

AGENDA
LOVELAND CITY COUNCIL MEETING
TUESDAY, MARCH 15, 2016
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

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“La Ciudad de Loveland está comprometida a proporcionar igualdad de oportunidades para los servicios, programas y actividades y no discriminar en base a discapacidad, raza, edad, color, origen nacional, religión, orientación sexual o género. Para más información sobre la no discriminación o para asistencia en traducción, favor contacte al Coordinador Título VI de la Ciudad al TitleSix@cityofloveland.org o al 970-962-2372. La Ciudad realizará las acomodaciones razonables para los ciudadanos de acuerdo con la Ley de Discapacidades para americanos (ADA). Para más información sobre ADA o acomodaciones, favor contacte al Coordinador de ADA de la Ciudad en bettie.greenberg@cityofloveland.org o al 970-962-3319”.

Please Note: Starting times shown on agenda are estimates only; actual times may vary.

(5:00 P.M.) DINNER – City Manager’s Conference Room

(6:00 P.M.) REGULAR MEETING - City Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PROCLAMATION RECOGNIZING MARCH AS DEVELOPMENTAL DISABILITY AWARENESS MONTH IN LOVELAND
(Dan Soldner, Taylor Summer, and Julian Wang; the Arc of Larimer County)

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. Members of the public will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight’s meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Comments will be limited to no more than three minutes, the City Clerk will start the timer once an introduction is made and a buzzer will sound when the three minutes have expired.

(6:05) CONSENT AGENDA

1. **CITY CLERK** (presenter: Terry Andrews)
APPROVAL OF MEETING MINUTES
A Motion To Approve City Council Minutes For the February 23, 2016 Special Meeting and the February 29, 2016 Regular meeting
 This is an administrative action to approve the City Council minutes for the February 23, 2016 special meeting and the February 29, 2016 regular meeting.

2. **CITY MANAGER** (presenter: Bill Cahill)
APPOINTMENTS TO THE CITIZENS' FINANCE ADVISORY COMMISSION, GOLF ADVISORY BOARD AND VISUAL ARTS COMMISSION
 1. Adopt a motion to appoint Joseph Lynch to the Citizens' Finance Advisory Commission for a term effective until December 31, 2018.
 2. Adopt a motion to appoint Roger Weidelman to the Citizens' Finance Advisory Commission for a term effective until December 31, 2018.
 3. Adopt a motion to reappoint Julie Nelson to the Golf Advisory Board for a term effective until December 31, 2018.
 4. Adopt a motion to reappoint Jan Wall to the Golf Advisory Board for a term effective until December 31, 2018.
 5. Adopt a motion to appoint Chuck Weirauch to the Golf Advisory Board for a term effective until December 31, 2018.
 6. Adopt a motion to appoint Jade Windell to the Visual Arts Commission for a partial term effective until December 31, 2017.
 This is an administrative item appointing members to the Citizens' Finance Advisory Commission, the Golf Advisory Board and the Visual Arts Commission.

3. **PUBLIC WORKS** (presenter: Chris Carlson)
FLOOD RECOVERY PROJECTS FINAL DESIGN
A Motion To Approve On Second Reading, Ordinance #6000 Enacting a Supplemental Budget and Re-Appropriation (Rollover) to the 2016 City of Loveland Budget for Final Design of the Wilson to Taft Reach Flood Recovery Projects and for Completion of the Highway 287 Bridge Flood Mitigation Feasibility Study
 This is an administrative action. The ordinance on second reading re-appropriates funding approved in 2015 for engineering/final design of the Wilson to Taft Reach Flood Recovery Projects and for the Highway 287 Flood Mitigation Feasibility Study. Funding for both projects was previously approved in 2015, but work was delayed pending FEMA approval of a scope change request, signature of a Community Development Block Grant – Disaster Recovery (CDBG-DR) planning grant contract, and selection of an engineering consultant. Because time is of the essence affecting analysis, design, permitting, bidding, construction and deadlines outside City control (FEMA and State deadlines), Public Works needs to move forward quickly to complete each of the two projects on schedule. Therefore, re-appropriation of \$246,000 for the flood recovery project work (Wilson to Taft reach projects) and \$172,150 for the Highway 287 Bridge Flood Mitigation Feasibility Study is requested. On February 29, 2016, City Council unanimously approved this ordinance on first reading.

4. **HUMAN RESOURCES** (presenter: Karen Rees)
EMPLOYEE BENEFITS FUND APPROPRIATION
A Motion To Approve On Second Reading, Ordinance #6001 Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland Budget For A General Fund Contribution To The Employee Benefits Fund
 The Employee Benefits Fund ended 2015 negative due to higher claims than expected in the months of November & December. In order to correct the shortfall, an appropriation of

\$610,000 is needed. The total \$5,342,782 General Fund contribution to the Employee Benefits Fund will not change, but the timing of the contribution will. On February 29, 2016, City Council unanimously approved this ordinance on first reading.

**5. POLICE (presenter: Tim Brown and Brent Worthington)
SUPPLEMENTAL APPROPRIATION FOR VEHICLES**

A Motion To Approve On Second Reading, Ordinance #6002 Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Four Police Vehicles

City Council approved the addition of three (3) officers funded by existing appropriations. Three (3) vehicles are needed to support the additional officers. One (1) vehicle is requested for a School Resource Officer approved in 2016 under acceptance of a COPS grant with Thompson School District R2J. On February 29, 2016, City Council unanimously approved this ordinance on first reading.

**6. LOVELAND FIRE RESCUE AUTHORITY (presenter: Mark Miller)
LFRA BUDGET ROLLOVER**

A Motion to Adopt Resolution #R-19-2016 Approving The Loveland Fire Rescue Authority's Supplemental Budget And Appropriation Resolution No. R-064 For The Loveland Fire Rescue Authority's 2016 Budget

This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2016 Budget to re-appropriate operational expenses not spent in 2015 and add new projects. The Council approval of the budget is required for the Authority's budget to be in effect. Implementation of the resolution requires an additional contribution from the City of \$362,054 to be appropriated from fund balance, available due to 2015 savings in the budgeted contribution to LFRA. At year end the contribution from the City had a balance of \$401,400, leaving \$39,386 of the savings to be retained in the City's General Fund Balance.

**7. CITY CLERK (presenter: Terry Andrews)
DDA ELECTION PREPARATION**

A Motion to Adopt Resolution #R-20-2016 Directing The City Clerk To Prepare For The Possibility Of An Election Issue Involving The Downtown Development Authority

This is an administrative action. The resolution would authorize the City Clerk and other staff to begin the process of creating the "qualified elector" list, for a possible November TABOR election for the Downtown Development Authority, created in February of 2015.

**8. AIRPORT (presenter: Jason Licon)
PUBLIC COMMENT**

AMENDMENT TO NCRA COMMISSION BYLAWS

A Motion to Adopt Resolution #R-21-2016 Amending The Bylaws Of The Northern Colorado Regional Airport Commission

This is an administrative action to adopt a resolution to the bylaws governing the responsibilities and duties of the Northern Colorado Regional Airport Commission.

END OF CONSENT AGENDA

(6:15) CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

(6:20) 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

(6:45)

9. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
PUBLIC COMMENT

SOUTH CATALYST PROJECT FUNDING

A Motion To Approve On Second Reading, Ordinance #6003 Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget To Re-Appropriate Funding Approved In 2014 For The Purchase Of Property And Other Costs Associated With Downtown Land Purchases For The South Catalyst Project

This is an administrative action. The ordinance re-appropriates \$1,734,414, which is the balance of the \$6.5 million that was originally approved in 2014 for the acquisition of Downtown property and other activities in support of the South Catalyst redevelopment project. The proposed project, a partnership with the Brinkman Partners, is expected to result in a vertically dense mixed-use project that would include office, residential and retail. The total investment is expected to be \$50 to \$70 million. Since the initial appropriation in 2014, the City has purchased twelve properties and completed extensive pre-development activities. The funding for the appropriation of \$1,734,414 is from Unreserved Fund Balance in the General Fund. The appropriation of this fund balance reduces the flexibility to fund other projects. On February 29, 2016 City Council approved the first reading of the ordinance by a 6 to 3 vote.

(7:10)

10. **CITY ATTORNEY** (presenter: Tami Yellico)
PUBLIC COMMENT

CONSTRUCTION DEFECTS

A Motion to Approve On Second Reading, Ordinance #6004 Adding a New Chapter 15.58 to the Loveland Municipal Code to Encourage Construction of Condominiums

This is a legislative action to consider the adoption of an ordinance that addresses the issues of builder and developer liability as it relates to construction defects. On February 29, 2016 City Council approved the first reading of the ordinance by an 8 to 1 vote.

(7:30) 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



CITY COUNCIL

Civic Center • 500 East Third Street, Suite 330 • Loveland, CO 80537
(970) 962-2303 • Fax (970) 962-2900 • TDD (970) 962-2620
www.cityofloveland.org

PROCLAMATION

- WHEREAS** our community believes people with intellectual and developmental disabilities belong in the community and have fundamental moral, civil and constitutional rights to be fully included and actively participate in all aspects of society; and
- WHEREAS** Loveland recognizes people with intellectual and developmental disabilities are defined by their own strengths, abilities, and inherent value, not by their disability; and
- WHEREAS** we recognize that people with intellectual and developmental disabilities, with appropriate resources and supports, can make decisions about their own lives and must be heard on issues affecting their lives; and
- WHEREAS** the City of Loveland is interested in the welfare of, and improving the quality of life for citizens with intellectual and developmental disabilities; and
- WHEREAS** the City wants to encourage businesses, individual citizens and the community-at-large to promote full inclusion for citizens with disabilities in work and recreation in the community.

NOW, THEREFORE, we, the City Council of Loveland do hereby recognize March, as

DEVELOPMENTAL DISABILITY AWARENESS MONTH IN LOVELAND

and call this observance to the attention of our citizens.

Signed this 15th day of March, 2016

Cecil A. Gutierrez
Mayor

**MINUTES
LOVELAND CITY COUNCIL SPECIAL MEETING
TUESDAY, FEBRUARY 23, 2016
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO**

CALL TO ORDER, Mayor Gutierrez called the Special Meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE

**ROLL CALL: Councilors Present: Gutierrez, Johnson, Ball, Clark, Shaffer and Overcash.
Councilors absent: Krenning, McKean and Fogle.**

**ECONOMIC DEVELOPMENT
SOUTH CATALYST PROJECT**

Mike Scholl, Economic Development Manager, presented this public briefing on the South Catalyst project. The presentation included discussions on the project site, additional information on the Brinkman Partners, general approach to the project, and timeframes including projected return dates to City Council. Staff also discussed roles and responsibilities including the participation of the Loveland Downtown Partnership and the Downtown Development Authority. Staff was directed to bring this item back at the next meeting for consideration on the consent agenda.

Councilor Shaffer moved that the City Council go into executive session to discuss negotiations concerning the Downtown South Catalyst Project and potential associated agreements as authorized by Colorado Revised Statutes Section 24-6-402(4)(e) and Loveland Charter Section 4-4(c)(1) concerning a matter that is subject to negotiations, to develop the City’s negotiation positions and strategies, and to instruct the City’s negotiators concerning those positions and strategies; and as authorized by Colorado Revised Statutes Section 24-6-402(4)(b) and Loveland Charter Section 4-4(c)(3) to receive legal advice from the City Attorney’s Office at 7:59 p.m. The motion, seconded by Councilor Ball, carried with all councilors present voting in favor thereof. Councilor Fogle arrived shortly after the Executive Session commenced. Council reconvened at 9:13 p.m.

ADJOURN

Hearing no further business to come before Council, Mayor Gutierrez adjourned the February 23, 2016 Special Meeting at 9:14 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

MINUTES
LOVELAND CITY COUNCIL MEETING
MONDAY, FEBRUARY 29, 2016
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

CALL TO ORDER: Mayor Gutierrez called the meeting to order at 6:03 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL, Councilors Present: Gutierrez, Johnson, Ball, Clark, McKean, Shaffer and Overcash. Councilor Krenning arrived at 6:09 p.m. and Councilor Fogle arrived at 6:12 p.m.

Councilor Johnson read the proclamation declaring Loveland a heart safe community Thompson Valley EMS Captain Mark Turner accepted the proclamation.

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Loveland resident, Jackie Marsh asked for item 5 to be moved to the Regular Agenda. Councilor McKean asked for Item 8 to be moved to the Regular Agenda. Councilor Shaffer moved to approve the consent agenda with the exception of items 5 and 8. The motion seconded by Councilor Fogle carried with all councilors present voting in favor thereof.

CONSENT AGENDA

1. **CITY CLERK** (presenter: Terry Andrews)
APPROVAL OF MEETING MINUTES
A Motion To Approve City Council Minutes For the January 26, 2016 Study Session, February 9, 2016 Study Session and the February 16, 2016 Regular meeting was approved.
This is an administrative action to approve the City Council minutes for January 26, 2016 the February 9, 2016 Study Sessions and the February 16, 2016 regular meeting.
2. **LOVELAND FIRE RESCUE AUTHORITY** (presenter: Mark Miller)
DESIGN OF FIRE TRAINING GROUNDS

A Motion To Approve On Second Reading, Ordinance #5997 Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Design Of The Fire Training Grounds was approved.

This is an administrative action to approval on second reading of \$321,442 supplemental appropriation to carryover funding appropriated in 2015 from Fire Capital Expansion Fees and meet actual project costs based on the Request for Proposal process for the design of the Fire Training Grounds. On February 16, 2016, City Council unanimously approved this ordinance on first reading.

**3. LOVELAND FIRE RESCUE AUTHORITY (presenter: Mark Miller)
ROSSUM DRIVE PROPERTY SALE**

A Motion To Approve On Second Reading, Ordinance #5998 Authorizing the Sale of Real Property Located within the City of Loveland on Rossum Drive Pursuant to Section 4-7 of the City of Loveland Municipal Charter was approved.

This is an administrative action on second reading regarding the sale of City property on Rossum Drive for \$145,000. The City of Loveland owns 1.83 acres on Rossum Drive located near 1220 Rossum Drive along West Highway 34. The property was purchased in 2002 for \$230,000 with fire capital expansion fees for a future station location. In 2015, a separate developer attempted to purchase the property along with an adjoining property to build a senior living facility. That proposed purchase agreement required that the developer rezone the two properties and the Loveland Planning Commission rejected the rezoning request in October, 2015. This new \$145,000 cash offer is from a neighbor who lives east of the property, and is \$10,000 more than the previous purchase offer. On February 16, 2016, City Council unanimously approved this ordinance on first reading.

**4. FINANCE (presenter: Alan Krcmarik)
SID BOND APPROPRIATIONS**

A Motion To Approve On Second Reading, Ordinance #5999 Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland Special Improvement District No. 1 Budget For Bond Appropriations was approved.

This is an administrative action. The City of Loveland recently completed the refunding of its Special Improvement District No. 1 (Series 2007) revenue bonds. The proposed Ordinance appropriates the final payments on the old bond (Series 2007) and the revenue generated from the new refunding bond. On February 16, 2016, City Council unanimously approved this ordinance on first reading.

**5. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)
PUBLIC COMMENT**

SOUTH CATALYST PROJECT FUNDING

This item was considered on Regular Agenda.

**6. PUBLIC WORKS (presenter: Chris Carlson)
PUBLIC COMMENT**

FLOOD RECOVERY PROJECTS FINAL DESIGN

A Motion To Approve On First Reading, An Ordinance Enacting a Supplemental Budget and Re-Appropriation (Rollover) to the 2016 City of Loveland Budget for Final Design of the Wilson to Taft Reach Flood Recovery Projects and for Completion of the Highway 287 Bridge Flood Mitigation Feasibility Study was approved.

This is an administrative action to re-appropriate funding approved in 2015 for engineering/final design of the Wilson to Taft Reach Flood Recovery Projects and for the Highway 287 Flood Mitigation Feasibility Study. Funding for both projects was previously approved in 2015, but work was delayed pending FEMA approval of a scope change request, signature of a Community Development Block Grant – Disaster Recovery (CDBG-DR) planning grant contract, and selection of an engineering consultant. Because

time is of the essence affecting analysis, design, permitting, bidding, construction and deadlines outside City control (FEMA and State deadlines), Public Works needs to move forward quickly to complete each of the two projects on schedule. Therefore, re-appropriation of \$246,000 for the flood recovery project work (Wilson to Taft reach projects) and \$172,150 for the Highway 287 Bridge Flood Mitigation Feasibility Study is requested.

7. **HUMAN RESOURCES** (presenter: Karen Rees)
PUBLIC COMMENT

EMPLOYEE BENEFITS FUND APPROPRIATION

A Motion To Approve On First Reading, An Ordinance On First Reading Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland Budget For A General Fund Contribution To The Employee Benefits Fund was approved.

The Employee Benefits Fund ended 2015 negative due to higher claims than expected in the months of November & December. In order to correct the shortfall, an appropriation of \$610,000 is needed. The total \$5,342,782 General Fund contribution to the Employee Benefits Fund will not change, but the timing of the contribution will. The requested appropriation will reduce the 2015 ending General Fund unassigned fund balance by \$610,000 and increase the projected ending 2016 General Fund unassigned fund balance by \$610,000.

8. **CITY MANAGER** (presenter: Bill Cahill)
BROADBAND TASK FORCE

This item was considered on Regular Agenda.

9. **FINANCE** (presenter: Brent Worthington)
JANUARY 2016 FINANCIAL REPORT

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending January 31, 2016.

10. **CITY MANAGER** (presenter: Alan Krcmarik)
JANUARY 2016 INVESTMENT REPORT

The budget projection for investment earnings for 2016 is \$2,229,818. On the portfolio's 2016 beginning balance this equates to an annual interest rate of 1.02%. Based on the January monthly statement, the estimated yield on the fixed income securities held by USBank was at 1.32%, for total assets the yield was 1.16%. For January, total earnings of \$129,599 were posted to City funds; the year-to date target was \$196,461. U.S. short-term Treasury interest rates fell in January; the portfolio's change in unrealized gain was \$1.5 million. The end of January portfolio market value is estimated to be \$212.5 million. The total amount of the portfolio is lower than the end of 2015 by \$4.8 million. The peak amount for the portfolio was reached before the 2013 flood when it had estimated market value of \$226.3 million.

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.

Roger Wiedleman, 4814 N. Franklin asked Council to review who would be serving on the Larimer County Selection Committee and if anyone on the committee was a Loveland resident.

Mayor Gutierrez introduced the new Economic Development Director, Susan Grafton.

PROCEDURAL INFORMATION

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REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

5. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)

PUBLIC COMMENT

SOUTH CATALYST PROJECT FUNDING

Economic Development Manager, Mike Scholl introduced this item to Council. This is an administrative action. The ordinance re-appropriates \$1,734,414, which is the balance of the \$6.5 million that was originally approved in 2014 for the acquisition of Downtown property and other activities in support of the South Catalyst redevelopment project. The proposed project, a partnership with the Brinkman Partners, is expected to result in a vertically dense mixed-use project that would include office, residential and retail. The total investment is expected to be \$50 to \$70 million. Since the initial appropriation in 2014, the City has purchased twelve properties and completed extensive pre-development activities. The funding for the appropriation of \$1,734,414 is from Unassigned Fund Balance in the General Fund. The remaining available unassigned fund balance in the General Fund will be \$6,446,959 if the request is approved. Mayor Gutierrez asked for public comment. Jackie Marsh, Rabbask Designs, spoke in opposition to the ordinance. **Councilor Shaffer moved To Approve On First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget To Re-Appropriate Funding Approved In 2014 For The Purchase Of Property And Other Costs Associated With Downtown Land Purchases For The South Catalyst Project. The motion was seconded by Councilor Ball. After discussion, Councilor Ball moved to call the question. The motion, seconded by Councilor Krenning, carried with seven councilors voting in favor and Councilors Overcash and Gutierrez voting against. The original motion was considered and carried with six councilors voting in favor and Councilors Overcash, Krenning and McKean voting against.**

8. CITY MANAGER (presenter: Bill Cahill)

BROADBAND TASK FORCE

This is an administrative item appointing a Council liaison to the recently formed Broadband Task Force to support the broadband initiative for the City of Loveland. There were no public comments. **Councilor Shaffer moved To Appoint John Fogle As Council Liaison To The Broadband Task Force For A Term Effective Until June 1, 2017. The motion, seconded by Councilor Johnson, carried with all councilors present voting in favor thereof.** Staff will bring back the establishment of a Communications Technologies Commission on a future Council agenda.

11. CITY MANAGER (presenters: Bill Cahill and Tim Hand)

MANDATORY PAROLE RECOMMENDATION

City Manager, Bill Cahill, introduced this item to Council. This is an administrative action directing staff to prepare and submit a letter of opposition to the mandatory parole recommendations of the Colorado Commission on Criminal and Juvenile Justice

Subcommittee. The Subcommittee has developed recommendations which may become a legislative proposal. Larimer County has registered their opposition to the recommendations and request that Loveland also send a letter of opposition, due to potential negative effects on community safety. There were no public comments. **Councilor Clark moved to Direct Staff To Prepare A City Of Loveland Letter Of Opposition To The Recommendations Of The Colorado Commission On Criminal And Juvenile Justice Subcommittee. The motion, seconded by Councilor Overcash, carried with five councilors voting in favor and Councilors Krenning, Clark, McKean and Shaffer voting against.**

12. **CITY ATTORNEY** (presenter: Tami Yellico)
PUBLIC COMMENT
CONSTRUCTION DEFECTS

City Attorney, Tami Yellico introduced this item to Council. This is a legislative action to consider the adoption of an ordinance that addresses the issues of builder and developer liability as it relates to construction defects. Public Comments: Mark Kenthopp, LBAR Realtors Chair spoke in support of the Option A ordinance. Renee Huff, LBAR spoke in support of the Option A ordinance. Michelle Jacobs Loveland resident also spoke in support of the Option A ordinance. **ORIGINAL MOTION: Councilor Shaffer moved to Approve On First Reading, An Ordinance Adding a New Chapter 15.58 to the Loveland Municipal Code to Encourage Construction of Condominiums. The motion was seconded by Councilor Fogle. AMEND: Councilor Krenning moved to Amend the motion to make the following changes to the ordinance: 13th Whereas shall read “The Council further finds that the use of alternative dispute resolution as a means to resolved construction defect claims by mediation should be encouraged as a standard practice with tin the City; and”; as well as the removal of the words “or arbitration” from section 15.58.100. The motion, seconded by Councilor Shaffer, carried with all councilors present voting in favor thereof. AMENDED MOTION: A vote was called on the original motion as amended, which carried with eight councilors voting in favor and Mayor Gutierrez voting against.**

13. **POLICE** (presenter: Tim Brown and Brent Worthington)
PUBLIC COMMENT
SUPPLEMENTAL APPROPRIATION FOR OFFICERS AND VEHICLES

Finance Director, Brent Worthington introduced this item. This is an administrative action. City Council approved the addition of three (3) officers funded by existing appropriations. Three (3) vehicles are needed to support the additional officers. One (1) vehicle is requested for a School Resource Officer approved in 2016. The remaining unassigned fund balance in the Police Capital Expansion Fee Fund will be \$5,289,723 if the ordinance is approved. The cost of the additional officers is offset by reductions in other expenses, so there is no impact to fund balance in the General Fund. Council asked the City Manager to come back with more information regarding the impact on other city departments. Council discussed approving the 4 police cars at this time and considering the officers at a future date. **Mayor Gutierrez moved to Approve On First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Four Police Vehicles and directed staff to remove all references to the “three polices officers and funds associated”, for consideration of this ordinance on second reading. The motion seconded by Councilor Clark, carried with all councilors present voting in favor thereof.**

14. **CITY ATTORNEY** (presenter: Tami Yellico)
LITIGATION UPDATE

City Attorney Tami Yellico gave an Update To City Council On Two Lawsuits And A Possible Motion To Allow City Council The Option To Go Into Executive Session For The Purpose Of Receiving Legal Advice And For Matters That May Be Subject To Negotiation Concerning The Lawsuits Of Jeremy C. Myers V. Brian Koopman And Tammy Fisher V. Brian Koopman And Luke Hecker

The City is involved in the lawsuits of Jeremy C. Myers v. Brian Koopman and Tammy Fisher v. Brian Koopman and Luke Hecker. Plaintiffs Jeremy Meyers and Western Salvage, Ltd., first filed suit in 2009 alleging violations of their Fourth and Fourteenth Amendment rights. Generally speaking, the claims stemmed from the September 6, 2007, execution of a no- knock search warrant by the Larimer County Sheriff’s Office SWAT Team at 1101 North Madison Street in Loveland, seeking evidence of a methamphetamine manufacturing laboratory being operated at the premises. The City has spent \$200,000 on this case. Having met its deductible/self-insured retention, the City’s additional costs are now being paid by CIRSA, which has spent \$52,058, bringing the total amount paid to date to \$252,058. On July 25, 2014, Tammy Fisher filed a Notice of Claim alleging that she suffered damages and monetary loss in excess of \$100,000 as a result of a police investigation regarding Plaintiff’s conduct during an investigation of a separate criminal matter in which the primary suspect was not Plaintiff. Plaintiff was alleged to have “tipped off” the primary suspect that the police were coming with a search warrant. To date \$60,246 has been spent by the City on this case.

Councilor Krenning moved to extend the meeting end time to 11:00p.m. per Council Resolution #R-7-2016. The motion, seconded by Councilor Fogle, carried with eight councilors voting in favor and Mayor Gutierrez voting against.

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.

- Shaffer** Announced the I-25 “Electeds” meeting is March 2, 2016 and the MPO meeting is March 3, 2016.
- Fogle** Announced, with Brinkman partners permission, their proposal for the County land RFP indicated that they would not consider the AIM or Probation as a possible use, because it did not appear compatible with other intended uses at that location.
- Gutierrez** Supreme Court had set “The Clean Power Plan” aside, however the Governor has indicated he is moving forward with the plan in Colorado. There are at least 6 bills that might be introduced in the future, relative to the Plan.

CITY MANAGER REPORT

None

CITY ATTORNEY REPORT

None

ADJOURN

Mayor Gutierrez, after hearing no further business adjourned the February 29, 2016 Regular meeting at 10:48 p.m.

Respectfully submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

AGENDA ITEM: 2
MEETING DATE: 3/15/2016
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill, City Manager



TITLE: Appointments to the Citizens' Finance Advisory Commission, Golf Advisory Board and Visual Arts Commission

RECOMMENDED CITY COUNCIL ACTION:

1. Adopt a motion to appoint Joseph Lynch to the Citizens' Finance Advisory Commission for a term effective until December 31, 2018.
2. Adopt a motion to appoint Roger Weidelman to the Citizens' Finance Advisory Commission for a term effective until December 31, 2018.
3. Adopt a motion to reappoint Julie Nelson to the Golf Advisory Board for a term effective until December 31, 2018.
4. Adopt a motion to reappoint Jan Wall to the Golf Advisory Board for a term effective until December 31, 2018.
5. Adopt a motion to appoint Chuck Weirauch to the Golf Advisory Board for a term effective until December 31, 2018.
6. Adopt a motion to appoint Jade Windell to the Visual Arts Commission for a partial term effective until December 31, 2017.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.

SUMMARY:

This is an administrative item appointing members to the Citizens' Finance Advisory Commission, the Golf Advisory Board and the Visual Arts Commission.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The **Citizens' Finance Advisory Commission** had three term vacancies during the Fall 2015 recruiting cycle. Two applications were received and interviews were conducted in February. The committee recommends appointing Joseph Lunch and Roger Weidelman to the Citizens' Finance Advisory Commission, each for a term effective until December 31, 2018. A third application was received and an interview will be conducted.

The **Golf Advisory Board** had three term vacancies during the Fall 2015 recruiting cycle. Three applications were received and interviews were conducted February 24, 2016. The committee recommends reappointing Julie Nelson and Jan Wall to the board. Chuck Weirauch is recommended for appointment to the board. All recommended terms are effective until December 31, 2018.

Julie Bender resigned from the **Visual Arts Commission** due to time conflicts. February 16, 2016 Jade Windell was appointed as an alternate member on VAC. He is recommended for appointment to the Visual Arts Commission for a partial term effective until December 31, 2017.

REVIEWED BY CITY MANAGER:

William D. Cabell

LIST OF ATTACHMENTS:

None

AGENDA ITEM: 3
MEETING DATE: 3/15/2016
TO: City Council
FROM: Leah Browder, Public Works Director
PRESENTER: Chris Carlson, Civil Engineer II



TITLE: An Ordinance Enacting a Supplemental Budget and Re-Appropriation (Rollover) to the 2016 City of Loveland Budget for Final Design of the Wilson to Taft Reach Flood Recovery Projects and for Completion of the Highway 287 Bridge Flood Mitigation Feasibility Study.

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The request would then be included in the annual City-wide re-appropriation rollover request in April. However, both projects will be delayed by approximately two months assuming that the re-appropriation is approved in April.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. The projects will be delayed accordingly.

SUMMARY:

This is an administrative action. The ordinance on second reading re-appropriates funding approved in 2015 for engineering/final design of the Wilson to Taft Reach Flood Recovery Projects and for the Highway 287 Flood Mitigation Feasibility Study. Funding for both projects was previously approved in 2015, but work was delayed pending FEMA approval of a scope change request, signature of a Community Development Block Grant – Disaster Recovery (CDBG-DR) planning grant contract, and selection of an engineering consultant. Because time is of the essence affecting analysis, design, permitting, bidding, construction and deadlines outside City control (FEMA and State deadlines), Public Works needs to move forward quickly to complete each of the two projects on schedule. Therefore, re-appropriation of \$246,000 for the flood recovery project work (Wilson to Taft reach projects) and \$172,150 for the Highway 287 Bridge Flood Mitigation Feasibility Study is requested. On February 29, 2016, City Council unanimously approved this ordinance on first reading.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

Both projects were funded in the 2015 budget as it was expected that these funds would be encumbered by the end of 2015. Since the funding was not encumbered by that time, it became an available fund balance at the end of the year. Therefore, this re-appropriation does not negatively impact the 2016 budget.

BACKGROUND:***Wilson – Taft Reach Flood Recovery Project:***

On March 2, 2014, City Council originally appropriated funding for the engineering costs of numerous flood recovery projects. That included funding for the multiple projects within the general Wilson to Taft Avenue reach of the Big Thompson River. Projects within this reach include replacement of the Wilson Avenue pedestrian bridge, trail realignment and repairs, storm sewer outfall and stormwater quality pond replacement, utility protection, bank protection, and flood hazard mitigation. Initial engineering analysis and conceptual design was completed for the projects, which led to a scope change request being submitted to FEMA for approval in July 2015. Final design and construction was then postponed pending FEMA approval. Unfortunately, FEMA is many months behind in their review process and has not yet reviewed the request.

Funding of \$246,000 was rolled over into the 2015 budget by approval of an ordinance on 2nd reading on December 1, 2015. Approximately \$112,000 was already encumbered for the alternative analysis and conceptual designs while \$134,000 remained unencumbered for final design. Public Works will now proceed with final design of these flood recovery projects. It is hoped that final design will be completed quickly, environmental permitting will proceed, and the overall construction project will be bid this coming summer. We anticipate construction to begin in fall 2016 after flood season. We anticipate FEMA review of the proposed project scope changes before construction. Once design is completed along with a detailed estimate of probably construction costs, Public Works will request a supplemental appropriation for construction funding. This is anticipated to likely occur by August 2016.

Because there are a number of critical path milestones that must be met in order for construction to begin in October 2016. These include: completing final design and construction documents, environmental permitting, construction bidding and contracting, appropriating funding for construction, and receiving FEMA approval of the requested scope changes. Therefore, final design must begin by no later than late-March 2016 or the construction would be postponed.

Highway 287 Bridge Flood Mitigation Feasibility Study:

On July 21, 2015, City Council approved funding by supplemental appropriation of \$172,150 for engineering costs to complete a Highway 287 Bridge Flood Mitigation Feasibility Study. Up to \$125,000 of those costs will be reimbursed by a Community Development Block Grant – Disaster Recovery (CDBG-DR) planning grant awarded to the City of Loveland by the State of Colorado. It was originally anticipated that the grant contract between the City and State would be executed promptly so that the project would begin by mid-fall 2015. However, the State did not sign the grant contract until November 20, 2015.

With the notice to proceed from the signed grant contract, the City selected an engineering consultant but the selection and scope of services were not finalized until after the end of the year. Since the grant includes a project deadline of December 31, 2016, and it's anticipated that the project could take 6-9 months to complete, Public Works desires to rollover the previously approved funding and begin the project as soon as possible so as not to risk the December 31 deadline. If the re-appropriation rollover occurred during the normal rollover approval process in April, the project could not begin until May. That late of a start date puts too much pressure on the City's ability to affectively complete the project within the required project schedule. Therefore, the re-appropriation rollover request is included in this agenda item so the project can begin as quickly as possible.

Supplemental Re-appropriation (Rollover):

Project	Supplemental Request Amount:	Budget Account
Wilson to Taft Reach Flood Recovery Projects	\$246,000	120-23-280-0000-49352
Highway 287 Bridge Flood Mitigation Feasibility Study	\$172,150	Original funding came from: \$125,000 – grant reimbursement; 345-23-283-0000-32000 \$31,434 – Public Works Project Engineering and Parks and Recreation (General Fund); 100-91-999-0000-47345 \$15,716 – Stormwater Utility Capital fund; 345-23-283-0000-43450 Funding moved into: 345-23-283-0000-43450 for the project

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Link to First Reading [Ordinance](#) Item 6



AGENDA ITEM: 4
MEETING DATE: 3/15/2016
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: Karen Rees, Interim Human Resources Director

TITLE: An Ordinance Enacting A Supplemental Budget And Appropriation To The 2015 City Of Loveland Budget For A General Fund Contribution To The Employee Benefits Fund

RECOMMENDED CITY COUNCIL ACTION:

Adopt the action on Second Reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The Employee Benefits Fund will be negative in 2015.
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration. Due to the timing of closing 2015, if this action is referred back to staff for further development and consideration it will not be able to be processed for 2015.

SUMMARY:

The Employee Benefits Fund ended 2015 negative due to higher claims than expected in the months of November & December. In order to correct the shortfall, an appropriation of \$610,000 is needed. The total \$5,342,782 General Fund contribution to the Employee Benefits Fund will not change, but the timing of the contribution will. On February 29, 2016, City Council unanimously approved this ordinance on first reading.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The requested appropriation will reduce the 2015 ending General Fund unassigned fund balance by \$610,000 and increase the projected ending 2016 General Fund unassigned fund balance by \$610,000.

BACKGROUND:

The initial analysis of the Employee Benefits Fund conducted in early 2015 identified a declining trend in fund balance that was anticipated to be drawn completely down in 2016. Due to higher claims than anticipated late in 2015 the fund drawdown occurred earlier than expected.

The cause of the negative balance was a timing difference between the City paying certain claims reimbursable under the stop-loss coverage and receipt of the reimbursement. The claims were booked as an expense in 2015; the cash will be received in 2016. (To date, \$400,392 has been received; an additional \$1,019,320 is pending). Therefore, there will be no net negative effect on the fund balance in the Benefits Fund.

This appropriation requests that \$610,000 be transferred from the General Fund to the Employee Benefits Fund for FY 2015.

In 2016, \$5,342,782 is already appropriated to be transferred from the General Fund to the Employee Benefits Fund. This ordinance will enable the General Fund to pay \$610,000 in 2015 and reduce the 2016 contribution to \$4,732,782.

The State's Local Government Budget Law of Colorado authorizes the City Council to adopt this action. Section 29-1-112 "Payment for Contingencies" states, "In case of an emergency and the passage of an ordinance or resolution authorizing additional expenditures in excess of the appropriation as provided in section 29-1-111 and if there is money available for such excess expenditure in some other fund or spending agency which will not be needed for expenditures during the balance of the fiscal year, the governing body shall transfer the available money from such fund to the fund from which the excess expenditures are to be paid. If available money which can be so transferred is not sufficient to meet the authorized excess expenditure, then the governing body may obtain a temporary loan to provide for such excess expenditures. The total amount of the temporary loan shall not exceed the amount which can be raised by a two-mill levy on the total assessed valuation of the taxable property within the limits of the local government of such governing body."

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Link to First Reading [Ordinance](#) Item 7

AGENDA ITEM: 5
MEETING DATE: 3/15/2016
TO: City Council
FROM: Tim Brown, Police Department
PRESENTER: Tim Brown, Interim Chief of Police



TITLE: An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Four Police Vehicles

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. Denial of this action will result in an inability to order police vehicles in time to be ordered and built in the 2016 State purchase bid timeline.
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration. Vehicles must be ordered prior to April of 2016 in order to be built and delivered by December, 2016. Delay of this action would result in us failing to meet the state-bid order deadline and may exceed their current appropriations.

SUMMARY:

City Council approved the addition of three (3) officers funded by existing appropriations. Three (3) vehicles are needed to support the additional officers. One (1) vehicle is requested for a School Resource Officer approved in 2016 under acceptance of a COPS grant with Thompson School District R2J. On February 29, 2016, City Council unanimously approved this ordinance on first reading.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The remaining unassigned fund balance in the Police Capital Expansion Fee Fund will be \$5,289,723 if the ordinance is approved.

BACKGROUND:

The police department issues patrol vehicles to officers on a one-to- one car plan that enhances our visibility in the community and allows for the rapid response of our sworn personnel to large-scale events or specific emergencies (i.e., SWAT call-outs or investigative needs).

The State bid process for police vehicles requires that we order these vehicles prior to April 7, 2016. This will permit the vehicles to be built during the summer and delivered likely in December, 2016.

In July, 2015, the City accepted a COPS grant in partnership with Thompson School District R2J to employ an additional School Resource Officer. A currently employed officer was immediately assigned to the position but a vehicle for the new position had not been ordered and is therefore

included for a total of 4 vehicles requested at a cost of \$50,000 each including specific equipment installed in the vehicles. The total request for \$200,000 is requested to be funded by fund balance in the Police Capital Expansion Fee Fund.

Approval of a supplemental request to fund the vehicles using fund balance in the Capital Expansion Fee Fund will permit us to equip all officers with consistent equipment in a timely manner upon the completion of their full field training experience.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance

FIRST READING February 29, 2016

SECOND READING March 15, 2016

ORDINANCE NO. 6002

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR FOUR POLICE VEHICLES

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for four police vehicles; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for four police vehicles, 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 amount of \$200,000 from fund balance in the Police Capital Expansion Fee Fund are available for appropriation. Such revenues in the total amount of \$200,000 are hereby appropriated to the 2016 City budget for four police vehicles. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Police Capital Expansion Fee Fund 265**

Revenues		
Fund Balance		200,000
Total Revenue		200,000
Appropriations		
265-21-201-2102-48244	Motor Vehicle	200,000
Total Appropriations		200,000

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 15th day of March, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

AGENDA ITEM: 6
MEETING DATE: 3/15/2016
TO: City Council
FROM: Mark Miller, Loveland Fire Rescue Authority
PRESENTER: Mark Miller, Fire Chief



TITLE: A Resolution Approving Supplemental Budget And Appropriation For The Loveland Fire Rescue Authority 2016 Budget

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Resolution as recommended.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The supplemental appropriation approved the LFRA Board would need to go back to the LFRA Board for consideration base on City Council feedback. The incomplete projects at year end would have to be taken out of the existing budget; thereby causing the elimination of projects planned in the 2016 adopted budget.
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration. Delays have a similar impact as a denial.

SUMMARY:

This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2016 Budget to re-appropriate operational expenses not spent in 2015 and add new projects. The Council approval of the budget is required for the Authority's budget to be in effect.

BUDGET IMPACT:

- Positive
- Negative *in that it is an appropriation of resources; however, it is well within the contribution savings at the end of 2015.*
- Neutral or negligible

Implementation of the resolution requires an additional contribution from the City of \$362,054 to be appropriated from fund balance, available due to 2015 savings in the budgeted contribution to LFRA. At year end the contribution from the City had a balance of \$401,400, leaving \$39,386 of the savings to be retained in the City's General Fund Balance.

BACKGROUND:

The Loveland Fire Rescue Authority was created through the Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity (IGA). At the Authority's February 24, 2016 meeting the Authority approved a resolution amending the budget by \$705,079 (including revenue from permits and grants of \$194,930 that offsets the cost) for projects approved but not completed and new projects. A staff memorandum is attached that highlight how the numbers are calculated and provides detailed information on all the projects requested.

REVIEWED BY CITY MANAGER:

William D. Cavill

LIST OF ATTACHMENTS:

1. A Resolution approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2016 budget.
2. Attachment A - Fire Authority Resolution #R-064 enacting a supplemental budget and appropriation to the 2016 Loveland Fire Rescue Authority Budget to appropriate additional funding from both the City of Loveland and the Loveland Rural Fire Protection District.

RESOLUTION #R-19-2016**A RESOLUTION APPROVING THE LOVELAND FIRE RESCUE
AUTHORITY'S SUPPLEMENTAL BUDGET AND APPROPRIATION
RESOLUTION NO. R-064 FOR THE LOVELAND FIRE RESCUE
AUTHORITY'S 2016 BUDGET**

WHEREAS, the Loveland Fire Rescue Authority ("Fire Authority") is established pursuant to that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 18, 2011, as amended (the "Authority IGA") between the City of Loveland, a Colorado home rule municipality ("City") and the Loveland Rural Fire Protection District, a Colorado Special District ("District"); and

WHEREAS, the Fire Authority is authorized under Section 4.1 of the Authority IGA to adopt an annual budget and to supplement such budget from time to time, provided that the annual budget and any supplemental appropriations shall become effective upon the approval of the governing bodies of the City and the District; and

WHEREAS, the Fire Authority held a public hearing on February 24, 2016 and by adoption of Resolution No. R-064, approved a supplemental budget and appropriation to its 2016 budget to appropriate additional funding for expenditures associated with projects approved but not completed and new projects; and

WHEREAS, the Fire Authority Board of Directors submitted the Fire Authority's Resolution No. R-064 enacting a supplemental budget and appropriation to the 2016 budget, which is attached hereto as **Exhibit A** and incorporated herein by reference, to the City and the District for approval as required by Section 1.9(f) of the Authority IGA; and

WHEREAS, the City Council desires to approve the Fire Authority's Resolution No. R-064.

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

Section 1. That the 2016 Loveland Fire Rescue Authority Supplemental Budget and Appropriation, attached hereto as **Exhibit A** and which has been filed with the Fire Authority Administrative Office in its entirety, for the fiscal year beginning January 1, 2016 and ending December 31, 2016, with revenues in the amount of \$705,079, and expenditures of \$705,079 for operations, is hereby approved.

Section 2. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 15th day of March, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

RESOLUTION NO. R-064

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET REGARDING THE APPROPRIATION OF MONEYS TO AND THE EXPENDITURE OF MONEYS FROM THE GENERAL FUND FOR THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2016 AND ENDING ON THE LAST DAY OF DECEMBER 2016

WHEREAS, the Loveland Fire Rescue Authority ("*Authority*") is a governmental entity of the State of Colorado, established by contract between the City of Loveland ("*City*") and the Loveland Rural Fire Protection District ("*Rural District*") pursuant to that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011 ("*Establishing IGA*");

WHEREAS, on November 18, 2015, the Authority Board of Directors ("*Board*"), after complying with notice and other statutory requirements, duly adopted a budget for fiscal year 2016 ("*2016 Budget*"). Pursuant to Section 4.1 of the Establishing IGA, the 2016 Budget subsequently was approved by the City Council and by the Rural District Board of Directors, and the amounts set forth therein were appropriated by the Authority Board on December 16, 2015;

WHEREAS, after adopting the 2016 Budget and making appropriations thereunder, the Authority Board determined it necessary to approve additional appropriations of moneys to and expenditures of moneys from the General Fund for fiscal year 2016;

WHEREAS, the Authority Board authorized its administrative staff and consultants to prepare and submit a proposed 2016 Supplemental Budget reflecting the additional appropriations of moneys to and expenditures of moneys from the General Fund;

WHEREAS, a proposed 2016 Supplemental Budget has been submitted to the Authority Board for its consideration. A copy of the 2016 Supplemental Budget is attached to this Resolution;

WHEREAS, pursuant to Section 4.1 of the Establishing IGA, the 2016 Supplemental Budget also must be submitted to the City Council and Rural District Board of Directors for their consideration, and shall become effective only after approval of both the City Council and Rural District Board of Directors;

WHEREAS, it is the Authority Board's understanding that, as part of the City's 2015 budget, the City appropriated funds for the City's 2015 funding contribution to the Authority, a portion of which funds were not expended by the Authority because certain ongoing projects were not completed or closed out during calendar year 2015, and that such unspent funds remain available to the City to re-appropriate in 2016 as part of the City's 2016 funding contribution to the Authority, in order to permit the Authority to continue work on such ongoing projects;

WHEREAS, it is the Authority Board's understanding that, as part of the Rural District's 2016 budget, the Rural District Board of Directors appropriated a contingency fund for

unanticipated expenditures and also appropriated funds for the Rural District's 2016 funding contribution to the Authority, including funds for the Authority's ongoing projects;

WHEREAS, it is the Authority Board's understanding that, in addition to the foregoing, the City and Rural District also have received and/or have reserved funds not anticipated or reserved at the time the City Council and Rural District Board of Directors adopted their respective 2016 budgets;

WHEREAS, the Authority Board desires to adopt the attached 2016 Supplemental Budget, and desires to request that the City Council and Rural District Board of Directors approve the attached 2016 Supplemental Budget, and appropriate the necessary funds to provide for the 2016 Supplemental Budget from the City's unspent funds, the Rural District's contingency and appropriated funds, and/or the City and District's unanticipated fund receipts, as appropriate;

WHEREAS, due and proper notice, published and posted in accordance with the law, advised the public that (1) the Authority's proposed 2016 Supplemental Budget was available for inspection by the public at a designated public office; (2) the Authority Board would hold a public hearing on the proposed 2016 Supplemental Budget on Wednesday, February 24, 2016 at 1:00 pm; and (3) interested electors could comment on or to file or register objections to the proposed 2016 Supplemental Budget any time before the public hearing; and,

WHEREAS, the Authority Board held a public hearing on Wednesday, February 24, 2016, and interested electors were given the opportunity to comment on or to file or register any objections to the attached 2016 Supplemental Budget.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:

Section 1. Receipt of Moneys to the General Fund. Subject to approval of the City Council and Rural District Board of Directors pursuant to Section 4 below, the Authority Board hereby authorizes and approves the receipt and appropriation in 2016 of an additional \$705,079 in revenue from the City's and Rural District's annual funding contributions to the Authority's General Fund.

Section 2. Expenditures of Money from the General Fund. Subject to approval of the City Council and Rural District Board of Directors pursuant to Section 4 below, the Authority Board hereby ratifies and approves the expenditure of an additional \$705,079 from the Authority's General Fund during fiscal year 2016.

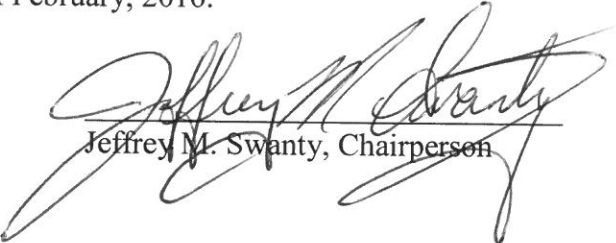
Section 3. Adoption of Supplemental Budget for 2016. Subject to approval of the City Council and Rural District Board of Directors pursuant to Section 4 below, the Authority Board hereby adopts the 2016 Supplemental Budget in the form attached to this Resolution.

Section 4. City Council's and Rural District Board of Directors' Approval Required. Pursuant to Section 4.1 of the Establishing IGA, the 2016 Supplemental Budget shall become effective as of the date that both the City Council and Rural District Board of Directors

approve the 2016 Supplemental Budget. The Authority's administrative staff shall obtain and maintain with this Resolution a copy of the City Council and Rural District Board actions approving or denying approval of the attached 2016 Supplemental Budget.

Section 5. Purposes of 2016 Supplemental Budget Could Not Have Been Reasonably Foreseen. At the time the Authority Board adopted the 2016 Budget in the fall of 2015, it could not have reasonably foreseen the need to approve additional appropriations of moneys to and expenditures of moneys from the General Fund for fiscal year 2016.

ADOPTED this 24th day of February, 2016.


Jeffrey M. Swanty, Chairperson

ATTEST:


Secretary

Loveland Fire Rescue Authority 2016 Supplemental Budget

Funds Appropriated for Use by the Authority But Unspent in 2015:

Account Title	Account Number	Amount	Description
Sources of Funds:			
Permit Revenue	604-22-223-1654-31304	\$29,930	Increase in the estimate based on collections over the last two years and projects in the queue
Pension Fund Revenue	604-22-227-1610-35315	45,000	Pension Fund revenue to offset pension fund expenditures
Federal Grant	604-22-227-1600-32000	165,000	Community Development Block Grant-DR for Mitigation Study and Master Plan
Contribution from the City	604-22-227-1601-38600	362,054	82% of the operations fund; re-appropriated from the 2015 contribution savings of \$401,440
Contribution from the Rural District	604-22-227-1601-32402	103,095	18% of the operations fund; from a 2015 contribution savings of \$88,128 an allowable use of contingency appropriated in 2016 Budget and \$23,620 from the Big Thompson Canyon budgeted capital for 100% of bunker gear match for grant from
Total Funds		\$705,079	

2016 Supplemental Authority Appropriations and Expenditures:

Account Title	Account Number	Amount	Description
Uses of Funds:			
Other Services	604-22-227-1600-43899	\$51,292	Emergency Management grants
Other Services	604-22-227-1600-43899 CDBG-DR FIRE	165,000	CDBG-DR grant for the Mitigation Study and Master Plan
Tools & Equip	604-22-227-1600-42033	23,275	Emergency Management grants
Other Capital	604-22-224-0000-49399	136,800	Complete Phase II of the Station Alerting
Salaries	604-22-224-0000-41011	15,120	Rover Accelerated hire/Overhire Firefighter Less salaries not paid during military leave
OT	604-22-224-0000-41021	2,822	
FLSA OT	604-22-224-0000-41025	910	
Insurance	604-22-224-0000-41543	8,377	
Medicare	604-22-224-0000-41544	260	
Retirement	604-22-224-0000-41545	1,663	
SCBA	604-22-226-1644-42097	1,720	
Training	604-22-224-1605-43270 FRTRAIN	1,500	
Uniforms & Bunker Gear	604-22-224-1630-42025	6,607	
Bunker Gear	604-22-22-1630-42025 FRBTCVFD	23,620	If Grant received this is required in addition to the grant to purchase 18 sets of Big Thompson Canyon Volunteer bunker gear replacements.
Equipment	604-22-223-1654-49399	18,900	Development and Permit Scanner
Equip Maint	604-22-226-1647-43562	16,050	Engine 1, 5, & 6 upgrades/repairs
Vehicle Replacement	604-22-226-1647-43654	12,480	Two BC Trucks were left out of the amortization calculation for the year
Parts & Supplies	604-22-226-1642-42032	9,510	One fog nail nozzle for every frontline engine

Account Title	Account Number	Amount	Description
Other Supplies	604-22-224-1605-42899 FRTRAIN	6,600	20' & 40" containers for burn cells to train on fire behavior
Chemicals	604-22-224-0000-42021	5,200	Nova-cool foam (200 gallons)
Salaries	604-22-223-1654-42011	14,504	Part time CSD Inspector to Full Time for 20 pay periods
OT	604-22-223-1654-42021	2,072	
Insurance	604-22-223-1654-41543	8,377	
FICA & Medicare	604-22-223-1654-41544	1,268	
Retirement	604-22-223-1654-41545	2,072	
Training	604-22-223-1654-43270	1,500	
Uniforms	604-22-224-1630-42025	600	
Veh Mtn-Outside Service	604-22-226-1647-43562	5,000	Graphics conversion on all apparatus, CSD, & Training
Training	604-22-224-1605-43270 FRTRAIN	5,000	Kill the Flashover, Lars Smoke Behavior & Active Assailant course sponsorship
Training	604-22-223-1654-43270	4,000	Development Review Team Everhardt Training
Training	604-22-224-1605-43270 FRTRAIN	4,000	TRICON & ETI conferences for technology
Training	604-22-224-1605-43270 FRTRAIN	3,000	Kill the Flashover-east Conference for one
Training	604-22-224-1605-43270 FRTRAIN	2,000	Arvada Auto Extrication class
Tower Maint on Training Grounds	604-22-224-1605-43569 FRTRAIN	1,265	½ of Tower Rail invoice not paid by end of year
Computer Supplies	604-22-226-1646-42015	3,485	CAD server upgrade – shared cost with PD
Other Capital	604-22-224-0000-49399	30,275	PO 15-1103 Station Alerting Installs not complete at year end
Comm Services	604-22-226-1641-43718	8,953	PO 15-0631 Rest of Motorola Maint Agreement
Hose	604-22-226-1642-42032	12,073	PO 15-0802 hose and PO 15-1152 nozzle tips
Other Supplies	604-22-227-1600-42899	8,953	PO 15-0761 traffic installation contract
Other Supplies	604-22-225-1603-42899 FRUSAR	3,525	EMS Skid Unit for Gator
Salaries	604-22-1601-227-41011	26,551	Retirement and one month overlap with replacement
Parts & Supplies	604-22-224-1631-42032	3,900	Commercial grade stove replacement-Station 1
Pension Fund	604-22-227-1610-43451	5,000	Legal
Pension Fund	604-22-227-1610-43450	30,000	Innovest to monitor investments
Pension Fund	604-22-227-1610-43270	10,000	Training
Total Appropriations and Expenditures		\$705,079	

AGENDA ITEM: 7
MEETING DATE: 3/15/2016
TO: City Council
FROM: Terry Andrews, City Clerk's Office
PRESENTER: Terry Andrews, City Clerk



TITLE: A Resolution Directing The City Clerk And Other Staff To Prepare For The Possibility Of An Election Issue Involving The Downtown Development Authority

RECOMMENDED CITY COUNCIL ACTION:

Approve the Resolution

OPTIONS:

1. Adopt the Resolution as requested
2. Denying the resolution may result in the appearance of the City not making every effort to ensure all "qualified electors" are contacted prior to the election.

SUMMARY:

This is an administrative action. The resolution would authorize the City Clerk and other staff to begin the process of creating the "qualified elector" list, for a possible November TABOR election for the Downtown Development Authority, created in February of 2015.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

BACKGROUND:

The process for developing the "Qualified Elector" list in a DDA election is complicated. Qualified electors are defined as "Landowners", "Residents" and "Lessees". The City Clerk's Office uses a variety of sources to gather names of qualified electors. In some cases, the voter must complete an additional step(s) to receive a ballot. Starting this process early will give "Qualified electors" additional time for questions and to complete the additional steps, necessary to ensure they are able to vote in the election.

This resolution merely grants permission for City Staff to move forward preliminarily on the creation of the "qualified elector list". In order to participate in a coordinated election in November, City Council would still need to call for the election and set the ballot title at a future date.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Resolution

RESOLUTION #R-20-2016

A RESOLUTION DIRECTING THE CITY CLERK TO PREPARE FOR THE POSSIBILITY OF AN ELECTION ISSUE INVOLVING THE DOWNTOWN DEVELOPMENT AUTHORITY

WHEREAS, voters approved the creation of the Downtown Development Authority (“DDA”) on February 10, 2015 and it is a body corporate duly organized and existing under laws of the State of Colorado; and

WHEREAS, Article X, Section 20 of the Colorado Constitution (“Amendment 1”) requires voter approval for the creation of any debt, a mill levy increase or revenue retention above certain limits in the DDA; and

WHEREAS, City Council as the governing body may submit to the qualified electors within the DDA such a ballot measure at any state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years; and

WHEREAS, the City Clerk pursuant to the Charter of the City of Loveland is responsible for all activities and duties required relating to the conduct of City elections; and

WHEREAS, during the months before an election, the City Clerk is busy with many election duties, and early development of a process to identify qualified voters within the DDA would benefit the election if such an election issue is submitted by City Council; and

WHEREAS, the City Council desires to direct the City Clerk to begin preparations for possible ballot questions concerning the DDA, including to develop the methods and processes for identification of qualified electors within the DDA.

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

Section 1. The City Clerk is hereby authorized and directed to begin preparation for possible ballot questions concerning the DDA, including to develop the methods and processes for identification of qualified electors within the DDA.

Section 2. That this Resolution shall take effect as of the date and time of its adoption.

APPROVED this 15th day of March, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

AGENDA ITEM: 8
MEETING DATE: 3/15/2016
TO: City Council
FROM: Jason Licon, Airport
PRESENTER: Jason Licon, Airport



TITLE: A Resolution To Amend The Bylaws Of The Northern Colorado Regional Airport Commission

RECOMMENDED CITY COUNCIL ACTION:

Conduct a Public Hearing and approve the Resolution on first reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The resolution is need to enable the Northern Colorado Regional Airport Commission the authority to pursue strategic planning objectives as approved by City Council
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration. If referred back to staff the Airport Commission will not have effective resources available as intended by the City Councils until adopted.

SUMMARY:

This is an administrative action to adopt a resolution amending the bylaws governing the responsibilities and duties of the Northern Colorado Regional Airport Commission to allow the NCRA Commission to establish subcommittee and work groups to provide research assistance and recommendations to the Commission.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

On January 22, 2015 the City of Loveland and the City of Fort Collins approved an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Airport. Under section 3 of the agreement the Northern Colorado Regional Airport Commission shall adopt Bylaws governing the responsibilities and duties of the Commission consistent with the terms and conditions of this Agreement. The Bylaws and any amendments thereto shall be approved by the City Councils before going into effect.

On February 18, 2016, the Northern Colorado Regional Airport Commissioners at a regularly scheduled meeting and public hearing adopted Resolution 1-2016. This resolution will allow for the formation of subcommittees or work groups, comprised of Commission members and work groups comprised of individuals who are not Commission members to provide research assistance or recommendations to the Commission provided that the work group has a Commission member assigned as a liaison. This amendment is now subject to approval by the Councils to amend the Bylaws as required by the 2015 IGA.

REVIEWED BY CITY MANAGER:

William D. Cavill

LIST OF ATTACHMENTS:

1. Commission Resolution-1-2016
2. Resolution

RESOLUTION 1-2016

**A RESOLUTION AMENDING THE BYLAWS OF THE NORTHERN
COLORADO REGIONAL AIRPORT COMMISSION**

WHEREAS, the Northern Colorado Regional Airport Commission (“Commission”) was established by the City of Loveland (“Loveland”) and the City of Fort Collins (“Fort Collins”) pursuant to that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated January 22, 2015 (“2015 IGA”), to effectuate changes to the governance structure and pursue development of the Fort Collins-Loveland Airport as a regional airport; and

WHEREAS, pursuant to and consistent with the 2015 IGA, the Commission, with the approval of the Loveland City Council and Fort Collins City Council (jointly, the “Councils”), adopted bylaws (“Bylaws”) governing the responsibilities of the Commission; and

WHEREAS, the Commission desires to establish subcommittees and work groups to assist the Commission with research and recommendations related to the Commission’s purpose and, to that end, seeks to amend the Bylaws to clarify its power to establish such subcommittees and work groups; and

WHEREAS, the 2015 IGA requires that the Bylaws, including any amendment thereto, be approved by the Councils before going into effect.

NOW, THEREFORE, BE IT RESOLVED BY THE NORTHERN COLORADO REGIONAL AIRPORT COMMISSION:

Section 1. That the Bylaws, subject to the approval of the Councils, are hereby amended by the addition of a Section 12 to read in full as follows:

Section 12. Subcommittees and Work Groups. The Commission may establish both subcommittees comprised of Commission members and work groups comprised of individuals who are not Commission members to provide research assistance or recommendations to the Commission; provided that any work group established by the Commission shall have a Commission member assigned as a liaison. Subcommittees and work groups established by the Commission shall be subject to the Colorado Open Meetings Law, C.R.S. §24-6-402.

Section 2. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 18th day of February, 2016


Cecil A. Gutierrez, Chair

ATTEST:


Secretary

APPROVED AS TO FORM:


Assistant City Attorney

City of Fort Collins Resolution No. _____, approved _____, 201__
City of Loveland Resolution No. _____, approved _____, 201__

A RESOLUTION AMENDING THE BYLAWS OF THE NORTHERN COLORADO REGIONAL AIRPORT COMMISSION

RESOLUTION #R-21-2016

**A RESOLUTION AMENDING THE BYLAWS OF THE NORTHERN
COLORADO REGIONAL AIRPORT COMMISSION**

WHEREAS, the Northern Colorado Regional Airport Commission (“Commission”) was established by the City of Loveland (“Loveland”) and the City of Fort Collins (“Fort Collins”) pursuant to that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated January 22, 2015 (“2015 IGA”), to effectuate changes to the governance structure and pursue development of the Fort Collins-Loveland Airport as a regional airport; and

WHEREAS, pursuant to and consistent with the 2015 IGA, the Commission, with the approval of the Loveland City Council and Fort Collins City Council (jointly, the “Councils”), adopted bylaws (“Bylaws”) governing the responsibilities of the Commission; and

WHEREAS, the Commission desires to establish subcommittees and work groups to assist the Commission with research and recommendations related to the Commission’s purpose and, to that end, seeks to amend the Bylaws to clarify its power to establish such subcommittees and work groups; and

WHEREAS, on February 18, 2016 the Commission adopted Resolution #1-2016 approving the proposed Bylaws amendment subject to the approval of the Councils; and

WHEREAS, the 2015 IGA requires that the Bylaws, including any amendment thereto, be approved by the Councils before going into effect.

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

Section 1. That the amendment to the Commission Bylaws adding a Section 12 to read as follows is hereby approved.

Section 12. Subcommittees and Work Groups. The Commission may establish both subcommittees comprised of Commission members and work groups comprised of individuals who are not Commission members to provide research assistance or recommendations to the Commission; provided that any work group established by the Commission shall have a Commission member assigned as a liaison. Subcommittees and work groups established by the Commission shall be subject to the Colorado Open Meetings Law, C.R.S. §24-6-402.

Section 2. That this Resolution shall be effective as of the date and time of its adoption.

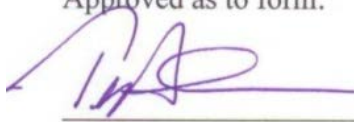
ADOPTED this 15th day of March, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:



Teresa Ablao
Assistant City Attorney

CC RESOLUTION AMENDING THE BYLAWS OF THE NORTHERN COLORADO REGIONAL AIRPORT COMMISSION

AGENDA ITEM: 9
MEETING DATE: 3/15/2016
TO: City Council
FROM: Mike Scholl, Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager



TITLE: An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget To Re-Appropriate Funding Approved In 2014 For The Purchase Of Property And Other Costs Associated With Downtown Land Purchases For The South Catalyst Project

RECOMMENDED CITY COUNCIL ACTION:

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

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration.

SUMMARY:

This is an administrative action. The ordinance re-appropriates \$1,734,414, which is the balance of the \$6.5 million that was originally approved in 2014 for the acquisition of Downtown property and other activities in support of the South Catalyst redevelopment project. The proposed project, a partnership with the Brinkman Partners, is expected to result in a vertically dense mixed-use project that would include office, residential and retail. The total investment is expected to be \$50 to \$70 million. Since the initial appropriation in 2014, the City has purchased twelve properties and completed extensive pre-development activities. On February 29, 2016 City Council approved the first reading of the ordinance by a 6 to 3 vote.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The funding for the appropriation of \$1,734,414 is from Unreserved Fund Balance in the General Fund. The appropriation of this fund balance reduces the flexibility to fund other projects.

BACKGROUND:

In 2014, staff engaged commercial real estate brokers to assemble property in downtown in Downtown Loveland which resulted in the acquisition of the twelve properties. In April of 2014, Council approved an initial supplemental appropriation of \$250,000 for earnest money and other costs associated with downtown land purchases. In July of 2014, an additional \$6.25 million was appropriated to fund the purchases and other activities.

Since 2014, the City has spent the funds on the following activities.

Summary Spent/Obligated	
Property Acquisition	4,530,286
Pre-Development Environmental	
Phase I Environmental Study	42,545
Demolition & Site Readiness Consultant	87,310
Asbestos Testing	18,113
Partial Cleanup – 130 N. Cleveland	4,339
Phase II Environmental Study (Pinyon)	1,370
Property Management	27,376
Pre-development Other	
Alta Surveys	29,495
Civil Engineering	13,254
Migratory Bird Survey	2,200
Architectural Renderings	9,300
Total Spent	4,765,586
Appropriation	6,500,000
Rollover Request	1,734,414

The \$1.7 million rollover will be used to complete abatement and partial demolition of project site. Currently, the City has committed additional funding to complete the Phase II environmental study, for the gas line disconnects, civil engineering, tree removal, environmental liability insurance, traffic study and additional consulting. See below:

Additional Spending	
Pre-development Environmental	
Demolition & Site Readiness Consultant	17,872
Environmental Liability Insurance Premium	66,641
Phase II Environmental Study (Pinyon)	58,431
Tree Removal	17,000
Pre-Development Other	
Development Proposal Review Consultant	25,000
Excel-Gas Disconnect	31,220
Preliminary Traffic Impact Study	16,000
Civil Engineering	33,747
Total Obligated	265,910

Staff, with the support of the private consultant, is estimating the cost of the abatement and demolition with contingency will be roughly \$1.3 million. However, the bid is intended to be conservative and the cost may be reduced with a competitive bidding process and additional environmental investigation.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance

FIRST READING February 29, 2016

SECOND READING March 15, 2016

ORDINANCE NO. 6003

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR THE SOUTH CATALYST PROJECT

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for the South Catalyst Project; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for the South Catalyst, 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 amount of \$1,734,415 from fund balance in the General Fund are available for appropriation. Such revenues in the total amount of \$1,734,415 are hereby appropriated to the 2016 City budget for the South Catalyst Project. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100**

Revenues	
Fund Balance	1,734,415
Total Revenue	1,734,415
Appropriations	
100-18-180-1500-49010 EDDTLAND Land	1,695,784
100-18-180-1500-49358 EDDTLAND Environmental Services	38,631
Total Appropriations	1,734,415

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 15th day of March, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

Ordinance # 6003

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the city Council, held on February 29, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on March 5, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on March 19, 2016.

City Clerk

Effective Date: March 15, 2016

AGENDA ITEM: 10
MEETING DATE: 3/15/2016
TO: City Council
FROM: Tami Yellico, City Attorney
PRESENTER: Tami Yellico, City Attorney



TITLE: An Ordinance Adding A New Chapter 15.58 To The Loveland Municipal Code To Encourage Construction Of Condominiums

RECOMMENDED CITY COUNCIL ACTION:

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

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration.

SUMMARY:

This ordinance is a legislative action to consider the adoption of an ordinance that addresses the issues of builder and developer liability as it relates to construction defects. On February 29, 2016 City Council approved the first reading of the ordinance by an 8 to 1 vote.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

City Council adopted a construction defects ordinance on first reading that includes the following provisions:

- Requires notice by homeowner/claimant to party alleged to have caused or contributed to the construction defect and builder who receives the notice to acknowledge receipt of notice within 30 days after receipt;
- Upon receipt of notice, builders have a right, within 60 days after acknowledging receipt, and with the written permission of the homeowner, to inspect and conduct tests regarding the property alleged to have defects, at a mutually agreeable date and time, and the builder has to complete the inspection and testing within 60 days;
- A right of builders to repair defects, only if the homeowner concurs in writing;
- Builder may offer to settle a claim by payment of a sum certain to the claimant;
- A requirement that homeowners association (HOA) boards obtain the informed consent of a majority of the owners in the association before asserting any claims against builders or developers; and
- Authorization of a builder to include a mediation provision in the initial covenants of a community, which provision could be amended by a vote of the homeowners, but any amendment would not be effective as to construction defect claim based on any act or omission that predates the amendment.

The ordinance as adopted on first reading is intended to balance builder/developer concerns of having more notice and an opportunity to cure defects with the homeowner's right to have defects repaired quickly, and to ensure individual homeowners have a say in potential litigation by the HOA board. One distinctive provision of the ordinance is the right of the builder to enter a home to inspect and repair the construction defect with the homeowner's permission. In addition, one phrase has been added to section 15.58.060 of the ordinance. While the section already indicates that the builder pays all expenses of the claimant, it is necessary to make clear the intent that if the builder elects to repair a construction defect, the builder does so at its own cost. A redline of this change is included in the second reading ordinance.

The ordinance, if adopted on second reading by City Council, would apply prospectively to condominium projects. Because this ordinance would apply to condominium projects not yet built, the efficacy and legality of the ordinance is likely to play out over 5 to 7 years.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Attachment A – Staff Report and Chart Summarizing Provisions of Local Government Ordinances
2. Amended Construction Defects Ordinance as adopted by City Council on First Reading

Attachment A – Construction Defect Ordinance Staff Report

State Law

In 2001, State legislation was adopted regulating construction defect litigation. This law, the Construction Defect Action Reform Act (CDARA I) was amended in 2003 by CDARA II, and again in 2007 by the Homeowner Protection Act (HPA). Other state laws that may be applicable in these types of claims and in analyzing local construction defects ordinances include the Colorado Common Interest Ownership Act (CCIOA) and the Colorado Arbitration Act (CAA). Colorado's laws represent compromises between builder and homeowner interests, which were formerly only addressed in case law. The general purpose of the State laws is "streamlining construction defect litigation" by requiring pre-lawsuit notice, exchanges of information, meetings between the parties to attempt to resolve disputes before a lawsuit can be filed, deadlines for identifying defects after filing a lawsuit, and requiring actual damage for a building code violation.

Local Ordinances

Eleven local governments have waded into the construction defects law landscape by adopting ordinances that attempt to address perceived gaps in the state legislation relating to builder and developer liability associated with construction defects. A chart summarizing the provisions of each of those ordinances is Attachment A to this memo. The local governments that have adopted these ordinances have generally relied upon their public health, safety, and welfare authority, authority to promote more affordable housing, and sound housing construction as a local concern. To avoid arguments that these local ordinances pre-empt state law it is important the ordinance does not conflict with existing State laws that govern the legal relationships between homebuilders and homebuyers.

Most of the local ordinances require that homeowners be advised of an HOA proposed construction defect claim and that a majority of the homeowners vote in favor of pursuing such claim, thereby giving homeowners more of a say in bringing claims.

Some of the ordinances include a presumptive right to reenter a home and repair the claimed defect regardless of the homeowner's desire. Arguably this provision is pre-empted by State statute that currently provides an opportunity to repair may be seen as denying a homeowner his or her right to go to court and to choose a contractor to repair such defect.

Denver's construction defects ordinance is more favorable to homeowners than other municipal ordinances in that it does not require the claimant homeowner to provide written notification at the time a defect is discovered in a manner that expands homeowner obligation. However, again, this is arguably in conflict with State statutes, like CDARA, that include of a notice of claim process.

The first two provisions from Denver's ordinance are new and different from the other local ordinances in that they address whether a technical violation of the building code may be used for litigation, and the ordinance provisions can be used by private civil litigant in a construction defects claim. These two provisions may be subject to challenge as conflicting with State law, which establishes the criteria for civil claims. These types of provisions would also conflict with the Loveland building code, which is considered a minimal specification standard and may be less rigorous than specifications necessary for safe construction.

Potential Challenges

Attorneys experienced in construction litigation have argued that challenges can be brought to most of these ordinances, including Denver's, for many reasons, including:

- Exceeding a City's home-rule authority;
- Pre-emption by State statute; and
- Due process concerns regarding a builder's right of entry into a home to make repairs.

For example, the local ordinances put in place notice, document sharing, and statute of limitation requirements different from State statute and, consequently, may be pre-empted. Further, arbitration requirements set in local ordinances are different from those set forth in the CAA and may be pre-empted. Finally, another major concern is allowing a contractor the opportunity to repair a defect, over a homeowner's objection who may not want the same contractor back in the home because of shoddy work.

Item	Arvada	Aurora	Centennial	Colorado Springs	Commerce City	Denver	Lakewood	Littleton	Lone Tree	Parker	Wheat Ridge
Proof of local building code violation can be used in a private civil action <i>only</i> if linked to actual property damage/injury or the risk thereof; city code not be used to support a claim for damages under "strict liability" theory				X		X					
Building codes represent standard for safe and sound construction (thus, if built in compliance with codes, improvements cannot be said to be "defective" in civil claim)				X		X					
Developer can structure declaration of covenants in a way that permanently governs the procedures for any future construction defect claims and prevents HOAs from amending or repealing the covenant without consent of original declarant (i.e. binding arbitration for any construction defect claims)	X					X					
Declaration of covenants clearly advises homebuyers of requirement for binding arbitration of construction defect claims	X					X					
Informed consent: (1) notification to owners before HOA board could bring a construction defect claim, and (2) Majority vote requirement for the owners of all affected condos before HOA board could bring construction defect claim		X	X	X	X	X	X	X	X		X
Claimant's Notice: Written notification of construction defect to builder/developer upon discovery of defect		X	X	X	X		X	X	X		X

FIRST READING **February 29, 2016**

SECOND READING **March 15, 2016**

ORDINANCE NO. 6004

AN ORDINANCE ADDING A NEW CHAPTER 15.58 TO THE LOVELAND MUNICIPAL CODE TO ENCOURAGE CONSTRUCTION OF CONDOMINIUMS

WHEREAS, the City of Loveland, Colorado (the "City"), is a home rule municipality organized pursuant to Article XX of the Colorado Constitution; and

WHEREAS, by virtue of Article XX of the Colorado Constitution, and as further authorized by state law, including but not limited to, Sections 31-15-401 and 31-23-301, C.R.S., home rule cities have broad authority to exercise police powers to promote and protect health, safety and welfare of the citizenry; and

WHEREAS, adoption, implementation, and enforcement of land use, zoning and building regulations are well-established as matters of purely local concern, subject to regulation by home rule municipalities; and

WHEREAS, the City's Code and comprehensive plan contemplate a diverse housing stock, consisting of a mix of single-family and multi-family developments, and both owned and rented units, designed to attract and serve the needs of all City residents; and

WHEREAS, the need for owner-occupied multi-family housing units (condominiums) has intensified; and

WHEREAS, the City Council ("Council") is aware of the general consensus that the scarcity of condominium projects in Colorado is highly attributable to a climate of increased and uncertain litigation risk due to risk of substantial judgments disproportionate to what is required to redress defects, if any, for alleged construction defects; and

WHEREAS, this uncertainty and inability to plan and allocate for risk has led insurance companies who would otherwise insure condominium projects to stop writing policies for such projects or to price such policies at levels that substantially increase the cost of condominium projects; and

WHEREAS, the Council finds that while the scarcity of new condominium projects is not unique to the City, the City nevertheless experiences some unique impacts because of growth and anticipated growth in the City's population, and the aging of its population, and

WHEREAS, the Council further finds that the lack of housing options negatively impacts the health, safety and welfare of the City and its residents; and

WHEREAS, plaintiffs in construction defect lawsuits have alleged that such defects are

violations of applicable building codes and, if such violations do exist, they are frequently not remedied for many months or years; and

WHEREAS, the Council finds that allegations of violations of the City's building codes and the likelihood that such violations may continue unremedied for many months or years present a material risk to the health and safety of City residents, including the risk that unsafe conditions as a result of construction defects may be exacerbated by long delays in remedying such conditions; and

WHEREAS, the Council further finds that lawsuits brought on account of alleged construction defects in condominium projects may often be brought at the direction of the board of directors of the homeowners' association, without the informed consent of the unit owners, thereby depriving the unit owners of the opportunity to become educated about the advantages and disadvantages of pursuing litigation, to have meaningful input regarding the consideration of such decision, and to vote on such decision; and

WHEREAS, the Council further finds that the use of mediation as a means to resolve construction defect claims should be encouraged as a standard practice within the City; and

WHEREAS, the Council therefore desires to take reasonable steps within its power as the governing body of a home rule municipality to encourage the development of condominium projects in the City through the adoption of regulations designed to reduce the risk and exposure to builders and developers of such projects, while still protecting the rights of homeowners to pursue legitimate construction defect claims;

WHEREAS, the Council further desires to take reasonable steps within its power as the governing body of a home rule municipality to encourage the prompt and voluntary correction of any construction defects that may constitute violations of the City's building code in order to enhance the health and safety of City residents; and

WHEREAS, the Council further desires to assure that all consumers who purchase condominiums within the City located within a community managed by a homeowners' association have the opportunity to become educated about the advantages and disadvantages of pursuing litigation concerning alleged construction defects, to have meaningful input concerning the decision, and to be able to vote on such decision.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, ORDAINS:

Section 1. Title 15 of the Loveland Municipal Code, entitled "Buildings & Construction", is hereby amended by adding a new Chapter 15.58, which chapter shall read as follows:

Chapter 15.58

REPAIR OF CONSTRUCTION DEFECTS

Sections:

- 15.58.010. Purposes and Applicability.**
- 15.58.020. Definitions.**
- 15.58.030. Potential Claimants**
- 15.58.040. Potential Respondents**
- 15.58.050. Claimant's Notice to Builder of Construction Defects; Builder's Acknowledgement; Inspection**
- 15.58.060. Builder's Right to Repair**
- 15.58.070. Warranty of Repairs**
- 15.58.080. Subsequently Discovered Defects**
- 15.58.090. Settlement by Payment of a Sum Certain**
- 15.58.100. Effect of Amendment of Alternative Dispute Resolution Provisions.**
- 15.58.110. Informed Consent of Homeowners.**

15.58.010. Purposes and applicability.

A. *Purposes.* The purposes of this Chapter are as follows: encourage the construction of owner-occupied, multi-family developments in the city; reassure homeowners that construction defects will be promptly investigated and addressed by builders; encourage prompt and voluntary correction of construction defects that may constitute violations of the city's building code in order to enhance the health and safety of residents of the city; motivate all parties to resolve disputes involving construction defects quickly to avoid the need for expensive and time consuming litigation; and provide homeowners in communities with homeowners' associations with an enhanced opportunity to participate in the governance of their community by empowering individual owners to give or withhold their informed consent with respect to actions the board of the homeowners' association may desire to pursue regarding construction defects.

B. *Applicability.* The provisions of this Chapter shall apply only to new construction commenced after the effective date hereof.

15.58.020. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Builder means any entity or individual, including, but not limited to, a builder, developer, general contractor, contractor, subcontractor, architect, engineer or original seller who performs or furnishes the design, supervision, inspection, construction or observation of any improvement to real property that is intended to be occupied as a dwelling or to provide access or amenities to such an improvement.

Building code means the several technical codes adopted in this Title 15 that govern the design, construction, alteration, addition, maintenance, repair, removal, demolition, location, use, and occupancy of buildings and structures in the city, as the same may be amended or modified.

City means City of Loveland, Colorado.

Common interest community means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvements of other real estate described in a declaration.

Condominium means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Construction defect means any alleged defect in the design or construction of an improvement to real property which causes any damages to, or the loss of use of, real or personal property, or personal injury.

Homeowner means any person who owns a unit in a condominium or in a multi-family building in a common interest community, but shall not include any declarant or any person having an interest in a unit solely as security for an obligation.

Homeowners' association means a unit owners' association formed to represent the interest of homeowners owning units in a condominium or in a multi-family building in a common interest community.

15.58.030. Potential claimants.

An original homeowner or a subsequent homeowner or a homeowners' association representing the interests of homeowners may be a claimant by providing notice of a claim of a construction defect, provided the notice requirements of this Chapter are satisfied.

15.58.040. Potential respondents.

Any person or entity within the definition of a "builder" as defined in Section 15.58.010 of this Code is subject to the requirements of this Chapter.

15.58.050. Claimant's notice to builder of construction defects; builder's acknowledgement; inspection.

A. *Claimant's notice.* Upon the discovery of any alleged construction defect, a claimant must provide written notice to the party alleged to have caused or contributed to the construction defect, in the manner prescribed in this Section, indicating that one or more construction defects exist in claimant's residence or, with respect to any homeowners' association, that one or more construction defects exist in any residence or in any common area or facility. The notice must:

1. Provide the claimant's name, address and preferred method of contact;
2. State that the claimant alleges a construction defect pursuant to this Chapter against the builder;
3. Describe the claim in reasonable detail sufficient to determine the nature and location of the alleged construction defect; and

4. Allow the builder the right to inspect and conduct tests regarding the claimed construction defect within 60 days after the builder acknowledged receipt of the notice, at a mutually agreeable date and time, and with the written consent of the claimant.
 5. Notice by a claimant shall be valid if sent by certified mail to the party's business address, post office box or registered agent, or if the party has personally received the claimant's notice.
- B. *Builder's responsibilities.* After receiving notice of a potential construction defects claim, a builder must do each of the following:
1. *Acknowledge the claim in writing.*
 - a. A builder who receives a notice under this Chapter shall acknowledge receipt of the notice, in writing, within 30 days after notice has been mailed in accordance with Section 15.58.050 A.5. The acknowledgement shall be sent to the claimant and to any attorney the builder knows to be representing the claimant in connection with the notice. If the builder has retained legal counsel, said counsel shall thereafter communicate with the claimant's legal representative, if any.
 - b. If the builder fails to acknowledge receipt of a notice within the time specified, this Chapter shall not apply and the claimant shall be released from the requirements of this Chapter and may proceed with the filing of an action against the builder, unless notice and consent are required by Section 15.58.110 of this Code.
 2. *Maintain an agent for notice.* Maintain an agent for notice with the secretary of state; and
 3. *Provide information to the claimant.* If specifically asked to do so by the claimant and within 30 days of such a request, provide the claimant or claimant's legal representative with:
 - a. Copies of all relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to the claimant's residence, common areas and facilities that are the subject of the claim;
 - b. All maintenance and preventative maintenance recommendations pertaining to the claimant's residence, common areas and facilities that are the subject of the claim; and
 - c. Contractual warranty information.
- A. *Charge of copying costs.* A builder responding to a claimant's request for documents may charge reasonable copying costs and may require the copies of the documents to be made on site.
- B. *Builder's election to inspect property.* In addition to the requirements set forth in this

Section, if the builder, with the written consent of the claimant, elects to inspect and conduct tests regarding the claimed construction defect, the builder shall complete the initial inspection and testing, if any, within 60 days after the builder acknowledged receipt of the notice, and at a mutually agreeable date and time. The builder shall bear all costs of inspection and testing, including the cost to repair any damage caused by the inspection and testing. Before entering onto the premises for the inspection, the builder shall supply the claimant with proof of liability insurance coverage. The builder shall, upon request, allow the inspection to be observed and recorded or photographed.

- C. *Builders who fail to comply.* A builder who fails to comply with any of the requirements of this Section within the time specified shall not be entitled to the protection of this Chapter, and the claimant shall be released from the requirements of this Chapter and may proceed with the filing of an action, unless notice and consent are required by Section 15.58.110 of this Code.
- D. *Statute of limitations and repose.* If a notice is sent to the builder in accordance with this Section within the time prescribed for the filing of an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until 60 days after the completion of the notice process described in this Section. If the builder elects to repair pursuant to Section 15.58.060 of this Code, then the statute of limitations or repose is tolled until 60 days after the completion of repairs.

15.58.060. Builder's right to repair.

- A. *Elect to repair.* Within 30 days of the initial inspection or testing, or within 14 days of builder's acknowledgment of the notice of claim, whichever is later, the builder may elect to repair the construction defect and shall provide a notice to repair to the claimant. If the builder, with the written consent of the claimant, elects to repair the construction defect, it has the right to do so, at its own cost, and the claimant may not, directly or indirectly, impair, impede or prohibit the builder from making repairs. Any notice to repair shall offer to compensate the claimant for all applicable expenses, if any, incurred by the claimant within the time frame set for repair, such as, without limitation, expenses for lodging if the repair requires the claimant to vacate his/her residence. Any notice of repair shall be accompanied by a detailed, step by step explanation of the particular construction defect being repaired and setting forth a reasonable completion date for the repair work. The notice shall also include the contact information for any contractors the builder intends to employ for the repairs.
- B. *Schedule of repair work.* Claimant shall promptly cooperate with builder to schedule repair work by builder. Builder shall make a good faith effort to develop a mutually agreeable schedule with claimant for the repair work.
- C. *Written objection to repair.* Within 10 business days after receipt of the builder's notice to repair, a claimant may deliver to the builder a written objection to the proposed repair if the claimant believes in good faith that the proposed repairs will not remedy the alleged construction defect. The builder may elect to modify the proposal, in whole or in part, in accordance with the claimant's objection, and proceed with the modified scope of work, or may proceed with the scope of work set forth in the original proposal, subject to the written

consent of the claimant.

- D. *Builder's failure to comply.* If the builder fails to send a notice to repair or otherwise strictly comply with this Chapter within the specified time frames, or if the builder does not complete the repairs within the time set forth in the notice to repair, the claimant shall be released from the requirements of this Chapter and may proceed with the filing of an action against the builder, unless notice and consent are required by Section 15.58.110 of this Code. Notwithstanding the foregoing, if the builder notifies the claimant in writing at least five days before the stated completion date that the repair work will not be completed by the completion date, the builder shall be entitled to one reasonable extension of the completion date, not to exceed 60 days.
- E. *Completion of repairs.* The builder shall notify the claimant when repairs have been completed. The claimant shall have 10 business days following the completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolved the alleged construction defects. A claimant who believes in good faith that the repairs made do not resolve the construction defects may proceed with the filing of an action, unless notice and consent are required by Section 15.58.110 of this Code.
- F. *Claimant's failure to comply.* If the Builder elects to repair the construction defects, with the written consent of the claimant, it has the right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit the Builder from making repairs. If the claimant, after providing written consent, directly or indirectly, impairs, impedes, or prohibits the builder from making repairs, the builder may enforce the claimant's obligations under this Chapter by seeking relief through the court system.

15.58.070. Warranty of repairs.

The repair work performed by the builder shall be warranted against material defects in design or construction for a period of two years, which warranty shall be in addition to any express warranties on the original work.

15.58.080. Subsequently discovered defects.

Any alleged construction defect discovered after repairs have been completed shall be subject to the same requirements of this Chapter if the builder did not have notice or an opportunity to repair the particular construction defect.

15.58.090. Settlement by payment of a sum certain.

Whether or not a builder elects to repair the alleged construction defect, a builder may offer to settle the claim by payment of a sum certain to the claimant. Whether or not a builder offers to settle a claim by payment of a sum certain, the claimant may make an offer to the builder to settle the claim by payment of a sum certain. An offer to settle by payment of a sum certain may also cover alleged construction defects that may be discovered after completion of the settlement. Neither a builder, nor a claimant is obligated to make or accept settlement by payment of a sum certain. If an offer of settlement by payment of a sum certain is made, it shall be accepted by written notice of acceptance given to the party making the offer no later than 15 days after receipt of the offer or such longer period, if any, stated in the offer as the time for

acceptance. If the offer is not accepted within the 15-day period (or such longer period, if any, stated in the offer as the time for acceptance), it shall be deemed to have been rejected. If an offer to settle is accepted, the monetary settlement shall be paid in accordance with the offer and such payment shall be in full settlement and release of all claims with respect to or arising out of the alleged construction defect. Execution of such offer and acceptance shall be acknowledged before a notary public if required by the terms of the offer. Upon such settlement, either party may record in the public records maintained by the clerk and recorder of the county in which the property is located a copy of the settlement offer and acceptance or a notice of the alleged construction defect and the settlement thereof, which shall provide notice to persons that thereafter acquire any interest in the property that all claims with respect to or arising out of the alleged construction defect have been settled. If the builder fails to make the payment in accordance with the offer, the claimant may proceed with the filing of an action against the builder for the claim arising out of the alleged construction defect, unless notice and consent are required by Section 15.58.110 of this Code.

15.58.100. Effect of amendment of alternative dispute resolution provisions.

If a provision found in the declaration, bylaws or rules and regulations of a common interest community requires that construction defect claims be submitted to mediation, that requirement constitutes a commitment on the part of the unit owners and the association upon which a developer, contractor, architect, builder or other person involved in the construction of the community is entitled to rely. Consequently, a subsequent amendment to the declaration, bylaws or rules and regulations that removes or amends the mediation requirement shall not be effective with regard to any construction defect claim that is based on an alleged act or omission that predates that amendment.

15.58.110. Informed consent of homeowners.

- A. Homeowners are entitled to be kept informed by boards of homeowners' associations of the board's consideration of actions regarding construction defects and to have meaningful input and a right to make a considered judgment and give or withhold informed consent. Accordingly, if a board of a homeowners' association considers or intends to institute an action asserting one or more construction defects, the board must do each of the following:
1. At least 60 days before filing any action under Section 13-20-803.5, C.R.S., the claimant must mail or deliver written notice to each homeowner at the homeowner's last known address.
 2. The notice must be signed by a person other than, and not employed or otherwise affiliated with, the attorney or law firm that represents or will represent the association in the construction defects claim.
 3. The notice required by this Section must contain the following information:
 - a. The nature of the action and the relief sought.
 - b. The amount of expenses and fees the board anticipates will be incurred, directly or indirectly, in prosecuting the action, including attorney fees, consultant fees,

expert witness fees and court costs, whether incurred by the association directly or for which it may be liable if it is not the prevailing party or if it does not proceed with the action.

- c. The estimated cost of repairing the construction defect, or if the construction defect is not repaired, the estimated reduction in value of the unit.
 - d. The estimated impact on the marketability of units that are not the subject of the action, including any impact on the ability of the owners to refinance their property during and after the action.
 - e. The manner in which the association proposes to fund the cost of the action, including any proposed special assessments or the use of any revenues.
 - f. The anticipated duration of the action and the likelihood of success.
 - g. Whether the builder has offered to make any repairs and, if so, whether the builder has made repairs.
 - h. The steps taken by the builder in accordance with this Chapter to address the alleged construction defect, including any acknowledgement, inspection, election to repair or repairs.
- B. The homeowners' association may not commence the action unless the board obtains the written consent of homeowners holding at least a majority of the total voting rights in the association after giving the notice required by this Section. Homeowners may vote either directly or through a written ballot signed by the homeowner. Such consent must be obtained within 60 days after such notice is provided, otherwise the homeowners shall be deemed to have declined to provide their informed consent to such action.

Section 2. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "*provision*" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "*application*" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

Section 3. Codification Amendments. The codifier of the City's Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of Section 1 of this Ordinance within the Loveland Municipal Code.

Section 4. Effective Date. Except as otherwise expressly provided herein, the provisions of this Ordinance shall become effective thirty (30) days after publication following final passage.

Section 5. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Loveland, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 15th day of March, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

Ordinance # 6004

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the city Council, held on February 29, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on March 5, 2016 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on March 19, 2016.

City Clerk

Effective Date: March 15, 2016