

**CALL TO ORDER** Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** Roll was called and the following responded: Gutierrez, McEwen, Farley, Klassen, Shaffer, Trenary, McKean, Fogle and Taylor.

**PROCLAMATION** Councilor Klassen read a proclamation declaring May 13 through May 19, 2012 as "Police Week". The proclamation was received by Lt. Tim Brown, City of Loveland Police.

**PROCLAMATION**

To recognize National Police Week 2012 and to honor the service and sacrifice of those law enforcement officers killed in the line of duty while protecting our communities and safeguarding our democracy.  
WHEREAS, there are approximately 900,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Loveland, Colorado Police Department; and,  
WHEREAS, nearly 60,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries; and,  
WHEREAS, since the first recorded death in 1791, almost 20,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty, including one member of the Loveland, Colorado Police Department; and,  
WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.; and,  
WHEREAS, 362 new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 163 officers killed in 2011 and 199 officers killed in previous years; and,  
WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund's 24th Annual Candlelight Vigil, on the evening of May 13, 2012; and,  
WHEREAS, the Candlelight Vigil is part of National Police Week, which takes place this year on May 13-19; and,  
WHEREAS, May 15 is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families.  
THEREFORE, BE IT RESOLVED that the City of Loveland City Council formally designates May 13-19, 2012, as

**POLICE WEEK**

in Loveland, Colorado, and publicly salutes the service of law enforcement officers in our community and in communities across the nation.  
Signed this 15th day of May, 2012  
Cecil A. Gutierrez  
Mayor

**PROCLAMATION** Councilor Farley read a proclamation declaring the week of May 20 through May 26, 2012 as "National Public Works Week". The proclamation was received by Public Works Director Keith Reester.

**PROCLAMATION**

WHEREAS, public works services provided in our community are an integral part of our citizen's everyday lives; and  
WHEREAS, having the support of an understanding and informed citizenry is vital to the efficient operations of the various public works systems and programs such as stormwater, streets, transit, solid waste, fleet, development review, traffic, facilities and public buildings; and  
WHEREAS, the health and safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities and services, as well as their planning, design, construction, is vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, this year's observance of Public Works Week celebrates the theme, "Public Works: Creating a Lasting Impression", recognizing the valuable work carried out by our highly capable and reliable public works professionals, engineers and administrators and acknowledging their contributions to an improved quality of life in this community.

NOW, THEREFORE, we, the City Council of the City of Loveland do hereby proclaim May 20-26, 2012 as

**NATIONAL PUBLIC WORKS WEEK**

in the City of Loveland, and we call upon all citizens to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort and quality of life.

Signed this 15th day of May, 2012

Cecil A. Gutierrez, Mayor

**PROCEDURAL  
INFORMATION**

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

**CONSENT AGENDA**

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor McEwen moved to approve the Consent Agenda. The motion was seconded by Councilor Shaffer and a roll call vote was taken with all councilors present voting in favor thereof

**1. CITY CLERK**

**Approval of Council Minutes**

**Motion**

The minutes from the April 24, 2012 study session and May 1, 2012 regular meeting were approved.

**2. DEVELOPMENT SERVICES**

**Utility Easement Vacation – Loveland Business Plaza First Addition**

**Ord. #5680**

Legislative Action: "AN ORDINANCE VACATING A UTILITY EASEMENT ON LOT 1, BLOCK ONE, AMENDED PLAT OF LOTS 2-6, BLOCK 3 LOVELAND BUSINESS PLAZA FIRST ADDITION" was approved and ordered published on second reading.

**3. FINANCE**

**Supplemental Appropriation – Matching Grant Funding to Loveland Fire Rescue Authority**

**Ord. #5681**

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO PROVIDE FUNDING TO THE LOVELAND FIRE RESCUE AUTHORITY FOR MATCHING FUNDS

REQUIRED BY A FEDERAL GRANT AND FOR THE PROGRAMING AND INSTALLATION OF THE RADIOS" was approved and ordered published on second reading.

#### **4. WATER & POWER**

##### **Supplemental Appropriation – Valley Substation Equipment**

**Ord. #5682**

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE PURCHASE FOR SWITCHGEAR AT THE VALLEY SUBSTATION" was approved and ordered published on second reading.

#### **5. CITY CLERK**

##### **Municipal Code Amendment – Lien Processes**

**Ord. #5683**

Legislative Action: "AN ORDINANCE AMENDING TITLE 3 OF THE LOVELAND MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 3.50 TO CONSOLIDATE AND AMEND THE LIEN AND COLLECTION PROCESSES FOR THE CITY'S CURRENT CODE PROVISIONS RELATED TO WEED ABATEMENT, GRAFFITI REMOVAL, REFUSE REMOVAL AND SNOW REMOVAL" was approved and ordered published on second reading.

#### **6. City Clerk**

##### **City Council Meeting Schedule**

**Motion**

Administrative Action: The motion cancelling the June 19, 2012 City Council regular meeting was approved.

#### **7. Fire & Rescue**

##### **Municipal Code amendment and adoption of Local Emergency Operations Plan, 2012 Revisions**

**1<sup>st</sup> Rdg Ord. & P.H.**

Legislative Action: A public hearing was held and "AN ORDINANCE ADOPTING THE CITY OF LOVELAND EMERGENCY OPERATIONS PLAN AND AMENDING SECTION 2.72.010 OF THE LOVELAND MUNICIPAL CODE CONCERNING THE COMPREHENSIVE DISASTER PLAN" was approved and ordered published on first reading.

#### **8. Airport**

##### **Colorado State Aviation Discretionary Grant**

**Resolution #R-34-2012**

Administrative Action: Resolution #R-34-2012 authorizing the City Manager to execute a grant agreement with the State of Colorado Division of Aeronautics (CDAG #12-FNL-02) for equipment, improvements and funding pertaining to the Fort Cooiins-Loveland Municipal Airport was approved.

##### **RESOLUTION #R-34-2012**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE STATE OF COLORADO DIVISION OF AERONAUTICS (CDAG #12-FNL-02) FOR EQUIPMENT, IMPROVEMENTS AND FUNDING PERTAINING TO THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the General Assembly of the State of Colorado has declared in Title 43 of the Coiorado Revised Statutes, Article 10, 1991 in C.R.S. 43-10-101 ("the Act") that: "...there exists a need to promote the safe operation and accessibility of general aviation and intrastate commercial aviation In this state; that improvement of general aviation and intrastate commercial aviation transportation facilities will promote diversified economic development across the state; and

that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency.”; and

WHEREAS, the Act created the Colorado Aeronautical Board (“the Board”) to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics (“the Division”) to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program. (See C.R.S. §43-10-103, C.R.S. §43-10-105, and C.R.S. §43-10-108.5 of the Act); and

WHEREAS, any entity operating a public-accessible airport in the state may file an application for and be a recipient of a grant to be used solely for aviation purposes (an “Application”); and

WHEREAS, The Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant’s duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division’s Grant program Project Management Manual, revised 1999 (“the Manual”); and

WHEREAS, the City of Fort Collins and the City of Loveland (“the Cities”) own and operate in the State the Fort Collins-Loveland Municipal Airport (“the Airport”); and

WHEREAS, the Cities previously applied for and were awarded grants CDAG #12-FNL-01 and CDAG #12-FNL-101 from the Division as part of a match funding grant with the Federal Aviation Administration (“FAA”), but as a result in a change in the match funding requirement by the FAA, the Cities must allocate additional funding; and

WHEREAS, the Cities have applied for a grant (CDAG #12-FNL-02) attached hereto as Exhibit A and incorporated by reference (the “Grant Agreement”), from the Division to cover one-half of the additional funding needed for the FAA match funding grant.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. That the Council of the City of Loveland (“the Council”), as one of the duly authorized governing bodies of the grant applicant, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state aviation system grant. The City of Loveland states that such grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the Application.

Section 2. That the City of Loveland makes the commitment (a) to keep the Airport facility accessible to, and open to, the public during the entire useful life of the grant funded improvements/equipment; or (b) to reimburse the Division for any unexpired useful life of the improvements/equipment on a pro-rata basis. By signing the Grant Agreement, the City of Loveland further commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in the Grant Agreement.

Section 3. That the Council hereby designates Jason Licon, Airport Director, as the Project Director, as described in the Manual, and authorizes the Project Director to act in all matters relating to the work project proposed in the Application in its behalf, and further authorizes the City Manager to execute the Grant Agreement with such modifications in form or substance as the City Manager, in consultation with the City Attorney’s Office, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City of Loveland has appropriated or will appropriate or otherwise make available in a timely manner its share of all funds that are required to be provided by the Cities under the terms and conditions of the Grant Agreement.

Section 5. That the City of Loveland, subject to the foregoing, hereby accepts all guidelines, procedures, standards, and requirements described in the Manual as applicable to the performance of the grant work and hereby approves the Grant Agreement submitted by the State, including all terms and conditions contained therein.

Section 6. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 15th day of May, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk’s Office

**CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.**

**CITY COUNCIL**

a) Citizens' Reports None

b) Business from Council

Taylor Councilor Taylor encouraged interested citizens to apply for openings on the City's various Boards and Commissions.

Trenary Councilor Trenary mentioned there are 10 different Boards and Commissions with openings. The "Cruz through Loveland" for custom car owners and their fans has started.

Fogle Councilor Fogle attended last Friday's "A Night on the Town" event in downtown Loveland. The Affordable Housing Commission has an opening for interested citizens.

McEwen Councilor McEwen attended the recent TEDx event held to exchange ideas and share creativity. She also attended the Loveland Honors event which recognized the many volunteers helping throughout the City of Loveland.

Farley Councilor Farley attended the annual Community Foundation of Northern Colorado's Celebration of Philanthropy.

Shaffer Councilor Shaffer attended the groundbreaking ceremony for Phase 2 of Mirasol. She'll be attending the National Association of Housing & Redevelopment conference.

Klassen Councilor Klassen mentioned the former Larimer County Manager, Frank Lancaster, will be the new City Manager at Estes Park.

Gutierrez Mayor Gutierrez mentioned two Memorial Day events: "Remembering Our Fallen" a tribute to fallen Coloradoan soldiers at the Devereaux Room, Rialto Theater Center runs May 24 to 31, 2012 and on May 26, 2012 the Memorial Day service at the Rialto Theater Center will take place.

c) City Manager Report None

d) City Attorney Report None

**PROCEDURAL INFORMATION**

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

**REGULAR AGENDA**

**CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

**9. City Manager / City Attorney**

**Moratorium on processing applications, permits, other approvals for oil and gas extraction**

**Ordinance #5685**

Legislative Action: Development Services Director Greg George introduced this item to City Council. This is a legislative action to consider an emergency ordinance enacting a

nine-month moratorium on the acceptance and processing of land use applications and other approvals related to oil and gas extraction and related operations within the City, pursuant to Council's request at its May 1, 2012 meeting. An alternative (non-emergency) ordinance is included should there not be at least six votes to pass this Ordinance as an emergency ordinance, but nevertheless a majority of the Council quorum present wishes to consider adopting a moratorium ordinance on first reading in lieu of the emergency ordinance. The Mayor opened the public hearing at 7:29 p.m. Kim Orr, Loveland resident, spoke in support of the moratorium. Don Belcer, 4132 Buffalo Mountain Dr, spoke in support of the moratorium. Sharon Carlisle, 439 E. 7<sup>th</sup> Street, spoke in support of the moratorium. Caria Weston, 226 S. Washington, spoke in support of the moratorium. Jeff Goody, 4105 Swan Mountain Dr, spoke in support of the moratorium. Irene Fortune, Loveland resident, spoke in support of the moratorium. Deann Ball, 2591 Begonia Ct, spoke in support of the moratorium. Andrew Casper, from the Colorado Oil & Gas Association, spoke in opposition to the moratorium. Andrew Leach, 2195 Buffalo Mountain Dr, spoke in support of the moratorium. The Mayor closed the public hearing at 7:58 p.m. Discussion ensued. Councilor McEwen move to approve and ordered published in full, on the only reading, "AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF LOVELAND IMPOSING A NINE-MONTH MORATORIUM ON THE CITY'S ACCEPTANCE AND PROCESSING OF LAND USE APPLICATIONS, PERMITS AND OTHER APPROVALS CONCERNING THE CONDUCT OF OIL AND GAS EXTRACTION AND RELATED OPERATIONS WITHIN THE CITY". Councilor Shaffer seconded the motion and a roll call vote was taken with six Councilors present voting in favor and Councilors McKean, Fogle and Klassen voting against. The motion passed.

#### **10. DEVELOPMENT SERVICES**

##### **Amend General Development Plan for Millennium Addition**

##### **Ordinance #5684**

Quasi-judicial Action: City Planner Kerri Burchett introduced this item to Council. Kim Perry was present representing the applicant, McWhinney Real Estate Services, Inc. Consideration of a quasi-judicial action to adopt an ordinance on second reading amending the land use, development standards and public hearing process established in the Millennium General Development Plan (the "GDP"). The Millennium PUD consists of 2,916 acres located generally on the east side of Loveland. The applicant is McWhinney Real Estate Services, inc. Councilor McEwen moved to adopt and ordered published on second reading "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED WITHIN THE MILLENNIUM ADDITION PUD - 8TH AMENDMENT (#P-59), APPROVING THE 9TH MAJOR AMENDMENT TO THE GENERAL DEVELOPMENT PLAN FOR THE MILLENNIUM ADDITION PUD". Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

#### **11. ECONOMIC DEVELOPMENT**

##### **Amendment to Park Place Plaza Fee Deferral Agreement**

##### **Resolution #R-35-2012**

This is an administrative action. City Planner Mike Scholl introduced this item to Council. This is an amendment to an agreement originally approved by City Council in 2008 for the benefit of the Park Place Plaza Project, located at 1st Street and Railroad Avenue (102 – 140 E. 1st Street). The agreement deferred the requirement to pay water and

wastewater system impact fees and the raw water development fee applicable to a two-inch residential water meter totaling \$107,660 by collecting the fees through the imposition of a capital recovery surcharge. The amendment would defer those same fees applicable to water and wastewater service for four new housing units to be added to the project. Councilor McEwen moved to approve Resolution #R-34-2012 authorizing the City Manager to execute a grant agreement with the State of Colorado Division of Aeronautics (CDAG #12-FNL-02) for equipment, improvements and funding pertaining to the Fort Collins-Loveand Municipal Airport. Councilor Klassen seconded the motion and a roll call vote was called with all Councilors present voting in favor thereof.

RESOLUTION #R-35-2012

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE PARK PLACE PLAZA FEE DEFERRAL AGREEMENT DATED JULY 7, 2008

WHEREAS, in conjunction with its development of a mixed-use development in historic downtown Loveland known as "Park Place Plaza," located at 102-110 East First Street ("Development"), Discovery Homes requested and received, by the City Council's adoption of Resolution #R-69-2008, a deferral of the water system impact fee, wastewater system impact fee, and raw water development fee (collectively, the "Fees") applicable to a two-inch residential water meter ("Meter") necessary to serve one lot within the Development consisting of four (4) buildings with four (4) residential condominium units in each, for a total of sixteen (16) residential condominium units, legally described as Lot 2, Block 1, Amended Plat, Portions of Lots 2 & 3, Block 1, Jefferson Place Addition, City of Loveland, County of Larimer, State of Colorado ("Property"); and

WHEREAS, this deferral of the Fees was set out in an agreement between Discovery Homes and the City known as the "Park Place Plaza Fee Deferral Agreement" dated July 7, 2008 and recorded with the Larimer County Clerk and Recorder's Office at Reception No. 20080044689 on July 14, 2008 ("Agreement"); and

WHEREAS, the Agreement, which runs with the Property and is binding on future fee title owners of the Property, provides for the deferment of the Fees applicable to the Meter in the total amount of Sixty-five Thousand, Six Hundred Ninety-six Dollars (\$65,696) by collecting said amount through the capital recovery surcharge established in City Code Section 13.04.034, to be applied in perpetuity to the utility bills of those customers who are served by the Meter; and

WHEREAS, Discovery Homes was unable to complete the Development, and fee title ownership of the Property was transferred to Cleveland Properties, LLC ("Cleveland Properties"); and

WHEREAS, no certificates of occupancy have been issued for any of the original sixteen (16) residential condominium units, and Cleveland Properties represents and has provided a title commitment to the City indicating that there are no fee title owners of the Property other than Cleveland Properties; and

WHEREAS, Cleveland Properties plans to convey the Property to Park Place Plaza RE, LLC ("Park Place Plaza RE"), a related entity, on or about May 18, 2012; and

WHEREAS, Park Place Plaza RE desires to complete the Development and has proposed to change the configuration of the Development from four (4) buildings with four (4) residential condominium units in each, for a total of sixteen (16) residential condominium units, to two (2) buildings with four (4) residential apartment units in each, and two (2) buildings with six (6) residential apartment units in each, for a total of twenty (20) residential apartment units; and

WHEREAS, in conjunction with the proposed reconfiguration, Cleveland Properties and Park Place Plaza RE have requested that the City Council amend the Agreement to recalculate the Fees associated with the Meter to serve the (20) residential apartment units and, pursuant to City Code Section 16.38.071, to defer payment of the Fees applicable to the Meter in the total amount of One Hundred Seven Thousand, Six Hundred Sixty Dollars (\$107,660) by collecting said amount through the capital recovery surcharge established in City Code Section 13.04.034 that will be applied in perpetuity to the utility bills of those customers who are served by the Meter; and

WHEREAS, Cleveland Properties, Park Place Plaza RE, and the City have negotiated the "First Amendment to the Park Place Plaza Fee Deferral Agreement," a copy of which is attached hereto as Exhibit A and incorporated by reference ("First Amendment").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND:

Section 1. That pursuant to City Code Section 16.38.071, the City Council hereby finds that: (a) the terms and conditions of the Agreement, as amended by the First Amendment, are in the best interests of the City; and (b) the deferral of the Fees applicable to the Meter pursuant to the Agreement, as amended by the First Amendment, will serve the public purpose of providing the public with significant social, economic, and cultural benefits including, without limitation, removing blight in historic downtown Loveland, creating new jobs, and increasing property and sales taxes.

Section 2. That the City Council hereby approves the First Amendment and authorizes the Mayor to sign it on behalf of the City. The Mayor, in consultation with the City Manager and the City Attorney, may agree to minor modifications to the form of the First Amendment, provided said modifications do not change significantly the substantive terms and conditions of the First Amendment.

Section 3. That the approval and authorization set forth in Section 2 above is expressly conditioned upon the City's receipt of the signed First Amendment from Cleveland Properties or Park Place Plaza RE, as the fee title owner of the Property, on or before July 15, 2012. In the event that Cleveland Properties or Park Place Plaza RE, as the fee title owner of the Property, fails to sign the First Amendment on or before July 15, 2012, then the approval and authorization set forth in Section 2 shall automatically be revoked.

Section 4. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 15th day of May, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

## **12. Economic Development**

### **Contract Template for Downtown Brokerage Services**

#### **Motion**

Administrative Action: City Planner Mike Scholl introduced this item to Council. This is an administrative action to approve the contract form for brokerage services for Downtown properties. The contract template will allow the City to contract with brokers that are interested in assisting the City with property valuations and assemblages in Downtown for the purposes of redevelopment. The brokerage contract is non-exclusive and does not obligate the City to acquire any property or pay any commissions. Staff had previously submitted the contract template and staff memorandum to Council for review prior for formal consideration. Councilor McEwen moved to approve a contract template for brokerage services for Downtown properties and authorizing the City Manager, in consultation with the City Attorney, to make changes to the contract form, in form or substance, as deemed necessary to protect the interest of the City and to execute contracts for brokerage services. Councilor Shaffer seconded the motion and a roll call vote was called with all Councilors present voting in favor thereof.

## **13. CITY MANAGER**

### **Proposed Executive Session to receive advice from Legal Counsel concerning Klen v. City of Loveland lawsuit**

At 9:48 p.m. Councilor McEwen moved that the City Council go into executive session, as authorized in CRS Section 24-6-402(4)(b), (4)(e) and (4)(g) and in City Charter Sections 4-4(c)(1), (c)(3) and (c)(6). This executive session will address a lawsuit currently pending in the Colorado Federal District Court, Klen v. City of Loveland, together with such other matters as may relate to or affect this lawsuit. The purpose of executive session will be to receive legal advice from the City's legal counsel, including from attorney Tom Lyons; and since this lawsuit is a matter that may become subject to negotiations: to receive reports concerning any negotiation discussions; to develop the City's negotiation positions and strategies; and to instruct the City's negotiators concerning those positions and strategies. In addition, documents and records related to



this lawsuit may be considered that are protected by the mandatory non-disclosure provisions of the Colorado Open Records Act, including, without limitation, work product documents. Councilor Shaffer seconded the motion and a roll call vote was held and all councilor present voted in favor thereof. Council reconvened at 10:48 p.m.

Councilor McEwen moved to approve Resolution #R-36-2012 indemnifying certain City employees in connection with pending litigation. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

Resolution #R-36-2012

A Resolution indemnifying certain City employees in connection with pending litigation

WHEREAS, the City of Loveland and four of its employees, John Duval, City Attorney; Greg George, Director of Development Services; Tom Hawkinson, Chief Building Official; and Dave Sprague, Plans Reviewer (collectively, the "Employees" or individually, an "Employee") are defendants in a pending lawsuit identified as *Klen, et al. v. City of Loveland, et al.*, United States District Court for the District of Colorado Case NO. 07-cv-00347-MSK-MEH (the "Lawsuit") scheduled for trial June 11-19, 2012; and

WHEREAS, one of the remaining claims in the Lawsuit alleges that the Employees retaliated against the plaintiffs for the exercise of the plaintiffs' First Amendment rights of free speech, in violation of Section 1983 of the federal Civil Rights Act ("Section 1983"); and

WHEREAS, the other claims remaining in the Lawsuit, including a First Amendment retaliation claim, are against the City only, and not the Employees; and

WHEREAS, a finding of liability under Section 1983 may result in personal financial liability for one or more of the Employees; and

WHEREAS, a finding of liability under Section 1983 may result in personal financial liability for one or more of the Employees; and,

WHEREAS, the Colorado Governmental immunity Act (the "Act") provides that a public entity shall be liable for all judgments and settlements of claims against its employees when the claim arises out of injuries resulting from an act or omission occurring in the performance of duties within the scope of employment, unless the employee's acts or omissions are willful and wanton, and also provides that a public entity may defend, settle or pay any punitive damage claim against a public employee; and

WHEREAS, the remaining claims in the Lawsuit include no allegation or apparent factual basis for concluding that any of the Employees acted outside the scope and course of their employment or in a willful and wanton manner in connection with the matters from which the Lawsuit arose; and

WHEREAS, indemnification of public employees, in general, and the Employees, in particular, for claims arising from the performance of their duties serves the public purpose of enabling municipal employees to be free to perform their work for the public good without fear of being subject to personal financial liability from lawsuits.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City Council hereby finds that indemnification of public employees, in general, and the Employees, in particular, for claims arising from the performance of their duties services the public purpose of enabling municipal employees to be free to perform their work for the public good without fear of being subject to personal financial liability from lawsuits.

Section 2. That the City shall, and hereby does, indemnify each Employee for all judgments and settlements of the claims against them individually in the Lawsuit that are not covered by insurance, including but not limited to any compensatory damages, punitive damages, and/or attorney fees or costs awarded to the plaintiffs, so long as the indemnified Employee does not compromise or settle the claim without consent of the City.

Section 3. That the City's indemnification of the Employees as set forth in this Resolution shall not constitute an admission of liability for any claims made by the plaintiffs in the Lawsuit and shall not be construed to expand, in any way, the City's liability to third party claimants, whether under the Act or otherwise.

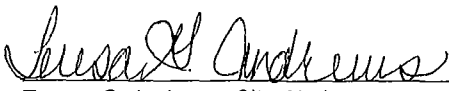
Section 4. That this Resolution shall be effective as of the date and time of its adoption.

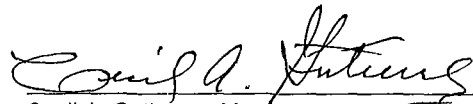
ADOPTED this 15<sup>th</sup> day of May, 2012.  
Cecil A. Gutierrez, Mayor  
Attest: Teresa G. Andrews, City Clerk

**ADJOURNMENT**

Having no further business to come before Council, the May 15, 2012  
Regular Meeting was adjourned at 10:53 p.m.

Respectfully Submitted,

  
\_\_\_\_\_  
Teresa G. Andrews, City Clerk

  
\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

