



\$636,150. This ordinance was approved unanimously on first reading by Council at the February 4, 2014 regular meeting. The ordinance appropriates undesignated fund balance reducing the flexibility to fund other projects. The fund balance is the result of actual revenues being higher than projected in the 2013 Budget and from projected 2014 revenue that was not appropriated in the 2014 Budget.

3. **PUBLIC WORKS** (presenter: Dave Klockeman)  
**CONTRACT EXTENSION OF THE 2014 STREET RESURFACING PROGRAM**  
**A Motion to Approve the Extension of the 2014 Street Resurfacing Program - Concrete Rehabilitation Project Schedule Target Area to JAG's Enterprises, Inc. of Greeley, Colorado in the Amount of \$800,000 and to Authorize the City Manager to Execute the Contract**  
 This is an administrative action. The motion approves the extension of the existing 2011 Street Resurfacing Program-Concrete Rehabilitation Project to JAG's Enterprises, Inc. of Greeley. Funding is available in the adopted 2014 Budget within the annual Street Rehabilitation Program.
  
4. **PUBLIC WORKS** (presenter: Keith Reester)  
**IGA FOR THE 2014 FLEX BUS SERVICE**  
**A Motion to Adopt Resolution #R-14-2014 Approving an Intergovernmental Agreement (IGA) Between the City of Loveland, Colorado and the City of Fort Collins, Colorado for Bus Service Between Fort Collins and Longmont for the Calendar Year 2014**  
 This is an administrative action to consider a resolution to approve an Intergovernmental Agreement (IGA) with Fort Collins to provide regional bus service between Fort Collins and Longmont along the U.S. Highway 287 corridor. This service is referred to as the Fort Collins-Longmont Express or FLEX route. This is an IGA for the 2014 calendar year. Funds for the local match portion of the contract (\$100,000) are budgeted into the annual core transit budget.
  
5. **LIBRARY** (presenter: Marcia Lewis)  
**PUBLIC HEARING**  
**SUPPLEMENTAL APPROPRIATION FOR LIBRARY DATABASE**  
**A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget to Join the Prospector Database for Regional Library Resource Sharing**  
 This is an administrative action. The ordinance on first reading appropriates \$37,080 from funds donated by the Kroh Charitable Trust Funds for the Loveland Public Library to join Prospector, a resource sharing database that provides access to over 2 million items through an online catalog of 40 public and academic libraries in Colorado and Wyoming. The ordinance is funded by outside resources donated to the City.
  
6. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)  
**PUBLIC HEARING**  
**MINOR CODE AMENDMENTS FOR TITLE 18**  
**A Motion to Approve and Order Published on First Reading an Ordinance Amending Various Sections in Title 18 of the Loveland Municipal Code**  
 This is a legislative action. The ordinance on first reading amends Title 18 of the Loveland Municipal Code. This collection of minor amendments is designed to correct errors, provide consistency, and clarify use allowances within the zoning code.

7. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)  
**PUBLIC HEARING**  
**MINOR CODE AMENDMENTS FOR LIMITED SIGNAGE NORTH CLEVELAND SUB-AREA**  
**A Motion to Approve and Order Published on First Reading an Ordinance Amending Sections 18.16.110, 18.48.020, and 18.50.090 of the Loveland Municipal Code to Permit Limited Signage for Home Occupations in the North Cleveland Sub-Area of the R3e Zone District**  
This is a legislative action. The ordinance on first reading amends Title 18 of the Loveland Municipal Code. The proposed revisions include text adjustments that allow limited signage for home occupations located in the North Cleveland sub-area of the R3E zone district.
8. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)  
**PUBLIC HEARING**  
**MINOR CODE AMENDMENT FOR VARIANCES BY THE ZONING BOARD OF ADJUSTMENT**  
**A Motion to Approve and Order Published on First Reading an Ordinance on First Reading Amending Section 18.60.020 of the Loveland Municipal Code Pertaining to Variances Granted by the Zoning Board of Adjustment**  
This is a legislative action. The ordinance on first reading amends the Zoning Board of Adjustment provisions of Title 18 of the Loveland Municipal Code. The proposed revisions clarify the authority of the Zoning Board of Adjustment to grant variances, specifying that the Board has the power to grant variances to properties in all zoning districts and those variances are authorized for dimensional and numerical standards.
9. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)  
**PUBLIC HEARING**  
**JAYHAWKER ADDITION ANNEXATION INTENT**  
**A Motion to Approve Resolution #R-15-2014 Stating the Intent of the City of Loveland to Annex Certain Property and Initiating Annexation Proceedings for Such Property to be Known as the "Jayhawker Addition" to the City of Loveland**  
This is a legislative action to consider a resolution setting a public hearing date of April 1, 2014 for City Council to review annexation of approximately 33 acres known as the Jayhawker Addition. The applicant is the City of Loveland. The property is generally located on the south side of West 1<sup>st</sup> Street and east of South Taft Avenue. It is comprised to two parcels; one being the City Jayhawker Ponds (approximately 30.77 acres) and the other being a parcel of land owned by Lee and Patricia Swisher (approximately 1.82 acres). Collectively, these two parcels represent an enclave as defined in C.R.S. 31-12-103 (4) within the City's Growth Management Area (GMA). Section 4.0 of the Intergovernmental Agreement for Growth Management (IGA) between the City of Loveland and Larimer County requires the City to pursue annexation of enclaves, whether voluntarily or involuntarily, as expeditiously as possible.
10. **DEVELOPMENT SERVICES** (presenter: Brian Burson)  
**PUBLIC HEARING**  
**VACATION OF EASEMENT FOR MARIANA COVE**  
**A Motion to Approve and Order Published on First Reading an Ordinance Vacating a Portion of a Utility and Drainage Easement on Lot 7, Block 7, Mariana Cove PUD Subdivision, City of Loveland**  
This is a legislative action. The ordinance on first reading approves the vacation of a 15-foot wide portion of a utility and drainage easement along the south side of Lot 7, Block 7, Mariana Cove PUD Subdivision. The owner of the property is Dan Wester.

11. **FIRE & RESCUE AUTHORITY** (presenter: Randy Mirowski)  
**IGA MUTUAL AID AGREEMENT WITH RIST CANYON FIRE DEPARTMENT**  
**A Motion to Adopt Resolution #R-16-2014 Approving an Intergovernmental Automatic Mutual Aid Agreement between the Loveland Fire Rescue Authority and the Rist Canyon Volunteer Fire Department**  
 This is an administrative action to consider a resolution approving an Intergovernmental Automatic Mutual Aid Agreement between the Loveland Fire Rescue Authority (LFRA) and the Rist Canyon Volunteer Fire Department. The IGA will be considered by the LFRA Board on February 13, 2014.
12. **FIRE & RESCUE AUTHORITY** (presenter: Randy Mirowski)  
**PURCHASE ORDER FOR 100' PLATFORM TRUCK**  
**A Motion to Approve the Purchase of a 100' Platform Truck from Pierce Manufacturing, Inc. for an Amount Not to Exceed \$1,111,280 and Authorize the City Manager to Sign the Purchase Order on Behalf of the City of Loveland**  
 This is an administrative action. The truck purchase was included in the 2014 Capital Program Fund Budget (see page 22-9 and 22-33 of the 2014 Adopted Budget) for \$1,458,610. The difference between the budget and the contract price will be used to purchase some additional equipment needed to make the truck service ready, but all within the appropriated budget. Pursuant to Chapter 3.12 of the City Code, purchases exceeding \$500,000 must be approved by City Council.
13. **WATER & POWER** (presenter: John McGee)  
**IGA REGARDING RIVER GAGES**  
**A Motion to Adopt Resolution #R-17-2014 Approving an Intergovernmental Agreement Between the City of Loveland, Colorado and the U.S. Geological Survey, United States Department of the Interior for Operation and Maintenance of a Streamflow Gaging Station and a Precipitation Gage**  
 This is an administrative action to approve an intergovernmental agreement (IGA) with the US Geological Survey (USGS) for operation and maintenance of two gages. The City and USGS have partnered on this project for many years, and each annual IGA was signed by the City administratively. However, now that the City's costs under the IGA exceed \$10,000, City Council approval is required according to City Code Section 2.08.030. There is a negligible impact to the budget because of the low dollar amount experienced so far. The Water Resources Fund will be used to pay for the annual operation and maintenance of the flow gaging station and the precipitation gaging station.
14. **WATER & POWER** (presenter: Greg Dewey)  
**CONVERSION OF COLORADO BIG THOMPSON (CBT) UNITS**  
**A Motion to Approve Resolution #R-18-2014 of the Loveland City Council Authorizing an Application to, and Contract with, the Northern Colorado Water Conservancy District for Beneficial use of 50 Acre-Feet Of Colorado Big Thompson Project Water**  
 This is an administrative action to adopt a resolution approving the conversion of 50 Colorado Big Thompson (CBT) units acquired during 2013 from a Temporary Use Permit to a Permanent Section 131 Contract. The units were purchased in 2013. No additional costs are associated with the conversion.
15. **WATER & POWER** (presenter: Melissa Morin)  
**PUBLIC HEARING**  
**AMENDMENTS CONCERNING WATER AND WASTEWATER REIMBURSEMENTS**

**AND OVERSIZING****1. A Motion to Approve and Order Published on First Reading an Ordinance Amending the Loveland Municipal Code at Chapters 13.04 and 13.08 to Revise the City's Water and Wastewater Reimbursement and Oversizing Policies and to Relocate the Policies from the City's Water and Wastewater Development Standards to the Loveland Municipal Code**

This is a legislative action to amend the Municipal Code concerning reimbursements for water and wastewater line extensions, major structures and oversizing of lines.

**2. A Motion to Approve Resolution #R-19-2014 Amending Section 1.10 of the City of Loveland Water and Wastewater Development Standards Concerning Reimbursements for Water and Wastewater Main Extensions, Major Structures, and Oversizing**

This is a legislative action to update Section 1.10 of the City's Water and Wastewater Development Standards to reflect the changes to the Municipal Code concerning reimbursements for water and wastewater line extensions, major structures and oversizing of lines. The Loveland Utilities Commission unanimously recommended adoption of both the Ordinance and the Resolution at its September 18, 2013 meeting. The Construction Advisory Board unanimously recommended adoption of both the Ordinance and the Resolution at its January 22, 2014 meeting.

**16. WATER & POWER (presenter: Brieana Reed-Harmel)  
PUBLIC HEARING****CODE AMENDMENT FOR ELECTRIC LINE EXTENSION****A Motion to Approve and Order Published on First Reading an Ordinance Amending the Loveland Municipal Code at Chapter 13.12 Regarding Electricity to Adopt an Electric Line Extension Policy and to Clarify Existing Electric Service Requirements**

This is a legislative action to amend the Municipal Code concerning electric line extensions and oversizing of lines. The Loveland Utilities Commission unanimously recommended adoption of the ordinance at the September 18, 2013 meeting. The Construction Advisory Board unanimously recommended adoption of the ordinance at the January 22, 2014 meeting.

**17. PARKS & RECREATION (presenter: Brian Hayes)  
PUBLIC HEARING****SALE OF A PORTION OF LONG VIEW FARM OPEN SPACE****A Motion to Approve and Order Published on First Reading an Ordinance Authorizing the Conveyance of the City of Loveland's one Sixth Fee Title Interest in a Portion of Long View Farm Open Space to the State of Colorado, Approving an Amendment to the Related Declaration of Covenants, Conditions and Restrictions, and Granting an Adjacent Temporary Easement to Permit Access and Work by the Colorado Department of Transportation**

This is an administrative action. The ordinance on first reading authorizes the City to convey its 1/6 interest and grant a temporary easement to the State for road and drainage improvements at the intersection of U.S. Highway 287 and S.H. 392 (Carpenter Road), and to modify the associated covenants to allow for the improvements. The Colorado Department of Transportation (CDOT) is in the process of planning and designing a project at the intersection of U.S. Highway 287 and S.H. 392 (Carpenter Road) in order to provide a more efficient turning radius and as part of that project will be improving drainage. The State is seeking to purchase land that is jointly owned by the City, Larimer County and Fort Collins for these improvements and seeks a temporary easement for access and construction of the improvements. Open Lands Sales Tax Fund 202 will receive approximately \$177.67 in net proceeds from the sale of the small

corner of the Long View Farm Open Space.

**18. HUMAN RESOURCES (presenter: Julia Holland and Karen Rees)  
EMPLOYEE RECOGNITION FOR FLOOD RESPONSE**

**A Motion to Adopt Resolution #R-20-2014 Approving Time Off for City Employees In Recognition of City Employees' Flood Response Efforts**

This is an administrative action for Council to consider recognition for City employee efforts resulting from the 2013 Flood. On January 21, 2014, City Council requested staff bring a recommendation providing employees with an additional day of paid time off to recognize their efforts and dedication to the community during the 2013 Flood. Staff recommends providing all regular benefit-eligible employees the equivalent to one day paid time off and providing four hours paid time off for non-benefit eligible employees based on involvement in flood recovery efforts. The City's 2014 adopted Budget does not include funding for the costs of the recommended action or alternative options reviewed. However, the costs will result in City Departments absorbing the soft or hard costs of the time off through their personnel/salary budgets.

**19. FINANCE (presenter: Brent Worthington)  
FINANCIAL REPORT-DECEMBER 2013**

This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending December 31, 2013.

**20. CITY MANAGER (presenter: Alan Krcmarik)  
INVESTMENT REPORT- DECEMBER 2013**

This is an information only item. The budget estimate for investment earnings for 2013 was \$2,760,420. Reports from institutions at which the City holds investments indicate the gross interest earnings and realized gains in 2013 exceeded \$2.2 million. After accounting adjustments, the net amount posted to the investment account was \$1,447,360. During the year, several high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank at the end of December was 1.07%. The yield is below the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels.

**END OF CONSENT AGENDA**

**CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

**PUBLIC COMMENT** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*

**PROCEDURAL INFORMATION**

*Anyone in the audience will be given time to speak to any item on the Regular Agenda before the Council acts upon it. The Mayor will call for public comment following the staff report. 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 quorum 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**

21. **CITY CLERK** (presenter: Terry Andrews)  
**APPROVAL OF JANUARY 28, 2014 STUDY SESSION MINUTES**  
**A Motion to Approve the City Council Study Session Meeting Minutes for the January 28, 2014 Study Session**  
 This is an administrative action to approve the City Council Study Session Minutes from the January 28, 2014 Study Session. Councilors McKean, Fogle, Taylor and Krenning were absent.
22. **FINANCE** (presenter: John Hartman)  
**PUBLIC HEARING**  
**SUPPLEMENTAL APPROPRIATION FOR 2014 FLOOD RELATED PROJECTS**  
**A Motion to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for Flood Related Projects**  
 This is an administrative action. The ordinance on first reading appropriates funding for engineering costs to determine the scope of several projects and the cost to repair several facilities from damage that occurred as a result of the 2013 Flood. The total appropriation net of transfers is \$10,494,930. Depending on the final determinations from FEMA on eligible costs, and other grant opportunities that may arise, the City's share of these costs will be between \$1,000,000 and \$1,800,000. The appropriation uses existing balance within several funds as the funding source. This reduces the ability to fund future projects in the short term. Over the long term, most of these costs will be reimbursed through insurance payments or FEMA and State distributions. When these reimbursements are received, the fund balances will increase allowing for use on other projects.
23. **CITY ATTORNEY** (presenter: John Duval)  
**Update on Status of Sarner v. City of Loveland Lawsuit Pending in Larimer County District Court**  
 This is primarily an information item concerning the Order issued in the Larimer County District Court deciding the *Sarner v. City of Loveland* lawsuit. City Council may want to give the City Attorney additional direction as to how the Council would like this lawsuit to proceed from the City's perspective. Depending on the nature of that direction, an executive session may be advisable.
24. **CITY COUNCIL**  
**APPOINTMENT OF PLANNING COMMISSIONER**  
 Discuss and decide the method of interview of applicants and recommendation for a vacancy on the Planning Commission. This item is placed on the agenda at the request of four City Council members. Applications have been closed and the applicants are: Alexi Greiwal, Jeremy Jersvig, and Bob Massaro.

**BUSINESS FROM CITY COUNCIL** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

**CITY MANAGER REPORT**

**CITY ATTORNEY REPORT**

**ADJOURN**



6. **A Motion to Appoint Mark Kirkpatrick as an Alternate member of the Police Citizen Advisory Board for a One-Year Term Effective Until December 31, 2014 was approved.**

7. **A Motion to Appoint Jennifer Nimmo to the Senior Advisory Board for a Full Term Effective Until December 31, 2016 was approved.**

These are administrative actions recommending the appointments and reappointments of members to the Library Board, Parks and Recreation Commission, Police Citizen Advisory Board, and the Senior Advisory Board.

2. **FIRE & RESCUE** (presenter: Randy Mirowski)  
**SUPPLEMENTAL APPROPRIATION FOR THE FIRE STATION NO. 2 CONSTRUCTION PROJECT**

**A motion to approve and order published on second reading Ordinance #5840 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Re-appropriation of Unexpended 2013 Funds for the Fire Station 2 Construction Project and the Appropriation of Additional Funds Needed to Complete the Project was approved.**

This is an administrative action. The ordinance reappropriates the remaining balance of the 2013 appropriation for the project and adds funding for addition of the fourth bay to the project. Most of the additional funding for the project is from reserves, which reduces the flexibility to fund other projects. The first reading of the ordinance was approved unanimously by Council at the January 7, 2014 regular meeting.

3. **PUBLIC WORKS** (presenter: Jason Licon)  
**SUPPLEMENTAL APPROPRIATION FOR THE AIRPORT INTERNSHIP AND AUTHORIZATION TO EXECUTE GRANT AGREEMENT**

1. **A public hearing was held and a motion to approve and order published on second reading Ordinance #5841 Enacting a Supplemental Budget and Appropriation to the 2014 Fort Collins/Loveland Municipal Airport Budget for State Grant Funding of an Internship was approved.**

This is an administrative action. The State has provided funding for an additional internship at the Airport with a fifty percent matching requirement. The airport's approved 2014 Budget includes provisions for a single intern. The additional internship will require matching funds totaling \$16,640. The match is from unassigned fund balance within the Airport Fund reducing flexibility to fund other projects. However, new funds are received for half the cost of the internship. The ordinance was approved unanimously on first reading by Council at the regular meeting on January 7, 2014.

2. **A motion to adopt Resolution #R-6-2014 Authorizing the City Manager to Execute a Grant Agreement With the State of Colorado Division of Aeronautics (CDAG #14-FNL-I01) for Two 12-Month Internship Programs at the Fort Collins-Loveland Municipal Airport was approved.**

This is an administrative action. The Resolution authorizes the City Manager to execute the grant agreement with the State of Colorado.

4. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)  
**STREET NAME FOR A PUBLIC RIGHT-OF-WAY**

**A motion to approve Resolution #R-7-2014 Establishing a Street Name for a Public Right-of-Way within The Lakes Place Third Subdivision was approved.**

This is an administrative action. The resolution establishes a name for an existing public right-of-way. The owner and developer of Lot 2, Block 1 of the Lakes Place Third Subdivision, and Lots 1-5, Block 1 of Lakes Place Fifth Subdivision, are requesting that the existing public right-of-way adjacent to the east side of these lots be given a street name so that the lots can be addressed and made ready for sale. The proposed street name, Waterlily Drive, is consistent with the City of Loveland street naming rules

(Chapter 12.08 of the Loveland Municipal Code) and has been approved by the Loveland Fire Authority and Public Works Department. Council has statutory authority to name streets within the City of Loveland.

## END OF CONSENT AGENDA

### CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

#### CITY COUNCIL

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*

**Nick Peterson, 822 East 5th Street, expressed concern regarding the Planning Commission appointment process as discussed at the January 7, 2014 City Council Meeting.**

- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

**Krenning:** Attended Chamber of Commerce Dinner; Acknowledged the Heart Award to the City of Loveland. Suggested an extra day off for City Staff for their actions regarding the 2013 Flood Relief; Consensus of Council was to direct staff to bring back a request for Council consideration; Suggested a Community event at the time of Fairgrounds Park re-opening to express appreciation to the public for their involvement in the 2013 flood event recovery; Discussed asking voters to consider a tax to cover litigation cost that a moratorium may invoke; Staff will bring a summary of the Court order. Food Sales Tax regarding groceries discussion; Announced Krenning will recuse himself regarding Litigation concerning the 10th Circuit Court Topic, which is on the agenda for discussion in Executive Session.

**Clark:** Congratulated Loveland for receiving the Heart Award for Flood Relief efforts from the Chamber of Commerce.

**Shaffer:** Announced Senator Udall will be attending the February 1, 2014, 1-25 afternoon event;

**Gutierrez:** Attended the Ribbon Cutting for the Colorado Ice Arena Football; Colorado Ice and Chamber of Commerce to hold fundraiser to help with the Business Recovery Fund; Attended Strategic Planning event at Otterbox with Kurt Richardson; Announced upcoming Airport Joint meeting on February 29, 2014 with Ft. Collins.

- c. **City Manager Report**

Expressed appreciation to City Council for acknowledging staff regarding the Heart Award.

- d. **City Attorney Report**

#### 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 quorum 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**

5. **ECONOMIC DEVELOPMENT** (presenter: Cindy Mackin)  
**SUPPLEMENTAL APPROPRIATION FOR SPONSORSHIP OF TWO EVENTS**  
 This is an administrative action. The ordinance on second reading appropriates funds for the City to sponsor two events using \$50,000 of reserves in the Lodging Tax Fund. The ordinance is funded with unassigned fund balance reducing the flexibility to fund other projects. The fund balance in lodging tax reserves is \$718,000. On January 7, 2014, City Council approved the ordinance on first reading by a vote of 8-1.  
**Councilor Shaffer moved to approve and order published on second reading Ordinance #5842 Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Sponsorship of Two Community Events, the Snow Sculpture Contest and Oktoberfest. Councilor Farley seconded the motion which carried with eight councilors present voting in favor and Councilor Fogle voting against.**
6. **FINANCE** (presenter: John Hartman)  
**DEVELOPMENT OF PRIORITY BASED BUDGETING (PBB) RESULTS**  
 Budget Officer, John Hartman introduced this item to Council. John Johnson and Chris Fabian from The Center for Priority Based Budgeting were present. The Center reported on the results from the Study Session exercise and work with Council to finalize the Result areas to be used for the Priority Based Budgeting exercise. This action will develop the guiding principles for the PBB exercise that will be part of the decision making for the development of the 2015 Budget.  
**Councilor Shaffer moved to approve a Set of Results for the City of Loveland, With the Aide of the Center for Priority Based Budgeting; to Begin the Priority Based Budgeting Exercise. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
7. **CITY ATTORNEY** (presenter: John Duval)  
**EXECUTIVE SESSION REGARDING CURRENT LITIGATION**  
 City Attorney, John Duval introduced this topic regarding Myers v Koopman 10th Circuit of Appeals. Discussion ensued. Councilor Krenning recused himself. At 7:50 p.m., Councilor Shaffer made the following motion: "I move that the City Council go into executive session, as authorized in CRS Section 24-6-402(4)(b), 4(e) and 4(g) and City Charter Sections 4-4(c)(1), (c)(3) and (c)(6). This executive session will concern the Myers v. Koopman lawsuit now pending in federal court. And related to this litigation: to receive legal advice from the City Attorney and CIRSA-appointed counsel Kent Campbell; and since this is a matter that may be subject to future negotiations, to determine negotiation position, developing negotiation strategy, and to instruct negotiators concerning such positions and strategy; and to receive and review documents and information that are not subject to public inspection under the Colorado Open Records Act, such as work-product documents". Discussion ensued. The motion, seconded by Councilor Clark, carried with eight Councilors voting in favor and Councilor Krenning voting against and Councilor Trenary abstaining due to illness. Councilor Krenning later requested to withdraw his vote, due to his desire to recuse himself from this issue. The executive session began at 8:11 p.m. Council reconvened at 9:25 p.m.

**ADJOURNMENT**

Having no further business to come before Council, the January 21, 2014 Regular Meeting was adjourned at 9:28 p.m.

**Respectfully Submitted,**

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**Teresa G. Andrews, City Clerk**

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**Cecil A. Gutierrez, Mayor**



**CITY OF LOVELAND**  
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537  
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

**AGENDA ITEM:** 2  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Keith Reester, Public Works Department  
**PRESENTER:** Ken Cooper, Facilities Operations Manager

**TITLE:**

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget for the Service Center Expansion Project

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The ordinance on second reading appropriates funds for construction contingency on the Service Center Expansion project in the amount of \$636,150. This ordinance was approved unanimously on first reading by Council at the February 4, 2014 regular meeting.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The ordinance appropriates undesignated fund balance reducing the flexibility to fund other projects. The fund balance is the result of actual revenues being higher than projected in the 2013 Budget and from projected 2014 revenue that was not appropriated in the 2014 Budget.

**BACKGROUND:**

This funding provides contingency to support the construction work being performed by Golden Triangle Construction. The majority of the contingency amount is needed to cover stabilization for poor soils conditions directly related to the flood event in September, 2013. Other items to be covered with this additional funding include utilities infrastructure for natural gas and for electricity. The funding will not be used to add scope to the project, but will be used as needed to cover unforeseen project conditions or issues.

Though the City would normally request at least ten percent in construction contingency, our project team is hopeful this five percent contingency request will be sufficient, since vertical construction is significantly underway and most of the ground issues are now resolved.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING**            February 4, 2014

**SECOND READING**        February 18, 2014

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR THE SERVICE CENTER EXPANSION PROJECT**

**WHEREAS**, the City has received and/or reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues and/or reserves in the amount of \$636,150 from current year projected revenue and fund balance in the General Government Capital Expansion Fee Fund are available for appropriation. Revenues in the total amount of \$636,150 are hereby appropriated and transferred to the Capital Projects Fund 120 for the Service Center Expansion Project. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Capital Projects Fund 120**

<b>Revenues</b>		
120-00-000-0000-37268-GF1107	Transfer from General Government CEF	636,150
<b>Total Revenue</b>		<b>636,150</b>

<b>Appropriations</b>		
120-23-250-1799-49360-GF1107	Construction	636,150
<b>Total Appropriations</b>		<b>636,150</b>

**Supplemental Budget  
General Government Capital Expansion Fee Fund 268**

<b>Revenues</b>		
Fund Balance		636,150
<b>Total Revenue</b>		<b>636,150</b>

<b>Appropriations</b>		
268-91-902-0000-47120-GF1107	Transfer to Capital Projects Fund	636,150
<b>Total Appropriations</b>		<b>636,150</b>

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

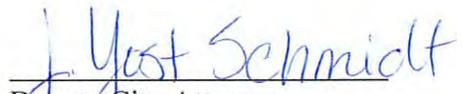
ADOPTED this 18<sup>th</sup> day of February, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney



**CITY OF LOVELAND**  
CITY COUNCIL

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 3  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Public Works (Engineering Division) and Finance  
**PRESENTER:** Dave Klockeman, City Engineer

**TITLE:**

A Motion to Approve the Extension of the 2014 Street Resurfacing Program - Concrete Rehabilitation Project Schedule Target Area to JAG's Enterprises, Inc. of Greeley, Colorado in the Amount of \$800,000 and to Authorize the City Manager to Execute the Contract

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the motion.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The motion approves the extension of the existing 2011 Street Resurfacing Program-Concrete Rehabilitation Project to JAG's Enterprises, Inc. of Greeley.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Funding is available in the adopted 2014 Budget within the annual Street Rehabilitation Program.

**BACKGROUND:**

The contract documents for the 2011 Street Resurfacing Program - Concrete Rehabilitation Project Schedule Target Area included a clause to allow the extension of the contracts for three additional years (in one-year periods) if beneficial to both parties. 2014 is the third extension

year for the Target Area (Schedule TA) contract which covers our Concrete Rehabilitation Project. The Concrete Rehabilitation Project includes concrete repairs in advance of paving operations for the Street Resurfacing Program. In order to accept price increases, the contractor is required to provide specific information to the City detailing changes in fixed costs associated with the required work. Cost increases are allowed for items that are out of the control of the contractor, such as fuel and raw materials. This contract is particularly sensitive to price increases for concrete materials. The contractor has supplied information which justifies an 11.8% increase to concrete prices. This is a reasonable increase based on raw material costs.

**Schedule TA:** The work under the Schedule TA consists of the following: repairs of curbs and gutters, crosspans, storm inlets, and some sidewalks that adversely affect the efficient drainage on the streets scheduled for paving. This concrete program also includes bringing these areas into compliance with the Americans with Disabilities Act (ADA) rules and regulations, which is mandated by the Federal Government and enforced by the Department of Justice.

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**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

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**LIST OF ATTACHMENTS:**

None



**CITY OF LOVELAND**  
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537  
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

**AGENDA ITEM:** 4  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Keith Reester, Public Works  
**PRESENTER:** Keith Reester, Public Works Director

**TITLE:**

A Resolution Approving an Intergovernmental Agreement (IGA) Between the City of Loveland, Colorado and the City of Fort Collins, Colorado for Bus Service Between Fort Collins and Longmont for the Calendar Year 2014

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action to consider a resolution to approve an Intergovernmental Agreement (IGA) with Fort Collins to provide regional bus service between Fort Collins and Longmont along the U.S. Highway 287 corridor. This service is referred to as the Fort Collins-Longmont Express or FLEX route. This is an IGA for the 2014 calendar year.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Funds for the local match portion of the contract (\$100,000) are budgeted into the annual core transit budget.

**BACKGROUND:**

The City of Fort Collins will prepare all necessary grant and pay applications for Federal Transit Administration Section 5307 Funds, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), and any additional amount of federal or state grant funding as may become available for use in connection with the FLEX. Additional project participants include Fort Collins, Berthoud, City of Longmont, and Boulder County.

FLEX

City of Loveland staff has worked collaboratively to secure funding for FLEX through 2014 and early 2015. This includes additional financial contributions from all funding partners (Fort Collins, Loveland, Longmont, Boulder County, and Berthoud). Additional 5307 federal dollars will be in the program for 2014. We anticipate in 2015 and beyond a large funding support through dedicated transit FASTER funds from CDOT.

The ridership on FLEX continues to be strong, greater than 20 passengers/hour and we anticipate further growth moving ahead. Fort Collins, in partnership with other agencies, will be launching a new FLEX advertising campaign in early 2014.

<b>FLEX REVENUES:</b>	<b>2013</b>	<b>2014</b>
CMAQ Funding	\$ 600,000	\$ -
Proposed FTA Section 5307 Funding	\$ -	\$ 362,598
Fares & Fees	\$ 54,749	\$ 55,751
Advertising	\$ 6,000	\$ 6,000
Loveland Contribution	\$ 45,800	\$ 100,000
Fort Collins Contribution	\$ 45,800	\$ 100,000
Berthoud Contribution	\$ 5,000	\$ 10,000
Longmont Contribution	\$ 10,000	\$ 45,000
Boulder County Contribution	\$ 10,000	\$ 45,000
ECO Pass Reimbursement	\$ 5,000	
FASTER Grant (Anticipated)	\$ -	\$ 58,000
<b>TOTAL REVENUES</b>	<b>\$ 782,349</b>	<b>\$ 782,349</b>

**FLEX EXPENDITURES:**

Payroll	\$	397,533	\$	397,533
Fuel	\$	155,232	\$	155,232
Maintenance	\$	229,584	\$	229,584
<b>TOTAL EXPENDITURES</b>	<b>\$</b>	<b>782,349</b>	<b>\$</b>	<b>782,349</b>
<b>CURRENT PROJECTED SHORTFALL</b>	<b>\$</b>	<b>0</b>	<b>\$</b>	<b>0</b>

*Anticipated cost per ride FLEX: \$4.35 (Fare: \$2.25)*

*Local Contribution Subsidy/Ride 2013: \$0.65/ride (2014: \$1.67)*

**REVIEWED BY CITY MANAGER:**



**LIST OF ATTACHMENTS:**

1. Resolution
2. IGA

**RESOLUTION #R-14-2014**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE CITY OF FORT COLLINS, COLORADO FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT FOR THE CALENDAR YEAR 2014**

**WHEREAS**, the City of Loveland desires to partner with the City of Fort Collins to provide regional connector bus service between the City of Fort Collins and the City of Longmont along the U.S. Highway 287 corridor, which service is referred to as the “Fort Collins-Longmont Express,” or “FLEX”; and

**WHEREAS**, as governmental entities in Colorado, the City of Loveland and the City of Fort Collins are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

**Section 1.** That the “Intergovernmental Agreement for Bus Service Between Fort Collins and Longmont,” attached hereto as Exhibit A and incorporated herein by reference (“Intergovernmental Agreement”), is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

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

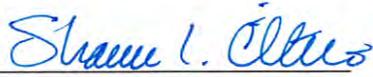
ADOPTED this 18<sup>th</sup> day of February, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

---

Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT  
FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT**

This Agreement is made this 1<sup>st</sup> day of January, 2014, between the **City of Fort Collins, Colorado**, a municipal corporation, and the **City of Loveland, Colorado**, a municipal corporation.

**I. RECITALS**

1. WHEREAS, the parties desire to provide regional connector bus service between the City of Fort Collins and the City of Longmont; and

2. WHEREAS, the City of Fort Collins has its own fixed-route bus system (“Transfort”) and has arranged for provision of regional connector bus service along the U.S. Highway 287 corridor between the City of Fort Collins and the City of Longmont (referred to as the “Fort Collins-Longmont Express (FLEX)”); and

3. WHEREAS, the parties have determined that significant economic and efficiency benefits will result for each party through the proposed system of providing connector bus service to the Fort Collins-Longmont Express (FLEX) through the City of Fort Collins Transfort system.

**II. CONSIDERATION**

4. Now, therefore, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the parties agree as follows:

**III. TERMS**

5. The City of Fort Collins shall provide connector bus service in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, consisting of one page, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. Additional service may be provided by the City of Fort Collins, at its discretion, to the extent the City of Fort Collins determines appropriate given the demand for service and available resources.

6. The City of Fort Collins agrees that all services provided under this Agreement shall be provided consistent with Transfort system operating policies and procedures, as the same may be amended, and that all such services shall be provided consistent with the schedule for operation of Transfort.

7. In consideration of the services provided by the City of Fort Collins under this Agreement and the mutual financial commitment herein made, the parties agree that each of the parties shall contribute to the direct and indirect cost of operating the FLEX Route, supplemented by such additional federal or state grant funds as may be available therefor. The City of Loveland shall make its payment in the amount of One Hundred Thousand Dollars (\$100,000) to the City of

Fort Collins within sixty (60) days after receipt of invoice.

8. Any additional revenues collected by the City of Loveland from the operation of the FLEX shall be remitted to the City of Fort Collins. Such revenue, and any additional revenues collected by the City of Fort Collins from the operation of the FLEX, shall be used to supplement the operation expenses of the FLEX and will equally benefit all responsible parties.

9. The City of Fort Collins shall prepare all necessary grant and pay applications for Federal Transit Administration Section 5307 funds, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000), or any such additional amount of federal or state grant funding as may become available hereafter for use in connection with the FLEX.

10. Revenue from advertising on exterior signs and interior panels on the FLEX bus or from bus shelters or bus bench advertising for bus stops that are served exclusively by the FLEX (collectively, "FLEX Revenue") shall be remitted to the City of Fort Collins. FLEX Revenue will be used to supplement the operation expenses of the FLEX and will equally benefit all responsible parties. **Exhibit B**, consisting of one page, attached hereto and incorporated by this reference, identifies all existing bus benches or bus shelters subject to this subparagraph. **Exhibit B** constitutes a current inventory, but any additional revenue-producing shelters or benches added during the term of this Agreement shall also be subject to this subparagraph. The parties acknowledge and agree that the budget proposal for operation of the FLEX for 2014 (and for subsequent years in the event the term of this Agreement is extended pursuant to Section 18 below) includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to Section 13 below ("FLEX Fare Revenue"). If FLEX Revenue and FLEX Fare Revenue for 2014 (or any subsequent year in the event the term of this Agreement is extended pursuant to Section 18 below) is insufficient to meet the budget for operation of the FLEX the parties may elect to appropriate and pay their prorata share of any shortage. If any party does not appropriate and pay its prorata share of the shortage in FLEX Revenue and FLEX Fare Revenue, the City of Fort Collins may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage, or terminate FLEX service.

11. The parties anticipate that the FLEX will be supported by additional contributions from the City of Berthoud, the City of Longmont, and Boulder County pursuant to separate Intergovernmental Agreements (the "Additional Supporting Entities"), and the budget proposal for operation of the FLEX for 2014 (and for subsequent years in the event the term of this Agreement is extended pursuant to Section 18 below) includes projected contributions from the Additional Supporting Entities. If any Additional Supporting Entity does not enter into such a separate Intergovernmental Agreement and appropriate and pay its anticipated contribution to support the operation of the FLEX, the City of Fort Collins may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address any resulting shortage of revenue, or terminate FLEX service.

12. In the event the City of Fort Collins determines that circumstances require

modification of the FLEX in order to better accommodate the demand for service or the efficient provision of service, the City of Fort Collins shall be entitled to implement such modification, provided that advance notice of any such modification is provided to the City of Loveland.

13. The basic cash fare to be charged for the FLEX shall be One Dollar and Twenty Five Cents (\$1.25) per ride; provided, however, that the City of Fort Collins shall be entitled to modify the fare to be charged by up to fifty percent (50%), as necessary for the efficient and cost-effective operation of the FLEX, and provided further that advance notice of any such modification is provided to the City of Loveland. All City of Fort Collins discounted fare categories for Transfort bus service will apply to the FLEX. The City of Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. The City of Fort Collins shall prepare quarterly reports of such receipts and ridership levels, and shall provide such quarterly reports to each of the parties hereto.

14. All City of Fort Collins and City of Loveland bus pass programs will be accepted as full fare to ride the FLEX. Transfers from the FLEX to the Transfort or City of Loveland Transit ("COLT") bus systems will be honored.

15. Each party shall designate a representative who shall be responsible for managing such party's performance of the terms of this Agreement, and shall provide the other party with written notice thereof, along with address and telephone information. All notices to be provided under this Agreement shall be provided to such designated representatives.

16. The City of Fort Collins agrees to prepare and submit any applications, reports, or other documentation required in connection with the grant funding provided for the FLEX in accordance with Section 9, above.

17. The parties agree to cooperate fully in the development and implementation of any surveys or studies undertaken by any of the parties in order to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of the FLEX service or the need for such service; provided, however, that such cooperation shall not include the expenditure of funds in excess of the specific amounts set forth in paragraph 7 above unless approved and appropriated by the parties.

18. This Agreement shall commence on January 1, 2014, and shall continue in full force and effect until December 31, 2014, unless sooner terminated as herein provided. In addition, the parties may extend the Agreement for additional one year periods not to exceed one additional one year period. A written addendum to this Agreement extending its term in accordance with this Section 18 and setting forth the amounts to be contributed by each party during each fiscal year of the extended term of this Agreement shall be executed by the parties no later than sixty (60) days prior to the end of each term of the Agreement. This Agreement is not a multi-year fiscal obligation of any of the parties hereto, and the amount to be contributed or borne by each party in future fiscal years is subject to annual appropriation by the parties.

19. In the event a party has been declared in default, such defaulting party shall be allowed a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to terminate the Agreement and so notify the defaulting party in writing. Any amounts due the non-defaulting party shall be paid within fifteen (15) days of the date of notice of termination is received.

20. Liability of the parties shall be apportioned as follows:

a. The City of Fort Collins shall be responsible for any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the City of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.

b. The City of Loveland shall be responsible for any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the City of Loveland or its officers, employees, and agents, in connection with the performance of this Agreement.

c. Nothing in this Section 20 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City of Fort Collins or the City of Loveland may have under the Colorado Governmental Immunity Act (Section 24-10-101, 10A C.R.S., et seq.) or any other defenses, immunities, or limitations of liability available to any party by law.

21. This Agreement embodies the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth herein.

22. No changes, amendments, or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by all parties, except as provided herein.

23. The laws of the State of Colorado shall be applied to the interpretation, execution, and enforcement of this Agreement.

24. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**CITY OF FORT COLLINS, COLORADO**  
a municipal corporation

By: \_\_\_\_\_  
Darin Atteberry, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

**CITY OF LOVELAND, COLORADO**  
a municipal corporation

By: \_\_\_\_\_  
William D. Cahill, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

### ***EXHIBIT A***

The City of Fort Collins will operate regional connector bus service between the City of Longmont and the City of Fort Collins. Service will be provided within the following parameters:

- **Days of Service** – Monday – Saturday, except for New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- **Hours of Service** – 5AM – 8 PM
- **Frequency of Service** – 60 Minutes
- **Service Area** –

From January through May, the route begins in Fort Collins at the Downtown Transit Center and travels southbound on US 287. The bus stops at US 287 and Prospect Road, US-287 and Drake Road, US-287 and Harmony Road, and US 287 and Skyway Drive in Fort Collins.

From June through December, the route begins at the South Transit Center, southwest of Harmony Road and US-287. The bus stops at US 287 and Skyway Drive in Fort Collins.

The route will then proceed on to US 287 resuming southbound direction. The bus will enter the Orchards Shopping Center via the northern entrance to the Transfer Point. The bus will exit the shopping center on Buchanan Avenue. The route will travel south on US 287 and the bus will stop on 8<sup>th</sup> Street. The route will continue south bound on US 287 and the bus will stop on SW 14<sup>th</sup> Street. The route will follow US 287 to Co Rd 15 into Berthoud. The route will turn West on Mountain Avenue and the bus will stop at Mountain Avenue and 3rd Street. The route will continue west on Mountain Avenue and resume the Southbound direction at US 287. The route will continue South on US 287 into Longmont. The bus will stop at 23<sup>rd</sup> and Main Street as well as 9<sup>th</sup> and Coffman in Longmont.

Due to the limited number of stops along this route, this route is not a fixed route and complementary paratransit service is not required.

**EXHIBIT B**

Benches and shelters served exclusively by the Fort Collins-Longmont Express (Flex):

**Fort Collins:**

NB Hwy 287 N/O Skyway ES	Bench #1105
NB College Ave N/O Fossil Creek Parkway ES	Bench #1106
SB College Ave S/O Cameron Rd WS	Shelter #1073

**Larimer County:**

NB Hwy 287 S/O Carpenter Rd ES Shelter #1103

SB Hwy 287 S/O Trilby WS Shelter #1075

**Loveland:**

NB Hwy 287 N/O 37 <sup>th</sup> St ES	Shelter #1097
SB Hwy 287 S/O 37 <sup>th</sup> St ES	Bench #1082
SB Hwy 287 S/O 41 <sup>st</sup> St WS	Bench #1081
NB Hwy 287 S/O 43 <sup>rd</sup> St ES	Bench #1098
NB Hwy 287 N/O 45 <sup>th</sup> St ES	Bench #1099
SB Hwy 287 S/O 45 <sup>th</sup> St WS	Shelter #1080
NB Hwy 287 N/O 50 <sup>th</sup> St ES	Bench #1100
SB Hwy 287 S/O 50 <sup>th</sup> St WS	Bench #1079
SB Hwy 287 S/O 57 <sup>th</sup> St WS	Bench #1078
NB Hwy 287 N/O 57 <sup>th</sup> St ES	Shelter #1101
NB Hwy 287 N/O 71 <sup>st</sup> St ES	Bench #1102
SB Hwy 287 S/O 71 <sup>st</sup> St WS	Shelter #1077



**CITY OF LOVELAND**  
LOVELAND PUBLIC LIBRARY

Civic Center • 300 North Adams • Loveland, Colorado 80537  
(970) 962-2665 • FAX (970) 962-2905 • TDD (970) 962-2620

**AGENDA ITEM:** 5  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Marcia Lewis, Library Department  
**PRESENTER:** Marcia Lewis, Library Director

**TITLE:**

An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City of Loveland Budget to Join the Prospector Database for Regional Library Resource Sharing

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The ordinance on first reading appropriates \$37,080 from funds donated by the Kroh Charitable Trust Funds for the Loveland Public Library to join Prospector, a resource sharing database that provides access to over 2 million items through an online catalog of 40 public and academic libraries in Colorado and Wyoming.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The ordinance is funded by outside resources donated to the City.

**BACKGROUND:**

The Kroh Charitable Trust Funds designated for the library may be used for the benefit of the library provided they are not used for ordinary operating expenses. On August 22, 2013 the

Library Board approved expenditure of Kroh Funds for the purpose of implementing and joining the Prospector Resource Sharing System.

In 2013, there were significant reductions in one-time costs to participate, making this an advantageous time to join.

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**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

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**LIST OF ATTACHMENTS:**

1. Ordinance

FIRST READING February 18, 2014

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET TO JOIN THE PROSPECTOR DATABASE FOR REGIONAL LIBRARY RESOURCE SHARING**

**WHEREAS**, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues in the amount of \$37,080 from the Kroh Charitable Trust in the General Fund 100 are available for appropriation. Revenues in the total amount of \$37,080 are hereby appropriated for software and training to join the Prospector Database maintained by the Colorado Alliance of Research Libraries for regional library resource sharing. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100- Regional Library Resource Sharing Database**

<b>Revenues</b>		
100-53-750-0000-35305	Donations	37,080
<b>Total Revenue</b>		<b>37,080</b>
 <b>Appropriations</b>		
100-53-750-0000-42015	Computer Software	12,000
100-53-750-0000-43450	Professional Services	25,080
<b>Total Appropriations</b>		<b>37,080</b>

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this \_\_\_\_ day of March, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 6  
**MEETING DATE:** 2/4/2014  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Bob Paulsen, Current Planning Manager

**TITLE:**

An Ordinance on First Reading Amending Various Sections in Title 18 of the Loveland Municipal Code

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action. The ordinance on first reading amends Title 18 of the Loveland Municipal Code. This collection of minor amendments is designed to correct errors, provide consistency, and clarify use allowances within the zoning code.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

This group of minor amendments to the zoning code addresses code deficiencies and inconsistencies that have arisen in relation to development projects and customer inquiries. The most noteworthy of the amendments addresses Safety Training Facilities and Indoor Shooting Ranges. Currently, the Code is silent as to these uses. The amendments define these uses and specify which zones would allow the uses. As the City is moving forward with plans to develop the Regional Training Facility at the airport, it is important to clarify zoning and use

issues prior to project review. Amendments addressed by the ordinance are summarized as follows:

- Drive-in or Fast Food Restaurant: A redundant definition is being eliminated and the remaining definition is being clarified. Drive-in restaurants like Sonic and restaurants with drive-up service windows require special review approval in commercial zoning districts.
- Two Family Dwelling Unit: Currently, this definition allows only attached units (duplexes); the revised definition would allow detached units to occur on a single lot when a two-family development is allowed.
- Indoor Firing Range: This use is defined and an allowance made for the use to occur by right in the I-Industrial District, and as special review use in the B, MAC and E districts.
- Safety Training Facility: This use is defined and an allowance made for the use to occur by special review in the I-Industrial district.
- Downtown BE zone: The amendment would limit drive-in restaurants and restaurants with drive-up services windows to a special review use. In addition, the role of the Planning Commission in reviewing plans for development in Downtown is clarified. Finally, minor adjustments are provided to address parking lot setback requirements.
- Swimming pools: An adjustment to the Accessory Building and Uses provisions would provide alternative means of preventing unwanted access to pools.

At a noticed public hearing on November 25, 2013, the Planning Commission recommended approval to Council regarding the minor zoning code amendments specified in the ordinance.

Note: The amendment to Chapter 18.60 relating to the Authority of the Zoning Board of Adjustment (ZBA) has been submitted to Council in a separate ordinance. The ZBA adjustment was part of the collection of minor amendments that were reviewed by the Planning Commission on November 25, 2013. This collection of minor amendments was reviewed and supported by the Title 18 Committee.

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Ordinance
2. November 25, 2013 Planning Commission Report
3. November 25, 2013 Planning Commission Minutes
4. Adjustment to the swimming pool provisions in response to Planning Commission comments
5. PowerPoint Slides

**FIRST READING**      February 18, 2014

**SECOND READING**      \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING VARIOUS SECTIONS IN TITLE 18 OF THE LOVELAND MUNICIPAL CODE**

**WHEREAS**, the definition of “two-family dwelling” contained in Section 18.04.143.6 for the purposes of Title 18 of the Loveland Municipal Code (“Code”) requires modification to allow greater flexibility in the arrangement of structures on property that is zoned for two-family and medium-density residential uses; and

**WHEREAS**, Code Sections 18.04.161 and 18.04.335, which currently define “fast food or drive in restaurant” and “restaurant, drive in or fast food” require modification to eliminate overlap and inconsistencies with respect to these definitions used for the purposes of Title 18 of the Code; and

**WHEREAS**, Title 18 of the Code requires modification to define and identify appropriate zoning districts for indoor firing ranges and safety training facilities; and

**WHEREAS**, the provisions of Code Section 18.24.050 regarding Planning Commission approval of certain proposed development in the BE zone district requires modification to clarify procedures and criteria for such approval; and

**WHEREAS**, side and rear parking setbacks as set forth in Table 18.24.080-1 contained in Code Section 18.24.080.E.1 (General and core character areas urban design standards for BE District), require specification; and

**WHEREAS**, Code Section 18.48.050 regarding swimming pools requires modification to permit alternative safety measures in light of changes in technology and methods that have become available in the marketplace.

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

**Section 1.** That the following Sections of Chapter 18.04 of the Loveland Municipal Code, which contains definitions of terms used in Title 18, are hereby amended to read as follows:

**18.04.143.6- Dwelling, two-family defined.**

**A “Two-family dwelling” means a building or lot containing two (2) dwelling units designed for occupancy by two (2) families living independently of each other, which has not less than one bathroom for each family and a minimum of five hundred (500) square feet per**

dwelling unit, except that if the dwelling is designed with respect to separate electric, water, and gas utility connections and common wall construction to allow each dwelling unit to be located on its own separate lot through a subdivision after issuance of the building permit, then the dwelling shall be a single-family attached dwelling, following approval of such subdivision.

**18.04.161 ~~Fast food or drive-in restaurant~~ Firing range, indoor defined.**

~~“Fast food or drive-in restaurant” means any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready to consume state for consumption either inside or outside the restaurant building or for carry-out for the purpose of consumption off the premises, and whose design and principal method of operation includes at least one of the following characteristics:~~

- ~~A. Foods, frozen desserts, or beverages are usually served in edible containers or in paper, plastic or other disposable containers;~~
- ~~B. The consumption of foods, frozen desserts, or beverages within a motor vehicle parked upon the premises or other facilities upon the premises outside the restaurant building is allowed, encouraged or permitted;~~
- ~~C. Foods, frozen desserts, or beverages are served directly to the customer in a motor vehicle by a service attendant, or by other means such as a drive-up service window which eliminates the need for the customer to exit the motor vehicle.~~

~~A completely enclosed building or group of buildings which contains facilities for the use of firearms and similar weaponry for training, testing, or recreational purposes in which noise, vibration, smoke, odor, and light flashes are contained within the building(s). Such facilities include the use of ammunition using kinetic propellants where a projectile is fired from a firearm, as defined by Title 18 Chapter 44 of the United States Code, or facsimile thereof and use of force scenarios where such firearms are used. The presence of activities that include archery, paintball systems, video-based gaming, laser-based technology of low output and other technologies that do not cause emission of a destructive force, including compressed gas, air propulsion based firearms or spring-based propulsion systems, do not constitute an indoor firing range, although such activities may occur within an indoor firing range.~~

**18.04.335- ~~Restaurant, drive-in or fast food defined.~~**

~~A restaurant so developed that it provides a driveway approach and patrons can be provided with food or beverage service windows or facilities for vehicles to serve patrons food and beverages while remaining in a ready to consume state from a drive-their vehicle, with service provided at on-site parking spaces or through a drive-up service window, or similar facility. Such restaurants may or may not also have indoor seating or parking spaces or outdoor dining areas for patrons.~~

**18.04.342 Safety training facility defined.**

Outdoor or partially-enclosed facility operated for the purpose of providing training or recreation relating to law enforcement, fire or emergency management, simulated use of force, electronic based simulation technology for the operation, testing, or training of motor vehicles to serve patrons while in the vehicle operations, motor vehicle, testing or training under high speeds or hazardous conditions, or similar activities that result in the creation of off-site noise, vibration, smoke, light flashes, or hazards. Such facilities may include indoor firing ranges.

**Section 2.** That Code Section 18.24.020 (Uses permitted by right in the BE District-Established Business District) is hereby amended by the deletion of subsection PP as follows:

**Chapter 18.24  
BE DISTRICT - ESTABLISHED BUSINESS DISTRICT**

**18.24.020** Uses permitted by right.

...

~~PP. Restaurant, fast food without drive in.~~

**Section 3.** That the following Code Sections of Chapter 18.28 (B District-Developing Business District) are hereby amended as follows:

**Chapter 18.28  
B DISTRICT-DEVELOPING BUSINESS DISTRICT**

**18.28.010** Uses permitted by right.

...

N. Restaurant, standard, ~~indoor or outdoor;~~

**18.28.020** Uses permitted by special review.

...

~~N. Restaurants and other eating and drinking places, outdoor;~~

S. Restaurant, Drive-in or fast food restaurant;

NN. Firing range, indoor.

**Section 4.** That the following Code Sections of Chapter 18.29 (MAC District – Mixed-Use Activity Center District) are hereby amended as follows:

**Chapter 18.29  
MAC DISTRICT – MIXED-USE ACTIVITY CENTER DISTRICT**

**18.29.020** Uses permitted by right.

...

BB. Restaurant, standard, ~~indoor or outdoor;~~

~~CC. Restaurant, standard outdoor;~~

**18.29.030** Uses permitted by special review.

P. Firing range, indoor.

**Section 5.** That the following Code Sections of Chapter 18.30 (E District, Employment Center District) are hereby amended as follows:

**Chapter 18.30**  
**E DISTRICT – EMPLOYMENT CENTER DISTRICT**

**18.30.020** Uses permitted by right.

...  
U. Restaurant, standard, ~~indoor or outdoor~~;

**18.30.030** Uses permitted by special review.

P. Firing range, indoor.

**Section 6.** That the following Code Sections of Chapter 18.36 (I District – Developing Industrial District) are hereby amended as follows:

**Chapter 18.36**  
**I DISTRICT – DEVELOPING INDUSTRIAL DISTRICT**

**18.36.020** Uses permitted by right.

...  
II. Restaurant, standard, ~~(indoor or outdoor)~~;  
TT. Firing range, indoor.

**18.36.030** Uses permitted by special review.

...  
V. Safety training facility.

**Section 7.** That Code Section 18.24.050 (BE District-Established Business District) of the Loveland Municipal Code is hereby amended as follows:

**18.24.050- Proposals requiring approval by the planning commission.**

A. ~~Structures~~ Applications for development and redevelopment of structures, buildings or additions meeting that meet the criteria listed specified in ~~this section shall require one or more of the numbered subsections below require site development plan~~ approval by the planning commission at a public hearing noticed in accordance with Chapter ~~16.16.070.18.05.~~ Uses listed in Section 18.24.030 as requiring ~~a~~ special review and meeting the thresholds listed in ~~this section one or more of the numbered subsections below~~ shall require a noticed neighborhood meeting and approval by the planning commission at a noticed public hearing in lieu of ~~at the special review process; notice distance shall be as specified for special review in Chapter 18.05.~~

- 1.- Any allowed uses located in the general, core or Fourth Street character areas containing more than 25,000 square feet of gross floor area construction.
- 2.- Any allowed uses located in the neighborhood transition character area containing more than 10,000 square feet ~~off~~ gross floor area construction.
- 3.- Any building or structure height above seventy (70) feet, exclusive of church spires, chimneys, ventilators, pipes, elevator shafts, or similar appurtenances.

B.- ~~\_\_\_ In evaluating proposals approving a site development plan application, the planning commissions shall make the commission must determine that the following findings included in this section. have been met:~~

- 1.- ~~\_\_\_ The proposed development complies with the standards of this chapter and any \_\_\_ other applicable provisions of the Loveland Municipal Code.~~
- 2.- ~~\_\_\_ The proposed development is consistent with the goals of the document, \_\_\_ Destination Downtown: Heart Improvement Project Downtown Strategic Plan \_\_\_ and Implementation Strategy-, as updated or as provided in the most current downtown strategic planning policy document adopted by the City Council.~~
- 3.- ~~\_\_\_ The proposed development is compatible with surrounding properties while when considering its location in anthe allowances for development intensity specified in this Chapter and the urban environmentorientation of the downtown which is characterized by a diversity \_\_\_ of uses and building types.~~
4. Adequate infrastructure is available to serve the proposed development.

C. Planning commission decisions may be appealed in accordance with chapter 18.80 of this Title.

**Section 8.** That Table 18.24.080-1 contained in Code Section 18.24.080.E.1 (General and core character areas urban design standards for BE District) is hereby amended to read as follows:

Table 18.24.080-1

Dimensional and Intensity Standards for General and Core Character Areas Only								
Use	Minimum yard requirements <sup>1,3</sup>				Open space, and lot size			
	Front	Side, Lot line <sup>4</sup>	Side, right-of-way <sup>6</sup>	Rear, lot line	Rear Right-of-way <sup>6</sup>	Useable Open Space	Min Lot Size	Min Lot Width
One-family detached	10	5	5	10	5	None	4,000	35
One-family attached <sup>4</sup>	10	5	0	10	5	None	1,600	17
Two-family	10	5	0	10	5	None	4,000	40
Accessory Bldg	25	5	0	5	5	None	N/A	N/A
Multi-family	10	5	0	10	0	10% Gen	5,000	50
Non-res & mixed	0	5-Gen 0-Core	0	10	0	7.5% Gen 0% Core	None	None
Off-street parking lots	8	8	8	0	5	N/A	N/A	N/A

<b>and structures<sup>2</sup></b>								
<p>Notes:</p> <ol style="list-style-type: none"> <li>1. Setbacks for garage doors fronting public alleys shall be either five (5) feet or less; or eighteen (18) feet or more. Setbacks for garage doors fronting a public street shall be at least twenty (20) feet.</li> <li>2. Setbacks may be reduced for surface parking when a decorative masonry wall at least three (3) feet in height is provided along public rights-of-way at least six (6) feet in height when adjacent to any residential use.</li> <li>3. Structures fifty (50) feet in height or taller shall be set back a minimum fifteen (15) feet from the face of the curb.</li> <li>4. Attached one-family dwelling units shall be allowed to have a zero (0) foot sideyard setback where party walls are used.</li> <li>5. See section 18.24.080.E.2.c for setbacks from public streets in the core character area.</li> <li>6. <b>Parking setback from side or rear lots adjacent to an alley is zero (0) feet.</b></li> </ol>								

**Section 9.** That Code Section 18.48.050 is hereby amended as follows:

**18.48.050 Swimming pools.**

A. Swimming pools may be located in any zoning district as an accessory use provided that such pools are situated on a lot, tract, or parcel in a manner which is not detrimental to the health, safety and welfare of the users of the pool or the adjacent property owners.

B. All swimming pools shall have safety features that prevent unwanted access to the pool as determined by the chief building official. Access may be controlled by completely enclosed enclosing the pool with a minimum of a four-foot high fence, ~~or be elevated~~ elevating the pool at least four feet above the ground level, ~~or by installing an automated pool cover, or by use of other safety features.~~

C. Gates, ladders, or entrances to the swimming pool area shall be designed to prevent people gaining access to the pool area without the owner’s consent.

**Section 10.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 11.** That this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

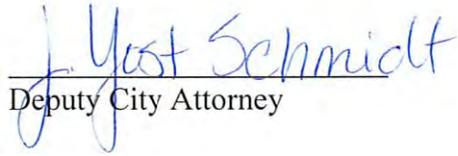
ADOPTED this \_\_\_\_ day of March, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**Development Services  
Current Planning**

Civic Center • 500 East Third Street • Loveland, Colorado 80537  
(970) 962-2523 FAX (970) 962-2945 • TDD (970) 962-2620  
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**ITEM NO:** **4 - Regular Agenda**

**PLANNING COMMISSION MEETING:** November 25, 2013

**TITLE:** Amendments to Title 18 of the Municipal Code

**APPLICANT:** City of Loveland, Current Planning Division

**STAFF CONTACTS:** Bob Paulsen, Current Planning Manager

**APPLICATION TYPE:** Amendments to the Municipal Code

**ACTION:** Legislative Action: Recommend Amendments to the Municipal Code for adoption by City Council

**STAFF RECOMMENDATION:** Subject to additional evidence at the public hearing, City Staff recommends the following motion:

*Move to recommend that City Council approve the amendments to Title 18 of the Municipal Code as specified in the November 25, 2013 Planning Commission staff report, as amended on the record.*

**I. PURPOSE**

A number of amendments to the zoning code have been assembled for consideration by the Planning Commission on November 25, 2013. These amendments are generally modest in size and complexity and are designed to correct minor errors, provide consistency, and to clarify use allowances in the code. These amendments have been reviewed most recently by the Title 18 Committee on November 21<sup>st</sup>; however, several of the amendments were reviewed by the Committee over the course of the last six months.

The most noteworthy of the amendments address Safety Training Facilities and Indoor Shooting Ranges. This is a topical and important matter as the City is beginning to develop plans for the

High Point Regional Training Campus on the west side of the airport property that will be accessed from Boyd Lake Avenue. The training campus is a law enforcement facility that would include an indoor shooting range and an outdoor drivers training facility. As the zoning code is silent about such facilities, the amendments are designed to clarify allowances and limitations for such uses. In addition to the proposed definitions, associated text amendments are proposed to several non-residential zones to specify allowances for these uses. Based on the recommendation from the Title 18 Committee, the only zoning district where a Safety Training Facility could locate would be in the I-Developing Industrial District as a special review use. Indoor Firing Ranges would be allowed by right in the I-Developing Industrial District and by special review in the Business, Mixed Use Activity Center, and Employment districts.

Another topic addressed by the amendments is drive-in and fast food restaurants. Currently there are two distinct definitions in the zoning code for drive-in and fast food restaurants; this situation results in confusion, so amendments are proposed to eliminate one definition and to adjust the remaining definition. The remaining definition will be combined with use citations in several non-residential zoning districts to clean up ambiguities in the code regarding restaurant use.

The final amendment addresses the scope of authority of the Zoning Board of Adjustment to approve variances. This amendment was also reviewed by the Title 18 Committee and the adjusted text reflects the Committee's recommendation.

## **II. SUMMARY DESCRIPTION OF THE AMENDMENTS**

### **DEFINITIONS:**

#### **18.04.161 Fast food or drive-in restaurant defined.**

This definition is proposed to be eliminated. Two definitions for "drive-in or fast food restaurant" currently exist in the zoning code. This definition is therefore unnecessary. See the next item below.

#### **18.04.335 Restaurant, drive-in or fast food defined.**

This definition has been clarified to specify that such restaurants have either food and beverage service provided directly to parked vehicles or have drive-through window service. Drive-in and fast food restaurants require special review approval in the B-Developing Business, E-Employment and I-Developing Industrial zoning districts. In association with this amended definition, adjustments have been made to the non-residential zoning districts to provide consistent terminology regarding restaurant uses.

#### **18.04.143.6 Dwelling, two-family defined.**

This definition has been amended to include detached residential units; currently, only attached units (conventional duplexes) fit this definition. The amendment will permit two detached dwelling units located on a single lot to occur in the R2, R3e, R3, B, E, and MAC zoning districts as long as setback, lot size and other applicable requirements are met.

**18.04.161 Firing range, indoor defined.**

Indoor firing ranges are not currently addressed by the zoning code. This definition would apply to publically or privately-operated facilities. Associated with the addition of “indoor firing range” is the inclusion of this use, as a use by right, in the I-Developing Industrial District, and the addition of “indoor firing range” as a special review use in the B-Developing Business, the MAC-Mixed-Use Activity Center District and the E-Employment District.

**18.04.342 Safety training facility defined.**

Safety training facility is not currently defined in the zoning code. This definition would apply to publically or privately-operated facilities. Associated with this definition is the addition of “safety training facility” as a special review use in the I-Developing Industrial District. This use would not be allowed by right or by special review in any other zoning district. The definition and associated inclusion of this use in the I-Developing Industrial District provides clarification as to which zoning district such facilities can locate within--including the City’s proposed High Point Training Facility.

**BE DISTRICT-ESTABLISHED BUSINESS DISTRICT (Chapter 18.24)**

Amendments are proposed to clarify the role and authority of the planning commission when reviewing a site development plan as authorized by this chapter. The amendment specifies that neighborhood meetings and public hearing must be noticed and that planning commission decisions are appealable. A minor adjustment to the design standards of the BE District concerning setback allowances for on-site parking lots adjacent to alleys is also provided.

**ACCESSORY BUILDINGS AND USES (Chapter 18.48)**

An amendment is provided to Section 18.48.050 relating to swimming pools that provides property owners flexibility in providing safety features that prevent unwanted access to pools. The chief building official is given authority to determine if safety features are adequate.

**ZONING BOARD OF ADJUSTMENT (Chapter 18.60)**

This amendment specifies that the zoning board of adjustment has the authority to approve variances to zoning code standards which are dimensional or numeric in nature (with specified limitations). The amended text broadens the scope of the ZBA’s authority to grant variances.

**III. CODE AMENDMENTS**

The specific text for inclusion into the code is specified in this section of the report. Proposed code changes are indicated in redline format. Following each proposed amendment, a description of the purpose of the amendment is provided in italic font.

**Chapter 18.04  
PURPOSE**

**~~18.04.161 — Fast Food or drive-in restaurant defined.~~**

~~“Fast food or drive-in restaurant” means any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready to consume state for consumption either inside or outside the restaurant building or for carry-out for the purpose of consumption off the premises, and whose design and principal method of operation includes at least one of the following characteristics:~~

~~— A. Foods, frozen desserts, or beverages are usually served in edible containers or in paper, plastic or other disposable containers;~~

~~— B. The consumption of foods, frozen desserts, or beverages within a motor vehicle parked upon the premises or other facilities upon the premises outside the restaurant building is allowed, encouraged or permitted;~~

~~— c. Foods, frozen desserts, or beverages are served directly to the customer in a motor vehicle by a service attendant, or by other means such as a drive-up service window which eliminates the need for the customer to exit the motor vehicle.~~

*Currently, the zoning code contains two definitions for Fast Food / Drive-in Restaurant. The above Fast Food definition is redundant and unnecessary. See the next item below.*

#### **18.04.335 Restaurant, drive-in or fast food defined.**

~~A restaurant so developed that patrons can be provided with food or beverage service while remaining in their vehicle, with service provided at on-site parking spaces or through a drive-up service window or similar facility. ~~it provides a driveway approach and service windows or facilities for vehicles to serve patrons food and beverages in a ready to consume state from a drive-through window.~~ Such restaurants may or may not also have indoor or outdoor dining areas for patrons. ~~seating or parking spaces for motor vehicles to serve patrons while in the motor vehicle.~~~~

*The adjusted language above clarifies what is meant by “drive-in or fast food restaurant.” Sonic restaurants are an example of drive-in restaurants; a restaurant with a drive-through facility would be considered a “fast food restaurant” under this definition. Fast food restaurants and drive through restaurants require special review approval in the B, E and I zoning districts. Other restaurants (standard as defined by the code) are allowed as a use by right in the non-residential zoning districts. With this new clarified definition, consistency adjustments are provided to the BE, B, MAC, E and I zoning districts to ensure that standard restaurants are allowed by right.*

#### **18.04.143.6 Dwelling, two-family defined.**

~~“Two-family dwelling” means a building or lot containing two (2) dwelling units designed for occupancy by two (2) families living independently of each other, which has not less than one bathroom for each family and a minimum of five hundred (500) square feet per dwelling unit.~~  
A dwelling containing two (2) dwelling units, except that if the dwelling is designed with respect to separate electric, water, and gas utility connections and common wall construction to allow each dwelling unit to be located on its own separate lot through a subdivision after issuance of the building permit, then the dwelling shall be a single-family attached dwelling, following approval of such subdivision.

*The adjusted language for two-family dwelling would allow dwelling units that are detached (but located on a single lot) to be considered a “two-family dwelling.” The way the current code definition is stated, only attached units are permitted as a “two-family dwelling.” For example, the R2 zoning district allows two family dwellings by right; under the current definition, the units need to be located in a single structure. With the proposed change, two separate structures each housing a dwelling unit would be allowable if other requirements were satisfied, like setback and off-street parking requirements. This allowance will also apply to two-family dwelling units in the R3e, R3, B, E and MAC districts since two-family dwelling units are listed as a use by right in these zoning districts.*

**18.04.161 Firing range, indoor defined.**

A completely enclosed building or group of buildings which contain facilities for the use of firearms and similar weaponry for training, testing, or recreational purposes. Such facilities may include the use of simulated weaponry and combat scenarios.

*This definition is combined with the insertion of text permitting “indoor firing range” as a use by right in the I-Developing Industrial District, and identifying “indoor firing range” as a special review use in the B-Developing Business, the MAC-Mixed-Use Activity Center District and the E-Employment District.*

**18.04.342 Safety training facility defined.**

Outdoor or partially-enclosed facility operated for the purpose of providing training or recreation relating to law enforcement, fire or emergency management, simulated combat , motor vehicle testing or training under high speeds or hazardous conditions, or similar activities that result in the creation of off-site noise, vibration, smoke, light flashes, or hazards.

*This definition is combined with the insertion of text in the I-Developing Industrial District identifying “safety training facility” as a special review use. This use would not be allowed by right or by special review in any other zoning district.*

**Chapter 18.24**

**BE DISTRICT - ESTABLISHED BUSINESS DISTRICT**

**18.24/020 Uses permitted by right.**

~~PP. — Restaurant, fast food without drive in.~~

**18.24.050 Proposals requiring approval by the planning commission**

- A. ~~Structures, buildings or additions meeting the criteria listed in this section shall require approval by the planning commission at a public hearing noticed in accordance with Chapter 16.16.070. Applications for development and redevelopment of structures, buildings or additions that meet the criteria specified in one or more of the numbered subsections below require site development plan approval by the planning commission at a public hearing noticed in accordance with Chapter 18.05.~~ Uses listed in Section 18.24.030 as requiring a special review and meeting the thresholds listed in one or more of the numbered ~~this~~ subsections

below shall require a noticed neighborhood meeting and approval by the planning commission at a noticed public hearing in lieu of the special review process; notice distance shall be as specified for special review in Chapter 18.05.

1. Any allowed uses located in the general, core or Fourth Street character areas containing more than 25,000 square feet of gross floor area construction.
2. Any allowed uses located in the neighborhood transition character area containing more than 10,000 square feet for gross floor area construction.
3. Any building or structure height above seventy (70) feet, exclusive of church spires, chimneys, ventilators, pipes, elevator shafts, or similar appurtenances.

**B. In evaluating proposals, the planning commission shall make the findings included in this section. In approving a site development plan application, the planning commission must determine that the following findings have been met:**

1. The proposed development complies with the standards of this chapter and any other applicable provisions of the Municipal Code.
2. The proposed development is consistent with the goals of the document, *Destination Downtown: Heart Improvement Project Downtown Strategic Plan and Implementation Strategy*, as updated or as provided in the most current downtown strategic planning policy document adopted by the City Council.
3. The proposed development is compatible with surrounding properties ~~while when~~ considering the allowances for development intensity specified in this Chapter and the urban orientation of the downtown which is its location in an urban environment characterized by a diversity of uses and building types.
4. Adequate infrastructure is available to serve the proposed development.

**C. Planning commission decisions may be appealed in accordance with chapter 18.80 of this Title.**

**18.24.080 General and core character areas urban design standards**

Table 18.24.080-1

<b>Dimensional and Intensity Standards for General and Core Character Areas Only</b>								
Use	Minimum yard requirements <sup>1,3</sup>				Open space, and lot size			
	Front	Side, Lot line <sup>4</sup>	Side, right-of-way <sup>6</sup>	Rear, lot line	Rear Right-of-way <sup>6</sup>	Useable Open Space	Min Lot Size	Min Lot Width
<b>One-family detached</b>	10	5	5	10	5	None	4,000	35
<b>One-family attached<sup>4</sup></b>	10	5	0	10	5	None	1,600	17

<b>Two-family</b>	10	5	0	10	5	None	4,000	40
<b>Accessory Bldg</b>	25	5	0	5	5	None	N/A	N/A
<b>Multi-family</b>	10	5	0	10	0	10% Gen	5,000	50
<b>Non-res &amp; mixed</b>	0	5-Gen 0-Core	0	10	0	7.5% Gen 0% Core	None	None
<b>Off-street parking lots and structures<sup>2</sup></b>	8	8	8	0	5	N/A	N/A	N/A

Notes:

1. Setbacks for garage doors fronting public alleys shall be either five (5) feet or less; or eighteen (18) feet or more. Setbacks for garage doors fronting a public street shall be at least twenty (20) feet.
2. Setbacks may be reduced for surface parking when a decorative masonry wall at least three (3) feet in height is provided along public rights-of-way at least six (6) feet in height when adjacent to any residential use.
3. Structures fifty (50) feet in height or taller shall be set back a minimum fifteen (15) feet from the face of the curb.
4. Attached one-family dwelling units shall be allowed to have a zero (0) foot sideyard setback where party walls are used.
5. See section 18.24.080.E.2.c for setbacks from public streets in the core character area.
6. Parking setback from side or rear lots adjacent to an alley is zero (0) feet.

Adjustments to the BE zoning district are summarized as follows:

1. The listing of “Restaurant, fast food without drive-in” is unnecessary with the proposed amendment to “Restaurant, drive-in or fast food” in chapter 18.04 (definitions) of the zoning code.
2. Amendments to Section 18.24.050 requiring site development plan approval by the planning commission are designed to clarify the role of the planning commission in reviewing site development plans that must undergo a public hearing process. A noticed neighborhood meeting would be required by the amendment for uses listed as special review uses. Also, the required findings for approval are clarified and it is specified that planning commission decisions can be appealed in accordance with Chapter 18.80 of the zoning code.
3. Minor adjustments to Table 18.24.080-1 are provided to allow parking lots adjacent to alleys along their side lot or rear lot boundaries to occur without setback requirements, ie.

*“zero setback.” The need for this adjustment was identified with the recent Brinkman and Artspace projects as it was determined that parking lot setbacks in such circumstances are unnecessary.*

**Chapter 18.28  
B DISTRICT-DEVELOPING BUSINESS DISTRICT**

**18.28.010 Uses permitted by right.**

N. Restaurant, standard, ~~indoor or outdoor~~;

**18.28.020 Uses permitted by special review.**

~~N. Restaurants and other eating and drinking places, outdoor;~~  
S. Restaurant, Drive-in or fast food restaurant;  
NN. Firing range, indoor.

*This adjustment provides consistency with the existing definition for “Restaurant, standard” as the definition includes both indoor and outdoor dining. Adjustment to the B.District also eliminates an unnecessary definition, provides consistency with the amended definition for “Restaurant, drive-in or fast food,” and indicates special review allowance for “Firing range, indoor.”*

**Chapter 18.29  
MAC DISTRICT – MIXED-USE ACTIVITY CENTER DISTRICT**

**18.29.020 Uses permitted by right.**

BB. Restaurant, standard ~~indoor~~;  
~~CC. Restaurant, standard outdoor~~;

**18.29.030 Uses permitted by special review.**

P. Firing range, indoor.

*This adjustment provides consistency with the existing definition for “Restaurant, standard,” eliminates an unnecessary definition, and provides for “Firing range, indoor” as a special review use.*

**Chapter 18.30  
E DISTRICT – EMPLOYMENT CENTER DISTRICT**

**18.30.020 Uses permitted by right.**

U. Restaurant, standard ~~indoor or outdoor~~;

**18.30.030 Uses permitted by special review.****P. Firing range, indoor.**

*This adjustment provides consistency with the existing definition for “Restaurant, standard, and provides for “Firing range, indoor” as a special review use.*

**Chapter 18.36****I DISTRICT – DEVELOPING INDUSTRIAL DISTRICT****18.36.020 Uses permitted by right.****II. Restaurant, standard (~~indoor or outdoor~~)****TT. Firing range, indoor.****18.36.030 Uses permitted by special review.****V. Safety training facility.**

*This adjustment provides consistency with the existing definition for “Restaurant, standard,” and allows “Firing range, indoor” as a use by right, and allows “Safety training facility” as a use by special review.*

**Chapter 18.48****ACCESSORY BUILDINGS AND USES****18.48.050 Swimming pools.**

A. Swimming pools may be located in any zoning district as an accessory use provided that such pools are situated on a lot, tract, or parcel in a manner which is not detrimental to the health, safety and welfare of the users of the pool or the adjacent property owners.

B. All swimming pools shall be completely enclosed with a minimum of a four-foot high fence, ~~or~~ be elevated at least four feet above the ground level, have an automated pool cover, or have alternative safety features that prevent unwanted access to the pool as determined by the chief building official.

C. Gates, ladders, or entrances to the swimming pool area shall be designed to prevent people gaining access to the pool area without the owner’s consent.

*The additional language provided in subsection 18.48.050.B. above is designed to accommodate means of restricting unwanted access to pools not anticipated by the original code. The chief building official would have the authority to determine the if one or more safety features are sufficient.*

**Chapter 18.60****ZONING BOARD OF ADJUSTMENT**

**18.60.010 Board of adjustment established.**

The planning commission shall serve as the board of adjustment for the city.

**18.60.020 Powers and Duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions to the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment shall have the power to grant variances for properties within each zoning district; however, variances cannot be granted to authorize a special review use or a use not otherwise permitted within a given zoning district. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

~~A. Standards for lot area, lot dimensions, and setback requirements;~~ and other dimensional and numerical standards within this title, with the exception of standards relating to building height (see chapter 18.54) and limited to standards relating to signs as specified in section 18.60.040 below.

~~B. Square footage of accessory structures;~~

~~C. Percentage of open spaces; and~~

~~D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.~~

After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions or deny the application.

*This amendment expands the powers of the Zoning Board of Adjustment to include the ability to approve variances for any dimensional and numerical standards specified in the zoning code, with the exception of building height standards which can only be varied by the planning commission and standards relating to signs. Allowances for sign variances are limited as specified later in Chapter 18.60. Absent this adjustment, variances to several zoning standards are not possible, including variances for the height of fences, the number of plantings in a bufferyard, and the percentage of floor area devoted to home occupation activities.*

**See pages 8-11 for  
minutes relating to the  
Minor Code amendments**

**CITY OF LOVELAND  
PLANNING COMMISSION MINUTES  
November 25, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on November 25, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Crescibene, Ray and Prior. Members absent: None, however one seat is currently vacant. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

**CITIZEN REPORTS**

Former **Commissioner and new City Councilor Troy Krenning** thanked the Commission and staff for their support during his tenure as a Planning Commissioner. **Chair Meyers** presented **Mr. Krenning** with a commemorative plaque and thanked him for his years of service.

**STAFF MATTERS**

1. **Mr. Bob Paulsen, Current Planning Manager**, requested that the December 9, 2013 Planning Commission Meeting be cancelled as there are no items on the agenda. **Commissioner Ray** made a motion to cancel the December 9, 2013 meeting. Upon a second from **Commissioner Middleton** the motion was unanimously approved.

**COMMITTEE REPORTS**

**Commissioner Molloy** stated that at the last Title 18 meeting the Current Development Activities Map (CDA) was presented. He explained the Commissioners would be given a presentation at tonight's meeting. He stated that the committee also discussed changes on industrial park uses that will be brought to the PC in the future.

**COMMISSIONER COMMENTS**

**Chair Meyers** explained that he gave a presentation to the City Council at the November 19, 2013 meeting addressing concerns about press and electronic media comments that surfaced in relation to the Artspace project. He summarized that the Planning Commission has the support of the City Council, and that they appreciate all the work the Planning Commission does.

**Commissioner Molloy** questioned what directive or rules are in place if one Planning Commissioner member speaks as a representative of the Commission as a whole at City Council or public meetings. He asked if it requires a motion to do so. He explained that he wants to ensure that rules and regulations are being followed, and would hate to see anyone not follow rules.

**Ms. Judy Schmidt, Deputy City Attorney**, responded that if a single member of the Planning

Commission wants to represent the entire commission, it's best to get a motion and a majority. **Mr. Paulsen** stated that Staff would be happy to develop guidelines with the Planning Commission's help, and hold a study session to ensure policy and procedures are being followed.

**Commissioner Ray** stated that he understood that Robert's rules, which can be found at the beginning of Title 18, should be followed by the Commission.

**Ms. Schmidt** stated that the policy regarding Robert's rules is general in nature. Historical information can be difficult to find, but the Planning Commission can adopt general policy rules to be followed.

**Mr. Paulsen** stated that when a Commissioner is representing the Planning Commission body as a whole, there should be a set of policy and procedures that are followed.

**Commissioner Massaro** agreed that procedures should be followed when a Commissioner represents the Planning Commission.

**Commissioner Dowding** explained that she watched the November 19, 2013 City Council meeting and felt **Chair Meyers** made it clear he was not representing the Commission as a whole, but was representing his viewpoint as the Chairman. She agreed that it's necessary to have guidelines.

**Commissioner Crescibene** stated went to several art events in downtown in the past several weeks and admits that he sees a commitment for downtown improvements that in the past have never come to fruition. He believes something is truly brewing in downtown Loveland. He appreciates the efforts that many successful business people are making. He explained that he also went to an event at the Feed and Grain building and feels the Artspace project will be successful.

**Commissioner Crescibene** went on to say he had concerns about certain Commissioners being politically involved. He shared that he had information indicating the **Commissioner Massaro** is the House 51 district director of the Larimer County Democratic Party, and is politically inclined, and he felt that was inappropriate since the Planning Commission is apolitical. He shared his concern that **Commissioner Massaro** cannot be unbiased in his role as a Commissioner.

**Commissioner Massaro** responded that he no longer serves in that capacity; and feels his voting record as a Planning Commissioner stands for itself. He explained that he makes decisions based on the facts as presented to the Commission and nothing else. He feels his politics does not influence his decisions on the Planning Commission. He reiterated he is no longer part of that Committee and hasn't been for two years.

**Commissioner Molloy** stated he does not have a problem with **Mr. Massaro's** voting record. **Commissioner Crescibene** apologized to **Commissioner Massaro**, and stated that if he spoke in error, he didn't intend to. His main concern is the Planning Commission stays apolitical. He thanked **Commissioner Massaro** for his understanding.

**Commissioner Molloy** shared that the Artspace project was an emotional project but feels now it's time to move on. He feels the Commission has done well with their decision making.

**Commissioner Ray** shared that he reads all project documents and makes every effort to stay unbiased in his decision-making until he has listened to all the pieces of the project including applicant statements, staff reports, and citizen comments. He wants to be open minded but educated in his decision making. He encouraged other Commissioners to do the same.

**Chair Meyers** explained that 80% of Planning Commission decisions are wrapped in code; 15% from staff input; and 5% is discussion based on empirical data. He feels that all Commissioners have a good record of recusing themselves when necessary.

**Commissioner Massaro** stated that different opinions are necessary, it keeps the Commission balanced. He prides himself for his time on the commission. He stated that he also attended both art events in downtown, and agreed that both were excellent. He agrees with **Commissioner Crescibene** about the commitment to downtown. Finally he shared that he traveled the new road to Estes Park and said it's an excellent road and gave CDOT major kudos for a job well done.

**Mr. Paulsen** explained that interviews for the vacant and incumbent Planning Commission positions will be underway in December. He stressed that candidates are not asked about their political affiliation or political involvement. He stressed that there is no political litmus test involved with being a planning commissioner. Applicants are asked if they can review materials and make informed and unbiased decisions.

### APPROVAL OF THE MINUTES

**Chair Meyers** asked if there were any corrections needed in the October 28, 2013 meeting minutes. Needing no amendments, **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Molloy**, the meeting minutes were approved 8-0.

### CONSENT AGENDA

#### 1. Millennium SW 8<sup>th</sup> Vacation

This is a public hearing to consider a legislative request to vacate four access easements located within the Millennium SW 8<sup>th</sup> subdivision, an application that is currently undergoing staff review. The easements, now unnecessary, were established within outlots in the Millennium SW 7<sup>th</sup> subdivision plat. The 96-lot single-family Millennium SW 8<sup>th</sup> subdivision is located along the north side of 1<sup>ST</sup> Street west of Sculptor Drive in SE Loveland; it is known more commonly as Stone Creek, Phase II. All needed easements and rights-of-way will be established with approval of the new subdivision. This vacation application requires the Planning Commission to make a recommendation to the City Council for final action. Staff is supportive of the request.

**Commissioner Molloy** moved to make the findings listed in Section IX of this report dated November 25, 2013; and, based on those findings, recommend approval of the easement

vacations to City Council, as depicted in Attachment #1 to this staff report, in the form included as Attachment #3 to this staff report. Upon a second from **Commissioner Middleton**, the motion was approved unanimously.

## **REGULAR AGENDA**

### **2. Current Development Activities Map Presentation**

This is an informational item about a new tool that can be used by the public to research and gather information on development projects that have been submitted to the City's Planning office. The Current Development Activities Map is available online at the City's website in the map directory, the Current Planning homepage, and through the following link: [www.cityofloveland.org/cda](http://www.cityofloveland.org/cda).

**Ms. Kerri Burchett, Principal Planner**, addressed the Commission and presented the Current Development Activities (CDA) map. The Planning Department and GIS team developed the tool to keep citizens informed about current development in the City of Loveland. She explained the tool is very innovative and interactive and **Ms. Burchett** believes it's the only one its kind in the country. The information available in the map will be updated weekly and includes residential and commercial projects. In addition, the projects can be filtered to show those that require public review and those that do not. Some the outstanding features of the tool includes searchable projects and aerial views. A help menu is included to help with definitions. **Ms. Burchett** stated that the simplicity is the key and explained that it was developed in house and will be maintained and updated in house. Finally she thanked **Brent Shafranek, GIS specialist** and **Heather Lassner, GIS Technician** for their brilliant work in creating the CDA map.

**Chair Meyers** commented that other people in the industry have stated that there is not anything else similar to the CDA map out there. The City of Loveland has done something that is first of its kind which is truly exceptional.

**Commissioner Massaro** stated he has been in the industry a long time and stated that Staff did an excellent job launching this tool. He worked in the tool yesterday and said it represents the excellent work City Staff does.

**Mr. Paulsen** encouraged Commissioners to work with the tool and urged them to provide feedback and comments.

**Commissioner Ray** agreed with the praise of the CDA map and shared that the GIS maps he works with in his current job is not as useful of a tool.

### **3. Wintergreen PDP**

This is a public hearing to consider a preliminary development plan (PDP) for a multifamily residential development within the Wintergreen PUD. The 19 acre subject site is located to the west of the Super Wal-Mart located on North Hwy. 287. The PDP proposes the development of 224 rental multifamily units within 14 two-story buildings. The units will vary between one, two and three bedrooms and are intended to be market rate rentals. Staff believes that all key issues have been resolved based on the municipal code and standards contained in the PUD. The

Commission's action on this quasi-judicial matter is final barring appeal.

**Mr. Paulsen, Current Planning Manager**, explained to the Commission that the project site for the Wintergreen PDP consists of 19 acres located to the west of the Super Wal Mart. The proposal is to construct 224 multifamily rental units within 14 two-story buildings. The units will vary between one, two, and three bedroom market rate rentals. The development is anticipated to be named "Ashley Estates". He noted that the subject property is adjacent to a developing single family subdivision and to vacant property that may include future non-residential development.

**Mr. Paulsen** stated that Planning staff believes that the project will be a high quality, well designed project that includes a clubhouse, pool, and playground that meets requirements of the Wintergreen General Development Plan (GDP). He stated that the Planning Commission has the final decision-making authority on the project barring an appeal. Staff is recommending approval with 3 conditions.

**Commissioner Middleton** asked if there was a possibility that residents might be bothered by development to the north of the project site. **Mr. Paulsen** replied that there is nothing in the planning stages yet; however, there is a buffer on the north end of the subject property which is deemed sufficient to mitigate noise and other compatibility issues. Any new development in the Longview Industrial Park (to the north) would require Site Development Plan approval and this process would be used to mitigate impacts on the apartment complex; but, it should be understood that industrial uses are a use by right within the vicinity.

**Applicant, Terence Hoaglund, Vignette Studios representing Pedcor Investments, LLC** addressed the Commission and shared that his company has been doing site development in the area for over 10 years. He explained that the platting has already been complete and that there will be 16 units per building. He stated that there will be a central leasing unit and multiple play areas. The site exceeds the setback requirements and extensive landscaping will be added. 448 total parking spaces were required, but 475 will be provided of which 56 garage spaces could be rented by tenants. No fencing is being proposed.

**Ryan Rogers, Pedcor Investments**, explained that Pedcor has been doing development since 1987 including the development of 16,000 multi-family units' in 13 states. Pedcor will manage the property for a minimum of 15 years, making the company fully vested in the project. The affordable units will be constructed with the same quality materials as other Pedcor properties.

**Mr. Rogers** explained that the market in Northern Colorado is very tight, and multi-family housing is needed. He stated that Pedcor received a 4% affordable housing tax credit to help finance the project. Based on the 60% area median income, a 1 bed 1 bath, 1800 sf unit with rent of \$800/month is considered affordable housing under the federal tax code. The screening process for tenants will include background checks, sex offender checks, and a zero drug tolerance policy.

**Commissioner Crescibene** asked what lease options will be available. **Mr. Rogers** replied that the typical rent option will be annual, but there will be some flexibility with lease options. Pedcor will be involved in the property management for 15 years minimum due to tax

implications and credits.

Since the company has been in business since 1987, **Commissioner Crescibene** asked if they still have involvement in projects as far back as that date. **Mr. Rogers** replied that Pedcor is still involved in their first project and stated that many of the early developments still have a 95% occupancy rate.

**Mr. Rogers** explained that financing from HUD requires a vigorous review for funding, and HUD felt any concerns related to the project, including future construction in the area, have been mitigated.

**Commissioner Crescibene** questioned if there would be additional cost for use of the clubhouse or pool. **Mr. Rogers** explained that all amenities are included in the rent, and property owners will pay water, sewer and trash.

**Commissioner Prior** asked what plans, if any, are being developed in the property directly behind Walmart. **Mr. Rogers** shared that the property is on the market, but no plans are currently in the works.

**Commissioner Prior** queried what the zoning is for future development to the north. **Mr. Paulsen** stated that industrial uses are allowed by right. Specific requirements and standards are required in the Longview Industrial Park to ensure compatibility with surrounding properties. He stated that the Wintergreen GDP plan allows for the apartment use but Planning will work to mitigate any incompatibilities that arise when vacant property in the vicinity is reviewed for development.

**Commissioner Dowding** questioned if open space areas are a HUD requirement. **Mr. Rogers** explained that it not a HUD requirement but a City of Loveland requirement. She stated the play area seemed to be reduced by landscaping. **Mr. Paulsen** explained that landscaping is allowed in play areas and is considered an amenity as long as there is sufficient open play field space.

**Commissioner Molloy** offered kudos for the decision to move the buildings across the ridgeline and asked what the build-out timeline is. **Mr. Rogers** responded that the construction timeline is sixteen (16) months from start to finish, and said that assuming there are no other government shutdowns, they hope to start construction in the April/May timeframe.

**Commissioner Ray** explained there are two entrances to the facility and questioned why there are not more ingress points. **Mr. Rogers** stated that the Traffic Impact Study (TIS) was completed and is keeping with the overall GDP. **Mr. Paulsen** explained that **Sean Keller, TDR**, is very comfortable with the project plans and traffic levels that will be generated. He stated that the Fire Authority requires two access points at a minimum but also had no concerns.

**Mr. Massaro** asked if the TIS took future projects in the area into consideration. **Mr. Rogers** stated that the Wintergreen 2<sup>nd</sup> project was approved and started in 2008, but was halted during the recession. He explained that traffic patterns and allowances were established with the original GDP, and this project is following that plan.

**Chair Meyers** asked if the west face, downhill slope would include a split rail fence along the property line. **Mr. Rogers** replied that no fencing is associated with the project, with the exception of a required fence around the pool.

**Commissioner Massaro** questioned if there will be bike trails on 64<sup>th</sup> street. **Mr. Rogers** explained that it will have sidewalks on the entire street system and bike lanes will be included. 65<sup>th</sup> will also have sidewalks and bike paths.

**Chair Meyers** opened the public hearing.

Seeing no citizen comments, the public hearing was closed.

**Commissioner Ray** stated that he appreciated the detail that went into this project. He feels income level properties of this type are much needed in Loveland and feels it was well designed.

**Commissioner Crescibene** shared that the project is a fantastic opportunity for the community. He would like to make sure that bikes and other outdoor storage is kept to a minimum. He explained the project fills a gap that is greatly needed in the community.

**Commissioner Massaro** explained that he likes the plans for this community project and thinks the developer did a good job.

**Commissioner Crescibene** asked about the HOA requirements. **Mr. Rogers** responded that the management company would ensure that tenants follow the rules in keeping the site clean and attractive. Complaints from residents or citizens in the community are taken seriously and are handled in a timely manner.

**Commissioner Middleton** stated that he was impressed with the history of Pedcor, impressed with the layout and the footprint. He explained that he especially likes that the developer hires contractors locally.

**Chair Meyers** shared that he felt this was an impressive project which is much needed in the community. Pedcor offers a good quality product that fits in with the surrounding area.

**Commissioner Middleton** made a motion to move to make the findings listed in Section VIII of the Planning Commission staff report dated November 25, 2013 and, based on those findings, instruct staff to prepare a resolution of approval for the Wintergreen Third Subdivision Preliminary Development Plan subject to the conditions listed in said report, as amended on the record. Upon a 2<sup>nd</sup> from **Commissioner Dowding**, and after the applicant accepted all conditions, the motion passed unanimously.

The Planning Commission took a ten minute break at 8:35 p.m.

At 8:49 the meeting resumed.

#### **4. Amendments to Title 18 of the Municipal Code**

This is a public hearing item on a legislative matter to consider amendments to Title 18 (the zoning code) of the Loveland Municipal Code. The amendments are a compilation of relatively modest adjustments to several areas of the code that are designed to correct errors, provide consistency, and clarify use allowances. The amendments have been reviewed by the Title 18 Committee. Upon review, the Planning Commission will forward a recommendation to the City Council for final action.

**Mr. Paulsen** shared that the changes to the code require a public hearing. He pointed out that, rather than dealing with rights of a specific property owner, the changes more broadly address zoning changes that will affect a number of properties in the community. To this effect, the matter is legislative in nature, not quasi-judicial.

The assemblage of minor amendments include definitions, use adjustments in residential zones, use adjustments in commercial zones, adjustments to the downtown BE district provisions, clarifications to accessory buildings and uses, and Zoning Board of Adjustment clarifications.

**Mr. Paulsen** began by addressing the definition of drive-in and fast food restaurants. He explained that the zoning code currently includes two definitions for fast food and drive-in restaurants. With the amendments, one of the definitions will be eliminated because it is out dated and redundant. The remaining definition clarifies the distinction between a standard restaurant versus drive-in and fast food restaurants. Drive-in and fast food restaurants require special review, while standard restaurants are a use by right in many of the commercial zoning districts.

Next, **Mr. Paulsen** explained changes to the definition of two-family dwellings. Currently, two-family dwellings are defined in the code to specify that when two family units occur on the same lot, they must be attached. The code amendments will allow two family dwellings to be attached or detached, and to occur as a use by right in several residential and commercial zones. This amendment will provide for more flexibility for property owners who have a large enough lot to develop a second dwelling unit on their property—which is a situation that most commonly occurs in the downtown area. The amendment will not impact the allowance for accessory units.

**Commissioner Massaro** stated that he owns a property that might be impacted by the amendment and asked if he should he recuse himself from the discussion.

**Ms. Schmidt** explained that since this discussion does not impact his property directly, he does not need to recuse himself.

**Commissioner Middleton** asked if this situation will create a subdivision capability. He also questioned if the requirements for the percentage of square footage remain the same. **Mr. Paulsen** stated that all existing zoning provisions, including lot size and setback requirements, will remain unchanged.

**Chair Meyers** questioned if property owners could create a condominium association and then sell individual units. **Mr. Paulsen** clarified that this change does not affect zoning requirements

concerning lot size minimums nor condominium use—which is controlled by the state. City has accessory unit allowances and this change has no bearing on those allowances.

**Commissioner Crescibene** asked what, if any, implications are there to the setbacks. **Mr. Paulsen** explained that building code separation requirements and zoning setback requirements would remain applicable and unchanged. He stressed that the change would not allow for greater densities or smaller lot sizes. Rather, on lots where two units are allowed, the change in definition would allow the units to be detached or attached.

**Ms. Schmidt** explained that the code will allow property owners to build two detached buildings on a lot, but it does not necessarily allow automatic rights for subdivision.

**Mr. Paulsen** next described the amendment addressing indoor firing ranges. He explained that the amendment was designed to clarify the definition for an indoor firing range and to specify in what zoning districts an indoor firing range could locate. **Mr. Paulsen** explained that the City is working to develop a new safety training facility in the airport area which will include an indoor shooting range and this clarification would apply to the proposed airport project. However, the amendment applies to publically operated facilities or privately operated facilities.

**Chair Meyers** asked if he needed to recuse himself from the vote since he owns a firearm business. **Ms. Schmidt** questioned if he owns an indoor firing range. **Chair Meyers** responded he did not; therefore there is no conflict of interest.

**Mr. Paulsen** shared that if an applicant wanted to open a privately operated shooting range, they would fall under the proposed definition and use allowances of the code. He went on to explain that the definition of a firing range specifies it must be in a completely enclosed building. Under the proposal, such a facility would be allowed by right in the I-Industrial district, and by special review in B, MAC, and E districts. The definition does not include archery, laser tag, or paintball or other recreational uses which could occur by right in various commercial zoning districts.

**Commissioner Crescibene** asked if this definition would only be applied to community firing ranges. **Mr. Paulsen** responded it does not have to be public and could be a privately operated facility.

**Commissioner Molloy** shared that the Title 18 Committee has reviewed these provisions in the past. He stated that **Chair Meyers**, with his expertise in this area, did an outstanding job in assisting staff in developing the definitions.

**Mr. Paulsen** explained that archery, paintball systems, video-based gaming, laser-based technology of low output, and other technologies that do not cause emission of a destructive force, including compressed gas, air propulsion based firearms, and spring-based propulsion systems, do not constitute an indoor firing range, although such activities may occur within a firing range.

**Mr. Paulsen** went on to address the amendment concerning safety training facilities. He explained that currently the zoning code does not define or specify what zones this type of use is

allowed within. As proposed, this type of facility is defined as an outdoor or partially enclosed facility for training or recreation that may result in the creation of off-site noise, vibration, smoke, light flashes or hazards. With such uses, a special review will be required and would only be allowed in the industrial zoning district. The definition would apply to publically or privately operated facilities.

**Commissioner Ray** questioned if guns will be allowed to be discharged outdoors around the airport. **Mr. Paulsen** explained that the City's proposed safety training facility would include an outdoor track for vehicle training; however, the firing range and related uses will be indoors.

**Chair Meyers** stated that airport management in the area have reviewed the plans and are comfortable with the changes.

**Mr. Paulsen** explained the changes to definitions in the BE District-Established Business District. Amendments being proposed clarify the role and authority of the Planning Commission when reviewing a Site Development Plan (SDP) as authorized by this chapter. Amendments also specify that neighborhood meetings and public hearings must be noticed, and state that Planning Commission decisions are appealable. A minor adjustment to the design standards of the BE District concerning setback allowances for on-site parking lots adjacent to alleys is also provided.

**Mr. Paulsen** described changes to the accessory building and uses provisions. Adjustments in the definition pertain to swimming pools since they are considered an accessory use. The modifications will allow for additional safety solutions to prevent unwanted entry into outdoor pools. It allows the Chief Building Official the authority to make a determination as to the adequacy of safety features.

**Commissioner Molloy** shared that the Title 18 Committee discussed the issue, and stated that insurance companies usually require a four foot fence around swimming pools. **Mr. Paulsen** clarified that is not true in all cases based on his experience in reviewing proposed swimming pools.

**Commissioner Ray** asked if someone built a pool in an area with no fence, but had a pool cover, would that sufficient. **Mr. Paulsen** replied that a full review of site-specific factors would be necessary, including accessibility to the property and to the swimming pool; the Chief Building Official will have final authority on whether or not the safety provisions are satisfactory.

**Mr. Paulsen** described the proposed alterations to the Zoning Board of Adjustment section of the code specifying that the ZBA has the authority to approve variances to zoning code standards which are dimensional or numeric in nature (with specified limitations). The amended text broadens the scope of the ZBA's authority to grant variances in all zones.

**Mr. Paulsen** stated that staff is recommending approval of the code amendments to City Council.

Mr. Ray stated he would like to approve the amendments however he won't because he cannot accept detonation of firearms near an airport.

Mr. Middleton shared that he is in favor of all proposed changes and will be voting for them.

Commissioner Middleton made motion to move to recommend that City Council approve the amendments to Title 18 of the Municipal Code as specified in the November 25, 2013 Planning Commission staff report, as amended on the record. Upon a 2<sup>nd</sup> from Commissioner Dowding the motion passed 7-1 with Commissioner Ray voting nay.

**5. Review of the updated Boards and Commissions Handbook and Related Materials**

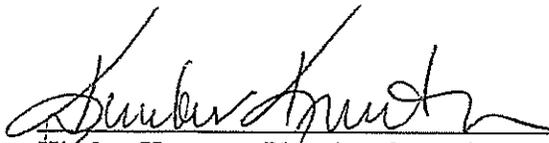
This is an administrative item. Staff has distributed a collection of materials that provide direction on the operations of the Planning Commission, including the updated Boards and Commissions Handbook. The purpose of this item is intended to give Commissioners familiarity with relevant materials and to identify any pertinent revisions that have occurred in the recent past.

Commissioner Middleton made a motion to review the Boards and Commission Handbook at a later date, due to the late hour. Upon a 2<sup>nd</sup> from Commissioner Massaro the motion was unanimously approved.

**ADJOURNMENT**

Commissioner Middleton made a motion to adjourn. Upon a second by Commissioner Dowding, the motion was unanimously adopted and the meeting was adjourned.

Approved by:   
Buddy Meyers, Planning Commission Chairman

  
Kimber Kreutzer, Planning Commission Secretary

**Chapter 18.48**  
**ACCESSORY BUILDINGS AND USES**

**VERSION OF AMENDMENT PRESENTED TO THE PLANNING COMMISSION ON 11-25-2013**

**18.48.050 Swimming pools.**

- A. Swimming pools may be located in any zoning district as an accessory use provided that such pools are situated on a lot, tract, or parcel in a manner which is not detrimental to the health, safety and welfare of the users of the pool or the adjacent property owners.
- B. All swimming pools shall be completely enclosed with a minimum of a four-foot high fence, ~~or~~ be elevated at least four feet above the ground level, have an automated pool cover, or have alternative safety features that prevent unwanted access to the pool as determined by the chief building official.
- C. Gates, ladders, or entrances to the swimming pool area shall be designed to prevent people gaining access to the pool area without the owner's consent.

**RECOMMENDED, REVISED VERSION IN RESPONSE TO PLANNING COMMISSION COMMENTS:**

**18.48.050 Swimming pools.**

- A. Swimming pools may be located in any zoning district as an accessory use provided that such pools are situated on a lot, tract, or parcel in a manner which is not detrimental to the health, safety and welfare of the users of the pool or the adjacent property owners.
- B. All swimming pools shall have safety features that prevent unwanted access to the pool as determined by the chief building official. Access may be controlled by ~~be~~ completely enclosed ing the pool with a minimum of a four-foot high fence, or elevated ing the pool at least four feet above the ground level, ~~;~~ or by installing an automated pool cover, or by use of other safety features.
- C. Gates, ladders, or entrances to the swimming pool area shall be designed to prevent people gaining access to the pool area without the owner's consent.



# *Minor Amendments to the Zoning Code*

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City Council Public Hearing  
February 18, 2013



## Minor Code Amendments

- **Public Hearing on a Legislative Matter**
- **Amendments reviewed by the Planning Commission on November 25, 2013**
- **Reviewed / supported by the Title 18 Committee**
- **Assemblage of Minor Amendments**
- **Clean-up / Clarification Effort**



## Minor Code Amendments

- **New and Revised Definitions:**
  - Fast Food Restaurants**
  - Two-family dwelling units**
  - Indoor Firing Range**
  - Safety Training Facility**
- **Clean-up in commercial zones to achieve consistent use of terms**
- **Use allowances in Commercial Zones**
- **Downtown BE District Adjustments**
- **Address options for Swimming Pool safety**



## Minor Code Amendments

### **Definitions: Restaurant, drive-in or fast food:**

- Fast Food and Drive-in Restaurant clarifications
- Eliminates a redundant definition
- Clarifies drive-in and fast food
- Distinct from “Restaurant, Standard”
- Related clarifications in B, E and I zoning districts
- Drive-in and fast food restaurants require special review



## Minor Code Amendments

### **Definition: Two-Family Dwelling**

- When “Two-family dwellings” are allowed on one lot, the revised definition will allow detached units to occur—when zoning requirements can be met.
- Currently, two-family units must be attached (duplex arrangement)
- Provides more flexibility in locating allowable units on a lot, especially in the older areas of town where lots are often long and narrow.
- Revised definition does not change density allowances in any zone.



## Code Amendments

### **Definition:** Firing Range, Indoor

- Defines what a firing range includes & excludes
- Completely enclosed building required
- Allowed by right in the I-Industrial District
- Allowed by special review in B, MAC and E districts

### **Definition:** Safety Training Facility

- Defines what a Safety Training Facility may include
- Anticipates that the use will have impacts to be mitigated
- Allowed only as a special review use in I-Industrial zone
- When combined with Firing Range, special review required



## Minor Code Amendments

### **Downtown BE District**

- Adjustments have developed in response to recent projects
- Clarifies Planning Commission role
- Site Development Plan review (for certain projects)
- Special review uses require a noticed neighborhood meeting
- Findings for approval are clarified
- Planning Commission decisions are subject to appeal
- Eliminates setback requirements for parking lots located adjacent alleys on the rear and side of lots



## Minor Code Amendments

### **Accessory Buildings and Uses: Swimming Pools**

- Allows for more options for safety solutions to prevent unwanted entry into outdoor pools.
- Gives Chief Building Official authority to make this decision.



## Minor Code Amendments

- **Questions or Comments**
- **This is a Public Hearing**
- **Staff is recommending adoption of the Ordinance**



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 7  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Bob Paulsen, Current Planning Manager

**TITLE:**

An Ordinance on First Reading Amending Sections 18.16.110, 18.48.020, and 18.50.090 of the Loveland Municipal Code to Permit Limited Signage for Home Occupations in the North Cleveland Sub-Area of the R3e Zone District

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action. The ordinance on first reading amends Title 18 of the Loveland Municipal Code. The proposed revisions include text adjustments that allow limited signage for home occupations located in the North Cleveland sub-area of the R3E zone district.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The home occupation regulations specified in Chapter 18.48 of the Municipal Code prohibit the use of advertising signage. The amendment would allow an exception to this prohibition for home occupations located within the six-block section of North Cleveland that extends from 10<sup>th</sup> Street, north to the Loveland Burial Park. Signs would be limited to one, twenty (20) square foot sign per property that is non-illuminated or indirectly lit—which is the same limitation placed on

all other business signs within this corridor. The purpose of this amendment is to help facilitate appropriately-scaled business activity in this transitional area.

The Planning Commission considered this amendment at a noticed public hearing on December 23, 2013, voting 7-0 to recommend approval to Council. This amendment was reviewed and supported by the Title 18 Committee in December of 2013.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. December 23, 2013 Planning Commission Report
3. December 23, 2013 Planning Commission Minutes
4. Map of North Cleveland Sub-Area
5. PowerPoint Presentation

**FIRST READING**      February 18, 2014

**SECOND READING**      \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING SECTIONS 18.16.110, 18.48.020, AND 18.50.090 OF THE LOVELAND MUNICIPAL CODE TO PERMIT LIMITED SIGNAGE FOR HOME OCCUPATIONS IN THE NORTH CLEVELAND SUB-AREA OF THE R3E ZONE DISTRICT**

**WHEREAS**, the North Cleveland Sub-Area is established pursuant to Chapter 18.16 of the Loveland Municipal Code (“Code”) as a sub-area in the R3E zone District subject to standards and requirements set forth therein to recognize the unique nature of this transitional area; and

**WHEREAS**, major and minor home occupations, as regulated by Code Section 18.48, are not currently permitted to have signs under Code Section 18.40.090; and

**WHEREAS**, the unique nature of the North Cleveland Sub-Area lends itself to the use of limited signage for home occupations located therein.

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

**Section 1.** That Code Section 18.16.110.C (Design Standards for the North Cleveland Sub-Area is the R3D zone district) is hereby amended by the addition of a new Subsection 6, to read as follows:

**Chapter 18.16  
R3E DISTRICT – ESTABLISHED HIGH-DENSITY RESIDENTIAL DISTRICT**

**18.16.110 North Cleveland Sub-Area Identification and Supplemental Regulations.**

...

**C. Design Standards**

...

**6. Home Occupations: Home occupations shall comply with the provisions in Section 18.48 and shall be permitted one sign on North Cleveland Avenue, subject to the sign regulations in Section 18.50.090.**

**Section 2.** That Code Section 18.48.020.D.3.a is hereby amended as follows:

**D.3. Minor Home Occupations.** A use shall be classified as a minor home occupation and allowed without a business occupancy permit in all residential districts provided that the general provisions of subsection (D)(1) and the following standards are met:

- a. \_\_\_\_\_ There shall be no advertising, sign, exterior activity, or other indications of a \_\_\_\_\_ home occupation on the premises. ~~Except for except as follows:~~
  - ~~i. boarding and rooming houses and bed and breakfast homes, no advertising or listings may list the address of the home occupation in business or telephone directories; and~~
  - ~~ii. Properties within the North Cleveland Sub-Area, as defined in Section 18.16.110, shall list the address of the home occupation. be permitted one sign on North Cleveland Avenue subject to the standards in Section 18.50.090.~~

**Section 3.** That Code Section 18.48.020.D.4 is hereby amended by the addition of a new subsection h as follows:

**D.4. Major Home Occupations.** A use shall be classified as a major home occupation, and allowed by permit in all residential districts, provided that the general provisions of subsection (D)(1) and the following standards are met:

...

h. Properties within the North Cleveland Sub-Area, as defined in Section 18.16.110, shall be permitted one sign on North Cleveland Avenue subject to the standards in Section 18.50.090.

**Section 4.** That Code Section 18.50.090.D. is hereby amended to read as follows:

**D. Home Occupation Sign.** No signs are allowed in conjunction with any home occupation, ~~except for properties within the North Cleveland Sub-Area, as defined in Section 18.16.110, which shall be permitted one sign on North Cleveland Avenue subject to the standards contained in this section.~~

**Section 5.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 6.** That this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

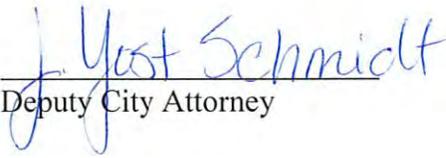
ADOPTED this \_\_\_\_\_ day of March, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**DEVELOPMENT SERVICES**  
**Current Planning**

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**Planning Commission Staff Report**  
**December 23, 2013**

**Agenda #:** Regular Item - 1

**Title:** Amendments to Title 18 regarding sign allowances for home occupations in the North Cleveland Sub-Area

**Applicant:** City of Loveland

**Request:** **Amendment to the Municipal Code**

**Location:** North Cleveland Corridor from 10<sup>th</sup> Street northward to where Cleveland and Lincoln avenues merge

**Existing Zoning:** R3e – Est. High Density Res.

**Staff Planner:** Kerri Burchett

***Staff Recommendation***

**APPROVAL** of the Amendments to Title 18.

***Recommended Motion***

*Move to find that the proposed amendments to Title 18, described in the December 23, 2013 Planning Commission staff report, are in substantial compliance with the Loveland Comprehensive Plan; and based on that finding, recommend that City Council approve the amendments to Title 18 as described herein and as amended on the record.*

***Summary of Analysis***

The North Cleveland Avenue corridor has been undergoing incremental transition from residential to office uses over the past 15 years. In 2010, City Council approved an amendment to the R3e zone district that defined the North Cleveland Sub-Area and adjusted the use allowances to facilitate redevelopment efforts. Recently when staff began working on business proposals with landowners in the corridor, staff became aware of a barrier that made it difficult for a property owner to reside in a structure and begin a small business. The Fire Code requires that a structure containing a mixed residential and business use install a fire sprinkler system which can create financial hardships on small business start-ups. The sprinkler systems is not required for a home occupation, however the Municipal Code prohibits any advertising or signage associated with the home occupation. As the intent of the corridor plan is to facilitate small business start-ups in the existing structures, staff is proposing to amend the code to allow one, 20 square foot sign on Cleveland Avenue in conjunction with a home occupation permit.

## I. SUMMARY OF PROPOSED AMENDMENT

Planning staff is proposing an amendment to the home occupations provisions in Section 18.48 of the Municipal Code that prohibit a business sign in conjunction with a home occupation. The amendment would pertain to home occupations within the North Cleveland Sub-Area and would allow a 20 square foot business sign to be installed in conjunction with a home occupation permit. The following is a summary of the proposed amendment.

- Purpose:** To promote live-work structures and small business start-ups and growth in the North Cleveland Corridor by removing a barrier that prevented advertising a home occupation business.
- Proposal:** Amend the home occupation provisions in Section 18.48.020 and the sign regulations in Section 18.50.090 for nonresidential uses in residential zones. The amendment would permit one, 20 square foot sign on Cleveland Avenue in conjunction with a home occupation permit. The amendment would also reference the sign allowance in the supplement regulations for the corridor in Section 18.16.110.
- Area:** North Cleveland Sub-Area which encompasses 6 blocks fronting on North Cleveland Avenue from 10<sup>th</sup> Street north to the cemetery. The specific boundaries are shown on the map on page 2 of this memorandum.
- Character:** Properties in this area are zoned Established High Density Residential and include a combination of residential and nonresidential uses. The character of the corridor has been transitioning in the past 15 years into low intensity professional office and personal service uses.
- Schedule:** Title 18 Committee review on December 19, 2013. Planning Commission public hearing on December 23, 2013. City Council public hearing on February 4, 2014.

## II. North Cleveland Sub-Area Boundaries



North Cleveland Sub-Area

## III. BACKGROUND

In 2010, City Council approved an amendment to the R3e zone district that defined the North Cleveland Sub-Area and adjusted the use allowances to facilitate a low intensity conversion of the corridor into professional offices. The amendment also provided supplemental standards to maintain the existing residential character along Cleveland Avenue and ensure compatibility between differing land uses. Council was supportive of the amendment and was also interested in making sure that associated allowances related to Transportation and Fire would not hinder redevelopment efforts.

In working with a landowner in the corridor, staff recently became aware of a barrier that could create financial hardships if a structure is proposed to be used as a residence in conjunction with a home business. Mixed use residential and business structures require fire sprinklers in the Fire Code which can be a costly endeavor for a low intense or small scale business. In discussing the intent of the Fire and Building Codes and the desire to facilitate businesses in the Cleveland Corridor, fire, building, and planning staff began exploring alternatives that would allow a residence with a low intense business use without installing sprinklers in the structure.

Requests for business start-ups within a residence typically can meet the provisions of a home occupation. A home occupation does not change the occupancy rating in the Building Code or require a fire sprinkler system. However, the home occupation provisions in Section 18.48 prohibit advertising a home occupation which is contrary to growing a businesses in the corridor. As the character along Cleveland Avenue has and is continuing to transition to low intense professional offices and clinics, staff believes that allowing a business sign in conjunction with a home occupation is in keeping with the intent of the corridor plan. Staff also believes that the proposed amendment will help grow small businesses within the area which maintaining the existing character of the corridor.

#### **IV. SIGNANGE CRITERIA**

The signage criteria proposed in the North Cleveland Sub-Area would match the provisions currently in the Municipal Code for nonresidential signs in residential zone districts including:

- Sign area: 20 square feet
- Illumination: either non-illuminated or indirectly illuminated
- Number: Only one sign along Cleveland Avenue
- Type: Either freestanding or wall mounted

#### **V. POLICY FRAMEWORK**

Loveland's Comprehensive Plan provides policy guidance for the code amendments that are proposed herein. As with previous Title 18 amendments, the current proposed code amendments support the development of a well-planned community—a theme which runs throughout the Comprehensive Plan. In particular to the North Cleveland corridor code amendment, several of the land use plan goals emphasize a need to reevaluate residential and commercial patterns within the City and apply flexibility as conditions change. The following specific Comprehensive Plan policies and goals support the intent and concepts of the proposed amendments:

- *LU2: Place an equal importance on the quality and character of new residential neighborhoods in each quadrant of the city, while at the same time maintaining or upgrading of existing neighborhoods.*
- *RES14: Businesses and home occupations should be allowed in residential areas that are unobtrusive and compatible with residential uses.*

- *CORLU2.D: Future corridor development/redevelopment and planning measures should include incentives to encourage redevelopment and upgrading of existing corridor development, such as relaxing development controls where appropriate and where such standards serve as an impediment to redevelopment and upgrading existing conditions; and use of special districts and economic incentives where appropriate.*

The amendment to allow a business sign in conjunction with a home occupation permit in the corridor is designed to further economic activity and reinvestment while affording appropriate neighborhood protections. As such, the policies in the Comprehensive Plan are furthered by the proposed code amendments.

## VI. REDLINE CODE LANGUAGE

**18.48.020.D.3. Minor Home Occupations.** A use shall be classified as a minor home occupation and allowed without a business occupancy permit in all residential districts provided that the general provisions of subsection (D)(1) and the following standards are met:

a. There shall be no advertising, sign, exterior activity, or other indications of a home occupation on the premises, **except as follows:**

i. Boarding and rooming houses and bed and breakfast homes may list the address of the home occupation in business or telephone directories.

ii. **Properties within the North Cleveland Sub-Area, as defined in Section 18.16.110, shall be permitted one sign on North Cleveland Avenue subject to the standards in Section 18.50.090.**

4. Major Home Occupations. A use shall be classified as a major home occupation, and allowed by permit in all residential districts, provided that the general provisions of subsection (D)(1) and the following standards are met:

**h. Properties within the North Cleveland Sub-Area, as defined in Section 18.16.110, shall be permitted one sign on North Cleveland Avenue subject to the standards in Section 18.50.090.**

### **18.50.090 Sign regulations for nonresidential uses in a residential zone.**

A. General. Except as provided for in this section, all signs for nonresidential uses in residential zoning districts shall be limited to twenty square feet in size per face, unless otherwise approved in conjunction with a special review for the primary use. All such signs shall be unlit or indirectly lit. All lighting shall be aimed and/or shielded to insure that no direct light is seen upon any nearby street or upon any nearby residential property.

B. Subdivision sales office. A subdivision sales office shall be entitled to one illuminated sign not to exceed ten square feet in size.

C. Project Marketing Sign. A residential development shall be entitled to at least one project marketing sign, in accordance with the provisions of 18.50.085 of this title.

D. Home Occupation Sign. No signs are allowed in conjunction with any home occupation, **except for properties within the North Cleveland Sub-Area, as defined in Section 18.16.110, which shall be permitted one sign on North Cleveland Avenue subject to the standards contained in this subsection.**

**18.16.110 North Cleveland Sub-Area Identification and Supplemental Regulations.**

C.6 Home Occupations: Home Occupations shall comply with the provisions in Section 18.48 and shall be permitted one sign on North Cleveland Avenue, subject to the sign regulations in Section 18.50.090.

**VII. RECOMMENDATION**

Staff recommends that the Commission offer any comments or suggestions regarding the proposed amendments and recommend adoption by City Council.

**CITY OF LOVELAND  
PLANNING COMMISSION MINUTES  
December 23, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on December 23, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Ray and Prior. Members absent: Commissioner Crescibene. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney, Bethany Clark, Community and Strategic Planning.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

**CITIZEN REPORTS**

There were no citizen reports.

**STAFF MATTERS**

**1. Highway 287 Strategic Plan**

The City is developing an Advisory Committee to provide input on the Highway 287 Strategic Plan process and is requesting one or two Planning Commission members to serve on the committee. Development of the plan will include an extensive public outreach component, market study, and economic analysis.

In January 2012 City Council identified the Highway 287 Strategic Plan as a priority and funding was provided in July 2013. The goals of the plan are to: (i) generate private investment; (ii) create a positive image along the corridor; (iii) facilitate redevelopment; (iv) increase jobs and generate new tax revenue; (v) create a gateway corridor to downtown; (vi) improve public infrastructure, and; (vii) define implementation strategies and recommendations for action.

The timeline for the project is as follows:

Nov 13-Jan 14-Project Initiation

Dec 13-Feb 14-Analysis of Corridor Conditions

Feb 14-Apr 14-Corridor Vision + Alternatives

Apr 14-Jun 14- Development of the Strategic Plan

**Ms. Clark** explained that Strategic Planning is looking for two planning commissioners who could volunteer their time for the project. The first meeting would most likely be mid-January 2014.

**Ms. Clark** explained that the plan will include two segments of Highway 287. The 4.5 mile segment north of Downtown and the 3.0 mile segment south of Downtown.

**Chair Meyers** asked if county businesses would be included in the study or only city businesses. **Ms. Clark** replied that both county and city businesses will be invited to participate in the study.

**Commissioner Ray** asked what time the meetings would be held. **Ms. Clark** stated the meetings would most likely be around the-4-6 pm timeframe on a weekday.

**Ms. Clark** explained that the committee would prefer someone from the Planning Commission who has a background in architecture and landscape design. **Mr. Molloy** explained that he has design experience, but would like to have another Commissioner be involved on other committees.

**Chair Meyers** stated that **Commissioner Prior** would be a good candidate and explained that the new Commissioner who has been nominated might be a good fit.

**Commissioner Massaro** and **Commissioner Dowding** also volunteered to participate on the Highway 287 committee; however **Chair Meyers** made the decision to defer a final decision until the next Planning Commission meeting in order for the new Commissioner to be considered for the committee.

**Chair Meyers** stated that **Ms. Bethany Clark, Strategic Planning**, specifically requested a Commissioner that had an architectural and/or landscaping design background.

**Commissioner Massaro** agreed that a decision should be made at the next Planning Commission meeting.

**Commissioner Molloy** asked what other members will be on the committee. **Ms. Clark** responded that the other committee members will include a Transportation Advisory Board member, a Loveland Utilities Commission member, and city/county property owners.

**Commissioner Ray** commended other Commissioners for stepping up to volunteer given that there were more volunteers than needed.

### COMMITTEE REPORTS

**Commissioner Molloy** stated at the last Title 18 Committee meeting, future projects for 2014 which included landscape standards, and xeric plantings were discussed.

**Commissioner Prior** questioned if the xeric plants that are being planted along the highways would be killed due to chemicals being used on the roads during snow removal. He questioned if they should be planted only to end up being killed.

**Mr. Paulsen** responded that the city has not had a concerted review of the use of mag-chloride on the roads and its impact on plantings along streets, and stated that it is an item open for discussion and consideration.

### COMMISSIONER COMMENTS

There were no comments.

## APPROVAL OF THE MINUTES

**Chair Meyers** asked if there were any corrections needed in the November 25, 2013 meeting minutes. **Commissioner Massaro** asked for a correction to page 2 paragraph 8 to reflect his title from “Chair of the Larimer County Democratic Party: to “House District 51 Director”. After **Ms. Kreutzer, Planning Commission Secretary** noted the correction, **Commissioner Dowding** moved to approve the minutes. Upon a second by **Commissioner Ray**, the meeting minutes were approved 7-0.

## REGULAR AGENDA

### 1. North Cleveland Sub-Area Code Amendment

This is public hearing on a legislative matter. Staff is proposing an amendment to the Municipal Code to allow limited on-site signage to home occupation businesses located within the North Cleveland Avenue corridor. The Commission’s task is to review the amendment and to make a recommendation for final action to the City Council.

**Mr. Paulsen** shared that this code amendment is a legislative matter that came about after having conversations with property owners in the North Cleveland Sub-Area corridor. He explained that properties within this district are zoned R3e, and explained that a few years ago, some amendments were put into place making greater allowances for office uses.

**Mr. Paulsen** communicated that there has been a transition in the area from what was built as a residential district, to an office/business district. To facilitate the transition, zoning was amended to allow office uses more readily. He explained that because there are still residential uses in the corridor, Planning felt at the time that the corridor should respect the existing residential environment.

With the new amendment, **Mr. Paulsen** explained that home occupations would be permitted to have a sign associated with the perspective business. He clarified that the municipal code currently does not allow signs for home occupations. He stated that because of the redeveloping area of the Cleveland corridor, it would be appropriate to allow signs for home occupation businesses.

**Mr. Paulsen** finished by explaining the sign specifications within the provisions would allow a 20 (twenty) square foot sign.

**Commissioner Massaro** asked if the signs would only be illuminated externally and asked why internal lighting would not be allowed. **Mr. Paulsen** stated that externally lit signs would be consistent with the policy in the area.

**Commissioner Middleton** asked Mr. Paulsen to define what a “business” is. **Mr. Paulsen** explained that home occupation applications are processed through Current Planning via the Home Occupation application.

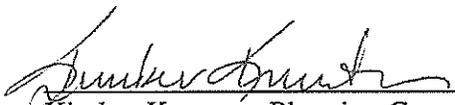
**Chair Meyers** opened the public hearing.

**Commissioner Middleton** made a motion to find that the proposed amendments to Title 18, described in the December 23, 2013 Planning Commission staff report, are in substantial compliance with the Loveland Comprehensive Plan; and based on that finding, recommend that City Council approve the amendments to Title 18 as described herein and as amended on the record. Upon a 2<sup>nd</sup> from **Commissioner Dowding** the motion was unanimously approved.

**ADJOURNMENT**

**Commissioner Molloy**, made a motion to adjourn. Upon a second by **Commissioner Ray**, the motion was unanimously approved and the meeting was adjourned.

Approved by:   
Buddy Meyers, Planning Commission Chairman

  
Kimber Kreutzer, Planning Commission Secretary

# North Cleveland Sub-Area Boundaries



North Cleveland Sub- Area





# *Amendments to the Zoning Code Addressing Home Occupations in the North Cleveland Sub-Area*

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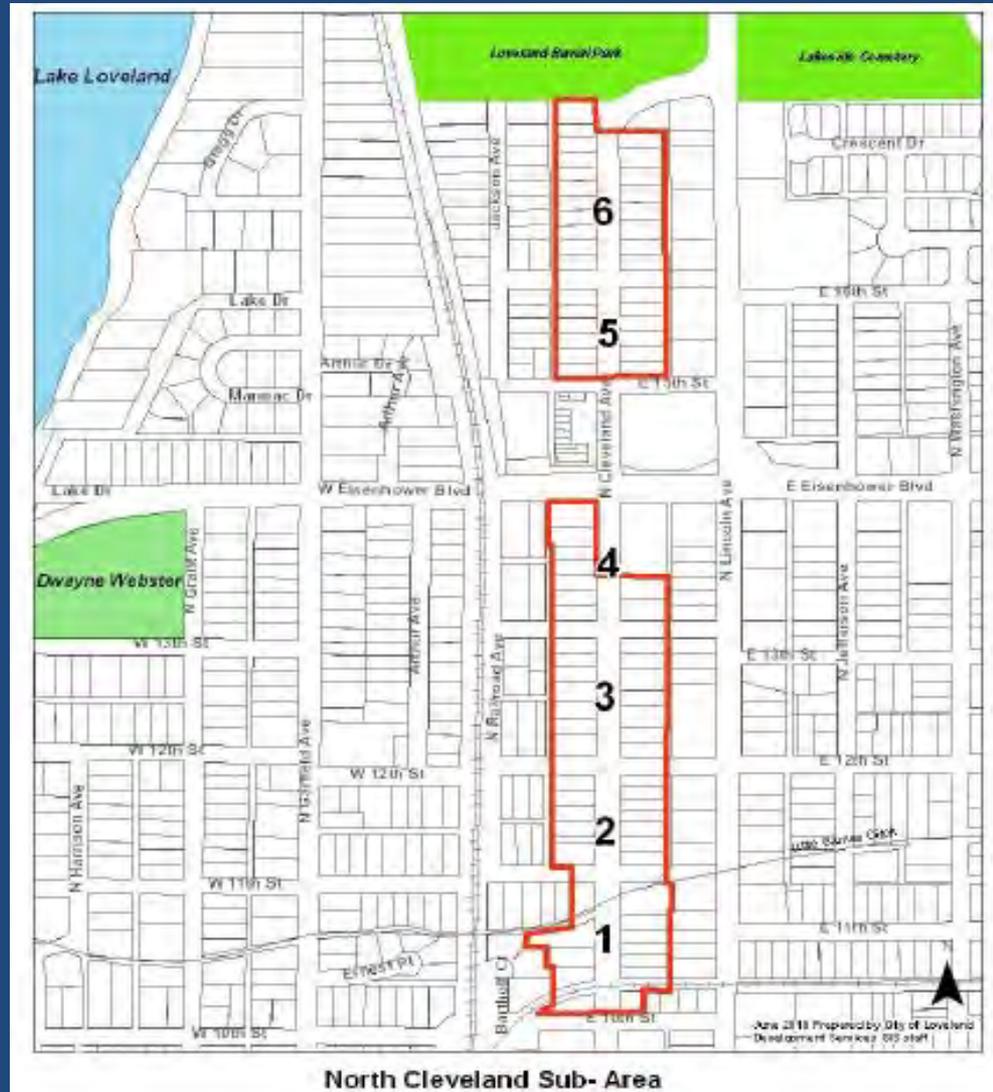
City Council Public Hearing  
February 18, 2013



## Code Amendment for the Cleveland Corridor

- **Public Hearing on a Legislative Matter**
- **The Amendment was reviewed by the Planning Commission on December 23, 2013 with a unanimous recommendation for approval**
- **Reviewed / supported by the Title 18 Committee**
- **The amendment has been developed in response to interest by a small, start-up business**

# North Cleveland Sub-Area Boundaries



North Cleveland Sub- Area



## Cleveland Corridor Amendment

### **Signage Allowance for Home Occupations :**

- Corridor is transitioning from residential to office uses
- Zoning (R3e) was adjusted in 2010 to facilitate office use
- Amendment would allow home occupations to have 1 free standing, 20 sf sign– like other corridor businesses
- Without this exception, home occupations are not allowed a sign.
- The amendment is part of an effort to facilitate small-scale businesses in this corridor.



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 8  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Bob Paulsen, Current Planning Manager

**TITLE:**

An Ordinance on First Reading Amending Section 18.60.020 of the Loveland Municipal Code Pertaining to Variances Granted by the Zoning Board of Adjustment

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action. The ordinance on first reading amends the Zoning Board of Adjustment provisions of Title 18 of the Loveland Municipal Code. The proposed revisions clarify the authority of the Zoning Board of Adjustment to grant variances, specifying that the Board has the power to grant variances to properties in all zoning districts and those variances are authorized for dimensional and numerical standards.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Chapter 18.60 of the Municipal Code grants the Zoning Board of Adjustment (the Board) the authority to grant variances that offer relief where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Code. The amendment provides clarifications and minor adjustments to the authorities of the Board as follows:

1. Specifies that the Board has the authority to grant variances for properties in each zoning district, clarifying that the Board's authority extends to properties zoned Planned Unit Development (PUD).
2. Clarifies that variances cannot be granted to authorize a special review use or a "use not otherwise allowed" by applicable zoning regulations.
3. Extends the authority of the Board to grant variances to dimensional and numerical standards specified in the Code (with limitations relating to signs and building height). Existing Code provisions limit variances to the specific categories of lot area, lot dimensions and setbacks. With the broadened authority, variances can be granted for fence height, landscaping area, certain architectural requirements, and other site and building features that are defined numerically.

The Planning Commission considered this amendment addressing the Zoning Board of Adjustment (ZBA) authorities in a public hearing on November 25, 2013. The amendment was part of a larger grouping of amendments that the Commission recommended for City Council approval by a vote of 7-1. This ZBA amendment was reviewed and supported by the Title 18 Committee.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. November 25, 2013 Planning Commission report
3. November 25, 2013 Planning Commission minutes
4. PowerPoint Presentation

FIRST READING February 18, 2014

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 18.60.020 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO VARIANCES GRANTED BY THE ZONING BOARD OF ADJUSTMENT**

**WHEREAS**, Section 18.60.020 of the Loveland Municipal Code (“Code”) sets forth the powers and duties of the zoning board of adjustment with respect to variances, which are currently limited to standards for lot area, lot dimensions, and setback requirements, square footage of accessory structures, percentage of open space, and setbacks and space for certain signage; and

**WHEREAS**, the Loveland City Council (“Council”) desires to modify Section 18.60.020 to permit variances with respect to other numerical and dimensional standards within Title 18 of the Code, with the exception of standards relating to building height and certain standards relating to signs which shall remain limited by Code Sections 18.60.040; and

**WHEREAS**, Council also desires to clarify that that the power to grant variances under Code Section 18.60.040 extends to all zoning districts, including the PUD zone district.

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

**Section 1.** That Code Section 18.60.020 is hereby amended as follows:

**18.60.020- Powers and duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions ~~of~~ the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done.

The board of adjustment shall have the power to grant variances for properties within each zoning district; however, variances cannot be granted to authorize a special review use or a use not otherwise permitted within a given zoning district.

The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- ~~A. Standards for lot area, lot dimensions, and setback requirements;~~
- ~~B. Square footage of accessory structures;~~
- ~~C. Percentage of open space, and other dimensional~~ and
- ~~D. Setbacks for a freestanding sign, spacing between freestanding numerical standards within this title, with the exception of standards relating to building height (see chapter 18.54) and limited to standards relating to signs and the area for freestanding and wall mounted signs, as specified in section 18.60.040 below.~~

\_\_\_\_\_ After considering if ~~the~~ proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny the application.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** That this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

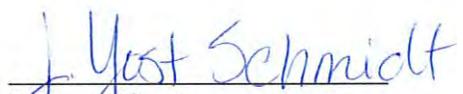
ADOPTED this \_\_\_\_\_ day of March, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**Development Services  
Current Planning**

Civic Center • 500 East Third Street • Loveland, Colorado 80537  
(970) 962-2523 FAX (970) 962-2945 • TDD (970) 962-2620  
www.cityofloveland.org

**ITEM NO:** **4 - Regular Agenda**

**PLANNING COMMISSION MEETING:** November 25, 2013

**TITLE:** Amendments to Title 18 of the Municipal Code

**APPLICANT:** City of Loveland, Current Planning Division

**STAFF CONTACTS:** Bob Paulsen, Current Planning Manager

**APPLICATION TYPE:** Amendments to the Municipal Code

**ACTION:** Legislative Action: Recommend Amendments to the Municipal Code for adoption by City Council

**STAFF RECOMMENDATION:** Subject to additional evidence at the public hearing, City Staff recommends the following motion:

*Move to recommend that City Council approve the amendments to Title 18 of the Municipal Code as specified in the November 25, 2013 Planning Commission staff report, as amended on the record.*

## **I. PURPOSE**

A number of amendments to the zoning code have been assembled for consideration by the Planning Commission on November 25, 2013. These amendments are generally modest in size and complexity and are designed to correct minor errors, provide consistency, and to clarify use allowances in the code. These amendments have been reviewed most recently by the Title 18 Committee on November 21<sup>st</sup>; however, several of the amendments were reviewed by the Committee over the course of the last six months.

The most noteworthy of the amendments address Safety Training Facilities and Indoor Shooting Ranges. This is a topical and important matter as the City is beginning to develop plans for the

City Council: **EXHIBIT 2**

High Point Regional Training Campus on the west side of the airport property that will be accessed from Boyd Lake Avenue. The training campus is a law enforcement facility that would include an indoor shooting range and an outdoor drivers training facility. As the zoning code is silent about such facilities, the amendments are designed to clarify allowances and limitations for such uses. In addition to the proposed definitions, associated text amendments are proposed to several non-residential zones to specify allowances for these uses. Based on the recommendation from the Title 18 Committee, the only zoning district where a Safety Training Facility could locate would be in the I-Developing Industrial District as a special review use. Indoor Firing Ranges would be allowed by right in the I-Developing Industrial District and by special review in the Business, Mixed Use Activity Center, and Employment districts.

Another topic addressed by the amendments is drive-in and fast food restaurants. Currently there are two distinct definitions in the zoning code for drive-in and fast food restaurants; this situation results in confusion, so amendments are proposed to eliminate one definition and to adjust the remaining definition. The remaining definition will be combined with use citations in several non-residential zoning districts to clean up ambiguities in the code regarding restaurant use.

The final amendment addresses the scope of authority of the Zoning Board of Adjustment to approve variances. This amendment was also reviewed by the Title 18 Committee and the adjusted text reflects the Committee's recommendation.

## **II. SUMMARY DESCRIPTION OF THE AMENDMENTS**

### **DEFINITIONS:**

#### **18.04.161 Fast food or drive-in restaurant defined.**

This definition is proposed to be eliminated. Two definitions for "drive-in or fast food restaurant" currently exist in the zoning code. This definition is therefore unnecessary. See the next item below.

#### **18.04.335 Restaurant, drive-in or fast food defined.**

This definition has been clarified to specify that such restaurants have either food and beverage service provided directly to parked vehicles or have drive-through window service. Drive-in and fast food restaurants require special review approval in the B-Developing Business, E-Employment and I-Developing Industrial zoning districts. In association with this amended definition, adjustments have been made to the non-residential zoning districts to provide consistent terminology regarding restaurant uses.

#### **18.04.143.6 Dwelling, two-family defined.**

This definition has been amended to include detached residential units; currently, only attached units (conventional duplexes) fit this definition. The amendment will permit two detached dwelling units located on a single lot to occur in the R2, R3e, R3, B, E, and MAC zoning districts as long as setback, lot size and other applicable requirements are met.

**18.04.161 Firing range, indoor defined.**

Indoor firing ranges are not currently addressed by the zoning code. This definition would apply to publically or privately-operated facilities. Associated with the addition of “indoor firing range” is the inclusion of this use, as a use by right, in the I-Developing Industrial District, and the addition of “indoor firing range” as a special review use in the B-Developing Business, the MAC-Mixed-Use Activity Center District and the E-Employment District.

**18.04.342 Safety training facility defined.**

Safety training facility is not currently defined in the zoning code. This definition would apply to publically or privately-operated facilities. Associated with this definition is the addition of “safety training facility” as a special review use in the I-Developing Industrial District. This use would not be allowed by right or by special review in any other zoning district. The definition and associated inclusion of this use in the I-Developing Industrial District provides clarification as to which zoning district such facilities can locate within--including the City’s proposed High Point Training Facility.

**BE DISTRICT-ESTABLISHED BUSINESS DISTRICT (Chapter 18.24)**

Amendments are proposed to clarify the role and authority of the planning commission when reviewing a site development plan as authorized by this chapter. The amendment specifies that neighborhood meetings and public hearing must be noticed and that planning commission decisions are appealable. A minor adjustment to the design standards of the BE District concerning setback allowances for on-site parking lots adjacent to alleys is also provided.

**ACCESSORY BUILDINGS AND USES (Chapter 18.48)**

An amendment is provided to Section 18.48.050 relating to swimming pools that provides property owners flexibility in providing safety features that prevent unwanted access to pools. The chief building official is given authority to determine if safety features are adequate.

**ZONING BOARD OF ADJUSTMENT (Chapter 18.60)**

This amendment specifies that the zoning board of adjustment has the authority to approve variances to zoning code standards which are dimensional or numeric in nature (with specified limitations). The amended text broadens the scope of the ZBA’s authority to grant variances.

**III. CODE AMENDMENTS**

The specific text for inclusion into the code is specified in this section of the report. Proposed code changes are indicated in redline format. Following each proposed amendment, a description of the purpose of the amendment is provided in italic font.

**Chapter 18.04  
PURPOSE**

**~~18.04.161 — Fast Food or drive-in restaurant defined.~~**

~~“Fast food or drive-in restaurant” means any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready to consume state for consumption either inside or outside the restaurant building or for carry-out for the purpose of consumption off the premises, and whose design and principal method of operation includes at least one of the following characteristics:~~

~~— A. Foods, frozen desserts, or beverages are usually served in edible containers or in paper, plastic or other disposable containers;~~

~~— B. The consumption of foods, frozen desserts, or beverages within a motor vehicle parked upon the premises or other facilities upon the premises outside the restaurant building is allowed, encouraged or permitted;~~

~~— c. Foods, frozen desserts, or beverages are served directly to the customer in a motor vehicle by a service attendant, or by other means such as a drive-up service window which eliminates the need for the customer to exit the motor vehicle.~~

*Currently, the zoning code contains two definitions for Fast Food / Drive-in Restaurant. The above Fast Food definition is redundant and unnecessary. See the next item below.*

#### **18.04.335 Restaurant, drive-in or fast food defined.**

~~A restaurant so developed that patrons can be provided with food or beverage service while remaining in their vehicle, with service provided at on-site parking spaces or through a drive-up service window or similar facility. ~~it provides a driveway approach and service windows or facilities for vehicles to serve patrons food and beverages in a ready to consume state from a drive-through window.~~ Such restaurants may or may not also have indoor or outdoor dining areas for patrons. ~~seating or parking spaces for motor vehicles to serve patrons while in the motor vehicle.~~~~

*The adjusted language above clarifies what is meant by “drive-in or fast food restaurant.” Sonic restaurants are an example of drive-in restaurants; a restaurant with a drive-through facility would be considered a “fast food restaurant” under this definition. Fast food restaurants and drive through restaurants require special review approval in the B, E and I zoning districts. Other restaurants (standard as defined by the code) are allowed as a use by right in the non-residential zoning districts. With this new clarified definition, consistency adjustments are provided to the BE, B, MAC, E and I zoning districts to ensure that standard restaurants are allowed by right.*

#### **18.04.143.6 Dwelling, two-family defined.**

~~“Two-family dwelling” means a building or lot containing two (2) dwelling units designed for occupancy by two (2) families living independently of each other, which has not less than one bathroom for each family and a minimum of five hundred (500) square feet per dwelling unit.~~  
A dwelling containing two (2) dwelling units, except that if the dwelling is designed with respect to separate electric, water, and gas utility connections and common wall construction to allow each dwelling unit to be located on its own separate lot through a subdivision after issuance of the building permit, then the dwelling shall be a single-family attached dwelling, following approval of such subdivision.

*The adjusted language for two-family dwelling would allow dwelling units that are detached (but located on a single lot) to be considered a “two-family dwelling.” The way the current code definition is stated, only attached units are permitted as a “two-family dwelling.” For example, the R2 zoning district allows two family dwellings by right; under the current definition, the units need to be located in a single structure. With the proposed change, two separate structures each housing a dwelling unit would be allowable if other requirements were satisfied, like setback and off-street parking requirements. This allowance will also apply to two-family dwelling units in the R3e, R3, B, E and MAC districts since two-family dwelling units are listed as a use by right in these zoning districts.*

**18.04.161 Firing range, indoor defined.**

A completely enclosed building or group of buildings which contain facilities for the use of firearms and similar weaponry for training, testing, or recreational purposes. Such facilities may include the use of simulated weaponry and combat scenarios.

*This definition is combined with the insertion of text permitting “indoor firing range” as a use by right in the I-Developing Industrial District, and identifying “indoor firing range” as a special review use in the B-Developing Business, the MAC-Mixed-Use Activity Center District and the E-Employment District.*

**18.04.342 Safety training facility defined.**

Outdoor or partially-enclosed facility operated for the purpose of providing training or recreation relating to law enforcement, fire or emergency management, simulated combat , motor vehicle testing or training under high speeds or hazardous conditions, or similar activities that result in the creation of off-site noise, vibration, smoke, light flashes, or hazards.

*This definition is combined with the insertion of text in the I-Developing Industrial District identifying “safety training facility” as a special review use. This use would not be allowed by right or by special review in any other zoning district.*

**Chapter 18.24**

**BE DISTRICT - ESTABLISHED BUSINESS DISTRICT**

**18.24/020 Uses permitted by right.**

~~PP. — Restaurant, fast food without drive in.~~

**18.24.050 Proposals requiring approval by the planning commission**

- A. ~~Structures, buildings or additions meeting the criteria listed in this section shall require approval by the planning commission at a public hearing noticed in accordance with Chapter 16.16.070. Applications for development and redevelopment of structures, buildings or additions that meet the criteria specified in one or more of the numbered subsections below require site development plan approval by the planning commission at a public hearing noticed in accordance with Chapter 18.05.~~ Uses listed in Section 18.24.030 as requiring a special review and meeting the thresholds listed in one or more of the numbered this subsections

below shall require a noticed neighborhood meeting and approval by the planning commission at a noticed public hearing in lieu of the special review process; notice distance shall be as specified for special review in Chapter 18.05.

1. Any allowed uses located in the general, core or Fourth Street character areas containing more than 25,000 square feet of gross floor area construction.
2. Any allowed uses located in the neighborhood transition character area containing more than 10,000 square feet for gross floor area construction.
3. Any building or structure height above seventy (70) feet, exclusive of church spires, chimneys, ventilators, pipes, elevator shafts, or similar appurtenances.

**B. In evaluating proposals, the planning commission shall make the findings included in this section. In approving a site development plan application, the planning commission must determine that the following findings have been met:**

1. The proposed development complies with the standards of this chapter and any other applicable provisions of the Municipal Code.
2. The proposed development is consistent with the goals of the document, *Destination Downtown: Heart Improvement Project Downtown Strategic Plan and Implementation Strategy*, as updated or as provided in the most current downtown strategic planning policy document adopted by the City Council.
3. The proposed development is compatible with surrounding properties ~~while when~~ considering the allowances for development intensity specified in this Chapter and the urban orientation of the downtown which is its location in an urban environment characterized by a diversity of uses and building types.
4. Adequate infrastructure is available to serve the proposed development.

**C. Planning commission decisions may be appealed in accordance with chapter 18.80 of this Title.**

**18.24.080 General and core character areas urban design standards**

Table 18.24.080-1

<b>Dimensional and Intensity Standards for General and Core Character Areas Only</b>								
Use	Minimum yard requirements <sup>1,3</sup>				Open space, and lot size			
	Front	Side, Lot line <sup>4</sup>	Side, right-of-way <sup>6</sup>	Rear, lot line	Rear Right-of-way <sup>6</sup>	Useable Open Space	Min Lot Size	Min Lot Width
<b>One-family detached</b>	10	5	5	10	5	None	4,000	35
<b>One-family attached<sup>4</sup></b>	10	5	0	10	5	None	1,600	17

<b>Two-family</b>	10	5	0	10	5	None	4,000	40
<b>Accessory Bldg</b>	25	5	0	5	5	None	N/A	N/A
<b>Multi-family</b>	10	5	0	10	0	10% Gen	5,000	50
<b>Non-res &amp; mixed</b>	0	5-Gen 0-Core	0	10	0	7.5% Gen 0% Core	None	None
<b>Off-street parking lots and structures<sup>2</sup></b>	8	8	8	0	5	N/A	N/A	N/A

Notes:

1. Setbacks for garage doors fronting public alleys shall be either five (5) feet or less; or eighteen (18) feet or more. Setbacks for garage doors fronting a public street shall be at least twenty (20) feet.
2. Setbacks may be reduced for surface parking when a decorative masonry wall at least three (3) feet in height is provided along public rights-of-way at least six (6) feet in height when adjacent to any residential use.
3. Structures fifty (50) feet in height or taller shall be set back a minimum fifteen (15) feet from the face of the curb.
4. Attached one-family dwelling units shall be allowed to have a zero (0) foot sideyard setback where party walls are used.
5. See section 18.24.080.E.2.c for setbacks from public streets in the core character area.
6. [Parking setback from side or rear lots adjacent to an alley is zero \(0\) feet.](#)

Adjustments to the BE zoning district are summarized as follows:

1. The listing of “Restaurant, fast food without drive-in” is unnecessary with the proposed amendment to “Restaurant, drive-in or fast food” in chapter 18.04 (definitions) of the zoning code.
2. Amendments to Section 18.24.050 requiring site development plan approval by the planning commission are designed to clarify the role of the planning commission in reviewing site development plans that must undergo a public hearing process. A noticed neighborhood meeting would be required by the amendment for uses listed as special review uses. Also, the required findings for approval are clarified and it is specified that planning commission decisions can be appealed in accordance with Chapter 18.80 of the zoning code.
3. Minor adjustments to Table 18.24.080-1 are provided to allow parking lots adjacent to alleys along their side lot or rear lot boundaries to occur without setback requirements, ie.

*“zero setback.” The need for this adjustment was identified with the recent Brinkman and Artspace projects as it was determined that parking lot setbacks in such circumstances are unnecessary.*

### **Chapter 18.28**

#### **B DISTRICT-DEVELOPING BUSINESS DISTRICT**

##### **18.28.010 Uses permitted by right.**

N. Restaurant, standard, ~~indoor or outdoor~~;

##### **18.28.020 Uses permitted by special review.**

~~N. Restaurants and other eating and drinking places, outdoor;~~

S. Restaurant, Drive-in or fast food ~~restaurant~~;

NN. Firing range, indoor.

*This adjustment provides consistency with the existing definition for “Restaurant, standard” as the definition includes both indoor and outdoor dining. Adjustment to the B.District also eliminates an unnecessary definition, provides consistency with the amended definition for “Restaurant, drive-in or fast food,” and indicates special review allowance for “Firing range, indoor.”*

### **Chapter 18.29**

#### **MAC DISTRICT – MIXED-USE ACTIVITY CENTER DISTRICT**

##### **18.29.020 Uses permitted by right.**

BB. Restaurant, standard ~~indoor~~;

~~CC. Restaurant, standard outdoor;~~

##### **18.29.030 Uses permitted by special review.**

P. Firing range, indoor.

*This adjustment provides consistency with the existing definition for “Restaurant, standard,” eliminates an unnecessary definition, and provides for “Firing range, indoor” as a special review use.*

### **Chapter 18.30**

#### **E DISTRICT – EMPLOYMENT CENTER DISTRICT**

##### **18.30.020 Uses permitted by right.**

U. Restaurant, standard ~~indoor or outdoor~~;

**18.30.030 Uses permitted by special review.****P. Firing range, indoor.**

*This adjustment provides consistency with the existing definition for “Restaurant, standard, and provides for “Firing range, indoor” as a special review use.*

**Chapter 18.36****I DISTRICT – DEVELOPING INDUSTRIAL DISTRICT****18.36.020 Uses permitted by right.****II. Restaurant, standard (~~indoor or outdoor~~)****TT. Firing range, indoor.****18.36.030 Uses permitted by special review.****V. Safety training facility.**

*This adjustment provides consistency with the existing definition for “Restaurant, standard,” and allows “Firing range, indoor” as a use by right, and allows “Safety training facility” as a use by special review.*

**Chapter 18.48****ACCESSORY BUILDINGS AND USES****18.48.050 Swimming pools.**

A. Swimming pools may be located in any zoning district as an accessory use provided that such pools are situated on a lot, tract, or parcel in a manner which is not detrimental to the health, safety and welfare of the users of the pool or the adjacent property owners.

B. All swimming pools shall be completely enclosed with a minimum of a four-foot high fence, ~~or~~ be elevated at least four feet above the ground level, have an automated pool cover, or have alternative safety features that prevent unwanted access to the pool as determined by the chief building official.

C. Gates, ladders, or entrances to the swimming pool area shall be designed to prevent people gaining access to the pool area without the owner’s consent.

*The additional language provided in subsection 18.48.050.B. above is designed to accommodate means of restricting unwanted access to pools not anticipated by the original code. The chief building official would have the authority to determine the if one or more safety features are sufficient.*

**Chapter 18.60****ZONING BOARD OF ADJUSTMENT**

**18.60.010 Board of adjustment established.**

The planning commission shall serve as the board of adjustment for the city.

**18.60.020 Powers and Duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions to the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment shall have the power to grant variances for properties within each zoning district; however, variances cannot be granted to authorize a special review use or a use not otherwise permitted within a given zoning district. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

~~A. Standards for lot area, lot dimensions, and setback requirements;~~ and other dimensional and numerical standards within this title, with the exception of standards relating to building height (see chapter 18.54) and limited to standards relating to signs as specified in section 18.60.040 below.

~~B. Square footage of accessory structures;~~

~~C. Percentage of open spaces; and~~

~~D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.~~

After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions or deny the application.

*This amendment expands the powers of the Zoning Board of Adjustment to include the ability to approve variances for any dimensional and numerical standards specified in the zoning code, with the exception of building height standards which can only be varied by the planning commission and standards relating to signs. Allowances for sign variances are limited as specified later in Chapter 18.60. Absent this adjustment, variances to several zoning standards are not possible, including variances for the height of fences, the number of plantings in a bufferyard, and the percentage of floor area devoted to home occupation activities.*

**CITY OF LOVELAND  
PLANNING COMMISSION MINUTES  
November 25, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on November 25, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Crescibene, Ray and Prior. Members absent: None, however one seat is currently vacant. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

**CITIZEN REPORTS**

Former **Commissioner and new City Councilor Troy Krenning** thanked the Commission and staff for their support during his tenure as a Planning Commissioner. **Chair Meyers** presented **Mr. Krenning** with a commemorative plaque and thanked him for his years of service.

**STAFF MATTERS**

1. **Mr. Bob Paulsen, Current Planning Manager**, requested that the December 9, 2013 Planning Commission Meeting be cancelled as there are no items on the agenda. **Commissioner Ray** made a motion to cancel the December 9, 2013 meeting. Upon a second from **Commissioner Middleton** the motion was unanimously approved.

**COMMITTEE REPORTS**

**Commissioner Molloy** stated that at the last Title 18 meeting the Current Development Activities Map (CDA) was presented. He explained the Commissioners would be given a presentation at tonight's meeting. He stated that the committee also discussed changes on industrial park uses that will be brought to the PC in the future.

**COMMISSIONER COMMENTS**

**Chair Meyers** explained that he gave a presentation to the City Council at the November 19, 2013 meeting addressing concerns about press and electronic media comments that surfaced in relation to the Artspace project. He summarized that the Planning Commission has the support of the City Council, and that they appreciate all the work the Planning Commission does.

**Commissioner Molloy** questioned what directive or rules are in place if one Planning Commissioner member speaks as a representative of the Commission as a whole at City Council or public meetings. He asked if it requires a motion to do so. He explained that he wants to ensure that rules and regulations are being followed, and would hate to see anyone not follow rules.

**Ms. Judy Schmidt, Deputy City Attorney**, responded that if a single member of the Planning

Commission wants to represent the entire commission, it's best to get a motion and a majority. **Mr. Paulsen** stated that Staff would be happy to develop guidelines with the Planning Commission's help, and hold a study session to ensure policy and procedures are being followed.

**Commissioner Ray** stated that he understood that Robert's rules, which can be found at the beginning of Title 18, should be followed by the Commission.

**Ms. Schmidt** stated that the policy regarding Robert's rules is general in nature. Historical information can be difficult to find, but the Planning Commission can adopt general policy rules to be followed.

**Mr. Paulsen** stated that when a Commissioner is representing the Planning Commission body as a whole, there should be a set of policy and procedures that are followed.

**Commissioner Massaro** agreed that procedures should be followed when a Commissioner represents the Planning Commission.

**Commissioner Dowding** explained that she watched the November 19, 2013 City Council meeting and felt **Chair Meyers** made it clear he was not representing the Commission as a whole, but was representing his viewpoint as the Chairman. She agreed that it's necessary to have guidelines.

**Commissioner Crescibene** stated went to several art events in downtown in the past several weeks and admits that he sees a commitment for downtown improvements that in the past have never come to fruition. He believes something is truly brewing in downtown Loveland. He appreciates the efforts that many successful business people are making. He explained that he also went to an event at the Feed and Grain building and feels the Artspace project will be successful.

**Commissioner Crescibene** went on to say he had concerns about certain Commissioners being politically involved. He shared that he had information indicating the **Commissioner Massaro** is the House 51 district director of the Larimer County Democratic Party, and is politically inclined, and he felt that was inappropriate since the Planning Commission is apolitical. He shared his concern that **Commissioner Massaro** cannot be unbiased in his role as a Commissioner.

**Commissioner Massaro** responded that he no longer serves in that capacity; and feels his voting record as a Planning Commissioner stands for itself. He explained that he makes decisions based on the facts as presented to the Commission and nothing else. He feels his politics does not influence his decisions on the Planning Commission. He reiterated he is no longer part of that Committee and hasn't been for two years.

**Commissioner Molloy** stated he does not have a problem with **Mr. Massaro's** voting record. **Commissioner Crescibene** apologized to **Commissioner Massaro**, and stated that if he spoke in error, he didn't intend to. His main concern is the Planning Commission stays apolitical. He thanked **Commissioner Massaro** for his understanding.

**Commissioner Molloy** shared that the Artspace project was an emotional project but feels now it's time to move on. He feels the Commission has done well with their decision making.

**Commissioner Ray** shared that he reads all project documents and makes every effort to stay unbiased in his decision-making until he has listened to all the pieces of the project including applicant statements, staff reports, and citizen comments. He wants to be open minded but educated in his decision making. He encouraged other Commissioners to do the same.

**Chair Meyers** explained that 80% of Planning Commission decisions are wrapped in code; 15% from staff input; and 5% is discussion based on empirical data. He feels that all Commissioners have a good record of recusing themselves when necessary.

**Commissioner Massaro** stated that different opinions are necessary, it keeps the Commission balanced. He prides himself for his time on the commission. He stated that he also attended both art events in downtown, and agreed that both were excellent. He agrees with **Commissioner Crescibene** about the commitment to downtown. Finally he shared that he traveled the new road to Estes Park and said it's an excellent road and gave CDOT major kudos for a job well done.

**Mr. Paulsen** explained that interviews for the vacant and incumbent Planning Commission positions will be underway in December. He stressed that candidates are not asked about their political affiliation or political involvement. He stressed that there is no political litmus test involved with being a planning commissioner. Applicants are asked if they can review materials and make informed and unbiased decisions.

### APPROVAL OF THE MINUTES

**Chair Meyers** asked if there were any corrections needed in the October 28, 2013 meeting minutes. Needing no amendments, **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Molloy**, the meeting minutes were approved 8-0.

### CONSENT AGENDA

#### 1. Millennium SW 8<sup>th</sup> Vacation

This is a public hearing to consider a legislative request to vacate four access easements located within the Millennium SW 8<sup>th</sup> subdivision, an application that is currently undergoing staff review. The easements, now unnecessary, were established within outlots in the Millennium SW 7<sup>th</sup> subdivision plat. The 96-lot single-family Millennium SW 8<sup>th</sup> subdivision is located along the north side of 1<sup>ST</sup> Street west of Sculptor Drive in SE Loveland; it is known more commonly as Stone Creek, Phase II. All needed easements and rights-of-way will be established with approval of the new subdivision. This vacation application requires the Planning Commission to make a recommendation to the City Council for final action. Staff is supportive of the request.

**Commissioner Molloy** moved to make the findings listed in Section IX of this report dated November 25, 2013; and, based on those findings, recommend approval of the easement

vacations to City Council, as depicted in Attachment #1 to this staff report, in the form included as Attachment #3 to this staff report. Upon a second from **Commissioner Middleton**, the motion was approved unanimously.

## **REGULAR AGENDA**

### **2. Current Development Activities Map Presentation**

This is an informational item about a new tool that can be used by the public to research and gather information on development projects that have been submitted to the City's Planning office. The Current Development Activities Map is available online at the City's website in the map directory, the Current Planning homepage, and through the following link: [www.cityofloveland.org/cda](http://www.cityofloveland.org/cda).

**Ms. Kerri Burchett, Principal Planner**, addressed the Commission and presented the Current Development Activities (CDA) map. The Planning Department and GIS team developed the tool to keep citizens informed about current development in the City of Loveland. She explained the tool is very innovative and interactive and **Ms. Burchett** believes it's the only one its kind in the country. The information available in the map will be updated weekly and includes residential and commercial projects. In addition, the projects can be filtered to show those that require public review and those that do not. Some the outstanding features of the tool includes searchable projects and aerial views. A help menu is included to help with definitions. **Ms. Burchett** stated that the simplicity is the key and explained that it was developed in house and will be maintained and updated in house. Finally she thanked **Brent Shafranek, GIS specialist** and **Heather Lassner, GIS Technician** for their brilliant work in creating the CDA map.

**Chair Meyers** commented that other people in the industry have stated that there is not anything else similar to the CDA map out there. The City of Loveland has done something that is first of its kind which is truly exceptional.

**Commissioner Massaro** stated he has been in the industry a long time and stated that Staff did an excellent job launching this tool. He worked in the tool yesterday and said it represents the excellent work City Staff does.

**Mr. Paulsen** encouraged Commissioners to work with the tool and urged them to provide feedback and comments.

**Commissioner Ray** agreed with the praise of the CDA map and shared that the GIS maps he works with in his current job is not as useful of a tool.

### **3. Wintergreen PDP**

This is a public hearing to consider a preliminary development plan (PDP) for a multifamily residential development within the Wintergreen PUD. The 19 acre subject site is located to the west of the Super Wal-Mart located on North Hwy. 287. The PDP proposes the development of 224 rental multifamily units within 14 two-story buildings. The units will vary between one, two and three bedrooms and are intended to be market rate rentals. Staff believes that all key issues have been resolved based on the municipal code and standards contained in the PUD. The

Commission's action on this quasi-judicial matter is final barring appeal.

**Mr. Paulsen, Current Planning Manager**, explained to the Commission that the project site for the Wintergreen PDP consists of 19 acres located to the west of the Super Wal Mart. The proposal is to construct 224 multifamily rental units within 14 two-story buildings. The units will vary between one, two, and three bedroom market rate rentals. The development is anticipated to be named "Ashley Estates". He noted that the subject property is adjacent to a developing single family subdivision and to vacant property that may include future non-residential development.

**Mr. Paulsen** stated that Planning staff believes that the project will be a high quality, well designed project that includes a clubhouse, pool, and playground that meets requirements of the Wintergreen General Development Plan (GDP). He stated that the Planning Commission has the final decision-making authority on the project barring an appeal. Staff is recommending approval with 3 conditions.

**Commissioner Middleton** asked if there was a possibility that residents might be bothered by development to the north of the project site. **Mr. Paulsen** replied that there is nothing in the planning stages yet; however, there is a buffer on the north end of the subject property which is deemed sufficient to mitigate noise and other compatibility issues. Any new development in the Longview Industrial Park (to the north) would require Site Development Plan approval and this process would be used to mitigate impacts on the apartment complex; but, it should be understood that industrial uses are a use by right within the vicinity.

**Applicant, Terence Hoaglund, Vignette Studios representing Pedcor Investments, LLC** addressed the Commission and shared that his company has been doing site development in the area for over 10 years. He explained that the platting has already been complete and that there will be 16 units per building. He stated that there will be a central leasing unit and multiple play areas. The site exceeds the setback requirements and extensive landscaping will be added. 448 total parking spaces were required, but 475 will be provided of which 56 garage spaces could be rented by tenants. No fencing is being proposed.

**Ryan Rogers, Pedcor Investments**, explained that Pedcor has been doing development since 1987 including the development of 16,000 multi-family units' in 13 states. Pedcor will manage the property for a minimum of 15 years, making the company fully vested in the project. The affordable units will be constructed with the same quality materials as other Pedcor properties.

**Mr. Rogers** explained that the market in Northern Colorado is very tight, and multi-family housing is needed. He stated that Pedcor received a 4% affordable housing tax credit to help finance the project. Based on the 60% area median income, a 1 bed 1 bath, 1800 sf unit with rent of \$800/month is considered affordable housing under the federal tax code. The screening process for tenants will include background checks, sex offender checks, and a zero drug tolerance policy.

**Commissioner Crescibene** asked what lease options will be available. **Mr. Rogers** replied that the typical rent option will be annual, but there will be some flexibility with lease options. Pedcor will be involved in the property management for 15 years minimum due to tax

implications and credits.

Since the company has been in business since 1987, **Commissioner Crescibene** asked if they still have involvement in projects as far back as that date. **Mr. Rogers** replied that Pedcor is still involved in their first project and stated that many of the early developments still have a 95% occupancy rate.

**Mr. Rogers** explained that financing from HUD requires a vigorous review for funding, and HUD felt any concerns related to the project, including future construction in the area, have been mitigated.

**Commissioner Crescibene** questioned if there would be additional cost for use of the clubhouse or pool. **Mr. Rogers** explained that all amenities are included in the rent, and property owners will pay water, sewer and trash.

**Commissioner Prior** asked what plans, if any, are being developed in the property directly behind Walmart. **Mr. Rogers** shared that the property is on the market, but no plans are currently in the works.

**Commissioner Prior** queried what the zoning is for future development to the north. **Mr. Paulsen** stated that industrial uses are allowed by right. Specific requirements and standards are required in the Longview Industrial Park to ensure compatibility with surrounding properties. He stated that the Wintergreen GDP plan allows for the apartment use but Planning will work to mitigate any incompatibilities that arise when vacant property in the vicinity is reviewed for development.

**Commissioner Dowding** questioned if open space areas are a HUD requirement. **Mr. Rogers** explained that it not a HUD requirement but a City of Loveland requirement. She stated the play area seemed to be reduced by landscaping. **Mr. Paulsen** explained that landscaping is allowed in play areas and is considered an amenity as long as there is sufficient open play field space.

**Commissioner Molloy** offered kudos for the decision to move the buildings across the ridgeline and asked what the build-out timeline is. **Mr. Rogers** responded that the construction timeline is sixteen (16) months from start to finish, and said that assuming there are no other government shutdowns, they hope to start construction in the April/May timeframe.

**Commissioner Ray** explained there are two entrances to the facility and questioned why there are not more ingress points. **Mr. Rogers** stated that the Traffic Impact Study (TIS) was completed and is keeping with the overall GDP. **Mr. Paulsen** explained that **Sean Keller, TDR**, is very comfortable with the project plans and traffic levels that will be generated. He stated that the Fire Authority requires two access points at a minimum but also had no concerns.

**Mr. Massaro** asked if the TIS took future projects in the area into consideration. **Mr. Rogers** stated that the Wintergreen 2<sup>nd</sup> project was approved and started in 2008, but was halted during the recession. He explained that traffic patterns and allowances were established with the original GDP, and this project is following that plan.

**Chair Meyers** asked if the west face, downhill slope would include a split rail fence along the property line. **Mr. Rogers** replied that no fencing is associated with the project, with the exception of a required fence around the pool.

**Commissioner Massaro** questioned if there will be bike trails on 64<sup>th</sup> street. **Mr. Rogers** explained that it will have sidewalks on the entire street system and bike lanes will be included. 65<sup>th</sup> will also have sidewalks and bike paths.

**Chair Meyers** opened the public hearing.

Seeing no citizen comments, the public hearing was closed.

**Commissioner Ray** stated that he appreciated the detail that went into this project. He feels income level properties of this type are much needed in Loveland and feels it was well designed.

**Commissioner Crescibene** shared that the project is a fantastic opportunity for the community. He would like to make sure that bikes and other outdoor storage is kept to a minimum. He explained the project fills a gap that is greatly needed in the community.

**Commissioner Massaro** explained that he likes the plans for this community project and thinks the developer did a good job.

**Commissioner Crescibene** asked about the HOA requirements. **Mr. Rogers** responded that the management company would ensure that tenants follow the rules in keeping the site clean and attractive. Complaints from residents or citizens in the community are taken seriously and are handled in a timely manner.

**Commissioner Middleton** stated that he was impressed with the history of Pedcor, impressed with the layout and the footprint. He explained that he especially likes that the developer hires contractors locally.

**Chair Meyers** shared that he felt this was an impressive project which is much needed in the community. Pedcor offers a good quality product that fits in with the surrounding area.

**Commissioner Middleton** made a motion to move to make the findings listed in Section VIII of the Planning Commission staff report dated November 25, 2013 and, based on those findings, instruct staff to prepare a resolution of approval for the Wintergreen Third Subdivision Preliminary Development Plan subject to the conditions listed in said report, as amended on the record. Upon a 2<sup>nd</sup> from **Commissioner Dowding**, and after the applicant accepted all conditions, the motion passed unanimously.

The Planning Commission took a ten minute break at 8:35 p.m.

At 8:49 the meeting resumed.

#### **4. Amendments to Title 18 of the Municipal Code**

This is a public hearing item on a legislative matter to consider amendments to Title 18 (the zoning code) of the Loveland Municipal Code. The amendments are a compilation of relatively modest adjustments to several areas of the code that are designed to correct errors, provide consistency, and clarify use allowances. The amendments have been reviewed by the Title 18 Committee. Upon review, the Planning Commission will forward a recommendation to the City Council for final action.

**Mr. Paulsen** shared that the changes to the code require a public hearing. He pointed out that, rather than dealing with rights of a specific property owner, the changes more broadly address zoning changes that will affect a number of properties in the community. To this effect, the matter is legislative in nature, not quasi-judicial.

The assemblage of minor amendments include definitions, use adjustments in residential zones, use adjustments in commercial zones, adjustments to the downtown BE district provisions, clarifications to accessory buildings and uses, and Zoning Board of Adjustment clarifications.

**Mr. Paulsen** began by addressing the definition of drive-in and fast food restaurants. He explained that the zoning code currently includes two definitions for fast food and drive-in restaurants. With the amendments, one of the definitions will be eliminated because it is out dated and redundant. The remaining definition clarifies the distinction between a standard restaurant versus drive-in and fast food restaurants. Drive-in and fast food restaurants require special review, while standard restaurants are a use by right in many of the commercial zoning districts.

Next, **Mr. Paulsen** explained changes to the definition of two-family dwellings. Currently, two-family dwellings are defined in the code to specify that when two family units occur on the same lot, they must be attached. The code amendments will allow two family dwellings to be attached or detached, and to occur as a use by right in several residential and commercial zones. This amendment will provide for more flexibility for property owners who have a large enough lot to develop a second dwelling unit on their property—which is a situation that most commonly occurs in the downtown area. The amendment will not impact the allowance for accessory units.

**Commissioner Massaro** stated that he owns a property that might be impacted by the amendment and asked if he should he recuse himself from the discussion.

**Ms. Schmidt** explained that since this discussion does not impact his property directly, he does not need to recuse himself.

**Commissioner Middleton** asked if this situation will create a subdivision capability. He also questioned if the requirements for the percentage of square footage remain the same. **Mr. Paulsen** stated that all existing zoning provisions, including lot size and setback requirements, will remain unchanged.

**Chair Meyers** questioned if property owners could create a condominium association and then sell individual units. **Mr. Paulsen** clarified that this change does not affect zoning requirements

concerning lot size minimums nor condominium use—which is controlled by the state. City has accessory unit allowances and this change has no bearing on those allowances.

**Commissioner Crescibene** asked what, if any, implications are there to the setbacks. **Mr. Paulsen** explained that building code separation requirements and zoning setback requirements would remain applicable and unchanged. He stressed that the change would not allow for greater densities or smaller lot sizes. Rather, on lots where two units are allowed, the change in definition would allow the units to be detached or attached.

**Ms. Schmidt** explained that the code will allow property owners to build two detached buildings on a lot, but it does not necessarily allow automatic rights for subdivision.

**Mr. Paulsen** next described the amendment addressing indoor firing ranges. He explained that the amendment was designed to clarify the definition for an indoor firing range and to specify in what zoning districts an indoor firing range could locate. **Mr. Paulsen** explained that the City is working to develop a new safety training facility in the airport area which will include an indoor shooting range and this clarification would apply to the proposed airport project. However, the amendment applies to publically operated facilities or privately operated facilities.

**Chair Meyers** asked if he needed to recuse himself from the vote since he owns a firearm business. **Ms. Schmidt** questioned if he owns an indoor firing range. **Chair Meyers** responded he did not; therefore there is no conflict of interest.

**Mr. Paulsen** shared that if an applicant wanted to open a privately operated shooting range, they would fall under the proposed definition and use allowances of the code. He went on to explain that the definition of a firing range specifies it must be in a completely enclosed building. Under the proposal, such a facility would be allowed by right in the I-Industrial district, and by special review in B, MAC, and E districts. The definition does not include archery, laser tag, or paintball or other recreational uses which could occur by right in various commercial zoning districts.

**Commissioner Crescibene** asked if this definition would only be applied to community firing ranges. **Mr. Paulsen** responded it does not have to be public and could be a privately operated facility.

**Commissioner Molloy** shared that the Title 18 Committee has reviewed these provisions in the past. He stated that **Chair Meyers**, with his expertise in this area, did an outstanding job in assisting staff in developing the definitions.

**Mr. Paulsen** explained that archery, paintball systems, video-based gaming, laser-based technology of low output, and other technologies that do not cause emission of a destructive force, including compressed gas, air propulsion based firearms, and spring-based propulsion systems, do not constitute an indoor firing range, although such activities may occur within a firing range.

**Mr. Paulsen** went on to address the amendment concerning safety training facilities. He explained that currently the zoning code does not define or specify what zones this type of use is

allowed within. As proposed, this type of facility is defined as an outdoor or partially enclosed facility for training or recreation that may result in the creation of off-site noise, vibration, smoke, light flashes or hazards. With such uses, a special review will be required and would only be allowed in the industrial zoning district. The definition would apply to publically or privately operated facilities.

**Commissioner Ray** questioned if guns will be allowed to be discharged outdoors around the airport. **Mr. Paulsen** explained that the City's proposed safety training facility would include an outdoor track for vehicle training; however, the firing range and related uses will be indoors.

**Chair Meyers** stated that airport management in the area have reviewed the plans and are comfortable with the changes.

**Mr. Paulsen** explained the changes to definitions in the BE District-Established Business District. Amendments being proposed clarify the role and authority of the Planning Commission when reviewing a Site Development Plan (SDP) as authorized by this chapter. Amendments also specify that neighborhood meetings and public hearings must be noticed, and state that Planning Commission decisions are appealable. A minor adjustment to the design standards of the BE District concerning setback allowances for on-site parking lots adjacent to alleys is also provided.

**Mr. Paulsen** described changes to the accessory building and uses provisions. Adjustments in the definition pertain to swimming pools since they are considered an accessory use. The modifications will allow for additional safety solutions to prevent unwanted entry into outdoor pools. It allows the Chief Building Official the authority to make a determination as to the adequacy of safety features.

**Commissioner Molloy** shared that the Title 18 Committee discussed the issue, and stated that insurance companies usually require a four foot fence around swimming pools. **Mr. Paulsen** clarified that is not true in all cases based on his experience in reviewing proposed swimming pools.

**Commissioner Ray** asked if someone built a pool in an area with no fence, but had a pool cover, would that sufficient. **Mr. Paulsen** replied that a full review of site-specific factors would be necessary, including accessibility to the property and to the swimming pool; the Chief Building Official will have final authority on whether or not the safety provisions are satisfactory.

**Mr. Paulsen** described the proposed alterations to the Zoning Board of Adjustment section of the code specifying that the ZBA has the authority to approve variances to zoning code standards which are dimensional or numeric in nature (with specified limitations). The amended text broadens the scope of the ZBA's authority to grant variances in all zones.

**Mr. Paulsen** stated that staff is recommending approval of the code amendments to City Council.

**Mr. Ray** stated he would like to approve the amendments however he won't because he cannot accept detonation of firearms near an airport.

**Mr. Middleton** shared that he is in favor of all proposed changes and will be voting for them.

**Commissioner Middleton** made motion to move to recommend that City Council approve the amendments to Title 18 of the Municipal Code as specified in the November 25, 2013 Planning Commission staff report, as amended on the record. Upon a 2<sup>nd</sup> from **Commissioner Dowding** the motion passed 7-1 with **Commissioner Ray** voting nay.

#### **5. Review of the updated Boards and Commissions Handbook and Related Materials**

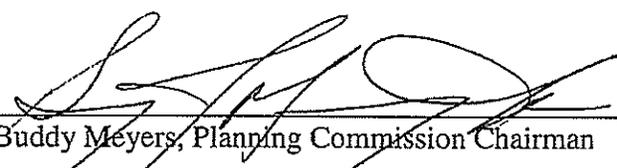
This is an administrative item. Staff has distributed a collection of materials that provide direction on the operations of the Planning Commission, including the updated Boards and Commissions Handbook. The purpose of this item is intended to give Commissioners familiarity with relevant materials and to identify any pertinent revisions that have occurred in the recent past.

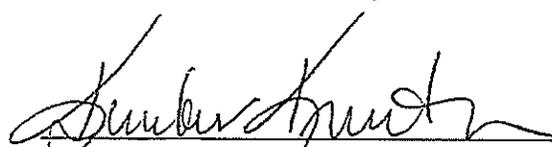
**Commissioner Middleton** made a motion to review the Boards and Commission Handbook at a later date, due to the late hour. Upon a 2<sup>nd</sup> from **Commissioner Massaro** the motion was unanimously approved.

#### **ADJOURNMENT**

**Commissioner Middleton** made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by:

  
Buddy Meyers, Planning Commission Chairman

  
Kimber Kreutzer, Planning Commission Secretary



# *Amendments to the Zoning Code Addressing the Zoning Board of Adjustment*

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City Council Public Hearing  
February 18, 2013



## Code Amendment regarding ZBA Authority

- **Public Hearing on a Legislative Matter**
- **The ZBA Amendments reviewed by the Planning Commission on November 25, 2013 in combination with other code amendments**
- **Reviewed / supported by the Title 18 Committee**
- **The ZBA amendment has been packaged as a separate agenda item for City Council review**
- **Zoning Board of Adjustment provisions are located in Chapter 18.60 of the zoning code**



## ZBA Code Amendment

### **Clarification of Zoning Board of Adjustment Authorities:**

- **The Planning Commission serves as the Zoning Board of Adjustment**
- **The Commission appoints a hearing officer**
- **Amendments Clarify that the ZBA has the power to grant variances in all zones**
- **Clarifies that use variances for uses are prohibited**
- **Allows variances to be granted for all dimensional and numeric standards.**



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 9  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Greg George, Development Services  
**PRESENTER:** Troy Bliss, City Planner II

**TITLE:**

A Resolution Stating the Intent of the City of Loveland to Annex Certain Property and Initiating Annexation Proceedings for Such Property to be Known as the "Jayhawker Addition" to the City of Loveland

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action to consider a resolution setting a public hearing date of April 1, 2014 for City Council to review annexation of approximately 33 acres known as the Jayhawker Addition. The applicant is the City of Loveland. The property is generally located on the south side of West 1<sup>st</sup> Street and east of South Taft Avenue. It is comprised to two parcels; one being the City Jayhawker Ponds (approximately 30.77 acres) and the other being a parcel of land owned by Lee and Patricia Swisher (approximately 1.82 acres). Collectively, these two parcels represent an enclave as defined in C.R.S. 31-12-103 (4) within the City's Growth Management Area (GMA). Section 4.0 of the Intergovernmental Agreement For Growth Management (IGA) between the City of Loveland and Larimer County requires the City to pursue annexation of enclaves, whether voluntarily or involuntarily, as expeditiously as possible.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Annexation of the Swisher property is being presented as an involuntary annexation. The owners have not filed a petition for annexation and object to being annexed.

City staff has had several conversations with the Swishers between May and June of 2013 concerning the City's obligations under the terms of the IGA with Larimer County, development constraints due to most of the property being in the FEMA Floodway, and appropriate zoning for the property once annexed into the City. Additionally, the City has made two formal offers to buy the property so it could be included in the River's Edge Natural Area. Both offers were rejected.

On February 20, 2014, a neighborhood meeting will be held to discuss the proposal further with the property owners. Opportunities will also be given to the owners to discuss this annexation at public hearings before the Planning Commission on February 24, 2014 and City Council on April 1, 2014.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Resolution
2. Vicinity Map

**RESOLUTION #R-15-2014**

**A RESOLUTION STATING THE INTENT OF THE CITY OF LOVELAND TO ANNEX CERTAIN PROPERTY AND INITIATING ANNEXATION PROCEEDINGS FOR SUCH PROPERTY TO BE KNOWN AS THE "JAYHAWKER ADDITION" TO THE CITY OF LOVELAND**

**WHEREAS**, the Loveland City Council ("**Council**") desires to make the findings and conclusions that the real property described below complies with the applicable requirements of C.R.S. §31-12-106(1) and is therefore eligible for annexation as an enclave; and

**WHEREAS**, upon such a finding, the Council desires to initiate annexation proceedings with respect to the Property in accordance with law.

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

**Section 1.** The Council desires to annex the following described property, to be known as the Jayhawker Addition to the City of Loveland, situate in Larimer County, Colorado, and more particularly described as follows (the "**Property**"):

**Being all of Parcels 1 and 2 Reception No. 2001058143, recorded 7-17-2001; Reception No. 93016002, recorded 3-15-1993; Reception No.2000070305, recorded 10-11-2000; and Reception No. 2000070306, recorded 10-11-2000; also being a portion of the Northwest 1/4 of Section 23, Township 5 North, Range 69 West of the 6<sup>th</sup> Principal meridian, Larimer County, Colorado more particularly described as follows:**

**Considering the North line of the Northwest 1/4 of the Northwest 1/4 of Section 23 in Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado as bearing N 88°16'38" E and with all bearings contained herein relative thereto.**

**BEGINNING at the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of Section 23 in Township 5 North, Range 69 West of the 6<sup>th</sup> Principal Meridian, Larimer County, Colorado; thence run S 01°14'00" E along the East line of West 1/2 of the Northwest 1/4 of said Section 23 for a distance of 1314.13 feet to the Southeast corner of the Northwest 1/4 of said Northwest 1/4 of Section 23;**  
**thence run S 01°12'01" E along said East line for a distance of 357.90 feet to the North line of MINERAL ADDITION; thence leaving said East line run along said North line for the following courses and distances:**  
**thence run N 44°31'23" W for a distance of 97.11 feet; thence run N 57°02'47" W for a distance of 480.81 feet;**  
**thence run N 78°28'51" W for a distance of 57.59 feet to a point on the South line of the Northwest 1/4 of the Northwest 1/4 of said Section 23;**

thence run N 79°31'58" W for a distance of 741.12 feet to a point on the East line of HAPPINESS PLAZA ADDITION; thence leaving said North line run N 01°06'54" E along said East line for a distance of 56.83 feet;  
 thence run N 01°11'26" W along said East line for a distance of 482.34 feet to a point on the South line of HAPPINESS PLAZA FORTH ADDITION;  
 thence leaving said East line run N 88°07'49" E along said South for a distance of 377.60 feet to the East line of said HAPPINESS PLAZA FORTH ADDITION;  
 thence leaving said South line run N 01°11'26" W East line, the East lines of HAPPINESS PLAZA FORTH ADDITION and HAPPINESS PLAZA SECOND ADDITION for a distance of 607.44 feet to the South right-of-way line of West First Street;  
 thence leaving said East lines run N 88°16'38" E along said South right-of-way line for a distance of 645.73 feet; thence run N 01°11'19" W along said South right-of-way line for a distance of 10.00 feet;  
 thence run N 88°16'38" E along said South right-of-way line for a distance of 220.00 feet to the Point of Beginning.

Containing 32.59 acres, more or less, and being subject to all easements and rights-of-way of record.

**Section 2.** The Council makes the following findings of fact:

A. The Property to be annexed is entirely contained within the boundaries of the City of Loveland, and has been so surrounded for a period of not less than three (3) years.

B. Pursuant to C.R.S. §31-12-106, the Council may by ordinance annex the Property without complying with C.R.S. §§31-12-104, 31-12-105, 31-12-108, or 31-12-109, except that notice of the proposed annexation ordinance shall be given by publication as provided by C.R.S. §31,-12-108(2) for notices of annexation petitions and resolutions.

C. Pursuant to C.R.S. §31-12-108.5, the City and the Larimer County Board of Commissioners have agreed, pursuant to that certain Intergovernmental Agreement for Growth Management dated January 12, 2004 and recorded in the real property records of the Larimer County Clerk and Recorder on January 22, 2008 at Reception No. 20090003606, that no annexation impact report is required for the Property.

D. The perimeter of the Property to be annexed is 5,448.61 linear feet and contains approximately 32.59 acres. The entire perimeter of the area is contiguous with the City of Loveland.

E. No part of the municipal boundary or territory surrounding the Property consists, at the time of annexation, of public rights of way, including streets and alleys, which are not immediately adjacent to the City on the side of the right of way opposite the Property.

F. No part of the territory surrounding the Property was annexed to the City since December 19, 1980, without compliance with section 30 of article II of the Colorado Constitution.

**Section 3.** Based on the findings of fact set forth above, Council makes the following determinations and conclusions:

- A. The proposed annexation of the Property described above complies with and meets the applicable requirements of C.R.S. §31-12-106(1) and is eligible for annexation as an enclave.
- B. No election is required under C.R.S. §31-12-107(2).
- C. No additional terms and conditions are to be imposed.
- D. Council hereby initiates annexation proceedings for the Property.

**Section 4.** The Notice attached hereto as **Exhibit A** is hereby adopted as a part of this Resolution. The Notice establishes the date, time, and place when a hearing will be held regarding the passage of an annexation ordinance pertaining to the Property. The City Clerk is directed to publish a copy of this Resolution and the Notice as provided in C.R.S. §31-12-108(2).

**Section 5.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 18<sup>th</sup> day of February, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**NOTICE**

**TO ALL INTERESTED PERSONS:**

**PLEASE TAKE NOTICE:**

That the City Council of the City of Loveland, Colorado has adopted a Resolution initiating annexation proceedings for the Jayhawker Addition to the City of Loveland, which Addition is more particularly described in the Resolution, a copy of which precedes this Notice. This is an enclave annexation.

That, on April 1, 2014, at the hour of 6:30 p.m., or as soon thereafter as the matter may come on for hearing in the City Council Chambers at 500 East Third Street, Loveland, Colorado, the Loveland City Council will hold a public hearing upon the annexation and zoning of the Property described in the Resolution. At such hearing, any persons may appear and present such evidence as they may desire.

It is proposed that the Property included in the Addition be placed in the DR-Developing Resource zone district, as defined by the Loveland Municipal Code.

The City of Loveland will make reasonable accommodations for access to City services, programs and activities, including special communication arrangements for persons with disabilities, in accordance with the Americans with Disabilities Act. Please contact the City's ADA Coordinator at [bettie.greemberg@cityofloveland.org](mailto:bettie.greemberg@cityofloveland.org) or 970-962-3319 for assistance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
City Clerk

W 8th St

W 1st St

Carlisle Ave

Taft Ave

Railroad Ave

CENTENNIAL PARK

Swisher Property

JAYHAWKER PONDS

RIVER'S EDGE NATURAL AREA



**LEGEND**

-  Jayhawker Ponds
-  Open Lands
-  Parks

-  Recreation Trail
-  Big Thompson River
-  Ditches/Canals
-  Lakes & Ponds



**JAYHAWKER PONDS**  
 W. 1st St. & Taft Ave.  
**VICINITY MAP**



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
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**AGENDA ITEM:** 10  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Brian Burson, Current Planning Division

**TITLE:**

An Ordinance on First Reading Vacating a Portion of a Utility and Drainage Easement on Lot 7, Block 7, Mariana Cove PUD Subdivision, City of Loveland

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action. The ordinance on first reading approves vacating a 15-foot wide portion of a utility and drainage easement along the south side of Lot 7, Block 7, Mariana Cove PUD Subdivision. The owner of the property is Dan Wester.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The easement was originally dedicated as part of the final plat of Mariana Cove PUD Subdivision. It is unusually wide and occupies a significant amount of lot area that could be made available for construction of a new custom-built home complying with required side yard setbacks. The application has been routed to all providers of utilities for this subdivision. No objection or concerns have been indicated by these providers. The vacation of a non-access easement does not require Planning Commission consideration.

---

**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

---

**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Memorandum, dated February 18, 2014.

**FIRST READING:** February 18, 2014

**SECOND READING:** \_\_\_\_\_

**ORDINANCE NO.**

**AN ORDINANCE VACATING A PORTION OF A DRAINAGE AND UTILITY  
EASEMENT  
IN LOT 7, BLOCK 7, MARIANA COVE PUD SUBDIVISION, CITY OF LOVELAND**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of the drainage and utility easement described below and located in Lot 7, Block 7, Mariana Cove PUD Subdivision, City of Loveland, County of Larimer, State of Colorado; and

**WHEREAS**, the City Council finds and determines that no land adjoining the portions of the easement to be vacated is left without an established public or private easement connecting said land with another established public or private easement; and

**WHEREAS**, the City Council finds and determines that the portion of the easement to be vacated is no longer necessary for the public use and convenience; and

**WHEREAS**, the City Council further finds and determines that the application filed with the Current Planning Division was signed by the owners of more than 50% of property abutting the easement to be vacated.

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

**Section 1.** That the City Council hereby adopts and makes the findings set forth above.

**Section 2.** That based on the City Council’s findings described above, the following portion of the drainage and utility easement be and the same is hereby vacated:

**A portion of the 15' Drainage and Utility Easement located in Lot 7, Block 7, of Mariana Cove PUD Subdivision, as recorded in reception no. 19940032684 of Larimer County, Colorado records, being a subdivision of a portion of Section 20, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, Larimer County, Colorado, more particularly described as Follows:**

**The Southerly line of said Lot 7, Block 7, was assumed to bear South 70°23'47" West according to the Recorded Plat of Mariana Cove PUD Subdivision, with all bearings contained herein relative thereto.**

**Commencing at the Southeasterly corner of said Lot 7 Block 7;**

thence South 70°23'47" West, along the Southerly line of said Lot 7 Block 7, a distance of 15.00 feet to the POINT OF BEGINNING;  
 thence continuing along said Southerly line South 70°23'47" West, a distance of 60.46 feet;  
 thence North 65°06'13" West, along the Westerly line of said Lot 7 Block 7, a distance of 14.79 feet;  
 thence departing said Westerly Line, North 19°36'13" West, a distance of 21.03 feet;  
 thence South 65°06'13" East, a distance of 23.40 feet;  
 thence North 70°23'47" East, a distance of 54.32 feet;  
 thence South 19°36'13" East, a distance of 15.00 feet to the POINT OF BEGINNING.  
 Containing 1,147.00 square feet or 0.0263 acres, more or less.

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 4.** That this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 5.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this \_\_\_\_ day of \_\_\_\_, 2014.

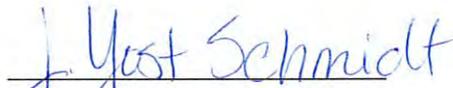
ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
 City Clerk

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

APPROVED AS TO FORM:

  
 Deputy City Attorney





**Development Services  
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537  
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
www.cityofloveland.org

**MEMORANDUM**

**TO:** City Council

**FROM:** Brian Burson, Senior City Planner, Current Planning Division

**DATE:** February 18, 2014

**SUBJECT:** Vacation of a portion of utility and drainage easement on Lot 7, Block 7, Mariana Cover PUD Subdivision.

**I. EXHIBITS**

1. Applicant's justification letter for the vacation.
2. Draft site plan and vacation exhibit w/ legal description.

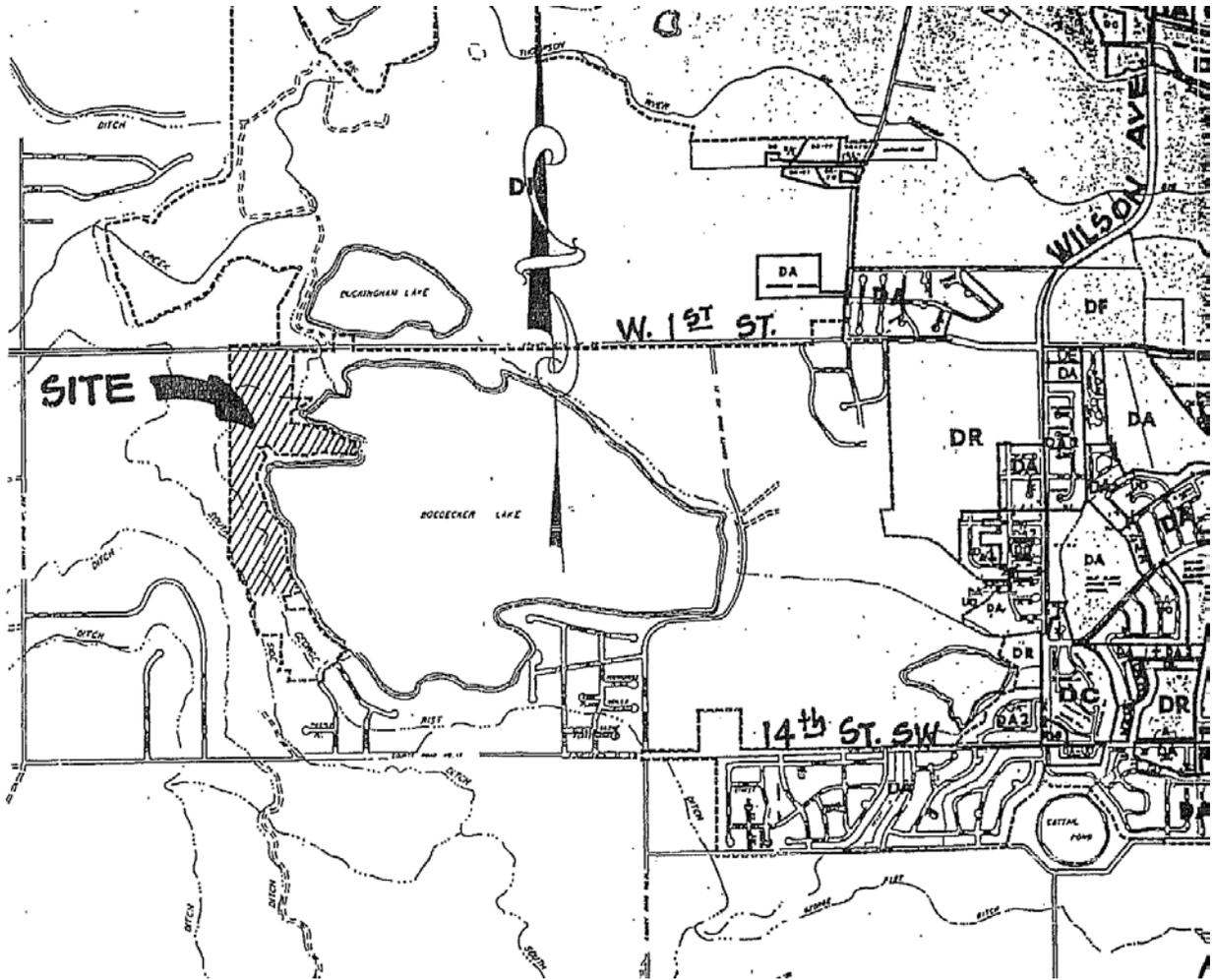
**II. KEY ISSUES**

Staff believes that all key issues regarding the vacation have been resolved through the staff review process. The application has been routed to all providers of utilities for this subdivision. No objection or concerns have been indicated by these providers. Vacation of a non-access easement does not require Planning Commission consideration. The item has been placed on the Council's consent agenda.

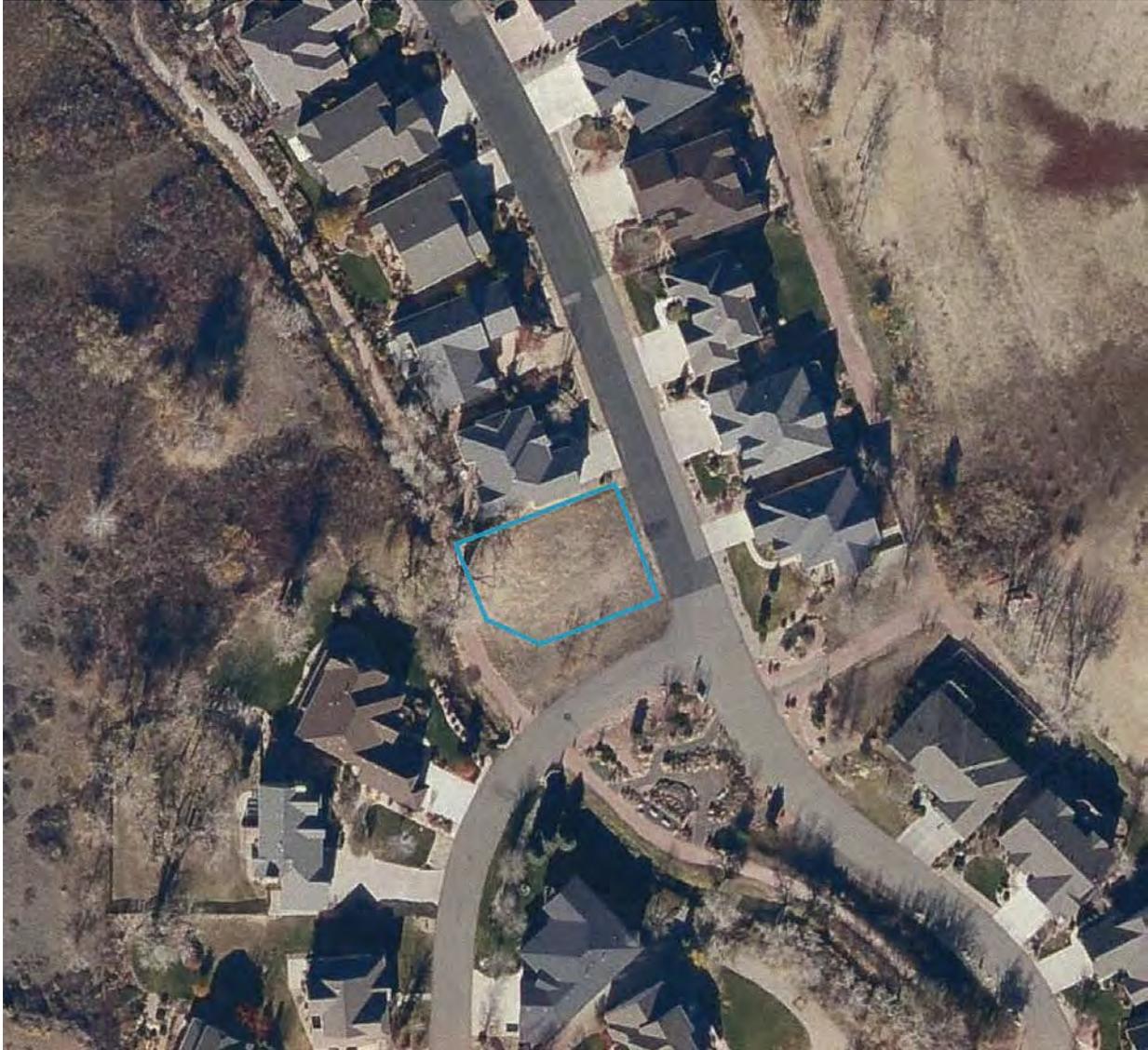
**III. BACKGROUND**

Mariana Cove PUD Subdivision was approved by the City in 1994, along with the related PUD Final Development Plan. In this process, standard easements were platted on each lot, without necessary regard to actual areas needed for installation of proposed utilities. For unknown reasons, this resulted in a 15 foot wide utility and drainage easement being dedicated along the entire south lot line of Lot 7, Block 7 of this subdivision. The PUD for the development only requires 5 foot side yard setbacks, with a minimum of 10 foot separation between adjacent structures. The property adjacent to the south of this lot is an open space tract owned by the Mariana Cove HOA, which has expressed full support for this easement vacation.

Vicinity Map:



Neighborhood Context Map:



**IV. FINDINGS and ANALYSIS**

The following two findings must be met in order for the City Council to vacate the easement. These findings are taken from section 16.36.010.B of the Loveland City Code, and also incorporated into the ordinance prepared for City Council action.

- 1. That no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

**PW-Transportation:** Since the proposed vacation of the utility and drainage easement does not involve any existing public street or alley rights-of-way, vacation will not result in any land

being left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.

2. *That the easement to be vacated is no longer necessary for the public use and convenience.*

**PW-Transportation:** Since the vacation is for a utility and drainage easement only, and does not include any existing alley or street rights of way, the vacation of the utility and drainage easement has no bearing on the existing public use and convenience in regards to access.

**Water/Wastewater:** Regarding wastewater, the property is in the City's current service area for wastewater only. There is no existing wastewater main in the area to be vacated. Therefore, vacation of the existing easement will not impact the existing wastewater utility configuration within and adjacent to this development. The existing easement to be vacated is no longer necessary for public use and convenience.

Regarding water, the property is in the Little Thompson Water District service area.

**Little Thompson Water District:** The district does not have any facilities within the easement to be vacated and does not have any objection to the easement being vacated.

**PW-Stormwater:** The existing 15 foot utility and drainage easement to be vacated is not used to convey stormwater and therefore it is not necessary for the public use and conveyance of stormwater.

**Power:** Existing underground electric single-phase primary is located in the open space tract south of the proposed easement to be vacated, and underground primary and secondary conductors and facilities are located along Cove Drive. The easement to be vacated is not necessary for the public use and convenience.

## **V. CONDITIONS**

No City departments or other review agencies have submitted any recommended conditions for this application.

EASEMENT VACATION REQUEST

613 COVE DRIVE

LOT 7, BLK 7, MARIANA COVE SUBDIVISION

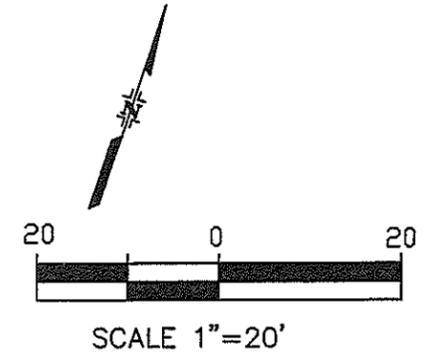
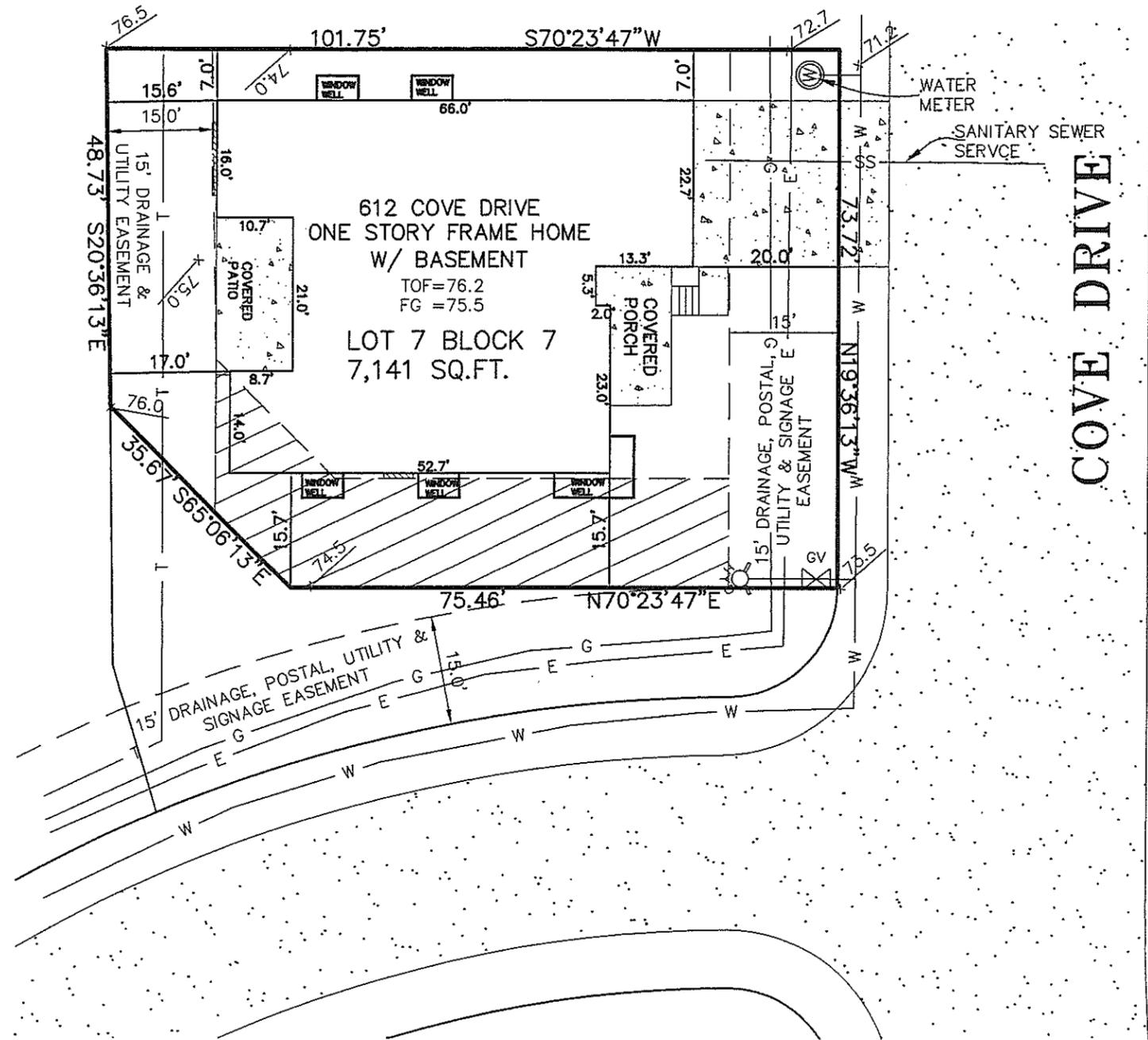
Dan Wester is the owner of 613 Cove Drive in Loveland, and plans to build a single-family home on this lot. At the time of original platting, a 15 foot wide utility and drainage easement was dedicated around the entire south and west perimeters of the lot. The minimum setbacks in the development are 20 feet for the front, 15 feet for the rear and 5 feet for the side, with 15 feet of separation between adjacent homes. Since structures are not allowed to encroach into easements, this results in an actual side setback of 15 feet from the south property line, rather than the normal 5 feet. This effectively reduces the buildable area of the lot by approximately 755 sq. ft.

Based on initial investigations, there are no utilities in the easement along the south perimeter of this lot. There is a privately owned underground sub-drain pipe located outside the property line in the adjacent common open space - Tract C of this subdivision. Vacation of a portion of the 15 foot easement that lies entirely within the lot will not affect the function or maintenance of this private drain pipe, and make the lot more buildable for an attractive custom home.

Vacation of a portion of this easement as depicted on the enclosed vacation exhibit is requested.

01/12/2014  
Dan Wester  

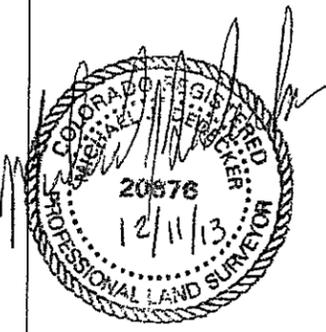
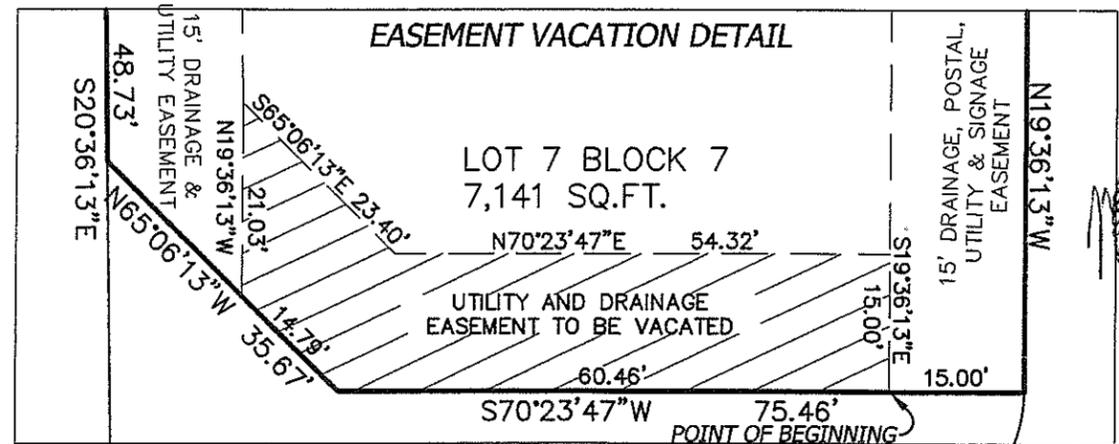

**REVISED**  
1/12/14



- T — INDICATES EXISTING TELEPHONE LINE
- G — INDICATES EXISTING EXCEL GAS LINE
- E — INDICATES EXISTING C.O.L. ELECTRIC LINE
- W — INDICATES EXISTING C.O.L. WATER MAIN

**LEGAL DESCRIPTION  
PORTION OF EASEMENT TO BE VACATED**

A portion of the 15' Drainage and Utility Easement located in Lot 7 Block 7 of Mariana Cove PUD, as recorded in reception no. 19940032684 of Larimer County, Colorado records, being a subdivision of a portion of Section 20, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, Larimer County, Colorado, more particularly described as Follows:  
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 Commencing at the Southeasterly corner of said Lot 7 Block 7;  
 thence South 70°23'47" West, along the Southerly line of said Lot 7 Block 7, a distance of 15.00 feet to the POINT OF BEGINNING;  
 thence continuing along said Southerly line South 70°23'47" West, a distance of 60.46 feet;  
 thence North 65°06'13" West, along the Westerly line of said Lot 7 Block 7, a distance of 14.79 feet;  
 thence departing said Westerly Line, North 19°36'13" West, a distance of 21.03 feet;  
 thence South 65°06'13" East, a distance of 23.40 feet;  
 thence North 70°23'47" East, a distance of 54.32 feet;  
 thence South 19°36'13" East, a distance of 15.00 feet to the POINT OF BEGINNING.  
 Containing 1,147.00 square feet or 0.0263 acres, more or less.



**EASEMENT VACATION  
SITE PLAN FOR  
LOT 7 BLOCK 7 MARIANA  
COVE PUD EXHIBIT 2  
LOVELAND, CO**

PROJECT NO. 13-6684	SCALE 1" = 10'
DRAWING NO. 6684 WESTER	DATE: 12-06-13 INITIAL ISSUE
REVISION NO.	FIELD BOOK: N/A
SHEET 1 OF 1	DRAWN: MJD CHECKED:
 CDS Engineering Corporation 165 2nd ST SW LOVELAND, COLORADO 80538 (970) 667-8010	



**CITY OF LOVELAND**  
**LOVELAND FIRE RESCUE AUTHORITY**  
 Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537  
 (970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

**AGENDA ITEM:** 11  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Randy Mirowski, Loveland Fire Rescue Authority  
**PRESENTER:** Randy Mirowski, Fire Chief

**TITLE:**

A Resolution Approving an Intergovernmental Automatic Mutual Aid Agreement between the Loveland Fire Rescue Authority and the Rist Canyon Volunteer Fire Department

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action to consider a resolution approving an Intergovernmental Automatic Mutual Aid Agreement between the Loveland Fire Rescue Authority (LFRA) and the Rist Canyon Volunteer Fire Department. The IGA will be considered by the LFRA Board on February 13, 2014.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The intergovernmental agreement that established the LFRA requires that mutual aid agreements be approved by the City.

A mutual aid agreement provides that LFRA or the Rist Canyon Volunteer Fire Department will be dispatched to an emergency response area when it is reasonable for both organizations and

resources are available. It is a standard agreement necessary to ensure that there are policies and procedures in place for mutual aid response.

This agreement clarifies the area of auto response, roles and responsibilities, establishes procedures for cooperation and coordination, liability, workers compensation coverage, provides no compensation for services, provides for response determination in terms of availability, sets the term for one year renewable annually, and sets procedures for termination of the agreement by either party.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution
2. IGA

**RESOLUTION # R-16-2014****A RESOLUTION APPROVING AN INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE RIST CANYON VOLUNTEER FIRE DEPARTMENT**

WHEREAS, in accordance with section §29-1-203 of the Colorado Revised Statutes, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. §29-1 -201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, the Rist Canyon Volunteer Fire Department ("RCVFD") and Loveland Fire Rescue Authority ("LFRA") are independent governmental entities duly organized and existing in accordance with Colorado law are called upon to respond to emergency areas contained within their respective jurisdictions; and

WHEREAS, RCVFD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the Participating Agencies have defined an area within which they will provide automatic responses to one another, said area is delineated on Exhibit A; and

WHEREAS, notice to the Participating Agencies of fire emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm. Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire response system that meets the health, safety and welfare needs of the affected residents; and

WHEREAS, by the terms Section 1.9 of Article I of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011, such agreements must be presented to and approved by the Loveland City Council and the Loveland Rural Fire Protection district; and

WHEREAS, the City Council finds that it is in the best interests of the Fire

Authority to adopt the “Intergovernmental Automatic Mutual Aid Agreement” attached hereto as **Exhibit A** and incorporated by reference (the “Agreement”).

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

**Section 1.** That the Agreement is hereby approved.

**Section 2.** That the Loveland Fire Authority is hereby authorized and directed to execute the Agreement, subject to such modifications in form or substance as the Fire Chief in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution.

**Section 3.** That this Resolution shall go into effect as of the date and time of its adoption.

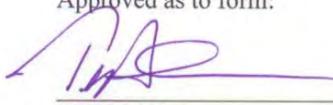
ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:



\_\_\_\_\_  
Teresa Ablao  
Assistant City Attorney

**INTERGOVERNMENTAL MUTUAL AID AGREEMENT  
BETWEEN LOVELAND FIRE RESCUE AUTHORITY AND RIST CANYON  
VOLUNTEER FIRE DEPARTMENT**

THIS AGREEMENT is made and entered into this 20th day of January 2014, by and between the Loveland Fire Rescue Authority ("LFRA") and the Rist Canyon Volunteer Fire Department, ("RCVFD"), concerning response to a designated area.

**RECITALS**

**WHEREAS**, in accordance with C.R.S. § 29-1-203, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

**WHEREAS**, in accordance with C.R.S. § 29-1-201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

**WHEREAS**, RCVFD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

**WHEREAS**, the Participating Agencies strive to improve the emergency services each provides within their respective jurisdictions through mutual aid responses; and

**WHEREAS**, the Participating Agencies have defined an area within which they will provide mutual aid responses to one another, said area being delineated in Exhibit A; and

**WHEREAS**, notice to the Participating Agencies of needed aid in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm. Centers"); and

**WHEREAS**, it is the intent and desire of the Participating Agencies to provide an emergency response system that meets the health, safety and welfare needs of the affected residents.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Participating Agencies agree as follows:

**AGREEMENT**

1. Mutual Aid Response.

a. The Parties agree that mutual aid is the assistance provided by a supporting agency at no cost to the jurisdictional agency. Each Participating Agency agrees to provide, if the Agency

has such resources available, fire and rescue personnel and apparatus resources at no cost, for the duration of an incident located in the response area described in Exhibit A, Response Zones, attached hereto and incorporated herein by this reference, upon notification thereof and dispatch thereto by the Comm. Center receiving the emergency call. The Comm. Centers shall make initial and contemporaneous notification of emergency dispatch to both the Participating Agency within which the emergency has occurred and the Participating Agency responding pursuant to this Agreement.

b. A Participating Agency is not under any obligation to respond to a call for mutual aid under this agreement when, in its sole discretion, it determines that responding would unreasonably deplete its ability to respond within its own jurisdiction.

c. Cancellation of any Participating Agency's response shall occur only after coordinated communication between the Participating Agencies on an assigned frequency. The first arriving Participating Agency shall determine whether to cancel the response of the other Participating Agency, or, when all units from a Participating Agency are en route to an emergency call, the Participating Agency having geographic jurisdiction may cancel the response of the other Participating Agency.

2. Purpose. The purpose for such dispatch and the responsibility of the Participating Agency is limited to certain call types and the apparatus response guide shown in Exhibits B, attached hereto and incorporated herein by this reference.

3. Good Faith Discussion. In the event the responses outside a Participating Agency's jurisdiction that occur pursuant to this Agreement become a burden, the Participating Agencies agree to discuss, in good faith, amendments to this Agreement and/or other possible resolutions, but in no case shall the proposed resolution be onerous, as determined by the Participating Agencies in their sole subjective discretion, to the respective Participating Agencies.

4. Command. The first arriving Participating Agency officer-in-charge shall assume command of the incident. The incident commander shall provide in-coming responders with an arrival report and shall instruct them to begin operations. Upon arrival of an officer from the Participating Agency having jurisdiction, incident command shall be passed to such officer.

5. Liability. The Participating Agencies hereto agree, notwithstanding the provisions of C.R.S. §29-5-108, that during the time that a responding Participating Agency's employees are traveling to the requesting Participating Agency's staging area or command post, any liability which accrues under the provision of the Colorado Governmental Immunity Act, C.R.S. §24-10101, et seq., (the "Act") as a result of a negligent act or omission of any of the responding Participating Agency's employees shall be imposed upon the responding Participating Agency and not the requesting Participating Agency. However, once the responding Participating Agency's employees physically arrive at the requesting Participating Agency's staging area or command post, then, in accordance with the provisions of C.R.S. §29-5-108, any liability which accrues, under the provisions of the Act as a result of a negligent act or omission of the responding Participating Agency's employees while performing duties at that time and thereafter, shall be imposed upon the requesting Participating Agency, not the responding Participating

Agency. In addition, the requesting Participating Agency, to the extent permitted by law, agrees to indemnify, defend and hold harmless the responding Participating Agency against any and all judgments, costs, expenses and attorney's fees incurred by the responding Participating Agency related to its performance under this Agreement that may result from any negligent act or omission by the requesting Participating Agency or by its employees. However, nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that any of the Participating Agencies and their respective officers and employees may have under the Act and under any other law,.

6. Benefits. Pursuant to C.R.S. §§29-5-101 et seq, if any officer or other personnel of the responding Participating Agency is injured, disabled or dies as a result of performing services within the boundaries of the requesting Participating Agency, said individual shall remain covered by, and eligible for, the workers compensation and firefighters pension benefits which said individual would otherwise be entitled if the injury, disability or death had occurred within the boundaries of the responding Participating Agency.

7. Compensation. No Participating Agency shall be required to pay any compensation to any other Participating Agency for any services rendered hereunder, the mutual aid and assistance to be afforded under this Agreement being adequate compensation to the Participating Agencies, this Agreement shall not be construed as to limit reasonable compensation, as defined in C.R.S. §29-22-104, in response to hazardous materials incidents. The requesting Participating Agency agrees that it will reasonably pursue any legal reimbursement possible, pursuant to state and federal laws and that, upon receipt of any such reimbursement (after subtracting the reasonable costs of pursuing and collecting the reimbursement), will distribute the received funds in a fair and equitable manner to the responding Participating Agencies based upon a pro rata share of their documented expenses.

8. Response Determination. Obligations of the Participating Agencies to respond pursuant to the provisions of this Agreement shall be contingent upon each Participating Agency's determination that the specified equipment and personnel are available for response and that such equipment and personnel are not needed in its own jurisdictions. The responding Participating Agency shall communicate its determination regarding the availability of equipment and personnel to the requesting Participating Agency through the Comm. Center at the time of the request.

9. Term. The terms of this agreement shall continue for a period of one year from the date hereof, and shall be automatically renewed for successive one year periods unless terminated by any Participating Agency with respect to itself.

10. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement shall not be affected thereby.

11. Entire Agreement. This Agreement shall not invalidate or otherwise affect any other agreement presently in effect. This Agreement represents the entire agreement of the

Participating Agencies with respect to mutual aid and any amendment to this agreement shall be in writing and executed by all the Participating Agencies hereto.

12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Larimer.
13. Assignment. This Agreement shall not be assigned by any of the Participating Agencies hereto.
14. Relationship of Participating Agencies. The Participating Agencies enter into this Agreement as separate and independent governmental entities and each shall maintain such status throughout the term of this Agreement.
15. Effect of Agreement. This Agreement is not intended to, nor should it be construed to, effect or extend the legal responsibilities of any of the Participating Agencies hereto; create or modify any preexisting legal obligations, if any; or create for or extend any of the legal rights to any person. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. Any services performed or expenditures made in connection with furnishing mutual aid under this Agreement by any of the Participating Agencies hereto shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such Participating Agency.
16. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement. The Participating Agencies agree that counterpart signatures of this Agreement shall be acceptable and that execution of this Agreement in the same form by each and every Participating Agency shall be deemed to constitute full and final execution of this Agreement.
17. Headings. Paragraph headings in this Agreement are for convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement,
18. Construction of Agreement. This Agreement shall be construed according to its fair meaning as if it was prepared by all of the Participating Agencies hereto and shall be deemed to be and contain the entire Agreement between the Participating Agencies hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by all of the Participating Agencies hereto.
19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Participating Agencies hereto and the respective successors and permitted assigns
20. Termination. Any Participating Agency may terminate this Agreement, with or without cause, upon thirty days prior written notice to all other Participating Agencies to this Agreement.

21. Notices. Any notice under this Agreement to a Participating Agency shall be effective upon receipt at the addresses set forth below.

Loveland Fire Rescue Authority: Fire Chief  
410 East Fifth Street  
Loveland, Colorado 80537

and

City Attorney's Office  
500 East Third Street, Suite 330  
Loveland, Colorado 80537

Rist Canyon Volunteer Fire Department: Fire Chief  
RCVFD  
PO Box 2  
Bellvue, CO 80512

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement the day and year first above written.

LOVELAND FIRE RESCUE AUTHORITY:

\_\_\_\_\_  
By: Board Chair

ATTEST:

\_\_\_\_\_  
Board Secretary

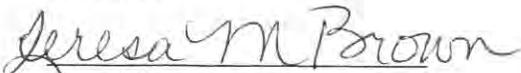
Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

RIST CANYON VOLUNTEER FIRE DEPARTMENT:

  
\_\_\_\_\_  
By: Fire Chief

ATTEST:

  
\_\_\_\_\_  
Board Secretary

Approved as to Form:

N/A  
\_\_\_\_\_  
Attorney





**CITY OF LOVELAND**  
**FIRE & RESCUE DEPARTMENT**  
 Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537  
 (970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

**AGENDA ITEM:** 12  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Randy Mirowski, Loveland Fire Rescue Authority  
**PRESENTER:** Randy Mirowski, Fire Chief

**TITLE:**

A Motion to Approve the Purchase of a 100' Platform Truck from Pierce Manufacturing, Inc. for an Amount Not to Exceed \$1,111,280 and Authorize the City Manager to Sign the Purchase Order on Behalf of the City of Loveland

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the motion.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The truck purchase was included in the 2014 Capital Program Fund Budget (see page 22-9 and 22-33 of the 2014 Adopted Budget) for \$1,458,610. The difference between the budget and the contract price will be used to purchase some additional equipment needed to make the truck service ready, but all within the appropriated budget. Pursuant to Chapter 3.12 of the City Code, purchases exceeding \$500,000 must be approved by City Council.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The aerial platform truck was included in the Loveland Fire Rescue Authority Strategic Plan for implementation in Phase 2. It was appropriated for purchase in the 2014 Capital Replacement Fund and planned for delivery in 2014.

The City has a membership with the Houston Galveston Area Council Cooperative (HGAC) Purchasing Program. This program has already conducted the competitive bidding process for a wide variety of products, including fire apparatus.

Pierce Manufacturing, Inc. has a contract with HGAC to provide fire apparatus according to the HGAC bid specifications, allowing for up to 25% of the total contract price for options specific to the needs of the customer department (unpublished options). The customer department may also contract with the vendor for the specific apparatus purchase, provided the contract is no less restrictive or in conflict with the Pierce Manufacturing, Inc./HGAC contract.

We have successfully used this cooperative purchasing program in the past (as recent as last year). Their comprehensive approach to the purchasing process for fire apparatus and our familiarity with Pierce Manufacturing as a vendor for building fire apparatus made it a favorable purchasing option. Past experiences have shown that using HGAC has saved time and money while still maintaining a competitive process. Because HGAC has already performed the competitive purchasing process, it assists the City with securing equipment more quickly. Each purchase contract costs the City \$2,000. However, it is estimated that the cooperative purchasing program make the purchasing process so efficient that the process savings is well worth the fee. The \$2,000 is in additional to the contract price of \$1,111,280.

**REVIEWED BY CITY MANAGER:**

**LIST OF ATTACHMENTS:**

1. \*HGAC Pricing Verification of Pierce Manufacturing Proposal
2. Contract

\* **NOTE:** The specifications document for the platform truck is available to City Council upon request. It has been held back from this cover sheet and request based on its size and technical nature; the document is around 250 pages long.



**HOUSTON-GALVESTON AREA COUNCIL**  
PO Box 22777 • 3555 Timmons Ln. • Houston, Texas 77227-2777 • 1-800-926-0234

**FACSIMILE TRANSMITTAL SHEET**

TO: <b>Greg Ward</b>	FROM: <b>Jackie Palmer</b>
COMPANY: <b>City of Loveland Fire Department</b>	DATE: <b>01/29/2014</b>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <b>1</b>
PHONE NUMBER: <b>303-342-2183</b>	SENDER'S REFERENCE NUMBER: <b>713.993.2466</b>
RE: <b>Price Verification</b>	YOUR REFERENCE NUMBER:

URGENT     FOR REVIEW     PLEASE COMMENT    PLEASE REPLY     PLEASE RECYCLE

**Greg Ward,**

**The contract pricing worksheet from Pierce Manufacturing Inc. is in compliance with our contract.  
Thanks**

**Product Code UA09** Pierce Arrow Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Axle, 100' Rear-Mounted Telescoping Ladder with Platform (750#)  
**Unit(s) 1      Total \$1,113,280.00**

**Total \$1,113,280.00 – (\$2,000.00) HGAC fee = \$1,111,280.00 Balance Due Customer**

**HGAC will invoice Pierce the \$2,000.00 dollar fee.**

**CITY OF LOVELAND, COLORADO**

**BID DOCUMENTS**

**FOR**

**ONE (1) CUSTOM-MADE PIERCE ARROW-XT 100' PLATFORM AERIAL TRUCK**

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**INSTRUCTIONS TO BIDDERS**

## INSTRUCTIONS TO BIDDERS

### 1.0 GENERAL

These instructions apply to the preparation of bids for supplies and work for the City of Loveland, Colorado ("City").

#### 1.1 Bid Documents

The following documents constitute the bid documents for this project. By submitting a bid, the bidder certifies and represents that it has been furnished with all of the bid documents, is familiar with them, and intends to be bound by them.

Furnished with Bid Packet:

<p>Instructions to Bidders H-GAC Bid Invitation FS12-11 (June 30, 2011) Contract</p>	<p>General Conditions Special Conditions Technical Specifications, Warranties and Certifications</p>
--	--

#### 1.2 Bidder's Understanding

The bidder is responsible to be informed of, and the bidder awarded the contract shall comply with, all federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, without limitation, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, permits, fees, and similar subjects.

### 2.0 BIDS

#### 2.1 Basis of Bid

If the project is on a unit price basis, the estimate of work to be done and units provided is tabulated in the bid form, approximate only, and assumed solely for the basis of calculation upon which the contract award shall be made. Payment shall be made on the measurement of the units provided and work actually performed as specified in the contract documents. The City reserves the right to increase or diminish the amount of units or any class of work as may be deemed necessary.

If the project is on a lump-sum basis, the total compensation to be paid for the unit and work shall be the lump-sum amount bid, as adjusted by written change orders. A breakdown of the lump-sum bid, if requested, shall be used only to evaluate pay requests and, at the option of the City, to determine the price for change orders.

#### 2.2 Preparation

Each bid shall be typed using dark black ribbon or legibly written in dark ink. All prices shall be stated in words and figures except where a bid form provides for figures only.

The bidder shall return with the bid a signed copy of each addendum issued, all of the bidder's drawings, catalog data, and other supplementary information necessary to thoroughly describe materials and equipment covered by the bid, and all bid documents except for the instructions to bidders, general conditions and special conditions.

#### 2.3 Signatures

The bidder shall sign the bid with the bidder's usual signature and shall give the bidder's full business address.

Bids by partnerships shall be signed with the partnership name followed by the signature and designation of one of the partners or other authorized representative. A complete list of partners shall be included with the bid.

Bids by a corporation shall be signed in the official corporate name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation and shall display the corporate seal. The names of all persons signing should also be typed or printed below the signature. Bidding corporations shall designate the state in which they are incorporated, the address of their principal office, and the name and address of their agent for service of process.

A bid by a person who adds the word "president," "secretary," "agent," or other designation without disclosing the principal will be rejected.

The bidder's name stated on the bid shall be the exact legal name of the firm.

#### **2.4 Submittal**

Bids shall be submitted to an authorized representative of the City's Fire Department with the bidder's name and the project title included. A single proprietary interest shall not submit multiple bids for the same work even though the individual bids are submitted under different names. The City reserves the right to reject all bids so submitted. Multiple submittals by a single proprietary interest may subject that company to removal from the City's list of eligible bidders.

#### **3.0 TIME OF COMPLETION**

The time of completion of the work is a primary consideration of the contract. The bid shall be based upon completion of all work within the time set forth in the special conditions. The bidder must satisfy the City of the bidder's ability to complete the work within this time. The general conditions contain provisions relative to delays and extensions of time. The successful bidder shall dedicate all necessary labor, material, and equipment for a continuous operation, weather permitting, to assure completion of the project within the allowed time. Any deviation from this condition shall require the City's prior written approval.

#### **4.0 INTERPRETATION OF CONTRACT DOCUMENTS AND BID**

If the bidder is in doubt as to the true meaning of any part of the bid documents, the bidder may submit a written request to the City for an interpretation. The bidder shall be responsible for its prompt delivery. Any interpretation of the bid documents will be made only by written addendum mailed or delivered to each company that has requested a copy of the bid documents. The City is not responsible for any other explanations or interpretations of the bid documents.

The bidder shall be responsible for informing the City before executing the Contract of any conflicting requirements, real or apparent, or missing information requiring clarification. In the event any of the bid documents are in conflict, the bid documents shall control in the following order: Instruction to Bidders, Special Conditions, General Conditions, Technical Specifications, Warranties and Certifications, Contractor's Bid, and H-GAC Bid Invitation FS12-11 (June 30, 2011).

#### **5.0 SUBCONTRACTS**

Upon the City's request, the bidder shall supply the City with a list of all subcontractors the bidder plans to employ to complete the project. The City reserves the right to disapprove the use of any or all subcontractors that, in the City's judgment, are not reasonably capable of performing the work required.

**6.0 AWARD OF CONTRACT**

Upon awarding the contract to bidder, the City will furnish the contract for execution and any bid documents prepared by the City. The bidder shall execute the contract and furnish the performance bond and any required certificates of insurance within ten (10) days from the date the City furnishes the contract to the bidder for execution.

**7.0 CONFIDENTIAL INFORMATION**

Pursuant to the Colorado Open Records Act, C.R.S. §§ 24-72-201 *et seq.* ("Act"), all information contained in any bid or proposal is subject to public disclosure unless it meets one of the exceptions set forth in the Act. To avoid disclosure of trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data ("Confidential Information"), the bidder must clearly mark all Confidential Information as such and provide a written, detailed justification with its bid or proposal of the protected nature of the Confidential Information under Colorado law. This justification must address, at a minimum, the specific competitive harm that may result from any disclosure, the intrinsic value of the Confidential Information to the bidder, and any safeguards the bidder uses to protect the Confidential Information from disclosure.

By submitting a bid, the bidder agrees to hold the City harmless from any claim arising from the release of Confidential Information not clearly marked as such by the bidder or lacking written, detailed justification supported by Colorado law.

**CONTRACT AND BOND**

**CONTRACT**

THIS CONTRACT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality ("City"), and SUPER VACUUM MANUFACTURING CO., INC, d/b/a SVI Trucks, a Colorado corporation ("Contractor").

The Contractor, in consideration of the sum to be paid to the Contractor by the City and of the covenants and agreements contained herein and in the contract documents, identified in the general conditions at section 1.0 and incorporated herein by reference, hereby agrees at the Contractor's own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for **one (1) custom-made Pierce Arrow-XT 100' Platform Aerial Truck** in full compliance with the contract documents.

In consideration of the performance of the work as set forth in the contract documents, the City agrees to pay the Contractor a sum not to exceed One Million One Hundred Eleven Thousand Two Hundred and Eighty Dollars (\$1,111,280.00), as adjusted in accordance with the contract documents or as otherwise herein provided, and to make such payments in the manner and at the times provided in the contract documents.

Time is the essence of this contract. The Contractor agrees to complete the work and deliver the equipment within the time set forth in the contract documents and to accept as full payment hereunder the quantities computed as determined by the contract documents and based on the unit prices set forth in the bid.

IN WITNESS WHEREOF, the parties have executed this contract as of the date first above written.

CITY OF LOVELAND, COLORADO

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

CONTRACTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: (if corporation)

\_\_\_\_\_  
Corporate Secretary

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_  
(Insert name of individual signing on behalf of the Contractor)

\_\_\_\_\_  
Notary's official signature

S E A L

\_\_\_\_\_  
Commission expiration date

**GENERAL CONDITIONS**

## GENERAL CONDITIONS

### 1.0 CONTRACT DOCUMENTS

It is understood and agreed that the bid documents, the Contractor's bid, any addenda and change orders issued by the City, and all drawings, construction plans, specifications, and engineering data furnished by the Contractor and accepted by the City are included in the contract, and the Contractor warrants that the work will strictly conform to the requirements therewith.

### 2.0 DEFINITIONS

Words, phrases, or other expressions used in these Contract Documents shall have meanings as follows:

"Contract" shall mean the contract, which incorporates all of the contract documents by reference therein.

"Contract documents" shall mean those documents set forth in paragraph 1.0.

"City" shall mean the City of Loveland, Colorado and its duly authorized agents. All notices, letters, and other communication directed to the City shall be addressed and delivered to the City as specified in the Special Conditions.

"Contractor" shall mean the corporation, company, partnership, firm, other legal business entity or individual so named and designated in the contract and its or their duly authorized representatives.

"Subcontractor" shall mean and refer only to a corporation, partnership, other legal business entity or individual having a direct contract with the Contractor for performing work.

"Day" or "days" shall mean a calendar day.

"Work" shall mean the equipment, supplies, materials, labor, and services to be furnished under the Contract and the carrying out of all obligations imposed by the contract documents.

"Drawings" and "plans" shall include all of the following: (a) drawings furnished by the City as a basis for bids; (b) supplementary drawings furnished by the City to clarify and to define in greater detail the intent of the contract drawings and specifications; (c) drawings submitted by the Contractor with its bid, provided such drawings are acceptable to the City; (d) drawings furnished by the City to the Contractor during the progress of the work; and (e) engineering data and drawings submitted by the Contractor during the progress of the work provided such drawings are acceptable to the City.

"Inspector," "representative," "construction observer," "observer," "engineer," and similar terms mean the person or persons designated by the City to monitor the progress of the work on behalf of the City.

Wherever in the contract documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like effect and import are used, it shall be understood that the order, direction, requirement, permission, or allowance of the City is intended only to the extent of judging compliance with the terms of the contract; none of these terms shall imply that the City has authority or responsibility for supervision of the Contractor's forces or business operations, such supervision and the sole responsibility therefore being strictly reserved for the Contractor.

Similarly, the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the sole judgment of the City.

Wherever in the contract documents the expression "it is understood and agreed" or an expression of like import is used, such expression shall mean the mutual understanding and agreement of the parties executing the contract.

"Official acceptance" shall mean the City's written acceptance of all work performed under the contract based on final inspection and issuance of a final payment.

### **3.0 EXECUTION OF CONTRACT**

Two (2) copies of the contract and the performance bonds will be prepared by the City. If required by the bonding agency in writing, a third copy of the contract and the performance and payment bonds will be prepared by the City. The copies will be submitted to the Contractor, who shall execute the Contract, insert executed copies of the required performance and payment bonds, power of attorney, and insurance certificates and submit all copies to the City. The date of contract on the contract and performance and payment bonds shall be left blank for filling in by the City. The certification date on the power of attorney shall also be left blank for filling in by the City. The City will execute all copies, insert the date of contract on the contract, performance and payment bonds, and power of attorney, retain one (1) copy, and distribute the remaining copy/copies to the Contractor.

### **4.0 LEGAL ADDRESSES**

All notices, letters, and other communication to the Contractor shall be mailed or delivered to either the Contractor's business address listed in the bid or the Contractor's office in the vicinity of the work, with delivery to either of these addresses being deemed as delivery to the Contractor. The address of the City is hereby designated as the place to which all notices, letters, and other communication to the City shall be mailed or delivered as identified in the special conditions.

### **5.0 SCOPE AND INTENT OF CONTRACT DOCUMENTS**

Any specifications and drawings are intended to supplement but not necessarily duplicate each other. Any work exhibited in the one and not in the other shall be executed as if it had been set forth in both so that the work will be constructed according to the complete design as determined by the City.

Should anything necessary for a clear understanding of the work be omitted from any specifications and drawings, or should the requirements appear to be in conflict, the Contractor shall secure written instructions from the City before proceeding with the work affected thereby. Any detail that appears on one page of the drawings shall be as if it appears on all sections within the set of drawings. It is understood and agreed that the work shall be performed according to the true intent of the contract documents.

### **6.0 INDEPENDENT CONTRACTOR**

The City hereby retains the Contractor for the Project to perform the services on the terms and conditions specified in the Contract Documents, and the Contractor agrees so to serve. The parties agree that the Contractor shall be an independent contractor and shall not be an employee of the City. The Contractor, as an independent contractor, is not entitled to workers' compensation benefits and unemployment insurance benefits, and the Contractor is obligated to pay federal and state income tax on any monies earned pursuant to the contract relationship.

### **7.0 ASSIGNMENT AND SUBCONTRACTING**

The Contractor shall not assign by power of attorney or otherwise any of the money payable under this Contract unless prior written consent of the City has been obtained. No right under this Contract, nor claim for any money due or to become due hereunder, shall be asserted against the City or persons acting for the City by reason of any so-called assignment of the Contract, or any part thereof, unless such assignment has been authorized by the prior written consent of the City. In case the Contractor is

permitted to assign monies due or to become due under this Contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of the work.

The City reserves the right to disapprove the use of any or all subcontractors, which, in the City's opinion, are not reasonably capable of performing the work required.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken, the subcontractor shall be immediately terminated by the Contractor upon notice from the City. The Contractor shall be as fully responsible and accountable to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained in the Contract shall create any contractual relationship between any subcontractor and the City.

#### **8.0 ORAL STATEMENTS**

It is understood and agreed that the written terms and provisions of this Contract shall supersede all oral statements of representatives of the City, and oral statements shall not be effective or construed as being a part of this Contract.

#### **9.0 REFERENCE STANDARDS**

Reference to the standards of any technical society, organization, or association or to codes of local or state authorities shall mean the latest standard, code, specification, or tentative standard adopted and published at the date of taking bids unless specifically stated otherwise.

#### **10.0 OWNER'S DRAWINGS AND SPECIFICATIONS**

Upon request, the Contractor will furnish up to two (2) sets of any Project drawings, including revisions thereto, and up to two (5) copies of any Project specifications without charge.

#### **11.0 CONTRACTOR TO CHECK DRAWINGS AND LISTS**

The Contractor shall confirm the specifications, dimensions, equipment and quantities indicated on any Project drawings and notify the City of any discrepancy, error or omission in the drawings. The Contractor shall not be allowed to take advantage of any discrepancy, error or omission in the drawings or Contract Documents. Full instructions shall be furnished by the City upon discovery of any discrepancy, error or omission, and the Contractor shall carry out such instructions as if originally specified.

#### **12.0 PROJECT MANAGEMENT**

The Contractor shall be responsible for coordinating work between various subcontractors and resolving any conflicts between subcontractors regarding scheduling or coordination.

The time of completion is of the essence of the Contract, and the Contractor shall be responsible for performing the work in accordance with the specified work and delivery schedule. If at any time the Contractor's work is behind schedule, the Contractor shall increase forces, work overtime, or otherwise accelerate operations to comply with the schedule and shall put into effect definite procedures for getting the work back on schedule. The proposed procedures shall be subject to the City's approval or modification. The procedures adopted shall be put into effect immediately. The Contractor will not be allowed extra compensation for costs incurred because of additional regular or premium time or of additional mobilization of equipment required to keep its work on schedule.

#### **13.0 NO WAIVER OF RIGHTS**

Neither the inspection by the City or any of its officials, employees, or agents, nor any order by the City for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the City, nor any extension of time, nor any possession taken by the City or its employees shall operate as a

waiver of any provision of the Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

#### **14.0 OBSERVATIONS**

The City may appoint such inspectors as the City deems proper to observe the materials furnished and the work performed for compliance with the drawings and specifications. The Contractor shall furnish all reasonable assistance required by the inspectors for the proper observation of the work. Should the Contractor object to any order given by any inspector, the Contractor may make written appeal to the City for a decision.

Inspectors shall have the authority to reject work that is unsatisfactory, faulty, defective, or does not conform to the requirements of any drawings and specifications. Observation shall not relieve the Contractor from any obligation to construct the work strictly in accordance with any drawings and specifications. Work not so constructed shall be removed and replaced by the Contractor at its own expense.

#### **15.0 RECORDS**

The Contractor shall maintain at the site office current copies of all drawings, specifications, and other Contract Documents and supplementary data, complete with latest revisions thereto. In addition, the Contractor shall maintain a continuous record of all Contract changes and, at the conclusion of work, shall incorporate all such changes on any drawings and other engineering data, and shall submit the required number of copies thereof to the City.

#### **16.0 RELATIONS WITH SUBCONTRACTORS**

If any part of the Contractor's work is dependent upon the quality and completeness of work performed by a subcontractor, the Contractor shall inspect the subcontractor's work and reject defects therein which render such work unsuitable for the proper execution of the work under this Contract.

#### **17.0 OPERATIONS**

The Contractor shall comply with all applicable requirements of federal, state, and local codes and of all other authorities having jurisdiction over its work. The Contractor shall be solely and completely responsible for conditions related to Contractor's work including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours.

#### **18.0 FORCE MAJEURE**

Notwithstanding anything contained herein to the contrary, in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, riot, terrorist attack, war, illegality, or any other cause beyond the control of the parties hereto prevents or delays performance by either party, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance as soon as practicable.

#### **19.0 CHARACTER OF WORKERS**

The Contractor shall employ only workers who are competent to perform the work assigned to them and, in the case of skilled labor, who are adequately trained and experienced in their respective trades and who do satisfactory work.

#### **20.0 INSURANCE REQUIREMENTS**

### **20.1 Comprehensive General Liability**

The Contractor shall procure and keep in force during the duration of the Contract a policy of Comprehensive General Liability insurance insuring the Contractor and the City against any liability for personal injury, bodily injury, or death arising out of the ownership, use, occupancy, or construction of the project and all areas appurtenant thereto and against liability for property damage with a combined single limit as specified in the Special Conditions. The limits of said insurance shall not, however, limit the liability of the Contractor hereunder. If the Contractor fails to procure and maintain said insurance, the City may, but shall not be required to, procure and maintain the same but at the expense of the Contractor.

### **20.2 Comprehensive Automobile Liability**

The Contractor shall procure and keep in force during the duration of the Contract a policy of Comprehensive Automobile Liability insurance insuring the Contractor and the City against any liability for personal injury, bodily injury, or death arising from the use of motor vehicles and shall cover operations on or off the site of all motor vehicles controlled by the Contractor whether they are owned, non-owned, or hired with a combined single limit as specified in the Special Conditions. The limits of said insurance shall not, however, limit the liability of the Contractor hereunder. If the Contractor shall fail to procure and maintain said insurance, the City may, but shall not be required to, procure and maintain the same but at the expense of the Contractor.

### **20.3 Workers' Compensation and Other Insurance**

The Contractor shall procure and keep in force during the term of the Contract such other insurance as may be required by any law, ordinance, or governmental regulation including, but not limited to, Workers' Compensation.

### **20.4 Insurance Policies**

Insurance required shall be with companies with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as the Contractor may deem to be reasonable for the Project, but in no event greater than Twenty Thousand Dollars (\$20,000). No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. However, where cancellation of coverage is due to nonpayment of premium, a ten (10) day written notice to the City is required. The Contractor shall not do or permit to be done anything that shall invalidate the insurance policies referred to in this Section. All insurance policies provided herein shall be issued in the names of the Contractor and the City.

Such policies shall be for the mutual and joint benefit and protection of the Contractor and the City. All policies shall contain a provision that the City, although named as an Additional Insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of negligence of the Contractor. All policies shall be written as primary policies not contributing to or in excess of coverage that the City may carry.

The Contractor shall furnish certificates evidencing required insurance coverage to the City. Such certificates shall be in a form acceptable to the City.

### **21.0 INDEMNITY**

The Contractor hereby covenants and agrees to indemnify, defend, save, and hold harmless the City from any and all liability, loss, costs, charges, penalties, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever in connection with, arising out of, or by any reason of any violation of the Contract or of any law, ordinance, or regulation by the Contractor, the Contractor's agents, employees, servants, subcontractors, or business invitees, or by reason of any

injury or damage however occurring to any person or persons whomever (including the Contractor, the Contractor's agents, employees, servants, subcontractors, or business invitees) or to property of any kind whatsoever and to whomever belonging (including the Contractor, the Contractor's agents, employees, servants, subcontractor, or business invitees), or from any cause or causes whatsoever while in, upon, about, or in any way connected with the Project or any portion thereof during the term of the Contract.

The Contractor hereby assumes all risk and damage to property or injury to persons in, upon, or about the Project arising from any cause, and the Contractor hereby waives all claims in respect thereof against the City.

#### **22.0 RELEASE OF LIABILITY**

Acceptance by the Contractor of the last payment shall be a release to the City and every officer and agent thereof from all claims and liability hereunder for anything done or furnished for or relating to the work or for any act or neglect of the City or of any person relating to or affecting the work.

#### **23.0 CLAIMS FOR LABOR AND MATERIALS**

The Contractor shall indemnify, defend, save, and hold harmless the City from all claims for labor and materials furnished under the Contract. When requested by the City, the Contractor shall submit satisfactory evidence that all persons, firms, or corporations who have done work or furnished materials under the Contract for which the City may become legally liable have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, an amount will be retained from money due the Contractor that in addition to any other sums which may be retained will be sufficient in the opinion of the City to liquidate all such claims. Such amount will be retained until the claims as aforesaid are fully settled or satisfactorily secured.

Before final acceptance of the work by the City, the Contractor may be required to submit to the City a notarized and sworn affidavit stating that all subcontractors, vendors, persons, or firms who have furnished labor or materials for the work have been fully paid and that all taxes have been paid.

#### **24.0 RIGHT OF CITY TO TERMINATE CONTRACT**

If the Project and related work to be done under the Contract is abandoned by the Contractor, or if the Contract is assigned without the written consent of the City, or if the Contractor is named in proceedings in bankruptcy or for reorganization, or if a general assignment of assets is made for the benefit of creditors, or if a receiver is appointed for the Contractor or any of the Contractor's property, or if at any time the City certifies that the performance of the work under the Contract is being unnecessarily delayed, the Contractor is violating any of the conditions of the Contract, or the Contractor is executing the same in bad faith or otherwise not in accordance with the terms of said Contract, or if, in the judgment of the City, the work will not be or cannot be completed within the time named for its completion or within the time to which such completion date may be extended, then the City may serve written notice upon the Contractor and the Contractor's surety of the City's intention to terminate this Contract. Unless within five (5) days after the serving of such notice a satisfactory arrangement is made for continuance, this Contract shall terminate at 12:01 a.m. on the sixth calendar day following service of said notice. In the event of such termination and if such work can be completed by the surety within the time named for its completion, the surety shall have the right to take over and complete the work provided that the surety within ten (10) days affirm in writing its intention to take over and complete the work. Otherwise the City may make a claim on the surety bond and the surety and Contractor shall be liable to the City for all costs sustained by the City by reason of such default.

## **25.0 BEGINNING, PROGRESS, AND COMPLETION OF THE WORK**

The time of completion is of the essence of the Contract. The work shall be prosecuted to completion in accordance with the schedule stipulated in the Contract subject to adjustment as provided in the Contract Documents.

A work and delivery schedule shall be prepared by the Contractor and submitted to the City for approval before performing the work. The work schedule shall contain the various activities required to perform the work and the dates the activities will be started and completed in order to complete the work in accordance with the specified schedule requirements. The Contractor is responsible for determining the sequence and time estimates of the work activities. Upon acceptance by the City of the Contractor's work and delivery schedules, the Contractor shall be responsible for maintaining such schedules.

If at any time the Contractor's work is behind schedule, the Contractor shall immediately put into effect definite procedures for getting the work back on schedule. The procedures shall be subject to review and modification by the City. The Contractor shall not be allowed extra compensation for costs incurred because of accelerated operations required to maintain the schedule.

## **26.0 UNFAVORABLE CONDITIONS**

No portion of the work shall be performed under conditions that would affect adversely the quality or efficiency thereof unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

## **27.0 HINDRANCES AND DELAYS**

The Contractor expressly agrees that the delivery schedule stated in the Contract includes allowance for all hindrances and delays incident to the work. The Contractor further agrees that no claims shall be made for hindrances and delays from any cause during the performance of the work except as specifically provided for in the Sections entitled "SUSPENSION OF WORK," and "EXTENSIONS OF TIME," below.

## **28.0 EXTENSIONS OF TIME**

Should the Contractor be delayed in the final completion of the work by any act or neglect of the City or by strike, fire, or other cause outside of the control of the Contractor and which could have been neither anticipated nor avoided, then an extension of time sufficient to compensate for the delay will be granted by the City provided that the Contractor gives the City prompt notice in writing of the cause of delay in each case and demonstrates that it has used all reasonable means to minimize the delay. No damages shall be payable for any delay not due to an act or neglect of the City or an employee of the City.

Unless approved in writing by the City, extensions of time will not be granted for delays caused by inadequate staffing or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to ensure delivery when needed.

## **29.0 REJECTED WORK AND MATERIALS**

The Contractor, upon written notice from the City, shall repair or replace work and materials rejected as defective, unsound, improper, or in any way failing to conform to the requirements of the Contract Documents at Contractor's sole expense.

If the Contractor does not repair or replace rejected work and materials within twenty (20) days after written notice, the City may remove and replace such work and materials at the expense of the Contractor. If the City prefers to accept work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract

amount will be reduced as appropriate and equitable. Non-conforming work shall be deemed rejected, unless written acceptance of such work is provided is provided by the City.

### **30.0 SECURITY**

The Contractor shall be responsible for the protection of the work and all materials and equipment in the Contractor's custody until final acceptance of the Project by the City. Security methods shall be employed by the Contractor as required to ensure the protection of all materials, equipment, and construction work from theft, vandalism, fire, and all other damage and loss. In the event of damage or loss to the work prior to acceptance by and delivery to the City of the Project, the Contractor shall have no claim against the City and shall be responsible for the complete restoration of work to its original condition complying with bid specifications and drawings. All restoration work shall be acceptable to the City.

### **31.0 TESTING**

The City may require testing to satisfy itself of compliance with the Contract. This testing may be performed by an independent testing laboratory acceptable to the City. All initial test costs shall be paid by the City unless otherwise stated in the Contract. All re-tests on account of failed tests shall be paid by the Contractor.

### **32.0 MODIFICATIONS**

The Contractor shall modify the work whenever so ordered by the City, and such modifications shall not affect the validity of the Contract. Modifications may involve increases or decreases in the amount of the work for which appropriate contract price adjustment shall be made

Except for minor changes that involve no contract price adjustment, all modifications shall be made under the authority of duly executed change orders issued and signed by the City and accepted and signed by the Contractor.

#### **32.1 Change of Contract Price**

The contract price constitutes the total compensation payable to the Contractor for performing the work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at Contractor's expense without change in the contract price.

The contract price may be changed only by a change order. If the Contractor is entitled by the Contract Documents to make a claim for an increase in the contract price, the claim shall be made in writing and delivered to the city within ten (10) days of the occurrence of the event giving rise to the claim. Any change in the contract price resulting from any such claim shall be incorporated in a change order.

The value of any work covered by a change order or any claim for an increase or decrease in the contract price shall be determined in one of the following ways: (a) by mutual acceptance of a lump-sum; or if no agreement is reached, then (b) by cost plus fifteen percent (15%) for overhead and profit. In such case, the Contractor shall submit, in a form prescribed by the City, an itemized cost breakdown together with supporting data.

The amount of credit to be allowed by the Contractor to the City for any such change that results in a net decrease in cost will be the amount of the actual net decrease as determined by the City. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

### **32.2 Changes in the Work**

Without invalidating the Contract, the City may at any time or from time-to-time order additions, deletions, or revisions in the work, which additions, deletions, or revisions shall be authorized by change orders. Upon receipt of a change order, the Contractor shall proceed with the work involved. All such work shall be executed under the applicable conditions of the Contract Documents. If any change order causes an increase or decrease in the contract price or an extension or shortening of the contract time, a corresponding adjustment shall be made.

Additional work performed by the Contractor without authorization of a change order shall not entitle the Contractor to an increase in the contract price or an extension of the contract time, except in the case of an emergency as deemed warranted by the City.

It is the Contractor's responsibility to notify the surety of any changes affecting the general scope of the work or change in the contract price, and the amount of the applicable bonds shall be adjusted accordingly. The Contractor shall furnish proof of such adjustments to the City.

### **32.3 No Modification Without Appropriation**

No Change Order or other form of order or directive by the City requiring additional compensable work to be performed, which order or directive causes the aggregate amount payable under the Contract to exceed the amount appropriated or to be appropriated, in the case of payments to be made in more than one calendar year, for the original contract, shall be issued unless the Contractor is given written assurance that lawful appropriations have been made or will be made to cover the costs of the additional work.

### **32.4 Reimbursement for Additional Directed Work**

For any Change Order or other form of order or directive by the City requiring additional compensable work to be performed, the City shall reimburse the Contractor upon acceptance by and delivery to the City of the Project.

## **33.0 LAWS AND REGULATIONS**

The Contractor shall observe and comply with all federal, state, and local ordinances, laws, codes, and regulations and all other applicable requirements of authorities having jurisdiction over the work and shall protect and indemnify the City and the City's officers and agents, including its engineers, against any claim or liability arising from or based upon any failure or alleged failure of the Contractor to comply with the same.

## **34.0 TAXES, PERMITS, AND LICENSES**

All sales to the City in its governmental capacity only shall be exempt from Colorado sales and use tax pursuant to C.R.S. § 39-26-704. The Contractor may apply with the Department of Revenue, Sales Tax for an exemption certificate pursuant to and purchase the materials for incorporation in this Project tax-free pursuant to C.R.S. § 39-26-708. The Contractor shall use all reasonable efforts to exempt the Project from sales and use tax under the state law where Contractor perform any work that is subject to such taxation.

It shall be the responsibility of the Contractor to obtain all licenses, permits, and inspections required for the work. The City shall pay for such licenses and permits separate and apart from the Contract.

## **35.0 PATENTS**

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment, or processes used in the work shall be included in the Contract price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and shall be liable for any damages or claims for

patent infringements. The Contractor shall, at the Contractor's own cost and expense, defend all suits or proceedings that may be instituted against the City for alleged infringement of any patents involved in the work and, in case of an award of damages, the Contractor shall pay such award regardless of the amount or nature of such award. Final payment to the Contractor by the City shall not be made while any such suit or claim remains unsettled.

### **36.0 MATERIALS AND EQUIPMENT**

Unless specifically provided otherwise in each case, all materials and equipment furnished for permanent installation in the work shall conform to applicable standard specifications and shall be new, unused, and undamaged when installed or otherwise incorporated in the work. No such material or equipment shall be used by the Contractor for any purpose other than that intended or specified unless such use is specifically authorized by the City in each case.

Unless stated otherwise in the Contract Documents, all required tests in connection with acceptance of source of materials or other specification compliance shall be made at the Contractor's expense by a properly-equipped laboratory of established reputation whose work and testing facilities are acceptable to the City. Any change in origin or method of preparation or manufacture of a material being routinely tested will require new tests. Reports of all tests shall be furnished to the City in as many copies as required.

### **37.0 FACILITIES**

The Contractor shall furnish all facilities, materials, equipment, and supplies required for prosecution of the work but that will not be incorporated in the completed work.

### **38.0 RECEIVING, HANDLING, AND STORAGE**

The Contractor shall receive (from carriers or subcontractors), check, unload, handle, and store all materials and equipment to be incorporated in the Project under these specifications. The Contractor shall be responsible for the prompt unloading of materials and equipment and shall pay any demurrage.

The Contractor shall provide all storage facilities.

### **39.0 GUARANTEE**

The Contractor shall guarantee the equipment, equipment design, materials, and workmanship furnished under the Contract to be as specified and to be free from defects for the period designated in the Special Statement of Warranty.

Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the City, arose out of defects and became necessary during the guarantee period.

The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the Contractor or the surety.

This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each such repair or replacement shall be one (1) year after installation or completion, unless extended by any manufacturer's warranty. The Contractor's guarantee shall not be construed as a waiver by the City of the relevant statute of limitations and statute of repose periods.

If within ten (10) days after the City has notified the Contractor of a defect, failure, or abnormality in the work the Contractor has not started to make the necessary repairs or adjustments, the City is hereby authorized to make the repairs or adjustments or to order the work to be done by a third party, with the cost of such work to be paid by the Contractor or the surety.

In the event of an emergency where, in the sole judgment of the City, delay would cause serious loss or damage, repairs or adjustments may be made by the City or a third party chosen by the City without advance notice to the Contractor, with the cost of such work to be paid by the Contractor or the surety.

#### **40.0 FINAL INSPECTION**

When the Project has been completed and at a time mutually agreeable to the City and Contractor, the City shall make an inspection of the Project. If, based upon such inspection, the City determines that the Project is complete, it shall accept the Project, and the running of time for completion shall stop.

#### **41.0 CONTRACTOR'S PRICE BREAKDOWN**

For lump-sum projects, the Contractor shall prepare and submit to the City for review a breakdown of the contract price according to the system of accounts provided by the City. The Contractor's price breakdown shall be reviewed and accepted by the City before any payments are made under the Contract. Each invoice submitted for payment shall be prepared in accordance with the price breakdown accepted by the City. An unbalanced breakdown estimate providing for overpayment of the Contractor on items of work which would be performed first will not be acceptable.

#### **42.0 ESTIMATES AND PAYMENTS**

Not later than the first day of each month, the contractor shall make an estimate of the value of the work completed and of unused materials stored on the site. The estimated cost of repairing, replacing, or rebuilding any part of the work or replacing materials that do not conform to the drawings and specifications will be deducted from the estimated value.

#### **43.0 APPROPRIATION**

To the extent the Contract constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue the Contract in any fiscal year in which no such appropriation is made.

#### **44.0 GOVERNMENTAL IMMUNITY ACT**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

*The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act.*

**SPECIAL CONDITIONS**

**SPECIAL CONDITIONS**

**1.0 PROJECT DESCRIPTION**

One (1) custom-made Pierce Arrow-XT 100' Platform Aerial Truck.

**2.0 PROJECT MANAGER**

The Project Manager for this project is Greg Ward who can be reached at (970) 962-4761. All post-award notices, letters, submittals, and other communications directed to the City shall be addressed and mailed or delivered to:

Fire Chief  
 City of Loveland  
 410 East Fifth Street  
 Loveland, CO 80537  
 (970) 962-2827

**3.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The time of completion for this Project is three hundred and sixty (360) days from Contractor's receipt of a purchase order. The rate for liquidated damages is Zero Dollars (\$0.00) per day until completion.

**4.0 INSURANCE LIMITS**

The insurance limits for this Project are as follows:

Form of Insurance	Combined Single Limit
Comprehensive General Liability	\$1,000,000
Comprehensive Automobile Liability	\$1,000,000
Worker's Compensation and Employer's Liability	Statutory/\$500,000
Excess Umbrella Liability	\$4,000,000
Garage Keepers Liability	\$4,500,000



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

**AGENDA ITEM:** 13  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** John McGee, Water and Power Department  
**PRESENTER:** John McGee, Water Treatment Manager

**TITLE:**

A Resolution Approving an Intergovernmental Agreement Between the City of Loveland, Colorado and the U.S. Geological Survey, United States Department of the Interior for Operation and Maintenance of a Streamflow Gaging Station and a Precipitation Gage

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action to approve an intergovernmental agreement (IGA) with the US Geological Survey (USGS) for operation and maintenance of two gages. The City and USGS have partnered on this project for many years, and each annual IGA was signed by the City administratively. However, now that the City's costs under the IGA exceed \$10,000, City Council approval is required according to City Code Section 2.08.030.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

There is a negligible impact to the budget because of the low dollar amount experienced so far. The water resources fund will be used to pay for the annual operation and maintenance of the flow gaging station and the precipitation gaging station.

**BACKGROUND:**

The City of Loveland is proposing to partner with USGS for operation and maintenance of a streamflow gage and a precipitation gage. This continues a long-standing partnership which is being renewed for 2014.

The IGA will support the streamflow gage station on the Big Thompson River near Loveland and the precipitation gage near Masonville. USGS will provide all of the field and analytical work and make the data available to the public. The term of the IGA is from October 1, 2013 through September 30, 2014. Both the streamflow gage and the precipitation gage were functional at the start of the contractual period for this IGA. The total cost is \$18,940, of which \$11,660 will be paid by the City. The funds exist in the 2014 Budget to support this IGA. The Loveland Utilities Commission unanimously recommended that the City Council adopt a resolution approving the IGA at the January 15, 2014 meeting.

City Code Section 2.08.030 authorizes the City Manager to sign intergovernmental agreements that are in the furtherance of a policy, work plan item, project, or agreement that has been specifically approved by the City Council so long as the direct, monetary payment to be made by the city under the intergovernmental agreement does not exceed \$100,000. The City has been partnering with USGS on the operation and maintenance of a streamflow gaging station and a precipitation gage for many years and anticipates doing so for years to come. City staff recommends that City Council adopt the resolution authorizing the City Manager to sign future agreements with USGS for operation and maintenance of a streamflow gaging station and a precipitation gage, on substantially similar terms as set forth in the Intergovernmental Agreement, providing any direct, monetary payment to be made by the City under any annual intergovernmental agreement does not exceed \$100,000.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Resolution
2. "Joint Funding Agreement for Water Resources Investigations" (Exhibit A to the Resolution)

**RESOLUTION #R-17-2014**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR FOR OPERATION AND MAINTENANCE OF A STREAMFLOW GAGING STATION AND A PRECIPITATION GAGE**

**WHEREAS**, the City of Loveland and the U.S. Geological Survey, United States Department of the Interior (“USGS”) desire to partner to operate and maintain a streamflow gaging station on the Big Thompson River near Loveland and a precipitation gage near Masonville (“Project”); and

**WHEREAS**, the Project will be funded in part by federal funds in the amount of \$5,485, and in part by City funds in the amount of \$11,660; and

**WHEREAS**, the City and USGS desire to enter into an intergovernmental agreement to define the division of responsibilities with regard to the Project; and

**WHEREAS**, at its meeting on January 15, 2014, the Loveland Utilities Commission unanimously recommended that the City Council adopt a resolution approving the “Joint Funding Agreement for Water Resources Investigations,” attached hereto as Exhibit A and incorporated herein by reference (“Intergovernmental Agreement”); and

**WHEREAS**, as governmental entities, the City and USGS are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

**Section 1.** That the Intergovernmental Agreement is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

**Section 4.** That the City Manager shall be authorized, pursuant to City Code Section 2.08.030, to enter into annual intergovernmental agreements with USGS for operation and maintenance of a streamflow gaging station and a precipitation gage, on substantially similar terms as set forth in the Intergovernmental Agreement, so long as any direct, monetary payment

to be made by the City under any annual intergovernmental agreement does not exceed \$100,000.

**Section 5.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 18<sup>th</sup> day of February, 2014.

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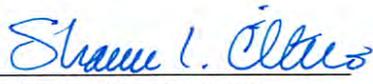
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Assistant City Attorney

**U.S. Department of the Interior  
U.S. Geological Survey  
Joint Funding Agreement  
FOR WATER RESOURCES INVESTIGATIONS**

**Customer No: 600000894 P. 184**  
**Agreement No: 14CMCO14 024 0000**  
**Project No:**  
**TIN #: 846000609**  
Fixed Cost Agreement  Yes  No

THIS AGREEMENT is entered into as of the 1st day of **October, 2013** by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the **City of Loveland**, party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation for the **operation and maintenance of the streamflow gaging station on the Big Thompson River near Loveland and the precipitation gage near Masonville**, hereinafter called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of **\$0.00**.
  - (a) **\$5,485.00** by the party of the first part during the period **October 1, 2013 to September 30, 2014**
  - (b) **\$11,660.00\*** by the party of the second part during the period **October 1, 2013 to September 30, 2014**

**\*Unmatched \$6,175.00**

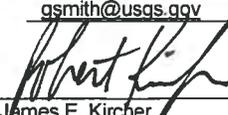
  - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
  - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to ensure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties.
9. USGS will issue billings utilizing Department of the Interior Bill for Collection (Form DI-1040). Billing documents are to be rendered **annually in September 2014**. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

USGS Point of Contact

Name: Greg Smith  
 Address: PO Box 25046, MS 415  
Denver, CO 80225  
 Telephone: 303-236-6945  
 Email: gsmith@usgs.gov

Customer Point of Contact

Name: John McGee  
 Address: 200 N Wilson  
Loveland, CO 80537  
 Telephone: (970) 962-2571  
 Email: mcgee@ci.loveland.co.us

By:  Date: 12-13-13  
 Name: James E. Kircher  
 Title: Director

By:  Date: 12/19/13  
 Name: John McGee  
 Title: For C.M.  
*Stephen Adams 12-27-2013*



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

**AGENDA ITEM:** 14  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Steve Adams, Water and Power Department  
**PRESENTER:** Greg Dewey, Civil Engineer

**TITLE:**

A Resolution of the Loveland City Council Authorizing an Application to, and Contract with, the Northern Colorado Water Conservancy District for Beneficial use of 50 Acre-Foot Of Colorado Big Thompson Project Water

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action to adopt a resolution approving the conversion of 50 Colorado Big Thompson (CBT) units acquired during 2013 from a Temporary Use Permit to a Permanent Section 131 Contract.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The units were purchased in 2013. No additional costs are associated with the conversion.

**BACKGROUND:**

The City of Loveland currently holds 50 acre-foot units of CBT Project water in the form of temporary use permits, or TUPs. These give the City the temporary right to use the CBT water associated with these acre-foot units during the year the units are acquired, prior to obtaining a Section 131 contract which provides for use in all subsequent years.

Northern Colorado Water Conservancy District (Northern Water) policy requires municipal and industrial allottees to convert the TUPs to Section 131 Contracts in the year following acquisition. ("Section 131" refers to that section in the Water Conservancy Act of Colorado, Title 31, Article 43, Colorado Revised Statutes). Failure to convert the TUPs will result in Northern Water's refusal to deliver the water.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution
2. Application (attached to the Resolution as Exhibit A)

**RESOLUTION #R-18-2014**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL AUTHORIZING AN APPLICATION TO, AND CONTRACT WITH, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR BENEFICIAL USE OF 50 ACRE-FEET OF COLORADO-BIG THOMPSON PROJECT WATER**

**WHEREAS**, pursuant to the Water Conservancy Act of Colorado, Title 37, Article 45, C.R.S., the City Council of the City of Loveland, a Colorado municipal corporation, must apply to the Board of Directors of the Northern Colorado Water Conservancy District (“District”) for a contract for the beneficial use of Colorado-Big Thompson Project water within the boundaries of the District on an annually-renewable basis under C.R.S. § 37-45-131 in order to obtain the perpetual right to use said water.

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

**Section 1.** That the City of Loveland has determined to apply for a contract providing for the beneficial use of fifty (50) acre-feet of Colorado-Big Thompson Project water from the District within the boundaries of the District.

**Section 2.** That the Director of the Department of Water and Power is hereby authorized and directed to apply to the Board of Directors of the District for a contract providing to the City the beneficial use of said water upon the terms prescribed by said Board in the manner and form attached hereto as Exhibit A and incorporated herein by reference (“Application”).

**Section 3.** That the Director of the Department of Water and Power is hereby authorized to execute the Application and any other documents required by the District to effectuate the contract.

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

ADOPTED this 18<sup>th</sup> day of February, 2014.

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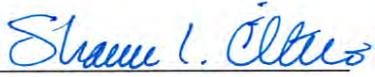
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink, reading "Shamus L. Oltus". The signature is written in a cursive style with a prominent initial "S".

Assistant City Attorney

APPLICATION TO  
NORTHERN COLORADO WATER CONSERVANCY DISTRICT  
FOR ANNUALLY RENEWABLE  
PERPETUAL WATER CONTRACT FOR RIGHT TO USE  
COLORADO-BIG THOMPSON PROJECT WATER  
UNDER C.R.S. 37-45-131

Applicant, City of Loveland, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 50 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth (1/310,000) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: 200 N. Wilson Avenue, Loveland, Colorado 80537.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.
8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

- 9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.
- 10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

\_\_\_\_\_  
CITY OF LOVELAND

By\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 50 acre-feet of water is hereby made to the City of Loveland, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT

By \_\_\_\_\_  
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

ATTEST: \_\_\_\_\_  
Secretary



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

**AGENDA ITEM:** 15  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Melissa Morin, Water & Power Department  
**PRESENTER:** Melissa Morin

**TITLE:**

1. An Ordinance on First Reading Amending the Loveland Municipal Code at Chapters 13.04 and 13.08 to Revise the City's Water and Wastewater Reimbursement and Oversizing Policies and to Relocate the Policies from the City's Water and Wastewater Development Standards to the Loveland Municipal Code
2. A Resolution Amending Section 1.10 of the City of Loveland Water and Wastewater Development Standards Concerning Reimbursements for Water and Wastewater Main Extensions, Major Structures, and Oversizing

**RECOMMENDED CITY COUNCIL ACTION:**

1. Conduct a public hearing and approve the ordinance on first reading.
2. Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

1. This is a legislative action to amend the Municipal Code concerning reimbursements for water and wastewater line extensions, major structures and oversizing of lines.
2. This is a legislative action to update Section 1.10 of the City's Water and Wastewater Development Standards to reflect the changes to the Municipal Code concerning reimbursements for water and wastewater line extensions, major structures and oversizing of lines.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

Presently the Department's policy for reimbursement agreements and oversize agreements is contained within the City of Loveland Water and Wastewater Development Standards ("Standards") at Chapter 1, Section 10 (or Section 1.10), titled "Public Water and Wastewater Extension, Oversize and Reimbursement." This section contains the definition and requirements for reimbursement for main extensions and major structures, and for oversize reimbursement agreements.

The Standards need updating and clarification. While making these changes and in order to improve visibility to developers and the public, it is recommended to move these sections out of the Standards and into the Municipal Code. The following issues are addressed by the proposed changes:

- 1) Add a "public reimbursement" definition and record notice for when the Department is the "developer" and seeks reimbursement on future developable properties. A public reimbursement agreement would have a less stringent definition for term of contract.
- 2) Add a "future subdivision" point for collection. The Department found it difficult to track existing private reimbursement agreements on tracts of lands that were subdividing into smaller parcels. There were no terms in the original agreements to cover this situation. Our desire is to collect the reimbursement at the time of subdivision, which we consider development.
- 3) Add a clause that if a parcel subject to an existing reimbursement agreement decides to develop and connect to a neighboring water or wastewater district's lines, the owner of the parcel is NOT responsible for paying the reimbursement due under the agreement.
- 4) Clarify the definition of when the reimbursements are due so that they are easier to track.
- 5) Modify the length of private reimbursement agreement term from 20 years to 10 years.

Staff has found that the codes for some neighboring cities (Greeley, Boulder, and Fort Collins) have policies similar to ours contained within their codes.

Removing the policy definitions from the Standards resulted in the revisions to Section 1.10 to outline the process and requirements for reimbursement and oversizing agreements. The attached Resolution outlines the changes to Section 1.10 of the Standards.

A procedural update to Section 1.10, important to Construction Advisory Board (CAB), has been made to require the Developer to notify the encumbered properties of the Reimbursement Agreement being recorded on their property prior to the City beginning any collection. Previously there was no notice requirement. The new process will be similar to how Public Works processes its Third Party Reimbursement Agreements.

The Loveland Utilities Commission unanimously recommended adoption of both the Ordinance and the Resolution at its September 18, 2013 meeting. The CAB unanimously recommended adoption of both the Ordinance and the Resolution at its January 22, 2014 meeting.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Proposed changes to Municipal Code (Redline)
2. Ordinance
3. Resolution
4. Section 1.10 of the Water and Wastewater Development Standards (Exhibit A of the Resolution)

**FIRST READING**     February 18, 2014

**SECOND READING**     \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTERS 13.04 AND 13.08 TO REVISE THE CITY’S WATER AND WASTEWATER REIMBURSEMENT AND OVERSIZING POLICIES AND TO RELOCATE THE POLICIES FROM THE CITY’S WATER AND WASTEWATER DEVELOPMENT STANDARDS TO THE LOVELAND MUNICIPAL CODE**

**WHEREAS**, the City of Loveland has adopted water line and wastewater line reimbursement and oversizing policies, both of which are set forth in the City’s Water and Wastewater Development Standards; and

**WHEREAS**, Water Department staff has proposed certain revisions to these policies to improve reimbursement and oversizing administrative practices, and to address reimbursements and oversizing requirements for water booster stations and wastewater lift stations; and

**WHEREAS**, Water Department staff has also proposed that the revised policies be relocated from the Water and Wastewater Development Standards to the Loveland Municipal Code for greater visibility; and

**WHEREAS**, the Loveland Utilities Commission reviewed the proposed revisions at its September 18, 2013 meeting and unanimously recommended that the City Council adopt the proposed revisions; and

**WHEREAS**, the Construction Advisory Board reviewed the proposed revisions at its January 22, 2014 meeting and unanimously recommended that the City Council adopt the proposed revisions.

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

**Section 1.**     That Subsection J. of Section 13.04.031 of the Loveland Municipal Code is hereby amended to read as follows:

**13.04.031     System impact fee regulations.**

...

J. At the time system impact fees are due and payable for a property, the applicant for a water service meter shall also pay any charges for open area system impact fees which have previously been paid and which the city has,

by contract, agreed to collect from dwellings appurtenant thereto, and any applicable sewer system impact fees as set forth in Chapter 13.08.

**Section 2.** That Chapter 13.04 of the Loveland Municipal Code is hereby amended by the addition of a new Section 13.04.320 to read as follows:

**13.04.320 Reimbursement for water mains.**

- A. When a developer extends a water main through or adjacent to other property in order to serve his development, and where such other property has the potential to develop in the future in a way that could require use of the main, the developer may request a third-party reimbursement agreement in accordance with the provisions of this section. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the department within thirty (30) days after initial acceptance of the water main by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per linear foot of the property adjacent to the water main. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense.
- B. An applicant desiring to connect to the city's water system to serve property subject to a third-party reimbursement agreement shall pay to the city the reimbursement amount attributable to the applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's water system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date of the reimbursement agreement, whichever occurs first. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- C. When the city extends a water main as a system improvement at the city's expense, the city may require adjacent property owners to pay a portion of the cost of the main. The reimbursement amount shall be determined on a cost per linear foot of property adjacent to the water main. The

reimbursement amount shall be due and paid prior to connection to the city's water system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date on which the main is placed into service, whichever occurs first. No building permit for property subject to the payment requirement set forth herein shall be issued until the reimbursement amount is paid. The reimbursement obligation shall remain in effect and shall be enforceable as long as the main is in service. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.

- D. If the city installs or causes a developer to install a water main larger than that required to serve the water demands of the developer's property, or the water demands of the developer's property and adjacent properties in the case of a main intended to serve both of them, the city shall be responsible for the cost of the oversizing. The method for determining the city's share of the oversizing costs shall be established at the time the installation of the main is authorized, and payment of that oversizing amount shall be made over a period not to exceed ten (10) years following the city's acceptance of the main, subject to the limitations of Article X, Section 20 of the Colorado Constitution. The city and the developer shall enter into an oversizing reimbursement agreement, the form of which shall be approved by the director of the water and power department in consultation with the city attorney.
- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's water service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

**Section 3.** That Chapter 13.04 of the Loveland Municipal Code is hereby amended by the addition of a new Section 13.04.330 to read as follows:

**13.04.330 Reimbursement for water booster stations.**

- A. The water and power department is authorized to cause surveys or engineering studies to be made for the purpose of determining those areas either within or without the city that would require the installation and operation of water booster stations to ensure adequate water pressure and supply to the area. The booster station service areas may include areas outside the city that might by annexation become a part of the city or that pursuant to an agreement with the city are being provided out-of-city water service.
- B. When a booster station is required because of development within the booster station service area, the cost of its construction is entirely the responsibility of the owners of the property to be served by the booster station. If only a part of a booster station service area is initially

developed, the developer shall be required to install a booster station of sufficient capacity to serve the entire area. The developer may request a third-party reimbursement agreement in accordance with the provisions of this section. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the water and power department within thirty (30) days after initial acceptance of the water booster station by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per developable area being served by the water booster station, as determined by the director of the water and power department. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense

- C. An applicant desiring to connect to the city's water system to serve property subject to a developer's third-party reimbursement agreement with the city shall pay to the city the reimbursement amount attributable to that applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's water system. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- D. When the city constructs a water booster station at the city's expense, the city may require property owners within the booster station service area to pay their share of the cost of the booster station. The reimbursement amount shall be determined on a cost per developable area to be served by the booster station, as determined by the director of the water and power department. The reimbursement amount shall be due and paid prior to connection to the city's water system. The reimbursement obligation shall remain in effect and shall be enforceable as long as the booster station is in service. No building permit for property subject to the payment reimbursement set forth herein shall be issued until the reimbursement amount is paid. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.

- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city’s water service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

**Section 4.** That Subsection E. of Section 13.08.040 of the Loveland Municipal Code is hereby amended to read as follows:

**13.08.040 System impact fees.**

...

- E. The applicant shall also pay, at the time that system impact fees are paid, any applicable water system impact fees as set forth in Section 13.04.030.

**Section 5.** That Chapter 13.08 of the Loveland Municipal Code is hereby amended by the addition of a new Section 13.08.140 to read as follows:

**13.08.140 Reimbursement for wastewater mains.**

- A. Any developer extending a wastewater main through or adjacent to other undeveloped property in order to serve his development and such other undeveloped property has the potential to develop in the future, the developer may request a third-party reimbursement agreement in accordance with the provisions of this section. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the water and power department within thirty (30) days after initial acceptance of the wastewater main by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per linear foot of the other undeveloped property adjacent to the wastewater main. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer’s expense

- B. An applicant desiring to connect to the city's wastewater system to serve property subject to a third-party reimbursement agreement shall pay to the city the reimbursement amount attributable to the applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date of the reimbursement agreement, whichever occurs first. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- C. When the city extends a wastewater main as a system improvement at the city's expense, the city may require adjacent property owners to pay a portion of the cost of the main. The reimbursement amount shall be determined on a cost per linear foot of property adjacent to the wastewater main. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date on which the main is placed into service, whichever occurs first. No building permit for property subject to the payment requirement set forth herein shall be issued until the reimbursement amount is paid. The reimbursement obligation shall remain in effect and shall be enforceable as long as the main is in service. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.
- D. If the city installs or causes a developer to install a wastewater main larger than that required to serve the wastewater demands of the developer's property, or the wastewater demands of the developer's property and adjacent properties in the case of a main intended to serve both of them, the city shall be responsible for the cost of the oversizing. The method for determining the city's share of the oversizing costs shall be established at the time the installation of the main is authorized, and payment of that oversizing amount shall be made over a period not to exceed ten (10) years following the city's acceptance of the main, subject to the limitations of Article X, Section 20 of the Colorado Constitution. The city and the developer shall enter into an oversizing reimbursement agreement, the form of which shall be approved by the director of the water and power department in consultation with the city attorney.
- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's wastewater service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

**Section 6.** That Chapter 13.08 of the Loveland Municipal Code is hereby amended by the addition of a new Section 13.08.150 to read as follows:

**13.08.150 Reimbursement for lift stations.**

- A. The water and power department is authorized to cause surveys or engineering studies to be made for the purpose of determining those areas either within or without the city that would require the installation and operation of lift stations to ensure adequate wastewater service to the area. The lift station service areas may include areas outside the city that might by annexation become a part of the city or that pursuant to an agreement with the city are being provided out-of-city wastewater service.
- B. When a lift station is required because of development within the lift station service area, the cost of its construction is entirely the responsibility of the owners of the property to be served by the lift station. If only a part of a lift station service area is initially developed, the developer shall be required to install a lift station of sufficient capacity to serve the entire area. The developer may request a third-party reimbursement agreement. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the water and power department within thirty (30) days after initial acceptance of the lift station by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per developable area to be served by the lift station, as determined by the director of the water and power department. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense.
- C. An applicant desiring to connect to the city's wastewater system to serve property subject to a developer's third-party reimbursement agreement with the city shall pay to the city the reimbursement amount attributable to that applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- D. When the city constructs a lift station at the city's expense, the city may require property owners within the lift station service area to pay a portion of the cost of the lift station. The reimbursement amount shall be

determined on a cost per developable area to be served by the lift station, as determined by the director of the water and power department. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system. No building permit for property subject to the payment requirement set forth herein shall be issued until the reimbursement amount is paid. The reimbursement obligation shall remain in effect and shall be enforceable as long as the lift station is in service. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.

- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's wastewater service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

**Section 7.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading, in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this \_\_\_\_\_ day of March, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

### 13.04.031 System impact fee regulations.

- ...
- J. At the time system impact fees are due and payable for a property, the applicant for a water service meter shall also pay ~~any charges which the city has, by contract, agreed to collect from said property in connection with the construction of the water main to which the applicant's service line is to be connected, as well as~~ any charges for open area system impact fees which have previously been paid and which the city has, by contract, agreed to collect from dwellings appurtenant thereto, and any applicable sewer system impact fees as set forth in Chapter 13.08.

### 13.04.320 Reimbursement for water mains.

- A. When a developer extends a water main through or adjacent to other property in order to serve his development, and where such other property has the potential to develop in the future in a way that could require use of the main, the developer may request a third-party reimbursement agreement in accordance with the provisions of this section. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the department within thirty (30) days after initial acceptance of the water main by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per linear foot of the property adjacent to the water main. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense.
- B. An applicant desiring to connect to the city's water system to serve property subject to a third-party reimbursement agreement shall pay to the city the reimbursement amount attributable to the applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's water system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date of the reimbursement agreement, whichever occurs first. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- C. When the city extends a water main as a system improvement at the city's expense, the city may require adjacent property owners to pay a portion of the cost of the main. The reimbursement amount shall be determined on a cost per

linear foot of property adjacent to the water main. The reimbursement amount shall be due and paid prior to connection to the city's water system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date on which the main is placed into service, whichever occurs first. No building permit for property subject to the payment requirement set forth herein shall be issued until the reimbursement amount is paid. The reimbursement obligation shall remain in effect and shall be enforceable as long as the main is in service. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.

- D. If the city installs or causes a developer to install a water main larger than that required to serve the water demands of the developer's property, or the water demands of the developer's property and adjacent properties in the case of a main intended to serve both of them, the city shall be responsible for the cost of the oversizing. The method for determining the city's share of the oversizing costs shall be established at the time the installation of the main is authorized, and payment of that oversizing amount shall be made over a period not to exceed ten (10) years following the city's acceptance of the main, subject to the limitations of Article X, Section 20 of the Colorado Constitution. The city and the developer shall enter into an oversizing reimbursement agreement, the form of which shall be approved by the director of the water and power department in consultation with the city attorney.
- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's water service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

#### **13.04.330 Reimbursement for water booster stations.**

- A. The water and power department is authorized to cause surveys or engineering studies to be made for the purpose of determining those areas either within or without the city that would require the installation and operation of water booster stations to ensure adequate water pressure and supply to the area. The booster station service areas may include areas outside the city that might by annexation become a part of the city or that pursuant to an agreement with the city are being provided out-of-city water service.
- B. When a booster station is required because of development within the booster station service area, the cost of its construction is entirely the responsibility of the owners of the property to be served by the booster station. If only a part of a booster station service area is initially developed, the developer shall be required to install a booster station of sufficient capacity to serve the entire area. The developer may request a third-party reimbursement agreement in accordance with the provisions of this section. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the water and power department within thirty (30) days after initial acceptance of the water booster

station by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per developable area being served by the water booster station, as determined by the director of the water and power department. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense

- C. An applicant desiring to connect to the city's water system to serve property subject to a developer's third-party reimbursement agreement with the city shall pay to the city the reimbursement amount attributable to that applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's water system. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- D. When the city constructs a water booster station at the city's expense, the city may require property owners within the booster station service area to pay their share of the cost of the booster station. The reimbursement amount shall be determined on a cost per developable area to be served by the booster station, as determined by the director of the water and power department. The reimbursement amount shall be due and paid prior to connection to the city's water system. The reimbursement obligation shall remain in effect and shall be enforceable as long as the booster station is in service. No building permit for property subject to the payment reimbursement set forth herein shall be issued until the reimbursement amount is paid. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.
- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's water service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

#### **13.08.040 System impact fees.**

...

- E. The applicant shall also pay ~~any charges~~, at the time that system impact fees are paid, ~~which the city has by contract agreed to collect from the property to be served by the sewer main to which the applicant's service line is to be connected,~~ and any applicable water system impact fees as set forth in Section 13.04.030.

**13.08.140 Reimbursement for wastewater mains.**

- A. Any developer extending a wastewater main through or adjacent to other undeveloped property in order to serve his development and such other undeveloped property has the potential to develop in the future, the developer may request a third-party reimbursement agreement in accordance with the provisions of this section. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the water and power department within thirty (30) days after initial acceptance of the wastewater main by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per linear foot of the other undeveloped property adjacent to the wastewater main. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense
- B. An applicant desiring to connect to the city's wastewater system to serve property subject to a third-party reimbursement agreement shall pay to the city the reimbursement amount attributable to the applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date of the reimbursement agreement, whichever occurs first. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- C. When the city extends a wastewater main as a system improvement at the city's expense, the city may require adjacent property owners to pay a portion of the cost of the main. The reimbursement amount shall be determined on a cost per linear foot of property adjacent to the wastewater main. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system, or prior to the city's approval of a subdivision final plat if the property is subdivided after the date on which the main is placed into service, whichever occurs first. No building permit for property subject to the payment requirement set forth herein shall be issued until the reimbursement amount is paid. The reimbursement obligation shall remain in effect and shall be enforceable as long as the main is in service. The city shall record with the Larimer County Clerk and

Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.

- D. If the city installs or causes a developer to install a wastewater main larger than that required to serve the wastewater demands of the developer's property, or the wastewater demands of the developer's property and adjacent properties in the case of a main intended to serve both of them, the city shall be responsible for the cost of the oversizing. The method for determining the city's share of the oversizing costs shall be established at the time the installation of the main is authorized, and payment of that oversizing amount shall be made over a period not to exceed ten (10) years following the city's acceptance of the main, subject to the limitations of Article X, Section 20 of the Colorado Constitution. The city and the developer shall enter into an oversizing reimbursement agreement, the form of which shall be approved by the director of the water and power department in consultation with the city attorney.
- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's wastewater service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

#### **13.08.150 Reimbursement for lift stations.**

- A. The water and power department is authorized to cause surveys or engineering studies to be made for the purpose of determining those areas either within or without the city that would require the installation and operation of lift stations to ensure adequate wastewater service to the area. The lift station service areas may include areas outside the city that might by annexation become a part of the city or that pursuant to an agreement with the city are being provided out-of-city wastewater service.
- B. When a lift station is required because of development within the lift station service area, the cost of its construction is entirely the responsibility of the owners of the property to be served by the lift station. If only a part of a lift station service area is initially developed, the developer shall be required to install a lift station of sufficient capacity to serve the entire area. The developer may request a third-party reimbursement agreement. Any developer requesting a third-party reimbursement agreement must submit a draft agreement to the water and power department prior to the time the department signs the final public improvement construction plans, and must submit a final agreement to the water and power department within thirty (30) days after initial acceptance of the lift station by the city. All such reimbursement agreements shall be in a form approved by the director of the water and power department in consultation with the city attorney. The reimbursement amount shall be determined on a cost per developable area to be served by the lift station, as determined by the director of the water and power department. The city shall attempt to collect the reimbursement amount, but shall not be obligated to collect the reimbursement amount, initiate or defend any legal proceeding to collect the reimbursement amount, or pay the developer a sum equal to the reimbursement amount if collection efforts are unsuccessful. The

term of any third-party reimbursement agreement established hereunder shall be ten (10) years from the date of execution, regardless of whether the developer has been reimbursed. Prior to expiration of the agreement, the developer may request that the City Council approve a one-time extension of the term of the agreement, not to exceed an additional ten (10) years, for good cause shown. All third-party reimbursement agreements, and any extensions thereof, shall be recorded with the Larimer County Clerk and Recorder at the developer's expense.

- C. An applicant desiring to connect to the city's wastewater system to serve property subject to a developer's third-party reimbursement agreement with the city shall pay to the city the reimbursement amount attributable to that applicant's property. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system. No building permit for property subject to a third-party reimbursement agreement shall be issued until the reimbursement amount is paid.
- D. When the city constructs a lift station at the city's expense, the city may require property owners within the lift station service area to pay a portion of the cost of the lift station. The reimbursement amount shall be determined on a cost per developable area to be served by the lift station, as determined by the director of the water and power department. The reimbursement amount shall be due and paid prior to connection to the city's wastewater system. No building permit for property subject to the payment requirement set forth herein shall be issued until the reimbursement amount is paid. The reimbursement obligation shall remain in effect and shall be enforceable as long as the lift station is in service. The city shall record with the Larimer County Clerk and Recorder a notice of the encumbrance and reimbursement amount due for each encumbered property.
- E. Notwithstanding anything herein to the contrary, if the owner of property encumbered by a third-party reimbursement agreement or a recorded notice of reimbursement due to the city files a successful petition to be removed from the city's wastewater service area, said owner shall not be required to pay the reimbursement amount, and the city shall not be required to collect it.

**RESOLUTION #R-19-2014**

**A RESOLUTION AMENDING SECTION 1.10 OF THE CITY OF LOVELAND WATER AND WASTEWATER DEVELOPMENT STANDARDS CONCERNING REIMBURSEMENTS FOR WATER AND WASTEWATER INFRASTRUCTURE EXTENSIONS AND OVERSIZING**

**WHEREAS**, the City of Loveland has adopted certain requirements for the design and construction of water and wastewater improvements within the City's water and wastewater service areas known as the City of Loveland Water and Wastewater Development Standards ("Standards"); and

**WHEREAS**, Water Division staff has proposed certain policy revisions to Section 1.10 of the Standards; and

**WHEREAS**, Section 16.24.013 of the Loveland Municipal Code provides that revisions to the Standards shall be made in accordance with the process set forth in the Standards, which references Section 1.6.2 of the Larimer County Urban Area Street Standards ("LCUASS"); and

**WHEREAS**, Section 1.6.2 of the LCUASS provides that policy revisions must be approved by the City Council; and

**WHEREAS**, the Loveland Utilities Commission considered the proposed policy revisions to Section 1.10 of the Standards at its meeting on September 18, 2013 and unanimously recommended that the City Council adopt a resolution amending the Standards as proposed; and

**WHEREAS**, the Construction Advisory Board considered the proposed policy revisions to Section 1.10 of the Standards at its meeting on January 22, 2014 and unanimously recommended that the City Council adopt a resolution amending the Standards as proposed.

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

**Section 1.** That Section 1.10 of the Standards is hereby deleted in its entirety and replaced with a new Section 1.10 as set forth in Exhibit A, attached hereto and incorporated herein by reference.

**Section 2.** That this Resolution shall take effect as of the date on which the "Ordinance Amending the Loveland Municipal Code at Chapters 13.04 and 13.08 to revise the City's Water and Wastewater Reimbursement and Oversizing Policies and to Relocate the Polices from the City's Water and Wastewater Development Standards to the Loveland Municipal Code," which was considered by the City Council on first reading on February 18, 2014, takes effect.

ADOPTED this 18<sup>th</sup> day of February, 2014.

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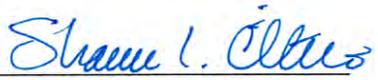
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Assistant City Attorney

## **1.10 PUBLIC WATER AND WASTEWATER MAIN REIMBURSEMENT FOR LINE EXTENSIONS, MAJOR STRUCTURES, AND OVERSIZING**

### **1.10.1 General**

- A. Reference City Code Title 13.
- B. As determined necessary by the Department, Public Water and Wastewater System mains and related appurtenances shall be installed to the farthest point(s) of a Development Project Area and within all Rights-of-way. Such installation is intended to facilitate the orderly continuation of the Public Water and Wastewater System and to provide adequate service to properties beyond a Development Project Area.
- C. All Public Water and Wastewater System mains and major structures providing service to or within a Development Project Area shall be installed at the sole cost of the Developer except when eligible for reimbursement in accordance with City Code Title 13 and these Standards.

### **1.10.2 Developer Reimbursement for Main Extensions**

- A. When a Developer installs a Public Water or Wastewater System main through or adjacent to other property in order to serve his development, and where such other property has the potential to develop in the future in a way that could require use of the main, the Developer may establish a Reimbursement Agreement. The establishment of a Reimbursement Agreement is optional.
- B. Agreement Timing The Developer must submit a draft Reimbursement Agreement to the Department before the Department signs the final PICPs. Within thirty (30) days after Initial Acceptance of the main, the Developer must submit a final Reimbursement Agreement. If the draft or final Reimbursement Agreement is not timely submitted as required herein, the City may deny the Developer the right to establish a Reimbursement Agreement.
- C. Agreement Form The Reimbursement Agreement must be in a form approved by the Department Director and the City Attorney and contain the following:
  - 1. Depiction of the eligible improvements: copies of the final PICPs depicting the location of the main constructed and identifying each encumbered property by parcel number.
  - 2. Determination of total costs eligible for reimbursement.
    - a. The draft Reimbursement Agreement shall identify “total costs” as determined by the Design Engineer’s estimate.
    - b. The final Reimbursement Agreement shall identify “total costs” as determined by invoices for design and engineering costs and construction management costs, and low bid for construction of the main. The final Reimbursement Agreement shall attach and

include competitive bids from at least three (3) qualified contractors, which bids must include a description of the work, estimated quantities, and unit prices for each item required in construction of the main.

3. Determination of reimbursement owed from each encumbered property. Said reimbursement shall be calculated as follows: (i) total costs; (ii) minus any payment due from the Department for oversizing, if applicable; (iii) divided by the number of encumbered properties and apportioned based on linear footage adjacent to the main.
    - a. If the line is installed in a Right-of-way or in an easement along a property line between two parcels, the property on each side shall pay fifty percent of the reimbursement amount.
  4. The reimbursement amount shall be increased or decreased to reflect fluctuations in the “Engineering News Record” construction cost index (twenty city average). The date of the construction bid shall establish the initial index value.
  5. Table depicting the following for each encumbered property:
    - a. Parcel number and legal description;
    - b. Name and mailing address of current owner;
    - c. Linear footage adjacent to the main (including any portion of Right-of-way (if applicable); and
    - d. Reimbursement amount due.
  6. The City will record the final Reimbursement Agreement with the Larimer County Clerk and Recorder. The Developer shall pay all recordation fees.
- D. Notification of Agreement** After the Reimbursement Agreement has been recorded the Developer shall certify, by affidavit, that all owners of properties obligated to provide reimbursement have been notified in writing through certified mail with return receipt requested. The affidavit and copies of the return receipt are required to be submitted to the city prior to any collection attempts.
- E. Collection** The City shall attempt to collect the reimbursement as stated in the Reimbursement Agreement. A service charge equal to three percent (3%) of the amount collected shall be deducted and retained by the City to cover the City’s administrative costs.

### **1.10.3. Developer Reimbursement for Major Structures**

- A. A major structure is a component of the Public Water or Wastewater System that will bring direct benefits to an identifiable area, such as water booster pump stations and sewage lift stations. A Developer may be required to install a major structure to obtain water or wastewater service. Where the major structure will benefit property other than that which is being developed by the Developer, the Developer may be eligible to establish a Reimbursement Agreement. The establishment of a Reimbursement Agreement is optional.

- B.** Agreement Timing The Developer must submit a draft Reimbursement Agreement to the Department before the Department signs the final PICPs. Within thirty (30) days after Initial Acceptance of the major structure, the Developer must submit a final Reimbursement Agreement. If the draft or final Reimbursement Agreement is not timely submitted as required herein, the City may deny the Developer the right to establish a Reimbursement Agreement.
- C.** Agreement Form The Reimbursement Agreement must be in a form approved by the Department Director and City Attorney and contain the following:
1. Depiction of eligible improvements: Copies of the final PICPs depicting the location of the major structure constructed and identifying each encumbered property by parcel number.
  2. Determination of total costs eligible for reimbursement. The draft Reimbursement Agreement shall identify “total costs” as determined by the Design Engineer’s estimate. The final Reimbursement Agreement shall identify “total costs” as determined by invoices for engineering costs and construction management, and low bid for construction of the major structure. The final Reimbursement Agreement shall attach and include competitive bids from at least three (3) qualified contractors, which bids must include a description of the work, estimated quantities, and unit prices for each item required in construction of the major structure.
  3. Determination of reimbursement owed from each encumbered property. Said reimbursement shall be calculated as follows: (i) total costs; (ii) minus any payment due from the Department for oversizing, if applicable; (iii) divided by the number of encumbered properties and apportioned based on developable area being served, as determined by the Design Engineer and approved by the Department.
  4. Table depicting the following for each encumbered property:
    - a. Parcel number and legal description;
    - b. Name and mailing address of current owner;
    - c. Square footage; and
    - d. Reimbursement amount due.

#### **1.10.4 Developer Reimbursement for Oversizing Main Extensions**

- A.** When the Department requires installation of Public Water or Wastewater System main that is larger in diameter than is necessary to serve a Development Project Area (“Oversizing”), the Department shall pay for eligible costs associated with the larger mains pursuant to an Oversizing Agreement. The establishment of an Oversizing Agreement is optional.
- B.** The Design Engineer shall determine the diameter of Public Water or Wastewater System main required to serve the Development Project Area. The Design Engineer shall take into account the following items when determining main diameters:
1. Public Water or Wastewater System Master Plan;

2. Potential future demand, as related to the surrounding and/or future proposed Development Project Areas; and
  3. Industry standards for hydraulic design.
- B.** Agreement Timing The Developer must submit a draft Oversizing Agreement to the Department before the Department signs the final PICPs. Within thirty (30) days after Initial Acceptance of the main, the Developer must submit a final Oversizing Agreement. If the draft or final Oversizing Agreement is not timely submitted as required herein, the City may deny the Developer the right to establish an Oversizing Agreement.
- C.** Agreement Form The Oversizing Agreement must be in a form approved by the Department Director and the City Attorney and include the following:
1. Copies of final PICPs depicting the location of the main constructed.
  2. Determination of total costs eligible for reimbursement.
    - a. The draft Oversizing Agreement shall identify “total costs” as determined by the Design Engineer’s estimate.
    - b. The final Oversizing Agreement shall identify “total costs” as determined by low bid for construction of the main and actual quantities installed. The Oversizing Agreement shall attach and include competitive bids from at least three (3) qualified contractors, which bids must include a description of the work, estimated quantities, and unit prices for each item required in construction of the main.
    - c. Only the components of the Public Water or Wastewater System main that were oversized are eligible for reimbursement. Eligible items include the cost to furnish and install the oversized main, fittings, valves, and service saddles. The cost of design, engineering, construction management, service lines, fire hydrant laterals, fire hydrants, manholes, surface repairs, traffic control, and connected lines and appurtenances are not eligible items. Wastewater manholes larger than four feet (4’) in diameter are eligible on mains larger than eighteen inches (18”) in diameter.
  3. A copy of the final payment to the contractor, with a letter from the contractor certifying final payment from the Developer.
- D.** Under an Oversizing Agreement, the Department shall pay the Developer a portion of the eligible costs for the Public Water or Wastewater System main in accordance with the the following tables:

PERCENTAGE PAID BY THE DEPARTMENT FOR OVERSIZED WATER MAINS				
SIZE OF WATER MAIN NEEDED	SIZE OF WATER MAIN INSTALLED			
	12"	16"	24"	30"
8"	33	50	67	73
12"	0	25	50	60
16"		0	33	47

PERCENTAGE PAID BY THE DEPARTMENT FOR OVERSIZED WASTEWATER MAINS								
SIZE OF WASTEWATER MAIN NEEDED	SIZE OF WASTEWATER MAIN INSTALLED							
	10"	12"	15"	18"	21"	24"	27"	30"
8"	15	25	37	46	53	58	62	65
10"	0	13	27	37	44	50	55	59
12"		0	16	28	36	43	49	53
15"			0	14	24	32	39	44
18"				0	12	22	29	36
21"					0	11	20	27

For mains larger than those listed above, the City shall pay the Developer a percentage of the costs determined to be fair and equitable in the sole discretion of the City.



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

**AGENDA ITEM:** 16  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Brieana Reed-Harmel, Water & Power Department  
**PRESENTER:** Brieana Reed-Harmel, Electric Engineer

**TITLE:**

An Ordinance on First Reading Amending the Loveland Municipal Code at Chapter 13.12 Regarding Electricity to Adopt an Electric Line Extension Policy and to Clarify Existing Electric Service Requirements

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action to amend the Municipal Code concerning electric line extensions and oversizing of lines. The Loveland Utilities Commission unanimously recommended adoption of the ordinance at the September 18, 2013 meeting. The Construction Advisory Board unanimously recommended adoption of the ordinance at the January 22, 2014 meeting.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

This item amends the Loveland Municipal Code to address electric line extensions, oversizing of lines, and some other technical changes.

*Extensions:* The current practice for the Power Division is to require the developer to pay for the 200 amp line extension to the point of delivery of the development and the infrastructure to

serve the development. The extension through the development area has been borne by the utility. The Power Division is proposing that the Code require the line extension to be to the furthest point in the development area if determined necessary by the Power Division to facilitate orderly growth of the system

This is similar to the requirements for the Water/Wastewater Division, which is that their lines be extended through the edge of the developed area to facilitate orderly growth of the system and this cost be borne by the customer.

This new policy will provide additional benefit to the development and to customers. The extensions through the development area are done to provide loop connections to adjacent development areas. Most large developments are already designed with a minimum of two connections to the 600 amp feeder system, however smaller developments near the edges of the system may take time to have this benefit as areas around it develop at different rates. Installing duct for lines at the time of initial development eliminates future disturbance of the landscaping and does not significantly impact the initial development costs. Also, due to the fact that the electric utility only has two sizes of the primary system, if the extension through the development area will be oversized, this then becomes a 600 amp system improvement cost paid by Plant Investment Fees (PIF).

*Oversizing:* The Power Division currently has a policy for oversizing the electric lines that is contained with the sections for overhead and underground electric systems (Sections 13.12.080 and 13.12.091). This policy states that the cost to provide excess capacity into the designed system shall be borne by the City. This language will be pulled out of these individual sections and placed into a new section titled "Oversizing of Electric Lines". This will provide clarity, while helping to simplify the code.

*Other Technical Changes:* Other Code changes are proposed to add clarification, eliminate redundancies or contradictions and standardize language:

- The Power Division proposes removal of language that the electric meters may be authorized to be placed on the inside of the premises if reasonable access will be provided. This statement is contradictory to other statements in this paragraph, language in the *Requirements for Electric Services* book, and the Fire Department's access requirements.  
The entire Chapter 13.12 will be renumbered to accommodate the addition of the sections on "Oversizing of Electric Lines" and the "Electric Line Extensions".

All of these changes have been reviewed and approved for recommendation by two commissions. The Loveland Utilities Commission unanimously recommended adoption of the ordinance at the September 18, 2013 meeting. The Construction Advisory Board unanimously recommended adoption of the ordinance at the January 22, 2014 meeting.

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Proposed changes to Municipal Code (Redline)
2. Ordinance

FIRST READING February 18, 2014

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.12 REGARDING ELECTRICITY TO ADOPT AN ELECTRIC LINE EXTENSION POLICY AND TO CLARIFY EXISTING ELECTRIC SERVICE REQUIREMENTS**

**WHEREAS**, Power Utility staff recommends that the City Council adopt an electric line extension policy consistent with the policies adopted for water and wastewater line extensions, and that Chapter 13.12 of the Loveland Municipal Code be amended to include the proposed electric line extension policy and to clarify certain other existing electric service requirements; and

**WHEREAS**, the Loveland Utilities Commission reviewed the proposed electric line extension policy and proposed changes to Chapter 13.12 at its September 18, 2013 meeting and unanimously recommended that the City Council adopt the policy and approve those changes; and

**WHEREAS**, the Construction Advisory Board reviewed the proposed electric line extension policy and proposed changes to Chapter 13.12 at its January 22, 2014 meeting and unanimously recommended that the City Council adopt the policy and approve those changes.

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

**Section 1.** That Chapter 13.12 of the Loveland Municipal Code is hereby renumbered as follows:

**Chapter 13.12**

**ELECTRICITY**

**Sections:**

- 13.12.010**      **Establishment of service.**
- 13.12.020**      **Electric Development Standards.**
- 13.12.030**      **Electric cooperatives.**
- 13.12.040**      **Electric meters.**
- 13.12.050**      **Overhead electric systems.**
- 13.12.060**      **Underground electric systems – Residential.**
- 13.12.070**      **Underground electric systems – Commercial and industrial.**
- 13.12.080**      **Oversizing of electric lines.**
- 13.12.090**      **Electric line extensions.**

<b>13.12.100</b>	<b>Costs – How paid.</b>
<b>13.12.110</b>	<b>Undergrounding of existing overhead electrical systems.</b>
<b>13.12.120</b>	<b>Interior wiring.</b>
<b>13.12.130</b>	<b>Electrical system disturbances.</b>
<b>13.12.140</b>	<b>Dangerous conditions.</b>
<b>13.12.150</b>	<b>Electric facilities expansion fund.</b>
<b>13.12.160</b>	<b>Street lighting.</b>
<b>13.12.170</b>	<b>Unmetered service for street lighting.</b>
<b>13.12.180</b>	<b>Cogeneration and small power production.</b>
<b>13.12.190</b>	<b>Interconnection Standard.</b>

All cross-references to such sections in the Loveland Municipal Code shall be updated in accordance with the renumbering set forth in this Section 1.

**Section 2.** That Section 13.12.040 of the Loveland Municipal Code is hereby amended to read as follows:

**13.12.040 Electric meters.**

The department shall furnish and install all necessary meters, and the same shall remain the property of the city. The location of all new meters for new construction shall be determined by the city and installed on the outside of the customer's premises. All meters now located on the inside of a customer's premises shall be moved to the outside when there is a change of service.

**Section 3.** That Section 13.12.050 of the Loveland Municipal Code is hereby amended to read as follows:

**13.12.050 Overhead electric systems.**

The city shall design, furnish material, install, and energize all overhead electric system extensions, and the same shall remain the property of the city. The cost of the system necessary to provide service, including direct and indirect costs of design, inspection, labor, material, and equipment, shall be borne by the customer, owner, developer, or contractor receiving the service. The electric department shall furnish material, energize, and maintain all individual overhead services up to the weatherhead, and the same shall remain the property of the city.

**Section 4.** That Section 13.12.060 of the Loveland Municipal Code is hereby amended to read as follows:

**13.12.060 Underground electric systems – Residential.**

The city shall design, furnish material, and energize all underground electric system extensions. The cost of the system necessary to provide service, including direct and indirect costs of design, inspection, labor, material, and equipment, shall be borne by the customer, owner, developer, or contractor receiving the service. Such person receiving the service will provide the earth work, including installation of vaults, trenching, backfilling, and compaction, and install primary and secondary CIC cables at his own expense and to city

specifications. Contractor personnel designated to handle the primary and secondary cables must first be qualified by the electric department. The city may elect to bid the earth work and installation of CIC cables, and perform such work if so requested. The city's bid price is to be based on current electric department unit prices; such prices to periodically be reviewed and updated. The installation of transformers and all primary and secondary terminations will be performed by the electric department. The underground service from the secondary/service splice box or transformer to the meter shall be installed by, and at the expense of, the person receiving the service, and such work shall be owned and installed by the city at the expense of the customer, owner, developer, or contractor receiving the service.

**Section 5.** That Chapter 13.12 of the Loveland Municipal Code is hereby amended by addition of a new Section 13.12.080 to read as follows:

**13.12.080 Oversizing of electric lines.**

The cost of any capacity designed into the system in excess of that necessary to serve the customer, as determined by the city, shall be borne by the city.

**Section 6.** That Chapter 13.12 of the Loveland Municipal Code is hereby amended by addition of a new Section 13.12.090 to read as follows:

**13.12.090 Electric line extensions.**

As determined necessary by the department, electric feeders shall be installed to the furthest point(s) of a development project area and within all rights-of-way. Such installation is intended to facilitate the orderly continuation of the electric system and to provide adequate service to the properties beyond a development project area. All feeders and electric lines providing service to or within a development project area shall be at the sole cost of the developer. For the purposes of this section, "development project area" shall mean an area approved by the city for development or re-development.

**Section 7.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this \_\_\_\_ day of March, 2014.

---

Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Sharon L. Oltus*  
Assistant City Attorney

## Chapter 13.12

### ELECTRICITY

#### Sections:

#### **I. GENERAL REQUIREMENTS**

- 13.12.010 Establishment of service.
- 13.12.01120 Electric Development Standards.
- 13.12.01230 Electric cooperatives.
- 13.12.0740 Electric meters.
- 13.12.0850 Overhead electrical systems.
- 13.12.09160 Underground electrical systems – Residential.
- 13.12.09670 Underground electrical systems – Commercial and industrial.
- 13.12.080 Oversizing of electric lines.
- 13.12.090 Electric line extensions.
- 13.12.098100 Costs – How paid.
- 13.12.099110 Undergrounding of existing overhead electrical systems.
- 13.12.10020 Interior wiring.
- 13.12.13130 Electrical system disturbances.
- 13.12.13240 Dangerous conditions.

#### **H. RATES**

- 13.12.13650 Electric facilities expansion fund.

#### **III. EXTENDED SERVICES**

- 13.12.1960 Street lighting.
- 13.12.200170 Unmetered service for street lighting.
- 13.12.235180 Cogeneration and small power production.
- 13.12.240190 Interconnection Standard.

#### **13.12.040 Electric meters.**

The department shall furnish and install all necessary meters, and the same shall remain the property of the city. The location of all new meters for new construction shall be determined by the city and installed on the outside of the consumer's-customer's premises. ~~The city may authorize placement of a meter on the inside of the premises upon a determination by the city that reasonable access will be available to such meter.~~ All meters now located on the inside of a consumer's-customer's premises shall be moved to the outside when there is a change of service.

#### **13.12.050 Overhead electrical systems.**

The city shall design, furnish material, install, and energize all overhead electric systems extensions, and the same shall remain the property of the city. The cost of the overhead-system necessary to provide service, including direct and indirect costs of design, inspection, labor, and material, and equipment, shall be borne by the consumer-customer, owner, developer, or contractor receiving the service. ~~The cost of any capacity designed into the system in excess of that necessary to serve the customer shall be borne by the city.~~ The electric department shall furnish material, energize, and maintain all individual overhead services up to the weatherhead, and the same shall remain the property of the city.

**13.12.060     Underground electrical systems – Residential.**

The city shall design, furnish material, and energize all underground electric system extensions. The cost of the system necessary to provide service, including direct and indirect costs of design, inspection, labor, material, and equipment, shall be borne by the ~~consumer~~customer, owner, developer, or contractor receiving the service. Such person receiving the service will provide the earth work, including installation of vaults, trenching, backfilling, and compaction, and install primary and secondary CIC cables at his own expense and to city specifications. Contractor personnel designated to handle the primary and secondary cables must ~~be~~-first be qualified by the electric department. The city may elect to bid the earth work and installation of CIC cables, and perform such work if so requested. The city's bid price is to be based on current electric department unit prices; such prices to periodically be reviewed and updated. The installation of transformers and all primary and secondary terminations will be performed by the electric department. ~~The cost of any capacity designed into the system in excess of that necessary to serve the customer, as determined by the city, shall be borne by the city.~~The underground service from the secondary/service splice box or transformer to the meter shall be installed by, and at the expense of, the person receiving ~~such~~the service, and such work shall be owned and installed by the city at the expense of the ~~consumer~~customer, owner, developer, or contractor ~~requesting~~receiving the service.

**13.12.080     Oversizing of electric lines.**

The cost of any capacity designed into the system in excess of that necessary to serve the customer, as determined by the city, shall be borne by the city.

**13.12.090     Electric line extensions.**

As determined necessary by the department, electric feeders shall be installed to the furthest point(s) of a development project area and within all rights-of-way. Such installation is intended to facilitate the orderly continuation of the electric system and to provide adequate service to the properties beyond a development project area. All feeders and electric lines providing service to or within a development project area shall be at the sole cost of the developer. For the purposes of this section, "development project area" shall mean an area approved by the city for development or re-development.



**CITY OF LOVELAND**  
**PARKS & RECREATION DEPARTMENT**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2303 • FAX (970) 962-2903 • TDD (970) 962-2620

**AGENDA ITEM:** 17  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Gary Havener, Parks and Recreation Director  
**PRESENTER:** Brian Hayes, Open Lands Coordinator

**TITLE:**

An Ordinance on First Reading Authorizing the Conveyance of the City of Loveland's one Sixth Fee Title Interest in a Portion of Long View Farm Open Space to the State of Colorado, Approving an Amendment to the Related Declaration of Covenants, Conditions and Restrictions, and Granting an Adjacent Temporary Easement to Permit Access and Work by the Colorado Department of Transportation

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The ordinance on first reading authorizes the City to convey its 1/6 interest and grant a temporary easement to the State for road and drainage improvements at the intersection of U.S. Highway 287 and S.H. 392 (Carpenter Road), and to modify the associated covenants to allow for the improvements. The Colorado Department of Transportation (CDOT) is in the process of planning and designing a project at the intersection of U.S. Highway 287 and S.H. 392 (Carpenter Road) in order to provide a more efficient turning radius and as part of that project will be improving drainage. The State is seeking to purchase land that is jointly owned by the City, Larimer County and Fort Collins for these improvements and seeks a temporary easement for access and construction of the improvements.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Open Lands Sales Tax Fund 202 will receive approximately \$177.67 in net proceeds from the sale of the small corner of the Long View Farm Open Space.

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**BACKGROUND:**

Long View Farm, consisting of 478.50 acres, was purchased in 1997 for \$2,465,000 as a partnership between Larimer County, the City of Fort Collins and the City of Loveland. Great Outdoors Colorado (GOCO) also provided funding for the open space project.

As a part of the GOCO requirements, Legacy Land Trust (LLT) holds the Declaration of Covenants, Conditions and Restrictions (CCR's) that have been placed of record on the property which preserve the property in perpetuity. The property is managed by Larimer County Open Lands, and it presently has a five-year farm lease for dryland wheat production.

In order to sell the Property to the State (CDOT) and permit the improvements, the Property must be released from the Declaration of Covenants, Conditions, and Restrictions held by the City, County, Fort Collins and Legacy Land Trust.

CDOT hired Western States Land Services, Inc. who determined the value for the purchase of 3,098 square feet and the purchase of a temporary easement consisting of 1,328 square feet to be \$1,270.00.

The City of Loveland has a 1/6 (16.7%) fee title ownership percentage in the property. GOCO will also receive a portion of the proceeds along with Larimer County and the City of Fort Collins.

The intersection improvement project is planned to start on April 1, 2014.

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**REVIEWED BY CITY MANAGER:**



**LIST OF ATTACHMENTS:**

1. Ordinance
  2. Vicinity Map (PDF)
  3. Survey Map (PDF)
  4. CDOT Easement Detail (PDF)
-

First Reading: February 18, 2014

Second Reading: \_\_\_\_\_

**ORDINANCE** \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CONVEYANCE OF THE CITY OF LOVELAND’S ONE SIXTH FEE TITLE INTEREST IN A PORTION OF LONG VIEW FARM OPEN SPACE TO THE STATE OF COLORADO, APPROVING AN AMENDMENT TO THE RELATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND GRANTING AN ADJACENT TEMPORARY EASEMENT TO PERMIT ACCESS AND WORK BY THE COLORADO DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the City of Loveland (“City”), the City of Fort Collins (“Fort Collins”) and Larimer County (“County”) jointly own certain property known as Long View Farm Open Space consisting of 478.5 acres and located west of U.S. Highway 287 between the City and Fort Collins legally described in **Exhibit “A”** attached and incorporated by reference (“Open Space”); and

**WHEREAS**, the Open Space is subject to a declaration of covenants, conditions and restrictions jointly held by the City, County, Fort Collins and Legacy Land Trust, a Colorado nonprofit corporation (“LLT”) recorded on November 15, 2001 at Reception No. 2001103042 in the Larimer County, Colorado records (“Covenants”); and

**WHEREAS**, the City owns an undivided one-sixth (1/6) interest in the Open Space, Fort Collins owns an undivided one-third (1/3) interest in the Open Space, and the County owns an undivided one-half (1/2) interest in the Open Space; and

**WHEREAS**, as part of a project to improve the intersection of U.S. Highway 287 and Carpenter Road, the State of Colorado (“State”) seeks to acquire fee title to a parcel consisting of 3,098 square feet of the Open Space located near said intersection to be used for drainage improvements, which parcel is legally described in **Exhibit “B”** attached and incorporated by reference (“Property”); and

**WHEREAS**, the State additionally seeks a temporary easement over the Open Space on land located adjacent to the Property to be used for access and work space during construction of the intersection improvements, which easement is legally described in **Exhibit “C”** attached and incorporated by reference (“Temporary Easement”); and

**WHEREAS**, in order to convey fee title in the Property to the State for the State to construct the intersection improvements, the Property must be released from the Covenants; and

**WHEREAS**, on November 13, 2013 the Open Lands Advisory Commission unanimously recommended approval of the proposed conveyance of the Property; and

**WHEREAS**, the City Council finds that the conveyance of the Property and the grant of the Temporary Easement to the State, together with the Property’s release from the Covenants, are all in the best interests of the City.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO as follows:**

**Section 1.** The conveyance of the City’s one-sixth (1/6) fee title interest in the Property and grant of the Temporary Easement to the State are hereby approved, subject to the contemporaneous conveyance by Fort Collins and the County of their respective fee title interests in the Property and their grant of the Temporary Easement to the State.

**Section 2.** The proposed amendments to the Covenants to release the Property from the Covenants are hereby approved, subject to the contemporaneous approval of such amendments by Fort Collins, the County and LLT.

**Section 3.** The City Manager is hereby authorized and directed to execute such documents as may be necessary for the conveyance of the City’s fee title interest in the Property and the grant of Temporary Easement to the State, and to amend the Covenants for the Property’s release from the Covenants subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Ordinance or to protect the interests of the City.

**Section 4.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED \_\_\_\_\_ day of \_\_\_\_\_, 2014

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

## EXHIBIT A

## LEGAL DESCRIPTION OF LONGVIEW FARM

A tract of land located in Section 23, Township 6 North, Range 69 West of the 6<sup>th</sup> P.M., Larimer County, Colorado being more particularly described as follows:

Considering the East line of the Southeast quarter of said Section 23 as bearing South 00°16'24" West from a 3" brass cap at the East Quarter corner of said Section 23 to a 3" brass cap at the Southeast corner of said Section 23 and with all bearings contained herein relative thereto:

COMMENCING at the Southeast corner of said Section 23; thence along the South line of said Southeast quarter, South 89°18'09" West 50.01 feet to the West right-of-way line of U.S. Highway 287; thence along said West right-of-way line, North 00°16'24" East, 30.00 feet to the Northerly right-of-way line of 69<sup>th</sup> Street, said point being the POINT OF BEGINNING; thence along said Northerly right-of-way line, South 89°18'09" West, 100.50 feet to a curve concave to the South having a central angle of 25°37'34", a radius of 305.00 feet and the chord of which bears South 76°29'23" West, 135.28 feet; thence continuing along said Northerly right-of-way line and the arc of said curve 136.41 feet to a point on the South line of said Southeast Quarter of Section 23; thence along the South line, South 89°18'09" West, 2362.39 feet to the South Quarter corner of said Section 23; thence along the South line of the Southwest Quarter of Section 23, North 89°19'35"; West, 1306.95 feet to the West 1/16 corner between Section 23 and Section 26; thence, North 00°11'51" East, 2650.27 feet to the Center West 1/16 corner of Section 23; thence, North 00°11'54" east, 2636.51 feet to the West 1/16 corner between said Section 23 and Section 14; thence along the North line of the Northwest Quarter of said Section 23, North 89°21'56" east, 1319.70 feet to the North Quarter corner of said Section 23; thence along the North line of the Northeast Quarter of said Section 23, North 89°29'53" East, 2588.28 feet to a point on the West right-of-way line of said U.S. Highway 287; thence along said West line, South 00°16'06" West, 2654.25 feet; thence continuing along said West line, South 00°16'24" West 2623.63 feet to the Point of Beginning.

## EXCEPT:

A tract of land located in the Northeast Quarter of Section 23, Township 6 North, Range 69 West of the 6<sup>th</sup> Principal meridian, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the East line of the Northeast Quarter of said Section 23 as bearing South 00°16'06" West from a 3" brass cap at the Northeast corner of said Section 23 to a 3" brass cap at the East Quarter corner of said Section 23 and with all bearings contained herein relative thereto:

Commencing at the East Quarter corner of said Section 23; thence, South 89°42'32" West, 50.00 feet to the West right-of-way line of U.S. Highway 287, said point being the POINT OF BEGINNING; thence along said West right-of-way line south 00°16'24" West, 25.25 feet; thence, South 89°42'32" West, 41.82 feet to a point on a curve concave to the Southeast having a central angle of 54°45'22", a radius of 610.00 feet and the chord of which bears South 62°19'50" West 561.03 feet; thence along the arc of said curve 582.96 feet; thence along a non-tangent line, North 55°02'52" West 279.71 feet; thence, North 27°44'06", West 137.30 feet; thence South 89°42'32" West, 812.49 feet; thence, North 00°17'28", West 1006.92 feet; thence, North 62°19'19" East, 680.61 feet; thence, North 89°42'32" East, 1053.02 feet to a point on the West right-of-way line of U.S. Highway 287; thence along said West right-of-way line, South 00°16'06" West, 1320.07 feet to the Point of Beginning

EXHIBIT B

**Project No. FSA 392A-016  
PARCEL NUMBER: RW-1  
Project Code: 18800  
Date: July 17, 2013**

A tract or parcel of land No. RW-1 of the Department of Transportation, State of Colorado, Project No. FSA 392A-016 containing **0.071 acres**, more or less, located in the Northeast Quarter of Section 23, Township 6 North, Range 69 West, of the 6th Principal Meridian, in the County of Larimer, State of Colorado, said tract or parcel being more particularly described as follows:

Commencing at a point, whence the Northeast Corner of said Section 23 (3" Brass CDOT Cap in a monument box), bears **N 89°07'00" E**, a distance of **50.01** feet, said point being on the North line of said Section 23, and on the existing westerly right-of-way line of U.S. Highway 287, also being the POINT OF BEGINNING;

1. Thence along said existing right-of-way line, **S 0°10'01" E** a distance of **112.25** feet;
2. Thence **S 89°49'59" W** a distance of **41.66** feet;
3. Thence **N 00°10'01" W** a distance of **37.58** feet;
4. Thence **N 46°31'40" E** a distance of **34.57** feet;
5. Thence **N 00°10'01" W** a distance of **51.27** feet, to a point on the North line of said Section 23;
6. Thence along said section line, **S 89°07'00" E** a distance of **16.50** feet, to the POINT OF BEGINNING.

The above described tract or parcel of land contains 3,098 square feet (0.071 acres), more or less.

Basis of Bearings: Bearings are based on the west line of the Northwest Quarter of Section 24, Township 6 South, Range 69 West, of the 6th Principal Meridian, between the West Quarter Corner of Section 24, a found 3" Brass CDOT Cap in a monument box, bearing **N 0°10'01" W**, to the Northwest Corner of Section 24, a 3" Brass CDOT Cap in a monument box.

Prepared for and on behalf of the  
Colorado Department of Transportation  
Terry R. Maw, PLS #31161  
Farnsworth Group, Inc.  
4655 Forge Road, Suite 150  
Colorado Springs, CO 80907



Count of Larimer, State of Colorado, AND

A tract of land located in the East Half of Section 23, Township 6 North, Range 69 West of the 6<sup>th</sup> Principal Meridian, County of Larimer, State of Colorado, being more particularly described as follows:

Considering the East line of the Northeast quarter of said Section 23 as bearing North  $00^{\circ}16'06''$  East from a 3" brass cap at the East quarter corner of said Section 23 to a 3" brass cap at the Northeast corner of said Section 23 and with all bearings contained herein relative thereto:

Commencing at the East Quarter corner of said Section 23; thence, South  $89^{\circ}42'32''$  West, 50.00 feet to the West right-of-way line of U.S. Highway 287, said point being the POINT OF BEGINNING; thence along said West right-of-way line South  $00^{\circ}16'24''$  West, 25.25 feet; thence, South  $89^{\circ}42'32''$  West, 41.82 feet to a point on a curve concave to the Southeast having a central angle of  $54^{\circ}45'22''$ , a radius of 610.00 feet and the chord of which bears South  $62^{\circ}19'50''$  West, 561.03 feet; thence along the arc of said curve 582.96 feet; thence along a non-tangent line, North  $55^{\circ}02'52''$  West 279.71 feet; thence, North  $27^{\circ}44'06''$  West 137.30 feet; thence South  $89^{\circ}42'32''$  West, 812.49 feet; thence, North  $00^{\circ}17'28''$  West 1006.92 feet; thence, North  $62^{\circ}19'19''$  East, 680.61 feet; thence, North  $89^{\circ}42'32''$  East, 1053.02 feet to a point on the West right-of-way line of U.S. Highway 287; thence along said West right-of-way line, South  $00^{\circ}16'06''$  West, 1320.07 feet to the Point of Beginning.

County of Larimer, State of Colorado

## EXHIBIT C

**PROJECT NUMBER: FSA 392A-016**  
**TEMPORARY EASEMENT NUMBER: TE-1**  
**Project Code: 18800**  
**Date: July 17, 2013**

A temporary easement No. TE-1 of the Department of Transportation, State of Colorado, Project No. FSA 392A-016 containing 0.031 acres, more or less, located in the Northeast Quarter of Section 23, Township 6 North, Range 69 West, of the 6th Principal Meridian, in the County of Larimer, State of Colorado, said temporary easement being more particularly described as follows:

Commencing at a point, whence the Northeast Corner of said Section 23 (3" Brass CDOT Cap in a monument box), bears N 24°01'02" E, a distance of 122.05 feet to a point on the existing westerly right-of-way line of U.S. Highway 287, the POINT OF BEGINNING;

1. Thence along said existing right-of-way line, S 00°10'01" E a distance of 10.00 feet;
2. Thence S 89°50'09" W a distance of 51.66 feet;
3. Thence N 00°10'01" W a distance of 51.89 feet;
4. Thence N 46°31'40" E a distance of 48.31 feet;
5. Thence S 00°10'01" E a distance of 13.74 feet;
6. Thence S 46°31'40" W a distance of 34.57 feet;
7. Thence S 00°10'01" E a distance of 37.58 feet
8. Thence N 89°49'59" E a distance of 41.66 feet, to the POINT OF BEGINNING.

The above described temporary easement contains 1,328 square feet (0.031 acres), more or less.

The purpose of the above described temporary easement is for construction of highway and drainage improvements.

Basis of Bearings: Bearings are based on the west line of the Northwest Quarter of Section 24, Township 6 South, Range 69 West, of the 6th Principal Meridian, between the West Quarter Corner of Section 24, a found 3" Brass CDOT Cap in a monument box, bearing N 0°10'01" W, to the Northwest Corner of Section 24, a 3" Brass CDOT Cap in a monument box.

Prepared for and on behalf of the  
Colorado Department of Transportation  
Terry R. Maw, PLS #31161  
Farnsworth Group, Inc.  
4655 Forge Road, Suite 150  
Colorado Springs, CO 80907

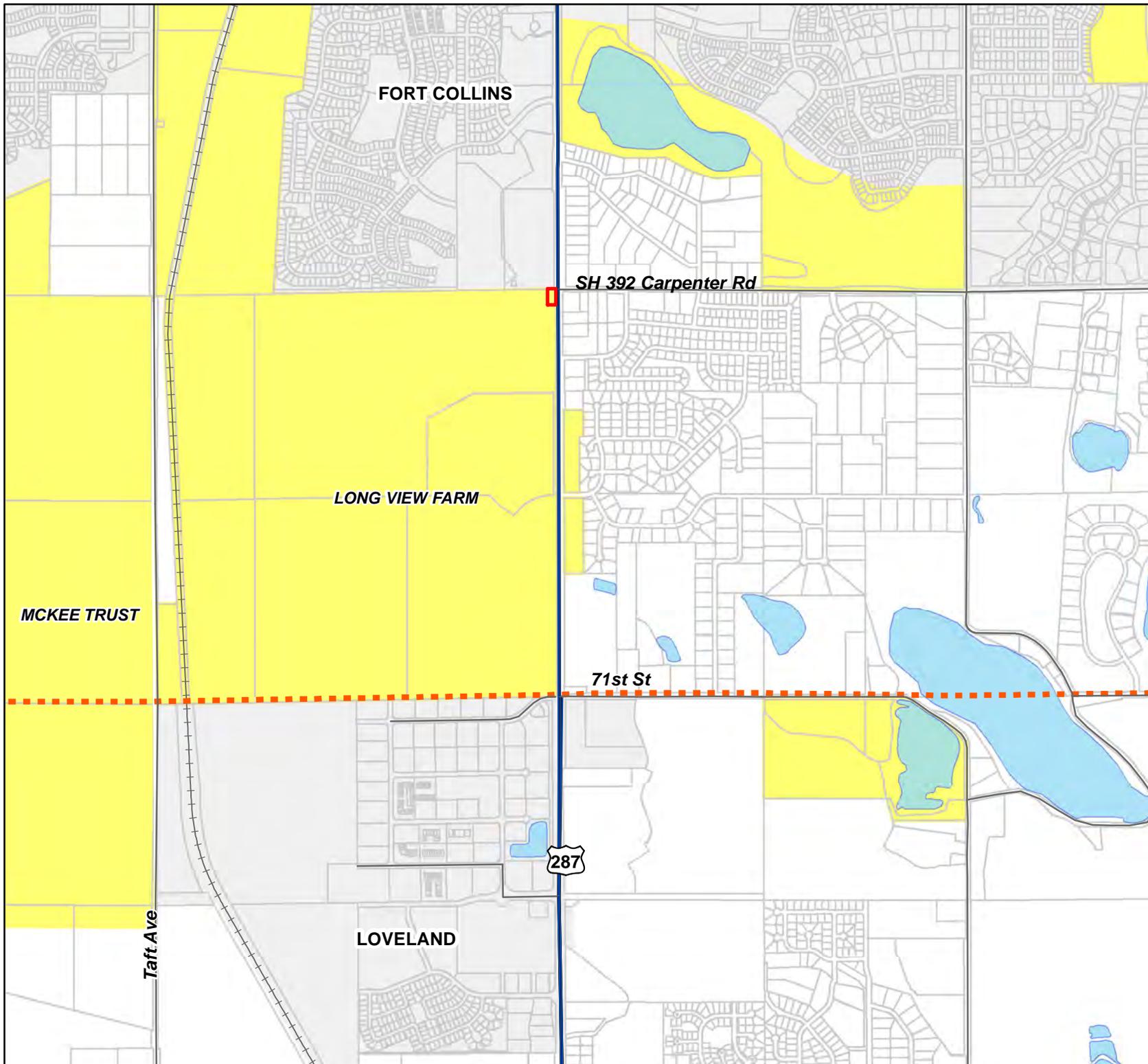
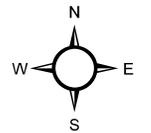
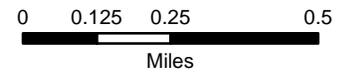


# CDOT ACQUISITION- LONG VIEW FARM OPEN SPACE

January 2014

## LEGEND

-  Subject Property
-  Open Lands
-  Loveland GMA





**COLORADO DEPARTMENT OF TRANSPORTATION  
REAL PROPERTY  
TO BE ACQUIRED  
FROM**

Parcel No. RW-1  
STA. 103+ to 104+ U.S. 287

County of Larimer, Colorado, as to an undivided one-half interest and City of Fort Collins, Colorado, as to an undivided one-third interest and City of Loveland, Colorado, as to an undivided one-sixth interest

**FOR**

Project No. FSA 392A-016  
Interchange of U.S. 287 and S.H. 392

US Highway 287 & State Highway 392  
Project Code: 18800

**EXHIBIT "A"**

**Project No. FSA 392A-016**  
**PARCEL NUMBER: RW-1**  
**Project Code: 18800**  
**Date: July 17, 2013**

A tract or parcel of land No. RW-1 of the Department of Transportation, State of Colorado, Project No. FSA 392A-016 containing **0.071 acres**, more or less, located in the Northeast Quarter of Section 23, Township 6 North, Range 69 West, of the 6th Principal Meridian, in the County of Larimer, State of Colorado, said tract or parcel being more particularly described as follows:

Commencing at a point, whence the Northeast Corner of said Section 23 (3" Brass CDOT Cap in a monument box), bears **N 89°07'00" E**, a distance of **50.01** feet, said point being on the North line of said Section 23, and on the existing westerly right-of-way line of U.S. Highway 287, also being the POINT OF BEGINNING;

1. Thence along said existing right-of-way line, **S 0°10'01" E** a distance of **112.25** feet;
2. Thence **S 89°49'59" W** a distance of **41.66** feet;
3. Thence **N 00°10'01" W** a distance of **37.58** feet;
4. Thence **N 46°31'40" E** a distance of **34.57** feet;
5. Thence **N 00°10'01" W** a distance of **51.27** feet, to a point on the North line of said Section 23;
6. Thence along said section line, **S 89°07'00" E** a distance of **16.50** feet, to the POINT OF BEGINNING.

The above described tract or parcel of land contains 3,098 square feet (0.071 acres), more or less.

Basis of Bearings: Bearings are based on the west line of the Northwest Quarter of Section 24, Township 6 South, Range 69 West, of the 6th Principal Meridian, between the West Quarter Corner of Section 24, a found 3" Brass CDOT Cap in a monument box, bearing **N 0°10'01" W**, to the Northwest Corner of Section 24, a 3" Brass CDOT Cap in a monument box.

Prepared for and on behalf of the  
Colorado Department of Transportation  
Terry R. Maw, PLS #31161  
Farnsworth Group, Inc.  
4655 Forge Road, Suite 150  
Colorado Springs, CO 80907



**COLORADO DEPARTMENT OF TRANSPORTATION  
TEMPORARY EASEMENT  
TO BE ACQUIRED  
FROM**

Temporary Easement No. TE-1  
STA. 103+ to 104+ U.S. 287

County of Larimer, Colorado, as to an  
undivided one-half interest and City  
of Fort Collins, Colorado, as to an  
undivided one-third interest and City  
of Loveland, Colorado, as to an  
undivided one-sixth interest

**FOR**

Project No. FSA 392A-016  
Interchange of U.S. 287 and S.H. 392

US Highway 287 & State Highway 392  
Project Code: 18800

**EXHIBIT "A"**

**PROJECT NUMBER: FSA 392A-016**  
**TEMPORARY EASEMENT NUMBER: TE-1**  
**Project Code: 18800**  
**Date: July 17, 2013**

A temporary easement No. TE-1 of the Department of Transportation, State of Colorado, Project No. FSA 392A-016 containing **0.031 acres**, more or less, located in the Northeast Quarter of Section 23, Township 6 North, Range 69 West, of the 6th Principal Meridian, in the County of Larimer, State of Colorado, said temporary easement being more particularly described as follows:

Commencing at a point, whence the Northeast Corner of said Section 23 (3" Brass CDOT Cap in a monument box), bears **N 24°01'02" E**, a distance of **122.05** feet to a point on the existing westerly right-of-way line of U.S. Highway 287, the POINT OF BEGINNING;

1. Thence along said existing right-of-way line, **S 00°10'01" E** a distance of **10.00** feet;
2. Thence **S 89°50'09" W** a distance of **51.66** feet;
3. Thence **N 00°10'01" W** a distance of **51.89** feet;
4. Thence **N 46°31'40" E** a distance of **48.31** feet;
5. Thence **S 00°10'01" E** a distance of **13.74** feet;
6. Thence **S 46°31'40" W** a distance of **34.57** feet;
7. Thence **S 00°10'01" E** a distance of **37.58** feet
8. Thence **N 89°49'59" E** a distance of **41.66** feet, to the POINT OF BEGINNING.

The above described temporary easement contains 1,328 square feet (0.031 acres), more or less.

The purpose of the above described temporary easement is for construction of highway and drainage improvements.

Basis of Bearings: Bearings are based on the west line of the Northwest Quarter of Section 24, Township 6 South, Range 69 West, of the 6th Principal Meridian, between the West Quarter Corner of Section 24, a found 3" Brass CDOT Cap in a monument box, bearing **N 0°10'01" W**, to the Northwest Corner of Section 24, a 3" Brass CDOT Cap in a monument box.

Prepared for and on behalf of the  
Colorado Department of Transportation  
Terry R. Maw, PLS #31161  
Farnsworth Group, Inc.  
4655 Forge Road, Suite 150  
Colorado Springs, CO 80907





**CITY OF LOVELAND**  
**HUMAN RESOURCES DEPARTMENT**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

**AGENDA ITEM:** 18  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Julia Holland, Human Resources Department  
**PRESENTER:** Julia Holland/Karen Rees

**TITLE:**

A Resolution Approving Time Off for City Employees In Recognition of City Employees' Flood Response Efforts

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action for Council to consider recognition for City employee efforts resulting from the 2013 Flood. On January 21, 2014, City Council requested staff bring a recommendation providing employees with an additional day of paid time off to recognize their efforts and dedication to the community during the 2013 Flood. Staff recommends providing all regular benefit-eligible employees the equivalent to one day paid time off and providing four hours paid time off for non-benefit eligible employees based on involvement in flood recovery efforts.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The City's 2014 adopted Budget does not include funding for the costs of the recommended action or alternative options reviewed. However, the costs will result in City Departments absorbing the soft or hard costs of the time off through their personnel/salary budgets.

**BACKGROUND:**

The following options were considered in accordance with Council's request to provide an additional paid day off to City employees:

1. Provide all regular benefit-eligible employees the equivalent to one day paid time off in 2014, and provide certain non-benefit eligible employees with four hours paid time off, as determined by Department Directors. This recommended option includes all benefit-eligible employees, and allows each Department Director to determine the non-benefit eligible employees in their departments who would receive recognition for their efforts during the flood. The identified non-benefit eligible employees may receive four hours of regular pay in lieu of time off because it may be difficult to schedule time away from work.

Staff considered several other options in developing this recommendation but each has some drawbacks:

2. Provide only regular benefit-eligible employees the equivalent to one day paid time off in 2014. This option includes only regular benefit-eligible employees, but fails to recognize the efforts of other non-benefitted employees who were involved in flood response and recovery.
3. Provide all employees the equivalent to one day paid time off in 2014. This option includes regular benefit and non-benefit eligible employees, as well as all temporary employees. The problem with this option is that it includes many who were not involved in the flood.
4. Provide all regular employees the equivalent to one day paid time off in 2014. This option includes only regular benefit and non-benefit eligible employees working full and part time. This option may also include many who have not been involved in the Flood.

City staff recommends Option 1 that provides a day off prorated based on the hours status for all regular benefit-eligible employees (full or part time), and provides four hours paid for certain, non-benefit-eligible employees involved in flood recovery, as determined by the supervising Department Director.

**REVIEWED BY CITY MANAGER:**

**LIST OF ATTACHMENTS:**

1. Resolution

**RESOLUTION # R-20-2014****A RESOLUTION APPROVING TIME OFF FOR CITY EMPLOYEES IN RECOGNITION OF CITY EMPLOYEES' FLOOD RESPONSE EFFORTS**

**WHEREAS**, the City of Loveland ("City") and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013 (the "2013 Flood"); and

**WHEREAS**, the 2013 Flood resulted in loss of life and injury and caused substantial damage and destruction to private and public property within the City and surrounding areas, including significant damage to the City's infrastructure, particularly its streets and bridges, park and recreational areas and its utility facilities; and

**WHEREAS**, during and after the 2013 Flood City employees acted quickly to preserve life and property, to restore access to local roadways and utilities, to assist the economic recovery of businesses and individual recovery in the community, and to mitigate the effects of the flooding; and

**WHEREAS**, on January 21, 2014, City Council directed City staff to develop a recommendation to City Council to provide employees with additional paid time off to recognize City employees' efforts and dedication to the community during the 2013 Flood; and

**WHEREAS**, City staff recommends that in 2014 all regular, benefit-eligible City employees receive one additional day of paid time off, which time off shall not accrue past 2014 or be payable and shall be pro-rated for regular, benefit-eligible, part-time employees, and that certain nonbenefit-eligible employees involved in flood recovery, as determined by the supervising Department Director, receive four hours of regular pay (the "Recommendations"); and

**WHEREAS**, the City Council finds that the Recommendations are in the best interests of the City.

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

**Section 1.** That the Recommendations are hereby approved.

**Section 2.** The City Manager is hereby authorized and directed to implement the Recommendations subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That this Resolution shall take effect as of the dates of its adoption.

ADOPTED this \_\_\_\_\_ day of February 18, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

A RESOLUTION APPROVING TIME OFF FOR CITY EMPLOYEES IN RECOGNITION OF CITY EMPLOYEES' FLOOD RESPONSE EFFORTS



**CITY OF LOVELAND**  
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 19  
**MEETING DATE:** 1/7/2014  
**TO:** City Council  
**FROM:** Brent Worthington, Finance  
**PRESENTER:** Brent Worthington

**TITLE:**

December 2013 Financial Report

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No action is required.

**SUMMARY:**

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending December 31, 2013.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures, including detailed reports on tax revenue and health claims as of December 31, 2013. Citywide Revenue (excluding internal transfers) of \$233,511,340 is 94.5% of year to date (YTD) budget or \$13,596,920 under the budget. Sales Tax collections are 103.7% of the YTD budget or \$1,304,512 over budget. Building Material Use Tax is 124.1% of YTD budget, or \$312,819 over budget. Sales and Use Tax collections combined were 106.0% of YTD budget or \$2,387,935 over budget. When the combined sales and use tax for the current year are compared to 2012 for the same period last year, they are higher by 7.0% or \$2,750,823.

Citywide total expenditures of \$226,507,143 (excluding internal transfers) are 77.3% of the YTD budget or \$66,641,587 under the budget.

**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. December Snapshot Presentation
2. Snapshot Report for December 2013
3. Rialto Quarterly Report



# Snapshot

## December 2013

**Brent Worthington**  
Finance Director

**Presented**  
February 18, 2014

# December 2013 Snapshot

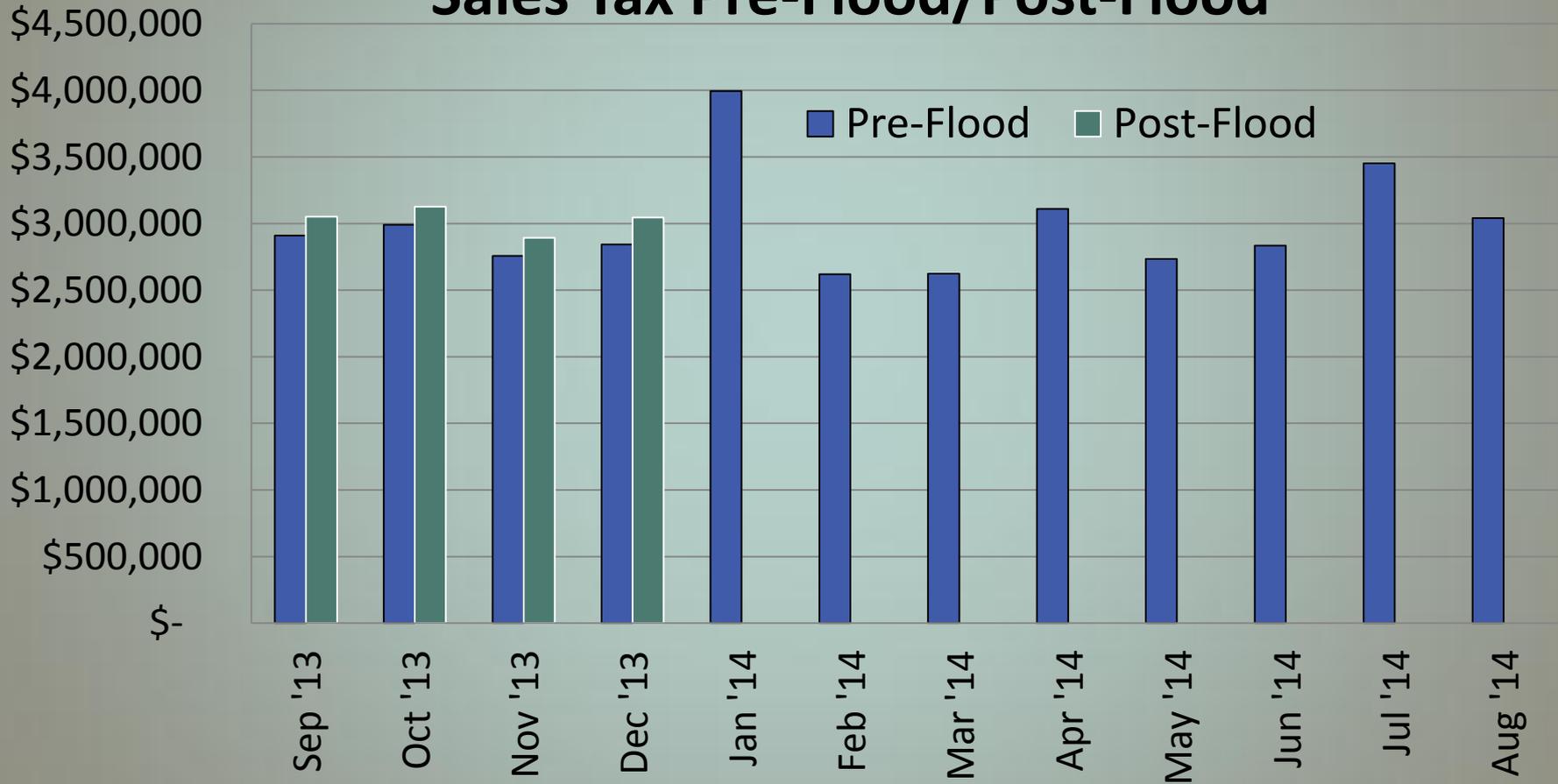
- Citywide Revenue
  - \$233.5 million, excluding transfers
  - 2.4% above budget projections
  
- Citywide Expenditures
  - \$226.5 million, excluding transfers
  - 22.7% below budget projections
  
- Citywide revenues exceed expenditures by \$7 million.

# December 2013 Snapshot

- General Fund Revenue
  - \$74.2 million YTD, excluding transfers
  - 5.7% above YTD Budget
  - 8.0% above same period last year
  
- Sales and Use Tax Revenue
  - \$40.8 million YTD
  - 5.8% above budget projections
  - 6.8% above same period as last year
  
- Sales Tax only
  - \$36.4 million YTD
  - 3.4% above budget projections
  - 6.5% above same period last year

# December 2013 Snapshot

## Sales Tax Pre-Flood/Post-Flood



# December 2013 Snapshot

- General Fund Expenditures
  - \$60.4 million YTD, excluding transfers
  - 7.7% below budget projections
  
- General Fund Revenues Exceed Expenditures by \$5.5 million
  
- Health Claims
  - December Claims \$635,123
  - 2013 YTD increased from \$6.2 mil to \$8.0 mil from same time as last year (28.6%)

# December 2013 Snapshot

## ➤ December “All Other Areas” on Geo Map

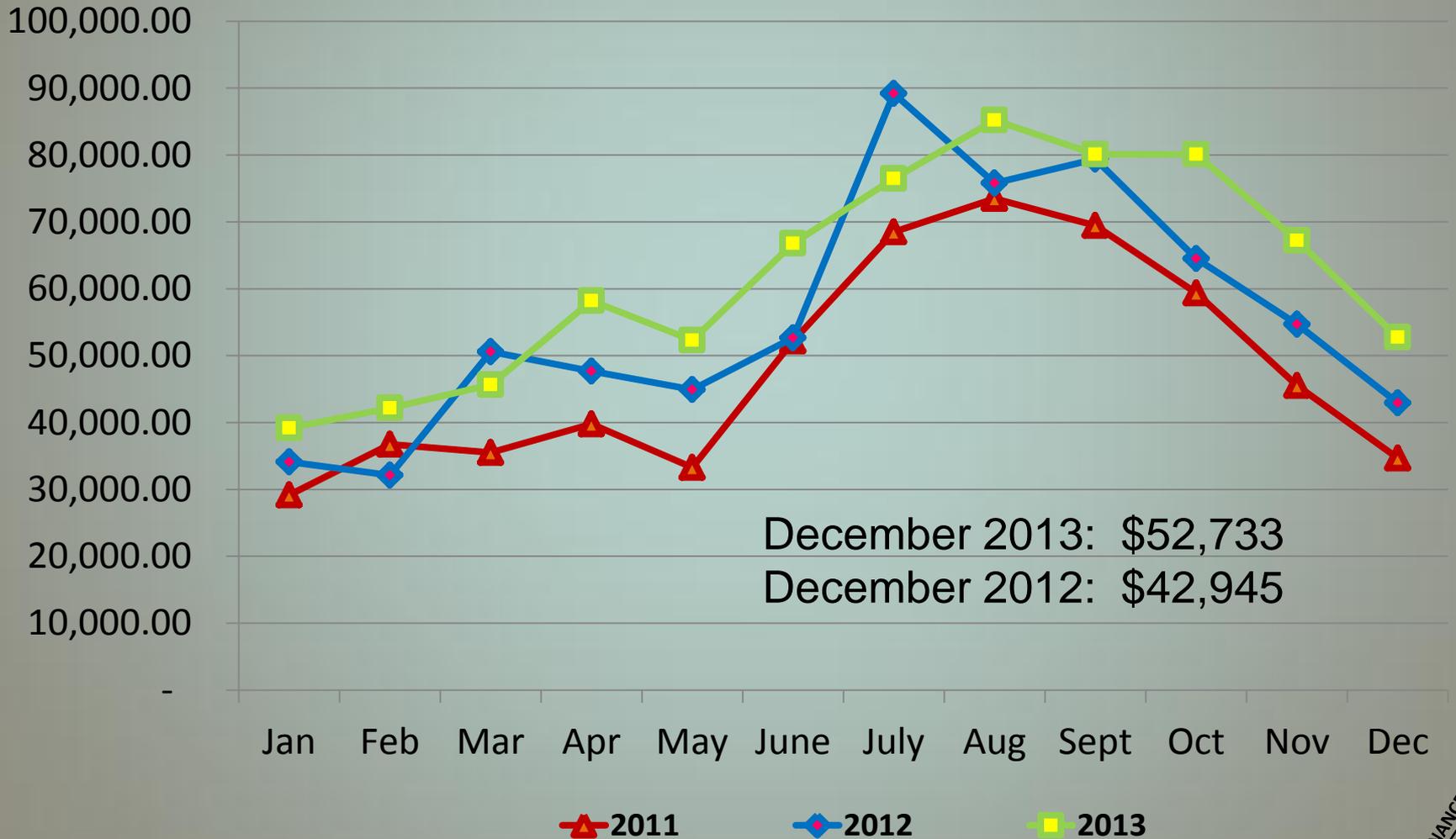
OCO Total	\$ 164,990.63	Out of Colorado
CNL Total	157,059.21	Colorado Not Loveland
OCL Total	7,210.25	Out of City limits
INT Total	2,242.40	Internet
INN Total	-	Innoprise Conversion
PEN Total	557.91	Pending (Application filed on-line for new account)
<b>Grand Total</b>	<b>\$ 332,060.40</b>	

## ➤ Other highlights

- Lodging tax YTD is \$746,135 (11.5% higher than 2012 YTD).

# Lodging Tax Comparison

## Lodging Tax



# Flood Report

<b>Cost Estimates</b>		
Operational	\$2,780,000	
Business Assistance	1,200,000	
Capital	26,530,000	
<b>Total</b>	<b>\$30,510,000</b>	

<b>Actual Expenditures</b>		
	<u>December</u>	<u>To Date</u>
<b>Total</b>	3,271,584	6,623,258

<b>Reimbursements Applied For</b>		
	<u>December</u>	<u>To Date</u>
FEMA	1,476,254	9,457,001
CIRSA	2,296,359	2,614,744
Other		
<b>Total</b>	<b>\$ 3,772,614</b>	<b>\$ 12,071,744</b>

<b>Reimbursements Received</b>		
	<u>December</u>	<u>To Date</u>
FEMA	\$ -	\$ -
CIRSA	500,000	750,000
Other	-	-
<b>Total</b>	<b>\$ 500,000</b>	<b>\$ 750,000</b>

# Rialto Theater Center

- Theater Revenue
  - \$212,129 YTD
  - \$201,901 YTD (previous year)
  
- Event Center Revenue
  - \$26,580 YTD
  - \$117,041 YTD (previous year)
  
- Theater Expense
  - \$496,550 YTD
  - \$496,957 (previous year)
  
- Event Center Expense
  - \$130,158 YTD
  - \$143,096 YTD (previous year)

# December 2013 Snapshot



**Questions?**

**Brent Worthington**  
Finance Director

**Presented**  
**February 18, 2014**

# Snapshot

## Monthly Financial Report

# December 2013

### A Snapshot In Time

- ◇ Citywide Revenue, excluding transfers between funds, \$233.5 million (2.4% below budget projections)
- ◇ Sales & Use Tax Collection, \$41 million (5.8% above budget projections)
- ◇ Citywide Expenditures, excluding transfers between funds, \$226.5 million (22.7% below budget projections)
- ◇ Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$7 million
- ◇ General Fund Revenue, excluding transfers between funds, \$74.2 million (5.7% above budget projections)
- ◇ General Fund Expenditures, excluding transfers between funds, \$60.4 million, (7.7% below budget projections)
- ◇ General Fund Revenues exceed Expenditures by \$5.5 million

Citywide Revenues & Expenditures	2-3
General Fund Revenues & Expenditures	4-5
Capital Projects	5
Tax Totals & Comparison	6-9
Geo Codes & Sales Tax SIC	10-12
Health Care Claims	13
Activity Measures	14
Rialto Theater Quarterly Report	15

### The Sales / Use Tax Basics

December 2013	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2013	\$ 35,219,650	\$ 2,000,000	\$ 1,300,000	\$ 38,519,650
Actual 2013	36,425,736	2,727,178	1,611,658	40,764,572
% of Budget	103.4%	136.4%	124.0%	105.8%
Actual 2012	\$ 34,187,877	\$ 2,468,822	\$ 1,500,063	\$ 38,156,762
Change from prior year	6.5%	10.5%	7.4%	6.8%

### Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes ongoing processes designed to ensure that the City retains a healthy financial outlook

**2013 Flood:** The 2013 Flood resulted in some businesses being closed during the clean-up/restoration process. In addition, reduced traffic on U.S. 34 due to the closure at the canyon may have reduced sales in businesses along the 34 Corridor. Tracking the impact of the flood on retail sales will provide important information related to the sustainability of City finances due to the flood event. Pre-flood to post flood tracking on a monthly basis began in the September 2013 Snapshot. Sales tax revenue for the four months included is above the previous year by \$615,551 or 5.4%.



# Citywide Revenues & Expenditures

Combined Statement of Revenues and Expenditures December 2013				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
<b>General Governmental</b>				
1 General Fund	\$ 5,650,203	\$ 74,366,580	\$ 70,422,460	105.6%
2 Special Revenue	5,070,846	14,297,094	16,184,510	88.3% <sup>1</sup>
3 Other Entities	1,603,580	27,140,738	28,719,340	94.5% <sup>2</sup>
4 Internal Service	1,322,311	16,874,609	16,565,430	101.9%
5 <i>Subtotal General Govt Operations</i>	<i>13,646,940</i>	<i>132,679,022</i>	<i>131,891,740</i>	<i>100.6%</i>
6 Capital Projects	(20,007)	8,250,121	6,768,420	121.9%
<b>Enterprise Fund</b>				
7 Water & Power	6,410,099	78,820,302	86,396,920	91.2% <sup>3</sup>
8 Stormwater	369,580	4,345,736	4,340,880	100.1%
9 Golf	30,908	3,317,729	3,592,100	92.4% <sup>3</sup>
10 Solid Waste	476,313	6,098,430	6,279,800	97.1%
11 <i>Subtotal Enterprise</i>	<i>7,286,899</i>	<i>92,582,197</i>	<i>100,609,700</i>	<i>92.0%</i>
<b>12 Total Revenue</b>	<b>\$ 20,913,831</b>	<b>\$ 233,511,340</b>	<b>\$ 239,269,860</b>	<b>97.6%</b>
	<i>Prior Year External Revenue</i>	209,169,149		
	<i>Increase From Prior Year</i>	11.6%		
13 Internal Transfers	10,201,875	13,958,574	40,466,610	34.5%
<b>14 Grand Total Revenues</b>	<b>\$ 31,115,706</b>	<b>\$ 247,469,914</b>	<b>\$ 279,736,470</b>	<b>88.5%</b>
<b>EXPENDITURES</b>				
<b>General Governmental</b>				
15 General Fund	7,445,673	59,195,318	63,951,450	92.6%
16 Special Revenue	1,278,565	10,571,377	9,153,130	115.5% <sup>4</sup>
17 Other Entities	1,796,433	22,898,458	23,895,980	95.8%
18 Internal Services	2,037,742	16,503,948	17,274,260	95.5%
19 <i>Subtotal General Gov't Operations</i>	<i>12,558,414</i>	<i>109,169,101</i>	<i>114,274,820</i>	<i>95.5%</i>
20 Capital	7,137,662	38,624,250	98,262,620	39.3%
<b>Enterprise Fund</b>				
21 Water & Power	8,655,141	66,658,024	70,290,440	94.8% <sup>6</sup>
22 Stormwater	397,828	2,746,068	2,265,710	121.2% <sup>5</sup>
23 Golf	866,651	3,478,380	3,027,130	114.9% <sup>6</sup>
24 Solid Waste	1,505,660	5,831,320	5,028,010	115.9% <sup>7</sup>
25 <i>Subtotal Enterprise</i>	<i>11,425,280</i>	<i>78,713,792</i>	<i>80,611,290</i>	<i>97.6%</i>
<b>26 Total Expenditures</b>	<b>\$ 31,121,355</b>	<b>\$ 226,507,143</b>	<b>\$ 293,148,730</b>	<b>77.3%</b>
	<i>Prior Year External Expenditures</i>	191,071,665		
	<i>Increase (-Decrease) From Prior Year</i>	18.5%		
27 Internal Transfers	10,201,875	13,958,574	40,474,000	34.5%
<b>28 Grand Total Expenditures</b>	<b>\$ 41,323,230</b>	<b>\$ 240,465,718</b>	<b>\$ 333,622,730</b>	<b>72.1%</b>

<sup>1</sup> Lower than anticipated Transportation intergovernmental revenue due to the timing of grant drawdowns, lower than anticipated State Revenue Sharing from HUTF and motor vehicle fees, and Transportation Utility Fees coming in lower than anticipated.

<sup>2</sup> Timing of the drawdown of Federal grants to the Airport related to capital projects.

<sup>3</sup> Lower than anticipated revenue resulting from inclement weather and flooding.

<sup>4</sup> Repairs and Maintenance budgeted for as capital construction; offset by savings in capital accounts in line 20.

<sup>5</sup> Budgeted Stormwater repair and maintenance work was able to begin sooner than originally planned.

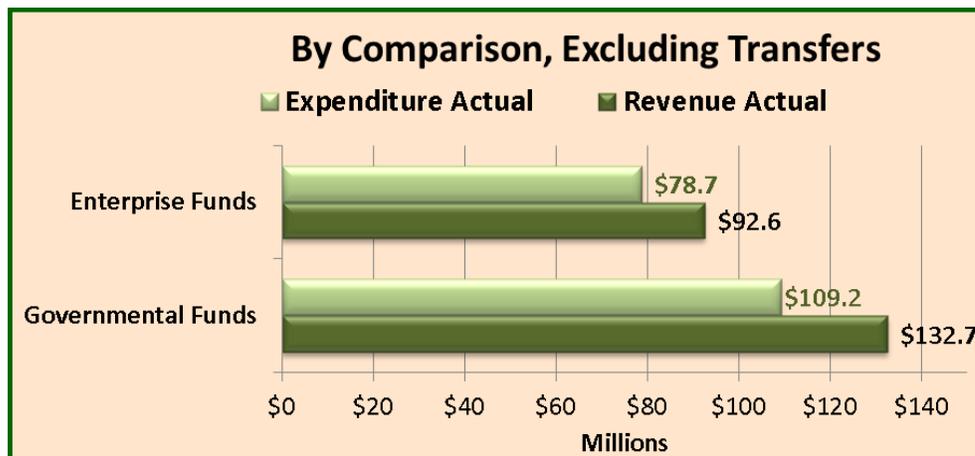
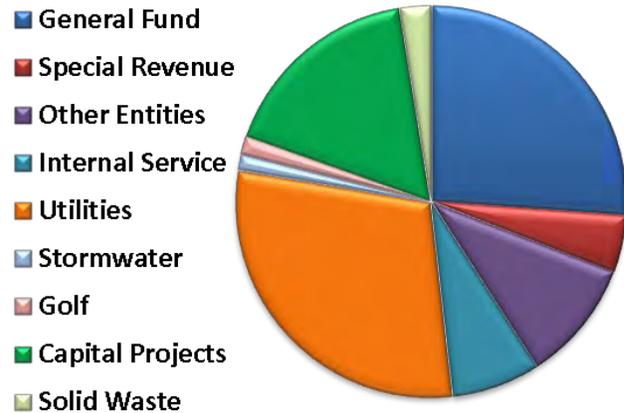
<sup>6</sup> Budgeted Flood repairs not completed.

<sup>7</sup> Debris Removal related to flood damage.

**YTD Operating Revenues of \$233.5 Million**



**YTD Operating Expenditures of \$226.5 Million**



- ◆ General Fund Revenue, excluding transfers between funds, \$74.4 million (5.6% above budget projections)
  - \* 8.0% above 2012 YTD
- ◆ General Fund Expenditures, excluding capital and transfers between funds, \$59.2 million (7.4% below budget projections)
  - \* 2.4% below 2012 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$78.8 million (8.8% below budget projections)
  - \* 4.6% above 2012 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$66.7 million (5.2% below budget projections)
  - \* 20.9% above 2012 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$27.1 million (5.5% below budget projections)
  - \* 9.4% above 2012 YTD
- ◆ Other Entities Expenditures, excluding capital and transfers between funds, \$22.9 million (4.2% below budget projections)
  - \* 6.8% below 2012 YTD

# General Fund Revenues & Expenditures

General Fund Revenue & Expenditures December 2013				
REVENUES	Current Month	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 33,264	\$ 7,470,842	\$ 7,439,950	100.4%
3 Sales tax	2,946,709	36,425,736	35,219,650	103.7%
4 Building use tax	105,740	1,611,658	1,300,000	124.1% <sup>1</sup>
5 Auto use tax	206,740	2,727,178	2,000,000	138.5%
6 Other taxes	1,427	2,722,658	2,628,000	103.6%
7 Intergovernmental	54,524	555,860	380,450	146.1%
8 License & permits				
9 Building permits	103,243	1,531,603	1,322,500	115.8%
10 Other permits	31,612	187,547	229,400	81.8%
11 Charges for services	902,188	11,904,919	11,503,620	103.5%
12 Fines & forfeitures	51,404	871,873	1,068,280	81.6% <sup>2</sup>
13 Interest income	44,418	275,327	340,160	80.9% <sup>3</sup>
14 Miscellaneous	1,019,362	7,809,567	6,828,850	114.4%
15 <i>Subtotal</i>	<i>5,643,643</i>	<i>74,237,780</i>	<i>70,260,860</i>	<i>105.7%</i>
16 Interfund transfers	6,560	128,800	161,600	79.7%
<b>17 Total Revenue</b>	<b>\$ 5,507,192</b>	<b>\$ 74,223,567</b>	<b>\$ 70,422,460</b>	<b>105.6%</b>
EXPENDITURES				
Operating Expenditures				
18 Legislative	13,681	118,263	139,210	85.0%
19 Executive & Legal	300,804	2,414,437	2,585,740	93.4% <sup>5</sup>
20 Economic Development	306,240	1,825,389	3,950,060	46.2% <sup>4</sup>
21 Cultural Services	252,184	1,708,607	1,875,810	91.1% <sup>6</sup>
22 Development Services	361,966	2,960,670	3,416,990	86.6% <sup>7</sup>
23 Finance	746,234	4,232,490	4,303,450	98.4% <sup>8</sup>
24 Fire & Rescue	7,372	21,868	21,200	0.0%
25 Human Resources	106,153	965,919	1,049,370	92.0% <sup>9</sup>
26 Information Technology	378,654	3,510,155	3,788,040	92.7% <sup>10</sup>
27 Library	348,795	2,788,066	2,883,320	96.7%
28 Parks & Recreation	1,124,981	9,258,450	9,887,240	93.6% <sup>11</sup>
29 Police	1,990,563	17,083,730	17,308,730	98.7%
30 Public Works	897,789	5,180,256	5,276,030	98.2%
31 Non-Departmental	1,023,016	8,271,213	8,860,510	93.3%
32 <i>Subtotal Operating</i>	<i>7,858,432</i>	<i>60,339,511</i>	<i>65,345,700</i>	<i>92.3%</i>
33 Internal Transfers	5,322,592	8,499,803	10,751,830	79.1%
<b>34 Total Expenditures</b>	<b>\$ 13,181,024</b>	<b>\$ 68,839,314</b>	<b>\$ 76,097,530</b>	<b>90.5%</b>

<sup>1</sup> Higher than projected use tax revenue from auto sales and building activity above projected volume.

<sup>2</sup> Lower than projected revenue from traffic fines, parking fines, and fines for municipal ordinance violations.

<sup>3</sup> Lower than projected revenue from interest income due to lower than projected rates.

<sup>4</sup> Lower than budgeted expense in Economic Development Department for the Economic Incentive account.

<sup>5</sup> Lower than budgeted expense in the Executive Department due to lower than anticipated computer supplies and printing costs

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# Monthly Financial Report

- <sup>6</sup> Lower than budgeted expense in Cultural Services due to timing of expenses for building rental for the collection storage and for parking space.
- <sup>7</sup> Lower than budgeted expense in Development Services due to timing of expenses for the Highway 287 Corridor Plan.
- <sup>8</sup> Lower than budgeted expense in Finance due to vacancies.
- <sup>9</sup> Lower than budgeted expense in Human Resources due to lower than anticipated operating costs.
- <sup>10</sup> Lower than budgeted expense in Information Technology due to lower than anticipated computer replacement costs and telephone repair expense.
- <sup>11</sup> Lower than budgeted expense in Parks in Recreation due to timing of flood repair expense.

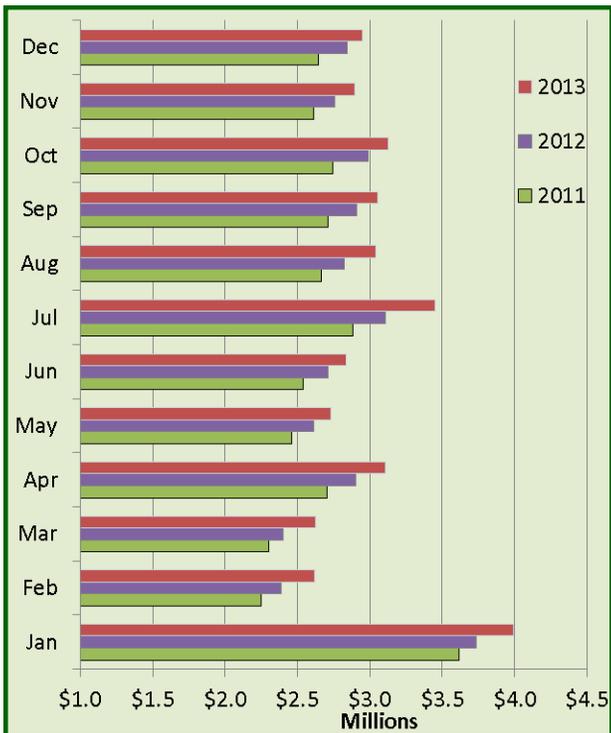
## Capital Projects \$500,000+

Project Title	2013 Budget	2013 Expenditures	Remaining 2013 Budget	% of 2013 Budget (Exp/Bud)
<b>Water Capital</b>				
Water Treatment Plant Phase II Expansion (38 MGD)	\$ 2,194,510	\$ 1,284,136	\$ 910,374	58.52%
Filter Plant No. 2 Pipe Gallery Improvements	943,110	942,869	241	99.97%
W 29th St. & W 1st St. Water Line Replacement	725,910	38,152	687,759	5.26%
Morning Drive Alternate Waterline 30"	959,700	959,671	29	100.00%
2013 Small Diameter Waterline Replacement	995,300	21,698	973,602	2.18%
<b>Raw Water Capital</b>				
Windy Gap Firming Project	1,218,000	81,225	1,136,775	6.67%
Purchase of Colorado-Big Thompson Project (CBT)	820,090	-	820,090	0.00%
<b>Wastewater Utility Capital</b>				
WWTP Digester System Improvements	3,190,270	85,471	3,104,799	2.68%
Digester Mixing System	1,200,000	-	1,200,000	0.00%
Digester Building Code Compliance	900,000	-	900,000	0.00%
South Horseshoe Lift Station Submersible	1,199,690	843,692	355,998	70.33%
<b>Power Capital</b>				
East Sub to Crossroads Sub on Railroad	1,379,732	1,347,587	32,145	97.67%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,299	48,209	1,290,090	3.60%
Airport Sub North to Crossroads and South to Kendall Pkwy	683,260	547,796	135,464	80.17%
Callisto (vault 2716) East along 5th, North on Boyd Lake to railroad xing	570,000	2,157	567,843	0.38%
SW219 on old railroad North on VanBuren, East on 22nd to SW126	670,250	16,297	653,953	2.43%
Crossroads Substation - purchase new transformer	600,000	-	600,000	0.00%
Crossroads Substation - new switgear & transformer install	512,900	-	512,900	0.00%
<b>Stormwater Capital</b>				
Washington Ave Outfall Phase 4	750,000	2,298	747,702	0.31%
29th and Monroe Outfall (Dry Creek)	1,000,000	-	1,000,000	0.00%
MeHaffey Park Regional Detention Pond	569,451	67,440	502,011	11.84%
<b>Streets Transportation Program</b>				
2013 Street Rehabilitation	4,441,840	4,041,581	400,259	90.99%
Fiber Optic Network to Signals and Other Facilities	1,071,130	94,301	976,829	8.80%
Boise & 37th Intersection Improvements	540,060	91,112	448,948	16.87%
<b>All Other</b>				
Facilities Maintenance Capital Projects	500,000	500,000	-	100.00%
Open Lands Acquisition	1,290,000	818	1,289,182	0.06%
Fire Station 2 Relocation	3,534,500	-	3,534,500	0.00%
Service Center Phase III	13,209,070	2,338,110	10,870,960	17.70%
Vehicle Wash	1,315,000	420,699	894,301	31.99%
Mehaffey Park	8,550,000	1,124,497	7,425,503	13.15%
River's Edge Natural Area	\$ 1,808,840	\$ 1,658,275	\$ 150,565	91.68%



## Sales & Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,799,760	\$ 4,039,678	\$ 4,345,835	\$ 4,136,490	5.1%
Feb	2,465,447	2,649,229	2,906,780	2,528,010	15.0%
Mar	2,517,162	2,618,052	3,033,347	3,028,120	0.2%
Apr	3,022,770	3,215,437	3,397,074	3,286,040	3.4%
May	2,769,526	2,966,032	3,150,201	2,991,970	5.3%
Jun	2,800,184	3,136,015	3,284,808	3,127,370	5.0%
Jul	3,129,254	3,480,123	3,882,561	3,495,310	11.1%
Aug	2,961,686	3,171,055	3,392,757	3,154,400	7.6%
Sep	3,008,637	3,225,155	3,379,303	3,211,640	5.2%
Oct	2,944,433	3,421,098	3,452,052	3,327,150	3.8%
Nov	2,853,360	3,092,095	3,280,666	3,091,770	6.1%
Dec	2,933,671	3,142,793	3,259,189	3,141,380	3.8%
	\$35,205,889	\$38,156,762	\$40,764,573	\$38,519,650	
YTD	\$35,205,889	\$38,156,762	\$40,764,573	\$38,519,650	5.8%



## Retail Sales Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,613,881	\$ 3,733,309	\$ 3,995,194	\$ 3,909,960	2.2%
Feb	2,249,749	2,390,409	2,619,453	2,285,380	14.6%
Mar	2,299,237	2,403,380	2,622,808	2,715,660	-3.4%
Apr	2,702,024	2,905,558	3,109,701	3,008,620	3.4%
May	2,462,213	2,614,500	2,733,983	2,710,640	0.9%
Jun	2,536,541	2,711,906	2,835,171	2,878,350	-1.5%
Jul	2,882,075	3,105,564	3,453,149	3,210,310	7.6%
Aug	2,667,674	2,823,319	3,039,219	2,866,890	6.0%
Sep	2,710,738	2,909,008	3,051,797	2,909,990	4.9%
Oct	2,746,866	2,991,033	3,125,566	3,035,070	3.0%
Nov	2,610,980	2,757,932	2,892,986	2,824,870	2.4%
Dec	2,647,162	2,841,959	2,946,709	2,863,910	2.9%
	\$32,129,139	\$34,187,877	\$36,425,736	\$35,219,650	
YTD	\$32,129,139	\$34,187,877	\$36,425,736	\$35,219,650	3.4%

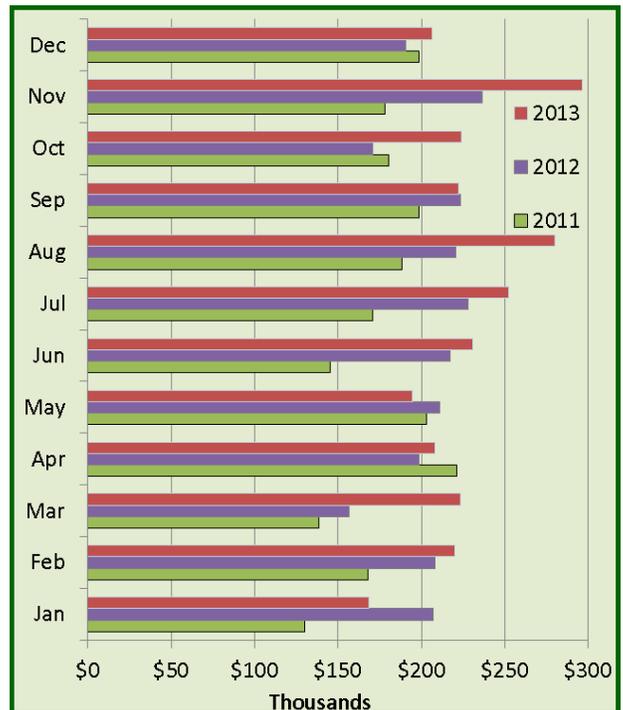
## Building Materials Use Tax

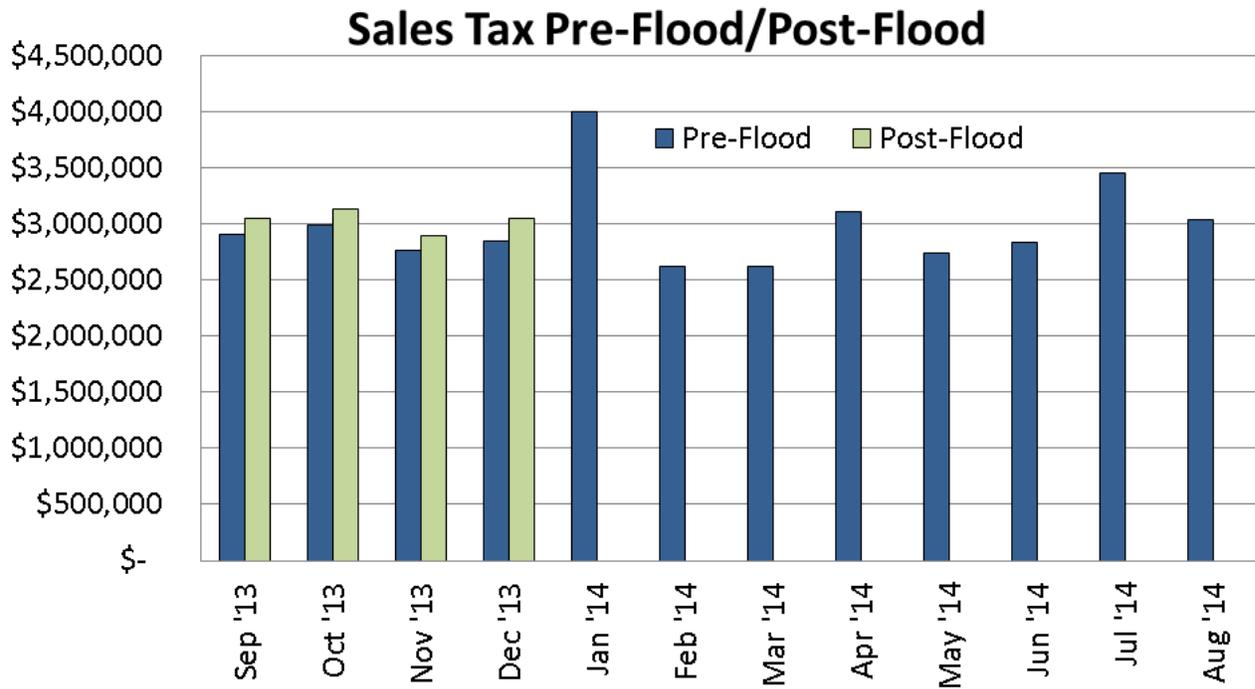
	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 55,542	\$ 99,108	\$ 181,907	\$ 85,270	113.3%
Feb	47,621	50,703	67,440	83,620	-19.3%
Mar	79,590	57,845	187,222	164,570	13.8%
Apr	99,569	111,197	79,229	110,120	-28.1%
May	104,373	140,470	221,834	104,700	111.9%
Jun	118,318	207,024	218,722	100,770	117.1%
Jul	76,488	146,570	176,829	108,080	63.6%
Aug	105,871	127,261	73,524	104,580	-29.7%
Sep	99,544	92,415	105,174	117,480	-10.5%
Oct	17,021	259,279	102,584	96,490	6.3%
Nov	64,211	97,778	91,453	100,250	-8.8%
Dec	88,033	110,414	105,740	124,070	-14.8%
	\$956,181	\$1,500,063	\$1,611,658	\$1,300,000	
YTD	\$956,181	\$1,500,063	\$1,611,658	\$1,300,000	24.0%



## Motor Vehicle Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 130,337	\$ 207,261	\$ 168,734	\$ 141,260	19.4%
Feb	168,077	208,117	219,886	159,010	38.3%
Mar	138,335	156,828	223,317	147,890	51.0%
Apr	221,177	198,682	208,144	167,300	24.4%
May	202,940	211,062	194,384	176,630	10.1%
Jun	145,325	217,084	230,915	148,250	55.8%
Jul	170,691	227,989	252,583	176,920	42.8%
Aug	188,141	220,475	280,014	182,930	53.1%
Sep	198,355	223,732	222,332	184,170	20.7%
Oct	180,546	170,786	223,902	195,590	14.5%
Nov	178,169	236,385	296,227	166,650	77.8%
Dec	198,476	190,420	206,740	153,400	34.8%
	\$2,120,569	\$2,468,822	\$2,727,178	\$2,000,000	
YTD	\$2,120,569	\$2,468,822	\$2,727,178	\$2,000,000	36.4%





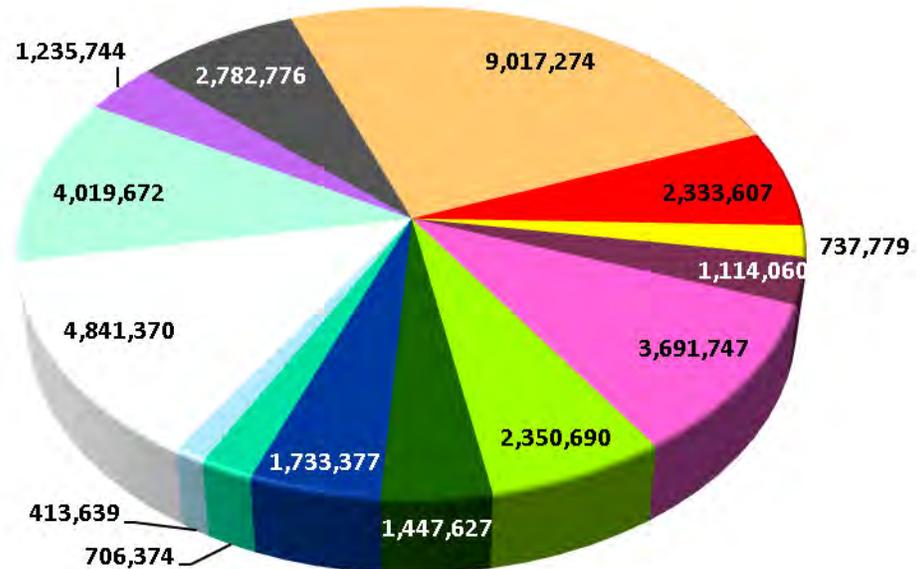
	Pre-Flood	Post-Flood
Sep 2013	\$ 2,909,008	\$ 3,051,797
Oct 2013	2,991,034	3,125,566
Nov 2013	2,757,932	2,892,986
Dec 2013	2,841,959	3,045,135
Jan 2014	3,995,194	
Feb 2014	2,619,453	
Mar 2014	2,622,808	
Apr 2014	3,109,701	
May 2014	2,733,983	
Jun 2014	2,835,171	
Jul 2014	3,452,149	
Aug 2014	3,040,219	
	\$ 35,908,611	\$ 12,115,484

<b>Cost Estimates</b>			
Operational	\$	2,780,000	
Business Assistance		1,200,000	
Capital		26,530,000	
<b>Total</b>	<b>\$</b>	<b>30,510,000</b>	
<b>Actual Expenditures</b>			
		December	To Date
<b>Total</b>		3,271,584	6,623,258
<b>Reimbursements Applied For</b>			
		December	To Date
FEMA		1,476,254	9,457,001
CIRSA		2,296,359	2,614,744
Other			
<b>Total</b>	<b>\$</b>	<b>3,772,614</b>	<b>\$ 12,071,744</b>
<b>Reimbursements Received</b>			
		December	To Date
FEMA	\$	-	\$ -
CIRSA		500,000	750,000
Other		-	-
<b>Total</b>	<b>\$</b>	<b>500,000</b>	<b>\$ 750,000</b>

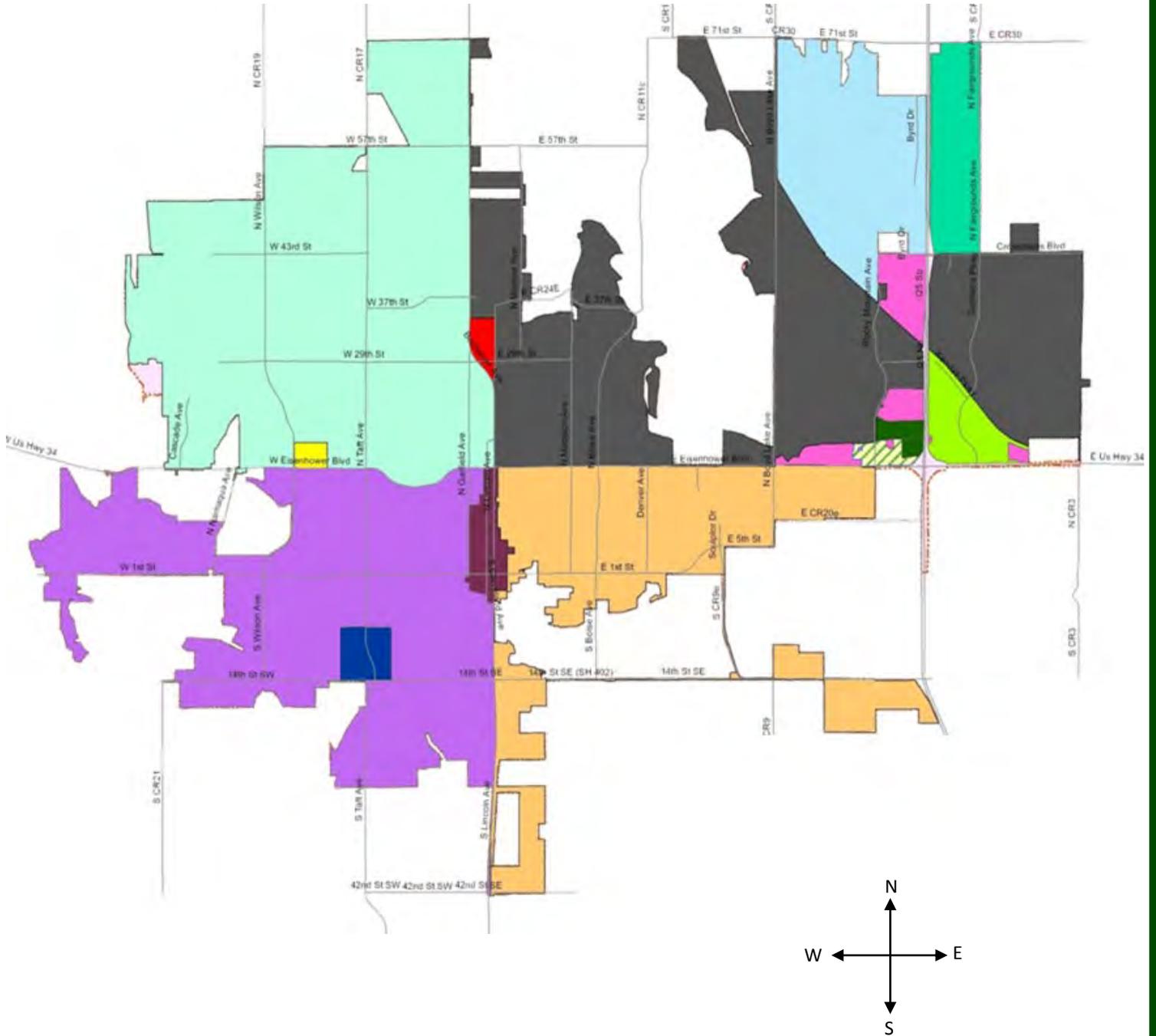


Geographical Area	YTD 2013	YTD 2012	Change
South East Loveland	\$9,017,274	\$8,560,280	5.3%
North West Loveland	4,019,672	3,941,846	2.0%
Centerra	3,691,747	3,333,385	10.8%
North East Loveland	2,782,776	2,564,548	8.5%
Promenade Shops	2,350,690	2,100,045	11.9%
Orchards Shopping Center	2,333,607	2,247,768	3.8%
Thompson Valley Shopping Center	1,733,377	1,622,842	6.8%
Outlet Mall	1,447,627	1,400,596	3.4%
South West Loveland	1,235,744	1,155,860	6.9%
Downtown	1,114,060	1,019,405	9.3%
Columbine Shopping Center	737,779	706,149	4.5%
The Ranch	706,374	657,651	7.4%
Airport	413,639	405,578	2.0%
All Other Areas	4,841,370	4,471,921	8.3%
<b>Total</b>	<b>\$36,425,736</b>	<b>\$34,187,877</b>	<b>6.5%</b>

- North West Loveland
- North East Loveland
- Orchards Shopping Center
- Downtown
- Promenade Shops
- Thompson Valley Shopping Center
- Airport
- South West Loveland
- South East Loveland
- Columbine Shopping Center
- Centerra
- Outlet Mall
- The Ranch
- All Other Areas

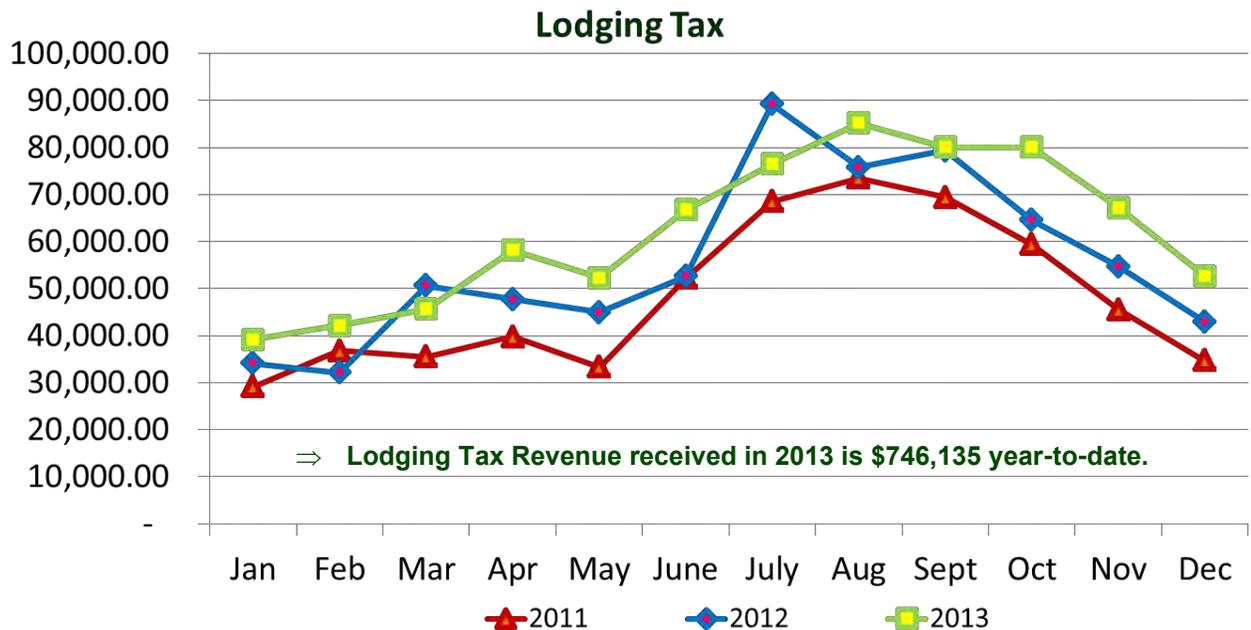


Map →



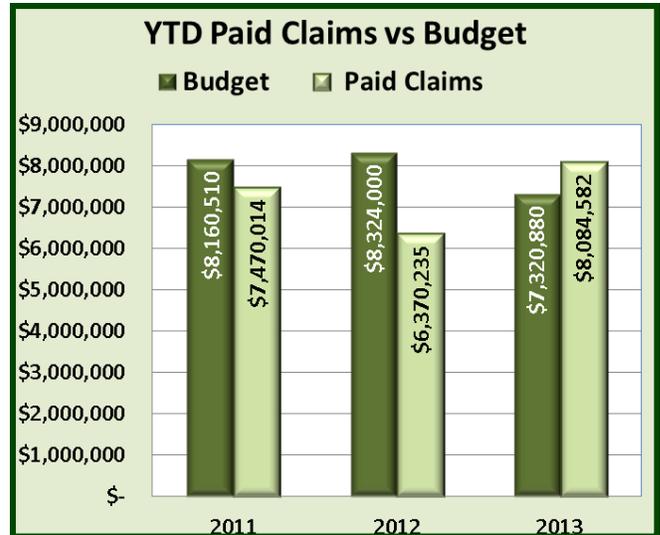
# Sales Tax Collections

Description	YTD 2013	YTD 2012	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 7,911,490	\$ 7,731,895	\$ 179,595	2.3%	21.7%	21.7%
Restaurants & Bars	4,715,323	4,375,427	339,896	7.8%	12.9%	34.7%
Grocery Stores & Specialty Foods	3,622,745	3,369,334	253,411	7.5%	9.9%	44.6%
Clothing & Clothing Accessories Stores	2,669,120	2,524,480	144,640	5.7%	7.3%	51.9%
Motor Vehicle Dealers, Auto Parts & Leasing	2,582,659	2,271,767	310,892	13.7%	7.1%	59.0%
Building Material & Lawn & Garden Supplies	2,461,189	2,298,628	162,561	7.1%	6.8%	65.8%
Sporting Goods, Hobby, Book & Music Stores	1,926,207	1,726,445	199,762	11.6%	5.3%	71.1%
Utilities	1,815,154	1,705,518	109,636	6.4%	5.0%	76.1%
Broadcasting & Telecommunications	1,290,596	1,334,117	(43,521)	-3.3%	3.5%	79.6%
Used Merchandise Stores	1,117,068	1,068,684	48,384	4.5%	3.1%	82.7%
Beer, Wine & Liquor Stores	894,914	826,642	68,272	8.3%	2.5%	85.1%
Hotels, Motels & Other Accommodations	829,303	760,498	68,805	9.0%	2.3%	87.4%
Consumer Goods & Commercial Equipment Rental	734,310	594,356	139,954	23.5%	2.0%	89.4%
Health & Personal Care Stores	602,462	564,338	38,124	6.8%	1.7%	91.1%
Electronics & Appliance Stores	479,158	461,841	17,317	3.7%	1.3%	92.4%
Furniture & Home Furnishing Stores	474,919	441,695	33,224	7.5%	1.3%	93.7%
Electronic Shopping & Mail-Order Houses	465,353	465,210	143	0.0%	1.3%	95.0%
Office Supplies, Stationery & Gift Stores	324,513	315,452	9,061	2.9%	0.9%	95.9%
Gasoline Stations with Convenience Stores	312,917	271,342	41,575	15.3%	0.9%	96.7%
All Other Categories	1,196,336	1,080,209	116,127	10.8%	3.3%	100.0%
<b>Total</b>	<b>\$ 36,425,736</b>	<b>\$ 34,187,878</b>	<b>\$ 2,237,858</b>	<b>6.5%</b>	<b>100.0%</b>	



Claims Incurred				
		OAP	HRA	Total
2013	Dec	536,974	98,149	635,123
	YTD	6,345,462	1,678,669	8,024,131
2012	Dec	159,617	77,140	236,757
	YTD	4,857,571	1,382,465	6,240,036
Change	Dec	377,357	21,009	398,366
	% Dec	236.4%	27.2%	168.3%
	YTD	1,487,891	296,203	1,784,095
	% YTD	30.6%	21.4%	28.6%

⇒ HRA—Health Reimbursement Arrangement  
 ⇒ OAP—Open Access Plan



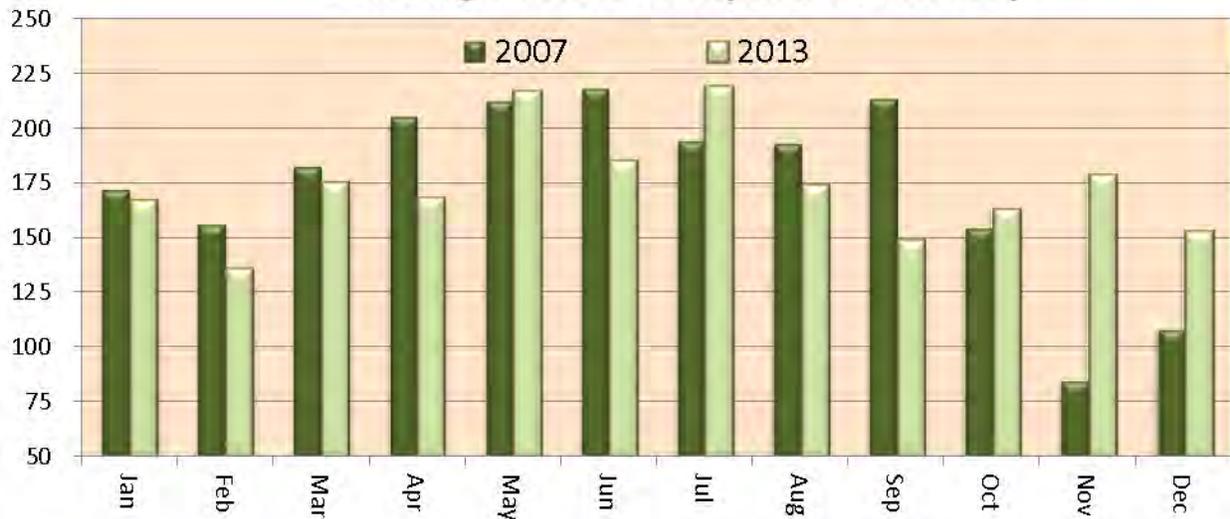
Incurred claims are total expenses the City is obligated to pay for claims, including claims paid and unpaid. Paid claims are those claims that have been paid and reconciled through the bank to-date, which may not reflect Stop Loss reimbursements or other refunds.



Comparison of YTD Claims Over \$25k				
December	2010	2011	2012	2013
# of claims	53	66	51	69
YTD Cost of high claims	\$4,134,990	\$3,376,922	\$2,780,612	\$4,005,604

⇒ 2013 # of StopLoss claims: 4  
 (claims over \$150k paid by StopLoss Carrier)

## Building Permit Comparison History



Measures	Dec 2011	Dec 2012	Dec 2013	2011 YTD	2012 YTD	2013 YTD
# of Building Permits	130	154	153	1,740	2,058	2,085
Building Permit Valuations	\$ 9,749,017	\$ 7,543,284	\$ 7,543,180	\$ 78,717,041	\$ 126,746,938	\$ 155,023,820
# of Certified Occupancies	21	36	9	231	314	315
Net # of Sales Tax Licenses	(48)	13	(7)	193	(67)	(302)
New Residential Electric Meter Sets	7	95	38	335	264	298
# of Utility Bills Sent	35,984	36,347	36,588	391,450	397,260	438,510
Rounds of Golf	-	694	875	117,204	122,155	107,534
\$ Average Health Claim Costs/Emp.	\$ 877.77	\$ 365.93	\$ 981.64	\$ 959.69	\$ 855.12	\$ 1,025.79
KWH Demand (kH)	105,024	101,596	105,191	1,174,414	1,190,613	1,328,171
KWH Purchased (kwh)	64,126,663	62,688,462	64,750,816	667,395,077	679,818,254	752,038,685
Gallons of Water Sold	152,186,164	151,780,723	156,219,108	3,519,549,558	4,038,497,023	3,423,021,352
# of Workers' Comp Claims 2013	11	4	10	105	94	114
\$ of Workers' Comp Claims Paid 2013	\$ 39,057.20	\$ 90,907.00	\$ 28,729.00	\$ 209,982.05	\$ 523,146.05	\$ 534,131.95
# of Total Open Claims	22	10	23	<i>Not Cumulative</i>		
\$ of Total Open Claims	185,378	216,104	360,246	<i>Not Cumulative</i>		
\$ of Lodging Tax Collected	\$ 34,684.54	\$ 42,944.92	\$ 52,733.13	\$ 542,987.72	\$ 625,646.21	\$ 746,134.95

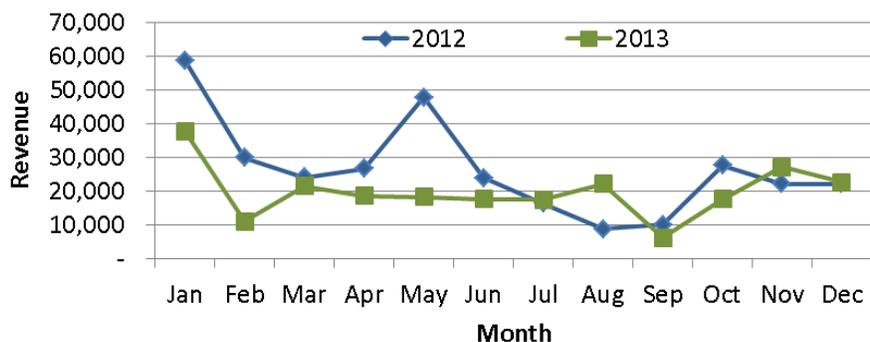
# Rialto Theater Center - Quarterly Financial Report

**City of Loveland**  
**Statement of Results of Operations for Rialto Theatre Center**  
 For Quarter Ending 09/30/2013

	YTD Amount	YTD Budget	% of Budget	2012 YTD	Change from Prior Year
<b>Rialto Theatre</b>					
<b>Rialto Theatre Revenues</b>					
Revenues from Operations	\$ 187,129.46	\$ 186,500.00	100.34%	\$ 183,286.09	2.10%
Gifts/Donations	-	18,000	0.00%	18,615	-100.00%
Transfers from Lodging Tax Fund	25,000	25,000	100.00%	-	0.00%
<b>Total Rialto Theatre Revenues</b>	<b>212,129</b>	<b>229,500</b>	<b>92.43%</b>	<b>201,901</b>	<b>5.07%</b>
<b>Rialto Theatre Expenses</b>					
Personnel Costs	242,496	263,190	92.14%	257,870	-5.96%
Supplies	47,584	38,190	124.60%	41,454	14.79%
Purchased Services	102,183	121,830	83.87%	159,340	-35.87%
Capital Outlay	7,137	10,000	71.37%	38,293	-81.36%
<b>Total Direct Costs</b>	<b>399,400</b>	<b>433,210</b>	<b>92.20%</b>	<b>496,957</b>	<b>-19.63%</b>
Administrative Allocations	97,150	97,150	100.00%	-	0.00%
<b>Total Rialto Theatre Expenses</b>	<b>496,550</b>	<b>530,360</b>	<b>93.63%</b>	<b>496,957</b>	<b>-0.08%</b>
<b>Rialto Theatre Net Income (Loss)</b>	<b>\$ 284,420.63</b>	<b>\$ (300,860.00)</b>	<b>94.54%</b>	<b>\$ (295,056.00)</b>	<b>-3.60%</b>
<b>Rialto Event Center</b>					
<b>Rialto Event Center Revenues</b>					
Revenues from Operations	26,580	21,000	126.57%	12,057	120.45%
Gifts/Donations	-	-	0.00%	104,984	-100.00%
<b>Total Event Center Revenues</b>	<b>26,580</b>	<b>21,000</b>	<b>126.57%</b>	<b>117,041</b>	<b>-77.29%</b>
<b>Rialto Event Center Expenses</b>					
Personal Services	76,380	85,290	89.55%	57,923	31.87%
Supplies	9,314	2,000	465.68%	84,698	-89.00%
Purchased Services	44,464	52,630	84.48%	475	9260.88%
Capital Outlay	-	20,320	0.00%	-	0.00%
<b>Total Rialto Event Center Expenses</b>	<b>\$ 130,158</b>	<b>\$ 160,240</b>	<b>81.23%</b>	<b>\$ 143,096</b>	<b>-9.04%</b>
<b>Rialto Event Center Net Income (Loss)</b>	<b>\$ (103,578)</b>	<b>\$ (139,240)</b>	<b>74.39%</b>	<b>\$ (26,056)</b>	<b>297.54%</b>
<b>Grand Total Rialto Theatre Center Revenues</b>	<b>238,710</b>	<b>250,500</b>	<b>95.29%</b>	<b>318,942</b>	<b>-25.16%</b>
<b>Grand Total Rialto Theatre Center Expenses</b>	<b>626,708</b>	<b>690,600</b>	<b>90.75%</b>	<b>640,053</b>	<b>-2.08%</b>
<b>Rialto Theatre Center Net Income (Loss)</b>	<b>\$ (387,998)</b>	<b>\$ (440,100)</b>	<b>88.16%</b>	<b>\$ (321,111)</b>	<b>20.83%</b>

<sup>1</sup>Rialto Event Center 2012 Net Income/(Loss), NET OF \$105,000 donation = (131,039)

## Rialto Theater Center Revenue by Month



**For more information regarding this report contact:**

**Brent Worthington, Finance Director**

**970.962.2300 or**

**[brent.worthington@cityofloveland.org](mailto:brent.worthington@cityofloveland.org)**

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**CITY OF LOVELAND**  
**CULTURAL SERVICES DEPARTMENT**

Rialto Theater  
 228 E. 4th St., Loveland, CO 80537  
 (970) 962-2120 • FAX 962-2422

February 3, 2014

TO: City Council and City Manager

FROM: Susan Ison, Cultural Services Director

RE: Rialto Theater Center Quarterly Report

**Staff Changes**

Since the last quarterly report, dated October 31, 2013, several staff changes have occurred. Rich Harris started work as the new Rialto Theater Center Manager on November 5<sup>th</sup>. In September, Dave Klith, Facilities staff, became Scheduling Coordinator for the “event side” of the RTC. Management focus has been on transfer of information from the existing staff to the new staff. The Theater Manager needed time to get up to speed on procedures and policies (department and city-wide), while managing the activities in the Theater daily and preparing contracts for future performances. We are very pleased to have him at the helm.

Although the Quarterly Financial Report ends on 12/31/2013, several additional staff changes have occurred since then.

- Scott Dunn, Technical Coordinator, has resigned to take a job with artist Gavin DeGraw. He will be traveling the world with the band, beginning with a multi-country European tour in late February.
- Elise VanDyne has been hired as a one-year temporary Development Administrator. She has numerous ideas for fundraising for the Rialto Theater Center and the Loveland Museum/Gallery. We are very excited to have a staff position to work specifically on securing support for programs and events in the Cultural Services Department.

**Quarterly Report**

As mentioned in the last Quarterly Report memo, personnel costs on the event side will decrease significantly in 2014 with the transfer of Scheduling Coordinator to Facilities. On the Theater side the Report separates Direct Costs and Administrative Allocations (Cost Allocations for other City departments). The separation is not as clear on the Event Center side. Condo fees comprise \$48,510 of the \$52,630 budget for Purchased Services, an indirect cost.



The Development Administrator should also have a positive impact on the Revenue Report. The position was approved on the condition that revenue would exceed the cost of the position. The success will be assessed later in the year.

**Business Plan**

The Business Plan is nearing completion. It will be presented to City Council in the next few months. The Plan will recommend changes to the Rates and Fees Schedule adopted in the 2014 Budget. Those suggested changes will also be presented to Council in the next few months.

**Madwire**

Madwire signed a contract for daily week-day use of the Devereaux Room, but unfortunately a notification was received to terminate the contract as their third-floor space is adequate for their purposes.





**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

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(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 20  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Alan Krcmarik, Executive Fiscal Advisor

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**TITLE:**

Investment Report for December 2013

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No council action is required.

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**SUMMARY:**

The budget estimate for investment earnings for 2013 was \$2,760,420. Reports from institutions at which the City holds investments indicate the gross interest earnings and realized gains in 2013 exceeded \$2.2 million. After accounting adjustments, the net amount posted to the investment account was \$1,447,360. During the year, several high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank at the end of December was 1.07%. The yield is below the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels.

---

**BACKGROUND:**

At the end of December the City's portfolio had an estimated market value of \$215.3 million, about \$5.2 million less than the prior month. The market value is attributable to expenditures for flood related projects, revenue collections, and the interest rate shifts in treasury rates. Of this amount, US Bank held (including accrued interest) \$184.9 million in trust accounts; other funds are held in local government investment pools, in operating accounts at First National Bank and Wells Fargo Bank and a few miscellaneous accounts. Interest rates trended significantly lower in 2012 and despite an upward move in the last few months of 2013; they are still projected to remain relatively low for years. Investments are in US Treasury Notes, high-rated US Agency Bonds, high-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each one percent of earnings on the portfolio equates to about \$2.2 million annually.

---

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Investment Focus December 2013



# Investment Focus

Monthly Investment Report

December 2013

## What's in here?

- Focal Points** 1
- Gain / Loss**
- Rate Trends** 2
- Cash Statement** 3
- Portfolio size** 4
- Investment types**
- Transactions /** 5
- Maturity**
- Future Scan** 6

## Focal Points

- \* 2013 targets for the City's portfolio: 1) the interest rate target is **1.2%**; 2) the earnings goal = **\$2,760,420**.
- \* City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.
- \* Interest earnings and realized gains exceeded \$2.2 million. Revenue posted to accounts = **\$1,447,360: 53% of the target**. During the year, the portfolio has **\$50,650 in realized gains**.
- \* Each 1% of the market value amounts to nearly \$2.2 million.
- \* The month end market value shows the unrealized loss was higher, estimated to be **\$3,138,921** at the end of December.

### Real Jobs Gap Not Closing Any Time Soon

"December's lackluster jobs reports offers another reminder of the huge hole in the U.S. labor market. U.S. payrolls rebounded slowly in what was known as the jobless recovery following the 2001 recession. As late as 2003 the economy was adding an average of only 5,000 jobs a month. The total number of jobs in the U.S. hit a peak of about 138 million in January 2008, one month after the start of the most recent recession. In the ensuing downturn, nearly nine million

continued on page 2

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 5,769,175	\$ 5,769,175	--
Investment Pools	24,503,695	24,503,695	--
Money Markets	<u>7,863,068</u>	<u>7,863,068</u>	--
<b>Subtotal</b>	<b>\$ 38,137,939</b>	<b>\$ 38,137,939</b>	--
Notes and Bonds	<u>180,131,059</u>	<u>176,992,138</u>	<b>\$ (3,138,921)</b>
<b>Total Portfolio</b>	<b>\$ 218,268,998</b>	<b>\$ 215,130,077</b>	<b>\$ (3,138,921)</b>
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

## Treasury rate trends / About the jobs gap

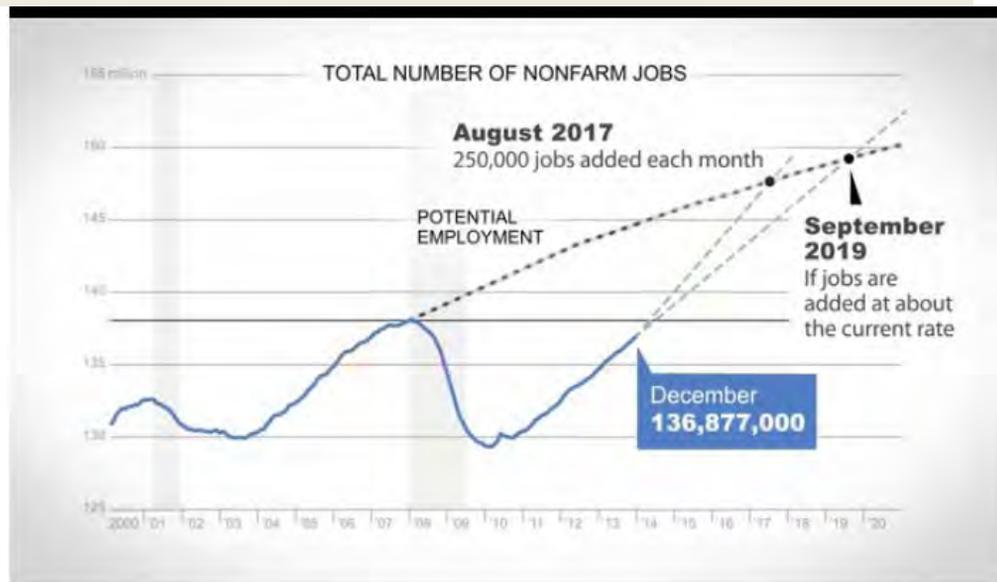


Interest rates on U.S. Treasuries rose sharply during December. The 2-, 3- and 5-year treasury notes rose by 1, 22, and 38 basis points respectively.

The value of securities held in the portfolio fell by over \$2 million and increased the unrealized loss.

### Real Jobs Gap (continued from first page)

jobs disappeared through early 2010, when the labor market started turning around. Job gains accelerated in 2011 and have remained fairly steady since, edging up a bit each year. To date, almost 8 million jobs have returned, leaving a gap just shy of 1 million, which is likely to be closed this year. But that doesn't account for changes in the population. If job



growth had kept up with labor-force growth, the shortfall would be a lot bigger. If the population keeps growing at that same rate, and the U.S. continues to add jobs near 2013's pace, then the total number of nonfarm jobs in the U.S. won't get back to where they should be until 2019. If the pace picks up in 2014 and beyond — say to 250,000 a month — the gap will narrow sooner, in 2017. That said, the U.S. economy hasn't added an average 250,000 jobs or more a month since 1999."

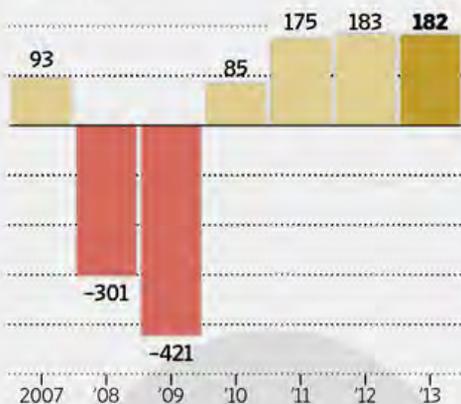
(Source: Real Time Economics in **THE WALL STREET JOURNAL** online, January 10, 2014.)

# More Job Info at yearend

## How 2013 Compares | Job gains were steady, unemployment fell and fewer people looked for work

### AVERAGE MONTHLY JOB GAIN OR LOSS

In thousands



### UNEMPLOYMENT RATE

Monthly (—) and at year-end (■)



### LABOR FORCE PARTICIPATION RATE

Monthly (—) and at year-end (■)



U.S. jobs at peak in January 2008

138,056,000

Jobs lost through February 2010\*

8.736m

7.557m

Jobs gained as the economy began adding jobs again\*

U.S. jobs December 2013

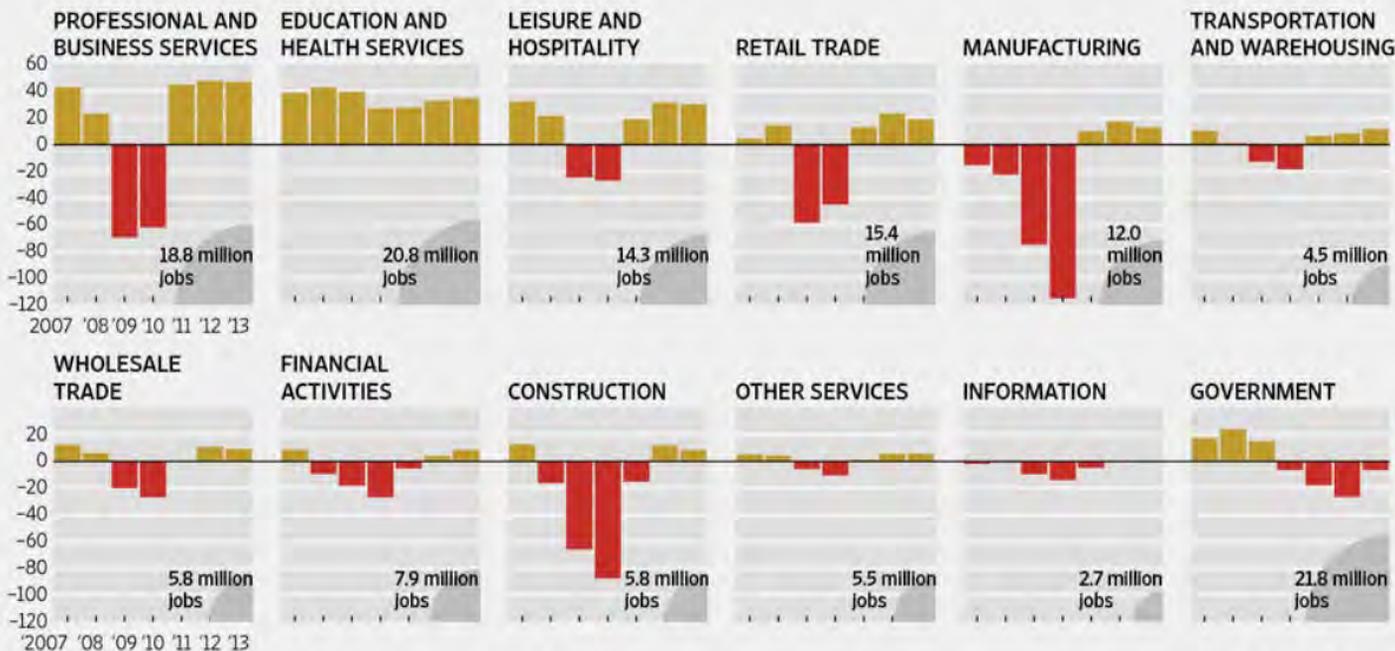
136,877,000

\*The economy began adding jobs again in March 2010. Note: Data are seasonally adjusted. Source: Labor Department

The Wall Street Journal

## Where Jobs Were Added

Average monthly job gain or loss each year, in thousands (bars) and sector size in December 2013 (circles)

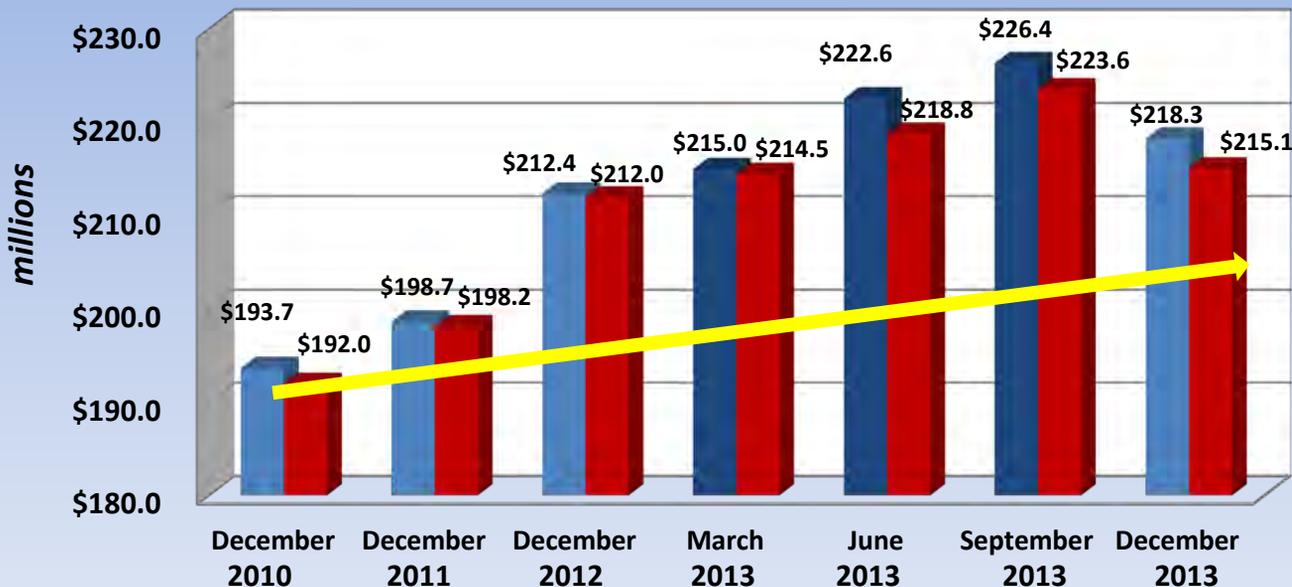


Note: Data are seasonally adjusted; not all sectors are shown. Source: Labor Department

The Wall Street Journal

## Portfolio Growth Trend / Types of Investments

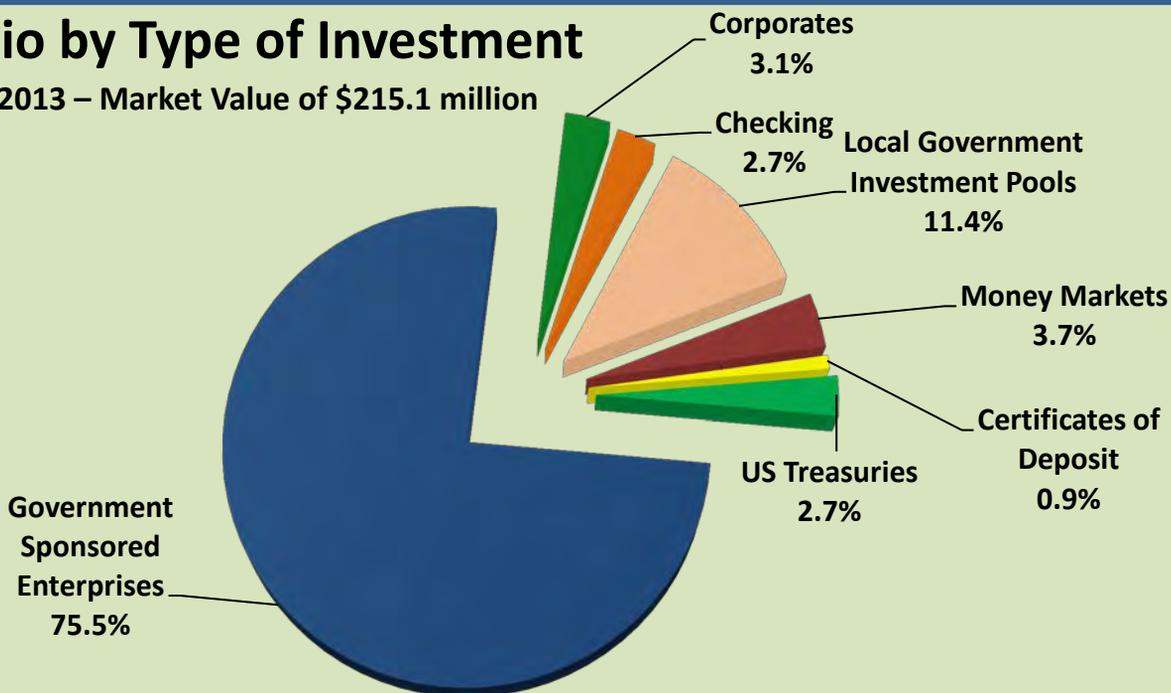
### Portfolio Size since December 2010



Blue bars show Purchase value; red and green bars show Market value (red = loss and green = gain).

### Portfolio by Type of Investment

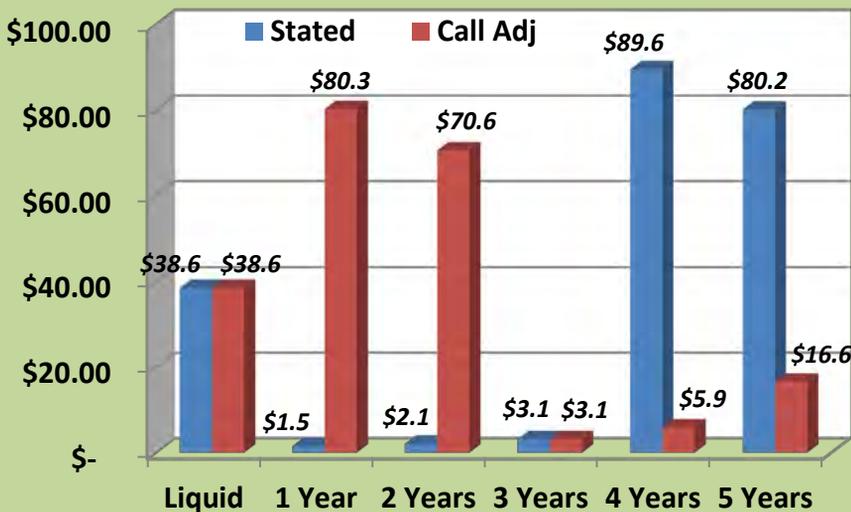
December 2013 – Market Value of \$215.1 million



# Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<b><u>Purchases</u></b>				
none this month				
<b><u>Matured</u></b>				
none this month				
<b><u>Called</u></b>				
Federal Home Loan Bank	09/20/18	\$3,130,000	<u>Call Value \$</u> \$3,130,000	1.375%
<b><u>Sales</u></b>				
none this month				
			<u>Gain \$</u>	

**Portfolio by Estimated Maturity Term**  
(in millions - Total = \$215.1 at the end of December)



The target rate for 2013 is 1.2%. Rates are now up from the near record lows. For the year-to-date, the portfolio proceeds are below the earnings target level for 2013.

To support earnings, or to reposition the portfolio, bonds may be sold. For the year, gains of \$50,650 were realized through sales.

The blue bars show the stated term; red bars show the calls. Due to the recent drop in interest rates, most of the five year bonds may be called early.



## Future Scan: Fed Sticks to Script on Taper, Unemployment lower

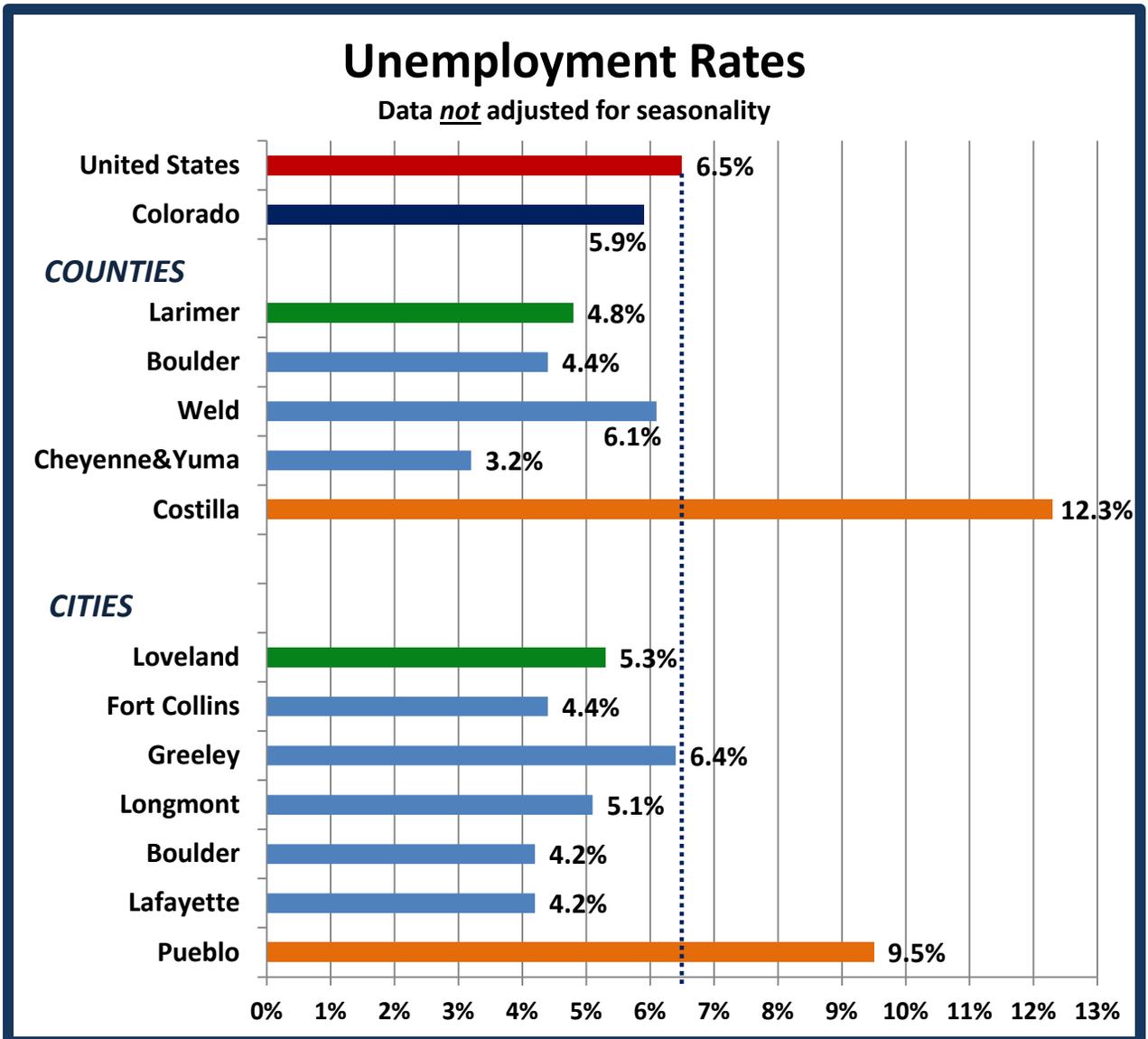
- ❖ **On January 29, the Federal Open Market Committee again scaled back the rate of Quantitative Easing.**
  - “The Fed said it would cut its purchases of Treasury bonds and mortgage-backed securities to \$65 billion a month, from \$75 billion, and officials suggested they would continue reducing the purchases in \$10 billion increments in the months ahead.”
  - “Fed officials have become more optimistic about the U.S. economic outlook in the past few months. Though job gains slowed in December, the growth rate of gross domestic product appears to have accelerated to well over 3% in the second half of 2013.”
  - “That rosy outlook stands in contrast to the deepening gloom building in emerging economies—especially places such as India, South Africa and Turkey—where central banks find themselves battling high inflation and declining currencies with interest-rate increases that threaten to choke off growth.”
  - “The Fed could veer from its plans if its outlook for growth, inflation or unemployment changes substantially, but Wednesday’s move suggested officials were inclined to stay the course.”
  - Chairman Ben Bernanke will be succeeded by Janet Yellen in January of 2014.  
(Source: *Fed Sticks to Script on Paring Bond Buys*, Jon Hilsenrath and Victoria McGrane, in **THE WALL STREET JOURNAL** online, January 29, 2014)
- ❖ **Morgan Stanley Fixed Income Commentary – “Light at the End of the Tunnel”**
  - “2013 was one of the worst years to be a fixed income investor... We don’t expect 2014 to be significantly better... we do think it could be the year the fixed income markets move to a semblance of normalcy where artificially suppressed Treasury yields fade into the background.”
  - “Morgan Stanley economics team expects growth in the US to improve further with the drivers being a combination of stronger capital spending, higher consumer spending and less fiscal restraint, a view the Fed appears to share as well.”
  - “The light at the end of the tunnel: better growth should lead to a more normal investing environment for fixed income investors.”
  - “Until we emerge into daylight, investors should be using the same playbook that worked in 2013: favoring credit over rate-sensitive product and favor short duration over long duration.”  
(Source: Morgan Stanley **Basis Points** Fixed Income Strategy, Kevin Flanagan & Jon Mackay, January 7, 2014.)
- ❖ **The December Colorado Employment Situation** was released on January 28, 2014. Using non-seasonally adjusted data, Colorado’s unemployment rate for the month was estimated to be 5.9% compared to the national unemployment rate of 6.5%. According to the business survey Colorado added 2,400 jobs; according to the household survey 11,851 jobs were dropped. City and county data show lower unemployment and are displayed in the attached table. Loveland’s unemployment rate decreased to 5.2% from 5.4% in December.  
(Source: Colorado Department of Labor and Employment **Colorado Employment Situation December 2013**, dated January 28, 2014.)
- ❖ **Recession Outlook:** Four indicators, Industrial Production, Nonfarm Employment, Real Personal Income, and Real Retail Sales are the basis for determining a recession. Based on December data, Real Income and Real Retail Sales were negative; Employment and Industrial Production were positive, resulting in a zero growth rate for the average. “The overall picture of the US economy remains one of a ploddingly slow recovery from the Great Recession.”  
(Source: *Advisor Perspectives*, Doug Short, January 31, 2014.)

[For more information regarding this report, please contact:](#)

**Alan Krcmarik, Executive Fiscal Advisor** 970.962.2625 or [Alan.Krcmarik@cityofloveland.org](mailto:Alan.Krcmarik@cityofloveland.org)

# Updated Colorado Labor Data

- ❑ Loveland’s employed workforce **contracted** in **December**, **down** 461 jobs from November.
- ❑ Compared to December of 2012, there are now 72 **more** jobs reported in Loveland.



## Current “missing worker” estimates at a glance

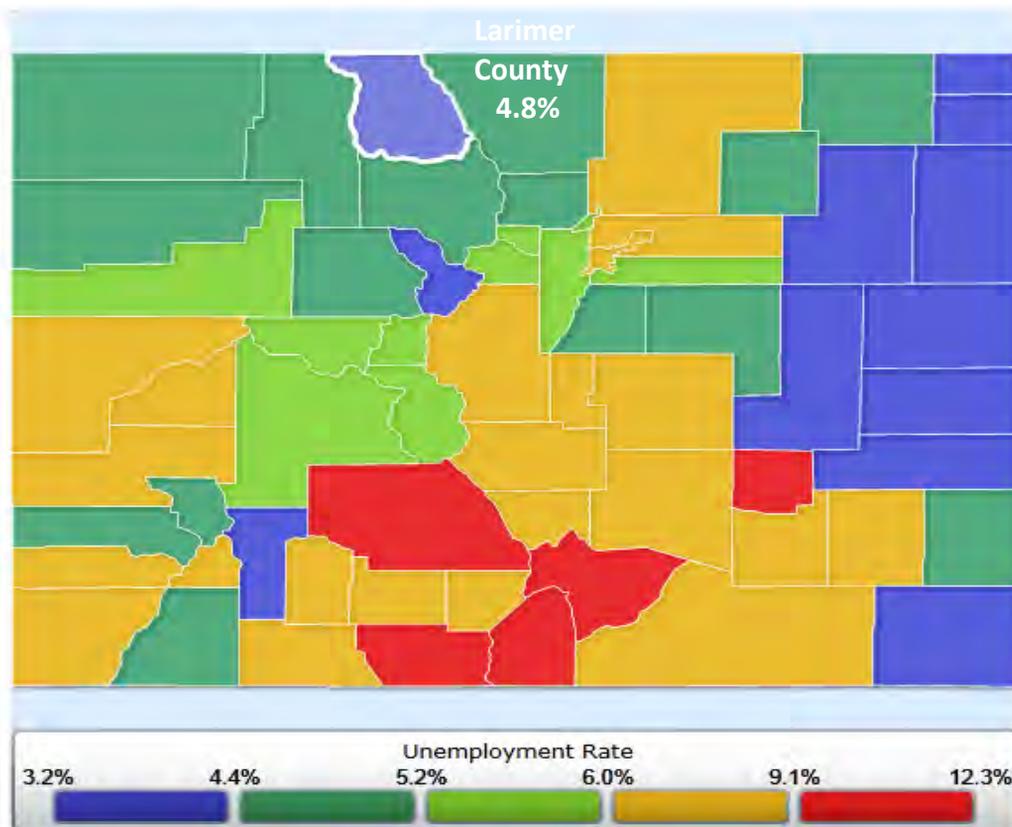
*Updated January 10, 2014, based on most current data available*

Total missing workers, December 2013:	Unemployment rate if missing workers were looking for work:	Official unemployment rate:
<b>5,990,000</b>	<b>10.2%</b>	<b>6.7%</b>

In today’s labor market, the unemployment rate drastically understates the weakness of job opportunities. This is due to the existence of a large pool of “*missing workers*” – potential workers who, because of weak job opportunities, are neither employed nor actively seeking a job. In other words, these are people who would be either working or looking for work if job opportunities were significantly stronger. Because jobless workers are only counted as unemployed if they are actively seeking work, these “missing workers” are not reflected in the unemployment rate. See website below for more information. When persons marginally attached to the labor force and those plus total employed part time for economic reasons are added to the official unemployment rate (the 6.7% above right, the rate rises to **13.1%**).

<http://www.epi.org/publication/missing-workers/>

The map below shows the monthly not seasonally adjusted unemployment rate for all Counties in Colorado in December, 2013.



Map Layers

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**CITY OF LOVELAND**

BUDGET OFFICE

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**AGENDA ITEM:** 22  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

**TITLE:**

An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2014 City Of Loveland Budget For Flood Related Projects

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The ordinance on first reading appropriates funding for engineering costs to determine the scope of several projects and the cost to repair several facilities from damage that occurred as a result of the 2013 Flood. The total appropriation net of transfers is \$10,494,930. Depending on the final determinations from FEMA on eligible costs, and other grant opportunities that may arise, the City's share of these costs will be between \$1,000,000 and \$1,800,000.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The appropriation uses existing balance within several funds as the funding source. This reduces the ability to fund future projects in the short term. Over the long term, most of these costs will be reimbursed through insurance payments or FEMA and State distributions. When these reimbursements are received, the fund balances will increase allowing for use on other projects.

---

**BACKGROUND:**

In 2013, staff brought to Council an ordinance requesting funding for the most immediate and known flood related projects. As we have had time to work through projects, and get further assessments after the water receded, we are able to project costs for the next round of projects to bring our facilities back from the damage incurred during the Flood. There are still a significant number of projects that will require engineering work to determine the scope of work necessary to rebuild some facilities and river work to mitigate damage from another event. As these costs become known, staff will return with the costs, recommending funding sources and an appropriation ordinance to budget for these costs.

The projects or equipment included in this ordinance include:

\$7,500 – Replacement of generators and tools at the Fire Training Grounds;

\$193,370 – Salary costs for enterprise personnel involved in determining the amount of work necessary within the river to mitigate costs from a future event. These costs are budgeted in the General Fund, since river management is not a function of our enterprises. Charging these costs to the General Fund will result in salary savings in the Water and Storm Water Enterprises.

\$46,780 – Salary costs to add a temporary Administrative Technician position to provide administrative support to the engineering teams involved in flood projects.

\$60,000 – Salary costs for a temporary Construction Management position in Parks & Recreation.

\$25,000 – Funding for a post-flood geomorphic assessment of the Big Thompson River.

\$50,000 – Funding for a contribution to the Big Thompson River Coalition for the Big Thompson River Restoration Master Plan.

\$2,328,000 – Capital costs for the reconstruction of Namaqua, Centennial, Jayhawker, Fairgrounds and Barnes Parks.

\$807,000 – Engineering and construction costs for repairs to the river bank at the Fire Training Grounds, and engineering costs to determine the scope of work at Centennial Park, the Wilson Avenue Pedestrian Bridge and Cottonwoods Meadows area.

\$1,014,680 – Reconstruction and mitigation at several Open Space sites.

\$40,000 – Funding for sidewalk repairs on U.S. 287 and Taft Avenue.

\$25,000 – Reconstruction of the road from the Water Treatment Plant to U.S. 34.

\$145,000 – Funding to repair the 16” water main where it crosses the river at Rivers Edge Park.

\$150,000 – Funding to repair the 6” water line where it crosses the river at Fairgrounds Park.

\$4,083,370 - Cost to repair the 20” and 36” water transmission line from the Water Treatment Plant to U.S. 34.

\$150,000 – Repair of the 8” water line where it crosses the river at Lincoln Avenue.

\$50,000 - Funding to repair the water intake structure at the Water Treatment Plant.

\$100,000 – Cost to construct a temporary diversion to the water intake structure.

\$10,000 - Funding to cover and protect the 24” water transmission line from the Water Treatment Plant to U.S. 34.

\$5,000 – Funding to inspect and repair large diameter water lines from potholing.

\$5,000 – Funding to protect the Wilson Avenue water line.

\$320,300 – Cost to repair the 20” wastewater force main at Boise Avenue and the Big Thompson River.

\$20,000 – Costs for manhole repairs and backfill reclamation.

\$385,400 – Funding to design and repair the Denver Avenue storm water outfall structure.

\$15,000 – Funding for flood recovery engineering in the Storm Water Enterprise.

\$151,700 – Funding for smaller repair projects at several storm water outfall structures.

\$356,080 – Costs for reconstruction and mitigation at the Mariana Butte Golf Course.

\$200,000 – Funding for the City’s deductible payment to CIRSA for insured properties that have claims from damage.

\$16,150 – Funding for the addition of temporary administrative assistance for environmental issues associated with flood damage projects.

**REVIEWED BY CITY MANAGER:**

*William A. Cahill*

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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING**      February 18, 2014

**SECOND READING**      \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2014 CITY OF LOVELAND BUDGET FOR FLOOD RELATED PROJECTS**

**WHEREAS**, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2014; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2014, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the total amount of \$10,494,930, including \$3,567,950 from fund balance in the General Fund 100, \$1,014,680 from fund balance in the Open Space Fund 202, \$2,623,370 from fund balance in the Water Enterprise Fund 300, \$2,100,000 from fund balance in the Water SIF Fund 301, \$340,300 from fund balance in the Wastewater Enterprise fund 315, \$616,700 from fund balance in the Storm Water Enterprise Fund 345, \$356,080 from fund balance in the Golf Enterprise Fund 375, and \$216,150 from fund balance in the Risk and Insurance Fund 502, are available for appropriation. Revenues from such reserves in the total amount of \$10,494,930 are hereby appropriated for flood related projects. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		3,567,950
<b>Total Revenue</b>		<b>3,567,950</b>
<b>Appropriations</b>		
100-22-222-0000-42033-FLD913	Fire equipment	7,500
100-23-231-0000-41011	Regular Salary	41,000
100-23-231-0000-41543	Insurance Benefits	10,590
100-23-231-0000-41544	FICA	3,140
100-23-231-0000-41545	Retirement	2,050
100-23-280-0000-41011	Regular Salary	73,170
100-23-280-0000-41543	Insurance Benefits	10,590
100-23-280-0000-41544	FICA	5,600
100-23-280-0000-41545	Retirement	3,660
100-23-280-0000-43450	Professional Services	25,000
100-23-280-0000-43714	Payment to Outside Agencies	50,000
100-46-310-0000-41011	Regular Salary	79,680
100-46-310-0000-41543	Insurance Benefits	10,590
100-46-310-0000-41544	FICA	6,100
100-46-310-0000-41545	Retirement	3,980
100-51-560-0000-41012	Non-benefited Wages	53,000
100-51-560-0000-41544	FICA	4,060
100-51-560-0000-42899	Other Supplies	1,440
100-51-560-0000-43265	Mileage	1,500
100-51-562-0000-49399	Other Capital	2,328,000
100-91-999-0000-47120	Transfer to Capital Projects Fund	807,300
100-91-9999-0000-47211	Transfer to Transportation Fund	40,000
<b>Total Appropriations</b>		<b>3,567,950</b>

**Supplemental Budget  
Capital Projects Fund 120 - 2014 Flood Appropriations**

<b>Revenues</b>		
120-00-000-0000-37100	Transfer from General Fund	807,300
<b>Total Revenue</b>		<b>807,300</b>
<b>Appropriations</b>		
120-23-280-0000-49352	Engineering	313,800
120-23-280-0000-49360	Construction	493,500
<b>Total Appropriations</b>		<b>807,300</b>

**Supplemental Budget  
Open Space Fund 202 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		1,014,680
<b>Total Revenue</b>		<b>1,014,680</b>
<b>Appropriations</b>		
202-51-590-0000-49399	Other Capital	1,014,680
<b>Total Appropriations</b>		<b>1,014,680</b>

**Supplemental Budget  
Transportation Fund 211**

<b>Revenues</b>		
211-00-000-0000-37100	Transfer from General Fund	40,000
<b>Total Revenue</b>		<b>40,000</b>
<b>Appropriations</b>		
211-23-232-1700-43569	Repair and Maintenance	40,000
<b>Total Appropriations</b>		<b>40,000</b>

**Supplemental Budget  
Water Enterprise Fund 300**

<b>Revenues</b>		
Fund Balance		2,623,370
<b>Total Revenue</b>		<b>2,623,370</b>
<b>Appropriations</b>		
300-46-318-2902-49352-FLW00C	Engineering	4,000
300-46-318-2902-49360-FLW00C	Construction	21,000
300-46-310-2903-49352-FLW02C	Engineering	10,000
300-46-310-2903-49360-FLW02C	Construction	135,000
300-46-310-2903-49352-FLW03C	Engineering	20,000
300-46-310-2903-49360-FLW03C	Construction	130,000
300-46-310-2903-49352-FLW04C	Engineering	600,000
300-46-310-2903-49360-FLW04C	Construction	1,383,370
300-46-310-2903-49352-FLW06C	Engineering	20,000
300-46-310-2903-49360-FLW06C	Construction	130,000
300-46-318-2902-43569-FLWO00	Repair and Maintenance	50,000
300-46-318-2902-43569-FLWO01	Repair and Maintenance	100,000
300-46-313-2903-43569-FLWO06	Repair and Maintenance	10,000
300-46-313-2903-43569-FLWO07	Repair and Maintenance	5,000
300-46-313-2903-43569-FLWO11	Repair and Maintenance	5,000
<b>Total Appropriations</b>		<b>2,623,370</b>

**Supplemental Budget  
Water Enterprise SIF Fund 301 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		2,100,000
<b>Total Revenue</b>		<b>2,100,000</b>
<b>Appropriations</b>		
301-46-310-2903-49352-FLW04C	Engineering	600,000
301-46-310-2903-49360-FLW04C	Construction	1,500,000
<b>Total Appropriations</b>		<b>2,100,000</b>

**Supplemental Budget  
Wastewater Enterprise Fund 315 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		340,300
<b>Total Revenue</b>		<b>340,300</b>
<b>Appropriations</b>		
315-46-310-2904-49352-FLZ07G	Engineering	50,000
315-46-310-2904-49360-FLZ07G	Construction	270,300
315-46-313-2904-43569-FLZO10	Repair and Maintenance	20,000
<b>Total Appropriations</b>		<b>340,300</b>

**Supplemental Budget  
Storm Water Enterprise Fund 345 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		616,700
<b>Total Revenue</b>		<b>616,700</b>
<b>Appropriations</b>		
345-23-283-0000-49352	Engineering	79,600
345-23-283-0000-49360	Construction	537,100
<b>Total Appropriations</b>		<b>616,700</b>

**Supplemental Budget  
Golf Enterprise Fund 375 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		356,080
<b>Total Revenue</b>		<b>356,080</b>
<b>Appropriations</b>		
375-51-513-5001-49399	Other Capital	356,080
<b>Total Appropriations</b>		<b>356,080</b>

**Supplemental Budget  
Risk & Insurance Fund 502 - 2014 Flood Appropriations**

<b>Revenues</b>		
Fund Balance		216,150
<b>Total Revenue</b>		<b>216,150</b>
<b>Appropriations</b>		
502-17-170-0000-43311	Property and Liability Insurance Deductible	200,000
502-17-176-0000-41012	Part-time salary	15,000
502-17-176-0000-41544	FICA	1,150
<b>Total Appropriations</b>		<b>216,150</b>

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

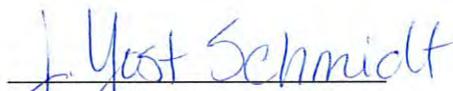
ADOPTED this \_\_\_\_ day of March, 2014.

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**CITY OF LOVELAND**  
CITY ATTORNEY'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 23  
**MEETING DATE:** 2/18/2014  
**TO:** City Council  
**FROM:** John Duval, City Attorney  
**PRESENTER:** John Duval

**TITLE:**

Update on the Status of Sarner v. City of Loveland Lawsuit Pending in Larimer County District Court

**RECOMMENDED CITY COUNCIL ACTION:**

This is primarily an information item, but the City Council may want to give the City Attorney additional direction as to how the Council would like this lawsuit to proceed from the City's perspective. Depending on the nature of that direction, an executive session may be advisable.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an information item concerning the Order issued in the Larimer County District Court deciding the Sarner v. City of Loveland lawsuit.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Attached is District Court Judge Kaup's Order dated February 11, 2014, issued in the Sarner v. City of Loveland lawsuit ("February Order"). In the February Order, a copy of which is attached, Judge Kaup has upheld all of the determinations the City Clerk made in her August 27, 2013, "Determination Pursuant to C.R.S. Section 31-11-110" ("Clerk's Determination") concerning Larry Sarner's challenge to the ballot-initiative petitions that had been previously submitted to

the City Clerk by Protect Our Loveland (“POL”). POL’s proposed ballot initiative seeks to present to Loveland’s voters an ordinance that would impose a two-year moratorium on all hydraulic fracturing operations in Loveland (“Proposed Ordinance”).

Mr. Sarner has challenged the Proposed Ordinance and the petitions supporting it on the following grounds: (1) the Proposed Ordinance violates the City’s single-subject rule; (2) POL’s petitions contain an insufficient number of valid signatures; (3) the number of Loveland registered voters the City Clerk relied on that were received from the County Clerk to calculate the required number of petition signatures was inaccurate; (4) the Proposed Ordinance is preempted by state law; and (5) the Proposed Ordinance is unconstitutionally retroactive.

In its February Order, the Court has determined that the Clerk’s Determination was correct in all of its findings and conclusions, which were: (1) that the Proposed Ordinance did not violate the City’s single-subject rule; (2) that POL’s petitions contained a sufficient number of valid signatures; (3) that the Clerk was correct in relying on the total number of registered electors in Loveland given to her by the County Clerk; and (4) that the Clerk did not have the jurisdiction or the authority to decide whether the Proposed Ordinance was preempted by state law or whether it was unconstitutionally retroactive. The Court further decided that, at this time, it too does not have the authority to decide whether the Proposed Ordinance is preempted by state law or unconstitutional because of its retroactive effect. The Court also observed that the courts will not be able to address these legal issues until the Proposed Ordinance is enacted into law by the voters.

Now that the Court has issued its decision in this lawsuit upholding all of the City Clerk’s findings and conclusions, this raises the question of whether the City Council is now required to submit the Proposed Ordinance to the voters for their consideration at an upcoming City election. The Colorado Municipal Election Code requires that once a “final determination of petition sufficiency” has been made concerning POL’s petitions, the Council has not less than 60 days and not more than 150 days from the date of that final determination in which to hold the required election on the Proposed Ordinance (C.R.S. § 31-11-104(1)). Therefore, the key to answering the question of whether the Council is now required to submit the Proposed Ordinance to the voters at an upcoming City election, depends on whether the February Order constitutes a “final determination of petition sufficiency.”

Council will recall, that early in this lawsuit POL asked the Court to order the City Council to submit the Proposed Ordinance to the voters. In denying POL’s request, the Court appeared to rule in its Order dated November 4, 2013 (“November Order”), a copy of which is attached, that until the Court completed its judicial review of the Clerk’s Determination, that a “final determination of petition sufficiency” has not occurred. However, it is not entirely clear from the November Order whether this “final determination of petition sufficiency” occurs once the District Court completes its judicial review of the Clerk’s Decision or not until all possible appeals have been completed. Language in the Municipal Election Code (C.R.S. § 31-11-110(3)) and some language in the November Order supports the former interpretation, while other language in the November Order supports the latter interpretation. In order to clarify the District Court’s ruling on

this point in the November Order, it will probably be necessary for the City to file a motion asking the Court to provide this clarification. Mr. Sarner's and POL's attorneys have indicated, at least preliminarily, that they would not object to seeking the Court's clarification on this issue.

In any event, based on communications with Mr. Sarner's attorneys, the City Attorney has been advised that Mr. Sarner will be pursuing an appeal of the February Order. Mr. Sarner's attorneys have also filed with the District Court a motion asking the Court to determine that the February Order is a "final judgment" for purposes of appeal (such a final-judgment order does not necessarily address the question of when a "final determination of petition sufficiency" has occurred). The City Attorney has advised Mr. Sarner's attorneys that the City does not object to this motion and that it is appropriate in these circumstances. Once the Court issues its expected order making the February Order a final judgment for purposes of appeal, Mr. Sarner will have 49 days from that date in which to file his appeal with the Colorado Court of Appeals. However, Mr. Sarner's attorneys have also advised the City Attorney that as soon as the Court issues its order making the February Order a final judgment, they will not wait the full 49-day appeal period, but will promptly thereafter file the appeal.

When district court decisions are appealed to the Colorado Court of Appeals, the appeal process typically takes anywhere from nine months to eighteen months before the Court of Appeals decides the case. However, any Court of Appeals decision can be appealed to the Colorado Supreme Court through the timely filing of a petition for writ of certiorari. The Colorado Supreme Court is not required to grant a writ of certiorari and in a large majority of cases does not grant the writ. However, when the Supreme Court does grant a writ of certiorari, it could take another year to a year and a half for the case to be decided by the Supreme Court. If this case is ultimately decided by Colorado Supreme Court, the only remaining avenue of appeal would be to file a petition for writ of certiorari with the U.S. Supreme Court, but it is very doubtful that the U.S. Supreme Court would grant a writ in this case. Therefore, the Colorado Supreme Court's decision would almost certainly be the final judicial decision in this lawsuit. Also, if the Colorado Supreme Court does not grant the writ, the Court of Appeals' decision would be the final judicial decision.

In summary, because it appears that Mr. Sarner will be appealing the February Order to the Colorado Court of Appeals, it continues to be an unresolved question as to the date of when the "final determination of petition sufficiency" will have occurred. Therefore, it is advisable for the City at this point to ask Judge Kaup to clarify this legal issue by filing with the Court a motion asking for this clarification.

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**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

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**LIST OF ATTACHMENTS:**

1. Court Order dated February 11, 2014.
2. Court Order dated November 4, 2013.

<p>DISTRICT COURT, LARIMER COUNTY,          COLORADO          201 Laporte Avenue, Suite 100          Fort Collins, Colorado 80521-2761          (970) 494-3500</p>	<p><b>JM</b>          Filed in Clerk of Courts          Larimer County CO          DATE FILED: February 11, 2014          CASE NUMBER: 2013CV31071          FEB 11 2014          Sherlyn K. Sampson          Clerk of Court</p>
<p><b>LARRY SARNER,</b>          Plaintiff</p> <p>v.</p> <p><b>CITY OF LOVELAND, et. al.,</b>          Defendants</p> <p><b>PROTECT OUR LOVELAND, INC.,</b>          Intervenor</p>	<p><b>▲ COURT USE ONLY ▲</b></p> <p>Case No. 2013CV31071</p> <p>Courtroom: 4C</p>
<p align="center"><b>ORDER</b></p>	

THIS MATTER comes before the Court on review pursuant to C.R.C.P 106 and C.R.S. § 31-11-110(3). Plaintiff Larry Sarner (“Plaintiff”) seeks review of the City Clerk of Loveland’s (“the City Clerk”) determination of petition sufficiency (“the Clerk’s determination”) in favor of Intervenor Protect Our Loveland, Inc. (“POL”). The City of Loveland, the City Clerk, the mayor of Loveland, and individual members of the Loveland City Council are the named defendants in this action, and the Court will refer to them collectively as “the City Defendants.” Having heard oral arguments, having reviewed the pleadings, the briefs of all parties, and the complete file in this matter, and being fully advised in the premises, the Court FINDS and ORDERS as follows:

**I. FACTS AND PROCEDURAL HISTORY**

POL is the proponent of a ballot initiative proposing a Loveland ordinance (“the proposed ordinance”) that, if enacted, would “place a moratorium on hydraulic fracturing and the storage and disposal of its waste products within the city of Loveland for a period of two years in order to fully study the impacts of this process on property values and human health.” Proposed Ordinance § 3. POL submitted its written notice of the proposed ordinance to the City Clerk on May 21,

2013. Before a proposed ordinance may be submitted to the legislative body of a municipality, the proponent of the ordinance must file a petition signed by at least five percent of the municipality's registered electors as of the date of the proponent's notice to the City Clerk. C.R.S. § 31-11-104(1). Pursuant to this requirement, the City Clerk made an inquiry to the Larimer County Clerk and Recorder's Elections Department ("the County Clerk's office") as to the number of registered electors of Loveland as of May 21, 2013. The County Clerk's office represented to the City Clerk that this number was 45,044 registered electors. On June 3, 2013, the City Clerk mailed a letter to POL approving the form of the petition and advising that the petition would require 2,523 signatures. On July 1, 2013, the City Clerk mailed POL a letter correcting a transposition of numbers in the original letter and clarifying that the petition would actually require only 2,253 signatures.

POL submitted 3,704 petition signatures to the City Clerk on July 8, 2013. After reviewing the petition, the City Clerk initially determined that the petition contained 2,743 valid signatures.

On July 19, a new list of Loveland registered electors was generated by the County Clerk's office. Although the later list contains the registration date of each elector, it is not possible to reproduce the list of registered electors that would have been generated based on the data that had actually been entered into the County Clerk's office's records on May 21, 2013. It appears that on July 29, 2013, Plaintiff's counsel contacted the City Clerk regarding the fact that the July 19 list contained approximately 3,000 more voters with registration dates of May 21 or earlier than the list actually generated on May 21, on which the City Clerk relied to calculate the 2,253 signature threshold. On July 31, 2013, the City Clerk recorded a voicemail message to Plaintiff's counsel stating that the City Clerk had contacted the County Clerk's office regarding this disparity. A representative of the County Clerk's office stated to the City Clerk that the originally-reported number of registered electors could be relied upon and that the disparity between the May 21 number and the July 19 number could be explained by new electors being added to the list in the course of ongoing data entry. Ex. 16-U.

On August 16, 2013, Plaintiff filed a written protest challenging the sufficiency of POL's petition pursuant to C.R.S. § 31-11-110(3). Plaintiff challenged the petition on the following grounds: 1) the City Clerk derived the threshold number of signatures from an inaccurate estimate of the total number of registered electors in Loveland; 2) the petition contained an additional 558 invalid signatures; 3) the proposed ordinance violates the single subject provision of the Loveland City Charter; 4) the proposed ordinance is preempted by state law; and 5) the proposed ordinance is unconstitutionally retroactive.

A hearing on Plaintiff's protest was held on August 22, 2013, at which the City Clerk functioned as the hearing officer. Plaintiff presented testimony and exhibits demonstrating his objections to the petition.

Plaintiff's case-in-chief included the testimony of Michael Hagihara, who identified himself as the voter registration manager of the Colorado Department of State. Mr. Hagihara testified that, although the data recorded in SCORE, the state's voter registration computer system, is not static because voter registration data is processed on a continual basis, the discrepancy in the County Clerk's voter registration records between May 21 and July 19 was outside the normal range of variation. Mr. Hagihara testified that the discrepancy "may" suggest that the May 21 number did not include registered electors who had failed to vote in a previous election. Prior to May 10, 2013, registered electors who failed to vote in a coordinated election were categorized as "inactive-failed to vote." However, H.B. 13-1303, 69th Gen. Assem. 1st Reg. Sess. (Colo. 2013) (codified at C.R.S. § 1-2-605(3)) amended the election code to state that "any registered elector whose registration record has been marked as 'Inactive-failed to vote' is, as of [May 10, 2013], an active elector." Mr. Hagihara testified that it was possible that the County Clerk's office had not implemented this change in the law by May 21, 2013, and mistakenly excluded registered electors marked as "inactive-failed to vote" from the number of registered electors originally provided to the City Clerk. Mr. Hagihara explained that it would be impossible to determine precisely how many registered voters would have been listed in the voter registration system on May 21, 2013. On cross-examination, Mr. Hagihara testified that he did not know whether there was an error in the number originally reported by the County Clerk, and that the City Clerk had a right to rely on the number of registered electors conveyed to her by the County Clerk. Protest Hr'g Tr. 48.

The City Clerk issued her findings on August 27, 2013. The City Clerk declined to accept Plaintiff's theory regarding the number of registered electors, and she adhered to the 2,253 threshold. Of the 558 signatures challenged by Plaintiff, the City Clerk found 224 signatures to be invalid. Subtracting this figure from the 2,743 signatures the City Clerk had previously determined to be valid, the City Clerk concluded that POL had submitted 2,519 valid petition signatures, exceeding the 2,253 threshold by 266 signatures. The City Clerk determined that the proposed ordinance complied with the Loveland City Charter's single subject provision. Finally, the City Clerk determined that she lacked the authority to determine whether the proposed ordinance was preempted by state law or whether the proposed ordinance was unconstitutionally retrospective, and that these issues could only be determined later by the judiciary if the proposed ordinance was adopted.

Plaintiff initiated the instant proceedings on September 3, 2013, seeking judicial review of the City Clerk's findings pursuant to C.R.C.P 106 and C.R.S. § 31-11-110(3). The Court heard oral argument from Plaintiff, the City Defendants, and POL on December 18, 2013.

## **II. STANDARD OF REVIEW**

C.R.S. § 31-11-110(3) provides that “[t]he determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protestor . . .” C.R.C.P. 106(a)(4)(I) directs the Court to review a government body or officer’s exercise of a judicial or quasi-judicial function to determine “whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.”

The Court defers to the government body or officer’s factual finding unless “no competent evidence” supports such findings, that is, unless the government body or officer’s determination “is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.” Ross v. Fire and Police Pension Ass’n, 713 P.2d 1304, 1309 (Colo. 1986). Generally, the Court’s review of the applicable law is *de novo*. City of Commerce City v. Enclave West, Inc., 185 P.3d 174, 178 (Colo. 2008). Nevertheless, “a reviewing court should defer to the construction of a statute by the administrative officials charged with its enforcement,” and the Court may not set aside the administrative official’s construction of such a statute unless it lacks a “reasonable basis.” Giuliani v. Jefferson County Bd. Of County Com’rs, 303 P.3d 131, 138 (Colo. App. 2012).

## **III. THE CLERK’S RELIANCE ON THE LIST OF REGISTERED ELECTORS CONVEYED ON MAY 21, 2013**

In his oral argument, Plaintiff’s counsel characterized the City Clerk’s reliance on the County Clerk’s office’s representation that 45,044 resided in Loveland as of May 21, 2013 as a “systemic, fatal flaw” because the City Clerk was aware of the disparity of approximately 3,000 registered electors between the May 21 figure and the figure obtained on July 19, 2013. Plaintiff’s counsel has identified this issue as Plaintiff’s most important challenge to the validity of the Clerk’s determination.

The City Clerk considered this issue in her written determination. Central to the City Clerk’s analysis was the proposition that “[t]he courts have long recognized a presumption of validity and regularity with respect to the official acts of state and local officials in Colorado and, in the absence of clear evidence to the

contrary, the courts will presume that these officials have properly discharged their official duties.” Clerk’s Determination 25 (citing Jensen v. City and County of Denver, 806 P.2d 381, 386 (Colo. 1991)). The City Clerk reasoned that the County Clerk’s office’s transmission to her of the number of registered electors in Loveland was an official act, and therefore it is entitled to a presumption of validity that may be rebutted through “clear evidence.” All of the parties agree that this standard is applicable to the issue at hand.

The City Clerk concluded that the testimony of Mr. Hagihara did not rise to the level of “clear evidence” and adhered to the May 21 number. The City Clerk noted that although Mr. Hagihara testified that the disparity in the figures suggested that the May 21 number omitted “inactive-failed to vote” registered electors, the data as it existed on May 21 could not be recreated and that the various County Clerk and Records’ offices, not Mr. Hagihara’s office, were the primary custodians of voter registration records in their respective counties.

Plaintiff argues that the inability to precisely, retrospectively determine the number of Loveland registered electors that would have appeared in the County Clerk’s office’s records on May 21 did not excuse the City Clerk’s reliance on the May 21 number after the July 19 number called the May 21 number into question. Plaintiff emphasizes the importance of precision in deriving the requisite number of signatures for a ballot initiative, and asserts that if the accuracy of that number on any given day is undermined by subsequently-discovered information and the exact number cannot be verified, then the initiative must be abandoned. Plaintiff also requests that the Court consider equities such as the “disenfranchisement” experienced by registered electors whose presence in Loveland is not counted toward the number of signatures required in order to submit a ballot initiative.

The Court is not persuaded that the interest in deriving a precise number of registered electors causes the City Clerk’s reliance on the May 21 number to amount to an abuse of discretion under these circumstances. Although Plaintiff urges that Mr. Hagihara’s testimony on the May 21 number was clear and un rebutted, the record contains conflicting evidence. In addition to the evidence explicitly referenced by the City Clerk in her written determination, the record also contains evidence that the City Clerk contacted the County Clerk’s office to follow up on the disparity, and that the City Clerk was informed upon this inquiry that the May 21 number was reliable and attributable to continual data entry. Ex. 16-U. Furthermore, Mr. Hagihara was asked on cross-examination whether his testimony was “that there was some error in that number that was given to the Municipal Clerk of the City.” Mr. Hagihara answered “that is one thing I do not know.” Protest Hr’g Tr. 48. Mr. Hagihara’s testimony did not establish that the May 21 number was inaccurate. Rather, Mr. Hagihara essentially testified that the disparity between the May 21 number and the July 19 number suggested to him that

something had gone awry, and one possible explanation was that the lower number omitted inactive voters.

As the hearing officer, the City Clerk was entitled to resolve conflicting evidence and to determine what weight to afford the evidence, and “the reviewing court may not substitute its judgment for that of the fact finder” absent an abuse of discretion. Stamm v. City and County of Denver, 856 P.2d 54, 57 (Colo. App. 1993). Here, the record shows that the City Clerk received conflicting evidence from Mr. Hagihara and from the County Clerk’s office regarding whether the disparity between the May 21 and July 19 numbers could be explained by ongoing updates to the voter registration data or the omission of inactive voters. It was within the City Clerk’s discretion to determine that the evidence in the record regarding inactive voters did not rise to the level of clear evidence.

City clerks must be permitted this discretion to ensure that participation in the initiative process is not stymied by continual second-guessing of the requisite number of signatures except where the existence of an error is apparent and clear. The record indicates that the number of registered voters associated with a given registration date may fluctuate as data is moved in and out of the record custodian’s system. Therefore, the number of registered electors used to calculate the threshold number can only ever be a working approximation, and the need to facilitate the ballot initiative process requires that all participants be entitled to rely on the voter information available on the date certain that the proponent’s notice of intent is submitted, pursuant to C.R.S. § 31-11-104(1). In this case, that date certain is May 21. The petition was approved for circulation on June 3, and by the time the July 19 list was generated the petitions had gone out and the circulation process was well underway with all parties involved relying on the May 21 number. Although the list of registered electors that was created on May 21 can not be recreated, there is competent evidence in the record to support the City Clerk’s determination that the initial number reported was reliable, and that is where the Court’s inquiry must end.

#### **IV. SUFFICIENCY OF PETITION SIGNATURES**

The Court will next address Plaintiff’s challenges against the 334 disputed signatures that the City Clerk determined were valid. The Court upholds the Clerk’s determination with respect to all of these signatures.

##### **A. SUBSTANTIAL COMPLIANCE STANDARD**

The people’s right to the initiative process is a fundamental right under the Colorado constitution. Loonan v. Woodley, 882 P.2d 1380, 1383 (Colo. 1994).

Thus, “constitutional and statutory provisions governing the initiative process should be liberally construed so that the constitutional right reserved to the people may be facilitated and not hampered by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.” Fabec v. Beck, 922 P.2d 330, 341 (1996)(internal quotations omitted).

In order to safeguard the initiative process, the law does not require strict compliance with the provisions pertaining to the sufficiency of a petition; a petition need only meet the standard of substantial compliance. Fabec, 922 P.2d at 341. Substantial compliance is assessed by balancing the following considerations: “(1) The extent of the noncompliance, (2) the purpose of the applicable provision and whether that purpose is substantially achieved despite the alleged noncompliance, and (3) whether there was a good-faith effort to comply or whether noncompliance is based on a conscious decision to mislead the electorate.” Id.

## B. IMPROPER AFFIANT NAMED IN NOTARY’S CERTIFICATE

Plaintiff objects to ten petition sections, totaling 220 signatures, on the ground that the notaries who signed the corresponding circulators’ affidavits wrote their own name in a field intended for the name of the petition circulator. Each petition section is accompanied by an affidavit in which the petition circulator makes certain statutorily-required affirmations. The affirmations are then followed by a signature of the circulator, which are all validly signed in the petition sections at issue here. Below the signature of the circulator is a notary’s certificate that reads “Subscribed and sworn before me this \_\_ day of \_\_\_\_, 2013, by \_\_\_\_\_.” In this sentence, “me” denotes the notary. The blank space following the word “by” is intended to be filled in with the name of the person who circulated the petition, that is, the person who had subscribed and swore to the above affidavit before the notary. There is a separate signature line for the notary to sign underneath the certification.

In the notary certifications at issue here, the notary filled his or her own name, rather than the name of the circulator, in the blank following the word “by.” If one reads the flawed certificates technically, they literally state that the notaries have sworn to the statements in the circulators’ affidavits before themselves, and they do not state that the circulators have signed the affidavits in the presence of the notary. This flaw only affects the notaries’ certificates attached to the circulators’ affidavits. The circulators themselves properly signed their respective affidavits.

The City Clerk determined that this error did not invalidate the associated signatures. The City Clerk looked to the statutory form for a notary’s certificate

found in C.R.S. § 12-55-119(1), which requires the following statement: “the document has been subscribed and affirmed, or sworn to before me in the county of \_\_\_\_\_, state of Colorado, this \_\_\_ day of \_\_, 20\_\_ . (Official signature, seal, and commission expiration date of notary).” The City Clerk noted that the statute does not require the certificate to state the name of the person affirming or swearing to the document, and that the certificates at issue fulfilled all of the elements of the statutory form. The City Clerk determined that the evidence did not show any bad faith on the part of the notaries or that they intentionally named themselves on the certificates to mislead anyone.

The City Clerk’s conclusion did not constitute an abuse of discretion under the substantial compliance standard. First, the extent of the noncompliance is relatively minor. Although 220 signatures are affected, this is due to one line being filled in incorrectly on a small fraction of the petition sections. The line in question is not a line that the statutory model for notary certificates requires. Second, the purpose of the notarization requirement was substantially fulfilled. “The purpose of the ‘notarized’ affidavit provision is to prevent mistake, fraud or abuse in the initiative process by requiring that circulators’ signatures be authenticated by persons authorized to administer oaths.” Fabec, 922 P.2d at 345. There is no evidence that the notaries did not actually authenticate the circulators’ signatures; Plaintiff’s only allegation as to this issue seems to be that the notaries misread the form and mistakenly wrote an incorrect name on one line. The circulators signed the affidavits, and the notaries included all of the statutorily-required information. Third, Plaintiff has conceded the absence of bad faith as to all issues in this case. In the absence of bad faith, it is not plausible that the notaries believed that they were notarizing their own signatures, so the Court is confident that the notaries conducted a proper authentication of the circulators’ signatures and merely failed to record the event with literal precision. As such, the Court concludes that the notaries’ certificates adequately guard against the risk of fraud and mistake, and that the City Clerk properly declined to reject any signatures on this basis.

### C. NOTARY SEAL NOT UNDER OR NEAR NOTARY’S SIGNATURE

C.R.S. § 12-55-112(2) requires a notary to place his or her seal “under or near” the notary’s signature. Plaintiff challenges 85 signatures on the ground that the notaries who certified the corresponding circulators’ affidavits signed near the bottom of the page containing the circulator’s affidavit, but placed his or her seal near the top of the same page. Plaintiff argues that the seals on these pages are not “under or near” the signatures.

The City Clerk determined that Plaintiff’s strict interpretation of the word “near” would hamper the fundamental right of initiative. The City Clerk

determined that it was sufficient that the seals were placed on the same 8 1/2" x 11" page. The City Clerk reasoned that the purpose of the notarization requirement was to guard against "fraud or mistake," and the seal's presence anywhere on the page substantially fulfilled that purpose.

The Court finds that to invalidate petition signatures on this basis would frustrate the initiative process by employing an excessively technical reading of C.R.S. § 12-55-112(2). Even assuming that the notaries did not strictly comply with the requirement to affix their seals "near" their signatures, the notaries substantially complied with the applicable provisions. Their seals contain all of the required information, they are plainly visible on the page, and they adequately verify the notaries' credentials. Therefore, the extent of the noncompliance is minimal, the purpose of the statute is fulfilled, and bad faith is absent.

#### D. ILLEGIBLE AND INCOMPLETE SIGNATURES

C.R.S. § 31-11-108 requires that "[e]ach registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city or town, the county, and the date of signing." In his original protest, Plaintiff asserted that thirty-two signatures failed to substantially comply with this provision. Of these, the City Clerk invalidated one. The Court now reviews the City Clerk's acceptance of the remaining thirty-one signatures objected to on this ground.

The case law construing the provisions applicable to initiatives at the state level is instructive. "The primary justification for requiring a petition signer to provide information with respect to identity and residence is to safeguard the integrity of the petition process" by allowing interested parties "to determine whether a particular petition signer is a qualified registered elector." McClellan v. Meyer, 900 P.2d 24, 32 (Colo. 1995). Thus, in reviewing the substantial compliance of signatures challenged on the ground that some required information is missing or illegible, the Court considers whether the identities and eligibility of the signers can nevertheless be ascertained based on the information that is included and is legible.

The Court has compared the signatures objected to under C.R.S. § 31-11-108 to the list of Loveland registered electors in the record. The Court finds that the identity and status as a Loveland registered elector of each individual associated with the challenged signatures can be readily ascertained. Plaintiff challenges many of these signatures on the ground that the signer did not write his or her name or other information legibly. However, the Court can confidently interpret the unclear handwriting with the aid of the printed names and addresses on the registered voters list. As to the signatures challenged on the ground that the

accompanying information is missing or incomplete, the Court finds sufficient evidence in the record to support the Clerk's determination. The Court finds that any deficiencies in these signatures are of a technical nature, rather than of a substantive nature, and do not interfere with the purpose of identifying and determining the eligibility of the voters who signed the petition.

#### E. SIGNATURES DO NOT MATCH LIST OF REGISTERED ELECTORS

Plaintiff's original protest challenged sixteen signatures on the ground that the information provided by the signers did not match the information contained in the list of registered electors. The City Clerk invalidated twelve of these signatures, and thus the Court need only review the remaining four.

The information provided by a petition signer need not perfectly match the corresponding information in the voter registration records so long as the information is sufficiently accurate to safeguard the integrity of the petition process. McClellan, 900 P.2d at 33. The Court has reviewed the four signatures upheld by the City Clerk, and the Court finds sufficient evidence in the record to support the Clerk's determination.

Once again, any deficiencies in these signatures are of a technical nature, rather than of a substantive nature, and do not interfere with the purpose of identifying and determining the eligibility of the voters who signed the petition.

#### F. INCORRECT NOTARY COMMISSION EXPIRATION DATE

Plaintiff challenges one petition section containing one signature on the ground that the notary's certificate includes a handwritten date of the notary's commission expiration that does not match the expiration date on the notary's seal. The date on the seal is May 2, 2017. The handwritten date is May 2, 2013. The City Clerk reasonably inferred that the notary mistakenly wrote the present year rather than the actual year of her commission expiration. The Court does not find this inference by the City Clerk to be an abuse of discretion, nor does the Court find that this mistake compromises the integrity or reliability of the petition section in question.

### V. SINGLE SUBJECT REQUIREMENT

Plaintiff contends that the proposed ordinance violates the single subject provision of the Loveland City Charter § 7-7.

## A. JURISDICTION

POL suggests that the Court does not have jurisdiction to determine the single subject issue. POL argues that courts have only reviewed proposed ordinances for compliance with the respective municipal single subject provisions when explicitly granted authority to do so by statute or by a municipal provision. See, e.g., Bruce v. City of Colorado Springs, 252 P.3d 30 (Colo. App. 2010). POL asserts that no such grant of authority exists as to Loveland's single subject requirement.

The Court is not persuaded that it may not review this issue absent an explicit grant of authority. C.R.C.P. 106(a)(4) permits the Court to review for abuse of discretion a determination of "any governmental body or officer . . . exercising judicial or quasi-judicial functions" if there is "no plain, speedy and adequate remedy otherwise provided by law." The City Clerk's determination as to the single subject requirement constituted a judicial or quasi-judicial function, and the Court may therefore review it pursuant to Rule 106. Alternately, C.R.S. § 31-11-110(3) grants the Court jurisdiction to review a city clerk's determination of petition sufficiency following a protest hearing, and the Court finds that the Loveland City Clerk's determination of petition sufficiency in this case includes the City Clerk's single subject determination.

The Court notes that review for compliance with any applicable single subject requirement is exempt from the general restriction against determining the substantive legal validity of a statute or ordinance prior to its adoption. See In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45, 274 P.3d 576, 579 (Colo. 2012) ("[O]ur limited role in this process prohibits us from addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted. We will sufficiently examine the initiative, however, to determine whether or not it violates the constitutional prohibition against initiative proposals containing multiple subjects.").

## B. SINGLE SUBJECT STANDARD

The Loveland City Charter § 7-7 imposes the applicable single subject requirement. The charter states that the City Clerk "shall approve for petition circulation measures proposing referred ordinances or initiated ordinances only when such measures contain a single subject," that is, "the matters in the measure submitted for voter approval are necessarily and properly connected and are not disconnected or incongruous."

The Loveland City Charter thus explicitly tasks the City Clerk with the role of approving or disapproving petitions for proposed ordinances based on the single

subject requirement. As the administrative officer charged with enforcing the single subject provision, the City Clerk's construction of that provision is entitled to deference. See Giuliani, 303 P.3d at 138. The Court reviews the City Clerk's single subject decision solely to determine whether it lacks a "reasonable basis." Id.

As the City Clerk observed, Bruce v. City of Colorado Springs, 252 P.3d 30 (Colo. App. 2010) found that the case law interpreting the state single subject rule is germane to the interpretation of substantially similar municipal single subject requirements. Loveland's single subject provision is similar to the Colorado Springs single subject provision held to be substantially similar to the state counterpart in Bruce, therefore the case law related to the state single subject rule is instructive in this case.

"An initiative violates the single subject requirement when it (1) relates to more than one subject and (2) has at least two distinct and separate purposes." Id. at 34. "In contrast, if the initiative tends to achieve or to carry out one general object or purpose, it constitutes a single subject." Id. "The single subject requirement must be construed liberally so as not to impose undue restrictions on the initiative process." Id. at 35.

The Court interprets the single subject requirement in light of its two purposes. First, the rule is intended to "ensure that each initiative depends on its own merits for passage" by preventing several disconnected initiatives that would not garner sufficient support on their own merits from being combined to attract coalitions of voters. Id. at 34. Second, "the single subject requirement is intended to prevent surreptitious measures . . . [so as] to prevent surprise and fraud from being practiced on the voters." Id.

### C. ANALYSIS

At the protest hearing, Plaintiff presented the City Clerk with two exhibits intended to highlight what Plaintiff perceives as a multitude of subjects embedded in the proposed ordinance. The first such exhibit, marked as Exhibit 3 at the protest hearing, labels the following five "subjects" in the text of the proposed ordinance: (1) property values and aesthetics; (2) public health, safety and welfare; (3) inalienable civil rights; (4) environmental and wildlife protection; (5) oil and gas technology. The second of these exhibits, Exhibit 4, finds the following additional five "subjects" in the text of the proposed ordinance: (1) oil and gas development/extraction generally; (2) injection of non-native waters; (3) content of hydraulic fracturing fluid; (4) storage of hydraulic fracturing fluid; and (5) disposal of hydraulic fracturing fluid. The opening brief Plaintiff submitted for the purposes of this C.R.C.P. 106 review reiterates the same two lists of ten subjects total.

The City Clerk observed that many of the listed topics were included in Sections 1 and 2 of the proposed ordinance. Section 1 states the “purpose” of the ordinance and Section 2 states the “findings” that the people of Loveland would be making if they passed the ordinance, and are analogous to a legislative declaration. These sections are intended to aid in the interpretation of the proposed ordinance, and do not by themselves impose any new obligations or restrictions. The City Clerk found that these sections were “both certainly necessarily and properly connected to the Ordinance and do not include within them any distinct and separate subject different from the rest of the ordinance.” Clerk’s Determination 9.

The City Clerk also addressed whether the ordinance covers multiple subjects because it would impose a moratorium on both the process of hydraulic fracturing itself and the storage and disposal of waste product resulting from hydraulic fracturing. The City Clerk determined that “[t]he clear purpose of the Ordinance is to impose a two-year moratorium on *all* activities related and connected to hydraulic fracturing. And since the Ordinance is not a lengthy or complex proposal, there is little likelihood that the voters will be surprised or have concealed from them the contents and purposes of the Ordinance.” Clerk’s Determination 10. The City Clerk also determined that “[i]t is unlikely that Loveland’s voters would favor a moratorium on hydraulic fracturing but not on the storage and disposal of its waste products, or vice versa.” *Id.*

The City Clerk compared this case to In re Title, 274 P.3d 576, in which the Colorado Supreme Court upheld against a multiple subject challenge a state ballot initiative concerning the “public control of waters.” The initiative in In re Title contained various provisions related to “public control of waters,” such as a provision allowing existing water rights to be limited or curtailed to protect the “natural elements of the public’s dominant water estate” and an arguably separate requirement that appropriators return water to their natural streams unimpaired after use. The City Clerk considered the initiative in In re Title to be more complex than the initiative at issue in this case. As such, the City Clerk found that the initiative’s proposing a moratorium on multiple activities related to hydraulic fracturing did not cause the initiative to contain multiple subjects.

The Court agrees with the City Clerk’s determination regarding the topics listed in Exhibit 3. In referring to property values, public health, civil rights, wildlife protection, etcetera, the proposed ordinance merely declares that there is more than one reason a moratorium on hydraulic fracturing may be desirable. In order to violate the single subject requirement, a proposed ordinance must relate to more than one subject and have at least two distinct purposes. Bruce, 252 P.3d at 34. Even if each of these purportedly positive consequences of the proposed moratorium constituted a distinct purpose, they would not constitute distinct subjects. The Loveland City Charter’s definition of “the single subject

requirement” requires a determination of whether the matters in the proposed ordinance are “disconnected or incongruous.” The Court is not persuaded that a proposed ordinance becomes incongruous with itself because its proponents believe it to be beneficial for several reasons.

As to the topics listed in Exhibit 4, the Court finds the City Clerk’s determination to have a reasonable basis. While acknowledging that the proposed ordinance would certainly impose more than one new legal restriction—one restriction against conducting hydraulic fracturing in Loveland and a second restriction against storing or disposing of certain associated products in Loveland—the Court finds that this distinction does not cause the proposed ordinance to contain two distinct purposes. Both restrictions are sufficiently related to the single, general object of placing a moratorium on all hydraulic fracturing-related activities in Loveland for a period of two years.

The City Clerk considered this issue according to the proper legal standard and exercised her discretion appropriately. The City Clerk considered both the plain language of Loveland City Charter § 7-7 itself as well as the case law interpreting the analogous state-level single subject requirement. Furthermore, the Clerk referred to the two purposes of the single subject requirement—preventing the rolling together of provisions that would not pass on their own merits and preventing voter surprise—and the City Clerk concluded that this proposed ordinance complies with these goals. The City Clerk thoroughly applied the correct legal principles to the proposed ordinance and her determination passes the test of reasonableness.

## **VI. STATE LAW PREEMPTION AND RETROACTIVITY**

Plaintiff raises two issues that the City Clerk declined to address because they require a determination of the substantive legal validity of the proposed ordinance. First, Plaintiff asserts that the proposed ordinance is preempted by the Oil and Gas Conservation Act, C.R.S. § 34-60-101 to -126. Second, Plaintiff asserts that the ordinance is rendered unconstitutionally retrospective by its Section 4, providing that “[i]n the event the measure is adopted by the voters, its provisions shall apply retroactively as of the date the measure was found to have qualified for placement on the ballot.” Plaintiff argues that although the City Clerk made no determinations as to these issues, the Court may address them because original claims may be joined to a C.R.C.P. 106 action.

However, such claims must still be ripe for judicial review. A longstanding body of case law favors allowing the political process, and specifically the initiative process, to run its course prior to any judicial determination of a proposed law’s substantive validity or constitutionality. See Bd. of County Com’rs of

County of Archuleta v. County Road Users Ass'n, 11 P.3d 432, 438-39 (2000)(citing McKee v. City of Louisville, 616 P.2d 969, 972 (Colo. 1980); Polhill v. Buckley, 923 P.2d 119, 121-22 (Colo. 1996); City of Rocky Ford v. Brown, 293 P.2d 974, 976 (1956)). The Court “may not interfere with the initiative process to address challenges to the substantive validity of an initiative before it is actually adopted.” Vagneur v. City of Aspen, 295 P.3d 493, 503 (Colo. 2013). Once an initiative is adopted, “[t]hen and only then, when actual litigants whose rights are affected are before it, may the court determine the validity of the legislation.” McKee, 616 P.2d at 973. This longstanding precedent requiring the Court not to issue prospective rulings on the validity of ballot initiatives flows in part from the fundamental nature of the initiative right, which is a “right of the first order; it is not a grant to the people but a reservation by them for themselves.” Id. at 972. Colorado courts have therefore “viewed with the closest scrutiny any governmental action that has the effect of curtailing [the initiative right’s] free exercise.” Id.

The Court is specifically directed not to consider “the initiative’s efficacy, construction, or future application.” In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91, 235 P.3d 1071, 1076 (Colo. 2010). “[O]ur limited role in this process prohibits us from opining on how [an initiative] might operate if applied.” In re Title, 274 P.3d at 581 n.2.

The Court cannot examine the proposed initiative for state law preemption without opining on how it might operate if passed and subsequently applied. The Court weighs the following four factors to determine whether state law preempts a home rule city’s interest in regulating land use: “whether there is a need for statewide uniformity of regulation; whether the municipal regulation has an extraterritorial impact; whether the subject matter is one traditionally governed by state or local government; and whether the Colorado Constitution specifically commits the particular matter to state or local regulation.” Colorado Min. Ass’n v. Board of County Com’rs of Summit County, 199 P.3d 718, 723 (Colo. 2009). Thus, to decide this issue the Court would necessarily need to construe the proposed ordinance’s future application to determine whether the proposed ordinance would disrupt a needed statewide uniformity in oil and gas regulation, whether it would impact areas outside the City of Loveland, whether it would reach into regulatory areas traditionally applied by the state, and whether it would primarily concern matters constitutionally committed to state regulation. While the Court has serious concerns whether the proposed ordinance, if enacted, would withstand legal scrutiny with respect to the issue of state law preemption, the Court finds that it cannot address this issue at this time because it is not ripe for judicial review unless and until the ordinance is adopted.

Likewise, the Court is precluded from invalidating the proposed initiative on retroactivity grounds prior to its enactment. The Court is cognizant of why Plaintiff

finds the proposed ordinance's retroactivity clause troubling. On its face, the ordinance purports to prohibit conduct that will have already occurred if and when the ordinance becomes adopted. Ordinarily, a law violates Colo. Const. Art. II, § 11 if it is intended to apply retroactively and it impairs vested rights, creates a new obligation, imposes a new duty, or attaches a disability with respect to transactions or considerations already passed. American Compensation Ins. Co. v. McBride, 107 P.3d 973, 978 (Colo. App. 2004).

While the Court has serious concerns whether the proposed ordinance, if enacted, would withstand legal scrutiny with respect to state law preemption and retroactivity, the Court is committed to defending the people's fundamental right to the initiative process and will abide by the restriction against "declaring unconstitutional or invalid a proposed measure before the process has run its course and the measure is actually adopted." McKee, 616 P.2d at 972.

## VII. CONCLUSION AND ORDER

Pursuant to C.R.C.P. 106 and C.R.S. § 31-11-110(3), the Court concludes that the City Clerk's determinations regarding the number of registered electors in Loveland as of May 21, 2013, the validity of the challenged signatures, and the single subject requirement did not constitute an abuse of discretion and did not exceed the City Clerk's jurisdiction. The Court finds that the issues of state law preemption and retroactivity are not ripe for judicial review unless and until the proposed ordinance is adopted. The Loveland City Clerk's determination of petition sufficiency is AFFIRMED. Plaintiff's Complaint is DENIED, both as to the above-described issues determined on their merits and as to the above-described issues denied on the ground that they are not ripe for judicial review.

SO ORDERED February 11, 2014.



BY THE COURT:

  
 \_\_\_\_\_  
 DANIEL J. KAUP  
 District Court Judge

<p>DISTRICT COURT, LARIMER COUNTY,          COLORADO          201 Laporte Avenue, Suite 100          Fort Collins, Colorado 80521-2761          (970) 498-6100</p>	<p>Filed in Clerk of Courts          Larimer County CO   DATE FILED: November 4, 2013          CASE NUMBER: 2013CV31071          Sherlyn K. Sampson          Clerk of Court</p>
<p><b>LARRY SARNER,</b>          Plaintiff</p> <p>v.</p> <p><b>CITY OF LOVELAND, et. al.,</b>          Defendants</p> <p><b>PROTECT OUR LOVELAND, INC.,</b>          Intervenor</p>	<p><b>▲ COURT USE ONLY ▲</b></p> <p>Case No. 2013CV31071</p> <p>Courtroom: 4C</p>
<p style="text-align: center;"><b>ORDER</b></p>	

THIS MATTER comes to the Court on issues pending in consolidated cases 2013CV31071 and 2013CV31142. The Court addresses two issues in this Order. First, having reviewed the written submissions of all parties and being fully advised, the Court finds as a matter of law that it is unable to hear the issues originally raised in 2013CV1142 prior to the resolution of the issues originally raised in 2013CV31071. Second, the Court institutes an expedited briefing and oral argument schedule for the issues originally raised in 2013CV31071.

**FACTS AND PROCEDURAL HISTORY**

Protect Our Loveland (hereinafter “POL”) is the proponent of a ballot initiative proposing a Loveland ordinance that POL describes to be “directed to the issue of whether oil and gas extraction using hydraulic fracturing should be allowed in the City of Loveland for two years while health and environmental impact studies are being conducted.” POL circulated a petition in order to collect the signatures of Loveland registered electors required in order to submit the proposed ordinance. POL ultimately submitted the petition to the City Clerk of Loveland, who initially determined that the petition was sufficient.

Larry Sarner initiated a protest to the petition. The clerk held an evidentiary hearing on the protest, and issued a written determination finding the petition sufficient on August 27, 2013. The Loveland City Council then voted to take no action on the proposed ordinance until the completion of any judicial review of the clerk's determination of sufficiency.

Mr. Sarner filed the complaint in 2013CV31071 on September 3, 2013. Mr. Sarner seeks judicial review of the clerk's determination of petition sufficiency pursuant to C.R.C.P. 106.

On September 26, 2013, POL initiated 2013CV31142 by filing a Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus Under C.R.C.P. 106(a)(2) (hereinafter "Petition for Writ of Mandamus"). The Petition for Writ of Mandamus essentially alleges that the Loveland City Council failed to act in accordance with its legal duties when it voted not to act on the proposed ordinance until the completion of judicial review of the clerk's determination of petition sufficiency.

The Court ordered the consolidation of 2013CV31071 and 2013CV31142 on October 17, 2013.

**WHETHER THIS COURT CAN PROPERLY HEAR PROTECT OUR  
LOVELAND'S MOTION FOR PRELIMINARY INJUNCTION BEFORE  
THE C.R.C.P. 106 REVIEW OF THE CLERK'S DETERMINATION OF  
SUFFICIENCY IS RESOLVED**

POL has filed a Motion for Preliminary Injunction, in which it requests that the Court issue a preliminary injunction to compel the City of Loveland and the Loveland City Counsel "to immediately publish the Proposed Ordinance, set the ballot title, and take all necessary actions to submit the Proposed Ordinance to the registered electors of Loveland . . . no later than January 24, 2014." Essentially, POL argues that it will be irreparably harmed if the submission of the proposed ordinance to Loveland's electors is delayed while the parties litigate the merits of its Petition for Writ of Mandamus.

Prior to the consolidation of these cases, Judge Thomas French directed the parties to address the issue of whether the Court could properly hear the motion for a preliminary injunction during the pendency of the C.R.C.P. 106 review of the clerk's determination of sufficiency. The parties have now amply briefed this issue in their pleadings pertaining to the motion for a preliminary injunction, and the Court is satisfied that it can determine that, as a matter of law, it cannot hear the Motion for Preliminary Injunction or rule on the merits of the Petition for Writ of Mandamus prior to the completion of the C.R.C.P. 106 review of the clerk's determination of sufficiency.

The opponents of the Motion for Preliminary Injunction argue that the Court's hearing that motion prior to the review of the clerk's determination of sufficiency would be premature under C.R.S. § 31-11-104(1), which requires that an election on a municipal initiative be held "not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution." The opponents of the Motion for Preliminary Injunction argue that the "final determination of petition sufficiency" referred to in the statute occurs at the conclusion of the judicial review of the clerk's determination of sufficiency. Thus, the opponents contend, the City of Loveland and the Loveland City Counsel cannot, as a matter of law, be compelled to act on the proposed ordinance until after judicial review of the clerk's determination has completed.

POL argues that the "final determination of petition sufficiency" occurred on August 27, 2013, the date the clerk issued its determination denying Sarner's protest. Thus, POL contends that the Loveland City Counsel became derelict in its statutory duties when it affirmatively voted to take no action on the initiative until the conclusion of the judicial review process. Under POL's interpretation, the election process is not stayed pending judicial review of the clerk's determination. That is, under this construction, the election on the proposed ordinance may very well be held and conclude while the review of the clerk's sufficiency determination is ongoing. POL contends that, in the event that the clerk's determination is overruled on judicial review after the election is held, then the appropriate remedy would be to "not count the votes or possibly set aside the results."

In order to resolve the controversy among the parties regarding whether it would be premature for the Court to consider the Petition for Writ of Mandamus and the associated Motion for Preliminary Injunction during the pendency of the C.R.C.P. 106 review of the clerk's determination of petition sufficiency, the Court must construe the term "final determination of petition sufficiency" as it is used in C.R.S. Title 31, Article 11.

### Applicable Legal Standard

The Court finds that the general principles of statutory construction cited by the City of Loveland are correct:

In construing statutes, our primary duty is to give full effect to the intent of the General Assembly. Accordingly, we start with the plain language of the statute, because if courts can give effect to the ordinary meaning of words adopted by a legislative body, the

statute should be construed as written since it may be presumed that the General Assembly meant what it clearly said . . . Additionally, a statutory interpretation leading to an illogical or absurd result will not be followed, and we strive to construe a statute as a whole in order to give consistent, harmonious, and sensible effect to all of its parts.” Colorado Water Conservation Bd. V. Upper Gunnison River Water Conservancy Dist., 109 P.3d 585, 593 (Colo. 2005) (internal quotations and citations omitted).

Additionally, the Court is required to “construe constitutional and statutory provisions governing the initiative process in a manner that facilitates the right of initiative instead of hampering it with technical statutory provisions or constructions.” Armstrong v. Davidson, 10 P.3d 1278, 1282 (Colo. 2000).

### Analysis

The Court is called upon to construe the following statutory language:

[T]he legislative body shall forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days *after the final determination of petition sufficiency*, unless otherwise required by the state constitution. C.R.S. § 31-11-104(1) (emphasis added).

The term “final determination of petition sufficiency” is defined by statute as follows:

“Final determination of petition sufficiency” means the date following passage of the period of time within which a protest must be filed pursuant to section 31-11-110 or the date on which any protest filed pursuant to section 31-11-110 results in a finding of sufficiency, whichever is later. C.R.S. § 31-11-103(2).

Because a protest was filed before the limitations period elapsed, the “final determination of petition sufficiency” in this case occurred or will occur on “the date on which any protest filed pursuant to section 31-11-110 results in a finding of sufficiency.” Thus, the Court must construe which “finding of sufficiency”—that of the clerk or that of the judiciary—constitutes the “result” of a “protest filed pursuant to section 31-11-110.”

C.R.S. § 31-11-110 contains three subsections. Subsection (1) describes the time limit in which a protest may be filed, the possible grounds for protest, and the clerk’s duty to set a hearing and give notice to the protestor and the initiative’s proponent. Subsection (2) describes the clerk’s duty to furnish a list of registered electors to the protestor upon request. Subsection (3) contains the following language:

Every hearing shall be held before the clerk with whom such protest is filed. The clerk shall serve as hearing officer . . . The hearing shall be summary and not subject to delay and shall be concluded within sixty days after the petition is filed. No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the officer shall identify those portions of the petition that are not sufficient and the reasons therefor. The result of the hearing shall be forthwith certified to the protestor and to the persons designated as representing the petition proponents . . . The determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protestor, the persons designated as representing the petition proponents . . . or the municipality, but such review shall be had and determined forthwith.

The full statutory context suggests that the clerk’s “determination as to petition sufficiency” referred to in this passage is not synonymous with “finding of sufficiency” as it is used in the statutory definition of “final determination of petition sufficiency.” The definition of “final determination of petition sufficiency” refers to the “result” of a protest pursuant to C.R.S. § 31-11-110, and the process described in C.R.S. § 31-11-110 expressly includes a provision for judicial review.

The result of a protest pursuant C.R.S. § 31-11-110 must therefore be the date at which the this Court has completed the review contemplated by the statute.

The Court must also give effect to the modifier “final” in “final determination of petition sufficiency.” The City of Loveland has submitted ample case law from parallel areas of the law holding that determinations that are pending on review are not “final.” See People v. Robb, 215 P.3d 1253, 1263 (Colo. App. 2009); Rantz v. Kaufman, 109 P.3d 132, 141 (Colo. 2005); Martinez v. Indus. Comm’n, 746 P.2d 552, 558 n.6 (Colo. 1987); People v. McAfee, 160 P.3d 277, 281 (Colo. App. 2007); Griffith v. Kentucky, 479 U.S. 314, 321 n.6 (1987). The Court finds that “final” takes a similar meaning in this context.

Finally, it establishes the General Assembly’s intent that the statute directs the Court to have and determine its review of the clerk’s determination of sufficiency “forthwith.” This provision demonstrates that the General Assembly perceived that the review process would be particularly time-sensitive. This sense of urgency—an urgency stronger than what is typically associated with judicial review of an ordinance subsequent to its enactment—tends to show that the General Assembly envisioned that the election on the proposed initiative would be stayed until the conclusion of judicial review. The General Assembly therefore enacted a measure to expedite the judicial process in this context, to reduce the delay of the election during judicial review.

The Court finds it to be the clear intent of the General Assembly that the District Court cannot compel a municipal legislative body to refer a proposed ordinance to the voters while a clerk’s determination of petition sufficiency is pending on judicial review. The Court discerns that the General Assembly sought to avoid a scenario in which the Court issues a writ of mandamus compelling an election that is later found to be a nullity because the clerk’s determination of sufficiency is reversed. The General Assembly carefully balanced the need to avoid such a scenario with the people’s interest in swiftly bringing a proposed ordinance to a vote by providing that the Court shall conduct the review process as expeditiously as reasonably possible.

POL argues with passion that the construction the Court adopts burdens the constitutional initiative process. In POL’s words, “[p]roposals that are of great importance to a portion of the electorate, often which is of a time sensitive manner . . . could be stolen from the hands of the voters by a single protester. State law simply cannot be read to allow the initiative process to be held hostage in this manner.” The Court understands POL’s concern, but finds the danger to be overstated. The provision that review shall be conducted “forthwith” protects against unreasonably long delay, and any actions brought in bad faith may be dealt with through appropriate sanctions. The Court’s construction does not unduly hamper the initiative process.

POL cites Polhill v. Buckley, 923 P.2d 119, 122 (Colo. 1996) in arguing that post-election review would be an adequate remedy. However, Polhill addressed a situation in which post-election review was *required* because the case concerned a challenge to the substantive legality of a referendum rather than a challenge to the pre-election procedure. Polhill merely stands for the longstanding disfavor directed toward judicial advisory opinions. The post-election review found to be “adequate” under the jurisdictional constraints faced in Polhill is not the remedy the General Assembly intended as to challenges against the sufficiency of an initiative petition.

The Court recognizes that its ruling here affects POL’s insistence that the election on the proposed ordinance must be held by January 24, 2014. This date was derived from the premise that the “final determination of petition sufficiency” occurred on the date of the clerk’s written determination of sufficiency. If that were the case, then the election would be required to occur by January 24, 2014, that is, within one hundred fifty days of August 27, 2013. Because the Court has determined as a matter of law that the final determination of petition sufficiency has not yet occurred, it necessarily follows that the Court does not agree that the January 24, 2014 date is binding. To the extent that POL’s Motion for Preliminary Injunction requests that the Court order that a special election be held by January 24, 2014, that portion of the motion is denied at this time. In a similar vein, the Court is not bound to resolve the Petition for Writ of Mandamus, or any issue in this matter, in time for a hypothetical January 24, 2014 special election.

### **EXPEDITED BRIEFING SCHEDULE FOR THE C.R.C.P. 106 REVIEW OF THE CLERK’S DETERMINATION OF SUFFICIENCY**

Pursuant to C.R.C.P. 106(a)(4)(VIII), the Court may accelerate any action which, in the discretion of the Court, requires acceleration. The Court determines that the C.R.C.P. 106 review of the clerk’s determination of sufficiency requires acceleration.

The opening brief of Mr. Sarnier shall be submitted within the timeframe ordinarily required under C.R.C.P. 106(a)(4)(VII). That is, the opening brief must be filed within forty-two days after the date on which the record was filed. The record was filed on September 27, 2013, and so the opening brief shall be filed on or before November 8, 2013.

The subsequent briefs shall follow an expedited schedule. All answer briefs shall be filed on or before December 3, 2013. The reply brief shall be filed on or before December 10.

The Court anticipates scheduling oral arguments on the review of the clerk’s determination of sufficiency on December 11 or December 18. Counsel must notify the Court regarding availability as soon as possible, and the Court

respectfully requests that all counsel make every effort to clear their respective calendars.

ACCORDINGLY, the Court FINDS that it cannot hear the Petition for Writ of Mandamus or the associated Motion for Preliminary Injunction prior to the resolution of the C.R.C.P. 106 review of the clerk's determination of petition sufficiency. The Court directs the parties to comply with the expedited briefing schedule described above.

SO ORDERED November 4, 2013.



BY THE COURT:

DANIEL J. KAUP  
District Court Judge