

**AGENDA**  
**LOVELAND CITY COUNCIL MEETING**  
**TUESDAY, JUNE 7, 2016**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

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*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 DECLARING JUNE 20 - 24, 2016 AS BIKE WEEK (David Hollingsed, PEDAL)**

**PROCLAMATION HONORING TOM BUCHANAN (Dorie Buchanan)**

**INTRODUCTION OF POLICE CHIEF, BOB TICER**

*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.*

**(6:30) CONSENT AGENDA**

1. **CITY CLERK** (presenter: Terry Andrews)  
**APPROVAL OF MEETING MINUTES**  
**A Motion To Approve City Council Minutes For the May 10, 2016 Study Session.**  
 This is an administrative action item to approve the City Council minutes for the May 10, 2016 study session.
  
2. **CITY MANAGER** (presenter: Bill Cahill)  
**APPOINTMENT TO THE CITIZENS FINANCE ADVISORY COMMISSION**  
**1. A motion to appoint Steve Olson to the Citizens' Finance Advisory Commission for a term effective until December 31, 2018.**  
 This is an administrative item appointing members to the Citizens' Finance Advisory Commission.
  
3. **NORTHERN COLORADO REGIONAL AIRPORT** (presenter: Jason Licon)  
**PUBLIC COMMENT**  
**AIRPORT IGA AMENDMENTS**  
**1) A Motion To Approve On Second Reading, Ordinance #6016 For The First Amendment To The Amended And Restated Intergovernmental Agreement For The Joint Operation Of The, Fort Collins-Loveland Municipal Airport, To Be Henceforth Known As The Northern Colorado Regional Airport And Ratification Of Previous Actions**  
**2) A Motion To Approve On Second Reading, Ordinance #6017 Amending Portions Of The Loveland Municipal Code Concerning The Northern Colorado Regional Airport**  
 This is an administrative action to adopt two ordinances involving the Northern Colorado Regional Airport Commission. The first ordinance amends the Amended and Restated Intergovernmental Agreement for the joint operation of the Airport for the Northern Colorado Regional Airport Commission to delegate, within specific parameters, the authority for the Airport Commission to enter into longer lease agreements, grant agreements, and make expenditures for Airport needs from appropriated, but unassigned reserves. This ordinance also corrects a procedural defect by ratifying all actions taken pursuant to the Airport IGA dated January 22, 2015. The second ordinance changes certain other provisions of the City Code related to the Airport, particularly the delegation of powers and the change of the airport name.
  
4. **CITY MANAGER** (presenter: Alan Krcmarik)  
**PUBLIC COMMENT**  
**INVESTMENT POLICY CORRECTION**  
**A Motion To Approve On Second Reading, Ordinance #6018 Amending The City Of Loveland Investment Policy**  
 This is a legislative action to consider a technical amendment to correct a prior amendment to the City's Investment Policy. In the fall of 2015, the Citizens' Finance Advisory Commission ("CFAC") reviewed the Investment Policy and recommended a few changes to the City Council. Council adopted the changes on second reading on January 5, 2016. The form of the amendments presented to Council did not capture all of the limitations on the investments allows under Section VIII. of the policy. The CFAC intended to limit investments by an expressed dollar amount **and** as a percentage of the total portfolio. As previously adopted the percentage limitations were inadvertently omitted.

- 5. **CULTURAL SERVICES** (presenter: Bryan Zellmer)  
**PUBLIC COMMENT**  
**SUPPLEMENTAL APPROPRIATION FOR CULTURAL DONATIONS**  
**A Motion To Approve On First Reading, An Ordinance Enacting a Supplemental Budget and Appropriation to the 2016 City of Loveland Budget for the Foote Lagoon Concert Series, the Rialto Theater Center Arts & Education Programs and the Rialto Theater Center Cinema Series.**  
Donations have been received from Kaiser Permanente to fund the Foote Lagoon Series (\$20,000) and the Iva McKee Charitable Trust to fund the Arts & Education Programs (\$28,000) and the Cinema Series (\$12,000). These programs would not be possible without these donations.
  
- 6. **MUNICIPAL COURT** (presenter: Geri Joneson)  
**PUBLIC COMMENT**  
**COURT SURCHARGE FEES**  
**A Motion To Approve On First Reading, An Ordinance To Amend Chapter 1.12.010, Subsection C, Of The Loveland Municipal Code To Include Municipal Court Justice Programs As A Recipient Of 30% Of The Total Surcharge Collected**  
This is an administrative item. In February, a committee reviewed the use of a surcharge that has funded Alternative Dispute Resolution Programs and more recently, Traffic Safety and Enforcement Programs. The committee agreed that Municipal Court Justice Programs were valuable sentencing alternatives that benefit offenders and the community. It was further agreed that funding could be achieved by allocating 30% of the total annual surcharge to Municipal Court Justice Programs. The remaining 70% would be allocated to Traffic Safety and Enforcement. This would be a simple redistribution of funds with no financial consequence nor impact to the budget.
  
- 7. **PUBLIC WORKS** (presenter: Jeff Bailey)  
**PUBLIC COMMENT**  
**SUPPLEMENTAL APPROPRIATION BYRD DRIVE**  
**A Motion To Approve On First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Byrd Drive Roadway Connection**  
City Council approval is necessary to appropriate the funds to authorize the use of City of Loveland and Colorado Department of Transportation (CDOT) funds to construct the missing segment of Byrd Drive between Crossroads Blvd and Earhart Road. Council approved the Intergovernmental Agreement (IGA) at the May 6<sup>th</sup>, 2016 Council Session which accepted the CDOT funds and conditions to be used to construct the missing segment of roadway. The developer, Byrd Drive Development, LLC, will be responsible for constructing Byrd Drive by the time CDOT needs to remove the Frontage Road. This request is included in a development agreement that has been finalized with the developer.

<u>Project Funds</u>	
CDOT Granted Funds	= \$1,100,000.00
City Provided Project Funds	= \$ 588,000.00
Anticipated Developer Funds	= \$ 591,844.00
  
- 8. **CITY CLERK** (presenter: Terry Andrews)  
**PUBLIC COMMENT**  
**DDA ELECTION**  
**1) A Motion To Approve Resolution #R-38-2016 Of The Loveland City Council Authorizing The City Clerk To Notify The Larimer County Clerk And Recorder Of The City Of Loveland's Intention To Participate In The Statewide Election To Be Held On November 8, 2016, as a coordinated election with the County**

**2) A Motion To Approve On First Reading, An Ordinance Calling for a Special Election To Be Held November 8, 2016 Which Shall Be Conducted As A Coordinated Election With The Larimer County Clerk and Recorder and, To The Extent Necessary To So Conduct That Election As A Coordinated Election, The Colorado Uniform Election Code Of 1992 Shall Govern**

The proposed resolution is an administrative action authorizing the City Clerk to notify the Larimer County Clerk and Recorder of the City's intent to participate in a coordinated election with the County on November 8, 2016.

The proposed Ordinance is a legislative action needed to allow the City to conduct a special election on November 8, 2016 as a coordinated election with the Larimer County Clerk and Recorder.

**9. COMMUNITY PARTNERSHIP OFFICE (presenter: Alison Hade)  
CDBG REALLOCATION**

**A Motion To Approve Resolution #R-39-2016 Approving the Grant Funding Recommendation of the Loveland Affordable Housing Commission for the Reallocation of Certain Community Development Block Grant Funds**

This is an administrative action by the Affordable Housing Commission to recommend to City Council reallocation of \$18,930 of 2015-2016 Community Development Block Grant (CDBG) funds to Elderhaus Adult Day Program to purchase HVAC equipment for its new day center. These CDBG funds became available due to recipient Live the Victory, dba The Matthews House's (Matthews House) inability to use the funds awarded to create new office space at the House of Neighborly Service Life Center. Funds were allocated by the U.S. Department of Housing and Urban Development (HUD) and were initially appropriated in the 2015 City Budget and rolled over to the 2016 City Budget.

**10. COMMUNITY PARTNERSHIP OFFICE (presenter: Alison Hade)  
HUMAN SERVICES GRANT ALLOCATION**

**A Motion To Approve Resolution #R-40-2016 Approving the 2016 Grant Funding Recommendation of the Loveland Human Services Commission**

This is an administrative action to consider the 2016 grant allocation recommendation of the Human Services Commission totaling \$550,411. The attached staff report describes how the commission members made their decision.

**11. COMMUNITY PARTNERSHIP OFFICE (presenter: Alan Krcmarik)  
PAB ASSIGNMENT MAPLE TERRACE**

**A Motion To Approve Resolution #R-41-2016 Authorizing the Assignment of the City's Private Activity Bond Allocation for 2016**

This is an administrative action. This Resolution will authorize the assignment of all of the City's 2016 private activity bond allocation in the amount of \$3,649,150 to the Housing Authority of the City of Loveland ("HACOL" or the "Authority") for the purpose of issuing bonds or a revenue note for the 130-unit rental housing Maple Terrace Apartments Project (the "Project") to be acquired, rehabilitated, and equipped by Maple Terrace Investors, an affiliate of GHC Housing Partners. The private activity bond assignment is not a cash contribution. It allows the funding for an eligible project to come from the issuance of bonds, a loan, or a note. The Project is an affordable housing project and meets the federal and state requirements for the use of Private Activity Bond financing and federal tax credits. The City's 2016 allocation will be combined with other allocations to reach a total principal amount of \$14 million. The other sources will be from an allocation from the state-wide balance, an assignment of allocation from Larimer County, and from a previously assigned allocation from the City of Loveland in 2014. The City of Loveland will not have any financial responsibility for the repayment of the bonds or note issued for the project. The Project will be responsible to make the bond or note payments.



12. **COMMUNITY PARTNERSHIP OFFICE** (presenter: Alan Krcmarik)  
**TEFRA MAPLE TERRACE**  
**A Motion To Approve Resolution #R-42-2016 Approving The Issuance Of A Multifamily Housing Revenue Note By The Housing Authority Of The City Of Loveland**  
 This is an administrative action approving a tax-exempt financing of not more than \$14,000,000 of a Multi-family Revenue Note by the Housing Authority of the City of Loveland. The proceeds of the revenue note will be loaned to Maple Terrace Investors LLC, an affiliate of GHC Housing Partners, to provide funds to finance a portion of the cost of acquisition, rehabilitation, and equipping of a 130-unit multi-family rental project located at 574 E. 23<sup>rd</sup> Street in Loveland. Rent proceeds and other revenues of the Project will be the source of repayment for the Note. In no event shall the City of Loveland or any other political subdivision of the State of Colorado be liable for the repayment of the Note nor shall the Note constitute a debt of the State of Colorado or the City of Loveland or any other such political subdivision.
13. **MUNICIPAL COURT** (presenter: Vince Junglas)  
**TEEN COURT IGA WITH THOMPSON SCHOOL DISTRICT**  
**A Motion To Approve Resolution #R-43-2016 Approving An Amended Intergovernmental Agreement Between The City Of Loveland, A Home Rule Municipality, And The Thompson School District R-2J For Operation Of The Loveland Municipal Teen Court Program**  
 This is an administrative action to consider a resolution approving an amended Intergovernmental Agreement (“IGA”) for operation of a municipal Teen Court program. Teen Court is a joint effort between the City of Loveland Judicial Branch (Municipal Court), Executive Branch (City Attorney) and the Thompson School District (“the District”). The amended IGA between the City and the District includes operational provisions and provides funding for the program, the City will contribute an amount not to exceed \$5,000 for the operation of the program in the 2016-2017 school year. The funds will cover a portion of the District’s administrative, operational, and personnel costs incurred in connection with the program. The District has approved the amended IGA. Partial funds in the amount of \$3000 for the aforementioned purpose are included in the 2016 Municipal Court Budget.  
 Partial funds in the amount of three thousand (\$3,000) dollars per year have been appropriated as part of the 2016 Municipal Court Budget. An additional two thousand (\$2,000) dollars will be paid out of the Loveland Municipal Court Professional Services Account, 100-13-115-0000-43450, which has a current balance of nine thousand one hundred (\$9,100) dollars. Payment to the District occurs in two installments of two thousand five hundred (\$2,500) dollars for each semester.
14. **LOVELAND POLICE DEPARTMENT** (presenter: Tim Brown)  
**JAG GRANT**  
**A Motion For Approval Of Staff Application For A Federal Justice Assistance Grant**  
 This is an administrative action. The Federal JAG grant of \$16,451 for the Police Department will fund overtime for Detectives in the Special Investigations Unit at the Northern Colorado Drug Task Force. There is no match.
15. **HUMAN RESOURCES** (presenter: Julia Holland)  
**SPECIAL MEETING ON JUNE 28, 2016**  
**A Motion calling for a Special meeting to be held at 6:30 p.m. or as soon as possible thereafter, in these Council Chambers, following the regularly scheduled Study session on June 28, 2016. The purpose of the special meeting is to call an Executive Session as allowed by CRS section 24-6-402(4)(f)(I) and Charter Section 4-4(c)(5) concerning personnel matters to conduct the annual performance evaluation**

**interviews with the City Attorney, Municipal Judge and City Manager**

This is an administrative action to call for a Special meeting, which may include Executive Sessions per 24-6-402 C.R.S. The Special meeting will begin immediately following the Study Session on June 28, 2016. The purpose of this Special meeting is to conduct annual evaluation interviews with Council's appointed positions City Manager, City Attorney and Municipal Judge.

**16. HUMAN RESOURCES (presenter: Julia Holland)**

**WORKERS' COMPENSATION RENEWAL**

**A Motion to award the City's Workers' Compensation Coverage to Pinnacol Assurance and Authorize the City Manager to enter into a contract with Pinnacol, execute security and collateral agreements required in connection with the contract, and establish a purchase order in the Amount of \$1,350,000.**

This is an administrative action to authorize the City Manager to enter into contract with Pinnacol Assurance for July 2016 through July 2017 Workers' Compensation coverage, which includes premium costs and claims payable from prior years. The City's insurance broker took the Workers' Compensation coverage to market for bids. Pinnacol was the only carrier to provide a quote.

**17. CITY MANAGER (presenter: Jeff Bailey)**

**TRAIN HORN NOISE**

**A Motion To Authorize Official City Comment On The Train Horn Rule To Be Published On The Federal Railroad Administration Website**

This is an administrative action. 49 CFR part 222 – Use of Locomotive Horns at Public Highway-Rail Grade Crossings (Rule), also known as the Train Horn Rule, was opened for public comment on March 7, 2016, by the Federal Railroad Administration (FRA). The attached letter contains comments directly related to train horn impacts upon the city and recommends avenues for relief. Staff is requesting that Council adopt the language in the attached letter from City Manager Cahill as the City's formal comments on the Rule. After approval, the comment letter will be uploaded to the FRA's comment website for their review and consideration. The deadline for providing public comment on the Rule is July 5, 2016.

**18. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)**

**ENA WITH BRINKMAN**

**A Motion Approving The First Amendment to the Exclusive Negotiation Agreement With Brinkman Capital, LLC For The South Catalyst Project And Authorizing The Execution Of Said Amendment**

This is an administrative action directing the City Manager to sign the amendment to the Exclusive Negotiation Agreement (ENA) with the Brinkman Capital, LLC (Brinkman) for the South Catalyst Project. The initial agreement (see attached) was on the Council agenda for February 2, 2016, however the meeting was cancelled due to a snow storm and the final approval was delayed by two weeks. The First Amendment to the Exclusive Negotiation Agreement (see attached) reflects the initial two week delay to the start of the ENA; and changes the deadline for the completion of the preliminary terms of the agreement from August 2, 2016 to August 16, 2016. Because there is no administrative extension allowed under the original agreement, this amendment is required to go before City Council for consideration.

**19. FINANCE (presenter: Brent Worthington)**

**APRIL 2016 FINANCIAL REPORT**

This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending April 30, 2016.

**20. CITY MANAGER (presenter: Alan Krcmarik)  
APRIL 2016 INVESTMENT REPORT**

This is an information only item. The budget projection for investment earnings for 2016 is \$2,199,328. On the portfolio's 2016 beginning balance this equates to an annual interest rate of 1.02%. Based on the April monthly statement, the estimated yield on the fixed income securities held by USBank was at 1.28%, for total assets the yield was 1.16%. For year-to-date, total earnings of \$551,093 were posted to City fund accounts. U.S. short-term Treasury interest rates rose slightly in April; the portfolio's change in unrealized gain for the year-to-date was \$1.74 million. The end of April portfolio market value is estimated to be \$217.9 million. The total market value of the portfolio is now higher than the end of 2015 by about \$646,800. 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**

**(6:40) CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

**(6:50) 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**

**(7:10) 21. CITY ATTORNEY (presenter: Tami Yellico)  
PUBLIC HEARING**

**COUNTY ANIMAL SHELTER FEE WAIVERS**

**A Motion To Approve On Second Reading, Ordinance #6019 Granting Larimer County An Exemption From Certain Capital Expansion Fees And Other Development Fees For The Larimer County Animal Shelter Project And Authorizing The City Manager To Enter Into An Intergovernmental Agreement With The County For The Payment Of The Remainder Of The Fees**

This is an administrative action to consider approving an Ordinance Granting Larimer County an Exemption from Certain Capital Expansion Fees and other Development Fees for the Larimer County Animal Shelter Project.

Staff will update City Council on discussions with Larimer County regarding waiving certain capital expansion fees (CEFs) and other impacts fees assessed to Larimer County by the City in the amount of approximately \$92,307.90 for the construction of a new animal shelter within the City and not to require reimbursement of such fees to the CEFs by the general fund or other fund.

- (7:20) 22. **DEVELOPMENT SERVICES** (presenter: Kerri Burchett)  
**PUBLIC HEARING**  
**WATERS EDGE ADDITION ANNEXATION**
1. A Motion To Approve Resolution #R-44-2016 Concerning The Annexation To The City Of Loveland, Colorado, Of A Certain Area Designated As "Waters Edge Addition" More Particularly Described Herein, And Setting Forth Findings Of Fact And Conclusions Based Thereon As Required By The Colorado Constitution And By State Statute
  2. A Motion To Approve On First Reading, An Ordinance Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Waters Edge Addition" To The City Of Loveland
  3. A Motion To Approve On First Reading, An Ordinance Amending Section 18.04.040 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Waters Edge Addition" To The City Of Loveland
- This is a public hearing to consider the following items on first reading:
- A legislative action to adopt a resolution and ordinance to annex 82.6 acres of property to be known as the Waters Edge Addition; and
  - A quasi-judicial action to zone the 82.6 acres to R1 Developing Low Density Residential District.
- The property is located north of 28<sup>th</sup> Street SW, south of Ryan's Gulch Reservoir and west of Taft Avenue and the Lakeside Terrace Subdivision. The applicant is Lynda Beierwaltes with Luxor, LLC.
- (8:30) 23. **YOUTH ADVISORY COMMISSION** (presenters: Beth Gudmestad)  
**PUBLIC HEARING**  
**ELECTRONIC SMOKING DEVICE RESTRICTIONS**
- Option 1. A Motion To Approve On First Reading, An Ordinance Amending Chapter 7.40 Of The Loveland Municipal Code To Address The Use Of Electronic Smoking Devices In Indoor Areas Within City Owned Facilities**
- Option 2. A Motion To Approve On First Reading, An Ordinance Amending Sections 7.40.020 And 7.40.030 Of The Loveland Municipal Code To Address The Use Of Electronic Smoking Devices In Public Places**
- This is a legislative item providing two alternative and mutually exclusive ordinances to prohibit the use of electronic smoking devices in public places. The Youth Advisory Commission Ordinance seeks to treat all emissions from electronic smoking devices the same as conventional tobacco smoke and the Council Directed Ordinance seeks to prohibit emissions from electronic smoking devices only within City buildings.
- (9:30) 24. **CITY ATTORNEY** (presenter: Tami Yellico)  
**MUNICIPAL JUDGE PERSONNEL MATTERS**  
**Motion to go into Executive Session related to personnel matters concerning the performance, pay, and benefits of the Municipal Judge**
- This is an administrative action. The purpose of the Executive Session is to discuss personnel matters concerning the performance, pay, and benefits of the Municipal Judge.
- (10:00) 25. **HUMAN RESOURCES** (presenter: Julia Holland)  
**CITY COUNCIL EMPLOYEE PERFORMANCE EVALUATIONS**  
**A motion calling an executive session as allowed by CRS section 24-6-402(4)(f)(I) and Charter Section 4-4(c)(5) concerning personnel matters to conduct the annual performance reviews for the City Attorney, Municipal Judge and City Manager.**
- This is an administrative action for Council to conduct an executive session on June 7, 2016, for the annual review of performance for the City Attorney, Municipal Judge and City Manager.

**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

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### PROCLAMATION

**WHEREAS,** the City of Loveland is dedicated to providing safe and alternative modes of transportation; and

**WHEREAS,** the benefits of bicycling are numerous, both to the individual and to the community as a whole; and

**WHEREAS,** the City of Loveland received a Bicycle Friendly Community Honorable Mention recognition from the League of American Bicyclists in 2010.

**WHEREAS,** the City of Loveland adopted a comprehensive Bicycle and Pedestrian Master Plan on May 1, 2012.

**WHEREAS,** our fair city maintains nearly 140 miles of bicycle routes, lanes and trails; and

**WHEREAS,** persons of all ages and abilities are encouraged to use helmets for their protection; and

**WHEREAS,** the month of June has been declared as Bike Month to recognize and encourage bicycling as a viable source of transportation and recreation.

**NOW, THEREFORE,** we, the City Council of the City of Loveland, do hereby proclaim the week of June 20 through June 24, 2016 as

### **BIKE WEEK**

in Loveland and encourage citizens to try bicycling as an alternative transportation method and to participate in Bike-to-Work Day on Wednesday, June 22.

Signed this 7th day of June, 2016.

Cecil A. Gutierrez, Mayor



**CITY COUNCIL**

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**PROCLAMATION**

**HONORING TOM BUCHANAN**

**WHEREAS** The City of Loveland has been blessed with the presence of citizens whose lives are defined by service to their community, and who rise above and step beyond their neighbors in that pursuit; and

**WHEREAS** Tom Buchanan was such a person, living by the "get 'er done" attitude nurtured during three years of service to his country as a United States Marine; and

**WHEREAS** Tom brought home from his Marine Corps service a commitment to his fellow veterans that led him to become a champion for their interests throughout his life; and

**WHEREAS** Tom Buchanan embodied a spirit of patriotism and love of country that so many people lay claim to, but so few live up to as Tom did; and

**WHEREAS** Tom brought his passion for the broader community interest to this City Council Chamber on many occasions, always blending good humor with forceful advocacy, and always with the greatest respect; and

**WHEREAS** Tom set an enduring standard for us all as a community leader, advocate, patriot, husband, father, grandfather and friend.

**NOW, THEREFORE,** we, the City Council of the City of Loveland, Colorado do hereby honor

**TOM BUCHANAN**

recognizing his strong advocacy for the issues which he held dear.

Signed this 5th day of July, 2016

Cecil A. Gutierrez, Mayor  
City of Loveland, Colorado



**MINUTES**  
**LOVELAND CITY COUNCIL STUDY SESSION**  
**TUESDAY, MAY 10, 2016**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

**STUDY SESSION 6:30 P.M.**

**Councilors present:** Gutierrez, Fogle, Johnson, Overcash, McKean, Shaffer, Krenning and Clark were present. Councilor Ball was absent. City Manager, Bill Cahill was also present.

**1. MUNICIPAL COURT  
QUARTERLY REPORT**

Geri Joneson, Municipal Court Judge, presented this informational item regarding the 2016 Municipal Court's First Quarter Case Statistics. Councilors expressed appreciation to the judge and for the work being done in the courts.

**2. DEVELOPMENT SERVICES  
WEST EISENHOWER – REGULATORY RELIEF**

Brett Limbaugh, Development Services Director; Robert Paulsen, Current Planning Manager; Jeff Bailey, Senior Civil Engineer; and Greg George, Special Projects Manager; presented this informational item. On February 16, 2016, City Council discussed the need to incentivize redevelopment and business reinvestment on properties along the west Eisenhower Boulevard corridor. The discussion focused on providing some level of relief from compliance with development regulations that may be preventing private sector development and/or redevelopment. The area of focus was from Boise Avenue west. Council requested that a "palette of options" for regulatory relief be developed by City staff and presented back to City Council.

The memorandum from City staff presents options designed to encourage private sector development, redevelopment and reuse/repurposing of existing buildings. The memorandum describes the outreach process used by City staff to identify obstacles to development along this corridor and provides more detail on options for eliminating or reducing those obstacles. Discussion ensued. Council would like to hear from developers on best uses.

**3. CITY MANAGER  
CAPITAL EXPANSION FUNDS**

Alan Krcmarik, Economic Advisor, presented this item. The City of Loveland has utilized impact fees, more specifically Capital Expansion Fees, as a method to fund capital improvements since 1984. The fees were based on a cost of services study and the equity buy-in approach to setting fees was adopted. The CEFs are updated every few years and after the last major review in 2012, Council requested more study of an alternative method to determine the fees, the Plans Based approach. This approach is based on projections of growth for the next 25 years, master plans prepared by the City departments, and updated capital improvement plans. With outside consulting support from BBC Research & Consulting, alternative calculations for CEFs have been made using the Plans Based approach.

In the September 22, 2015, Council Study Session, the attached staff report, the BBC Research & Consulting report and other materials included as exhibits provided detailed background for the Plans Based fees. Some Council members asked for additional information and it was determined to present the issue to Council again after the City

Council election. Based on information provided and the Council discussion at the Study session, staff presented and Council also took action to not do any construction cost inflation adjustment to the fees for 2016. In this study session, staff will address the questions and attempt to identify the next steps in the process. Discussion ensued. Council asked for more information on projects that CEFs would impact.

**ADJOURN**

Hearing no further business to come before Council, Mayor Gutierrez adjourned the May 10, 2016 Study Session at 10:25 p.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor

**AGENDA ITEM:** 2  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** City Manager's Office  
**PRESENTER:** Bill Cahill, City Manager



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**TITLE:**  
**Appointment To Citizens' Finance Advisory Commission**

**RECOMMENDED CITY COUNCIL ACTION:**

1. Adopt a motion to appoint Steve Olson to the Citizens' Finance Advisory Commission for a term effective until December 31, 2018.

**OPTIONS:**

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

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**SUMMARY:**

This is an administrative item appointing a member to Citizens' Finance Advisory Commission.

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

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**BACKGROUND:**

At the end of 2015, three incumbent members did not apply for reappointment to the **Citizens' Finance Advisory Commission**. Two new members were appointed by Council on March 15, 2016. Two new applicants were interviewed on May 10, 2016. Steve Olson is recommended for appointment to the Citizens' Finance Advisory Commission for a full term effective until December 31, 2018.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

None

**AGENDA ITEM:** 3  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Jason Licon, Airport  
**PRESENTER:** Jason Licon, Airport




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**TITLE:**

1. An Ordinance To Approve The First Amendment To The Amended And Restated Intergovernmental Agreement For The Joint Operation Of The Fort Collins-Loveland Municipal Airport, Now Known As The Northern Colorado Regional Airport

2. An Ordinance Amending Portions Of The Loveland Municipal Code Concerning The Northern Colorado Regional Airport

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the two ordinances involving the Northern Colorado Regional Airport Commission on second reading.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. These ordinances are needed to enable the Northern Colorado Regional Airport Commission the authority to pursue strategic planning objectives as approved by City Council, to ratify previous actions of Council and the Commission with respect to actions taken pursuant to the Amended and Restated IGA, and to amend other provisions of the city code to reflect the terms of the First Amendment and to the IGA and reflect the Airport name change.
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.

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**SUMMARY:**

This is an administrative action to adopt two ordinances involving the Northern Colorado Regional Airport Commission. The first ordinance amends the Amended and Restated Intergovernmental Agreement for the joint operation of the Airport for the Northern Colorado Regional Airport Commission to delegate, within specific parameters, the authority for the Airport Commission to enter into longer lease agreements, grant agreements, and make expenditures for Airport needs from appropriated, but unassigned reserves. This ordinance also corrects a procedural defect by ratifying all actions taken pursuant to the Airport IGA dated January 22, 2015. The second ordinance changes certain other provisions of the City Code related to the Airport, particularly the delegation of powers and the change of the airport name. The ordinance was approved unanimously on first reading by City Council on May 17, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

At the April 27, 2016 meeting, the Commission reviewed and approved a First Amendment to the Airport IGA establishing the Commission. The Commission recommends that in order to provide efficient airport operations, the City Council expand the Commission's authority to:

- enter into lease agreements within the maximum allowable terms as given by the FAA
- enter into grant agreements on behalf of the two Cities up to a certain amount
- provide a recommended budgetary reserve policy that will be used to create the ability for the Commission to spend balances of the Airport fund for Airport needs

This amendment requires the approval of both City Councils. Because both the underlying Airport IGA and the amendment deal with the assignment of powers and duties of a commission, both Cities' charters require that each Council approve by Ordinance. The amendment also provides for ratification of all actions taken pursuant to the Amended and Restated IGA adopted in January of 2015 because the adoption of the IGA was done by resolution rather than ordinance.

The First Amendment to the Airport IGA impacts certain other provisions of the City Code related to the Airport. Thus, Staff recommends Council adopt a second ordinance amending the City Code to address the impact the First Amendment has on the delegation of power. In addition, on that same Commission meeting held April 27, 2016, the Commission voted to change the name of the Airport to the Northern Colorado Regional Airport. This change of the airport name necessitates amendments to other provisions of the city code to reflect the change.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

[Link to the Ordinances on First Reading – Item 7](#)

**AGENDA ITEM:** 4  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Alan Krcmarik  
**PRESENTER:** Alan Krcmarik, Executive Fiscal Advisor




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**TITLE:**

An Ordinance Amending the City of Loveland Investment Policy

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the Ordinance Second Reading.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. If the proposed correction is denied, a limitation recommended by the Citizens' Finance Advisory Commission on the ability to invest City funds in certain investment would not be in the policy.
3. Adopt a modified action. No other options have been recommended by the Citizens' Finance Advisory Commission.
4. Refer back to staff for further development and consideration. Consistent with the feedback from Council, staff would conduct appropriate research and present it to the CFAC for evaluation.

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**SUMMARY:**

This is a legislative action to consider a technical amendment to correct a prior amendment to the City's Investment Policy. In the fall of 2015, the Citizens' Finance Advisory Commission ("CFAC") reviewed the Investment Policy and recommended a few changes to the City Council. Council adopted the changes on second reading on January 5, 2016. The form of the amendments presented to Council did not capture all of the limitations on the investments allowed under Section VIII. of the policy. The CFAC intended to limit investments by an expressed dollar amount **and** as a percentage of the total portfolio. The percentage limitations were inadvertently omitted. The ordinance was approved unanimously on first reading by City Council on May 17, 2016.

**BUDGET IMPACT:**

- Positive The investment policy changes recommended by CFAC would increase earnings.
- Negative
- Neutral or negligible

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**BACKGROUND:**

The Citizens' Finance Advisory Commission is assigned the responsibility to periodically review the City of Loveland Investment Policy and to recommend changes. During 2015, the Commission reviewed the policy. The CFAC recommended modification of Section VIII. Suitable and Authorized Investments. Please refer to Attachment 1, the City of Loveland Temporary Addendum to Investment Policy. Beginning several years ago, the CFAC and city investment staff discussed and reviewed ways to improve the rate of return on the portfolio without taking on substantially more risk. The CFAC received information from staff and conducted additional research into credit quality based on extension of maturities and considering a broader range of credit quality. The Policy limits investments to securities that have two double-A ratings from the major credit rating agencies. The CFAC recommendation allows investments in lower rated

securities and links the securities to the maturity. For example, the recommended policy change would allow a Government Sponsored Enterprise security with a term of 3 years or less to be placed into the City's portfolio with an A-/A3/A- rating. For a 7 year term security, the credit quality would have to be higher, A+/A1/A+. The general idea is that more credit quality risk could be taken on shorter term investments. The proposed policy change also establishes dollar limits on the longer term securities.

The CFAC discussion led to the concept of allowing lower rated securities and extending maturities. CFAC discussed and intended to have dollar limitations on each type of investment and also a limitation on the percentage of the total portfolio. In Subsection 1. which covers U.S. Treasury and Agency issues, CFAC determined a limit of \$20 million and a percentage limit of 10% of the total portfolio. In Subsection 2. Which covers Government Sponsored Enterprises, CFAC determined a level of \$20 million and 10% of the total portfolio, and Subsection 4. Which covers Corporate Securities, the CFAC determined a level of \$10 million and 10% of the total portfolio.

The key consideration supporting the CFAC recommendation comes from extensive historical investment security performance tables published by Moody's Investors Service and Standard & Poor's, two of the nationally recognized rating agencies. The tables showed (even through the downturn from 2008 to 2010—the Great Recession) that highly rated bonds, those in the A rating category, did not have high rates of default. In fact, virtually no bonds with ratings this high actually proceeded to default. If the credit quality diminished it occurred slowly, allowing time for the sale of securities to minimize investment losses. The proposed change to the Investment Policy was also supported by information provided by Morgan Stanley, the City's investment advisor, other investment professionals, and commentary from the public indicating the City should strive to get higher returns on its portfolio. Based on the current investment environment, City staff believes that an additional \$150,000 of earnings could be achieved through the proposed change. Most of the additional return would be from the extension of security maturity by two years with some additional income from the slightly lower credit ratings.

To correct the omission, the original ordinance that authorized the changes to the Investment Policy is being presented again with the corrected Temporary Addendum to the Investment Policy inserted.

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

[Link to the Ordinance on First Reading – Item 8](#)



**AGENDA ITEM:** 5  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Susan Ison, Cultural Services Director  
**PRESENTER:** Bryan Zellmer, Rialto Theater Manager




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**TITLE:**

**An Ordinance Enacting a Supplemental Budget and Appropriation to the 2016 City of Loveland Budget for the Foote Lagoon Concert Series, the Rialto Theater Center Arts & Education Programs and the Rialto Theater Center Cinema Series.**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the action as recommended.

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**SUMMARY:**

Donations have been received from Kaiser Permanente to fund the Foote Lagoon Series (\$20,000) and the Iva McKee Charitable Trust to fund the Arts & Education Programs (\$28,000) and the Cinema Series (\$12,000).

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

These programs would not be possible without these donations.

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**BACKGROUND:**

**Kaiser Permanente Donation:**

The Foote Lagoon Concert Series has been a long-running, community event for people of all ages. The concerts, which feature a wide variety of musical styles and genres, bring people from the community of Loveland and surrounding neighborhoods together to engage in experiences that celebrate a myriad of different cultural influences and musical expression. There will be some new additions this year: a Loveland Library Stage for Kids, introductory performers for the main acts, and artisans and vendors.

**Iva McKee Charitable Trust Donation:**

This donation is combined with another donation from Backstage Rialto/Linda Ligon to develop a new and expanded Cinema Program, featuring a number of thematic series—Musical Mondays, Tuesday Family Cinema, Date Night at the Movies, Political Humor, Phyllis Walbye Films, I Love Anime and Silent Films. The New Cinema Program will launch June 3 with a pre-party gala, followed by a special showing of *The Princess Bride*. The cinema program takes the Rialto back to its historic roots as a movie theater.

Several Arts & Education program will be supported by the Trust this summer: the Broadway Bootcamp, a 2-week workshop that offers students the opportunity to develop their acting, singing, and theater dance abilities under the tutelage of Broadway stars; and Kids' Stage at the Foote Lagoon Concerts.

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**REVIEWED BY CITY MANAGER:**

*William H. Cabell*

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**LIST OF ATTACHMENTS:**

Ordinance

FIRST READING: June 7, 2016

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

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR THE FOOTE LAGOON CONCERT SERIES, ARTS & EDUCATION PROGRAMS AND THE CINEMA SERIES**

**WHEREAS**, the City has received funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for the Foote Lagoon Concert Series, Arts & Education Programs and the Cinema Series; 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 Foote Lagoon Concert Series, Arts & Education Programs and the Cinema Series, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues in the amount of \$60,000 from donations in the General Fund are available for appropriation. Such revenues in the total amount of \$60,000 are hereby appropriated to the 2016 City budget for the Foote Lagoon Concert Series, Arts & Education Programs and the Cinema Series. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

**Revenues**

100-52-730-0000-35305	Donations	60,000
<b>Total Revenue</b>		<b>60,000</b>

**Section**

**Appropriations**

100-52-730-0000-43450	Professional Services	21,350
100-52-730-0000-43737	Advertising	6,850
100-52-730-0000-43089	Artist Fees	15,185
100-52-730-0000-43460	Production Costs	6,515
100-52-730-0000-42899	Other Supplies	500
100-52-730-0000-43774	Film Rental	9,600
<b>Total Appropriations</b>		<b>60,000</b>

**2.** That as provided in City

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

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

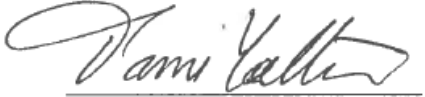
ADOPTED this \_\_\_\_ day of July, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**AGENDA ITEM:** 6  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Geri R. Joneson, Municipal Court  
**PRESENTER:** Geri R. Joneson, Judge




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**TITLE:**

**An Ordinance To Amend Chapter 1.12.010, Subsection C, Of The Loveland Municipal Code To Include Municipal Court Justice Programs As A Recipient Of 30% Of The Total Surcharge Collected**

**RECOMMENDED CITY COUNCIL ACTION:**

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

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. Denial of this action would hinder progress and improvements to the programs. Staff would be unable to take the programs to the next level.
3. Adopt a modified action. Council could modify the action by increasing or decreasing the percentage of the total surcharge to be designated.
4. Refer back to staff for further development and consideration. This option will delay the progress of the programs and require staff to locate alternative sources of funding for Council to consider.

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**SUMMARY:**

This is an administrative item. In February, a committee reviewed the use of a surcharge that has funded Alternative Dispute Resolution Programs and more recently, Traffic Safety and Enforcement Programs. The committee agreed that Municipal Court Justice Programs were valuable sentencing alternatives that benefit offenders and the community. It was further agreed that funding could be achieved by allocating 30% of the total annual surcharge to Municipal Court Justice Programs. The remaining 70% would be allocated to Traffic Safety and Enforcement. This would be a simple redistribution of funds with no financial consequence nor impact to the budget.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

In 1999 the Loveland City Council adopted Ordinance No. 4499 which amended Section 1.12.010 of the Loveland Municipal Code by adding Subsection C. Ordinance No. 4499 created a \$10 surcharge for each ordinance violation, traffic offense, or traffic infraction to be used to the purpose of funding "Alternative Dispute Resolution Programs".

In 2006 Council adopted Ordinance No. 5160 which amended section 1.12.010 (C) of the Loveland Municipal Code. Ordinance No. 5160 amended the surcharge funding purpose from the "Restorative Justice Program" to "Traffic Safety and Enforcement".

In February 2016 Council suggested, as a possible funding source for Municipal Court Justice Programs, that the court review the history and purpose of the surcharge.

The Court and members of the Loveland Police Department, Traffic Engineering, and Public Works Department met to discuss the application of the surcharge. The committee agreed that Municipal Court Justice Programs are valuable sentencing alternatives that benefit offenders and the community. It was further agreed that with City Council approval, funding could be easily achieved by reallocating this revenue source. After discussion and review of needs and desires of the three participating departments, it was determined that a fair allocation would be 30% of the total annual surcharge to "municipal court justice programs" and 70% to "traffic safety and enforcement" to be used collaboratively between the Loveland Police Department and the Traffic Engineering Division of the Public Works Department.

Since 2012, the amount of the surcharge collected by Municipal Court and budgeted to the Public Works Department - Traffic Engineering Division is as follows:

COLLECTED:	BUDGETED:
2012 - \$66,135.09	\$65,000
2013 - \$63,332.00	\$65,000
2014 - \$73,372.00	\$60,000
2015 - \$86,732.00	\$65,000
2016 -	\$65,000

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**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

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**LIST OF ATTACHMENTS:**

1. Ordinance
2. 2015-2016 Municipal Court Justice Programs Data

**FIRST READING**                    **June 7, 2016**

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

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

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 1.12.010 REGARDING PENALTY SURCHARGE**

**WHEREAS** the Loveland Municipal Code Section 1.12 addresses fines and penalties for violations of City ordinances; and

**WHEREAS** Chapter 1.12.010 subsection C adds a surcharge of ten dollars for all ordinance violation and traffic offenses that are paid into a separate account; and

**WHEREAS** Teen Court provides juveniles an alternative to the municipal court system using principles of restorative justice and Jumpstart provides homeless, near homeless and families in crisis an alternative to the municipal court system using principles of education and community resources;

**WHEREAS** municipal court justice programs provide alternatives to the Court and the community for restorative justice where everyone involved learns and benefits.

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

1. That Chapter 1.12.010.C of the Loveland Municipal Code is hereby amended to read as follows:

**1.12.010        General penalty and penalty for traffic infractions.**

C. In addition to the aforesaid fine, there shall be added a surcharge in the amount of ten dollars for each ordinance violation, traffic offense, or traffic infraction, except parking violations. All monies generated by the surcharge under this subsection (C) shall be paid into a separate account of the City of Loveland, to be used for the purpose of funding traffic safety and enforcement and municipal court justice programs. Traffic safety and enforcement shall receive 70% and municipal court justice programs 30% of the total surcharge collected.

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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**5 year Court Revenue/Expenditures and net difference**

#1 Due 5/27/16

	2011	2012	2013	2014	2015
<b>Revenue (budget revenue report)</b>					
Fines And Penalties					
Fines And Penalties	867,232.91	871,831.04	804,198.87	902,649.31	1,063,375.48
Charges For Services	30,428.00	30,828.50	26,078.00	13,390.00	12,088.00
Miscellaneous	142.99	80.00	(140.18)	221.05	876.60
<b>Total Revenue</b>	<b>897,803.90</b>	<b>902,739.54</b>	<b>830,136.69</b>	<b>916,260.36</b>	<b>1,076,340.08</b>
<b>Expense (ran gl query on 100-xx-115 &amp; Auth Spend)</b>					
Personal Services	323,693.28	319,157.83	323,954.95	337,591.36	339,321.51
Supplies	7,360.67	7,950.75	7,111.73	5,958.33	11,942.78
Purchased Services	25,675.22	28,447.25	67,369.85	229,476.88	268,344.73
	356,729.17	355,555.83	398,436.53	573,026.57	619,609.02
Difference between Revenue and Expenditures	541,074.73	547,183.71	431,700.16	343,233.79	456,731.06

**Revenue detail and 5 year surcharge history**

#4 Due 5/13/16

Surcharge Revenue Account	2011	2012	2013	2014	2015	2016
100-13-115-0000-31716 : Summons Surcharge	67,127.00	66,135.00	63,332.00	75,372.00	86,732.00	65,000

Budget

<b>2016 Budget Broken out</b>	
<b>30%</b>	<b>70%</b>
<b>Court</b>	<b>Traffic Safety/Enforcement</b>
19,500	45,500

**AGENDA ITEM:** 7  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Leah Browder, Public Works Director  
**PRESENTER:** Jeff Bailey, Interim City Engineer




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**TITLE:**  
**An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For Byrd Drive Roadway Connection**

**RECOMMENDED CITY COUNCIL ACTION:**

Appropriate the necessary funds to construct Byrd Drive (Project No. EN1504) between Crossroads Blvd and Earhart Road in Loveland, Colorado in the amount of \$1,188,000 and authorize the City Manager to execute the development agreement.

**OPTIONS:**

1. Adopt the action as recommended, which will allow the Byrd Drive roadway connection to be completed in 2016 as planned.
2. Deny the action, which would stop the Byrd Drive roadway connection from being completed in 2015 and result in the need for a significant detour route to be in place.
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration. Byrd Drive roadway connection would be delayed and a significant detour route would have to be initiated until Byrd Drive could be constructed.

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**SUMMARY:**

City Council approval is necessary to appropriate the funds to authorize the use of City of Loveland and Colorado Department of Transportation (CDOT) funds to construct the missing segment of Byrd Drive between Crossroads Blvd and Earhart Road. Council approved the Intergovernmental Agreement (IGA) at the May 6, 2016 Council Session which accepted the CDOT funds and conditions to be used to construct the missing segment of roadway. The amount of \$500,000 is already appropriated in the 2016 budget in Account No. 211-23-232-1701-49360, and will be transferred into the project-specific account. The remaining amount of \$88,000 needs to be supplementally appropriated for the project in addition to the CDOT granted funds. The developer, Byrd Drive Development, LLC, will be responsible for constructing Byrd Drive by the time CDOT needs to remove the Frontage Road. This request is included in a development agreement that has been finalized with the developer.

Project Funds

CDOT Granted Funds	=	\$1,100,000.00
City Provided Project Funds	=	\$ 588,000.00
Anticipated Developer Funds	=	\$ 591,844.00

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

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**BACKGROUND:**

The City of Loveland 2035 Transportation Plan includes the construction of Byrd Drive from Crossroads Blvd to Earhart Road with a 2-lane arterial cross section as depicted in the Larimer County Urban Area Street Standards (LCUASS). In late 2014, CDOT approved \$30 million for the I-25/Crossroads Interchange which included the replacement of the twin structures over Crossroads Blvd along with road widening and ramp reconstruction. This project was approved to facilitate the widening of I-25 from Longmont to north of Fort Collins.

As a result of this project, the Frontage Road between Crossroads Blvd and Earhart Road is planned to be demolished and decommissioned since the ramps are being shifted. The Frontage Road traffic will then be rerouted onto Byrd Drive in this location. A detour will need to be provided if Byrd Drive cannot accommodate 2 lanes of traffic by September 7, 2016.

The developer who owns most of the adjacent property has finalized design of the utilities and roadway for this section. A development agreement has been agreed upon which holds the developer responsible for the construction of the roadway with the timelines required by CDOT. CDOT will provide \$1.1 million for the project and maintenance of Byrd Drive. The city has agreed to provide \$588,000 thousand for the oversizing of the project. The developer is responsible for the remainder of the cost.

The City already has \$500,000 appropriated in the 2016 budget in Account No. 211-23-232-1701-49360. Therefore, a supplemental appropriation of \$1,100,000 for the CDOT funds and \$88,000 for City funds is necessary to utilize these funds for the construction of Byrd Drive.

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**REVIEWED BY ACTING CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

Ordinance

**FIRST READING** June 7, 2016

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

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR BYRD DRIVE ROADWAY CONNECTION**

**WHEREAS**, the City has received and reserved funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for Byrd Drive Roadway Connection; 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 Byrd Drive Roadway Connection, 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 \$17,600 from fund balance in the General Fund are available for appropriation. That revenues in the amount of \$1,100,000 from a State grant in the Transportation Fund are available for appropriation. That reserves in the amount of \$70,400 from fund balance in the Streets Capital Expansion Fee Fund are available for appropriation. Such revenues in the total amount of \$1,188,000 are hereby appropriated to the 2016 City budget for Byrd Drive Roadway Connection. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

<b>Revenues</b>		
Fund Balance		17,600
<b>Total Revenue</b>		<b>17,600</b>
<b>Appropriations</b>		
100-91-999-1701-47211	Transfers to Transportation Fund	17,600
<b>Total Appropriations</b>		<b>17,600</b>

**Supplemental Budget  
Transportation Fund 211**

<b>Revenues</b>		
211-23-232-1701-32100	State Grant	1,100,000
211-23-232-1701-37100	Transfers from General Fund	17,600
211-23-232-1701-37269	Transfers from Streets CEF	70,400
<b>Total Revenue</b>		<b>1,188,000</b>
<b>Appropriations</b>		
211-23-232-1701-49360	Construction	(500,000)
211-23-232-1701-49360 EN1504	Construction	1,688,000
<b>Total Appropriations</b>		<b>1,188,000</b>

**Supplemental Budget  
Streets Capital Expansion Fee Fund 269**

<b>Revenues</b>		
Fund Balance		70,400
<b>Total Revenue</b>		<b>70,400</b>
<b>Appropriations</b>		
269-23-232-1701-47211	Transfers to Transportation Fund	70,400
<b>Total Appropriations</b>		<b>70,400</b>

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

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

ADOPTED this 5th day of July, 2016.

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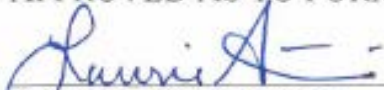
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:



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Assistant City Attorney



**AGENDA ITEM:** 8  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Terry Andrews, City Clerk's Office  
**PRESENTER:** Terry Andrews, City Clerk

**TITLE:**

**A Resolution Of The Loveland City Council Authorizing The City Clerk To Notify The Larimer County Clerk And Recorder Of The City Of Loveland's Intention To Participate In The Statewide Election To Be Held On November 8, 2016, as a coordinated election with the County**

**An Ordinance on First Reading, Calling for a Special Election To Be Held November 8, 2016 Which Shall Be Conducted As A Coordinated Election With The Larimer County Clerk and Recorder and, To The Extent Necessary To So Conduct That Election As A Coordinated Election, The Colorado Uniform Election Code Of 1992 Shall Govern**

**RECOMMENDED CITY COUNCIL ACTION:**

Request public comment and approve the resolution and ordinance.

**OPTIONS:**

1. Adopting the resolution and ordinance ensures the actions will be completed timely as required by State statute and City Charter.
2. Deny the action, could affect the City's ability to participate in the coordinated election.

**SUMMARY:**

The proposed resolution is an administrative action authorizing the City Clerk to notify the Larimer County Clerk and Recorder of the City's intent to participate in a coordinated election with the County on November 8, 2016.

The proposed Ordinance is a legislative action needed to allow the City to conduct a special election on November 8, 2016 as a coordinated election with the Larimer County Clerk and Recorder.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Funds have been appropriated in the 2016 Budget to conduct this election.

**BACKGROUND:**

On March 15, 2016 City Council approved Resolution #R-20-2016 directing the City Clerk to begin work on the compilation of the Qualified Elector List for voters located within the DDA boundaries. Staff indicated at that time, the return for additional actions necessary to move forward with an election in November.

The two measures to be decided on by DDA voters are both "Taxpayer Bill of Rights" (TABOR) ballot issues, requiring the election to be held November 8, 2016, which is a general election, and according to Larimer County the ballot may be as large as two pages.

State law requires the City to notify the Larimer County Clerk and Recorder of its intention to participate in this upcoming statewide special election as a coordinated election at least 100 days prior to the election. The proposed Resolution authorizes this notification.

In addition to calling a Special coordinated election with Larimer County on November 8, 2016, the proposed Ordinance provides that the City's election will be governed by the Colorado Uniform Election Code, to the extent as necessary. In all other respects, the City's special election will be governed by the Colorado Municipal Election Code, the City Charter and applicable City ordinances.

If the proposed actions are approved this evening the City Clerk will notify Larimer County of Loveland's intention to participate in the November 8, 2016 General election. The ordinance will be brought back to Council for second reading.

It should also be noted that Staff will be returning in August with additional considerations regarding the DDA election, which would include setting the Ballot titles.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution
2. Ordinance

**RESOLUTION #R-38-2016**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL  
AUTHORIZING THE CITY CLERK TO NOTIFY THE  
LARIMER COUNTY CLERK AND RECORDER OF THE  
CITY OF LOVELAND'S INTENTION TO PARTICIPATE IN  
THE STATEWIDE ELECTION TO BE HELD ON  
NOVEMBER 8, 2016, AS A COORDINATED ELECTION  
WITH THE COUNTY**

**WHEREAS**, the City of Loveland intends to participate in the statewide election to be held on November 8, 2016, and to coordinate its regular election on November 8, 2016, with the Larimer County Clerk and Recorder; and

**WHEREAS**, C.R.S. Section 1-7-116(5) requires the City to notify the Larimer County Clerk and Recorder of its intention to so participate in this upcoming election; and

**WHEREAS**, this Resolution constitutes the City's formal decision to participate in the November 8, 2016, statewide election to be coordinated with the Larimer County Clerk and Recorder.

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

Section 1. That the City Clerk is hereby authorized and directed to notify the Larimer County Clerk & Recorder of the City's intention to participate in the November 8, 2016, statewide election and to coordinate its participation in that election with the Larimer County Clerk and Recorder with respect to the City's regular election on November 8, 2016.

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

APPROVED this 7th day of June, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to form:



\_\_\_\_\_  
Teresa Ablao  
Assistant City Attorney

**FIRST READING:**

**SECOND READING:** \_\_\_\_\_

**ORDINANCE #**\_\_\_\_\_

**AN ORDINANCE CALLING FOR A SPECIAL ELECTION, TO BE HELD ON NOVEMBER 8, 2016, SHALL BE CONDUCTED AS A COORDINATED ELECTION WITH THE LARIMER COUNTY CLERK AND RECORDER AND, TO THE EXTENT NECESSARY TO SO CONDUCT THAT ELECTION AS A COORDINATED ELECTION, THE COLORADO UNIFORM ELECTION CODE OF 1992 SHALL GOVERN**

**WHEREAS**, on June 7, 2016, the Loveland City Council has adopted Resolution #R-\_\_\_\_-2016 authorizing the City Clerk to notify the Larimer County Clerk and Recorder (“the County Clerk”) of the City of Loveland’s intention to participate in the November 8, 2016, statewide election and to coordinate the City’s November 8, 2016, special election in that statewide election with the County Clerk; and

**WHEREAS**, Loveland Charter Section 6-1 provides that City elections are to be governed by the provisions of the Colorado Municipal Election Code of 1965 (C.R.S. §31-10-101, et seq) (“the Municipal Election Code”), except as otherwise provided by the City Charter or by City ordinance; and

**WHEREAS**, C.R.S. §31-10-102.7 authorizes a municipality to provide by ordinance that it will utilize the requirements and procedures of the Uniform Election Code of 1992, Articles 1 to 13 of Title 1 of the Colorado Revised Statutes, (“the Uniform Election Code”) in lieu of the requirements and procedures of the Municipal Election Code for any election; and

**WHEREAS**, since it is the intent of the City Council that the City’s special election to be held on November 8, 2016, be a coordinated election with the County Clerk as part of the statewide election on November 8, 2016, the purpose of this Ordinance is to provide that such coordinated election shall be governed by the Uniform Election Code, but only to the extent necessary to conduct that election as a coordinated election, and otherwise the City’s special election on November 8, 2016, shall be governed by the Municipal Election Code, the City Charter and applicable City ordinances.

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

Section 1. That the City’s November 8, 2016, special election shall be governed by the Uniform Election Code, but only to the extent necessary to conduct this

election as a coordinated election with the County Clerk, as part of the statewide election to be held on November 8, 2016. In all other respects, the City's special election on November 8, 2016, shall be governed by the Municipal Election Code, the City Charter, and applicable City ordinances.

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

Dated this 5th day of July, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to form:



\_\_\_\_\_  
Teresa Ablao  
Assistant City Attorney

**AGENDA ITEM:** 9  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Alison Hade, Community Partnership Office  
**PRESENTER:** Alison Hade, Administrator




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**TITLE:**

**A Resolution Approving the Grant Funding Recommendation of the Loveland Affordable Housing Commission for the Reallocation of Certain Community Development Block Grant Funds**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action – If the action is denied, funding may not be spent by the end of the 2015-2016 grant year on September 30, 2016.
3. Adopt a modified action (specify in the motion) - Council would need to define any modification to the allocation recommendation.
4. Refer back to staff for further development and consideration - Staff would require direction from Council.

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**SUMMARY:**

This is an administrative action by the Affordable Housing Commission to recommend to City Council reallocation of \$18,930 of 2015-2016 Community Development Block Grant (CDBG) funds to Elderhaus Adult Day Program to purchase HVAC equipment for its new day center. These CDBG funds became available due to recipient Live the Victory, dba The Matthews House's (Matthews House) inability to use the funds awarded to create new office space at the House of Neighborly Service Life Center.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Funds were allocated by the U.S. Department of Housing and Urban Development (HUD) and were initially appropriated in the 2015 City Budget and rolled over to the 2016 City Budget.

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**BACKGROUND:**

In 2015, CDBG funding was allocated to the Matthews House to fund the build-out of office space at the House of Neighborly Service Life Center. Matthews House found that the \$20,000 allocation was insufficient to pay for the remodel and had to withdraw their request.

On April 27, 2016, the Affordable Housing Commission voted to reallocate \$18,930 of the \$20,000 to Elderhaus Adult Day Program for HVAC equipment for their day center. The remaining \$1,070 will be added to the 2016-2017 CDBG allocation and redistributed later this year.

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**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

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**LIST OF ATTACHMENTS:**

Resolution

**RESOLUTION #R-39-2016**

**A RESOLUTION APPROVING THE GRANT FUNDING RECOMMENDATION OF THE LOVELAND AFFORDABLE HOUSING COMMISSION FOR REALLOCATION OF CERTAIN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**WHEREAS**, the City Council of the City of Loveland recognizes the need to provide opportunities for the well-being of less fortunate citizens; and

**WHEREAS**, the City receives federal Community Development Block Grant (“CDBG”) funds through the U.S. Department of Housing and Urban Development to assist in meeting the housing needs for Loveland citizens with low incomes; and

**WHEREAS**, the City Council has charged the Affordable Housing Commission with the task of reviewing all “bricks and mortar” grant applications made to the City for CDBG funds related to housing and making a recommendation to the City Council regarding such grant fund distribution; and

**WHEREAS**, on June 2, 2015, the City Council adopted Resolution #R-31-2015 allocating \$20,000 in 2015-2016 CDBG funds to Live the Victory, dba The Matthews House (“Matthews House”) for office space at the House of Neighborly Service Life Center (the “Project”); and

**WHEREAS**, Matthews House was unable to complete the Project and, as a result, such funds became available for reallocation to other applicants; and

**WHEREAS**, the Affordable Housing Commission has received and reviewed CDBG grant applications made to the City for the use of such funds and has made a recommendation to the City Council regarding reallocation of 18,930 of such funds with the balance to be distributed as part of the 2016-2017 CDBG allocation; and

**WHEREAS**, the City Council desires to approve the grant funding recommendation of the Affordable Housing Commission.

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

**Section 1.** That the allocation of 2015-2016 CDBG Community Development Block Grant funding in the amount of \$20,000 granted to the Matthew House pursuant to Resolution #R-31-2015 is hereby withdrawn.

**Section 2.** That the recommendation of the Affordable Housing Commission for the reallocation of \$18,930 in 2015-2016 Community Development Block Grant funds is hereby approved as follows, subject to Agency execution of a subrecipient contract with the City of



Loveland on or before August 31, 2016 and expenditure of the funds on or before September 30, 2016:

Agency	Total Grant Amount
Elderhaus Adult Day Program	\$18,930

**Section 3.** That this Resolution shall be effective as of the date of its adoption.

**ADOPTED** this 7<sup>th</sup> day of June, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**AGENDA ITEM:** 10  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Alison Hade, Community Partnership Office  
**PRESENTER:** Alison Hade, Administrator




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**TITLE:**

**A Resolution Approving the 2016 Grant Funding Recommendation of the Loveland Human Services Commission**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action – If the action is denied, grant contracts will be delayed. The grant year for human service grant funding is currently expected to begin on July 1, 2016.
3. Adopt a modified action (specify in the motion) – Council would need to define any modification to the allocation recommendation.
4. Refer back to staff for further development and consideration – Staff would require direction from Council.

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**SUMMARY:**

This is an administrative action to consider the 2016 grant allocation recommendation of the Human Services Commission totaling \$550,411. The attached staff report describes how the commission members made their decision.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The resolution authorizes the allocation of the 2016 Human Services Grant and the public service portion of the 2016 Community Development Block Grant that was appropriated in the 2016 City Budget.

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**BACKGROUND:**

The Human Services Commission received 46 grant applications and recommended funding for 37, including 35 general applications and two Model Partnership applications. Individual grant recommendations are based on average scores provided by commissioners.

The allocation recommendation for bricks and mortar Community Development Block Grants funding made by the Affordable Housing Commission will be presented to City Council separately this year.

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**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

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**LIST OF ATTACHMENTS:**

1. Resolution
2. Staff Report

**RESOLUTION #R-40-2016****A RESOLUTION APPROVING THE 2016 GRANT FUNDING RECOMMENDATION OF THE LOVELAND HUMAN SERVICES COMMISSION**

**WHEREAS**, the City of Loveland, Colorado recognizes the valuable services provided by human services agencies in the Loveland community; and

**WHEREAS**, the City Council of the City of Loveland recognizes the need to provide opportunities for the well-being of less fortunate citizens; and

**WHEREAS**, the City has established the Human Services Grant Program to provide financial assistance to agencies meeting the human service needs in the community; and

**WHEREAS**, the City has budgeted \$500,000 in the 2016 City of Loveland budget for the Human Services Grant Program; and

**WHEREAS**, the City receives federal Community Development Block Grant (“CDBG”) Program funds through the U.S. Department of Housing and Urban Development (“HUD”) to assist in meeting the human service needs of Loveland citizens with low incomes; and

**WHEREAS**, the City anticipates receiving \$50,411 in CDBG Public Service Program funds for the 2016-2017 federal fiscal year; and

**WHEREAS**, the City Council has charged the Human Services Commission with the task of reviewing all grant applications made to the City for Human Services Grant Program funds and for CDBG Public Service Program funds and making a funding recommendation to the City Council regarding such grant funds distribution; and

**WHEREAS**, the Human Services Commission has reviewed all grant applications made to the City for Human Services Grant Program funds and CDBG Public Service Program funds, and have made a recommendation to the City Council regarding distribution of said funds; and

**WHEREAS**, the City Council desires to approve the grant funding recommendations of the Human Services Commission.

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

**Section 1.** That the 2016 grant funding recommendation of the Human Services Commission regarding the distribution of Human Services Grant Program funds are hereby approved in the following amounts to the following agencies, subject to execution of a recipient contract with the City of Loveland by the agency on or before September 31, 2016:

<b>Agency</b>	<b>Total Grant Amount</b>
Alternatives to Violence	\$3,748
Boys & Girls Club	\$65,594
Care-A-Van SAINT	\$5,694
Court Appointed Special Advocates	\$13,123
Catholic Charities of Larimer County	\$10,415
Center for Adult Learning	\$30,825
Disabled Resource Services	\$11,288
Easter Seals/WINGS	\$11,537
Elderhaus Day Program	\$12,990
Ensign Skills Center	\$9,809
Food Bank for Larimer County	\$38,667
Goodwill Industries	\$10,940
Hearts and Horses	\$4,478
House of Neighborly Service	\$17,745
Loveland Rotary Kids Pak	\$2,983
Matthews House	\$19,844
Meals on Wheels	\$24,901
Neighbor to Neighbor	\$23,719
Partners Mentoring Youth	\$3,990
Project Self-Sufficiency	\$19,993
Rehabilitation & Visiting Nurse Association	\$19,626
Respite Care	\$9,932
SummitStone Health Partners	\$27,195
Thompson Education Foundation First Steps	\$7,811
Thompson Valley Preschool	\$10,901
Turning Point Center for Youth	\$18,508
United Day Care Center – Teaching Tree	\$18,238
United Way Reading Corps	\$11,834
Voice Carry Child Advocacy Center	\$17,504
Volunteers of America Meal Program	\$6,168
Model Partnership: House of Neighborly Services and Goodwill Ind.	\$4,000
Model Partnership: Murphy Center for Hope	\$6,000
<b>Total Grant Amount</b>	<b>\$500,000</b>

**Section 2.** That the 2016 grant funding recommendation of the Human Services Commission regarding the distribution of CDBG Public Service Program funds are hereby approved in the following amounts to the following agencies, subject to: (a) the approval of HUD and the allocation to and receipt of CDBG funds by the City of Loveland in 2016; (b) City Council budget and appropriation of such allocated federal funding; and (c) execution of a subrecipient contract with the City of Loveland by the agency or project owner on or before March 31, 2017:

<b>Agency</b>	<b>Total Grant Amount</b>
Alternatives to Violence	\$33,105
House of Neighborly Service	\$17,306
Total Grant Amount	\$50,411

**Section 3.** That this Resolution shall take effect as of the date of its adoption.

**ADOPTED** this 7<sup>th</sup> day of June, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

## MEMORANDUM

**TO:** City Council  
**FROM:** Alison Hade, Community Partnership Office  
**DATE:** June 7, 2016  
**RE:** 2016-2017 Grant Recommendations

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### Summary:

The City of Loveland invests in housing and human services via the Human Services Grant (HSG) program. The City received 46 grant applications for HSG funds, including two applications for Model Partnership funding. The Human Services Commission reviewed and scored applications, heard presentations from each applicant, and formulated funding recommendations totaling **\$550,411**. Human Services Grant funding includes \$500,000 from the City of Loveland and \$50,411 from the U.S. Department of Housing and Urban Development (HUD) for public services.

Decisions are made for HSG funding by the Human Services Commission (HSC) through a blind allocation process based on the overall score of the proposal and the presentation. The commission funded proposals that received 79% or higher of the total score possible, or a minimum of 226 total points. Two Model Partnership applications were submitted for collaborative services to the homeless. The HSC recommended partial funding for both partnerships.

### 2016 Allocations

Grant Program	Revenue Source	2016 Funds Available for Grants	Funds Requested	# Requests	# Grants Recommended
Human Services Grant	City general fund, CDBG Public Svc funds	\$550,411	\$1,044,787	46	37

### Funding Distribution Process

HSC members receive training on the grant and allocation processes each year. In 2016, training included reviewing the grant guide that was distributed to non-profits, discussing how information is presented in an application, how score sheets correspond to the questions asked on proposals, and how scores are submitted and compiled for the allocation process.

Scoring criteria and summaries can be found below. Ranking and funding recommendations for each grant applicant are shown on subsequent pages and are followed by a brief history of HSG funding.

HSC members spend between 30 and 70 hours reviewing proposals and about 20 hours watching presentations and completing score sheets.

## Human Services Commission – 2016 Grant Applicant Scoring Summary

Human Services Grant				
<b>Total Amount Requested:</b>	<b>\$1,044,787</b>	<b>Total Amount Available:</b>	<b>\$550,411</b> HSG & 15% CDBG	
<b># of Requests Received</b>	46 requests	<b>Recommended # Grants</b>	37 grants	
<b>Total # of Points Possible</b>	285 points	<b>Average Score</b>	232 points	
<b>Highest Score</b>	266 points	<b>Lowest Score</b>	154 points	
<b>Average Grant Amount</b>	\$15,440	<b>Median Score</b>	233 points	
<b>Lowest Grant Amount</b>	\$2,983	<b>Highest Grant Amount</b>	\$30,825	
<b>Scoring Range</b>	<b>Low</b> 154-182	<b>Low-Mid</b> 183-210	<b>Mid-High</b> 211-238	<b>High</b> 239-266
<b># applicants in range</b>	2	2	23	17

### Human Services Grant Program Goals

HSG funds are used to assist in meeting the needs of Loveland citizens through projects and services that enhance stability, provide crisis intervention and prevention, and lead to self-sufficiency.

### Objectives:

1. Financially support services that value diversity, foster self-reliance, treat people with dignity, build self-respect, address issues of safety, and allow people to live free of fear through the provision of food, shelter, physical and mental health care as well as services that prevent crises and assist in sustaining independent living.
2. Limit the amount of grant funds to a maximum of \$35,000 for any one request.
3. Allocate up to \$10,000 to a Model Partnership among two or more organizations.
4. Grant recipients must be an IRS-determined non-profit agency.

### Human Services Commission Scoring System

Each commissioner completes a score sheet for each applicant proposal. Commissioners score the following 15 questions using a 1-5 scale with adjusted weights for each item.

Questions	Total Points Possible
How well does the program match the HSG program goal	15
Explanation of need for service(s)	20
Agency's objective for the program	25
Program benefit to Loveland residents	25
Agency provides accessible and accommodating services	10
Coordination of services with other agencies	15
Program's provision of tools for self-reliance	15
Program's use of volunteers	10
Program's client-generated revenue system or explanation for no fees	10
Funding and program sustainability	25
Program budget narrative	10



Impact of service relative to community need	35
Clarity & quality of grant proposal	25
Clarity & quality of grant presentation	35
Percent of Loveland program budget requested	10
Total Points Possible	285

### Human Services Grant Applicants – Ranking & Funding Recommendations

Applicant	Rank	Request	Score	Amount Recommended	% of Request
Center for Adult Learning	1	\$35,000	266	\$30,825	88%
Boys and Girls Club - Pulliam	2	\$35,000	259	\$28,187	81%
Food Bank- Food Share	3	\$35,000	258	\$27,995	80%
SummitStone Health Partners	4	\$35,000	256	\$27,195	78%
Loveland Rotary - Kids Pak	5	\$4,000	253	\$2,983	75%
Turning Point Center for Youth	6	\$25,000	252	\$18,508	74%
United Day Care Center - Teaching Tree	7	\$25,000	251	\$18,238	73%
Meals on Wheels	8	\$35,000	249	\$24,901	71%
Food Bank - Kids Café	8	\$15,000	249	\$10,672	71%
Alternatives to Violence - Housing	10	\$30,000	246	\$20,443	68%
Live the Victory - Matthews House	10	\$29,120	246	\$19,844	68%
Neighbor to Neighbor	12	\$35,000	245	\$23,719	68%
Disabled Resource Services	13	\$16,937	244	\$11,288	67%
Project Self-Sufficiency	13	\$30,000	244	\$19,993	67%
Respite Care	15	\$15,335	242	\$9,932	65%
Elderhaus Day Program	16	\$20,777	240	\$12,990	63%
Boys and Girls Club - West	17	\$35,000	239	\$21,707	62%
Boys and Girls Club - Summer	18	\$26,158	237	\$15,700	60%
Ensign Skills Center	19	\$16,620	236	\$9,809	59%
Easter Seals/WINGS	20	\$20,000	235	\$11,537	58%
House of Neighborly Services - 137 Connection	20	\$30,000	235	\$17,306	58%
Care-A-Van SAINT	22	\$10,000	234	\$5,694	57%
Volunteers of America - Café	23	\$11,000	233	\$6,168	56%
Rehabilitation Visiting Nurses Assoc.	23	\$35,000	233	\$19,626	56%
Voices Carry Child Advocacy Center	25	\$32,000	231	\$17,504	55%
Alternatives to Violence - Victim Services	25	\$30,000	231	\$16,410	55%
CASA - Court Appointed Special Advocates	25	\$23,991	231	\$13,123	55%
Goodwill Industries	25	\$20,000	231	\$10,940	55%
United Way Reading Corps	29	\$22,000	230	\$11,834	54%
Partners Mentoring Youth	30	\$7,500	229	\$3,990	53%
Catholic Charities- Senior	31	\$20,000	228	\$10,415	52%
Thompson Education Foundation- First Steps	31	\$15,000	228	\$7,811	52%
Hearts and Horses	33	\$8,640	227	\$4,478	52%
House of Neighborly Service - Food	34	\$35,000	226	\$17,745	51%

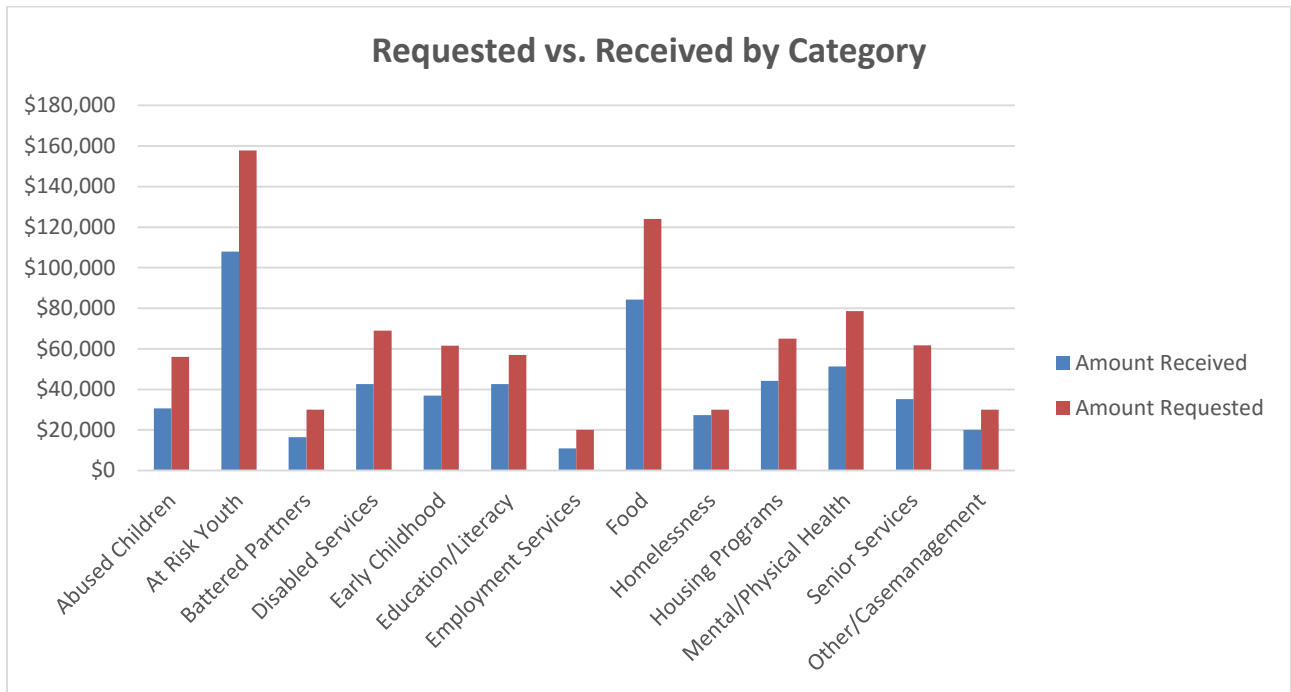
Thompson Valley Preschool	35	\$21,500	226	\$10,901	51%
Model Partnership: HNS and Goodwill Ind.		\$10,000		\$4,000	
Model Partnership: The Murphy Center		\$10,000		\$6,000	

**Human Services Grant Applicants – Ranking & Scores for Applications Not Funded**

Applicant	Rank	Request	Score
Colorado Health Network - No Colorado AIDS Proj	36	\$10,000	224
McKee Medical Center - Stepping Stones	37	\$18,720	222
House of Neighborly Service - Basic Needs	38	\$35,000	219
CASA - Harmony House	39	\$23,989	218
Alliance for Suicide Prevention	40	\$20,000	215
Audio Information Network	41	\$1,500	203
Center for Family Outreach	42	\$10,000	194
Loveland Housing Development Corp - Mirasol	43	\$30,000	155
Team Wellness & Prevention	44	\$35,000	154

**2016 Human Services Commission – Requested & Received by Category**

The following chart represents the primary populations served or primary service offered by category. Some categories shown below overlap.



<b>Human Services Grant Program History</b>							
<b>Comparison Facts</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
<b># of Applications</b>	46	45	46	44	48	46	48
<b>Total Requested</b>	1,044,787	\$946,450	\$915,113	\$883,207	\$933,081	\$866,471	\$888,428
<b>HSG Funds Available</b>	500,000	\$500,000	\$518,669	\$450,000	\$450,000	\$450,000	\$450,000
<b>CDBG Funds Available</b>	50,411	\$48,370	\$45,247	\$43,754	\$43,235	\$41,276	\$49,000
<b>Total Funds Available</b>	<b>550,411</b>	<b>\$548,370</b>	<b>\$563,915</b>	<b>\$493,754</b>	<b>\$493,235</b>	<b>\$491,276</b>	<b>\$499,000</b>
<b># Requests Funded</b>	37	32	36	42	33	38	35
<b>% Requests Funded</b>	80%	71%	78%	95%	69%	83%	73%

**Next Steps**

Upon City Council approval of the allocation of funds, the Community Partnership Office will draft a contract agreement between each grant recipient and the City. Additionally, and as required by HUD, staff will complete the 2016 Annual Action Plan providing detailed information regarding the City’s plans for expending CDBG funds. The plans will be presented to the City Council for approval in August, 2016. The approved plans will then be submitted to HUD for release of 2016-2017 CDBG funding.

**AGENDA ITEM:** 11  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Sam Betters, Executive Director, Housing Authority




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**TITLE:**

**A Resolution Authorizing the Assignment of the City's Private Activity Bond Allocation for 2016**

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the resolution.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. If the Resolution is denied, the project will not proceed.
3. Adopt a modified action. No modified actions have been created.
4. Refer back to staff for further development and consideration. The project is up against tight deadlines. If delayed, the financing would not be able to be completed in 2016.

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**SUMMARY:**

This is an administrative action. This Resolution will authorize the assignment of all of the City's 2016 private activity bond allocation in the amount of \$3,649,150 to the Housing Authority of the City of Loveland ("HACOL" or the "Authority") for the purpose of issuing bonds or a revenue note for the 130-unit rental housing Maple Terrace Apartments Project (the "Project") to be acquired, rehabilitated, and equipped by Maple Terrace Investors, an affiliate of GHC Housing Partners. The private activity bond assignment is not a cash contribution. It allows the funding for an eligible project to come from the issuance of bonds, a loan, or a note. The Project is an affordable housing project and meets the federal and state requirements for the use of Private Activity Bond financing and federal tax credits. The City's 2016 allocation will be combined with other allocations to reach a total principal amount of \$14 million. The other sources will be from an allocation from the state-wide balance, an assignment of allocation from Larimer County, and from a previously assigned allocation from the City of Loveland in 2014. The City of Loveland will not have any financial responsibility for the repayment of the bonds or note issued for the project. The Project will be responsible to make the bond or note payments.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

If Council approves the assignment, the Housing Authority will be responsible for the use of the City's 2016 Private Activity Bond Allocation. The City of Loveland will not incur any costs due to the assignment of the 2016 Allocation.

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**BACKGROUND:**

Private Activity Bonds are tax-exempt bonds that can be issued for specific purposes, including affordable multi-family housing, single-family mortgages and credits, industrial development bonds, and exempt facility bonds. The federal government grants annual allocations of private

activity bond issuance authority to states under the Tax Reform Act of 1986. The State of Colorado allocates 50% of its private activity bond ceiling to local governments on a per capita basis. The City of Loveland 2016 allocation is \$3,649,150. The financing will be issued by the HACOL and will be repaid from revenue generated by the project. The City is not liable for the debt service payments on the bonds.

The City has used its private activity bond allocation many times in the past to assist in the financing of affordable multi-family housing. Two examples of past housing projects are the Waterford Apartments and The Reserve Apartments. The City has also completed private activity bond transactions for industrial projects and combines with state-wide efforts for single-family mortgage bond programs.

The proceeds of the Note will be used to finance a portion of the cost of acquiring, rehabilitating and equipping a 130-unit multi-family rental housing project (the "Project") to be owned by Maple Terrace Investors LLC. Maple Terrace Investors is an affiliate of GHC Housing Partners, a for profit company specializing in affordable housing. According to the GHC website, it is third largest (in terms of units managed) company in the affordable housing sector. The Project will consist of 40 one-bedroom units, 48 two-bedroom units, 30 three-bedroom units and 12 four-bedroom units. The Project is located at 574 E. 23rd Street, in the City of Loveland, Colorado.

In 2016 the City of Loveland received two inquiries regarding the use of the 2016 allocation. The uses were analyzed by city staff and the Maple Terrace project was found to be the more advantageous to the affordable housing needs of the community. The City of Loveland will not incur additional costs in the process of using the 2016 private activity bond allocation. Repayment of the bonds will be the responsibility of the Maple Terrace Investors. All of the units at the Project will remain as affordable housing units. GHC Housing Partners has provided a letter (included as an attachment) explaining the intended uses. The Housing Authority of Loveland will use the proceeds that it will receive from the transaction to produce additional affordable housing units for the community.

The City of Loveland received two requests for Loveland's allocation of Private Activity Bonds in 2016. The second request came from Retirement Housing Foundation based on Long Beach, California, to rehabilitate 60 apartments at Madison Avenue and east 6<sup>th</sup> Street. This Housing Authority effort was chosen for Loveland's allocation because the cost of housing will not increase for at least 86% of the current occupants in Maple Terrace.

The Maple Terrace property is owned by the Loveland Housing Development Corporation. LHDC is a 501c3 not for profit and is independent of LHA. Sale proceeds will be used by LHDC, in conjunction with the Loveland Housing Authority, to create 200 new units of affordable housing over the next several years. The residents of Maple Terrace will benefit from the sale as the existing affordable housing will be preserved and improved. The community will benefit because the sale proceeds will be leveraged to create new additional affordable housing units in Loveland.

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**REVIEWED BY ACTING CITY MANAGER:**




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**LIST OF ATTACHMENTS:**

1. Resolution
2. Assignment of Allocation
3. Letter from GHC Housing Partners

**RESOLUTION #R-41-2016**

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF THE CITY'S PRIVATE ACTIVITY BOND ALLOCATION FOR 2016 TO THE HOUSING AUTHORITY OF THE CITY OF LOVELAND, COLORADO; PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Loveland, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling for the year 2016 (the "2016 Allocation"); and

**WHEREAS**, the Housing Authority of the City of Loveland, Colorado (the "Authority") has requested that the City assign all of the 2016 Allocation equal to \$3,649,150 (the "Assigned Allocation") to the Authority pursuant to Section 24-32-1706 of the Allocation Act for the purpose of assisting in the financing of the acquisition, rehabilitation and equipping of a 130-unit rental housing project known as Maple Terrace Apartments, located at 574 E. 23rd Street, in the City of Loveland, Colorado; and

**WHEREAS**, the City desires to assign the Assigned Allocation to the Authority; and

**WHEREAS**, there has been presented to the City Council (the "Council") the form of an Assignment of Allocation (the "Assignment").

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

**Section 1.** Authorization of Assignment. The City hereby authorizes the assignment of the Assigned Allocation to the Authority for use as described above.

**Section 2.** Approval of Assignment of Allocation. The form, terms and provisions of the Assignment hereby are approved and the officers of the City hereby are authorized and directed to execute and deliver the Assignment, with such changes therein as are approved by the officers of the City executing the Assignment. The execution of the Assignment shall be conclusive evidence of the approval by the City of such document in accordance with the terms hereof.

**Section 3.** Further Action. The officers of the City shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this resolution and the Assignment.

**Section 4.** Ratification. All action not inconsistent with the provisions of this resolution heretofore taken by the Council and the officers of the City directed toward the assignment of the Assigned Allocation and the authorization of the Assignment hereby are ratified, approved and confirmed.

**Section 5.** Severability. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution, the intent being that the same are severable.

**Section 6.** Repealer. All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, inconsistent with this resolution are hereby repealed to the extent only of such inconsistency.

**Section 7.** Effective Date. This resolution shall be in full force and effect upon its passage and approval.

APPROVED AND ADOPTED this June 7, 2016.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

# AFFIDAVIT OF PUBLICATION REPORTER-HERALD

State of Colorado  
County of Larimer

I, the undersigned agent, do solemnly swear that the LOVELAND REPORTER-HERALD is a daily newspaper printed, in whole or in part, and published in the City of Loveland, County of Larimer, State of Colorado, and which has general circulation therein and in parts of Larimer and Weld counties; that said newspaper has been continuously and uninterruptedly published for a period of more than six months next prior to the first publication of the annexed legal notice of advertisement, that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any, amendments thereof, and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado; that a copy of each number of said newspaper, in which said notice of advertisement was published, was transmitted by mail or carrier to each of the subscribers of said newspaper, according to the accustomed mode of business in this office.

The annexed legal notice or advertisement was published in the regular and entire edition of said daily newspaper once; and that one publication of said notice was in the issue of said newspaper dated **May 13, 2016**.

*JERRY LOVE*

Agent

Subscribed and sworn to before me this 18<sup>th</sup> day of **May** 2016 in the County of Boulder, State of Colorado.

*Rita Marie Hanner-Ward*

Notary Public

Fee \$ 37.75  
Account #104124  
Ad # 5671050

RITA MARIE HANNER-WARD  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID: 20144042768  
MY COMMISSION EXPIRES NOVEMBER 4, 2018

**NOTICE OF PUBLIC HEARING**  
**HOUSING AUTHORITY OF THE CITY OF LOVELAND, COLORADO**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(MAPLE TERRACE APARTMENTS PROJECT) SERIES 2016**  
NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Tax Code") will be held by the Housing Authority of the City of Loveland, Colorado (the "Authority") on Friday, May 27, 2016, commencing at 9:00 a.m., at the Authority's offices, 375 W. 37th St., Suite 200, in Loveland, Colorado, for the purpose of providing a reasonable opportunity for interested individuals to express their views, either orally or in writing; on the issuance by the Authority of the above-captioned Note (the "Note") and the Project described below.  
The Authority has been requested to make available proceeds of the Note to be issued in an aggregate principal amount not exceeding \$14,000,000 to finance a portion of the cost of acquiring, rehabilitating and equipping a 130-unit multi-family rental housing project (the "Project") to be owned by Maple Terrace Investors LLC. The Project will consist of 40 one-bedroom units, 48 two-bedroom units, 30 three-bedroom units and 12 four-bedroom units. The Project will be located at 574 E. 23rd Street, in the City of Loveland, Colorado.  
THE NOTE SHALL BE A SPECIAL, LIMITED OBLIGATION OF THE AUTHORITY. THE AUTHORITY WILL NOT BE OBLIGATED TO PAY THE NOTE OR THE INTEREST THEREON, EXCEPT FROM THE ASSETS OR REVENUES PLEDGED THEREFOR. IN NO EVENT SHALL THE STATE OF COLORADO, THE CITY OF LOVELAND OR ANY OTHER POLITICAL SUBDIVISION THEREOF (OTHER THAN THE AUTHORITY) BE LIABLE FOR THE NOTE, AND THE NOTE SHALL NOT CONSTITUTE A DEBT OF THE STATE OF COLORADO, THE CITY OF LOVELAND OR ANY OTHER SUCH POLITICAL SUBDIVISION. THE AUTHORITY DOES NOT HAVE THE POWER TO PLEDGE THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE AUTHORITY HAS NO TAXING POWER.  
It is intended that the interest payable on the Note be excludable from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Tax Code. The Authority will, at the above time and place, receive any written comments from and hear all persons with views in favor of or opposed to the proposed issuance of the Note and the use of the proceeds thereof to finance the Project.  
Dated May 13, 2016.  
HOUSING AUTHORITY OF THE CITY OF  
LOVELAND, COLORADO  
Published: Loveland Reporter Herald May 13, 2016 - 5671050



**GHC | HOUSING PARTNERS**  
15301 Ventura Blvd. Suite B-570  
Sherman Oaks, California 91403  
Phone (818) 808-0600  
[www.ghchousing.com](http://www.ghchousing.com)

June 2, 2016

Mr. Samuel Betters  
Loveland Housing Authority  
375 W. 37<sup>th</sup> St., Suite 200  
Loveland, CO 80538

Via Electronic Mail - [sbett@lovelandhousing.org](mailto:sbett@lovelandhousing.org)

**RE: GHC's Experience and Commitment**

Mr. Samuel Betters and Loveland City Council:

An affiliate of GHC Housing Partners ("GHC") is under contract to purchase the Maple Terrace Apartments (the "Project") in Loveland, CO. With a long-term view and a focus on preservation, GHC specializes in acquiring and owning rental housing with project-based Section 8 contracts, low-income housing tax credits and affordability rent restrictions. GHC and its affiliated entities are among the country's largest owners and managers of HUD subsidized housing with over 18,000 units in 24 states, of which more than 6,000 units are subject to low income housing tax credit regulations.

GHC will renew the in-place Project Based HAP Contract upon closing, extending the Project's contract term to 20 years. Furthermore, GHC will perform a tax credit and bond financed rehabilitation of the Project which will result in an additional affordability commitment on all of the residential units for 30 years. GHC wants residents to live in a safe, high-quality living environment. Our renovation and preservation of the Project will ensure the property remains in good physical condition and remains affordable to its low income tenants for many years to come.

GHC and PK Management, an affiliated management company, implement social programming at a property whenever possible. These initiatives not only create opportunities, such as education, health and wellness programs, they also function to protect the asset by building pride and facilitating resident involvement in the community.

Maple Terrace has long been a quality affordable housing option for low-income residents of Loveland, in large part because of the current owner's efforts. As a result of the recapitalization of the property, Maple Terrace will continue to serve low-income families in the community for the foreseeable future.

Thank you,



RJ Miller  
Senior Vice President  
GHC Housing Partners

**AGENDA ITEM:** 12  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Sam Betters, Executive Director, Housing Authority

**TITLE:**

**A Resolution Approving The Issuance Of A Multifamily Housing Revenue Note By The Housing Authority Of The City Of Loveland**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the Resolution.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. If the Resolution is denied, the project will not proceed.
3. Adopt a modified action. No modified actions have been created.
4. Refer back to staff for further development and consideration. The project is up against tight deadlines. If delayed, the financing would not be able to be completed in 2016.

**SUMMARY:**

This is an administrative action approving a tax-exempt financing of not more than \$14,000,000 of a Multi-family Revenue Note by the Housing Authority of the City of Loveland. The proceeds of the revenue note will be loaned to Maple Terrace Investors LLC, an affiliate of GHC Housing Partners, to provide funds to finance a portion of the cost of acquisition, rehabilitation, and equipping of a 130-unit multi-family rental project located at 574 E. 23<sup>rd</sup> Street in Loveland. Rent proceeds and other revenues of the Project will be the source of repayment for the Note. In no event shall the City of Loveland or any other political subdivision of the State of Colorado be liable for the repayment of the Note nor shall the Note constitute a debt of the State of Colorado or the City of Loveland or any other such political subdivision.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The action recommended will allow the Maple Terrace Apartments Project to be acquired, refurbished, and equipped. The City of Loveland is not responsible for the costs of the Project.

**BACKGROUND:**

The City has been advised by the Loveland Housing Authority (the "Authority") that it proposes to issue a revenue note in the principal amount of not to exceed \$14,000,000 (the "Note"), and to loan the proceeds to Maple Terrace Investors LLC, a limited liability corporation. The project to be acquired, rehabilitated, and equipped will be a 130-unit multi-family project. The Project will consist of the acquisition, rehabilitation, and equipping of 40 one-bedroom apartments, 48 two-bedroom apartments, 30 three-bedroom apartments, and 12 four-bedroom apartments. It will be located at 574 E. 23<sup>rd</sup> Street, Loveland, Colorado. The Project will be owned by Maple Terrace Investors. Maple Terrace Investors is an affiliate of GHC Housing Partners ("GHC"). GHC and its affiliated entities are among the country's largest owners and managers of HUD subsidized housing with over 18,000 units in 24 states, of which more than 6,000 units are subject to low

income housing tax credit regulations. GHC is a for profit company that has been in business since 1993. Maple Terrace Investors and GHC will have all of the units at the Project remain as affordable housing units to meet the requirements of the financing documents.

This Resolution is required under Internal Revenue Code Section 147(f) so that interest earned on the Bonds qualifies as non-taxable income for federal income tax purposes. For this to occur, the Internal Revenue Code requires that an "elected legislative body" must adopt this Resolution. This is why it is not sufficient for just the Authority's unelected board to adopt this Resolution. It is important to note that the Loveland City Council's adoption of this Resolution does not create any liability for the City for the payment of the Bonds, which liability will remain solely with the Authority.

Also, as required by the Internal Revenue Code, the Authority has conducted a public hearing on May 27, 2016, after giving the required notice for that hearing. Attached as Exhibit "A" to the resolution is the Authority's report on that public hearing, and attached as Exhibit "B" to the Resolution is an affidavit of publication of the notice for the hearing.

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**REVIEWED BY ACTING CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution
2. Exhibit A
3. Exhibit B
4. Letter from GHC Housing Partners

**RESOLUTION #R-42-2016**

**A RESOLUTION APPROVING THE ISSUANCE OF A MULTIFAMILY HOUSING REVENUE NOTE BY THE HOUSING AUTHORITY OF THE CITY OF LOVELAND FOR THE SOLE PURPOSE OF QUALIFYING THE INTEREST PAYABLE ON THE NOTE FOR EXCLUSION FROM THE GROSS INCOME OF THE OWNER OR OWNERS OF THE NOTE FOR FEDERAL INCOME TAX PURPOSES UNDER THE APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986; AND RELATED MATTERS**

**WHEREAS**, the City Council for the City of Loveland, Colorado (the “City Council”) has been advised by the Housing Authority of the City of Loveland (the “Authority”) that the Authority proposes to issue its Multifamily Housing Revenue Note (Maple Terrace Apartments Project), Series 2016 in the principal amount of not to exceed \$14,000,000 (the “Note”), and to loan the proceeds therefrom to Maple Terrace Investors LLC, a Delaware limited liability company (the “Borrower”) to provide funds to finance a portion of the cost of the acquisition, rehabilitation and equipping of a 130-unit multi-family rental housing project located at 574 E. 23<sup>rd</sup> Street, in Loveland, Colorado, to be owned and operated by the Borrower and managed by the Authority or an affiliate of the Authority, all in accordance with the Authority’s powers as set forth in Part 2, Article 4, Title 29 of Colorado Revised Statutes, and contingent upon the adoption of this Resolution; and

**WHEREAS**, it is the intent of the Authority that interest on the Note qualify for exclusion from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Tax Code”); and

**WHEREAS**, under the provisions of Section 147(f) of the Tax Code, interest on the Note would not be so excludable unless the issue is approved by the City Council after a public hearing to consider the issuance of the Note following reasonable public notice; and

**WHEREAS**, the City Council has been advised that a public hearing was held by the Authority on May 27, 2016, after reasonable public notice; and

**WHEREAS**, the Authority’s Report of the Public Hearing is attached to this resolution as **Exhibit A** and attached as **Exhibit B** is the affidavit of publication for the May 27, 2016 hearing.

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

**Section 1.** The City Council, for the sole purpose of qualifying the interest payable on the Note for exclusion from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Tax Code, does hereby approve the issuance by the Authority of the Note, provided that: (i) the aggregate principal amount of the Note shall not exceed \$14,000,000, and (ii) in no event shall the City or any other political

subdivision of the State of Colorado (other than the Authority) be liable for the Note nor shall the Note constitute a debt of the State of Colorado, the City of Loveland or any other such political subdivision (other than the Authority).

**Section 2.** All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded.

**Section 3.** This Resolution shall be in full force and effect from and after its passage and approval, in accordance with law.

**ADOPTED this 7th day of June, 2016.**

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A**  
**REPORT OF PUBLIC HEARING**

**REPORT ON PUBLIC HEARING WITH RESPECT TO PROPOSED ISSUANCE OF  
HOUSING AUTHORITY OF THE CITY OF LOVELAND  
MULTIFAMILY HOUSING REVENUE NOTE  
(MAPLE TERRACE APARTMENTS PROJECT) SERIES 2016**

May 27, 2016

TO: City Council, City of Loveland, Colorado  
FROM: Executive Director, Housing Authority of the City of Loveland

I. Summary of proposed issuance of not to exceed \$14,000,000 Housing Authority of the City of Loveland Multifamily Housing Revenue Note (Maple Terrace Apartments Project) Series 2016 (the “Note”)

Purpose: Housing Authority of the City of Loveland (the “Authority”) proposes to use the proceeds of the Note to finance a portion of the cost of acquiring, rehabilitating and equipping a 130-unit multi-family rental housing project (the “Project”) to be owned by Maple Terrace Investors LLC. The Project will consist of 40 one-bedroom units, 48 two-bedroom units, 30 three-bedroom units and 12 four-bedroom units. The Project will be located at 574 E. 23rd Street, in the City of Loveland, Colorado.

Note: The Note will be a special, limited obligation of the Authority. The Note is not otherwise an obligation or liability of the State of Colorado or any political subdivision thereof, including the City of Loveland.

State Volume Cap Allocation: The Authority is using 2016 volume cap assigned to it from the City of Loveland, as well as its 2014 carryforward volume cap assigned to it from the City of Loveland and from Larimer County with respect to the Note.

Principal Amount: Not to exceed \$14,000,000

Bond Counsel: Sherman & Howard, L.L.C., Denver, Colorado

Investor: Citibank N.A.

II. Report on Public Hearing

The public hearing was convened by Sharlet Lee, Director of Operations, at 9:00 a.m., May 27, 2016, at the offices of the Authority, 375 W. 37th St., Suite 200, in Loveland, Colorado. No persons appeared and no comments were received with respect to the issuance of the Note or the financing of the Project. The hearing was closed at approximately 9:30 a.m.

**EXHIBIT B**  
**AFFIDAVIT OF PUBLICATION**

[Attach Affidavit of Publication from the *Loveland Reporter-Herald* as page 6.]



STATE OF COLORADO            )  
   )  
 COUNTY OF LARIMER            ) SS.  
   )  
 CITY OF LOVELAND             )

I, the undersigned duly appointed City Clerk of the City of Loveland (the "City"), do hereby certify that the foregoing pages 1 through 6, inclusive, are a true, correct and complete copy of the record of proceedings of the City Council, insofar as such proceedings relate to the resolution contained therein, had and taken at a lawful, public meeting of the City Council held at the City Council's Chambers, 500 E. Third Street in Loveland, Colorado, on June 7, 2016, commencing at the hour of 6:30 p.m., as recorded in the regular official book of the proceedings of the City Council kept in my office; that said proceedings were duly had and taken as therein shown; that the meeting therein shown was duly held and was open to the public at all times; and that the persons therein were present at said meeting in person or by telephone as therein shown.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Loveland this June 7, 2016.

\_\_\_\_\_  
 City Clerk, City of Loveland

(SEAL)

# AFFIDAVIT OF PUBLICATION REPORTER-HERALD

State of Colorado  
County of Larimer

I, the undersigned agent, do solemnly swear that the LOVELAND REPORTER-HERALD is a daily newspaper printed, in whole or in part, and published in the City of Loveland, County of Larimer, State of Colorado, and which has general circulation therein and in parts of Larimer and Weld counties; that said newspaper has been continuously and uninterruptedly published for a period of more than six months next prior to the first publication of the annexed legal notice of advertisement, that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any, amendments thereof, and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado; that a copy of each number of said newspaper, in which said notice of advertisement was published, was transmitted by mail or carrier to each of the subscribers of said newspaper, according to the accustomed mode of business in this office.

The annexed legal notice or advertisement was published in the regular and entire edition of said daily newspaper once; and that one publication of said notice was in the issue of said newspaper dated **May 13, 2016**.

*JERRY LOVE*

Agent

Subscribed and sworn to before me this 18<sup>th</sup> day of **May** 2016 in the County of Boulder, State of Colorado.

*Rita Marie Hanner-Ward*

Notary Public

Fee \$ 37.75  
Account #104124  
Ad # 5671050

RITA MARIE HANNER-WARD  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144042768  
MY COMMISSION EXPIRES NOVEMBER 4, 2018

**NOTICE OF PUBLIC HEARING**  
**HOUSING AUTHORITY OF THE CITY OF LOVELAND, COLORADO**  
**MULTIFAMILY HOUSING REVENUE NOTE**  
**(MAPLE TERRACE APARTMENTS PROJECT) SERIES 2016**  
NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Tax Code") will be held by the Housing Authority of the City of Loveland, Colorado (the "Authority") on Friday, May 27, 2016, commencing at 9:00 a.m., at the Authority's offices, 375 W. 37th St., Suite 200, in Loveland, Colorado, for the purpose of providing a reasonable opportunity for interested individuals to express their views, either orally or in writing, on the issuance by the Authority of the above-captioned Note (the "Note") and the Project described below.  
The Authority has been requested to make available proceeds of the Note to be issued in an aggregate principal amount not exceeding \$14,000,000 to finance a portion of the cost of acquiring, rehabilitating and equipping a 130-unit multi-family rental housing project (the "Project") to be owned by Maple Terrace Investors LLC. The Project will consist of 40 one-bedroom units, 48 two-bedroom units, 30 three-bedroom units and 12 four-bedroom units. The Project will be located at 574 E. 23rd Street, in the City of Loveland, Colorado.  
THE NOTE SHALL BE A SPECIAL, LIMITED OBLIGATION OF THE AUTHORITY. THE AUTHORITY WILL NOT BE OBLIGATED TO PAY THE NOTE OR THE INTEREST THEREON, EXCEPT FROM THE ASSETS OR REVENUES PLEDGED THEREFOR. IN NO EVENT SHALL THE STATE OF COLORADO, THE CITY OF LOVELAND OR ANY OTHER POLITICAL SUBDIVISION THEREOF (OTHER THAN THE AUTHORITY) BE LIABLE FOR THE NOTE, AND THE NOTE SHALL NOT CONSTITUTE A DEBT OF THE STATE OF COLORADO, THE CITY OF LOVELAND OR ANY OTHER SUCH POLITICAL SUBDIVISION. THE AUTHORITY DOES NOT HAVE THE POWER TO PLEDGE THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE AUTHORITY HAS NO TAXING POWER.  
It is intended that the interest payable on the Note be excludable from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Tax Code. The Authority will, at the above time and place, receive any written comments from and hear all persons with views in favor of or opposed to the proposed issuance of the Note and the use of the proceeds thereof to finance the Project.  
Dated May 13, 2016.  
HOUSING AUTHORITY OF THE CITY OF  
LOVELAND, COLORADO  
Published: Loveland Reporter Herald May 13, 2016 - 5671050

**GHC | HOUSING PARTNERS**  
15301 Ventura Blvd. Suite B-570  
Sherman Oaks, California 91403  
Phone (818) 808-0600  
[www.ghchousing.com](http://www.ghchousing.com)

June 2, 2016

Mr. Samuel Betters  
Loveland Housing Authority  
375 W. 37<sup>th</sup> St., Suite 200  
Loveland, CO 80538

Via Electronic Mail - [sbett@lovelandhousing.org](mailto:sbett@lovelandhousing.org)

**RE: GHC's Experience and Commitment**

Mr. Samuel Betters and Loveland City Council:

An affiliate of GHC Housing Partners ("GHC") is under contract to purchase the Maple Terrace Apartments (the "Project") in Loveland, CO. With a long-term view and a focus on preservation, GHC specializes in acquiring and owning rental housing with project-based Section 8 contracts, low-income housing tax credits and affordability rent restrictions. GHC and its affiliated entities are among the country's largest owners and managers of HUD subsidized housing with over 18,000 units in 24 states, of which more than 6,000 units are subject to low income housing tax credit regulations.

GHC will renew the in-place Project Based HAP Contract upon closing, extending the Project's contract term to 20 years. Furthermore, GHC will perform a tax credit and bond financed rehabilitation of the Project which will result in an additional affordability commitment on all of the residential units for 30 years. GHC wants residents to live in a safe, high-quality living environment. Our renovation and preservation of the Project will ensure the property remains in good physical condition and remains affordable to its low income tenants for many years to come.

GHC and PK Management, an affiliated management company, implement social programming at a property whenever possible. These initiatives not only create opportunities, such as education, health and wellness programs, they also function to protect the asset by building pride and facilitating resident involvement in the community.

Maple Terrace has long been a quality affordable housing option for low-income residents of Loveland, in large part because of the current owner's efforts. As a result of the recapitalization of the property, Maple Terrace will continue to serve low-income families in the community for the foreseeable future.

Thank you,



RJ Miller  
Senior Vice President  
GHC Housing Partners

**AGENDA ITEM:** 13  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Geri Joneson, Municipal Court  
**PRESENTER:** Vince Junglas, Assistant City Attorney




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**TITLE:**

**A Resolution Approving An Amended Intergovernmental Agreement Between The City Of Loveland, A Home Rule Municipality, And The Thompson School District R-2J For Operation Of The Loveland Municipal Teen Court Program.**

**RECOMMENDED CITY COUNCIL ACTION:**

Staff is recommending adoption of the amended IGA, by resolution.

**OPTIONS:**

1. Adopt the Resolution.
2. Deny the Resolution. (The March 17, 2015 IGA will remain in place, which would limit the growth and improvement of Teen Court).
3. Adopt modified action.
4. Refer back to staff for further development and consideration. (Minimal timing issues if referred back to staff).

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**SUMMARY:**

This is an administrative action to consider a resolution approving an amended Intergovernmental Agreement (“IGA”) for operation of the municipal Teen Court program. Teen Court is a joint effort between the City of Loveland Judicial Branch (Municipal Court), Executive Branch (City Attorney) and the Thompson School District (“the District”). The amended IGA between the City and the District includes operational provisions and provides funding for the program, the City will contribute an amount not to exceed five thousand (\$5,000) dollars for the operation of the program in the 2016-2017 school year. The funds will cover a portion of the District’s administrative, operational, and personnel costs incurred in connection with the program. The District has approved the amended IGA. Partial funds in the amount of three thousand (\$3,000) dollars for the aforementioned purpose are included in the 2016 Municipal Court Budget.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Partial funds in the amount of three thousand (\$3,000) dollars per year have been appropriated as part of the 2016 Municipal Court Budget. An additional two thousand (\$2,000) dollars will be paid out of the Loveland Municipal Court Professional Services Account, 100-13-115-0000-43450, which has a current balance of nine thousand one hundred (\$9,100) dollars. Payment to the District occurs in two installments of two thousand five hundred (\$2,500) dollars for each semester.

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**BACKGROUND:**

On the July 22, 2014 City Council Study Session the former presiding Municipal Judge, Bill Starks and Executive Director of Secondary Education, Dr. Margaret Crespo detailed a Teen Court proposal to Council. On July 22, 2014 Council directed staff to move forward with the implementation of Teen Court. Thereafter, staff worked on an approach to the program that would satisfy the stated desires of the City Council.

The City Council unanimously adopted Resolution #R-25-2015 on March 17, 2015 approving the current IGA with the District. Since then, Teen Court has processed 36 cases in the 2015-2016 school year with 10 being heard in the fall of 2015 and 26 cases in the spring 2016. Significant excitement and interest in the program lead Teen Court to conduct hearings every week during the last month of the program for the 2015-2016 school year.

The proposed amendments to the IGA include a removal on the number of teen court sessions that may occur per month, a clarification regarding the role of the Teen Court High School Advisor, and an increase in funding to the District from three thousand (\$3,000) dollars per year to five thousand (\$5,000) per year.

The additional funds per year are to assist the District in utilizing transportation for participants who do not have access to a vehicle or who do not possess a driver's license. Moreover, the additional funds will assist Teen Court obtain witness participants for either the prosecution or the defense.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

Resolution and Intergovernmental Agreement with the District

**RESOLUTION #R-43-2016**

**A RESOLUTION APPROVING AN AMENDED  
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF  
LOVELAND, A HOME RULE MUNICIPALITY, AND THE THOMPSON  
SCHOOL DISTRICT R-2J FOR OPERATION OF THE LOVELAND  
MUNICIPAL TEEN COURT PROGRAM**

**WHEREAS**, since 1990 the City of Loveland, a home rule municipal corporation, (the “City”) and Thompson School District R2-J (the “District”), pursuant to C.R.S. § 29-1-203, have cooperated in several areas to establish and develop positive relationships between students, police officers, school staff, the general public, and to prevent delinquency, alcohol and substance abuse, gang involvement, and other unlawful or disorderly activities among students within the City of Loveland community; and

**WHEREAS**, C.R.S. § 29-1-201 permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

**WHEREAS**, C.R.S. § 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

**WHEREAS**, the current, joint goals of the District and the City are to implement a Teen Court Program (the “Program”) for low-risk, first-time offenders based on restorative justice principles as an alternative to the traditional juvenile justice system; and

**WHEREAS**, the Program would hold juveniles accountable for their delinquent behavior while using positive peer involvement to promote long-term behavioral change; and

**WHEREAS**, the Loveland City Council previously approved the Program by adopting Resolution #R-25-2015 on March 17, 2015.

**WHEREAS**, the District and the City wish to continue such cooperation and recognize that the Program’s development and growth requires a need to modify the conditions and responsibilities of the parties with respect to the operation of the Program and to allocate the cost of providing for the Program.

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

**Section 1.** That the Intergovernmental Agreement Concerning Operation of the Loveland Municipal Teen Court Program (“Agreement”), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

**Section 2.** That the District, following consultation with the District’s Attorney, has reviewed this Agreement and finds it to be acceptable.

**Section 3.** That the City Manager is authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the

purposes of this resolution or to protect the interests of the City.

**Section 4.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Loveland.

**Section 5.** That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 7th day of June, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

## **EXHIBIT A**

### **AMENDED INTERGOVERNMENTAL AGREEMENT CONCERNING OPERATION OF THE LOVELAND MUNICIPAL TEEN COURT PROGRAM**

#### **RECITALS**

**WHEREAS**, since 1990 the City of Loveland, a home rule municipal corporation, (the “City”) and Thompson School District R2-J (the “District”), pursuant to C.R.S. § 29-1-203, have cooperated in several areas to establish and develop positive relationships between students, police officers, school staff, the general public, and to prevent delinquency, alcohol and substance abuse, gang involvement, and other unlawful or disorderly activities among students within the City of Loveland community; and

**WHEREAS**, C.R.S. § 29-1-201 permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

**WHEREAS**, C.R.S. § 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

**WHEREAS**, the current, joint goals of the District and the City are to implement a Teen Court Program (the “Program”) for low-risk, first-time offenders based on restorative justice principles as an alternative to the traditional juvenile justice system; and

**WHEREAS**, the Program would hold juveniles accountable for their delinquent behavior while using positive peer involvement to promote long-term behavioral change; and

**WHEREAS**, the Loveland City Council previously approved the Program by adopting Resolution #R-25-2015 on March 17, 2015.

**WHEREAS**, the District and the City wish to continue such cooperation and recognize that the Program’s development and growth requires a need to modify the conditions and responsibilities of the parties with respect to the operation of the Program and to allocate the cost of providing for the Program.

#### **AGREEMENT**

**THEREFORE**, in consideration of the foregoing, by the mutual promises contained herein, and other good and valuable consideration, the District and the City hereby agree as follows:

1. **Term.** This Intergovernmental Agreement Concerning Operation of the Loveland Municipal Teen Court Program (“Agreement”) sets forth the general terms and conditions of the Program to be implemented in the Loveland Municipal Court and Loveland High School through the Teen Court High School Advisor, Loveland Municipal Court, and the Loveland City Attorney’s Office. The term of this Agreement shall begin upon the proper execution of the Agreement, and continue for consecutive one year terms, unless sooner terminated as provided herein or amended by mutual written agreement of the parties.



2. Scope of Services: City. The City promises the following:
  - a. To make the Loveland Municipal Courtroom available for use by the Program.
  - b. To financially contribute to the Program by payment, to the District, pursuant to paragraph six (6).
  - c. The Loveland City Attorney's Office, through the Municipal Court Prosecutor, will make referrals to the Program pursuant to paragraph four (4), and the volume of those referrals will be consistent with the capacity permitted by the Teen Court High School Advisor and the availability of eligible cases for the Program.
  - d. The Presiding Municipal Court Judge will promulgate sentencing guidelines for Program participants to follow, and a copy of said guidelines will be provided to all participants in the program.
  
3. Scope of Services: District. The District promises the following:
  - a. To assign a Teen Court High School Advisor to the Program. The Teen Court High School Advisor will create the curriculum for the Program and administer the Program, including, but not limited to, the procurement of witnesses, assisting offenders who wish to participate in the Program, and assigning weekly roles. The Teen Court High School Advisor will arrange for the purchase of necessary supplies during meetings with the Program participants.
  - b. To financially contribute to the Program by covering all costs associated with the Program in excess of the City's contribution pursuant to paragraph six (6).
  - c. To account for and record all Program expenditures to be reviewed by the parties annually.
  - d. To work cooperatively with the City in scheduling use of the Loveland Municipal Courtroom and monitoring compliance with the Program.
  
4. Program Eligibility and Offer: Defendant. Upon arraignment of a juvenile defendant, the City Attorney's Office, through the Municipal Court Prosecutor, will use the following criteria to determine if a juvenile defendant is eligible for the Program:
  - a. The juvenile defendant has not participated in the Program previously.
  - b. The juvenile defendant is not charged with a violation of the Model Traffic Code adopted and amended by the City of Loveland.
  - c. The juvenile defendant has no prior violations of law, including, but not limited to, dispositions in other diversion programs. The City Attorney's Office will not treat traffic infractions as prior violations of law for purposes of this section.

- d. The juvenile defendant's parents or guardians do not object to the juvenile defendant's participation in the Program.

The above referenced criteria shall in no way constitute a waiver of prosecutorial discretion vested in the City Attorney's Office. However, if the City Attorney's Office, using the criteria above, determines that the juvenile defendant is eligible for participation in the Program, the City Attorney's Office may offer the juvenile defendant a stipulated deferred judgment and sentence, subject to approval by the Court, for a period not to exceed one (1) year with the sole condition of participation in and successful completion of the Program by a date certain. Additionally, the City Attorney's Office will make a recommendation to the Court, to the extent permitted by Colorado law, that the Court seal the juvenile defendant's record upon successful completion of the Program.

5. Relationship of the Parties. Nothing contained in this Agreement is intended to or shall be construed in any way as establishing the relationship of co-partners or a joint venture between the District and the City or as construing the parties, their officers, agents, volunteers and employees as agents of the other.
6. Payment. The District will receive from the City up to five thousand dollars (\$5,000) annually in order to facilitate the program. Payment to the District will occur in two (2) two thousand five hundred dollar (\$2,500) payments made per District semester for a maximum of two (2) semesters. The funds will be used as a contribution for the purchase of food items during student meetings as well as partially covering the staffing costs borne by the District. Payment of the two (2) two thousand five hundred dollar (\$2,500) City contributions to the Program shall be made to the District within fourteen 14 days of receipt of an invoice sent to the City pursuant to paragraph fourteen (14).
7. Early Termination. The Agreement may be terminated by either party upon three (3) months' prior written notice to the other party. The City shall only be responsible for the payment of the costs for services performed up to the date of termination. Upon termination, any monies advanced to the District shall be prorated and returned to the City within sixty (60) days.
8. Application to the Program. In order to participate in the Program each student or Program participant shall provide a waiver and release for the benefit of the City and the District.
9. Attire. All Program participants shall wear professional business attire during all Program hearings at the Loveland Municipal Court.
10. Training. Basic Program training shall be provided to all new Program participants as soon as practicable by the Teen Court High School Advisor. Basic Program training can be obtained through the Presiding Loveland Municipal Court Judge, the Teen Court High School Advisor, and the Loveland City Attorney's Office. However, the District shall

organize a class to be held periodically, during each District semester, where the student participants will obtain the majority of basic Program training.

11. Confidentiality. All parties and participants in the Program shall maintain confidentiality of any information obtained pursuant to Title 19 of the Colorado Children's Code and of District records and information in accordance with Parts 2 and 3, Article 72 of Title 24, Colorado Revised Statutes; the Family Educational Rights and Privacy Act; and District policies, and shall not disclose the information except as provided by law or court order. In order to participate in the Program, each student or Program participant shall sign a confidentiality agreement drafted by the District and approved by the City.
12. Facilities and Equipment. The City will make the Loveland Municipal Court Room available to the Program, depending on schedules, to conduct sentencing hearings. Facilities and equipment for all other meetings and Program activities will be the District's responsibility.
13. Appropriations. The financial obligations of each party under this Agreement are contingent upon adequate funds being budgeted, appropriated, and otherwise made available.
14. Notices. Any and all notices or any other communications are deemed to have been given when personally delivered, emailed, or by depositing in the United States Postal Service as regular mail, postage prepaid, and addressed as follows or to such other person or address as a party may designate in writing to the other party:

To the District:  
 Executive Director of Secondary Education  
 Thompson School District  
 800 South Taft Avenue  
 Loveland, Colorado 80537-6347  
 Email: [margaret.crespo@thompsonschoools.org](mailto:margaret.crespo@thompsonschoools.org)

To the City:  
 Presiding Municipal Court Judge  
 Loveland Municipal Court  
 810 East Tenth Street, Suite 200  
 Loveland, Colorado 80537-4942  
 Email: [court@cityofloveland.org](mailto:court@cityofloveland.org)

15. Good Faith. The parties, their agents, and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. The parties agree that they will attempt to resolve any disputes concerning the interpretation of this Agreement and unforeseen questions

and difficulties which may arise in implementing the Agreement by good faith negotiations before resorting to termination of this Agreement and/or litigation.

16. Legal Constraints. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States, and imposed upon Loveland by its Charter and Municipal Code, and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law.
17. Liability. The parties agree that each Party, to the extent permitted by federal and state law, shall be liable for the acts or omissions of its respective personnel. Nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that the parties and their respective officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. Section 24-10-101, et seq.) and under any other law. Each party shall be liable for any worker's compensation claims filed by its respective personnel arising from injuries sustained as a result of performance under this Agreement.
18. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended, modified or changed, in whole or in part, only by written agreement approved and signed by each party. This agreement supersedes the prior agreement adopted by the Loveland City Council on March 17, 2015 under Resolution #R-25-2015.
19. Non-assignment. This Agreement and each and every covenant herein, shall not be capable of assignment except with the prior consent of both parties.
20. No Third Party Beneficiaries. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party, and no third party shall have any right of action hereunder for any cause whatsoever.
21. Merger. This Agreement constitutes a final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms.
22. Effective Date. This Agreement is effective upon the date set forth below.
23. Counterparts. This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken as a whole shall constitute one and the same instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**For the City of Loveland, Colorado:**

**THE CITY OF LOVELAND,**  
a home rule municipal corporation

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

ATTEST:

APPROVED AS TO FORM:

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

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

**For Thompson School District:**

**Thompson School District R2-J**

By: \_\_\_\_\_  
Margaret Crespo, Executive Director of Secondary Education

APPROVED AS TO FORM:

\_\_\_\_\_  
Thompson School District Attorney

Amended Intergovernmental Agreement Concerning Operation Of The Loveland Municipal Teen Court Program 05/12/2016

**AGENDA ITEM:** 14  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Bob Klinger, Police Department  
**PRESENTER:** Tim Brown, Interim Police Chief

**TITLE:**

**A Motion For Approval Of Staff Application For A Federal Justice Assistance Grant (Jag Grant)**

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the motion.

**OPTIONS:**

1. Adopt the action as recommended. Adopting the grant will provide essential overtime pay for officer assigned to the Northern Colorado Drug Task Force.
2. Deny the action. Consequence if denied, is risk of overtime budget overage. If the grant is denied it will affect our officer's ability to focus on larger, more complex cases. Or the agency will need to increase its overtime budget for the Task Force to cover the overtime expenses.
3. Adopt a modified action. I am unaware of any modifications that are available for the grant.
4. Refer back to staff for further development and consideration. The grant application deadline is June 30, therefore any delay would end the project

**SUMMARY:**

This is an administrative action. The Federal JAG grant of \$16,451 for the Police Department will fund overtime for Detectives in the Special Investigations Unit at the Northern Colorado Drug Task Force. There is no match.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Federal regulations require review of the grant application to be conducted prior to submitting the grant application. The public hearing notice was published in the Loveland Reporter-Herald on May 23, 2016. This is a routine grant, one that we receive regularly. We have not experienced any negative actions with our previous uses of the funds and, there are no requirements for the grant other than the monies must be used for overtime pay related to narcotics trafficking.

**REVIEWED BY ACTING CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

JAG Grant Application Solicitation

OMB No. 1121-0329  
Approval Expires 12/31/2018

**U.S. Department of Justice**  
Office of Justice Programs  
*Bureau of Justice Assistance*



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The [U.S. Department of Justice](#) (DOJ), [Office of Justice Programs](#) (OJP) [Bureau of Justice Assistance](#) (BJA) is seeking applications for funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. This program furthers the Department's mission by assisting state, local, and tribal efforts to prevent or reduce crime and violence.

## **Edward Byrne Memorial Justice Assistance Grant (JAG) Program Fiscal Year (FY) 2016 Local Solicitation Applications Due: June 30, 2016**

### **Eligibility**

Eligible applicants are limited to units of local government appearing on the FY 2016 JAG Allocations List. To view this list, go to [www.bja.gov/programs/jag/16jagallocations.html](http://www.bja.gov/programs/jag/16jagallocations.html). For JAG Program purposes, a unit of local government is a town, township, village, parish, city, county, borough, or other general purpose political subdivision of a state; or, it may also be a federally recognized Indian tribal government that perform law enforcement functions (as determined by the Secretary of the Interior). Otherwise a unit of local government may be any law enforcement district or judicial enforcement district established under applicable state law with authority to independently establish a budget and impose taxes. In Louisiana, a unit of local government means a district attorney or parish sheriff.

### **Deadline**

Applicants must register in the [OJP Grants Management System \(GMS\)](#) prior to submitting an application for this funding opportunity. Registration is required for all applicants, even those previously registered in GMS. Select the "Apply Online" button associated with the solicitation title. All registrations and applications are due by **due by 5:00 p.m. eastern time on June 30, 2016**.

For additional information, see [How to Apply](#) in Section [D. Application and Submission Information](#).



## Contact Information

For technical assistance with submitting an application, contact the Grants Management System Support Hotline at 888-549-9901, option 3 or via email at [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov). The [GMS Support Hotline](#) hours of operation are Monday – Friday from 6:00 a.m. to midnight eastern time, except federal holidays.

Applicants that experience unforeseen GMS technical issues beyond their control that prevent them from submitting their application by the deadline must email the contact identified below **within 24 hours after the application deadline** and request approval to submit their application. Additional information on reporting technical issues is found under “Experiencing Unforeseen GMS Technical Issues” in the [How to Apply](#) section.

For assistance with any other requirement of this solicitation, contact the National Criminal Justice Reference Service (NCJRS) Response Center: toll-free at 1-800-851-3420; via TTY at 301-240-6310 (hearing impaired only); email [grants@ncjrs.gov](mailto:grants@ncjrs.gov); fax to 301-240-5830; or web chat at <https://webcontact.ncjrs.gov/ncjchat/chat.jsp>. The NCJRS Response Center hours of operation are 10:00 a.m. to 6:00 p.m. eastern time, Monday through Friday. You may also contact your [State Policy Advisor](#).

Release date: May 16, 2016

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# Edward Byrne Memorial Justice Assistance Grant (JAG) Program: FY 2016 Local Solicitation (CFDA #16.738)

## A. Program Description

### Overview

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 U.S.C. § 3751(a)) is the primary provider of federal criminal justice funding to state and local jurisdictions. The JAG Program provides states and units of local governments with critical funding necessary to support a range of program areas including law enforcement; prosecution and court programs; prevention and education programs; corrections and community corrections; drug treatment and enforcement; crime victim and witness initiatives; and planning, evaluation, and technology improvement programs.

### Program-Specific Information

JAG funds may be used for state and local initiatives, technical assistance, strategic planning, research and evaluation (including forensics), data collection, training, personnel, equipment, forensic laboratories, supplies, contractual support, and criminal justice information systems that will improve or enhance such areas as:

- Law enforcement programs.
- Prosecution and court programs, including indigent defense.
- Prevention and education programs.
- Corrections, community corrections and reentry programs.
- Drug treatment and enforcement programs.
- Planning, evaluation, and technology improvement programs.
- Crime victim and witness programs (other than compensation).

***Additionally, BJA reminds applicants that the JAG program allows funding for broadband deployment and adoption activities as they relate to criminal justice activities.***

### JAG Priority Areas

BJA recognizes that there are significant pressures on state and local criminal justice systems. In these challenging times, shared priorities and leveraged resources can make a significant impact. In light of this, it is important to make State Administering Agencies (SAAs) and local JAG recipients aware of several areas of priority that may be of help in maximizing the effectiveness of JAG funding at the state and local level. The following priorities represent key areas where BJA will be focusing nationally and encourages each state and local JAG recipient to join us in addressing these challenges as a part of our JAG partnership:

#### Reducing Gun Violence

Gun violence has touched nearly every state, local, and tribal government in America. BJA continues to encourage states and localities to invest valuable JAG funds in programs to combat gun violence, enforce existing firearms laws, and improve the process for ensuring that persons prohibited from purchasing or owning guns are prevented from doing so by enhancing reporting to the FBI's [National Instant Criminal Background Check System \(NICS\)](#).

While our nation has made great strides in reducing violent crime, some municipalities and regions continue to experience unacceptable levels of violent crime at rates far in excess of the national average. In 2014, as part of BJA's longstanding commitment to support effective strategies to reduce violent crime, BJA launched the [Violence Reduction Network \(VRN\)](#). By the end of FY 2016, 10 VRN sites, working with a broad network of federal, state, and local partners, will be implementing data-driven evidence-based strategies to reduce deeply entrenched violent crime in their communities. States and localities can support VRN sites by investing JAG funds in technology, crime analysis, training, and community-based crime reduction programs in VRN communities. For information on VRN, see [www.bja.gov/Programs/VRN.html](http://www.bja.gov/Programs/VRN.html).

#### Body-Worn Cameras, Storage, and Policies

Law enforcement agencies across the country are equipping their officers with body-worn cameras (BWCs) to increase transparency and build community trust. The important benefits of BWCs, and the challenges in implementing BWC programs, are highlighted in several recent publications: see the Office of Justice Programs' Diagnostic Center report [Police Officer Body-Worn Cameras: Assessing the Evidence](#), and the COPS Office and Police Executive Research Forum paper, [Implementing A Body-Worn Camera Program: Recommendations and Lessons Learned](#).

JAG funding is an important potential source of funding for law enforcement agencies implementing new BWC programs or enhancing existing programs. JAG funds may be used to purchase BWCs and for costs associated with the BWC program, such as storage and policy development. Similarly, SAAs are encouraged to use either their Variable Pass-Through (VPT) or their "less than \$10,000" funding that is added into the state award to set aside funds to assist small departments in implementing BWC programs. Grantees who wish to use JAG funds to purchase BWC equipment, or to implement or enhance BWC programs, must certify that they or the law enforcement agency receiving the BWC funding have policies and procedures in place related to equipment usage, data storage, privacy, victims, access, disclosure, training, etc. A copy of the required BWC certification can be found at [www.bja.gov/Funding/BodyWornCameraCert.pdf](http://www.bja.gov/Funding/BodyWornCameraCert.pdf).

**The BJA [BWC Toolkit](#) provides model BWC policies, resources, and best practices to assist departments in implementing BWC programs.**

#### National Incident-Based Reporting System (NIBRS)

The FBI has formally announced its intentions to establish NIBRS as the law enforcement (LE) crime data reporting standard for the nation. The transition to NIBRS will provide a more complete and accurate picture of crime at the national, state, and local level. Once this transition is complete, the FBI will no longer collect summary data and will only accept data in the NIBRS format and JAG awards will be based on submitted NIBRS data. Transitioning all law enforcement agencies to NIBRS is the first step in gathering more comprehensive crime data. State and local JAG grantees are encouraged to use JAG funds to expedite the transition to NIBRS in their jurisdictions.

#### Justice System Reform and Reentry

There is growing bipartisan support for Justice Systems Reform and Reentry. A promising approach to justice systems reform is the [Justice Reinvestment Initiative \(JRI\)](#), a public-private partnership between BJA and the PEW Public Safety Performance Project. Currently, 30 states have used the justice reinvestment process to control spiraling incarceration costs and reinvest

in evidence-based criminal justice programs and strategies. Strategic investments of JAG funds to implement JRI legislation and policy changes in JRI states can augment federal funds and achieve greater cost savings and reinvestments in programs to promote public safety. For state-by-state information on JRI, please visit the [JRI Sites web page](#).

Over the past seven years, DOJ has partnered with state, local, and tribal agencies and national organizations to support hundreds of reentry programs across the country to provide job training, healthcare, housing, treatment, and other services to individuals returning to our communities from prisons and jails. The demand for effective reentry services remains high. More than 600,000 men and women leave our prisons every year and more than 11 million people cycle through our jails. Investments of JAG funds to support reentry efforts at the state and local level will pay dividends for returning citizens and for public safety in America. A summary of research-based reentry strategies is available on the [National Reentry Resource Center's What Works in Reentry Clearinghouse](#) along with a map identifying federally funded Second Chance Act Reentry programs at the state and local level. (See <https://csgjusticecenter.org/nrrc>).

### Public Defense

Another key priority area is support for improving public defense delivery systems. To support this priority in November 2015, BJA established the Right to Counsel National Consortium ([www.rtcnationalcampaign.org](http://www.rtcnationalcampaign.org)) to spearhead a national conversation on how to ensure the Sixth Amendment Right to Counsel for every individual. BJA continues to encourage states and SAAs to use JAG funds to ensure that no person faces the loss of liberty without first having the aid of a lawyer with the time, ability, and resources to present an effective defense. Currently, across the nation public defense reform is being supported by governors, state legislators, chief judges and local communities. Research shows that early appointment of counsel can decrease jail and prison stays and produce better outcomes for defendants and communities. Many of these successes are guided by the American Bar Association's Ten Principles of a Public Defense Delivery System, which are recommendations for government officials and other parties who are charged with improving public defense delivery systems ([http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf)).

### Improving Mental Health Services

Many people with mental illness enter the criminal justice system without a diagnosis or with untreated mental illness. Screening and assessment is critical to identify and provide appropriate referrals to treatment. This is an issue that impacts numerous facets of the criminal justice system. BJA encourages states to utilize JAG funding in support of programs and policy changes aimed at identifying and treating people with severe mental illness to divert when appropriate, treat during incarceration, and engage in appropriate pre-release planning for the provision of community treatment (see [JMHCP Resources](#)). BJA provides training and technical assistance (TTA) to grantees and non-grantees (states, jurisdictions) to increase enrollment in health care plans (increase linkages to health care providers) that can increase access to treatment for improved mental health outcomes. Information can be found at [www.bjatrain.org](http://www.bjatrain.org).

### DOJ Universal Accreditation w/Forensic Service Providers

In 2015, the National Commission on Forensic Science (NCFS) announced recommendations on strengthening the field of forensic science. There are a number of key principles, which include promoting universal accreditation and finding ways to improve upon medical-legal

investigative processes. For additional information on these recommendations, please review the [New Accreditation Policies to Advance Forensic Science](#). The JAG program provides broad-based support to states and local jurisdictions across the nation in order to strengthen our criminal justice system, including the forensic sciences. As such, BJA encourages investments of JAG funds for programs and activities related to forensic work, including accreditation of forensic labs.

### **Goals, Objectives, and Deliverables**

The Chief Executive Officer (CEO) of an eligible unit of local government or other officer designated by the CEO must submit the application for JAG funds. A unit of local government receiving a JAG award will be responsible for the administration of the funds including: distributing the funds; monitoring the award; submitting quarterly financial status (SF-425), performance metrics reports, and semi-annual programmatic reports; and providing ongoing oversight and assistance to any subrecipients of the funds.

### **Evidence-Based Programs or Practices**

OJP strongly emphasizes the use of data and evidence in policy making, program development, and program implementation in criminal justice, juvenile justice, and crime victim services. OJP is committed to:

- Improving the quantity and quality of evidence OJP generates
- Integrating evidence into program, practice, and policy decisions within OJP and the field
- Improving the translation of evidence into practice

OJP considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through one or more outcome evaluations. Causal evidence documents a relationship between an activity or intervention (including technology) and its intended outcome, including measuring the direction and size of a change, and the extent to which a change may be attributed to the activity or intervention. Causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change. The strength of causal evidence, based on the factors described above, will influence the degree to which OJP considers a program or practice to be evidence-based. The [OJP CrimeSolutions.gov](http://OJP.CrimeSolutions.gov) website is one resource that applicants may use to find information about evidence-based programs in criminal justice, juvenile justice, and crime victim services.

1. A useful matrix of evidence-based policing programs and strategies is available through the [Center for Evidence-Based Crime Policy](#) at George Mason University. BJA offers a number of program models designed to effectively implement promising and evidence-based strategies through the BJA “Smart Suite” of programs including Smart Policing, Smart Supervision, Smart Pretrial, Smart Defense, Smart Prosecution, Smart Reentry and others (see <https://www.bja.gov/programs/crppe/smartsuite.htm>). BJA encourages states to use JAG funds to support these “smart on crime” strategies, including effective partnerships with universities and research partners and with non-traditional criminal justice partners.

### **BJA Success Stories**

The [BJA Success Story web page](#) was designed to identify and highlight projects that have demonstrated success or shown promise in reducing crime and positively impacting communities. This web page will be a valuable resource for states, localities, territories, tribes,

and criminal justice professionals who seek to identify and learn about JAG and other successful BJA-funded projects linked to innovation, crime reduction, and evidence-based practices. **BJA strongly encourages the recipient to submit annual (or more frequent) success stories.**

If you have a Success Story you would like to submit, sign in to your [My BJA account](#) to access the Success Story Submission form. If you do not have a [My BJA account](#), please [register](#). Once you register, one of the available areas on your *My BJA* page will be "My Success Stories." Within this box, you will see an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the [BJA Success Story web page](#).

## B. Federal Award Information

BJA estimates that it will make up to 1,161 local awards totaling an estimated \$86.4 million.

Awards of at least \$25,000 are four years in length, and award periods will be from October 1, 2015 through September 30, 2019. Extensions beyond this period may be made on a case-by-case basis at the discretion of BJA and must be requested via GMS no less than 30 days prior to the grant end date.

Awards of less than \$25,000 are two years in length, and award periods will be from October 1, 2015 through September 30, 2017. Extensions of up to two years can be requested for these awards via GMS no less than 30 days prior to the grant end date, and will be automatically granted upon request.

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law.

Eligible allocations under JAG are posted annually on BJA's JAG web page: [www.bja.gov/ProgramDetails.aspx?Program\\_ID=59](http://www.bja.gov/ProgramDetails.aspx?Program_ID=59).

### Type of Award<sup>1</sup>

BJA expects that it will make any award from this solicitation in the form of a grant.

JAG awards are based on a statutory formula as described below:

Once each fiscal year's overall JAG Program funding level is determined, BJA partners with the Bureau of Justice Statistics (BJS) to begin a four-step grant award calculation process which consists of:

1. Computing an initial JAG allocation for each state and territory, based on their share of violent crime and population (weighted equally).
2. Reviewing the initial JAG allocation amount to determine if the state or territory allocation is less than the minimum ("de minimus") award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the state or territory is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG

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<sup>1</sup> See generally 31 U.S.C. §§ 6301-6305 (defines and describes various forms of federal assistance relationships, including grants and cooperative agreements [a type of grant]).



funds. Each of the remaining states receives the minimum award plus an additional amount based on their share of violent crime and population.

3. Dividing each state's final award amount (except for the territories and District of Columbia) between state and local governments at a rate of 60 and 40 percent, respectively.
4. Determining local unit of government award allocations, which are based on their proportion of the state's 3-year violent crime average. If a local eligible award amount is less than \$10,000, the funds are returned to the state to be awarded to these local units of government through the state agency. If the eligible award amount is \$10,000 or more, then the local government is eligible to apply for a JAG award directly from BJA.

### **Financial Management and System of Internal Controls**

Award recipients and subrecipients (including any recipient or subrecipient funded in response to this solicitation that is a pass-through entity<sup>2</sup>) must, as described in the Part 200 Uniform Requirements set out at 2 C.F.R. 200.303:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient (and any subrecipient) is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the recipient's (and any subrecipient's) compliance with statutes, regulations, and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the recipient (or any subrecipient) considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

In order to better understand administrative requirements and cost principles, applicants are encouraged to enroll, at no charge, in the Department of Justice Grants Financial Management Online Training available [here](#).

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<sup>2</sup> For purposes of this solicitation (or program announcement), "pass-through entity" includes any entity eligible to receive funding as a recipient or subrecipient under this solicitation (or program announcement) that, if funded, may make a subaward(s) to a subrecipient(s) to carry out part of the funded program.



## Budget Information

Administrative Funds – Grant recipients may use up to 10 percent of the JAG award, including up to 10 percent of any earned interest, for costs associated with administering funds. Administrative funds (when utilized) must be tracked separately and recipients must report on SF-425s those expenditures that specifically relate to each grant number and established grant period. Additionally, recipients and subrecipients are prohibited from commingling funds on a program-by-program or project-by-project basis. More specifically, administrative funds under JAG are utilized for the same purpose each year (i.e., the administration of JAG funding) and therefore not considered separate programs/projects (commingling is not occurring) when utilized across all active JAG awards.

Disparate Certification – A disparate allocation occurs when a city or municipality is allocated one-and-one-half times (150 percent) more than the county, while the county bears more than 50 percent of the costs associated with prosecution or incarceration of the municipality's Part 1 violent crimes. A disparate allocation also occurs when multiple cities or municipalities are collectively allocated four times (400 percent) more than the county, and the county bears more than 50 percent of the collective costs associated with prosecution or incarceration of each municipality's Part 1 violent crimes.

Jurisdictions certified as disparate must identify a fiscal agent that will submit a joint application for the aggregate eligible allocation to all disparate municipalities. The joint application must determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG application process, a Memorandum of Understanding (MOU) that identifies which jurisdiction will serve as the applicant/fiscal agent for joint funds must be completed and signed by the Authorized Representative for each participating jurisdiction. The signed MOU should be attached to the application. For a sample MOU, go to [www.bja.gov/Funding/JAGMOU.pdf](http://www.bja.gov/Funding/JAGMOU.pdf).

Supplanting – Supplanting is prohibited under JAG. Applicants cannot replace or supplant non-federal funds that have been appropriated for the same purpose. See the JAG FAQs on BJA's JAG web page for examples of supplanting.

Leveraging of Grant Funds – Although supplanting is prohibited, the leveraging of federal funding is encouraged. For example, a city may utilize JAG and Homeland Security Grant Program (HSGP) money to fund different portions of a fusion center project. In instances where leveraging occurs, all federal grant funds must be tracked and reported separately and may not be used to fund the same line items. Additionally, federal funds cannot be used as match for other federal awards.

Trust Fund – Units of Local Government may draw down JAG funds in advance. To do so, a trust fund must be established in which to deposit the funds. The trust fund may or may not be an interest-bearing account. If subrecipients draw down JAG funds in advance, they also must establish a trust fund in which to deposit funds. This trust fund requirement does not apply to direct JAG award recipients or subrecipients that draw down on a reimbursement basis rather than in advance.

Prohibited and Controlled Uses – The [JAG Prohibited and Controlled Expenditures Guidance](#) represents a combination of BJA-controlled items and those controlled under the [Executive Order on “Federal Support for Local Law Enforcement Equipment Acquisition”](#) that was signed on January 16, 2015. The guidance contains:

1. Table of all prohibited expenditures (strictly unallowable expenditures under JAG).
2. Table of all controlled expenditures (expenditures which require prior written approval from BJA under JAG; including UAV guidance checklist).
3. Controlled Expenditures Justification Template (must be completed and submitted for any JAG controlled expenditures request to be considered for approval by BJA).
4. Overall Controlled Expenditure/Equipment Guidance (should be reviewed in conjunction with the template prior to controlled expenditures request(s) being submitted to BJA).
5. Standards for State, Local and Tribal Law Enforcement Agencies for the Acquisition of Controlled Equipment with Federal Resources.

Additional information on JAG controlled and prohibited expenditures, along with the process for requesting prior approval from BJA to expend funds on controlled items, can be found within the [JAG FAQs](#).

#### **Cost Sharing or Matching Requirement**

This solicitation does not require a match. However, if a successful application proposes a voluntary match amount, and OJP approves the budget, the total match amount incorporated into the approved budget becomes mandatory and subject to audit.

#### **Pre-Agreement Cost (also known as Pre-award Cost) Approvals**

Pre-agreement costs are costs incurred by the applicant prior to the start date of the period of performance of the grant award.

OJP does not typically approve pre-agreement costs; an applicant must request and obtain the prior written approval of OJP for all such costs. If approved, pre-agreement costs could be paid from grant funds consistent with a grantee’s approved budget, and under applicable cost standards. However, all such costs prior to award and prior to approval of the costs are incurred at the sole risk of an applicant. Generally, no applicant should incur project costs before submitting an application requesting federal funding for those costs. Should there be extenuating circumstances that appear to be appropriate for OJP’s consideration as pre-agreement costs, the applicant should contact the point of contact listed on the title page of this announcement for details on the requirements for submitting a written request for approval. See the section on Costs Requiring Prior Approval in the [Financial Guide](#), for more information.

#### **Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs**

OJP strongly encourages applicants that propose to use award funds for any conference-, meeting-, or training-related activity to review carefully—before submitting an application—the OJP policy and guidance on conference approval, planning, and reporting available at [www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm](http://www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm). OJP policy and guidance (1) encourage minimization of conference, meeting, and training costs; (2) require prior written approval (which may affect project timelines) of most conference, meeting, and training costs for cooperative agreement recipients and of some conference, meeting, and training costs for grant recipients; and (3) set cost limits, including a general prohibition of all food and beverage costs.

### **Costs Associated with Language Assistance (if applicable)**

If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services or benefits for individuals with limited English proficiency may be allowable. Reasonable steps to provide meaningful access to services or benefits may include interpretation or translation services where appropriate.

For additional information, see the "Civil Rights Compliance" section under "Solicitation Requirements" in [OJP's Funding Resource Center](#).

### **Other JAG Requirements**

#### Compliance with Applicable Federal Laws

Applicants for state and local JAG formula grants are required to certify compliance with all applicable federal laws at the time of application. In that regard, Members of Congress have asked the Department of Justice to examine whether jurisdictions with "sanctuary policies" (i.e., policies that either prevent law enforcement from releasing persons without lawful immigration status into federal custody for deportation, or that prevent state or local law enforcement from sharing certain information with Department of Homeland Security [DHS] officials), are in violation of 8 U.S.C. section 1373.

All applicants should understand that if OJP receives information that indicates that an applicant may be in violation of any applicable federal law, that applicant may be referred to the DOJ Office of Inspector General (OIG) for investigation; if the applicant is found to be in violation of an applicable federal law by the OIG, the applicant may be subject to criminal and civil penalties, in addition to relevant OJP programmatic penalties, including suspension or termination of funds, inclusion on the high risk list, repayment of funds, or suspension and debarment.

#### Law Enforcement Agency Training Information

Any law enforcement agency receiving direct or subawarded JAG funding must submit quarterly accountability metrics data related to training on use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public that officers have received.

**Any grantees that fail to submit this data will have their grant funds frozen.**

Accountability metrics reports must be submitted through BJA's PMT, available at [www.bjaperformancetools.org](http://www.bjaperformancetools.org). The accountability measures can be found at: <http://www.bjaperformancetools.org/help/jagdocs.html>.

#### Body-Worn Camera (BWC) purchases

Grantees who wish to use JAG funds to purchase BWC equipment, or to implement or enhance BWC programs, must certify that they or the law enforcement agency receiving the BWC funding have policies and procedures in place related to equipment usage, data storage, privacy, victims, access, disclosure, training, etc. A copy of the required BWC certification can be found at [www.bja.gov/Funding/BodyWornCameraCert.pdf](http://www.bja.gov/Funding/BodyWornCameraCert.pdf).

Any grantees that wish to use JAG funds for BWC-related expenses who do not have BWC policies and procedures in place will have funds withheld until a certification is submitted and approved by BJA.

The BJA [BWC Toolkit](#) provides model BWC policies, resources, and best practices to assist departments in implementing BWC programs.

#### Body Armor

Ballistic-resistant and stab-resistant body armor can be funded through two BJA-administered programs: the JAG Program and the Bulletproof Vest Partnership (BVP) Program. The BVP Program is designed to provide a critical resource to state and local law enforcement through the purchase of ballistic-resistant and stab-resistant body armor. A jurisdiction is able to request up to 50 percent of the cost of a vest with BVP funds. For more information on the BVP Program, including eligibility and application, refer to the [BVP web page](#).

JAG funds may also be used to purchase vests for an agency, but they may not be used to pay for that portion of the ballistic-resistant vest (50 percent) that is not covered by BVP funds. Unlike BVP, JAG funds used to purchase vests do not require a 50 percent match. Vests purchased with JAG funds may be purchased at any threat level, make, or model from any distributor or manufacturer, as long as the vests have been tested and found to comply with the latest applicable National Institute of Justice (NIJ) ballistic or stab standards. In addition, vests purchased must be American-made. Information on the latest NIJ standards can be found at: [www.nij.gov/topics/technology/body-armor/safety-initiative.htm](http://www.nij.gov/topics/technology/body-armor/safety-initiative.htm).

As is the case in BVP, grantees who wish to purchase vests with JAG funds must certify that law enforcement agencies receiving vests have a written "mandatory wear" policy in effect. FAQs related to the mandatory wear policy and certifications can be found at [www.bja.gov/Funding/JAGFAQ.pdf](http://www.bja.gov/Funding/JAGFAQ.pdf). This policy must be in place for at least all uniformed officers before any FY 2016 funding can be used by the agency for vests. There are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty. The certification **must** be signed by the Authorized Representative and **must** be attached to the application. If the grantee proposes to change project activities to utilize JAG funds to purchase bulletproof vests after the application period (during the project period), the grantee must submit the signed certification to BJA at that time. A mandatory wear concept and issues paper and a model policy are available by contacting the BVP Customer Support Center [vests@usdoj.gov](mailto:vests@usdoj.gov) or toll free at 1-877-758-3787.

A copy of the certification related to the mandatory wear can be found at: [www.bja.gov/Funding/BodyArmorMandatoryWearCert.pdf](http://www.bja.gov/Funding/BodyArmorMandatoryWearCert.pdf).

#### DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database

If JAG Program funds will be used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System (CODIS, the national DNA database operated by the FBI) by a government DNA lab with access to CODIS. No profiles generated with JAG funding may be entered into any other non-governmental DNA database without prior express written approval from BJA. For more information, refer to the NIJ DNA Backlog Reduction Program, available at [www.nij.gov/topics/forensics/lab-operations/evidence-backlogs/Pages/backlog-reduction-program.aspx](http://www.nij.gov/topics/forensics/lab-operations/evidence-backlogs/Pages/backlog-reduction-program.aspx).

In addition, funds may not be used for purchase of DNA equipment and supplies when the resulting DNA profiles from such technology are not accepted for entry into CODIS.

### Interoperable Communications

Grantees (including subgrantees) that are using FY 2016 JAG Program funds to support emergency communications activities (including the purchase of interoperable communications equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission (FCC) Waiver Order) should review [FY 2016 SAFECOM Guidance](#). The SAFECOM Guidance is updated annually to provide current information on emergency communications policies, eligible costs, best practices, and technical standards for state, local, tribal, and territorial grantees investing federal funds in emergency communications projects. Additionally, emergency communications projects should support the Statewide Communication Interoperability Plan (SCIP) and be coordinated with the full-time Statewide Interoperability Coordinator (SWIC) in the state of the project. As the central coordination point for their state's interoperability effort, the SWIC plays a critical role, and can serve as a valuable resource. SWICs are responsible for the implementation of the SCIP through coordination and collaboration with the emergency response community. The U.S. Department of Homeland Security Office of Emergency Communications maintains a list of SWICs for each of the 56 states and territories. Contact [OEC@hq.dhs.gov](mailto:OEC@hq.dhs.gov). All communications equipment purchased with grant award funding should be identified during quarterly performance metrics reporting.

In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires the grantee to comply with DOJ's Global Justice Information Sharing Initiative guidelines and recommendations for this particular grant. Grantee shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: [www.it.ojp.gov/gsp\\_grantcondition](http://www.it.ojp.gov/gsp_grantcondition). Grantees shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

## **C. Eligibility Information**

For eligibility information, see the title page.

For additional information on cost sharing or matching requirements, see [Section B. Federal Award Information](#).

### **Limit on Number of Application Submissions**

If an applicant submits multiple versions of the same application, BJA will review only the most recent system-validated version submitted. For more information on system-validated versions, see [How to Apply](#).

## **D. Application and Submission Information**

### **What an Application Should Include**

Applicants should anticipate that if they fail to submit an application that contains all of the specified elements, it may negatively affect the review of their application; and, should a decision be made to make an award, it may result in the inclusion of special conditions that

preclude the recipient from accessing or using award funds pending satisfaction of the conditions.

Applicants may combine the Budget Narrative and the Budget Detail Worksheet in one document. However, if an applicant submits only one budget document, it must contain **both** narrative and detail information. Please review the “Note on File Names and File Types” under [How to Apply](#) to be sure applications are submitted in permitted formats.

OJP strongly recommends that applicants use appropriately descriptive file names (e.g., “Program Narrative,” “JAG Budget and Budget Narrative,” “Timelines,” “Memoranda of Understanding,” “Résumés”) for all attachments. Also, OJP recommends that applicants include résumés in a single file.

**Failure to submit the required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.**

### 1. Information to Complete the Application for Federal Assistance (SF-424)

The SF-424 is a required standard form used as a cover sheet for submission of pre-applications, applications, and related information. GMS takes information from the applicant's profile to populate the fields on this form.

**Intergovernmental Review:** This funding opportunity is subject to [Executive Order 12372](#). Applicants may find the names and addresses of their state's Single Point of Contact (SPOC) at the following website: [www.whitehouse.gov/omb/grants\\_spoc/](http://www.whitehouse.gov/omb/grants_spoc/). Applicants whose state appears on the SPOC list must contact their state's SPOC to find out about, and comply with, the state's process under Executive Order 12372. In completing the SF-424, applicants whose state appears on the SPOC list are to make the appropriate selection in response to question 19 once the applicant has complied with their state's E.O. 12372 process. (Applicants whose state does not appear on the SPOC list are to make the appropriate selection in response to question 19 to indicate that the “Program is subject to E.O. 12372 but has not been selected by the State for review.”)

### 2. Project Abstract

Applications should include a high-quality project abstract that summarizes the proposed project in 400 words or less. Project abstracts should be:

- Written for a general public audience and submitted as a separate attachment with “Project Abstract” as part of its file name.
- Single-spaced, using a standard 12-point font (Times New Roman) with 1-inch margins
- Include applicant name, title of the project, a brief description of the problem to be addressed and the targeted area/population, project goals and objectives, a description of the project strategy, any significant partnerships, and anticipated outcomes.
- Identify up to 5 project identifiers that would be associated with proposed project activities. The list of identifiers can be found at [www.bja.gov/funding/JAGIdentifiers.pdf](http://www.bja.gov/funding/JAGIdentifiers.pdf).

As a separate attachment, the project abstract will **not** count against the page limit for the program narrative.



### 3. Program Narrative

Applicants must submit a program narrative that generally describes the proposed program activities for the two or four year grant period. The narrative must outline the type of programs to be funded by the JAG award and provide a brief analysis of the need for the programs. Narratives must also identify anticipated coordination efforts involving JAG and related justice funds. Certified disparate jurisdictions submitting a joint application must specify the funding distribution to each disparate unit of local government and the purposes for which the funds will be used.

A plan for collecting the data required for this solicitation's performance measures should also be included. To demonstrate program progress and success, as well as to assist the Department with fulfilling its responsibilities under the Government Performance and Results Act of 1993 (GPRA), Public Law 103-62, and the GPRA Modernization Act of 2010, Public Law 111-352, applicants that receive funding under this solicitation must provide data that measure the results of their work done under this solicitation. **Quarterly accountability metrics reports must be submitted through BJA's PMT, available at [www.bjaperformancetools.org](http://www.bjaperformancetools.org). The accountability measures can be found at: <http://www.bjaperformancetools.org/help/jagdocs.html>.**

BJA does not require applicants to submit performance measures data with their application. Performance measures are included as an alert that BJA will require successful applicants to submit specific data as part of their reporting requirements. For the application, applicants should indicate an understanding of these requirements and discuss how they will gather the required data, should they receive funding.

#### Note on Project Evaluations

Applicants that propose to use funds awarded through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute "research" for purposes of applicable DOJ human subjects protection regulations. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP's performance measure data reporting requirements likely do not constitute "research." Applicants should provide sufficient information for OJP to determine whether the particular project they propose would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research.

Research, for the purposes of human subjects protections for OJP-funded programs, is defined as, "a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge" 28 C.F.R. § 46.102(d). For additional information on determining whether a proposed activity would constitute research, see the decision tree to assist applicants on the "[Research and the Protection of Human Subjects](#)" section of the [OJP's Funding Resource Center](#). Applicants whose proposals may involve a research or statistical component also should review the "Data Privacy and Confidentiality Requirements" section on that web page.

### 4. Budget Detail Worksheet and Budget Narrative

Applicants must submit a budget detail worksheet and budget narrative outlining how JAG funds, including administrative funds (up to 10% of the grant award) if applicable, will be used to

support and implement the program. Please note that if an applicant submits only one budget document, it must contain **both** narrative and detail information.

**a. Budget Detail Worksheet**

A sample Budget Detail Worksheet can be found at [www.ojp.gov/funding/Apply/Resources/BudgetDetailWorksheet.pdf](http://www.ojp.gov/funding/Apply/Resources/BudgetDetailWorksheet.pdf). Applicants that submit their budget in a different format should include the budget categories listed in the sample budget worksheet. The Budget Detail Worksheet should be broken down by year.

**b. Budget Narrative**

The budget narrative should thoroughly and clearly describe every category of expense listed in the Budget Detail Worksheet. OJP expects proposed budgets to be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities). **This narrative should include a full description of all costs, including administrative costs (if applicable) and how funds will be allocated across the seven allowable JAG program areas** (law enforcement, prosecution, indigent defense, courts, crime prevention and education, corrections and community corrections, drug treatment and enforcement, planning, evaluation, technology improvement, and crime victim and witness initiatives).

Applicants should demonstrate in their budget narratives how they will maximize cost effectiveness of grant expenditures. Budget narratives should generally describe cost effectiveness in relation to potential alternatives and the goals of the project. For example, a budget narrative should detail why planned in-person meetings are necessary, or how technology and collaboration with outside organizations could be used to reduce costs, without compromising quality.

The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Detail Worksheet. The narrative should explain how the applicant estimated and calculated all costs, and how they are relevant to the completion of the proposed project. The narrative may include tables for clarification purposes but need not be in a spreadsheet format. As with the Budget Detail Worksheet, the Budget Narrative should be broken down by year.

For questions pertaining to budget and examples of allowable and unallowable costs, see the DOJ Grants Financial Guide at [www.ojp.gov/financialguide/index.htm](http://www.ojp.gov/financialguide/index.htm).

**c. Non-Competitive Procurement Contracts In Excess of Simplified Acquisition Threshold**

If an applicant proposes to make one or more non-competitive procurements of products or services, where the non-competitive procurement will exceed the simplified acquisition threshold (also known as the small purchase threshold), which is currently set at \$150,000, the application should address the considerations outlined in the [Financial Guide](#).

**d. Pre-Agreement Costs**

For information on pre-agreement costs, see “Pre-Agreement Cost Approvals” under [Section B. Federal Award Information](#).



## 5. Indirect Cost Rate Agreement (if applicable)

Indirect costs are allowed only under the following circumstances:

- (a) The applicant has a current, federally approved indirect cost rate; or
- (b) The applicant is eligible to use and elects to use the “de minimis” indirect cost rate described in the Part 200 Uniform Requirements as set out at 2 C.F.R. 200.414(f).

Attach a copy of the federally approved indirect cost rate agreement to the application. Applicants that do not have an approved rate may request one through their cognizant federal agency, which will review all documentation and approve a rate for the applicant organization, or, if the applicant’s accounting system permits, costs may be allocated in the direct cost categories. For the definition of Cognizant Federal Agency, see the “Glossary of Terms” in the [Financial Guide](#). For assistance with identifying your cognizant agency, please contact the Customer Service Center at 1-800-458-0786 or at [ask.ocfo@usdoj.gov](mailto:ask.ocfo@usdoj.gov). If DOJ is the cognizant federal agency, applicants may obtain information needed to submit an indirect cost rate proposal at [www.ojp.gov/funding/Apply/Resources/IndirectCosts.pdf](http://www.ojp.gov/funding/Apply/Resources/IndirectCosts.pdf).

In order to use the “de minimis” indirect rate, attach written documentation to the application that advises OJP of both the applicant’s eligibility (to use the “de minimis” rate) and its election. If the applicant elects the “de minimis” method, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. In addition, if this method is chosen then it must be used consistently for all federal awards until such time as you choose to negotiate a federally approved indirect cost rate.<sup>3</sup>

## 6. Tribal Authorizing Resolution (if applicable)

Tribes, tribal organizations, or third parties proposing to provide direct services or assistance to residents on tribal lands should include in their applications a resolution, a letter, affidavit, or other documentation, as appropriate, that certifies that the applicant has the legal authority from the tribe(s) to implement the proposed project on tribal lands. In those instances when an organization or consortium of tribes applies for a grant on behalf of a tribe or multiple specific tribes, the application should include appropriate legal documentation, as described above, from all tribes that would receive services or assistance under the grant. A consortium of tribes for which existing consortium bylaws allow action without support from all tribes in the consortium (i.e., without an authorizing resolution or comparable legal documentation from each tribal governing body) may submit, instead, a copy of its consortium bylaws with the application.

Applicants unable to submit an application that includes a fully-executed (i.e., signed) copy of appropriate legal documentation, as described above, consistent with the applicable tribe’s governance structure, should, at a minimum, submit an unsigned, draft version of such legal documentation as part of its application (except for cases in which, with respect to a tribal consortium applicant, consortium bylaws allow action without the support of all consortium member tribes). If selected for funding, BJA will make use of and access to funds contingent on receipt of the fully-executed legal documentation.

## 7. Applicant Disclosure of High Risk Status

Applicants that are currently designated high risk by another federal grant making agency must disclose that status. This includes any status requiring additional oversight by the federal agency due to past programmatic or financial concerns. If an applicant is designated

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<sup>3</sup> See 2 C.F.R. § 200.414(f).

high risk by another federal grant making agency, the applicant must email the following information to [OJPComplianceReporting@usdoj.gov](mailto:OJPComplianceReporting@usdoj.gov) at the time of application submission:

- The federal agency that currently designated the applicant as high risk
- Date the applicant was designated high risk
- The high risk point of contact name, phone number, and email address, from that federal agency
- Reasons for the high risk status

OJP seeks this information to ensure appropriate federal oversight of any grant award. Disclosing this high risk information does not disqualify any organization from receiving an OJP award. However, additional grant oversight may be included, if necessary, in award documentation.

## 8. Additional Attachments

### a. Review Narrative

Applicants **must** submit information documenting that the date the JAG application was made available for review by the governing body of the state, or to an organization designated by that governing body, was not less than 30 days before the application was submitted to BJA. If the 30 governing body requirement cannot be met before the application deadline, a withholding special condition will be placed on the award until the governing body requirement can be met. The attachment must also specify that an opportunity to comment was provided to citizens prior to application submission to the extent applicable law or established procedures make such opportunity available.

**Below are notification language templates that can be utilized in completing this section of the application.**

The (**provide name of State/Territory**) made its Fiscal Year 2015 JAG application available to the (**provide name of governing body**) for its review and comment on (**provide date**); or intends to do so on (**provide date**).

The (**provide name of State/Territory**) made its Fiscal Year 2015 JAG application available to citizens for comment prior to application submission by (**provide means of notification**); or the application has not yet been made available for public review/comment.

### b. Memorandum of Understanding (if applicable)

Jurisdictions certified as disparate must identify a fiscal agent that will submit a joint application for the aggregate eligible allocation to all disparate municipalities. The joint application must determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG application process, a Memorandum of Understanding (MOU) that identifies which jurisdiction will serve as the applicant/fiscal agent for joint funds must be completed and signed by the Authorized Representative for each participating jurisdiction. The signed MOU must be attached to the application. For a sample MOU, go to [www.bja.gov/Funding/JAGMOU.pdf](http://www.bja.gov/Funding/JAGMOU.pdf).

**c. Applicant Disclosure of Pending Applications**

Applicants are to disclose whether they have pending applications for federally funded grants or subgrants (including cooperative agreements) that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation. The disclosure should include both direct applications for federal funding (e.g., applications to federal agencies) and indirect applications for such funding (e.g., applications to state agencies that will subaward federal funds).

OJP seeks this information to help avoid any inappropriate duplication of funding. Leveraging multiple funding sources in a complementary manner to implement comprehensive programs or projects is encouraged and is not seen as inappropriate duplication.

Applicants that have pending applications as described above are to provide the following information about pending applications submitted within the last 12 months:

- The federal or state funding agency
- The solicitation name/project name
- The point of contact information at the applicable funding agency

Federal or State Funding Agency	Solicitation Name/Project Name	Name/Phone/Email for Point of Contact at Funding Agency
DOJ/COPS	COPS Hiring Program	Jane Doe, 202/000-0000; jane.doe@usdoj.gov
HHS/ Substance Abuse & Mental Health Services Administration	Drug Free Communities Mentoring Program/ North County Youth Mentoring Program	John Doe, 202/000-0000; john.doe@hhs.gov

Applicants should include the table as a separate attachment to their application. The file should be named “Disclosure of Pending Applications.”

Applicants that do not have pending applications as described above are to include a statement to this effect in the separate attachment page (e.g., “[Applicant Name on SF-424] does not have pending applications submitted within the last 12 months for federally funded grants or subgrants (including cooperative agreements) that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.”).

**d. Research and Evaluation Independence and Integrity**

If a proposal involves research and/or evaluation, regardless of the proposal's other merits, in order to receive funds, the applicant must demonstrate research/evaluation independence, including appropriate safeguards to ensure research/evaluation objectivity and integrity, both in this proposal and as it may relate to the applicant's other current or prior related projects. This documentation may be included as an attachment to the application which addresses BOTH i. and ii. below.

i. For purposes of this solicitation, applicants must document research and evaluation independence and integrity by including, at a minimum, one of the following two items:

a. A specific assurance that the applicant has reviewed its proposal to identify any research integrity issues (including all principal investigators and subrecipients) and it has concluded that the design, conduct, or reporting of research and evaluation funded by BJA grants, cooperative agreements, or contracts will not be biased by any personal or financial conflict of interest on the part of part of its staff, consultants, and/or subrecipients responsible for the research and evaluation or on the part of the applicant organization;

OR

b. A specific listing of actual or perceived conflicts of interest that the applicant has identified in relation to this proposal. These conflicts could be either personal (related to specific staff, consultants, and/or subrecipients) or organizational (related to the applicant or any subgrantee organization). Examples of potential investigator (or other personal) conflict situations may include, but are not limited to, those in which an investigator would be in a position to evaluate a spouse's work product (actual conflict), or an investigator would be in a position to evaluate the work of a former or current colleague (potential apparent conflict). With regard to potential organizational conflicts of interest, as one example, generally an organization could not be given a grant to evaluate a project if that organization had itself provided substantial prior technical assistance to that specific project or a location implementing the project (whether funded by OJP or other sources), as the organization in such an instance would appear to be evaluating the effectiveness of its own prior work. The key is whether a reasonable person understanding all of the facts would be able to have confidence that the results of any research or evaluation project are objective and reliable. Any outside personal or financial interest that casts doubt on that objectivity and reliability of an evaluation or research product is a problem and must be disclosed.

ii. In addition, for purposes of this solicitation applicants must address the issue of possible mitigation of research integrity concerns by including, at a minimum, one of the following two items:

a. If an applicant reasonably believes that no potential personal or organizational conflicts of interest exist, then the applicant should provide a brief narrative explanation of how and why it reached that conclusion. Applicants MUST also include an explanation of the specific processes and

procedures that the applicant will put in place to identify and eliminate (or, at the very least, mitigate) potential personal or financial conflicts of interest on the part of its staff, consultants, and/or subrecipients for this particular project, should that be necessary during the grant period. Documentation that may be helpful in this regard could include organizational codes of ethics/conduct or policies regarding organizational, personal, and financial conflicts of interest.

OR

- b. If the applicant has identified specific personal or organizational conflicts of interest in its proposal during this review, the applicant must propose a specific and robust mitigation plan to address conflicts noted above. At a minimum, the plan must include specific processes and procedures that the applicant will put in place to eliminate (or, at the very least, mitigate) potential personal or financial conflicts of interest on the part of its staff, consultants, and/or subrecipients for this particular project, should that be necessary during the grant period. Documentation that may be helpful in this regard could include organizational codes of ethics/conduct or policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

Considerations in assessing research and evaluation independence and integrity will include, but are not limited to, the adequacy of the applicant's efforts to identify factors that could affect the objectivity or integrity of the proposed staff and/or the organization in carrying out the research, development, or evaluation activity; and the adequacy of the applicant's existing or proposed remedies to control any such factors.

#### **9. Financial Management and System of Internal Controls Questionnaire**

In accordance with the Part 200 Uniform Requirements as set out at [2 C.F.R. 200.205](#), federal agencies must have in place a framework for evaluating the risks posed by applicants before they receive a federal award. To facilitate part of this risk evaluation, **all** applicants (other than an individual) are to download, complete, and submit this [form](#).

#### **10. Disclosure of Lobbying Activities**

Any applicant that expends any funds for lobbying activities is to provide the detailed information requested on the form, Disclosure of Lobbying Activities ([SF-LLL](#)).

#### **How to Apply**

Applicants must submit applications through the [Grants Management System \(GMS\)](#), which provides support for the application, award, and management of awards at OJP. Applicants **must register in GMS for each specific funding opportunity**. Although the registration and submission deadlines are the same, OJP urges applicants to **register immediately**, especially if this is their first time using the system. Find complete instructions on how to register and submit an application in GMS at [www.ojp.gov/gmscbt/](http://www.ojp.gov/gmscbt/). Applicants that experience technical difficulties during this process should email [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov) or call 888-549-9901 (option 3), Monday–Friday from 6:00 a.m. to midnight, Eastern Time, except federal holidays. OJP recommends that applicants **register promptly** to prevent delays in submitting an application package by the deadline.

**Note on File Types: GMS does not accept executable file types as application attachments.** These disallowed file types include, but are not limited to, the following extensions: “.com,” “.bat,” “.exe,” “.vbs,” “.cfg,” “.dat,” “.db,” “.dbf,” “.dll,” “.ini,” “.log,” “.ora,” “.sys,” and “.zip.”

OJP may not make a federal award to an applicant organization until the applicant organization has complied with all applicable DUNS and SAM requirements. Individual applicants must comply with all Grants.gov requirements. If an applicant has not fully complied with the requirements by the time the federal awarding agency is ready to make a federal award, the federal awarding agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

All applicants should complete the following steps:

1. **Acquire a Data Universal Numbering System (DUNS) number.** In general, the Office of Management and Budget (OMB) requires that all applicants (other than individuals) for federal funds include a DUNS number in their application for a new award or a supplement to an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and differentiating entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Call Dun and Bradstreet at 866-705-5711 to obtain a DUNS number or apply online at [www.dnb.com](http://www.dnb.com). A DUNS number is usually received within 1-2 business days.
2. **Acquire registration with the System for Award Management (SAM).** SAM is the repository for standard information about federal financial assistance applicants, recipients, and subrecipients. OJP requires that all applicants (other than individuals) for federal financial assistance maintain current registrations in the SAM database. Applicants must **update or renew their SAM registration annually** to maintain an active status. SAM registration and renewal can take as long as 10 business days to complete.  
  
Information about SAM registration procedures can be accessed at [www.sam.gov](http://www.sam.gov).
3. **Acquire a GMS username and password.** New users must create a GMS profile by selecting the “First Time User” link under the sign-in box of the [GMS](#) home page. For more information on how to register in GMS, go to [www.ojp.gov/gmscbt](http://www.ojp.gov/gmscbt).
4. **Verify the SAM (formerly CCR) registration in GMS.** OJP requests that all applicants verify their SAM registration in GMS. Once logged into GMS, click the “CCR Claim” link on the left side of the default screen. Click the submit button to verify the SAM (formerly CCR) registration.
5. **Search for the funding opportunity on GMS.** After logging into GMS or completing the GMS profile for username and password, go to the “Funding Opportunities” link on the left side of the page. Select BJA and the **FY 16 Edward Byrne Memorial Local Justice Assistance Grant (JAG) Program**.
6. **Register by selecting the “Apply Online” button associated with the funding opportunity title.** The search results from step 5 will display the funding opportunity title

along with the registration and application deadlines for this funding opportunity. Select the “Apply Online” button in the “Action” column to register for this funding opportunity and create an application in the system.

- 7. Follow the directions in GMS to submit an application consistent with this solicitation.** Once submitted, GMS will display a confirmation screen stating the submission was successful. **Important:** In some instances, applicants must wait for GMS approval before submitting an application. OJP urges applicants to submit the application **at least 72 hours prior** to the application due date.

**Note: Duplicate Applications**

If an applicant submits multiple versions of the same application, BJA will review only the most recent system-validated version submitted. See Note on “File Names and File Types” under [How to Apply](#).

**Experiencing Unforeseen GMS Technical Issues**

Applicants that experience unforeseen GMS technical issues beyond their control that prevent them from submitting their application by the deadline must contact the [GMS Help Desk](#) or the [SAM Help Desk](#) (Federal Service Desk) to report the technical issue and receive a tracking number. Then the applicant must email the BJA contact identified in the Contact Information section on page 2 **within 24 hours after the application deadline** and request approval to submit their application. The email must describe the technical difficulties and include a timeline of the applicant’s submission efforts, the complete grant application, the applicant’s DUNS number, and any GMS Help Desk or SAM tracking number(s). **Note: BJA does not approve requests automatically.** After the program office reviews the submission, and contacts the GMS Help Desk to validate the reported technical issues, OJP will inform the applicant whether the request to submit a late application has been approved or denied. If OJP determines that the applicant failed to follow all required procedures, which resulted in an untimely application submission, OJP will deny the applicant’s request to submit their application.

The following conditions are generally insufficient to justify late submissions:

- Failure to register in SAM or GMS in sufficient time (SAM registration and renewal can take as long as 10 business days to complete)
- Failure to follow GMS instructions on how to register and apply as posted on the GMS website
- Failure to follow each instruction in the OJP solicitation
- Technical issues with the applicant’s computer or information technology environment, including firewalls, browser incompatibility, etc.

**Notifications regarding known technical problems with GMS, if any, are posted at the top of the OJP funding [web page](#) at <http://ojp.gov/funding/index.htm>.**

## E. Application Review Information

### Review Process

OJP is committed to ensuring a fair and open process for awarding grants. BJA reviews the application to make sure that the information presented is reasonable, understandable,



measurable, and achievable, as well as consistent with the solicitation. BJA will also review applications to ensure statutory requirements have been met.

OJP reviews applications for potential awards to evaluate the risks posed by applicants before they receive an award. This review may include but is not limited to the following:

1. Financial stability and fiscal integrity
2. Quality of management systems and ability to meet the management standards prescribed in the Financial Guide
3. History of performance
4. Reports and findings from audits
5. The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on award recipients

Absent explicit statutory authorization or written delegation of authority to the contrary, the Assistant Attorney General will make all final award decisions.

## F. Federal Award Administration Information

### Federal Award Notices

OJP sends award notification by email through GMS to the individuals listed in the application as the point of contact and the authorizing official. The email notification includes detailed instructions on how to access and view the award documents, and how to accept the award in GMS. GMS automatically issues the notifications at 9:00 p.m. eastern time on the award date (by September 30, 2016). Recipients will be required to login; accept any outstanding assurances and certifications on the award; designate a financial point of contact; and review, sign, and accept the award. The award acceptance process involves physical signature of the award document by the authorized representative and the scanning of the fully-executed award document to OJP.

### Administrative, National Policy, and other Legal Requirements

If selected for funding, in addition to implementing the funded project consistent with the agency-approved project proposal and budget, the recipient must comply with award terms and conditions, and other legal requirements, including but not limited to OMB, DOJ, or other federal regulations which will be included in the award, incorporated into the award by reference, or are otherwise applicable to the award. OJP strongly encourages prospective applicants to review the information pertaining to these requirements **prior** to submitting an application. To assist applicants and recipients in accessing and reviewing this information, OJP has placed pertinent information on its [Solicitation Requirements](#) page of [OJP's Funding Resource Center](#) website.

Please note in particular the following two forms, which applicants must accept in GMS prior to the receipt of any award funds, as each details legal requirements with which applicants must provide specific assurances and certifications of compliance. Applicants may view these forms in the Apply section of [OJP's Funding Resource Center](#) and are strongly encouraged to review and consider them carefully prior to making an application for OJP grant funds.

- [Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements](#)



- [Standard Assurances](#)

Upon grant approval, OJP electronically transmits (via GMS) the award document to the prospective award recipient. In addition to other award information, the award document contains award terms and conditions that specify national policy requirements<sup>4</sup> with which recipients of federal funding must comply; uniform administrative requirements, cost principles, and audit requirements; and program-specific terms and conditions required based on applicable program (statutory) authority or requirements set forth in OJP solicitations and program announcements, and other requirements which may be attached to appropriated funding. For example, certain efforts may call for special requirements, terms, or conditions relating to intellectual property, data/information-sharing or -access, or information security; or audit requirements, expenditures and milestones; or publications and/or press releases. OJP also may place additional terms and conditions on an award based on its risk assessment of the applicant, or for other reasons it determines necessary to fulfill the goals and objectives of the program.

Prospective applicants may access and review the text of mandatory conditions OJP includes in all OJP awards, as well as the text of certain other conditions, such as administrative conditions, via OJP's [Mandatory Award Terms and Conditions](#) page of [OJP's Funding Resource Center](#).

#### **General Information about Post-Federal Award Reporting Requirements**

Recipients must submit quarterly financial reports, semi-annual progress reports, final financial and progress reports, an annual audit report in accordance with the Part 200 Uniform Requirements, if applicable, and Federal Funding Accountability and Transparency Act (FFATA) reports through the FFATA Sub-award Reporting System ([FSRS](#)) as necessary. Future awards and fund drawdowns may be withheld if reports are delinquent.

Special Reporting requirements may be required by OJP depending on the statutory, legislative or administrative requirements of the recipient or the program.

## **G. Federal Awarding Agency Contact(s)**

For Federal Awarding Agency Contact(s), see title page.

For contact information for GMS, see title page.

## **H. Other Information**

#### **Provide Feedback to OJP**

To assist OJP in improving its application and award processes, we encourage applicants to provide feedback on this solicitation, the application submission process, and/or the application review process. Provide feedback to [OJPSolicitationFeedback@usdoj.gov](mailto:OJPSolicitationFeedback@usdoj.gov).

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<sup>4</sup> See *generally* 2 C.F.R. 200.300 (provides a general description of national policy requirements typically applicable to recipients of federal awards, including the Federal Funding Accountability and Transparency Act of 2006 [FFATA]).

**IMPORTANT:** This email is for feedback and suggestions only. Replies are **not** sent from this mailbox. If you have specific questions on any program or technical aspect of the solicitation, **you must** directly contact the appropriate number or email listed on the front of this solicitation document. These contacts are provided to help ensure that you can directly reach an individual who can address your specific questions in a timely manner.

If you are interested in being a reviewer for other OJP grant applications, please email your resume to [ojpeerreview@lmsolas.com](mailto:ojpeerreview@lmsolas.com). The OJP Solicitation Feedback email account will not forward your resume. **Note:** Neither you nor anyone else from your organization can be a peer reviewer in a competition in which you or your organization have submitted an application.

**Application Checklist**  
**Edward Byrne Memorial Justice Assistance Grant (JAG) Program:**  
**FY 2016 Local Solicitation**

This application checklist has been created to assist in developing an application.

**What an Applicant Should Do:**

*Prior to Registering in GMS:*

- \_\_\_\_\_ Acquire a DUNS Number (see page 23)
- \_\_\_\_\_ Acquire or renew registration with SAM (see page 23)

*To Register with GMS:*

- \_\_\_\_\_ For new users, acquire a GMS username and password\* (see page 23)
- \_\_\_\_\_ For existing users, check GMS username and password\* to ensure account access (see page 23)
- \_\_\_\_\_ Verify SAM registration in GMS (see page 23)
- \_\_\_\_\_ Search for correct funding opportunity in GMS (see page 23)
- \_\_\_\_\_ Select correct funding opportunity in GMS (see page 23)
- \_\_\_\_\_ Register by selecting the “Apply Online” button associated with the funding opportunity title (see page 23)
- \_\_\_\_\_ Read OJP policy and guidance on conference approval, planning, and reporting available at [Post Award Requirements](#) (see page 11)
- \_\_\_\_\_ If experiencing technical difficulties in GMS, contact the NCJRS Response Center (see page 24)

\*Password Reset Notice – GMS users are reminded that while password reset capabilities exist, this function is only associated with points of contacts designated within GMS at the time the account was established. Neither OJP nor the GMS Help Desk will initiate a password reset unless requested by the authorized official or a designated point of contact associated with an award or application.

**General Requirements:**

- \_\_\_\_\_ Review [Solicitation Requirements](#) web page in the OJP Funding Resource Center.

**Scope Requirement:**

- \_\_\_\_\_ The federal amount requested is within the allowable limit(s) of the FY 2016 JAG Allocations List as listed on BJA’s [JAG web page](#)

**Eligibility Requirement:**

- \_\_\_\_\_ State/Territory listed as the legal name on the application corresponds with the eligible State/Territory listed on BJA’s [JAG web page](#)

**What an Application Should Include:**

- \_\_\_\_\_ Application for Federal Assistance (SF-424) (see page 15)
- \_\_\_\_\_ Intergovernmental Review (see page 15)
- \_\_\_\_\_ Project Abstract (see page 15)
- \_\_\_\_\_ Program Narrative (see page 16)
- \_\_\_\_\_ Budget (see page 17)
- \_\_\_\_\_ Budget Narrative (see page 17)
- \_\_\_\_\_ Indirect Cost Rate Agreement (if applicable) (see page 18)
- \_\_\_\_\_ Tribal Authorizing Resolution (if applicable) (see page 18)
- \_\_\_\_\_ Applicant Disclosure of High Risk Status (If applicable see page 18)
- \_\_\_\_\_ Additional Attachments (see page 19)
  - \_\_\_\_\_ Review Narrative (see page 19)
  - \_\_\_\_\_ Applicant Disclosure of Pending Applications (see page 20)
  - \_\_\_\_\_ Research and Evaluation Independence and Integrity (see page 20)
- \_\_\_\_\_ Disclosure of Lobbying Activities (SF-LLL) (if applicable) (see page 22)
- \_\_\_\_\_ Financial Management and System of Internal Controls Questionnaire (see page 22)

**AGENDA ITEM:** 15  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Julia Holland, Human Resources  
**PRESENTER:** Julia Holland, Director of Human Resources

**TITLE:**

**A Motion calling for a Special meeting to be held at 6:30 p.m. or as soon as possible thereafter, in these Council Chambers, following the regularly scheduled Study session on June 28, 2016. The purpose of the special meeting is to call an Executive Session as allowed by CRS section 24-6-402(4)(f)(I) and Charter Section 4-4(c)(5) concerning personnel matters to conduct the annual performance evaluation interviews with the City Attorney, Municipal Judge and City Manager**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the motion.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.

**SUMMARY:**

This is an administrative action to call for a Special meeting, which may include Executive Sessions per 24-6-402 C.R.S. The Special meeting will begin immediately following the Study Session on June 28, 2016. The purpose of this Special meeting is to conduct annual evaluation interviews with Council's appointed positions City Manager, City Attorney and Municipal Judge.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

City Council conducts annual evaluations of their three employees. In 2015 Consensus of Council was to complete the review process of their appointed positions annually before the end of June.

**REVIEWED BY CITY MANAGER:**

*William A. Cavill*

**LIST OF ATTACHMENTS:**

None

**AGENDA ITEM:** 16  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Julia Holland, Human Resources  
**PRESENTER:** Julia Holland, Director of Human Resources



**TITLE:**  
**A Motion To Award The City’s Workers’ Compensation Coverage To Pinnacol Assurance And Authorize The City Manager To Enter Into A Contract With Pinnacol, Execute Security And Collateral Agreements Required In Connection With The Contract, And Establish A Purchase Order In The Amount Of \$1,350,000.**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the motion as recommended.

**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 to authorize the City Manager to enter into contract with Pinnacol Assurance for July 2016 through July 2017 Workers’ Compensation coverage, which includes premium costs and claims payable from prior years. The City’s insurance broker took the Workers’ Compensation coverage to market for bids. Pinnacol was the only carrier to provide a quote.

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

This contract is within the budget already approved for 2016.

**BACKGROUND:**

Flood and Peterson, the insurance broker for the City’s workers’ compensation insurance, took the City’s Workers’ Compensation coverage to market for bids this year. Only Pinnacol provided a quote. The other insurers all declined to quote as described based on the following reasons.

Travelers,	Will not write mono-line workers’ compensation which includes police officers
BHHC, C.N.A, Chubb/ACE, Berkshire, AI, Republic Indemnity, Hanover, Glatfelter, BHHC, and CRC (wholesaler)	Class of business – Do not write municipalities.

Liberty Mutual, Employers National	Declined due to size. Only writes small municipalities
Safety National	Only provides coverage on an excess basis with a \$500,000 self-insured retention
Zurich, Starr Indemnity, All Risk (wholesaler)	Declined due to police officers
Applied Underwriters	Declined due to police officers, however, if premium were at least \$750,000, they would consider it.
ADCO (wholesaler)	Do not write workers' compensation
AmWins (wholesaler)	Will not write mono-line coverage, which includes Police.

The City has budgeted \$1,350,000 for workers' compensation in 2016, compared to \$1,364,560 in 2015. This includes the premium of \$328,726, the loss fund payment of \$25,000, and claims payable under the City's deductible for 2016 and from previous years.

Under the terms of the contract, Pinnacol will adjust workers' compensation claims and bill the City for the amounts paid under the \$75,000 per occurrence deductible. The 2016/17 premium is \$149,930 less than last year's premium of \$476,206. The decreased premium is primarily due to the separation of the Loveland Fire and Rescue Authority from the City.

The contract requires collateral of \$450,000 which is down from \$1,000,000 last year. Pinnacol will also provide loss control services to the City, including but not limited to, industrial hygiene and training programs.

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**REVIEWED BY CITY MANAGER:**




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**LIST OF ATTACHMENTS:**

July 2016 through July 2017 Pinnacol Quote and Security Agreement.



# Proposal 2016-2017



**Presented by: Dan Mills**  
**Sales Executive**  
**Vice President**

05/16/2016



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# Flood and Peterson Service Team

<b>Service Team</b>	Dana M. Stewart, CIC, CISR	970 266 7149 Dstewart@floodpeterson.com
	Nick Rolph, CISR	970 266 7139 Nrolph@floodpeterson.com
	Shawn Gallegos, Esq	970 266 7108 Sgallegos@floodpeterson.com
<b>Sales Executive</b>	Dan Mills	970 266 7114 Dmills@floodpeterson.com
<b>Surety</b>	Rusty Lear, AFSB	720-977-6010 Rusty.Lear@floodpeterson.com
<b>Risk Control</b>	Ken Zimmerman, CSP	970-506-3276 KZimmerman@floodpeterson.com
<b>Employee Benefits</b>	Lori Geisick	970 266 7122 Lgeisick@floodpeterson.com
	Theresa Moss	970 266 7112 Tmoss@floodpeterson.com
<b>Corporate Mailing Address</b>	PO Box 578 Greeley, Co 80632	800-356-2295 Main Number 970-506-6836 Fax Number
<b>Fort Collins Office</b>	4821 Wheaton Drive Fort Collins, CO 80527	970-266-8710 Main Number 970-266-8715 Fax Number



# Workers' Compensation

**Carrier Name** Pinnacol Assurance  
**AM Best Rating** N/A  
**Named Insured** City of Loveland  
**Address** 200 N. Wilson, Loveland, CO 80537

**Effective Date** 7/1/2016  
**Expiration Date** 7/1/2017

**Limit Part A** Statutory  
**Limit Part B** Employers Liability  
 \$2,000,000 Each Accident Bodily Injury by Accident  
 \$2,000,000 Policy Limit Bodily Injury by Disease  
 \$2,000,000 Each Employee Bodily Injury by Disease

**State** Colorado Only

Code	Classification	2016 Payroll	Rate	Premium
8811	Non-Salaried BD	\$ 3,120,000	0.048	\$ 1,498
5506	Street/Road Construction	\$ 1,328,466	6.444	\$ 85,606
7382	Bus Co: All Other	\$ 432,071	5.556	\$ 24,006
8869	Child Care Centers	\$ 112,366	1.812	\$ 2,036
7520	Waterworks Operations	\$ 2,942,408	3.516	\$ 103,455
6325	Cable Laying	\$ 689,915	3.552	\$ 24,506
8820	Attorneys	\$ 745,582	0.216	\$ 1,611
9410	Municipal/Town	\$ 3,065,136	1.692	\$ 51,862
7539	Electrical Light/Power	\$ 2,628,809	1.656	\$ 43,533
7380	Drivers	\$ 520,063	5.652	\$ 29,394
9015	Building	\$ 1,536,341	4.776	\$ 73,375
9403	Garbage/Ashes/Refuse	\$ 1,430,520	7.02	\$ 100,423
7580	Sewage Disposal	\$ 736,939	3.024	\$ 22,102
7720	Police Officers	\$ 9,302,040	3.84	\$ 357,198
8380	Auto Service	\$ 865,456	2.88	\$ 24,925
8810	Exclusively Office	\$ 16,739,019	0.168	\$ 28,121
9063	Health Clubs	\$ 2,293,008	1.488	\$ 34,120
9060	Clubs - Country	\$ 1,411,673	2.088	\$ 29,476
9402	Street Cleaning	\$ 229,720	5.064	\$ 11,633
9102	Parks NOC	\$ 1,783,439	4.116	\$ 73,406
9220	Cemetery Operations	\$ 159,698	7.764	\$ 12,399
8811	Non-Salaried BD	\$ 147,420	0.048	\$ 71
Total Payrolls		\$ 52,220,089		
Manual Premium				\$1,134,939
Increased Limits			1.014	\$15,889
Deductible Discount			0.559	(\$500,508)
Experience Modification			0.76	(\$156,077)
Schedule Rating & Designated Provider			0.75	(\$123,561)
Cost Containment Credit			0.95	(\$18,534)
Premium Discount			\$1	(\$34,511)
Expense Constant				\$195
Terrorism Coverage				\$5,222
DTEC - Catastrophe				\$5,222



*Additional limits may be available upon request*

# Workers' Compensation

Deductible \$75,000 Per Claim, No Aggregate

## Exclusions/Endorsements

### Included but not limited to the following:

Blanket Waiver of Subrogation  
 Mid Size Deductible Program  
 No Aggregate  
 No loss handling charges  
 Collateral Required \$450,000  
 \$75,000 Deductible Fund required  
 Paid Claims will be billed monthly, with payment due in twenty days  
 Policies subject to Audit

## Comment(s)

- a. Anyone excluded from this policy should review alternative benefits.  
  
 Subcontractors: Most Workers' Compensation laws provide that you are responsible for injury to employees of your subcontractors who are not otherwise covered by Workers' Compensation insurance. In addition, your insurance company may charge additional premium for them as employees.  
  
 To avoid this situation, we recommend you require all subcontractors to provide Certificates of Insurance evidencing proper coverage, and these be maintained in your files.
- b. Rates for certain states are subject to pending rate change.
- c. If you commence operations in states other than those listed above, we must be notified or there will be no coverage in those states.
- d. Higher limits may be available. Please contact us if you are interested in pursuing them.
- e. The premium shown is auditable, and is based on the payroll estimates shown

Premium \$328,276



# Program Comparison

Coverage Line	2015-2016 Expiring	2016 - 2017 Renewal	Difference	%
	JULY Affinity Tier	JULY Affinity Tier		
<b>Exposures</b>				
Class 100810 Firefighters Cancer Load	\$ 3,010,071	\$ -	\$ (3,010,071)	-100%
Rate	1.2373	0.0000	\$ (1)	-100%
Class 100811 Firefighters (Volunteer) Cancer Load	\$ 40,219	\$ -	\$ (40,219)	-100%
Rate	1.2373	0.0000	\$ (1)	-100%
Class 550605 Street/Road Construction	\$ 1,418,974	\$ 1,328,466	\$ (90,508)	-6%
Rate	5.9976	6.4440	\$ 0	7%
Class 6325 Cable Laying	\$ 641,907	\$ 689,915	\$ 48,008	7%
Rate	3.5400	3.5520	\$ 0	0%
Class 7380 Drivers	\$ 499,225	\$ 520,063	\$ 20,838	4%
Rate	5.6574	5.6520	\$ (0)	0%
Class 7382 Bus Co; All other	\$ 462,956	\$ 432,071	\$ (30,885)	-7%
Rate	5.7960	5.5560	\$ (0)	-4%
Class 7520 Waterworks Operations	\$ 2,297,515	\$ 2,942,408	\$ 644,893	28%
Rate	3.1878	3.5160	\$ 0	10%
Class 7539 Electrical Light/Power	\$ 2,031,017	\$ 2,628,809	\$ 597,792	29%
Rate	1.9152	1.6560	\$ (0)	-14%
Class 7580 Sewage Disposal Plant	\$ 1,008,404	\$ 736,939	\$ (271,465)	-27%
Rate	3.2130	3.0240	\$ (0)	-6%
Class 7710 Firefighters	\$ 3,010,071	\$ -	\$ (3,010,071)	-100%
Rate	4.9493	0.0000	\$ (5)	-100%
Class 7711 Firefighters (Volunteer)	\$ 10,688	\$ -	\$ (10,688)	-100%
Rate	4.9493	0.0000	\$ (5)	-100%
Class 7720 Police Officers	\$ 8,740,199	\$ 9,302,040	\$ 561,841	6%
Rate	4.0824	3.8400	\$ (0)	-6%
Class 8380 Auto Service	\$ 843,186	\$ 865,456	\$ 22,270	3%
Rate	3.0744	2.8800	\$ (0)	-6%
Class 8810 Exclusively Office	\$ 17,115,145	\$ 16,739,019	\$ (376,126)	-2%
Rate	0.2016	0.1680	\$ (0)	-17%
Class 8811 Non-Salaried BD	\$ 3,120,000	\$ 3,120,000	\$ -	0%
Rate	0.0504	0.0480	\$ (0)	-5%
Class 8811 Non-Salaried BD	\$ 140,400	\$ 147,420	\$ 7,020	5%
Rate	0.0504	0.0480	\$ (0)	-5%
Class 8820 Attorneys	\$ 689,966	\$ 745,582	\$ 55,616	8%
Rate	0.2268	0.2160	\$ (0)	-5%
Class 8869 Child Care Centers	\$ 95,390	\$ 112,366	\$ 16,976	18%
Rate	1.8018	1.8120	\$ 0	1%
Class 9015 Building	\$ 1,561,945	\$ 1,536,341	\$ (25,604)	-2%
Rate	4.9140	4.7760	\$ (0)	-3%
Class 9060 Clubs-Country/Golf	\$ 1,288,591	\$ 1,411,673	\$ 123,082	10%
Rate	2.0916	2.0880	\$ (0)	0%
Class 9063 Health Clubs	\$ 2,138,503	\$ 2,293,008	\$ 154,505	7%
Rate	1.5372	1.4880	\$ (0)	-3%



Class 9102 Parks NOC	\$	1,662,197	\$	1,783,439	\$	121,242	7%
Rate		4.4982		4.1160	\$	(0)	-8%
Class 92200 Cemetery Operations	\$	125,350	\$	159,698	\$	34,348	27%
Rate		7.8372		7.7640	\$	(0)	-1%
Class 9402 Street Cleaning	\$	160,819	\$	229,720	\$	68,901	43%
Rate		4.9644		5.0640	\$	0	2%
Class 9403 Garbage/Ashes/Refuse	\$	1,305,856	\$	1,430,520	\$	124,664	10%
Rate		7.5348		7.0200	\$	(1)	-7%
Class 9410 Muicipal/Town	\$	2,648,270	\$	3,065,136	\$	416,866	16%
Rate		1.6254		1.6920	\$	0	4%
<b>TOTAL</b>	<b>\$</b>	<b>56,066,864</b>	<b>\$</b>	<b>52,220,089</b>	<b>\$</b>	<b>(3,846,775)</b>	<b>-7%</b>
<b>Ratable Manual Premium</b>	<b>\$</b>	<b>1,249,713</b>	<b>\$</b>	<b>1,134,939</b>	<b>\$</b>	<b>(114,774)</b>	<b>-9%</b>
<b>Premium Debits/Credits</b>							
Increased Limits		1.0140		1.0140	\$	-	0%
Deductible Discount (\$75,000)		0.5590		0.5590	\$	-	0%
Experience Modification		0.7800		0.7600	\$	(0)	-3%
Experience Modification (\$)	\$	(163,522)	\$	(156,077)	\$	7,445	-5%
Schedule Rating & Designated Provider		0.7500		0.7500	\$	-	0%
Cost Containment Credit		0.9500		0.9500	\$	-	0%
Premium Discount		0.9020		0.9020	\$	-	0%
Annual Policy Fee	\$	195	\$	195	\$	-	0%
Terrorism Surcharge	\$	5,302	\$	5,222	\$	(80)	-2%
DTEC-Catastrophic Loss	\$	5,302	\$	5,222	\$	(80)	-2%
Firefighters Cancer Disease Load	\$	37,742	\$	-	\$	(37,742)	-100%
<b>Total Collateral Requirements</b>	<b>\$</b>	<b>1,779,836</b>	<b>\$</b>	<b>2,225,348</b>	<b>\$</b>	<b>445,512</b>	<b>25%</b>
<b>Required Collateral</b>	<b>\$</b>	<b>1,000,000</b>	<b>\$</b>	<b>450,000</b>	<b>\$</b>	<b>(550,000)</b>	<b>-55%</b>
<b>TOTAL PREMIUM</b>	<b>\$</b>	<b>402,463</b>	<b>\$</b>	<b>328,276</b>	<b>\$</b>	<b>(74,187)</b>	<b>-18%</b>



## Analysis Summary

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2015-2016	2016-2017
					JANUARY	JULY*	JULY
Rating Tier	Superior	Superior	Superior	Superior	Affinity	Affinity	Affinity
Payrolls	\$ 48,143,964	\$ 48,256,060	\$ 51,003,579	\$ 53,212,858	\$ 27,731,987	\$ 56,066,864	\$ 52,220,089
Firefighter Load Payrolls	\$ 4,982,657	\$ 4,923,349	\$ 5,407,394	\$ 5,740,008	\$ 2,863,854	\$ 3,050,290	\$ -
Manual Premium	\$ 788,696 (Audited)	\$ 832,691 (Audited)	\$ 921,493 (Audited)	\$ 1,234,989 (Audited)	\$ 682,577 (Audited)	\$ 1,249,713 (Estimated)	\$ 1,134,939 (Estimated)
Deductible	\$ 200,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$75,000
Deductible Premium	(\$240,868)	(\$364,719)	(\$403,614)	(\$495,231)	(\$301,699)	(\$552,373)	(\$500,508)
Terrorism	\$ 9,628	\$ 9,652	\$ 10,200	\$ 10,642	\$ 5,546	\$ 10,604	\$10,444
Policy Fee	\$ 165	\$ 165	\$ 195	\$ 195	\$ 195	\$ 195	\$195
Firefighters Load	\$ 40,061	\$ 41,356	\$ 45,206	\$ 64,314	\$ 35,435	\$ 37,742	\$ -
Total	\$ 318,221	\$ 329,433	\$ 364,656	\$ 415,348	\$ 236,245	\$ 485,875	\$328,276
Broker Fee	\$ 25,000	None	None	None	None	None	None
Total	\$ 343,221	\$ 329,433	\$ 364,656	\$ 415,348	\$ 236,245	\$ 402,463	\$ 328,276
Collateral Requirement	\$ 857,943	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 450,000
Claim Payment Fund	\$ 30,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000
Number of Claims	118	98	118	88	51	72	0
Average Days to Report	5.16	5.46	3.66	8.94	9.06	3.43	N/A
Incurred Claims	\$419,335.94	\$280,822.91	\$54,885.12	\$905,774.38	\$176,875.44	\$241,744.42	\$0.00
Claims Over \$200,000	0	0	0	1	0	0	0
Claims Over \$75,000	2	0	1	2	0	0	0
Claims Over \$50,000	2	1	3	3	0	0	0
Experience Modifier	0.87	0.72	0.75	0.70	0.78	0.78	0.76

\*Shows the information for the policy as it stands today, including the 1/1/2016 removal of firefighter payrolls, etc.



## Marketing Summary

Carrier Name	Market Response
Zurich	Declined due to the police department
Liberty Mutual	Declined as they only write small municipalities (under 25,000 in population and no police or fire departments)
AIG	Not a good fit for municipalities
Crum & Forster	Not a good fit for municipalities
C N A	Not a good fit for municipalities
Chubb/ACE	Not a fit for monoline workers' compensation for municipalities
Berkshire	Not a good fit for municipalities
BHHC	Not a market plus any deductible greater than \$10,000 will require collateral, range would be determined
Travelers	Not a market for the mono-line Workers Compensation including Police or Fire Departments
Republic Indemnity	Not a good fit for municipalities
Applied Underwriters	Declined due to the policy officers, however if the premium was closer to \$750k-\$1M they would consider
Hanover	Not a good fit for municipalities
Starr Indemnity	None of their markets will look at Police or Fire departments
Glatfelter	Declined not inclined to write municipality
Employers Assurance	Declined due to size and type
Safety National	They would only write on an excess basis for Municipalities and with a \$500,000 self insured
ADCO (wholesaler)	Do not write Workers Compensation
CRC (wholesaler)	No markets that were able to write this type of exposure
All Risk (wholesaler)	Declined due to the police officers
AmWins (Wholesaler)	They have a municipality program but would not write a one line exposure.





## Coverage Considerations

The following list is representative of, but is not limited to, coverages offered by Flood and Peterson. If there are coverages listed that are not part of your current insurance program, Flood and Peterson would be pleased to provide you with a proposal upon request.

Employment Practices / Discrimination / Wrongful Termination Liability  
Director's & Officer's Liability  
Professional Liability  
Key Employee  
Business Income  
Kidnap, Ransom & Extortion  
Environmental Coverage (Pollution, Asbestos, Nuclear, Mold)  
Flood & Earthquake  
Employee Benefits Liability  
Personal Insurance (*i.e.* , Home, Auto, Boat, Umbrella)  
Cyber Liability  
401k Plan Benefits  
Off Premises Power Failure



# Disclosures

## General Disclaimer

This is a convenient coverage summary, not a legal contract. Please refer to the actual policies quoted for specific terms, conditions, limitations, and exclusions that will govern in the event of a loss. Specimen copies of these policies are available for your review prior to binding coverage.

In evaluating your exposures to loss, we have depended upon information provided by you. If there are other areas that need to be evaluated prior to binding coverage, please bring these areas to our attention. Should any of your exposures change after coverage is bound, such as new operations, hiring employees in additional states, buying more property, etc., please let us know so proper coverage(s) can be discussed.

## Best's Company Data

A.M. Best Company is the leading provider of ratings, news and financial data for the insurance industry worldwide and Best's Ratings are recognized as the benchmark for assessing the financial strength of insurance related organizations and the credit quality of their obligations.

Best's Financial Strength Ratings (FSR) are an independent third-party evaluation that subjects all insurers to the same rigorous criteria, providing a valuable benchmark for comparing insurers, regardless of their country of domicile. Such a benchmark is increasingly important to an international market that looks for a strong indication of stability in the face of widespread deregulation, mergers, acquisitions and other dynamic factors. A.M. Best assigns three types of ratings. All are independent options based on a comprehensive quantitative and qualitative evaluation of a company's balance sheet strength, operating performance and business profile. They are not a warranty of a company's financial strength and ability to meet either its obligations to the policyholder or its financial obligations.

GUIDE TO BEST'S FINANCIAL STRENGTH RATINGS			
	Rating	Descriptor	Definition
Secure	A++, A+	Superior	Assigned to companies that have, in Best's opinion, a superior ability to meet their ongoing obligations to policyholders.
	A, A-	Excellent	Assigned to companies that have, in Best's opinion, an excellent ability to meet their ongoing obligations to policyholders.
	B++, B+	Good	Assigned to companies that have, in Best's opinion, a good ability to meet their ongoing obligations to policyholders.
Please note that a rating of NR indicates the company does not have a Best Financial Strength Rating.			

Pinnacol Assurance has a statutory mission of ensuring that all employers have an assured source of workers' compensation, regardless of size or risk. Pinnacol Assurance functions like an insurance company in that it is recognized by the Division of Insurance and it sells workers' compensation insurance policies. Pinnacol is an authority of the State of Colorado; it is not appropriate for Pinnacol to be rated by insurance rating organizations such as A. M. Best.

Pinnacol is considered quasi-public because they are obligated by statute to be the guaranteed source of workers' compensation for Colorado employers and Pinnacol board of directors is appointed by the Governor. Other than that, Pinnacol functions like any other company and is self-sufficient and receives no taxpayer funding.



**AGENDA ITEM:** 17  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Bill Cahill, City Manager  
**PRESENTER:** Jeff Bailey, Interim City Engineer




---

**TITLE:**

**Motion To Authorize Official City Comment On The Train Horn Rule To Be Published On The Federal Railroad Administration Website**

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the comment letter as presented.

**OPTIONS:**

1. Adopt the letter as recommended.
2. Deny the action. No formal comment on the Rule will be forwarded to the Federal Railroad Administration (FRA).
3. Adopt a modified action. Propose revised language and approve based on those revisions.
4. Refer back to staff for further development and consideration. With the cancellation of the June 21<sup>st</sup> Council meeting, there would be insufficient time to return a revised comment letter to Council for approval prior to the FRA's comment deadline.

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**SUMMARY:**

This is an administrative action. 49 CFR part 222 – Use of Locomotive Horns at Public Highway-Rail Grade Crossings (Rule), also known as the Train Horn Rule, was opened for public comment on March 7, 2016, by the Federal Railroad Administration (FRA). The attached letter contains comments directly related to train horn impacts upon the city and recommends avenues for relief. Staff is requesting that Council adopt the language in the attached letter from City Manager Cahill as the City's formal comments on the Rule. After approval, the comment letter will be uploaded to the FRA's comment website for their review and consideration. The deadline for providing public comment on the Rule is July 5, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

On November 2, 1994 Congress passed Public Law 103-440, requiring the use of locomotive horns at railroad crossings, but allowing the Federal Railroad Administration (FRA) to make reasonable exceptions. In January of 2000, as a result of a drastic increase in automobile/train crashes, the FRA published a notice of Proposed Rule Making, that would ultimately become the Final Rule - 49 CFR part 222 (Rule).

The primary intent of the Rule was to increase safety at rail/highway crossings, regulate horn volume, duration and pattern, and, theoretically, reduce overall train horn noise. Regulations for the establishment of Quiet Zones were also included in the Rule.

While the intended safety increase was realized with the Rule, the actual level of train horn noise increased. This was primarily due to the Rule imposing higher penalties on engineers who failed to follow the strict regulations for horn frequency, duration and pattern. While the same regulations were in effect under the original Public Law from 1994, engineers apparently were exercising more horn discretion before the Rule was approved. Obviously this increased horn sounding began to affect quality of life for those living in close proximity to the crossings, including the majority of downtown Loveland residents.

With the increase in horn noise, communities began to work toward the establishment of Quiet Zones to gain relief. As this occurred, it became apparent that creating a Quiet Zone using FRA approved Supplemental Safety Measures (SSM) was extremely costly, assuming that one could even meet all of the geometric requirements. There was also no established federal funding source to help offset the expense. While the Rule also had provisions for the use of marginally lower cost Alternative Safety Measures (ASM), the use of ASM mandates a lengthy FRA review process, and the long-term approval was not guaranteed, effectively making the proposition an expensive gamble.

With increasing local and national outcry, and with a promise from the FRA to open the Rule for public comment "soon," the City in 2014 convened the Quiet Zone Technical Coalition (QZTC), made up of technical staff from Loveland, Fort Collins, Windsor, Longmont, Boulder and Larimer County in order to prepare for the impending public comment period. Over the course of several meetings and with the help of consultant train experts, the QZTC in July of 2014 developed a white paper that set out guidelines for how best to approach the railroads and FRA and also recommended 10 areas of shared concern for the development of future comments once the Rule was opened for comment.

While some of the areas of shared concern have evolved since the publication of the white paper, and other areas of concern have arisen, the comments proposed in the letter from the City Manager generally follow the content and spirit of the white paper, while limiting the comments to those topics deemed most pertinent to the City of Loveland. It is expected that our Congressional Delegation and other broader, organizations will take up the more regionally pertinent topics in their respective comments to the FRA.

City Council and staff have invested a great deal of time and effort over the past 3 years with an eye toward reaching this point. The submission of the City's formal comment is the culmination of those efforts, but also represents the beginning of a new phase of working diligently to make positive change for our citizens as the new rulemaking process begins.

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**REVIEWED BY CITY MANAGER:**

*William A. Cavill*

---

**LIST OF ATTACHMENTS:**

Comment Letter from City Manager, dated June 8, 2016.



## CITY MANAGER

Civic Center • 500 East Third Street • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

[www.cityofloveland.org](http://www.cityofloveland.org)

June 8, 2016

Ms. Sarah E. Feinberg, Administrator  
U.S. Department of Transportation  
Federal Railroad Administration  
1200 New Jersey Avenue SE  
Washington DC, 20590

Dear Administrator Feinberg,

The City of Loveland would like to thank the Federal Railroad Administration (FRA) for making this opportunity available for the public to provide comment on 49 CFR Part 222 (Rule). This correspondence is intended to state the position of the City Council of the City of Loveland, as adopted on June 7, 2016, regarding the Rule. We understand that the highest purpose for the Rule is to provide the maximum level of safety at all railroad crossings, and each of the comments we offer is written in the spirit of achieving revisions that will provide relief without compromising safety.

Located along Colorado's North Front Range, the City of Loveland (City) is traversed by three rail lines: The Union Pacific to our northwest, OmniTRAX bisecting the city from east to west, and, by far the most impactful, the Burlington Northern & Santa Fe, bisecting the City from north to south. The BNSF line is characterized by a mixture of 19 public and private crossings as it traverses the City. Many of these crossings are in such close proximity to each other that the train horn sounding becomes effectively continuous throughout our downtown area. As the tracks coincide with our highest density of residential dwellings in our redeveloping downtown area, the number of train horn related complaints the City receives have been on the rise over the past few years.

In 2014, the City convened a Quiet Zone Technical Coalition (QZTC) of technical staff from neighboring cities and counties along Colorado's North Front Range. The purpose of the QZTC was to study the history and requirements of the Rule, discuss individual railroad challenges faced by each community, and develop a recommended course of action for when the Rule was opened for comment. The findings of the QZTC were presented in a white paper that was distributed initially to the member entities, then to other Colorado governmental agencies, elected officials, and, ultimately, to Colorado's Congressional Delegation. The white paper stressed the need to honor the safety intent of the Rule and to understand that the FRA, the Railroads and the local governments need to approach the comment period as an opportunity to improve upon an already effective piece of legislation. Finally, the white paper provided a number of recommend topics for possible comment on the Rule, once opened.

The above information is provided to reflect that the governmental entities of Northern Colorado, and the City of Loveland in particular, are prepared to do more than just make our comments and

leave the hard work to the FRA. Instead, we seek an opportunity to work together toward the common goal of improving crossing safety while also facilitating change that will improve quality of life for those living and working in close proximity to the rail lines. Please bear this spirit of cooperation in mind as you review the following:

1. Provisions should be made for night time horn discretion by Engineers.

When the Rule was amended in 2005, one of the expected outcomes was an estimated 38% overall reduction in train horn noise. This reduction was not realized and the experience of those most impacted by the train horns was/is one of actual train horn noise increase due to Engineer's discretion being removed.

Allowing the train engineers the discretion to determine whether a horn is necessary in populated or urban areas during overnight hours will show consideration for the residents who live in close proximity to the crossings, and will essentially be a return to the way many engineers complied with the original Law, as established in 1994.

2. A defined funding source for the creation of quiet zones should be established.

Currently, local entities bear the entire cost of implementing quiet zones. Considering that many of these are small municipalities, with only limited financial resources, establishing a quiet zone quickly becomes cost-prohibitive. With no defined funding mechanism, these communities have little hope of improving the quality of life for their citizens.

While recently, in 2013, the Town of Windsor, CO was awarded TIGER Grant funding for the establishment of a Quiet Zone, it is unclear whether this represents a policy shift in the awarding of those grants, or simply an anomaly. A specific program with a defined level of Federal funding and a well-defined application criteria will go a long way to help local entities hoping to establish Quiet Zones.

3. The review of and deliberations on waiver requests should be a public process.

While it is commendable that provisions for waiver requests were included in the Rule, the actual process is lacks transparency and makes no provision for public discourse. It is understood that the safety bar is set necessarily high and that waiver approval would be infrequent. However, to not afford an applicant the opportunity to provide testimony in support of their written justification renders the entire process suspect, and allows the FRA to deliver decisions backed by only minimal justification.

The current review process is also viewed as uncooperative and seemingly geared toward the prevention of quiet zones in all but the most optimal and standardized locations. Since discovery is a vital part of the decision making process for any waiver request, the applicant should be given the opportunity to be present at any necessary field visits or technical assessments related to their request. Doing so, affords the

opportunity for clarification of finer points of the request and increases the chances that a mutually beneficial solution could be achieved.

Amending the process to include public testimony, public deliberation, and applicant inclusion during the review will make great strides toward showing that the FRA is truly interested in evaluation of new ideas and emerging technologies, and is also interested in a cooperative approach to quiet zone establishment.

4. Provide more certainty regarding establishment of Quiet Zones using Alternative Safety Measures.

The current Rule has provisions for the ability to establish a quiet zone in areas where the strict use of Supplemental Safety Measures (SSM) may not be feasible. It even goes on to define some Alternative Safety Measures (ASM) that can be used. Unfortunately, the installation cost of ASM is significant, and there is no guarantee that a quiet zone established through their use will remain in effect for any set period of time, as they are subject to annual review. This causes local agencies to be reluctant to make a significant expenditure on what is generally perceived as a gamble.

While it is unreasonable to expect that a quiet zone using ASM could be established in perpetuity, it would certainly be reasonable to establish some measure of certainty that a significant expenditure on ASM would incur a longer time period between reviews. It is well known that the usually considerable cost to develop new ASM is borne by the Local Agency, and, as such, there is not much rapid change taking place in that regard. Considering this, it would seem reasonable to ask that a 7-10 year review period for ASM quiet zones be established. Obviously, measures for triggering an earlier review could be included, such as increased crash frequency, etc. This is only one suggestion, but more clarification regarding the use of ASM, and what a Local Agency can expect in return for their substantial investment is certainly warranted.

Once again we thank you for the opportunity to provide comment on this most important topic.

Sincerely,

William D. Cahill, City Manager  
City of Loveland, CO

**AGENDA ITEM:** 18  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Economic Development Department  
**PRESENTER:** Mike Scholl, Economic Development Manager




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**TITLE:**

**A Motion Approving The First Amendment to the Exclusive Negotiation Agreement With Brinkman Capital, LLC For The South Catalyst Project And Authorizing The Execution Of Said Amendment**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the action as recommended.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action - If the action is denied, the deadline for agreement would remain August 2, 2016
3. Adopt a modified action – Council could seek conditions to the approval
4. Refer back to staff for further development and consideration. Council could seek modifications to agreement

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**SUMMARY:**

This is an administrative action directing the City Manager to sign the amendment to the Exclusive Negotiation Agreement (ENA) with the Brinkman Capital, LLC (Brinkman) for the South Catalyst Project. The initial agreement (see attached) was on the Council agenda for February 2, 2016, however the meeting was cancelled due to a snow storm and the final approval was delayed by two weeks. The First Amendment to the Exclusive Negotiation Agreement (see attached) reflects the initial two week delay to the start of the ENA; and changes the deadline for the completion of the preliminary terms of the agreement from August 2, 2016 to August 16, 2016. Because there is no administrative extension allowed under the original agreement, this amendment is required to go before City Council for consideration.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The amendment will not have an impact on the budget.

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**BACKGROUND:**

The ENA, which is for six months, is a formal contract with the developer that lays out the deliverables and expectations for both the developer and the City during the negotiation period. Since the ENA was approved, the preliminary site plan was completed and the preliminary construction budget was received on May 27 as required by the “DRA Timeline” under the amendment.

The City and Brinkman expect to have a completed draft of the Disposition and Re-Development Agreement (DRA) at the end of the six month period of exclusivity which expires on August 16 under the amendment. The amendment to the ENA includes the following timeline:



<u>Original Date</u>	<u>New Date</u>	<u>Item</u>
February 2, 2016	February 16, 2016	Effective Date of the ENA Agreement
April 4, 2016	April 4, 2016	Preliminary site plan (COMPLETED)
May 2, 2016	May 27, 2016	Preliminary Pro Forma, Construction Budget and Definition of the Project Site
August 2, 2016	August 16, 2016	Complete Preliminary Term Sheet

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Exclusive Negotiation Agreement dated February 2016
2. First Amendment to the Exclusive Negotiation Agreement

## EXCLUSIVE NEGOTIATION AGREEMENT

**THIS EXCLUSIVE NEGOTIATION AGREEMENT** (the "Agreement") dated February 25, 2016, is made by and between the CITY OF LOVELAND, COLORADO, a body corporate and politic of the State of Colorado (the "City") and Brinkman Capital, LLC, a Colorado limited liability company (the "Developer"), which may be referred to individually herein as a "Party" or collectively herein as the "Parties."

In consideration of the following mutual covenants and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

**1. Development Project.** Pursuant to a competitive bidding procedure established by the City, the Developer's affiliate, Brinkman Development, LLC ("Brinkman Development") submitted a proposal dated November 13, 2015 ("Proposal"), concerning the redevelopment of the real property that is depicted on the attached map, labeled **Exhibit A**, and incorporated herein by this reference, and which includes the street rights of way on 2<sup>nd</sup> Street and 3<sup>rd</sup> Street between Lincoln and Cleveland Avenues as well as any public alleyways (the "Property").

The Parties acknowledge that the Proposal is conceptual and a starting point for negotiations.

The Proposal provides for construction on the Property of the following:

- A three- or four-story commercial building with approximately 57,000 square feet.
- A four- or five-story mixed-use building with approximately 78,000 square feet to include up to 100 multifamily apartment units, with some ground floor office and/or retail space.
- A single-story, 22,250 square foot movie theater with four to six movie screens.
- One or two stories of approximately 28 for-sale condominium units that are comprised of approximately 28,080 square feet.
- A parking structure with an estimated 370 parking spaces sized to the needs of the development, the downtown and ground floor retail. Parking spaces within the structure may be above or below grade.
- Approximately seven artist studios.
- Improvements to the Greeley Loveland Irrigation Canal ("GLIC") and the areas adjacent to Lincoln Avenue that serve as a gateway to downtown.
  - Both parties agree that any improvements to GLIC are subject to additional input from the community, project design team, and City's review team and are subject to review by representatives from GLIC.
  - Both parties acknowledge that the cost of any public improvements are subject to further negotiation.

Such Property and Proposals described in Section 1 above shall be referred to collectively in this Agreement as the "Project."

The City acknowledges that the Developer, in entering into this agreement, will be seeking significant financial participation as indicated in their Proposal and which is outlined in Exhibit B. Further, both parties agree that the information in Exhibit B is based on a conceptual design that

is subject to change and is merely a starting point for negotiations and nothing in this Agreement is commitment by the City to such financial participation.

On January 19, 2016, the RFP Review Committee, appointed by the Loveland City Council ("City Council") recommended the Developer as the City's "preferred developer" with which to enter into an exclusive negotiation agreement for redevelopment of the Property as described above as the Project. Such selection and the execution of this Agreement shall not be deemed acceptance of the Proposal or the Developer by the City. The Project shall not be deemed accepted until the Parties execute a mutually agreeable Disposition and Re-Development Agreement (the "DRA"), which may differ *substantially from the Project*; provided, however, failure of the Parties to agree upon a material revision or alteration of the Project, without more, shall not constitute a violation of this Agreement, including the obligation of the Parties to negotiate in good faith.

2. **Exclusive Negotiations.** The Parties agree that for a period beginning on February 2, 2016 and expiring on August 2, 2016 (the "Negotiation Period"), they will negotiate exclusively and in good faith with one another in an effort to reach a mutually acceptable DRA. The Negotiation Period may be extended only by written amendment of this Agreement authorized and executed by the Parties, and such amendment must be approved by City Council.

3. **Deposit.** Upon execution of this Agreement, the Developer shall deliver to the City a good faith deposit of Ten Thousand Dollars (\$10,000) in the form of a company check (the "Deposit"). The Deposit shall be held by the City during the term of this Agreement and all extensions. The City shall retain the Deposit in an interest bearing account. All interest earned on the Deposit shall be added to and become part of the Deposit. If, in spite of the Parties' best efforts and good faith negotiations, they are unable to agree upon a mutually acceptable DRA, the Deposit, and all interest earned thereon, shall be promptly returned to the Developer by the City. The Developer agrees that the City shall retain the Deposit, and all interest earned thereon, as liquidated damages if the Developer breaches this Agreement by failing or refusing to meet at reasonable intervals or in accordance with a mutually established schedule to negotiate with the City's representatives or if the Developer otherwise fails to negotiate in good faith (collectively, "Deposit Retention Events"). The Developer agrees to provide the City with a proposed schedule of meetings.

4. **DRA Timeline.** The Parties agree to adhere to the following timeline for the development of the DRA:

DATE	ITEM
FEBRUARY 2	Effective date of this Agreement
APRIL 4	Preliminary site plan that includes the location of various elements of the Project, including the parking structure and any new or relocated infrastructure
MAY 2	Preliminary pro forma and construction

**AUGUST 2**

budget and definition of the Project site

Complete preliminary term sheet that includes the major terms and conditions, including, financing, for the DRA; Complete first draft of the DRA to be brought before City Council for review and consideration.

**5. Developer's Duties and Covenants.** The Developer warrants and covenants as follows:

a. Developer inspected and is reasonably familiar with the general character and location of the Property. For purposes of this section, Developer assumes all areas of land have had a Phase 2 environmental study performed and the City will provide the Developer with all documentation regarding the environmental conditions, including all actions taken by the City to abate, remediate and/or cure any known environmental conditions.

b. The Developer understands and acknowledges that the Property is subject to certain legal requirements, including to the Downtown Urban Renewal Plan, as amended, and the Loveland Downtown Development Authority and, when appropriate, the restrictions, covenants, conditions and obligations required by the City and all applicable law. The Parties will jointly seek reasonable modifications to any such requirements that may be required by the terms of the final DRA, as agreed upon by the Parties.

c. Developer hereby certifies to the best of Developer's actual knowledge that it possesses the legal ability and the ability to obtain adequate financing to develop the Property by constructing the improvements contemplated by the Proposal. Subject to normal financing contingencies and market conditions, the Developer knows of no reason or circumstance that will preclude its ability to obtain adequate financing. This warranty by Developer is subject to the Project not materially deviating from the current Proposal.

d. The Developer will disclose to the City, prior to the execution of the DRA, its principals, officers, stock holders, partners, joint venturers, members, guarantors, and other interested persons that will be involved in the ownership of the special purpose entity(ies) that will develop, own and operate the real property and improvements located thereon of the Project. The City acknowledges and agrees that the ownership composition of such entities have not been finalized.

e. As part of the Developer's obligations under this Agreement, the Developer shall reasonably cooperate with the City, its bond advisors, underwriters, attorneys, legal advisers, consultants, City staff and others involved in the financing and completion of the Project.

f. The Developer shall submit to the City periodic reports as reasonably requested by the City, regarding the progress of studies, reports, plans, designs and other activities that affect

the negotiation of the DRA. Reports made by the Developer at scheduled meetings shall satisfy this Agreement.

h. The Developer shall provide at its own expense) the professional services necessary to complete the preliminary site design and conceptual rendering for the Project (“Professional Expenses”), in a form reasonably satisfactory to the City.

i. The Developer shall provide tenant commitment(s) for the retail space, at terms that are reasonably satisfactory to the City. Developer agrees to provide market comparable to the City in an effort to verify market rates.

j. The Developer shall provide, market studies (“Market Studies”) that demonstrate retail and housing demand, in a form reasonably acceptable to the City.

k. The Developer shall complete, at its own expense, site design and conceptual design renderings for the Project, in a form reasonably acceptable to the City.

l. The City agrees to dedicate sufficient staff to ensure timely input and review of conceptual design renderings.

m. The City agrees to make available space for meetings at no cost to the Developer, to provide all documents related to the project site, electronic CAD files prepared by the civil engineer and other information as necessary.

m. The City acknowledges that it has no claim to any work product including but not limited to site design, conceptual renderings, and Market Studies. In the event that the parties fail to reach an agreement, the City is not entitled to use any work product without prior agreement from the Developer.

6. **City Duties and Covenants.** The City represents, warrants, and covenants as follows:

a. To provide current and future (the environmental and clearing studies planned for Spring, 2016) site data in the City’s possession, including maps and civil surveys, required to complete the preliminary Project site design and concept design, full utility and parcel maps, and title work on those portions of the Property to be conveyed;

b. Access to and prioritization of the City’s internal design review team; and

c. Right of Developer to include within the Project Proposal the additional property located at 3<sup>rd</sup> Street, should it be brought under purchase contract by the Developer during the term of this Agreement and expiring one year following completion of the Project as evidenced by a certificate of occupancy.

7. **Developer and City Duties.** The Developer and the City agree to complete the following no later than the close of business on August 2, 2016, subject to the Project timeline set forth in Section 3 above:

- a. A term sheet describing the terms and conditions of the DRA;
- b. The first draft of the DRA to be brought before City Council for review and consideration;
- c. Subject to further change and revision as the Project progresses, The Project budget and redevelopment pro-forma; and
- d. To dedicate staff as needed to complete a term sheet and DRA as set forth in this Agreement, including bi-weekly meetings at the City beginning Monday, February 8, 2016 through the completion of the draft DRA.

8. **Access to Property.** At any reasonable time, the Developer, its employees, agents or contractors may enter upon the Property at the sole risk of the Developer for the purpose of making inspections or conducting such reasonable tests, investigations, studies, audits, surveys and reviews and for the purpose of removing samples from the Property in connection with the design and construction of the Project. Immediately after such entry on the Property, the Developer shall restore the Property to substantially the same condition it was in prior to such entry. The Developer shall indemnify and hold harmless the City, and City Council members, employees, agents, consultants, insurance provider and attorneys for any loss, damage or claims of any loss or damage (including reasonable legal fees) resulting from any such entry, tests and surveys. The City may require the Developer and any other person seeking such entry to sign reasonable and customary license agreements and other documents confirming the terms of this provision.

9. **Indemnification.** The Developer shall indemnify and hold harmless the City, its officials, officers, employees, agents, and insurance provider for and against any loss, damage, or claims of any loss or damage, including reasonable legal fees, resulting from any action, representation, commitment or activity of the Developer in connection with the proposed redevelopment of the Property.

10. **No Assignment.** This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. The City recognizes that the Developer intends to form separate, special purpose entity(ies) to develop, own and operate real property and the improvements thereon of the Project, and that assignments may be required in connection with such activities. Approval of any such assignment(s) shall not be unreasonably withheld by the City.

11. **Covenant Against Contingent Fees and Costs.** The City shall not be liable for any fees or costs, including real estate commissions or brokerage fees, or costs of studies, reports, or other

documents that may arise as a consequence of any transaction involving this Agreement or the Property or any part thereof. The Parties represent that neither has engaged a broker, agent or finder in connection with this Agreement or in connection with the sale and transfer of the Property or any part thereof.

**12. City not a Partner.** Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the City shall not be deemed to be a partner or joint venturer of the Developer or any operator or manager of the Project, and the City shall not be responsible for any debt of the Developer.

**13. Defaults; Remedies.** Upon a default by the other Party, and provided that such Party has not cured the default within twenty (20) days of the receiving written notice thereof, the remedies of the respective Parties under this Agreement shall be as follows:

a. If the Developer fails to substantially observe or perform any covenant, obligation or agreement required under this Agreement, the sole and exclusive remedy of the City shall be to cancel and rescind the Agreement, except in the case of a Deposit Retention Event, the sole and exclusive remedy of the City shall be to cancel and rescind the Agreement.

b. If the City fails to substantially observe or perform any covenant, obligation or agreement required under this Agreement, Developer shall be entitled to cancel and rescind the Agreement. The Developer shall not be entitled to any other legal or administrative remedy, action or proceeding including, without limitation, the right to seek damages, specific performance, or to seek any other right or remedy at law or in equity. The Developer shall be responsible for bearing all of its costs and expenses, direct or indirect, in connection with the Project, this Agreement or the DRA.

**14. No Other Rights or Remedies.** Notwithstanding any language in the Agreement or any other Agreement, document or communication to the contrary, the Project shall not be deemed accepted by the Parties until the DRA is executed by both Parties. The rights and remedies of the Parties are specifically limited to those set forth in this Agreement and no rights to specific enforcement or in the nature of equitable conversion will be deemed to have been created with respect to the Project, the Property or otherwise.

**15. Non-liability for Certain Persons.** No City Council member, employee, agent, consultant, underwriter, insurance provider, or attorney of the City shall be personally liable to the Developer under this Agreement or in the event of any default or breach by the City under this Agreement.

**16. Conflicts of Interest.** None of the following shall have any personal interest, direct or indirect, in this Agreement: a member of the governing body or an employee of the City who exercises responsibility concerning the Project, or an individual or firm retained by the City, who has performed or will perform consulting or legal services in connection with the Project. Nor shall any of the above persons or entities make any decisions relating to this Agreement that affect

his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

17. **Notices.** A notice or demand under this Agreement by any Party to the other shall be in writing and sufficiently given if delivered in person or via overnight courier service with guaranteed next-day delivery or by certified mail, return receipt required, postage prepaid, and;

a. in the case of the Developer, is addressed or delivered to the Developer as follows:

Brinkman Capital, LLC  
Attn: Jay Hardy  
3528 Precision Drive, Suite 100  
Fort Collins, CO 80528

with a copy to:

Liley, Rogers & Martell L.L.C.  
Attn: Lucia Liley  
300 S. Howes Street  
Fort Collins, CO 80521

b. in the case of the City, is addressed or delivered to the City as follows:

City Manager  
City of Loveland  
500 E. Third Street, Suite 330  
Loveland, CO 80537

with a copy to:

City Attorney  
City of Loveland  
500 E. Third Street, Suite 330  
Loveland, CO 80537

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

18. **Authorized Contacts for Communications.** The Developer and the City agree that each shall designate one individual as a point of contact for all communications pursuant to this Agreement. The City designates Mike Scholl, Economic Development Director, as its contact and the Developer designates Jay Hardy as its contact.



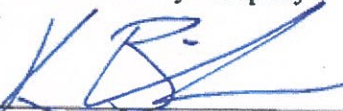
19. **Applicable Law and Venue.** The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement and exclusive venue shall be in the Larimer County District Court.

20. **Confidentiality.** Pursuant to the Colorado Open Records Act, C.R.S. §§ 24-72-201 *et seq.* ("Act"), all information provided to the City is subject to public disclosure unless it meets one of the exceptions set forth in the Act. To avoid disclosure of trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data ("Confidential Information"), the Developer must clearly mark all Confidential Information as such and provide a written, detailed justification to the City of the protected nature of the Confidential Information under Colorado law. This justification must address, at a minimum, the specific competitive harm that may result from any disclosure, the intrinsic value of the Confidential Information to the Developer, and any safeguards the Developer uses to protect the Confidential Information from disclosure. By executing this Agreement, the Developer agrees to hold the City harmless from any claim arising from the release of Confidential Information not clearly marked as such by the bidder or lacking written, detailed justification supported by Colorado law.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be duly executed as of the day first above written.

**DEVELOPER:**  
**BRINKMAN CAPITAL, LLC,**  
**a Colorado limited liability company**

By: BRINKMAN REAL ESTATE SERVICES, LLC  
a Colorado limited liability company  
its Manager

By:   
\_\_\_\_\_  
Kevin Brinkman, Manager

CITY:  
CITY OF LOVELAND, COLORADO

By: Ernie A. Gutierrez  
Mayor

ATTEST:

Deputy [Signature]  
City Clerk

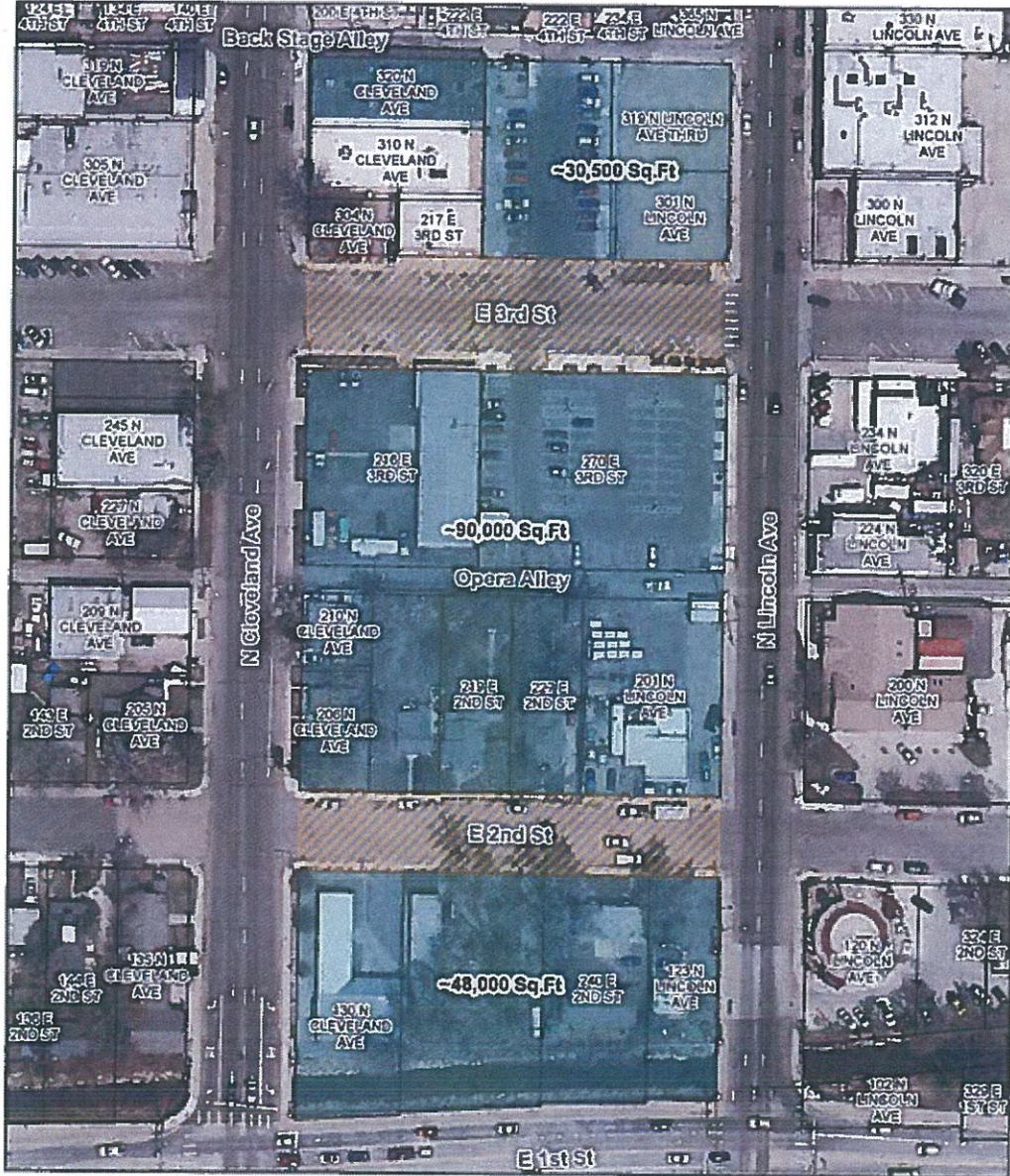


APPROVED AS TO FORM:

[Signature]  
City Attorney



### Exhibit A



**Downtown Project Area**

 Project Area  
 Possible Additional Area

NOTE: All dimensions were taken from completed drawings and should be considered approximate.



## Exhibit B

Developer Requested Assistance – By product type			(see proforma gap analysis)
Project	Land	Fee Waivers	Financial need (NPV)
Movie Theater	X	X	\$ 1,798,641
Mixed Use building	X	X	\$ -
Office	X	X	\$ 147,655
Live/Work units	X	X	\$ 793,588
Condominiums	X	X	\$ -
Artist Studios	X	X	\$ 120,430
Parking Structure	X	X	\$ 5,091,797
			\$ 7,952,111



**FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT**

THIS **FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT** (the “First Amendment”) is entered into this \_\_\_ day of May, 2016, by and between the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the “City”) and **BRINKMAN CAPITAL, LLC**, a Colorado limited liability company (the “Developer”), which may be referred to individually herein as a “Party” or collectively as the “Parties.”

**WHEREAS**, the Parties have entered into that certain Exclusive Negotiation Agreement dated February 25, 2016, (referred to herein as “the Agreement”) concerning the redevelopment of the real property that is depicted on the map labeled Exhibit A to the Agreement, which includes the street rights of way on 2<sup>nd</sup> Street and 3<sup>rd</sup> Street between Lincoln and Cleveland Avenues as well as any public alleyways; and

**WHEREAS**, Section 4 of the Agreement set forth a timeline for the development of the Disposition and Re-Development Agreement (the “DRA”);

**WHEREAS**, the Parties desire to amend Section 4 of the Agreement to allow more time for the development of the DRA; and

**WHEREAS**, Section 2 of the Agreement provides that the Parties may amend the Negotiation Period by an instrument signed by both Parties and approved by City Council; and

**WHEREAS**, the Loveland City Council approved this First Amendment by motion at the June 7<sup>th</sup>, 2016 Loveland City Council meeting.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

**AMENDMENT TO AGREEMENT**

1. That Section 4 of the Agreement be stricken in its entirety and restated as follows:
4. **DRA Timeline.** The Parties agree to adhere to the following timeline for the development of the DRA:

<b>DATE</b>	<b>ITEM</b>
<b>FEBRUARY 16</b>	Effective date of this Agreement
<b>APRIL 4</b>	Preliminary site plan that includes the location of various elements of the Project, including the parking structure and any new or relocated infrastructure

<b>MAY 27</b>	Preliminary pro forma and construction budget and definition of the Project site
<b>AUGUST 16</b>	Complete preliminary term sheet that includes the major terms and conditions, including, financing, for the DRA; Complete first draft of the DRA to be brought before City Council for review and consideration.

2. That the first sentence of Section 7 of the Agreement be amended as follows: “The Developer and the City agree to complete the following no later than the close of business on August 16, 2016, subject to the project timeline set forth in Section 4 above:”

**MISCELLANEOUS**

3. That the City and the Developer each find and determines that the execution of this First Amendment is in the best interest of the public health and general welfare of the City, and that it will serve the public purposes of providing significant social and economic benefits to the City.

4. That except as expressly provided in this First Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Frist Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado municipal coporation

By: \_\_\_\_\_  
Cecil Gutierrez, Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

DEVELOPER:  
BRINKMAN CAPITAL, LLC,  
a Colorado limited liability company

By: BRINKMAN REAL ESTATE SERVICES,  
LLC, a Colorado limited liability company  
its Manager

By: \_\_\_\_\_  
Kevin Brinkman, Manager



**AGENDA ITEM:** 19  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Director  
**PRESENTER:** Brent Worthington, Finance Director




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**TITLE: April 2016 Financial Report**

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No action is required.

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**SUMMARY:**

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending April 30, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures, including detailed reports on tax revenue and health claims as of April 30, 2016. Citywide Revenue (excluding internal transfers) of \$87,435,094<sup>1</sup> is 82.1% of year to date (YTD) budget or \$19,008,378 under the budget.

Sales Tax collections are 98.4% of the YTD budget or \$221,298 below budget. Several retail sectors are contributing to this softening:

- Department/Clothing stores (following a national trend)
- Office Supplies
- Broadcast/Telecommunication
- Utilities

Staff continues to closely monitor these sectors. Sales tax continues to grow year over year.

Building Material Use Tax is 137.1% of YTD budget, or \$213,882 over budget. Sales and Use Tax collections combined were 102.9% of YTD budget or \$455,743 over budget. When the combined sales and use tax for the current year are compared to 2015 for the same period last year, they are higher by 2.1% or \$331,539.

Other Revenue variances of note:

Transportation Capital Projects (Special Revenue Fund) shows a significant negative variance. When the Capital Budget is prepared, the project total is included as a revenue item; however, the revenue amounts aren't transferred until actual costs are incurred. Since projects proceed irregularly through the year, the timing of revenue transfers can appear as negative variances.

Water and Power Projects: There are several projects that are subject to irregular transfers, as explained above. Further, there are three significant grant-funded projects; the entire grant amounts are budgeted as revenue, but the transfers occur only when costs are incurred for the projects.

Citywide total expenditures of \$81,938,354<sup>2</sup> (excluding internal transfers) are 55.0% of the YTD budget or \$67,052,166 under the budget.

<sup>1)</sup> Primarily due to timing of anticipated grant revenues for capital projects.

<sup>2)</sup> Primarily due to timing of capital projects (April's report includes 2015 capital projects re-appropriated at the Council meeting on April 19<sup>th</sup>, 2016).

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. April Snapshot Presentation
2. Snapshot report for April 2016

# Snapshot



**April**  
**2016**

**Brent Worthington**  
Finance Director

**Presented**  
June 7, 2016

# April 2016 Snapshot

- Citywide Revenue
  - 87.4 million, excluding transfers
  - 17.9% below budget projections
  
- Citywide Expenditures
  - \$81.9 million, excluding transfers
  - 45.0% below budget projections
  
- Citywide revenues exceed expenditures by \$5.5 million.

# April 2016 Snapshot

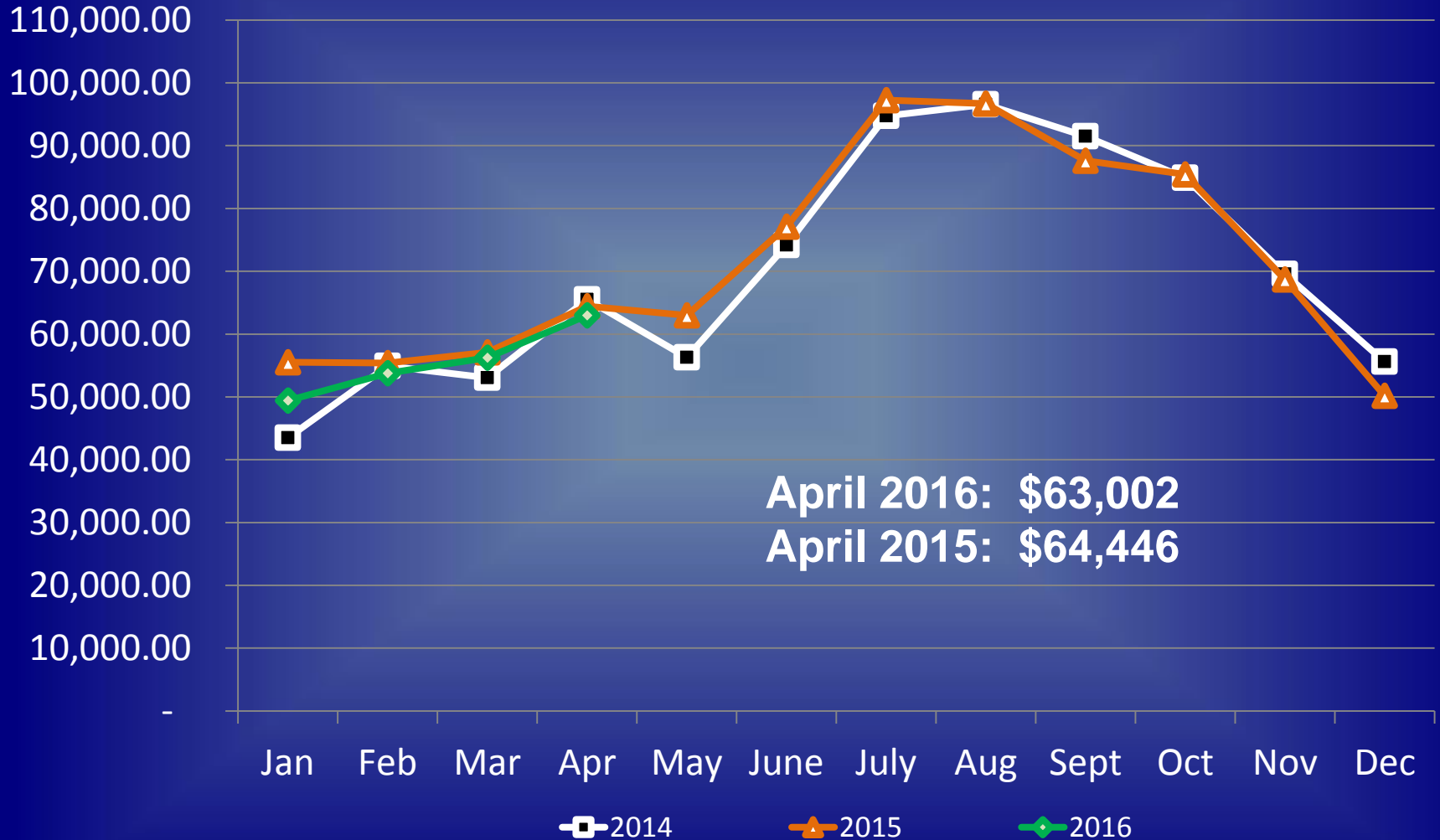
- General Fund Revenue
  - \$29.7 million YTD, excluding transfers
  - 1.6% above YTD Budget
  - 3.2% above same period last year
  
- Sales and Use Tax Revenue
  - \$16.0 million YTD
  - 2.9% above budget projections
  - 2.1% above same period as last year
  
- Sales Tax only
  - \$14 million YTD
  - 1.6% below budget projections
  - 1.5% above same period last year

# April 2016 Snapshot

- General Fund Expenditures
  - \$25.7 million YTD, excluding transfers
  - 14.2% below budget projections
  
- General Fund Expenditures Exceed Revenues by \$2.2 million
  
- Health Claims
  - April Claims \$1.1 million
  - 2016 YTD decreased slightly by 0.3%.

# April 2016 Snapshot

## Lodging Tax



➤ Lodging tax YTD is \$222,400 (4.5% lower than 2015 YTD).



# Flood Report

<b>Cost Estimates</b>			
Emergency Response		\$ 2,000,000	
Business Assistance		600,000	
Capital		27,906,129	
<b>Total</b>		<b>\$30,506,129</b>	
<b>Actual Expenditures</b>			
		<u>April</u>	<u>To Date</u>
<b>Total</b>	<b>\$</b>	<b>91,595</b>	<b>\$ 22,669,670</b>
<b>Reimbursements Applied For</b>			
		<u>April</u>	<u>To Date</u>
FEMA	\$	191,394	\$ 11,592,821
CIRSA			7,119,891
Other		295,990	1,030,525
<b>Total</b>	<b>\$</b>	<b>487,384</b>	<b>\$ 19,743,237</b>
<b>Reimbursements Received</b>			
		<u>April</u>	<u>To Date</u>
FEMA	\$	430,585	\$ 8,561,469
CIRSA		-	\$ 7,119,891
Other		295,990	\$ 1,030,524
<b>Total</b>	<b>\$</b>	<b>726,575</b>	<b>\$ 16,711,884</b>



# April 2016 Snapshot



# Questions?

**Brent Worthington**  
Finance Director

**Presented**  
June 7, 2016

# SnapShot



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Health Care Claims 13

Activity Measures 14

*“Loveland: a vibrant community...surrounded by natural beauty... where you belong.”*



## Monthly Financial Report



- ◆ Citywide Revenue, excluding transfers between funds, \$87.4 million (17.9% below budget projections)
- ◆ Sales & Use Tax Collection, \$16.0 million (2.9% above budget projections)
- ◆ Citywide Expenditures, excluding transfers between funds, \$81.9 million (45.0% below budget projections)
- ◆ Citywide Revenues exceed Expenditures by \$5.5 million; Citywide Operating Revenues exceed Operating Expenditures by 8.3 million.
- ◆ General Fund Revenue, excluding transfers between funds, \$29.7 million (1.6% above budget projections)
- ◆ General Fund Expenditures, excluding transfers between funds, \$25.7 million, (14.2% below budget projections)
- ◆ General Fund Revenues (including transfers) exceed Expenditures by \$2.2 million; General Fund Operating Revenues (excluding transfers) exceed Expenditures by \$4.0 million.



## Sales / Use Tax Basics

April 2016	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2016	\$ 14,206,107	\$ 720,226	\$ 577,203	\$ 15,503,536
Actual 2016	13,984,809	1,183,385	791,085	15,959,279
% of Budget	98.4%	164.3%	137.1%	102.9%
Actual 2015	\$ 13,772,843	\$ 1,056,726	\$ 798,170	\$ 15,627,740
Change from prior yr	1.5%	12.0%	-0.9%	2.1%

# — Citywide Revenues & Expenditures —

Combined Statement of Revenues and Expenditures April 2016				
REVENUE	Current Month	YTD Actual Budget	YTD Revised Budget	% of Budget
<b>General Governmental</b>				
1 General Fund	\$ 7,023,761	\$ 29,682,966	\$ 29,202,887	101.6%
2 Special Revenue	1,346,386	2,683,475	8,266,942	32.5% <sup>1</sup>
3 Other Entities	1,638,961	11,074,354	13,249,515	83.6% <sup>2</sup>
4 Internal Service	1,610,900	6,501,799	6,287,736	103.4%
5 <i>Subtotal General Gov't Operations</i>	<i>11,620,008</i>	<i>49,942,594</i>	<i>57,007,079</i>	<i>87.6%</i>
6 Capital Projects	868,810	3,421,631	2,976,802	114.9%
<b>Enterprise Fund</b>				
7 Water & Power	5,530,885	29,048,142	41,437,825	70.1% <sup>3</sup>
8 Stormwater	535,144	2,029,470	1,938,717	104.7%
9 Golf	432,410	936,161	895,186	104.6%
10 Solid Waste	588,835	2,057,096	2,187,863	94.0%
11 <i>Subtotal Enterprise</i>	<i>7,087,274</i>	<i>34,070,868</i>	<i>46,459,590</i>	<i>73.3%</i>
<b>12 Total Revenue</b>	<b>\$ 19,576,092</b>	<b>\$ 87,435,094</b>	<b>\$ 106,443,471</b>	<b>82.1%</b>
		<i>Prior Year External Revenue</i>		
		<i>82,762,129</i>		
		<i>Increase (Decrease) From Prior Year</i>		
		<i>5.6%</i>		
13 Internal Transfers	669,951	4,719,756	28,993,582	16.3%
<b>14 Grand Total Revenues</b>	<b>\$ 20,246,043</b>	<b>\$ 92,154,850</b>	<b>\$ 135,437,053</b>	<b>68.0%</b>
<b>EXPENDITURES</b>				
<b>General Governmental</b>				
15 General Fund	5,640,029	25,200,682	27,544,727	91.5%
16 Special Revenue	804,690	3,305,067	4,292,331	77.0%
17 Other Entities	1,558,021	8,245,617	10,344,689	79.7%
18 Internal Services	1,794,404	4,905,013	7,269,271	67.5%
19 <i>Subtotal General Gov't Operations</i>	<i>9,797,144</i>	<i>41,656,378</i>	<i>49,451,018</i>	<i>84.2%</i>
20 Capital	3,335,126	15,588,958	66,146,360	23.6%
<b>Enterprise Fund</b>				
21 Water & Power	5,103,943	21,453,241	29,069,755	73.8%
22 Stormwater	226,209	866,999	1,490,167	58.2%
23 Golf	229,816	835,662	950,296	87.9%
24 Solid Waste	408,719	1,537,116	1,882,924	81.6%
25 <i>Subtotal Enterprise</i>	<i>5,968,686</i>	<i>24,693,018</i>	<i>33,393,142</i>	<i>73.9%</i>
<b>26 Total Expenditures</b>	<b>\$ 19,100,956</b>	<b>\$ 81,938,354</b>	<b>\$ 148,990,520</b>	<b>55.0%</b>
		<i>Prior Year External Expenditures</i>		
		<i>78,650,698</i>		
		<i>Increase (Decrease) From Prior Year</i>		
		<i>4.2%</i>		
27 Internal Transfers	669,951	4,719,756	27,881,220	16.9%
<b>28 Grand Total Expenditures</b>	<b>\$ 19,770,907</b>	<b>\$ 86,658,110</b>	<b>\$ 176,871,740</b>	<b>49.0%</b>

<sup>1</sup> Revenue is lower than projected due to timing of when capital projects are done, and federal grants are drawn on those projects.

<sup>2</sup> Revenue is lower than projected due to timing of when property tax payments are made to LURA.

<sup>3</sup> Revenue is lower than projected due to timing of when capital projects are done, and federal grants are drawn on those projects.

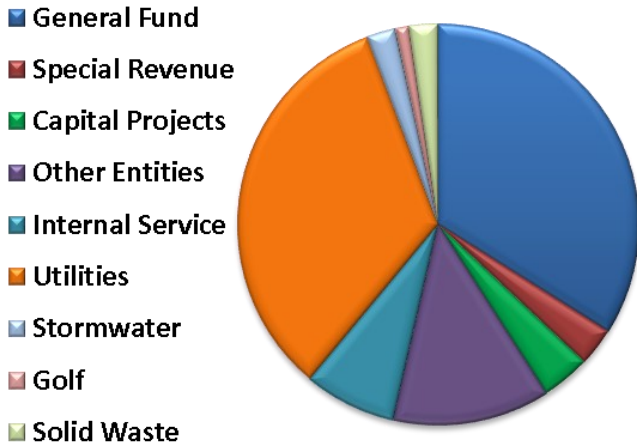
**Special Revenue Funds:** Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures, Transit, Transportation.

**Other Entities Fund:** Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

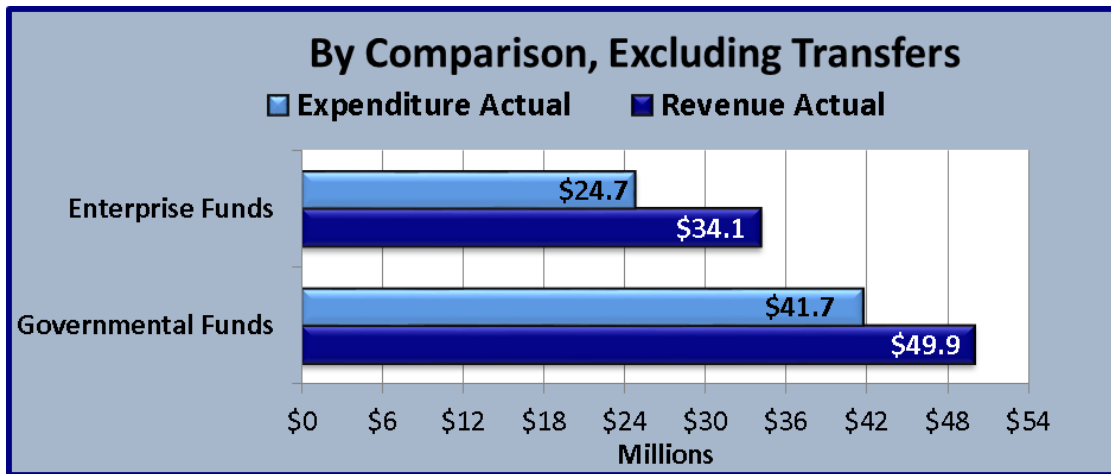
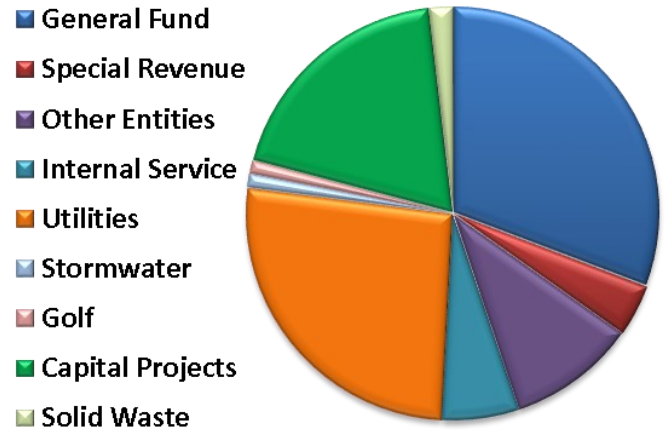
**Internal Service Funds:** Risk/Insurance, Fleet, Employee Benefits.

# Monthly Financial Report

**YTD Operating Revenues of \$87.4 Million**



**YTD Operating Expenditures of \$82 Million**



- ◆ General Fund Revenue, excluding capital and transfers between funds, \$29.7 million (1.6% above budget projections)
  - \* 3.2% above 2015 YTD
- ◆ General Fund Expenditures, excluding capital and transfers between funds, \$25.2 million (8.5% below budget projections)
  - \* 0.4% below 2015 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$29 million (29.9% below budget projections)
  - \* 5.4% above 2015 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$21.5 million (26.2% below budget projections)
  - \* 2.2% below 2015 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$11.1 million (16.4% below budget projections)
  - \* 15.9% above 2015 YTD
- ◆ Other Entities Expenditures, excluding capital and transfers between funds, \$8.2 million (20.3% below budget projections)
  - \* 0.4% below 2015 YTD

# General Fund Revenues & Expenditures

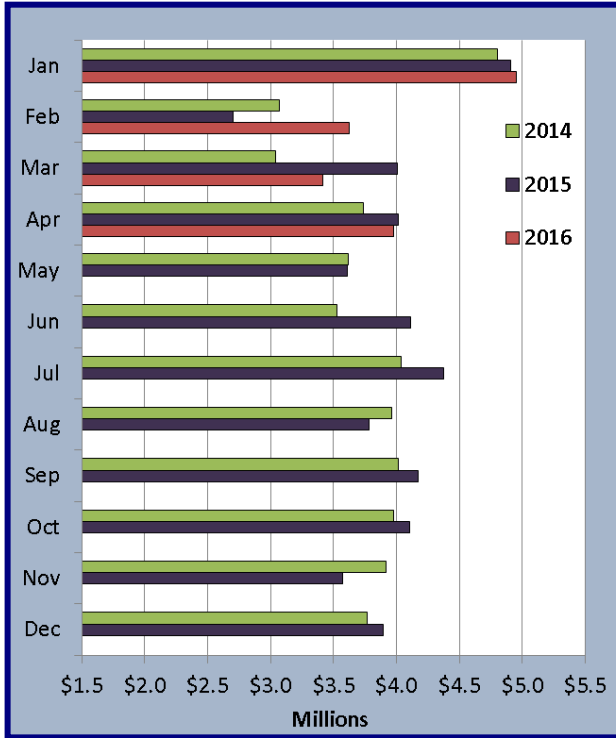
General Fund Revenue & Expenditures April 2016				
REVENUES	Current Month	YTD Actual Budget	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 562,803	\$ 3,630,811	\$ 3,406,546	106.6%
3 Sales tax	3,504,812	13,984,809	14,206,107	98.4%
4 Building use tax	229,024	791,085	577,203	137.1%
5 Auto use tax	240,529	1,183,385	720,226	164.3%
6 Other taxes	199,880	925,708	942,204	98.2%
7 Intergovernmental	43,333	203,057	300,485	67.6%
8 License & Permits				
9 Building Permits	239,174	739,417	982,400	75.3% <sup>1</sup>
10 Other Permits	46,327	99,842	56,840	175.7%
11 Charges for Services	1,262,321	5,244,964	5,173,088	101.4%
12 Fines & Forfeitures	76,474	335,748	306,150	109.7%
13 Interest Income	38,464	123,333	109,480	112.7%
14 Miscellaneous	580,618	2,420,808	2,422,158	99.9%
15 <i>Subtotal</i>	<i>7,023,761</i>	<i>29,682,966</i>	<i>29,202,887</i>	<i>101.6%</i>
16 Interfund Transfers	6,850	52,400	52,400	100.0%
17 <b>Total Revenue</b>	<b>\$ 7,030,611</b>	<b>\$ 29,735,366</b>	<b>\$ 29,255,287</b>	<b>101.6%</b>
<b>EXPENDITURES</b>				
Operating Expenditures				
18 Legislative	16,346	59,186	48,600	121.8% <sup>2</sup>
19 Executive & Legal	191,167	813,189	810,317	100.4%
20 City Clerk & Court Admin	35,607	159,868	197,998	80.7%
21 Economic Development	179,464	791,764	2,599,336	30.5%
22 Cultural Services	160,294	651,151	702,333	92.7%
23 Development Services	347,041	1,192,597	1,851,116	64.4%
24 Finance	384,954	1,626,469	1,668,068	97.5%
25 Fire & Rescue	-	-	-	0.0%
26 Human Resources	96,747	402,647	398,617	101.0%
27 Information Technology	305,494	1,435,405	2,011,090	71.4%
28 Library	245,323	1,099,301	1,184,867	92.8%
29 Parks & Recreation	813,484	3,050,763	3,565,241	85.6%
30 Police	1,680,706	7,391,207	7,649,776	96.6%
31 Public Works	462,918	1,756,959	1,929,203	91.1%
32 Water/ Waste Operations	-	-	-	0.0%
33 Non-Departmental	772,198	5,254,031	5,332,849	98.5%
34 <i>Subtotal Operating</i>	<i>5,691,744</i>	<i>25,684,536</i>	<i>29,949,411</i>	<i>85.8%</i>
35 Internal Transfers	96,622	1,814,555	10,586,146	17.1%
36 <b>Total Expenditures</b>	<b>\$ 5,788,366</b>	<b>\$ 27,499,091</b>	<b>\$ 40,535,557</b>	<b>67.8%</b>

# Capital Projects \$500,000+

Project Title	2016 Budget	2016 Expenditures	Remaining 2016	% of 2016 Budget
<b>Water Capital</b>				
WTP Phase II Expansion (38 MGD)	\$ 6,672,691	\$ 2,626,651	\$ 4,046,040	39.36%
2015 Water Line Replacement	859,633	3,967	855,666	0.46%
2016 Water Line Replacement	622,800	92,274	530,527	14.82%
<b>Raw Water Capital</b>				
Windy Gap Firming Project	2,406,660	1,118,956	1,287,704	46.49%
<b>Wastewater Utility Capital</b>				
WWTP Expansion	27,101,493	2,096	27,099,397	0.01%
Lakeside Terrace & Boedecker Lift Station Improvements	1,716,631	319,447	1,397,184	18.61%
Southside Lift Station	534,912	58,766	476,146	10.99%
<b>Power Capital</b>				
Phase 2 of Canyon Voltage Conversion - Glade Rd to WTP	754,250	373,853	380,397	49.57%
OH to UG conversion Circuit 411	555,660	-	555,660	0.00%
OH to UG conversion 29th St - Madison to Hwy 287	750,000	5,025	744,975	0.67%
OH to UG conversion - RR tracks N of 10th	1,400,000	-	1,400,000	0.00%
OH to UG conversion - Downtown Catalyst	1,400,000	301	1,399,699	0.02%
Land purchase for new substation	1,700,000	-	1,700,000	0.00%
Transfer load from 1012-621 - Crossroads to Fairgrounds	950,000	2,637	947,363	0.28%
Install 750 AL - Crossroads Sub N. to CR30, E. to I-25	1,000,000	-	1,000,000	0.00%
Extend feeders - Crossroads C2 into system	700,000	-	700,000	0.00%
<b>Stormwater Capital</b>				
Benson Park Culvert Improvements	1,000,509	509	1,000,000	0.05%
Airport Basin North Outfall	1,502,743	6,572	1,496,171	0.44%
<b>Streets Transportation Program</b>				
Boise & 37th Intersection	1,864,844	-	1,864,844	0.00%
Boyd Lake Avenue @ Grlv-LvInD	1,632,000	-	1,632,000	0.00%
Taft Avenue @ Big Barnes Ditch	2,227,031	107,769	2,119,262	4.84%
CR 3 ABC (N Larimer Cty Rd 3 Aggregate Base Course	850,000	-	850,000	0.00%
Railroad Avenue Flood Repairs FHWA@20038ER1	7,144,215	126,234	7,017,981	1.77%
<b>All Other</b>				
Replace General Spartan Engine	652,300	-	652,300	0.00%
Viestenz-Smith Mountain Park Redevelopment	2,865,610	15,972	2,849,638	0.56%
Museum Collections Storage Building	2,400,000	2,079,779	320,222	86.66%
Open Lands Acquisition & Restoration	5,899,433	2,695,189	3,204,244	45.69%
Neighborhood Park East	1,900,000	-	1,900,000	0.00%
Wilson Pedestrian Bridge & Flood Trail Reconstruction	600,000	2,726	597,274	0.45%
Fire Administration Building (FAB) Remodel	1,884,036	390,852	1,493,184	20.75%
Mariana Butte Flood River & Bridge Enhancements	564,091	167,566	396,525	29.71%
Airport - Snow Removal Equipment Building	1,252,549	199,186	1,053,363	15.90%
Maintenance & Operation Center (MOC) Remodel	934,660	390,852	45,102	41.82%

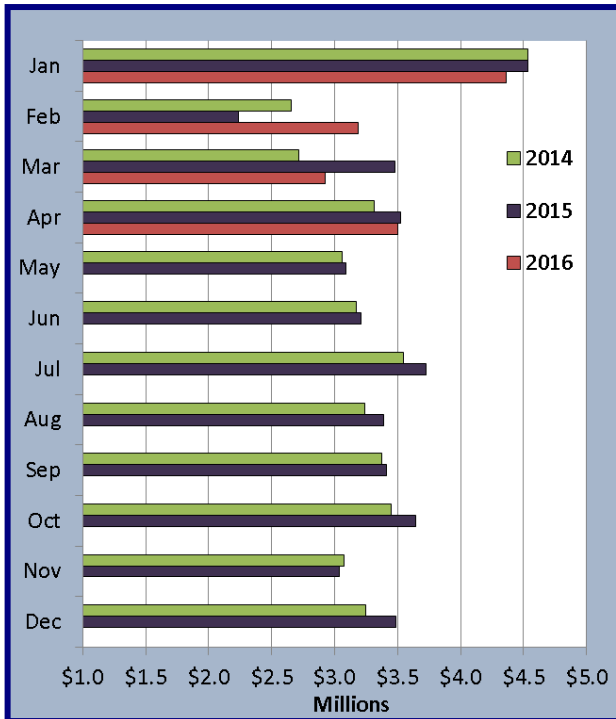
# — Tax Totals and Comparisons —

## Sales & Use Tax



	2014	2015	2016	2016 Budget	+ / - Budget
<b>Jan</b>	\$ 4,801,433	\$ 4,908,517	\$ 4,950,022	\$ 5,026,356	-1.5%
<b>Feb</b>	3,066,965	2,700,204	3,622,959	3,115,503	16.3%
<b>Mar</b>	3,037,688	4,007,386	3,411,932	3,410,801	0.0%
<b>Apr</b>	3,737,255	4,011,633	3,974,366	3,950,876	0.6%
<b>May</b>	3,614,459	3,611,468		3,686,850	
<b>Jun</b>	3,525,536	4,116,214		3,636,050	
<b>Jul</b>	4,038,555	4,375,627		4,286,198	
<b>Aug</b>	3,962,915	3,783,694		4,104,437	
<b>Sep</b>	4,014,321	4,170,066		4,103,238	
<b>Oct</b>	3,974,590	4,102,720		4,138,714	
<b>Nov</b>	3,919,205	3,572,713		3,898,651	
<b>Dec</b>	3,763,933	3,894,616		3,933,615	
	<b>\$ 45,456,855</b>	<b>\$ 47,254,859</b>	<b>\$ 15,959,279</b>	<b>\$ 47,291,289</b>	
<b>YTD</b>	<b>\$ 14,643,341</b>	<b>\$ 15,627,740</b>	<b>\$ 15,959,279</b>	<b>\$ 15,503,536</b>	<b>2.9%</b>

## Retail Sales Tax



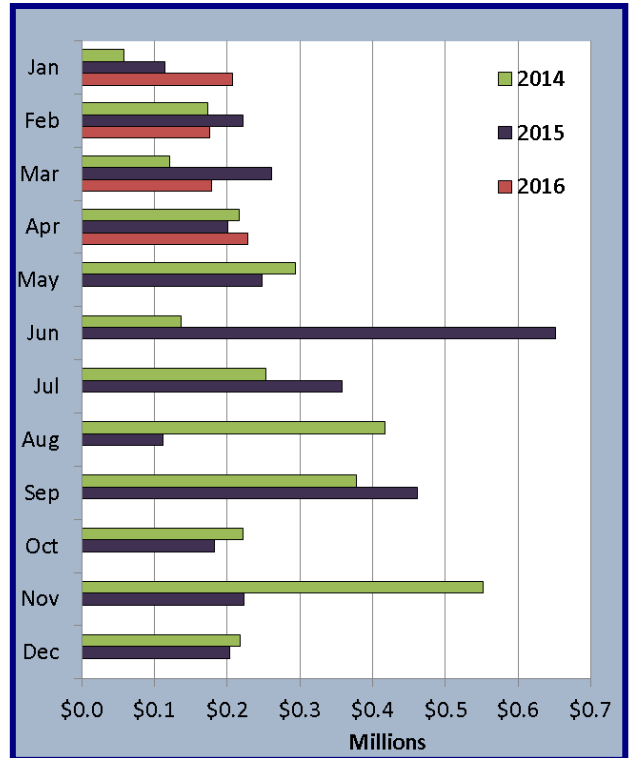
	2014	2015	2016	2016 Budget	+ / - Budget
<b>Jan</b>	\$ 4,531,650	\$ 4,535,554	\$ 4,365,416	\$ 4,697,419	-7.1%
<b>Feb</b>	2,658,798	2,235,775	3,190,005	2,770,381	15.1%
<b>Mar</b>	2,719,254	3,480,164	2,924,575	3,141,451	-6.9%
<b>Apr</b>	3,317,905	3,521,350	3,504,812	3,596,856	-2.6%
<b>May</b>	3,059,076	3,092,253		3,217,352	
<b>Jun</b>	3,170,467	3,208,195		3,335,420	
<b>Jul</b>	3,546,945	3,727,389		3,870,943	
<b>Aug</b>	3,241,521	3,389,010		3,495,655	
<b>Sep</b>	3,374,248	3,408,259		3,563,123	
<b>Oct</b>	3,448,473	3,642,285		3,693,841	
<b>Nov</b>	3,077,404	3,034,997		3,289,036	
<b>Dec</b>	3,246,097	3,486,297		3,495,655	
	<b>\$ 39,391,838</b>	<b>\$ 40,761,528</b>	<b>\$ 13,984,809</b>	<b>\$ 42,167,132</b>	
<b>YTD</b>	<b>\$ 13,227,607</b>	<b>\$ 13,772,843</b>	<b>\$ 13,984,809</b>	<b>\$ 14,206,107</b>	<b>-1.6%</b>



# Monthly Financial Report

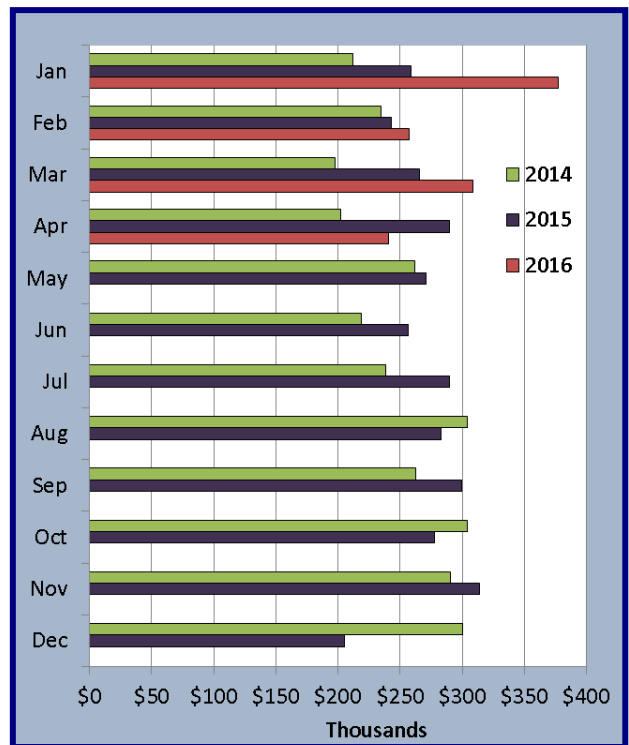
## Building Materials Use Tax

	2014	2015	2016	2016 Budget	+ / - Budget
Jan	\$ 57,942	\$ 114,444	\$ 207,531	\$ 148,689	39.6%
Feb	173,295	221,517	175,706	145,302	20.9%
Mar	120,768	261,500	178,825	101,202	76.7%
Apr	217,134	200,708	229,024	182,010	25.8%
May	293,543	248,738		246,503	
Jun	136,432	651,849		114,457	
Jul	253,077	358,806		212,345	
Aug	417,801	111,575		350,509	
Sep	377,319	462,146		316,605	
Oct	222,297	182,690		186,343	
Nov	551,682	223,788		362,672	
Dec	217,712	203,069		182,520	
	\$3,039,002	\$3,240,831	\$ 791,085	\$2,549,157	
YTD	\$ 569,139	\$ 798,170	\$ 791,085	\$ 577,203	37.1%



## Motor Vehicle Use Tax

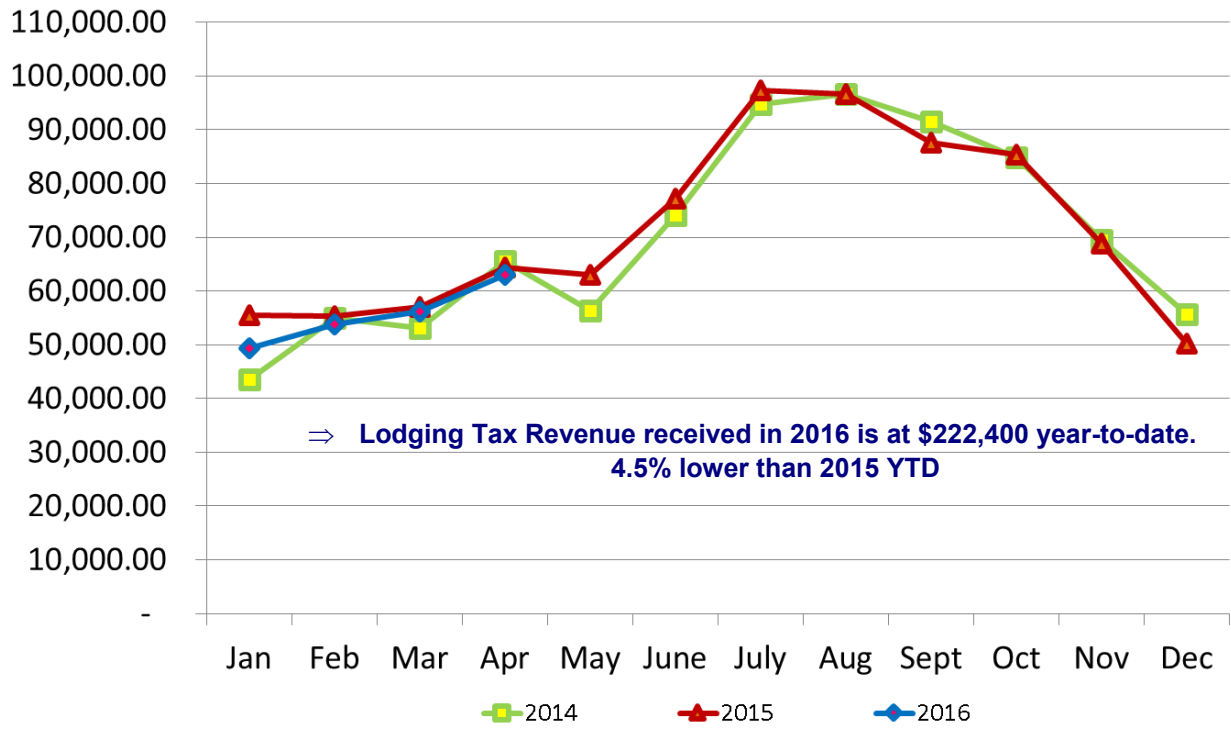
	2014	2015	2016	2016 Budget	+ / - Budget
Jan	\$ 211,841	\$ 258,519	\$ 377,075	\$ 180,248	109.2%
Feb	234,872	242,911	257,248	199,820	28.7%
Mar	197,666	265,721	308,532	168,148	83.5%
Apr	202,216	289,575	240,529	172,010	39.8%
May	261,840	270,477		222,995	
Jun	218,637	256,170		186,173	
Jul	238,533	289,432		202,910	
Aug	303,593	283,109		258,273	
Sep	262,754	299,661		223,510	
Oct	303,820	277,746		258,530	
Nov	290,119	313,928		246,943	
Dec	300,124	205,249		255,440	
	\$3,026,015	\$3,252,500	\$1,183,385	\$2,575,000	
YTD	\$ 846,595	\$1,056,726	\$1,183,385	\$ 720,226	64.3%



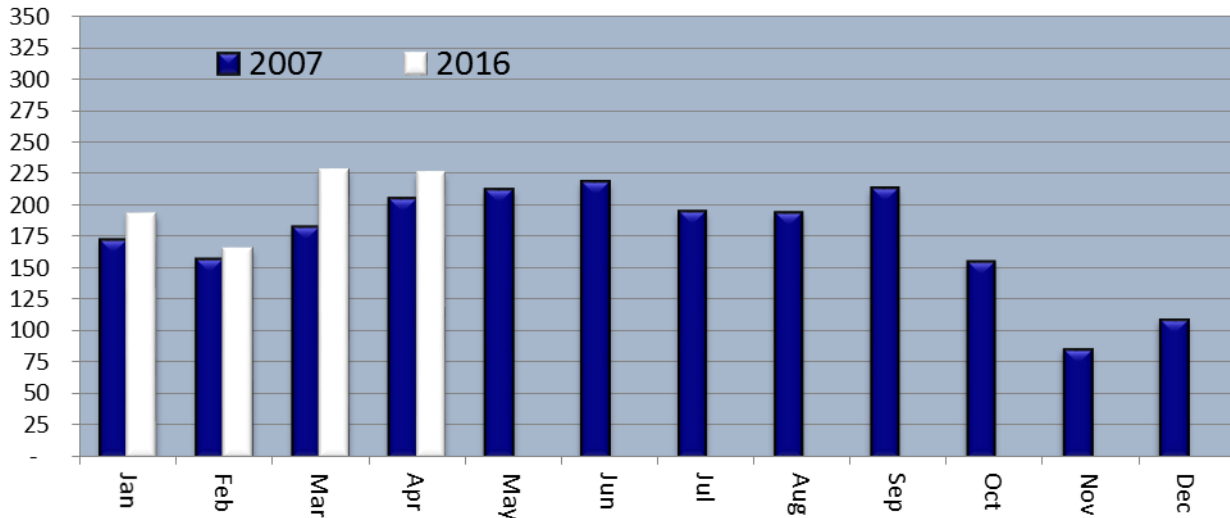


# Lodging / Building Comparisons

### Lodging Tax

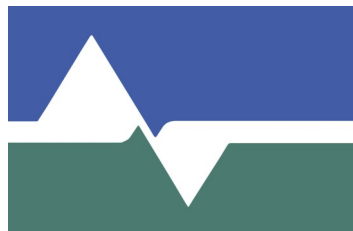


### Building Permit Comparison History



# — Monthly Flood Update —

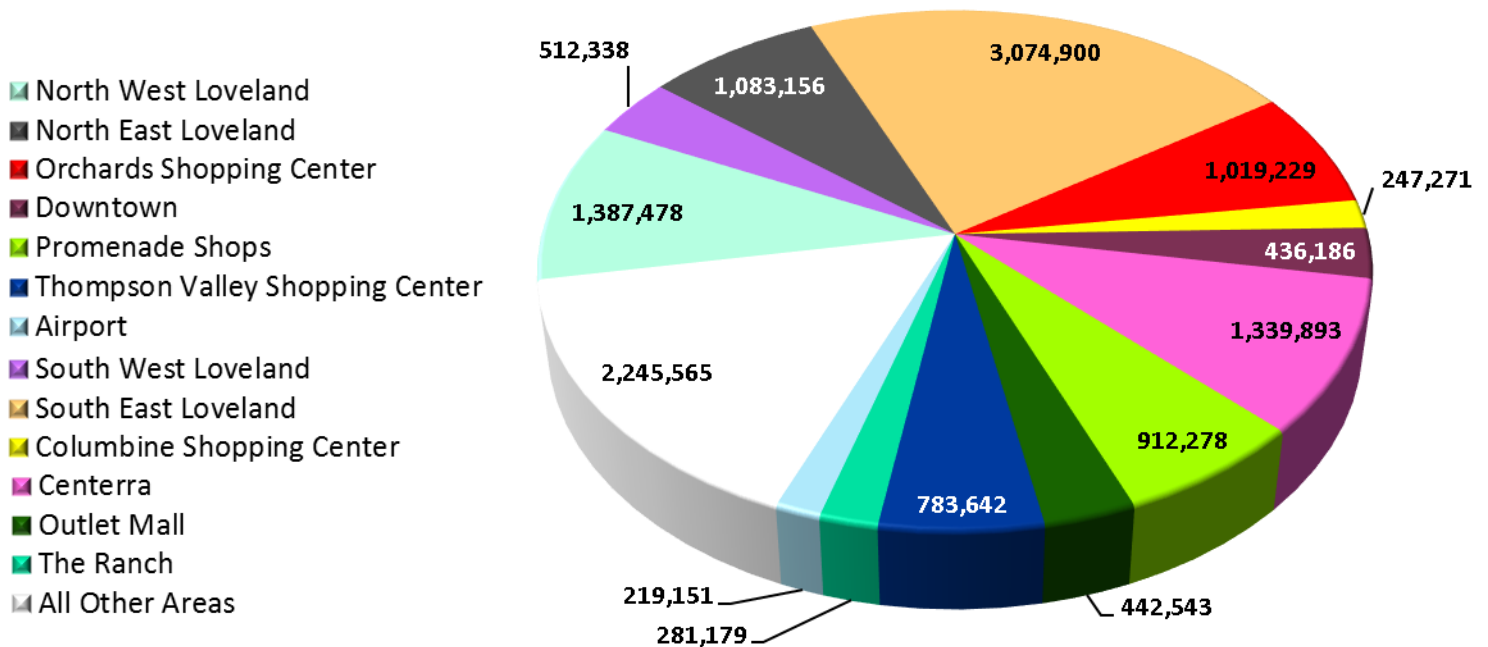
<b>Cost Estimates</b>			
Emergency Response		\$ 2,000,000	
Business Assistance		600,000	
Capital		27,906,129	
<b>Total</b>		<b>\$ 30,506,129</b>	
<b>Actual Expenditures</b>			
		April	To Date
<b>Total</b>	\$	91,595	\$ 22,669,670
<b>Reimbursements Applied For</b>			
		April	To Date
FEMA	\$	191,394	\$ 11,592,821
CIRSA			7,119,891
Other		295,990	1,030,525
<b>Total</b>	\$	<b>487,384</b>	<b>\$ 19,743,237</b>
<b>Reimbursements Received</b>			
		April	To Date
FEMA	\$	430,585	\$ 8,561,469
CIRSA		-	\$ 7,119,891
Other		295,990	\$ 1,030,524
<b>Total</b>	\$	<b>726,575</b>	<b>\$ 16,711,884</b>



# Geographical Codes

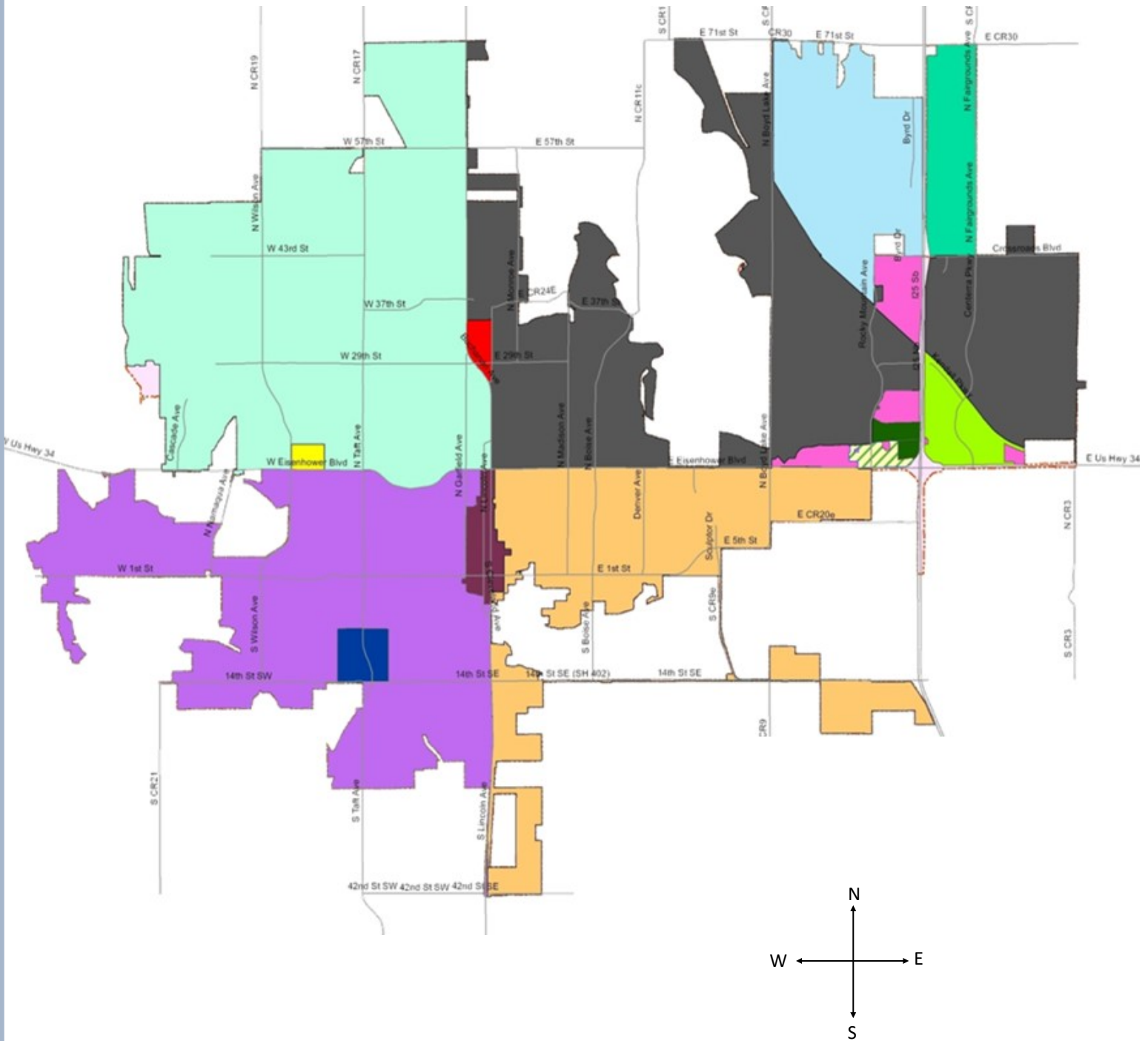
Geographical Area	YTD 2016	YTD 2015	Change
South East Loveland	\$ 3,074,900	\$ 3,071,408	0.1%
North West Loveland	1,387,478	1,370,205	1.3%
Centerra	1,339,893	1,334,089	0.4%
North East Loveland	1,083,156	1,061,134	2.1%
Orchards Shopping Center	1,019,229	922,189	10.5%
Promenade Shops	912,278	992,432	-8.1%
Thompson Valley Shopping Center	783,642	746,128	5.0%
South West Loveland	512,338	475,169	7.8%
Outlet Mall	442,543	494,282	-10.5%
Downtown	436,186	427,131	2.1%
The Ranch	281,179	283,576	-0.8%
Columbine Shopping Center	247,271	237,723	4.0%
Airport	219,151	141,291	55.1%
All Other Areas (1)	2,245,565	2,216,086	1.3%
<b>Total</b>	<b>\$13,984,809</b>	<b>\$13,772,843</b>	<b>1.5%</b>

(1) Refers to sales tax remitted by vendors who are located outside of the City but make sales to customers within Loveland.



Map →

# Geographical Codes



# Sales Tax Collections

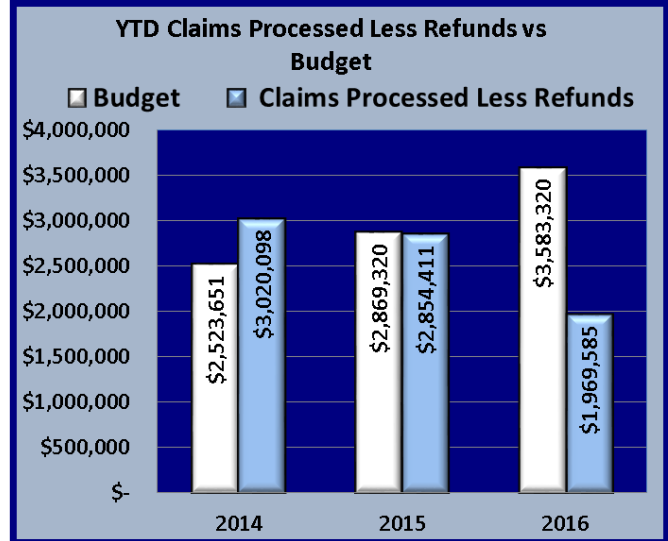
Description	YTD 2016	YTD 2015	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 2,624,712	\$ 2,687,733	\$ (63,021)	-2.3%	18.8%	18.8%
Restaurants & Bars	1,786,182	1,742,011	44,171	2.5%	12.8%	31.5%
Grocery Stores & Specialty Foods	1,640,899	1,531,884	109,015	7.1%	11.7%	43.3%
Motor Vehicle Dealers, Auto Parts & Leasing	1,032,256	984,735	47,521	4.8%	7.4%	50.7%
Building Material & Lawn & Garden Supplies	955,892	873,976	81,916	9.4%	6.8%	57.5%
Clothing & Clothing Accessories Stores	903,482	1,008,067	(104,585)	-10.4%	6.5%	64.0%
Utilities	742,822	785,897	(43,075)	-5.5%	5.3%	69.3%
Sporting Goods, Hobby, Book & Music Stores	622,401	612,703	9,698	1.6%	4.5%	73.7%
Used Merchandise Stores	533,906	494,968	38,938	7.9%	3.8%	77.5%
Broadcasting & Telecommunications	408,009	474,999	(66,990)	-14.1%	2.9%	80.4%
Consumer Goods & Commercial Equipment Rental	353,527	299,919	53,608	17.9%	2.5%	83.0%
Beer, Wine & Liquor Stores	342,846	323,778	19,068	5.9%	2.5%	85.4%
Electronics & Appliance Stores	297,826	244,595	53,231	21.8%	2.1%	87.6%
Hotels, Motels & Other Accommodations	277,425	292,172	(14,747)	-5.0%	2.0%	89.5%
Health & Personal Care Stores	257,819	253,821	3,998	1.6%	1.8%	91.4%
Electronic Shopping & Mail-Order Houses	248,654	239,302	9,352	3.9%	1.8%	93.2%
Furniture & Home Furnishing Stores	204,483	188,146	16,337	8.7%	1.5%	94.6%
Gasoline Stations with Convenience Stores	124,462	137,562	(13,100)	-9.5%	0.9%	95.5%
Office Supplies, Stationery & Gift Stores	101,430	118,327	(16,897)	-14.3%	0.7%	96.2%
All Other Categories	525,776	478,248	47,528	9.9%	3.8%	100.0%
<b>Total</b>	<b>\$13,984,809</b>	<b>\$ 13,772,843</b>	<b>\$ 211,966</b>	<b>1.5%</b>	<b>100.0%</b>	

# Health Care Claims

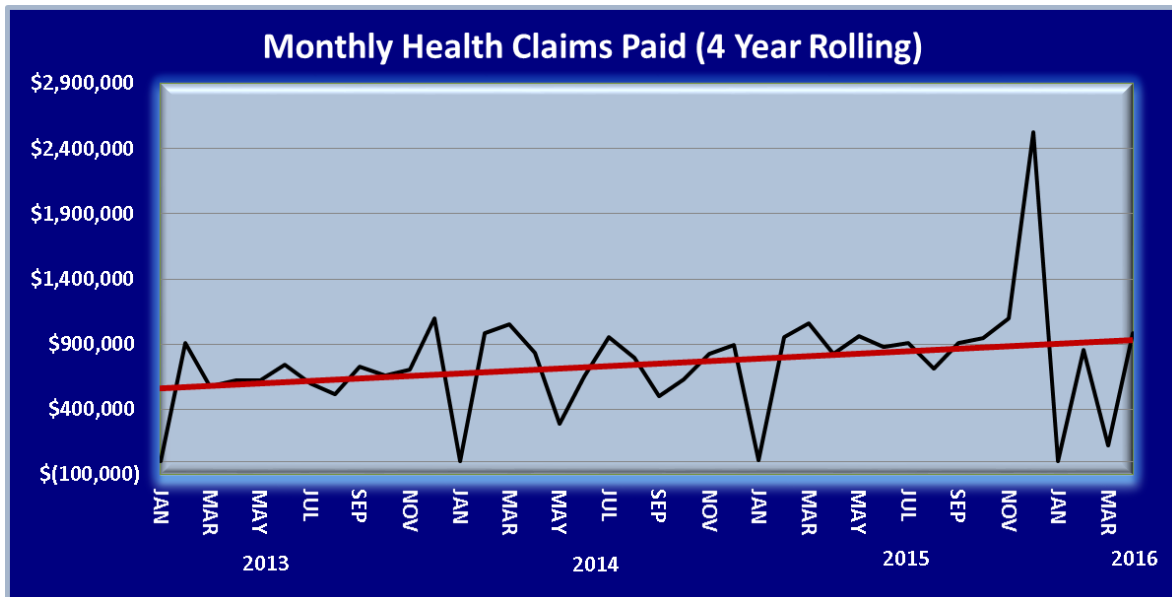
## Claims Incurred

		OAP	HRA	Total
<b>2016</b>	Apr	920,698	140,874	1,061,572
	YTD	3,253,948	634,145	3,888,093
<b>2015</b>	Apr	601,106	364,203	965,309
	YTD	2,966,120	932,016	3,898,137
<b>Change</b>	Apr	319,592	(223,329)	96,263
	Apr	53.2%	-61.3%	10.0%
	YTD	287,828	(297,872)	(10,044)
	% YTD	9.7%	-32.0%	-0.3%

- ⇒ HRA—Health Reimbursement Arrangement
- ⇒ OAP—Open Access Plan



Incurred claims are total expenses the City is obligated to pay for claims, including claims paid and unpaid. Paid claims are those claims that have been paid and reconciled through the bank to-date, which may not reflect Stop Loss reimbursements or other refunds.



April	2013	2014	2015	2016
# of claims	18	26	26	29
YTD Cost of high claims	\$877,603	\$2,369,119	\$2,080,812	\$2,186,333

- ⇒ 2016 # of StopLoss claims: 2
- ⇒ Projected YTD Reimbursements: \$11,487 (claims over \$175k paid by StopLoss Carrier)

# Activity Measures

Measures	Apr 2014	Apr 2015	Apr 2016	2014 YTD	2015 YTD	2016 YTD
# of Building Permits	196	203	225	651	748	809
Building Permit Valuations	\$20,448,937	\$13,767,387	\$15,699,614	\$55,980,872	\$53,855,578	\$60,073,330
# of Certified Occupancies	20	31	79	57	111	241
Net # of Sales Tax Licenses	(4)	24	9	(130)	(36)	(32)
New Residential Electric Meter Sets	28	65	40	133	308	192
# of Utility Bills Sent	36,793	37,581	38,288	147,026	149,445	152,997
Rounds of Golf	8,052	9,270	8,855	14,410	20,989	15,883
\$ Average Health Claim Costs/Emp.	\$1,651	\$1,383	\$1,454	\$ 1,030	\$ 1,522	\$ 1,427
KWH Demand (kH)	80,546	82,972	79,703	373,397	374,950	353,668
KWH Purchased (kwh)	56,722,142	55,222,147	52,946,047	180,308,125	238,176,888	230,250,626
Gallons of Water Sold	165,342,484	178,071,304	154,769,793	600,104,874	631,544,037	585,855,981
# of Workers' Comp Claims 2015	4	8	8	19	32	30
\$ of Workers' Comp Claims Paid 2015	\$86,532	\$30,435	\$10,032	\$246,267	\$194,265	\$128,670
# of Total Open Claims	15	19	14	<i>Not Cumulative</i>		
\$ of Total Open Claims	\$568,305	\$422,064	\$429,883	<i>Not Cumulative</i>		
\$ of Lodging Tax Collected	\$65,511	\$64,446	\$63,002	\$216,974	\$232,463	\$222,400





**Financial Sustainability  
Strategies Can Be  
Found At:  
[CityofLoveland.org](http://CityofLoveland.org)**

- ⇒ **Departments**
- ⇒ **Finance**
- ⇒ **Administration**
- ⇒ **Financial Reports**
- ⇒ **Financial  
Sustainability  
Strategies**

*The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at [bettie.greenberg@cityofloveland.org](mailto:bettie.greenberg@cityofloveland.org) or 970-962-3319*



# SnapShot

April 2016



**For more information regarding this report contact:**

**Brent Worthington**

**Finance Director**

**970.962.2300 or**

**[brent.worthington@cityofloveland.org](mailto:brent.worthington@cityofloveland.org)**



**AGENDA ITEM:** 20  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Alan Krcmarik  
**PRESENTER:** Alan Krcmarik, Executive Fiscal Advisor




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**TITLE:**  
**Investment Report for April 2016**

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No Council action is required.

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**SUMMARY:**

This is an information only item. The budget projection for investment earnings for 2016 is \$2,199,328. On the portfolio's 2016 beginning balance this equates to an annual interest rate of 1.02%. Based on the April monthly statement, the estimated yield on the fixed income securities held by USBank was at 1.28%, for total assets the yield was 1.16%. For year-to-date, total earnings of \$551,093 were posted to City fund accounts. U.S. short-term Treasury interest rates rose slightly in April; the portfolio's change in unrealized gain for the year-to-date was \$1.74 million. The end of April portfolio market value is estimated to be \$217.9 million. The total market value of the portfolio is now higher than the end of 2015 by about \$646,800. The peak amount for the portfolio was reached before the 2013 flood when it had estimated market value of \$226.3 million.

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**BACKGROUND:**

At the end of April, the City's portfolio had an estimated market value of \$217.9 million, about \$2.4 million more than a month ago. Of this amount, USBank held \$193.7 million (including accrued interest) in trust accounts; other funds are held in local government investment pools, in operating accounts at First National Bank, and a few other miscellaneous accounts. Interest rates trended to all-time record lows in 2012-2013 before rising in the second half of 2014. Through 2015 interest rates cycled down, up, down, and back up through December. At the end of April, rates were down sharply from the end of 2015. Short-term rates are projected to rise later in 2016 and are dependent upon the actions of the Federal Open Market Committee. City investments are in U.S. Treasury Notes, high-rated U.S. Agency Bonds, highly-rated corporate bonds, money market accounts, insured certificates of deposit and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to nearly \$2.2 million annually.

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**REVIEWED BY CITY MANAGER:**

*William A. Cavill*

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**LIST OF ATTACHMENTS:**

Investment Focus February 2016



# Investment Focus

Monthly Investment Report

April 2016

## What's in here?

Focal Points /	1
Rate Worries	
Rate Trends	2
Cash Statement	3
Portfolio Size /	4
Investment Types	
Transactions /	5
Maturity	
Labor Data	6-7
Future Scan	8

## Focal Points

- \* The 2016 targets for the City's portfolio:
  - 1) interest rate = **1.02%**; 2) earnings = **\$2,199,328**.
- \* City investments are in high-quality, low-risk securities to comply with Colorado law and the City's investment policy.
- \* Interest earnings posted for the month totaled **\$169,980**.  
**Year-to-date earnings total \$551,093.**
- \* Each 1% of market value amounts to nearly \$2.2 million.
- \* The month-end market value shows the unrealized gain is estimated to be **\$981,393** at the end of April.

## Rate Worries Rack Bonds

Brighter economic data raises prospect of Fed hike, yield curve now flattest since 2007

"A combination of strengthening economic data at home and plummeting interest rates overseas is causing distortions in the U.S. bond market as investors grapple with the question of when the Federal Reserve will next raise interest rates."

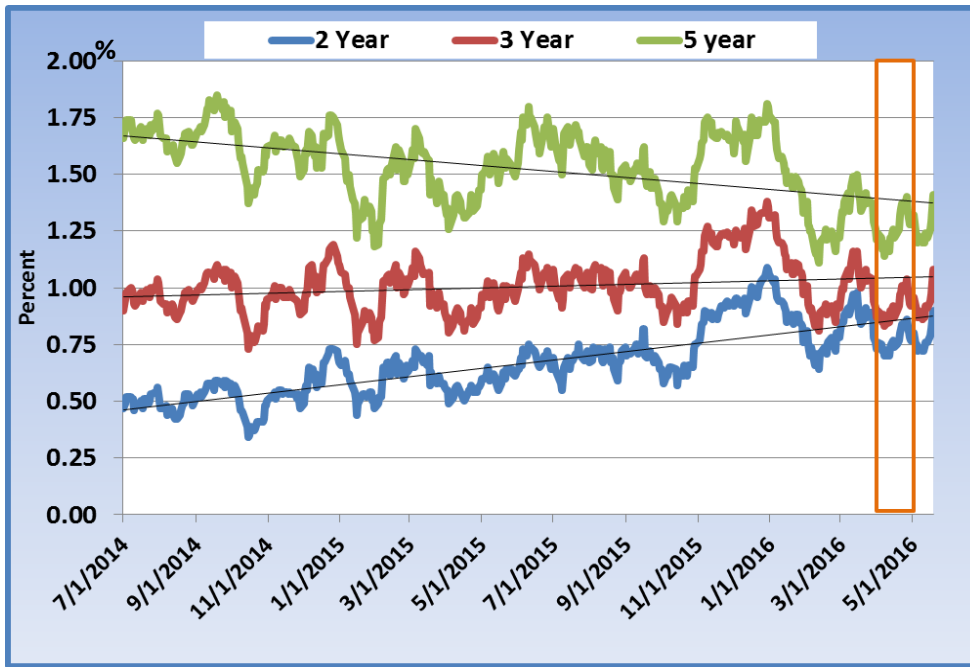
"Economists monitor the yield curve for signs of where the economy is headed. If the yield inverts, it can mean trouble ahead."

*continued on page 2*

Type of Investment	Purchase Price	Market Price	Unrealized Gain / Loss
Checking Accounts	\$ 19,228,145	\$ 19,228,145	-
Investment Pools	\$ 5,039,527	\$ 5,039,527	-
Money Markets	\$ 24,310,140	\$ 24,310,140	-
Subtotal	\$ 48,577,812	\$ 48,577,812	-
Notes, Bonds, and CDs	\$ 168,373,722	\$ 169,355,115	\$ 981,393
Total Portfolio	\$ 216,951,534	\$ 217,932,927	\$ 981,393
Data sources	(Morgan Stanley)	(US Bank)	4/29/2016

Due to rounding, column and row totals may not add exactly.

## Treasury Rate Trends / Rate Worries



Interest rates on U.S. Treasuries rose in April. The 2-year Treasury note was up 4 basis points, the 3-year note rose 5 basis points, and the 5-year Treasury was up 7 basis points.

When rates moved higher, the price of securities held in the portfolio decreased, resulting in a lower unrealized gain at month end.

Continued from Page 1.

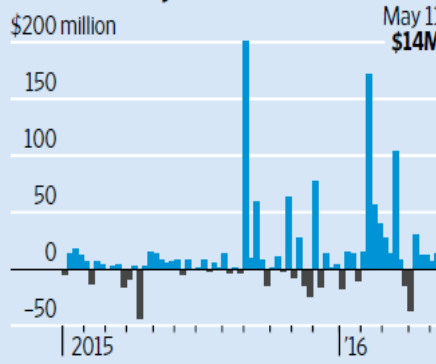
“The core CPI (Consumer Price Index), excluding volatile food and energy prices was up 2.1% over the past 12 months through April, above the Fed’s 2% target, through the central bank prefers to look at other measures (of inflation).” Two Federal Reserve bank presidents suggested that “a rate increase next month is not off the table.”

Treasury securities would suffer the largest losses in 15 years if interest rates rose. But this ‘duration risk’ hasn’t discouraged foreign investors. On Tuesday, the Dow tumbled on fears the Fed will soon raise rates again.

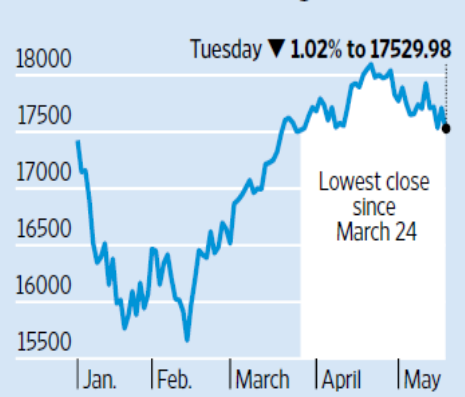
Duration\* of the U.S. Treasury Index, daily



Weekly net flows by foreign investors in U.S. Treasury debt



Dow Jones Industrial Average



\*Sensitivity to interest-rate changes.

Sources: Ryan ALM (spreads); Barclays (duration index); EPFR (weekly net flow)

THE WALL STREET JOURNAL.

(Source: “Rate Worries Rack Bonds” by Min Zeng and Ben Eisen in the **THE WALL STREET JOURNAL**, May 18, 2016.)

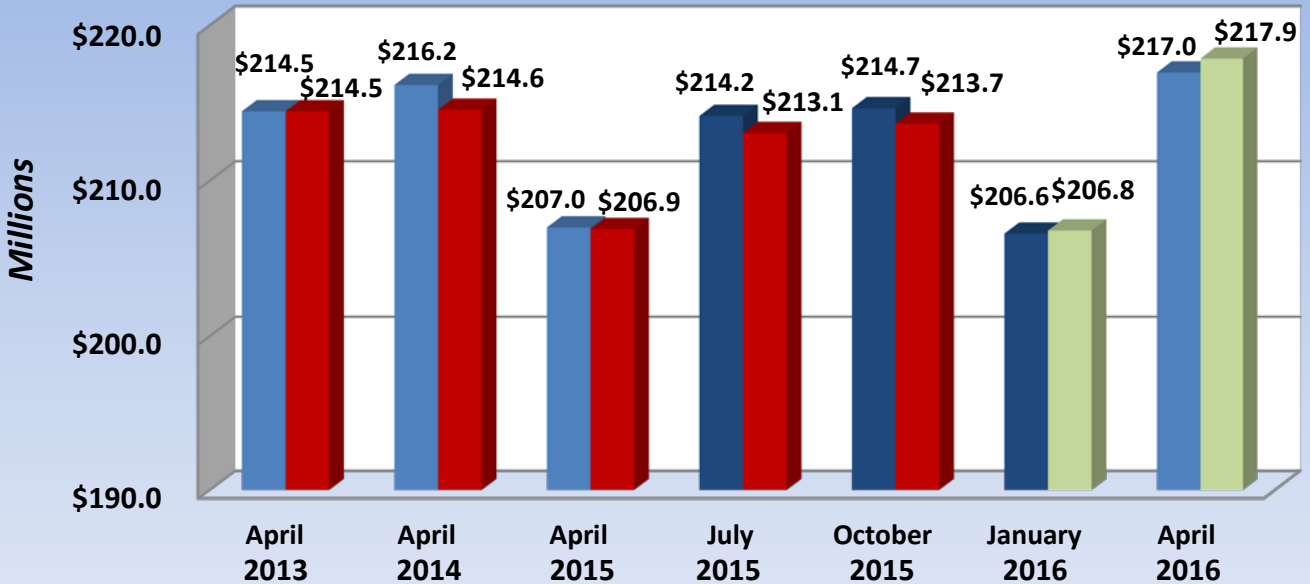
## Bottom Line: Plus 0.7% to Beginning Balance

		2016 Beginning	YTD Activity	Month End Total
<b>Restricted Reserves</b>				
1	Capital Expansion Fees	\$ 30,529,948	\$ (211,490)	\$ 30,318,458
2	Water System Improvement Fees	3,463,847	(1,146,220)	2,317,627
3	Raw Water Revenue - Windy Gap	21,258,069	(1,580,198)	19,677,871
4	Wastewater System Imp. Fees	8,190,570	6,731	8,197,300
5	Storm Drainage System Imp. Fees	2,029,191	98,314	2,127,505
6	Power Plant Investment Fees	2,882,209	991,743	3,873,952
7	Cemetery Perpetual Care	2,765,890	3,948	2,769,838
8	Other Restricted	31,401,906	(1,328,552)	30,073,354
9	<b>Total Restricted</b>	<b>\$ 102,521,630</b>	<b>\$ (3,165,725)</b>	<b>\$ 99,355,905</b>
<b>Committed / Assigned</b>				
10	General Fund	\$ 11,224,908	\$ 962	\$ 11,225,870
11	Enterprise Funds	6,693,603	77,067	6,770,669
12	Internal Service Funds	12,313,489	1,423,080	13,736,569
13	<b>Total Committed / Assigned</b>	<b>\$ 30,232,000</b>	<b>\$ 1,501,109</b>	<b>\$ 31,733,108</b>
14	<b>Total Restricted/Committed/Assigned</b>	<b>\$ 132,753,630</b>	<b>\$ (1,664,616)</b>	<b>\$ 131,089,014</b>
<b>Unassigned Balance</b>				
15	General Fund	\$ 34,406,367	\$ 2,026,362	\$ 36,432,729
16	Airport	1,830,922	61,337	1,892,260
17	Internal Service - Vehicle Maint.	5,670	62,683	68,352
18	Enterprise Funds	46,105,905	980,059	47,085,965
19	<b>Total Unassigned</b>	<b>\$ 82,348,864</b>	<b>\$ 3,130,441</b>	<b>\$ 85,479,305</b>
20	<b>TOTAL FUND BALANCE</b>	<b>\$ 215,102,494</b>	<b>\$ 1,465,825</b>	<b>\$ 216,568,319</b>

Source: City of Loveland Budget Office  
 Due to rounding, column and row totals may not add exactly.

## Portfolio Growth Trend / Types of Investments

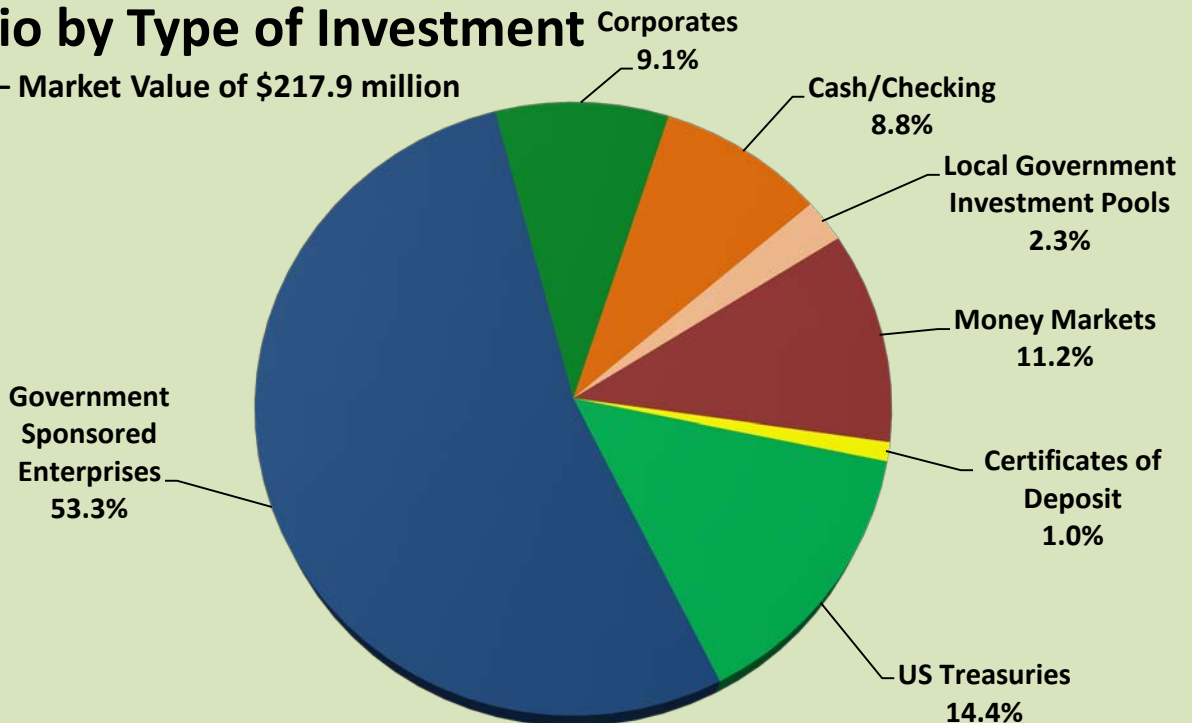
### Portfolio Size Since April 2013



Blue bars show Purchase value; red or green bars show Market value (red = loss and green = gain).

### Portfolio by Type of Investment

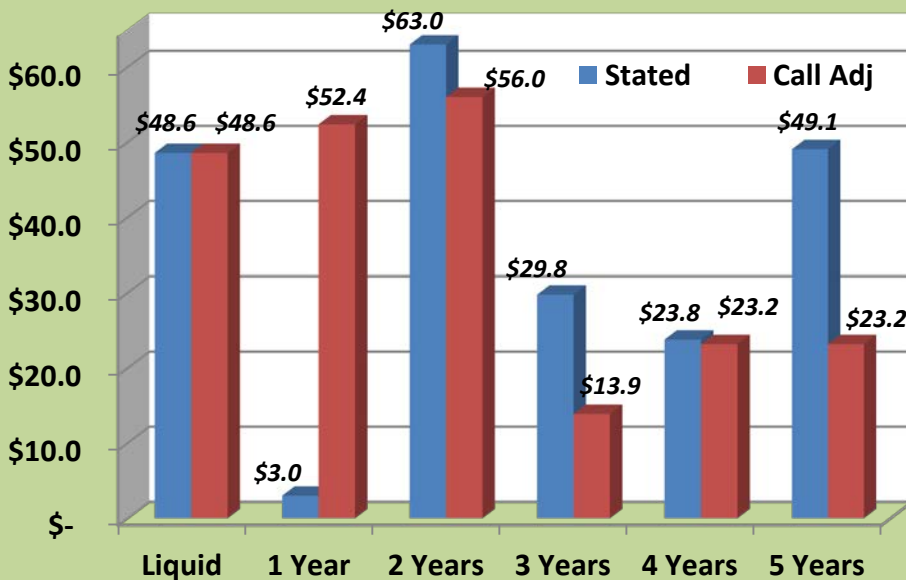
April 2016 – Market Value of \$217.9 million



# Transactions / Portfolio by Maturity

	Maturity Date	Face Value \$	Purchase \$	Rate
<b>Purchases</b>				
State of Hawaii Taxable Note	4/01/2021	\$ 1,000,000.00	\$ 1,003,310.00	1.750%
Federal Home Loan Bank	4/26/2021	<u>5,000,000.00</u>	<u>5,000,000.00</u>	1.700%
		\$ 6,000,000.00	\$ 6,003,310.00	
<b>Matured</b>				
None this month				
<b>Called</b>				
Fed. Home Loan Mortgage Corp	10/29/2020	\$ 5,000,000.00	<u>Call Value \$</u> \$ 5,000,000.00	1.875%
<b>Sales</b>				
None this month				
			<u>Gain/(Loss) \$</u>	

**Portfolio by Estimated Maturity Term**  
(in millions - Total = \$217.9 at the end of the month)



The target interest earnings rate for 2016 is 1.02%. Rates have been volatile over recent months and reached all-time lows for the 10-year treasury.

To support earnings, or to reposition the portfolio, bonds may be sold. Sales have netted \$54,758.36 this year.

Blue bars show the stated term; red bars show possible calls.

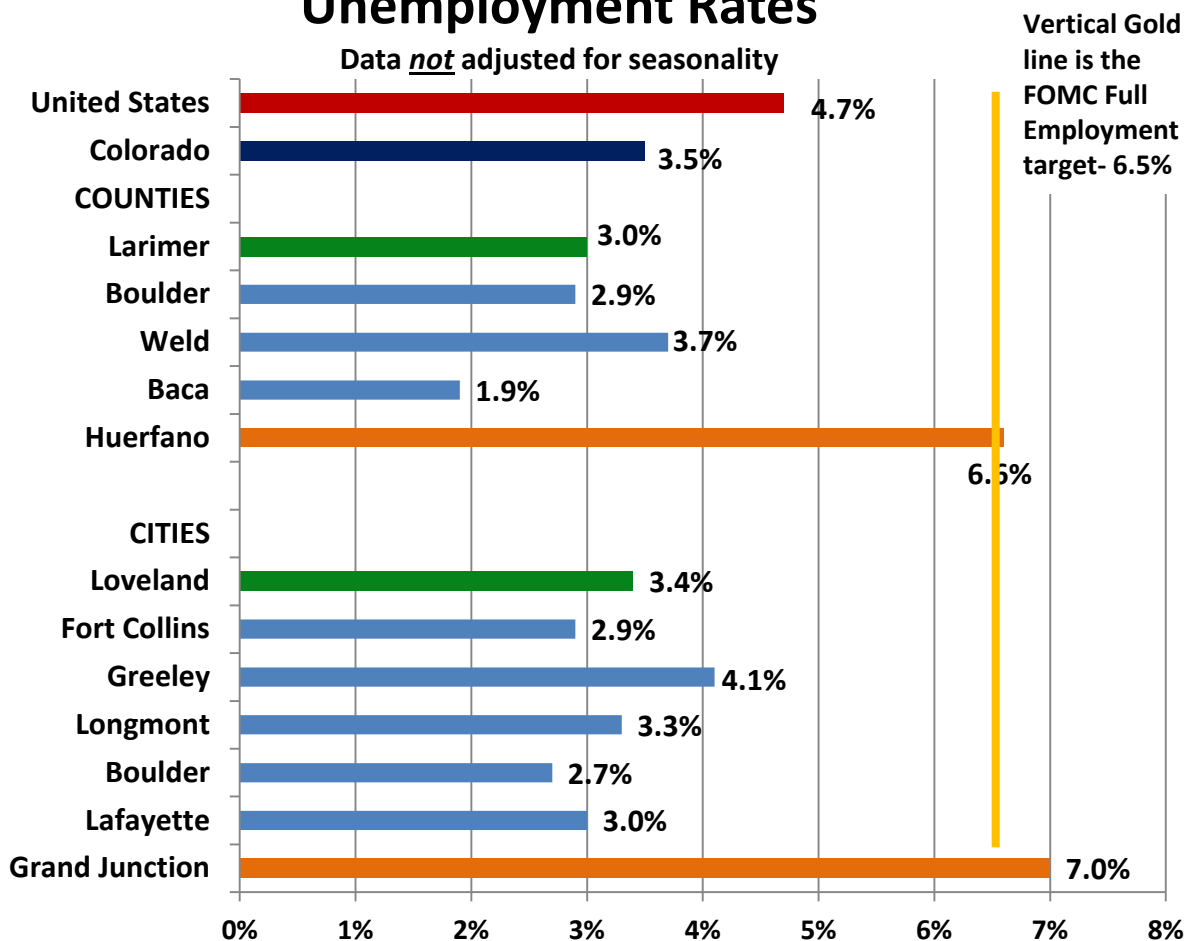


- ❑ Loveland’s employed workforce expanded in April, **up 245** jobs from March.
- ❑ Compared to April of 2015, there are **1,376 more** jobs reported by Loveland residents.

*Important note: It is a routine practice at the beginning of each year for the Bureau of Labor Statistics to revise estimates for prior years based on new information available and updated methodologies. Revisions to the unemployment rate and all related household survey based series as a result of the benchmark process this year were particularly significant due to a change to American Community Survey based inputs. All series were revised back to 1976.*

## Unemployment Rates

Data *not* adjusted for seasonality





## Current “missing worker” estimates at a glance

Updated May 6, 2016, based on most current data available.

Total missing workers,  
April 2016:  
**2,500,000**

Unemployment rate if  
missing workers were  
looking for work:  
**6.5%**

Official  
unemployment rate:  
**5.0%**

In today’s labor market, the unemployment rate drastically understates the weakness of job opportunities. This is due to the existence of a large pool of “missing workers”—potential workers who, because of weak job opportunities, are neither employed nor actively seeking a job. In other words, these are people who would be either working or looking for work if job opportunities were significantly stronger. Because jobless workers are only counted as unemployed if they are actively seeking work, these “missing workers” are not reflected in the unemployment rate. When persons marginally attached to the labor force plus those employed part time for economic reasons are added to the official unemployment rate (the 5.0% number above right), the rate rises to **9.7%** (the seasonally adjusted U-6 number; the unadjusted number is **9.3%**).

Website: <http://www.epi.org/publication/missing-workers/>





## Future Scan: Fed Minutes, Recession Data, Colorado Employment

### ❖ *The FOMC Minutes Surprise Markets and Investors*

- “The Federal Reserve released minutes of its last meeting suggesting it was more open to raising rates than many had thought. Caught unaware, investors started dumping utilities and other high-dividend payers that had been in favor for much of the year. Bond prices fell sharply, sending long-term interest rates higher.”
- “‘The Fed is clearly in the driver’s seat’ of the stock market, said Ernie Cecilia, chief investment officer of Bryn Mawr Trust. He added that it was affecting prices ‘more than any other kind of input out there.’”
- “Some investors are worried that a rise in rates will slow down an already sluggish U.S. economy that grew just 0.5 percent in the first quarter. ‘There is little room for error,’ said Tom Cassidy, chief investment officer at Univest Wealth Management Division. ‘When you’re growing slowly, any hiccup could result in a recession.’”  
(Source: *“Market Is Mixed After Release of Fed Minutes”* by THE ASSOCIATED PRESS in *The New York Times* online May 18, 2016.)

### ❖ *Early Warning Signs of Recession Around the Globe*

- “Mexico is about to plunge into recession for the first time since 2009, an economic forecasting agency has claimed. The forecast of recession comes from World Economics.” The headline reading for a series of future sales indices has been below the statistical growth line since February.  
(Source: *“Mexico is heading for recession”* by Steve Johnson in the, **FINANCIAL TIMES**, May 18, 2016.)
- Bank of England governor “Mark Carney said a vote to leave the European Union could cause a U.K. recession.” The “uncertainty over the outlook has risen to the highest since the euro-debt crisis.”  
(Source: *“Carney Warns Brexit Risks Causing Recession,”* by Jill Ward et al in Bloomberg online, May 12, 2016.)
- “With consumers likewise rattled by rising joblessness and inflation at more than double the government’s target, families are strapped for cash and tightening their belts. That’s put growth forecasts onto a downward spiral, with this week’s outlook marking the fourteenth straight reduction.”  
(Source: *“Brazil Analysts Forecast Recession Deepening in 2016”* by David Biller in Bloomberg online, April 25, 2016.)
- “Japan narrowly escaped recession in the first quarter, according to a broad view of market analysts, but weak domestic demand and a volatile global economy will continue to stall recovery efforts in the world’s third largest economy.” (Source: *“Japan First Quarter GDP Outlook”* by Sam Bourgi in the Economic Calendar online, May 15, 2016.)
- “California has added an average of 15,000 jobs a month this year versus 40,000 in the last. Hot tech stocks are cooling. The Governor’s Department of Finance forecasts, gulp, that a recession of “average magnitude” in the next two years would slash revenues by \$55 billion.”  
(Source: *“Jerry Brown’s Budget Blowout”* in **THE WALL STREET JOURNAL**, May 18, 2016.)

- ❖ *The April 2016 Colorado Employment Situation* was released May 20th. Total nonfarm payroll jobs decreased by 2,000 from March to April. Over the last 12 months, nonfarm payroll jobs increased by 67,700. The latest household survey data show Loveland’s unemployment rate to be 3.4%, down from 3.5% in March. Other cities and counties showed mixed results in their rates. The chart is on page 6. (Next Update June 17, 2016.)  
(Source: Colorado Department of Labor and Employment *April 2016 Colorado Employment Situation*, May 20, 2016.)

- ❖ *Recession Indicators:* Four indicators (Industrial Production, Nonfarm Employment, Real Personal Income, and Real Retail Sales) are the basis for determining a recession. Based on April data, Employment was **up 0.11%**, Industrial Production was **up 0.66%** and Real Retail Sales were **up 0.84%**. March Real Income was **up 0.33%**. “The US economy has been slow in recovering from the Great Recession, and the overall picture has been a mixed bag for well over a year and counting. Employment and Income have been relatively strong. Real Retail Sales have been weak at best over the last eleven months, and Industrial Production has essentially been in a recession.” The average of the four Big Indicators since 2007 has not yet reached its pre-recession level.  
(Source: *Advisor Perspectives*, Doug Short, May 19, 2016.)

## Monthly Investment Report

April 2016

For more information about this report contact  
Alan Krcmarik, Executive Fiscal Advisor 970 962-2625  
Alan.Krcmarik@cityofloveland.org



**City of Loveland**  
**500 East 3<sup>rd</sup> Street**  
**Loveland, CO 80537**

**AGENDA ITEM:** 21  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Tami Yellico, City Attorney's Office  
**PRESENTER:** Tami Yellico, City Attorney

**TITLE:**

**An Ordinance Granting Larimer County An Exemption From Certain Capital Expansion Fees And Other Development Fees For The Larimer County Animal Shelter Project And Authorizing The City Manager To Enter Into An Intergovernmental Agreement With The County For The Payment Of The Remainder Of The Fees**

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a Public Hearing and adopt 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 to consider approving an Ordinance Granting Larimer County an Exemption from Certain Capital Expansion Fees and other Development Fees for the Larimer County Animal Shelter Project.

Staff will update City Council on discussions with Larimer County regarding waiving certain capital expansion fees (CEFs) and other impacts fees assessed to Larimer County by the City in the amount of approximately \$92,307.90 for the construction of a new animal shelter within the City and not to require reimbursement of such fees to the CEFs by the general fund or other fund.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

In November 2014 the citizens of the County voted in favor of a sales tax increase to fund construction of a new animal shelter to replace the animal shelter built in 1974 and located in south Fort Collins. The shelter will be located at 3437 East 71st Street on property owned by the Larimer Humane Society. Following construction of the shelter the County will transfer the shelter to the Larimer Humane Society.

In order to construct the shelter in the City, the County is subject to certain development fees, including capital expansion fees and other impact fees in the total amount of \$208,455.90. While the County has historically paid some of these fees, the County has raised concerns about the City's authority to assess fees to another governmental entity and desires to forego payment of the fees in order to maximize the use of funds raised for construction of the Shelter. The City supports the desire, but the City Code does not have a specific provision relating to the waiver of impact fees for governmental entities and the subsequent transfer of the shelter. The City Code

provisions that may allow waiver of the Development Fees would place unnecessary regulatory requirements on the County by requiring development agreements and deed restrictions, or negatively impact the general fund or other City funds by requiring reimbursement to the capital expansion funds of the Development Fees.

The proposed Ordinance was on City Council's April 5, 2016 agenda and continued to April 19, 2016. At the April 19 meeting Council directed staff to bring the item back at a future meeting once discussions with Larimer County occurred.

The City staff is proposing an ordinance to waive certain fees because it believes that the City Code does not effectively address the unique circumstances of this project and waiver of the fees is in the best interest of the public by encouraging construction of the shelter which will provide significant social, economic and cultural benefits to the citizens. Of the total amount of \$208,455.90 in fees owed for the Project, the fees that staff is recommending be waived include the following:

- \$1,900 in Law Enforcement CEFs
- \$2,280 in General Government CEFs
- \$1,450 in street inspection fees
- \$1,450 in street inspection fees
- Up to \$85,227.90 of the Stormwater Investment Fee

Total amount of recommended fee waiver is \$92,307.90.

The total amount of the impact fees that the County would agree to pay is \$116,148. The City would allocate this payment to the following fees:

- \$39,928 for road widening of County Road 30 (full amount, no waiver)
- \$63,080 for Street Capital Expansion fees (full amount, no waiver)
- \$12,000 for Stormwater Investment Fees
- \$1,140 for Fire CEFs (full amount, no waiver)

This payment provides the total amount due for road impact fees and \$12,000 of the stormwater investment fees. The fee calculation for the stormwater investment fees is a "per developed acre" approach which for the 19.642 acres at \$4,950/acre is \$97,227.90.

The payment amount includes Fire fees for Loveland Fire Rescue Authority (LFRA), which the City cannot unilaterally waive (would require the Loveland Rural Fire Protection District and the LFRA Board to act).

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. Ordinance: Waiving Fees in a total amount of \$92,307.90
2. Intergovernmental Agreement Between Larimer County and the City of Loveland Concerning Impact Fees Associated with the Construction of an Animal Shelter

**FIRST READING: May 17,**  
**2016**

**SECOND READING: June 7, 2016**

**ORDINANCE NO. 6019**

**AN ORDINANCE GRANTING LARIMER COUNTY AN EXEMPTION FROM CERTAIN CAPITAL EXPANSION FEES AND OTHER DEVELOPMENT FEES FOR THE LARIMER COUNTY ANIMAL SHELTER PROJECT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY FOR THE PAYMENT OF THE REMAINDER OF THE FEES**

**WHEREAS**, in November 2014 the citizens of Larimer County (the “County”) voted in favor of a sales tax increase to fund construction of a new animal shelter (the “Shelter”) to replace the animal shelter built in 1974 and located in south Fort Collins; and

**WHEREAS**, the County selected 3437 East 71<sup>st</sup> Street, a site located in the City of Loveland (the “City”) and owned by the Larimer Humane Society, a private nonprofit organization, for construction of the Shelter; and

**WHEREAS**, following construction of the Shelter the County intends to deliver the Shelter to the Larimer Humane Society pursuant to a deed restriction that ensures the continued use of the Shelter as an animal shelter for the benefit of the public; and

**WHEREAS**, in order to construct the Shelter in the City, the County is subject to certain development fees, including capital expansion fees and other impact fees identified and estimated in **Exhibit “A”** attached hereto and incorporated by reference (collectively, the “Development Fees”); and

**WHEREAS**, the County desires to forego payment of certain Development Fees, in order to maximize the use of funds raised through the sales tax increase for construction of the Shelter; and the City is willing to waive the Law Enforcement Capital Expansion Fees, General Government Fees, Street Inspection Fees, and Stormwater Inspection Fees; and

**WHEREAS**, the City desires to encourage use of such funds for construction of the Shelter, but the City Code does not have a specific provision relating to the waiver of capital expansion fees and other impact fees for governmental entities, and the subsequent transfer of the Shelter to a non-profit agency; and

**WHEREAS**, City Code provisions that may allow waiver of the Development Fees would place unnecessary regulatory requirements on the County by requiring development agreements and deed restrictions, or negatively impact the general fund or other City funds by requiring reimbursement to the capital expansion funds of the Development Fees; and

**WHEREAS**, the City believes that such waiver of the Law Enforcement Capital Expansion Fees, General Government Fees, Street Inspection Fees, and Stormwater Inspection Fees by ordinance to address the unique circumstances set forth above will be in the best interest of the public by encouraging construction of the Shelter that will, in turn, offer services that provide significant social, economic and cultural benefits to the citizens.

**WHEREAS**, the City and County desire to enter into an intergovernmental agreement for the payment of the remainder of the Development Fees due; and

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

**Section 1.** That the City Council hereby finds that waiver of the Law Enforcement Capital Expansion Fees, General Government Fees, Street Inspection Fees, and Stormwater Inspection Fees for construction of the Shelter is in the best interest of the public by encouraging activities that provide significant social, economic or cultural benefits as identified above.

**Section 2.** That the entire amounts of the Law Enforcement Capital Expansion Fees, General Government Fees, Street Inspection Fees, and Stormwater Inspection Fees, and a portion of the Stormwater Investment Fee in the amount of \$85,227.90, totaling **\$92,307.90**, are hereby waived up to the actual amount of such fees assessed by the City for the purpose described above and there shall be no reimbursement to the capital expansion funds by the general fund or any other fund.

**Section 3.** The City Manager is authorized to enter into an intergovernmental agreement with the County, in a form approved by the City Attorney, for the payment by the County of \$116,148 in Development Fees for the Shelter project.

**Section 4.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**ADOPTED** this 7th day of June, 2016.

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

ATTEST:

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



APPROVED AS TO FORM:

  
Assistant City Attorney

AN ORDINANCE GRANTING LARIMER COUNTY AN EXEMPTION FROM CERTAIN CAPITAL EXPANSION FEES AND OTHER DEVELOPMENT FEES FOR THE LARIMER COUNTY ANIMAL SHELTER PROJECT

Ordinance # 6019

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 May 17, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on May 21, 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 June 11, 2016.

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

Effective Date: June 21, 2016

**Exhibit A  
Development Fees**

CEF/Impact Fees	Animal Shelter Fees (Estimated)
Fire	1,140.00
Law Enforcement	1,900.00
General Gov't	2,280.00
Streets	63,080.00
Storm Water Investment Fee	97,227.90
Arterial Road Widening	39,928.00
Street Inspection	1,450.00
Stormwater Inspection	1,450.00
<b>Total</b>	<b>208,455.90</b>



**INTERGOVERNMENTAL AGREEMENT  
BETWEEN LARIMER COUNTY AND THE CITY OF LOVELAND  
CONCERNING IMPACT FEES ASSOCIATED WITH THE CONSTRUCTION OF AN  
ANIMAL SHELTER**

This Intergovernmental Agreement, hereafter referred to herein as the “Agreement,” is made this 17<sup>th</sup> day of May, 2016, between the **City of Loveland, Colorado**, a municipal corporation, and the **County of Larimer, Colorado**, a body politic organized and existing by virtue of the laws of the State of Colorado, by and through its **Board of County Commissioners** (“the County”) that may be individually referred to herein as a “Party” or collectively as the “Parties.”

**I. RECITALS**

1. **WHEREAS**, in November 2014 the citizens of Larimer County (the “County”) voted in favor of a sales tax increase to fund construction of a new animal shelter (the “Shelter”) to replace the animal shelter built in 1974 and located in south Fort Collins; and
2. **WHEREAS**, the County selected 3437 East 71<sup>st</sup> Street, a site located in the City of Loveland (the “City”) and owned by the Larimer Humane Society, a private nonprofit organization, for construction of the Shelter; and
3. **WHEREAS**, such site will be divided into two lots pursuant to the Bates-Larimer Humane Society First Subdivision plat (the “Plat”) and the Shelter will be constructed on Lot 1 as identified therein; and
4. **WHEREAS**, following construction of the Shelter the County intends to deliver the Shelter to the Larimer Humane Society pursuant to a deed restriction that ensures the continued use of the Shelter as an animal shelter for the benefit of the public; and
5. **WHEREAS**, The County disputes that it is subject to certain development fees, including capital expansion fees and other impact fees identified and estimated in **Exhibit “A”** attached hereto and incorporated by reference (collectively, the “Development Fees”); and
6. **WHEREAS**, the County desires to forego payment of certain Development Fees in order to maximize the use of funds raised through the sales tax increase for construction of the Shelter but is willing to pay for impacts directly related to the Shelter; and the City is willing to waive the Law Enforcement Capital Expansion Fees, General Government Fees, Street Inspection Fees, and Stormwater Inspection Fees; and
7. **WHEREAS**, the City desires to encourage use of such funds for construction of the Shelter, but the City Code does not contain a specific provision relating to the waiver of capital expansion fees and other impact fees for governmental entities, and the subsequent transfer of the Shelter to a non-profit agency; and

8. **WHEREAS**, City Code provisions that may allow waiver of the Development Fees would place unnecessary regulatory requirements on the County by requiring development agreements and deed restrictions, or negatively impact the general fund or other City funds by requiring reimbursement to the capital expansion funds of the Development Fees; and

9. **WHEREAS**, the City believes that such waiver of the Law Enforcement Capital Expansion Fees, General Government Fees, Street Inspection Fees, and Stormwater Inspection Fees by ordinance to address the unique circumstances set forth above will be in the best interest of the public by encouraging construction of the Shelter that will, in turn, offer services that provide significant social, economic and cultural benefits to the citizens; and

10. **WHEREAS**, the City and County desire to enter into an intergovernmental agreement for the payment of the remainder of the Development Fees due.

## II. CONSIDERATION

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

## III. TERMS

12. County Payment of Impact Fees.

12.1 The County shall pay the total amount of \$116,148 in Development Fees associated with the construction of the Shelter (hereinafter referred to as the "Total Payment"). The County shall remit the Total Payment to the City within sixty (60) days of both Parties executing this Agreement.

13. Term and Termination. This Agreement shall commence on the date both Parties have executed this Agreement and shall continue in full force and effect until the date that the County pays the Total Payment to the City.

14. Notices.

14.1 Any notice required or desired to be given by one Party to the other Party shall be in writing and may be: (a) personally delivered; (b) sent by certified mail, return receipt requested; or (c) sent by a nationally recognized receipted overnight delivery service, including the United States Postal Service, United Parcel Service or Federal Express, for delivery the next day.

14.2 Any such notice shall be deemed to have been received as follows: (a) when personally delivered to the Party to whom it is addressed; (b) when mailed, three



15.4 If any term or condition of this Agreement is held to be illegal, invalid or unenforceable under applicable law, rule or regulation, such term or condition shall be fully severable.

16. Material Nature of Terms; General Default Remedy.

16.1 Each and every term and condition contained herein shall be deemed to be a material element of this Agreement.

16.2 In the event a Party has been declared in default, such defaulting Party shall be allowed a period of sixty (60) days within which to cure said default. In the event the default remains uncured after the sixty (60) day period, the non-defaulting Party may terminate this Agreement, sue for damages, or pursue any available equitable or legal remedy.

17. Limitation on Waiver; Binding Nature.

17.1 The failure of either Party to insist, in any one instance or more, upon the performance by the other Party of any of the duties, obligations or conditions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as thereafter waiving any such duties, obligations, conditions, rights or privileges, but the same shall continue and remain in full force and effect.

17.2 All duties, obligations, conditions, rights and privileges contained herein shall be binding upon, inure to the benefit of, and be enforceable by, the Parties, their successors and assigns.

18. Governing Law and Court Jurisdiction. This Agreement shall be interpreted and enforced under the laws of the State of Colorado. Court jurisdiction shall lie exclusively in the District Court for Larimer County, Colorado.

19. No Third Party Beneficiaries. Other than as specifically set forth herein, no term or condition contained herein shall be deemed or construed as creating any right or entitlement which inures to the benefit of any third party.

20. Sections and Headings. Sections and headings contained herein are for organizational purposes only and shall not affect the interpretation of this Agreement.

LARIMER COUNTY, a body politic organized and existing by virtue of the laws of the State of Colorado



By: \_\_\_\_\_

*[Handwritten signature in blue ink]*

ATTEST:

*[Handwritten signature of Sarah Vally in black ink]*  
Clerk to the Board

APPROVED AS TO FORM:

5-17-16 *[Handwritten signature]*  
County Attorney

CITY OF LOVELAND, a Colorado municipal corporation

By: \_\_\_\_\_

William D. Cahill, City Manager

ATTEST:

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

APPROVED AS TO FORM:

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

**Exhibit A**  
**Development Fees**

CEF/Impact Fees	Animal Shelter Fees (Estimated)
Fire	1,140.00
Law Enforcement	1,900.00
General Gov't	2,280.00
Streets	63,080.00
Storm Water Investment Fee	12,000.00
Arterial Road Widening	39,928.00
Street Inspection	1,450.00
Stormwater Inspection	1,450.00
<b>Total</b>	<b>123,228</b>

**AGENDA ITEM:** 22  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Brett Limbaugh, Development Services Director  
**PRESENTER:** Kerri Burchett, Current Planning



**TITLE:**

1. **A Resolution Concerning The Annexation To The City Of Loveland, Colorado, Of A Certain Area Designated As "Waters Edge Addition" More Particularly Described Herein, And Setting Forth Findings Of Fact And Conclusions Based Thereon As Required By The Colorado Constitution And By State Statute**
2. **An Ordinance Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Waters Edge Addition" To The City Of Loveland**
3. **An Ordinance Amending Section 18.04.040 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Waters Edge Addition" To The City Of Loveland**

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motions for City Council action as recommended by the Planning Commission:

1. Move to adopt the resolution concerning the annexation of the Waters Edge Addition;
2. Move to adopt on first reading the ordinance annexing the Waters Edge Addition to the City of Loveland; and
3. Move to adopt on first reading the ordinance zoning the Waters Edge Addition to the City of Loveland to R1-Developing Low Density Residential.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. The property would remain outside city limits and the applicant could request development in unincorporated Larimer County.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. This would delay the applicant in proceeding to the additional city applications necessary for development of the property.

**SUMMARY:**

This is a public hearing to consider the following items on first reading:

- A legislative action to adopt a resolution and ordinance to annex 82.6 acres of property to be known as the Waters Edge Addition; and
- A quasi-judicial action to zone the 82.6 acres to R1 Developing Low Density Residential District.

The property is located north of 28<sup>th</sup> Street SW, south of Ryan’s Gulch Reservoir and west of Taft Avenue and the Lakeside Terrace Subdivision. The applicant is Lynda Beierwaltes with Luxor, LLC.

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

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**BACKGROUND:**

The proposal is to annex and zone the Waters Edge Addition as the first step towards developing a low density residential subdivision. The property is contiguous to city limits and borders the Lakeside Terrace Estates developments. The property is designated as low density residential in both the City's current Comprehensive Master Plan and the proposed Create Loveland Master Plan. The proposed R1 zone district aligns with the residential designation in the Master Plan.

Concerns regarding the development of the property have been expressed by the neighborhood and include density, traffic, change in the character of the area and loss of habitat, views and housing values. The neighborhood has submitted a petition signed by 172 residents requesting that the City purchase the property as open space. The Open Lands Advisory Commission has reviewed the Waters Edge property on three separate occasions and did not recommend that staff pursue the acquisition.

The Planning Commission is recommending approval of the annexation and zoning request by a vote of 4-1. The Commission further approved a resolution on May 23<sup>rd</sup> recommending that City Council consider purchasing the Waters Edge property as open space (see Attachment 5.A).

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Resolution
2. Ordinance approving the annexation
3. Ordinance relating to zoning
4. Draft Annexation Agreement
5. Staff Memorandum [Link to Staff Memo Exhibits](#)



**RESOLUTION #R-44-2016****A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS "WATERS EDGE ADDITION" MORE PARTICULARLY DESCRIBED HEREIN, AND SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS BASED THEREON AS REQUIRED BY THE COLORADO CONSTITUTION AND BY STATE STATUTE**

**WHEREAS**, on April 14, 2016, a Petition for Annexation was filed by persons comprising more than fifty percent (50%) of the landowners in the area described on **Exhibit "A"**, attached hereto and incorporated herein, who own more than fifty percent (50%) of said area, excluding public streets and alleys; and

**WHEREAS**, said petition requests the City of Loveland to annex said area to the City; and

**WHEREAS**, pursuant to Resolution No. R-31-2016, the City Council found that said petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution and of §31-12-107(1), C.R.S.; and

**WHEREAS**, on June 7, 2016, commencing at 6:00 p.m., pursuant to the notice required by §31-12-108, C.R.S., the City Council held a public hearing to determine whether the area proposed to be annexed complies with the applicable requirements Section 30 of Article II of the Colorado Constitution and of §§31-12-104 and 31-12-105, C.R.S., and is eligible for annexation; whether or not an election is required under Section 30(1)(a) of Article II of the Colorado Constitution and of §31-12-107(2), C.R.S.; and whether or not additional terms and conditions are to be imposed.

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

1. The City Council of the City of Loveland makes the following findings of fact:
  - A. The subject Petition for Annexation was signed by persons comprising more than fifty percent (50%) of the landowners in the area proposed to be annexed, who own more than fifty percent (50%) of said area, excluding public streets and alleys.
  - B. Pursuant to Resolution No. R-31-2016, the City Council found that said petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution §31-12-107(1), C.R.S.

- C. Pursuant to this Resolution, a public hearing was held on June 7, 2016, commencing at the hour of 6:00 p.m., to determine whether the proposed annexation complies with the applicable requirements of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S.; whether an election is required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S.; and whether additional terms and conditions are to be imposed.
- D. Notice of said public hearing was published in The Loveland Reporter Herald on April 14, and May 14, 21, and 28, 2016, in the manner prescribed by §31-12-108(2), C.R.S. The Loveland Reporter Herald is a newspaper of general circulation in the area proposed to be annexed. Copies of the published notices, together with a copy of said resolution and a copy of said petition, were sent by registered mail by the City Clerk to the Board of County Commissioners of Larimer County and to the Larimer County Attorney and to all special districts and school districts having territory within the area proposed to be annexed at least 25 days prior to the date fixed for said hearing.
- E. The land to be annexed lies entirely within the City of Loveland Growth Management Area, as depicted in the 2005 Comprehensive Plan, as amended. Therefore, pursuant to Section 3.3.1 of the Intergovernmental Agreement with Larimer County, the annexation impact report requirement of §31-12-108.5, C.R.S. has been waived.
- F. The perimeter of the area proposed to be annexed is 9,162.35 linear feet, of which 2,542.95 linear feet are contiguous to the City of Loveland. Not less than one-sixth of the perimeter of said area is contiguous with the City of Loveland.
- G. A community of interest exists between the area proposed to be annexed and the City of Loveland.
- H. The area proposed to be annexed is urban or will be urbanized in the near future, and said area is integrated with or is capable of being integrated with the City of Loveland.
- I. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, is divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.
- J. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising 20 acres or more and which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax

purposes for the year next preceding the annexation, is included within the area proposed to be annexed without the written consent of the landowner or landowners.

- K. No annexation proceedings have been commenced for the annexation to another municipality of part or all of the area proposed to be annexed.
- L. The annexation of the area proposed to be annexed will not result in the detachment of the area from any school district and the attachment of the same to another school district.
- M. The annexation of the area proposed to be annexed would not have the effect of extending the boundary of the City of Loveland more than three miles in any direction from any point of such boundary in any one year.
- N. In establishing the boundaries of the area proposed to be annexed, the entire width of any platted street or alley to be annexed is included within said area.
- O. The annexation of the area proposed to be annexed will not deny reasonable access to any landowner, owner of an easement or owner of a franchise adjoining a platted street or alley which is included in said area but which is not bounded on both sides by the City of Loveland.

2. The City Council reaches the following conclusions based on the above findings of fact:

- A. The proposed annexation of the area described on **Exhibit "A"** complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S.
- B. No election is required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S.
- C. No additional terms and conditions are to be imposed.

3. This Resolution shall become effective on the date and at the time of its adoption.

APPROVED the 7th day of June, 2016.

CITY OF LOVELAND, COLORADO:

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney

## EXHIBIT A

That portion of the South Half of Section 27 and that portion of the North Half of Section 34, all being in Township 5 North, Range 69 West of the 6<sup>th</sup> P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Southeast Quarter of said Section 27 as bearing North 89°46'28" West and with all bearings contained herein relative thereto:

Beginning at the Southwest corner of the Southeast Quarter of said Section 27; thence along the South line of the Southwest Quarter of said Section 27 North 89°46'49" West 952.24 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16 and the TRUE POINT OF BEGINNING; thence departing said South line of the Southwest Quarter of said Section 27 and along said Westerly right-of-way of Larimer County Road No. 16 North 00°28'31" East 1256.77 feet; thence departing said Westerly right-of-way of Larimer County Road No. 16 South 89°31'29" East 30.00 feet, more or less, to a point on the Westerly line of that certain parcel of land as described in Deed recorded at Reception No. 97073349, records of said County; thence along said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 North 00°28'31" East 225.76 feet and again North 51°31'32" East 179.34 feet, more or less, to a point in the Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309, records of said County; thence departing said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 and along said Southerly lines of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 the following nine (9) courses and distances: 1) South 52°15'00" East 24.41 feet; 2) North 89°40'00" East 643.24 feet; 3) North 70°31'30" East 355.66 feet; 4) North 00°00'00" East 368.32 feet; 5) North 57°43'00" West 271.65 feet; 6) North 10°46'00" East 216.89 feet; 7) North 55°40'00" East 210.16 feet; 8) South 73°01'30" East 489.04 feet; 9) South 29°17'30" East 306.32 feet, more or less, to the Northwest corner of Lakeside Terrace Third Addition to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 and along the Westerly line of said Lakeside Terrace Third Addition South 00°13'32" West 1585.18 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; thence departing said Westerly line of said Lakeside Terrace Third Addition and along the Southerly line of said Lakeside Terrace Third Addition South 89°46'28" East 340.00 feet, more or less, to a point on the Westerly line of Lakeside Terrace Estates P.U.D. Second Addition And Subdivision to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of said Lakeside Terrace Third Addition and along the Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision the following five (5) courses and distances: 1) South 00°13'32" West 60.00 feet; 2) South 24°23'19" West 225.78 feet; 3) South 00°13'32" West 180.00 feet; 4) North 89°46'28" West 10.00 feet; 5) South 00°13'32" West 141.99 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; said point also being a point on the Southerly right-of-way line of Larimer County Road No. 16; thence departing said Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision and along said Southerly right-of-way

line of Larimer County Road No. 16 North  $89^{\circ}46'28''$  West 1059.46 feet and again North  $89^{\circ}46'49''$  West 952.37 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16; thence departing said Southerly right-of-way line of Larimer County Road and along said Westerly right-of-way of Larimer County Road No. 16 North  $00^{\circ}28'31''$  East 30.00 feet, more or less, to the TRUE POINT OF BEGINNING.

Containing 82.68 Acres, more or less, and being subject to all easements and/or rights-of-ways now in use or of record.

**FIRST READING:** June 7, 2016

**SECOND READING:** \_\_\_\_\_

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

**AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "WATERS EDGE ADDITION" TO THE CITY OF LOVELAND**

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

**Section 1.** That a Petition for Annexation, together with copies of the map of said territory as required by law, was filed with the City on April 14, 2016, by more than fifty percent (50%) of the owners who own more than fifty percent (50%) of the area of the territory hereinafter described, exclusive of public streets and alleys. The Council, by resolution at its regular meeting on June 7, 2016, found and determined that the proposed annexation complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S. and further determined that an election was not required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S. and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

**Section 2.** That the annexation to the City of Loveland of the following described property to be designated as "**WATERS EDGE ADDITION**" to the City of Loveland, Larimer County, Colorado is hereby approved:

That portion of the South Half of Section 27 and that portion of the North Half of Section 34, all being in Township 5 North, Range 69 West of the 6<sup>th</sup> P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Southeast Quarter of said Section 27 as bearing North 89°46'28" West and with all bearings contained herein relative thereto:

Beginning at the Southwest corner of the Southeast Quarter of said Section 27; thence along the South line of the Southwest Quarter of said Section 27 North 89°46'49" West 952.24 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16 and the TRUE POINT OF BEGINNING; thence departing said South line of the Southwest Quarter of said Section 27 and along said Westerly right-of-way of Larimer County Road No. 16 North 00°28'31" East 1256.77 feet; thence departing said Westerly right-of-way of Larimer County Road No. 16 South 89°31'29" East 30.00 feet, more or less, to a point on the Westerly line of that certain parcel of land as described in Deed recorded at Reception No. 97073349, records of said County; thence along said Westerly line of said certain parcel of land as described in Deed recorded at Reception

No. 97073349 North 00°28'31" East 225.76 feet and again North 51°31'32" East 179.34 feet, more or less, to a point in the Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309, records of said County; thence departing said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 and along said Southerly lines of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 the following nine (9) courses and distances: 1) South 52°15'00" East 24.41 feet; 2) North 89°40'00" East 643.24 feet; 3) North 70°31'30" East 355.66 feet; 4) North 00°00'00" East 368.32 feet; 5) North 57°43'00" West 271.65 feet; 6) North 10°46'00" East 216.89 feet; 7) North 55°40'00" East 210.16 feet; 8) South 73°01'30" East 489.04 feet; 9) South 29°17'30" East 306.32 feet, more or less, to the Northwest corner of Lakeside Terrace Third Addition to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 and along the Westerly line of said Lakeside Terrace Third Addition South 00°13'32" West 1585.18 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; thence departing said Westerly line of said Lakeside Terrace Third Addition and along the Southerly line of said Lakeside Terrace Third Addition South 89°46'28" East 340.00 feet, more or less, to a point on the Westerly line of Lakeside Terrace Estates P.U.D. Second Addition And Subdivision to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of said Lakeside Terrace Third Addition and along the Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision the following five (5) courses and distances: 1) South 00°13'32" West 60.00 feet; 2) South 24°23'19" West 225.78 feet; 3) South 00°13'32" West 180.00 feet; 4) North 89°46'28" West 10.00 feet; 5) South 00°13'32" West 141.99 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; said point also being a point on the Southerly right-of-way line of Larimer County Road No. 16; thence departing said Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision and along said Southerly right-of-way line of Larimer County Road No. 16 North 89°46'28" West 1059.46 feet and again North 89°46'49" West 952.37 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16; thence departing said Southerly right-of-way line of Larimer County Road and along said Westerly right-of-way of Larimer County Road No. 16 North 00°28'31" East 30.00 feet, more or less, to the TRUE POINT OF BEGINNING.

Containing 82.68 Acres, more or less, and being subject to all easements and/or rights-of-ways now in use or of record.

**Section 3.** That the annexation of said territory is subject to the conditions set forth in Paragraph (14) of the Petition for Annexation of said territory filed with the City of Loveland.

**Section 4.** That the annexation of said territory is subject to the conditions set forth in the annexation agreement filed with the City of Loveland.

**Section 5.** That the City Council hereby consents to the inclusion of the annexed territory in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to Section 37-45-136 (3.6), C.R.S.



**Section 6.** Should any court of competent jurisdiction determine that any portion of the land annexed in this ordinance was unlawfully annexed, then it is the intent of the City Council that the remaining land lawfully annexed to the City of Loveland should be so annexed and the City Council affirmatively states that it would have annexed the remaining land even though the court declares the annexation of other portions of the land to have been unlawfully annexed.

**Section 7.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 8.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

ADOPTED the 5<sup>th</sup> day of July, 2016.

ATTEST:

CITY OF LOVELAND, COLORADO:

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

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

APPROVED AS TO FORM:

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

**FIRST READING:** June 7, 2016

**SECOND READING:** \_\_\_\_\_

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

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "WATERS EDGE ADDITION" TO THE CITY OF LOVELAND**

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

**Section 1.** That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the following described property recently annexed to the City of Loveland and within the area known as "WATERS EDGE ADDITION" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

**R1 – DEVELOPING LOW-DENSITY RESIDENTIAL:**

That portion of the South Half of Section 27 and that portion of the North Half of Section 34, all being in Township 5 North, Range 69 West of the 6<sup>th</sup> P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Southeast Quarter of said Section 27 as bearing North 89°46'28" West and with all bearings contained herein relative thereto:

Beginning at the Southwest corner of the Southeast Quarter of said Section 27; thence along the South line of the Southwest Quarter of said Section 27 North 89°46'49" West 952.24 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16 and the TRUE POINT OF BEGINNING; thence departing said South line of the Southwest Quarter of said Section 27 and along said Westerly right-of-way of Larimer County Road No. 16 North 00°28'31" East 1256.77 feet; thence departing said Westerly right-of-way of Larimer County Road No. 16 South 89°31'29" East 30.00 feet, more or less, to a point on the Westerly line of that certain parcel of land as described in Deed recorded at Reception No. 97073349, records of said County; thence along said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 North 00°28'31" East 225.76 feet and again North 51°31'32" East 179.34 feet, more or less, to a point in the Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309, records of said County; thence departing said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 and along said Southerly lines of that certain parcel of land as

described in Deed recorded in Book 1933 at Page 309 the following nine (9) courses and distances: 1) South 52°15'00" East 24.41 feet; 2) North 89°40'00" East 643.24 feet; 3) North 70°31'30" East 355.66 feet; 4) North 00°00'00" East 368.32 feet; 5) North 57°43'00" West 271.65 feet; 6) North 10°46'00" East 216.89 feet; 7) North 55°40'00" East 210.16 feet; 8) South 73°01'30" East 489.04 feet; 9) South 29°17'30" East 306.32 feet, more or less, to the Northwest corner of Lakeside Terrace Third Addition to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 and along the Westerly line of said Lakeside Terrace Third Addition South 00°13'32" West 1585.18 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; thence departing said Westerly line of said Lakeside Terrace Third Addition and along the Southerly line of said Lakeside Terrace Third Addition South 89°46'28" East 340.00 feet, more or less, to a point on the Westerly line of Lakeside Terrace Estates P.U.D. Second Addition And Subdivision to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of said Lakeside Terrace Third Addition and along the Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision the following five (5) courses and distances: 1) South 00°13'32" West 60.00 feet; 2) South 24°23'19" West 225.78 feet; 3) South 00°13'32" West 180.00 feet; 4) North 89°46'28" West 10.00 feet; 5) South 00°13'32" West 141.99 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; said point also being a point on the Southerly right-of-way line of Larimer County Road No. 16; thence departing said Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision and along said Southerly right-of-way line of Larimer County Road No. 16 North 89°46'28" West 1059.46 feet and again North 89°46'49" West 952.37 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16; thence departing said Southerly right-of-way line of Larimer County Road and along said Westerly right-of-way of Larimer County Road No. 16 North 00°28'31" East 30.00 feet, more or less, to the TRUE POINT OF BEGINNING.

Containing 82.68 Acres, more or less, and being subject to all easements and/or rights-of-ways now in use or of record.

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

**Section 3.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

ADOPTED the 5<sup>th</sup> day of July, 2016.

ATTEST:

CITY OF LOVELAND, COLORADO:

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

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

APPROVED AS TO FORM:

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

**ANNEXATION AGREEMENT  
PERTAINING TO THE  
WATERS EDGE ADDITION  
TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between Luxor, LLC, (the "Developer"); and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

**RECITALS**

WHEREAS, the Developer owns +/- 82.68 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property";

WHEREAS, the Developer is requesting that the City annex and zone said Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms of this Agreement without the consent of the Developer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

**AGREEMENT**

1. Consent to annexation. Developer has petitioned for the annexation of the Property described in the attached Exhibit A. The Developer hereby consents to the annexation of the Property subject to the terms of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developer's application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

2. Terms of annexation.

**A. CURRENT PLANNING**

- i. Development of the property shall not exceed a gross density of 3 units per acre, as identified in the Low Density Residential Classification in the Comprehensive Master Plan. This density shall be calculated based on the developable area of the property, excluding environmentally sensitive areas identified in the Environmental Sensitive Areas Report dated December 14, 2015.
- ii. Subsequent development plans and subdivision plats for the property shall include residential design standards to demonstrate compliance with the City's Comprehensive Master Plan and the city policies for creating non-garage dominated streetscapes.
- iii. The streetscape on 28th Street SW shall include a detached meandering sidewalk within a 40 foot landscape bufferyard. Landscaping within the bufferyard shall be consistent with the rural character of the surrounding area, incorporating an informally arranged mix of deciduous and coniferous trees and shrubs with naturalized grasses.
- iv. The concept plan submitted with the annexation proposal is not vested or approved as part of the annexation and zoning of the property.

**B. PARKS AND RECREATION**

- i. This project is adjacent to the future Front Range Regional Trail (former CR 16 ROW on west side being abandoned for trail and utility access). No permanent structures or landscape shall be permitted within this easement without Parks and Recreation permission. The City may allow some permanent landscape improvements if such improvements meet the Parks and Recreation Dept. planting standards. Any improvements or connections to the future trail shall be installed, owned and maintained by the developer.
- ii. Future development plans and subdivision plats shall demonstrate compliance with the findings and recommendations from the submitted Environmentally Sensitive Areas Report (ESAR) dated December 14, 2015.
- iii. Any environmental buffer setbacks resulting from the findings in the Environmentally Sensitive Areas Report shall be located within a separate tract or outlot that will be owned and maintained by the homeowners association.

**C. TRANSPORTATION**

- i. All public street improvements will need to comply with the Larimer County Urban

Area Street Standards. Residential street lengths shall not exceed 660 feet. No dead end streets are permitted. Standards require the development to connect to adjacent developed parcels at exiting street stubs or provide for a future connection to adjacent developable parcels every 1320 feet minimum around the all sides.

#### **D. WATER/WASTEWATER**

- i. With any development plans or subdivision plat the developer shall provide a 25 foot wide utility easement for a future water main at a location as shown in the current water master plan at the time of development.
- ii. With any development plans or subdivision plat the developer shall submit an approvable water and wastewater impact demand analysis that also determines a feasible wastewater solution for the development area.
- iii. With any development plans or subdivision plat the developer shall, unless previously constructed by others, design and construct a wastewater solution for this development.

#### **E. STORMWATER**

- i. Prior to approval of a Final Plat, the Developer shall design the residential lots which abut Ryan Gulch Reservoir such that the minimum abutting rear lot corner elevations are no lower than 5019.28 (NGVD29 datum). In addition, the Developer shall design the residential lots which abut Ryan Gulch Reservoir such that the residential home basement finished floor elevations are no lower than 5020.28 (NGVD 29 datum).

### **GENERAL PROVISIONS**

3. Waiver of Damages. In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.
4. Incorporation. The terms of this Agreement shall be deemed to be incorporated into the Developer's Petition for annexation of the Property.
5. Integration and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard

to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on \_\_\_\_\_, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.

6. Remedies. In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.
7. Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
8. Binding Effect and Recordation. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the Property. The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developer agrees to all promises made by the Developer, which shall constitute equitable servitudes that run with the land.
9. Notices. Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or by mailing same by certified, return receipt requested mail, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City:	City Clerk City of Loveland 500 E. Third Street Loveland, CO 80537
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To Developer:	Luxor, LLC
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1907 Gail Court  
Loveland, CO 80537

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by certified, return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

- 10. Waiver. No waiver by the City or Developer of any term of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
  
- 11. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.
  
- 12. Paragraph or Section Headings. Paragraph or Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**THE CITY OF LOVELAND, COLORADO**

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

**ATTEST:**

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



**EXHIBIT A**  
(legal description)

PROPERTY DESCRIPTION – WATERS EDGE ADDITION

That portion of the South Half of Section 27 and that portion of the North Half of Section 34, all being in Township 5 North, Range 69 West of the 6<sup>th</sup> P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Southeast Quarter of said Section 27 as bearing North 89°46'28" West and with all bearings contained herein relative thereto:

Beginning at the Southwest corner of the Southeast Quarter of said Section 27; thence along the South line of the Southwest Quarter of said Section 27 North 89°46'49" West 952.24 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16 and the TRUE POINT OF BEGINNING; thence departing said South line of the Southwest Quarter of said Section 27 and along said Westerly right-of-way of Larimer County Road No. 16 North 00°28'31" East 1256.77 feet; thence departing said Westerly right-of-way of Larimer County Road No. 16 South 89°31'29" East 30.00 feet, more or less, to a point on the Westerly line of that certain parcel of land as described in Deed recorded at Reception No. 97073349, records of said County; thence along said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 North 00°28'31" East 225.76 feet and again North 51°31'32" East 179.34 feet, more or less, to a point in the Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309, records of said County; thence departing said Westerly line of said certain parcel of land as described in Deed recorded at Reception No. 97073349 and along said Southerly lines of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 the following nine (9) courses and distances: 1) South 52°15'00" East 24.41 feet; 2) North 89°40'00" East 643.24 feet; 3) North 70°31'30" East 355.66 feet; 4) North 00°00'00" East 368.32 feet; 5) North 57°43'00" West 271.65 feet; 6) North 10°46'00" East 216.89 feet; 7) North 55°40'00" East 210.16 feet; 8) South 73°01'30" East 489.04 feet; 9) South 29°17'30" East 306.32 feet, more or less, to the Northwest corner of Lakeside Terrace Third Addition to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of that certain parcel of land as described in Deed recorded in Book 1933 at Page 309 and along the Westerly line of said Lakeside Terrace Third Addition South 00°13'32" West 1585.18 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; thence departing said Westerly line of said Lakeside Terrace Third Addition and along the Southerly line of said Lakeside Terrace Third Addition South 89°46'28" East 340.00 feet, more or less, to a point on the Westerly line of Lakeside Terrace Estates P.U.D. Second Addition And Subdivision to the City of Loveland, County of Larimer, State of Colorado; thence departing said Southerly line of said Lakeside Terrace Third Addition and along the Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision the following five (5) courses and distances: 1) South 00°13'32" West 60.00 feet; 2) South 24°23'19" West

225.78 feet; 3) South  $00^{\circ}13'32''$  West 180.00 feet; 4) North  $89^{\circ}46'28''$  West 10.00 feet; 5) South  $00^{\circ}13'32''$  West 141.99 feet, more or less, to the Southwest corner of said Lakeside Terrace Third Addition; said point also being a point on the Southerly right-of-way line of Larimer County Road No. 16; thence departing said Westerly line of said Lakeside Terrace Estates P.U.D. Second Addition And Subdivision and along said Southerly right-of-way line of Larimer County Road No. 16 North  $89^{\circ}46'28''$  West 1059.46 feet and again North  $89^{\circ}46'49''$  West 952.37 feet, more or less, to a point on the Westerly right-of-way of Larimer County Road No. 16; thence departing said Southerly right-of-way line of Larimer County Road and along said Westerly right-of-way of Larimer County Road No. 16 North  $00^{\circ}28'31''$  East 30.00 feet, more or less, to the TRUE POINT OF BEGINNING.

Containing 82.68 Acres, more or less, and being subject to all easements and/or rights-of-ways now in use or of record.



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

500 East Third Street, Suite 310 • Loveland, CO 80537  
 (970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

**MEMORANDUM**

**TO:** City Council

**FROM:** Kerri Burchett, Principal Planner

**DATE:** June 7, 2016

**RE:** Waters Edge Addition Annexation and Zoning

**I. EXHIBITS**

1. Staff power point presentation
2. Planning Commission resolution
3. Planning Commission minutes dated May 9, 2016
4. Exhibit from Planning Commission (3 photographs)
5. Planning Commission staff report, including:
  - A. Narrative provided by the Applicant
  - B. Rezoning Assessment provided by the Applicant
  - C. Chapter 18.12 R1-Developing Low Density Residential
  - D. Notes/questions from the Neighborhood Meeting recorded by The Birdsall Group
  - E. Excerpt from Environmental Sensitive Areas Report
  - F. Letter from the Open Lands Advisory Commission
  - G. Information provided by the Surrounding Property Owners:
    1. Neighborhood Agenda Outline
      - a. Proposal by Lakeside Terrace HOAs
      - b. Photographs of wildlife
      - c. Top concerns to keep property as open space
      - d. Petition requesting the City to purchase the property as open space
    2. Email from Rhonda Koons
  - H. Annexation Map
  - I. Rezoning Map

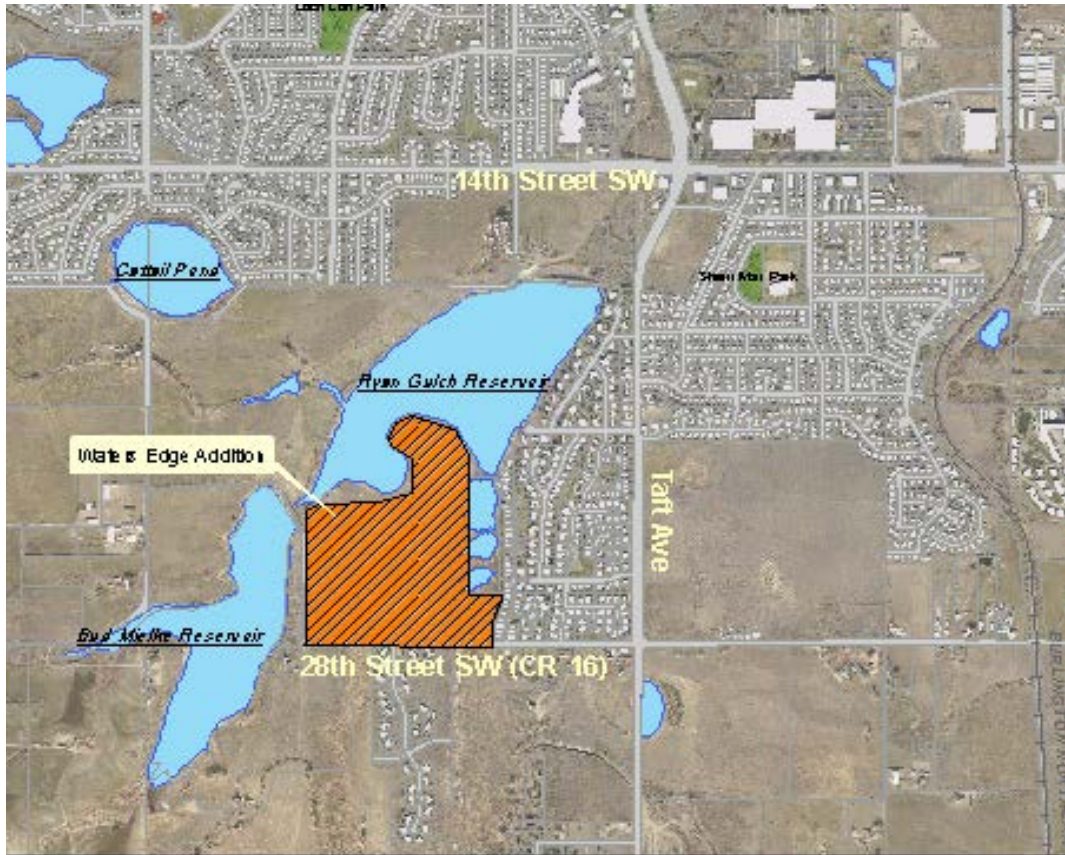
## II. EXECUTIVE SUMMARY

### A. Project Description

The City Council public hearing is to consider an annexation and zoning of 82.68 acres located north of 28<sup>th</sup> Street SW, south of Ryans Gulch Reservoir and directly west of the Lakeside Terrace Estates neighborhoods (see vicinity map below and neighborhood map on page 5). The requested zoning is R1-Developing Low Density Residential. This zoning aligns with both the City’s Comprehensive Master Plan and the proposed Create Loveland Master Plan. Both documents designate the site as Low Density Residential with a target density of 2-4 units per acre.

The annexation and zoning request for the Waters Edge Addition is the first of three steps in developing a residential subdivision in the City. Annexation requires findings of compliance with State Statutes regarding contiguity, an intent to develop at an urban level and an indication that the property can be served with infrastructure. Additionally, annexations are subject to compliance with the Intergovernmental Agreement with Larimer County which requires the annexation of eligible properties located within the City’s Growth Management Area. Subdivision design and traffic and infrastructure studies are not required with an annexation and zoning request. These studies are performed with the second planning step, which is the preliminary subdivision plat. A neighborhood meeting and a public hearing with the Planning Commission are required for preliminary subdivision plat approval. For additional information on the development steps, please refer to the Planning Commission staff report included as Exhibit 5 to this memorandum.

### Vicinity Map





While a subdivision design and traffic and infrastructure studies have not been completed for the Waters Edge property, a conceptual plan has been included below that shows an illustrative concept for the development. The plan identifies lot size ranges from 7,000 to 22,000 square feet, two access points from 28<sup>th</sup> Street SW and an emergency access drive connecting to McKenzie Drive. These general access locations comply with the City's standards. The conceptual plan also identifies wetland areas in green that were described in the environmentally sensitive report that was provided by the applicant (see **Attachment E**). The concept plan is for illustrative purposes only and is not part of the annexation and zoning approval.

### Conceptual Plan



### Regionally Preserved Open Space

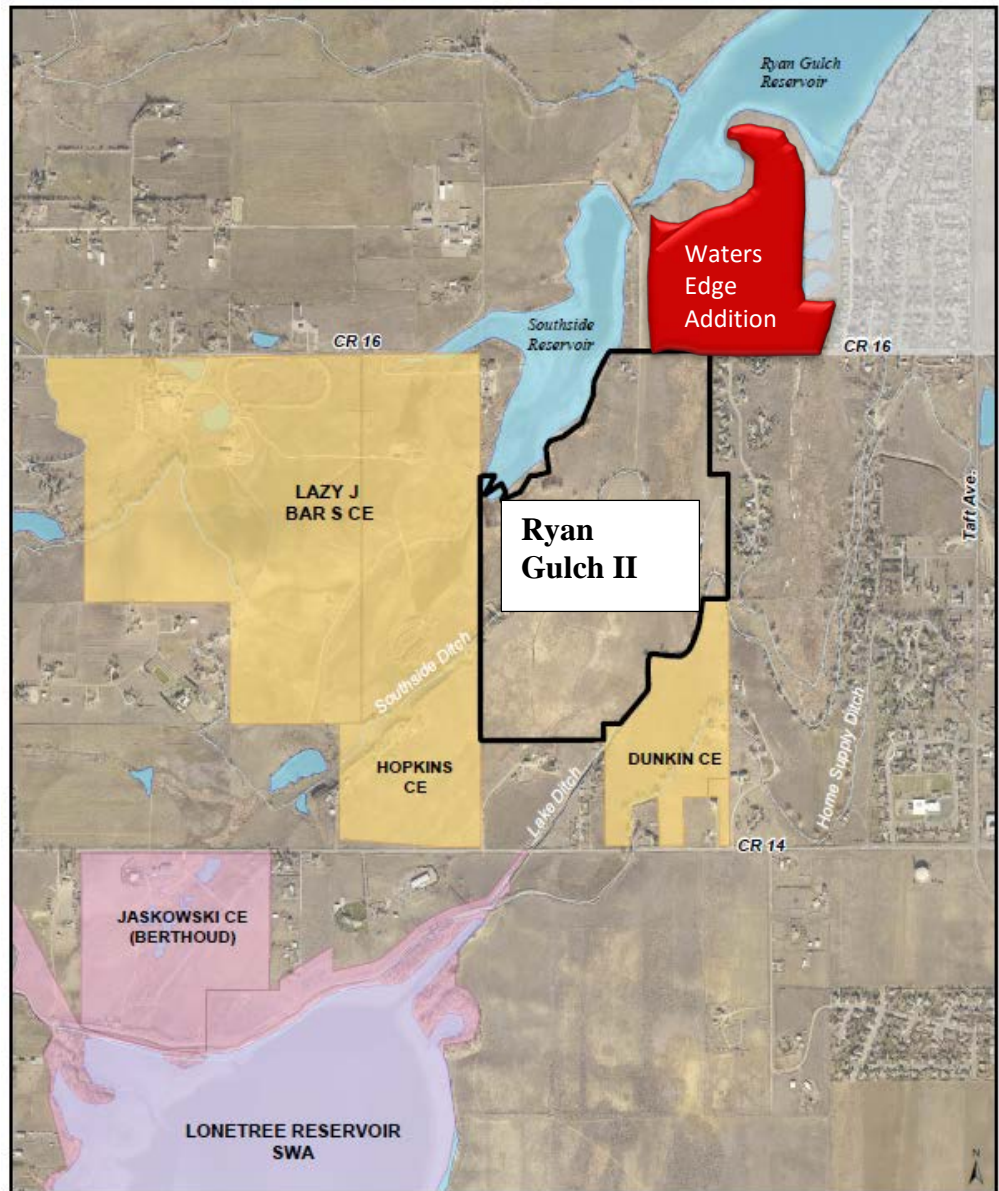
A key concern raised by the neighborhood is the loss of open space and habitat areas with the development of the Waters Edge property. In the surrounding area, efforts have been made to purchase conservation easements to preserve valuable regional open space. The below map shows properties that have been designated as open space through permanent conservation easements purchased by the City, Larimer County and Town of Berthoud. This includes the following:

- Ryan Gulch II: 185 acres funded by Loveland, Larimer County & Berthoud
- Lazy J Bar S: 326 acres funded by Loveland, Larimer County, Berthoud & GOCO
- Hopkins: 60 acres funded by Loveland & Larimer County
- Dunkin: 52 acres funded by Loveland, Larimer County & Berthoud
- Jaskowski: 80 acres donated to Berthoud; conservation easement held by Colorado Open Lands

### Regional Open Space

The Ryan Gulch II open space area was originally owned by Luxor LLC, the owners of the Waters Edge Addition. The 185 acres was a desired location for a regional trail connection and was rated as a high wildlife area with a documented Golden Eagle nest. This site was purchased in January of 2016 as a joint preservation effort between the City of Loveland, Larimer County and the Town of Berthoud. The purchase price was \$2,950,000 and of that amount, the City contributed \$2,475,000.

In selecting and purchasing the Ryan Gulch II open space, the City's Open Lands Advisory Commission (OLAC) also reviewed and evaluated the Waters Edge property over the last several years. More recently, OLAC reviewed the property in March of this year as requested by the surrounding neighbors.





Wildlife ratings, property cost and trail connectivity are all factors of consideration in selecting priority sites for preservation and determining projects that work within the Open Lands budget. The Commission did not select the Waters Edge property to pursue as an open space acquisition. A letter from OLAC is included as **Attachment F** to this report. A petition from the neighborhood requesting that the City, County and/or State purchase the property for open space is included as **Attachment G.1.d**.

**B. Public Outreach and Planning Commission Hearing**

1. **Neighborhood Meeting:** A neighborhood meeting was held at 6:00 p.m. on March 24, 2016 at the Calvary United Reformed Church on 14<sup>th</sup> Street SW. The meeting was attended by 82 neighbors and interested parties along with City staff and consultants. At the meeting, there were concerns voiced regarding development of the property. The concerns focused on accesses to the development being only from 28<sup>th</sup> Street SW, traffic on 28<sup>th</sup> Street SW and cut-thru traffic in Lakeside Terrace Estates, loss of habitat and views, loss of the rural character of the area and concern over declining property values. The Lakeside Terrace Estates developments, adjacent to the east, were developed without sidewalks and residents were concerned about pedestrian and vehicular conflicts. Many of the questions at the meeting focused on specific development of the property and staff explained that if annexed, there would be another neighborhood meeting and Planning Commission public hearing to consider the design and development of the subdivision.

**Surrounding Neighborhoods**



At the neighborhood meeting, there was also a strong desire from residents to have the City, County and/or State purchase the property for open space preservation. A petition signed by 172 residents was submitted requesting that the property be purchased for open space. The petition is included as **Attachment G.1.d**. As previously stated, the City's Open Lands Advisory Commission considered the Waters Edge Addition property several times, however did not select the property for open space acquisition. A letter from the Commission is included as **Attachment F**.

Lastly, staff received comments from the neighborhood requesting that the City deny the annexation. If the annexation is denied, per the Intergovernmental Agreement with the County, the applicant can request to develop the property in the County and connect to City infrastructure services. If developed in the County under a Planned Land Division, the County would permit a gross density of 2 units per acre, which could be clustered to preserve the environmentally sensitive areas. Rob Helmick, Senior Planner for the County, also indicated that as the property lies within the City's Growth Management Area, the County would also look towards the City's Comprehensive Plan to determine appropriate densities should the property not be annexed.

Neighborhood questions from the neighborhood meeting are included as **Attachment D** and additional information provided by the neighborhood after the meeting is included as **Attachment G** to this report.

- 2. Planning Commission Public Hearing:** The Planning Commission held a public hearing regarding the proposal on May 9, 2016. Fourteen neighborhood residents spoke at the hearing and several of the speakers represented the Lakeside Terrace Estate neighborhoods. Concerns over density, traffic and loss of wildlife areas were voiced. Residents in the neighborhoods are requesting that the property be purchased by the City for open space.

The Planning Commissioners voted 4-1 to recommend approval of the annexation and zoning. The Commission believed that the property should be annexed into the City however several Commissioners expressed concerns over the traffic and site visibility at the Taft Avenue and 28<sup>th</sup> Street SW intersection. A traffic study will be submitted and reviewed with a subdivision application, which is the next step of development. Discussion also occurred on the acquisition priorities of the Open Lands Advisory Commission, how properties were selected for acquisition and the Open Lands budget. The Planning Commission approved a resolution at their May 23, 2016 meeting recommending that City Council consider the Waters Edge property for open space acquisition. The resolution is included as **Exhibit B** and the minutes from the May 9, 2016 public hearing are included as **Exhibit C** to this staff memorandum.

### III. RECOMMENDED CONDITIONS

The following conditions are recommended by City Staff and the Planning Commission.

#### Planning

1. Development of the property shall not exceed a gross density of 3 units per acre, as identified in the Low Density Residential Classification in the Comprehensive Master Plan. This density shall be calculated based on the developable area of the property, excluding environmentally sensitive areas identified in the Environmental Sensitive Areas Report dated December 14, 2015.
2. Subsequent development plans and subdivision plats for the property shall include residential design standards to demonstrate compliance with the City's Comprehensive Master Plan and the city policies for creating non-garage dominated streetscapes.
3. The streetscape on 28th Street SW shall include a detached meandering sidewalk within a 40 foot landscape bufferyard. Landscaping within the bufferyard shall be consistent with the rural character of the surrounding area, incorporating an informally arranged mix of deciduous and coniferous trees and shrubs with naturalized grasses.
4. The concept plan submitted with the annexation proposal is not vested or approved as part of the annexation and zoning of the property.

#### Parks and Recreation

5. This project is adjacent to the future Front Range Regional Trail (former CR 16 ROW on west side being abandoned for trail and utility access). No permanent structures or landscape shall be permitted within this easement without Parks and Recreation permission. The City may allow some permanent landscape improvements if such improvements meet the Parks and Recreation Dept. planting standards. Any improvements or connections to the future trail shall be installed, owned and maintained by the developer.
6. Future development plans and subdivision plats shall demonstrate compliance with the findings and recommendations from the submitted Environmentally Sensitive Areas Report (ESAR) dated December 14, 2015.
7. Any environmental buffer setbacks resulting from the findings in the Environmentally Sensitive Areas Report shall be located within a separate tract or outlot that will be owned and maintained by the homeowners association.

#### Transportation Development Review

8. All public street improvements will need to comply with the Larimer County Urban Area Street Standards. Residential street lengths shall not exceed 660 feet. No dead end streets are permitted. Standards require the development to connect to adjacent developed parcels at exiting street stubs or provide for a future connection to adjacent developable parcels every 1320 feet minimum around the all sides.

Water/Wastewater

9. With any development plans or subdivision plat the developer shall provide a 25 foot wide utility easement for a future water main at a location as shown in the current water master plan at the time of development.
10. With any development plans or subdivision plat the developer shall submit an approvable water and wastewater impact demand analysis that also determines a feasible wastewater solution for the development area.
11. With any development plans or subdivision plat the developer shall, unless previously constructed by others, design and construct a wastewater solution for this development.

Stormwater

12. Prior to approval of a Final Plat, the Developer shall design the residential lots which abut Ryan Gulch Reservoir such that the minimum abutting rear lot corner elevations are no lower than 5019.28 (NGVD29 datum). In addition, the Developer shall design the residential lots which abut Ryan Gulch Reservoir such that the residential home basement finished floor elevations are no lower than 5020.28 (NGVD 29 datum).

**AGENDA ITEM:** 23  
**MEETING DATE:** 06/072016  
**TO:** City Council  
**FROM:** The Youth Advisory Commission  
**PRESENTER:** Youth Advisory Commission Representatives




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**TITLE:**

**Option 1. An Ordinance Amending Chapter 7.40 Of The Loveland Municipal Code To Address The Use Of Electronic Smoking Devices In Indoor Areas Within City Owned Facilities**

**Option 2. An Ordinance Amending Sections 7.40.020 And 7.40.030 Of The Loveland Municipal Code To Address The Use Of Electronic Smoking Devices In Public Places**

**RECOMMENDED CITY COUNCIL ACTION:**

Hold a public hearing and adopt an ordinance on first reading.

**OPTIONS:**

1. Adopt the Youth Advisory Commission Ordinance which would treat all emissions from electronic smoking devices the same as conventional tobacco smoke and deny the Council Directed Ordinance only prohibiting emissions from electronic smoking devices in City buildings.
2. Adopt the Council Directed Ordinance only prohibiting emissions from electronic smoking devices in City buildings and deny the Youth Advisory Commission Ordinance which would treat all emissions from electronic smoking devices the same as conventional tobacco smoke.
3. Deny the action in total. (Electronic smoking devices are not regulated by City ordinance).
4. Adopt a modified action.
5. Refer back to staff for further development and consideration. (No timing issues or impacts if referred back to staff other than the ordinary departure of Youth Advisory Commission Members.)

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**SUMMARY:**

This is a legislative item providing two alternative and mutually exclusive ordinances to prohibit the use of electronic smoking devices in public places. The Youth Advisory Commission Ordinance seeks to treat all emissions from electronic smoking devices the same as conventional tobacco smoke and the Council Directed Ordinance seeks to prohibit emissions from electronic smoking devices only within City buildings.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

The Youth Advisory Commission ("YAC") participated in a study session on April 12<sup>th</sup>, 2016 and made several recommendations to City Council. The YAC is bringing forth a proposed ordinance to treat the smoke or aerosol from electronic smoking devices in the same manner as conventional tobacco smoke. The proposed Council Directed Ordinance stems from guidance the City Council

provided during new business on May 3<sup>rd</sup>, 2016 to prohibit the smoking of electronic smoking devices inside City buildings notwithstanding action from the YAC.

### **Electronic Smoking Devices:**

Electronic smoking devices are not currently regulated within the city. The Youth Advisory proposal adds electronic smoking devices to the smoking ordinance banning their use from all areas where conventional smoking is prohibited. This includes bars, restaurants, workplaces, outdoor dining areas, bar patios, and transit facilities. The Food and Drug Administration (FDA) recently promulgated sweeping new rules and for the first time to extend federal regulatory authority to electronic smoking devices and accessories. These rules affect the manufacturing rather than the use of products. Manufacturers have up to 3 years to come into compliance so the ruling will not have an immediate effect on producers or retailers. Local governments continue to have authority to add these products to local smoking ordinances. These new rules are highlighted as follows:

- Retailers of electronic smoking devices and accessories are prohibited from selling to minors. Retailers are also required to check photo identification if the purchaser appears to be below the age of twenty six years of age.
- Producers of electronic smoking devices and accessories must place health warnings on certain items manufactured by producers.
- Producers of electronic smoking devices and accessories will be subject to inspection from the FDA, will be prohibited from providing free samples, and will be prohibited from marketing products as “light” or “mild” without FDA permission.
- Producers of electronic smoking devices and accessories must register with the FDA, provide the FDA with a detailed accounting of the product ingredients, and disclose their manufacturing process.

Electronic cigarettes or vaporizers are devices that vaporize and deliver to the lungs of the user a chemical mixture composed of nicotine, propylene glycol and other chemicals. Some e-devices are offered without nicotine, and some are offered in candy or fruit flavors that can be attractive to youth. A recent testing of vape shop e-juice samples in Utah showed that among products advertised as having no nicotine in them, 61% had nicotine levels over the 10% variance the American E-Liquids Manufacturing Association has set. These variances and trace amounts of nicotine were also found in other studies that tested e-liquids. Colorado Department of Health and Environment is conducting similar tests on e-liquids, but results are not yet available. When users inhale, a battery operated vaporizer heats a liquid solution into a vapor. E-devices are also being used with highly concentrated marijuana oil or wax, and may provide a discreet way of using marijuana in public settings. While vapor from electronic devices likely contain fewer toxins and carcinogens than those found in traditional tobacco smoke, this alone does not mean that breathing e-cigarette vapor is “safe.”

Preliminary studies on secondhand emissions are showing that users not only ingest but also emit toxins and harmful ultrafine and fine particles, posing potential health risks to those nearby. Although the long-term effects of electronic smoking devices require further study, the FDA has found that some devices contain toxins and carcinogens and has expressed concerns about their safety. Use of electronic devices and vaporizers, particularly in places where conventional smoking is prohibited, may interfere with smokers’ attempts to quit by making it easier for them to maintain their nicotine addiction. Children and youth who experiment with electronic devices may become addicted to nicotine and ultimately switch to smoking cigarettes. Even small amounts of liquid nicotine used in refillable devices can be poisonous to children.

The use of electronic smoking devices may be visually similar to the smoking of cigarettes, and has already been observed in locations where smoking is prohibited, creating concern and confusion. The use of electronic smoking devices where smoking is prohibited may increase the

social acceptability and appeal of smoking, particularly for youth. Several state and local governments have decided to regulate the use of electronic smoking devices:

- Connecticut, Delaware, Hawaii, Maine, Oregon, Utah, New Jersey, and North Dakota - passed legislation prohibiting e-cigarettes wherever regular smoking is banned.
- 10 States (including Colorado) - passed legislation regulating e-cigarette use in certain places such as school property and State workplaces.
- Nationally, at least 470 municipalities (including large metropolitan cities like New York and Chicago) include e-cigarettes in their local smoking ordinances.
- In Colorado 12 municipalities have included e-cigarettes in local smoking ordinances (see Policy Brief).

At least 10 national public health organizations, including the American Medical Association, have recommended that electronic smoking devices be added to local smoking ordinances.

The Larimer County Department of Health and Environment worked with the City of Loveland to distribute a survey to Loveland residents to ask whether they supported restricted use of electronic smoking devices in public places. The survey was open from January to April and there were 377 responses. 83% of non-users of electronic smoking devices were supportive of the YAC policy and 62% of all those taking the survey supported the policy. In addition a YAC business owner survey was completed by 34 businesses and 79% of these showed support. By combining the results of these two surveys, 66% of all surveyed were supportive of the YAC ordinance proposal.

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**REVIEWED BY ACTING CITY MANAGER:**




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**LIST OF ATTACHMENTS:**

1. Ordinance – Option 1 City Owned Facilities
2. Ordinance – Option 2 Public Places
3. Attachment A: The Youth Advisory Commission Ordinance.  
Attachment B: The City Council Directed Ordinance.  
Attachment C: YAC Power Point Presentation.  
Attachment D: Business Opinion Survey.  
Attachment E: Policy Brief.  
Attachment F: Library Board Letter of Support.  
Attachment G: Parks and Recreation Letter of Support.  
Attachment H: Cultural Services Board Letter of Support.  
Attachment I: Larimer County Board of Health Letter of Support.  
Attachment J: CanDo (UCHealth) Letter of Support.  
Attachment K: Healthy Hearts (UCHealth) Letter of Support.  
Attachment L: Summitstone Health Partners Letter of Support.  
Attachment M: Colorado Tobacco Free Alliance Letter of Support.  
Attachment N: Americans for Nonsmokers' Rights Letter of Support.



**FIRST READING: June 7, 2016**

**SECOND READING: \_\_\_\_\_**

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

**AN ORDINANCE AMENDING CHAPTER 7.40 OF THE LOVELAND MUNICIPAL CODE TO ADDRESS THE USE OF ELECTRONIC SMOKING DEVICES IN INDOOR AREAS WITHIN CITY OWNED FACILITIES**

**WHEREAS**, Chapter 7.40 of the Loveland Municipal Code prohibits conventional smoking for indoor areas owned by the City of Loveland; and

**WHEREAS**, electronic smoking devices are not regulated within the Loveland Municipal Code; and

**WHEREAS**, although electronic smoking devices do not contain conventional tobacco, users of such devices inhale vaporized or aerosolized liquid nicotine or other liquids created by heat through an electronic ignition system and exhaled in a manner that simulates conventional smoking; and

**WHEREAS**, the City Council previously found and determined by adoption of Ordinance No. 5161 in 2006 that smoking in areas which are used by, or open to the public, may adversely affect the public’s health, safety, and welfare; and

**WHEREAS**, City Council determines that it is in the best interest of Loveland residents with respect to their health, safety, and welfare that Chapter 7.40 be amended as set forth below.

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

**Section 1.** That Chapter 7.40 of the Loveland Municipal Code is hereby amended as follows:

**7.40.035 Specific Smoking Restrictions for City Owned Property.**

In order to reduce the levels of exposure to environmental tobacco smoke, smoke or aerosol generated from electronic smoking devices, and second hand smoke, smoking shall not be permitted and no person shall smoke in any indoor area of any property belonging to the City of Loveland or within fifteen (15) feet from any entry way of any property belonging to the City of Loveland. For purposes of this section, “smoking” shall mean the act of burning, heating, or activation of any device, including, but not limited to, a cigarette, cigar, pipe, hookah, or electronic smoking device, electronic cigarette, vape pen, e-hookah or similar device by any other product name or descriptor, that results in the release of smoke, vapors or aerosol when the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.



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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**FIRST READING: June 7, 2016**

**SECOND READING: \_\_\_\_\_**

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

**AN ORDINANCE AMENDING SECTIONS 7.40.020 AND 7.40.030 OF THE LOVELAND MUNICIPAL CODE TO ADDRESS THE USE OF ELECTRONIC SMOKING DEVICES IN PUBLIC PLACES**

**WHEREAS**, Chapter 7.40 of the Loveland Municipal Code prohibits conventional smoking in public places; and

**WHEREAS**, electronic smoking devices are not regulated within the Loveland Municipal Code; and

**WHEREAS**, although electronic smoking devices do not contain conventional tobacco, users of such devices inhale vaporized or aerosolized liquid nicotine or other liquids created by heat through an electronic ignition system and exhaled in a manner that simulates conventional smoking; and

**WHEREAS**, the United States Food and Drug Administration conducted laboratory tests on numerous brands of electronic smoking devices and found that, in addition to nicotine, they contain toxic chemicals and carcinogens; and

**WHEREAS**, the City Council previously found and determined by adoption of Ordinance No. 5161 in 2006 that smoking in areas which are used by, or open to the public, may adversely affect the public’s health, safety, and welfare; and

**WHEREAS**, concerns regarding the health impacts of secondhand and thirdhand smoke continues to rise among the citizens of Loveland; and

**WHEREAS**, the use of electronic smoking devices in public places and in places of employment complicates enforcement of the laws governing conventional smoking in public places; and

**WHEREAS**, City Council determines that it is in the best interest of Loveland residents with respect to their health, safety, and welfare that Sections 7.40.020 and 7.40.030 be amended as set forth below.

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

**Section 1.** That Sections 7.40.020 and 7.40.030 of the Loveland Municipal Code are hereby amended as follows:

**7.40.020 Definitions.**

As used in this chapter, the following words and terms shall be defined as follows, unless the context requires otherwise:

A. “Airport smoking concession” means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.

B. “Auditorium” means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

C. “Bar” means any indoor area that is operated and licensed under article 47 of title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

D. “Cigar-tobacco bar” means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar” and shall not thereafter be included in the definition regardless of sales figures.

EF-F. “Electronic Smoking Device” means any device that can be used to deliver nicotine or any other substance to the person inhaling from such device, including, but not limited to, e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs or any other similar product by any other name or descriptor. An electronic smoking device includes any component, part or accessory of such device whether or not sold separately, regardless of nicotine content or any other substance intended to be vaporized or aerosolized during the use of the device.

EF. 1. “Employees” means any person who:

a. performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

b. provides uncompensated work or services to a business or nonprofit entity.

2. “Employee” includes every person described in paragraph (1) of this subsection E, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

GF. “Employer” means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. “Employer” includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

HG. “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under Section 7.40.040. “Entryway” also includes the area of public or private property within a fifteen (15) foot radius outside of the doorway.

IH. “Environmental tobacco smoke,” “ETS,” or “secondhand smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product or electronic

smoking device, also known as “sidestream smoke,” and smoke or aerosol exhaled by the smoker.

J. “Food service establishment” means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

K. “Indoor area” means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

L. “Marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.

M. “Person” means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

N. “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

O. “Public building” means any building owned or operated by:

1. the state, including the legislative, executive, and judicial branches of state government;
2. any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or
3. any other separate corporate instrumentality or unit of state or local government.

P. “Public meeting” means any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of this state.

Q. “Smoke-free work area” means an indoor area in a place of employment where smoking is prohibited under this chapter.

~~R. “Smoking” means “Smoke” means the release of gasses, particles, vapors or aerosols into the air from burning, heating, or activation of any device, including, but not limited to, a cigarette, electronic smoking device, e-cigarette, e-hookahs or any other product by name or descriptor when the apparent or usual purpose of burning, heating, or activation of the device is human inhalation.~~

~~the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco including, without limitation, marijuana-~~

~~S. “Smoking” means the act of burning, heating, activation, or carrying of any device, including, but not limited to, a cigarette, cigar, pipe, hookah, or electronic smoking device, electronic cigarette, vape pen, e-hookah or similar device by any other product name or descriptor, that results in the release of smoke, vapors or aerosol when the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.~~

T. “Tobacco” means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse

scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, electronic smoking device or otherwise, or both for chewing and smoking. “Tobacco” also includes cloves, marijuana, and any other plant matter or product that is packaged for smoking.

US. “Tobacco business” means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

VF. “Work area” means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer. (Ord. 5839 § 2, 2013)

#### **7.40.030 General Smoking Restrictions.**

A. Except as provided in Section 7.40.040 and in order to reduce the levels of exposure to environmental tobacco smoke, smoke or aerosol generated from electronic smoking devices, and second-hand smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

1. Public meeting places;
2. Elevators;
3. Government-owned or -operated means of mass transportation, including, but not limited to, buses, vans, and trains;
4. Taxicabs and limousines;
5. Grocery stores;
6. Gymnasiums;
7. Jury waiting and deliberation rooms;
8. Courtrooms;
9. Child day care facilities;
10. Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
11.
  - a. Any place of employment that is not exempted.
  - b. In the case of employers who own facilities otherwise exempted from this chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.
12. Food service establishments;
13. Bars;
14. Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
15. Indoor sports arenas;
16. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;

- 17. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;
  - 18. Bowling alleys;
  - 19. Billiard or pool halls;
  - 20. Facilities in which games of chance are conducted;
  - 21. The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
  - 22. Public buildings;
  - 23. Auditoria;
  - 24. Theaters;
  - 25. Museums;
  - 26. Libraries;
  - 27. To the extent not otherwise provided in C.R.S. § 25-14-103.5, public and nonpublic schools;
  - 28. Other educational and vocational institutions; and
  - 29. The entryways of all buildings and facilities listed in paragraphs (1) to (28) of this subsection A.
- B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age must be accompanied by a parent or guardian."

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

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

# E-cigarettes/Vaporizers in Public Places



Megan Valliere & Michael Selbert

# Recap

During the April 12, 2016 Study Session, the Youth Advisory Commission recommended that electronic smoking devices (ESDs) be added to the current smoking ordinance. This would prohibit the use of ESDs where traditional cigarettes are not allowed.



# Since April 12th

“On May 5, 2016 the FDA announced that it would be extending its authority to all tobacco products including e-cigarettes, cigars, hookah tobacco and pipe tobacco.” - FDA News Release

YAC held an open house on May 2nd to gather opinions from the public and to educate the community.



# Council Comments to address:

Research

Non-nicotine products and other ingredients

Balancing rights (users, non-users, businesses etc.)

Unintended consequences

# Advertising and Cessation

E-cigarettes are often advertised on TV, social media, and radio as a healthy alternative to cigarettes or as a cessation method.<sup>1</sup>

“E-cigarette users were no more likely to have quit 1 year later than nonusers.”<sup>2</sup>

“No significant change in the number of conventional cigarettes smoked per day between the



# Dual Use

“...dual use will have much smaller beneficial effects on overall survival compared with quitting smoking completely.”<sup>3</sup>

“...use of ENDS will not significantly decrease smoking-attributable disease and mortality even if the full theoretical risk reduction potential of ENDS were to be realized.”<sup>3</sup>

# Harmful Aerosol

The American Society for Heating, Refrigerating, and Air-Conditioning Engineers  
Journal calculations<sup>4</sup>

Presence of heavy metals and carcinogens in e-cigarette aerosol<sup>2,3,4,5,6</sup>

Short-term exposure to ENDS aerosol<sup>3</sup>

# UK Review Article

UK Review claims that e-cigarette usage is 95% safer than traditional tobacco.

Criticism of review by Center for Tobacco Control Research and Education

The lack of evidence gathered in the report makes it difficult to validate the findings.

# Other Countries, States, and Municipalities

39 countries have implemented “comprehensive advertising, promotion and sponsorship bans on ENDS”<sup>3</sup>

30 countries prohibit indoor use of ENDS<sup>3</sup>

19 countries require premarket review on ENDS<sup>3</sup>

3 states prohibit the use of ENDS in smoke-free, indoor environments<sup>2</sup>

524 municipalities regulate ENDS in some form<sup>7</sup>

## Vape-free Policies in CO



Source: CBS News 4 Denver, Americans for Nonsmokers' Rights

# Non-nicotine devices

Not Regulated = no quality control for conclusive evidence

Other ingredients (safe for eating but not studied for inhaling)

Burning of flavorings

Other drugs such as marijuana

Devices may be indistinguishable

Perception to youth





# Balancing Rights

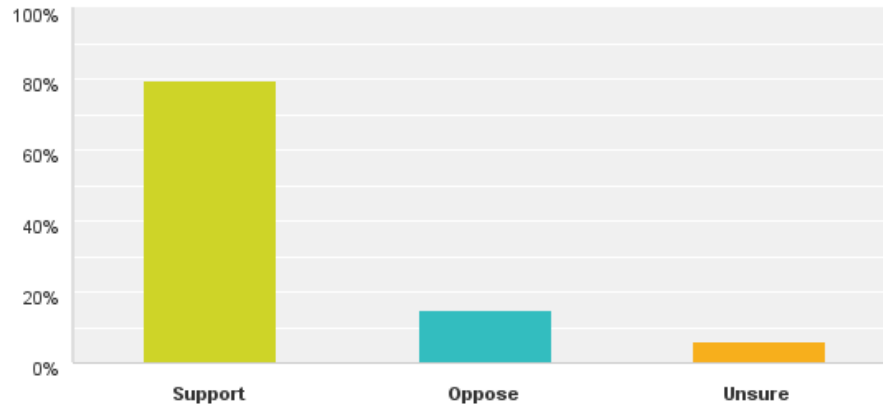
- Not a full ban on devices, just in certain areas open to the public
- Clean air rights vs. choice to use product
- 5% of the public are e-cigarette users<sup>8</sup>
- 85% of surveyed non-users support this policy<sup>8</sup>
- 79% of local residents support a ban on e-cigarettes in public places



# Survey of Local Business Owners and Managers

**Q3 Would you support or oppose a city ordinance prohibiting the use of e-cigarette/vaporizer in all indoor areas open to the public similar to the way traditional smoking is prohibited in Loveland?**

Answered: 34 Skipped: 0



# Why a city wide policy?

More clear to public, especially youth

Protect employees

Provide law for business to refer to

Signage and education

Protecting standard for clean air

May be “safer”, but not safe



# Unintended Consequences

## Users wanting to quit

Can still do so but limited where

7 Approved FDA quit methods that have been clinically studied for safety

Research is insufficient to recommend ESDs for quitting

## Vape Shops

Excluded in ordinance draft language

Quit aids are intended to reduce use rates over time

## Technology that reduces risk?

# Letters of Support

Library Board

Parks and Recreation Commission

Cultural Services Board

Larimer County Board of Health

CanDo

Healthy Hearts

SummitStone Health System

Colorado Tobacco Free Alliance

# References

- 1) *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012. Web.
- 2) Grana, Rachel, PhD, MPH; Neal Benowitz, MD; and Stanton A. Glantz, PhD. "Contemporary Reviews in Cardiovascular Medicine E-Cigarettes A Scientific Review." *American Heart Association Journals*. American Heart Association, 2014. Web. 19 May 2016.
- 3) World Health Organization. "Electronic Nicotine Delivery Systems." Conference of the Parties to the WHO Framework Convention on Tobacco Control 6 (2014): 1-13. <[http://apps.who.int/gb/fctc/PDF/cop6/FCTC\\_COP6\\_10-en.pdf](http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10-en.pdf)>.
- 4) Offermann, Francis J, P.E., CIH. "The Hazards of E-Cigarettes." *ASHRAE Journal* (2014). *ASHRAE.org*. ASHRAE Journal, June 2014. Web. 19 May 2016.
- 5) Soule, Erik K., Sarah F. Maloney, Tory R. Spindle, Alyssa K. Rudy, Marzena M. Hiler, and Caroline O. Cobb. "Electronic Cigarette Use and Indoor Air Quality in a Natural Setting." *TobaccoControl.BMJ.com*. Tobacco Control, 15 Feb. 2015. Web. 19 May 2016.
- 6) Durmowicz, Elizabeth L., Susan F. Rudy, and Li-Iun Chen. "Electronic Cigarettes: Analysis of FDA Adverse Experience Reports in Non-users." *TobaccoControl.BMJ.com*. Group.bmj.com, 23 Apr. 2015. Web. 19 May 2016.
- 7) CBS News 4 Denver; American for Nonsmokers' Rights
- 8) Previous TobacNo Survey

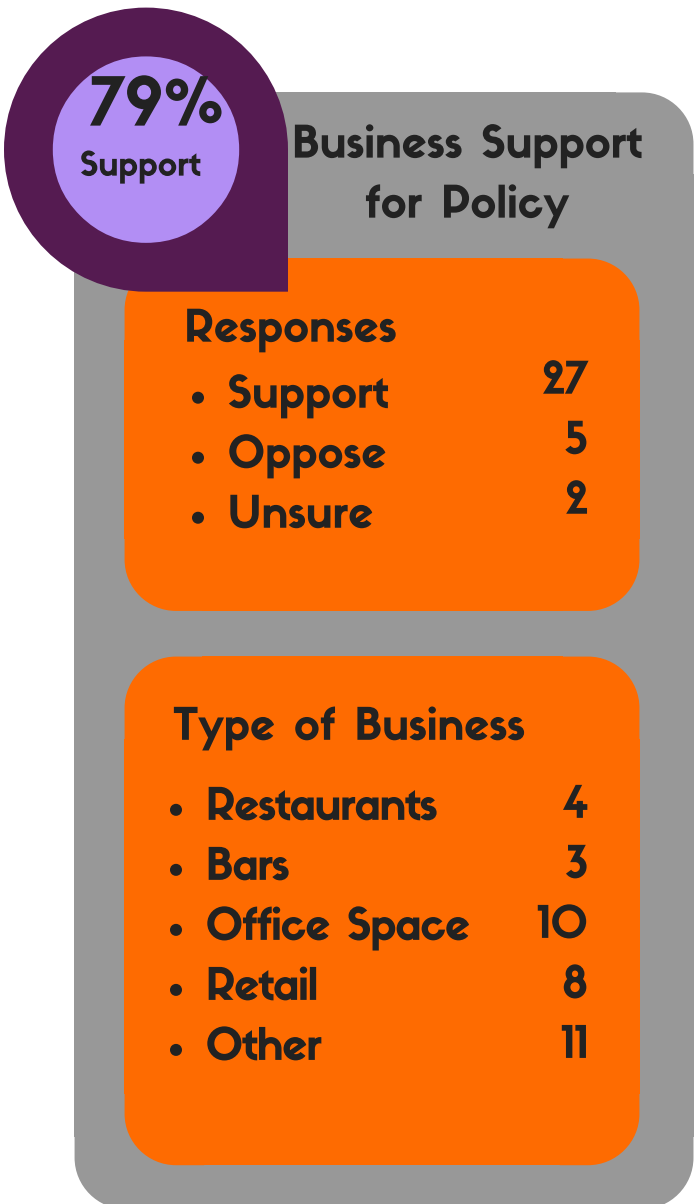
# Question & Answer

Thank You!

# Business Opinion Survey Loveland Colorado

## E-cigarettes and Vaporizers

This survey is in response to City Council's concern about the Loveland business community's support for adding e-cigarettes and vaporizers to Loveland's smoking ordinance. The City of Loveland Youth Advisory Commission (YAC) and Larimer County Department of Health and Environment (LCDHE) in partnership with Loveland Chamber of Commerce and Loveland Downtown Partnership distributed an online, voluntary, and anonymous survey of Loveland business owners/managers. 34 businesses responded.



4 out of 5

**Businesses Support the Policy**

“

"Let's do it yesterday!"

"...this is a very valuable issue. We applaud the Youth Advisor Commission for initiating this action.

- 2 Loveland Business Opinion Survey Respondents

”



# Electronic Cigarettes and Vaporizers in Public Places

March 2016

Loveland Policy Brief

***E-cigarettes and vaping devices are battery-operated products that can deliver nicotine, flavor or other chemicals through an aerosol inhaled by the user and exhaled into the environment.***

(See factsheets from the Center for Disease Control (CDC) and the American Academy of Pediatrics (AAP) for details.)

## Electronic Smoking Devices - A Problem In Public Places

### Secondhand Exposure & Health

Exhaled aerosol from Electronic Smoking Devices (ESDs) may contain nicotine, toxins and cancer causing chemicals that are released into the air and can cause respiratory issues.<sup>1</sup> Many e-liquid flavorings, while approved for ingestion, have not been studied for harmful effects on the lungs or upper airway tissue. Safe when ingested in normal doses does not mean safe when inhaled.<sup>2</sup> There is **no safe level of nicotine** exposure for pregnant women, infants, children or adolescents.<sup>3</sup> Exposure to nicotine is harmful to adolescent brain development and may increase vulnerability to addiction.<sup>1</sup>

### Smoking Enforcement Concerns

The use of ESDs may make it difficult for employers, business owners and officials to enforce existing smoke-free air laws under the Colorado Clean Indoor Air Act (CCIAA). ESDs used for marijuana and nicotine are indistinguishable and may be discretely used in public areas.

### Social Norms

According to the CDC, designated smoke-free public areas are proven strategy for reducing tobacco use rates. In Larimer County adult smoking rates have decreased from 19% in 1995 to 11% in 2013.<sup>4</sup> Additionally, only 9% for youth in Larimer County are current smokers.<sup>5</sup> However, use of electronic products is increasing and public use creates a norm that tobacco and nicotine use is acceptable.<sup>6</sup>



***"Using electronic products in clean air environments may result in population harm if use of the product enforces the act of smoking as socially acceptable, and if use undermines the effects of smoke-free policies on quitting smoking."***

Grana,R; Benowitz, N; Glantz, S. "Background Paper on E-cigarettes," Center for Tobacco Control Research and Education, University of California, San Francisco and WHO Collaborating Center on Tobacco Control, December 2013

1. "Electronic Nicotine Delivery Systems". SECTION ON TOBACCO CONTROL. American Academy of Pediatrics. Nov 2015. 136 (5) 1018-1026; DOI: 10.1542/peds.2015-3222

2. "E-cigarettes and Electronic Nicotine Delivery Systems." American Academy of Pediatrics; Julius B. Richmond Center for Excellence, n.d. Print.

3. "Electronic Nicotine Delivery Systems: Key Facts." Center for Disease Control and Prevention. Office on Smoking and Health, n.d. Print.

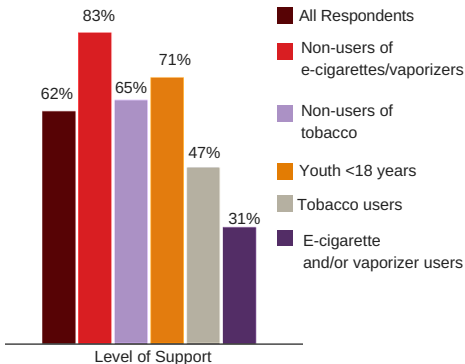
4. Health District of Northern Larimer County. Community Health Survey. 2013. Raw data. Larimer County.

5. Colorado Health and Environmental Data (CHED). Health Kids Colorado Survey. 2013. Web. 29 Mar. 2016.

6. "Electronic Nicotine Delivery Systems Key Facts Info-graphic | Open Data | Centers for Disease Control and Prevention." Socrata. N.p., n.d. Web. 29 Mar. 2016.

## From 2016 Loveland Public Opinion Survey

Do you support or oppose prohibiting the use of e-cigarettes/vaporizers inside places like restaurants, bars, workplaces or other buildings open to the public?



## National Health Organizations that support restrictions on ESDs

- American Medical Association (AMA)
- American Heart Association (AHA)
- American Lung Association (ALA)
- National Association of City and County Health Officials (NACCHO)
- American Association for Cancer Research
- American Society of Clinical Oncology
- Campaign for Tobacco Free Kids
- American Academy of Pediatrics
- American Public Health Association
- National Institute for Occupational Safety and Health (NIOSH)

“Vapor devices/e-cigarettes emit harmful chemicals into the air and need to be regulated in the same manner as tobacco smoking.”

American Society of Heating Refrigeration and Air Conditioning Engineers, 2014 Annual Report

## CO Vape-free Communities



Source Credit: CBS News 4 Denver

## Local Policy Recommendations

The current Smoking In Public Places policy in Loveland meets the minimum standards of the Colorado Clean Indoor Act. These standards are: No smoking in workplaces, bars and restaurants, public buildings, and no smoking 15 feet form main entryways. To strengthen Loveland’s current policy:

Restrict use of ESDs in **ALL** public settings in Loveland where traditional smoking is prohibited.

**LOVELAND PUBLIC LIBRARY**

Civic Center • 300 N Adams • Loveland, Colorado 80537  
(970) 962-2665 • FAX (970) 962-2905  
[www.lovelandpubliclibrary.org](http://www.lovelandpubliclibrary.org)

April 26, 2016

Loveland City Council  
500 E. Third Street  
Loveland, CO 80537

Dear City of Loveland Mayor, Council Members and Manager:

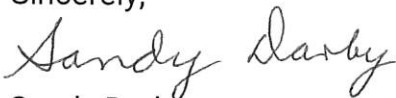
The Loveland Library Board supports the Loveland Youth Commission's (YAC) recent recommendation of adding electronic smoking devices to the City of Loveland smoking ordinance.

In the most recent update of library policies approved by the City Council in September 2015, the Library added e-cigarettes and vaping to the list of banned tobacco use and smoking in the library. This decision was based on problems with vaping in the library, concern for the public (especially youth) being exposed nicotine and other chemicals in the aerosol, and the desire to maintain a healthy environment during library use. We also wanted to prevent potential marijuana vaping in the library.

To protect the health of the public and to maintain a non-smoking norm for youth, we agree that there should be no use of electronic smoking devices (e-cigarettes and vaporizers) in ALL buildings and businesses open to the public in Loveland. The YAC has expressed concern about this issue and has presented additional information to the Council about why restricting these products in public places is important. Their research has shown that there are too many potentially harmful impacts of these devices on users and bystanders to allow them in areas accessed by the public.

Thank you for considering the input of the Library Board as you deliberate the use of electronic smoking devices in the City of Loveland.

Sincerely,



Sandy Darby  
Library Board Chairperson

May 14, 2016

City of Loveland  
Youth Advisory Commission  
500 E. 3<sup>rd</sup> Street  
Loveland, CO 80537

To the members of the Youth Advisory Commission,

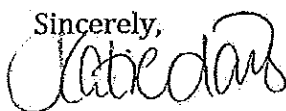
The Parks and Recreation Commission supports the Youth Advisory Commission's efforts to add Electronic Smoking Devices to Loveland's existing Smoking in Public Places Policy.

At our monthly meeting on Thursday, May 12, 2016, Loveland Assistant City Attorney Vincent Junglas and Christa Timmerman of the Larimer County Department of Health and Environment gave a presentation pertaining to the use of Electronic Cigarettes and Vaporizers. Secondhand exposure to electronic smoking and the possibility of negative health consequences were discussed.

Included in the discussion was input by the Parks & Recreation (P&R) staff regarding the issues of e-smokers at various P&R facilities. This included use of e-cigarettes and vaporizers at the Chilson Recreation Center. The P&R staff has witnessed e-smoking inside the Recreation Center.

After a question and answer session, a vote was taken and the motion to support the YAC's attempt to restrict the use of Electronic Smoking Devices in all public settings in Loveland where traditional smoking is prohibited was approved 6-1.

We appreciate the Youth Advisory Commission for asking the Parks and Recreation Commission for our input. We wish you well in your endeavor.

Sincerely,  


Katie Davis  
Vice-Chair, Parks & Recreation Commission

*Cultural Services Board  
City of Loveland*

*April 28, 2016*

*City of Loveland  
Youth Advisory Commission  
500 E 3rd Street  
Loveland, Colorado 80537*

*Members of the Youth Advisory Commission (YAC):*

*The Cultural Services Board (CSB) wishes to thank Loveland City Assistant Attorney Vincent Junglas and Christa Timmerman of the Larimer County Department of Health and Environment for their presentation at our April 26th board meeting and also for the opportunity to ask questions about the YAC's proposal to add electronic cigarettes and vaporizers to existing city policy concerning smoking in public places.*

*Having listened to the April 26th presentation, and having reviewed literature from the American Academy of Pediatrics, the CSB concurs with the concerns expressed by the YAC in their presentation to Loveland City Council on April 12, 2016. There is documented evidence in support of banning electronic cigarettes and vaporizers from public places. Adding these devices to the existing city policy will promote the health and safety of our citizens.*

*Last but not least, kudos to the YAC for taking a stand on an issue important to health and safety in Loveland. Mayor Gutierrez said of you that the future of Loveland "is in good hands". The Cultural Services Board agrees.*

*Sincerely,*

A handwritten signature in black ink that reads "Juanita Cisneros". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

*Juanita Cisneros, Chairperson of the City of Loveland Cultural Services Board*

Larimer County Board of Health  
Resolution on use of Electronic Smoking Devices

- Whereas, nicotine poses dangers to pregnant women and fetuses, children and adolescents and youth use of nicotine in any form, including Electronic Smoking Devices (ENDs) is unsafe
- Whereas most adult ENDS users also smoke conventional cigarettes, which is referred to as “dual use”
- Whereas, youth use of ENDS continues to rise rapidly in the U.S
- Whereas, ENDS aerosol is not harmless water vapor and is not as safe as clean air
- Whereas, given the currently available evidence on ENDS, several policy levels are appropriate to protect public health

**Therefore, The Larimer County Board of Health:**

**--encourages elected officials of the City of Loveland to prohibit the use of ENDS in the same indoor areas where traditional cigarettes are prohibited under the Colorado Clean Indoor Air Act (workplaces, bars & restaurants, other business, and 15 feet from major entryways)**

Dated this 21th day of April, 2016 on behalf of the Larimer County Board of Health

---

N. Mark Richards, M.D., M.P.H, Board of Health President



# UCHealth

## CanDo

May 2, 2016

Loveland City Council

500 E. Third Street

Loveland, CO 80537

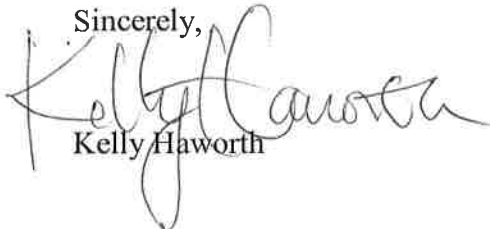
Dear Loveland City Council and City Manager,

On behalf of CanDo I am writing you to support the Loveland Youth Advisory Commission's (YAC) recommendation to add electronic smoking devices (ESD) to the current ordinance regarding smoking in indoor public places. CanDo supports measures that promote healthy communities and the physical environments in which we live, work, and play hold a significant role in shaping our health. Clean air environments reduce the risk of chronic conditions and create a social norm that tobacco/nicotine use and secondhand exposure is not acceptable.

Although electronic smoking devices do not produce the same chemicals as traditional cigarette smoking, the aerosol is not harmless to the user or to bystanders and may contain varying levels of nicotine and other chemicals.<sup>1</sup> We are especially concerned about secondhand exposure to youth, pregnant women, and people with chronic respiratory issues like asthma and chronic obstructive pulmonary disease (COPD) who may be effected by the exhaled aerosol.

Given the potential threat to lung health and the health of at-risk populations, CanDo supports the YAC recommendation to prohibit use of ESD's in all indoor areas open to the public and places of employment.

Sincerely,



Kelly Haworth

Reference:

1. <http://www.cdc.gov/tobacco/stateandcommunity/pdfs/ends-key-facts2015.pdf>



## HEALTHY HEARTS

May 2, 2016

Loveland City Council:

Healthy Hearts is an education and cholesterol screening program for elementary, middle and high school students sponsored by UCHealth. Our purpose is to educate students and their families about cardiac health and heart disease and to promote heart-healthy lifestyles.

Heart disease will take more lives than any other cause of death in the United States. Smoking/nicotine products are the number one risk factor for heart disease. The negative effects of involuntary second- and third-hand nicotine, ENDS solution and aerosol exposure are well-documented by the American Academy of Pediatrics and the American Heart Association. In addition, the rate of young people using ENDS products has increased substantially over the past few years, is highly addictive and often leads to traditional cigarette use.

Healthy Hearts data collected on e-cigarettes in Larimer County since 2012 show:

- e-cigarette use is rising among middle and high school students which is consistent with national trends
- more high school students report using e-cigarettes (9.6%) than cigarettes (7.4%)
- out of the 16.9% of high school students that use marijuana, 12.4% use it in an e-cigarette
- 32% of high school, 24% of middle school, and 18% of elementary students are exposed to 2<sup>nd</sup> hand smoke
- average age to try an e-cigarette has dropped from 14.7 to 13.9
- users on average consistently engage in 2 less healthy behaviors than non-users which can set back our efforts of creating a healthier community

A disturbing trend that Healthy Hearts has observed in the past couple years is that elementary students often cannot differentiate between cigarettes and e-cigarettes in advertisements and now report that e-cigarettes must be “good for you” since they are seen everywhere.

Elementary, middle and high school students state that e-cigarettes must be healthy since it is “just a vapor” and not “real smoke”. Our educators spend time dispelling myths on what is the vapor (a non-regulated aerosol which is the suspension of fine particles in gas) and what are the potential dangers of an e-cigarette (short term increased heart rate and blood pressure which can ultimately increase your risk for heart disease, and increased particulate inhalation that can cause respiratory conditions such as asthma).




Healthy Hearts agrees with the American Academy of Pediatrics and the American Heart Association when they state that 50 years of anti-smoking efforts are disappearing as young children are exposed to e-cigarettes in public and in marketing campaigns. The normalization of smoking is demonstrated in the stories shared. One elementary child reported how much fun she has picking out her mother's e-cigarette flavors. Another child reported that he would never smoke but, of course, would try an e-cigarette "maybe once a week" when he was in high school since it was considered healthy.

As a result of our local data, reputable national recommendations, and student feedback, Healthy Hearts supports programs and policies that aim to reduce the exposure of youth to ENDS including measures to limit use in public places. Healthy hearts mission is to reduce heart disease and believes that e-cigarettes are dangerous because they:

- target young people
- can keep people hooked on nicotine
- threaten to 're-normalize' tobacco use
- produce an aerosol that may contain harmful chemicals including nicotine and heavy metals

I sincerely hope you consider supporting efforts to protect the public's health.



**NaNet Puccetti, MPH, MHSA**

Supervisor – Healthy Hearts Program | Research

UCHealth Northern Colorado

2500 Rocky Mountain Ave., SMOB Ste. 360

Loveland, CO 80538

p: 970.624.5298

[nanet.puccetti@uchealth.org](mailto:nanet.puccetti@uchealth.org)

[uchealth.org](http://uchealth.org)



May 23, 2016

Loveland City Council  
500 East Third Street, Suite 330  
Loveland, CO 80537

Dear Mayor and Council,

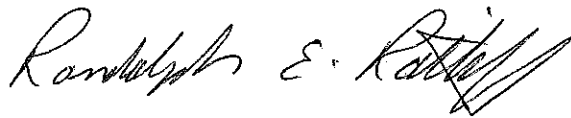
I am contacting you to support the proposal from the Loveland Youth Advisory Commission to add indoor e-cigarette use and vaping to the City of Loveland's smoking ordinance.

As one of the major health systems in Loveland, we feel that use of these products is unsafe for many reasons:

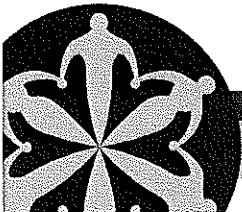
- Nicotine use and nicotine exposure are not safe for children or pregnant women; nicotine in any form is hazardous to brain development
- Secondhand aerosols from the devices can be inhaled by others and we do not have enough research to show that the aerosol is safe
- The use of e-cigarettes and vaping is rising rapidly among youth
- These devices may contain marijuana as well as nicotine
- Many users of electronic smoking devices still use conventional cigarettes and they are not a proven method for quitting
- Several national organizations including the American Medical Association and the American Academy of Pediatrics recommend that electronic devices be included in smoking ordinances.

SummitStone Health Partners encourages elected officials of the City of Loveland to prohibit the use of Electronic Smoking Devices in the same areas where traditional cigarettes are prohibited under the Colorado Clean Indoor Air Act, including workplaces, bars, restaurants, and other businesses, and within 15 feet of major entryways. Thank you for receiving input from SummitStone Health Partners on this health related proposal.

Sincerely,



Randolph E. Ratliff  
Chief Executive Officer



# COLORADO TOBACCO FREE ALLIANCE

**Americans for  
Nonsmokers' Rights**



May 17, 2016

Dear Mayor and City Council,

We are writing to support your proposed ordinance that would prohibit the use of electronic smoking devices in indoor places that are smoke-free under state law. We represent the Colorado Tobacco Free Alliance, a coalition of statewide health organizations that includes the American Cancer Society: Cancer Action Network, American Lung Association in Colorado, Campaign for Tobacco Free Kids, American Heart Association, Americans for Nonsmokers' Rights, and the Group to Alleviate Smoking Pollution. We have been working on smoke-free policies in Colorado for several decades as a means of protecting public health.

**American Cancer  
Society: Cancer Action  
Network**



**American Heart  
Association**



We would urge you to include all indoor public places, including tobacco retailers and vapor shops, in your smoke and aerosol free proposal to protect all employees, and those who visit such establishments from breathing toxic air particles. All employees deserve the right to breathe clean indoor air.

Communities throughout the state have been working to include electronic smoking devices in their smoke-free law and several have expanded their laws to address additional public places like parks, playgrounds, and open space.

**American Lung  
Association in Colorado**



Smoke-free policies have been proven to protect the health of workers and others, help reduce youth and adult tobacco use, and do not cause negative economic harm to a community. Studies from both Greeley and Pueblo Colorado found heart attack admissions dropped 27% and 41% respectively following the passage of their smoke-free laws. In addition to the health benefits, comprehensive smoke-free laws provide a level playing field for all businesses and facilitate enforcement by removing any confusion as to who is supposed to comply with the law.

**Campaign for Tobacco  
Free Kids**



E-cigarettes and vaporization devices are not approved smoking cessation devices. Nicotine and other toxic substances have been found in exhaled e-cigarette aerosol. And we know some products also can contain tobacco and conceal marijuana use. Your policy will complement the recently announced FDA regulations of e-cigarettes, which do not address their use in public places.

**Group to Alleviate  
Smoking Pollution**



We support your proposed ordinance and appreciate your work to improve the health of Loveland residents, workers and visitors.

Respectfully,

**Healthier Colorado**



*Jodi Radke*

Jodi Radke

Regional Director, Campaign for Tobacco-Free Kids

Loveland resident and a member of the leadership of the Colorado Tobacco Free Alliance

[jradke@tobaccofreekids.org](mailto:jradke@tobaccofreekids.org)

# ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

May 10, 2016

Loveland City Council  
500 East Third Street, Suite 330  
Loveland, CO 80537

Cc: Loveland Youth Commission

Dear Honorable Loveland City Council Members,

On behalf of our members, Americans for Nonsmokers' Rights encourages the Loveland City Council to support the current policy proposal from the Youth Advisory Commission to add electronic smoking devices to the smokefree ordinance. The proposed policy would prohibit the use of electronic smoking devices (ESDs) in smokefree venues, where people may be exposed to the secondhand aerosol they emit.

E-cigarette industry proponents, including tobacco companies, often lobby to allow use of their products inside smokefree environments. Their goal is not public health, but rather to maximize profits by enabling product consumption inside otherwise smokefree environments. E-cigarette proponents may claim that the chemical aerosol emitted by these products is completely harmless and only contains "water vapor" but it's worth noting that water typically isn't an ingredient in these products.

**More than 470 localities and 8 states now specifically prohibit the use of e-cigarettes and other vaping devices in all smokefree spaces, and it is now a standard component of smokefree indoor air laws.**

Research shows that e-cigarettes and vaping devices can produce high levels of harmful ultra-fine particles that can irritate or damage the respiratory system. These products produce a dense visible aerosol of liquid sub-micron droplets consisting of glycols, nicotine, volatile organic compounds, and carcinogens (e.g., formaldehyde, metals like cadmium, lead, & nickel, and nitrosamines). So while some may believe the product is "safer" than a conventional cigarette, the use of and exposure to e-cigarettes certainly isn't harmless or risk-free (see attached fact sheet). Even substances that might be safe for eating have not been tested for safety as a heated, inhaled aerosol.

While FDA now has the authority to regulate marketing and ingredients in e-cigs, it does not have the authority to regulate where these products can be used; therefore, it is critical that Loveland City Council adopts rules about including ESD's in Loveland's smokefree law to protect the public from exposure to the secondhand aerosol.

Regardless of the debate of whether these products serve a role in cessation, there is simply no need to use them inside shared air spaces (such as workplaces and public places) where others are then subject to the hazardous secondhand emissions. Just like traditional cigarettes, e-cigarettes should be used in ways that don't impact the health of others.

Loveland should follow the recommendations of experts such as the National Institute for Occupational Safety and Health (NIOSH); the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE); the World Health Organization (WHO); the American Industrial Hygiene Association; and other health and safety organizations that **recommend that electronic smoking devices should not be used inside smokefree spaces.**

**Non-users exposed to secondhand emissions from e-cigarettes show levels of cotinine (a biomarker for nicotine exposure) in their system.** There is also evidence of third-hand exposure from the residue the aerosol leaves behind on surfaces in an area where these products have been used.

Loveland has the opportunity to protect public health from exposure to secondhand smoke and secondhand aerosol. We have enough science to make an intelligent decision that secondhand aerosol is not harmless and that it is a new source of air pollution that contains ultrafine particles, toxicants, and carcinogens.

**Given these facts, Americans for Nonsmokers' Rights urges the Loveland City Council to support the current proposal to prohibit the use of electronic smoking devices in all public places and workplaces, at all times, without exception.**

Thank you for your leadership and desire to make Loveland the best place to live, work, and visit. Please feel free to contact me at 510-841-3045 if you have any questions, comments, or feedback.

Sincerely,



Cynthia Hallett, MPH  
Executive Director

Attachments: Electronic Cigarettes and Secondhand Aerosol fact sheet  
List of Cities and States with e-cigarette laws

*Americans for Nonsmokers' Rights is a national, member-based, not-for-profit organization based in Berkeley, CA that is dedicated to helping nonsmokers breathe smokefree air since 1976.*

## Electronic Smoking Devices and Secondhand Aerosol

Electronic smoking devices (or ESDs), which are often called **e-cigarettes**, heat and vaporize a solution that typically contains nicotine. The devices are metal or plastic tubes that contain a cartridge filled with a liquid that is vaporized by a battery-powered heating element. The aerosol is inhaled by the user when they draw on the device, as they would a regular tobacco cigarette, and the user exhales the aerosol into the environment.

*"If you are around somebody who is using e-cigarettes, you are breathing an aerosol of exhaled nicotine, ultra-fine particles, volatile organic compounds, and other toxins."* Dr. Stanton Glantz, Director for the Center for Tobacco Control Research and Education at the University of California, San Francisco.

### Current Legislative Landscape

- As of April 2, 2015, **354 municipalities and three states include electronic smoking devices** as products that are prohibited from use in smokefree environments.

### Constituents of Secondhand Aerosol

Electronic smoking devices (ESDs) do not just emit "harmless water vapor." **Secondhand aerosol (incorrectly called vapor by the industry) from ESDs contains nicotine, ultrafine particles and low levels of toxins** that are known to cause cancer.

- ESD aerosol is made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.<sup>1</sup>
- Exposure to fine and ultrafine particles may exacerbate respiratory ailments like asthma, and constrict arteries which could trigger a heart attack.<sup>2</sup>
- ESD aerosol particles are smaller than 1000 nanometers, which is a similar size to tobacco smoke and diesel engine smoke, and bystanders can be exposed to this aerosol. "The exact size distribution depends on the chemical composition of the electronic cigarette liquid, the e-cigarette device operation, and user vaping preferences."<sup>3</sup>
- At least 10 chemicals identified in ESD aerosol are on California's Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986. The compounds that have already been identified in mainstream (MS) or secondhand (SS) ESD aerosol include: **Acetaldehyde (MS), Benzene (SS), Cadmium (MS), Formaldehyde (MS,SS), Isoprene (SS), Lead (MS), Nickel (MS), Nicotine (MS, SS), N-Nitrosornicotine (MS, SS), Toluene (MS, SS)**.<sup>4,5</sup>
- **ESDs contain and emit propylene glycol**, a chemical that is used as a base in ESD solution and is one of the primary components in the aerosol emitted by ESDs.
  - Short term exposure causes eye, throat, and airway irritation.<sup>6</sup>
- Long term inhalation exposure can result in children developing asthma.<sup>7</sup> Even though propylene glycol is FDA approved for use in some products, the inhalation of vaporized nicotine in propylene glycol is not. Some studies show that heating propylene glycol changes its chemical composition, producing small amounts of propylene oxide, a known carcinogen.<sup>8</sup>

- There are **metals in ESD aerosol, including chromium, nickel, and tin nanoparticles.**<sup>9</sup>
- FDA scientists found detectable levels of carcinogenic tobacco-specific nitrosamines in ESD aerosol.<sup>10</sup>
- People exposed to ESD aerosol absorb nicotine (measured as cotinine), with one study showing levels comparable to passive smokers.<sup>11</sup>
- **Diethylene Glycol**, a poisonous organic compound, was also detected in ESD aerosol.<sup>12</sup>
- **Exhaled ESD aerosol contained propylene glycol, glycerol, flavorings, and nicotine, along with acetone, formaldehyde, acetaldehyde, propanal, diacetyl, and triacetyl.**<sup>13</sup>
- Many of the elements identified in the aerosol are known to **cause respiratory distress and disease.** The aerosol contained particles >1 µm comprised of tin, silver, iron, nickel, aluminum, and silicate and nanoparticles (<100 nm) of tin, chromium and nickel. The concentrations of nine of eleven elements in ESD aerosol were higher than or equal to the corresponding concentrations in conventional cigarette smoke.<sup>14</sup>
- ESDs cause exposure to different chemicals than found in conventional cigarettes and there is a need for risk evaluation for both primary and passive exposure to the aerosol in smokers and nonsmokers.<sup>15</sup>
- Short term use of ESD has been shown to increase respiratory resistance and impair lung function, which may result in difficulty breathing.<sup>16</sup>
- The first study to look at exposure to aerosol from ESDs in real-use conditions found that non-smokers who were exposed to conventional cigarette smoke and ESD aerosol absorbed similar levels of nicotine.<sup>17</sup>
- The “E-cigarettes do not produce a vapor (gas), but rather a dense visible aerosol of liquid sub-micron droplets consisting of glycols, nicotine, and other chemicals, some of which are carcinogenic (e.g., formaldehyde, metals like cadmium, lead, & nickel, and nitrosamines).” ASHRAE concluded that ESDs emit harmful chemicals into the air and need to be regulated in the same manner as tobacco smoking.<sup>18</sup>
- ESD aerosol is a source of high doses of particles being deposited in the human respiratory system.<sup>19</sup>
- ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings—especially cinnamon—are show increased oxidative stress and inflammatory responses.<sup>20</sup>
- Concentrations of formaldehyde are higher than concentrations of nicotine in some samples of ESD aerosol. Formaldehyde is created when propylene glycol and glycerol are heated to temperatures reached by commercially available ESDs operating at high voltage.<sup>21</sup>
- Flavorings are a largely unrecognized potential hazard of ESDs. Diacetyl and acetyl propionyl are present in many sweet-flavored ESDs, and are approved by the FDA for food use (ingestion), but are not evaluated and approved for heating and inhalation, and are associated with respiratory disease when inhaled.<sup>22</sup> High doses of diacetyl, used to flavor buttered popcorn, have been shown to cause acute-onset bronchiolitis obliterans, a severe and irreversible obstructive lung disease when inhaled by workers exposed to particulate aerosolized flavorings containing diacetyl.<sup>23</sup> Therefore, these chemicals cannot be deemed “generally recognized as safe” for inhalation.

- There is a risk of thirdhand exposure to nicotine released from ESD aerosol that deposits on indoor surfaces.<sup>24</sup>
- Overall, ESDs are a new source of **Volatile Organic Compounds (VOCs) and ultrafine/fine particles in the indoor environment**, thus resulting in “passive vaping.”<sup>25</sup>
- The World Health Organization (WHO) recommends that ESDs not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.<sup>26</sup>
- The American Industrial Hygiene Association (AIHA) also recommends that ESDs be included in smokefree laws: **“Because e-cigarettes are a potential source of pollutants (such as airborne nicotine, flavorings, and thermal degradation products), their use in the indoor environment should be restricted, consistent with current smoking bans, until and unless research documents that they will not significantly increase the risk of adverse health effects to room occupants.”**<sup>27</sup>
- The American Public Health Association adopted a resolution, “Supporting Regulation of Electronic Cigarettes,” that outlines seven action steps including, “States and municipalities [should] enact and enforce laws...prohibiting the use of e-cigarettes in all enclosed areas of public access and places of employment. These standards should be incorporated into existing clean indoor air laws.”<sup>28</sup>
- The American Association for Cancer Research and the American Society of Clinical Oncology supports prohibiting the use of ESDs in smokefree spaces until the safety of second- and thirdhand aerosol exposure is established.<sup>29</sup>

**ESD aerosol is a new source of pollution and toxins being emitted into the environment.** We do not know the long-term health effects of ESD use and although the industry marketing of the product implies that these products are harmless, the aerosol that ESD emit is not purely water vapor.

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**AGENDA ITEM:** 24  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Tami Yellico, City Attorney's Office  
**PRESENTER:** Tami Yellico, City Attorney




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**TITLE:**  
**Motion to go into Executive Session related to personnel matters concerning the performance, pay, and benefits of the Municipal Judge**

**RECOMMENDED CITY COUNCIL ACTION:**

If Council chooses, to go into an Executive Session for the purpose of discussing personnel matters concerning the performance, pay, and benefits of the Municipal Judge. After the Executive Session, Council may give direction to staff regarding future Council actions.

**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.

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**SUMMARY:**

This is an administrative action. The purpose of the Executive Session is to discuss personnel matters concerning the performance, pay, and benefits of the Municipal Judge.

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

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**BACKGROUND:**

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

None

**AGENDA ITEM:** 25  
**MEETING DATE:** 6/7/2016  
**TO:** City Council  
**FROM:** Julia Holland, Human Resources  
**PRESENTER:** Julia Holland, Human Resources

**TITLE:**

**Discussion/Determination Of The Annual Performance Evaluation Process For City Manager, City Attorney, And Presiding Municipal Judge And Possible Executive Session To Discuss Personnel Matters, Including Performance, Salary, And Benefits Of The City Manager, The City Attorney, And The Municipal Judge As Allowed By As Authorized By § 24-6-402(4)(F) Of The Colorado Revised Statutes And Municipal Charter Section 4-4(C)(5).**

**RECOMMENDED CITY COUNCIL ACTION:**

1. Give direction to staff for the conduct of annual evaluations for the Council's direct reports
2. If necessary, adopt a motion for an executive session.

**OPTIONS:**

1. Give direction to staff, in open session.
2. Convene an executive session, and then give direction in open session.
3. Take no action (results in no direction for evaluations)
4. Refer back to staff for further development and consideration.

**SUMMARY:**

This is an administrative action to discuss/determine the evaluation process for the City Manager, City Attorney and Presiding Municipal Judge for 2015 performance and a possible executive session to discuss personnel matters, including performance, salary, and benefits of the City Manager, the City Attorney, and the Municipal Judge as authorized by § 24-6-402(4)(f) of the Colorado Revised Statutes and Charter Section 4-4(c)(5).

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

This is an administrative action to discuss/determine the 2016 performance evaluation process and for a possible executive session.

**REVIEWED BY CITY MANAGER:**

*William D. Cavill*

**LIST OF ATTACHMENTS:**

None