focus on Priority-based Budgeting. Finally, she explained this year's budget timeline illustrating the steps of budget development.

**Economic Climate**
Budget Director Eric Nickell provided economic information related to the development of the 2012 budget. He began with an overview of the national and global economy.

He then reviewed regional and state economic climate. In 2009, Colorado lost 5 percent of its job base and is recovering slowly. Inflation for the Denver-Boulder-Greeley Region is 3.8 percent for the first six months of this year.

Next, the Budget Director reviewed the local economic climate. The city had its worst year for employment in 2009 when its employment base shrunk by 5 percent. Year-to-date the City is down approximately 70 jobs over 2010, although the city may balance out to a net loss of zero by year end.

Next, the Budget Director summarized the revenue outlook. Sales and use tax is up 7.6 percent year-to-date, however net total assessed valuation is down 2.2 percent from 2010. He then explained the relationship between increasing sales revenues and inflation, which indicates we may reach a point where the value of the dollar does not increase as fast as costs are increasing. Sales tax has tentatively rebounded in the first seven months of the year.

The Budget Director then provided an overview of our current mill levy and limitations in de-Brucing additional property tax. He then illustrated the difference between actual property tax collections and what would have happened if city voters had not eliminated TABOR restrictions on the mill levy. The recommended mill levy for 2012 will be 11.981 which is based on TABOR's allowable growth factor in the context of declining assessed values.

He then reviewed other revenue sources which make up approximately 40 percent of the total revenue. Next, he discussed Lottery Fund (Conservation Trust Fund) revenues. Both total Conservation Trust Fund total revenues and Boulder's share of the state population are declining which means less revenue for the city after 2012.

Questions were then taken from City Council. Answers were provided in the study session itself or in an Information Packet that was released on Thursday, September 22.

**2012 Recommended Budget – Executive Summary**
Budget Manager Peggy Bunzli provided an overview of the citywide budget. The 2012 Recommended Budget is approximately $239 million, of which $215 million is operating and $24 million is capital. Of the $215 million operating budget, $91 million is in the General Fund and $124 million is in restricted funds.

The Budget Manager next reviewed citywide revenues. For 2012 the city projects $232 million in revenue. Examples of major sources are: 53 percent of the total revenue comes from sales tax and property tax, 20 percent comes from utilities, and 19 percent comes from other revenues, which includes accommodations tax, admissions tax, occupation tax, CAP tax, use tax, fines and fees, licenses, lottery, parking, cash-in-lieu, non-governmental grants and other various revenues.

The Budget Manager then reviewed citywide expenses. For 2012 the city projects $239 million in expenditures. Examples of major uses are 32 percent of total expense in Public Works, 19 percent in Public Safety, and 11 percent in Open Space and Mountain Parks. General Governance, one category of expense in the summary charts, includes Municipal Court, City Attorney's Office, City Manager's Office and City Council. Admin Services, another category of expense, includes Human Resources, Finance, Information Technology, and telecommunications.

The Budget Manager noted that Council may have noted that expenditures are approximately $8 million greater than revenue. This difference is funded by fund balances. Typically fund balances are used for:

- One-time capital expenditures for pay-as-you-go financing;
- Multi-year projects such as Boulder Junction;
- Emergencies; or
- Short-term dips in revenue.

The Budget Manager continued, indicating that for the 2012 budget, all funds will meet their fund reserve goals. As a reminder, for the General Fund, the reserve goal is 10-15 percent of the operating budget, to be used to cover emergencies or short-term dips in revenue.

Next, the Budget Manager discussed General Fund revenues and expenditures. For 2012 we are projecting $104 million in revenue. In the General Fund, 67 percent of revenues come from sales and property tax. This is the first year the budget shows the Community Planning and Sustainability Department on the General Fund summary charts. Historically this work group has been in the General Governance section of the pie chart.

As another 2012 budget highlight, the city has set aside approximately $2 million for the capital improvement strategy in case the November 2011 bond measure were to pass. If the measure does not pass, those funds would roll back into the General Fund and would be available for other uses.

As a summary, the Budget Manager indicated that citywide revenues are increasing by 3.1 percent while citywide expenditures are increasing 3.4 percent. General Fund revenues are increasing 4.5 percent, while General Fund expenditures are increasing 3.8 percent. The City is proposing to spend a little less in the General Fund than it is bringing in, consistent with cautious budgeting in uncertain times.

**2012 Recommended Budget – Budget Highlights**

The City Manager then discussed Recommended Budget highlights. For 2012, the focus was again on Priority-based Budgeting. From the goals outlined in Priority-Based Budgeting, the city found the following areas of focus for the 2012 Recommended Budget:

- Organizational Efficiency
- Department Assessments
- West Trail Study Area
- Community Planning and Sustainability
- Boulder's Energy Future

The City Manager continued by going into detail of the first highlight, organizational efficiency. A major goal over the last few years has been the management of personnel expenses. The city is moving in 2012 to a market based compensation structure which aligns the ranges that employees are paid to the market independent of inflation. Second, the city is moving toward employee cost sharing of healthcare premiums.

Third, the City is instituting a common review date and goal alignment for performance reviews. Fourth, the city has given greater attention to staff development and succession planning, a focus of our organization now and into future. Finally, an example of organizational efficiency is the move of code enforcement from Environmental and Zoning Enforcement Office (EZEO) to the Police Department. In total, the Police Department's budget is increasing by $199,000 and 3.0 Full Time Equivalent (FTE) positions through new dollars and a reallocation from EZEO.

Next, the City Manager discussed department assessments. Three department assessments have been competed this year: Information Technology, Human Resources, and Fire. The Information

Technology Department will be backfilling some existing staff with fixed-term positions in order to complete two major software projects: replacing the LandLink system and replacing the existing Finance/HR/Payroll systems with a new all encompassing Enterprise Resource Planning (ERP) system. Human Resources and Information Technology have both done some reorganizing within their current budgets. As a result of the Fire Department's assessment, the following changes are planned for the 2012 Recommended Budget:

- The addition of a Staff battalion Chief;
- Improvements to operational and leadership training;
- Transformation of two seasonal firefighters to fulltime wildland fire crew positions;
- An update the Fire Department Master Plan which is funded in 2011; and
- The addition of administrative support.

Following department assessments Jane discussed the West Trail Study Area and its impact on the 2012 Recommended Budget which includes:

- A four year extension of the fixed-term Visitor Master Plan Implementation Coordinator;
- The addition of a fixed-term Trails Contract and Project Manager;
- The addition of nine seasonal employees for trail maintenance;
- The addition of three rangers; and
- An increase in funding to increase OSMP community outreach.

Community Planning and Sustainability has been a focus of the Council for the last several years and has had several workgroups added to it. As a result, the following changes are recommended for 2012:

- The addition of a Deputy Director of Community Planning and Sustainability; and
- A new fixed term position to complete land use code revisions.

Along with the previous changes, the City Attorney's Office will be adding attorneys to both meet core legal service needs of the city as well as to meet the needs of the Public Works-Utilities Division.

The final budget highlight is related to Boulder's Energy Future. The same funding that was approved for 2011, $260,000, is proposed for 2012. In the event that the municipalization ballot measures pass and the voters authorize new funding, this amount will be returned to the General Fund.

The impact of all changes to the budget equates to a net increase of 12 FTE. These 12 FTE are comprised of new budget resources and reallocations of existing program resources. Of the 12 FTE, six are fixed-term.

**Next Steps**

The City Manager began the next steps discussion with the introduction of the Budget Changes Sheet. The Budget Changes Sheet will be used to collect errata, new information and changes proposed by Council in a centralized location instead of individual "slip in" pages. One change not yet mentioned is the removal of the North Boulder Recreation Center Parking Lot from the 2012-2017 CIP for further analysis and Council consideration.

Next, the City Manager discussed the following schedule for the rest of the 2012 budget process:

- Second study session (if requested by Council) – September 27th
- 1st Reading of 2012 Recommended Budget – October 4th
- 2nd Reading of 2012 Recommended Budget – October 18th
- 3rd Reading of 2012 Recommended Budget (if necessary) – October 31st

Questions were then taken from City Council. Answers were provided in the study session or in an IP that was released on Thursday, September 22nd.

**2012 Changes to City Fees**
The Budget Director presented the 2012 changes to city fees beginning with an overview of departments who are proposing fee changes.

- DUHMD
- Public Works - Development and Support Services
- Public Works - Transportation
- Public Works - Utilities
- Parks and Recreation
- Police - Animal Control
- Finance - Licensing Fees

Next, the Budget Director presented some background information on City of Boulder fee policy and fee update procedures. He first covered the policy on cost recovery. These policies are available in the budget document on pages 46-48. He continued with the typical fee update cycle. Finally, he finished the background section with an introduction to a comprehensive fee study that will take place in 2014 after the ERP system is implemented.

The Budget Director then presented all of the fee changes proposed for 2012 which include:

- **DUHMD**
    - Downtown and University Hill permit parking
        - 4percent increase
    - Mall permits and fees
        - 2-3 percent increase depending on the specific fee
- **Parks and Recreation**
    - Daily Admission for recreation centers and pools
        - 3-7 percent increase depending on the specific fee
    - Season or Annual Admission for recreation centers and pools
        - 0-25 percent increase depending on the specific fee
    - Facility Rental - Resident
        - 10-100 percent increase depending on the specific fee
    - Facility Rental - Non-Resident
        - 17-100 percent increase depending on the specific fee
    - Commercial fee pilot program that applies to businesses using City of Boulder property such as park land
        - Minimal fee during pilot program to allow for data collection on usage

- **Public Works - Development and Support Services**
  - Development not located within the conveyance zone
    - 35 percent decrease - 6 percent increase depending on the specific fee
  - Development located within the conveyance zone or floodway
    - 31-73 percent reduction depending on the specific fee
  - Review of emergency management plans
    - New fee for 2012
  - Hazardous materials facility plans
    - New fee for 2012
  - Map revisions
    - 31-57 percent decrease depending on the specific fee
  - Miscellaneous floodplain requests and reviews
    - 14 percent reduction - 0 percent change depending on fee
- **Public Works - Transportation**
  - A Transportation Maintenance Fee Study will be presented at a December 2011 Council study session
- **Public Works - Utilities**
  - Water Utility
    - 2-3 percent increase depending on the specific customer class
  - Wastewater Utility
    - 2-3 percent increase depending on the specific customer class
  - Stormwater/Flood Utility Management Utility
    - 2 percent increase
  - Utility Specific Services Charges
    - 17 percent reduction to 17 percent increase depending on the specific fee
- **Police**
  - Animal Control impound fee
    - $10 increase
- **Finance**
  - New license and renewal applications
    - 4 percent increase

Over all the City of Boulder anticipates receiving $1.2 million from fee increases.

Questions were then taken from City Council. Answers were provided in the study session or in an IP that was released on Thursday, September 22nd.

Council the concluded the meeting by agreeing that a second study session will not be necessary.

# Attachment B

**INFORMATION PACKET**
**MEMORANDUM**

To: Mayor Osborne and City Council

From: Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichem, Chief Financial Officer
Eric Nickell, Budget Director
Peggy Bunzli, Budget Manager

Date: September 23, 2011

**Subject: Information Item: Follow-up to the September 13, 2011 Study Session on the City Manager's 2012 Recommended Budget**

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## PURPOSE

The purpose of this information item is to provide City Council with staff responses to Council comments at the September 13 study session on the City Manager's 2012 Recommended Budget.

## BACKGROUND

On September 13, 2011, the City Manager and Budget Division staff made a presentation to the City Council on the City Manager's 2012 Recommended Budget. The presentation included an economic update, an update on revenue projections for the City of Boulder, and 2012 Recommended Budget highlights. Council asked a number of questions and provided comments about the presentation and the 2012 Recommended Budget. Below are staff's responses to questions or comments from the Study Session.

## QUESTIONS AND RESPONSES

The key dialogue from the Study Session is divided below into subsections on economic trends, revenues, budget programs and process, and the budget document itself.

### Economic Trends Questions

*Question:* Why does BLS (U.S. Bureau of Labor Statistics) show only 57,085 jobs in 2011, when past discussions of local employment have indicated that there are about 100,000 jobs in Boulder?

*Staff Response:* The city's current estimate of employment in the City of Boulder is 96,800. This is an estimate prepared by the Department of Community Planning and Sustainability, and includes both wage and salary employees, and self employed workers.

The raw BLS jobs number of 57,085 reported in the study session did not include certain large employers or self-employed workers due to the reporting method used for that data. For example, the Federal Labs may report all their employees at their headquarters in Washington DC, and the number that work in the Boulder offices must be manually corrected. The city develops its jobs estimate using BLS data through DRCOG and/or the University of Colorado Business Research Division. Both agencies review the source data and correct for those employers where the reporting is not reflected correctly. This data is then combined with an estimate of self-employed workers which are not counted in the BLS data to establish a citywide employment estimate. This is a more accurate method for establishing a local jobs estimate, and is commonly used by other communities and agencies.

The city maintains basic community data on population, employment, and housing units posted on the city website at bouldercolorado.gov > About Boulder > City of Boulder Statistics. Additional detailed data on estimates and projections is linked from that page to the Community Planning and Sustainability (CP&S) page on community and planning data. The City of Boulder jobs estimate for 2012 will be developed by CP&S using 2010 and 2011 data in the first quarter of 2012. In addition, the city coordinates with the Boulder Economic Council on their annual economic and demographic profiles, as well as their quarterly reports. Those reports can be found at www.bouldereconomiccouncil.org/publications.

*Question:* Which sectors have experienced job loss in Boulder?

*Staff Response:* There is a lag time of nine months in the employment data received from BLS. Therefore, we do not have information for the most recent quarters.

Changes to the industry employment patterns during the early part of the recession are shown in the table below. Not included in the table are any estimates for which sectors contain jobs held by Boulder’s 8,000 to 10,000 self-employed workers. 2006 is used since it was previous to any influence created by the latest economic downturn.

Exceptional rates of growth and contraction by industry sector between 2006 and 2009 include **government** (including public universities and schools) with a 7 percent increase in jobs, **administrative and waste management services** with a 26 percent decrease, **wholesale trade** with a 23 percent decrease, **construction** with a 22 percent decrease, **management of companies and enterprises** with an 86 percent decrease, and **educational services** with an 8 percent decrease.

Some changes may reflect movement of a small number of companies out of the city, or a reclassification of jobs in smaller industries. On the whole, the city lost approximately 1.0 percent of its 2009 job base in this three-year period.

## EMPLOYMENT BY INDUSTRY, CITY OF BOULDER, 2006-2009

| Industry | 2006 | 2009 | Change to 2009 Base (%) |
|---|---|---|---|
| Government (includes public universities and schools) | 17,353 | 18,582 | 6.6% |
| Professional, Scientific, and Tech Services | 12,326 | 13,003 | 5.2% |
| Manufacturing | 8,806 | 8,564 | -2.8% |
| Accommodation and Food Services | 8,091 | 8,278 | 2.3% |
| Health Care and Social Assistance | 7,557 | 7,731 | 2.3% |
| Retail Trade | 7,805 | 7,593 | -2.8% |
| Information | 7,180 | 6,595 | -8.9% |
| Finance and Insurance | 3,202 | 3,154 | -1.5% |
| Other Services | 2,652 | 2,683 | 1.2% |
| Administrative and Waste Management Services | 3,371 | 2,670 | -26.3% |
| Wholesale Trade | 3,198 | 2,594 | -23.3% |
| Arts, Entertainment, and Recreation | 1,551 | 1,641 | 5.5% |
| Construction | 1,851 | 1,516 | -22.1% |
| Real Estate and Rental and Leasing | 1,400 | 1,343 | -4.2% |
| Educational Services | 1,437 | 1,337 | -7.5% |
| Transportation and Warehousing | 623 | 633 | 1.6% |
| Management of Companies and Enterprises | 764 | 410 | -86.3% |
| **Total Employment** | **89,167** | **88,327** | **-1.0%** |

**Notes:**

Original Data Source: Colorado Department of Labor and Employment (QCEW 2006-2009), Business Research Division, University of Colorado. This data does not include self-employed workers within the City of Boulder.

Information characterizing changes to the city's employment base in 2011 will be available in late 2012. Budget Study session employment data for the City of Boulder was selected because it was more current (covering the month of July 2011), although the data had no detail related to job changes by industry.

*Question:* Is CPI adequate as an economic indicator for Boulder? Other specific indices, such as the Engineering News Record Cost Index for Denver Engineering and the Colorado Department of Transportation Colorado Construction Cost Index might be more relevant to Boulder's specific economy.

*Staff Response:* The Denver Boulder CPI is the index that must be used by cities in Colorado for Tax Payer Bill of Rights (TABOR) purposes. It is also used in many contracts that have clauses for cost escalations. This CPI index is a yardstick for inflation from the consumer perspective and has limitations in tracking the prices paid by the City of Boulder for its goods and services. City expenditures on the whole are more sensitive to local wage rates and construction material prices than prices encountered by the average consumer.

For more specific comparisons city staff uses other indices. Examples are, the State Department of Transportation publishes the Colorado Construction Cost Index, an index that is appropriate for roadway and utility project cost estimation. *Engineering News and Review* (ENR) publishes a Denver Construction Cost index as well. The city already uses both series in selected areas within its six-year Capital Improvement Program (CIP).

**Revenue Trends Questions**

*Question:* Federal cuts may impact jobs in the Federal Labs in Boulder. Has this type of loss been taken into consideration in the current revenue projections?

*Staff Response:* Yes. Projections do take into account the impact of federal budget changes and how it may impact city revenues. Since the federal government is on a different fiscal year than the city projections may change and that is taken into account as staff monitors ongoing revenue trends and changes throughout the year.

*Question:* Have the impacts of the recession on residential property's assessed value in the City of Boulder been different than impacts on the assessed value of nonresidential property?

*Staff Response:* After being shown the above question, the County Assessor estimates that residential structures in the city have lost 1.0 percent of their net assessed value in the past year, while nonresidential structures have lost 3.1 percent of their net assessed value in the past year. The indication is that, if measured by assessor standards, Boulder's commercial and industrial building stock property value has fallen in value at three times the rate of Boulder's single family and multi-family housing stock.

*Question:* If the mill levy will be capped in 2012, is the 3 percent increase in property tax revenue projected for 2013 accurate?

*Staff Response:* Once the Assessor updated its net assessed value for the city in mid-September, the 3 percent increase in property tax revenues that formed the basis for the Recommended 2012 Budget was reevaluated. Staff believe that a revised projection using the latest information from the County Assessor suggests a 1 percent increase in 2013 property tax revenue compared to 2012 levels. Projections for this revenue source in later years are not changed.

**Budget Programs and Process Questions**
*Question:* What percentage of the Parking Violations revenue noted on the General Fund revenues pie chart in the Citywide Summaries section of the 2012 Recommended Budget comes from Neighborhood Permit Parking (NPP) violations?

*Staff Response:* Approximately 10% of parking violations revenue comes from NPP violations.

*Question:* How was Priority Based Budgeting (PBB) incorporated into the budget process and where is this reflected in the 2012 Recommended Budget? What improvements can be made to describe PBB results for future budget years?

*Staff Response:* This is the second year of implementation of PBB, an iterative process for prioritizing city programs according to their contributions to a series of defined results customized for the city of Boulder. The results defined for the city's programs and services (shown in the City Manager's Budget Message, pages 33-35) are the following six overarching objectives that reflect City Council and broader community priorities:

- Accessible and Connected Community
- Economically Vital Community
- Environmentally Sustainable Community
- Healthy and Socially Thriving Community
- Safe Community
- Good Governance

Through the PBB process, all city programs and services are categorized in an inventory of programs by department. All programs then go through an internal citywide scoring assessment, which is the classification of each PBB program into one of four quartiles, with the first quartile indicating that a program has the highest influence on achieving the city's defined results, and the fourth quartile indicating the lowest level of influence.

Location in Budget Document
The full list of PBB programs, and the quartiles in which they fall, are included in the City Manager's Budget Message section of the 2012 Recommended Budget. For each of these programs, the Department Overviews section of the 2012 Recommended Budget, pages 105-215, shows the budgeted direct costs and indirect costs of the department (the program "Administration").

An example of this is the "Health and Wellness Programs and Services" PBB program. This program is listed in the full PBB program list, on page 43 of the budget document, under Quartile 4. The department associated with the program is Parks and Recreation, and this program is listed as a budget line item in the Parks and Recreation department budget on page 188 of the budget document. This PBB program contains, among other things, Recreation classes that are offered to the public, such as yoga.

In the budget process leading to the 2012 Recommended Budget, PPB was updated in order to improve internal processes and achieve greater consistency in terms of program definition, score assessment and communication with city departments. As departments began preparing their 2012 budgets, each department was asked to assess their budget requests and the allocation of resources within the department budget according to PBB results. In March, departments submitted information to the City Manager outlining the use of PBB in the department budgeting process. A number of budget requests and issues were handled by departments reallocating resources within their departments from lower priority to higher priority programs.

Much of this PBB-focused assessment was done before departments submitted final budget requests to the City Manager for review by a multi-department team. The graphs, showing the distribution of resources across the city by quartile (page 37 of the 2012 Recommended Budget), include these reallocations.

Future Budgets and PBB

The City of Boulder is committed to using PBB in its budgeting process to prioritize city programs and services and align the budget with Council and Community priorities and values. In the process leading to the 2013 Budget, staff will continue to improve on PBB methods to ensure that PBB is a meaningful and relevant tool in the budgeting process, with attention to the important task of communicating budget results to the Council and Community.

*Question:* What budget requests for expanded programs or services were not able to be funded in the 2012 Recommended Budget?

*Staff Response:* Two groups of budget requests are described in detail below. First, pending voter approval of two ballot measures in November 2011, the following budget requests were not funded at the conclusion of the PBB process this year:

- Additional staff backfill to permit core services to continue while the Enterprise Resource Planning (ERP) system is installed phase by phase in the Finance, Information Technology, and Human Resources Departments;
- Project management and administrative staff necessary to effectively program funding from capital investment bonds; and
- Support staff and legal staff necessary for later phases of municipalization as part of Boulder's Energy Future.

Completion of department master plans in the near term will assess and prioritize a second group of proposals for investment in the Departments of Police, Fire, Library, and Health and Human Services. The following proposals were not funded at the conclusion of the PBB process this year:

- Utility budgets for new city facilities and increases in utility costs for existing city facilities;
- Increases to fleet budgets; and
- Shortening department equipment replacement cycles by allocating additional funding.

These budget initiatives do not impact core services or employee safety and can be evaluated and, if prioritized, fully funded in coming budget years.

*Question:* What consideration was made to resource allocation for the Police department, to ensure appropriate levels of Police staffing and response time?

*Staff Response:* There was no request for additional officers as a part of the 2012 budget process. The City continues to monitor response time and community needs, in light of increased calls for service. The Police Department is updating its Master Plan, a process that is anticipated to be completed in 2012. The Master Plan Update will be used to help determine the best use of resources and any additional resource needs for the department and the community.

**Budget Document Questions/Comments**

*Comment:* The citywide and General Fund pie charts in the Budget Overview section could be more meaningful if:

- Utilities are shown separately;
- Departments that receive a significant portion of their funding from General Fund transfers are shown in the General Fund charts; and
- Sources of funds are linked to the departments receiving the funds and/or an indication of dedicated funding streams.

*Staff Response:* Beginning with the 2013 Recommended Budget, the budget document could include similar citywide summary pie charts to illustrate the relative impact of all city services. To add additional transparency to the Budget Overview section of the document, the following charts could be added:

- Citywide budget shares by function or department, excluding the city’s enterprise funds (utility funds and GIDs);
- Total General Fund transfers by fund (ex. Library Fund and Recreation Activity Fund transfers); and
- Dedicated revenue stream totals by function or department (utility funds, dedicated property and sales taxes).

*Question:* Can there be further information on large fund balances that exist in particular funds, above the reserve goals?

*Staff Response:* Beginning with the 2013 Recommended Budget, the budget document could include a summary schedule identifying ending fund balances after designations for each fund. In that case, the fund balance summary schedule contains ending fund balances within each fund for prior year actual, current year and six year projected balances for purposes of illustrating multi-year trends in fund balances. Immediately following multi-year fund balance data for each fund, a brief note provides an overview including the purpose and intended use of remaining fund balances after designations.

## NEXT STEPS

| MEETING | Date | Topic |
| --- | --- | --- |
| City Council Meeting | Oct 4 | 1st Reading of 2012 Recommended Budget |
| City Council Meeting | Oct 18 | 2nd Reading of 2012 Recommended Budget |
| City Council Meeting | Oct 31 | If needed, 3rd Reading of 2012 Recommended Budget |

# CONSENT ITEM – 3D

**C I T Y O F B O U L D E R**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 4, 2011**

**AGENDA TITLE:** Consideration of a motion to approve a 20-year lease of city-owned land to Public Service Company of Colorado (Xcel Energy) for the location of underground utilities adjacent to Pearl Parkway on a parcel of land that is located on the northeast corner of the intersection of 30th Street and Pearl Parkway right-of way.

**PRESENTERS:**

Jane Brautigam, City Manager
Tom Carr, City Attorney
Tracy Winfree, Director Public Works/Transportation
David Driskell, Exec. Director Community Planning
Alex May, Engineering Project Manager, Public Works/Transportation
Charles Ferro, Land Use Review Manager, CP&S
Debra S. Kalish, Senior Asst. City Attorney

## EXECUTIVE SUMMARY:

The city is cooperating with the Regional Transportation District and private developers to create Boulder Junction. Part of this project requires removing and placing underground power wires along Pearl Parkway. As part of the expired energy franchise, Xcel Energy maintained a fund set aside to pay for undergrounding electrical wires. When the franchise expired there was approximately $450,000 remaining in the fund for use in the city. In late 2010, city staff approached Xcel Energy about using these funds for undergrounding necessary for proposed improvements to Pearl Parkway (30th Street to BNSF railroad) as part of the Boulder Junction project. Xcel Energy agreed in principle. Use of such funds outside the context of franchise is unprecedented and presents challenges because Xcel Energy does not have a long-term right to operate in Boulder. Staff from the city and Xcel have reached tentative agreement on a long-term lease of the area underground that the conduit will occupy. The leasehold will be terminable if the city municipalizes or enters into a new franchise with Xcel. The leasehold will have no value as part of any compensation required for acquisition of Xcel Energy's assets.

Pursuant to Section 2-2-8, B.R.C. 1981, Conveyance of City Real Property Interest, City Council approval is required for leases which exceed three years. Staff requests council approval granting authority to the city manager to enter into a lease meeting the criteria set forth below.

**STAFF RECOMMENDATION:**

**Suggested Motion Language**:
Staff requests council consideration of this matter and action in the form of the following motion:

Motion authorizing the city manager, or her delegate, to approve and execute a lease of city-owned land to Public Service Company of Colorado (Xcel Energy), subject to the conditions included in the staff memo dated October 4, 2011, for the location of underground electric utilities adjacent to Pearl Parkway on a parcel of land that is located on the northeast corner of the intersection of 30th Street and Pearl Parkway right-of way

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

- Economic: Undergrounding the electrical wires will address required overhead electric relocations to support various alternative options for planned improvements to Pearl Parkway and contribute to the financial viability of the Boulder Junction Project.
- Environmental: Undergrounding provides an aesthetic benefit to the community.
- Social: N/A

**OTHER IMPACTS:**

- Fiscal: Xcel Energy's contribution should pay for almost all of the cost of undergrounding electrical wires.
- Staff time: Staff time necessary for implementing the motion will be minimal.

**BOARD AND COMMISSION FEEDBACK:** None

**PUBLIC FEEDBACK:** None

**DISCUSSION:**

The Boulder Junction project is an exciting opportunity to create a mixed-use, transit-oriented development in the city. The project will join housing, shopping and employment opportunities to mass transit. Currently, the area is served by above-ground power lines. The public portion of the project includes reconstruction and re-routing of Pearl Parkway between 30th Street and the BNSF railroad tracks. All of the various alternative options under consideration for improvements to Pearl Parkway require undergrounding the overhead wires, primarily to address conflicts with proposed public improvements but also to provide aesthetic benefits for the project. When improvements to the street are built, the current pole locations and overhead lines will be in conflict with new roadway, sidewalk and tree-planted medians within the street right of way. Undergrounding the power lines is an essential project element. The estimated cost to underground the power lines is just under $500,000.

The city's 1993 Xcel franchise included a provision setting aside funds for undergrounding of overhead power lines. Over the years, Boulder has used these funds for various undergrounding projects. When the franchise expired in August 2010, there was approximately $450,000 remaining. Before the franchise expiration, city staff requested that the remaining funds be used for undergrounding necessary for the Pearl Parkway project at Boulder Junction. Xcel agreed in principle, but expressed concern about securing its right to remain in the city right-of-way in the absence of a franchise. This would be the first time that Xcel had distributed undergrounding funds accrued under a franchise to a municipality not under franchise. In the normal course, Xcel's right to remain in the right-of-way is protected contractually under a long-term franchise. Xcel initially demanded that the city grant it a permanent easement under a portion of the right-of-way. City staff could not agree to such a conveyance for several reasons. First, the city code does not permit the city to convey easements across city right-of-way or property held in trust for the public; it can only grant revocable permits, short-term leases and long-term leases. Second, staff was concerned that if the city decides to acquire Xcel's distribution system, the value of the easement would be included as a compensable property right.

Through a series of negotiations, the parties settled on a limited leasehold interest. The Boulder Revised Code provides the city manager to enter into a lease with council approval:

> The city manager may convey, grant, or lease any interest in any city real property for a term of three years or more only if the manager first obtains city council approval in the form of a motion, after which the manager may sign the deed or other instrument making the conveyance, grant, or lease.

Section 2-2-8(a), B.R.C. 1981

**<u>Conditions</u>**:

Staff is seeking approval for the city manager to enter into a lease with Xcel that would be limited in time and scope. The lease would meet the following conditions:

- Xcel would have a twenty-year lease.
- The leasehold would be limited to only the actual area occupied by the conduits carrying the wires.

- The city would grant Xcel a revocable permit to use the trench in which its electric lines are located, plus the public right-of-way and adjacent city property for construction and maintenance of the Xcel facilities.
- The leasehold interest would have no monetary value if the city were to acquire Xcel’s distribution system at any time during the term of the lease.
- Xcel would not be required to pay for any relocation required in the first two years after completion, or if required by a change of plans.
- The city would not waive its right to seek relocation costs from another party.
- The city would be responsible for the difference between the amount left in the undergrounding fund and the actual cost of the undergrounding project. If current estimates of the cost are correct, this amount should be less than $50,000.
- The lease would be terminable if the city enters into a franchise with Xcel or the city municipalizes Xcel’s system
- The city will pay its estimated share prior to the start of construction with later reconciliation, if necessary.
- Xcel will complete construction within 120 days of authorization.
- The lease would not be a reinstatement of the franchise agreement.
- Neither party waives any right regarding interpretation of the franchise, Xcel’s right or duty to serve, or the city’s right to municipalize by entering into the lease agreement.

This lease provides some protection to Xcel and is within the scope of authority permitted by the code. It maintains the status quo, while putting the balance of the undergrounding fund to productive use. Staff recommends that Council grant the city manager authority to enter into this lease.

**MATRIX OF OPTIONS:**

Council can approve the motion or reject the motion.

# CONSENT ITEM – 3E

# CITY OF BOULDER
# CITY COUNCIL AGENDA ITEM

**MEETING DATE:** October 4, 2011

**AGENDA TITLE**
Second reading and consideration of a motion to adopt Ordinance No. 7816 repealing and re-enacting Section 11-1-19, “Water and Ditch Rights”, B.R.C. 1981, to address agreements for right of first refusal, purchase and sale of water or ditch rights and resulting adjustment of water budget.

**PRESENTERS**
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Tom Carr, City Attorney
Kathy Haddock, Senior Assistant City Attorney

Department of Public Works
Maureen Rait, Executive Director of Public Works
Ned Williams, Director of Public Works for Utilities

**EXECUTIVE SUMMARY**
Section 11-1-19, Boulder Revised Code (B.R.C. 1981) describes the city’s acquisition of water and ditch rights when an applicant annexes into the city and/or requests a permit to connect to the city’s water main. These conditions allow the city to purchase, at fair market value, water supplies to offset the treated water needed by the new or expanded use and are intended to preserve this limited resource for use within Boulder’s water service area. Ordinance No. 7816 (**Attachment A**) states the city’s purposes for acquiring interests as being to:

(1) preserve and protect for future generations the city’s water supply;
(2) allocate fairly the water supply during a drought;
(3) implement current master plans;
(4) support the city’s duty to supply water and protect the value and utility of the water system’s assets for all city customers; and
(5) recognize and preserve the historic character of certain ditches and discourage the transfer of water and ditch rights for use outside of Boulder’s water service area.

The proposed ordinance provides that, for property owners who desire a new connection to the city's water system or an expanded, enlarged water service and choose to retain water and ditch rights on their property, they provide a right of first refusal agreement. In addition, their water budget outdoor allocation would be reduced and the Plant Investment Fee (PIF) payment for the new water connection or expanded water service would be reduced to reflect the smaller outdoor budget allocation.

The City Council passed Ordinance No. 7763 on first reading on October 19, 2010 and asked that the ordinance be referred to the Water Resources Advisory Board (WRAB) for a recommendation before coming back to council. WRAB reviewed this item at its meeting on January 20, 2011, and on August 15, 2011, made several revisions and recommended approval (4-0) of Ordinance No. 7816 (see **Attachment A**).

At first reading on Sept. 20, 2011, City Council passed Ordinance No. 7816 and requested additional information. Refer to section **FIRST READING QUESTIONS & RESPONSE** for a list of the questions and responses.

**Key Issue Identification**
The key issues identified during the council and WRAB public process included:

- Emphasis should be to allow the property owner to keep water and ditch rights active on their property; and
- Questions about the legality and constitutionality related to water and ditch rights acquisition at time of connection to the water system, annexation, subdivision, redevelopment or subsequent purchase of water or ditch rights for use on a property connected to the water system

Both key issues were discussed by the WRAB and are addressed in the recommended Ordinance No. 7816 (**Attachment A**).

## STAFF RECOMMENDATION

**Suggested Motion Language**:

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

Motion to adopt Ordinance No. 7816 (**Attachment A**) repealing and re-enacting Section 11-1-19, "Water and Ditch Rights", B.R.C. 1981.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: The proposed changes to Section 11-1-19, B.R.C. 1981 will provide greater flexibility in allowing water and ditch rights to continue to be used by private owners on suitable properties while also continuing to give the city sufficient contractual influence over these rights to assure water that has historically contributed to Boulder's vitality is not transferred for use outside the city's municipal water supply service area.

- Environmental: Water seeping out of irrigation ditches supports riparian habitats along the ditches. The proposed ordinance will allow local properties to continue to use water rights in local irrigation ditches and protect against the transfer of local water rights to other municipalities for use outside the city's water supply service area.

- Social: Irrigation ditches have historical and cultural importance for the community.

**OTHER IMPACTS**

- Fiscal: Ditch water used for irrigation of properties served by the municipal water system can reduce costs to the city water utility in instances where the ditch company-owned water rights do not compete with city water rights. The proposed ordinance is necessary to implement the 2009 Settlement Agreement with Silver Lake Ditch & Reservoir Company by eliminating conflicting provisions with the Settlement Agreement, such as regarding the share price.

- Staff time: No additional staff time is required as a result of the proposed ordinance.

**BOARD AND COMMISSION FEEDBACK**

The WRAB conducted public hearings and discussions at their January and August 2011 meetings regarding this topic. At the Aug. 15th meeting, WRAB made some changes to a draft ordinance and recommended approval (4-0, Iott absent) of the proposed ordinance (**Attachment A**).

At first reading on Sept. 20, 2011, City Council passed Ordinance No. 7816 and requested additional information. Refer to section **FIRST READING QUESTIONS & RESPONSE** for a list of the questions and responses.

**PUBLIC FEEDBACK**

At the Aug. 15, 2011, WRAB meeting, members from the public provided comments that indicated the proposed ordinance is a step in the right direction, but that there were concerns about:

- right of first refusal condition,
- water budget reduction,
- ditch company bylaw restrictions and
- the absence of exemptions for large, rural lots.

A member from the public suggested that the ordinance be further revised so that the offer of a right of first refusal would only be triggered if the water or ditch rights were being sold for use on a property outside the Boulder community or outside the service area of the ditch company.

The WRAB considered the public feedback and concluded that the proposed ordinance was sufficient and provided flexibility to respond to these concerns by allowing agreements to be developed that address special and unique situations. WRAB made some changes to the ordinance and recommended approval (4-0, Iott absent) of the proposed ordinance.

An email correspondence (**Attachment B**) from Catherine Gates about this topic was received on Sept. 20. Refer to section **FIRST READING QUESTIONS & RESPONSE** for a response to this correspondence.

**FIRST READING QUESTIONS & RESPONSE**

At a first reading on Sept. 20, 2011, City Council passed Ordinance No. 7816 and requested additional information, as follows:

Question 1: What is the problem with selling water and ditch rights to downstream users who are outside the city limits and can we keep a market for ditch shares by allowing use in historical boundaries?

Response: The sale of water and ditch rights to downstream users who are outside the city limits results in a transfer of irrigation water from within the city to outside the city, thereby reducing and diminishing the amount of water that has historically been used within the city limits. The result is that less treated water will be available during drought and non-drought years for Boulder's water customers.

The proposed ordinance would not prohibit sales to downstream users of the same ditch system who are outside city limits if they are willing to enter into an agreement giving the city the first right to purchase the water or ditch rights in the future. Requiring an agreement with the city that restricts the water or ditch rights provides an effective enforcement mechanism for keeping water in existing irrigation ditches when water is sold to a user outside of the city while also maintaining a market for ditch shares with those who support Boulder's purposes as stated in the proposed ordinance.

Most irrigation ditches with diversion headgates from creeks within city limits can deliver water to areas far from the city. For example, irrigation ditches that divert water from Boulder Creek at the Broadway headgate include service areas that extend to southeast Longmont (near Niwot Road and East County Line Road). Water that flows in irrigation ditches through Boulder to downstream users outside the city limit could be delivered through different conveyance systems or used in river augmentation plans, provided that the Colorado Water Court and, in some cases the irrigation ditch company, agrees. In situations where this has happened and diversion of the water is allowed at other locations, the flow of water is reduced in the irrigation ditch through Boulder. Without the protection of an agreement giving the city an interest in the water, the city's options for assuring that the water continues to be delivered through the existing irrigation ditch as it runs through the city become much more limited and expensive.

If shares in ditch companies that currently serve in-city properties were allowed to be sold to out-of-city users of the same ditches without having acquired any city interest in the shares, the city's only option to prevent a subsequent transfer of the water out of the ditch would be through Water Court proceedings.

Question 2: Provide more detail in response to the letter from Catherine and Dennis Gates (**Attachment B**) and provide more information about ditch rights and water budgets.

Response: Many Colorado municipalities have water sale or donation requirements associated with annexation or obtaining a municipal water tap. The practice is legal and is considered fair and equitable, which is an essential legal requirement for the operation of a municipal water utility. This assures that developing properties are responsible for offsetting their impacts on public services. Some municipalities along the Front Range pay for the dedicated water rights and others require the transfer with no payment offered. Boulder will pay fair market value when it purchases water or ditch rights. The requirement is only triggered when there will be an increase in water demand from the new water connection or enlarged water service. Those property owners who already have a city water tap and own water or ditch rights will not be asked to enter into an agreement unless they request a change resulting in a greater demand for city water.

A provision for reducing the water budget outdoor allocations for customers who retain ownership or lease-back rights is reasonable to assure fair treatment of all water users. Water budgets were implemented in 2007 to provide each customer with sufficient treated water for their property-specific indoor and outdoor needs. A customer who constructs a building addition (or a new patio or paved surface) at their home in an area that previously had a garden or lawn will have their water budget outdoor allocation reduced because they should need less water for outdoor irrigation. In the same manner, customers who choose to retain ownership or lease-back rights of water or ditch rights, or purchase new water or ditch rights for their outdoor watering needs, will have their water budget outdoor allocation reduced.

It is likely the city will only need to reduce water budgets in one year out of twenty years due to drought conditions. For nineteen years out of twenty years (95% of the time), water budgets will be normal and standard. Reducing water budgets during non-drought years for those property owners who also use ditch water encourages full use of the ditch water supplies by providing a financial consequence if the customer uses city treated water in a manner that results in usage in billing blocks 3, 4 or 5. This action reduces the demand on city water storage reservoirs in both drought and non-drought years and increases the ability of the city to enter drought periods with adequate water supplies.

At the Oct. 4 council meeting, staff will be prepared to discuss language changes to the proposed ordinance or conditions to include in a right of first refusal agreement.

**BACKGROUND**
Section 11-1-19, B.R.C. 1981, describes the city's acquisition of water and ditch rights when an applicant annexes into the city and/or requests a permit to connect to the city's water main. These conditions allow the city to acquire water supplies to offset the water needed by the new or expanded use. City Council requested that WRAB conduct an evaluation of the proposed revisions to Section 11-1-19, B.R.C. 1981, and provide a recommendation to City Council.

In the late 1800s, Boulder's founders recognized the importance of a reliable water supply for the creation of a secure and economically-stable community when they began developing a water supply system for the growing city. Subsequent generations have expanded and maintained the water system and planned for its future. Given the uncertainties presented by climate change and growth, future generations will depend on present efforts to preserve options for meeting future water needs.

The most senior direct flow water rights used to feed Boulder's municipal water system are derived from ditch company shares that once served irrigation ditches located in the Boulder Valley. Many of these historic irrigation ditches continue to be used to irrigate land within or adjacent to the City of Boulder. The city's policies of protecting local water supplies and acquiring shares in local ditch companies have existed since the late 1880s.

If water rights were to be transferred out of the local ditches without being made available to Boulder for use in its municipal water system, the city would need to significantly increase the amount of municipal water provided to its service area. Local irrigation ditches currently provide about 7,500 acre-feet annually for irrigation of lands within the Boulder city limits. This water is in addition to the approximate 19,000 acre-feet currently provided each year to the city's water customers through the municipal water system. If the city no longer had the means to protect local ditch company water supplies through the provisions of Section 11-1-19, B.R.C. 1981, and the water was sold for use elsewhere, the demand on Boulder's municipal system would increase by 7,500 acre-feet, or about 40 percent of the current municipal use.

Section 11-1-19, B.R.C. 1981, has come to the forefront because the city has become more efficient at identifying situations during the building permit or subdivision process. The demand on property owners located within the city to transfer title of water or ditch rights to the city is often triggered by application for a building permit that requests a new or enlarged water tap or subdivision approval. This is the time when the city has renewed contact with the property owner and is a convenient time to complete the offer process. Before the advent of computerized geographic information systems, the city used manual means and paper files to track requirements for individual properties through the building permit and subdivision processes. Computer technology has improved the city's ability to identify and track properties that have associated water or ditch rights at the time of application for a building permit. Thus, while the triggering event (annexation or connection to the city's water system) may have occurred some time before, it is when the property owner applies for a building permit allowing increased municipal water use or subdivision approval that the city has another opportunity to purchase the water or ditch rights. The city has occasionally allowed annexing ditch company shareholders to continue using water from their water or ditch rights. The city has always maintained, however, that the shareholder's acceptance of a water tap into the city's system established a standing offer to sell the water or ditch rights to the city upon demand.

Additional information about this topic may be found in the city council agenda memo from the Sept. 20, 2011, meeting that is available at www.bouldercolorado.gov.

**ANALYSIS**

Based on feedback and discussion with the WRAB and public, the proposed ordinance now states the city's purposes for acquiring interests (right of first refusal or purchase with lease-back) in local ditch and water rights, and protecting against the transfer of local water rights to other municipalities for use outside of Boulder's water service area. The proposed ordinance also provides that, for property owners who choose to retain water and ditch rights on their property, their water budget outdoor allocation would be reduced and their Plant Investment Fee payment would be reduced to reflect the smaller outdoor budget allocation.

These provisions are intended to continue the city's ability to protect local water supplies for local use, allow continued irrigation from ditches (in instances where it does not compete with the municipal water supply), preserve the historic character of certain agricultural ditches and assure equity for all municipal water system customers, particularly in drought situations.

The city has a strong and reasonable interest in limiting options that would allow customers to "cherry pick" their way around drought restrictions and pricing systems that are designed to protect the reliability and availability of water. Fairness to all city water users is an essential legal requirement for the operation of a municipal water utility. Therefore, including provisions for reducing the water budget outdoor allocations for customers who retain ownership or lease-back rights is reasonable to assure fair treatment of all water users. Without this provision, customers who do not fully use their water budget in normal years due to the availability of water or ditch rights might increase to a full use of the water budget in drought years when the yield of the water or ditch rights is reduced. In drought years, this would increase demand on the municipal water system and undermine city drought response efforts.

Conditioning municipal water service upon the dedication of water rights is a common requirement for both annexation and water service in Colorado cities. This assures that developing properties are responsible for offsetting their impacts on public services. Some municipalities along the Front Range pay for the dedicated water rights and others require the transfer with no payment offered. When the City of Boulder purchases water or ditch rights, it will pay fair market value.

Section (d) of the proposed ordinance indicates that, in the event owners of water and ditch rights have agreements with the city that contain terms conflicting with Section 11-1-19, B.R.C. 1981, the agreement shall control. Section (d) would apply to existing agreements, such as the 2009 Settlement Agreement with the Silver Lake Ditch & Reservoir Company or to future agreements that would be mutually acceptable between the city and owners of water or ditch rights who desire annexation or municipal water service. These future agreements could be tailored to unique situations without diminishing the city's ability to influence the location of use for local water supplies.

The inclusion of Section (d), which allows separate agreements to contain different conditions, is an important clause in the proposed ordinance. During the discussion at the Aug. 15 WRAB meeting, consideration was given to removing the right of first refusal condition and allowing the water and ditch rights to be sold anywhere the ditch company allows, including to downstream users who are outside the city limits. However, the conclusion was that water and ditch rights might be sold or transferred to a property outside Boulder's water service area, perhaps by using a third-party broker or another shareholder who does not request annexation or a permit to connect to the city's water main, thereby transferring irrigation water outside the city and increasing water demand on the city's water system. Use of an agreement provides an option to retain water and ditch rights in the Boulder water supply service area if the property owner has a unique situation that is also of value to the city. Also, when the city is presented with the option to purchase water and ditch rights when a right of first refusal condition is triggered, the city could propose a new right of first refusal agreement, or a lease, with the new owner, provided that the new owner agrees to retain the water and ditch rights on their property and within Boulder's water service area or, if not contrary to the city's interests, outside of the Boulder water service area.

The WRAB concluded that it was preferable not to revise the ordinance to remove the right of first refusal condition and thereby allow the water and ditch rights to be sold anywhere the ditch company allows, but rather to rely upon Section (d), which allows a separate agreement to address special and unique situations.

**MATRIX OF OPTIONS**

Options for council are:

1. Adopt the proposed Ordinance No. 7816 (**Attachment A**) on second reading
2. Adopt the proposed Ordinance No. 7816 on second reading with revisions and schedule the ordinance for a third reading
3. Do not adopt the proposed ordinance and provide direction to staff

**ATTACHMENTS**

**A –** Proposed Ordinance No. 7816
**B –** Email correspondence (Sept. 20, 2011) from Catherine Gates

ORDINANCE NO. 7816

AN ORDINANCE REPEALING AND RE-ENACTING SECTION 11-1-19, "WATER AND DITCH RIGHTS," B.R.C. 1981, TO ADDRESS AGREEMENTS FOR RIGHT OF FIRST REFUSAL, PURCHASE AND SALE OF WATER OR DITCH RIGHTS, AND RESULTING ADJUSTMENT OF WATER BUDGET; ELIMINATE REFERENCES IN THE CODE TO SILVER LAKE DITCH AND RESERVOIR COMPANY; AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 11-1-19, B.R.C. 1981, is repealed and re-enacted to read:

11-1-19 Water and Ditch Rights.

(a) Purpose

The purpose of this section is as follows:

(1) to preserve and protect for future generations the city's municipal water supply;

(2) to allocate fairly the municipal water supply during times of drought;

(3) to implement the then-current water utility master plans;

(4) to support the city's duty to provide an adequate municipal water supply for all of its customers and to protect the value and utility of the municipal water supply system's assets on behalf of the investment made by all city customers; and

(5) to recognize and preserve the historic character of certain agricultural ditches in the city and the sense of community that the ditches engender and to discourage the transfer of water and ditch rights for use outside the city's municipal water supply service area.

(b) An applicant for a permit for new or expanded water service under sections 11-1-14, "Permit to Make Water Main Connections," and 11-1-15, "Out-of-City Water Service," B.R.C. 1981, shall elect option (1) or (2) below.

(1) Offer to the city on a form provided by the city manager the right of first refusal on all water or ditch rights used on or appurtenant to the property at fair market

value and shall file such form in the office of the Boulder County clerk and recorder. The right of first refusal shall provide that the applicant shall give the manager at least sixty days advance written notice that water or ditch rights are for sale and the details of the sale.

Upon issuance of the permit, the outdoor allocation component of the municipal water budget for the property shall be reduced by an amount equal to the amount of water available under the water or ditch rights. The amount due under section 4-20-26 “Water Plant Investment Fees,” B.R.C. 1981, for the outdoor allocation also may be reduced based on the reduced water budget needed for outdoor irrigation for the property. Such reduction of such fee shall be made only if the right of first refusal includes a provision for the applicant to pay the incremental Water Plant Investment Fee in the future upon applicant’s request for full (non-reduced) water budget following sale of the water or ditch rights.

(2) Offer for sale to the city all water and ditch rights used on or appurtenant to the property at fair market value determined by the city and the applicant at the time of the offer for sale. If the city purchases the water and ditch rights, the applicant shall have the option to lease back the water or ditch rights for a period of at least five years at the price specified under section 4-20-25(d) “Monthly Water User Charges,” B.R.C. 1981, so long as the water or ditch rights are used exclusively on the property where such rights were used at the time of the sale to the city.

(c) If a person purchases or obtains any water or ditch rights for use on a property after connecting such property to the city water utility, or if a person outside the city and connected to the city water utility who owns water or ditch rights is annexed to the city, the city shall reduce the outdoor allocation component of the municipal water budget for such property in an amount equal to the amount of water available to such property under the water or ditch rights purchased or owned by such person. A full water budget may be restored to the property upon sale to the city of the water or ditch rights used on the property.

(d) In the event owners of water or ditch rights have entered into an Agreement(s) with the city that contain provisions that conflict with the terms of this section, the Agreement shall control.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 20th day of September, 2011.

__________________________________

Mayor

Attest:

__________________________________

City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of October, 2011.

______________________________

Mayor

Attest:

______________________________

City Clerk on behalf of the
Director of Finance and Record

## ATTACHMENT B

**From:** Catherine & Dennis [mailto:capncat@longsgardens.com]
**Sent:** Tuesday, September 20, 2011 8:36 AM
**To:** Council
**Cc:** Brautigam, Jane; Carr, Thomas; DeOreo, William
**Subject:** Agenda item 3 B

Re: September 20, 2011 Council Agenda item 3B – Agreements for right of first refusal, purchase and sale of water or ditch rights and resulting adjustment of water budget

Dear Members of Council,

My sincere thanks to City Council for referring this ordinance revision to WRAB. The current revision is a huge improvement over the previous version. I respectfully submit that there are still difficulties with the proposed language.

Requiring someone to offer a first right of refusal or outright sale of their water right when connecting or expanding their city water service is unfair. The person without a separate water right is not being required to sign over private property rights in the same situation. Just because this has been the practice does not mean it is correct.

We have a shared interest in seeing that water rights remain in our community. I would suggest structuring the ordinance to trigger a first right of refusal or sale only if the water right is being sold outside the historical irrigation district.

Reducing someone's water budget because they have spent the money to obtain a separate water right is also a violation of personal property rights. If the true problem is to protect the city's water resources during a period of drought then why not consider a reduction in the water budget that would be triggered only in times of officially declared droughts?

WRAB seemed to feel that the agreement clause (d) provided an avenue for addressing special circumstances where it would be preferable to keep the ditch rights in private hands. The agreement clause does offer that possibility, but I fear the problem would be that the administration of that clause would be left in the hands of the Utilities Department. The focus of that department is narrow and in my experience does not generally evaluate a situation based on the very commendable goals stated in (a)(5) of the proposed ordinance: "to recognize and preserve the historic character of certain agricultural ditches in the city and the sense of community that the ditches engender . . ." Perhaps the agreement clause could mandate that a person coming under the terms of the ordinance has the right for a hearing before Council or at least a review by a broader audience than the Utilities Department.

Please consider further revisions to the proposed ordinance to more specifically address the city's very legitimate concerns of keeping water in our community and working together in times of drought. There should be creative ways to address these concerns without trampling on an individual’s private property rights or jeopardizing the viability of irrigation ditches within our community.

Thank you so much for the attention you have given this matter.

Catherine

Catherine Long Gates
Long’s Gardens
3240 Broadway
303-442-4801

# PUBLIC HEARING ITEM – 5A

**CITY OF BOULDER**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 4, 2011**

**AGENDA TITLE:** Consideration of the following items relating to the 2012 Budget:

a. Public hearing on the proposed 2012 City of Boulder Budget; and
b. Introduction, first reading, and consideration of a motion to order published by title only an ordinance that adopts a budget for the City of Boulder, Colorado, for the fiscal year commencing on the first day of January 2012 and ending on the last day of December 2012, and setting forth details in relation thereto; and
c. Introduction, first reading and consideration of a motion to order published by title only an ordinance that establishes the 2011 City of Boulder property tax mill levies which are to be collected by the County of Boulder, State of Colorado, within the City of Boulder in 2012 for payment of expenditures by the City of Boulder, County of Boulder, State of Colorado, and setting forth details in relation thereto; and
d. Introduction, first reading and consideration of a motion to order published by title only an ordinance that appropriates money to defray expenses and liabilities of the City of Boulder, Colorado, for the 2012 fiscal year of the City of Boulder, commencing on the first day of January 2012, and ending on the last day of December 2012, and setting forth details in relation thereto; and
e. Introduction, first reading and consideration of a motion to order published by title only an ordinance, that amends Chapters 2-6, 3-9 and 4-20 B.R.C. 1981 changing certain fees and setting forth details in relation thereto.

**PRESENTERS**
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichem, Chief Financial Officer
Eric Nickell, Budget Director
Peggy Bunzli, Budget Manager

**EXECUTIVE SUMMARY**
The purpose of this item is the adoption of (1) the 2012 budget and other related ordinances to appropriate city funds as presented in the 2012 Recommended Budget, and (2) City of Boulder fees for the 2012 fiscal year.

The 2012 Recommended Budget was reviewed with City Council during the study session on Sept. 13, 2011 (see **Attachments A** and **B)**. To facilitate Council review of the budget, staff has also prepared a single list of each change proposed for the budget that occurred after Council received the 2012 Recommended Budget document (see **Attachment C**). A summary of all city funds is provided (see **Attachment D**).

Adoption of the ordinance that establishes the 2011 mill levy for the city and the ordinance that changes certain codified fees is also requested.

The Downtown Commercial District (formerly known as the Central Area General Improvement District), the University Hill Commercial District (formerly known as University Hill General Improvement District), the Boulder Municipal Property Authority (BMPA), the Forest Glen Transit Pass General Improvement District, the Boulder Junction General Improvement District for Parking, and the Boulder Junction Improvement District for Transportation Demand Management (TDM) budgets are not included with these ordinances. They will be appropriated by resolution under a separate agenda item October 18, 2011 coinciding with the second reading of the city budget.

**STAFF RECOMMENDATION**
Staff recommends adoption of the following four ordinances:

- **Budget Adoption Ordinance (Attachment E)**
  The Charter of the City of Boulder requires that, before the city establishes the property tax mill levy, the annual budget that summarizes sources and uses must be approved. The ordinance included in this packet incorporates the 2012 Recommended Budget.

- **Mill Levy Ordinance (Attachment F)**
  In order to prevent any ratcheting down of the city's mill levies per the Taxpayor Bill of Rights (TABOR), a temporary mill levy credit is used whenever the calculated revenue forecast exceeds the calculated TABOR revenue limitation by more than 0.10 mill. As a result of the passage of Ballot Issue 201, "Retention of Property Tax Funds" approved by voters on Nov. 4, 2008, the remaining restrictions on property tax collected by the City of Boulder are being eliminated.

  Ballot Issue 201 has the effect of reducing the mill levy credit by 0.50 mill each year until the credit is completely eliminated. The mill levy credit available this year is now less than 0.50 mill. As a consequence, the mill levy credit will be completely eliminated in the 2011 mill levy calculation.

Given the most current assessed valuation information received from Boulder County and the passage of Ballot Issue 201, the following is the net mill levy for 2011:

| | |
|---|---|
| Base Mill Levy | 11.981 |
| Less: Mill Levy Credit | (0) |
| Net Mill Levy | 11.981 |

- **Appropriation Ordinance (Attachment G)**
  This ordinance appropriates funds as stated in the budget ordinance for 2012.

- **Fees Ordinance (Attachment H)**
  City fees are adjusted based on costs of providing city services and depend on calculations of inflation, pricing guidelines, or service-specific cost analysis. The annual budget process also provides an opportunity to review and clarify the Boulder Revised Code language related to fees and rates.

**Suggested Motion Language**

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

- Motion to introduce and order published by title only an ordinance adopting the 2012 budget;
- Motion to introduce and order published by title only an ordinance establishing the property tax mill levy for 2011 to be collected in 2012;
- Motion to introduce and order published by title only an ordinance appropriating the 2012 budget;
- Motion to introduce and order published by title only an ordinance changing certain fees.

**OTHER IMPACTS**

- **Fiscal -** This item will appropriate funds to implement the City of Boulder's 2012 budget. This budget is based on the City Manager's 2012 Recommended Budget and in accordance with City Council's feedback provided during the study session. In addition to the budget ordinances, the property tax mill levy and fees ordinance are also included. These ordinances are necessary to fund the annual budget in full.

- **Staff time -** Staff time for this process is allocated in the Budget Division's regular annual work plan.

**QUESTIONS**
Responses to questions regarding the 2012 Recommended Budget that were raised at the September 13, 2011 City Council study session are addressed in an Information Packet item that was sent to Council on September 22.

Council members may contact the Budget Division (Eric Nickell at ext. 3007 or Peggy Bunzli at ext. 1848) for any questions they have on the contents of this agenda item, including clarification of any budget program or fund status.

**ITEMS TO BRING TO THE OCTOBER 4 MEETING**
Council members should bring with them to the October 4 meeting their copies of the 2012 Recommended Budget binder and slide handouts for the presentations on the budget and on fees from the September 13 study session.

**WHERE TO FIND BUDGET MATERIALS ONLINE**
The digital version of the 2012 Recommended Budget is found at

http://www.bouldercolorado.gov/index.php?option=com_content&view=article&id=15188&Itemid=1754%20

Past budgets can be downloaded at

http://www.bouldercolorado.gov/index.php?option=com_content&task=view&id=3937&Itemid=1541

Study session materials for the current session (September 13 of the writing of this item) are available for review at

http://www.bouldercolorado.gov/index.php?option=com_content&view=article&id=457&Itemid=399

**PUBLIC FEEDBACK**
There will be a public hearing at both first and second readings of these ordinances.

**NEXT STEPS**

| MEETING | Date | Topic |
|---|---|---|
| City Council Meeting | Oct 4 | 1st Reading of 2012 Recommended Budget |
| City Council Meeting | Oct 18 | 2nd Reading of 2012 Recommended Budget |
| City Council Meeting | Oct 31 | If needed, 3rd Reading of 2012 Recommended Budget |

**ATTACHMENTS**

| | |
|---|---|
| **Attachment A** | September 13, 2011 Budget Study Session notes. |
| **Attachment B** | Responses to questions regarding the the City Manager’s 2012 Recommended Budget raised at the September 13 Study Session. |
| **Attachment C** | Budget Changes document logging all changes proposed to the 2012 Recommended Budget since its publication. |
| **Attachment D** | The Fund Activity Summary that reflects the impact of 2012 estimated revenues and appropriations on the fund balance for each fund in the city. |
| **Attachment E** | A proposed ordinance adopting the Budget for the City of Boulder for 2012. |
| **Attachment F** | A proposed ordinance establishing 2011 City of Boulder property tax mill levies. |
| **Attachment G** | A proposed ordinance appropriating the 2012 budget. |
| **Attachment H** | A proposed ordinance amending Chapters 2-6, 3-9, and 4-20 B.R.C. 1981, changing certain fees. |

# Attachment A

**September 13, 2011**
**City Council Study Session Summary**
**2012 Recommended Budget**

**PRESENT**
**City Council:** Mayor Susan Osborne, Deputy Mayor Ken Wilson, Council Members Matt Appelbaum, Macon Cowles, Crystal Gray, George Karakehian and Lisa Morzel

**Staff Members:** City Manager Jane S. Brautigam, Budget Director Eric Nickell and Budget Manager Peggy Bunzli

**PURPOSE**
The purpose of this study session was to present information on the 2012 Recommended Budget and receive Council feedback in preparation for the first reading of the 2012 budget ordinance on October 4, 2011. The study session had the following agenda:

- Introduction
- Economic Climate
- 2012 Recommended Budget
- Next Steps
- 2012 Changes to City Fees

**PRESENTATION**
**Introduction**
City Manager Brautigam opened the meeting by giving a brief overview of the agenda for the evening. She then began by introducing the City's Budget Director and Budget Manager, acknowledging that the 2012 Recommended Budget was put together with the efforts of many people throughout the city. She emphasized that staff has been focused on preparing a transparent budget document with a focus on Priority-based Budgeting. Finally, she explained this year's budget timeline illustrating the steps of budget development.

**Economic Climate**
Budget Director Eric Nickell provided economic information related to the development of the 2012 budget. He began with an overview of the national and global economy.

He then reviewed regional and state economic climate. In 2009, Colorado lost 5 percent of its job base and is recovering slowly. Inflation for the Denver-Boulder-Greeley Region is 3.8 percent for the first six months of this year.

Next, the Budget Director reviewed the local economic climate. The city had its worst year for employment in 2009 when its employment base shrunk by 5 percent. Year-to-date the City is down approximately 70 jobs over 2010, although the city may balance out to a net loss of zero by year end.

Next, the Budget Director summarized the revenue outlook. Sales and use tax is up 7.6 percent year-to-date, however net total assessed valuation is down 2.2 percent from 2010. He then explained the relationship between increasing sales revenues and inflation, which indicates we may reach a point where the value of the dollar does not increase as fast as costs are increasing. Sales tax has tentatively rebounded in the first seven months of the year.

The Budget Director then provided an overview of our current mill levy and limitations in de-Brucing additional property tax. He then illustrated the difference between actual property tax collections and what would have happened if city voters had not eliminated TABOR restrictions on the mill levy. The recommended mill levy for 2012 will be 11.981 which is based on TABOR's allowable growth factor in the context of declining assessed values.

He then reviewed other revenue sources which make up approximately 40 percent of the total revenue. Next, he discussed Lottery Fund (Conservation Trust Fund) revenues. Both total Conservation Trust Fund total revenues and Boulder's share of the state population are declining which means less revenue for the city after 2012.

Questions were then taken from City Council. Answers were provided in the study session itself or in an Information Packet that was released on Thursday, September 22.

**2012 Recommended Budget – Executive Summary**
Budget Manager Peggy Bunzli provided an overview of the citywide budget. The 2012 Recommended Budget is approximately $239 million, of which $215 million is operating and $24 million is capital. Of the $215 million operating budget, $91 million is in the General Fund and $124 million is in restricted funds.

The Budget Manager next reviewed citywide revenues. For 2012 the city projects $232 million in revenue. Examples of major sources are: 53 percent of the total revenue comes from sales tax and property tax, 20 percent comes from utilities, and 19 percent comes from other revenues, which includes accommodations tax, admissions tax, occupation tax, CAP tax, use tax, fines and fees, licenses, lottery, parking, cash-in-lieu, non-governmental grants and other various revenues.

The Budget Manager then reviewed citywide expenses. For 2012 the city projects $239 million in expenditures. Examples of major uses are 32 percent of total expense in Public Works, 19 percent in Public Safety, and 11 percent in Open Space and Mountain Parks. General Governance, one category of expense in the summary charts, includes Municipal Court, City Attorney's Office, City Manager's Office and City Council. Admin Services, another category of expense, includes Human Resources, Finance, Information Technology, and telecommunications.

The Budget Manager noted that Council may have noted that expenditures are approximately $8 million greater than revenue. This difference is funded by fund balances. Typically fund balances are used for:

- One-time capital expenditures for pay-as-you-go financing;
- Multi-year projects such as Boulder Junction;
- Emergencies; or
- Short-term dips in revenue.

The Budget Manager continued, indicating that for the 2012 budget, all funds will meet their fund reserve goals. As a reminder, for the General Fund, the reserve goal is 10-15 percent of the operating budget, to be used to cover emergencies or short-term dips in revenue.

Next, the Budget Manager discussed General Fund revenues and expenditures. For 2012 we are projecting $104 million in revenue. In the General Fund, 67 percent of revenues come from sales and property tax. This is the first year the budget shows the Community Planning and Sustainability Department on the General Fund summary charts. Historically this work group has been in the General Governance section of the pie chart.

As another 2012 budget highlight, the city has set aside approximately $2 million for the capital improvement strategy in case the November 2011 bond measure were to pass. If the measure does not pass, those funds would roll back into the General Fund and would be available for other uses.

As a summary, the Budget Manager indicated that citywide revenues are increasing by 3.1 percent while citywide expenditures are increasing 3.4 percent. General Fund revenues are increasing 4.5 percent, while General Fund expenditures are increasing 3.8 percent. The City is proposing to spend a little less in the General Fund than it is bringing in, consistent with cautious budgeting in uncertain times.

**2012 Recommended Budget – Budget Highlights**
The City Manager then discussed Recommended Budget highlights. For 2012, the focus was again on Priority-based Budgeting. From the goals outlined in Priority-Based Budgeting, the city found the following areas of focus for the 2012 Recommended Budget:

- Organizational Efficiency
- Department Assessments
- West Trail Study Area
- Community Planning and Sustainability
- Boulder's Energy Future

The City Manager continued by going into detail of the first highlight, organizational efficiency. A major goal over the last few years has been the management of personnel expenses. The city is moving in 2012 to a market based compensation structure which aligns the ranges that employees are paid to the market independent of inflation. Second, the city is moving toward employee cost sharing of healthcare premiums.

Third, the City is instituting a common review date and goal alignment for performance reviews. Fourth, the city has given greater attention to staff development and succession planning, a focus of our organization now and into future. Finally, an example of organizational efficiency is the move of code enforcement from Environmental and Zoning Enforcement Office (EZEO) to the Police Department. In total, the Police Department's budget is increasing by $199,000 and 3.0 Full Time Equivalent (FTE) positions through new dollars and a reallocation from EZEO.

Next, the City Manager discussed department assessments. Three department assessments have been competed this year: Information Technology, Human Resources, and Fire. The Information

Technology Department will be backfilling some existing staff with fixed-term positions in order to complete two major software projects: replacing the LandLink system and replacing the existing Finance/HR/Payroll systems with a new all encompassing Enterprise Resource Planning (ERP) system. Human Resources and Information Technology have both done some reorganizing within their current budgets. As a result of the Fire Department's assessment, the following changes are planned for the 2012 Recommended Budget:

- The addition of a Staff battalion Chief;
- Improvements to operational and leadership training;
- Transformation of two seasonal firefighters to fulltime wildland fire crew positions;
- An update the Fire Department Master Plan which is funded in 2011; and
- The addition of administrative support.

Following department assessments Jane discussed the West Trail Study Area and its impact on the 2012 Recommended Budget which includes:

- A four year extension of the fixed-term Visitor Master Plan Implementation Coordinator;
- The addition of a fixed-term Trails Contract and Project Manager;
- The addition of nine seasonal employees for trail maintenance;
- The addition of three rangers; and
- An increase in funding to increase OSMP community outreach.

Community Planning and Sustainability has been a focus of the Council for the last several years and has had several workgroups added to it. As a result, the following changes are recommended for 2012:

- The addition of a Deputy Director of Community Planning and Sustainability; and
- A new fixed term position to complete land use code revisions.

Along with the previous changes, the City Attorney's Office will be adding attorneys to both meet core legal service needs of the city as well as to meet the needs of the Public Works-Utilities Division.

The final budget highlight is related to Boulder's Energy Future. The same funding that was approved for 2011, $260,000, is proposed for 2012. In the event that the municipalization ballot measures pass and the voters authorize new funding, this amount will be returned to the General Fund.

The impact of all changes to the budget equates to a net increase of 12 FTE. These 12 FTE are comprised of new budget resources and reallocations of existing program resources. Of the 12 FTE, six are fixed-term.

**Next Steps**

The City Manager began the next steps discussion with the introduction of the Budget Changes Sheet. The Budget Changes Sheet will be used to collect errata, new information and changes proposed by Council in a centralized location instead of individual "slip in" pages. One change not yet mentioned is the removal of the North Boulder Recreation Center Parking Lot from the 2012-2017 CIP for further analysis and Council consideration.

Next, the City Manager discussed the following schedule for the rest of the 2012 budget process:

- Second study session (if requested by Council) – September 27th
- 1st Reading of 2012 Recommended Budget – October 4th
- 2nd Reading of 2012 Recommended Budget – October 18th
- 3rd Reading of 2012 Recommended Budget (if necessary) – October 31st

Questions were then taken from City Council. Answers were provided in the study session or in an IP that was released on Thursday, September 22nd.

**2012 Changes to City Fees**
The Budget Director presented the 2012 changes to city fees beginning with an overview of departments who are proposing fee changes.

- DUHMD
- Public Works - Development and Support Services
- Public Works - Transportation
- Public Works - Utilities
- Parks and Recreation
- Police - Animal Control
- Finance - Licensing Fees

Next, the Budget Director presented some background information on City of Boulder fee policy and fee update procedures. He first covered the policy on cost recovery. These policies are available in the budget document on pages 46-48. He continued with the typical fee update cycle. Finally, he finished the background section with an introduction to a comprehensive fee study that will take place in 2014 after the ERP system is implemented.

The Budget Director then presented all of the fee changes proposed for 2012 which include:

- **DUHMD**
  - Downtown and University Hill permit parking
    - 4percent increase
  - Mall permits and fees
    - 2-3 percent increase depending on the specific fee
- **Parks and Recreation**
  - Daily Admission for recreation centers and pools
    - 3-7 percent increase depending on the specific fee
  - Season or Annual Admission for recreation centers and pools
    - 0-25 percent increase depending on the specific fee
  - Facility Rental - Resident
    - 10-100 percent increase depending on the specific fee
  - Facility Rental - Non-Resident
    - 17-100 percent increase depending on the specific fee
  - Commercial fee pilot program that applies to businesses using City of Boulder property such as park land
    - Minimal fee during pilot program to allow for data collection on usage

- **Public Works - Development and Support Services**
    - Development not located within the conveyance zone
        - 35 percent decrease - 6 percent increase depending on the specific fee
    - Development located within the conveyance zone or floodway
        - 31-73 percent reduction depending on the specific fee
    - Review of emergency management plans
        - New fee for 2012
    - Hazardous materials facility plans
        - New fee for 2012
    - Map revisions
        - 31-57 percent decrease depending on the specific fee
    - Miscellaneous floodplain requests and reviews
        - 14 percent reduction - 0 percent change depending on fee
- **Public Works - Transportation**
    - A Transportation Maintenance Fee Study will be presented at a December 2011 Council study session
- **Public Works - Utilities**
    - Water Utility
        - 2-3 percent increase depending on the specific customer class
    - Wastewater Utility
        - 2-3 percent increase depending on the specific customer class
    - Stormwater/Flood Utility Management Utility
        - 2 percent increase
    - Utility Specific Services Charges
        - 17 percent reduction to 17 percent increase depending on the specific fee
- **Police**
    - Animal Control impound fee
        - $10 increase
- **Finance**
    - New license and renewal applications
        - 4 percent increase

Over all the City of Boulder anticipates receiving $1.2 million from fee increases.

Questions were then taken from City Council. Answers were provided in the study session or in an IP that was released on Thursday, September 22nd.

Council the concluded the meeting by agreeing that a second study session will not be necessary.

**Attachment B**

**INFORMATION PACKET**
**MEMORANDUM**

To: Mayor Osborne and City Council

From: Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichem, Chief Financial Officer
Eric Nickell, Budget Director
Peggy Bunzli, Budget Manager

Date: September 23, 2011

**Subject: Information Item: Follow-up to the September 13, 2011 Study Session on the City Manager's 2012 Recommended Budget**

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## PURPOSE

The purpose of this information item is to provide City Council with staff responses to Council comments at the September 13 study session on the City Manager's 2012 Recommended Budget.

## BACKGROUND

On September 13, 2011, the City Manager and Budget Division staff made a presentation to the City Council on the City Manager's 2012 Recommended Budget. The presentation included an economic update, an update on revenue projections for the City of Boulder, and 2012 Recommended Budget highlights. Council asked a number of questions and provided comments about the presentation and the 2012 Recommended Budget. Below are staff's responses to questions or comments from the Study Session.

## QUESTIONS AND RESPONSES

The key dialogue from the Study Session is divided below into subsections on economic trends, revenues, budget programs and process, and the budget document itself.

### Economic Trends Questions

*Question:* Why does BLS (U.S. Bureau of Labor Statistics) show only 57,085 jobs in 2011, when past discussions of local employment have indicated that there are about 100,000 jobs in Boulder?

*Staff Response:* The city's current estimate of employment in the City of Boulder is 96,800. This is an estimate prepared by the Department of Community Planning and Sustainability, and includes both wage and salary employees, and self employed workers.

The raw BLS jobs number of 57,085 reported in the study session did not include certain large employers or self-employed workers due to the reporting method used for that data. For example, the Federal Labs may report all their employees at their headquarters in Washington DC, and the number that work in the Boulder offices must be manually corrected. The city develops its jobs estimate using BLS data through DRCOG and/or the University of Colorado Business Research Division. Both agencies review the source data and correct for those employers where the reporting is not reflected correctly. This data is then combined with an estimate of self-employed workers which are not counted in the BLS data to establish a citywide employment estimate. This is a more accurate method for establishing a local jobs estimate, and is commonly used by other communities and agencies.

The city maintains basic community data on population, employment, and housing units posted on the city website at bouldercolorado.gov > About Boulder > City of Boulder Statistics. Additional detailed data on estimates and projections is linked from that page to the Community Planning and Sustainability (CP&S) page on community and planning data. The City of Boulder jobs estimate for 2012 will be developed by CP&S using 2010 and 2011 data in the first quarter of 2012. In addition, the city coordinates with the Boulder Economic Council on their annual economic and demographic profiles, as well as their quarterly reports. Those reports can be found at www.bouldereconomiccouncil.org/publications.

*Question:* Which sectors have experienced job loss in Boulder?

*Staff Response:* There is a lag time of nine months in the employment data received from BLS. Therefore, we do not have information for the most recent quarters.

Changes to the industry employment patterns during the early part of the recession are shown in the table below. Not included in the table are any estimates for which sectors contain jobs held by Boulder’s 8,000 to 10,000 self-employed workers. 2006 is used since it was previous to any influence created by the latest economic downturn.

Exceptional rates of growth and contraction by industry sector between 2006 and 2009 include **government** (including public universities and schools) with a 7 percent increase in jobs, **administrative and waste management services** with a 26 percent decrease, **wholesale trade** with a 23 percent decrease, **construction** with a 22 percent decrease, **management of companies and enterprises** with an 86 percent decrease, and **educational services** with an 8 percent decrease.

Some changes may reflect movement of a small number of companies out of the city, or a reclassification of jobs in smaller industries. On the whole, the city lost approximately 1.0 percent of its 2009 job base in this three-year period.

## EMPLOYMENT BY INDUSTRY, CITY OF BOULDER, 2006-2009

| Industry | 2006 | 2009 | Change to 2009 Base (%) |
|---|---|---|---|
| Government (includes public universities and schools) | 17,353 | 18,582 | 6.6% |
| Professional, Scientific, and Tech Services | 12,326 | 13,003 | 5.2% |
| Manufacturing | 8,806 | 8,564 | -2.8% |
| Accommodation and Food Services | 8,091 | 8,278 | 2.3% |
| Health Care and Social Assistance | 7,557 | 7,731 | 2.3% |
| Retail Trade | 7,805 | 7,593 | -2.8% |
| Information | 7,180 | 6,595 | -8.9% |
| Finance and Insurance | 3,202 | 3,154 | -1.5% |
| Other Services | 2,652 | 2,683 | 1.2% |
| Administrative and Waste Management Services | 3,371 | 2,670 | -26.3% |
| Wholesale Trade | 3,198 | 2,594 | -23.3% |
| Arts, Entertainment, and Recreation | 1,551 | 1,641 | 5.5% |
| Construction | 1,851 | 1,516 | -22.1% |
| Real Estate and Rental and Leasing | 1,400 | 1,343 | -4.2% |
| Educational Services | 1,437 | 1,337 | -7.5% |
| Transportation and Warehousing | 623 | 633 | 1.6% |
| Management of Companies and Enterprises | 764 | 410 | -86.3% |
| **Total Employment** | **89,167** | **88,327** | **-1.0%** |

**Notes:**

Original Data Source: Colorado Department of Labor and Employment (QCEW 2006-2009), Business Research Division, University of Colorado. This data does not include self-employed w orkers w ithin the City of Boulder.

Information characterizing changes to the city's employment base in 2011 will be available in late 2012. Budget Study session employment data for the City of Boulder was selected because it was more current (covering the month of July 2011), although the data had no detail related to job changes by industry.

*Question:* Is CPI adequate as an economic indicator for Boulder? Other specific indices, such as the Engineering News Record Cost Index for Denver Engineering and the Colorado Department of Transportation Colorado Construction Cost Index might be more relevant to Boulder's specific economy.

*Staff Response:* The Denver Boulder CPI is the index that must be used by cities in Colorado for Tax Payer Bill of Rights (TABOR) purposes. It is also used in many contracts that have clauses for cost escalations. This CPI index is a yardstick for inflation from the consumer perspective and has limitations in tracking the prices paid by the City of Boulder for its goods and services. City expenditures on the whole are more sensitive to local wage rates and construction material prices than prices encountered by the average consumer.

For more specific comparisons city staff uses other indices. Examples are, the State Department of Transportation publishes the Colorado Construction Cost Index, an index that is appropriate for roadway and utility project cost estimation. *Engineering News and Review* (ENR) publishes a Denver Construction Cost index as well. The city already uses both series in selected areas within its six-year Capital Improvement Program (CIP).

**Revenue Trends Questions**

*Question:* Federal cuts may impact jobs in the Federal Labs in Boulder. Has this type of loss been taken into consideration in the current revenue projections?

*Staff Response:* Yes. Projections do take into account the impact of federal budget changes and how it may impact city revenues. Since the federal government is on a different fiscal year than the city projections may change and that is taken into account as staff monitors ongoing revenue trends and changes throughout the year.

*Question:* Have the impacts of the recession on residential property's assessed value in the City of Boulder been different than impacts on the assessed value of nonresidential property?

*Staff Response:* After being shown the above question, the County Assessor estimates that residential structures in the city have lost 1.0 percent of their net assessed value in the past year, while nonresidential structures have lost 3.1 percent of their net assessed value in the past year. The indication is that, if measured by assessor standards, Boulder's commercial and industrial building stock property value has fallen in value at three times the rate of Boulder's single family and multi-family housing stock.

*Question:* If the mill levy will be capped in 2012, is the 3 percent increase in property tax revenue projected for 2013 accurate?

*Staff Response:* Once the Assessor updated its net assessed value for the city in mid-September, the 3 percent increase in property tax revenues that formed the basis for the Recommended 2012 Budget was reevaluated. Staff believe that a revised projection using the latest information from the County Assessor suggests a 1 percent increase in 2013 property tax revenue compared to 2012 levels. Projections for this revenue source in later years are not changed.

**Budget Programs and Process Questions**

*Question:* What percentage of the Parking Violations revenue noted on the General Fund revenues pie chart in the Citywide Summaries section of the 2012 Recommended Budget comes from Neighborhood Permit Parking (NPP) violations?

*Staff Response:* Approximately 10% of parking violations revenue comes from NPP violations.

*Question:* How was Priority Based Budgeting (PBB) incorporated into the budget process and where is this reflected in the 2012 Recommended Budget? What improvements can be made to describe PBB results for future budget years?

*Staff Response:* This is the second year of implementation of PBB, an iterative process for prioritizing city programs according to their contributions to a series of defined results customized for the city of Boulder. The results defined for the city's programs and services (shown in the City Manager's Budget Message, pages 33-35) are the following six overarching objectives that reflect City Council and broader community priorities:

- Accessible and Connected Community
- Economically Vital Community
- Environmentally Sustainable Community
- Healthy and Socially Thriving Community
- Safe Community
- Good Governance

Through the PBB process, all city programs and services are categorized in an inventory of programs by department. All programs then go through an internal citywide scoring assessment, which is the classification of each PBB program into one of four quartiles, with the first quartile indicating that a program has the highest influence on achieving the city's defined results, and the fourth quartile indicating the lowest level of influence.

Location in Budget Document

The full list of PBB programs, and the quartiles in which they fall, are included in the City Manager's Budget Message section of the 2012 Recommended Budget. For each of these programs, the Department Overviews section of the 2012 Recommended Budget, pages 105-215, shows the budgeted direct costs and indirect costs of the department (the program "Administration").

An example of this is the "Health and Wellness Programs and Services" PBB program. This program is listed in the full PBB program list, on page 43 of the budget document, under Quartile 4. The department associated with the program is Parks and Recreation, and this program is listed as a budget line item in the Parks and Recreation department budget on page 188 of the budget document. This PBB program contains, among other things, Recreation classes that are offered to the public, such as yoga.

In the budget process leading to the 2012 Recommended Budget, PPB was updated in order to improve internal processes and achieve greater consistency in terms of program definition, score assessment and communication with city departments. As departments began preparing their 2012 budgets, each department was asked to assess their budget requests and the allocation of resources within the department budget according to PBB results. In March, departments submitted information to the City Manager outlining the use of PBB in the department budgeting process. A number of budget requests and issues were handled by departments reallocating resources within their departments from lower priority to higher priority programs.

Much of this PBB-focused assessment was done before departments submitted final budget requests to the City Manager for review by a multi-department team. The graphs, showing the distribution of resources across the city by quartile (page 37 of the 2012 Recommended Budget), include these reallocations.

Future Budgets and PBB

The City of Boulder is committed to using PBB in its budgeting process to prioritize city programs and services and align the budget with Council and Community priorities and values. In the process leading to the 2013 Budget, staff will continue to improve on PBB methods to ensure that PBB is a meaningful and relevant tool in the budgeting process, with attention to the important task of communicating budget results to the Council and Community.

*Question:* What budget requests for expanded programs or services were not able to be funded in the 2012 Recommended Budget?

*Staff Response:* Two groups of budget requests are described in detail below. First, pending voter approval of two ballot measures in November 2011, the following budget requests were not funded at the conclusion of the PBB process this year:

- Additional staff backfill to permit core services to continue while the Enterprise Resource Planning (ERP) system is installed phase by phase in the Finance, Information Technology, and Human Resources Departments;
- Project management and administrative staff necessary to effectively program funding from capital investment bonds; and
- Support staff and legal staff necessary for later phases of municipalization as part of Boulder's Energy Future.

Completion of department master plans in the near term will assess and prioritize a second group of proposals for investment in the Departments of Police, Fire, Library, and Health and Human Services. The following proposals were not funded at the conclusion of the PBB process this year:

- Utility budgets for new city facilities and increases in utility costs for existing city facilities;
- Increases to fleet budgets; and
- Shortening department equipment replacement cycles by allocating additional funding.

These budget initiatives do not impact core services or employee safety and can be evaluated and, if prioritized, fully funded in coming budget years.

*Question:* What consideration was made to resource allocation for the Police department, to ensure appropriate levels of Police staffing and response time?

*Staff Response:* There was no request for additional officers as a part of the 2012 budget process. The City continues to monitor response time and community needs, in light of increased calls for service. The Police Department is updating its Master Plan, a process that is anticipated to be completed in 2012. The Master Plan Update will be used to help determine the best use of resources and any additional resource needs for the department and the community.

**Budget Document Questions/Comments**

*Comment:* The citywide and General Fund pie charts in the Budget Overview section could be more meaningful if:

- Utilities are shown separately;
- Departments that receive a significant portion of their funding from General Fund transfers are shown in the General Fund charts; and
- Sources of funds are linked to the departments receiving the funds and/or an indication of dedicated funding streams.

*Staff Response:* Beginning with the 2013 Recommended Budget, the budget document could include similar citywide summary pie charts to illustrate the relative impact of all city services. To add additional transparency to the Budget Overview section of the document, the following charts could be added:

- Citywide budget shares by function or department, excluding the city’s enterprise funds (utility funds and GIDs);
- Total General Fund transfers by fund (ex. Library Fund and Recreation Activity Fund transfers); and
- Dedicated revenue stream totals by function or department (utility funds, dedicated property and sales taxes).

*Question:* Can there be further information on large fund balances that exist in particular funds, above the reserve goals?

*Staff Response:* Beginning with the 2013 Recommended Budget, the budget document could include a summary schedule identifying ending fund balances after designations for each fund. In that case, the fund balance summary schedule contains ending fund balances within each fund for prior year actual, current year and six year projected balances for purposes of illustrating multi-year trends in fund balances. Immediately following multi-year fund balance data for each fund, a brief note provides an overview including the purpose and intended use of remaining fund balances after designations.

## NEXT STEPS

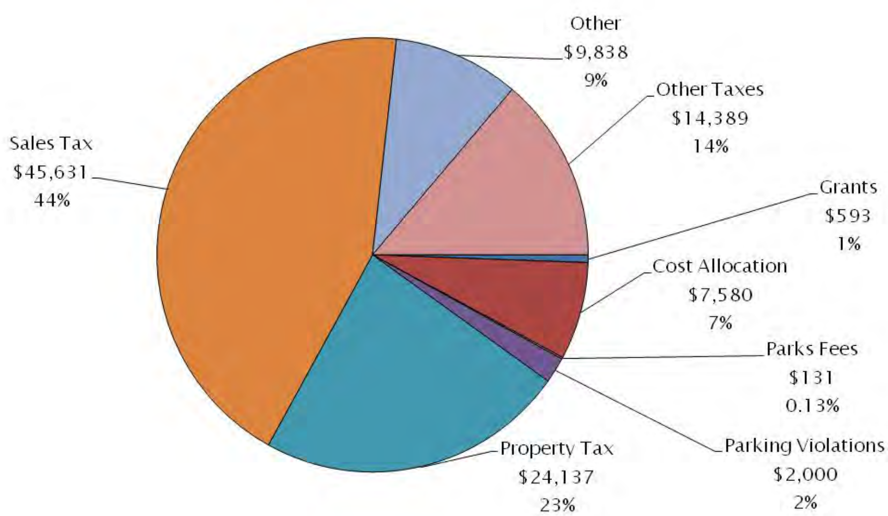
| MEETING | Date | Topic |
|---|---|---|
| City Council Meeting | Oct 4 | 1st Reading of 2012 Recommended Budget |
| City Council Meeting | Oct 18 | 2nd Reading of 2012 Recommended Budget |
| City Council Meeting | Oct 31 | If needed, 3rd Reading of 2012 Recommended Budget |

**Attachment C**

# 2012 Recommended Budget Document Changes

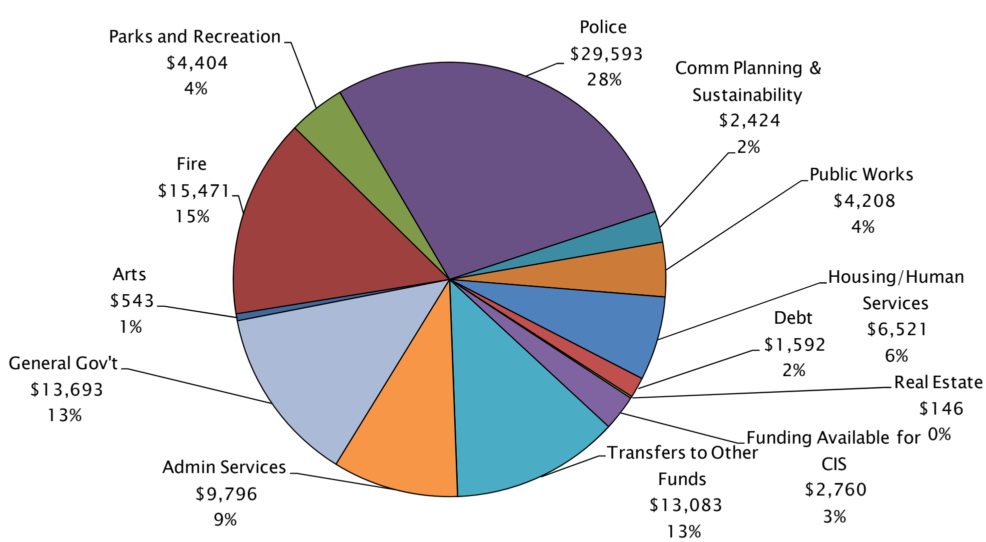
| | Budget Document Change Description | Document | Section(s) | Page(s) |
|---|---|---|---|---|
| 1 | Please replace the pie chart with the chart below. | Recommended Budget | Citywide Summaries | 81 |

## 2012 General Fund Revenues
## $104,299 (in $1,000s)




| | | | | |
|---|---|---|---|---|
| 2 | Please replace the pie chart with the chart below. | Recommended Budget | Citywide Summaries | 94 |

## 2012 General Fund Expenditures
## $104,234 (in $1,000s)



# 2012 Recommended Budget Document Changes, cont.

| | Budget Document Change Description | Document | Section(s) | Page(s) |
|---|---|---|---|---|
| 3 | Increase FTE by .30 in Community Planning and Sustainability | Recommended Budget | Citywide Summaries; Department Overviews | 93, 211, 215 |
| 4 | Increase the Engineering Permits position from one- year to two- year fixed-term in Public Works-Development and Support Services | Recommended Budget | City Manager's Budget Message, Attachment A; Department Overviews | 31, 167 |
| 5 | Change recommended 2012 mill levy to 11.981 | Recommended Budget | Citywide Summaries | 21, 76, 79, 80, 81, 82, 83, 84, 86, 218, 226, 228, 241 |

**Property Tax Projections with Mill Levy of 11.981**

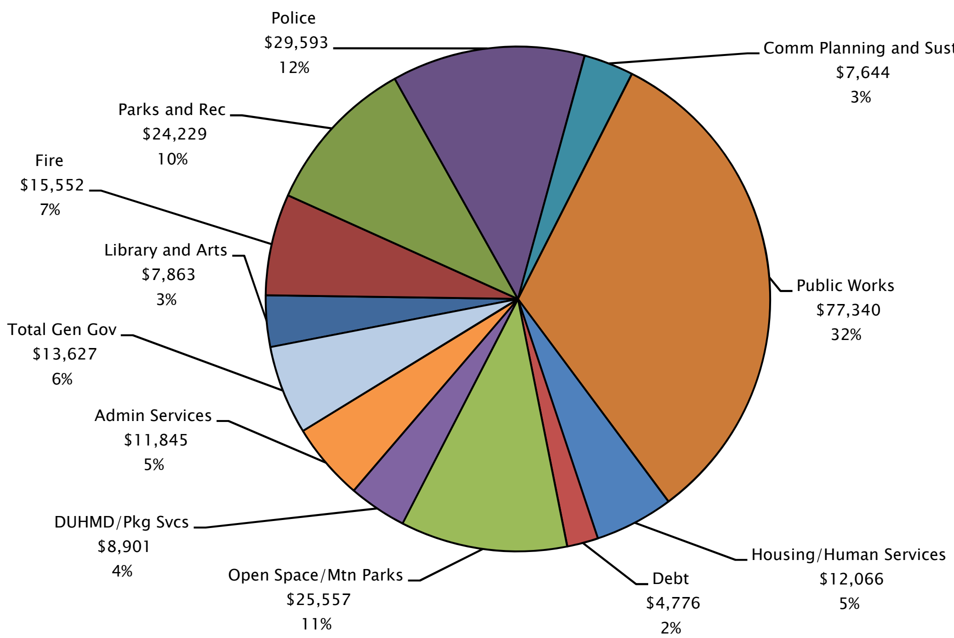
| Fund | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|
| General Fund | $ 19,752,100 | $ 19,949,621 | $ 20,149,117 | $ 20,552,100 | $ 20,963,142 | $ 21,592,036 |
| Library | $ 827,560 | $ 835,836 | $ 844,194 | $ 861,078 | $ 878,300 | $ 904,649 |
| Permanent Parks | $ 2,236,649 | $ 2,259,016 | $ 2,281,606 | $ 2,327,238 | $ 2,373,783 | $ 2,444,997 |
| CHAP | $ 1,988,133 | $ 2,008,014 | $ 2,028,094 | $ 2,068,656 | $ 2,110,029 | $ 2,173,330 |

| | | | | |
|---|---|---|---|---|
| 6 | Distributions of Lottery funds to departments in 2013 and in subsequent years updated in relation to decreasing revenues. 2013 CIP Document will incorporate updated available funding. **See attached staff memorandum memorializing the agreement.** | Recommended Budget | Fund Financials | 223 |
| 7 | The revised rates will reduce the typical residential bill by $5 annually to $17 annually ($1.42 per month). 2012 budgeted revenues have been revised and are projected to be $20,645,066 for Water Utility Rates and $12,953,947 for Wastewater Utility Rates. | Recommended Budget; CIP Budget | City Manager's Message, Attachment A; Department Overviews; Fund Financials; Fees, Rates and Charges; CIP-Utilities | 21, 30, 76, 86, 87, 181,244, 246, 278; 167-CIP Budget |
| 8 | Remove North Boulder Recreation Center land purchase/parking lot development from CIP | CIP Budget | Parks & Recreation | 80, 87, 100 |

# 2012 Recommended Budget Document Changes, cont.

| | Budget Document Change Description | Document | Section(s) | Page(s) |
|---|---|---|---|---|
| 9 | Please replace two pie chart with the chart below. | Recommended Budget | City Manager's Message, Citywide Summaries | 21, 81 |

## Citywide Expenditures (Uses) for 2012
## $238,993 (in $1,000s)



**DATE:** September 14, 2011

**TO:** Paul Fetherston, Deputy City Manager
Maureen Rait, Executive Director of Public Works
Mike Patton, Director of Open Space and Mountain Parks
Kirk Kincannon, Director of Parks and Recreation
Alice Guthrie, Recreation Superintendent
Ned Williams, Director of Utilities
Jeff Arthur, Engineering Review Manager

**FROM:** David Mallett, Budget Transition Team Member
Eric Nickell, Budget Director
Peggy Bunzli, Budget Manager

**SUBJECT:** Lottery Fund Allocation Agreement

In response to declining Conservation Trust Fund (Lottery) revenues, a meeting was convened August 31st to discuss the distribution method of future revenues among the Departments of Public Works – Tributary Greenways, Open Space and Mountain Parks and Parks and Recreation.

The 2008 Lottery Fund distribution agreement allocated $150,000 annually to Public Works-Tributary Greenways with all additional revenue split 50/50 between Open Space and Mountain Parks and Parks and Recreation. When this agreement was formally implemented, the City of Boulder received approximately $1 million in revenue annually. Because of perceived stability of this revenue stream, Open Space and Mountain Parks and Parks and Recreation Departments each received a fixed allocation of $425,000 annually.

Declining State Lottery net revenues and the city's lower rate of population growth has caused the city's projected Lottery Fund revenue to fall to approximately $836,000 in 2011. The decline in revenue coupled with the fixed allocation will cause the Lottery Fund to dip into a negative fund balance as early as 2013.

The August 31st meeting produced the following agreement for the Lottery Fund's fund financial and each department's budget planning:

- **2013 and 2014:** Public Works- Tributary Greenways will continue to receive $150,000 annually. Open Space and Mountain Parks and Parks and Recreation will each receive 50% of remaining Lottery revenues. Based on current data in the Budget Division, the amount allocated to the two departments will be $343,000 in 2013 and 2014. The Budget Division, based on any updated Lottery revenue data, may revise the amounts for both departments after a 50/50 split. The Tributary Greenways allocation of $150,000, however, will be unchanged for 2013 and 2014.
- **2015 and on:** All three departments will receive a fixed percentage of the Lottery Fund revenues. Public Works- Tributary Greenways will receive 15% and Open Space and Mountain Parks and Parks and Recreation will each receive 42.5%. Based on current data in the Budget Division, this allocation would direct $125,400 to Public Works- Tributary Greenways and $355,300 to Open Space and Mountain Parks, and the same ($355,300) to Parks and Recreation. The Budget Division, based on any updated Lottery revenue data, may revise projections.

At any point, if Lottery Fund revenues received shift significantly, new information becomes available or departmental needs change, the respective directors of the departments receiving Lottery Fund revenues and Budget Division may meet again to discuss this distribution.

This agreement will be shared with Council during the public hearings on the 2012 Recommended Budget and be memorialized in the 2012 Approved Budget.

# Attachment D

## 2012 Fund Activity Summary - Original Budget

| Fund Title | Projected Unreserved Fund Balance 1/1/2012 | Estimated Revenues Including Transfers In | Appropriations Including Transfers Out | Projected Unreserved Fund Balance 12/31/2012 |
|---|---|---|---|---|
| **ACTIVITY BY FUND** | | | | |
| General | $ 10,466,000 | $ 104,299,000 | $ 103,683,661 | $ 11,081,339 |
| Capital Development | 5,305,707 | 302,964 | 132,069 | 5,476,602 |
| Lottery | 137,838 | 862,162 | 1,000,000 | - |
| Planning and Development Services | 4,445,553 | 8,409,198 | 8,954,896 | 3,899,855 |
| Affordable Housing | 26,793 | 1,532,663 | 1,529,203 | 30,254 |
| Community Housing Assistance Program | 36,971 | 2,197,469 | 2,194,540 | 39,900 |
| .25 Cent Sales Tax | 993,018 | 6,860,754 | 7,174,683 | 679,089 |
| Library | 429,009 | 7,319,967 | 7,319,967 | 429,009 |
| Recreation Activity | 772,932 | 9,724,830 | 9,582,543 | 915,219 |
| Climate Action Plan | 99,486 | 1,795,330 | 1,795,330 | 99,486 |
| Open Space and Mountain Parks | 11,213,583 | 25,594,268 | 26,138,822 | 10,669,030 |
| Airport | 390,849 | 425,065 | 447,928 | 367,986 |
| Transportation | 3,244,092 | 22,752,639 | 22,167,894 | 3,828,838 |
| Transportation Development | 522,943 | 720,000 | 714,585 | 528,358 |
| Community Development Block Grant (CDBG) | - | 810,497 | 810,497 | - |
| HOME Investment Partnership Grant | - | 1,132,947 | 1,132,947 | - |
| Permanent Parks and Recreation | 1,568,067 | 2,593,833 | 3,290,651 | 871,249 |
| .15 Cent Debt Service | 805,247 | - | 552,790 | 252,457 |
| Boulder Junction Improvement | - | 1,223,582 | 229,000 | 994,582 |
| Water Utility | 27,192,569 | 25,660,307 | 25,479,799 | 27,373,077 |
| Wastewater Utility | 11,592,322 | 13,789,563 | 16,009,312 | 9,372,573 |
| Stormwater/Flood Management Utility | 6,307,444 | 6,485,072 | 6,111,932 | 6,680,584 |
| Telecommunications | 422,691 | 738,918 | 834,895 | 326,714 |
| Property and Casualty Insurance | 4,781,849 | 1,634,504 | 1,753,613 | 4,662,740 |
| Worker's Compensation Insurance | 3,464,554 | 1,322,359 | 1,755,503 | 3,031,410 |
| Compensated Absences | 1,217,890 | 805,269 | 704,568 | 1,318,591 |
| Fleet Operations | 123,144 | 4,067,393 | 3,764,896 | 425,641 |
| Fleet Replacement | 8,793,610 | 5,138,789 | 4,399,895 | 9,532,504 |
| Computer Replacement | 4,793,644 | 1,826,589 | 1,562,704 | 5,057,529 |
| Equipment Replacement | 4,042,574 | 853,885 | 2,722,668 | 2,173,791 |
| Facility Renovation and Replacement | 1,981,160 | 3,276,076 | 3,060,208 | 2,197,028 |
| **Totals** | **$ 115,171,540** | **$ 264,155,893** | **$ 267,011,999** | **$ 112,315,434** |

**Note:**

The table above reflects the impact of the 2012 budget, including estimated revenues (with transfers in) and appropriations (with transfers out), on projected unreserved fund balance and excludes commercial and improvement districts.

# Attachment E

**ORDINANCE NO. _____**

**AN ORDINANCE ADOPTING A BUDGET FOR THE CITY OF BOULDER, COLORADO, FOR THE FISCAL YEAR COMMENCING ON THE FIRST DAY OF JANUARY, 2012 AND ENDING ON THE LAST DAY OF DECEMBER, 2012 AND SETTING FORTH DETAILS IN RELATION THERETO.**

WHEREAS, the City Manager has submitted a recommended budget for fiscal year 2012 to the City Council as required by Charter; and,

WHEREAS, upon due and proper notice, numerous study sessions and public hearings have been held on said recommended budget;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO THAT THE FOLLOWING FISCAL YEAR 2012 BUDGET IS HEREBY ADOPTED:

Section 1. That estimated expenditures for fiscal year 2012 are as follows (excludes carryover and the parking districts):

| | |
|---|---|
| General Operating Fund | $ 103,683,661 |
| Capital Development Fund | 132,069 |
| Lottery Fund | 1,000,000 |
| Planning & Development Services Fund | 8,954,894 |
| Affordable Housing Fund | 1,529,202 |
| Community Housing Assistance Fund | 2,194,540 |
| .25 Cent Sales Tax Fund | 7,174,683 |
| Library Fund | 7,319,966 |
| Recreation Activity Fund | 9,582,543 |
| Climate Action Plan Fund | 1,795,330 |

| | |
|---|---|
| Open Space Fund | $26,138,824 |
| Airport Fund | 447,928 |
| Transportation Fund | 22,167,894 |
| Transportation Development Fund | 714,585 |
| Community Development Block Grant Fund | 810,497 |
| HOME Fund | 1,132,947 |
| Permanent Parks and Recreation Fund | 3,290,651 |
| Boulder Junction Improvement Fund | 229,000 |
| .15 Cent Debt Service Fund | 552,790 |
| Water Utility Fund | 25,479,798 |
| Wastewater Utility Fund | 16,009,312 |
| Stormwater/Flood Management Utility Fund | 6,111,931 |
| Telecommunications Fund (Internal Service Fund) | 834,895 |
| Property & Casualty Ins. Fund (Internal Service Fund) | 1,753,614 |
| Worker Compensation Ins. Fund (Internal Service Fund) | 1,755,503 |
| Compensated Absences Fund (Internal Service Fund) | 704,568 |
| Fleet Operations Fund (Internal Service Fund) | 3,764,896 |
| Fleet Replacement Fund (Internal Service Fund) | 4,399,895 |
| Computer Replacement Fund (Internal Service Fund) | 1,562,704 |
| Equipment Replacement Fund (Internal Service Fund) | 2,722,668 |
| Facility Renovation & Replacement Fund (Internal Service Fund) | 3,060,208 |
| Police Pension Fund | 5,083 |
| Fire Pension Fund | 5,020 |
| Less: Interfund Transfers | 21,677,616 |
| Less: Internal Service Fund Charges | 19,524,431 |

| | |
|---|---|
| TOTAL (Including Debt Service) | $225,820,052 |

Section 2. That estimated carryover funds from fiscal year 2011 are as follows (excludes parking districts):

| | |
|---|---|
| General Fund | $2,370,000 |
| Lottery Fund | 685,000 |
| Planning & Development Services Fund | 400,000 |
| Affordable Housing Fund | 4,000,000 |
| CHAP Fund | 2,000,000 |
| .25 Cent Sales Tax Fund | 1,550,000 |
| Climate Action Plan Fund | 1,050,000 |
| Open Space Fund | 350,000 |
| Airport Fund | 1,200,000 |
| Transportation Fund | 10,800,000 |
| Transportation Development Fund | 1,700,000 |
| Community Development Block Grant Fund | 750,000 |
| HOME Fund | 2,000,000 |
| Permanent Parks and Recreation Fund | 1,200,000 |
| Boulder Junction Improvement Fund | 350,000 |
| Water Utility Fund | 4,190,000 |
| Wastewater Utility Fund | 799,000 |
| Stormwater/Flood Management Fund | 6,288,000 |
| Fleet Replacement Fund (Internal Service Fund) | 600,000 |
| Equipment Replacement Fund (Internal Service Fund) | 50,000 |
| Facility Renovation and Replacement Fund (Internal Service Fund) | 5,000,000 |
| TOTAL | $47,332,000 |

Section 3. That estimated revenues and fund balances available for fiscal year 2012 to fund the above expenditures are as follows (excludes carryover and parking districts):

| | |
|---|---|
| Taxes | $140,920,671 |
| Charges for Service | 52,531,366 |
| Internal Service Fund Charges | 18,462,554 |
| Sale of Goods and Capital Assets | 1,440,658 |
| License Fees/Fines | 14,864,664 |
| Intergovernmental Revenue | 9,897,993 |
| Interest/Lease/Rent | 4,797,433 |
| Other Revenues | 893,216 |
| Transfers In | 20,278,383 |
| Less: Transfers | 20,278,383 |
| Less: Internal Service Fund Charges | 18,574,554 |
| Plus: Fund Balance | 586,049 |
| TOTAL | $225,820,052 |

Section 4. That the proposed budget as submitted and hereinabove summarized be adopted as the budget of the City of Boulder, Colorado, for the 2012 fiscal year.

Section 5. The City Council finds that the budget must be adopted before the mill levy can be certified, and said levy must be certified to the County Assessor of the County of Boulder, State of Colorado, by December 15, 2011.

Section 6. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

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

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of October, 2011.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of October, 2011.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

## Attachment F

**ORDINANCE NO._____**

**AN ORDINANCE ESTABLISHING THE 2011 CITY OF BOULDER PROPERTY TAX MILL LEVIES WHICH ARE TO BE COLLECTED BY THE COUNTY OF BOULDER, STATE OF COLORADO, WITHIN THE CITY OF BOULDER IN 2012 FOR PAYMENT OF EXPENDITURES BY THE CITY OF BOULDER DURING THE FISCAL YEAR 2012 PROVIDING THAT SAID LEVY BE CERTIFIED TO THE COUNTY ASSESSOR OF THE COUNTY OF BOULDER, STATE OF COLORADO, SETTING FORTH DETAILS IN RELATION THERETO.**

WHEREAS, Section 94 of the Charter of the City of Boulder, Colorado requires the City Council to make by ordinance the proper levy in mills on each dollar of the assessed valuation of all taxable property within the City, such levy representing the amount of taxes for City purposes necessary to provide for payment during the ensuing fiscal year of the properly authorized demands upon the Treasury, and to cause said total levy to be certified to the County Assessor of the County of Boulder, State of Colorado; and

WHEREAS, after reviewing the requirements for anticipated expenditures as well as anticipated revenues from other sources for 2012, the City Council has determined that for the year of 2011, the proper mill levy, which shall be collected in 2012 by the Treasurer of the County of Boulder, State of Colorado, upon each dollar of the assessed valuation of all taxable property within the city, shall be 11.981 mills; and

WHEREAS, the preliminary assessed valuation information received from the County together with Amendment One guidelines, indicates that the growth limit for 2012 property taxes (other than the Public Safety Tax levy which was un-oned by voters when initially approved) is 2.40%; and

WHEREAS, Boulder residents approved Ballot Issue 201 on November 4, 2008, which has the effect of reducing the mill levy credit by 0.50 mill each year until the credit is completely eliminated; and

WHEREAS, in order to be in line with those guidelines, no mill levy credit remains, and a total of 11.981 mills is to be assessed upon each dollar of assessed valuation of all taxable property with the City.

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

Section 1. For the purpose of maintaining funds to defray the general expenses of the City of Boulder, Colorado, during the fiscal year of the City commencing at 12:00 Midnight at the end of December 31, 2011, and ending at 12:00 Midnight at the end of December 31, 2012, there is hereby levied for the year of 2011 to be collected in 2012 a tax of 11.981 mills upon each dollar of the total assessed valuation of all taxable property within the City of Boulder, Colorado. The levy includes the following components:

| | |
|---|---|
| GENERAL CITY OPERATIONS | 8.748 |
| PERMANENT PARKS FUND (Charter Sec. 161) | .900 |
| LIBRARY FUND (Charter Sec. 165) | .333 |
| TOTAL | 9.981 |
| | |
| LESS MILL LEVY CREDIT | 0.000 |
| TOTAL (MILLS SUBJECT TO TABOR) | 9.981 |
| | |
| GENERAL CITY OPERATIONS (PUBLIC SAFETY) | 2.000 |
| | |
| NET MILL LEVY | 11.981 |

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 3. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

Section 4. Pursuant to Section 18 of the Charter of the City of Boulder, this ordinance shall take effect immediately upon publication after final passage.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of October, 2011.

____________________________________

Mayor

Attest:

____________________________

City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of October, 2011.

____________________________________

Mayor

Attest:

____________________________

City Clerk on behalf of the
Director of Finance and Record

## Attachment G

**ORDINANCE NO. _____**

**AN ORDINANCE APPROPRIATING MONEY TO DEFRAY EXPENSES AND LIABILITIES OF THE CITY OF BOULDER, COLORADO, FOR THE 2012 FISCAL YEAR OF THE CITY OF BOULDER, COMMENCING ON THE FIRST DAY OF JANUARY 2012, AND ENDING ON THE LAST DAY OF DECEMBER 2012, AND SETTING FORTH DETAILS IN RELATION THERETO.**

WHEREAS, the City Council has approved a motion to adopt the budget for 2012; and,

WHEREAS, the City Council has by ordinance made the property tax levy in mills upon each dollar of the total assessed valuation of all taxable property within the City, such levy representing the amount of taxes for City purposes necessary to provide for payment in part during the City's said fiscal year of the properly authorized demands upon the Treasury; and,

WHEREAS, the City Council is now desirous of making appropriations for the ensuing fiscal year as required by Section 95 of the Charter of the City of Boulder;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, that;

Section 1. The following appropriations are hereby made for the City of Boulder's fiscal year commencing at 12:00 Midnight at the end of December 31, 2011 and ending at 12:00 Midnight at the end of December 31, 2012, for payment of 2011 City operating expenses, capital improvements, and general obligation and interest payments:

| | |
|---|---|
| General Operating Fund | $ 103,683,661 |
| Capital Development Fund | 132,069 |
| Lottery Fund | 1,000,000 |

| | |
|---|---|
| Planning & Development Services Fund | $8,954,894 |
| Affordable Housing Fund | 1,529,202 |
| Community Housing Assistance Fund | 2,194,540 |
| .25 Cent Sales Tax Fund | 7,174,683 |
| Library Fund | 7,319,966 |
| Recreation Activity Fund | 9,582,543 |
| Climate Action Plan Fund | 1,795,330 |
| Open Space Fund | 26,138,824 |
| Airport Fund | 447,928 |
| Transportation Fund | 22,167,894 |
| Transportation Development Fund | 714,585 |
| Community Development Block Grant Fund | 810,497 |
| HOME Fund | 1,132,947 |
| Permanent Parks and Recreation Fund | 3,290,651 |
| Boulder Junction Improvement Fund | 229,000 |
| .15 Cent Debt Service Fund | 552,790 |
| Water Utility Fund | 25,479,798 |
| Wastewater Utility Fund | 16,009,312 |
| Stormwater/Flood Management Utility Fund | 6,111,931 |
| Telecommunications Fund (Internal Service Fund) | 834,895 |
| Property & Casualty Ins. Fund (Internal Service Fund) | 1,753,614 |
| Worker Compensation Ins. Fund (Internal Service Fund) | 1,755,503 |
| Compensated Absences Fund (Internal Service Fund) | 704,568 |
| Fleet Operations Fund (Internal Service Fund) | 3,764,896 |
| Fleet Replacement Fund (Internal Service Fund) | 4,399,895 |

| | |
|---|---|
| Computer Replacement Fund (Internal Service Fund) | $1,562,704 |
| Equipment Replacement Fund (Internal Service Fund) | 2,722,668 |
| Facility Renovation & Replacement Fund (Internal Service Fund) | 3,060,208 |
| Police Pension Fund | 5,083 |
| Fire Pension Fund | 5,020 |
| Less: Interfund Transfers | 21,677,616 |
| Less: Internal Service Fund Charges | 19,524,431 |
| TOTAL (Including Debt Service) | $225,820,052 |

Section 2. The following appropriations are hereby made for the City of Boulder's fiscal year commencing January 1, 2012 and ending December 31, 2012 for estimated carryover expenditures:

| | |
|---|---|
| General Fund | $2,370,000 |
| Lottery Fund | 685,000 |
| Planning & Development Services Fund | 400,000 |
| Affordable Housing Fund | 4,000,000 |
| CHAP Fund | 2,000,000 |
| .25 Cent Sales Tax Fund | 1,550,000 |
| Climate Action Plan Fund | 1,050,000 |
| Open Space Fund | 350,000 |
| Airport Fund | 1,200,000 |
| Transportation Fund | 10,800,000 |
| Transportation Development Fund | 1,700,000 |
| Community Development Block Grant Fund | 750,000 |
| HOME Fund | 2,000,000 |
| Permanent Parks and Recreation Fund | 1,200,000 |

| | |
|---|---|
| Boulder Junction Improvement Fund | $350,000 |
| Water Utility Fund | 4,190,000 |
| Wastewater Utility Fund | 799,000 |
| Stormwater/Flood Management Fund | 6,288,000 |
| Fleet Replacement Fund (Internal Service Fund) | 600,000 |
| Equipment Replacement Fund (Internal Service Fund) | 50,000 |
| Facility Renovation and Replacement Fund (Internal Service Fund) | 5,000,000 |
| TOTAL | $47,332,000 |

Section 3. The following appropriations are hereby made for the City of Boulder's fiscal year commencing January 1, 2012, and ending December 31, 2012, for Fund Balances:

| | |
|---|---|
| General Operating Fund | $11,081,339 |
| Capital Development Fund | 5,476,602 |
| Planning & Development Services Fund | 3,899,855 |
| Affordable Housing Fund | 30,254 |
| Community Housing Assistance Program Fund | 39,900 |
| .25 Cent Sales Tax Fund | 679,089 |
| Library Fund | 429,009 |
| Recreation Activity Fund | 915,219 |
| Climate Action Plan Fund | 99,486 |
| Open Space Fund | 10,669,030 |
| Airport Fund | 367,986 |
| Transportation Fund | 3,828,838 |
| Transportation Development Fund | 528,358 |
| Permanent Parks and Recreation Fund | 871,249 |

| | |
|---|---|
| .15 Cent Sales Tax Debt Service Fund | $252,457 |
| Boulder Junction Improvement Fund | 994,582 |
| Water Utility Fund | 27,373,077 |
| Wastewater Utility Fund | 9,372,573 |
| Stormwater/Flood Management Utility Fund | 6,680,584 |
| Telecommunications Fund (Internal Service Fund) | 326,714 |
| Property & Casualty Ins. Fund (Internal Service Fund) | 4,662,740 |
| Worker Compensation Ins. Fund (Internal Service Fund) | 3,031,410 |
| Compensated Absences Fund (Internal Service Fund) | 1,318,591 |
| Fleet Operations Fund (Internal Service Fund) | 425,641 |
| Fleet Replacement Fund (Internal Service Fund) | 9,532,504 |
| Computer Replacement Fund (Internal Service Fund) | 5,057,529 |
| Equipment Replacement Fund (Internal Service Fund) | 2,173,791 |
| Facility Renovation & Replacement Fund (Internal Service Fund) | 2,,197,028 |
| TOTAL FUND BALANCES | $112,315,434 |

Section 4. The City Council hereby appropriates as revenues all 2011 year end cash balances not previously reserved for insurance or bond purposes for all purposes not designated as "emergencies", including without limitation subsequent years' expenditures, capital improvements, adverse economic conditions and revenue shortfalls, pursuant to Article X, Section 20 to the Colorado Constitution, approved by the electorate on November 3, 1992; and

Section 5. The sums of money as appropriated for the purposes defined in this ordinance shall not be over expended, and that transfers between the various appropriations defined in this ordinance shall not be made except upon supplemental appropriations by ordinance authorizing such transfer duly adopted by City Council of the City of Boulder, Colorado. It is expressly provided hereby that at any time after the passage of this ordinance and after at least one week's public notice, the Council may transfer unused balances appropriated for one purpose to another purpose, and may appropriate available revenues not included in the annual budget and appropriations ordinance.

Section 6. The City Council is of the opinion that the provisions of the within ordinance are necessary for the protection of the public peace, property, and welfare of the residents of the city, and covers matters of local concern.

Section 7. Pursuant to Section 95 of the Boulder City Charter, the annual appropriation ordinance must be adopted by December 1 and to Section 18 of the Charter, this ordinance shall take effect immediately upon publication after final passage.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of October, 2011.

____________________________________
Mayor

Attest:

____________________________
City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, AND ORDERED PUBLISHED BY TITLE ONLY this 18th day of October, 2011.

____________________________________
Mayor

Attest:

____________________________
City Clerk on behalf of the
Director of Finance and Record

# Attachment H

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTERS 2-6, 3-9 AND 4-20, B.R.C. 1981, CHANGING CERTAIN FEES, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 2-6-3 (g), B.R.C. 1981, is amended to read:

**2-6-3 Creation, Jurisdiction, and Powers of Municipal Court.**

**....**

(g) In all cases where a judge acts as an administrative hearing officer under this code or other ordinance of the city, the judge shall conduct hearings under the procedures prescribed by chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981. In all such cases, the judge may impose court costs in an amount not exceeding the amount specified in section 4-20-55, “Court and Vehicle Impoundment Costs, Fees, and Civil Penalties,” B.R.C. 1981.

**....**

Section 2. Section 2-6-23, B.R.C. 1981, is amended to read:

**2-6-23 Court Issued Warrants and Summons.**

(a) If a person fails to appear in court as required by a summons, fails to appear at any post-arraignment proceeding, or fails to comply with an order of the municipal court or a condition of release on bond, the judge may issue a warrant for the person's arrest.

(b) If any person fails to appear in municipal court as required by a subpoena or fails to comply with any subsequent order of the judge premised upon such subpoena, the judge may issue a warrant for the person's arrest.

(c) Upon the filing of a properly executed complaint by any person and with the agreement of the city attorney, the judge may issue a warrant for the arrest of an individual if the complaint is accompanied by an affidavit that sets forth facts sufficient to show probable cause to believe the alleged violation has been committed, that the individual accused has committed it, and that the offense and conditions are such that the defendant could be incarcerated as provided in section 2-6-18, “Authority To Arrest And Incarcerate,” B.R.C. 1981. If the individual may not be incarcerated, the court shall issue a summons.

(d) Each municipal court warrant shall state the name of the person to be arrested, the charter, code, or ordinance section alleged to have been violated, the date and place of the alleged violation, that the person is alleged to have committed the offense, and the bond set for release on bail after arrest.

(e) In association with the issuance or return of any warrant issued pursuant to this section, the judge may impose a warrant processing fee in an amount not to exceed the amount set for such a fee in section 4-20-55 “Court and Vehicle Impoundment Costs, Fees and Civil Penalties.” B.R.C. 1981.

Section 3. Section 2-6-27, B.R.C. 1981, is amended to read:

**2-6-27 Deferred Prosecution and Conditional Motions to Dismiss.**

(a) In any case the judge may, prior to trial or entry of a plea of guilty and with the consent of the defendant, the defendant's attorney of record, if any, and the city attorney, order the prosecution of the offense to be deferred for a period not to exceed two years or in the alternative grant a conditional motion to dismiss. Such deferral or dismissal may be conditioned by written stipulation in the manner provided in subsection 2-6-26(b), B.R.C. 1981.

(b) Upon the defendant's full compliance with such conditions, the charge against the defendant shall be dismissed with prejudice. If any condition is violated, the defendant shall be tried for the offense for which the defendant is charged. Whether a breach of condition has occurred shall be determined by the court upon application of the city attorney and upon notice of hearing thereon of not less than five days to the defendant or the defendant's attorney of record, if any, at the address given by the defendant on the stipulation. The burden of proof at such hearing is on the city by a preponderance of the evidence, and the judge shall apply the rules of evidence for civil non-jury cases, but may receive and consider evidence not admissible under such rules if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(c) Upon consenting to a deferred prosecution or a conditional motion to dismiss as provided in this section, the defendant shall execute a written waiver of defendant's right to a speedy trial. Consent to a deferred prosecution or a conditional motion to dismiss under this section shall not be construed as an admission of guilt, nor shall such consent be admitted in evidence in a trial for the offense for which the defendant is charged.

Section 4. Section 3-9-2, B.R.C. 1981, is amended to read:

**3-9-2 Tax Imposed on Nonresidential and Residential Development.**

(a) Tax Rate: No person engaged in nonresidential or residential development in the city shall fail to pay, prior to the scheduling of final building inspection, a tax thereon according to the following rates:

| New and Annexing Residential Dwelling Unit | |
|---|---|
| *Year in Which Building Permit is Issued* | *Tax Rate Per Square Foot of Floor Area* |
| 1995-1998 | 0.16 |
| 1999 | 0.18 |
| 2000 | 0.185 |
| 2001 | 0.19 |
| 2002 | 0.195 |
| 2003 | 0.20 |
| 2004 | 0.206 |
| 2005 | 0.21 |
| 2006 | 0.215 |
| 2007 | 0.22 |
| 2008 | 0.225 |
| 2009 | 0.23 |
| 2010 | 0.23 |
| 2011 | 0.23 |
| 2012 | 0.23 |

| New, Annexing and Expanded Nonresidential Development | |
|---|---|
| *Year in Which Building Permit is Issued* | *Tax Rate Per Square Foot of Floor Area* |
| 1995-1998 | 0.34 |
| 1999 | 0.39 |
| 2000 | 0.40 |
| 2001 | 0.41 |
| 2002 | 0.42 |
| 2003 | 0.43 |
| 2004 | 0.44 |
| 2005 | 0.45 |
| 2006 | 0.46 |
| 2007 | 0.47 |
| 2008 | 0.48 |
| 2009 | 0.49 |
| 2010 | 0.49 |
| 2011 | 0.50 |
| 2012 | 0.51 |

(b) Exceptions: This tax shall not apply to the construction of an addition to, renovation, or remodeling of an existing dwelling unit, nor to the construction of a dwelling unit which replaces an existing dwelling unit, provided, however, that the replacement dwelling unit is located on the same lot as the existing dwelling unit and that the existing dwelling unit is demolished before the building permit for the replacement dwelling unit is issued.

(c) Affordable Housing Exemption: The development excise tax shall not apply to dwelling units that are permanently affordable units, as defined in section 9-16-1, "General Definitions," B.R.C. 1981.

(d) Credits: Any person holding a credit for units offered beyond requirements may surrender that credit to the city and receive therefor a credit against this housing excise tax in the amount of $3,300.00. Alternatively, any person holding a credit for units offered beyond requirements which was first acquired by that person before January 23, 1991, may surrender that credit to the city in lieu of paying the housing excise tax due on any six and two-thirds dwelling units which that person developed.

(e) Definitions: For purposes of this chapter:

"Floor area" shall have the same meaning as defined in chapter 3-8, "Development Excise Tax," B.R.C. 1981.

"Nonresidential development" shall have the same meaning as defined in chapter 3-8,

"Development Excise Tax," B.R.C. 1981.

Section 5. Section 4-20-3, B.R.C. 1981, is amended to read:

**4-20-3. Auctioneer License Fees.**

An applicant for an auctioneer license shall pay an annual fee of $72.00~~$69.15~~.

Section 6. Section 4-20-4, B.R.C. 1981, is amended to read:

**4-20-4. Building Contractor License, Building Permit Fees and Payment of Estimated Use Tax.**

**....**

(d) The value of the work covered by the permit shall be determined by either the City of Boulder Valuation Table or the estimated value of the work covered by the permit provided by the applicant at time of application. The higher of the two valuations shall be used to calculate the building permit fees and the estimated pre-payment of construction use tax if the applicant chooses to pay use taxes pursuant to subsection 3-2-14(a), "Methods of Paying Sales and Use Tax," B.R.C. 1981.

(1) City of Boulder Valuation Table means a table of square foot construction values based on type of construction and use. The City has adopted the August ~~2010~~ 2011 version of the cost data as published by the International Code Council.

(2) The cost per square foot values from the City of Boulder Valuation Table shall be applied to the area identified in the permit application for the project. Such area of a project shall include new, added and reconfigured construction areas for which the permit is sought. When the reconfiguration involves linear elements such as partition walls or new openings in existing walls, the work area shall be calculated by multiplying the length of the element by a width of four feet to determine the square footage to apply the valuation table.

(3) Building permit fees shall be based on the construction valuation in the City of Boulder Valuation Table, which includes without limitation: foundations, structural and nonstructural building components, electrical, plumbing, mechanical and interior finish materials that are within work requiring a permit.

....

Section 7. Section 4-20-5, B.R.C. 1981, is amended to read:

**4-20-5. Circus, Carnival, and Menagerie License Fees.**

An applicant for a circus, carnival, and menagerie license shall pay $380.00~~$365.15~~ per day of operation.

Section 8. Section 4-20-7, B.R.C. 1981, is amended to read:

**4-20-7. Dog License Fee.**

(a) An applicant for a dog license shall pay the following fees per year:

(1) for dogs less than one year old or for altered dogs upon presentation of a veterinary certificate showing alteration:

(A) One-year license: $15.00~~$14.00~~.

(B) Three-year license: $37.00~~$36.00~~.

(2) for unaltered dogs one year or more old:

(A) One-year license: $30.00~~$28.00~~.

(B) Three-year license: $80.00~~$78.00~~.

(3) Additional fee for licenses renewed later than April 1 of the calendar year in which renewal is due: $5.00.

(b) An applicant to transfer a dog license shall pay the fees specified for a new license, subject to the proration provisions of this section.

(c) The holder of a dog license shall pay $2.00 for a replacement dog tag.

(d) The fees prescribed in subsections (a) and (b) of this section shall be prorated on a monthly basis for all licenses except renewals.

Section 9. Section 4-20-10, B.R.C. 1981, is amended to read:

**4-20-10. Itinerant Merchant License Fee.**

An applicant for an itinerant merchant license shall pay $50.00~~$48.59~~ per year.

Section 10. Section 4-20-11, B.R.C. 1981, is amended to read:

**4-20-11. Mall License and Permit Fees.**

The following fees shall be paid before issuance of a mall building extension, kiosk, mobile vending cart, ambulatory vendor, entertainment vending, personal services vending, animal, or special activity permit and rental of advertising space on informational kiosks:

(a) For building extension permits, an annual fee of $15.00 per square foot of occupied space;

(b) For kiosk permits, an annual fee to be negotiated by contract with the city manager;

(c) For mobile vending carts, $1,970.00~~1,917.00~~ per year, payable in two equal payments by April 1 and August 1, or, for substitution or other permits which begin later in the year and are prorated, within thirty days of permit approval;

(d) For ambulatory vendor permits, $98.50~~96.00~~ per month from May through September and $48.50~~47.00~~ per month from October through April;

(e) For any permits requiring use of utilities to be provided by the city, up to a maximum of $17.00~~16.50~~ per day;

(f) For rental of advertising space on informational kiosks, $1,898.00 per quarter section per year;

(g) For animal permits, $0.00 per permit;

(h) For entertainment vending permits, $13.50~~13.25~~ per month;

(i) For personal services vending permits, $98.50~~96.00~~ per month from May through September and $48.50~~47.00~~ from October through April; and

(j) For a newspaper vending machine permit, $63.50~~62.00~~ per year.

Section 11. Section 4-20-17, B.R.C. 1981, is amended to read:

**4-20-17. Secondhand Dealer and Pawnbroker License Fee.**

(a) An applicant for a secondhand dealer license shall pay $100.00~~$95.41~~ per year.

(b) An applicant for a pawnbroker license shall pay $1,920.00~~$1,848.91~~ per year.

(c) The fees for a new license prescribed in subsections (a) and (b) of this section shall be prorated on a monthly basis.

Section 12. Section 4-20-23, B.R.C. 1981, is amended to read:

**4-20-23. Water Permit Fees.**

An applicant for a water permit under section 11-1-14, “Permit to Make Water Main Connections,” 11-1-15, “Out-of-City Water Service,” or 11-1-16, “Permit to Sell Water,” B.R.C. 1981, or for water meter installation under section 11-1-36, “Location and Installation of Meters; Maintenance of Access to Meters,” B.R.C. 1981, or for testing or inspection of backflow prevention assemblies under section 11-1-25, “Duty to Maintain Backflow Prevention Assembly and Prevent Cross-Connection,” B.R.C. 1981, and for inspection for cross-connections under section 11-1-25, “Duty to Maintain Backflow Prevention Assembly and Prevent Cross-Connection,” B.R.C. 1981, shall pay the following fees:

**....**

(d) Water meter installation fee:

| | |
|---|---|
| (1) 3/4" meter | $ 519.00~~506.00~~ |
| (2) 1" meter | 716.00~~702.00~~ |
| (3) 1 1/2" meter (domestic) | 1,889.00~~2,276.00~~ |
| (4) 1 1/2" meter (sprinkler) | 2,165.00~~2,405.00~~ |
| (5) 2" meter (domestic) | 2,278.00~~2,372.00~~ |
| (6) 2" meter (sprinkler) | 2,322.00~~2,584.00~~ |
| (7) 3" meter | 2,976.00~~3,036.00~~ |
| (8) 4" meter | 3,867.00~~3,926.00~~ |
| (9) Install 3/4" meter transponder | 224.00~~211.00~~ |
| (10) Install 1" meter transponder | 260.00~~246.00~~ |
| (11) Install 1 1/2" meter transponder | 321.00~~304.00~~ |
| (12) Install 2" meter transponder (domestic) | 339.00~~331.00~~ |
| (13) 3" to 8" meter transponder (domestic) | 818.00~~773.00~~ |
| (14) 2" to 8" meter transponder (sprinkler) | 818.00~~773.00~~ |
| (15) Call back for 3/4" and 1" | 51.00~~48.00~~ |
| (16) Call back for 1 1/2" and 2" | 93.00~~87.00~~ |

Sales tax is due on materials portion of installation.

(e) Tap fee:

| | | |
|---|---|---|
| (1) | 3/4" in DIP or CIP | $113.00 |
| (2) | 3/4" in AC or PVC | 211.00 |
| (3) | 1" in DIP or CIP | 121.00~~124.00~~ |
| (4) | 1" in AC or PVC | 215.00~~220.00~~ |
| (5) | 1 1/2" | 367.00~~371.00~~ |
| (6) | 2" | 454.00~~475.00~~ |
| (7) | 4" | 367.00~~386.00~~ |
| (8) | 6" | 424.00~~445.00~~ |
| (9) | 8" | 506.00~~530.00~~ |
| (10) | 12" | 662.00~~692.00~~ |
| (11) | Call back for installing a water tap | 120.00~~124.00~~ |

Sales tax is due on materials portion of installation.

(f) The emergency water conservation special permit fee is $75.00.

(g) Tests and inspections for backflow prevention assemblies:

| | | |
|---|---|---|
| (1) | To test or inspect first backflow prevention assembly | $115.00 |
| (2) | Each additional assembly at same location | 75.00 |
| (3) | For cross-connection inspection first hour | 115.00 |
| (4) | For each additional hour at same location | 75.00 |

Section 13. Section 4-20-24, B.R.C. 1981, is amended to read:

**4-20-24. Water Service Fees.**

A person shall pay the following charges for water services:

| | | |
|---|---|---|
| (a) | To terminate water service | $31.00~~29.00~~ |
| (b) | To deliver water service termination | 14.00~~12.00~~ |

notice

| | | |
|---|---|---|
| (c) | To remove water meter | 59.00~~55.00~~ |
| (d) | To reset water meter | 52.00~~48.00~~ |
| (e) | To resume water service | 30.00~~27.00~~ |
| (f) | To resume water service after 3:00 p.m. weekends or holidays | 55.00~~59.00~~ |
| (g) | Special meter read | 38.00~~35.00~~ |
| (h) | To test meter and meter tests accurate | 50.00 |
| (i) | Water monitors | 75.00 |

Section 14. Section 4-20-25(b), B.R.C. 1981, is amended to read:

**4-20-25. Monthly Water User Charges.**

**....**

(b) Treated water quantity charges:

(1) Block Rate Structure:

| | ***Block Rates (per thousand gallons of water)*** | ***Block Size (% of monthly water budget)*** |
|---|---|---|
| Block 1 | $ 2.25~~2.18~~ | 0 – 60% |
| Block 2 | 3.00~~2.90~~ | 61 – 100% |
| Block 3 | 6.00~~5.80~~ | 101 – 150% |
| Block 4 | 9.00~~8.70~~ | 151 – 200% |
| Block 5 | 15.00~~14.50~~ | Greater than 200% |

(2) Definitions:

(A) “Block Rate Structure” is the water budget rate structure which includes Blocks 1-5. These blocks represent an increasing block rate structure such that the price of water increases as more water is used, particularly when the amount of water used exceeds the customer's water budget. This rate structure is intended to:

- promote water conservation and the efficient use of water;
- support community goals;
- reflect the value of water;

- send a price signal to customers who waste water;
- recover needed revenues for administration, operations, maintenance, capital projects, debt payments and reserves for the water utility;
- avoid additional costs of new water development; and
- avoid additional costs of new and expanded water treatment.

The rate structure provides an individualized water budget to each customer that is expected to meet the customer's specific water needs. The revenues generated from the block rate structure will be used to satisfy the quantity charge portion of the basic revenue requirements of the water utility.

(B) "Monthly water budget" means the amount of water allocated to the water utility customers to meet their anticipated watering needs for the month. The monthly water budget shall be the indoor and/or outdoor allocation for each water utility customer. The allocation shall be based on reasonable and necessary indoor and/or outdoor use, water conservation, and other relevant factors associated with water use in the City. The allocations shall be defined by rules and guidelines issued by the city manager.

....

Section 15. Section 4-20-26, B.R.C. 1981, is amended to read:

**4-20-26. Water Plant Investment Fees.**

(a) Water utility customers shall pay the following plant investment fees:

The number of bedrooms, type of units, number of units, irrigated area and AWC Usage** are used to determine water budgets as well as calculate the Plant Investment Fee. Any changes to these characteristics may require payment of an additional Plant Investment Fee before any water budget adjustments are made.

| **Customer Description** | **PIF Amount** |
|---|---|

(1) Single Unit Dwelling:

| ***Type*** | ***Amount of Square Feet of Irrigable Area*** | ***Application Rate*** | ***~~2009~~*** | ***~~2010~~*** | ***~~2011~~*** |
|---|---|---|---|---|---|
| Outdoor [per S.F. of irrigated area (2,000 S.F. minimum)] | First 5,000 square feet of irrigable area | 15 gallons per square feet (gpsf) | ~~$ 1.78~~ | ~~$ 2.13~~ | $ 2.47 |
| | Next 9,000 square feet of irrigable area | 12 gpsf | ~~1.43~~ | ~~1.70~~ | 1.98 |
| | Irrigable area in excess of | 10 gpsf | ~~1.19~~ | ~~1.42~~ | 1.65 |

| | | | | | |
|---|---|---|---|---|---|
| | 14,000 square feet | | | | |
| Indoor | | | ~~7,947.00~~ | ~~9,282.00~~ | 10,602.00 |

(2) Multi Unit Dwelling:

Outdoor (Separate irrigation service under paragraph (4) of this section).

| ***Indoor*** | ~~***2009***~~ | ~~***2010***~~ | ~~***2011***~~ |
|---|---|---|---|
| 1 or 2 bedroom unit (per unit) | ~~$4,542.00~~ | ~~$5,304.00~~ | $ 6,060.00 |
| 3 bedroom unit (per unit) | ~~5,677.00~~ | ~~6,630.00~~ | 7,574.00 |
| 4 bedroom unit (per unit) | ~~6,812.00~~ | ~~7,956.00~~ | 9,088.00 |
| 5 or more bedroom unit (per unit) | ~~7,947.00~~ | ~~9,282.00~~ | 10,602.00 |

(3) Nonresidential:

Outdoor (Separate irrigation service under paragraph (4) of this section).

Indoor:

| | **AWC Usage (Gallons)**** | | |
|---|---|---|---|
| Meter size* | 25% | 50% | 85% |
| ¾" | N/A | 30,000 | 165,000 |
| 1" | 42,000 | 108,000 | 503,000 |
| 1½" | 99,000 | 228,000 | 924,000 |
| 2" | 183,000 | 483,000 | 1,941,000 |
| | ~~**2009 PIF Amount**~~ | | |
| ~~Meter size*~~ | ~~25%~~ | ~~50%~~ | ~~85%~~ |
| ~~¾"~~ | ~~N/A~~ | ~~$ 2,839.00~~ | ~~$ 15,613.00~~ |
| ~~1"~~ | ~~$ 3,974.00~~ | ~~10,219.00~~ | ~~47,596.00~~ |
| ~~1½"~~ | ~~9,368.00~~ | ~~21,574.00~~ | ~~87,433.00~~ |
| ~~2"~~ | ~~17,316.00~~ | ~~45,704.00~~ | ~~183,666.00~~ |
| | ~~**2010 PIF Amount**~~ | | |
| ~~Meter size*~~ | ~~25%~~ | ~~50%~~ | ~~85%~~ |
| ~~¾"~~ | ~~N/A~~ | ~~$ 3,315.00~~ | ~~$ 18,233.00~~ |
| ~~1"~~ | ~~$ 4,641.00~~ | ~~11,934.00~~ | ~~55,582.00~~ |
| ~~1½"~~ | ~~10,940.00~~ | ~~25,194.00~~ | ~~102,102.00~~ |
| ~~2"~~ | ~~20,222.00~~ | ~~53,372.00~~ | ~~214,481.00~~ |

| | ~~2011~~ PIF Amount | | |
|---|---|---|---|
| Meter size* | 25% | 50% | 85% |
| ¾" | N/A | $ 3,787.00 | $ 20,286.00 |
| 1" | $ 5,301.00 | 13,632.00 | 63,488.00 |
| 1½" | 12,496.00 | 28,778.00 | 116,627.00 |
| 2" | 23,098.00 | 60,964.00 | 244,991.00 |

Water usage other than that listed above may be evaluated and assessed a proportional PIF on a case by case basis.

* Nonresidential meters larger than 2 inches require a special agreement described under paragraph (5) of this section. The efficiency standard option with a corresponding special agreement is available to all nonresidential customers.

** Average Winter Consumption Usage, (AWC Usage), is based on a usage distribution of all nonresidential accounts with a given meter size.

"N/A" means this option is not available for purchase.

(4) Irrigation service:

| | | ***PIF Amount*** | | |
|---|---|---|---|---|
| ***Usage*** | ***Application Rate*** | ***~~2009~~*** | ***~~2010~~*** | ***~~2011~~*** |
| Per S.F. of irrigated area (2,000 S.F. minimum) | 15 gallons per square feet (gpsf) | ~~$1.78~~ | ~~$2.13~~ | $2.47 |

(5) The PIF for a customer whose total water demand exceeds the water use demand described in subsection 11-1-52(j), B.R.C. 1981, is as follows:

(A) Raw Water: [(AYWA/30,650 acre feet) x A] plus

(B) Water Delivery Infrastructure: [(PDWD/53,000,000 gallons per day) x B] = Total PIF

Where:

AYWA = customer's average year water demand in acre feet

30,650 acre feet = City's usable water rights capacity

A = value of City's raw water

PDWD = customer's peak day water demand in million gallons per day

53,000,000 gallons per day = City's current treated water delivery capacity

B = value of City's water delivery infrastructure

| | Water Asset Valuations | | |
|---|---|---|---|
| | ~~2009~~ | ~~2010~~ | ~~2011~~ |
| A | ~~$432,763,775.00~~ | ~~$425,381,364.00~~ | $418,072,046.00 |
| B | ~~472,466,057.00~~ | ~~622,707,186.00~~ | 771,460,779.00 |

Section 16. Section 4-20-27, B.R.C. 1981, is amended to read:

**4-20-27. Wastewater Permit Fees.**

An applicant for a wastewater tap or permit under section 11-2-8, "When Connections With Sanitary Sewer Mains Required," or 11-2-9, "Permit to Make Sanitary Sewer Connection," B.R.C. 1981, shall pay the following fees:

(a) Permit fee (stub, connection, enlargement, renewal, abandonment):

| | |
|---|---|
| (1) Wastewater residential | $127.00 |
| (2) Wastewater nonresidential | 169.00 |
| (3) Wastewater private property repair | 42.00 |
| (4) Sewer main extension permit | 326.00 |

(b) Inspection fee (stub, connection, enlargement, abandonment):

| | |
|---|---|
| (1) Wastewater residential (first two inspections inclusive) | $169.00 |
| (2) Wastewater nonresidential (first two inspections inclusive) | 211.00 |
| (3) Each inspection after the first two inspections | 94.00 |

(c) Sewer tap fee:

| | |
|---|---|
| (1) 4" PVC and VCP | $127.00~~126.00~~ |
| (2) 4" RCP | 198.00~~197.00~~ |
| (3) 6" PVC and VCP | 161.00~~144.00~~ |
| (4) 6" RCP | 229.00~~213.00~~ |
| (5) Manhole tap | 576.00~~607.00~~ |
| (6) Call back for installing a sewer tap | 83.00 |

Sales tax is due on materials portion of installation.

Section 17. Section 4-20-28, B.R.C. 1981, is amended to read:

**4-20-28. Monthly Wastewater User Charges.**

(a) Monthly service charge:

| ***Meter Size*** | ***Inside City*** | ***Outside City*** |
|---|---|---|
| ¾" | $ 1.00 | $ 1.50 |
| 1" | 1.75 | 2.65 |
| 1½" | 4.00 | 5.95 |
| 2" | 7.05 | 10.60 |
| 3" | 15.85 | 23.80 |
| 4" | 28.20 | 42.30 |
| 6" | 63.45 | 95.15 |
| 8" | 112.80 | 169.15 |

(b) Quantity charge:

(1) Average strength sewage (up to and including two hundred twenty mg/l TSS, twenty-five mg/l NH3-N, or two hundred thirty mg/l BOD):

| ***Quantity*** | ***Inside City*** | ***Outside City*** |
|---|---|---|
| Per 1,000 gallons of billable usage | $4.02~~3.92~~ | $6.00~~5.83~~ |

(2) Consumers with sewage strengths exceeding two hundred twenty mg/l TSS, or twenty-five mg/l NH3-N, or two hundred thirty mg/l BOD, shall pay the quantity charge for average strength sewage and, additionally, $355.00 per one thousand pounds of sewage which exceeds such sewage strengths for TSS, $2,355.00~~2,340.00~~ per one thousand pounds of sewage which exceeds such sewage strengths for NH3-N, and $515.00~~505.00~~ per one thousand pounds of sewage which exceeds such sewage strengths for BOD.

(3) The quantity charge for all residential accounts with average strength sewage will be based on each property's Average Winter Consumption ("AWC") from the last AWC computation period or the number of thousand gallons of water actually consumed during the month, whichever is lower~~, except during the AWC computation period, during which charges will be based on actual water consumption~~. "AWC" means the average number of thousand gallons of water use per month reflected on an account's utility bill for the most recent consecutive months of December, January, February and March. For accounts registering no water use in one or more monthly billing periods, an average will be established based on those months in which there was usage, historical records or other

available relevant data. The average for billing purposes will be recalculated in April of each year.

....

Section 18. Section 4-20-29, B.R.C. 1981, is amended to read:

**4-20-29. Wastewater Plant Investment Fees.**

(a) Sanitary sewer utility customers shall pay the following plant investment fees:

***Customer Description*** ***PIF Amount***

(1) Single Unit Dwelling:

| ~~2009~~ | ~~2010~~ | ~~2011~~ |
|---|---|---|
| ~~$2,561.00~~ | ~~$3,356.00~~ | $4,136.00 |

(2) Multi Unit Dwelling:

| ***Description*** | ***~~2009~~*** | ***~~2010~~*** | ***~~2011~~*** |
|---|---|---|---|
| 1 or 2 bedroom unit (per unit) | ~~$1,463.00~~ | ~~$1,919.00~~ | $2,363.00 |
| 3 bedroom unit (per unit) | ~~1,829.00~~ | ~~2,398.00~~ | 2,954.00 |
| 4 bedroom unit (per unit) | ~~2,195.00~~ | ~~2,877.00~~ | 3,545.00 |
| 5 or more bedroom unit (per unit) | ~~2,561.00~~ | ~~3,356.00~~ | 4,136.00 |

(3) Nonresidential:

| | ***AWC Usage (Gallons)***** | | |
|---|---|---|---|
| Meter size* | 25% | 50% | 85% |
| ¾” | N/A | 30,000 | 165,000 |
| 1” | 42,000 | 108,000 | 503,000 |
| 1½” | 99,000 | 228,000 | 924,000 |
| 2” | 183,000 | 483,000 | 1,941,000 |
| - | ***~~2009 PIF Amount~~*** | | |
| ~~Meter size*~~ | ~~25%~~ | ~~50%~~ | ~~85%~~ |
| ~~¾”~~ | ~~N/A~~ | ~~$ 915.00~~ | ~~$ 5,030.00~~ |
| ~~1”~~ | ~~$1,280.00~~ | ~~3,292.00~~ | ~~15,334.00~~ |
| ~~1½”~~ | ~~3,018.00~~ | ~~6,951.00~~ | ~~28,169.00~~ |
| ~~2”~~ | ~~5,579.00~~ | ~~14,725.00~~ | ~~59,173.00~~ |
| - | ***~~2010 PIF Amount~~*** | | |
| ~~Meter size*~~ | ~~25%~~ | ~~50%~~ | ~~85%~~ |
| ~~¾”~~ | ~~N/A~~ | ~~$ 1,199.00~~ | ~~$ 6,592.00~~ |

| | | | |
|---|---|---|---|
| ~~1”~~ | ~~$1,678.00~~ | ~~4,315.00~~ | ~~20,097.00~~ |
| ~~1½”~~ | ~~3,955.00~~ | ~~9,109.00~~ | ~~36,917.00~~ |
| ~~2”~~ | ~~7,311.00~~ | ~~19,297.00~~ | ~~77,549.00~~ |
| | ***~~2011~~ PIF Amount*** | | |
| Meter size* | 25% | 50% | 85% |
| ¾” | N/A | $ 1,477.00 | $ 8,123.00 |
| 1” | $2,068.00 | 5,317.00 | 24,764.00 |
| 1½” | 4,874.00 | 11,225.00 | 45,492.00 |
| 2” | 9,010.00 | 23,780.00 | 95,562.00 |

* Nonresidential meters larger than 2 inches require a special agreement described under paragraph (4) of this section. The efficiency standard option with a corresponding special agreement is available to all nonresidential customers.

** Average Winter Consumption Usage, (AWC Usage), is based on a usage distribution of all nonresidential accounts with a given meter size.

“N/A” means this option is not available for purchase.

(4) The PIF for a customer who exceeds the wastewater discharge described in subsection 11-2-33(j), B.R.C. 1981, is calculated as follows:

[(PDH/25,000,000 gallons per day) x A] plus

[(ABOD/36,000 lbs. per day) x B] plus

[(ATSS/39,000 lbs. per day) x C] plus

[(ANH3/4,060 lbs. per day) x D] = Total PIF

Where:

PDH = customer's peak day hydraulic loading in million gallons per day

25,000,000 gallons per day = City's current hydraulic and collection capacity

A = value of City's hydraulic and collection capacity

ABOD = thirty-day average BOD5 loading removal in lbs. per day where BOD5 is the amount of dissolved oxygen consumed in five days by biological processes breaking down organic matter

36,000 lbs. per day = City's current BOD5 removal capacity

B = value of City's BOD5 removal capacity

ATSS = customer's thirty-day average total suspended solids (TSS) loading requiring removal in lbs. per day

39,000 lbs. per day = City's current TSS removal capacity

C = value of City's TSS removal capacity

ANH3 = customer's thirty-day average ammonia nitrogen as N (NH3-N) loading requiring removal in lbs. per day

4,060 lbs. per day = City's current NH3-N removal capacity

D = value of City's NH3-N removal capacity

| | ***Wastewater Asset Valuations*** | | |
|---|---|---|---|
| | ***~~2009~~*** | ***~~2010~~*** | ***~~2011~~*** |
| A | ~~$137,939,128.00~~ | ~~$188,276,648.00~~ | $237,617,385.00 |
| B | ~~19,522,752.00~~ | ~~22,878,731.00~~ | 26,168,255.00 |
| C | ~~11,602,191.00~~ | ~~8,069,404.00~~ | 4,606,573.00 |
| D | ~~5,051,733.00~~ | ~~7,830,983.00~~ | 10,555,199.00 |

Section 19. Section 4-20-31, B.R.C. 1981, is amended to read:

**4-20-31. Wastewater Classification Survey Filing Fee and Industrial and Groundwater Discharge Permit Fees and Charges.**

(a) Applicants for an industrial discharge permit shall pay the following permit fees:

(1) Flow:

| ***Gallons per Day*** | ***Annual Fee*** |
|---|---|
| 0 – 100 | $ 500.00 |
| 101 – 10,000 | 3,590.00~~3,555.00~~ |
| 10,001 – 25,000 | 5,070.00~~5,020.00~~ |
| Over 25,000 | 6,390.00~~6,330.00~~ |

(2) Industries that are issued more than one permit will be charged an annual fee based on the total gallons per day from all their permit discharges.

(3) Fee to review a wastewater classification survey is $100.00.

(b) An applicant for a groundwater discharge permit shall pay the following permit fees:

(1) The fee to review a groundwater discharge permit application shall be $100.00.

(2) For an applicant that will have a continuous, ongoing discharge, the annual fee shall be $450.00 per year. The first year permit fee shall be payable upon the issuance of the permit and shall be paid every year thereafter on the anniversary of such issuance for the duration of the permit. Annual fees are not applied to construction de-watering discharges occurring over a period of no more than one hundred eighty days.

(c) The fee for dumping domestic septic wastes at the septage receiving station at the wastewater treatment plant in accordance with section 11-3-10, “Septage Tank Waste,” B.R.C. 1981, shall be $70.00 per thousand gallons.

Section 20. Section 4-20-39, B.R.C. 1981, is amended to read:

**4-20-39. Animal Impoundment Fee.**

The animal impoundment fee prescribed by subsection 6-1-25(b), B.R.C. 1981, is $55.00~~45.00~~ per animal with a license; board fee for bite animal quarantine (dangerous animals) is $20.00 per day. There is also a $15.00 per day fee for feeding and keeping the animal by the City.

Section 21. Section 4-20-41, B.R.C. 1981, is amended to read:

**4-20-41. Park and Recreation Admission Fees.**

(a) The fees for admission to the East Boulder Community Center and the North and the South Boulder Recreation Centers are:

(1) Daily:

| ***Category*** | ***Fee*** |
|---|---|
| Adult | $7.00~~6.75~~ |
| Youth | 4.50~~4.25~~ |
| Senior | 5.25~~5.00~~ |

(2) Annual Pass:

| ***Category*** | ***Resident*** | ***Nonresident*** |
|---|---|---|
| Adult | $552.00~~532.00~~ | $645.00~~615.00~~ |
| Youth | 260.00~~248.00~~ | 330.00~~314.00~~ |
| Senior | 353.00~~336.00~~ | 445.00~~424.00~~ |

(3) Ten Admission Pass:

| ***Category*** | ***Resident*** | ***Nonresident*** |
|---|---|---|
| Adult | $63.00~~61.00~~ | $69.00~~67.00~~ |
| Youth | 40.00~~38.00~~ | 45.00~~42.00~~ |
| Senior | 47.00~~45.00~~ | 51.00~~49.00~~ |

(4) Twenty Admission Pass:

| ***Category*** | ***Resident*** | ***Nonresident*** |
|---|---|---|
| Adult | $119.00~~115.00~~ | $131.00~~126.00~~ |
| Youth | 76.00~~72.00~~ | 84.00~~79.00~~ |
| Senior | 89.00~~85.00~~ | 99.00~~94.00~~ |

(5) Forty Admission Pass:

| ***Category*** | ***Resident*** | ***Nonresident*** |
|---|---|---|
| Adult | $224.00~~216.00~~ | $247.00~~238.00~~ |
| Youth | 144.00~~136.00~~ | 159.00~~150.00~~ |
| Senior | 168.00~~160.00~~ | 185.00~~176.00~~ |

(b) The fees for admission to the Spruce and Scott Carpenter pools are:

Outdoor Pool Daily:

| ***Category*** | ***Resident/Nonresident*** |
|---|---|
| Adult | $6.25~~6.00~~ |
| Youth | 3.75~~3.50~~ |
| Senior | 4.25~~4.00~~ |

(c) The fees for season pass allowing admission to the Boulder Reservoir, Scott Carpenter Pool, and the Spruce Pool are:

| ***Outdoor Aquatic Facility Season Passes (Splash Pass):*** | | |
|---|---|---|
| ***Season Pass*** | ***Resident*** | ***Nonresident*** |
| Adult | 132.00~~120.00~~ | 150.00 |
| Youth | 88.00~~80.00~~ | 100.00 |
| Senior | 90.00~~80.00~~ | 100.00 |
| Family | 264.00~~240.00~~ | 300.00 |
| The “Splash Pass” provides admission to all three outdoor aquatic facilities: Boulder Reservoir, Scott Carpenter Park, and Spruce Pool. | | |

(d) The fees for admission to Boulder Reservoir are:

Gate Admission only:

| ***Category*** | ***Fee*** |
|---|---|
| Adult | $6.25 |
| Youth | 3.75 |
| Senior | 4.25 |

(e) The fees for Flatirons Municipal Golf Course are:

(1) Per Round (Monday through Thursday):

| ***Category*** | ***Fee*** |
|---|---|
| Adult | Resident/ Nonresident |
| 9 holes | $22.00~~19.00~~ |
| 18 holes | 34.00~~29.00~~ |
| Child/Teen | |
| 9 holes | 12.00 |
| 18 holes | 20.00 |
| Student | |
| 9 holes | 17.00 |
| 18 holes | 26.00 |
| Senior | |
| 9 holes | 16.00 |
| 18 holes | 25.00 |

(2) Per Round (Friday through Sunday and Holidays):

| ***Category*** | ***Fee*** |
|---|---|
| Adult | Resident/Nonresident |
| 9 holes | $24.00~~21.00~~ |
| 18 holes | 39.00~~34.00~~ |
| Child/Teen | |
| 9 holes | 14.00 |
| 18 holes | 22.00 |
| Student | |
| 9 holes | 19.00 |
| 18 holes | 31.00 |
| Senior | |
| 9 holes | 18.00 |
| 18 holes | 29.00 |
| Regular fees apply Friday through Sunday and Holidays October 15 through April 14. | |

....

Section 22. Section 4-20-44, B.R.C. 1981, is amended to read:

**4-20-44. Floodplain Development Permits and Flood Control Variance Fees.**

(a) If the floodplain development permit is for a development not located within ~~the high hazard zone or~~ the conveyance zone:

(1) An applicant for a floodplain development permit for the construction of a fence, or for flatwork, shall pay $35.00~~33.00~~.

(2) An applicant for a floodplain development permit for construction of a shed, garage, deck or for interior or exterior "rehabilitation" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure shall pay $85.00~~81.50~~.

(3) An applicant for a floodplain development permit for ~~exterior "rehabilitation" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure, or for~~ improvements or additions to an existing structure not meeting the thresholds for "substantial damage," ~~or for a~~ "substantial improvement," or "substantial modification" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, shall pay $350.00~~542.00~~. ~~For review of plan revisions, an applicant shall pay $109.00.~~

(4) An applicant for a floodplain development permit for work on an existing residential structure exceeding the threshold for "substantial damage," ~~or for a~~ "substantial improvement," or "substantial modification" as defined in section 9-16-1, "General Definitions," B.R.C. 1981, ~~or any commercial or nonresidential addition,~~ or any new single-family detached residential, new commercial or mixed use, or attached residential structure elevated to flood protection elevation shall pay $700.00~~1,082.00~~. ~~For review of plan revisions, an applicant shall pay $217.00.~~

(5) An applicant for a floodplain development permit for an addition to an existing structure, "substantial improvement," "substantial modification," or construction of a new structure with "floodproofing" as that term is defined in section 9-16-1, "General Definitions," B.R.C. 1981, shall pay $3,675.00~~5,207.00. For review of plan revisions, an applicant shall pay $542.00.~~

(b) If the floodplain development permit is for a development located within the ~~high hazard zone or the~~ conveyance zone or the floodway ~~and a floodplain analysis is not required, the applicant shall pay $2,603.00. For review of plan revisions, an applicant shall pay $271.00.~~:

(1) An applicant for a floodplain development permit where a floodplain analysis is not required, shall pay $700.00

~~(c)~~ (2) An applicant for a floodplain development permit where ~~If the development is located within the high hazard zone or conveyance zone and~~ the city manager, pursuant to paragraph 9-3-6(b)(3), B.R.C. 1981, requires the applicant to furnish a floodplain analysis, the applicant shall pay $3,600.00~~5,207.00~~. ~~For review of plan revisions, an applicant shall pay $542.00.~~

(c) An applicant for a floodplain development permit for an emergency operations plan shall pay:

(1) $700.00 for an evacuation plan.

(2) $1,400.00 for a shelter-in-place plan.

(d) An applicant for a floodplain development permit for a hazardous materials facility shall pay $700.00 for containment of hazardous materials or shall apply for elevation or floodproofing permits as described above.

(e) An applicant for a floodplain map revision shall pay:

(1) $700.00 for a map revision that involves fill.

(2) $3,600.00 for a map revision that includes a floodplain analysis.

(f~~d~~) An applicant for a variance from the floodplain regulation provisions of section 9-3-7, “Variances,” B.R.C. 1981, shall pay $1,400.00~~1,629.00~~.

~~(e) An applicant for a map revision that is located within the floodway or conveyance zone and includes a floodplain analysis shall pay $5,207.00. For review of plan revisions, an applicant shall pay $542.00.~~

~~(f) An applicant for a map revision that involves fill and is not located within the floodway or conveyance zone shall pay $1,629.00. For review of plan revisions, an applicant shall pay $217.00.~~

(g) An applicant shall pay a revision fee of 25% of the application fee for review of revisions to items (a) through (f) above.

(h~~g~~) An applicant for a floodplain information request shall pay $28.00 for each address.

Section 23. Section 4-20-45, B.R.C. 1981, is amended to read:

**4-20-45. Storm Water and Flood Management Fees.**

(a) Owners of detached residences and attached single-unit metered residences in the city shall pay the following monthly storm water and flood management fees:

| Size of Parcel | |
|---|---|
| (1) Up to 15,000 sq. ft. | $7.25~~7.10~~ |

| | |
|---|---|
| (2) 15,000-30,000 sq. ft. | 9.05~~8.85~~ |
| (3) 30,001 sq. ft. and over | 10.85~~10.60~~ |

(b) The owners of all other parcels of land in the city on which any improvement has been constructed shall pay a storm water and flood management fee based on the monthly rate in paragraph (a)(1) of this section (for up to a fifteen thousand square foot parcel) multiplied by the ratio of the runoff coefficient of the parcel to a coefficient of 0.43 and by the ratio of the area of the parcel in square feet to a seven thousand square foot parcel. If the calculation results in a fee less than the monthly rate in paragraph (a)(1) of this section, then the fee specified in paragraph (a)(1) of this section will be assessed.

Section 24. Section 4-20-55, B.R.C. 1981, is amended to read:

**4-20-55. Court and Vehicle Impoundment Costs, Fees, and Civil Penalties.**

(a) The costs, fees, or civil penalties authorized in chapter 2-6, “Courts and Confinements,” B.R.C. 1981, shall be:

| | | |
|---|---|---|
| (1) | Scofflaw civil penalty | $ 25.00 |
| (2) | Immobilization or impoundment civil penalty | 50.00 |
| (3) | Deferred sentence administrative costs: traffic violations | 75.00 |
| | Deferred sentence administrative costs: all other violations | 100.00 |
| | Deferred prosecution and conditional motions to dismiss administrative costs | 50.00 |
| (4) | Juror fees: | |
| | panel only | 3.00 |
| | actual service for day | 6.00 |
| (5) | Witness fee | 5.00 |
| (6) | Complaining witness default fee | 300.00 |
| (7) | Court costs: | |
| | plea | 25.00 |
| | trial to court | 25.00 |
| | jury trial | 25.00 |
| | administrative hearing | 25.00 |
| (8) | Probation supervision fee | 50.00 |
| (9) | Community service fee | 35.00 |
| ~~(10)~~ | ~~Personal service of process: automated vehicle identification complaint:~~ | |
| | ~~served by a person other than a peace officer~~ | ~~20.00~~ |

~~served by a peace officer 60.00~~

~~served by certified mail 3.00~~

(10~~11~~) Warrant processing fee 50.00~~30.00~~

(11~~12~~) Failure to appear pay, or comply fee 50.00~~30.00~~

(12~~13~~) Stay fee (payment plan) 15.00

(b~~10~~) The costs for service of process under chapter 7-4, "Operations of Vehicles," B.R.C. 1981, shall be:

(1) Personal service of process: automated vehicle identification complaint:

| | |
|---|---|
| served by a person other than a peace officer | 20.00 |
| served by a peace officer | 60.00 |
| served by certified mail | 3.00 |

(c~~b~~) The administration fee for vehicles impounded under chapter 7-7, "Towing And Impoundment," B.R.C. 1981, shall be:

| | | |
|---|---|---|
| (1) | Abandoned and inoperable vehicle impoundment fee | $ 25.00 |
| (2) | Inoperable vehicle on private property impoundment fee | 25.00 |

....

Section 25. Section 4-20-57, B.R.C. 1981, is amended to read

**4-20-57. News Box Fees.**

(a) The annual fee for leases of news boxes governed by chapter 4-27, "News Box Leases and Regulation," B.R.C. 1981, is $91.50~~89.00~~ per full size box, $47.00~~46.00~~ for a double-sized slot, and $26.25~~25.50~~ for a single-sized slot, payable in advance at time of application or renewal. Fees shall be prorated by month for partial year periods, and partial months shall constitute a full month.

(b) The waiting list fee is $26.50 for each box or slot desired, and shall not be prorated or refunded.

Section 26. Section 4-20-64, B.R.C. 1981, is amended to read:

**4-20-64. Medical Marijuana Businesses.**

Application and license fees for medical marijuana businesses shall be up to the following amounts:

(a) Application fee: $3,115.00~~$3,000.00~~

(b) Criminal background check fee, per person checked: Actual Costs

(c) License fee, per year: $2,075.00~~$2,000.00~~

(d) Renewal application fee, per year: $1,040.00~~$1,000.00~~

(e) Renewal license fee, per year: $1,040.00~~$1,000.00~~

The actual amount of the application and license fees shall be set by the city manager, up to the maximums provided above, based on the anticipated direct and indirect costs to the City of preparing to issue licenses, processing applications and monitoring compliance of medical marijuana businesses. The application fee and costs paid are nonrefundable. The license fee may be refunded if the license application is denied. Neither the application fee nor the license/renewal fee will be refunded in the instance of revocation.

Section 27. Section 4-20-66, B.R.C. 1981, is amended to read:

**4-20-66. Mobile Food Vehicle Sales.**

An applicant for a mobile food vehicle permit shall pay a $210.00~~$200.00~~ application fee and a $210.00~~$200.00~~ renewal fee per year.

Section 28. This ordinance is effective on January 1, 2012.

Section 29. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 30. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of October 2011.

____________________________________
Mayor

Attest:

____________________________________
City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this ____ day of ____________, 2011.

______________________________
Mayor

Attest:

______________________________
City Clerk on behalf of the
Director of Finance and Record

# PUBLIC HEARING ITEM – 5B

**CITY OF BOULDER**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE:** Oct. 4, 2011

**AGENDA TITLE:** Motion to authorize the City Manager to disburse $960,292 of the city's education excise tax revenue to support the purchase of a property for the Wilderness Place Project, a center to provide comprehensive services related to early childhood AND, in connect thereto, to enter into a shared appreciation loan agreement to secure the city's investment in that project.

**PRESENTERS**
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Thomas Carr, City Attorney
Carl Castillo, Policy Advisor
Karen Rahn, Director of Housing and Human Services

## EXECUTIVE SUMMARY

On Aug. 16, 2011, council directed staff to evaluate a proposal from The Acorn School for Early Childhood Development ("Acorn") to use the existing balance of the city's educational excise tax ("EET") revenue to support the purchase of a property for the Wilderness Place Project, a center where a number of community-based organizations would provide comprehensive services related to early childhood (the "Wilderness Place Proposal" **Attachment A**). The purpose of this agenda item is for council to consider authorizing the city manager to fund the Wilderness Place Proposal and to enter into a shared equity agreement with Acorn to secure the city's investment in the project. The form of such agreement is included as **Attachment B**.

In addition to funding from the city, Acorn has applied for or expects to receive $1,685,000, including funding from the following entities: Boulder County Worthy Cause funds; Qualistar; Kaboom; Jared Polis Foundation; Temple Hoyne Buell Foundation; Rose Community Foundation; Daniels Fund, and private donors. With this, Acorn expects it can take ownership of a property located at 2845 Wilderness Place in Boulder (the "Property") by Dec. 8, 2011, conduct necessary improvements to the Property, and begin providing early childhood services at the Property by Aug. 2012.

If council supports the Wilderness Place Proposal a disbursement of $960,292 from the city's EET account to Acorn would be required on or before December 31, 2011 conditioned upon a finding by the city manager that sufficient additional funds have been committed to demonstrate the feasibility of the Wilderness Place Project. The funds would be subject to appropriation subsequent to this agenda item and prior to disbursement.

**Key Issue Identification**

At Council's August 16th meeting, staff was asked to return with answers to the following questions about the Wilderness Place Proposal:

1. What is the financial feasibility of this project?
2. What are the contributions that have been or are expected to be made by other community partners?
3. Can and should the city purchase the real estate to secure its investment?
4. What other projects are possible for the city to fund?
5. Is this the highest need for the city's EET funds?

All five of these questions are addressed below in the "Analysis" section.

## STAFF RECOMMENDATION

**Suggested Motion Language**:

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

> Motion to authorize the city manager to disburse $960,292 of the city's education excise tax revenue to The Acorn School for Early Childhood Development for the purchase of the Wilderness Place Project, a center to provide comprehensive services related to early childhood, with disbursement of such funds conditioned upon a finding that sufficient additional funds have been committed to demonstrate project feasibility, and, in connection thereto, to enter into a shared appreciation loan agreement to secure the city's investment in that project, the form of such agreement existing as **Attachment B**.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic –Early childhood education providers are one of the largest small business categories in Boulder County, driving secondary employment and services. Quality, dependable childcare and related services, including those proposed here, enable families to seek and retain employment, providing workforce stability. It is also possible that the design and renovation of the Property would contribute to the local economy, especially if local companies are hired.

- Environmental – Not applicable.
- Social: Quality early childhood care and education programs have been demonstrated to provide various benefits for children including improved social, emotional and cognitive development leading to increased school readiness, educational achievement, graduation rates, entrance into post secondary education and skills training, lifelong income and reduced likelihood of dependence on public services. In particular, investments in early childhood education for low income and at-risk children help to alleviate achievement gaps that develop early and are difficult to remediate later in life. In addition, the Wilderness Place Project would provide the community with efficient access to the high priority areas of early childhood services as outlined in the Boulder County Early Childhood Education Framework.

**OTHER IMPACTS**

- Fiscal – As of Sept. 15, 2011, the balance in the city's educational excise account was $1,184,958. Although assessment of the excise tax was discontinued in 2009, excise taxes are still expected to be collected on 23 building permits that are already in the process. These funds are expected to be collected over the next year or two and amount to $651,668.67 of additional revenue being added to the EET account.
- Staff time – If the Wilderness Place Proposal is to be supported, it will require a limited amount of time from various city staff members to negotiate, draft and execute agreements necessary to secure the city's investment in this project. These efforts are part of staff's normal workplan.

**FEEDBACK FROM CITY COUNCIL'S BOULDER VALLEY SCHOOL DISTRICT ISSUES COMMITTEE**

Council's BVSD Issues Committee met twice to review the Wilderness Place Proposal. After considering it in full, and hearing from staff and representatives from Acorn, the committee developed a recommendation to support the proposal. The committee asked staff to explore the possibility of the city purchasing the property in order to secure the city's investment. After staff conducted a preliminary analysis of that possibility (described in the Analysis section below), and the committee heard about the significant challenges that such city purchase would create, the committee recommended that the city instead make a shared appreciation loan to Acorn. Under such loan, no payments would be made by Acorn to the city, nor would interest accrue unless the funded use terminated either through sale of the Property or some other change in the funded use. In this event, the repayment to the city would be an amount that includes the original EET investment plus a proportional share of any appreciation. Staff agrees with the committee and is recommending that council provide the city manager with authority to enter into such an agreement, the form of which is included as **Attachment B** (Shared Equity Agreement).

The committee also recommended that the amount to be disbursed be pegged at the amount that existed in the EET account when this proposal was first considered by council. That amount was $960,292, which is less than the $1,184,958 that existed in the account on September 15th, the date this memo was written. Staff's recommendation to council also incorporates this committee recommendation.

## PUBLIC FEEDBACK

Staff has received various letters of support for the Wilderness Place Proposal, all of which are included as **Attachment C**. Beyond these letters, staff is not aware of any other communications that the city has received from the public concerning this proposal.

## BACKGROUND

- ***Consideration of a School Impact Fee***

On July 19, 1993, BVSD formally requested that the city take steps appropriate to implement a school facilities impact fee. On Aug. 3, 1993, City Council endorsed the concept of school impact fees and directed staff to prepare an intergovernmental agreement with BVSD for the administration of those fees. According to the minutes from the Aug. 3, 1993 council meeting, the proposed fee at that time was being considered "specifically for middle and elementary schools and did not include high schools or centralized facilities."

The city did not pursue an impact fee for various reasons. Chief among them was an inability to achieve consensus among local communities to initiate a funding strategy. According to a memo from then-City Attorney Joe de Raismes to City Council dated August 30, 1994, legal precedent required that local communities collect a uniform impact fee rate across the school district to ensure that the impact fee that one community collected was not subsidizing school construction to satisfy the facility needs that residential development in other communities was creating. In addition, a Douglas County District Court decision challenged the authority of local communities to collect impact fees for school financing purposes. The decision held that Douglas County was preempted by the State School Finance Act from imposing a school impact fee as a condition of a building permit or a certificate of occupancy. Further, the District Court held that counties do not have express or implied authority to impose such fees.

- ***Consideration of Educational Excise Tax***

BVSD unsuccessfully attempted to pass a $36 million bond measure in November of 1993. Funding from that measure would have covered the cost of future school facility needs from 1993 through the year 2000. Against the backdrop of that failed measure, BVSD asked local communities to revisit the issue of school impact fees.

After discussions among local community representatives, it quickly became apparent that it would be near impossible to broker an agreement to collect the required uniform impact fees among all communities within BVSD. However, legal counsel for these communities made some suggestions concerning alternative funding mechanism. One suggestion was an education excise tax on new residential development. This alternative was seen as advantageous because it allowed communities to asses the tax at any rate they felt was appropriate without concern for maintaining uniformity with other communities. It also allowed the communities the flexibility to determine how they would appropriate the revenue they collected.

On Aug. 30, 1994, council passed Ordinance Number 5662, which referred Ballot Issue 2D to the citizens of Boulder. Relevant portions of that ordinance are reproduced below:

> ***WHEREAS****, the city council is of the opinion that an education excise tax should be imposed in lieu of a school impact fee, previously endorsed by the council, and expended for education related purposes or for property tax credits to offset future education taxes, but without dedication of the tax. . . .*
>
> ***NOW, THEREFORE,*** *. . .*
>
> *Section 2. The official ballot punch card and the official absentee ballot shall state . . .*
>
> *SHALL CITY OF BOULDER TAXES BE INCREASED BY UP TO $3,000,000 ANNUALLY (IN THE FIRST YEAR) BY IMPOSING AN EDUCATION EXCISE TAX ON NEW RESIDENTIAL DEVELOPMENT IN THE AMOUNT OF UP TO $3.43 PER SQUARE FOOT OF HABITABLE FLOOR AREA FOR EACH NEW RESIDENTIAL DWELLING UNIT AND OF POTENTIAL HABITABLE FLOOR AREA FOR EACH NEW MOBILE HOME PAD,*
>
> *and in connection therewith*
>
> *SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH RATES BE* ***COLLECTED AND SPENT, TOGETHER WITH ANY EARNINGS THEREON, WITHOUT LIMITATION OR CONDITION****, AND WITHOUT LIMITING THE COLLECTION OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE CITY OF BOULDER, UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?* [Emphasis added]

The language emphasized above, relating to how the revenue from the tax was to be used, was intentionally made flexible in part to address the potential limitations that had been imposed by the Douglas County District Court decision. According to a summary of a statement made by then-City Attorney Joe de Raismes, as captured in the minutes of the Aug. 30, 1994 council discussion of the EET, the intent of the tax was that "it be used in a flexible way to deal with the impacts of schools by new residential construction."[1] During that same meeting, in response to a question by Mayor Durgin on what level of school would be built and the purview of the city to give feedback in that regard, the minutes summarized the following response from then-City Attorney de Raismes:

> *Mr. de Raismes said it is the intention that the City will collect this money and keep it in an interest bearing account. The City will then determine how to spend the money. It will never be in the coffers of the School District until the City and the School District reach an agreement about how the money is to be used.*

- ***Post- Ballot Measure***

On Nov. 8, 1994, Ballot Issue 2D was approved by the voters. On April 4, 1995, in order to implement the EET, the City Council approved a conforming ordinance, known as Ordinance No. 5689. According to that ordinance, the intent of the tax was codified in the city code as follows:

> ***3-11-1 LEGISLATIVE INTENT***
>
> *IT IS THE PURPOSE OF THIS CHAPTER TO PROMOTE THE DEVELOPMENT OF PUBLIC EDUCATIONAL FACILITIES AND SERVICES IN THE CITY. REVENUES FROM THE TAX, TOGETHER WITH ANY EARNINGS THEREON, SHALL BE DEPOSITED IN A DESIGNATED ACCOUNT OF THE GENERAL FUND AND SHALL THEREFORE BE* ***AVAILABLE TO PAY FOR THE GENERAL EXPENSES OF GOVERNMENT****. HOWEVER, ALTHOUGH THE CITY COUNCIL RECOGNIZES THAT IT CANNOT BIND FUTURE CITY COUNCILS, IT NONETHELESS DECLARES ITS INTENTION THAT THE REVENUE GENERATED BY THE EDUCATION EXCISE TAX BE APPROPRIATED BY FUTURE CITY COUNCILS ONLY FOR EDUCATIONAL RELATED PURPOSES, INCLUDING, WITHOUT LIMITATION, DEVELOPMENT OF PUBLIC EDUCATIONAL FACILITIES AND SERVICES OR TAX REFUNDS OR SETOFFS RELATING THERETO.* [Emphasis Added]

In the April 4, 1995, staff memo for council's consideration of this resolution, staff provided council with a list of some, but not all, of the options relative to disposition of

[1] At the time BVSD expected that it would be necessary to construct new school buildings in North Boulder to meet capacity needs at the elementary and secondary school levels.

these funds. Staff listed: (1) Direct Dispersal to the School District; (2) Construction of School Facilities in Boulder, and; (3) Property Tax Rebate. Staff's memo on this point did not make a recommendation but concluded by stating "Future City Council bodies will need to make decisions regarding this matter in light of a variety of factors, including the condition of school facilities in Boulder and the City's relationship with the School District."

Pursuant to the implementing ordinance, the EET became effective on April 4, 1995, at the rate of $0.95 per square foot of floor area, up to a cap of 6,000 square feet. This amount was set based on an analysis of the relative financial impact of new residential development on BVSD facilities. That amount was adjusted annually based on the Consumer Price Index up until the implementing ordinance was repealed on Oct. 27, 2009 by Ordinance No. 7698. Since that time, the city has only collected fees on development applications that were received prior to the repeal of the ordinance.

While BVSD originally expected that the EET revenue would be necessary to construct new school buildings in North Boulder, since the passage of the ballot measure, declining enrollment combined with open enrollment have resulted in North Boulder student growth being accommodated through available capacity in schools throughout the city.

The expenditures of EET funds approved by council since the city began collecting the tax in 1995 have been:

- $17,000 for a BVSD recreation facilities needs assessment;
- $1,898,000 for the installation of synthetic turf at Boulder and Fairview High Schools;
- $130,134.50 for athletic field lights at Boulder High;
- $1,794,348.06 for the energy efficient rebuilding of Casey Middle School, and;
- $3,500,000 for the renovation of the Mapleton School for use as an early childhood education center.

On June 3, 2003, out of concern for the lack of criteria by which to consider future requests, City Council approved policy guidelines for future use of EET revenues. These guidelines were passed after council's experience with the process used for the synthetic turf expenditure of funds and during a time of controversial school closures within the city. On July 10, 2007, City Council revised those policy guidelines for future use of EET revenues to read as follows:

1. *EET revenues shall be used only for one-time capital and non-capital expenditures to the extent permitted by state law.*
2. *EET revenues may be used to:*
    a. *help fund facilities needed to serve new growth*
    b. *improve or renovate existing facilities*
    c. *enhance the viability of existing facilities, including recreational facilities*
    d. *fund tax refunds or set-offs relating to education purposes*

*e. purchase properties to preserve them for future educational purposes*

3. *EET revenues shall be expended in a manner that supports both Boulder Valley School District and City of Boulder needs and objectives. An evaluation of city needs and objectives should be informed by reference to the city's community sustainability goals.*
4. *Potential projects for EET expenditures may be proposed by either the City of Boulder or the Boulder Valley School District. In either event, both organizations shall be informed of any proposal, and direction provided first by Council's Boulder Valley School District Issues Committee then from the full City Council, prior to the commencement of any formal evaluation or consideration of such proposal. As may become necessary, Council may direct consideration of one or more proposal to occur in a forum where input by the community and the Boulder Valley School District may be solicited.*
5. *Whenever feasible capital expenditures of EET revenue shall be programmed as part of the city's Capital Improvement Programming process.*

**ANALYSIS**

- ***Proposal's Compliance with Council's EET Policy Guidelines***

The following analysis concludes that the Wilderness Place Proposal is consistent with all five of the criteria listed in council's policy guidelines for use of EET revenues:

1. The first criteria, relating to how EET funds can be used, is met because the Wilderness Place Project is for a "*one-time capital*" expense which is expressly allowed by the guidelines.
2. Consistency with the second criteria, relating to the types of allowable projects, is met because the proposed use of EET can be said to either "*help fund facilities needed to serve new growth*" or to "*purchase properties to preserve them for future educational purposes.*" Boulder's growing population is in need of early childhood services. Furthermore, the purchase of the Property does not only preserve its use for future educational purposes but creates an educational use for the Property that did not previously exist.
3. The third criteria relates to the need for EET proposals to support *"both Boulder Valley School District and City of Boulder needs and objectives."* While it will ultimately be council's decision whether the Wilderness Place Proposal supports city objectives, it is staff's opinion that this proposal would significantly further the city's social sustainability goals. Moreover, while the Boulder Valley School District School Board were not asked to consider supporting EET funds for the Wilderness Place Project, past and current school officials were made aware of this proposal, indicated that they believed EET funding for the proposal would be appropriate, and acknowledged that providing quality early childhood services furthers community and district goals of improving school readiness of future students.
4. The fourth criteria has to do with how proposals for use of EET funding come forth to council. This project meets this requirement in that the school district was

made aware of the proposal and decisions on its analysis received direction from council and its BVSD Issues Committee prior to coming forward for official consideration.

5. The fifth criteria is less of a requirement than an expression of preference for such funding to be "*programmed as part of the city's Capital Improvement Programming process.*" As has been the case with every other expenditure of EET funds, this proposal was not included in the CIP because the timing between its proposal and when the funding was necessary did not allow for such programming.

- ***Response to Council Questions***

At Council's Aug. 16th meeting, staff was asked to return with responses to questions about the Wilderness Place Proposal. The following are those questions (in italics) followed by staff's response.

1. ***What is the financial feasibility of this project succeeding?***

Based on information provided by Acorn, including the Wilderness Place Project Business Plan (**Attachment D**), the Wilderness Place Project appears feasible with a reasonable chance for success. Key factors in determining the feasibility of the project include:

a) Lease/rental income is projected at reasonable rates. Additionally, student enrollment is projected at a 70 to 80 percent rate. If Acorn maintains enrollment at its historic rate of 85 percent, this would provide enough rental and tuition revenue to sustain their operations. Rental income from identified community non-profits and partners is projected at below market rates, which provides a high likelihood of obtaining these rents, while still providing adequate levels of operating revenue.

b) Based on operating income projections from rents, fees and other grants, operating assumptions are reasonable. For capital improvements, however, the likelihood of success for this project long-term is reduced without city and county support, since reduced capital funding would necessitate funding capital improvements through debt. As debt service increases, the amount of operating cash flow is reduced, necessitating higher tuition levels in order to pay operational and debt service costs. Thus capital improvement funding from both the city and Boulder County allow reduced dependence on debt for project feasibility, and facilitate affordable tuition for lower-income families.

c) Reasonable construction costs have been provided by a licensed contractor.

d) Investment from Boulder County Worthy Cause funds is likely. Firm commitments from other significant funders have not yet been secured; however, the commitment of city funds will greatly increase the likelihood of other funding. While commitment of city funds will provide great leverage in securing other funding, release of city funds should be contingent on demonstration of firm commitments from other significant funders in an amount that demonstrates project feasibility.

e) The Acorn School has been operationally and financially stability for at least the past five years, as evidenced by its financial statements and audits.

f) Services to be provided are consistent with identified community needs for childcare and support services, including year-round programs from children birth to five years old, especially lower income children and HeadStart families.

g) 2845 Wilderness Place is located in the Industrial - General (I-G) zoning district. The zoning classification is described in Section 9-5-2(c)(4)(B) as "General industrial areas where a wide range of light industrial uses, including research and manufacturing operations and service industrial uses are located. Residential uses and other complementary uses may be allowed in appropriate locations." Daycare centers are permitted in this zoning district pursuant to a use review. Private elementary, junior high, and senior high schools are prohibited. See Section 9-6-1(d), Table 6-1,"Use Table," B.R.C. 1981.The Use Review application may be approved if it can be demonstrated that the proposed day care use is appropriate for the site and that it satisfies the Use Review criteria found in Section 9-2-15, B.R.C. 1981.

2. ***What are the contributions that have been or are expected to be made by other community partners?***

Community organizations that are likely to partner on the project include: HeadStart, Boulder Public Library, Colorado Preschool Program through BVSD, Colorado Childcare Assistance Program (CCAP) through Aspen Family Services, Boulder County Social Services, Amistad, Play Therapy Institute, Parenting Place, Boulder County Mental Health and Boulder County Health. Some of the partners will assist with the capital expenses including playground (moving existing equipment to Wilderness Place), kitchen, and shared office space, and partners on the second floor will contribute to the capital renovations to suit their needs. Partners will be paying below market lease rates and sharing the operational costs of the building to ensure sustainability and long-term partnerships. In addition, The Acorn School expects to raise funds and in-kind gifts from the community and existing private donors.

3. ***Can and should the city purchase the real estate to secure its investment?***

As discussed in some detail with Council's BVSD Issues Committee, there are several challenges associated with the city purchase of the Property that prevented this option from moving forward as either a staff or committee recommendation. These challenges include: the loss of $700,000 in County Worthy Case funds for the project; the sellers' limited interest in selling to the city; additional capital investment required by the city for an early childhood center, ongoing maintenance and improvements costs; city budgetary limitations; significant property management challenges; liability concerns, timing and staff workplan challenges.

4. ***What other projects are possible for the city to fund?***

The question of what other projects could be funded by the city's EET funds is routinely asked whenever a proposal is under consideration. The legal answer is that, given the broad language of the EET ordinance (funds may be used for "*general expenses of government"***)**, the funding could be used for an almost endless number of projects. Even if one were to limit the possible uses to the intended purpose of the EET account ("*development of public educational facilities and services or tax refunds or setoffs relating thereto"*) the answer would be extensive and dependent on who was asked to answer it. From a council perspective, the only purpose that has received council-wide expression of support has been funding for early childhood educational purposes. And, as addressed in response to the next question, it is staff's belief that the Wilderness Place Project is the best method of addressing this purpose. All other proposed uses of EET funding (i.e., funding for construction of a North Boulder library branch or funding for the Broadway and Euclid right-of-way purchase) have only been suggested by individual council members and never endorsed by the full council. Moreover, such suggestions have since been unanimously considered by Council's BVSD Issues Committee as inappropriate uses for these funds.

With regard to BVSD's prioritization of appropriate uses for the EET fund, it is important to note the school district last sent such a list to the city on May 26, 2006 (**Attachment E**). Council considered this list at its July 18, 2006 meeting and determined that it was only interested in funding part of one of the projects on that list: installation of athletic field lights at Boulder High School. Since that time, all projects proposed by the district have been based on what city council has expressed interest in supporting, not on what arose to the top of any school district priority list.

It is important to note that EET funding for the the Wilderness Place Proposal has been anticipated and unofficially supported by district officials ever since the city's earlier agreement to spend EET funding on the renovation of the Mapleton school to allow for its use as a preschool. Such tacit support by the district was provided partly to avoid forcing council to make an either/or decision between the projects.

5. ***Is this in fact the highest need for the city's EET funds?***

Longitudinal research indicates early childhood programs are the most cost effective and lasting approach to addressing school readiness, high school graduation and lifelong achievement, particularly for children at-risk of falling behind. The Wilderness Place Project would provide services for children birth to five with wrap-around services on site. The concept proposed would be similar to the original Mapleton concept. This project would provide alternative services to the BVSD preschool program and would not be in competition with those services. Both the BVSD program and the Wilderness Place Project would provide complementary services, both filling existing unmet needs in the community.

**OPTIONS**

Council has at least three options in how it proceeds:

1. Authorize the funding of the Wilderness Place Proposal at the amount recommended;
2. Authorize the funding the Wilderness Place Proposal at a higher amount equaling the balance of the EET account as of the date of disbursement, Dec. 1, 2011;
3. Not authorize the funding of the Wilderness Place Proposal.

**NEXT STEPS**

If council approves the Wilderness Place Proposal staff will work on finalizing a share appreciation loan agreement with Acorn that requires disbursement of the authorized funds by December 1, 2011. The agreement would be contingent on Acorn securing commitments for other identified sources of funds. Staff will also return prior to this date for the necessary appropriation of these funds.

**ATTACHMENTS**

**Attachment A –** The Wilderness Place Proposal
**Attachment B** – Form of Shared Equity Agreement
**Attachment C –** Letters of Support for the Wilderness Place Proposal
**Attachment D –** Business plan for the Wilderness Place Project
**Attachment E –** May 26, 2006 letter from BVSD to City with prioritization for use of EET funds.

July 21, 2011

Boulder City Council
1777 Broadway
Boulder, CO 80302

Dear Boulder City Council Members,

Thank you for this opportunity to present the case for use of the remaining Education Excise Tax (EET) dollars. In collaboration with several other local community non-profits, agencies, and programs, The Acorn School is proposing a “mini-Mapleton” project (hereafter called “Wilderness Place Project”), building upon much of the same principles and program design as was thoughtfully created through the community process two years ago.

The Wilderness Place Project deserves funding with EET dollars because it efficiently realizes the community based vision of the original Mapleton study. It creates a center where a number of community-based organizations would provide comprehensive services related to early childhood, it provides a solution for Boulder County Head Start’s need for a new location, and it addresses the need for affordable and accessible high quality care for infant and toddlers; which remain unmet through the 2-1/2 hour preschool program funded through BVSD.

The Early Childhood Council of Boulder County, working toward a county-wide comprehensive early childhood system, recognizes this proposal as an opportunity to make a significant leap forward in system development:

> “The Wilderness Place project would serve a birth-through-six population in a location close to the greatest need, in the eastern part of town, and with ample transportation options. It would provide Head Start and other services to its families, and would serve both market-rate and subsidized families efficiently, resulting in a large number of slots for the most at-risk children in our community. Given the overwhelming unmet need in Boulder, especially in the birth-3 age group, Wilderness Place would represent an outstanding return in terms of human capital for the city’s limited EET resources.” -BOBBIE WATSON, EXECUTIVE DIRECTOR OF THE EARLY CHILDHOOD COUNCIL OF BOULDER COUNTY.

You may ask, why give EET funds to a private non-profit. As you will see, this is not a private non-profit asking for funds to expand a business, but a community collaborative effort to meet an unmet and desperate need for basic human services in our City. We believe this approach is both justified and strategic because the Wilderness Place Project:

- Is true to the voters’ intent that the EET tax fund educational programming that addresses community need.
- Is aligned with City of Boulder principles of social equity and self-sufficiency.

- Represents broad community effort and is not in competition with other potential mechanisms to address unmet need for Early Childhood Education. [1]
- Capitalizes on timely prospects for additional and essential funding [2] and optimal site acquisition while addressing pressing needs of existing programming provided by Head Start and the Parenting Place.

While The Acorn School may be the leader in the project, the Wilderness Place Project is a comprehensive collaboration with a variety of agencies that provide wrap-around services for their children and families. Both the Boulder County and the State of Colorado's Early Childhood Frameworks emphasize the importance of providing access to comprehensive services which include a Mental Health and Health component. Wrap-around services which provide a parental engagement component along with a quality center have been shown throughout the years to benefit children the most.

Through a strong collaboration by community services and agencies, the children at the Wilderness Place Project will start their lives so that when they reach Kindergarten, they will be well prepared. The Wilderness Place Project will be a program supporting the full range of family needs by partnering with Early Childhood Educators, CPP, CCAP, Social Services, Amistad, Play Therapy Institute, Parenting Place, Boulder County Mental Health and Boulder County Health.

To elaborate on the rationale provided thus far, eight reasons to fund the Wilderness Place Project are:

1. **Access to comprehensive services**: The mission of the Wilderness Place is to collaborate with a variety of agencies providing wrap-around services for their children and families. "Emerging research tells us that the most successful early childhood programs engage children from *birth to kindergarten*, and do so via full wrap-around services in a neighborhood – or near-neighborhood – environment. This is especially true for at-risk children." -JARED POLIS, COLORADO REPRESENTATIVE TO THE U.S. CONGRESS
2. **Meeting an underserved need**: Families are struggling to find care for infants and toddlers. As written in a recent article in the Boulder Camera "...critical needs in the county include more spots for infants and toddlers, more full-day and full-year programs for working parents and more affordable options overall." -BOULDER CAMERA, SUNDAY JULY 17, 2011 This public need can only be met through nonprofit and private

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[1] Specifically, Boulder Day Nursery, the other early childhood education provider that was part of the Mapleton Project, knows about Acorn's interest in the EET funds and is not interested in starting a similar project in the City of Boulder.

[2] The estimated cost of the project in its entirety is $2.5 million (including acquisition, renovations, and start-up costs).

care-giving sites. Wilderness Place will provide ECE to children from birth to six years of age **(**it will not just focus on children 3 years and up).

3. **Accessible care to children and families of all income levels**: Families who receive public assistance and are needing affordable, high quality child care for more than 2.5 hours per day have very limited access to services. There are very few childcare centers within the City of Boulder that are set up to accept infants and toddlers for these families, and those that do exist are perpetually at maximum capacity. Acorn's philosophy is to provide high-quality early childhood education, *accessible to all* including at-risk families. The Wilderness Place Project will allow the Acorn School to increase the number of children and families being served by over 60%**.**
4. **Partnership with Boulder County Head Start**: Wilderness Place will include a partnership with Boulder County Head Start and solve the displacement of Head Start in the City of Boulder. Head Start is a comprehensive early childhood education system that provides family access to health, nutrition and other needed services determined by individual family assessments to sixty-six children and their families who are City of Boulder residents. "Head Start has always worked in a meaningful partnership with families and our community ... we are committed to working in partnership with the Wilderness (Place) Project. Access and availability to wrap around services is vital to children and families. Creating an Early Childhood Center that provides a collaborative approach represents best practice by integrating shared community services." -MARIA C. HARPER, DIVISION MANAGER, BOULDER COUNTY HEAD START
5. **Broad Community Focus and wrap-around services**: EET taxes were approved by voters for investments of educational uses to meet a community need. There is a community need for additional services for children ages birth-six, with a focus on at risk children, where wrap-around services and full-day, full-year services are available and accessible. A number of community-based organizations working collaboratively would provide services in each of the four domain areas outlined by the Boulder County Early Childhood Education framework (hard copy will be enclosed). The Mapleton Coalition studied and confirmed the need for a mixed-use facility (comprehensive early childhood education with wrap-around and supportive services for families) in its Mapleton Feasibility Study. This original vision is not feasible anymore for Mapleton. Several wrap-around services, including mental health screenings, medical health screenings, parent support and referral resources will be provided to all children through the Wilderness Place Project. We are also pursuing on-site partnerships with Dental Aid and Clinical Family Health Services to serve our families.
6. **Location:** The Acorn Board of Directors is in negotiations with the Wilderness Place which is in close vicinity to neighborhoods with a high need for access to early childhood education. This will minimize traffic levels to and from the location. The building will also have ample parking availability. In addition, the proximity to the

future Boulder Transit Village, as well as the current Goose Creek trail will stimulate alternative and sustainable modes of transportation. Because we are in negotiations, we are not disclosing the exact address of the building.

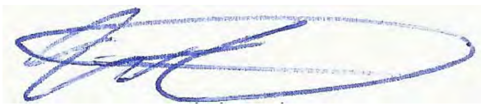
7. **Sustainability:** As a center committed to meeting the needs of low income families, Wilderness Place is a strong candidate for current and potential funding streams. In addition, existing partnerships and collaborations with the Early Childhood Council of Boulder County, The Boulder County Association for the Education of Young Children, Boulder County Human Services Alliance, and Foothills United Way will ensure the ability to leverage diversified resources to address existing and emerging needs at this comprehensive early childhood center.
8. **Costs per child and Financial Plan:** Last, and certainly not least, Early Childhood Education funding is limited and therefore it is important to allocate any available funding in the most efficient way possible. On a cost per child basis, the Wilderness Place Project will provide services for 80-90 + children ages birth-6 and an additional 66 slots for pre-school Head Start children. The wrap-around services will serve all of the families as well as other families in the community. It will be far more cost effective in terms of initial capital costs as well as on-going operational costs than if these services are offered separately and in different locations around town. *Funding from the EET grant is critical to the success of our capital campaign.* Our capital campaign is in full swing. We currently have a commitment for funding from 2010 Worthy Cause and CDGB grants. We are seeking additional funding from 2011 Worthy Cause, the Jared Polis Foundation, The Rose Community Foundation, and the Gates Foundation. Upon completion of our capital campaign, the Wilderness Place has a sound financial plan in which we are able to operate within our means. Additionally, we plan to offer leases at below market rate to our partners.

As the leader in the Wilderness Place Project, The Acorn School is well prepared. The Acorn School for Early Childhood Development is a 501(c)(3) non-profit organization created in 1994. Our mission is to provide high quality, accessible, early care and education programs and to advocate for higher standards in the field of early childhood education. The Acorn School is focused on providing excellent education and care for children and support for families.
Our goal is to foster and continue our philosophy of Primary Caregiving and Continuity of Care, which is the essence of The Acorn School, and child care at its best. Setting up such systems establishes an environment in which meaningful and lasting relationships can develop between early childhood teachers, children, and their families. *The need for high-quality and accessible early childhood education continues and The Acorn School has consistently had a long wait-list for our program*.

Thank you for your consideration. As described, the Wilderness Place Project provides a cost-effective option to provide accessible high quality early childhood education for children birth to six, including low-income, at risk children and families. In addition, it will include a partnership with Boulder County Head Start as well as with other wrap-around services, as outlined in the

Mapleton Feasibility Study. Included in this proposal are initial schematic plans and letters of support from the partners. The complete business plan is available upon request. Please feel free to contact us with any questions or concerns.

Sincerely,

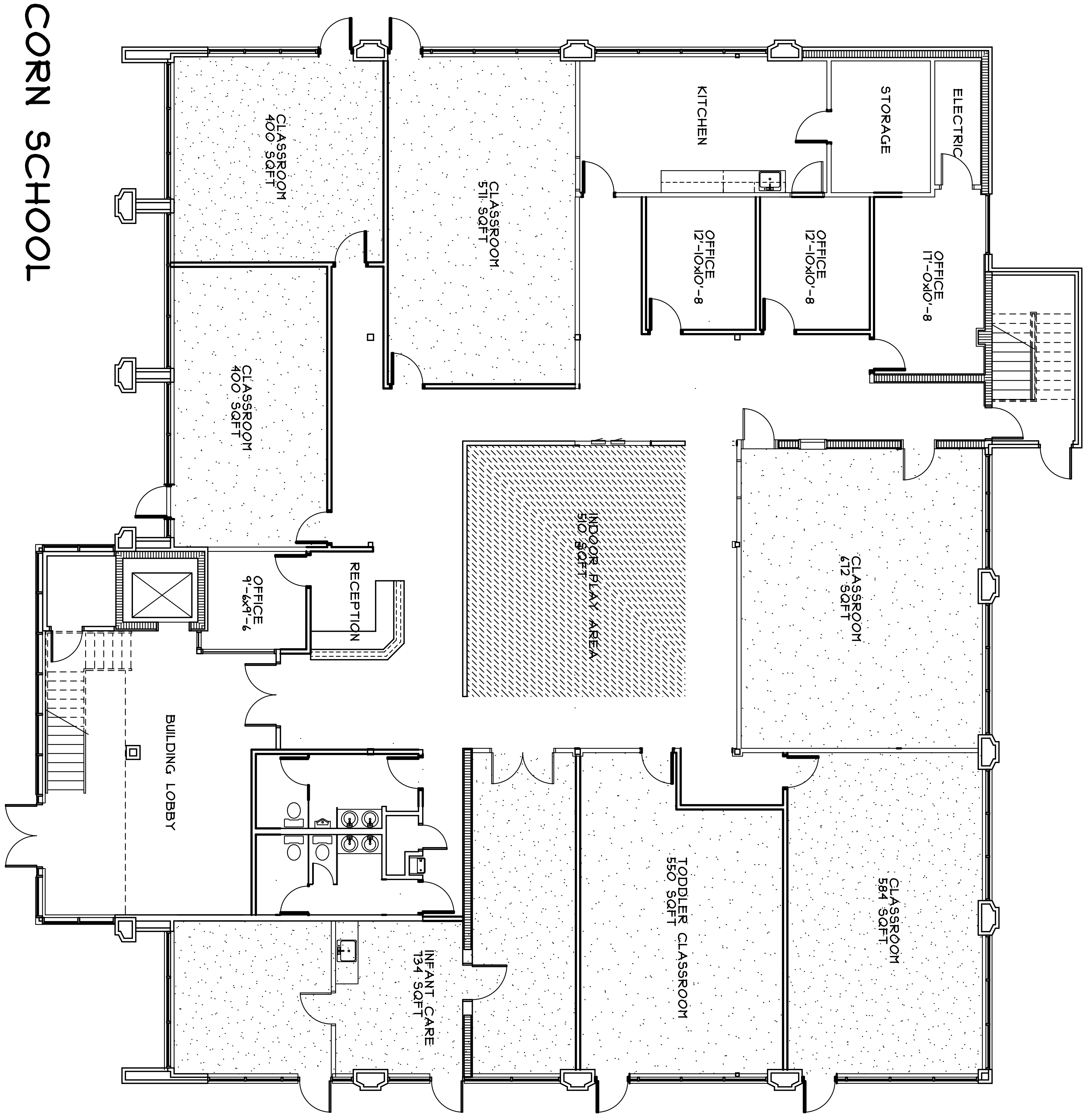


Matt Eldred
The Acorn School, Executive Director

Huybert Groenendaal
The Acorn School, Board President

# 2845 WILDERNESS - ACORN SCHOOL

1ST FLOOR



# EDUCATION EXCISE TAX FUNDING
# SHARED EQUITY AGREEMENT
## Acquisition of Property

This Agreement is made effective this ____ day of ________, 2011, between The Acorn School for Early Childhood Development, a Colorado non-profit corporation (the "Agency"), and the City of Boulder, Colorado, a Colorado home-rule city (the "City").

## RECITALS

A. The Agency provides early childhood education in the City of Boulder (the "Program").

B. The Agency desires to acquire real property in Boulder, Colorado located at Lot 6 Colorado and Southern Industrial Park, also known as 2845 Wilderness Place, Boulder, Colorado 80301, a legal description of which is attached hereto and marked as Exhibit A (the "Property"), from which it will operate the Program.

C. The City is of the opinion that the Agency provides a valuable service to the community and desires to contribute to assist in the acquisition of the Property. The City finds that the Program protects and enhances the health, safety and welfare of its citizens.

D. The City has determined to use an allocation of $960,292 from the City of Boulder Educational Excise Tax ("EET Funds") to assist the Agency in paying for the acquisition of the Property.

E. In the event that the Agency ceases to use the Property as a necessary and integral part of its Program, the Agency shall repay any funds provided by the City pursuant to this Agreement, plus a prorated portion of the appreciation of the Property, so that the City may continue to fund necessary future education needs.

## COVENANTS

NOW THEREFORE, in consideration of the promises and obligations set forth below, the parties agree as follows:

1. <u>Definitions</u>. The following terms shall have the meanings defined herein:

   a. "Appreciated Grant" means the amount of money that is repayable to the City upon any default or voluntary termination of this Agreement. The Appreciated Grant is the City's equity share in the property.

   b. "EET Funds" means the allocation of funds from the City of Boulder Education Excise Tax Funds.

   c. "Future Value" means the value of the Property as of the date on which the Property is valued for the purpose of repaying the Appreciated Grant in the event of default or voluntary termination of the Agreement.

d. "Significant Improvement" means a permanent alteration, addition, or enhancement to be constructed on the Property that increases its value by ten percent or more at the time of construction or installation and is paid for mostly (more than 75%) with money provided from sources other than the City. Maintenance expenses and expenditures to preserve or strengthen the structural integrity of any facility located on the Property, such as, for example, new roofing, siding or windows, or to bring the facility into compliance with municipal building, electrical, plumbing, fire and similar codes shall not be considered to be significant improvements.

f. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest, or any interest evidenced by a land contract by which possession of the Property is transferred.

2. <u>EET Funds Award</u>. The City will provide the Agency with $960,292 from the City's EET Funds to assist the Agency in paying for the acquisition of the Property. The full amount of any funds paid from City funding sources shall be promptly returned to the City in the event that the Agency fails to complete the acquisition of the Property before December 31, 2011.

3. <u>Payment by the City</u>. The City shall make the funds available to the Agency at closing. The Agency will be responsible for all costs of acquisition.

4. <u>Use of the Property</u>. The Agency shall use and permit the use of the Property only as a necessary and integral part of its Program.

5. <u>Conveyance of the Property</u>. The Agency shall not sell, assign, or otherwise convey, hypothecate or alienate any interest in the Property without the written consent of the City, which consent may be withheld at the City's sole discretion.

6. <u>Determining Future Value of the Property</u>. The value of the Property as of the date of this Agreement is $2,030,000. The future value shall be determined as follows: In the event of default or the voluntary termination of this Agreement and the Property is under a contract to be sold within 90 days of that date in an arm's length transaction between unrelated parties, then the future value shall be the sale price. If no such contract exists, the fair market value shall be determined as agreed by the parties, or as determined by an appraiser selected jointly by the parties who is a Member of the Appraisal Institute (M.A.I.) or a person with equivalent professional expertise. The cost of the appraisal shall be borne by the Agency. To the greatest extent practicable, the future value of the Property shall not include any sums attributable to significant improvements to the Property made subsequent to the purchase of the Property by the Agency.

7. <u>Determining the Amount of the Appreciated Grant</u>. The value of the Appreciated Grant shall be determined by multiplying the future value (determined in accordance with Section 6 of this Agreement) by the ratio calculated by dividing the amount of the EET Funds adjusted using the using the consumer price index - all items for the Boulder area as an inflator, by the value of the Property as agreed to in this Agreement plus the cost to the Agency of significant

improvements adjusted using the consumer price index - all items for the Boulder area as an inflator. The parties agree that the amount determined by this calculation will be the Appreciated Grant to be repaid by the Agency to the City.

$$\text{(Formula: Future Value x } \frac{\text{EET Funds}}{\text{Original Value + Sig. Improvements}} \text{ = Appreciated Grant)}$$

8. Adjustment to the Appreciated Grant. The parties agree that the Appreciated Grant may be adjusted if the City provides additional funding sources, or if the Agency constructs any significant improvements on the Property. The Appreciated Grant amount will be recalculated by the parties as of the date of the receipt of any additional City funding or by the additional value added to the Property resulting from the construction of any significant improvement. This recalculation will be memorialized in writing and signed by both parties to this Agreement.

9. Proof of Significant Improvements. The Agency shall be responsible for maintaining contemporaneous photographs, cost records, funding records, blueprints, etc., sufficient to enable an appraiser to determine whether a particular expenditure on the Property constitutes a significant improvement. In the absence of such records, the parties agree that significant improvements have not been made to the Property. The Agency may also request that the City approve a significant improvement as meeting the terms of this Agreement prior to construction of said improvement.

10. Repayment of the Appreciated Grant. The Appreciated Grant shall become immediately due and payable to the City following the occurrence of any of one or more of the following events:

a. All or part of the Agency's interest in the Property is sold, leased or otherwise transferred without the City's advance, written consent as provided in this Agreement;

b. The filing of a petition for any proceedings under federal or state bankruptcy acts or other similar-type proceedings seeking protection from creditors by the Agency or a court enters a decree or order for relief with respect to the Agency under any applicable bankruptcy or insolvency statute brought by any person against the Agency, which decree or order is not stayed; or

c. The giving of an assignment for the benefit of creditors by the Agency without the City's advance, written consent; or

d. The dissolution of the Agency as a corporate entity other than in conjunction with a merger or consolidation of said entity into another or surviving entity which shall thereby become the owner of the Property and continue the Program; or

e. The failure of the Agency to use the Property, for a period of thirty or more consecutive days as a necessary and integral part of it's the Program, except under circumstances beyond the control of the Agency which prohibit the use of the Property for the designated purpose.

Upon the happening of any of the foregoing events of default, the City may, but shall not be obligated to, give written notice to the Agency demanding repayment of the appreciated grant, and the Agency agrees to promptly pay it to the City.

11. Security - Promissory Note and Deed of Trust Required. The Agency's obligation to pay the appreciated grant to the City shall be secured by a promissory note and deed of trust on the Property, which shall entitle the City, upon the happening of an event of default as specified above, to take possession of and sell the Property in any manner provided by law and to credit the net proceeds against the Agency's obligation under this Agreement and against all costs, including, without limitation, court costs and reasonable attorney's fees, of foreclosure, possession and/or sale. The promissory note and deed of trust shall be in a form approved by the City Attorney. They shall be executed by the Agency at the time of the payment by the City to the Agency and the Deed of Trust shall immediately be recorded in the office of the Boulder County Clerk and Recorder.

12. Subordination of City's Interest. The City agrees, upon written request of the Agency, to subordinate its deed of trust to one mortgage in favor of a financial institution or other funding sources providing financing for the acquisition of the Property.

13. Transfer of Obligations to a Different Property. The City and Agency recognize that the value of the Property will almost certainly not diminish, and indeed, will probably increase, with the passage of time. It is also recognized that with the passage of time, the Property may no longer be suitable for the Agency's Program, and that an alternate site may need to be purchased by it. Consequently, if the Agency notifies the City that it is purchasing another property in the City of Boulder to replace the Property and certifies in writing that the new property will be used to facilitate the Agency's Program, then the City will release its deed of trust on the Property and cancel the promissory note which it secures. Simultaneous with this release, or immediately thereafter, a new deed of trust shall be recorded on the new property purchased by the Agency. The beneficiary of the new deed of trust shall be the City. The new deed of trust shall secure a promissory note from the Agency to the City for a sum equal to the amount of the appreciated grant (as defined in Section 7) under this Agreement. The new deed of trust shall be no lower in position than the deed of trust recorded against the Agency's title pursuant to this Agreement.

14. Records. The Agency shall maintain reasonable records of its performance under this Agreement, as follows:

c. The documentation retained shall be sufficient to support the information provided by the agency in its response.

d. The Agency will allow access to these records at any time during normal business hours by the City. These records will be kept in the Agency's office in Boulder, Colorado.

15. Reporting Requirements. The Agency shall submit annual reports as required by the City, and the City may require quarterly reports. The Agency must submit all reports on forms provided by the City prior to the report due date.

16. Compliance with Laws. The Agency shall comply with all applicable laws and regulations of the United States, State of Colorado, and City.

17. City's Right to Acquire Agency's Interest. In the case of potential or actual foreclosure, the City shall have the option to acquire the Property. The parties agree to the following provisions related to foreclosure or foreclosure prevention:

a. The Agency agrees that it will give immediate notice to the City upon the first to occur of: (a) the date any notice of foreclosure is provided to the Agency or any foreclosure is commenced against the Property, or (b) the date when the Agency becomes twenty-one days late in making a payment on any indebtedness encumbering the Property required to avoid foreclosure.

b. At any time within sixty days after receipt of any notice described in subparagraph (a) above, the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure or needed in order to redeem the Property after a foreclosure. Upon making any such payment, the City shall succeed to all rights of the Agency to the Property and shall assume all of the Agency's rights and obligations under all applicable deeds of trust, subject to the terms of this Agreement. In such event the Agency shall forthwith quit the Property and relinquish possession thereof to the City.

18. Enforcement Actions. This Agreement may be specifically enforced against the Agency or any successor in interest of the Agency. Venue for such action shall be in Boulder County. Enforcement actions may include, without limitation, restriction of eligibility for future funding, foreclosure on the note and the deed of trust, contract litigation and equitable relief, and any other relief granted by law.

19. Indemnification. The Agency shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgments or liabilities incurred as a result of its activities pursuant to this Agreement, and as part of such indemnification obligation shall pay all costs and reasonable attorney's fees, if any, incurred by the City as a result of any such claims or suits. The time, if any, of the attorneys and legal assistants in the Boulder City Attorney's Office spent on any such claims or suits shall be paid for by the Agency in accordance with generally prevailing attorney's fees charged in Boulder County for similar services.

20. Valid Provisions of this Agreement to Survive. If any provision of this Agreement shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

21. Termination of this Agreement. The Agency may terminate this Agreement at any time by giving the City written notice of its intent to do so. After the City receives this notice, the amount of the appreciated grant shall be determined. Upon payment of the amount of the appreciated grant to the City, the City will cancel its promissory note and release its deed of trust recorded on the Property, and this Agreement shall then become null and void.

22. Notice. Any notice required by this Agreement shall be in writing, made by hand-delivery or first class mail, fax, or email and addressed to the following:

Agency: Acorn School of Early Childhood Education

City: City Manager with copy to:
Director of Housing and Human Services
City of Boulder
Boulder Municipal Building
P.O. Box 791
Boulder, Colorado 80306
Fax: 303-441-4368
Email: rahnk@bouldercolorado.gov; brautigamj@bouldercolorado.gov

Notice given by hand-delivery, fax or email shall be effective immediately and notice by mail shall be effective three days after it is deposited in the United States mail depository correctly addressed with sufficient postage for delivery.

23. Relationship of the Parties. Nothing in this Agreement shall be deemed to create an Agency, partnership, or joint venture or employment relationship between the City and the Agency.

24. Third Party Beneficiaries. This Agreement is between the City and the Agency. It shall not create any third party beneficiaries.

25. No Guarantee of Future Funding. The allocation of funds from the City's Education Excise Tax in no way guarantees the Agency that it will receive additional City funds in future years. The Agency is encouraged to develop and follow a capital improvements program to assist it in meeting its future capital needs.

26. Future Interests. The term of this Agreement shall run with the land and be perpetual. It is not intended to create a future interest in land. However, if this Agreement is deemed to create a future interest in land, such interest shall vest, if at all, during the lives of the undersigned, plus twenty years and three hundred and sixty-four days.

27. Entire Agreement. This document represents the complete Agreement between the City and the Agency. Neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. No amendments or modifications shall be made to this Agreement unless they are in writing and signed by both parties. The provisions of this Agreement may be modified by mutual consent of both parties.

28. Recording of this Agreement. The parties intend to record this Agreement with the Boulder County Clerk and Recorder in order to put potential subsequent purchasers on notice of the terms and conditions contained herein.

29. Governing Law. The provisions of this Agreement shall be interpreted and enforced in accordance with Colorado law.

30. Authority to Sign. Agency warrants that the individual executing this Agreement is properly authorized to bind the Agency to this Agreement.

The parties have executed this Agreement as of the date first set forth above.

Acorn School of Early Childhood Education a Colorado non-profit corporation

By: ______________________________
Title: ______________________________

STATE OF COLORADO )
) ss.
COUNTY OF BOULDER )

SUBSCRIBED AND SWORN to before me, a notary public, this ______ day of _______________, 201__, by ________________________________________ (contractor name) as ______________________________________ (contractor title).

Witness my hand and official seal.

__________________________________
Notary Public

(SEAL)

CITY OF BOULDER

___________________________________
City Manager

ATTEST:

_____________________________
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

______________________________
City Attorney's Office

Date: _________________________

# EXHIBIT A
# LEGAL DESCRIPTION

ALIANZA MULTICULTURAL DE INMIGRANTES
SIRVIENDO A TODOS CON AYUDA PARA LOS DERECHOS

Boulder City Council
1777 Broadway
Boulder, CO 80302

Dear City Council Members,

On behalf of our Board of Directors, I would like to express El Centro AMISTAD support for The Acorn School Wilderness Place Project.

We at our organization are very exited about this community base initiative on early childhood in our community. We believed that the formation and readiness for education starts at early age and this project it will be a great benefit for future generations to come.

El Centro AMISTAD provides support to more than 600 families in Boulder and many families with new born and infants. Our community programs focus on health prevention, parenting education, leadership and education and we believed that by working together with Acorn School we could build a strong partnership and through this we could offer one stop and more efficient services to Latino families in Boulder.

The great vision that this project has by having a place where many non-profits including El Centro AMISTAD, could be a great benefit for our community where we can provide a better support to families and children.

Thank you for your support to the non-profit sector and to Acorn School Wilderness Place Project.

Sincerely,

Jorge De Santiago
Executive Director, El Centro AMISTAD

*El Centro AMISTAD*
*2222 14th Street Boulder, CO 80302 P 303.443.9899 F 303.443.1713 e-mail: info@elcentroamistad.org*
*www.elcentroamistad.org*

**Boulder County Head Start**
***A division of the Community Services Department***
Sundquist Building • 3482 N. Broadway • Boulder, Colorado 80304 • Tel: 303.441.3980 • Fax: 303.441.3973
**Mailing Address:** P.O. Box 471 • Boulder, Colorado 80306 • **www.bouldercounty.org**

July 18, 2011

Boulder City Council
1777 Broadway
Boulder, CO 80302

Dear City Council Members:

Boulder County Head Start is pleased to provide a letter strongly supporting the Wilderness Place Project.

Boulder County Head Start has been providing comprehensive quality services to low income children and families in our community since 1965. We have maintained a focus on School Readiness by ensuring that children are healthy and are developing cognitively, physically, socially, and emotionally. Head Start has always worked in a meaningful partnership with families and our community. We recognize that this approach is the best way for any child to be ready for school.

With this vision in mind we are committed to working in partnership with the Wilderness Project. Access and availability to wrap around services is vital to children and families. Creating an Early Childhood Center that provides a collaborative approach represents best practice by integrating shared community services.

The potential of having human service agencies that Boulder County Head Start routinely accesses, such as Dental Aid, Mental Health, Parenting Place, and Clinica, directly on site would ensure our children and families of the access that can be so challenging otherwise.

We appreciate the opportunity to be a partner in this exciting initiative. We believe Boulder County Head Start is ideally suited to help create a thriving Early Childhood Center.

Sincerely,

Maria C. Harper
Division Manager
Boulder County Head Start

Play Therapy
Institute of Colorado

April 28, 2011

Boulder City Council
1777 Broadway
Boulder, CO 80302

Dear Boulder City Council members:

The Play Therapy Institute of Colorado would like to express support for The Acorn School's Wilderness Place Project.

The voter's intent for the Education Excise Tax fund was to help meet an educational community need. Boulder County is in need of wrap around services and education for children birth to 6 that are accessible and affordable. We believe that The Acorn School's Wilderness Place Project is a fantastic and innovative idea for early childhood services and education in Boulder County that is in line with the voter's intent for these funds.

The idea of having multiple organizations in one building with a shared vision for children is exciting. Families would be able to easily access services for their children, eliminating much of the confusion that parents experience when their children need multiple supports. The organizations that are part of the Wilderness Place Project can bring their unique expertise to the collaboration, thereby enhancing the overall services provided. Overall, the standards of care would increase for the children and families.

We are excited for the possibility to become part of the wrap around services for this project. The Play Therapy Institute of Colorado offers training and education to teachers and mental health professionals on the social and emotional needs of children and families. We will also house The Boulder Center for Play Therapy, a Graduate level counseling internship site. The result will be that we will be able to provide on-site affordable counseling to children and their families. In addition to the counseling services that we offer, we will also have an on-site Occupational Therapist that would provide affordable services to children with special needs that require physical interventions.

Thank you for your consideration of The Acorn School's Wilderness Place Project proposal. This is an incredible opportunity for Boulder County and a great use of the funds from the Education Excise Tax Fund.

Sincerely,
Lisa Dion, LPC, RPT-S
Director, Play Therapy Institute of Colorado

PARENTING PLACE

A Place for your family to meet people, get support, learn, share ... and have fun!

April 8, 2011

Boulder City Council
1777 Broadway
Boulder, CO 80302

Dear Boulder City Council members:

On behalf of our Board of Trustees, I would like to express Parenting Place support for The Acorn School Wilderness Place Project.

Parenting Place believes Education Excise Tax funding could be used for broad-based, community benefit. We were excited by the potential of the community-based, early childhood center at Mapleton Elementary, of which we were a part; but since the project appears stalled, we now look forward to the comprehensive approach to early childhood services from birth through five that The Acorn School Wilderness Place Project presents.

Specifically, Parenting Place is exited for the project as it could make a one-stop shop for families in our community. As a certified application assistance site for Medicaid and CHP+ insurance, a provider of validated classes like the Incredible Years parenting series and the Cooking Matters nutrition courses, an onsite pantry and donation closet, and a well known source of facilitated parenting groups and counseling, Parenting Place can bring many services to such a partnership.

The possibility to house multiple agencies, including Parenting Place, in one location also allows for financial efficiencies for shared services and shared administration. That is good use of city funds.

Thank you for your continued support of the non-profit community, and we are grateful for your consideration of this proposal.

Sincerely,

Will Kropp
Executive Director



1235 Pine Street Boulder, CO 80302

March 25, 2011

The Honorable Susan Osborne
Boulder City Council
P.O. Box
Boulder, CO 80306

Dear Susan:

Congratulations on moving forward with the city's vision for providing early childhood education opportunities for more of its young children, via the Education Excise Tax. Early childhood education, as you know, is of paramount importance to the development of high-achieving students throughout our education system, and to the cultivation of success later in life. Given the original intent of the EET, there can be no higher use for those funds than ECE.

As you may also be aware, I had been involved in the development of ECE opportunities in Boulder and statewide for some time before running for Congress. My foundation has supported a variety of ECE centers, as well as the critical policy initiatives that would make ECE available to as many children as possible.

Emerging research tells us that the most successful early childhood programs engage children from *birth to kindergarten*, and do so via full wrap-around services in a neighborhood – or near-neighborhood – environment. This is especially true for at-risk children. According to Harvard University's Center on the Developing Child:

> For children at unusually high risk, neuroscience provides a compelling argument for beginning programs at birth … since a substantial amount of brain circuitry is constructed very early in life.[1]

**It is for these reasons that I heartily endorse the use of EET funds for a project currently called the "Wilderness Place project," named for the location of the proposed ECE center.**

The Wilderness Place project (WP) would serve a birth-through-six population in a location close to the greatest need, in the eastern part of town, and with ample transportation options. It would provide Head Start and other services to its families, and would serve both market-rate

[1] "A Science-Based Framework for Early Childhood Policy", Center for the Developing Child, Harvard University, August, 2007

and subsidized families efficiently, resulting in a large number of slots for the most at-risk children in our community. Given the overwhelming unmet need in Boulder, especially in the birth-3 age group, WP would represent an outstanding return in terms of human capital for the city's limited EET resources.

WP would be a project of the acclaimed Acorn School, one of only three 4-star rated (Qualistar) ECE centers in Boulder County. The School and its supporters have already raised a substantial amount of money for operations and renovations, but require a one-time capital infusion for purchase of the building.

We are at something of a crossroads in our nation's – and our city's – future. Obviously, the 30 month long recession we are suffering has starved many public programs of their funding. It is alarming to think that the very human capital that will, someday, create the next era of prosperity for our descendants, is being eaten away by policy-makers without the foresight to understand how prosperity comes about. Thankfully, the city has a resource to turn to in these difficult times to help plant the seeds of future success. I hope you will be persuaded that now is the time to invest the EET funds the city raised some years ago, for our children's future, and our community's.

I would appreciate it if you would give the Wilderness Place proposal your full consideration as you continue to deliberate ECE opportunities – via the EET funds – in Boulder.

Sincerely,

Jared Polis

Cc: Boulder City Council<br>
City Manager

Boulder County

# Board of County Commissioners

August 12, 2011

Mayor Susan Osborne and Boulder City Council
P.O. Box 791
Boulder, CO 80306

Dear Mayor and Councilmembers,

Boulder County has been a proud partner in ensuring quality of life and opportunity to those in our community who are most vulnerable. We partner with the city of Boulder for many of our progressive safety net services and programs, and like you, invest in our community through the direct funding of nonprofit human service agencies. In addition, as voters have demonstrated these shared values over the years, we have provided capital funding for nonprofit human services infrastructure with our Worthy Cause Tax program. Most recently, the voters agreed to a five-year increase in property taxes to protect programs serving our very low income residents.

Boulder County and the city of Boulder have also partnered with early care and education providers, Foothills United Way, CU-Boulder, both of our school districts, and many other stakeholders to ensure a comprehensive early childhood education system through the work of the Early Childhood Council of Boulder County. Ensuring quality early child care and education for all of our community, regardless of ability to pay, has been one of the council's key areas of work. This has resulted in several years of discussion about how to expand services to city of Boulder families, most recently in the form of planning for the Mapleton School early childhood initiative.

Utilizing EET funds for Mapleton will certainly fill part of the gap that exists in the city of Boulder, while meeting your goals for historic preservation, neighborhood schools, etc. Since the comprehensive program for Mapleton did not materialize, we are excited that another proposal has been initiated by The Acorn School for Early Childhood Development for its Wilderness Place project.

In its present conception, Wilderness Place will provide much needed classrooms and shared communal space for our Head Start classrooms currently housed in the BVSD Creekside trailer structures. These trailers are sorely inadequate for creating and fostering an appropriate learning environment, and do not allow for the full suite of services needed by participating families. We believe a public/private partnership with Acorn and the city of Boulder through the use of the remaining EET funds will create an innovative and comprehensive full-day program serving the needs of the very low income families who are currently accessing Head Start.

**Cindy Domenico** *County Commissioner* **Ben Pearlman** *County Commissioner* **Will Toor** *County Commissioner*

Boulder County Courthouse • 1325 Pearl Street • Boulder, Colorado 80302 • Tel: 303.441.3500 • Fax: 303.441.4525
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org • commissioners@bouldercounty.org

This partnership will allow for both increased Head Start instruction, but will also provide wrap-around services including medical and oral health care, and economic self-sufficiency programs to assist these families in moving from poverty.

While the majority of the operating costs of Boulder County Head Start are funded through the Head Start Act, for many years, we have made a commitment to these programs by providing additional funding through subsidies from the Boulder County general fund. In addition, Wilderness Place will be eligible to apply for Worthy Cause Tax funds for its capital construction, and we expect they will come forward with an application for funding.

We strongly encourage you to use the remaining EET funds for this worthwhile project and we look forward to our ongoing partnership with the city of Boulder to provide early care and education to our families most in need…a partnership that began with the creation of our Woodlands site – providing affordable housing, Head Start, and family self-sufficiency programs since 1992!

Sincerely,

Boulder County Board of Commissioners

Ben Pearlman

Ben Pearlman, Chair

# The Wilderness Place Project

# 2845 Wilderness Place

# Business Plan

Organization name: The Wilderness Place Project presented by the Acorn School
Address: 2580 Iris Ave.
Boulder, CO 80304
Telephone: 303.938.8233
Fax: 303.938.5977
Email: director@theacornschool.org

# Table of Contents

# Executive Summary

The following report was prepared by the Acorn Management Team and Acorn Board of Directors, in collaboration with two Board Fellows from the CU Leeds School of Business. This report is intended to study the possible expansion of the Acorn School to a second location and the implications of adapting the existing commercial property located at 2845 Wilderness Place, Boulder, CO to a center for early childhood education (ECE) with a range of wrap-around services.

The goal of the Wilderness Place Project is to support the comprehensive and inclusive needs of all children and families throughout the City of Boulder and Boulder County. It will provide services and partnerships with existing programs and services that will promote the goals of the Early Childhood Framework of Boulder County, which is a collective vision on behalf of Boulder County's young children and their families. The Early Childhood Framework aims to provide all children and families with access to (1) Early Learning, (2) Family Support and Education, (3) Social, Emotional, and Mental Health and (4) Health.

The Wilderness Place Project is a community collaborative effort to meet an unmet and desperate need for basic human services in our City and County. The Early Childhood Council of Boulder County, working toward a county-wide comprehensive early childhood system, recognizes this project as an opportunity to make a significant leap forward in system development:

> "The Wilderness Place project would serve a birth-through-six population in a location close to the greatest need, in the eastern part of town, and with ample transportation options. It would provide Head Start and other services to its families, and would serve both market-rate and subsidized families efficiently, resulting in a large number of slots for the most at-risk children in our community." -BOBBIE WATSON, EXECUTIVE DIRECTOR OF THE EARLY CHILDHOOD COUNCIL OF BOULDER COUNTY.

While The Acorn School may be the leader in the project, the Wilderness Place Project is a comprehensive collaboration with a variety of agencies that provide wrap-around services for their children and families. Both the Boulder County and the State of Colorado's Early Childhood Frameworks emphasize the importance of providing access to comprehensive services which include a Mental Health and Health component. Wrap-around services which provide a parental engagement component along with a quality center have been shown throughout the years to benefit children the most.

This document is approached as a "broad brush" look at a number of items which are believed to be important in considering the possible expansion of Acorn as well as the conversion of 2845 Wilderness Place to an ECE Center.

**Overview**

This document includes a strategic plan for the Wilderness Place Project and a brief history of the Acorn School. It also covers the current state of ECE education in Boulder County and some of the recent legal changes. Finally the report analyzes the marketing, operating, and financing implications of creating the Wilderness Place Project.

# Overview of The Wilderness Place Project

**Vision of The Wilderness Place Project**

The Wilderness Place Project parallels the principals of the Early Childhood Council of Boulder County's "Early Childhood Framework". The WPP is an affordable and accessible program designed to meet the comprehensive needs of all children and families. The program is family and child centered focusing on prevention through promotion of physical, social-emotional, cognitive, and language development of children ages birth - six years. WPP promotes seamless, efficient and and flexible service delivery, prevents gaps and duplication, maximizes resources, and leverages the strengths of the collaborative wrap-around services. The program is accountable to the community through monitoring of outcomes and indicators and a commitment to quality improvement and sustainable through stable funding mechanisms, governance, and infrastructure for services.[1]

**Mission of the Wilderness Place Project**

The mission of the Wilderness Place Project parallels that of the Acorn school's mission, which is to provide high quality, accessible, early care and education programs, and to advocate for higher standards in the field of early childhood education. Additionally, the Wilderness Place project is a comprehensive and inclusive program designed to meet the needs of all children and families through a community collaborative effort with wrap-around services.

[1] Early Childhood Framework, Boulder County 2010. http://www.eccbouldercounty.org/building-initiatives.aspx

The graph below shows the expected number of children from low income families that will receive scholarship support at the Wilderness Place. This figure excludes around 66 children within the Head Start program at the Wilderness Place. In other words, including the Head Start program, the Wilderness Place is expected to provide scholarship assistance to over 100 children per year.

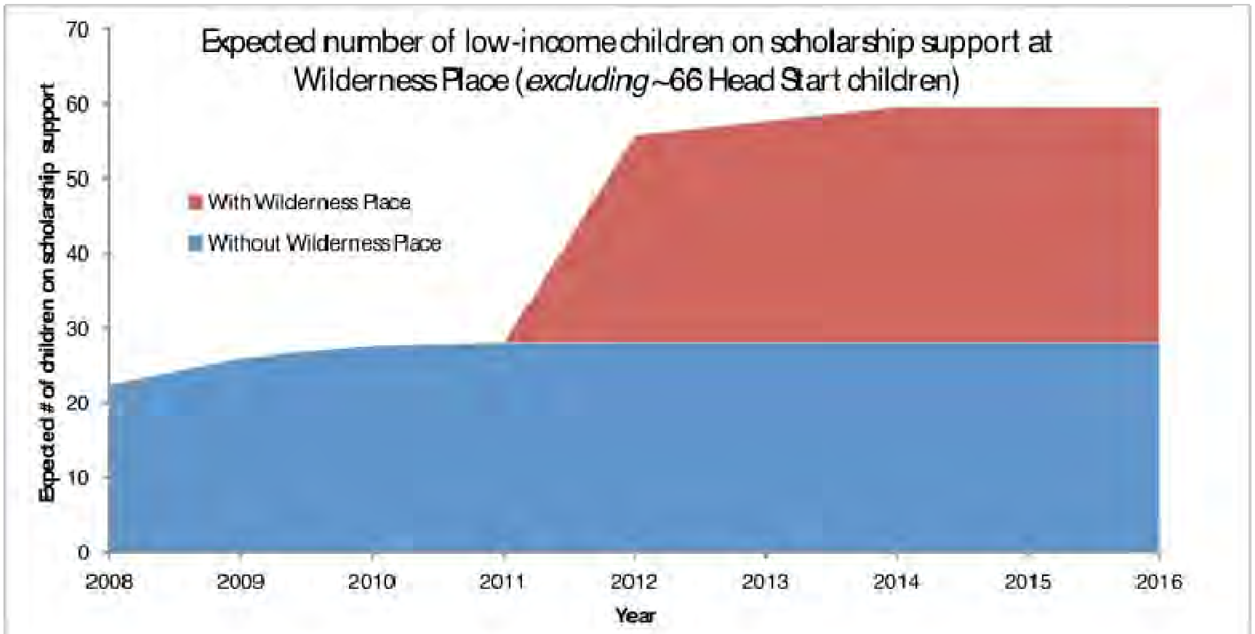



Figure x. Expected number of children from low income families that can be provided with a scholarship at the Wilderness Place. This figure excludes around 66 children within the Head Start program.

**Overview of strategic plan**

Through a strong collaboration by community services and agencies, the children at the Wilderness Place Project will start their lives so that when they reach Kindergarten, they will be well prepared. The Wilderness Place Project will be a program supporting the full range of family needs by partnering with Early Childhood Educators, CPP, CCAP, Social Services, Amistad, Play Therapy Institute, Parenting Place, Boulder County Mental Health, Boulder County Health and the Boulder Public Library.

Eight core strategic goals are as follows:

1. **Access to comprehensive services**: The Wilderness Place Project will collaborate with a variety of agencies providing wrap-around services for their children and families. "Emerging research tells us that the most successful early childhood programs engage children from birth to kindergarten, and do so via full wrap-around services in a neighborhood – or near-neighborhood – environment. This is especially true for at-risk children." -JARED POLIS, COLORADO REPRESENTATIVE TO THE U.S. CONGRESS
2. **Meeting an underserved need**: The Wilderness Place Project will provide ECE to children from birth to six years of age **(**it will not just focus on children 3 years and up). Families are struggling to find care for infants and toddlers. As written in a recent article in the Boulder Camera "...critical needs in the county include more spots for infants and toddlers, more full-day and full-year programs for working parents and more affordable options overall." -BOULDER CAMERA, SUNDAY JULY 17, 2011
3. **Accessible care to children and families of all income levels**: Families who receive public assistance and are needing affordable, high quality child care for more than 2.5 hours per day have very limited access to services. There are very few childcare centers within the City of Boulder that are set up to accept infants and toddlers for these families, and those that do exist are perpetually at maximum capacity. Acorn's philosophy is to provide high-quality early childhood education, accessible to all including at-risk families. The Wilderness Place Project will allow the Acorn School to increase the number of children and families being served by over 60%**.**
4. **Partnership with Boulder County Head Start**: Wilderness Place will include a partnership with Boulder County Head Start. Head Start is a comprehensive early childhood education system that provides family access to health, nutrition and other needed services determined by individual family assessments to sixty-six children and their families who are City of Boulder residents. "Head Start has always worked in a meaningful partnership with families and our community ... we are committed to working in partnership with the Wilderness (Place) Project. Access and availability to wrap around services is vital to children and families. Creating an Early Childhood Center that provides a collaborative approach represents best practice by integrating shared community services." -MARIA C. HARPER, DIVISION MANAGER, BOULDER COUNTY HEAD START
5. **Broad Community Focus and wrap-around services**: There is a community need for additional services for children ages birth-six, with a focus on at risk children, where wrap-around services and full-day, full-year services are available and accessible. A number of community-based organizations working collaboratively would provide services in each of the four domain areas outlined by the Boulder County Early Childhood Education framework. Several wrap-around services, including mental health screenings, medical health screenings, library services, parent

er contract with 2845 Wilderness Place, which is in close vicinity to neighborhoods with a high need for access to early childhood education. This will minimize traffic levels to and from the location. The building will also have ample parking availability. In addition, the proximity to the future Boulder Transit Village, as well as the current Goose Creek trail will stimulate alternative and sustainable modes of transportation.

7. **Sustainability:** As a center committed to meeting the needs of low income families, Wilderness Place is a strong candidate for current and potential funding streams. In addition, existing partnerships and collaborations with the Early Childhood Council of Boulder County, The Boulder County Association for the Education of Young Children, Boulder County Human Services Alliance, and Foothills United Way will ensure the ability to leverage diversified resources to address existing and emerging needs at this comprehensive early childhood center.
8. **Costs per child and Financial Plan:** On a cost per child basis, the Wilderness Place Project will provide services for 80-90 + children ages birth-6 and an additional 66 slots for pre-school Head Start children. The wrap-around services will serve all of the families as well as other families in the community. It will be far more cost effective in terms of initial capital costs as well as on-going operational costs than if these services are offered separately and in different locations around town. Our capital campaign is in full swing. We currently have a commitment for funding from 2010 Worthy Cause and CDGB grants. We are seeking additional funding from 2011 Worthy Cause, the Jared Polis Foundation, The Rose Community Foundation, and the Gates Foundation and others. Upon completion of our capital campaign, the Wilderness Place has a sound financial plan in which we are able to operate within our means. Additionally, we plan to offer leases at below market rate to our partners. A full financial analysis is included as an attachment to the business plan.

As described, the Wilderness Place Project provides a cost-effective option to provide accessible high quality early childhood education for children birth to six, including low-income, at risk children and families. In addition, it will include a partnership with Boulder County Head Start as well as with other wrap-around services, as outlined in the Mapleton Feasibility Study.

**Wraparound uses that are currently considered as good candidates include:**

1. **Head Start**, which is a comprehensive early childhood education system that provides family access to health, nutrition and other needed services determined by individual family assessments. For the purpose of this plan, Head Start will provide services to sixty-six children and their families who are City of Boulder residents. Head Start is excited to be a part of the Wilderness Place Project.

2. **Parenting Place**, which helps relieve isolation and reduce the stress of parenting by providing outreach and a place where families can receive support, education, and develop a sense of community would offer these services on site.

3. **Play Therapy Institute of Colorado**, which offers play therapists an inspiring educational experience in the field of play therapy for the purpose of expanding their play therapy knowledge and deepening their understanding of themselves. Play Therapy will consider relocating to the Wilderness site and conduct all its training and workshops on site.

4. **Front Range Community College**, which provides early childhood education courses and could partner with the Acorn School to provide classroom study and internships on site.

5. **Early Childhood council of Boulder County** (ECCBC) professional pathways training and education services works to ensure that all young children birth to five in Boulder County are ready to succeed in school and in life and could provide their services on site.

6. **Providers Advancing School Outcomes** (PASO) training program has mission to create an equitable, replicable, community-based model program for providing professional development to Latino Friend, Family, and Neighbor providers.

7. **Boulder County Mental Health** is interested in providing on site mental health screenings and therapies.

8. **Boulder County Health** is interested in collaberating to provide on site health services.

9. **Boulder Community Library Children's Book Program** is interested in creating a children's library in the building.

**Form of ownership**:

The intent at this time is that The Acorn School will be the Sole proprietor of the Wilderness Place located at 2845 Wilderness Place and sublease space to wrap around service partners. Acorn will also continue to operate and own Acorn I located at 2580 Iris Ave. The Acorn School will remain a 501 (c ) (3) organization.

Additional (legal) ownership structures that separate the legal and financial responsibilities between Acorn I and the Wilderness Place Project are being considered so that the Acorn I can be protected from this additional risk.

# Overview of the Acorn School

As the leader in the Wilderness Place Project, The Acorn School is well prepared. The Acorn School for Early Childhood Development is a 501(c)(3) non-profit organization created in 1994.

**Vision of the Acorn School**
Acorn is the leader and a model of best practices in the field of early childhood development. Because it is known as having the highest quality programs and a model for sustainability, Acorn is a source for parent and teacher training in the community and beyond.

**The Acorn School's Mission statement**

The mission of the Acorn School for Early Childhood Development is to provide high quality, accessible, early care and education programs, and to advocate for higher standards in the field of early childhood education.

The primary focus of our mission is to provide a high quality experience for children aged six weeks to six years in our full-day, full-year developmentally appropriate program. We seek to advocate for higher standards in the field of early childhood by demonstrating leadership and excellence in the field while disseminating our successes. The Acorn School believes that high quality is achieved by long-term, dedicated professional educators that are supported by diverse funding sources.

**History of the Acorn School**

Seventeen years ago, The Acorn School's founder, an experienced early childhood educator, became increasingly aware of what the Carnegie Corporation has called America's "quiet crisis"[2]—as more parents of young children enter the workforce, more of our children are largely being raised by an ongoing succession of inadequately trained and underpaid caregivers. To address this concern, what is now known as the Acorn School first opened its doors in 1994 in a working class Boulder neighborhood. The current school, located at 2580 Iris Ave. incorporates all of the best practices recommended by the original Carnegie report: low teacher-child ratios, small group sizes, qualified and well-trained caregivers, health/safety as a priority, and strong linkages to parents and the community. The Acorn School considers high-quality education for all children critical. It currently has a 4-star Qualistar rating (www.qualistar.org)[3], as well as, official accreditation from the National Association for the Education of Young Children (www.naeyc.org ), the largest and most widely recognized early childhood accreditation system.

**Important strengths and core competencies**

The Acorn School provides high quality early care and education to infants, toddlers and preschool-aged children from Boulder, Longmont, Louisville and unincorporated Boulder

[2] *Starting Points: Meeting the Needs of Our Youngest Children*, Carnegie Task Force, 1994.
*3 Out of about 145 ECE centers in Boulder County, The Acorn School is one of only three to have a 4-start Qualistar rating, the highest rating possible*

County. The essence of The Acorn School program is primary caregiving. Primary caregiving provides continuity of care by placing children and teachers together from toddler-hood to pre-kindergarten. The children shift classes together with their teachers each year, while the oldest cluster graduates to Kindergarten. The program is especially effective because of low teacher-child ratios and small group sizes. Other components of the high quality program include individualized instruction, equal access for all families, nutritious meals and snacks, a mixed socio-economic group of children, and professional treatment and compensation for its early childhood educators. Assuring that these features exist is our highest priority, for they make the best environment within which to support the positive development of children. Combining children of various socio-economic and cultural backgrounds benefits children in their very early, developmental stages. The school's curriculum, the Creative Curriculum, is flexible enough to take into account each child's need and is also the approved pre-school curriculum for the Boulder Valley School District (BVSD) as its curriculum of choice within the Colorado Preschool Program.

This model will continue with the expansion of the Acorn School into the Wilderness Place Project. With the expansion to a second location, Acorn will have a more intentional focus on the need for additional infant/toddler slots. Acorn I will allow for expanded infant/toddler slots that will feed into the larger Wilderness Place Project for the pre-school years. Priority will be given to sibling families to maintain continuity of care at The Wilderness Place Project.

Acorn's Professional Development Plan seeks to keep deeply contented and highly-skilled teachers. It does so by addressing teacher turnover through competitive salaries, benefit packages, and comprehensive professional development. Acorn promotes and supports teachers to be early childhood credentialed through the Colorado Department of Human Services and the Colorado Early Childhood Professional Credential Office. Acorn also has several staff who meet Director Qualification from the State of Colorado. As a consequence, the school's annual retention rate for primary caregivers has averaged 80% over the last few years. For the current school year we have a 100% retention rate for our full time teachers. With the Carnegie Task Force on Meeting the Needs of Young Children reporting annual turnover for child care providers as nearly three times the rate reported by U.S. companies and nearly five times the rate reported for public school teachers, we take the challenge seriously and convey our results proudly. Continuing education classes, monthly staff development meetings, teacher planning days and collaborative involvement with the school's Strategic Plan complement the program.

The Acorn School operates within a favorable early childhood policy context in both the city of Boulder and the state of Colorado. The Children, Youth, and Families Division of the city's Department of Housing and Human Services offers a number of programs focused on children, including child care resource and referral, child care certificate program offering financial assistance for child care, and child care recruitment and training. The Early Childhood Council of Boulder[4], a collaboration of a number of community agencies, works to "expand and improve the comprehensive system of quality early childhood services for families in Boulder County". Further, the council participates in the statewide Early Childhood Colorado[5] which is working to create a comprehensive early childhood system for children birth through age eight and their families.

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[4] *For further information see: http://www.earlychildhoodbouldercounty.org/about.aspx*
[5] *For further information see: http://www.earlychildhoodcolorado.org/*

Given the recent downturn in the economy, the fiscal context in Colorado and Boulder is less certain for public and private funding for early care and education. Recent introduction of legislation entitled "Colorado Quality in Child Care Incentive Grant Program in the Department of Human Services" would provide additional funds to counties to increase quality of early care and education programs. Passage of this bill, however, is unlikely due to the reliance on the federal Early Learning Challenge Fund[6] to support increased costs to the state. However, the FY2010-2011 State Budget bill currently preserves many early childhood programs and services and two new bills have passed the Senate Education Committee that could impact access and eligibility for early care and education by children from low-income families[7]. Both Boulder County and the City of Boulder have been impacted by the economy. The Child Care Assistance Program (CCAP) program in Boulder County suspended enrollments in January 2010 and implemented a wait list for the first time in close to 20 years. Eligibility levels were decreased from 225% of the federal poverty level to 185%; a 24-month maximum limit on educational activities has been imposed; and, rates have remained the same since 2008. The City of Boulder's child care certificate program, CLIFF[8], which serves families in Boulder who are not eligible for CCAP, also implemented a wait list. Child care centers in the city have been impacted as families face the loss of income and are increasingly unable to manage the costs of care, particularly licensed care.

Our Fund Development Program is strong and getting stronger. We have a dedicated Board of Directors with a 100% participation of the Board contributing financially to the organization. Our grant program includes grants from the Temple Hoyne Buell Foundation, Anschutz family fund, Burt Foundation, BVSD, Duncan Foundation, Denver foundation, Daniels fund, Community Development Block grant funding, and the local Boulder County Community Foundation. We have an involved group of parent volunteers who work in conjunction with The Acorn School staff to provide parent partnerships and educational programs.

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[6] *Note: The Early Learning Challenge Fund was taken out of the Health Care Reform Act and thus not currently part of any proposed legislation.*

[7] *Colorado Children's Campaign (April 2010). KidsFlash. Denver, CO: Author. Retrieved April 9, 2010 at http://www.coloradokids.org/includes/downloads/4210kidsflashwebversion.pdf?PHPSESSID=ff274c03466396c2f6e0b9a367923bc9*

[8] *See for further information: http://www.bouldercolorado.gov/index.php?option=com_content&task=view&id=3760&Itemid=1398*

# Marketing Plan

Currently in Boulder County there are a variety of services committed to providing excellent early childhood care. However, these services are located all across the city and there is no one location that a child can go to quickly receive a variety of services. The idea of the Wilderness Place Project is to provide one location that is dedicated to providing comprehensive care. This site would be dedicated to the principles outlined in the Early Childhood Framework for Boulder County which provides guidance into the best practices in ECE. These principles include being comprehensive and inclusive, family and child centered, focused on prevention, affordable, accessible, available, coordinated, integrated, accountable, and sustainable. By providing a site that offers comprehensive services we will be helping all children reach their full potential.

In addition to the need for a comprehensive care approach, there is also a great need for licensed, high-quality, and subsidized infant/toddler care. The birth rate in Boulder County in 2009 was 3,235. A household survey conducted in FY2000, indicated that of all households in Boulder County with children under age 12 years, 33% of those households were using paid child care.[9] (Mapleton Feasibility Study, MFS). Assuming that 33% of household need care, then approximately 1,067 infants need child care each year in Boulder County. However, there are only 608 licensed infant spots in Boulder County and 226 in the City of Boulder. [10] In addition, nationwide, 60.8 % of children ages 0-6 not yet in kindergarten receive some form of non parental child care on a regular basis", (MFS) and this implies an even greater demand for these services.

In addition to the overall need for child care on a County or national level, there is growing need for quality childcare for lower income families. According to a 2007 assessment regarding the need for Head Start Programs serving the Boulder Valley School District and the city of Longmont, the percentage of children in poverty in both the State of Colorado and Boulder County increased between 2000 and 2006, from 10.8% to 15.7% statewide, and 7.6% to 11.2% county wide. (MFS). During the 2006/2007 program year, the estimated need for ECE that is affordable to children at 100% of Federal Poverty Guidelines (the threshold for which eligibility for Head Start has historically been set) was 77% higher than the estimated supply. The current supply of ECE slots was sufficient for little more than half of the estimated number of children 3 and 4 years old at this income level. Approximately 25% of the county's low income 3 and 4-year-olds are in Boulder (60% were in Longmont, and 15% were in Lafayette/Louisville/Superior). (MFS)

Acorn currently mainly targets full time working families and its sliding scale payment system allows great flexibility in how families across different socio-economic backgrounds are able to access Acorn services.

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[9] *Mapleton Feasability Study*
*http://www.bouldercolorado.gov/index.php?option=com_content&task=view&id=9299&Itemid=195*
[10] *Indicators Report for Boulder County Comprehensive Early Childhood System Planning 2010*

## Competition

There are many small players that provide care in the ECE market. Some of the direct competitors include BVSD, Boulder Day Nursery, Boulder Journey School, Tiny Minders, and the Childrens' Creative Learning Center (CCLC). In general Acorn competes more with North Boulder market for infant and toddler care, and competes more on a city wide basis at the preschool level.

Several specifics are worth noting. First CCLC is located very near the proposed the Wilderness Place Project. CCLC derives most of their business from UCAR employees and only offers full time daycare options. The WPP will be able to be successful because it offers more flexibility in day care options and draws from a much larger customer base.

Another competitive risk is the impact of BVSD on preschool spots. Currently BVSD is seeking to expand its preschool program but will only offer an option that has preschool for 2.5 hours a day for 4 days week. Most working parents won't be able to take advantage of this because they will need to seek additional care for the hours they are working, and would have to arrange transportation between the BVSD preschool and another provider.

Acorn's long history and long wait list successfully speaks to how it stands out from its competitors and that it will be able to expand successfully. Acorn's accreditations, family atmosphere, reputation, and flexibility will continue to drive families to seek its services.

## Market for outside service providers

In addition to providing ECE services Acorn will also be engaged in finding and managing outside service providers. In the proposed site Acorn will have space to accommodate a number of complementary service providers related to early childhood care. These service providers will complement Acorn's mission and will help meet the needs to ECE children, families or teachers. These types of outside service providers will benefit because their co-location will allow them to interact with more customers in one location and they will be able to coordinate their services to meet the complete needs of a child.

Several outside service providers have already expressed interest in the plans to share space at the Wilderness Place location and have verbally committed to exploring moving to the location.

One key partner will be Head Start which provides similar services to almost an exclusive low income population. Head start has an interest in leasing two classrooms that can support up to 66 children.

# Operational Plan

The Wilderness Place project will provide primary care-giving and continuity of care for 6 classrooms birth to five, utilizing the Creative Curriculum in each class. Ratios will be below state licensing standards and in line with NAEYC and Qualistar recommendations. Enrollment will be ongoing, but most openings will occur in August with the school-wide shift of classrooms and pre-school children leaving for kindergarten. There will be 2 lead teachers in each classroom with 1-2 assistants that work shifts between 7:30 am and 5:30 pm. Additionally, Head Start will have 2 classrooms for children ages 3-5.

Acorn has a long history of successfully operating its first ECE center. The addition of the Wilderness Place Project would simply expand the operations to two sites but would not significantly change the fundamental operations. Each site would cater to different groups of children. With the expansion of the Wilderness Place Project, Acorn I would become an infant/toddler center serving 45 children ages 0-24months in 4 classrooms. Staffing would be determined by a combination of licensing standards and Qualistar and NAEYC standards. The Wilderness Place project would allow for 5 classrooms ages 0-6 and would also be staffed with a combination of licensing and Qualistar and NAEYC standards.

NAEYC standards for ratios are 35 sq. ft. per child. Two classrooms would be dedicated to Head Start and accommodate 44-64 children depending on sq. footage. Based on the proposed site the classroom numbers are shown below:

At Acorn II Classroom sizes include:

- 400 sq. ft. Head Start Classroom
- 400 sq. ft. Head Start Classroom
- 571 sq. ft. Acorn Pre-K
- 672 sq. ft. Acorn Pre-School II
- 584 sq. ft. Acorn Pre-School I
- 550 sq. ft. Acorn Toddler
- 367 sq. ft. Acorn Infant 1
- 367 sq. ft. Acorn Infant 2

- Number of children - 35 sq ft/child
    - 400/35 = 11.4286 – 11 (1/2 day x2)
    - 400/35 = 11.4286 – 11 (1/2 day x2)

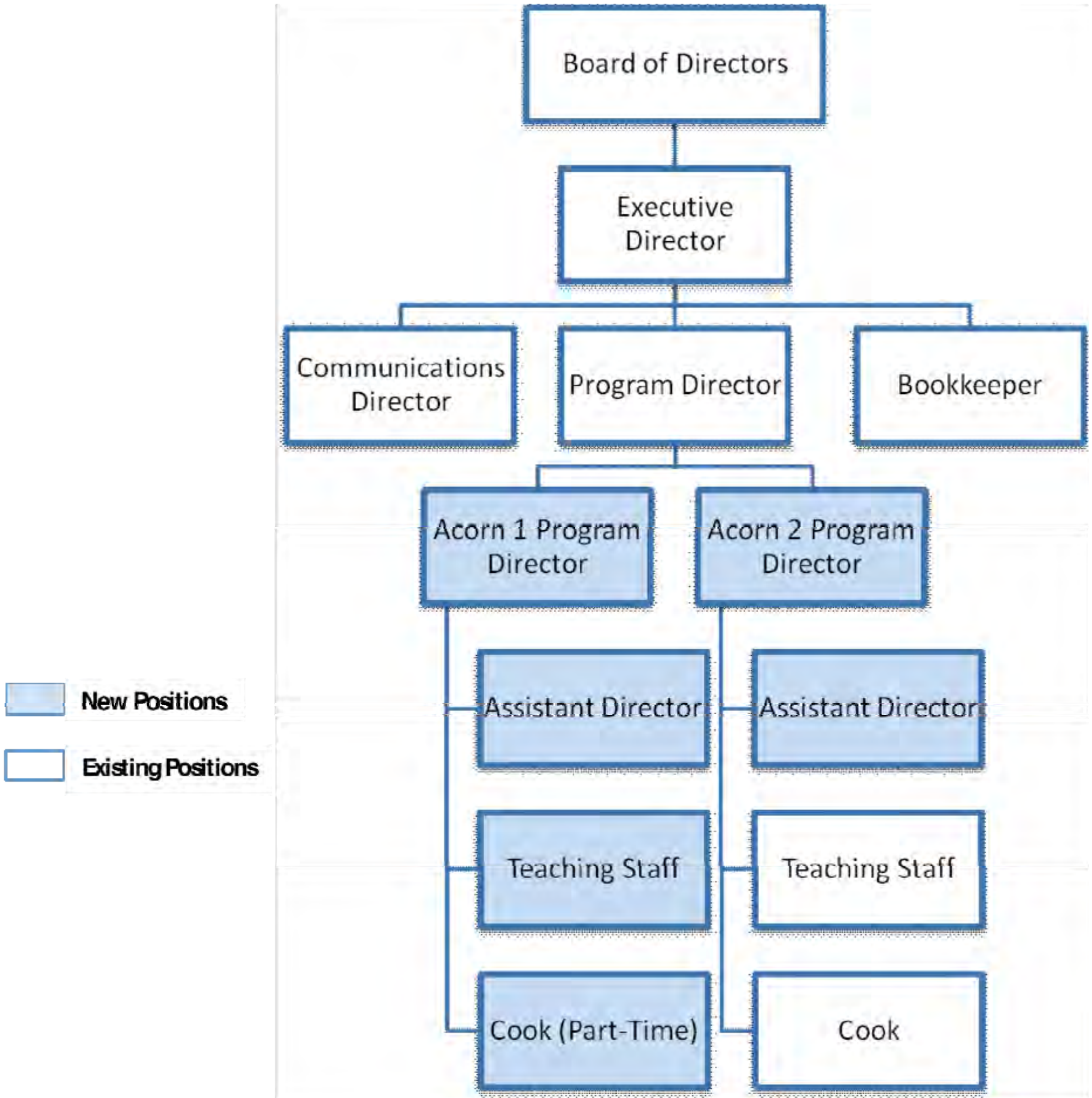
- 571/35 = 16.3143 - 16
- 672/35 = 19.2 - 19
- 584/35 = 16.6857 - 16
- 550/35 = 15.7143 - 15
- 367/35 = 10.48 - 10
- 367/35 = 10.48 - 10
- 130 total

Daily operations could be allocated based on overall capacity and thus, Acorn may require a part-time cook because infants require formula and don't need a cook, and there would be fewer kids. The Wilderness Place Project would need a Full-time cook providing food services for all children in care, including Head Start children. Primarily teaching staff would be the same at Acorn I and the WPP and assistants and subs could world at either location. Each Site would have a director and an assistant director with the program director overseeing the site directors.

Head Start would be responsible for staffing the 2 classrooms at the WPP under their guidelines and would not be associated with or under the oversight of Acorn management. Head Start will lease space from Acorn at below market rates, determined at rate to just cover costs with no profit for Acorn.

# Management and Organization

The overall organization chart for The Acorn School with the expansion is shown below




Currently Acorn's Board of Directors is composed of eight people who bring a variety of professional experience including accounting, finance, and operations. The board is governed in a traditional way. With the addition of the the Wilderness Place Project, we plan to expand the board to another 2-3 people to effectively manage the larger organization

# Financial History and Analysis

The Acorn I site has shown great financial stability over the last five years.

Attached are the 2009 and 2010 financial audits for your review.

# Financial Plan

A full financial plan and analysis is attached.

# Appendices

Licensing standard is 25 sq. ft. per child for infants and NAEYC requires 35 sq. ft. per child.

Number of children - 25 sq ft/child

- 400/25 = 16 (1/2 dayx2)
- 400/25 = 16 (1/2 day x2)
- 571/25 = 22.84 - 22
- 672/25 = 26.88 - 26
- 584/25 = 23.36 - 23
- 550/25 = 22
- 734/25 = 29.36 - 29
- 186 total

# THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2009

TOGETHER WITH INDEPENDENT AUDITORS' REPORT

# THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

## FINANCIAL STATEMENTS
## FOR THE YEAR ENDED DECEMBER 31, 2009

### CONTENTS

Taylor, Roth and Company, PLLC
Certified Public Accountants
working exclusively with nonprofit organizations

February 17, 2010

## INDEPENDENT AUDITORS' REPORT

Board of Directors
The Acorn School for Early Childhood Development
Boulder, Colorado

We have audited the accompanying statement of financial position of **The Acorn School for Early Childhood Development** (a Colorado nonprofit corporation) as of December 31, 2009, and the related statements of activities, functional expenses, and cash flows for the year then ended. These financial statements are the responsibility of The Acorn School for Early Childhood Development's management. Our responsibility is to express an opinion on these financial statements based on our audit. Information for the year ended December 31, 2008, is presented for comparative purposes only and was extracted from the financial statements presented by net asset class for that year, on which an unqualified opinion dated February 24, 2009, was expressed.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The Acorn School for Early Childhood Development as of December 31, 2009, and the changes in its net assets and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Taylor, Roth & Company, PLLC

TAYLOR, ROTH AND COMPANY, PLLC
CERTIFIED PUBLIC ACCOUNTANTS

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**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

STATEMENT OF FINANCIAL POSITION
DECEMBER 31, 2009
(WITH COMPARATIVE TOTALS FOR 2008)

| | 2009 | 2008 |
|---|---|---|
| Assets | | |
| Cash and cash equivalents - unrestricted | $ 84,209 | $ 164,287 |
| Cash and cash equivalents - temporarily restricted | 2,863 | 17,694 |
| Accounts receivable | 9,237 | 6,672 |
| Grants receivable - temporarily restricted | 35,000 | 17,000 |
| Prepaid expenses | 13,681 | 11,712 |
| Investments (Note 3) | 92,248 | - |
| Property and equipment (Note 4) | 482,465 | 435,584 |
| Total assets | $ 719,703 | $ 652,949 |
| Liabilities and net assets | | |
| Liabilities | | |
| Accounts payable | $ 6,785 | $ 3,191 |
| Accrued payroll costs | 18,917 | 15,709 |
| Deferred revenue | 14,500 | 17,195 |
| Mortgage note payable (Note 5) | 235,235 | 241,022 |
| Total liabilities | 275,437 | 277,117 |
| Net assets | | |
| Unrestricted | | |
| Operating | 128,154 | 115,871 |
| Board designated cash reserve fund | 31,019 | 30,507 |
| Net investment in fixed assets | 247,230 | 194,562 |
| Temporarily restricted (Note 6) | 37,863 | 34,892 |
| Total net assets | 444,266 | 375,832 |
| Total liabilities and net assets | $ 719,703 | $ 652,949 |

The accompanying notes are an integral part of these financial statements

## THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

### STATEMENT OF ACTIVITIES
### FOR THE YEAR ENDED DECEMBER 31, 2009
### (WITH COMPARATIVE TOTALS FOR 2008)

| | 2009 | | | 2008 |
|---|---|---|---|---|
| | Unrestricted | Temporarily Restricted | Total | Total |
| Revenue and other support | | | | |
| Tuition | $ 752,094 | $ - | $ 752,094 | $ 757,844 |
| Grants | 10,000 | 64,340 | 74,340 | 89,500 |
| Insurance proceeds (Note 7) | 19,633 | | 19,633 | - |
| Contributions | 15,577 | - | 15,577 | 11,859 |
| Food program | 10,228 | - | 10,228 | 11,177 |
| Special event income | 9,956 | - | 9,956 | 11,852 |
| Fees | 9,840 | - | 9,840 | 11,043 |
| Other | 7,479 | - | 7,479 | 2,616 |
| In-kind contributions (Note 8) | 9,616 | - | 9,616 | 9,256 |
| Net assets released from restrictions (Note 9) | 61,369 | (61,369) | - | - |
| Total revenue and other support | 905,792 | 2,971 | 908,763 | 905,147 |
| Expense | | | | |
| Program services | 741,109 | - | 741,109 | 659,710 |
| Supporting services | | | | |
| Management and general | 72,457 | - | 72,457 | 58,740 |
| Fund-raising | 26,763 | - | 26,763 | 28,075 |
| Total expense | 840,329 | - | 840,329 | 746,525 |
| Change in net assets | 65,463 | 2,971 | 68,434 | 158,622 |
| Net assets, beginning of year | 340,940 | 34,892 | 375,832 | 217,210 |
| Net assets, end of year | $ 406,403 | $ 37,863 | $ 444,266 | $ 375,832 |

The accompanying notes are an integral part of these financial statements

# THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

## STATEMENT OF FUNCTIONAL EXPENSES
## FOR THE YEAR ENDED DECEMBER 31, 2009
## (WITH COMPARATIVE TOTALS FOR 2008)

| | 2009 | | | | 2008 |
|---|---|---|---|---|---|
| | | Supporting Services | | | |
| | Program Services | Management and General | Fund-raising | Total | Total |
| Salaries | $ 486,065 | $ 41,198 | $ 16,093 | $ 543,356 | $ 498,950 |
| Payroll taxes and benefits | 102,875 | 8,720 | 3,406 | 115,001 | 100,028 |
| Supplies | 33,379 | 2,829 | 1,105 | 37,313 | 30,338 |
| Food | 21,857 | - | - | 21,857 | 21,849 |
| Maintenance | 15,017 | 1,273 | 497 | 16,787 | 14,684 |
| Education | 16,385 | - | - | 16,385 | 7,483 |
| Interest | 14,177 | 1,202 | 469 | 15,848 | 15,037 |
| Property damage repair | - | 12,642 | - | 12,642 | - |
| Professional services | 6,527 | 841 | 3,729 | 11,097 | 12,826 |
| Utilities | 7,048 | 598 | 233 | 7,879 | 7,829 |
| License/dues/fees | 5,648 | 479 | 187 | 6,314 | 4,171 |
| Insurance | 4,560 | 386 | 151 | 5,097 | 5,124 |
| Gifts | 4,114 | 349 | 136 | 4,599 | 1,107 |
| Telephone | 2,876 | 244 | 95 | 3,215 | 2,916 |
| Staff development | 2,786 | 236 | 92 | 3,114 | 2,887 |
| Equipment | 1,889 | 160 | 63 | 2,112 | 974 |
| Travel | 1,192 | 102 | 39 | 1,333 | 1,180 |
| Advertising | 1,014 | 85 | 34 | 1,133 | 1,376 |
| Printing | 1,008 | 85 | 33 | 1,126 | 1,564 |
| Bad debt | 561 | - | - | 561 | 5,765 |
| All other | 652 | 55 | 21 | 728 | 1,171 |
| | 729,630 | 71,484 | 26,383 | 827,497 | 737,259 |
| Depreciation | 11,479 | 973 | 380 | 12,832 | 9,266 |
| Total | $ 741,109 | $ 72,457 | $ 26,763 | $ 840,329 | $ 746,525 |

The accompanying notes are an integral part of these financial statements

## THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

### STATEMENT OF CASH FLOWS
### FOR THE YEAR ENDED DECEMBER 31, 2009
### (WITH COMPARATIVE TOTALS FOR 2008)

| | 2009 | 2008 |
|---|---|---|
| Cash flows from operating activities | | |
| Change in net assets | $ 68,434 | $ 158,622 |
| Adjustments to reconcile change in net assets to net cash provided by operating activities | | |
| Depreciation | 12,832 | 9,266 |
| Donated fixed assets | (975) | - |
| Changes in operating assets and liabilities | | |
| (Increase)decrease in accounts receivable | (2,565) | 6,234 |
| (Increase)decrease in grants receivable | (18,000) | (17,000) |
| (Increase)decrease in prepaid expenses | (1,969) | (2,701) |
| Increase(decrease) in accounts payable | 3,594 | (2,472) |
| Increase(decrease) in payroll accruals | 3,208 | (5,887) |
| Increase(decrease) in deferred tuition | (2,695) | 2,395 |
| Net cash provided(used) by operating activities | 61,864 | 148,457 |
| Cash flows from investing activities | | |
| (Additions) in investments | (92,248) | - |
| Purchase of fixed assets | (58,738) | (68,047) |
| Net cash provided(used) by investing activities | (150,986) | (68,047) |
| Cash flows from financing activities | | |
| (Repayment) on mortgage note | (5,787) | (9,979) |
| Net cash provided(used) by financing activities | (5,787) | (9,979) |
| Net increase(decrease) in cash and cash equivalents | (94,909) | 70,431 |
| Cash and cash equivalents, beginning of year | 181,981 | 111,550 |
| Cash and cash equivalents, end of year | $ 87,072 | $ 181,981 |
| Supplemental disclosure of information: | | |
| Cash paid during the period for interest | $ 15,848 | $ 15,037 |

The accompanying notes are an integral part of these financial statements

**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2009

NOTE 1 - NATURE OF ACTIVITIES

The Acorn School for Early Childhood Development (the Organization) was established to provide a model of high quality childcare and be an advocate for high childcare standards. The essence of the Organization is primary care giving. Primary care giving provides continuity of care by matching children with teachers who remain with them from infancy through pre-kindergarten. The Organization is supported primarily through tuition and augmented by private foundation grants.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND PROCEDURES

1. Basis of Accounting

   The financial statements of the Organization have been prepared on the accrual basis of accounting and accordingly reflect all significant receivables, payables, and other liabilities.

2. Basis of Presentation

   The Organization is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

3. Cash and Cash Equivalents

   The Organization considers all unrestricted highly liquid investments with an initial maturity of three months or less to be cash equivalents.

4. Restricted and Unrestricted revenue

   Contributions received are recorded as increases in unrestricted, temporarily restricted, or permanently restricted net assets, depending on the existence and/or nature of any donor restrictions.

   The Organization reports gifts of land, buildings, and equipment as unrestricted support unless the explicit donor stipulations specify how the donated assets must be used. Gifts of long-lived assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire long-lived assets are reported as restricted support. Absent donor stipulations regarding how long those long-lived assets must be maintained, the Organization reports expirations of donor restrictions when the donated or acquired long-lived assets are placed in service.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND PROCEDURES (Continued)

5. Accounts Receivable

No allowance for doubtful accounts has been established. The Organization believes all accounts will be collected.

6. Capitalization and Depreciation

The Organization follows the practice of capitalizing all expenditures for property and equipment in excess of $500. The fair value of donated assets is similarly capitalized. Depreciation of property and equipment is provided over the estimated useful lives of the respective assets on a straight-line basis. Estimated useful lives of furniture and equipment range from 3 to 5 years. Building and improvements are being depreciated over 25 years.

7. Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

8. Income Taxes

The Organization has received an Internal Revenue Service exemption from federal income taxes under Section 501(c)(3). Accordingly, no provision or liability for income taxes has been provided in the accompanying financial statements.

9. Functional Reporting of Expenses

For the year ended December 31, 2009, the costs of providing the various programs and other activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

10. Summarized Prior-Year Information

The financial statements include certain prior-year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with generally accepted accounting principles. Accordingly, such information should be read in conjunction with the Organization's financial statements for the year ended December 31, 2008, from which the summarized information was derived.

NOTE 3 - INVESTMENTS

At year-end, investments consisted of two certificates of deposit. Investments are stated at fair value.

NOTE 4 - PROPERTY AND EQUIPMENT

At year-end, property and equipment consisted of:

| Description | Amount |
|---|---|
| Land | $ 257,274 |
| Building and improvements | 281,859 |
| Furniture and equipment | 44,036 |
| Total | 583,169 |
| Less: accumulated depreciation | (100,704) |
| Net property and equipment | $ 482,465 |

Depreciation expense for the year was $12,832.

NOTE 5 - MORTGAGE NOTE PAYABLE

In 2009, the Organization refinanced a mortgage note payable totaling $235,235. The note is collateralized by property located in Boulder, Colorado. The interest rate is 7.13%. The note matures August 13, 2019. The future scheduled maturities are:

| Year | Amount |
|---|---|
| 2010 | $ 13,629 |
| 2011 | 14,632 |
| 2012 | 15,711 |
| 2013 | 16,869 |
| 2014 and after | 174,394 |
| Total | $ 235,235 |

NOTE 6 - TEMPORARILY RESTRICTED NET ASSETS

At year-end, temporarily restricted net assets consisted of:

| Description | Amount |
|---|---|
| Professional development and education | $ 35,000 |
| Capital improvements | 2,863 |
| Total | $ 37,863 |

NOTE 7 - INSURANCE PROCEEDS

The Organization was reimbursed by their insurance company for significant property damage and loss of tuition income caused by a sewer back-up.

NOTE 8 - IN-KIND CONTRIBUTIONS

Donated goods and services are reflected in the accompanying statements at their estimated values at date of receipt. Donated goods and services amounted to:

| Description | Amount |
|---|---|
| Classroom supplies | $ 8,641 |
| Donated equipment | 975 |
| Total | $ 9,616 |

NOTE 9 - NET ASSETS RELEASED FROM RESTRICTIONS

During the year, net assets were released from donor restrictions by incurring expenses satisfying the restricted program purposes:

| Description | Amount |
|---|---|
| Capital improvements | $ 23,764 |
| Scholarships | 19,387 |
| Professional development and education | 18,218 |
| Total | $ 61,369 |

# THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2010

TOGETHER WITH INDEPENDENT AUDITORS' REPORT

**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2010

CONTENTS

Taylor, Roth and Company, PLLC
Certified Public Accountants
working exclusively with nonprofit organizations

February 8, 2011

## INDEPENDENT AUDITORS' REPORT

Board of Directors
The Acorn School for Early Childhood Development
Boulder, Colorado

We have audited the accompanying statement of financial position of **The Acorn School for Early Childhood Development** (a Colorado nonprofit corporation) as of December 31, 2010, and the related statements of activities, functional expenses, and cash flows for the year then ended. These financial statements are the responsibility of The Acorn School for Early Childhood Development's management. Our responsibility is to express an opinion on these financial statements based on our audit. Information for the year ended December 31, 2009, is presented for comparative purposes only and was extracted from the financial statements presented by net asset class for that year, on which an unqualified opinion dated February 17, 2010, was expressed.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The Acorn School for Early Childhood Development as of December 31, 2010, and the changes in its net assets and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Taylor Roth & Company, PLLC

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## THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT

### STATEMENT OF FINANCIAL POSITION
### DECEMBER 31, 2010
### (WITH COMPARATIVE TOTALS FOR 2009)

| | 2010 | 2009 |
|---|---|---|
| Assets | | |
| Cash and cash equivalents - unrestricted | $ 58,753 | $ 84,209 |
| Cash and cash equivalents - temporarily restricted | - | 2,863 |
| Accounts receivable | 8,138 | 9,237 |
| Grants receivable | 10,000 | 35,000 |
| Prepaid expenses | 11,554 | 13,681 |
| Investments (Note 3) | 92,558 | 92,248 |
| Property and equipment (Note 4) | 517,719 | 482,465 |
| Total assets | $ 698,722 | $ 719,703 |
| Liabilities and net assets | | |
| Liabilities | | |
| Accounts payable | $ 16,232 | $ 6,785 |
| Accrued payroll costs | 21,212 | 18,917 |
| Deferred revenue | 24,180 | 14,500 |
| Mortgage note payable (Note 5) | 225,866 | 235,235 |
| Commitments (Note 6) | | |
| Total liabilities | 287,490 | 275,437 |
| Net assets | | |
| Unrestricted | | |
| Operating | 88,279 | 128,154 |
| Board designated cash reserve fund | 31,100 | 31,019 |
| Net investment in fixed assets | 291,853 | 247,230 |
| Temporarily restricted | - | 37,863 |
| Total net assets | 411,232 | 444,266 |
| Total liabilities and net assets | $ 698,722 | $ 719,703 |

The accompanying notes are an integral part of these financial statements

**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED DECEMBER 31, 2010
(WITH COMPARATIVE TOTALS FOR 2009)

| | 2010 | | | 2009 |
|---|---|---|---|---|
| | Unrestricted | Temporarily Restricted | Total | Total |
| Revenue and other support | | | | |
| Tuition | $ 735,577 | $ - | $ 735,577 | $ 752,094 |
| Grants | - | 60,600 | 60,600 | 74,340 |
| Contributions | 12,380 | - | 12,380 | 15,577 |
| Fees | 10,833 | - | 10,833 | 9,840 |
| Special event income | 10,190 | - | 10,190 | 9,956 |
| Food program | 10,025 | - | 10,025 | 10,228 |
| Insurance proceeds (Note 7) | - | | - | 19,633 |
| Other | 3,927 | - | 3,927 | 7,479 |
| In-kind contributions (Note 8) | 8,541 | - | 8,541 | 9,616 |
| Net assets released from restrictions (Note 9) | 98,463 | (98,463) | - | - |
| Total revenue and other support | 889,936 | (37,863) | 852,073 | 908,763 |
| Expense | | | | |
| Program services | 793,888 | - | 793,888 | 741,109 |
| Supporting services | | | | |
| Management and general | 62,863 | - | 62,863 | 72,457 |
| Fund-raising | 28,356 | - | 28,356 | 26,763 |
| Total expense | 885,107 | - | 885,107 | 840,329 |
| Change in net assets | 4,829 | (37,863) | (33,034) | 68,434 |
| Net assets, beginning of year | 406,403 | 37,863 | 444,266 | 375,832 |
| Net assets, end of year | $ 411,232 | $ - | $ 411,232 | $ 444,266 |

The accompanying notes are an integral part of these financial statements

**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

STATEMENT OF FUNCTIONAL EXPENSES
FOR THE YEAR ENDED DECEMBER 31, 2010
(WITH COMPARATIVE TOTALS FOR 2009)

| | 2010 | | | | 2009 |
|---|---|---|---|---|---|
| | | Supporting Services | | | |
| | Program Services | Management and General | Fund-raising | Total | Total |
| Salaries | $ 524,229 | $ 39,380 | $ 17,911 | $ 581,520 | $ 543,356 |
| Payroll taxes and benefits | 111,173 | 8,352 | 3,798 | 123,323 | 115,001 |
| Supplies | 36,141 | 1,188 | 1,816 | 39,145 | 37,313 |
| Food | 23,056 | - | - | 23,056 | 21,857 |
| Maintenance | 17,678 | 1,328 | 604 | 19,610 | 16,787 |
| Education | 18,703 | - | - | 18,703 | 16,385 |
| Interest | 15,106 | 1,135 | 516 | 16,757 | 15,848 |
| Professional services | 540 | 5,523 | 2,100 | 8,163 | 11,097 |
| Utilities | 7,279 | 547 | 249 | 8,075 | 7,879 |
| License/dues/fees | 5,399 | 406 | 184 | 5,989 | 6,314 |
| Insurance | 2,823 | 1,915 | 94 | 4,832 | 5,097 |
| Telephone | 4,271 | 321 | 146 | 4,738 | 3,215 |
| Equipment | 3,644 | 274 | 124 | 4,042 | 2,112 |
| Staff development | 2,698 | 203 | 92 | 2,993 | 3,114 |
| Travel | 1,652 | 125 | 56 | 1,833 | 1,333 |
| Advertising | 1,647 | 124 | 56 | 1,827 | 1,133 |
| Gifts | 1,438 | 108 | 49 | 1,595 | 4,599 |
| Printing | 1,127 | 84 | 38 | 1,249 | 1,126 |
| Bad debt | - | 703 | - | 703 | 561 |
| Property damage repair | - | - | - | - | 12,642 |
| All other | 1,917 | 143 | 66 | 2,126 | 728 |
| | 780,521 | 61,859 | 27,899 | 870,279 | 827,497 |
| Depreciation | 13,367 | 1,004 | 457 | 14,828 | 12,832 |
| Total | $ 793,888 | $ 62,863 | $ 28,356 | $ 885,107 | $ 840,329 |

The accompanying notes are an integral part of these financial statements

**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED DECEMBER 31, 2010
(WITH COMPARATIVE TOTALS FOR 2009)

| | 2010 | 2009 |
|---|---|---|
| Cash flows from operating activities | | |
| Change in net assets | $ (33,034) | $ 68,434 |
| Adjustments to reconcile change in net assets to net cash provided by operating activities | | |
| Depreciation | 14,828 | 12,832 |
| Donated fixed assets | - | (975) |
| Changes in operating assets and liabilities | | |
| (Increase)decrease in accounts receivable | 1,099 | (2,565) |
| (Increase)decrease in grants receivable | 25,000 | (18,000) |
| (Increase)decrease in prepaid expenses | 2,127 | (1,969) |
| Increase(decrease) in accounts payable | 9,447 | 3,594 |
| Increase(decrease) in payroll accruals | 2,295 | 3,208 |
| Increase(decrease) in deferred tuition | 9,680 | (2,695) |
| Net cash provided(used) by operating activities | 31,442 | 61,864 |
| Cash flows from investing activities | | |
| (Additions) in investments | - | (92,000) |
| (Reinvestment) of earnings | (310) | (248) |
| Purchase of fixed assets | (50,082) | (58,738) |
| Net cash provided(used) by investing activities | (50,392) | (150,986) |
| Cash flows from financing activities | | |
| (Repayment) on mortgage note | (9,369) | (5,787) |
| Net cash provided(used) by financing activities | (9,369) | (5,787) |
| Net increase(decrease) in cash and cash equivalents | (28,319) | (94,909) |
| Cash and cash equivalents, beginning of year | 87,072 | 181,981 |
| Cash and cash equivalents, end of year | $ 58,753 | $ 87,072 |
| Supplemental disclosure of information: | | |
| Cash paid during the period for interest | $ 16,757 | $ 15,848 |

The accompanying notes are an integral part of these financial statements

**THE ACORN SCHOOL FOR EARLY CHILDHOOD DEVELOPMENT**

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2010

## NOTE 1 - NATURE OF ACTIVITIES

The Acorn School for Early Childhood Development (the Organization) was established to provide a model of high quality childcare and be an advocate for high childcare standards. The essence of the Organization is primary care giving. Primary care giving provides continuity of care by matching children with teachers who remain with them from infancy through pre-kindergarten. The Organization is supported primarily through tuition and augmented by private foundation grants.

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND PROCEDURES

1. Basis of Accounting

   The financial statements of the Organization have been prepared on the accrual basis of accounting and accordingly reflect all significant receivables, payables, and other liabilities.

2. Basis of Presentation

   The Organization is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

3. Cash and Cash Equivalents

   The Organization considers all unrestricted highly liquid investments with an initial maturity of three months or less to be cash equivalents.

4. Restricted and Unrestricted revenue

   Contributions received are recorded as increases in unrestricted, temporarily restricted, or permanently restricted net assets, depending on the existence and/or nature of any donor restrictions.

   The Organization reports gifts of land, buildings, and equipment as unrestricted support unless the explicit donor stipulations specify how the donated assets must be used. Gifts of long-lived assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire long-lived assets are reported as restricted support. Absent donor stipulations regarding how long those long-lived assets must be maintained, the Organization reports expirations of donor restrictions when the donated or acquired long-lived assets are placed in service.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND PROCEDURES (Continued)

5. Accounts Receivable

No allowance for doubtful accounts has been established. The Organization believes all accounts will be collected.

6. Capitalization and Depreciation

The Organization follows the practice of capitalizing all expenditures for property and equipment in excess of $500. The fair value of donated assets is similarly capitalized. Depreciation of property and equipment is provided over the estimated useful lives of the respective assets on a straight-line basis. Estimated useful lives of furniture and equipment range from 3 to 5 years. Building and improvements are being depreciated over 25 years.

7. Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

8. Income Taxes

The Organization has received an Internal Revenue Service exemption from federal income taxes under Section 501(c)(3). Accordingly, no provision or liability for income taxes has been provided in the accompanying financial statements.

9. Functional Reporting of Expenses

For the year ended December 31, 2010, the costs of providing the various programs and other activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

10. Summarized Prior-Year Information

The financial statements include certain prior-year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with generally accepted accounting principles. Accordingly, such information should be read in conjunction with the Organization's financial statements for the year ended December 31, 2009, from which the summarized information was derived.

11. Subsequent events

Management has evaluated subsequent events through February 8, 2011, the date the financial statements are available to be issued.

NOTE 3 - INVESTMENTS

At year-end, investments consisted of two certificates of deposit. Investments are stated at fair value. Interest income for the year was $401.

NOTE 4 - PROPERTY AND EQUIPMENT

At year-end, property and equipment consisted of:

| Description | Amount |
|---|---|
| Land | $ 257,274 |
| Building and improvements | 331,026 |
| Furniture and equipment | 44,951 |
| Total | 633,251 |
| Less: accumulated depreciation | (115,532) |
| Net property and equipment | $ 517,719 |

Depreciation expense for the year was $14,828.

NOTE 5 - MORTGAGE NOTE PAYABLE

In 2009, the Organization refinanced a mortgage note payable totaling $235,235. The note is collateralized by property located in Boulder, Colorado. The interest rate is 7.13%. The note matures August 13, 2019. The future scheduled maturities are:

| Year | Amount |
|---|---|
| 2011 | $ 14,632 |
| 2012 | 15,711 |
| 2013 | 16,869 |
| 2014 | 18,111 |
| 2015 and after | 160,543 |
| Total | $ 225,866 |

NOTE 6 - COMMITMENTS

The Organization has acquired a copier under operating lease arrangements. The future scheduled minimum lease payments are:

| Year | Amount |
|---|---|
| 2011 | $ 3,348 |
| 2012 | 3,348 |
| 2013 | 3,348 |
| 2014 | 3,348 |
| 2015 | 2,790 |
| Total | $ 16,182 |

NOTE 7 - INSURANCE PROCEEDS

During 2009, the Organization was reimbursed by their insurance company for significant property damage and loss of tuition income caused by a sewer back-up.

NOTE 8 - IN-KIND CONTRIBUTIONS

Donated goods and services are reflected in the accompanying statements at their estimated values at date of receipt. Donated goods and services amounted to:

| Description | Amount |
|---|---|
| Classroom supplies | $ 8,541 |

NOTE 9 - NET ASSETS RELEASED FROM RESTRICTIONS

During the year, net assets were released from donor restrictions by incurring expenses satisfying the restricted program purposes:

| Description | Amount |
|---|---|
| Scholarships | $ 40,000 |
| Professional development and education | 35,000 |
| Capital improvements | 23,463 |
| Total | $ 98,463 |

NOTE 10 - PENSION PLAN

The Organization has adopted a retirement plan under the Internal Revenue Service Code section 401(k). Employees may make contributions to the plan up to the maximum amount allowed by the IRS if they wish. The Organization, at this point does not contribute to the plan. Administrative expense for the plan for the year totaled $1,013.

# Costs before opening date of Wilderness Place Project

Inputs

**Costs:**

| | | | | | |
|---|---|---|---|---|---|
| Cost purchasing building | | | | | |
| Purchase price | | $ | 2,030,000 | Under contract | |
| Closing costs | 5% | $ | 101,500 | Legal, mortgage costs, inspections, etc | |
| Mortgage insurance | | | | | |
| | | | | | |
| Costs renovations | | | | | |
| Playground | | $ | 155,000 | *45,000 playground allowance in estim | |
| Inside renovation- first floor | | $ | 558,097 | Initial bid contractor, will get more bids | |
| Inside renovation - second floor | | $ | 50,000 | Initial estimate | |
| Equipment | | $ | 50,000 | Inside equipment | |
| Costs (excl. financing) until opening doors | | $ | 50,000 | Overhead | |
| Contingency | 10% | $ | 86,310 | | |
| | | | | | |
| Costs financing during building: | | $ | 31,500 | assuming: | $ 700,000 |
| | | | | | 6% |
| | | | | Assuming | 9 |
| Total costs renovations: | | $ | 3,112,407 | (estimate based on esti | |

**Fund raising**

| | | | | |
|---|---|---|---|---|
| Worthy Cause 2010 | Awarded | $ | 200,000 | |
| Qualistar | Likely | $ | 25,000 | Application Sept 2011 |
| Kaboom | Likely | $ | 100,000 | Application Sept 2011 |
| Worthy Cause 2009 Mapleton | Likely | $ | 700,000 | (the original "Mapleton mon |
| EET | Likely | $ | 960,000 | Remainder of EET money |
| Jared Polis | Likely | $ | 100,000 | (also, apply for $45K/yr ope |
| Temple Buell | Likely | $ | 210,000 | Applied Aug 2011 |
| Rose | Likely | $ | 50,000 | Application Sept 2011 |
| Daniels Fund | Likely | $ | 200,000 | Application Sept 2011 |
| Private donations | | $ | 100,000 | **estimate** |
| Total funds raised: | | $ | 2,645,000 | |

**Note**: Our current financial analysis is based on an EET grant of $960,292 from the City of Boulder. If the City Council were to grant the full remaining funds of $1,184,958, it would provide The Acorn School with extra cash flows of about $16,200 per year. This would increase Acorn's annual scholarship budget at the Wilderness Place thus making high quality early childhood education accessible for more than thirty additional low income Boulder families.

| | | | |
|---|---|---|---|
| **Mortgage needed:** | | $ 467,407 | |
| | Mortgage rate | 6% | |
| | Term: | 30 | |
| | Monthly payment: | $2,802.34 | per month |

# Attachment D

| | | | | |
|---|---|---|---|---|
| Property taxes | exempt | $ 0 | | per month |
| Property insurance | | $ 250 | | per month |
| | | | | |
| Total mortgage payments | | $3,052.34 | | per month |
| Total mortgage payments one year | | $36,628.07 | | |
| | | | | |
| | Tax rate on profits leases | 40% | | (likely only small profit during current l |
| **Estimated Lease information:** | | | | |
| | 2012 estimated lease income | $19,596.00 | 2400 sq ft | Paradigm publising lease through April |
| | | $10,473.00 | 6500 sq ft | Boulder Wind lease through 3/31 (calcu |
| | TOTAL current leases | $30,069.00 | | |
| | | $10,000.00 | (see below for range) | |
| | | $10,000-$20,000 | 6500 sq ft | Additional second story lease potential |
| | TOTAL for 2012 | $40,069-$50,069 | | |
| | | | | |
| | 2013 estimated lease income | $20,183.00 | 2400 sq ft | Paradigm publising lease through April |
| | | $26,000.00 | 6500 sq ft | potential leases with partner agencies a |
| | TOTAL for 2013 | $46,183.00 | | |
| | | | | |
| | 2014 estimated lease income | $20,788.00 | | Paradigm publising lease through April |
| | | $26,000.00 | | potential leases with partner agencies a |
| | TOTAL for 2014 | $46,788.00 | | |
| | | | | |
| | TOTAL for 2015 | $35,600.00 | 8,900 square feet at $4 per foot | |

*these lease numbers are only for the second floor. We are assuming we will get very little lease money from Head Start.
*currently the triple net charge is $4.10 per square foot and is not included in the lease amounts
* current leases vary in price from $7.90-$8.50 per square foot. Offering leases to partner agencies at $2-$4 per square foot is well below market rate.

| Year | Mortgage Expense | Lease Income | Difference (out of pocket for Acorn) | |
|---|---|---|---|---|
| **2012** | $36,628.07 | $40,069 | $3,440.93 | (negative means building is a "cost") |
| **2013** | $36,628.07 | $46,183 | $9,554.93 | |
| **2014** | $36,628.07 | $46,183 | $9,554.93 | |
| **2015** | $36,628.07 | $35,600 | ($1,028.07) | |

.

ıate
s

loan at
(line of credit, interest only)
months
nated $ need during construction, see cash flow sheet)

| | Decision date |
|---|---|
| | Done |
| | 10/15/11 |
| | 12/1/11 |
| ıey", very likely) | 10/1/11 |
| | 10/4/11 |
| er. funds from foundation) | 11/1/11 |
| | 10/1/11 |
| | 2/1/12 |
| | 10/15/11 |
| | Longer period |

leases)

2015
ulated $3,491 for 3 months)

to partner agencies after 4/1/2012

2015, includes 3% yearly rate increase
at $4/sqft

2015, includes 3% yearly rate increase
at $4/sqft

cc: Carl

Attachment E

# **Boulder Valley** Public Schools

*Board of Education:*
Helayne Jones, Ed.D., President
Angelika Schroeder, Ph.D., Vice President
Teresa Steele, Treasurer
Jean Paxton
Ken Roberge
Lesley K. Smith, Ph.D.
Patti J. Smith

George F. Garcia, Ed.D.
*Superintendent*

May 26, 2006

Frank Bruno, City Manager
City of Boulder
P.O. Box 791
Boulder, CO 80306

Dear Frank:

I was pleased to receive an update regarding an initial meeting with City of Boulder (City) staff and Boulder Valley School District (BVSD) representatives to discuss potential use of Educational Excise Tax (EET) funds. Our two entities have a strong history of partnering to meet the needs of students and community members in a manner to maximize our resources. I look forward to further collaboration with the EET collections. BVSD staff has reviewed potential projects which serve our students and Boulder residents with the same success as our previous joint initiative; the synthetic fields and tracks at Boulder and Fairview high schools.

I also understand that City staff is preparing for a comprehensive review of the City of Boulder Recreation Master Plan and is also nearing an annual update of the City of Boulder Capital Improvement Plan. As you know, BVSD has recently completed a very exhaustive review of our facilities, and the Boulder Valley Board of Education may choose to ask the voters to support a capital bond election in the near future. It appears that these events could serve as a strategic opportunity for the long-term deployment of EET funds but, admittedly, they also could take some time to process.

BVSD proposals to distribute EET funds are sensitive to the unknowns associated with our respective efforts and the need to be strategic with the EET disbursement. However, I hope that it would be possible to consider some items which are not tied directly to a BVSD bond election or the long-term planning by the City. Among the ideas presented in the proposal:

**Athletic field lights at Boulder High School (BHS) and at Fairview High School (FHS)**: The synthetic fields at BHS and FHS have been a resounding success and have seen substantially higher use than previously anticipated. BHS has received a

6500 Arapahoe, P.O. Box 9011
Boulder, Colorado 80301
303-447-5114

preponderance of this use and it often extends into the evening hours due to the field lights. In addition, these lights are out-dated and have extensive 'spill-over' to the central Boulder neighbors (the lights do not currently conform to the City's light ordinance), and in retrospect, should have been replaced during the synthetic field construction. This could be considered a phase II of the former project. Our proposal would suggest replacing the current lights at Recht Field with more efficient and more accurate lights and add 'low profile' lights at FHS. The latter arrangement would allow for band practice (which currently uses noisy generators) and for small spectator sports to compete. These lights would allow some limited relief to the BHS field use, but the FHS facility cannot host any sizeable athletic events due to inadequate seating and restrooms.

**Playground enhancements at Boulder elementary school playgrounds**: Staff has identified seven elementary school playgrounds in Boulder which are extensively utilized as community parks, too. Our own assessments indicate that these play areas need updated playground structures and improved drainage/surfacing. In addition, we have recently partnered with the City of Lafayette to create Colorado's first fully-accessible playground with excellent results. We would like to extend that philosophy into Boulder and the EET funds may be a perfect opportunity to fund these enhancements. District capital funds would provide the basic upgrades noted earlier, and the EET funds could make these sites accessible to physically handicapped children. Our proposal would allow us to partner on the design of these playgrounds to include ADA enhancements funded through EET funds.

**Multi-use synthetic fields**: The need for additional multi-use fields and the success of the BVSD projects lead to the proposal to add more fields to our inventory. BVSD has several sites geographically dispersed in the city which could provide ample access to community users. We also have considerable experience with installation and design, and the advantages are immediate. This proposal also coincides with the renegotiation of the Master Joint Use Agreement between BVSD and the City on the cooperative use of school-district properties for park and recreational purposes. This may provide an opportunity to identify potential sites for maximum benefit.

**Valmont Park**: We continue to have strong interest in this project but understand the significant planning and processing which still remains. We will continue to provide support and assistance to this initiative as it moves forward, but we wish to avoid sacrificing current projects for one which may be well down the road.

These few examples do not represent an exhaustive list of potential projects, but rather reflect projects which maximize the benefit to students and Boulder residents. These recreational opportunities provide for higher student use, are respectful to environmental concerns (water/fertilizer use, light pollution, etc.), offer leadership with physically handicapped access, and lend themselves seamlessly to community use, too.

Again, thank you and City staff for taking the time to meet with BVSD and listen to our proposals. It is my hope that this discussion will lead to another productive City of Boulder/BVSD partnership. As always, please feel free to contact me at any time.

Sincerely,

George F. Garcia, Ed.D.
Superintendent

c: Robert Hammond
Carl Castillo
Joe Sleeper
Don Orr

se/636

# MATTERS FROM THE CITY ATTORNEY – ITEM 7A

**C I T Y O F B O U L D E R**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 4, 2011**

**AGENDA TITLE:** Consideration of a motion authorizing the city manager to enter into a settlement agreement in the litigation brought against the city and its employees by Sylvia Asten.

**PRESENTERS:**

Jane Brautigam, City Manager
Tom Carr, City Attorney
Mark Beckner, Chief of Police

## EXECUTIVE SUMMARY:

This matter arises out of a lawsuit brought in the United States District Court for Colorado against the city and two city police officers.

Settlement discussions conducted by United States Magistrate Judge Hegarty resulted in the proposed payment of a settlement amount of $80,000 to the plaintiff, Sylvia Asten, and dismissal of all defendants. The city manager and the city attorney recommend approval of the settlement. The police chief, the risk manager and the officers involved also support this settlement proposal.

Because the amount of the proposed settlement exceeds $10,000, City Council approval of the proposed settlement is necessary pursuant to section 2-2-14(c), B.R.C. 1981.

**STAFF RECOMMENDATION:**

**Suggested Motion Language**:
Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the city manager to enter into a settlement agreement in the litigation brought against the city and its employees by Sylvia Asten for payment of $80,000 in exchange for a general release of all claims against the city and its employees.

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

- Economic: Not applicable
- Environmental: Not applicable
- Social: The resolution of disputes generally provides a social benefit.

**OTHER IMPACTS:**

- Fiscal: The city is self insured for liability claims and lawsuits up to $250,000. To date the city has paid approximately $100,000 in fees and costs which have been paid from the Property and Casualty Fund which was established and funded for the purpose of paying for claims and the defense of such claims. The city will pay the $80,000 settlement out of the Property and Casualty Fund.

- Staff time: Settlement of the matter would avoid the need for trial and related expenditures of outside counsel costs and fees in addition to city staff time associated with litigation.

**BOARD AND COMMISSION FEEDBACK:** Not Applicable

**PUBLIC FEEDBACK:** Not Applicable

**BACKGROUND:**

This case concerns the application of a Taser to control Ms. Asten. Ms. Asten suffers from mental illness. In the early morning hours of October 1, 2006, police responded to a call reporting that she was out in the street and screaming. Two officers subdued her and transported her to Boulder Community Hospital, where she was treated and released. Later that same day, two different officers responded to a call reporting that Ms. Asten was in the street screaming again. When they arrived, Ms. Asten was in her home with the door open, but with the screen door shut. She was holding a wine glass in her hand. The officers approached and attempted to speak with Ms. Asten. The officers were unable to understand her responses. She tossed the contents of the wine glass in the face of one of the officers and broke the glass on the doorframe. The officers became concerned for Ms. Asten's safety and asked her to drop the wine glass. After she refused twice to drop the glass, the officers attempted to enter her house. The screen door was locked. One of the officers cut a hole in the screen. The officers did not attempt to unlock the screen door because Ms. Asten was holding the broken glass and behaving irrationally. Accordingly, an officer deployed his Taser and subdued Ms. Asten with a single discharge.

Ms. Asten brought a federal civil rights suit. The city moved for summary judgment dismissing the case in September 2010. There has been no decision on that motion. Prior to consummation of the proposed settlement, trial was set for October 3, 2011.

Although an initial mediation was unsuccessful, Magistrate Judge Michael Hegarty continued settlement discussions throughout the summer. Through several weeks of discussion, the parties reached an agreement to settle the case for the amount of $80,000.

**ANALYSIS:**

Below are the basic elements of the settlement:

Prior to the final settlement, the officers will be dismissed from the case. This is the standard practice in police cases. The officers are dismissed so that individual professional law enforcement careers are not adversely affected.

The final settlement will thereafter be between the city and Ms. Asten. The city has agreed to pay Ms. Asten $80,000 in exchange for a general release for any and all liability associated with the events surrounding the time in which Ms. Asten was Tasered.

**MATRIX OF OPTIONS:**

Council has the option of approving or rejecting the proposed settlement. If the settlement is rejected, the matter will be placed back on a litigation track.

## MATTERS FROM THE CITY ATTORNEY – ITEM 7B

**C I T Y O F B O U L D E R**
**CITY COUNCIL AGENDA ITEM**

**MEETING DATE: October 4, 2011**

**AGENDA TITLE:** Consideration of a motion authorizing the city manager to enter into settlement agreements in the disputes with Honeywell International, Inc. and Tusco, Inc. for their roles in the environmental remediation efforts on the Valmont Butte property.

**PRESENTERS:**

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Tom Carr, City Attorney
David J. Gehr, Deputy City Attorney
Maureen Rait, Executive Director of Public Works

## EXECUTIVE SUMMARY:

The city has been working on parallel tracks to: (1) deal in a responsible manner with environmental remediation requirements at the city's Valmont Butte property, and (2) discover potentially responsible parties for the environmental contamination associated with the Valmont Butte property. The city has retained Elizabeth Temkin and Alison Thayer of the law firm Temkin, Wielga and Hardt, LLP and Environmental Engineer Paul Casey of Casey Resources, Inc. to identify the scope of the environmental issues on the property, and to identify and bring previous property owners into the discussion about how to remediate the hazardous materials left on the property in the past.

The city identified two potentially responsible parties that were former owners and operators of milling operations on the property. Honeywell International, Inc., the successor to Allied Chemicals, Inc., operated the property from 1939 to 1976. The property was thereafter purchased by Tusco, Inc. Tusco leased portions of the property to a variety of businesses that were involved in the business of mining during its ownership from 1976 until it sold the property in 1992.

The city has been working with these parties to develop and fund a cleanup plan for the property. The city has not filed lawsuits, but instead the parties have entered into a mediated alternative dispute resolution process.

Section 2-2-14(c), B.R.C. 1981 authorizes the city attorney to initiate and pursue actions to address damages to city property. Given the community interest in this property, the city attorney and city manager are requesting authorization from the council to settles these disputes.

Additionally, this memorandum provides an update regarding approval of the city's Limited Impact Special Use Review application from Boulder County. The Boulder County Board of Commissioners imposed additional conditions, mostly in the area of historic preservation. A copy of the County's decision is included in Attachment A.

The city maintains a web site containing current status, next steps and key documents relating to the environmental conditions and activities at the Valmont Butte property at: www.bouldercolorado.gov/utilities/projects/valmontbutte.

**STAFF RECOMMENDATION:**

**Suggested Motion Language**:

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

Motion to authorize the city manager to enter into settlement agreements in the disputes with Honeywell International, Inc. and Tusco, Inc. for their roles in the environmental remediation efforts on the Valmont Butte property, subject to the terms and conditions described in this memorandum.

**COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:**

- Economic: N/A
- Environmental: Settlement of this dispute will allow the city to commence clean up and remediate existing environmental contamination. The cleanup plan will remediate past adverse action associated with waste products stored on the property.
- Social: The cleanup plan will help ensure that the basic health and safety needs of all residents are met. There is also a historic preservation component of the Voluntary Cleanup Plan that is intended to recognize, respect and value our local cultural heritage.

**OTHER IMPACTS:**

- Fiscal: It is anticipated that the total costs to implement the cleanup plan will be approximately $5 million. Apportionment of the costs for this effort have been allocated based on the interests that each city fund has in the property: General Fund (fire training center), 50%; Wastewater Utility (bio-solids facility), 40% and Open Space and Mountain Parks (environmental preservation / open space), 10% .

The General Fund portion is proposed to be completed by an inter-fund loan from the Fleet Replacement Fund (FRF) to the Facilities and Asset Management Fund. The recommended term is ten years at an interest rate of three percent. Wastewater funding will come from a combination of the Wastewater CIP and a 2011 adjustment to base. OSMP will fund their portion from the OSMP capital improvements program.

- Staff time: Settlement of this matter would avoid the need for trial and related expenditures of outside counsel costs and fees in addition to city staff time associated with litigation.

**BACKGROUND:**

The city purchased the Valmont Butte property in 2000. (See property map in Attachment B.) The property is comprised of an abandoned ore milling complex and associated tailings ponds. The intent was to use the approximately 102 acre property for a composting facility associated with the wastewater utility and for a fire training center. Also, portions of the property, notably along the northern property boundary, were purchased for open space and natural values. After an extensive public process, City Council decided not to pursue the fire training facility or the composting uses on the property, and directed the staff to begin the process of identifying potentially responsible parties for the environmental contamination on the property.

Over the years, the property has been used for industrial, milling and debris disposal. Milling of mineral ore began on the property in the mid-1930s when gold ore was processed on the site. From 1941 to 1973 the mill complex was expanded and converted to process fluorspar and generated approximately 400,000 cubic yards of tailings. These fluorspar tailings contain naturally occurring radioactive materials and heavy metals, including lead and arsenic. These tailings were generally deposited within two tailings impoundments east of the mill complex, referred to as the primary and secondary tailings ponds.

From approximately 1977 through 1985, the mill was converted to process gold ore; during this time, an additional 45,000 cubic yards of tailings were deposited on top of the fluorspar tailings in the primary tailings pond. Milling uses were discontinued on the property in 1985, however the historic mill site and other associated structures remain. The property was utilized intermittently by various operators for industrial uses through September 2000 when it was purchased by the city. Since that time it has remain unused.

The federal Environmental Protection Agency (EPA) conducted a site investigation on the Valmont Butte property under its authority under the federal Comprehensive Environmental, Response, Compensation and Liability Act in 2004 -2005. The EPA hired URS Operating Services, Inc. to complete the site investigation on its behalf. URS prepared an Analytical Results Report which can be found on the city's Valmont Butte website. The report has been prepared in accordance with the EPA guidance for performing site inspections under CERCLA The report included a great deal of soil and water sampling and analysis from the property. In 2008, the EPA made a request to be reimbursed for its costs associated with this work when the city was in discussions with the Trust for Public Lands for the purchase of the property. Interest, employee, and other expenses from the EPA have continued to mount over the initial amount of $430,000. The last claim letter from February of this year had the claim at approximately $540,000.

The city now has a remediation plan that was approved by the Colorado Department of Public Health and the Environment (CDPHE) on September 1, 2010 as part of the city's Voluntary Cleanup Plan (VCUP) application for the property. The project proposes to complete remediation of soils impacted with heavy metals and low-level, naturally occurring radioactive materials to limit the risk of human and wildlife exposure. The cleanup plan seeks to remediate the tailings pond areas as well as 14 additional areas outside the tailings ponds that were discovered to have high lead concentrations. The remediation strategy is driven by the need to construct a properly engineered cap on the primary tailings pond and the need to properly manage mining residuals located outside the tailings pond area. Contaminated soils will be consolidated in the tailings pond, then covered by a new cap of soil and rock.

The County approved the city's implementation of the cleanup plan. It included a number of standard conditions related to transportation construction, operation and scheduling requirements, the requirements for weed control and revegetation plans, construction and maintenance, and approval of the cap rock replacement colors.

There were also requirements related to historic preservation on the property. The city must provide a revised grading plan, illustrating the protection of significant structures, the preservation of the existing site access road to the scale house and extending to the mill's ore bins, to the Land Use Department for review and approval.

After the work is completed, the city will submit an application to the County for landmark designation of the Mill Complex along with a portion of the property that includes these resources. The designation includes the following buildings and features be included in the landmark designation: the mill structure, water clock building, cistern, rail spur, scale house, concrete well, and the road to the scale house.

If feasible, the County asked that the pump house, storage tanks, fire hydrants, and office/lab/assay office buildings also be retained. These are less important buildings to the preservation efforts. For these buildings and structures, the County will approve an administrative process where, as the work commences, the city will confer with the County and the County will allow structures to be demolished based on the level of contamination in and around the structure, as well as its general structural integrity. It is anticipated that final approval of this preservation and demolition plan will be done as part of the building permit process.

After the environmental covenants with the CDPHE are revised, the city is required to apply for a landmark designation for the balance of the property, defined as the entire property excluding the Mill Complex (which is covered in the separate landmarking requirement) and the 12.5 acres constituting the primary tailings pond.

The purpose of this landmarking is to evaluate thoroughly the historical significance of the balance of the property based on its association with Native American inhabitants and tribes, the Valmont settlers, and the property's past mining and milling activities. Through this landmarking process, the County may exclude additional specific areas (such as the secondary tailings pond), but only if the areas are deemed not to meet the County's historic landmark designation criteria.

Once all approvals are in place, staff will commence implementation of the VCUP. Construction is expected to be completed in approximately six months.

**ANALYSIS:**

**Honeywell Settlement**

During 2010 and 2011, there have been five meetings between city, Honeywell and Tusco representatives to resolve the matters related to clean up of the property. Two meetings were unmediated during the first half of the year and resulted in the exchange of information related to the site and the cleanup plan. Since May, there were three mediations that were facilitated by the Judicial Arbiter Group (often referred to as "JAG"). There have also been a number of other less formal communications that were facilitated by the mediator. Judge Richard Dana, a former Boulder District Court judge and nationally recognized expert in the resolution of environmental disputes, served as the mediator.

Subject to final approval by the City Council and Honeywell management, the parties agreed on the following proposed settlement:

1. Honeywell agrees to fully resolve and satisfy the EPA claim ($500,000, plus interest) and to indemnify, defend, and hold the city harmless in that regard.

2. The city takes responsibility for its non-VCUP costs.

3. The parties agreed that the VCUP application was reasonable and that it will define the scope of the project.

4. The issue of liability will not be subject to further debate. One required element of a claim under the federal Comprehensive Environmental Response, Compensation, and Liability Act is proof that the person or company caused (was liable for) a release of a hazardous material. This element will be resolved through this settlement. Each party will effectively acknowledge some level of responsibility for releases of hazardous materials on the Valmont Butte property. If the city had to litigate this element, it would have to establish that one party or the other was the proximate cause of the environmental contamination. Once the issues of liability and proximate causation are determined, the question then moves to how much responsibility each party has for the damages to the property, through the release of hazardous materials or other causes.

5. On an interim basis, the city and Honeywell will be equally responsible for the costs for moving forward to implement and complete the approved VCUP. This arrangement will be used to fund the construction of the improvements described in the VCUP. The city and Honeywell will be partners in the clean up.

   This approach provides the city with upfront funding of 50 percent of the capital cost for construction of the remedy, instead of being forced to sue for reimbursement after the fact.

Once the project is completed, the parties can either live with the 50/50 split or resolve the final damages allocation in an abbreviated, mini-trial process. The mini-trial will be limited to a determination of how much each property owner was responsible for paying, based on the damages the property owner made to the property. Agreeing to a "mini-trial" approach will greatly limit legal and related expenses.

The city or Honeywell could litigate the allocation of responsibility, with either party having an upside of obtaining up to 85% of the cleanup costs. Both parties have agreed to accept responsibility for no less than 15% of the cleanup costs.

6. Honeywell's future responsibility, once allocation of the construction and operation and maintenance costs are complete, will be limited to any new issues or problems at the property that the city and Honeywell could not anticipate. Typical items that would allow reopening include previously unknown conditions, significant changes in the regulatory environment, or for some type of catastrophic failure of containment of the materials on the property.

7. The city reserves the right to use and develop the property for any lawful use consistent with the VCUP, subject to appropriate state and local permitting authorities.

**Tusco Settlement**

The city also has an agreement in principal to resolve its claims against Tusco Inc. for a payment of $200,000 in exchange for a general release of liability, subject to standard reopeners. Reopeners will allow the city to seek further response if information is received after the settlement of previously unknown site conditions, significant changes in the regulatory environment, or for some type of catastrophic failure of containment of the materials on the property. The $200,000 will be allocated in equal amounts to the city's costs and Honeywell's costs.

**Fund Apportionment and Future Use of the Property**

As noted above, the apportionment across city funds (General Fund, Wastewater Utility, and Open Space and Mountain Parks) has been approximately 50 percent, 40 percent and 10 percent respectively, based upon ownership of the land by fund. The ultimate use of the property has not yet been determined because the focus in recent years has been on the environmental remediation. It remains possible that the land will be used by all of the contributing entities, including the utility. Beyond the implementation of the VCUP, the city's discussion about the extent to which funds should be reimbursed should be scheduled when the ultimate use of this property is determined by the city.

## MATRIX OF OPTIONS:

Council has the option of approving or rejecting the proposed settlement. If the settlement is rejected, the matter will likely be placed on a litigation track.

**Attachments:**

A - Boulder County Land Use Approval Resolution for the city's limited impact land use approval for the Valmont Butte property

B - Map of Valmont Butte property.

Boulder County

# Land Use

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
**Mailing Address:** P.O. Box 471 • Boulder, Colorado 80306 • **www.bouldercounty.org**

August 15, 2011

City of Boulder Fleet Services
Attn: Joe Castro
PO Box 791
Boulder, CO 80306

Dear Applicant:

This letter certifies that a hearing of the Board of County Commissioners, County of Boulder, State of Colorado, was duly called and held on June 27, 2011, in consideration of the following request:

**Docket LU-11-0005: CITY OF BOULDER VALMONT BUTTE PROPERTY REMEDIATION**

| | |
|---|---|
| Request: | Request for Limited Impact Special Use Review for an estimated 304,000 cubic yards of earthwork and demolition of selected industrial structures associated with the proposed remediation of a former mill, industrial and debris disposal site. |
| Location: | At 3000 63rd Street and 6680 Valmont Drive, approximately 1.5 miles east of the intersection of Valmont Road and Foothills Parkway, south of and adjacent to Valmont Road and northeast and adjacent to 63rd Street, in Sections 22 & 23, Township 1N, Range 70W. |
| Zoning: | Agricultural (A) and General Industrial (GI) |
| Applicant: | Joe Castro, City of Boulder |
| Agent: | Paul Casey, Casey Resources, Inc. |

The Board of County Commissioners has determined that the request is CONDITIONALLY APPROVED, subject to the terms in the attached resolution.

Your approval may have included certain conditions that must be met. Please contact the planner who processed your docket for more information on any requirements that will need to be met.

If you have any additional questions, please feel free to contact me at (303) 441-3930 or via email at bharding@bouldercounty.org

Sincerely,

Bryan Harding, Planner II
Planning Division

c.c. Paul Casey, Casey Resources, Inc.

**RESOLUTION 2011-76**

**A RESOLUTION CONDITIONALLY APPROVING BOULDER COUNTY LAND USE DOCKET #LU-11-0005 ("CITY OF BOULDER - VALMONT BUTTE PROPERTY REMEDIATION"): A REQUEST FOR A LIMITED IMPACT SPECIAL USE REVIEW FOR GRADING INVOLVING THE MOVEMENT OF AN ESTIMATED 304,000 CUBIC YARDS OF EARTH MATERIAL AND DEMOLITION OF SELECTED INDUSTRIAL STRUCTURES ASSOCIATED WITH THE PROPOSED REMEDIATION OF A FORMER MILL AND INDUSTRIAL AND DEBRIS DISPOSAL SITE, PER THE VOLUNTARY CLEANUP PLAN APPROVED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, ON THE CITY OF BOULDER'S PROPERTY KNOWN AS THE "VALMONT BUTTE" PROPERTY, LOCATED APPROXIMATELY 1.5 MILES EAST OF THE INTERSECTION OF VALMONT ROAD AND FOOTHILLS PARKWAY, SOUTH OF AND ADJACENT TO VALMONT ROAD AND NORTHEAST OF AND ADJACENT TO 63RD STREET, IN SECTIONS 22 AND 23, T1N, R70W, UNINCORPORATED BOULDER COUNTY**

**WHEREAS,** the City of Boulder ("Applicant" or "City") has requested approval pursuant to Article 4 of the Boulder County Land Use Code ("the Land Use Code") for a limited impact special use permit for grading in excess of 500 cubic yards of earth material, to move approximately 304,000 cubic yards of earth material and demolish selected industrial structures as part of an environmental remediation effort (Voluntary Cleanup Plan, or "VCUP") approved on September 1, 2010 by the Colorado Department of Public Health and Environment ("CDPHE"), involving the approximately 103-acre property which is located as described in the caption to this Resolution, above, in the Agricultural and General Industrial Zoning Districts in unincorporated Boulder County; and

**WHEREAS,** the project area is located on two adjacent parcels that are owned by the City of Boulder and currently occupied by an abandoned ore milling complex and associated tailings pond sites, including a parcel at 3000 63rd Street identified by parcel identification number 146322400019 (25.92 acres), and a parcel at 6680 Valmont Drive identified by parcel identification number 146323000019 (76.30 acres) (collectively, "the Property"); and

**WHEREAS,** the project proposes to complete remediation of soils impacted with heavy metals and low-level, naturally occurring radioactive materials, to limit the risk of human and wildlife exposure; and

**WHEREAS,** milling of mineral ore began on the Property in 1936, when gold ore was processed on the site, and then, from 1941 to 1973, the mill complex was expanded and converted to process fluorspar, generating approximately 400,000 cubic yards of tailings which contain naturally occurring radioactive materials and heavy metals, including lead and arsenic; and

**WHEREAS,** the tailings were generally deposited within two impoundments east of the mill complex, that are referred to as the primary and secondary tailings ponds; and

**WHEREAS,** from approximately 1977 through 1985, the mill was converted to again process gold ore, and during this time an additional 45,000 cubic yards of tailings were deposited on top of the fluorspar tailings in the primary tailings pond; and

**WHEREAS,** after the cessation of mining activity the Property was utilized intermittently by various operators for industrial uses through September, 2000, when it was purchased by the City of Boulder, after which time the Property has remain unused and does not have an established principal use; and

**WHEREAS,** while milling uses were discontinued on the Property in 1985, the historic mill site and other associated structures remain; and

**WHEREAS,** in addition to the Property's historic significance in association with mining activities, Valmont Butte and the surrounding area, including the Property, have additional historic ties to Native American communities and to the original settlers of the Valmont area, with Valmont Butte being considered a sacred site among Native American tribes, and the surrounding areas understood to contain archaeological features and cultural resources linked to historic Native American inhabitants; and

**WHEREAS,** the Property is also adjacent to the Valmont Pioneer Cemetery, which dates to the late 1800's and is linked to the original settlers of the area; and

**WHEREAS,** in response to the Property's recognized historical and cultural values, the Boulder County Historic Preservation Advisory Board ("HPAB") held several public meetings to discuss the historical significance of the Property with the Applicant and to hear public comment regarding the remediation proposal; and

**WHEREAS,** the proposed project aims to remediate the tailings pond areas, as well as 14 additional areas outside the tailings ponds that were discovered to have high lead concentrations, with the remediation strategy being driven by the need to construct a properly engineered cap on the primary tailings pond, and to properly manage mining residuals located outside of the tailings pond area; and

**WHEREAS,** the 14 mining residual areas, totaling 15.6 acres, are planned to be excavated and placed within the confines of the primary tailings pond, and, once graded, the primary tailings pond area will capped with two feet of clean soil overlain by 1.5 feet of rock to prevent prairie dog migration onto the tailings pond area; and

**WHEREAS,** disturbed areas outside the tailings pond will be regraded to promote drainage and then be revegetated; and

**WHEREAS,** the remediation project will include the deconstruction of several buildings located on the Property, to reduce public health and safety concerns and/or to perform remediation work on soils around and beneath existing structures; and

**WHEREAS,** all proposed remediation work will be completed following the CDPHE-approved VCUP application, and is regulated under the CDPHE's Air Quality Control Division; and

**WHEREAS,** the above-described request was processed and reviewed as Boulder County Land Use Docket #LU-11-0005 ("the Docket"), all as further described in the Boulder County Land Use Department Planning Staff's Memorandum and written recommendation to the Boulder County Board of County Commissioners ("the Board") dated June 27, 2011, with its attachments ("the Staff Recommendation"); and

**WHEREAS,** on June 27, 2011, the Board held a duly-noticed public hearing on the Docket ("the Public Hearing"), at which time the Board considered the Staff Recommendation, and also considered the documents and testimony presented by the County Land Use Department Planning Staff, representatives of the Applicant, spokespersons for Historic Boulder, Rocky Mountain Peace and Justice Center, Rural Historic Valmont, Valmont Butte Heritage Alliance, and Valmont Cemetery Association, in addition to other members of the public being present to speak to the Docket, all as reflected on the Board's official record of the Public Hearing; and

**WHEREAS,** based on the Public Hearing, the Board finds that the Docket meets the criteria for special use approval for grading in excess of 500 cubic yards as set forth in Article 4-600 of the Land Use Code, and can be approved, subject to the conditions listed below.

**NOW, THEREFORE, BE IT RESOLVED** that the Docket is hereby approved, on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. **PRESERVATION OF HISTORIC AND CULTURAL RESOURSES**
   Mill Complex Landmarking
   a. ***Prior to issuance of building or grading permits,*** the Applicant shall provide to the Land Use Department for review and approval a revised grading plan illustrating

the protection of significant structures and the preservation of the existing site access road to the scale house and extending to the mill's ore bins. This plan should include a narrative clearly describing how determinations will be made regarding the potential to preserve existing structures deemed marginally important.

b. ***Upon completion of remediation work,*** the Applicant shall provide to the Land Use Department written verification that remediation work, not including revegetation, is complete.

c. ***Within four months after the CDPHE's revisions to the VCUP environmental covenants,*** the Applicant shall submit an application to the County under Article 15 of the Land Use Code for landmark designation of the Mill Complex along with a site area encompassing these resources. The buildings and features to be included in the landmark designation shall include:

- the mill structure
- water clock building
- cistern
- rail spur
- scale house
- concrete well
- road to the scale house

If feasible, the pump house, storage tanks, fire hydrants and office/lab/assay office buildings (#2 & #3) should also be retained. Additionally, the cistern should not be filled with dirt as proposed but protected and preserved through other methods.

Balance of Property Landmarking

***Within four months after the CDPHE's revisions to the VCUP environmental covenants,*** the Applicant shall apply under Article 15 of the Land Use Code for landmark designation for the balance of the Property, defined as the entire Property *excluding* the Mill Complex (which is covered in the separate landmarking required above), *and excluding* the 12.5 acres constituting the primary tailings pond. The purpose of this landmarking shall be to evaluate thoroughly the historical significance of the balance of the Property based on its association with Native American inhabitants and tribes, the Valmont settlers, and the Property's past mining and milling activities. Through this landmarking process the County may exclude specific areas of this balance of the Property (such as the secondary tailings pond), but only if deemed not to meet the Land Use Code's criteria for historic landmark designation.

Additional Conditions

Except as provided otherwise in this approval, the Applicant shall comply with all other recommendations of the Boulder County HPAB's referral letter dated June 9, 2011, which is part of the official Docket file, including but not limited to Discovery Plan requirements.

2. **TRANSPORTATION**

***Prior to issuance of building or grading permits,*** the Applicant shall provide to the County Transportation Department for review and approval an on-site road design that will support the expected vehicle traffic; information regarding proposed truck routes; and a traffic control/traffic management plan.

***Prior to issuance of building or grading permits,*** documentation of the existing conditions of Valmont Road and associated striping near the proposed access must be submitted to the Transportation Department. The Applicant must ensure that any damage or degradation of the roadway or striping is brought to existing conditions or better at the completion of the project.

Additionally, the Applicant must adhere to the following conditions regarding the use of Valmont Road for construction traffic during remediation efforts:

a. Construction schedule shall allow for construction traffic on roads only between the hours of 9:00am and 4:00pm, Monday through Friday.
b. A vehicle tracking pad must be installed per the Applicant's construction drawings at the Valmont Road access.
c. Daily street sweeping of Valmont Road is required.
d. The Applicant must verify the status of legal access to N. 63rd Street. Should legal access to N. 63rd Street be available, the Valmont Road access shall be restricted to use for construction vehicles only.

3. **RE-VEGETATION**

***Prior to issuance of building or grading permits,*** the Applicant shall submit to the Land Use Department for review and approval one copy of a Revegetation Plan indicating a final seed mix selection.

***One year from remediation work completion***, the full installation of the approved Revegetation Plan must be inspected and approved by the Land Use Department. All areas of exposed soil must be revegetated.

4. **WEED CONTROL**
***Prior to issuance of building or grading permits,*** the Applicant shall submit two copies of a Weed Control Plan for review and approval by the County Land Use Department and the Parks and Open Space Department. The Weed Control Plan should identify what County-listed noxious weeds are known to be on the Property, their location, and the proposed method of weed control. For assistance in the development of this plan the Applicant is encouraged to contact the County's weed management coordinator (at 303-678-6110) or the CSU Weed Extension Agent (at 303-776-4865).

5. **CAP ROCK COLOR REQUIREMENT**
***Prior to issuance of building or grading permits,*** the Applicant shall submit to the Land Use Department for review and approval, a sample of the proposed cap rock material.

   ***At the final inspection,*** the Land Use Department must inspect and verify that the approved color was used on the rock-capped area.

6. Future development on the Property shall comply with all applicable requirements of the Land Use Code.

7. The Applicant shall be subject to the terms, conditions, and commitments of record for the Docket.

A motion to approve the Docket (#LU-11-0005), as stated above, was made by Commissioner Domenico, seconded by Commissioner Toor, and passed by a 3-0 vote.

**ADOPTED** as a final decision on this 9th day of August, 2011.

**BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:**

Ben Pearlman, Chair

Cindy Domenico, Vice Chair

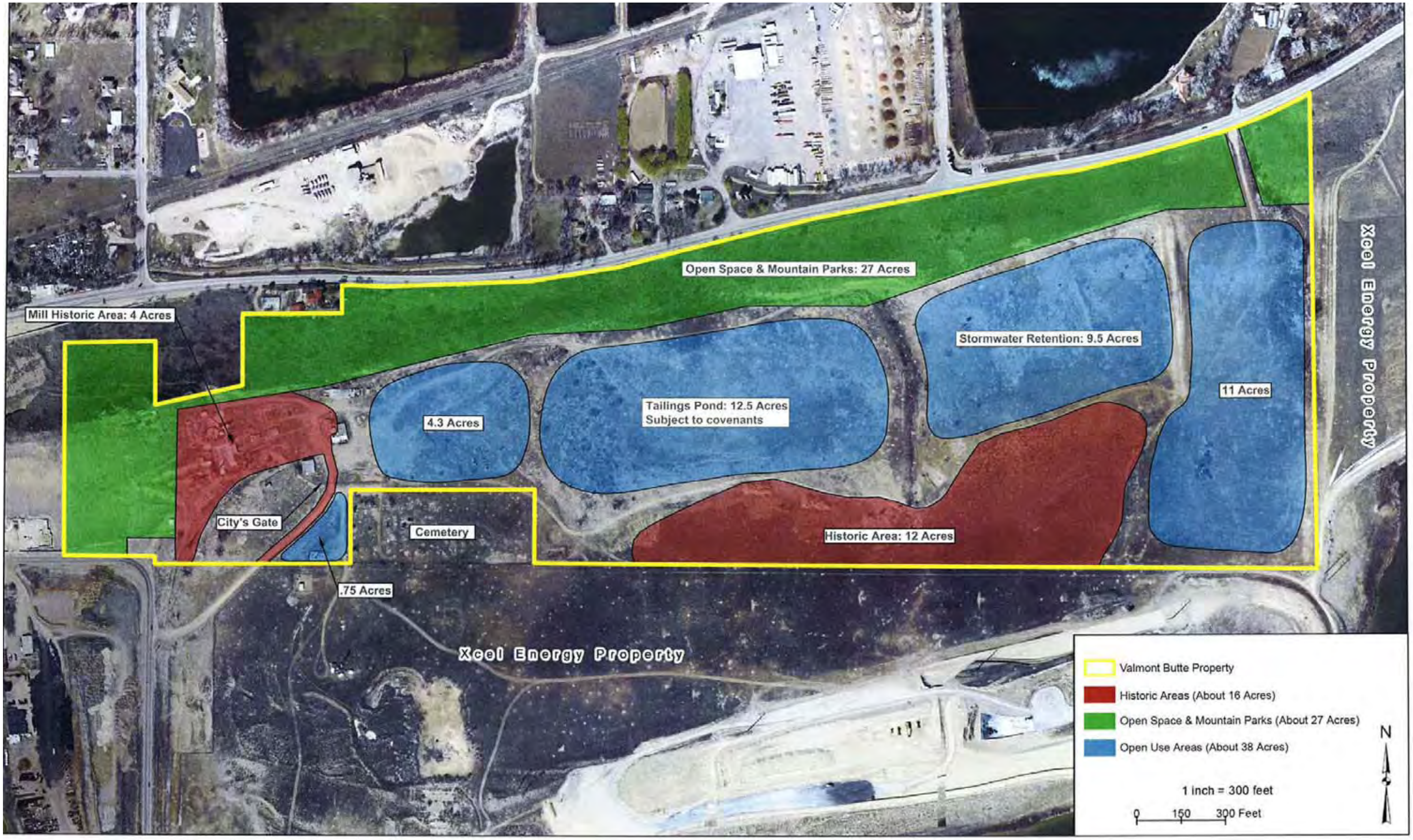
Will Toor, Commissioner

ATTEST:

Clerk to the Board

**Attachment B**

Valmont Butte Property



# REFERENCE MATERIALS

**2010-2011 City Council Goals**
**REVISED JANUARY 2011**

**Boulder's Energy Future – Note: Highlighted Section is new**
The city's top priority for 2011 is to develop a vision and framework to guide planning and decision making about Boulder's energy future, and to analyze and make decisions about potential options for achieving the community's vision. The project's overarching goal is:

> *To ensure that Boulder residents, businesses and institutions have access to energy that is increasingly clean, reliable and competitively priced.*

In charting Boulder's energy future, the following objectives will be used to evaluate success:

Boulder's energy future will:

- Ensure a stable, safe and reliable energy supply
- Ensure competitive rates, balancing short-term and long-term interests
- Significantly reduce carbon emissions and pollutants
- Provide energy customers with a greater say about their energy supply
- Promote local economic vitality
- Promote social and environmental justice

Specific actions to be accomplished in 2011 are:

1) **Develop a November 2011 Ballot Measure** through a series of community engagement opportunities, intensive research efforts and council discussions to establish the city's options or preferred option for its energy future; and

2) **Conduct Analysis to Inform Development of a 2012 Action Plan** which would be implement council and voter direction as established in the November 2011 vote.

**ADDITIONAL COUNCIL PRIORITIES**

**Affordable Housing**

- Receive the Affordable Housing Task Force recommendations on program goals and strategies in August. Based on council decisions regarding these recommendations, develop an implementation plan for the updated Affordable Housing Strategy.
- Conduct a study session in 4Q, 2011 to review approaches to addressing the maintenance and preservation of mobile home parks as affordable housing options and staff recommendations on a comprehensive approach to addressing mobile home park issues

**Climate Action Plan**

- Focus on success of projects and programs already underway, especially implementation of SmartRegs and Energy Smart, and work to reduce energy consumption in the commercial and industrial sectors
- Maximize utilization of Xcel’s SmartGrid: part of localization strategy
- Fund transportation projects that reduce greenhouse gas impacts
- Integrate Climate Action Plan with BVCP

**University Hill Revitalization**

- Continue work of Ownership Group to develop comprehensive revitalization strategy
- Investigate formation of a general improvement district, including the commercial area and part of the residential area to control trash and other problems
- Change boundaries of BMS land use to coincide with UHGID through BVCP process
- Support private development and investment in Hill area, including potential partnership for redevelopment on city-owned properties
- Partner with CU to consider opportunities for properties in the Hill area
- Provide an opportunity to explore big ideas

**Boulder Junction Implementation**

- Continue to implement key elements of Boulder Junction by: coordinating with public and private development, including RTD and its selected developer and the developer of the 3100 Pearl project; refining financial commitments which prioritize and phase in key public improvements, and advancing the Access and TDM Districts.
- Design key public improvements in greater detail; refine project costing and prioritize projects for phasing.
- Prioritize city actions to facilitate private investment
- Focus additional planning work on reconsidering use for Pollard site

**Capital Investment Strategy**

- Develop a capital investment strategy that commits unallocated existing revenues to address deficiencies first and high priority enhancements second.
- Consider asking voters for bonding authority based on existing revenues as early as Nov 2011.
- Establish a stakeholder committee which would provide advice to staff and City Council regarding potential new revenues for an expanded capital investment strategy, with the potential for a 2012 ballot item.

**Waste Reduction**

- Update Waste Reduction Master Plan, focusing on innovative solutions such as "waste to energy;" reduction of commercial waste stream; and reduction of toxic materials.

**Homelessness**

- Continue to participate in the implementation of the Ten Year Plan to Address Homelessness, including balancing long term and short term service needs and investing new available resources in the Housing First model.
- Continue to work with emergency service providers such as Carriage House, Shelter for the Homeless and Boulder Outreach for Homeless Overflow to coordinate emergency services.

**Sustainable Agriculture and Local Food Systems**

- Identify lands for potential food production
- Continue efforts to identify and address constraints of the Farmer's Market, and to explore potential for development of a year-round market facility
- Create a stronger policy framework for sustainable agriculture in the BVCP update

**Mapleton Early Childhood Center**

- Continue to work with community service providers, BVSD and Head Start to identify opportunities for meeting a range of family needs and incomes for early childhood programs and services which address the achievement gap.

## OTHER CITY GOALS AND WORK PLAN ITEMS

In addition, the City Council endorsed the staff work plan for 2011 which includes completion of the five year update to the Boulder Valley Comprehensive Plan, land use and zoning code changes, studies in support of water budgets, engagement with the Colorado Chautauqua Assocation regarding their planning efforts, work with CU related to their ten-year facilities master plan, a Congressional field hearing on sustainability, a critical facilities flood ordinance, and investigation of opportunities to support capital investment in the community. The full 2011 work program is detailed in the attached spreadsheet.

Realizing the magnitude of the work plan, the City Council also directed staff to utilize additional staff resources, if any, on background investigations to support Civic Center planning.

Council will reconvene in June 2011, to review progress on the Council goals and to address prioritization of projects.

**Council Working Agreements**

**Council Process:**

- The Council will work on general discipline in being prepared to ask questions and make comments.
- The Council asks the Mayor to intervene if discussion on agenda items extends beyond a reasonable time frame.
- The council will engage in the practice of colloquy to fully explore the different sides of a specific point.
- The Mayor will ask the city clerk to set the timer lights for council members if discussions begin to exceed efficient debate. Members should respect the lights as a time reminder, but will not be bound by them as absolute limits.
- Rather than restating a point, council members should simply say “I agree.”
- The council agenda committee may, with advance notice, adjust each public speaker's time to two rather than three minutes during public hearings for items on which many speakers want to address the council.
- Council members will grant each other permission to mentor and support each other on how each person contributes to the goal of being accountable for demonstrating community leadership.
- In order to hear each other respectfully and honor the public, council will avoid body language that could convey disrespect, side conversations, talking to staff, whispering to neighboring council members, passing notes, and leaving the council chambers.
- Regarding not revisiting past discussions, the council should check-in with fellow members periodically to ensure that this is not an issue.

**Council Communication:**

- Council members agree to keep quasi-judicial roles scrupulously clean between members of boards and members of council, like expressing ideas to board members on things coming before the Board, and carefully disclose or recuse themselves when they're is involvement with board members on a topic.
- Council agrees to e-mail the city manager about issues that they run into that staff or boards may be working on so that the manager can be actively involved in managing issues and keeping the full council informed well in advance of items coming before council for action.
- Members will keep the full council informed on issues from committees, public groups or other agencies that they are following, the a hot line e-mails, brief verbal reports at the end of council meetings or other means.
- The Council will find ways to support majority council decisions and adequately inform the public, through response letters that explain how divergent points of view were heard and honored in decisions, via standard e-mail responses for hot issues, by occasional council Letters to the Editor to clarify the facts, or by seeking out reporters after meetings to explain controversial decisions.

**Council Committees**

- Council goal committee meetings will be scheduled to accommodate the council members on the committee.
- Notice of the times and places for each goal committee meeting will be noticed once per month in the Daily Camera.
- The council agenda will include time for reports from committees under Matters from Members of Council, noting that written communications from the committees are appropriate as well.

Approved by Council 10/19/04

| | | | | |
|---|---|---|---|---|
| **October 11** | Zero Waste Master Plan (including plastic bags) | 2 hours total | | |
| **October 25** | West TSA Anemone - **Special Meeting** | | **Televise** | |
| **November 8** | Council Meeting in lieu of study session due to election on November 1 | | | |
| **November 22** | NO MEETING - THANKSGIVING WEEK | | | |
| **November 29** | Boulder's Energy Future Next Steps | | | |
| **December 13** | 1) Dinner 5-6 p.m. re: Legislative Agenda discussion Study Session topics:<br>1)Economic Vitality (CECO)<br>2)Transportation Maintenance Fee | | | Consider 12/13 discussion on BHP Lee Hill and Homeless review moving other topics to 11/29? Follow up with Paul |
| **December 27** | NO MEETING - HOLIDAYS | | | |

| October 18, 2011 - Early 5pm start time | Est. time | CAO to Prepare Ordinance? | Ppoint | Timing Issues | Contact |
|---|---|---|---|---|---|
| *** Ned Williams Retirement Declaration** | | | | | |
| **CONSENT:** | | | | | |
| * Minutes | | | | | |
| * Motion calling 10/25 special meeting re: Anemone | | | | | |
| * DBI Budget and board member appointments | | N | | | Sue Hempstead, DBI, 303-449-3774 |
| Urban Wildlife Management Plan acceptance | | | | If not consent, move to 11/8 | Susan Richstone |
| * Resolution authorizing Energy Performance Contract | | Y | | | Mo Rait/Laurel Olsen Horel |
| * Resolution appointing external auditing firm to examine the financial accounts of the City | | N | | | Sharon Danson/Bob Eichem |
| * 1st Reading CDOT IGA | | Y | | | Bev Johnson/Finfrock |
| **PUBLIC HEARINGS:** | | | | | |
| 1) 2nd Reading; 2012 Budget | 30 min. | | | | Eric or Duane |
| 2) 2nd Reading 6400 Arapahoe, EcoCycle, CHaRM, ReSource Annexation and Initial Zoning, Site and Use Reviews | 1.5 hours | N | | Cannot move - must fall within 30-60 days of 1st reading 9/6 | finfrock/McLaughlin |
| 3) 2nd Reading, Annexation and initial zoning for 3015 Kalmia (Harper Hollow) | 1.5 hours | N | MAY NOT BE READY | Continued from 9/6 | Guiler/Finfrock |
| **MATTERS FROM CITY MANAGER:** | | | | | |
| | | | | | |
| **MATTERS FROM CITY ATTORNEY:** | | | | | |
| | | | | | |
| **MATTERS FROM MAYOR AND MEMBERS:** | | | | | |
| | | | | | |
| **CALL-UPS:** | | | | | |
| | | | | | |