



## AGENDA

TUESDAY, AUGUST 16, 2016

5:00 PM - Dinner - City Manager's Conference Room

6:00 PM LOVELAND CITY COUNCIL MEETING

CITY COUNCIL CHAMBERS

500 EAST THIRD STREET

LOVELAND, COLORADO

### NOTICE OF NON-DISCRIMINATION

It is the policy of the City of Loveland to provide equal services, programs and activities without regard to race, color, national origin, creed, religion, sex, disability, or age and without regard to the exercise of rights guaranteed by state or federal law. It is the policy of the City of Loveland to provide language access services at no charge to populations of persons with limited English proficiency (LEP) and persons with a disability who are served by the City.

For more information on non-discrimination or for translation assistance, please contact the City's Title VI Coordinator at [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) or 970-962-2372 . The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act (ADA). For more information on ADA or accommodations, please contact the City's ADA Coordinator at [adacoordinator@cityofloveland.org](mailto:adacoordinator@cityofloveland.org) or 970-962-3319 .

### NOTIFICACIÓN EN CONTRA DE LA DISCRIMINACIÓN

La política de la Ciudad de Loveland es proveer servicios, programas y actividades iguales sin importar la raza, color, origen nacional, credo, religión, sexo, discapacidad, o edad y sin importar el uso de los derechos garantizados por la ley estatal o federal. La política de la Ciudad de Loveland es proveer servicios gratis de acceso de lenguaje a la población de personas con dominio limitado del inglés (LEP, por sus iniciales en inglés) y a las personas con discapacidades quienes reciben servicios de la ciudad.

Si desea recibir más información en contra de la discriminación o si desea ayuda de traducción, por favor comuníquese con el Coordinador del Título VI de la Ciudad en [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) al 970-962-2372 . La Ciudad hará acomodaciones razonables para los ciudadanos de acuerdo con la Ley de Americanos con Discapacidades (ADA, por sus iniciales en inglés). Si desea más información acerca de la ADA o acerca de las acomodaciones, por favor comuníquese con el Coordinador de ADA de la Ciudad en [adacoordinator@cityofloveland.org](mailto:adacoordinator@cityofloveland.org) o al 970-962-3319 .

Title VI and ADA Grievance Policy and Procedures can be located on the City of Loveland website at: [cityofloveland.org/](http://cityofloveland.org/)

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

(6:00)

## 1. INTRODUCTION

### 1.1 CALL TO ORDER

### 1.2 PLEDGE OF ALLEGIANCE

### 1.3 ROLL CALL

**(6:05) 2. CONSENT AGENDA**

*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.*

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*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.*

**2.1 CITY CLERK (presenter: Terry Andrews)  
APPROVAL OF MINUTES**

Approval of the City Council minutes for the July 26, 2016 Study Session and the August 2, 2016 Regular Meeting.

***A Motion To Approve City Council Minutes for the July 26, 2016 Study Session and the August 2, 2016 Regular Meeting.***

[07262016 Minutes SS](#)  
[08022016 Minutes RM](#)

**2.2 DEVELOPMENT SERVICES (presenter: Troy Bliss)  
WESTWOOD THIRD SUBDIVISION PEDESTRIAN EASEMENT**

This ordinance will be vacating a 20' by 53' pedestrian easement across the Mariano Exchanged Ditch between the Westwood and Somerset Park subdivisions. The easement was established when the Westwood Third Subdivision was developed. A bridge was built over the easement to allow crossing of the ditch. Its purpose was to facilitate a connection between the adjoining subdivisions and improve pedestrian access to other destinations in the general area, such as schools and churches. However, over the years, the bridge has become a location for unwanted and criminal activities, causing concerns to the surrounding residents and the Westwood Home Owners Association (entity responsible for maintenance and liabilities). Because of continued problems, the bridge was barricaded with a fence and a request to vacate the easement submitted. If the easement is vacated, the bridge would be removed. The property is generally located south of W. 1st Street and east of S. Wilson Avenue between 5th Court SW and Natasha Court spanning the Mariano Exchange Ditch connecting Westwood and Somerset Park subdivisions. The applicant is Kathy Louderback with Touchstone Property Management, LLC on behalf of the Westwood Third Subdivision Home Owners Association. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

***A Motion to Approve on, Second Reading, Ordinance #6036 Vacating A Twenty***

***Foot Pedestrian Access Easement Located Across Tracts A And G Of The Westwood Third Subdivision, City Of Loveland, County Of Larimer, State Of Colorado.***

[DS Westwood 3rd Esmt Cover Sheet](#)

[Att 1 DS Westwood Third Sub ORD](#)

[Att 2 DS Westwood 3rd Esmt memo](#)

**2.3 CITY ATTORNEY (presenter: Tami Yellico)**  
**APPROVAL OF THE DDA ELECTION & BALLOT QUESTION**

Approval of the ordinance will direct the City Clerk and other staff to conduct an election on November 8, 2016 for the Downtown Development Authority (DDA) and submit ballot questions regarding an ad valorem tax increase and authorization of debt to the qualified electors within the DDA boundaries. The ballot language can be found in Section 1 of the attached City of Loveland ordinance. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

***A Motion to Approve, on Second Reading, Ordinance #6037 Approving A Downtown Development Authority Election To Be Held November 8, 2016, To Authorize Debt, Taxes And Revenue Retention.***

[CAO Approving DDA Election Cover Sheet](#)

[Att 1 CAO Approving DDA Election ORD](#)

[Att 2 CAO Approving DDA Dev Plan Res](#)

[Att 3 CAO Approving DDA Election MAP](#)

**2.4 PUBLIC WORKS (presenter: Randy Maizland)**  
**SUPPLEMENTAL APPROPRIATION FOR INTERSECTION IMPROVEMENTS**

Walmart Distribution Center has approached the City with an offer and agreement to fund the design and construction of an interim traffic signal at the intersection of Crossroads Boulevard and Ward Avenue for an amount not to exceed \$300,000 for construction of the signal. The resolution adopted by Council on August 2, 2016 authorize the City Manager to execute the agreement to accept payment of \$300,000 from Walmart to be used for the construction of the traffic signal.

The ordinance appropriates the funds received, allowing them to be used by the City for this purpose. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

***1. A Motion To Approve, On Second Reading, Ordinance #6038 Enacting A Supplemental Budget And Appropriation For The 2016 City Of Loveland Budget For The Construction Of An Interim Traffic Signal At The Intersection Of Crossroads Boulevard And Ward Avenue.***

[PW Walmart Agreement Cover Sheet](#)

[Att PW IGA w Walmart Intersection ORD](#)

**2.5 NORTHERN COLORADO REGIONAL AIRPORT (presenter: Jason Licon)**  
**SUPPLEMENTAL APPROPRIATION FOR STRATEGIC PLAN**

The purpose of this item is to approve an amendment to the 2016 Airport operating budget and appropriate funds from the Airport Reserve Fund to initiate work associated with the City Council approved Airport Strategic Plan. The Northern Colorado Regional Airport Commission has reviewed and approved this request. The 2016 Airport operating budget will be amended to authorize expenditure in the total

amount of \$165,000 from the Airport Reserve Fund. The City of Loveland will appropriate 50% (\$82,500) of the total \$165,000 request, and the City of Fort Collins has approved their half of the appropriation at their July 19, 2016 City Council Meeting. This appropriation is needed as the funding resources were not included in the adopted 2016 Airport Budget approved by Council. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

***A Motion to Approve, On Second Reading, Ordinance #6039 Enacting A Supplemental Budget And Appropriation To The 2016 Northern Colorado Regional Airport Budget For The Addition Of 1 FTE & Strategic Plan Implementation.***

[Att NCRA Airport Strategic Plan ORD](#)

[NCRA Supp App for Strategic Plan Cover Sheet](#)

## **2.6      DEVELOPMENT SERVICES      (presenter: Bob Paulsen)** **FLEXIBLE ZONING OVERLAY DISTRICT CODE AMENDMENT**

This is a legislative action item to consider adoption of the Flexible Zoning Overlay District provisions. This new chapter of the zoning code responds to the interest of City Council in providing property owners with relief from regulatory standards that may be restraining development. The provisions are intended to promote development and redevelopment opportunities in locations experiencing disinvestment or underutilization of land. Applications for overlay districts would require a neighborhood meeting, a public hearing before the Planning Commission, and an adoption hearing by City Council. This public input process is designed to ensure that resulting projects would be well-vetted and compatible with surrounding development. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

***A Motion to approve, On Second Reading, Ordinance #6040 Amending Title 18 Of The Loveland Municipal Code To Add A New Chapter 18.44 Regarding A Flexible Zoning Overlay District.***

[DS Flex Zoning Cover Sheet](#)

[Att 1 DS Flex Zoning ORD](#)

[Att 2 DS Flex Zoning Summary](#)

[Att 3 DS Flex Zoning Staff Memo](#)

[Att 3b DS Flex Zoning PC Packet](#)

[Att 4 DS Flex Zoning PC Minutes](#)

[Att 5 DS Flex Zoning PP](#)

## **2.7      PUBLIC WORKS      (presenter: Steve Kibler)** **PUBLIC COMMENT** **SUPPLEMENTAL APPROPRIATION FOR FLEET VEHICLES**

Currently, some vehicles are purchased by the Fleet Replacement Fund (500) and other vehicles are purchased by other funds (enterprise and special revenue funds). Fleet Management amortizes vehicles purchased within the Fleet Replacement Fund to ensure funds are set aside for future replacement costs. Most vehicles purchased by other funds are amortized within those funds, however, the occasional vehicle has missed being amortized. This item is being presented to streamline and increase efficiency of the vehicle purchasing and amortization process. This item proposes the supplemental budget and appropriation necessary to transfer currently budgeted 2016 funds from the Transportation, Stormwater, Transit, and Police CEF Funds into the Fleet Replacement Fund to make this administrative change for vehicle purchases



budgeted outside of the Fleet Replacement Fund in 2016. This streamlined method will be built in to the budget for 2017 and beyond for future years.

***A Motion To Approve, On First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For An Administrative Change In The Method Of Purchasing Fleet Vehicles.***

[PW Supp App Fleet Vehicles Cover Sheet](#)

[Att PW Supp App Fleet Vehicles ORD 1](#)

**2.8      DEVELOPMENT SERVICES      (presenter: Kerri Burchett)**  
**MIRASOL SECOND ADDITION ANNEXATION**

This resolution sets a public hearing date of September 20, 2016 for the consideration of an annexation of 6.8 acres to be known as the Mirasol Second Addition. The property is located at the southeast corner of the intersection of 4th Street SE and S. St. Louis Avenue. Included with the annexation is a request to zone the property Mirasol Community Planned Unit Development and include the property into the Mirasol General Development Plan. The GDP seeks to allow the construction of a 60 unit apartment complex and 10 single family/duplex units on the property. The applicant is the Housing Authority of the City of Loveland.

***A Motion to Adopt Resolution R-73-2016, Finding A Certain Petition For Annexation Known As Mirasol Second Addition, Filed July 29, 2016, To Be In Substantial Compliance With Section 30 Of Article II Of The Colorado Constitution And With The Requirements Of Section 31-12-107(1), C.R.S.; And Establishing A Date, Time, And Place For A Hearing To Determine Whether The Proposed Annexation Complies With The Applicable Requirements Of Sections 31-12-104 And 31-12-105, C.R.S., And Is Eligible For Annexation To The City Of Loveland, Colorado***

[DS Mirasol 2nd Annexation Cover Sheet](#)

[Att 1 DS Mirasol 2nd Annexation Petition RES](#)

[Att 2 DS Mirasol 2nd Annexation Map](#)

**2.9      PARKS AND RECREATION      (presenter: Marilyn Hilgenberg)**  
**WARD TRUST OPEN LANDS CONSERVATION EASEMENT**

The City applied for and was awarded a Great Outdoors Colorado (“GOCO”) grant for the Ward Trust Property Open Lands Acquisition, which includes the acquisition of a 78-acre, more or less, parcel and associated George Rist Ditch water rights. This is an administrative action to approve the acquisition of the property and authorize the City Manager to sign the Conservation Easement on behalf of the City.

***1. A Motion to Adopt Resolution R-74-2016 Of The Loveland City Council Approving - The Acquisition Of The 78-Acre, More Or Less, Including Appurtenant Water Rights, Ward Trust Property On Cedar Valley Drive For Open Space Purposes.***

***2. A Motion to Adopt Resolution R-75-2016 Of The Loveland City Council Approving A Grant Of Conservation Easement On The Ward Trust Property From The City Of Loveland To Larimer County.***

[P&R Ward Trust Property Cover Sheet](#)

[Att 1 P&R Ward Trust Property acquisition RES 74](#)

[Att 2 P&R Ward Trust Consv Easement RES 75](#)

[Att 2a P&R Ward Trust Consv Easement](#)

[Att 3 P&R Ward Trust Location Map](#)

**2.10 CITY CLERK (presenter: Terry Andrews)**  
**IGA WITH LARIMER COUNTY CONCERNING THE COORDINATED ELECTION**

This resolution authorizes the execution of an agreement between the City of Loveland and the Larimer County Clerk and Recorder concerning the coordinated election to be held on November 8, 2016.

***A Motion To Adopt Resolution R-76-2016 Approving And Authorizing The Execution Of An Intergovernmental Agreement Between The City Of Loveland And The Larimer County Clerk And Recorder Concerning The Coordinated Mail Ballot Election To Be Held On November 8, 2016.***

[CCO IGA w County Election Cover Sheet](#)

[Att 1 CCO IGA w County for Election RES](#)

[Att 2 CCO IGA w County for Election EXH](#)

**2.11 CITY MANAGER (presenter: Rod Wensing)**  
**CHAMBER OF COMMERCE OFFICE LEASE**

The resolution will authorize the City Manager to sign the attached Building Lease between the City and the Loveland Chamber of Commerce. The Chamber Board of Directors voted unanimously to approve this Lease with the City.

***A Motion to Adopt Resolution R-77-2016 Approving A Lease Agreement Between The City Of Loveland, Colorado And The Loveland Chamber Of Commerce For A Portion Of The Building Located At 5400 Stone Creek Circle In Loveland, Colorado.***

[CMO Chamber Lease Cover Sheet](#)

[Att 1 CMO Chamber Lease RES](#)

[Att 2 CMO Chamber Lease EXH](#)

**2.12 PUBLIC WORKS (presenter: Jeff Bailey)**  
**BELL HOMES REIMBURSEMENT AGREEMENT**

Bell Homes LLC constructed street improvements that are a benefit to the adjacent property. The City and Bell Homes LLC entered into an agreement where the City collects those costs from the adjacent property at the time of development. This agreement has a 10-year period for collection, which expires September 6, 2016, if not extended by City Council. The process of reimbursement of the Developer from the adjacent property is detailed in the Larimer County Urban Area Street Standards in section 1.9.3. The Developer reimburses the City \$500 for the collection of these funds, and the City simply acts as a pass-through for the Developer. The process of reimbursement of the Developer from the adjacent property is detailed in the Larimer County Urban Area Street Standards in section 1.9.3. The Developer reimburses the City \$500 for the collection of these funds, and the City simply acts as a pass-through for the Developer.

***A Motion to Adopt Resolution R-78-2016 Approving An Amendment To A Reimbursement Agreement For New Street Construction Between The City Of Loveland And Bell Homes, LLC.***

[PW 2nd Amended Bell 3rd Party Cover Sheet](#)

[Att 1 PW 2nd Amended Bell 3rd Party Agreement](#)

[Att 2 PW 2nd Amended Bell 3rd Party RES](#)

[Att 3 PW 2nd Amended Bell Homes Area Map](#)

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

(presenter: 6:15)

**(6:25) 4. PUBLIC COMMENT**

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

**5. REGULAR AGENDA**

**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.*

**5.1 CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

**(6:35) 5.2 DEVELOPMENT SERVICES PUBLIC HEARING** (presenter: Noreen Smyth)

**GATORWEST ADDITION ANNEXATION**

This is a public hearing to consider the following items on first reading:

- A legislative action to adopt a resolution and ordinance to annex 2.3 acres of property to be known as the Gatorwest Addition; and
- A quasi-judicial action to zone the 2.3 acres to B-Developing Business District.

The property is situated on the west side of N. Garfield Avenue and on the east side of N. Granite Street, roughly half way between W. 50th Street and Ranch Acres Drives. It is addressed at 5100 Granite Street. The applicant is M. Bryan Short with Gatorwest, LLC.

***1. A Motion to Adopt Resolution R-79-2016 Concerning The Annexation To The City Of Loveland, Colorado, Of A Certain Area Designated As "Gatorwest 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, Ordinance Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Gatorwest Addition" To The City Of Loveland.***

***3. A Motion to Approve, On First Reading, An Ordinance Amending Section 18.04.060 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Gatorwest Addition" To The City Of Loveland.***

[DS Gatorwest Annexation and Zoning Cover Sheet](#)  
[Att 1 DS Gatorwest Annexation ORD](#)  
[Att 2 DS Gatorwest Annexation Zoning ORD](#)  
[Att 3 DS Gatorwest Annexation RES](#)  
[Att 4 DS Gatorwest Annexation staff memo](#)  
[Att 5 DS Gatorwest Annexation PC minutes](#)  
[Att 6 DS Gatorwest Annexation Zone code](#)

(6:50) 5.3 **COMMUNITY PARTNERSHIP OFFICE** (presenter: Laurie Stolen)  
**LARIMER COUNTY MENTAL HEALTH BALLOT QUESTION**

This is an update presentation on the recommendation to enhance behavioral health services in Larimer County and an administrative item to approve a resolution supporting a 2016 ballot issue to support a mental health, detox and substance abuse facility in Larimer County.

***A Motion to Adopt Resolution R-80-2016 In Support Of A 0.25% County-Wide Sales And Use Tax For The Construction, Improvement, Maintenance, And Operations Of A Mental Health, Detox And Substance Abuse Facility And Related Community Services.***

[CPO County Mental Health Res Cover Sheet](#)  
[Att 1 CPO County Mental Health Ballot Resolution](#)  
[Att 2 CPO County Mental Health](#)  
[Att 3 CPO County Mental Health](#)  
[Att 4 CPO County Mental Health](#)  
[Att 5 CPO County Mental Health PP](#)

(7:20) 5.4 **CITY ATTORNEY** (presenter: Tami Yellico)  
**REPEALING CODE FOR AIRCRAFT TAKEOFF AND LANDING**

Approval of one of the ordinances will repeal or amend Sections 12.48.030 and 12.48.110 of the Loveland Municipal Code.

***Option 1 - A Motion to Approve, On First Reading, An Ordinance Repealing Loveland Municipal Code §§ 12.48.030 AND 12.48.110 Prohibiting Takeoff and Landing of Aircraft Outside of Airport and Landing in City***

or

***Option 2 - A Motion to Approve, On First Reading, An Ordinance Amending Loveland Municipal Code Chapter 12.48 To Provide An Exemption For Hot Air Balloons, And An Exception For Aircraft Landing In Emergency Circumstances, From Prohibitions Against Takeoff And Landing Of Aircraft Outside Of Airport And Landing In City***

[CAO Repealing LMC Aircraft Landing Cover Sheet](#)  
[CAO Option1 - Aircraft Landing Prohibited ORD](#)  
[CAO Option 2 - Aircraft Landing Exception ORD](#)

(7:50) 5.5 **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)  
**SOUTH CATALYST UPDATE AND BRINKMAN PARTNERS AMENDMENT TO THE ENA**

Staff will provide a public briefing on the South Catalyst project; specifically, the

progress staff has made in negotiation with the Brinkman Partners. The presentation will include an overview of what has been accomplished, the most recent conceptual plans, a brief overview of the proposed cost and financing plan and next steps. The executive session will allow Council to review the draft terms of agreement and provide direction on confidential business negotiations.

If approved the Second Amendment to the Exclusive Negotiation Agreement (see attached) changes the deadline for the completion of the preliminary terms of the agreement from August 16, 2016 to November 15, 2016. Because there is no administrative extension allowed under the original agreement, this amendment is required to go before City Council for consideration.

The City will be expected to contribute the land value, and fee waivers as well as additional public contributions to be discussed in Executive Session.

***Public update and Council briefing on the South Catalyst project; and, a possible executive session to review the preliminary term sheet with the Brinkman Partners and to provide direction to staff to complete the negotiations.***

***A motion to Adopt Resolution R-81-2016 of the City of Loveland City Council Approving the Execution of the Second Amendment to the Exclusive Negotiation Agreement (ENA) with Brinkman Capital, LLC for the South Catalyst Project***

[EDO South Catalyst & Brinkman Cover Sheet](#)

[Att 1 EDO 2nd Amendment to ENA with Brinkman RES](#)

[Att 2 EDO South Catalyst & Brinkman Staff Report](#)

[Att 3 EDO South Catalyst & Brinkman Concept Plans](#)

[Att 4 EDO South Catalyst & Brinkman Chart](#)

[Att 5 EDO Brinkman ENA Executed](#)

[Att 6 EDO Brinkman ENA Amendment](#)

[Att 7 EDO Second Amendment to ENA](#)

**(9:50) 5.6 CITY CLERK (presenter: Terry Andrews)  
CALL FOR A SPECIAL MEETING ON AUGUST 23, 2016**

City Council directed the City Manager to set a special meeting to discuss and establish goals, objectives and priorities to be used for future direction in the City of Loveland. Council has requested the meeting occur offsite. Council preference was to use a Tuesday evening Study session date and time. The meeting will occur at the Devereux Room at the Rialto Theatre on August 23, 2016. A special meeting has been called and will be published and posted at least 24 hours prior to the meeting per the C.R.S. "Open Meetings Law". Study sessions items currently slated for August 23, 2016 on the "Rolling Calendar" will be moved to August 30, 2016.

***A motion calling a special meeting of City Council August 23, 2016 at 6:00 p.m., to be located in the Devereux Room, at the Rialto Theatre, 228 E 4th St. Loveland, CO 80537. The purpose of the meeting is for Council to work with the City Manager on goals, objectives and priorities for the City of Loveland.***

[Item CCO Call for a Special Meeting CS](#)

**(10:00) 6. REPORTS**

**6.1 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.*

**6.2 CITY MANAGER REPORT**

**6.3 CITY ATTORNEY REPORT**

**7. ADJOURNMENT**



**MINUTES**  
**CITY COUNCIL AND PLANNING COMMISSION STUDY SESSION**  
**TUESDAY, JULY 26, 2016**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

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

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

**1. DEVELOPMENT SERVICES**

**ELECTRONIC MESSAGE SIGNS**

Bob Paulson, Current Planning Manager, presented options for amendments to regulations in Chapter 18.50 on electronic message signs in the I-25 corridor. Planning Commissioners; Jeremy Jersvig, Mike Ray, Michele Forrest, Jamie Baker Roskie, and David Cloutier were present for this item.

**2. CITY CLERK**

**COUNCIL EMAIL TRANSPARENCY**

Terry Andrews, City Clerk, presented to City Council requested Staff look at a more transparent Email process regarding their electronic communications. A new software, "Global Relay" has been tested for a few months by City Staff. This new process will allow Council email to be available to the public in "real time" and accessible from outside of the City's computer system. This discussion has two primary functions: 1) To announce in a public meeting the new process; and 2) Staff members will be available to answer any questions City Council may have regarding Global Relay.

**3. PUBLIC WORKS**

**TRANSPORTATION AND STREET OVERVIEW**

Leah Browder, Public Works Director, presented this informational item intended to help the City Council prepare for development of the 2017 budget.

**ADJOURN**

Hearing no further business to come before Council, Mayor Gutierrez adjourned the July 26, 2016 Study Session at 10:01 p.m.

Respectfully Submitted,

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

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

**MINUTES**  
**LOVELAND CITY COUNCIL MEETING**  
**TUESDAY, AUGUST 2, 2016**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

**REGULAR MEETING - City Council Chambers**

**CALL TO ORDER:** Mayor Pro Tem Fogle called the meeting to order at 6:00 p.m.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:** Councilors present: Fogle, McKean, Krenning, Ball, Shaffer, Johnson, Overcash and Clark. Mayor Gutierrez arrived at 7:15 p.m.

**CONSENT AGENDA**

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**Resident of Ward 2, Larry Sarner requested item 6 be considered on the Regular Agenda. Councilor Shaffer moved to approve the Consent agenda with the exception of item 6. The motion, seconded by Councilor Ball, carried with all councilors present voting in favor thereof. Councilor Shaffer recused herself from item #4.**

1. **CITY CLERK** (presenter: Terry Andrews)

**APPROVAL OF MEETING MINUTES**

**A Motion To Approve City Council Minutes For July 12, 2016 Study Session and the July 19, 2016 Regular Meeting was approved.**

This is an administrative action item to approve the City Council minutes for the July 12, 2016 Study Session and the July 19, 2016 Regular Meeting.

2. **CITY MANAGER** (presenter: Steve Adams)

**APPOINTMENTS TO THE SENIOR ADVISORY BOARD**

**Adopt a motion to appoint Sherri Stinnett to the Senior Advisory Board for a term effective until December 31, 2017 and to appoint Carmen Cisneros to the Senior Advisory Board for a term effective until December 31, 2018 was approved.**

This is an administrative item appointing members to the Senior Advisory Board.

3. **CITY MANAGER** (presenter: Steve Adams)  
**APPOINTMENTS TO THE DDA**

**Adopt a motion to reappoint Sharon Rae Cook and Ray Steele, Jr. for terms effective until June 30, 2020 to the Downtown Development Authority (DDA) Board was approved.**

This is an administrative action item to approve the reappointment of members to the Downtown Development Authority (DDA) Board. If the motion is approved, Sharon Rae Cook and Ray Steele, Jr will be reappointed to four year terms effective until June 30, 2020.

4. **CITY MANAGER'S OFFICE** (presenter: Rod Wensing)  
**COMCAST FRANCHISE AGREEMENT**

**1. A Motion To Approve On Second Reading, Ordinance #6032 of the City of Loveland, Colorado Granting a Cable Franchise to Comcast of Colorado II, LLC**

**2. A Motion To Approve On Second Reading, Ordinance #6033 amending the Loveland Municipal Code at Section 13.16.030 concerning Customer Service Standards for Cable Television Operators was approved.**

The Council will be asked to take both an administrative and legislative action separately to consider approving an Ordinance granting a renewal of a non-exclusive 10 year Cable Franchise Agreement from the City of Loveland to Comcast of Colorado II, LLC as well as considering an amended Ordinance establish updated Customer Service Standards for Cable Television Operators located in Section 13.16.030 of the Loveland Municipal Code. The Ordinance was approved unanimously on first reading by City Council on July 19, 2016.

5. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)

**PUBLIC COMMENT**  
**WESTWOOD THIRD PEDESTRIAN EASEMENT**

**A Motion to Approve on First Reading, An Ordinance Vacating A Twenty Foot Pedestrian Access Easement Located Across Tracts A And G Of The Westwood Third Subdivision, City Of Loveland, County Of Larimer, State Of Colorado was approved.**

This is an Administrative action item to consider an ordinance on first reading, vacating a 20' by 53' pedestrian easement across the Mariano Exchanged Ditch between the Westwood and Somerset Park subdivisions. The easement was established when the Westwood Third Subdivision was developed. A bridge was built over the easement to allow crossing of the ditch. Its purpose was to facilitate a connection between the adjoining subdivisions and improve pedestrian access to other destinations in the general area, such as schools and churches. However, over the years, the bridge has become a location for unwanted and criminal activities, causing concerns to the surrounding residents and the Westwood Home Owners Association (entity responsible for maintenance and liabilities). Because of continued problems, the bridge was barricaded with a fence and a request to vacate the easement submitted. If the easement is vacated, the bridge would be removed. The property is generally located south of W. 1<sup>st</sup> Street and east of S. Wilson Avenue between 5<sup>th</sup> Court SW and Natasha Court spanning the Mariano Exchange Ditch connecting Westwood and Somerset Park subdivisions. The applicant is Kathy Louderback with Touchstone Property Management, LLC on behalf of the Westwood Third Subdivision Home Owners Association.

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

**DDA ELECTION AND BALLOT QUESTION APPROVAL**  
**This item was considered on the Regular Agenda.**

7. **NORTHERN COLORADO REGIONAL AIRPORT** (presenter: Jason Licon)  
**PUBLIC COMMENT**

**SUPPLEMENTAL APPROPRIATION FOR STRATEGIC PLAN**

**A Motion To Approve On First Reading, An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 Northern Colorado Regional Airport Budget For The Addition Of 1 FTE & Strategic Plan Implementation was approved.**

This is an administrative action item. The purpose of this item is to approve an amendment

to the 2016 Airport operating budget and appropriate funds from the Airport Reserve Fund to initiate work associated with the City Council approved Airport Strategic Plan. The Northern Colorado Regional Airport Commission has reviewed and approved this request. The 2016 Airport operating budget will be amended to authorize expenditure in the total amount of \$165,000 from the Airport Reserve Fund. The City of Loveland will appropriate 50% (\$82,500) of the total \$165,000 request, and the City of Fort Collins has approved their half of the appropriation at their July 19, 2016 City Council Meeting. This appropriation is needed as the funding resources were not included in the adopted 2016 Airport Budget approved by Council.

This initiative has a bottom line impact of \$165,000 to the Airport Reserve Fund, and ongoing impacts will be included in the 2017 and 2018 Airport budget. The Airport Reserve Fund unencumbered balance is approximately \$1.7 million and has been used historically to provide matching funds that leverage Federal and State grants. The City of Fort Collins is also being asked to appropriate the 50% match of \$82,500.

8. **PUBLIC WORKS** (presenter: Randy Maizland)  
**PUBLIC COMMENT**

**WAL-MART TRAFFIC SIGNAL INTERSECTION IMPROVEMENT**

1. **A Motion To Adopt Resolution #R-67-2016 Approving An Agreement Between The City Of Loveland, Colorado and Walmart Stores, Inc., for the Design and Construction of an Interim Traffic Signal at the Intersection of Crossroads Boulevard and Ward Avenue was approved.**
2. **A Motion To Approve On First Reading An Ordinance Enacting A Supplemental Budget And Appropriation For The 2016 City Of Loveland Budget For The Construction Of An Interim Traffic Signal At The Intersection Of Crossroads Boulevard And Ward Avenue was approved.**

These are administrative action items. Walmart Distribution Center has approached the City with an offer and agreement to fund the design and construction of an interim traffic signal at the intersection of Crossroads Boulevard and Ward Avenue for an amount not to exceed \$300,000 for construction of the signal. The resolution would approve and authorize the City Manager to execute the agreement to accept payment of \$300,000 from Walmart to be used for the construction of the traffic signal. The ordinance appropriates the funds received, allowing them to be used by the City for this purpose. If Council approves the agreement with Walmart the City Traffic Engineering Division will select the contractor and provide all construction management responsibilities for the installation and completion of the traffic signal to ensure quality control.

9. **COMMUNITY PARTNERSHIP OFFICE** (presenter: Alison Hade)  
**CDBG ANNUAL ACTION PLAN**

**A Motion to approve Resolution #R-68-2016 Of The City Council Of The City Of Loveland, Colorado Approving A Community Development Block Grant Annual Action Plan For 2016 – 2017 was approved.**

This is an administrative action item. Each year, the Community Partnership Office submits a report to the U.S. Department of Housing and Urban Development (HUD) called the Annual Action Plan which identifies the housing and public services projects

that will be funded with a Community Development Block Grant (CDBG) during the next grant year. This resolution approves the Annual Action Plan for 2016-2017 so it can be submitted to HUD. The resolution authorizes the allocation of the 2016 CDBG that was appropriated in the 2016 City Budget.

10. **CITY CLERK** (presenter: Terry Andrews)

**COUNCIL EMAIL POLICY**

**A Motion to approve Resolution #R-69-2016 A Resolution Superseding Resolution 101-00 And Adopting Email Disclosure Policy**

This is an Administrative action item. This resolution will supersede Resolution #R-101-00: "A Resolution adopting an e-mail disclosure policy concerning Electronic Mail Communication of Elected City Officials". On July 26, 2016 Staff presented to City Council a more transparent Email process regarding their electronic communications. The new software, "Global Relay" has been tested for four months by City Staff. This new process will allow Council email to be available to the public in "real time" and accessible from outside of the City's computer system.

11. **LOVELAND FIRE RESCUE AUTHORITY** (presenter: Mark Miller)  
**LFRA GRANT FUNDS**

**A Motion To Adopt Resolution #R-70-2016 Approving The Loveland Fire Rescue Authority's Supplemental Budget And Appropriation Resolution No. R-066 For The Loveland Fire Rescue Authority's 2016 Budget was approved.**

This is an administrative action item. There are three grants included in this appropriation that do not require any additional matching funds from LFRA or our governing partners. The grant funds will be used to purchase Emergency Operations Center (EOC) communications equipment, draft Emergency Operations plans and conduct an exercise, Big Thompson Canyon bunker gear, and a second set of hoods, gloves and helmets for fire personnel related to cancer prevention. The intergovernmental agreement that established the Fire Authority requires that both the City of Loveland City Council and the Loveland Rural Fire Protection District Board approve all budget appropriations to make them effective. The Loveland Fire Rescue Authority Board adopted this supplemental budget appropriation at their meeting on June 29, 2016. The Loveland Rural Fire Protection District approved it at their July 6, 2016 meeting.

12. **PUBLIC WORKS** (presenter: Jeff Bailey)

**ASPHALT PAVING CONTRACT CHANGE ORDER**

**Contract Change Order To 2016 Street Resurfacing Program, Asphalt Paving Schedule AP (Project ENSR005-AP) was approved.**

This is an administrative action item. A contract change order of an Asphalt Maintenance Contract for Asphalt Paving for the 2016 Street Resurfacing Program to Coulson Excavating Company of Loveland, Colorado in the amount of \$635,000.00 and Authorization for City Manager to execute the contract change order. Funding is available in the Adopted 2016 Budget.

13. **FINANCE** (presenter: Brent Worthington)  
**JUNE FINANCE REPORT**

This is an information only item. 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 June 30, 2016. Citywide Revenue (excluding internal transfers) of \$138.5 million is 96.5% of year to date (YTD) budget. Sales Tax collections are 2% above the same period in 2015, and 99% of the YTD budget. This data spans six months, and the trend has been slowly rising. Building

Material Use Tax is 164.6% of YTD budget. Sales and Use Tax collections combined are 104.4% of YTD budget. Citywide total expenditures of \$131,505,533 (excluding internal transfers) are 64.7% of the YTD budget.

**14. CITY MANAGER (presenter: Alan Krcmarik)**  
**JUNE 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 June monthly report, the estimated yield on the fixed income securities held by USBank was at 1.27%, for total assets the yield was 1.07%. For the year-to-date, total earnings of \$1,206,918 have been posted to City fund accounts. U.S. short-term Treasury interest rates fell sharply in June; the portfolio's change in unrealized gain for the year-to-date rose to nearly \$2.3 million. The end of June portfolio market value is estimated to be \$220.5 million. The total market value of the portfolio is now higher than the end of 2015 by about \$3.2 million. The peak amount for the portfolio was reached before the 2013 flood when it had an estimated market value of \$226.3 million.

**END OF CONSENT AGENDA**

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

**PUBLIC COMMENT**

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

Resident Larry Sarner, Ward 2, expressed concern on the classification of actions by Council on the agenda i.e. legislative or administrative. **Consensus of Council was to remove the classifications except for quasi judicial.**

Jackie Marsh, asked for clarification on the appointment of members to the Loveland Downtown Partnership.

**PROCEDURAL INFORMATION**

*Anyone in the audience will be given time to speak to any item on the Regular Agenda before the Council acts upon it. The Mayor will call for public comment following the staff report. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.*

**REGULAR AGENDA**

**CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

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

**DDA ELECTION AND BALLOT QUESTION APPROVAL**

This is an administrative action item, recommending the approval of an ordinance on first reading. Approval of the ordinance will direct the City Clerk and other staff to conduct an election on November 8, 2016 for the Downtown Development Authority (DDA) and submit ballot questions regarding an ad valorem tax increase and authorization of debt to the qualified electors within the DDA boundaries. The ballot language can be found in Section 1 of the attached City of Loveland ordinance. Ward 2 resident, Larry Sarner spoke in opposition to the ordinance. **Councilor Shaffer moved To Approve On First Reading, An Ordinance Approving A Downtown Development Authority Election**



**To Be Held November 8, 2016, To Authorize Debt, Taxes And Revenue Retention. The motion, seconded by Councilor Ball, carried with all councilors present voting in favor thereof.**

15. **DEVELOPMENT SERVICES** (presenter: Kerri Burchett)  
**WATERS EDGE ANNEXATION**  
 This is a consideration of the following items on second reading: A legislative action to adopt an 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. Jim Willard, spokesperson for the neighbors of this development, indicated they had over the last few weeks conferred with some of the 400+ residences in the area, and did not believe they would be able to come up with financing to purchase the property to be used for open space. Mr. Willard requested the neighbors be involved in a conversation with the developer to discuss buffer zones and impacts, when this development gets to that phase. **Councilor Shaffer moved To Approve On Second Reading, Ordinance #6034 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. The motion, seconded by Councilor McKean, carried with all councilors present voting in favor thereof. Councilor Shaffer moved to Approve On Second Reading, Ordinance #6035 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. The motion, seconded by Councilor McKean, carried with all councilors present voting in favor thereof.**
16. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)  
**PUBLIC HEARING**  
**FLEXIBLE ZONING OVERLAY DISTRICT**  
 This is a legislative action item to consider adoption of the Flexible Zoning Overlay District provisions. This new chapter of the zoning code responds to the interest of City Council in providing property owners with relief from regulatory standards that may be restraining development. The provisions are intended to promote development and redevelopment opportunities in locations experiencing disinvestment or underutilization of land. Applications for overlay districts would require a neighborhood meeting, a public hearing before the Planning Commission, and an adoption hearing by City Council. This public input process is designed to ensure that resulting projects would be well-vetted and compatible with surrounding development. There were no public comments. **Councilor Shaffer moved to Approve, On First Reading, An Ordinance Amending Title 18 Of The Loveland Municipal Code To Add A New Chapter 18.44 Regarding A Flexible Zoning Overlay District. The motion, seconded by Councilor Krenning, carried with all councilors present voting in favor thereof.**
17. **ECONOMIC DEVELOPMENT** (presenter: Susan Grafton)  
**NORTHERN COLORADO REGIONAL TOURISM BOARD APPOINTMENTS**  
 This is an administrative action item. The Go NoCO Board was put into place to facilitate the application by Larimer County, Town of Windsor, Town of Estes Park and City of Loveland for funding through the Economic Development Council of Colorado (EDC) for the purpose of financing regional tourism activity. That funding was approved by the EDC in December, 2015. A requirement of receiving funding is that a regional tourism authority be established to administer the receipt of funds and assure compliance to the state requirements for the approved projects. That new entity will be the Northern Colorado Regional Tourism Authority (NCRTA). City Council is asked to make two appointments to the NCRTA: a City Council member and a Community-at-large member.

Councilor Shaffer moved to Adopt Resolution #R-71-2016 Appointing Mayor Gutierrez as City Council Member And John Fogle as Community-At-Large Member To The Northern Colorado Regional Tourism Authority (NCRTA). The motion, seconded by Councilor Ball, carried with eight councilors voting in favor and Councilor McKean voting against.

18. **PUBLIC WORKS** (presenters: Leah Browder and Jeff Bailey)  
**US 287 SIDEWALKS NEAR WAL-MART UPDATE**

This item is intended to provide information regarding North US287 sidewalks at 57<sup>th</sup> Street following up to discussion at the March 15, 2016 City Council Meeting and to support City Council discussion regarding sidewalk projects in the area. This item provides information to support City Council decision making regarding capital program sidewalk projects. However, should City Council direct additional expenditures toward sidewalk design and construction, a negative budgetary impact could result. Kathie Guthrie from "CanDo" gave Council an update of the public work they have been doing related to walkability in the City.

19. **NORTHERN COLORADO REGIONAL AIRPORT** (presenter: Jason Licon)  
**AIRCRAFT WITHIN CITY LIMITS**

**Overview of Loveland Municipal Code 12.48.110 - Landing in City Prohibited**

This is an informational item pertaining to the City of Loveland Municipal Code 12.48.110 - Landing in City Prohibited. Dave Vines, city resident and Hot air balloonist, 2101 Frances Dr, gave Council information of the nuances of "ballooning". **Councilor McKean moved to direct the City Attorney to come back to Council with an ordinance repealing sections 12.48.110 and 12.48.030 from the municipal code. The motion was seconded by Mayor Pro Tem Fogle. CALL THE QUESTION: Councilor Ball called the question. The motion, seconded by Councilor Krenning, carried with seven councilors present voting in favor and Councilors Clark and Gutierrez voting against. ORIGINAL MOTION: Roll was called on the original motion, which carried with seven councilors present voting in favor and Councilors Clark and Gutierrez voting against.**

20. **WATER & POWER** (presenter: Greg Dewey)  
**WINDY GAP FIRING PROJECT WATER STORAGE**

This is an administrative action item. The City of Loveland has the immediate opportunity to acquire an additional 2,000 acre-feet of storage space in the Windy Gap Firing Project, which would increase the city's full participation in the Windy Gap Firing Project from its current subscription of 7,000 acre-feet to 9,000 acre-feet of storage. The City may seek other opportunities to increase the participation up to 10,000 acre-feet of storage. The LUC at its meeting on July 27, 2016 unanimously approved this item. Acquiring additional storage has a negative financial impact on the City. Acquisition of each 1,000 acre-feet of storage space would require an immediate payment to Northern Water of \$159,851 and an addendum to the *March 1, 2016 Fifth Interim Agreement Between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firing Project Water Activity Enterprise and City of Loveland for Participation in the Windy Gap Firing Project* to reflect the increased storage capacity. This would adjust Loveland's proportional share on the ongoing Windy Gap Firing Project expenses for permitting and mitigation. Money is available in the 2016 budget for this purpose No public comment. **Councilor Shaffer moved to Adopt Resolution #R-72-2016 To Negotiate To Acquire Up To An Additional 3,000 Acre-Feet Of Windy Gap Firing Project Storage Space. The motion, seconded by Councilor McKean, carried with all councilors present voting in favor thereof.**

Councilor Shaffer moved to extend the meeting to 11:00 p.m. The motion, seconded by Mayor Pro Tem Fogle, failed with eight councilors voting against and Mayor Gutierrez voting in favor.

21. **ECONOMIC DEVELOPMENT** (presenter: Susan Grafton)  
**ECONOMIC DEVELOPMENT UPDATE**

The Economic Development Office (EDO) is experiencing a good deal of activity at this time. To keep City Council abreast of projects and activities, an executive session is requested so that Economic Development staff can get direction and guidance concerning project and prospect negotiations. **Councilor Shaffer moved to move that the City Council go into executive session to discuss: 1) negotiations concerning the Brands, formally Eagle Crossing, request to modify an offer letter to reflect new development parameters; and 2) to discuss a request to modify the Crunchy Grocer existing business assistance agreement and instructing negotiators as to such projects as authorized by Colorado Revised Statutes Section 24-6-402(4)(e) and Loveland Charter Section 4-4(c)(1) concerning a matter that is subject to negotiations, to develop the City's negotiation positions and strategies, and to instruct the City's negotiators concerning those positions and strategies; and as authorized by Colorado Revised Statutes Section 24-6-402(4)(b) and Loveland Charter Section 4-4(c)(3) to receive legal advice from the City Attorney's Office at 9:53 p.m. The motion, seconded by Mayor Pro Tem Fogle, carried with eight councilors voting in favor and Councilor Krenning voting against.**

Council reconvened at 10:24 p.m. Councilor Krenning was absent.

Councilor McKean moved to extend the meeting to 10:35 to include Council reports. The motion, seconded by Councilor Clark, failed with five councilors voting against and Councilors Overcash, Clark and McKean voting in favor.

Councilor McKean moved to release the Executive Session recording from the City Manager's evaluation on June 6, 2016. The motion, seconded by Mayor Pro Tem Fogle, failed with five councilors voting against and Councilors Overcash, Clark and McKean voting against.

Mayor Gutierrez moved to call a special meeting on August 10, 2016 to consider an Executive Session for the purpose of receiving legal advice and discuss negotiations with the City Attorney, negotiators and Council. The motion, seconded by Councilor Shaffer, carried with seven voting in favor and Councilor McKean voting against.

**BUSINESS FROM CITY COUNCIL**

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

None

**CITY MANAGER REPORT**

None

**CITY ATTORNEY REPORT**

None

**ADJOURN**

Mayor Gutierrez, hearing no further business before Council, adjourned the August 2, 2016 Regular meeting at 10:31 p.m.

Respectfully Submitted,

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

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

**AGENDA ITEM:** 2.2  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Brett Limbaugh, Development Services Director  
**PRESENTER:** Troy Bliss, Current Planning




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**TITLE:**

**An Ordinance Vacating A Twenty Foot Pedestrian Access Easement Located Across Tracts A And G Of The Westwood Third Subdivision, City Of Loveland, County Of Larimer, State Of Colorado**

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motions for City Council action as recommended by the Planning Commission: Move to adopt on second reading an ordinance vacating a twenty-foot wide pedestrian access easement.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. The easement would remain, allowing public access, via an existing bridge, across the Mariano Exchange Ditch. Because it is a public access easement, the barricade preventing pedestrian access may have to be removed so that the bridge can continue to be used. The access has caused numerous problems in terms of unwanted behaviors for residents within proximity. If denied, these problems may continue to persist. And it continues to make the Westwood Third Subdivision Home Owners Association responsible for maintenance and liability issues that arise.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. This would delay the applicant in proceeding to remove the existing bridge.

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**SUMMARY:**

This ordinance will be vacating a 20' by 53' pedestrian easement across the Mariano Exchanged Ditch between the Westwood and Somerset Park subdivisions. The easement was established when the Westwood Third Subdivision was developed. A bridge was built over the easement to allow crossing of the ditch. Its purpose was to facilitate a connection between the adjoining subdivisions and improve pedestrian access to other destinations in the general area, such as schools and churches. However, over the years, the bridge has become a location for unwanted and criminal activities, causing concerns to the surrounding residents and the Westwood Home Owners Association (entity responsible for maintenance and liabilities). Because of continued problems, the bridge was barricaded with a fence and a request to vacate the easement submitted. If the easement is vacated, the bridge would be removed.

The property is generally located south of W. 1<sup>st</sup> Street and east of S. Wilson Avenue between 5<sup>th</sup> Court SW and Natasha Court spanning the Mariano Exchange Ditch connecting Westwood and Somerset Park subdivisions. The applicant is Kathy Louderback with Touchstone Property Management, LLC on behalf of the Westwood Third Subdivision Home Owners Association. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

The proposal to vacate the easement is the first step in removing the bridge that has been of concern in the neighborhood due to unwanted and criminal activities occurring on and around its location. Vacating this easement also requires a modification to the Westwood Third Subdivision Final Development Plan (FDP). It would be handled through an administrative approval process by the Current Planning Division, only if the easement is vacated.

A public hearing was held with the Planning Commission on April 11, 2016. The Planning Commission recommended approval of the vacation request by a vote of 4-1. There were concerns raised by the Planning Commission in vacating an easement that provides connectivity between subdivisions and allows greater ease to certain destinations such as schools and churches. However, a majority of the Commissioner's identified the following key points in support of the vacation:

- Unwanted/criminal activities that have been occurring over the years;
- There is no continuation of easement onto the adjoining Somerset Park subdivision for public pedestrian access;
- The bridge is currently not accessible with it being barricaded and is a private property issue, and;
- There is an agreement between both subdivisions to vacate the easement.

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**REVIEWED BY CITY MANAGER:****SCA**

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**LIST OF ATTACHMENTS:**

1. Ordinance approving the vacation of pedestrian access easement
2. Staff Memorandum



**FIRST READING: August 2, 2016**

**SECOND READING: August 16, 2016**

**ORDINANCE NO. 6036**

**AN ORDINANCE VACATING A TWENTY FOOT PEDESTRIAN ACCESS EASEMENT LOCATED ACROSS TRACTS A AND G OF THE WESTWOOD THIRD SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of a pedestrian access easement described below and located across Tracts A and G of the Westwood Third Subdivision, City of Loveland, County of Larimer, Sate of Colorado (the "Property"); and

**WHEREAS**, the City Council finds and determines no land adjoining any easement to be vacated will be left without an established public or private easement connecting said land with another established public or private easement is inapplicable; and

**WHEREAS**, the City Council finds and determines that the easement to be vacated is no longer necessary for the public use and convenience; and

**WHEREAS**, the City Council further finds and determines that the application filed at the City's Current Planning Division was signed by the owners of more than fifty percent of property abutting the easement to be vacated.

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

**Section 1.** That the City Council hereby adopts and makes the findings set forth above.

**Section 2.** That, based on such findings the following easement be and the same is hereby vacated:

A 20' Pedestrian Easement to be vacated lying on, over and across a portion of Tract A and Tract G, Westwood Third Subdivision to the City of Loveland, County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Block 6, of said Westwood Third Subdivision thence along the South line of said Lot 1 South 60°55'40" West 39.57 feet to the True Point of Beginning; thence departing said South line, South 28°39'50" East 53.00 feet to a point on the South line of said Westwood Subdivision; thence along said South line South 61°35'31" West 20.00 feet; thence departing said South line North 28°39'50" West 52.77 feet to the South line of said Lot 1; thence along

said South line North 60°55'40" East 20.00 feet to the True Point of Beginning;

The above described easement contains 1,058 square feet, more or less, and is subject to all easements, agreements and rights-of-way of record.

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. 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 4.** That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Records after its effective date in accordance with State Statutes.

ADOPTED this 16th day of August, 2016.

**CITY OF LOVELAND, COLORADO:**

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

**ATTEST:**

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

APPROVED AS TO FORM:

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

AN ORDINANCE VACATING A TWENTY FOOT PEDESTRIAN ACCESS EASEMENT LOCATED ACROSS TRACTS A AND G OF THE WESTWOOD THIRD SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

Ordinance # 6036

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 August 2, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 6, 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 August 20, 2016.

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City Clerk

Effective Date: August 30, 2016



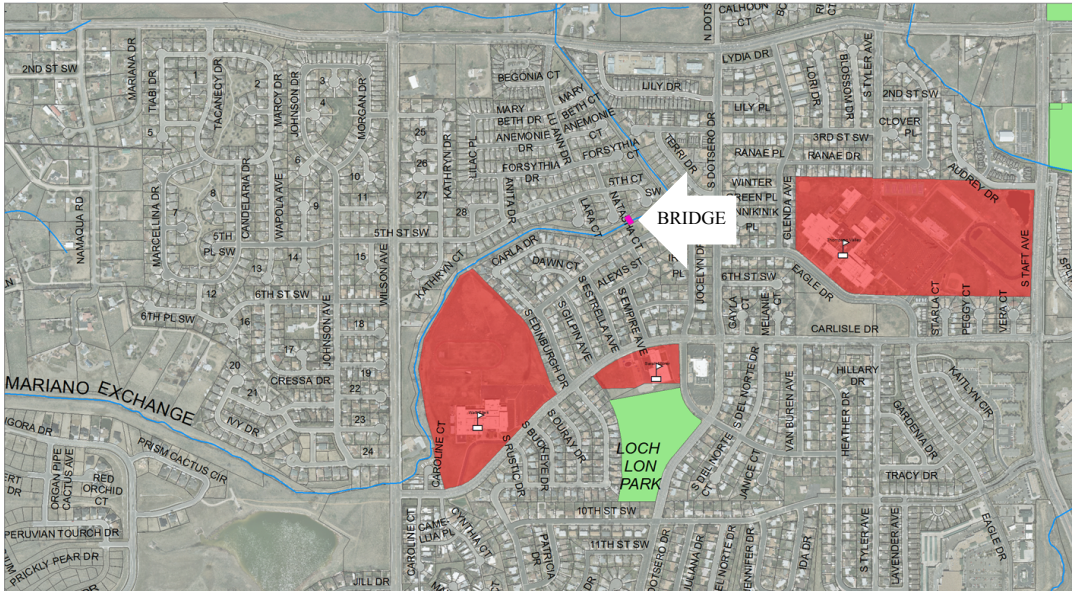
Current Planning Division
410 E. 5th Street • Loveland, CO 80537
(970) 962-2523 • eplan-
planning@cityofloveland.org

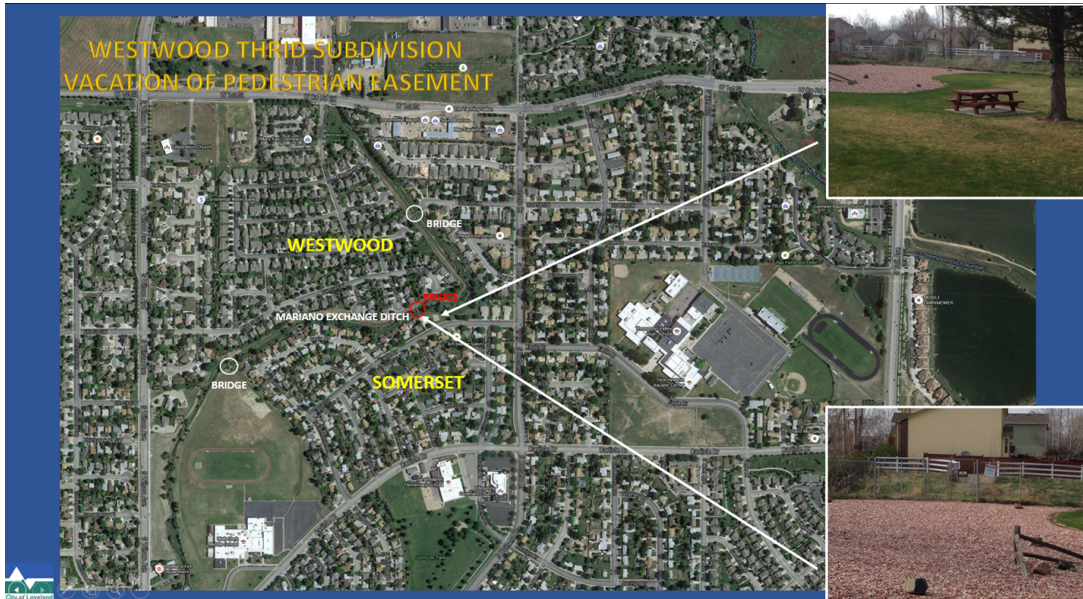
MEMORANDUM

TO: City Council
FROM: Troy Bliss, Senior Planner, Current Planning Division
DATE: August 2, 2016
SUBJECT: Westwood Third Subdivision – Vacation of Pedestrian Easement (PZ#15-00183)

I. EXHIBITS

- A. April 11, 2016, Planning Commission packet
B. April 11, 2016, Planning Commission minutes





## **II. KEY ISSUES**

City Staff has expressed some reservations about this request because the easement and bridge provides a connection between adjacent subdivisions and a centralized and convenient link for access to schools and churches in the vicinity through Westwood and Somerset Park. The City has previously been involved in meetings with the respective HOA's to look at alternatives in keeping the easement in place and opening the bridge back up. However, because of the controversy/liability factors related to the bridge and that both HOA's are in agreement to vacating the easement, there has not been a viable solution reached for all parties involved. Consequently, vacating the easement and ultimately removing the bridge has proven to be the only agreed upon option to resolve conflicts.

Additionally, as a follow-up to the Planning Commission discussion from April 11, 2016, questions were asked about the number of Police reports filed based upon the concerns raised about unwanted/criminal activities occurring in and around the bridge. Through the help of the Loveland Police Department, the information available suggests that between 2010 and 2015, there were 75 cases and 111 violations (some cases had more than 1 violation). It is important to point out that the report provided was within a 500 foot radius of the bridge. There is no ability to pin-point police reports directly at the bridge location. Consequently, not all 75 cases are associated with the bridge. A majority of the 75 cases were for criminal mischief and drug/alcohol possession (including underage).

### **III. BACKGROUND**

The application to vacate this pedestrian easement is prompted by an overall desire to remove an existing bridge in its place, crossing the Mariano Exchange Ditch. The subject bridge/pedestrian easement has not been in use for approximately 2-3 years as a result of it being fenced-off. This bridge is one of two installed with the Westwood Third Subdivision. The entire southern and eastern boundaries of the subdivision are bordered by the Mariano Exchange Ditch. These bridges were installed to facilitate pedestrian access from the Westwood Third Subdivision and adjoining developments across the ditch to destination spots including schools, churches, and parks – southeast of the subject site.

### **IV. VACATION**

An ordinance has been prepared for approval of the vacation request, reflecting the recommendation of City staff and the Planning Commission. A condition of approval was recommended by the Planning Commission stating:

- Prior to recording the ordinance vacating this pedestrian easement, an amendment to the Westwood Third Subdivision Final Development Plan shall be processed for approval by the Current Planning Division.

Agencies outside of the City which provide utility services including Century Link, Comcast, and Xcel Energy were referred this vacation request. No concerns have been voiced by these agencies as their utilities are not located within the easement – for pedestrian use only.

### **V. PLANNING COMMISSION REVIEW**

The vacation was reviewed by the Planning Commission at a public hearing on April 11, 2016 (see attached minutes – **Exhibit B**). The Commissioner's did express concerns relating to the vacation given its purpose in providing better pedestrian connectivity between subdivisions and destination areas within proximity such as schools as churches. However, by a vote of 4 to 1, the Commission recommended approval based upon the following key factors:

- Unwanted/criminal activities that have been occurring over the years;
- There is no continuation of easement onto the adjoining Somerset Park subdivision for public pedestrian access;
- The bridge is currently not accessible with it being barricaded and is a private property issue, and;
- There is an agreement between both subdivisions to vacate the easement.



**VI. RECOMMENDATION**

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinance on first reading.

**AGENDA ITEM:** 2.3  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** City Attorney's Office  
**PRESENTER:** Tami Yellico, City Attorney  
 Jacque Wedding-Scott, Executive Director, Loveland Downtown  
 Partnership and Downtown Development Authority




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**TITLE:**  
**An Ordinance Approving A Downtown Development Authority Election To Be Held November 8, 2016, To Authorize Debt, Taxes And Revenue Retention**

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the Ordinance on Second Reading.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. The election will not be held if the action is denied.
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration.

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**SUMMARY:**

Approval of the ordinance will direct the City Clerk and other staff to conduct an election on November 8, 2016 for the Downtown Development Authority (DDA) and submit ballot questions regarding an ad valorem tax increase and authorization of debt to the qualified electors within the DDA boundaries. The ballot language can be found in Section 1 of the attached City of Loveland ordinance. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

In January 2014 the Loveland City Council directed staff to work with the private sector to develop an organization that would lead downtown redevelopment efforts. In July 2014 the Loveland Downtown Partnership (LDP) was formed to act in this capacity. One focus area of the LDP was to lead the effort to establish a Downtown Development Authority (DDA). An election to form the DDA was held February 10, 2015 and the voters approved the formation of the DDA. Council approved Ordinance 5927 creating and establishing the DDA in April 2015 and subsequent to that action the DDA Board members were appointed in May 2015. The DDA Plan of Development was initially approved by Council in July, 2015.

On July 5, 2016 City Council approved an ordinance on second reading calling for a special election to be held as a coordinated election with the County Clerk on November 8, 2016. Both the LDP and DDA boards took affirmative action at their last meetings to move forward with the Amended Plan of Development, including sales tax in the base/increment on all items taxable under Section 3.16.010 and Section 3.16.020A of the Loveland Municipal Code. In addition,

both boards have recommended to move forward with a ballot question authorizing up to 5 mills property tax; and a second question authorizing up to \$75 million in debt. On July 19, 2016 City Council approved a Resolution approving the Amended Plan of Development.

If approved, this ordinance submits two ballot questions to the qualified electors on November 8, 2016. The first question seeks approval of a property tax mill levy, not to exceed 5 mills, on properties within the DDA Boundaries. The DDA recommendation, subject to City Council approval at a later date, is for a property tax levy of 5 mills in 2017. Revenues from this increase are conservatively estimated at \$198,000 for tax collection year 2017. Revenues from the 5 mill authorization would be purposed to include, but is not limited to, maintenance projects for sidewalks, street cleaning, litter pick up, landscape maintenance,

The second question is seeking approval to increase debt by \$75,000,000 to finance DDA projects, including without limitation, parking, utilities, streets, sidewalks, alleyways and beautification, and applicable provisions of Colorado law from sales and property tax increment monies, and allowing the City to keep tax revenue above certain state law limits for the financing of future projects within the DDA. DDA bonds are only issued when it can be demonstrated they can be paid back from tax increment monies.

Qualified electors of the DDA include: landowners, residents, or lessees located within the DDA Boundaries. Landowners or lessees that are entities located within the DDA boundaries may only vote if they officially designate a representative.

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**REVIEWED BY CITY MANAGER:**

**SCA**

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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Resolution approved by City Council and DDA Board
3. DDA Map

**FIRST READING: August 2, 2016**

**SECOND READING: August 16, 2016**

**ORDINANCE NO. 6037**

**AN ORDINANCE APPROVING A DOWNTOWN DEVELOPMENT  
AUTHORITY ELECTION TO BE HELD NOVEMBER 8, 2016, TO  
AUTHORIZE DEBT, TAXES AND REVENUE RETENTION**

WHEREAS, the City of Loveland, in the County of Larimer and State of Colorado (the "City") is a municipal corporation duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the City's Home Rule Charter (the "Charter"); and

WHEREAS, the members of the City Council of the City (the "City Council") have been duly elected and qualified; and

WHEREAS, the Loveland Downtown Development Authority, in the City of Loveland, State of Colorado (the "Authority"), is a body corporate duly organized and existing under laws of the State of Colorado; and

WHEREAS, the City Council has heretofore approved the Plan of Development (the "Plan") for the Authority; and

WHEREAS, the interest of the Authority and the public interest and necessity demand and require the financing of certain development projects described in the Plan (collectively, the "Projects"); and

WHEREAS, Article X, Section 20 of the Colorado Constitution ("TABOR") requires voter approval for the creation of any debt, a mill levy increase or revenue retention above certain limits; and

WHEREAS, pursuant to Section 31-25-807(3)(b), C.R.S., the Board of the Authority has called an election on the question of issuing bonds or otherwise providing for loans, advances or indebtedness ("Financial Obligations") and pledging the tax increment revenues to the payment of such Financial Obligations; and

WHEREAS, Section 31-25-816(2)(b), C.R.S. provides the operations of the Authority may be financed by an ad valorem tax levied by the City, not exceeding five mills on the valuation for assessment of property located within the Authority; and

WHEREAS, TABOR requires elections on ballot issues (as defined in TABOR) to be held on limited election days; and

WHEREAS, November 8, 2016 is one of the election dates at which ballot issues may be submitted pursuant to TABOR; and

WHEREAS, pursuant to Section 31-25-807(3)(b), C.R.S., the City Council must approve calling the election; and

WHEREAS, pursuant to Section 31-11-111, C.R.S., the City Council must set the ballot titles for ballot questions; and

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

**SECTION 1.** Approval of DDA Election. The City Council hereby approves the holding of the Election on November 8, 2016 and the submittal of the following questions in substantially the following forms to the qualified electors and pursuant to Section 31-11-111, C.R.S., the City Council hereby determines that the following questions are the submission clause for each question:

(a) SHALL CITY OF LOVELAND TAXES BE INCREASED \$198,000 IN TAX COLLECTION YEAR 2017 AND BY SUCH AMOUNT AS MAY BE RAISED ANNUALLY THEREAFTER BY AN AD VALOREM PROPERTY TAX RATE OF NOT MORE THAN 5.00 MILLS ON TAXABLE REAL AND PERSONAL PROPERTY WITHIN THE BOUNDARIES OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY, FOR THE PURPOSES SET FORTH IN TITLE 31, ARTICLE 25, PART 8, C.R.S., INCLUDING WITHOUT LIMITATION, MAINTENANCE PROJECTS FOR SIDEWALKS, STREET CLEANING, LITTER PICKUP, AND LANDSCAPE MAINTENANCE; AND SHALL THE CITY AND THE AUTHORITY BE AUTHORIZED TO COLLECT, RETAIN AND SPEND THE REVENUES COLLECTED FROM SUCH TOTAL PROPERTY TAX RATE, INVESTMENT INCOME THEREON AND ANY OTHER LAWFUL SOURCE AS A VOTER-APPROVED REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

(b) SHALL CITY OF LOVELAND DEBT BE INCREASED \$75,000,000, WITH A REPAYMENT COST OF NO MORE THAN \$200,000,000, FOR THE PURPOSE OF FINANCING THE COSTS OF DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY OR ON BEHALF OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PURSUANT TO THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT, AS IT MAY BE AMENDED FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, PARKING, UTILITIES, STREETS, SIDEWALKS, ALLEYWAYS AND BEAUTIFICATION, AND APPLICABLE PROVISIONS OF COLORADO LAW; SUCH DEBT AND THE INTEREST THEREON TO BE PAYABLE FROM AND SECURED BY A PLEDGE OF THE SPECIAL FUND OF THE CITY WHICH SHALL CONTAIN TAX INCREMENT REVENUES LEVIED AND COLLECTED WITHIN THE BOUNDARIES OF THE AUTHORITY; AND SHALL SUCH DEBT BE EVIDENCED BY BONDS, NOTES, CONTRACTS OR OTHER

FINANCIAL OBLIGATIONS TO BE SOLD IN ONE SERIES OR MORE FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT THEREOF, ON TERMS AND CONDITIONS, AND WITH SUCH MATURITIES AS PERMITTED BY LAW AND AS THE CITY MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT MORE THAN 3% OF THE PRINCIPAL AMOUNT SO REDEEMED; AND SHALL THE CITY AND THE AUTHORITY BE AUTHORIZED TO COLLECT, RETAIN AND SPEND THE TAX INCREMENT REVENUES, THE BOND PROCEEDS AND INVESTMENT INCOME THEREON AS A VOTER-APPROVED REVENUE CHANGE, AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

**SECTION 2. Ballot Question Titles.** Pursuant to Section 31-11-111, C.R.S., the City Council hereby sets the titles for questions (a) and (b) set forth in Section 1 above as follows;

The title for Question (a) in Section 1 above shall be:

AUTHORIZATION FOR THE CITY TO INCREASE PROPERTY TAXES IN THE DOWNTOWN DEVELOPMENT AUTHORITY BY NOT MORE THAN 5.00 MILLS AND OF A VOTER-APPROVED REVENUE CHANGE AS AN EXCEPTION TO THE LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW.

The title for Question (b) in Section 1 above shall be:

AUTHORIZATION FOR THE CITY TO INCUR DEBT OF UP TO \$75,000,000 FOR THE PURPOSE OF FINANCING THE COSTS OF DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY OR ON BEHALF OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PURSUANT TO THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT, WITH SUCH DEBT PAYABLE FROM AND SECURED BY A PLEDGE OF THE SPECIAL FUND OF THE CITY WHICH SHALL CONTAIN TAX INCREMENT REVENUES LEVIED AND COLLECTED WITHIN THE BOUNDARIES OF THE AUTHORITY.

**SECTION 3. Other Election Procedures.** The City Clerk and other officers and employees of the City are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance.

**SECTION 4. Election Contest.** Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set, and for contests concerning the order of a ballot, within five days after the ballot order is set by the County Clerk and not thereafter.

**SECTION 5. Repealer.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer

shall not be construed to revive any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

**SECTION 6. Severability.** If any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

**SECTION 7. Publication.** As provided in 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 8. Effective Date.** This Ordinance shall be in full force and effect ten days after its final publication, as provided in Charter Section 4-8(b).


ADOPTED this 16th day of August, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:



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

Ordinance # 6037

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 August 2, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 6, 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 August 20, 2016.

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

Effective Date: August 30, 2016

**RESOLUTION #R-59-2016**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING  
THE AMENDED PLAN OF DEVELOPMENT FOR THE LOVELAND  
DOWNTOWN DEVELOPMENT AUTHORITY**

**WHEREAS**, the Loveland Downtown Development Authority, in the City of Loveland, State of Colorado (the "Authority"), is a body corporate duly organized and existing under laws of the State of Colorado; and

**WHEREAS**, the members of the Board of the Authority (the "Board") have been duly appointed and qualified; and

**WHEREAS**, pursuant to C.R.S. §31-25-807(3)(a), the Board has adopted the attached Amended Plan of Development for the Authority (the "Plan"), subject to approval of the Plan by the City Council of the City of Loveland (the "City"); and

**WHEREAS**, it is anticipated that, pursuant to Article X, Section 20 of the Colorado Constitution, the Authority will propose to the City Council that an election be held on November 8, 2016 (the "Election"), for the approval of debt to be issued by the City for Authority purposes, taxes to be levied by the City for Authority purposes and revenue retention above certain limits (collectively the "Ballot Questions"); and

**WHEREAS**, the Plan provides for the pledge of property tax increment and municipal sales tax increment in order to finance projects and purposes of the Authority as authorized in the Plan ("Tax Increment Provisions"); and

**WHEREAS**, in the event all of the Ballot Questions are not approved by the qualified electors at the Election, the City Council desires that the Tax Increment Provisions of the Plan shall then be automatically repealed; and

**WHEREAS**, pursuant to C.R.S. §31-25-807(4)(b), the City Council submitted the Plan to the Loveland Planning Commission (the "Planning Commission") and the Planning Commission has submitted a written letter of support of the Plan to the City Council; and

**WHEREAS**, pursuant to C.R.S. § 31-25-807(4)(c), the City Council held a public hearing on the Plan after notice of such hearing was published once during the week preceding the public hearing in a newspaper having a general circulation in Loveland.

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

**Section 1. Findings.** The City Council hereby finds that there is a need to take corrective measures in order to halt or prevent deterioration of property values or structures within the Plan area and to halt or prevent the growth of blighted areas therein. The City Council further finds that the Plan will afford maximum opportunity consistent with the sound needs and plans of the



City as a whole, for the development or redevelopment of the Plan area by the Authority and by private enterprises.

**Section 2. Approval of Plan.** Having received a recommendation from the Planning Commission on the Plan and having held a public hearing thereon after required public notice, the City Council hereby approves the Plan.

**Section 3. Automatic Repeal.** The section of the Plan entitled "Methods of Financing Projects" contains the Tax Increment Provisions. In the event that the qualified electors do not approve all of the Ballot Questions at the Election, the Tax Increment Provisions found in the above-referenced section of the Plan shall thereupon, without further action of the City Council, be automatically repealed and of no further force and effect. In such an event, the City shall promptly give written notice to the Larimer County Assessor of such repeal.

Adopted this 19th day of July, 2016.



*Cecil A. Gutierrez*  
Cecil A. Gutierrez, Mayor

ATTEST:

*Christy Anderson*  
City Clerk

APPROVED AS TO FORM:

*Tami Yatten*  
City Attorney



# **LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY**

Amended Plan of  
Development

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## Foreword

The downtown (“Downtown”) of the City of Loveland (“Loveland”) serves as the heart of a city that from its beginnings in 1877 has defined the best of Colorado’s entrepreneurial spirit and sense of civic pride, with an emphasis on arts and cultural activities. Downtown Loveland residents, businesses and property owners believe that a strong economic foundation is critical to sustaining a vibrant community respectful of its history, committed to the full inclusion of all its citizens, and strategically positioned to thrive in a globally competitive marketplace.

This Plan of Development (the “Plan”) is an essential first legal step in creating a vibrant Downtown that provides a safe, dynamic environment to gather, live, educate, shop, work and play. The needs of the Downtown have been recognized over the past years in vision documents, comprehensive and strategic plans and master planning efforts. All of these documents have identified the need to have a strong Downtown for the economic health and future of Loveland.

The emphasis of this Plan is on the needs of the Downtown over a thirty (30) to fifty (50) year period and the type of projects and programs that are required to satisfy those needs, rather than dictating the physical location, dimensions and design which can only evolve through continual planning efforts.

## District Map



**Loveland Downtown Development Authority  
Established by Ordinance No. 5927**

## Boundaries of the DDA

The boundary of the Loveland Downtown Development Authority (the "DDA"), as shown on the preceding map, outlines the area in which the DDA will exercise its statutory powers (the "District"). The District was established on the basis of the best information available at the time. It is intended that the boundaries will change given changing times and circumstances. Property owners adjoining the District are encouraged to petition for inclusion if and when the uses and purposes of their properties become compatible with the purposes of the District.

The District is generally bounded on the east by Lincoln Avenue and on the west by Cleveland Avenue; the eastern boundary of the District goes from the tip of the southern gateway, following Lincoln Avenue to 3<sup>rd</sup> Street SE, east 2 blocks to Washington Avenue, 6 blocks north to 4<sup>th</sup> Street, east one block to Adams Avenue, north to 5<sup>th</sup> Street, and then back west to Washington Avenue; then from the intersection of 5<sup>th</sup> Street and Washington Avenue, north one block and west one block to Jefferson Avenue, north 1½ blocks and west another ½ block, then continuing northward, including the properties that front on Lincoln Avenue, toward Eisenhower Boulevard, to 1/2 block south of Eisenhower Boulevard, then east to Jefferson Avenue, north to the alley one half block past 16<sup>th</sup> Street, west 190 feet, north to the boundary with Lakeside Cemetery, west to Lincoln Avenue, north to the end of the one way system, and from the tip of the northern gateway, the western boundary includes the properties on the west side of Cleveland Avenue heading south to 11<sup>th</sup> Street, then west to just past the railroad tracks, south on Railroad Avenue for one block, and again west on 10<sup>th</sup> Street to Garfield Avenue, then south 11 blocks to past 2<sup>nd</sup> Street SW to the intersection of Garfield Avenue and Railroad Avenue, then following the irrigation ditch southeast back to Cleveland Avenue and then south to the end of the one way system.

The legal description of the District is attached as Appendix I to this Plan.

## Objective and Purposes

The primary objectives of the DDA are to promote the safety, prosperity, security and general welfare of the District and its inhabitants, to prevent deterioration of property values and structures within the District, to prevent the growth of blighted areas within the District, to assist Loveland in the development, redevelopment and planning of the economic and physical restoration and growth of the District, to improve the overall appearance, condition and function of the District, to encourage a variety of uses compatible with the artistic and cultural community, to sustain and improve the economic vitality of the District, to promote the historic, artistic and cultural elements of the District, and to encourage pedestrian traffic and security in the District. To achieve these objectives, the specific goals of the DDA include the following and any other activities, plans, and development and redevelopment authorized by law.

The Plan recognizes that this is a long term revitalization strategy focused on implementing an entrepreneurial environment in which District products and services meet local demands and attract new residents and businesses to the area.

To achieve these objectives, the specific goals of the DDA include, but are not limited to the following:

1. Work with private entities, developers and property owners to promote positive investment in the District.
2. Work with business owners, and business entrepreneurs to promote retail growth, new job growth and other uses in the District.
3. Identify and help form collaborative public/private partnerships that promote economic growth in ways that honor and sustain strong community values.
4. Implement key elements of Loveland's approved infrastructure plan.
5. Increase residential and employment density as catalysts for enriching life for residents and visitors alike.
6. Assist emerging and existing businesses in navigating various local, county, and state regulations and taxing policies.
7. Identify and establish a communications process with current business and property owners within the District.
8. Establish multiple communication forums with emphasis on email, social media, and newspaper.
9. Work with Loveland in evaluating and potentially implementing a "One Stop" approach to Downtown development including identifying a potential organizational structure therefor.
10. Improve the visual attractiveness of the District including but not limited to façade renovations, public streets, alleys, curbs, gutters, sidewalks, lighting along with street furniture and landscaping.
11. Underground the utility systems.
12. Promote a diversity of activities in the District.

13. Promote and encourage the renovation and reuse of vacant and deteriorated structures within the District.
14. Encourage the creation and continuation of public events within the District
15. Promote and market the District.
16. Promote Loveland's unique identity as a destination for arts and culture.



## Plan of Development Projects

- A. Plan projects may include public facilities and other improvements to public or private property of all kinds consistent with the priorities of the DDA by all means permitted by federal, state and local laws and regulations, including but not limited to, land assemblage, demolition, removal, site preparation, construction, renovation, repair, remodeling, reconstruction purchase of property interests, rehabilitating, equipping, selling and leasing in connection with such public and private improvements.

- B. Descriptions of specific development projects that have been conceptually identified as potential key downtown **redevelopment projects** including, but not limited to, the following:

ITEM	CITY/DDA FUNDING	OTHER PUBLIC FUNDING	PRIVATE	NOTES
<b>Redevelopment Projects</b>				
South Catalyst Project: 3 <sup>rd</sup> Street Site	\$15,000,000	\$15,000,000	\$50,000,000	Amount includes the estimate on land, plus the cost of the redevelopment with a parking structure
4th Street/Rialto Square	\$2,500,000	\$0	\$7,500,000	Includes the cost of land plus redevelopment cost,
Arcadia (opera House) (4th and Cleveland)	\$400,000	\$75,000	\$1,800,000	Based on preliminary review of proposed plan.
4th and Lincoln/Redevelopment (Heartland Corner)	\$2,000,000	\$0	\$6,250,000	Potential project/timeline unknown
Loveland Elks Lodge	\$250,000	\$200,000	\$2,000,000	Estimates are for rehab at \$100/square foot
Loveland Hotel	\$250,000	\$200,000	\$2,000,000	Estimates are for rehab at \$100/square foot
VFW Hall	\$500,000	\$0	\$4,000,000	
Feed and Grain	\$0	\$2,300,000	\$1,000,000	
Pulliam Building	\$4,600,000	\$200,000	\$1,200,000	Assumes the City receives a grant from the State Historic Fund and Historic Tax Credits
Former House of Neighborly Service Building - Cleveland	\$500,000	\$0	\$5,000,000	Assumes a redevelopment of a 20,000 sq./foot building
Safeway site	\$5,000,000	\$0	\$30,000,000	Requires further investigation
Railroad site	\$2,500,000	\$0	\$15,000,000	Land at 7th and Garfield
Other private	\$1,500,000		\$10,000,000	Includes other projects not contemplated, plus façade grants and fire safety grants
<b>SUBTOTAL REDEVELOPMENT</b>	<b>\$35,500,000</b>	<b>\$17,975,000</b>	<b>\$139,500,000</b>	

C. Descriptions of specific potential **public facilities and improvements** that have been conceptually identified to complement private developments including, but not limited to, the following:

ITEM	CITY/DDA FUNDING	OTHER PUBLIC FUNDING	PRIVATE	NOTES
4th Street/Phase I - 3 blocks	\$5,860,000			4th Street from Railroad to Jefferson
4th Street/Additional 2 blocks	\$2,500,000			4th Street to Garfield and Washington
3rd Street	\$2,250,000			3rd Street west of Cleveland to Feed and Grain
5th Street	\$3,010,000			5th Street from Lincoln to Railroad
5th Street Plaza	\$2,187,413			Museum plaza proposal in the parking lot at 5th and Lincoln
Power (Electric)	\$5,000,000			Estimates are for \$300,000 per block to underground the power
Railroad Avenue 1st to 5th	\$4,000,000			May include connectivity with the trail system.
Cost Escalation	\$3,161,483			Estimates were completed in 2009, the number is 20 percent of the cost of the streetscape improvements
<b>SUBTOTAL INFRASTRUCTURE</b>	<b>\$27,968,896</b>	<b>\$0</b>	<b>\$0</b>	

D. **Other specific development projects and public facilities** currently contemplated are as follows:

ITEM	CITY/DDA FUNDING	OTHER PUBLIC FUNDING	PRIVATE	NOTES
Trail Expansion	\$1,000,000			
Railroad Quiet Zones	\$1,000,000	\$2,000,000		Includes four rail crossings located at 1 <sup>st</sup> , 4 <sup>th</sup> , 6 <sup>th</sup> and 7 <sup>th</sup> Streets
<b>SUBTOTAL OTHER</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>\$0</b>	

E. The DDA also may seek to support other projects not directly identified above including, but not limited to, the following:

1. Beautification programs;
2. Pedestrian facilities and circulation improvements;
3. Parking that is not otherwise included within specific projects (i.e., 3<sup>rd</sup> Street Catalyst);  
and
4. Downtown hotel or other convention facilities built in conjunction with a private development.

## Strategic Downtown Plan

The DDA, acting in coordination with the Loveland Downtown Partnership and the City of Loveland, will need to establish short and long term priorities based on adopted strategic plans and identified development projects as such plans and projects evolve. The current plans, which are referenced below and attached as Appendices II through V to this Plan, are as follows:

### **Appendix II: *A Strategic Plan for Revitalizing Downtown Loveland (2014)***

The plan, adopted by the Loveland City Council and the Loveland Downtown Partnership, provides the comprehensive outline for short and long term success in Downtown Loveland.

A Strategic Plan for Revitalizing Downtown Loveland is driven by the following principles:

1. We are committed to a process driven by community stakeholders and supported by the City of Loveland.
2. We are committed to a long term revitalization strategy (20 yrs.) that combines immediate action to improve communications and marketing with an ongoing responsibility to maintain and improve the downtown infrastructure.
3. We are committed to shaping policies and procedures that provide adequate flexibility for the organization to respond quickly and effectively to changing conditions at the local, state, national, and/or international levels.
4. We are committed to implementing an entrepreneurial environment in which Downtown products and services meet local demands and attract new residents and businesses to the area.
5. We are committed to shaping collaborative public/private partnerships that promote economic growth in ways that honor and sustain strong community values.

### **Appendix III: *Downtown Vision Book (2010)***

The purpose of the Downtown Vision Book is to highlight catalyst projects, and describe the context, character and the opportunity for revitalization. In addition, the Downtown Vision Book identifies ideas, opportunities and strategies to further benefit Downtown Loveland. The Private-Public projects are designed to capture not only the value of public participation, but to be a catalyst for private investment, enhanced connections and enrichment of the community experience for residents, businesses and visitors alike.

### **Appendix IV: *Destination Downtown: HIP Streets Master Plan (Infrastructure Plan) (2010)***

The Infrastructure Plan was completed in 2010, and highlights the streetscape, utility and other public infrastructure improvements in Downtown Loveland.

**Appendix V: *Downtown Strategic Plan – Amendment to the City’s Comprehensive Plan (2009)***

The plan, adopted by the Loveland City Council as an amendment to the Comprehensive Plan, was the basis for the effort by the City and the Loveland Downtown Team to revitalize the Downtown.

## Methods of Financing Projects

In order to finance the projects and purposes of the DDA, the following financial sources are authorized to be utilized:

- A. Proceeds of bonds of, loans or advances to, or indebtedness incurred by the City of Loveland secured by the pledge of the following tax revenues for the maximum period of time authorized by C.R.S. § 31-25-807(3):
- a. **Property Tax Increment:** All of that portion of property taxes in excess of such taxes which are produced by the levy at the rate fixed each year by or for any public body upon the valuation for assessment of taxable property within the boundaries of the District last certified prior to the effective date of approval by the City Council of Loveland of this Plan or, as to an area later added to the boundaries of the District, the effective date of the modification of this Plan.
  - b. **Municipal Sales Tax Increment:** All of that portion of municipal sales tax in excess of such taxes collected within the boundaries of the District for the twelve-month period ending on the last day of the month prior to the effective date of approval by the City Council of Loveland of this Plan. For purposes of calculating the amount of municipal sales tax, "municipal sales tax" shall be as defined in Section 3.16.010 and Section 3.16.020A of the Loveland Municipal Code, provided that such definition shall specifically not include those municipal sales tax revenues that are obligated to be paid in accordance with the specific terms and conditions of any economic incentive agreement in effect as of the approval date of this Plan<sup>1</sup>.
  - c. **Other sources:** Such other sources of revenue for repayment of bonds, loans, advances or other indebtedness of Loveland as may be authorized by law.

*All such taxes described in this paragraph A shall be adjusted, collected, allocated and used as set forth in C.R.S. § 31-25-807(3), as amended from time to time.*

- B. Membership fees;
- C. Private contributions;
- D. Proceeds of loans to the DDA;
- E. Fees and other charges imposed in connection with projects undertaken by the DDA;
- F. Grants and other funds made available by public agencies and other entities;

<sup>1</sup> On January 27, 2015, the City of Loveland and Thornton Long Term Investments, L.L.C. entered into that certain Agreement for City Incentive, Fee Waiver, and Construction Materials Use Tax Waiver with Thornton Long Term Investments, L.L.C. for a Sprouts Farmers Market (the "Agreement"). Pursuant to the Agreement, a \$2,200,000 incentive was provided by the City of Loveland which is to be repaid at a rate of three percent (3%) interest, amortized over a ten (10) year period, in accordance with the terms and conditions of the Agreement.

- G. All types of bond issues, including industrial development revenue and special assessment bonds; and
- H. All such other sources and methods as may be authorized by law from time to time, including but not limited to, C.R.S. § 31-25-801, et seq.

**Appendix I: *Legal Description of Downtown Development District***

Beginning at the point of intersection of the south right-of-way (ROW) line of E. 4<sup>th</sup> Street and the east ROW line of N. Washington Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. 3<sup>rd</sup> Street; thence continuing southerly to the point of intersection of the south ROW line of E. 3<sup>rd</sup> Street and the east ROW line of N. Washington Avenue; thence continuing southerly along said east ROW line to its point of intersection with the north ROW line of E. 1<sup>st</sup> Street; thence southwestly to the point of intersection of the south ROW line of E. 1<sup>st</sup> Street and the east ROW line of S. Washington Avenue; thence southerly along said east ROW line its point of intersection with the north ROW line of the alley between E. 1<sup>st</sup> Street and 2<sup>nd</sup> Street S.E.; thence continuing southerly to the point of intersection of the south ROW line of said alley and the east ROW line of S. Washington Avenue; thence continuing southerly along said east ROW line its point of intersection with the north ROW line of 2<sup>nd</sup> Street S.E.; thence continuing southerly to the point of intersection of the south ROW line of 2<sup>nd</sup> Street S.E. and the east ROW line of S. Washington Avenue; thence continuing southerly along said east ROW line to its point of intersection with the south ROW line extended of 3<sup>rd</sup> Street S.E.; thence westerly along said extended line to the point of intersection of the west ROW line of S. Washington Avenue and the south ROW line of 3<sup>rd</sup> Street S.E.; thence continuing westerly along said south ROW line to its point of intersection with the east ROW line of S. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the north line extended of the 5<sup>th</sup> Street S.E. ROW; thence continuing southerly along said east ROW line to its point of intersection with the south line of the 5<sup>th</sup> Street S.E. ROW line; thence southerly along said east ROW line to its point of intersection with the north line of the 8<sup>th</sup> Street S.E. ROW; thence continuing southerly along said east ROW line to its point of intersection with the south line of the 8<sup>th</sup> Street S.E. ROW; thence westerly along the south line extended of the 8<sup>th</sup> Street S.E. ROW to the west line of the S. Lincoln Avenue ROW; thence northerly along the west ROW line of S. Lincoln Avenue to its point of intersection with the southwest line of the S. Cleveland Avenue ROW; thence continuing northwestly along said southwest ROW line to its point of intersection with the south line of the 5<sup>th</sup> Street S.E. ROW; thence northerly along the west line of the S. Cleveland Avenue ROW to its point of intersection with the north line of the 5<sup>th</sup> Street S.E. ROW; thence continuing northerly along said west ROW line of S. Cleveland Avenue to its intersection with the north bank of the Farmer's Ditch; thence northwestly along said bank to its point of intersection with the west ROW line of the Burlington Northern/Santa Fe Railroad and the south line of Henrikson Addition; thence continuing northwestly along said south line to the southwest corner of Henrikson Addition; thence northerly along the west line of said Henrikson Addition to its point of intersection with the south ROW line of 2<sup>nd</sup> Street S.W.; thence westerly along said south ROW line to the NW corner of Mill First Addition; thence northerly perpendicular to said ROW line to a point on the south line of Mill Second Addition; thence westerly along said south line to the SW corner of Mill Second Addition; thence northerly and easterly along the west line of said Mill Second Addition to the NW corner thereof; thence easterly and southerly along the north line of Mill Second Addition to the NE corner thereof; thence northwestly to the SE corner of Riverside Addition; thence northerly



along the east line of Riverside Addition to its point of intersection with the south ROW line of W. 1<sup>st</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 1<sup>st</sup> Street and the west ROW line of the N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 2<sup>nd</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 2<sup>nd</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 3<sup>rd</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 3<sup>rd</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly to the point of intersection of the south ROW line of the alley between W. 3<sup>rd</sup> Street and W. 4<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 4<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 4<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of the alley between W. 4<sup>th</sup> Street and W. 5<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 5<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 5<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 6<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 6<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 7<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 7<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line its point of intersection with the south ROW line of the alley between W. 7<sup>th</sup> Street and W. 8<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 8<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 8<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 10<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of W. 10<sup>th</sup> Street and the west ROW line of N. Garfield Avenue; thence easterly to the point of intersection of the east ROW line of N. Garfield Avenue and the north ROW line of W. 10<sup>th</sup> Street; thence easterly and northeasterly along said north ROW line to its point of intersection with the west ROW line of the Burlington Northern/Santa Fe Railroad; thence northerly along said west ROW to its point of intersection the south line of Little Barnes Ditch; thence continuing northerly to the point of intersection of the north line of said Ditch and the west ROW line of the Burlington Northern/Santa Fe Railroad; thence northerly along said west ROW line to its point of intersection with the south ROW line of E. 11<sup>th</sup> Street; thence continuing northerly to the point of intersection of the west ROW line of said Railroad and the north ROW line of W. 11<sup>th</sup> Street; thence northeasterly to the point of intersection of the east ROW line of N. Railroad Avenue and the north ROW line of E. 11<sup>th</sup> Street; thence easterly along said north ROW line to its point of intersection with the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence northerly along said west alley ROW line to its point of intersection with the south ROW line of the alley between E. 11<sup>th</sup> Street and E. 12<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of the alley between E. 11<sup>th</sup> Street and E. 12<sup>th</sup> Street and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west alley ROW line to its point of intersection with the south ROW line of E. 12<sup>th</sup> Street; thence continuing northerly to the point of intersection of the north ROW line of E. 12<sup>th</sup> Street and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west alley

ROW line to its point of intersection with the south ROW line of the alley between E. 12th Street and E. 13th Street; thence easterly to the point of intersection of the east ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue and the midpoint of the westerly Lot line of Lot 8 of Block 5 of Loveland Heights Addition Subdivision, thence easterly through the east-west centerline of said Lot 8, to a point of intersection of west ROW line of N. Cleveland Avenue and the midpoint of the easterly lot line of Lot 8 of Block 5 of Loveland Heights Addition Subdivision, thence continuing northerly along the west ROW line of N. Cleveland Avenue to the northeast corner of Lot 10 of Block 5 of Loveland Heights Addition Subdivision, thence westerly along the north property line of said Lot 10 to the point of intersection of the east ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue and the northwest corner of Lot 10, Block 5 of Loveland Heights Addition, thence westerly across said alley ROW along the north property line extended of Lot 10, Block 5 of Loveland Heights Addition to its intersection with the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue, thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of E. 13th Street; thence continuing northerly to the point of intersection of the north ROW line of E. 13th Street and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of the alley between E. 13th Street and E. Eisenhower Boulevard; thence continuing northerly to the point of intersection of the north ROW line of said alley between E. 13th Street and E. Eisenhower Boulevard and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west ROW line to the point of intersection of the east line of Lot 21, Block 4, Loveland Heights Addition and the south line of the vacated alley ROW; thence easterly along said south line to the centerline of the vacated alley ROW; thence northerly along said centerline to its point of intersection with the south ROW line of E. Eisenhower Boulevard; thence continuing northerly along the west line extended of said Lots to its point of intersection with the centerline of E. Eisenhower Avenue; thence westerly along said centerline, to its point of intersection with the west ROW line of the Burlington Northern/Santa Fe Railroad; thence northwesterly along said west ROW line to its point of intersection with the north line extended of the E. 15th Street ROW; thence easterly along said north line extended to its point of intersection with the west ROW line of Jackson Avenue; thence easterly along said north line extended of the East 15th Street ROW to its point of intersection with the east ROW line of Jackson Avenue; thence continuing easterly along the north ROW of E. 15th Street to its point of intersection with the east ROW line of the alley between Jackson Avenue and N. Lincoln Avenue; thence northerly along said east ROW of the alley to its point of intersection with the south ROW line of E. 16th Street; thence northerly along said east ROW of the alley to its point of intersection with the north ROW line of E. 16th Street; thence continuing northerly along said east ROW of the alley to its point of intersection with the southern property line of the Loveland Burial Park Cemetery; thence easterly along said southern property line to its point of intersection with the west ROW line of N. Cleveland Avenue; thence northeasterly along the northwestern ROW line of N. Cleveland Avenue to its point of intersection with the west ROW line of N. Lincoln Avenue; thence northerly along said west ROW line to its point of intersection with the south line extended of the E. 20th Street ROW; thence easterly along said south line extended to its intersection with the east ROW line of N. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the south boundary line of the Stephenson 1st Subdivision; thence easterly along said south boundary line to its point of intersection with the west boundary of the Conger Subdivision of the North End Addition; thence southerly along said west boundary line to its intersection with the south boundary of the Conger Subdivision of the North End Addition; thence easterly along said south boundary to its intersection with the west boundary line of the Grandview Subdivision of North End Addition; thence southerly along said west boundary line to its intersection with the north ROW line of E. 16th Street; thence southeasterly across E. 16th Street to the point of intersection of the south ROW line of E. 16th Street and the east ROW line of N. Jefferson Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. Eisenhower Blvd.; thence southerly along said east ROW line to its point of intersection with

the south ROW line of E. Eisenhower Blvd; thence continuing southerly along said east ROW line to its point of intersection with the south boundary line extended of the WARNOCK ADD AMD L1-4 35-39 & POR L40 & VACATED ALLEY Subdivision; thence westerly along said south boundary line extended to its intersection with the west ROW line of N. Jefferson Avenue; thence westerly along said south boundary line to its point of intersection with the west ROW line extended of the alley between N. Lincoln Avenue and N. Jefferson Avenue; thence southerly along said west alley ROW line to its point of intersection with the north ROW line of E. 13<sup>th</sup> Street; thence continuing southerly to the point of intersection of said west alley ROW line and the south ROW line of E. 13<sup>th</sup> Street; thence continuing southerly along said west alley ROW line to its point of intersection with north bank of the Big Lateral Ditch, thence northwesterly along north bank of said ditch to its intersection with the east ROW line of N. Lincoln Avenue, thence southerly along the east ROW line of N. Lincoln Avenue to a point 50 feet north of the southwest corner of Lot 6, Block 1 of the McKee Meadows Addition, thence easterly along a line 50 feet north of the southern property line of said Lot 6, Block 1 to its intersection with the west ROW line of the alley between N. Lincoln Avenue and N. Jefferson Avenue, thence continuing southerly along said west alley line to its point of intersection with the north ROW line of E. 12<sup>th</sup> Street; thence continuing southerly to the point of intersection of said west alley line with the south ROW line of E. 12<sup>th</sup> Street; thence continuing southerly along said west alley ROW line to its point of intersection with the north line of Lot 17, Block 2 of the McKee Meadows Addition, thence continuing westerly along north line of said Lot 17 to its point of intersection with the east ROW line of N. Lincoln Avenue; thence continuing southerly along the east ROW line of N. Lincoln Avenue to its point of intersection with the centerline of the alley ROW vacated via Ordinance 3317 and recorded at Reception Number 86051452 adjoining Block 2, Lincoln Place Addition; thence easterly along the centerline of said vacated alley to its point of intersection with the east line of Lot 10, Block 2, Lincoln Place Addition; thence southerly along said east line 20 feet to a point; thence westerly perpendicular to said east line to a point on the east line of Lot 11, Block 2, Lincoln Place Addition; thence southerly along the east line of said Lot 11 to its point of intersection with the north ROW line of E. 11<sup>th</sup> Street; thence continuing southerly to the point of intersection of the east line of Lot 11, Block 3, Lincoln Place Addition and the south ROW line of E. 11<sup>th</sup> Street; thence westerly along said south ROW line to its point of intersection with the east line of Lot 13, Block 3, Lincoln Place Addition; thence southerly along said east line to its point of intersection with the north ROW line of the Great Western/Omni Railroad; thence easterly along said north ROW line to its point of intersection with the east line of Lot 10, Block 3, Lincoln Place Addition; thence southerly to the point of intersection of the east line of Lot 2, Block 5, Orchard Park Addition and the south ROW line of said Railroad; thence continuing southerly along the east line of said Lot 2 to the NE corner of Lot 1, Block 5, Orchard Park; thence continuing south along the east line of said Lot 1 to its point of intersection with the north ROW line of E. 10<sup>th</sup> Street; thence southwest to the point of intersection of the south ROW line of E. 10<sup>th</sup> Street and the east ROW line of the alley between N. Jefferson Avenue and N. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. 8<sup>th</sup> Street; thence continuing southerly to the point of intersection of the south ROW line of E. 8<sup>th</sup> Street and the east ROW line of the alley between N. Jefferson Avenue and N. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of the alley between E. 8<sup>th</sup> Street and E. 7<sup>th</sup> Street; thence easterly along said north ROW line to its point of intersection with the west ROW line of N. Jefferson Avenue; thence continuing easterly to the point of intersection of said north ROW line and the east ROW line of N. Jefferson Avenue; thence southerly to the point of intersection of the south ROW line of said alley and the east ROW line of N. Jefferson Avenue; thence continuing southerly along said east line to its point of intersection with the north ROW line of E. 7<sup>th</sup> Street; thence continuing southerly to the point of intersection of the south ROW line of E. 7<sup>th</sup> Street and the east ROW line of E. Jefferson Avenue; thence continuing southerly along said east line to its point of intersection with the north ROW line of the alley between E. 7<sup>th</sup> Street and E. 6<sup>th</sup> Street; thence continuing southerly to the point of intersection of the south ROW line of said alley and the east ROW line of N. Jefferson Avenue; thence continuing southerly along said east line to its point intersection with the north ROW line of E. 6<sup>th</sup> Avenue; thence

easterly along said north line to its point intersection with the west ROW line of N. Washington Avenue; thence continuing easterly to the point intersection of the north ROW line of E. 6<sup>th</sup> Avenue and the east ROW line of N. Washington Avenue; thence southerly to the point of intersection of the south ROW line of E. 6<sup>th</sup> Avenue and the east ROW line of N. Washington Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of the alley between E. 6<sup>th</sup> Street and E. 5<sup>th</sup> Street; thence continuing southerly to the point of intersection of the south ROW line of said alley and the east ROW line of N. Washington Avenue; thence continuing southerly along said east line to its point of intersection with the north ROW line of E. 5<sup>th</sup> Street; thence easterly along said north ROW line to its point of intersection with the west ROW line of N. Adams Avenue; thence continuing easterly to the point of intersection of the north ROW line of E. 5<sup>th</sup> Street and the east ROW line of N. Adams Avenue; thence southerly to the point of intersection of the south ROW line of E. 5<sup>th</sup> Street and the east ROW line of N. Adams Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. 4<sup>th</sup> Street; thence continuing southerly to the point of intersection of the east ROW line of N. Adams Avenue and the south ROW line of E. 4<sup>th</sup> Street; thence westerly to the point of intersection of the west ROW line of N. Adams Avenue and the south ROW line of E. 4<sup>th</sup> Street; thence continuing westerly along said south ROW line to the Point of Beginning;

And,

Less [County building parcel] LOTS 13 THRU 16, BLK 7, City of Loveland, County of Larimer, State of Colorado; ALSO POR VACATED ALLEY PER BK 1712 PG 733; and [Former Home State Bank parcel] LOTS 1 THRU 8, BLK 12, City of Loveland, County of Larimer, State of Colorado; and [Museum parcel] LOTS 19-24, BLK 12, City of Loveland, County of Larimer, State of Colorado; and [Vacant Parking Lot parcel] LOTS 1-7, LESS S 25 FT LOTS 1-3 AND LESS S 25 FT OF E 5 FT LOT 4, BLK 13, City of Loveland, County of Larimer, State of Colorado; and [Lincoln Place parcel] The subdivision LINCOLN PLACE COMMUNITY, City of Loveland, County of Larimer, State of Colorado (20100069697) in its entirety (formerly known as Block 41 of Finley's Addition, City of Loveland, County of Larimer, State of Colorado), and [Street & Alley ROW] The full right-of-way of East 6th Street east of the easterly boundary line of the N. Cleveland Avenue right-of-way and west of the centerline of the N. Jefferson Avenue right-of-way, City of Loveland, County of Larimer, State of Colorado; and All public alley right-of-way within BLK 12, City of Loveland, County of Larimer, State of Colorado; and The full right-of-way of East 5th Street east of the easterly boundary line of the N. Cleveland Avenue right-of-way and west of the westerly boundary line of the N. Lincoln Avenue right-of-way, City of Loveland, County of Larimer, State of Colorado; and The north half of the street right-of-way of the intersection of East 5th Street and N. Lincoln Avenue, north of the centerline of East 5th Street, City of Loveland, County of Larimer, State of Colorado; and The north half of the right-of-way of East 5th Street north of the centerline of East 5th Street, east of the easterly boundary of the N. Lincoln Avenue right-of-way, and west of the centerline of the N. Jefferson Avenue right-of-way, City of Loveland, County of Larimer, State of Colorado; and The west half of the street right-of-way of N. Jefferson Avenue south of the southerly boundary of East 6th Street, and north of the northerly boundary of E 5th Street, City of Loveland, County of Larimer, State of Colorado.

Prepared by: Troy W. Jones, AICP, NCARB  
MTA Planning & Architecture  
Fort Collins, Colorado

Reviewed by: Scott Pearson  
Planning Technician  
Development Services Department  
City of Loveland, Colorado

Appendix II: *Link to A Strategic Plan for Revitalizing Downtown Loveland (2014)*

<http://www.ci.loveland.co.us/mmsfiles/strategicplan/2014/Appendix%20II.pdf>

**Appendix III: *Link to Downtown Vision Book (2010)***

[Link to Downtown Vision Book \(2010\)](#)

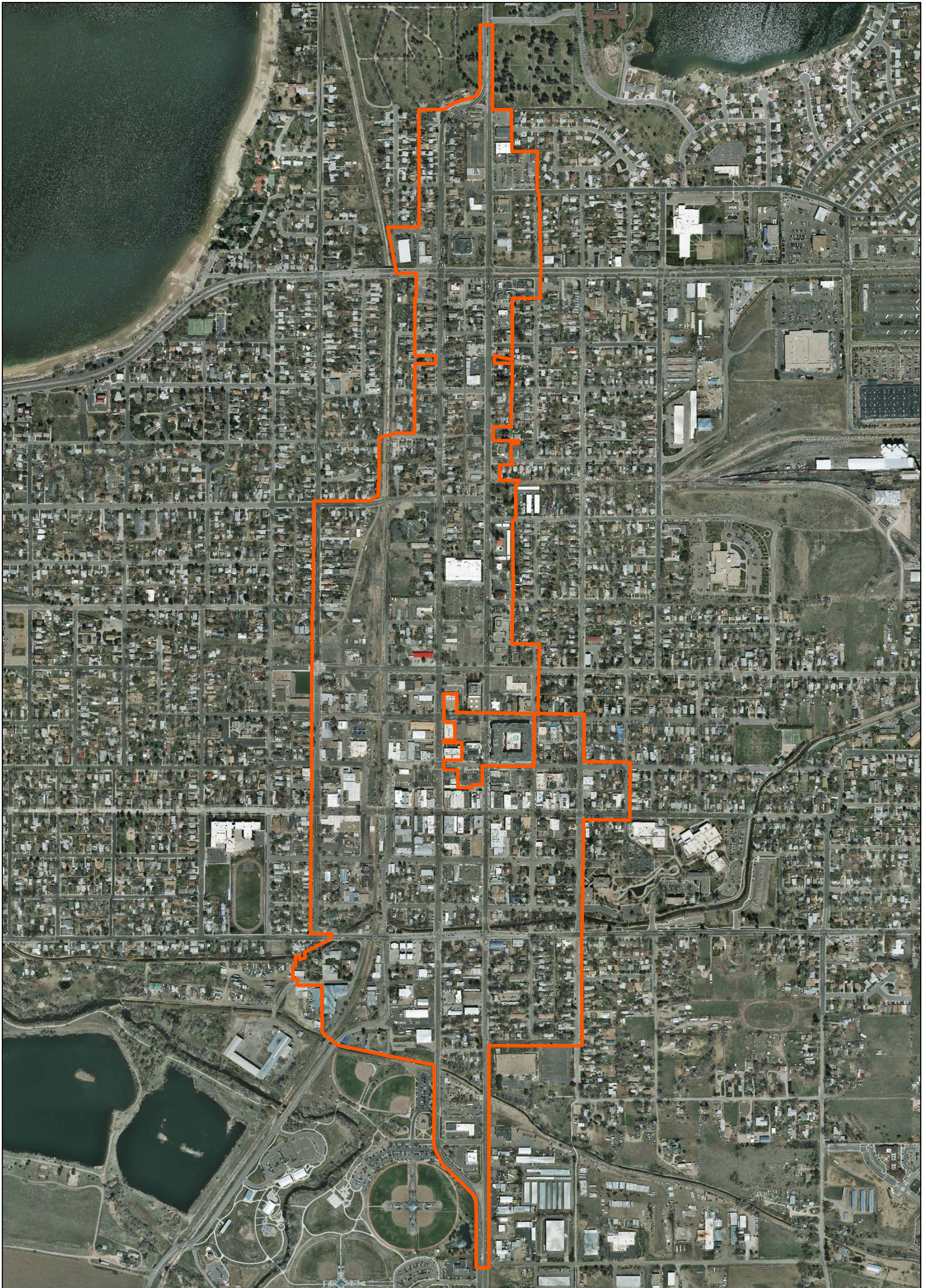
**Appendix IV: *Link to Destination Downtown: HIP Streets Master Plan (Infrastructure Plan) (2010)***

[http://www.lovelanddevelopmentauthority.com/development/infrastructure/972?](#)



**Appendix V: *Downtown Strategic Plan – Amendment to the City’s Comprehensive Plan (2009)***





**Loveland Downtown Development Authority  
Established by Ordinance No. 5927**



**AGENDA ITEM:** 2.4  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Public Works  
**PRESENTER:** Randy Maizland, Public Works




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**TITLE:**

**An Ordinance Enacting A Supplemental Budget And Appropriation For The 2016 City Of Loveland Budget For The Construction Of An Interim Traffic Signal At The Intersection Of Crossroads Boulevard And Ward Avenue**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the ordinance on second reading.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action (Walmart Distribution Center would not be permitted to design and pay for construction of the interim traffic signal improvement).
3. Adopt a modified action.
4. Refer back to staff for further consideration (construction of the interim traffic signal may be delayed).

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**SUMMARY:**

Walmart has approached the City with an offer and agreement to pay an amount not to exceed \$300,000 for the design and construction of an interim traffic signal at Crossroads Boulevard and Ward Avenue necessary due to a project that will increase operational efficiency at the Walmart Distribution Center. The resolution adopted on August 2, 2016 by Council authorizes the City Manager to execute the agreement to accept payment of \$300,000 from Walmart to be used for the construction of the traffic signal. The ordinance appropriates the funds received, allowing them to be used by the City for this purpose. If Council approves the agreement with Walmart, the City Traffic Engineering Division will select the contractor and provide all construction management responsibilities for the installation and completion of the traffic signal to ensure quality control. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

Walmart plans to increase the paved area within the Walmart Distribution Center property for increased efficiency in operations. It is projected that an increase in efficiency in operations will result in an increase of traffic at Walmart's existing truck access at the Crossroads Boulevard/Ward Avenue intersection. Due to safety concerns regarding the operation of this intersection, City staff requested Walmart to provide a signal warrant analysis to determine if a traffic signal was needed at the Crossroads Boulevard/Ward Avenue intersection. The results of the signal warrant analysis prepared by Kimley-Horn and Associates (6/18/14) indicates that a traffic signal is needed at the intersection based upon Walmart's traffic projection. The

Larimer County Urban Area Street Standards (LCUASS) requires developments to mitigate their traffic impact and to provide for a safe access to the public street. Therefore Walmart is required to design and construct a traffic signal at the intersection of Crossroads Boulevard/Ward Avenue in order to safely mitigate the projected traffic impact on Crossroads Boulevard. Walmart has agreed to fund the design and construction of this traffic signal and this supplemental appropriation will allow this project to move forward. The Agreement provides that Walmart shall hire, at its sole cost and expense, an engineer to design the interim traffic signal, and that Walmart will fund the City's construction of the traffic signal in an amount not to exceed \$300,000. The \$300,000 amount was estimated by the Traffic Engineering Division and is believed to be adequate to complete the project. Should the actual cost of construction exceed \$300,000 as determined by the final approved design and contractor bid amount, the Agreement identifies possible actions: (1) the City may abandon the construction of the Traffic signal and return the \$300,000 to Walmart; or (2) the City could choose to fund the additional costs above the \$300,000.

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**REVIEWED BY CITY MANAGER:****SCA**

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**LIST OF ATTACHMENTS:**

1. Agreement
2. Ordinance

FIRST READING August 2, 2016

SECOND READING August 16, 2016

**ORDINANCE NO. 6038**

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR THE CONSTRUCTION OF AN INTERIM TRAFFIC SIGNAL AT THE INTERSECTION OF CROSSROADS BOULEVARD AND WARD AVENUE**

**WHEREAS**, the City has received funds not anticipated or appropriated at the time of the adoption of the 2016 City budget for the construction of an interim traffic signal at the intersection of Crossroads Boulevard and Ward Avenue; 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 construction of an interim traffic signal at the intersection of Crossroads Boulevard and Ward Avenue, 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 \$300,000 from contributions from Walmart in the Transportation Fund are available for appropriation. Such revenues in the total amount of \$300,000 are hereby appropriated to the 2016 City budget for the construction of an interim traffic signal at the intersection of Crossroads Boulevard and Ward Avenue. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

<b>Supplemental Budget Transportation Fund 211</b>		
<b>Revenues</b>		
211-23-235-0000-35324	Contributions	300,000
<b>Total Revenue</b>		<b>300,000</b>
<b>Appropriations</b>		
211-23-235-0000-49360	Construction	300,000
<b>Total Appropriations</b>		<b>300,000</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 16th day of August, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

Ordinance # 6038

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 August 2, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 6, 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 August 20, 2016.

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

Effective Date: August 16, 2016

**FIRST READING**                    **August 2, 2016**

**SECOND READING**                **August 16, 2016**

**ORDINANCE NO. 6039**

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 NORTHERN COLORADO REGIONAL AIRPORT BUDGET FOR THE ADDITION OF 1 FTE & STRATEGIC PLAN IMPLEMENTATION**

**WHEREAS**, in 1963, the City of Fort Collins and the City of Loveland (the “Cities”) agreed to establish a regional general aviation facility and became owners and operators of the Fort Collins-Loveland Municipal Airport, now known as the Northern Colorado Regional Airport (the “Airport”); and

**WHEREAS**, the Airport is operated as a joint venture between the Cities, with each city retaining a 50% ownership interest, sharing equally in policy-making and management, and each assuming responsibility for 50% of the Airport’s capital and operating costs; and

**WHEREAS**, pursuant to the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated January 22, 2015, and 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 (the “IGA”), the Airport Manager is responsible for preparing the Airport’s annual operating budget and submitting it to the Cities for their approval; and

**WHEREAS**, under the IGA, the City’s share of existing and unanticipated Airport revenue is to be held and disbursed by the City of Loveland as an agent on behalf of the Cities, since the City of Loveland provides finance and accounting services for the Airport; and

**WHEREAS**, under the IGA, each City’s share of the Airport’s annual operating budget and the Airport capital improvement plan shall be appropriated by each City and transferred or otherwise paid into the designated account to be used for Airport funding on an annual basis; and

**WHEREAS**, on October 20, 2015, City Council adopted Ordinance No. 5969, 2015, adopting the 2016 Airport Budget and appropriating the City’s share of that Budget; and

**WHEREAS**, for transparency to the Council and the public and for governance, management, and audit of the Airport Budget, and to provide a mechanism to track and approve changes to the Airport Budget, it is appropriate for the City of Loveland, as a part of its administrative duties under the IGA, to approve any subsequent changes to the 2016 Airport Budget; and

**WHEREAS**, the Airport Manager has submitted for City Council consideration a request to increase the 2016 Airport Budget by a total of \$165,000 to fund work associated with the City Council approved Airport Strategic Plan by adding a staff person tasked with development, and promotion and creation of a communications and marketing plan with a focus on rebranding of the Airport (the Project); and

**WHEREAS**, pursuant to the IGA, the City of Loveland holds on behalf of both Cities the revenues of, and other financial contributions to, the Airport in a fund, which includes unappropriated and unencumbered, reserves (the “Airport Fund”); and

**WHEREAS**, in order to fund the increase to the approved 2016 Airport operating budget, the Cities must each appropriate one half of the total increase, or \$82,500 each from jointly owned reserves held in the Airport Fund, and Council desires to appropriate that additional amount for the Project.

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

**Section 1.** That reserves in the amount of \$165,000 from unassigned fund balance in the Airport Fund are available for appropriation. Such revenues in the total amount of \$165,000 are hereby appropriated to the 2016 Airport budget for the addition of 1 FTE & strategic plan implementation. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

<b>Supplemental Budget Airport Fund 600</b>		
<b>Revenues</b>		
Fund Balance	Loveland Contribution	165,000
<b>Total Revenue</b>		<b>165,000</b>
<b>Appropriations</b>		
600-60-290-0000-41011	Salaries for Benefitted Employees	40,000
600-60-290-0000-43737	Advertising	20,000
600-60-290-0000-43450	Professional Services	105,000
<b>Total Appropriations</b>		<b>165,000</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 16<sup>th</sup> day of August, 2016.

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

ATTEST:

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

Approved as to form:



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

Ordinance # 6039

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 August 2, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 6, 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 August 20, 2016.

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

Effective Date: August 16, 2016

**AGENDA ITEM:** 2.5  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Northern Colorado Regional Airport  
**PRESENTER:** Jason Licon, Director




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**TITLE:**

**An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 Northern Colorado Regional Airport Budget For The Addition Of 1 FTE & Strategic Plan Implementation**

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the Ordinance on second reading.

**OPTIONS:**

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

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**SUMMARY:**

The purpose of this item is to approve an amendment to the 2016 Airport operating budget and appropriate funds from the Airport Reserve Fund to initiate work associated with the City Council approved Airport Strategic Plan. The Northern Colorado Regional Airport Commission has reviewed and approved this request. The 2016 Airport operating budget will be amended to authorize expenditure in the total amount of \$165,000 from the Airport Reserve Fund. The City of Loveland will appropriate 50% (\$82,500) of the total \$165,000 request, and the City of Fort Collins has approved their half of the appropriation at their July 19, 2016 City Council Meeting. This appropriation is needed as the funding resources were not included in the adopted 2016 Airport Budget approved by Council. This ordinance was approved unanimously on first reading by City Council on August 2, 2016.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

This initiative has a bottom line impact of \$165,000 to the Airport Reserve Fund, and ongoing impacts will be included in the 2017 and 2018 Airport budget. The Airport Reserve Fund unencumbered balance is approximately \$1.7 million and has been used historically to provide matching funds that leverage Federal and State grants. The City of Fort Collins is also being asked to appropriate the 50% match of \$82,500.

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**BACKGROUND:**

The Northern Colorado Regional Airport Commission is working to achieve Strategic Planning goals listed below:

- Creation of a financially sustainable business model
- Encourage investment from the private sector
- Rebrand the Airport and more productively engage the public

The three goals focus on strengthening the financial sustainability of the Airport. The Airport's current approved budget is used to maintain FAA regulatory standards which include general operations and maintenance. The funding request will be used to add an Airport staff member tasked with development and promotion and creation of a communications and marketing plan with focus on rebranding of the Airport. The total cost to achieve said goals for 2016 is \$165,000 and will be taken from the Airport's Reserve Fund.

The Airport's Reserve Fund is used for capital projects that require Federal and State grant matches and general maintenance and repair of infrastructure ineligible for grant funding. The unassigned balance of the Airport's Reserve Fund is currently \$1.7 million, and use of the fund is restricted for Airport needs. Since 2011 the Airport's Reserve Fund has been used to leverage \$13 million in Federal and State grants. These grants are used to maintain Airport infrastructure such as runways and taxiways and for equipment necessary for regulatory requirements and operational safety. The forecasted expenditures from the Airport's Reserve Fund are \$1.1 million through 2021. This includes grant match forecasts and planned projects that are ineligible for Federal or State grant funding.

The Northern Colorado Regional Airport Commission desires to move forward with this request to enable continued progress on achievement of Strategic Plan goals. The achievement of these goals will create additional funding streams for the Airport including an increase in FAA funding resources and positive regional economic impact.

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**REVIEWED BY CITY MANAGER:****SCA**

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**LIST OF ATTACHMENTS:**

1. Ordinance

**AGENDA ITEM:** 2.6  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Brett Limbaugh, Development Services Director  
**PRESENTER:** Bob Paulsen, Current Planning Manager

**TITLE:**

**An Ordinance Amending Title 18 Of The Loveland Municipal Code To Add A New Chapter 18.44 Regarding A Flexible Zoning Overlay District**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the ordinance on second reading.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. If denied, the flexibility to waive zoning standards would not be available, which may reduce reinvestment and redevelopment opportunities.
3. Adopt a modified action. Any modifications to the proposed would need to be specified in the motion.
4. Refer back to staff for further development and consideration. Substantive changes to the ordinance will require further review by the Title 18 Committee and a public hearing before the Planning Commission, delaying Council action by sixty days or more.

**SUMMARY:**

The provisions establish a new chapter of the zoning code that responds to the interest of Council in providing property owners with relief from regulatory standards that may be restraining development. The provisions are intended to promote development and redevelopment opportunities in locations experiencing disinvestment or underutilization of land. Applications for overlay districts would require a neighborhood meeting, a public hearing before the Planning Commission, and an adoption hearing by City Council. This public input process is designed to ensure that resulting projects would be well-vetted and compatible with surrounding development.

On August 2, 2016, Council unanimously voted to approve the ordinance on first reading.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

The Flexible Zoning Overlay District provisions create a process for applicants (property owners/developers) to establish an overlay district and district plan that would specify development standards within the district boundaries. The plans submitted by an applicant could eliminate or modify any or all existing zoning standards, including standards for landscaping, architectural design, building height, setbacks or use allowances. However, standards relating to street improvements, stormwater and other infrastructure could not be waived or modified; nor could building safety, fire or emergency services requirements be modified through this process. City Council would have final authority to approve (or deny)

overlay districts on a case-by-case basis. No properties would be automatically designated for “overlay status” with the adoption of this ordinance.

The overlay district would “float over” the existing zoning. On a case-by-case basis, the Council would have latitude to place conditions on the overlay districts to ensure compatibility with nearby land uses and timely project completion, including the option of setting expiration dates whereupon the overlay district would sunset. Once a district expires, the requirements of the underlying zoning would resume. A primary reason for establishing the flexible zoning standards through the overlay district approach versus an actual zone change is to allow this flexibility on a temporary or trial basis, averting the need for a permanent zone change.

The establishment of an overlay district and the approval of initial planning documents are designed to be accomplished with limited cost to applicants. The submittal of narrative descriptions and conceptual plans would be required at the discretionary stage; detailed engineering and architectural plans would be required at a subsequent, administrative stage. The building permit review process would follow the planning review process.

The overlay district provisions have been developed with guidance from the Title 18 Committee and the Planning Commission. The Title 18 Committee reviewed the proposal extensively in 2015 and 2016. The Commission conducted a study session on the provisions on January 25, 2016 and reviewed the materials in a series of public hearings starting in March. On May 9<sup>th</sup>, the Commission recommended approval of the provisions to City Council as part of the consent agenda.

Public outreach included a prominent article published in the Reporter Herald on February 13, 2016 followed by publication of an editorial on this topic. In addition, there have been numerous postings on the City web site as development of the provisions progressed. Prior to the study session and initial public hearing, an email announcement to over one hundred customers of the City’s development review process was provided. Standard notice requirements for public hearings have also been met. Public feedback has been limited; however, several private sector engineering and design consultants have responded favorably to the proposal.

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**REVIEWED BY CITY MANAGER:**

**SCA**

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**LIST OF ATTACHMENTS:**

1. Ordinance amending Title 18 to incorporate new chapter 18.44 into the Municipal Code
2. Flexible Zoning District Overlay Summary (June 20, 2016)
3. Staff Memorandum (including attachments thereto)
4. Planning Commission Minutes: April 25, 2016 and March 14, 2016
5. Powerpoint Presentation Slides

**FIRST READING: August 2, 2016**

**SECOND READING: August 16, 2016**

**ORDINANCE NO. 6040**

**AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND  
MUNICIPAL CODE TO ADD A NEW CHAPTER 18.44 REGARDING  
A FLEXIBLE ZONING OVERLAY DISTRICT**

**WHEREAS**, the City desires to provide an overlay zoning district with more flexible land use controls in areas of the community that are experiencing disinvestment or underutilization of land to stimulate innovative development and promote reinvestment; and

**WHEREAS**, the Planning Commission reviewed the proposed Chapter 18.44 Flexible Zoning Overlay District set forth below and, on May 9, 2016, made a recommendation to City Council to adopt such chapter.

**WHEREAS**, City Council desires to follow such recommendation and finds that an ordinance to provide a flexible zoning overlay district is in the City's best interest.

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

**Section 1.** Title 18 of the Loveland Municipal Code is hereby amended by the addition of a new Chapter 18.44 which chapter shall read in full as follows:

**Chapter 18.44**

**FLEXIBLE ZONING OVERLAY DISTRICT**

**Sections:**

- |                  |                                                                      |
|------------------|----------------------------------------------------------------------|
| <b>18.44.010</b> | <b>Purpose.</b>                                                      |
| <b>18.44.020</b> | <b>Objectives of the flexible zoning overlay district.</b>           |
| <b>18.44.030</b> | <b>Definitions.</b>                                                  |
| <b>18.44.040</b> | <b>Establishment of flexible zoning overlay districts.</b>           |
| <b>18.44.050</b> | <b>Eligibility criteria.</b>                                         |
| <b>18.44.060</b> | <b>Permitted uses and applicable development standards.</b>          |
| <b>18.44.070</b> | <b>Overlay district application requirements.</b>                    |
| <b>18.44.080</b> | <b>Procedures for approval of flexible zoning overlay districts.</b> |
| <b>18.44.090</b> | <b>Flexible zoning project plan application requirements.</b>        |
| <b>18.44.100</b> | <b>Procedures for approval of flexible zoning project plans.</b>     |
| <b>18.44.110</b> | <b>Expiration of a district and termination of a district plan.</b>  |

**18.44.010 Purpose.**

The purpose of this chapter is to provide standards and procedures for the establishment of flexible zoning overlay districts in areas of the community that are experiencing disinvestment or under-utilization of land. The flexible zoning overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls, including the opportunity for relief from use restrictions, development intensity limitations and associated standards included in the provisions of the underlying zoning.

**18.44.020 Objectives of the flexible zoning overlay district.**

Objectives to be achieved through the establishment of a flexible overlay zoning district are to:

- A. Further the intent and goals of adopted land use plans;
- B. Encourage investment in areas experiencing blight, disinvestment or underutilization of land;
- C. Create opportunities for development and redevelopment that would otherwise be unachievable.
- D. Promote coordination and cooperation between property owners that are interested in pursuing redevelopment initiatives;
- E. Facilitate design innovation with the reduction or elimination of certain land use and zoning controls;
- F. Ensure adequate public safety within and adjacent to district boundaries;
- G. Maintain quality standards for the provision of city services for properties within and adjacent to district boundaries; and
- H. Protect land uses and neighborhoods that are adjacent to flexible overlay zoning districts from material negative impacts.

**18.44.030 Definitions.**

The words, terms and phrases in this section shall have the meanings as set forth below, unless the context requires otherwise.

- A. "Flexible zoning overlay district" or "district" shall mean all land within a designated area that has been approved by the council following a public hearing with public notice that will be subject to the provisions of this chapter.
- B. "Flexible zoning overlay district plan" or "district plan" shall mean a general plan of development that complies with the requirements specified in this chapter.
- C. "Flexible zoning project" or "project" shall mean a development project located within a district that conforms to the established district plan.
- D. "Flexible zoning project plan" or "project plan" shall mean a site specific plan of development located within a district that complies with the requirements specified in this chapter.
- E. "Greenfield sites" shall mean open land that is not surrounded by or substantially constrained by development, including leapfrog development, and where there has

been no previous development activity other than agricultural uses or similar low-intensity uses.

- F. “Sensitive uses” shall mean single family and two-family homes, schools and daycare facilities, medical care facilities including hospitals, clinics and nursing facilities, or other uses that may be materially impacted in a negative manner by the location of a district or development project.

**18.44.040 Establishment of flexible zoning overlay districts.**

Establishment of a flexible zoning overlay district includes the following:

- A. Submittal of a complete application signed by owners of real property within the district boundaries;
- B. Review of the application by the development review team for completeness;
- C. Conducting a neighborhood meeting and public hearings by the planning commission and the council all of which shall be publicly noticed; and
- D. Approval of the district, district plan, and, if applicable, the project plan by council following the public hearing.

**18.44.050 Eligibility criteria.**

All districts shall meet the following eligibility requirements:

- A. District boundaries shall be consistent with the city’s infill definition where at least eighty percent of the district boundary is contiguous to properties within the city limits; greenfield sites are unsuitable for district designation;
- B. Property within the district boundaries is contiguous or separated only by public rights-of-way;
- C. District boundaries are reasonably discernable and distinguishable from adjacent land;
- D. The district use meets applicable Adequate Community Facilities (ACF) standards set forth in chapter 16.41;
- E. The district plan is consistent with the intent and goals of applicable land use plans and policies; however, a district plan may vary from the use, density and intensity provisions specified in the land use plan component of the Comprehensive Plan;
- F. The district plan has been designed to prevent incompatibility with adjacent and nearby property and land uses, particularly sensitive uses;
- G. Community benefits of the flexible zoning overlay district and the associated district plan shall outweigh any negative impacts to surrounding properties or to the community; and
- H. Establishment of the district encourages property investment and development which might otherwise not occur, and furthers a valid public purpose.

**18.44.060 Permitted uses and applicable development standards.**



- A. When a flexible zoning overlay district is established, the underlying zoning designation remains in place except as modified by the district plan.
- B. Once a district has been established and a district plan approved, subsequent development and redevelopment within the district must conform to the district plan.
- C. All property within a flexible zoning overlay district is subject to this title, except where specifically exempted in the district plan.

**18.44.070 Overlay district application requirements.**

- A. An application for establishment of a flexible zoning overlay district may be submitted by a property owner within the proposed district boundaries or by written consent of three city council members.
- B. An applicant must present preliminary plans for a proposed district at a concept review meeting prior to making an application to establish a district.
- C. Written consent from all owners of property within the proposed district boundaries must be provided before notice of a public hearing before the planning commission.
- D. The application shall include the following information along with information specified on the city's submittal checklist for establishment of a district:
  - 1. A written explanation of the community benefit that the district and district plan will provide and how the proposed development furthers the intent and goals of applicable land use plans and policies;
  - 2. A written explanation of how the proposed development achieves compatibility with surrounding uses, particularly sensitive uses;
  - 3. A purpose statement indicating how the district plan achieves compliance with the eligibility criteria listed in Section 18.44.050;
  - 4. A map of the proposed district boundaries, including all lots, tracts, outlots and rights-of-way;
  - 5. A list of all owners of real property within the district boundaries;
  - 6. A district plan which specifies the type and extent of development proposed, including the following components:
    - a. A master plan indicating the intensity and general configuration of the proposed use or uses;
    - b. An architectural concept plan that includes a building massing and height study;
    - c. A phasing plan, including a projected timeframe for each phase; and,
    - d. A listing of zoning standards that will be applicable to development within the district.

**18.44.080 Procedures for approval of flexible zoning overlay districts.**

- A. Review process. Upon receipt of a complete application within the allowed timeframe, the development review team will undertake the review procedures specified in chapter 18.39 of this title.
- B. Public notice requirements. Notice shall be provided in accordance with chapter 18.05, and conform to the notice distance requirements for rezoning applications as specified in Table 18.05-1.
- C. Neighborhood meeting. Prior to completion of the review process by the development review team, the applicant shall provide public notice for and conduct a neighborhood meeting.
- D. Planning commission.
  - 1. A public hearing shall be conducted with public notice before the planning commission following the neighborhood meeting.
  - 2. Notes from the neighborhood meeting, relevant application materials, written input from interested parties and a recommendation from the current planning manager as to whether the district plan meets the eligibility criteria of section 18.44.050 shall be forwarded to the planning commission for review at the public hearing.
  - 3. Based upon information received at the public hearing, the planning commission shall, by resolution within thirty days of the hearing, recommend approval, approval with conditions or denial of the district and district plan based on eligibility criteria of Section 18.44.050.
  - 4. The public hearing may be continued if the planning commission determines that additional information is necessary to consider before a decision can be rendered.
  - 5. If the applicant objects to any condition of approval placed by the planning commission upon the district plan, the planning commission shall recommend denial.
  - 6. The planning commission's recommendation shall be forwarded to the council along with the approved minutes of the public hearing and all other material considered by the planning commission in making its recommendation.
- E. City council. The council shall conduct a public hearing with public notice upon receipt of the recommendation of the planning commission, the approved minutes of any planning commission public hearing, and all materials considered by the planning commission in making its recommendation, and any materials submitted following any such planning commission hearing.
  - 1. Council shall approve, approve with conditions or to deny the district and the associated district plan based on eligibility criteria of section 18.44.050.
  - 2. Council may establish an expiration date for a district and for associated district plans.
  - 3. If the applicant objects to any condition of approval placed upon the district plan by the council, the district plan shall not be approved.

4. The council may remand a district plan to the planning commission for any reason.
5. If the council approves a district plan, it shall adopt an ordinance establishing the district and the district plan. The adopted plan, signed by the mayor, the city attorney and the current planning manager, shall be recorded with the Larimer County clerk and recorder's office along with the adopting ordinance.
6. The adopted overlay zone shall be designated on the official zoning map.
- F. A project plan may be considered concurrently with a district plan. When a concurrent submittal is made, the council shall have final decision making authority on both plans.
- G. A district plan shall be amended in the same manner it was approved unless the current planning manager determines that the proposed amendment meets the following criteria:
  1. The amendment would not allow new uses;
  2. The amendment would not allow a change in development density or intensity greater than 20%;
  3. The amendment would not alter a condition approved by council; and
  4. There is no reason to believe that any party would be aggrieved by the amendment. Where these criteria have been met, the amendment shall be considered minor and the current planning manager shall have the authority to approve, approve with conditions or deny the amendment. Alternatively, the current planning manager may forward a minor amendment to the planning commission for determination at a public hearing with public notice.
- H. Planning commission decisions on district plan amendments may be appealed to council by a party in interest. The appeal shall be processed and heard as specified in chapter 18.80.

**18.44.085 Flexible zoning project plan required.**

Project plans are approved subsequent to or concurrently with approval of an associated district and district plan. Project plans are specific and detailed development plans that are reviewed and approved administratively unless approved concurrently with a district or district plan as specified in Section 18.44.80. Development within a flexible zoning overlay district must conform to an approved project plan.

**18.44.090 Flexible zoning project plan application requirements.**

Applications for flexible zoning project plans, including associated subdivision, infrastructure and related applications, shall be subject to the requirements for site development plans specified in chapter 18.46 and any conditions adopted by Council.

**18.44.100 Procedures for approval of flexible zoning project plans.**

- A. Development within an established district must be consistent with the approved district plan.

- B. Applications for approving or amending project plans shall be subject to the procedures for site development plans specified in chapter 18.39 and 18.46 unless project plans are approved as otherwise authorized by this chapter.
- C. Building permits. Any building permit issued for development or redevelopment within a district shall be consistent with the district plan and with the project plan approved for the property.

**18.44.110 Establishment, extension, expiration and termination of a district and district plan.**

Council has exclusive authority to establish with or without conditions, limit, terminate and extend districts and district plans.

- A. Districts and associated district plans shall be established for a period of forty-eight months from the date of the approval of the adopting ordinance, unless such ordinance specifies otherwise. When a district expires or is terminated, the district overlay designation on the official zoning map is removed and the authority of the underlying zoning regulations is reestablished. Any nonconforming uses or buildings resulting from a district expiration or termination will be subject to Chapter 18.56 of this title.
- B. The established expiration date for a flexible zoning overlay district may be extended by the council at the request of all property owners within the district. To be considered, a written extension request must be submitted to the city prior to the expiration date.
- C. Any district with an expiration date shall be approved only after the applicant has provided an agreement, in a form approved by the city attorney, that acknowledges the limited term of the district and the absence of any right to use or rely on the district beyond such term and indemnifies the city for any claim related to the expiration of the district.
- D. At the request of all property owners within a district or upon failure of the property owners to maintain any ongoing conditions of the district or district plan, or upon abandonment of the use permitted by the district and district plan, council may terminate the district and district plan.
- E. Subject to the foregoing, once a project plan is approved and any and all district or district plan conditions set by council have been fully satisfied, the district and the district plan shall not expire or terminate.
  - 1. Upon such approval and full satisfaction of any and all such conditions, the district property owner may request written certification from the current planning manager to this effect; and
  - 2. Upon receipt of such certification, the city clerk's office shall record the ordinance establishing the district and the district plan with the Larimer County clerk and recorder's office.

**Section2.** 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 16<sup>th</sup> day of August, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

Ordinance # 6040

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 August 2, 2016 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on August 6, 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 August 20, 2016.

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

Effective Date: August 30, 2016

### **SUMMARY: FLEXIBLE ZONING OVERLAY DISTRICT**

1. The Flexible Zoning District Overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls.
2. The City Council would have final authority to approve an Overlay District and a District Plan following staff review, a neighborhood meeting and a Planning Commission hearing.
3. Flexible Zoning Districts could be located anywhere in the City, except in greenfield areas (open land that is not surrounded by or constrained by development) or sites which do not meet the definition for infill.
4. The approved District Plan would supersede existing zoning requirements.
5. Flexible Zoning Overlay Districts would allow development that does not meet standard zoning requirements. Requirements such as building setbacks, height limitations, parking, landscaping and architectural standards, and use limitations could be reduced or completely waived.
6. Building code and infrastructure requirements for development could not be waived. Standards for street, stormwater, water, sewer, emergency services and building safety would still apply.
7. Flexible Zoning Overlay Districts would be established for specific locations and would “float” over existing zoning. Therefore, the underlying zoning would not change, but would be suspended unless the District expired or was terminated by the City Council.
8. Property owners (or City Council) could apply to establish a Flexible Zoning Overlay District.
9. Each district could include one or more properties, with no minimum size requirement.
10. Prior to submitting an application for an Overlay District, participating owners would be required to have a concept review meeting with development review staff.
11. To apply for Overlay District designation, applicants would be required to submit conceptual plans for the project area, provide a narrative explanation, and indicate what standard zoning requirements they are seeking to apply and which zone district requirements they would intend to modify or eliminate.
12. Upon staff review of an Overlay District application, a neighborhood meeting would be conducted with notice provided to property owners within an established radius of the site.
13. The Overlay District request could proceed to a Planning Commission hearing only if the development review team determined that infrastructure is available to serve the site.
14. The Planning Commission would review the proposal in a public hearing and make a recommendation to City Council, including any recommended conditions.
15. Council would conduct a public hearing and approve, approve with conditions or deny. Conditions could address expiration or termination of the Overlay.
16. Once approved, the applicant could submit a site development plan for (administrative) approval of any sites within the Overlay. Projects would only be subject to zoning standards specified in the approved Overlay District Plan plus other city infrastructure standards.

**For August 2, 2016 City Council Hearing**



**Current Planning Division**  
 410 E. 5th Street • Loveland, CO 80537  
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## STAFF MEMORANDUM

August 2, 2016

FROM: Bob Paulsen, Current Planning Manager, Development Services Department  
 TO: Loveland City Council  
 SUBJECT: Proposed amendment to Title 18 of the Municipal Code to incorporate new chapter 18.44 - Flexible Zoning Overlay District

### SUMMARY OF THE FLEXIBLE ZONING OVERLAY DISTRICT

On August 2, 2016 the City Council is scheduled to conduct a public hearing on an ordinance that would establish a new chapter in the zoning code: Chapter 18.44 -- Flexible Zoning Overlay District. The chapter would allow property owners to pursue the establishment of a defined district and a plan for development that would allow relief from zoning standards. The district and district plan could specify partial or full waiver of zoning standards, including standards for use, setbacks, landscaping, building height, architectural design, lot size and lot coverage.

As an alternative to the provision of City financial incentives, the purpose of the overlay district is to stimulate development or redevelopment in areas where physical or financial obstacles are constraining development or reinvestment. To accomplish this purpose, the provisions have been designed minimize an owner's initial investment (and financial risk) by delaying the development of detailed engineering and architectural plans until discretionary approvals have been achieved. Detailed plans would be reviewed at the administrative level through the site development plan review process. Efforts to ensure compatibility would occur in the initial review and approval process where a neighborhood meeting and public hearings before the Planning Commission and City Council would be required.

The overlay provisions have been developed by the Planning staff with significant guidance from the Title 18 Committee and from the City Attorney's office. On May 9<sup>th</sup>, the Planning Commission, as part of the consent agenda, recommended that the City Council approve the overlay provisions. The Planning Commission's approval came after two previous public hearings and a study session at which the overlay provisions were reviewed in detail.

The annotated timeline beginning on the following page provides a summary of the development of the overlay provisions and the public review and hearing process which has occurred in the first half of 2016.

## **ATTACHMENTS**

- A. Planning Commission staff report materials from the May 9, 2016, April 25, 2016 and March 14, 2016 public hearings.

## **ANNOTATED REVIEW AND HEARING TIMELINE**

### **Throughout 2015**

The Title 18 Committee reviewed draft versions of the Flexible Zoning Overlay District amendments (as prepared by staff) at a series of meetings in 2015. The primary objectives of the Committee are as follows:

- Provide regulatory relief as a viable alternative to public financial incentives.
- Make this tool available broadly throughout the community, requiring few location and size limitations but emphasis that it is a tool to stimulate development on difficult sites and sites that might otherwise not develop or redevelop.
- Keep initial costs low for developers. Engineering and architectural requirements should be required after discretionary approvals have been secured.
- The provisions should be available on a trial basis, avoiding permanent land use allowances that may not be desired.
- Allow Council to set expiration dates for the Districts.
- Use the neighborhood meeting and public hearing process to ensure that projects are well-vetted and compatible with surrounding development.

### **Late 2015 / 2016**

Current Planning provided several web postings related to the proposed overlay provisions.

### **January 25, 2016**

A Planning Commission study session was conducted on the Flexible Zoning Overlay District. The Commission was supportive of the purpose and content of the provisions as presented and directed staff to refine the provisions and conduct community outreach, with focus on obtaining feedback from development community customers.

### **February 13, 2016**

A prominent Reporter-Herald article was published describing the overlay provisions. Planning staff worked with the newspaper to facilitate the article in effort to facilitate community awareness.

### **February 15, 2016**

Reporter-Herald editorial supporting use of flexible overlay.

### **February 26, 2016**



Email on flexible overlay sent to 60+ development review and Current Planning customers describing the provisions and providing a link to the text that would be presented to the Planning Commission on March 14<sup>th</sup>.

**March 14, 2016**

Planning Commission public hearing. The Commission voted to recommend the flexible overlay to City Council for adoption.

**April 14, 2016**

Title 18 Committee review. Upon further review of the provisions with Planning and Legal staff, it was determined that the provisions should be brought back to the Planning Commission on April 25, 2016 following review by the Title 18 Committee. The primary concern was the need to address the termination and/or expiration of approved overlay districts for which development proposals had not been acted upon within a reasonable timeframe. Neither staff nor the Title 18 Committee was comfortable allowing dormant districts to remain in place indefinitely.

**April 25, 2016**

Planning Commission public hearing. A number adjustments for clarity were proposed, including that the provisions would be available citywide, except on greenfield sites. The Commission continued the hearing to May 9<sup>th</sup> so that further adjustments relating to district expiration/termination provisions be made.

**May 9, 2016**

Planning Commission public hearing. The Commission approved the flexible overlay provisions as part of the consent agenda—consequently, there are no Planning Commission minutes from this meeting being forwarded to the City Council. Minutes from previous Planning Commission hearings are included in the Council review packet.



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## Staff Report: Flexible Zoning Overlay District

May 9, 2016

**FROM:** Bob Paulsen, Current Planning Manager, Development Services Department  
**TO:** Loveland Planning Commission  
**SUBJECT:** Proposed amendment to Title 18 of the Municipal Code to incorporate new chapter 18.44 - Flexible Zoning Overlay District

### SUMMARY

On April 25, 2016, the Planning Commission conducted a public hearing to consider incorporation of proposed chapter 18.44 – Flexible Zoning Overlay District into Title 18 of the Municipal Code. This was the Commission’s second hearing on the proposed code amendments. The primary areas of Commission concern at the April 25<sup>th</sup> meeting addressed the provisions for termination and expiration of Flexible Zoning Overlay Districts and associated District Plans. Related to this issue was the issue of vesting: meaning, what threshold of investment or level of progress in pursuit of an approved plan would need to be made by a property owner to ensure that the district and associated plans could be relied upon in perpetuity. The Commission did not come to consensus on these matters at the meeting and voted to continue the public hearing until May 9, 2016. The Commission directed staff to review and amend the provisions in order to remedy the concerns.

On March 14, 2016, the Planning Commission conducted an initial public hearing to consider incorporation of proposed chapter 18.44 – Flexible Zoning Overlay District into Title 18 of the Municipal Code. After review of the provisions, the Planning Commission unanimously voted to recommend that City Council approve the provisions as presented.

Subsequent to the March 14, 2016 Planning Commission hearing, staff determined that the code provisions would benefit from clarifications and minor adjustments prior to consideration by the City Council. On March 28<sup>th</sup>, Planning staff requested that the Planning Commission consent to further consideration of the proposed code provisions by staff along with review by the Title 18 Committee. The Commission agreed to this request with the understanding that the delay would be minimal.

The attached redline version (**ATTACHMENT A**) of the proposed code provisions incorporate the recent revisions prepared by Current Planning staff.

This staff report is an updated supplement to the April 25, 2016 and March 14, 2016 staff reports.

**Flexible Zoning Overlay District for May 9, 2016 Planning Commission Public Hearing**

**RECOMMENDED ACTION**

Staff recommends that the Commission recommend approval of the Flexible Zoning Overlay District to the City Council.

**RECOMMENDED MOTION**

Move to recommend that City Council approve the proposed Flexible Zoning Overlay District and incorporate these provisions into the Municipal Code as Chapter 18.44 as presented to the Planning Commission in a public hearing on May 9, 2016 and as described in the Planning Commission staff report dated May 9, 2016 as specified in the attachments thereto and as further amended on the record.

**ATTACHMENTS**

- A. Chapter 18.44 FLEXIBLE ZONING OVERLAY DISTRICT (Revised for 5-9-16)
- B. April 25, 2016 Planning Commission Staff Report Packet addressing the Flexible Zoning Overlay District, including attachments thereto and further including the March 14, 2016 Staff Report Packet. The footers of the attachments have been given a color-coding by date to provide easy reference.

**SUMMARY OF THE FLEXIBLE ZONING OVERLAY DISTRICT**

As proposed, the Flexible Zoning Overlay District provisions would establish a new chapter of the zoning code (18.44). The provisions represent a departure from traditional practice of establishing new or revised standards, as these provisions would allow development to be partially or completely exempt from existing zoning standards like landscaping, building setbacks, architectural design and parking requirements. As such, the provisions are designed to stimulate development and redevelopment on properties that are experiencing disinvestment or under-utilization. The provisions would allow a property owner or group of owners to pursue a development plan that does not conform to some or all existing zoning standards, thereby increasing the financial feasibility of the project and allowing for design innovations that would otherwise be unavailable. In short, the intent is to provide regulatory relief that will encourage investment and new development.

The Flexible Zoning Overlay District provisions could be applied to property anywhere in the city, with the exception of greenfield sites. An overlay district, once approved, would “float over” the existing zoning designation establishing a set of tailored or exclusive development standards for the designated property. All new development occurring within an approved district would have to meet the specified standards. The standards could provide relief from any or all zoning standards of the underlying zoning district. An established district could not exempt development from the Building Code or from the City’s street standards or infrastructure requirements; exemptions would be limited to zoning.

For a more detailed description of the code provisions, please refer to the April 25, 2016 Planning Commission staff report packet; see **ATTACHMENT B**.

### SUMMARY OF MAJOR REVISIONS AS PRESENTED ON MAY 9, 2016

Revisions to the proposed code provisions as presented to the Planning Commission in a public hearing on April 25, 2015 are indicated by redline adjustments as shown in **ATTACHMENT A**. The main revisions are itemized below with an explanation for each change.

1. Adjustment to **Subsection 18.44.050.E**. clarifies that district plans can vary in terms of use, density and intensity from the policies specified in the land use plan component of the Comprehensive Plan.
2. New **Section 18.44.085 – Flexible zoning project plan required**. has been inserted. The purpose of this Section is to clarify that a *project plan* must be approved prior to development. A project plan is equivalent to a site development plan, and it is reviewed and typically approved administratively.
3. **Section 18.44.110** has be relabeled **Continuance, expiration and termination of districts and district plans**. to clarify an expanded purpose of this Section.
4. **Subsection 18.44.110.A**. has amended to address the issue of “substantial development-related activity.” This term relates to the next subsection.
5. New text has been inserted into **Subsection 18.44.110.B**. This new text specifies that districts, district plans and project plans continue in force if substantial development-related activity, as defined with the Council’s approval of the district and district plan, has been achieved. Once the specified threshold is demonstrated, the district, the district plan and any approved project plans remain in effect unless vacated by the property owner. This status is certified by the current planning manager and this certification is recorded.

## Flexible Zoning Overlay District Provisions / May 5 Revision

### Chapter 18.44

#### FLEXIBLE ZONING OVERLAY DISTRICT

##### Sections:

- 18.44.010 Purpose.**
- 18.44.020 Objectives of the flexible zoning overlay district.**
- 18.44.030 Definitions.**
- 18.44.040 Establishment of flexible zoning overlay districts.**
- 18.44.050 Eligibility criteria.**
- 18.44.060 Permitted uses and applicable development standards.**
- 18.44.070 Overlay district application requirements.**
- 18.44.080 Procedures for approval of flexible zoning overlay districts.**
- 18.44.090 Flexible zoning project plan application requirements.**
- 18.44.100 Procedures for approval of flexible zoning project plans.**
- 18.44.110 Expiration of a district and termination of a district plan.**

##### **18.44.010 Purpose.**

The purpose of this chapter is to provide standards and procedures for the establishment of flexible zoning overlay districts in areas of the community that are experiencing disinvestment or under-utilization of land. The flexible zoning overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls, including the opportunity for relief from use restrictions, development intensity limitations and associated standards included in the provisions of the underlying zoning.

##### **18.44.020 Objectives of the flexible zoning overlay district.**

Objectives to be achieved through the establishment of a flexible overlay zoning district are to:

- A. Further the intent and goals of adopted land use plans;
- B. Encourage investment in areas experiencing blight, disinvestment or underutilization of land;
- C. Create opportunities for development and redevelopment that would otherwise be unachievable.
- D. Promote coordination and cooperation between property owners that are interested in pursuing redevelopment initiatives;
- E. Facilitate design innovation with the reduction or elimination of certain land use and zoning controls;
- F. Ensure adequate public safety within and adjacent to district boundaries;
- G. Maintain quality standards for the provision of city services for properties within and adjacent to district boundaries; and
- H. Protect land uses and neighborhoods that are adjacent to flexible overlay zoning districts from material negative impacts.

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reflecting adjustments made after the 4-25-16 Planning Commission Hearing.

## Flexible Zoning Overlay District Provisions / May 5 Revision

### **18.44.030 Definitions.**

The words, terms and phrases in this section shall have the meanings as set forth below, unless the context requires otherwise.

- A. “Flexible zoning overlay district” or “district” shall mean all land within a designated area that has been approved by the council following a public hearing with public notice that will be subject to the provisions of this chapter.
- B. “Flexible zoning overlay district plan” or “district plan” shall mean a general plan of development that complies with the requirements specified in this chapter.
- C. “Flexible zoning project” or “project” shall mean a development project located within a district that conforms to the established district plan.
- D. “Flexible zoning project plan” or “project plan” shall mean a site specific plan of development located within a district that complies with the requirements specified in this chapter.
- E. “Greenfield sites” shall mean open land that is not surrounded by or substantially constrained by development, including leapfrog development, and where there has been no previous development activity other than agricultural uses or similar low-intensity uses.
- F. “Sensitive uses” shall mean single family and two-family homes, ~~public and private~~ schools ~~with on site enrollment of 25 or more students~~ and daycare facilities, medical care facilities including hospitals, clinics and nursing facilities, or other uses that may be materially impacted in a negative manner by the location of a district or development project.

### **18.44.040 Establishment of flexible zoning overlay districts.**

Establishment of a flexible zoning overlay district includes the following:

- A. Submittal of a complete application signed by owners of real property within the district boundaries;
- B. Review of the application by the development review team for completeness;
- C. Conducting a neighborhood meeting and public hearings by the planning commission and the council all of which shall be publicly noticed; and
- D. Approval of the district, district plan, and, if applicable, the project plan by council following the public hearing.

### **18.44.050 Eligibility criteria.**

All districts shall meet the following eligibility requirements:

- A. District boundaries shall be consistent with the city’s infill definition where at least eighty percent of the district boundary is ~~abutting and~~ contiguous to properties within the city limits; greenfield sites are unsuitable for district designation;
- B. Property within the district boundaries is contiguous or separated only by public rights-of-way;
- C. District boundaries are reasonably discernable and distinguishable from adjacent land;

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### **Flexible Zoning Overlay District Provisions / May 5 Revision**

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- D. The district use meets applicable Adequate Community Facilities (ACF) standards set forth in chapter 16.41;
- E. The district plan is consistent with the intent and goals of applicable land use plans and policies; however, a district plan may ~~exceed~~ vary from the use, density and intensity provisions specified in the land use plan component of the Comprehensive Plan;
- F. The district plan has been designed to prevent incompatibility with adjacent and nearby property and land uses, particularly sensitive uses;
- G. Community benefits of the flexible zoning overlay district and the associated district plan shall outweigh any negative impacts to surrounding properties or to the community; and
- H. Establishment of the district encourages property investment and development which might otherwise not occur, and furthers a valid public purpose.

#### **18.44.060 Permitted uses and applicable development standards.**

- A. When a flexible zoning overlay district is established, the underlying zoning designation remains in place except as modified by the district plan.
- B. Once a district has been established and a district plan approved, subsequent development and redevelopment within the district must conform to the district plan.
- C. All property within a flexible zoning overlay district is subject to this title, except where specifically exempted in the district plan.

#### **18.44.070 Overlay district application requirements.**

- A. An application for establishment of a flexible zoning overlay district may be submitted by a property owner within the proposed district boundaries or by written consent of three city council members.
- B. An applicant must present preliminary plans for a proposed district at a concept review meeting prior to making an application to establish a district.
- C. Written consent from all owners of property within the proposed district boundaries must be provided before notice of a public hearing before the planning commission.
- D. The application shall include the following information along with information specified on the city's submittal checklist for establishment of a district:
  - 1. A written explanation of the community benefit that the district and district plan will provide and how the proposed development furthers the intent and goals of applicable land use plans and policies;
  - 2. A written explanation of how the proposed development achieves compatibility with surrounding uses, particularly sensitive uses;
  - 3. A purpose statement indicating how the district plan achieves compliance with the eligibility criteria listed in Section 18.44.050;
  - 4. A map of the proposed district boundaries, including all lots, tracts, outlots and rights-of-way;
  - 5. A list of all owners of real property within the district boundaries;

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## Flexible Zoning Overlay District Provisions / May 5 Revision

6. A district plan which specifies the type and extent of development proposed, including the following components:
  - a. A master plan indicating the intensity and general configuration of the proposed use or uses;
  - b. An architectural concept plan that includes a building massing and height study;
  - c. A phasing plan, including a projected timeframe for each phase; and,
  - d. A listing of zoning standards that will be applicable to development within the district.

### **18.44.080 Procedures for approval of flexible zoning overlay districts.**

- A. Review process. Upon receipt of a complete application within the allowed timeframe, the development review team will undertake the review procedures specified in chapter 18.39 of this title.
- B. Public notice requirements. Notice shall be provided in accordance with chapter 18.05, and conform to the notice distance requirements for rezoning applications as specified in Table 18.05-1.
- C. Neighborhood meeting. Prior to completion of the review process by the development review team, the applicant shall provide public notice for and conduct a neighborhood meeting.
- D. Planning commission.
  1. A public hearing shall be conducted with public notice before the planning commission following the neighborhood meeting.
  2. Notes from the neighborhood meeting, relevant application materials, written input from interested parties and a recommendation from the current planning manager as to whether the district plan meets the eligibility criteria of section 18.44.050 shall be forwarded to the planning commission for review at the public hearing.
  3. Based upon information received at the public hearing, the planning commission shall, by resolution within thirty days of the hearing, recommend approval, approval with conditions or denial of the district and district plan based on eligibility criteria of Section 18.44.050.
  4. The public hearing may be continued if the planning commission determines that additional information is necessary to consider before a decision can be rendered.
  5. If the applicant objects to any condition of approval placed by the planning commission upon the district plan, the planning commission shall recommend denial.
  6. The planning commission's recommendation shall be forwarded to the council along with the approved minutes of the public hearing and all other material considered by the planning commission in making its recommendation.
- E. City council. The council shall conduct a public hearing with public notice upon receipt of the recommendation of the planning commission, the approved minutes of any planning commission public hearing, and all materials considered by the planning commission in

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### Flexible Zoning Overlay District Provisions / May 5 Revision

making its recommendation, and any materials submitted following any such planning commission hearing.

1. Council shall approve, approve with conditions or to deny the district and the associated district plan based on eligibility criteria of section 18.44.050.
2. Council may establish an expiration date for a district and for associated district plans.
3. If the applicant objects to any condition of approval placed upon the district plan by the council, the district plan shall not be approved.
4. The council may remand a district plan to the planning commission for any reason.
5. If the council approves a district plan, it shall adopt an ordinance establishing the district and the district plan. The adopted plan, signed by the mayor, the city attorney and the current planning manager, shall be recorded with the Larimer Ceounty clerk and recorder's office along with the adopting ordinance.
6. The adopted overlay zone shall be designated on the official zoning map.

~~F. Development within a designated overlay zone shall not occur unless a project plan has been approved for the district.~~

~~G.F.~~ A project plan may be considered concurrently with a district plan. When a concurrent submittal is made, the council shall have final decision making authority on both plans.

~~H.G.~~ A district plan shall be amended in the same manner it was approved unless the current planning manager determines that the proposed amendment meets the following criteria:

1. The amendment would not allow new uses;
2. The amendment would not allow an ~~increase~~ change in development density or intensity greater than 20%;
3. The amendment would not alter a condition approved by council; and
4. There is no reason to believe that any party would be aggrieved by the amendment.

Where these criteria have been met, the amendment shall be considered minor and the current planning manager shall have the authority to approve, approve with conditions or deny the amendment. Alternatively, the current planning manager may forward a minor amendment to the planning commission for determination at a public hearing with public notice.

~~I.H.~~ Planning commission decisions on district plan amendments may be appealed to council by a party in interest. The appeal shall be processed and heard as specified in chapter 18.80.

#### **18.44.085 Flexible zoning project plan required.**

Project plans are approved subsequent to or concurrently with approval of an associated district and district plan. Project plans are specific and detailed development plans that are reviewed and approved administratively unless approved concurrently with a district or district plan as specified in Section 18.44.80. Development within a flexible zoning overlay district must conform to an approved project plan.

5-9-2016 Planning Commission Public Hearing Version with redline changes  
reflecting adjustments made after the 4-25-16 Planning Commission Hearing.

## Flexible Zoning Overlay District Provisions / May 5 Revision

### **18.44.090 Flexible zoning project plan application requirements.**

Applications for flexible zoning project plans, including associated subdivision, infrastructure and related applications, shall be subject to the requirements for site development plans specified in chapter 18.46 and any conditions adopted by Council.

### **18.44.100 Procedures for approval of flexible zoning project plans.**

- A. Development within an established district must be consistent with the approved district plan.
- B. Applications for approving or amending project plans shall be subject to the procedures for site development plans specified in chapter 18.39 and 18.46 unless project plans are approved as otherwise authorized by this chapter.
- ~~C. Once a project plan is approved, the approval runs with the land unless the district or the district plan expires or is terminated prior to the issuance of a building permit for one or more structures within the district boundaries.~~
- ~~D.C.~~ Building permits. Any building permit issued for development or redevelopment within a district shall be consistent with the district plan and with the project plan approved for the property.

### **18.44.110 Establishment, extension, expiration and termination of a district and district plan.**

Council has exclusive authority to establish with or without conditions, limit, terminate and extend districts and district plans.

- A. Districts and associated district plans shall be established for a period of forty-eight months from the date of the approval of the adopting ordinance, unless such ordinance specifies otherwise. When a district expires or is terminated, the district overlay designation on the official zoning map is removed and the authority of the underlying zoning regulations is reestablished. Any nonconforming uses or buildings resulting from a district expiration or termination will be subject to Chapter 18.56 of this title.
- B. The established expiration date for a flexible zoning overlay district may be extended by the council at the request of all property owners within the district. To be considered, a written extension request must be submitted to the city prior to the expiration date.
- C. Any district with an expiration date shall be approved only after the applicant has provided an agreement, in a form approved by the city attorney, that acknowledges the limited term of the district and the absence of any right to use or rely on the district beyond such term and indemnifies the city for any claim related to the expiration of the district.
- D. At the request of all property owners within a district or upon failure of the property owners to maintain any ongoing conditions of the district or district plan, or upon abandonment of the use permitted by the district and district plan, council may terminate the district and district plan.

5-9-2016 Planning Commission Public Hearing Version with redline changes  
reflecting adjustments made after the 4-25-16 Planning Commission Hearing.

**Flexible Zoning Overlay District Provisions / May 5 Revision**

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- E. Subject to the foregoing, once a project plan is approved and any and all district or district plan conditions set by council have been fully satisfied, the district and the district plan shall not expire or terminate.
1. Upon such approval and full satisfaction of any and all such conditions, the district property owner may request written certification from the current planning manager to this effect; and
  2. Upon receipt of such certification, the city clerk's office shall record the ordinance establishing the district and the district plan with the Larimer County clerk and recorder's office.

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5-9-2016 Planning Commission Public Hearing Version with redline changes  
reflecting adjustments made after the 4-25-16 Planning Commission Hearing.



## Development Services Current Planning

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www.cityofloveland.org

### Staff Report: Flexible Zoning Overlay District

April 25, 2016

FROM: Bob Paulsen, Current Planning Manager, Development Services Department  
TO: Loveland Planning Commission  
SUBJECT: Proposed amendment to Title 18 of the Municipal Code to incorporate new chapter 18.44 - Flexible Zoning Overlay District

#### SUMMARY

On March 14, 2016, the Planning Commission conducted a public hearing to consider incorporation of proposed chapter 18.44 – Flexible Zoning Overlay District into Title 18 of the Municipal Code. After review of the provisions, the Planning Commission unanimously voted to recommend that City Council approve the provisions as presented.

Subsequent to the March 14, 2016 Planning Commission hearing, staff determined that the code provisions would benefit from clarifications and minor adjustments prior to consideration by the City Council. On March 28<sup>th</sup>, Planning staff requested that the Planning Commission consent to further consideration of the proposed code provisions by staff along with review by the Title 18 Committee. The Commission agreed to this request with the understanding that the delay would be minimal.

The attached redline version of the proposed code provisions incorporate the recent revisions prepared by Current Planning staff. These adjustments were reviewed and agreed upon at the Title 18 Committee meeting on April 14, 2016. This staff report is an updated supplement to the April 14, 2016 staff report.

#### RECOMMENDED ACTION

Staff recommends that the Commission recommend approval of the Flexible Zoning Overlay District to the City Council.

#### RECOMMENDED MOTION

Move to recommend that City Council approve the proposed Flexible Zoning Overlay District and incorporate these provisions into the Municipal Code as Chapter 18.44 as presented to the Planning Commission in a public hearing on April 25, 2016 and as described in the Planning Commission staff report dated April 25, 2016 as specified in the attachments thereto and as further amended on the record.

**Flexible Zoning Overlay District for April 25, 2016 Planning Commission Public Hearing**

**ATTACHMENT B**

## ATTACHMENTS

- A. Chapter 18.44 FLEXIBLE ZONING OVERLAY DISTRICT (Revised for 4-25-16)
- B. Flexible Zoning Summary (Revised for 4-25-16)
- C. March 14, 2016 Planning Commission Staff Report: Flexible Zoning Overlay District

## SUMMARY OF THE FLEXIBLE ZONING OVERLAY DISTRICT

As proposed, the Flexible Zoning Overlay District provisions would establish a new chapter of the zoning code (18.44). The provisions represent a departure from traditional practice of establishing new or revised standards, as these provisions would allow development to be partially or completely exempt from existing zoning standards like landscaping, building setbacks, architectural design and parking requirements. As such, the provisions are designed to stimulate development and redevelopment on properties that are experiencing disinvestment or under-utilization. The provisions would allow a property owner or group of owners to pursue a development plan that does not conform to some or all existing zoning standards, thereby increasing the financial feasibility of the project and allowing for design innovations that would otherwise be unavailable. In short, the intent is to provide regulatory relief that will encourage investment and new development.

The Flexible Zoning Overlay District provisions could be applied across the city, with the exception of greenfield sites. An overlay district, once approved, would “float over” the existing zoning designation establishing a set of tailored or exclusive development standards for the designated property. All new development occurring within an approved district would have to meet the specified standards. The standards could provide relief from any or all zoning standards of the underlying zoning district. An established district could not exempt development from the Building Code or from the City’s street standards or infrastructure requirements; exemptions would be limited to zoning.

For a more detailed description of the code provisions, please refer to the March 14, 2016 Planning Commission staff report; see **ATTACHMENT C**.

## SUMMARY OF THE REVISIONS AS PRESENTED ON APRIL 25, 2016

Revisions to the proposed code provisions as presented to the Planning Commission in a public hearing on April 14, 2015 are indicated by redline adjustments as shown in **ATTACHMENT A**. The revisions are itemized below with an explanation for each change.

1. Text has been inserted into two sections of the provisions indicating that the Flexible Zoning Districts and District Plans are to be consistent with the intent and goals of adopted plans; see Sections 18.44.020.A and 18.44.050.E. The purpose of these two insertions is to guide city decision making that furthers the intent of adopted plans, including the Comprehensive Plan, the Highway 287 Strategic Plan and the Downtown Heart Improvement Project Plan.
2. Inserted text in Section 18.44.050.E referenced above, includes a clarification that a District Plan may exceed the density and intensity policies specified in the Land Use Plan component of the Comprehensive Plan. This clarification is provided to give City decision makers the clear authority to approve a District Plan that does not comport with this specific policy.

**Flexible Zoning Overlay District for April 25, 2016 Planning Commission Public Hearing Page 2 of 3**

**ATTACHMENT B**

3. A definition of “Greenfield sites” has been added. This definition ties to the district eligibility criteria in Section 18.44.050.A. This adjustment specifies that Districts must fit the City’s infill definition and further states that Districts are unsuitable for greenfield sites. The purpose of these additions is to strengthen the policy emphasis that the Flexible Overlay Districts are designed to encourage reinvestment in properties that are experiencing blight or disinvestment. Greenfield sites are not generally subject to such factors.
4. Two additions have been made to Section 18.44.070 which addresses application requirements, including the requirement that an applicant provide an explanation as to the community benefit of the District and how it furthers the policies and goals of applicable plans; secondly, an additional application requirement specifies that the applicant explain how the proposed development achieves compatibility with surrounding uses. The purpose of these additions is ensure that the applicant has a clear purpose and justification for the waiving zoning requirements and articulates how compatibility with other uses is to be achieved.
5. A third adjustment to the application requirements is provided in Subsection 18.44.070.D.6 that better clarifies that a District Plan includes a master plan for the property.
6. In Section 18.44.080.B replacement text specifies that the public notice distance requirements for Districts is the same as the distance requirements for rezonings. This adjustment ties the notice process to existing standards, creating more consistency within the code.
7. Inserted text in Section 18.44.080.H specifies that the current planning manager has authority to amend District Plans with proposed density and intensity increases of up to 20%. This adjustment provides more flexibility to grant administrative approvals, but within clear limitations.
8. A minor clarification has been added to 18.44.090 to specify that Project Plans, in addition other requirements, are subject to conditions adopted by Council.
9. New Subsection 18.44.100.C addresses the issue of nonconformity, specifying that if a District Plan is approved and a building permit is issued for property within the established District, then the District Plan approval runs with the land and does not terminate even if District expires or the City Council terminates the District Plan. This addition protects a property owner who has relied on and invested in a District Plan.
10. Based on direction at the April 14<sup>th</sup> Title 18 Committee meeting, Subsection 18.44.110.A has been adjusted to specify that Districts and District Plans shall be established for a period of 48 months unless the City Council specifies otherwise when approving a District. Committee members indicated that they did not want Districts, especially Districts that were not active, to extend beyond a time period that is reasonable for development to occur.
11. On April 14<sup>th</sup>, the Title 18 Committee also requested that new Subsection 18.44.110.D be added to clarify that property owners within an established District can request vacation of the District by City Council.

## Flexible Zoning Overlay District Provisions

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### Chapter 18.44

#### FLEXIBLE ZONING OVERLAY DISTRICT

##### Sections:

- 18.44.010 Purpose.**
- 18.44.020 Objectives of the flexible zoning overlay district.**
- 18.44.030 Definitions.**
- 18.44.040 Establishment of flexible zoning overlay districts.**
- 18.44.050 Eligibility criteria.**
- 18.44.060 Permitted uses and applicable development standards.**
- 18.44.070 Overlay district application requirements.**
- 18.44.080 Procedures for approval of flexible zoning overlay districts.**
- 18.44.090 Flexible zoning project plan application requirements.**
- 18.44.100 Procedures for approval of flexible zoning project plans.**
- 18.44.110 Expiration of a district and termination of a district plan.**

##### **18.44.010 Purpose.**

The purpose of this chapter is to provide standards and procedures for the establishment of flexible zoning overlay districts in areas of the community that are experiencing disinvestment or under-utilization of land. The flexible zoning overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls, including the opportunity for relief from use restrictions, development intensity limitations and associated standards included in the provisions of the underlying zoning.

##### **18.44.020 Objectives of the flexible zoning overlay district.**

Objectives to be achieved through the establishment of a flexible overlay zoning district are to:

- A. Further the intent and goals of adopted land use plans;
- B. Encourage investment in areas experiencing blight, disinvestment or underutilization of land;
- C. Create opportunities for development and redevelopment that would otherwise be unachievable.
- D. Promote coordination and cooperation between property owners that are interested in pursuing redevelopment initiatives;
- E. Facilitate design innovation with the reduction or elimination of certain land use and zoning controls;
- F. Ensure adequate public safety within and adjacent to district boundaries;
- G. Maintain quality standards for the provision of city services for properties within and adjacent to district boundaries; and
- H. Protect land uses and neighborhoods that are adjacent to flexible overlay zoning districts from material negative impacts.

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4-25-2016 Planning Commission Public Hearing Version with redline changes  
reflecting adjustments made after the 3-3-16 Planning Commission Hearing.

## Flexible Zoning Overlay District Provisions

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### 18.44.030 Definitions.

The words, terms and phrases in this section shall have the meanings as set forth below, unless the context requires otherwise.

- A. “Flexible zoning overlay district” or “district” shall mean all land within a designated area that has been approved by the council following a public hearing with public notice that will be subject to the provisions of this chapter.
- B. “Flexible zoning overlay district plan” or “district plan” shall mean a general plan of development that complies with the requirements specified in this chapter.
- C. “Flexible zoning project” or “project” shall mean a development project located within a district that conforms to the established district plan.
- D. “Flexible zoning project plan” or “project plan” shall mean a site specific plan of development located within a district that complies with the requirements specified in this chapter.
- E. “Greenfield sites” shall mean open land that is not surrounded by or substantially constrained by development, including leapfrog development, and where there has been no previous development activity other than agricultural uses or similar low-intensity uses.
- ~~E.F.~~ “Sensitive uses” shall mean single family and two-family homes, public and private schools with on-site enrollment of 25 or more students, medical care facilities including hospitals, clinics and nursing facilities, or other uses that may be materially impacted in a negative manner by the location of a district or development project.

### 18.44.040 Establishment of flexible zoning overlay districts.

Establishment of a flexible zoning overlay district includes the following:

- A. Submittal of a complete application signed by owners of real property within the district boundaries;
- B. Review of the application by the development review team for completeness;
- C. Conducting a neighborhood meeting and public hearings by the planning commission and the council all of which shall be publicly noticed; and
- D. Approval of the district, district plan, and, if applicable, the project plan by council following the public hearing.

### 18.44.050 Eligibility criteria.

~~Property within a proposed district shall meet~~ All districts shall meet the following eligibility requirements:

- A. District boundaries shall be consistent with the city’s infill definition where at least eighty percent of the district boundary is abutting and contiguous to properties within the city limits; greenfield sites are unsuitable for district designation;
- B. Property within the district boundaries is contiguous or separated only by public rights-of-way;
- C. District boundaries are reasonably discernable and distinguishable from adjacent land;

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reflecting adjustments made after the 3-3-16 Planning Commission Hearing.



### Flexible Zoning Overlay District Provisions

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- D. The district use meets applicable Adequate Community Facilities (ACF) standards set forth in chapter 16.41;
- E. The district plan is consistent with the intent and goals of applicable land use plans and policies; however, a district plan may exceed the density and intensity provisions specified in the land use plan component of the Comprehensive Plan;
- F. The district plan has been designed to prevent incompatibility with adjacent and nearby property and land uses, particularly sensitive uses;
- G. Community benefits of the flexible zoning overlay district and the associated district plan shall outweigh any negative impacts to surrounding properties or to the community; and
- H. Establishment of the district encourages property investment and development which might otherwise not occur, and furthers a valid public purpose.

#### **18.44.60 Permitted uses and applicable development standards.**

- A. When a flexible zoning overlay district is established, the underlying zoning designation remains in place except as modified by the district plan.
- B. Once a district has been established and a district plan approved, subsequent development and redevelopment within the district must conform to the district plan.
- C. All property within a flexible zoning overlay district is subject to this title, except where specifically exempted in the district plan.

#### **18.44.070 Overlay district application requirements.**

- A. An application for establishment of a flexible zoning overlay district may be submitted by a property owner within the proposed district boundaries or by written consent of three city council members.
- B. An applicant must present preliminary plans for a proposed district at a concept review meeting prior to making an application to establish a district.
- C. Written consent from all owners of property within the proposed district boundaries must be provided before notice of a public hearing before the planning commission.
- D. The application shall include the following information along with information specified on the city's submittal checklist for establishment of a district:
  1. A written explanation of the community benefit that the district and district plan will provide and how the proposed development furthers the intent and goals of applicable land use plans and policies;
  2. A written explanation of how the proposed development achieves compatibility with surrounding uses;
  3. A purpose statement indicating how the district plan achieves compliance with the eligibility criteria listed in Section 18.44.050;
  4. A map of the proposed district boundaries, including all lots, tracts, outlots and rights-of-way;
  5. A list of all owners of real property within the district boundaries;

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reflecting adjustments made after the 3-3-16 Planning Commission Hearing.

### Flexible Zoning Overlay District Provisions

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6. A district plan which specifies the type and extent of development proposed, including the following components:
- a. ~~The district plan shall~~ A master plan indicating the intensity and configuration of the proposed use or uses;
  - b. ~~an~~ An architectural concept plan that includes a building massing and height study;
  - c. ~~a~~ A phasing plan, including a projected timeframe for each phase; and,
  - d. ~~a~~ A listing of zoning standards that will be applicable to development within the district.

#### 18.44.080 Procedures for approval of flexible zoning overlay districts.

- A. Review process. Upon receipt of a complete application within the allowed timeframe, the development review team will undertake the review procedures specified in chapter 18.39 of this title.
- B. Public notice requirements. Notice shall be provided in accordance with chapter 18.05, and conform to the notice distance requirements for rezoning applications as specified in Table 18.05-1, except that mailed notice distance shall be six hundred feet from the boundaries of an overlay district that is less than five acres and one thousand and two hundred feet for a district larger than five acres.
- C. Neighborhood meeting. Prior to completion of the review process by the development review team, the applicant shall provide public notice for and conduct a neighborhood meeting.
- D. Planning commission.
  1. A public hearing shall be conducted with public notice before the planning commission following the neighborhood meeting.
  2. Notes from the neighborhood meeting, relevant application materials, written input from interested parties and a recommendation from the current planning manager as to whether the district plan meets the eligibility criteria of section 18.44.050 shall be forwarded to the planning commission for review at the public hearing.
  3. Based upon information received at the public hearing, the planning commission shall, by resolution within thirty days of the hearing, recommend approval, approval with conditions or denial of the district and district plan based on eligibility criteria of Section 18.44.050.
  4. The public hearing may be continued if the planning commission determines that additional information is necessary to consider before a decision can be rendered.
  5. If the applicant objects to any condition of approval placed by the planning commission upon the district plan, the planning commission shall recommend denial.
  6. The planning commission's recommendation shall be forwarded to the council along with the approved minutes of the public hearing and all other material considered by the planning commission in making its recommendation.

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reflecting adjustments made after the 3-3-16 Planning Commission Hearing.

### Flexible Zoning Overlay District Provisions

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- E. City council. The council shall conduct a public hearing with public notice upon receipt of the recommendation of the planning commission, the approved minutes of any planning commission public hearing, and all materials considered by the planning commission in making its recommendation, and any materials submitted following any such planning commission hearing.
1. Council shall approve, approve with conditions or to deny the district and the associated district plan based on eligibility criteria of section 18.44.050.
  2. Council may establish an expiration date for a district and for associated district plans.
  3. If the applicant objects to any condition of approval placed upon the district plan by the council, the district plan shall not be approved.
  4. The council may remand a district plan to the planning commission for any reason.
  5. If the council approves a district plan, it shall adopt an ordinance establishing the district and the district plan. The adopted plan, signed by the mayor, the city attorney and the current planning manager, shall be recorded with the county clerk and recorder's office along with the adopting ordinance.
  6. The adopted overlay zone shall be designated on the official zoning map.
- F. Development within a designated overlay zone shall not occur unless a project plan has been approved for the district.
- G. A project plan may be considered concurrently with a district plan. When a concurrent submittal is made, the council shall have final decision making authority on both plans.
- H. A district plan shall be amended in the same manner it was approved unless the current planning manager determines that the proposed amendment meets the following criteria:
1. The amendment would not allow new uses;
  2. The amendment would not allow an increase in development density or intensity greater than 20%;
  3. The amendment would not alter a condition approved by council; and
  4. There is no reason to believe that any party would be aggrieved by the amendment.
- Where these criteria have been met, the amendment shall be considered minor and the current planning manager shall have the authority to approve, approve with conditions or deny the amendment. Alternatively, the current planning manager may forward a minor amendment to the planning commission for determination at a public hearing with public notice.
- I. Planning commission decisions on district plan amendments may be appealed to council by a party in interest. The appeal shall be processed and heard as specified in chapter 18.80.

#### **18.44.90 Flexible zoning project plan application requirements.**

Applications for flexible zoning project plans, including associated subdivision, infrastructure and related applications, shall be subject to the requirements for site development plans specified in chapter 18.46 and any conditions adopted by Council.

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reflecting adjustments made after the 3-3-16 Planning Commission Hearing.

**ATTACHMENT B**

### Flexible Zoning Overlay District Provisions

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#### 18.44.100 Procedures for approval of flexible zoning project plans.

- A. Development within an established district must be consistent with the approved district plan.
- B. Applications for approving or amending project plans shall be subject to the procedures for site development plans specified in chapter 18.39 and 18.46 unless project plans are approved as otherwise authorized by this chapter.
- C. Once a project plan is approved, the approval runs with the land unless the district or the district plan expires or is terminated prior to the issuance of a building permit for one or more structures within the district boundaries.
- D. Building permits. Any building permit issued for development or redevelopment within a district shall be consistent with the district plan and with the project plan approved for the property.

#### 18.44.110 Expiration of a district and termination of a district plan.

Council has exclusive authority to establish, terminate, vacate, limit and extend districts, and to approve and terminate district plans.

- A. Districts and associated district plans shall be established for a period of forty-eight months from the date of the approval of the adopting ordinance, unless the adopting ordinance specifies otherwise. When establishing a district, the council may specify a date upon which the district designation would expire and any associated plans would be terminated. Expiration of a district results in the removal of the district overlay designation on the official zoning map ~~and~~. When a district expires or is terminated or removed, reestablishment of the authority of the underlying zoning regulations is reestablished except as specified in Section 18.44.100.
- B. The established expiration date for a flexible zoning overlay district may be extended by the council at the request of all property owners within the district. An extension must occur prior to the expiration date.
- C. Any district with an expiration date shall be approved only after the applicant has provided an agreement, in a form approved by the city attorney, that acknowledges the limited term of the district and the absence of any right to use or rely on the district beyond such term and indemnifies the city for any claim related to the expiration of the district.
- D. At the request of all property owners within a district, council may vacate the approval of the district and terminate district plans. Upon council approval, the district overlay designation on the official zoning map is removed and the authority of the underlying zoning regulations is reestablished. Any nonconforming uses or buildings resulting from a district vacation will be subject to Chapter 18.56 of this title.

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reflecting adjustments made after the 3-3-16 Planning Commission Hearing.

## **FLEXIBLE ZONING DISTRICT OVERLAY SUMMARY** [Last Revision: 4-20-16]

1. The Flexible Zoning District Overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls.
2. The City Council would have final authority to approve an Overlay District and a District Plan following staff review, a neighborhood meeting and a Planning Commission hearing.
3. Flexible Zoning Districts could be located anywhere in the City, except in greenfield areas or sites which do not meet the definition for infill.
4. The approved District Plan would replace standard zoning requirements.
5. Flexible Zoning Overlay Districts would allow development that does not meet standard zoning requirements. Requirements like building setbacks, height limitations, parking, landscaping and architectural standards could be reduced or completely eliminated.
6. Building code and infrastructure requirements for development could not be waived. Existing standards for street, stormwater, water, sewer, emergency services and building safety would still apply.
7. Flexible Zoning Overlay Districts would be established for specific locations and would “float” over existing zoning. Therefore, the existing, underlying zoning would not change, but would be suspended unless the District expired or was terminated by the City Council.
8. Property owners (or City Council) could apply to establish a Flexible Zoning Overlay District.
9. Each district could include one or more properties, with no minimum size requirement.
10. Prior to submitting an application for an Overlay District, participating owners would be required to have a concept review meeting with development review staff.
11. To apply for Overlay District designation, applicants would be required to submit conceptual plans for the project area, provide a narrative explanation of their proposal, and indicate what standard zoning requirements (if any) they are seeking to apply—similar to a PUD.
12. Upon staff review of an Overlay District application, a neighborhood meeting would be conducted with notice provided to property owners within an established radius of the site.
13. The Overlay District request could proceed to a Planning Commission public hearing only if the development review team determined that the necessary infrastructure is available to serve the site—ie. the project is feasible in terms of the provision of adequate water, sewer, stormwater, fire and transportation facilities.
14. The Planning Commission would review the proposal in a public hearing and make a recommendation to City Council, including any recommended conditions.
15. Council would conduct a public hearing and approve, approve with conditions or deny.
16. If approved, the applicant(s) could then submit a site development plan for (administrative) review and approval of any sites within the overlay area. Projects would only be subject to the development standards specified in the approved Overlay District Plan. All other city standards/requirements would need to be met unless specifically waived by City Council.

**April 25, 2016 Planning Commission Hearing Information / Summary**

**ATTACHMENT B**



## Development Services Current Planning

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### Staff Report: Flexible Zoning Overlay District

March 14, 2016

FROM: Bob Paulsen, Interim Director, Development Services Department  
TO: Loveland Planning Commission  
SUBJECT: Proposed amendment to Title 18 of the Municipal Code to incorporate new chapter 18.44 - Flexible Zoning Overlay District

#### SUMMARY

On March 14, 2016, the Planning Commission will conduct a public hearing to consider incorporation of proposed chapter 18.44 – Flexible Zoning Overlay District into Title 18 of the Municipal Code. Consideration of the proposed code amendment is a legislative matter and Planning Commissioners are free to discuss this material outside of the public hearing process. Upon action on this matter by the Planning Commission, this proposed amendment to the zoning code will be forwarded to the City Council for final action.

#### RECOMMENDED ACTION

Staff recommends that the Commission recommends approval of the Flexible Zoning Overlay District to the City Council.

#### RECOMMENDED MOTION

Move to recommend that City Council approve the proposed Flexible Zoning Overlay District and incorporate these provisions into the Municipal Code as Chapter 18.44 as presented to the Planning Commission in a public hearing on March 14, 2016 and as described in the Planning Commission staff report dated March 14, 2016 as specified in the attachments thereto and as further amended on the record.

#### ATTACHMENTS

- A. Chapter 18.44 FLEXIBLE ZONING OVERLAY DISTRICT
- B. Flexible Zoning Summary
- C. February 13, 2016 Reporter Herald article on the Flexible Zoning Overlay District
- D. February 15, 2016 Reporter Herald editorial on the Flexible Zoning Overlay District

Staff Report-  
Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing **ATTACHMENT B**

## SUMMARY OF THE AMENDMENTS

As proposed, the Flexible Zoning Overlay District provisions would establish a new chapter of the zoning code (18.44). The provisions represent a significant departure from traditional practice of establishing new or revised standards, as these provisions would allow development to be partially or completely exempt from existing zoning standards like landscaping, building setbacks, architectural design and parking requirements. As such, the provisions are designed to stimulate development and redevelopment on properties that are experiencing disinvestment or under-utilization. The provisions would allow a property owner or group of owners to pursue a development plan that does not conform to some or all existing zoning standards, thereby increasing the financial feasibility of the project and allowing for design innovations that would otherwise be unavailable. In short, the intent is to provide regulatory relief that will encourage investment and new development.

The Flexible Zoning Overlay District provisions could be applied anywhere within the City. An overlay district, once approved, would “float over” the existing zoning designation establishing a set of tailored or exclusive development standards for the designated property. All new development occurring within an approved district would have to meet the specified standards. The standards could provide relief from any or all zoning standards of the underlying zoning district. An established district could not exempt development from the Building Code or from the City’s street standards or infrastructure requirements; exemptions would be limited to zoning.

The City Council would have exclusive authority to approve a Flexible Zoning Overlay District and the associated District Plan. The approval process would follow standard City development review approval procedures, including the following sequence:

1. Concept Review meeting with the development review team (DRT)
2. Administrative review by the DRT to ensure plans are complete and applicable City standards are adhered to
3. A noticed neighborhood meeting
4. A public hearing before the Planning Commission
5. A public hearing before the City Council

To achieve Council approval, the property owner(s) would need to identify the designated district and provide a district plan that identifies the scope of development within the district and indicates what the zoning exemptions will be. The Council would have the ability to establish any conditions and would be able to establish a sunset date for the district. The conceptual (district) plan is designed to set the parameters for development within the district without requiring detailed engineering or architectural plans until the district is established. This approach will allow developers to minimize their costs (and their financial risks) until the discretionary approvals are made. Once a district is established, site specific plans would proceed through the city’s development review process and building permit process. Site specific plans would need to comply with the approved district plan.

A summary of the proposed amendment is provided as Attachment B to this report.

## BACKGROUND

The original concept for the Flexible Zoning Overlay emanated from discussions at the City Council level. This concept was viewed as a means to provide regulatory relief to incent development of difficult sites as an alternative to fee reductions or other financial incentives. In response to the Council’s interest in this topic, the City Manager directed staff to conduct research and to work with

**Staff Report-**

**Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing** **ATTACHMENT B**



the Title 18 Committee in developing an ordinance to implement this concept. In early 2015, Planning staff brought forward a code amendment proposal to the Title 18 Committee that would allow for the waiving of zoning requirements within a specified or designated area. This was labeled the “No Zoning Zone.” Over a series of meetings, the Title 18 Committee worked with Current Planning staff to develop a more complete approach that has resulted in the provisions described in this Staff Report.

On January 25, 2016, the Planning Commission conducted a study session on the proposed Flexible Zoning Overlay District provisions. The Commission expressed support for the provisions and directed staff to move forward to the public hearing process. At the February 11, 2016 Title 18 Committee meeting, the Committee indicated support for Commission’s directive, requesting that a public outreach effort be conducted and that a final review of the provisions be completed by the City Attorney’s office.

Subsequent to the January 25<sup>th</sup> study session, staff has modified the provisions to allow overlay districts to be established anywhere within the municipal limits. In addition to this revision, Planning staff has incorporated numerous technical adjustments into the code provisions in response to comments from the City Attorney’s office. These adjustments have not substantially altered the purpose or application of the provisions.

#### **NOTICE AND OUTREACH**

In addition to the notice provided for the January 25<sup>th</sup> Planning Commission study session the following steps have been taken to inform the public of the proposed Flexible Zoning Overlay District provisions:

- A prominent feature article was published in the Reporter Herald on February 13<sup>th</sup> that described the purpose of the Flexible Zoning Overlay District.
- On February 15, 2016 the Reporter Herald published an editorial in qualified support of the Flexible Overlay provisions.
- The proposed code provisions have been posted on the Current Planning pages of the city’s web site. In addition to the actual code provisions, a one-page summary has also been posted.
- On February 26, 2016 an email was sent to over 100 planning and development review customers summarizing the Flexible Zoning Overlay District provisions, alerting recipients to the web site posting, informing them of the Planning Commission hearing on March 14<sup>th</sup> and offering to provide further information upon request. In response to this email, Planning staff have received approximately five inquiries; those inquiring were supportive of the content of the provisions.
- The March 14<sup>th</sup> public hearing has been properly noticed in the Report Herald.

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**ATTACHMENT B**



**Chapter 18.44****FLEXIBLE ZONING OVERLAY DISTRICT****Sections:**

- 18.44.010 Purpose.**
- 18.44.020 Objectives of the flexible zoning overlay district.**
- 18.44.030 Definitions.**
- 18.44.040 Establishment of flexible zoning overlay districts.**
- 18.44.050 Eligibility criteria.**
- 18.44.060 Permitted uses and applicable development standards.**
- 18.44.070 Overlay district application requirements.**
- 18.44.080 Procedures for approval of flexible zoning overlay districts.**
- 18.44.090 Flexible zoning project plan application requirements.**
- 18.44.100 Procedures for approval of flexible zoning project plans.**
- 18.44.110 Expiration of a district and termination of a district plan.**

**18.44.010 Purpose.**

The purpose of this chapter is to provide standards and procedures for the establishment of flexible zoning overlay districts in areas of the community that are experiencing disinvestment or under-utilization of land. The flexible zoning overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls, including the opportunity for relief from use restrictions, development intensity limitations and associated standards included in the provisions of the underlying zoning.

**18.44.020 Objectives of the flexible zoning overlay district.**

Objectives to be achieved through the establishment of a flexible overlay zoning district are:

- A. Encourage investment in areas experiencing blight, disinvestment or underutilization of land;
- B. Create opportunities for development and redevelopment that would otherwise be unachievable.
- C. Promote coordination and cooperation between property owners that are interested in pursuing redevelopment initiatives;
- D. Facilitate design innovation with the reduction or elimination of certain land use and zoning controls;
- E. Ensure adequate public safety within and adjacent to district boundaries;
- F. Maintain quality standards for the provision of city services for properties within and adjacent to district boundaries; and

**Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing**

**ATTACHMENT B**

- G. Protect land uses and neighborhoods that are adjacent to flexible overlay zoning districts from material negative impacts.

**18.44.030 Definitions.**

The words, terms and phrases in this section shall have the meanings as set forth below, unless the context requires otherwise.

- A. “Flexible zoning overlay district” or “district” shall mean all land within a designated area that has been approved by the council following a public hearing with public notice that will be subject to the provisions of this chapter.
- B. “Flexible zoning overlay district plan” or “district plan” shall mean a general plan of development that complies with the requirements specified in this chapter.
- C. “Flexible zoning project” or “project” shall mean a development project located within a district that conforms to the established district plan.
- D. “Flexible zoning project plan” or “project plan” shall mean a site specific plan of development located within a district that complies with the requirements specified in this chapter.
- E. “Sensitive uses” shall mean single family and two-family homes, public and private schools with on-site enrollment of 25 or more students, medical care facilities including hospitals, clinics and nursing facilities, or other uses that may be materially impacted in a negative manner by the location of a district or development project.

**18.44.040 Establishment of flexible zoning overlay districts.**

Establishment of a flexible zoning overlay district includes the following:

- A. Submittal of a complete application signed by owners of real property within the district boundaries;
- B. Review of the application by the development review team for completeness;
- C. Conducting a neighborhood meeting and public hearings by the planning commission and the council all of which shall be publicly noticed; and
- D. Approval of the district, district plan, and, if applicable, the project plan by council following the public hearing.

**18.44.050 Eligibility criteria.**

Property within a proposed district shall meet the following eligibility requirements:

- A. Property within the district boundaries is contiguous or separated only by public rights-of-way;
- B. District boundaries are reasonably discernable and distinguishable from adjacent land;
- C. The district use meets applicable Adequate Community Facilities (ACF) standards set forth in chapter 16.41;
- D. The district plan has been designed to prevent incompatibility with adjacent and nearby property and land uses, particularly sensitive uses;

**Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing**

**ATTACHMENT B**

- E. Community benefits of the flexible zoning overlay district and the associated district plan shall outweigh any negative impacts to surrounding properties or to the community; and
- F. Establishment of the district encourages property investment and development which might otherwise not occur, and furthers a valid public purpose.

**18.44.60 Permitted uses and applicable development standards.**

- A. When a flexible zoning overlay district is established, the underlying zoning designation remains in place except as modified by the district plan.
- B. Once a district has been established and a district plan approved, subsequent development and redevelopment within the district must conform to the district plan.
- C. All property within a flexible zoning overlay district is subject to this title, except where specifically exempted in the district plan.

**18.44.070 Overlay district application requirements.**

- A. An application for establishment of a flexible zoning overlay district may be submitted by a property owner within the proposed district boundaries or by written consent of three city council members.
- B. An applicant must present preliminary plans for a proposed district at a concept review meeting prior to making an application to establish a district.
- C. Written consent from all owners of property within the proposed district boundaries must be provided before notice of a public hearing before the planning commission.
- D. The application shall include the following information along with information specified on the city's submittal checklist for establishment of a district:
  1. A map of the proposed district boundaries, including all lots, tracts, outlots and rights-of-way;
  2. A list of all owners of real property within the district boundaries;
  3. A purpose statement demonstrating compliance of the district plan with the eligibility criteria listed in Section 18.44.050; and
  4. A district plan which specifies the type and extent of development proposed. The district plan shall indicate the intensity and configuration of the proposed use or uses; an architectural concept plan that includes a building massing and height study; a phasing plan, including a projected timeframe for each phase; and, a listing of zoning standards that will be applicable to development within the district. The district plan must indicate how the proposed development achieves compatibility with surrounding uses and the community.

**18.44.080 Procedures for approval of flexible zoning overlay districts.**

- A. Review process. Upon receipt of a complete application within the allowed timeframe, the development review team will undertake the review procedures specified in chapter 18.39 of this title.
- B. Public notice requirements. Notice shall be provided in accordance with chapter 18.05, except that mailed notice distance shall be six hundred feet from the boundaries of an

Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing

ATTACHMENT B

overlay district that is less than five acres and one thousand and two-hundred feet for a district larger than five acres.

- C. Neighborhood meeting. Prior to completion of the review process by the development review team, the applicant shall provide public notice for and conduct a neighborhood meeting.
- D. Planning commission.
  - 1. A public hearing shall be conducted with public notice before the planning commission following the neighborhood meeting.
  - 2. Notes from the neighborhood meeting, relevant application materials, written input from interested parties and a recommendation from the current planning manager as to whether the district plan meets the eligibility criteria of section 18.44.050 shall be forwarded to the planning commission for review at the public hearing.
  - 3. Based upon information received at the public hearing, the planning commission shall, by resolution within thirty days of the hearing, recommend approval, approval with conditions or denial of the district and district plan based on eligibility criteria of Section 18.44.050.
  - 4. The public hearing may be continued if the planning commission determines that additional information is necessary to consider before a decision can be rendered.
  - 5. If the applicant objects to any condition of approval placed by the planning commission upon the district plan, the planning commission shall recommend denial.
  - 6. The planning commission's recommendation shall be forwarded to the council along with the approved minutes of the public hearing and all other material considered by the planning commission in making its recommendation.
- E. City council. The council shall conduct a public hearing with public notice upon receipt of the recommendation of the planning commission, the approved minutes of any planning commission public hearing, and all materials considered by the planning commission in making its recommendation, and any materials submitted following any such planning commission hearing.
  - 1. Council shall approve, approve with conditions or to deny the district and the associated district plan based on eligibility criteria of section 18.44.050.
  - 2. Council may establish an expiration date for a district and for associated district plans.
  - 3. If the applicant objects to any condition of approval placed upon the district plan by the council, the district plan shall not be approved.
  - 4. The council may remand a district plan to the planning commission for any reason.
  - 5. If the council approves a district plan, it shall adopt an ordinance establishing the district and the district plan. The adopted plan, signed by the mayor, the city attorney and the current planning manager, shall be recorded with the county clerk and recorder's office along with the adopting ordinance.
  - 6. The adopted overlay zone shall be designated on the official zoning map.
- F. Development within a designated overlay zone shall not occur unless a project plan has been approved for the district.

**Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing**

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- G. A project plan may be considered concurrently with a district plan. When a concurrent submittal is made, the council shall have final decision making authority on both plans.
- H. A district plan shall be amended in the same manner it was approved unless the current planning manager determines that the proposed amendment meets the following criteria:
  1. The amendment would not allow new uses;
  2. The amendment would not allow an increase in development density or intensity;
  3. The amendment would not alter a condition approved by council; and
  4. There is no reason to believe that any party would be aggrieved by the amendment.

Where these criteria have been met, the amendment shall be considered minor and the current planning manager shall have the authority to approve, approve with conditions or deny the amendment. Alternatively, the current planning may forward a minor amendment to the planning commission for determination at a public hearing with public notice.

- I. Planning commission decisions on district plan amendments may be appealed to council by a party in interest. The appeal shall be processed and heard as specified in chapter 18.80.

**18.44.90 Flexible zoning project plan application requirements.**

Applications for flexible zoning project plans, including associated subdivision, infrastructure and related applications, shall be subject to the requirements for site development plans specified in chapter 18.46.

**18.44.100 Procedures for approval of flexible zoning project plans.**

- A. Development within an established district must be consistent with the approved district plan.
- B. Applications for approving or amending project plans shall be subject to the procedures for site development plans specified in chapter 18.39 and 18.46 unless project plans are approved as otherwise authorized by this chapter.
- C. Building permits. Any building permit issued for development or redevelopment within a district shall be consistent with the district plan and with the project plan approved for the property.

**18.44.110 Expiration of a district and termination of a district plan.**

Council has exclusive authority to establish, terminate, limit and extend districts, and to approve and terminate district plans.

- A. When establishing a district, the council may specify a date upon which the district designation would expire and any associated plans would be terminated. Expiration of a district results in the removal of the district overlay designation on the official zoning map and reestablishment of the authority of the underlying zoning regulations.
- B. The established expiration date for a flexible zoning overlay district may be extended by the council at the request of all property owners within the district. An extension must occur prior to the expiration date.

Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing

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- C. Any district with an expiration date shall be approved only after the applicant has provided an agreement, in a form approved by the city attorney, that acknowledges the limited term of the district and the absence of any right to use or rely on the district beyond such term and indemnifies the city for any claim related to the expiration of the district.

### Provided by the Current Planning Division

1. The Flexible Zoning District Overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls.
2. The City Council would have final authority to approve an Overlay District and a District Plan following staff review, a neighborhood meeting and a Planning Commission hearing.
3. Flexible Zoning Districts could be located anywhere in the City, upon City Council approval.
4. The approved District Plan would replace standard zoning requirements.
5. Flexible Zoning Overlay Districts would allow development that does not meet standard zoning requirements. Requirements like building setbacks, height limitations, parking, landscaping and architectural standards could be reduced or completely eliminated.
6. Infrastructure requirements for development could not be waived. Existing standards for street, stormwater, water, sewer, emergency services and building safety would still apply.
7. Flexible Zoning Overlay Districts would be established for specific locations and would “float” over existing zoning. Therefore, the existing, underlying zoning would not change, but would be suspended unless the District expired or was terminated by the City Council.
8. Property owners (or City Council) could apply to establish a Flexible Zoning Overlay District.
9. Each district could include one or more properties, with no minimum size requirement.
10. Prior to submitting an application for an Overlay District, participating owners would be required to have a concept review meeting with development review staff.
11. To apply for Overlay District designation, applicants would be required to submit conceptual plans for the project area, provide a narrative explanation of their proposal, and indicate what standard zoning requirements (if any) they are seeking to apply—similar to a PUD.
12. Upon staff review of an Overlay District application, a neighborhood meeting would be conducted with notice provided to property owners within an established radius of the site.
13. The Overlay District request could proceed to a Planning Commission public hearing only if the development review team determined that the necessary infrastructure is available to serve the site—ie. the project is feasible in terms of the provision of adequate water, sewer, stormwater, fire and transportation facilities.
14. The Planning Commission would review the proposal in a public hearing and make a recommendation to City Council, including any recommended conditions.
15. Council would conduct a public hearing and approve, approve with conditions or deny.
16. If approved, the applicant(s) could then submit a site development plan for (administrative) review and approval of any sites within the overlay area. Projects would only be subject to the zoning requirements, if any, specified in the approved Overlay District Plan. All other city standards/requirements would need to be met unless specifically waived by City Council.

Last Revision: 3-3-16

**Summary - Flexible Zoning Overlay District for March 14, 2016 Planning Commission Public Hearing**

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## Stretching the rules for development

City explores 'flexible zoning overlays' to encourage owners to revive moribund properties

By Craig Young

Reporter-Herald Staff Writer

POSTED: 02/13/2016 02:35:30 PM MST



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Areas in Loveland such as the city's designated South Catalyst Project between First and Third streets and Lincoln and Cleveland avenues, shown here in January 2014, could benefit from the "flexible zoning overlay" concept, according to City Councilman Troy Krenning. (Jenny Sparks / Reporter-Herald file photo)

The city is exploring a way to provide incentives to develop property that doesn't involve "throwing money at" a project.

The idea, called a "flexible zoning overlay," would allow a property owner to obtain permission from Loveland's Planning Commission and City Council to disregard certain zoning requirements in order to build something on a specifically designated plot.

"We spend an awful lot of time talking about ways to incentivize development," said City Councilman Troy Krenning, who first brought the idea to a city committee to study. Those incentives often involve "throwing money" at a developer, he said.

"I hear from those in the development community and from economic development as well that it's not always about money," Krenning said. "Sometimes, it's about process."

The city already has procedures through which zoning regulations can be relaxed, such as the special review process and planned unit development, but they can be complicated and costly.

"Sometimes, it's not cost-effective to develop a piece of dilapidated property," Krenning said. "If I didn't have to worry about going through the various codes, rules and regulations, would that serve as an incentive?"

### Planning Commission interest

Bob Paulsen, the city's acting director of Development Services, presented the concept during a Planning Commission study session Jan. 25, and he said the commission liked the idea and encouraged the staff to move forward with it.

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He said a more formalized version of the concept could be presented to the commission in a public hearing in the next month and a half.

"The idea is that there may be areas in town, whether they're blighted or experiencing a lack of investment, where this overlay zone may give the owners an opportunity to pursue innovative design solutions that might not otherwise be allowed," Paulsen said.

"Things like height, setback, landscaping and even use limitations could be waived in a final approval by the City Council," he said.

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3/9/2016



The concept would keep in place infrastructure requirements such as water, power, sewer and streets, Paulsen said, as well as safety rules.

Buddy Meyers, a member of the Planning Commission who studied the flexible zoning overlay concept as a member of the Title 18 Committee, said there are areas in downtown Loveland, on West Eisenhower Boulevard and on North U.S. 287 that are languishing that could benefit from relaxed rules.

#### **Achieving an eclectic community**

He gave as an example an area with zoning that allows only commercial structures, where a landowner could obtain an overlay zone that would permit a two-story mixed-use building with retail downstairs and residential upstairs.

He said such development would hark back to earlier times when shopkeepers lived above their stores, and neighborhoods had a more eclectic feel.

On the other hand, Meyers, Krenning and Paulsen all said the idea isn't to create a free-for-all where any kind of building goes.

"Of course, you don't want to have a city that doesn't have any zoning in it," Krenning said.

"If adjoining property owners don't see any objections, this is a way for the city of Loveland to get out of the way and see what would happen," he said.

Paulsen said the city hasn't run the idea past the real estate, development or business communities yet.

Krenning called the idea a "test tube experiment."

"This is thinking outside the box, which is something we don't tend to do very often," he said. "If it works, great. If it doesn't, then there's no harm. I just don't see any downside to it."

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## Editorial: New zoning overlays could be attractive

POSTED: 02/15/2016 10:52:13 PM MST

By dribs and drabs, some long-vacant buildings are starting to draw interest from developers — either for the buildings themselves or for the property on which they sit.

In north Loveland, a developer's plan to replace the former restaurant at 30th Street and Garfield Avenue with a KFC franchise will start a new chapter at a location that had become an attractor to trespassers and birds. In downtown, properties are filling with new businesses that see the energy that events such as the Loveland Fire and Ice Festival have brought to the core of Loveland.

Yet still more properties sit idle, in part because of zoning restrictions created for a user that might be long departed or from a time that has long since passed.

Last month, the Loveland Planning Commission heard about a program that would create a "flexible zoning overlay" to allow the property owner to bypass certain requirements that might have been included in the original zoning designation for the land or building. It's not the same as seeking a rezoning or a special review, which can call for costly studies and other bureaucratic hoops through which a developer would have to jump.

Instead, the city would be more flexible on issues such as building heights, the landscaping requirements or even the allowable uses — but not without the opportunity for neighbors and residents to have their voices heard. Such overlays would require a public hearing and City Council approval.

City officials rightly note the flexibility cannot extend to elements of public safety, or infrastructure requirements such as water, power and sewer services.

However, in the long run, such flexibility might allow what could be considered a return to the good old days, when mixed-use buildings allowed both commercial and residential uses in several areas of the city beyond the downtown core.

As long as the city remains committed to the notion that zoning overlays are to promote development of existing properties — and not for "greenfield" developments at the city's edge, the idea could be one that makes Loveland stronger for years to come.

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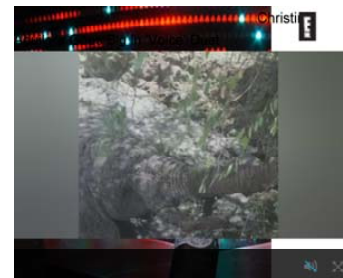
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**CITY OF LOVELAND**  
**PLANNING COMMISSION MINUTES**  
**April 25, 2016**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on April 25, 2016 at 6:30 p.m. Members present: Chairman Jersvig; and Commissioners Meyers, Molloy, Dowding, Forrest, Ray, and McFall. Members absent: Commissioner Crescibene. City Staff present: Bob Paulsen, Current Planning Manager; Moses Garcia, Assistant City Attorney; Jenell Cheever, Planning Commission Secretary.

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

**CITIZEN REPORTS**

There were no citizen reports.

**STAFF MATTERS**

1. **Robert Paulsen**, Current Planning Manager, discussed the agenda for the upcoming 5/9/16 Planning Commission meeting.
2. **Mr. Paulsen** noted that the Current Planning office moved in to the new Development Center and opened for business today. Staff provided a tour to the commissioners prior to the Planning Commissioners meeting tonight. The grand opening will be held on June 10<sup>th</sup>.
3. **Mr. Paulsen** stated that interviews for the Planning Commission vacancies will be held April 26<sup>th</sup>.
4. **Mr. Paulsen** updated the commissioners on the following Hot Topics:
  - a. Loveland Classical Schools is moving forward with pursuing a new location.
  - b. Plans for the demolition of buildings in the South Catalyst site are proceeding.

**COMMITTEE REPORTS**

1. **Commissioner Meyers** stated that the city's Title 18 Committee met on April 14th and discussed the Zoning Overlay Provisions that will be heard by the Planning Commission this evening.

**COMMISSIONER COMMENTS**

**Commissioner Meyers** motioned to move Item #1, Mountain Pacific Business Park Preliminary Development Plan, from the Regular Agenda to the Consent Agenda. Upon a second by **Commissioner Ray** the motion was approved with 5 ayes and 2 nays.

**APPROVAL OF THE MINUTES**

**Commissioner Dowding** made a motion to approve the April 11, 2016 minutes; upon a second from **Commissioner McFall** the minutes were unanimously approved.

## CONSENT AGENDA

### **1. Mountain Pacific Business Park Preliminary Development Plan**

**Project Description:** This is a public hearing on a quasi-judicial matter concerning a preliminary development plan for Mountain Business Park. This site is located at the southeast quadrant of the intersection of Garfield Avenue (Hwy 287) and 71<sup>st</sup> Street (LCR 30). The site includes a total of 20 acres and is zoned Planned Unit Development. The Business Park Plan proposes development of four light industrial/flex buildings totaling 48,000 sf along with minor changes to an existing office building that is part of the storage business that is located on the lot to the north.

The Planning Commission has final authority on this application barring appeal. In the view of staff, all issues have been resolved and staff is in support of the application.

**Commissioner Comments:** Several commissioners commented on the high quality of the project and thanked the applicant for their nice work.

*Commissioner Meyers motioned to approve the Consent Agenda. Upon a second by Commissioner Forrest, the motion was unanimously approved.*

## REGULAR AGENDA

### **2. Flexible Zoning Overlay District Code Amendments.**

**Project Description:** This is a public hearing on a legislative matter to consider incorporation of proposed chapter 18.44 – Flexible Zoning Overlay District into Title 18 of the Municipal Code. This amendment would allow property owners within designated and approved areas to be exempted from standard zoning requirements. City Council approval of an overlay district must occur prior to development. The purpose of this concept is to stimulate development in locations that are experiencing disinvestment or a lack of development activity.

The proposed code amendments were originally reviewed by the Planning Commission in a public hearing on March 14, 2016. Subsequent to the public hearing, staff has prepared revisions to the code provisions in collaboration with the city's Title 18 Committee. Staff is recommending that the Commission recommend approval of the code provisions to the City Council.

**Mr. Paulsen** provided background on the Flexible Zoning Overlay District provisions. **Mr. Paulsen** described several important components of the provisions and noted that districts

could only be located on non-greenfield sites. Several commissioners discussed the benefit of including this condition in the provision.

**Mr. Paulsen** noted that the provisions would not make allowances to waive or remove city infrastructure requirements. Districts would be established for specific locations and would “float” over existing zoning. The underlying zoning would be suspended until the district expired.

**Mr. Paulsen** discussed the application requirements and application steps.

**Mr. Paulsen** reviewed the changes to the provisions since the March 14<sup>th</sup> Planning Commission meeting.

**Commissioner Jersvig**, after learning that staff would be allowed to approve amendments for density/intensity increases up to 20%, he expressed interest in allowing staff to also approve lower densities through the amendment process. After discussion, commissioners agreed that the provision should be amended to allow approval of both increased and decreased density. **Mr. Paulsen** recommend amending 18.44.050 E to state that the district plan “may vary from the density/intensity and use provisions.” The commissioners approved this wording.

**Mr. Paulsen** noted that the provisions specify that unless City Council’s approval of a district plan specifies otherwise, district plans would expire after 48 months. **Mr. Paulsen** also discussed the issue of non-conformance and noted that the issuance of a building permit would be the threshold at which point the district plan would be given continued legal standing even if the district plan expires. He elaborated, indicating that the non-conformance provisions were designed to assure property owners that they could rely on city-approved plans and that their investments in carrying out the plans would be protected.

**Commissioner Jersvig** expressed concerns with allowing an applicant to achieve permanent district status after 48 months by only obtaining a building permit seemed insufficient. **Commissioner Jersvig** indicated that obtaining a building permit alone does not indicate substantial progress towards implementing a district plan. After a lengthy discussion with **Brett Limbaugh**, Director of Development Services, and **Mr. Paulsen**, the commissioners were unable to arrive at a consensus with regards to the proposed nonconformance and expiration provisions.

**Commissioner Ray** asked that the provisions include wording that states “substantial investment as determined by City Council” and not tie the continuance of the district to anything else. **Commissioner Ray** also stated that “substantial effort” should not be based on financial contribution.

**Commissioner Ray** also recommended the following changes: Change the word “runs” in 18.44.100 Item C and remove the word “abutted” from 18.44.050 Item A.

**Commissioner Meyers** asked for clarification as to when the agreement should be recorded

with the county. **Mr. Paulsen** stated that staff can work with **Terry Andrews**, City Clerk, to determine when the agreement should be recorded.

**Commissioner Dowding** noted that in section 18.44.060 and 18.44.090, the "0" is missing prior to the "60 and "90."

Commissioners directed staff to review and amend the overlay provisions for review at the next Planning Commission meeting. Prior to finalizing the provisions for the next Planning Commission meeting, commissioners asked that the language be emailed to them so they can comment and make recommendations. **Moses Garcia**, Assistant City Attorney, clarified that commissioners cannot discuss the provisions among themselves and comments and recommendations can only be emailed directly to **Mr. Paulsen**; however, commissioner emails can be included in the Planning Commission Agenda packet.

***Commissioner Dowding** motioned to continue the Flexible Zoning Overlay District Code Amendments to the May 9<sup>th</sup> Planning Commission meeting. Upon a second by **Commissioner Meyers** the motion was unanimously approved.*

#### **ADJOURNMENT**

***Commissioner Dowding**, made a motion to adjourn. Upon a second by **Commissioner Ray**, the motion was unanimously adopted.*

**Commissioner Jersvig** adjourned the meeting at 8:38 p.m.

Approved by: \_\_\_\_\_



Jeremy Jersvig, Planning Commission Chair



Jenell Cheever, Planning Commission Secretary

**CITY OF LOVELAND  
PLANNING COMMISSION MINUTES  
March 14, 2016**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on March 14, 2016 at 6:30 p.m. Members present: Chairman Jersvig; and Commissioners Dowding, Molloy, Forrest, Ray, and McFall. Members absent: Commissioners Crescibene and Meyers. City Staff present: Bob Paulsen, Current Planning Manager; Moses Garcia, Assistant City Attorney; and Jenell Cheever, Commission Secretary.

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

**CITIZEN REPORTS**

There were no citizen reports.

**STAFF MATTERS**

1. **Robert Paulsen**, Current Planning Manager, provided a preview of the 3/28/16 Planning Commission Agenda. **Mr. Paulsen** noted that the Temporary Uses Code Amendments may be postponed until an April Planning Commission meeting.
  - a. **Commission Ray** asked if staff can place a notice on the city's website that **Dr. Maas** will present the Thompson School District Master Plan. **Mr. Paulsen** stated that any material received from the school district will be posted on our website prior to the meeting.
2. **Mr. Paulsen** asked the commissioners if they wanted to continue receiving the monthly updates from the Building Division. The commissioners stated that they would like to continue receiving the information.
3. **Mr. Paulsen** noted that the 2015 Annual Report has been released and a hard copy was provided to the commissioners. **Mr. Paulsen** referred to the Development Review Process data on page 3 and noted that although the level of applications in 2015 nearly double since 2014, that staff performance levels and efficiency has stayed nearly the same.
4. **Mr. Paulsen** noted that Create Loveland is scheduled for a City Council study session on April 12<sup>th</sup>.
5. **Mr. Paulsen** stated that **Brett Limbaugh**, the new Director of Development Services, will begin on March 21<sup>st</sup>.
6. **Mr. Paulsen** noted that the two open positions for the Planning Commission have been advertised and applications can be submitted until March 30<sup>th</sup>.

**COMMITTEE REPORTS**

There were no committee reports.

**COMMISSIONER COMMENTS**

There were no comments.

### APPROVAL OF THE MINUTES

**Commissioner Dowding** made a motion to approve the February 22, 2016 minutes; upon a second from **Commissioner McFall**, the minutes were unanimously approved.

### CONSENT AGENDA:

**Commissioner Ray** requested that Item 1, 5726 Byrd Drive, be removed from the consent agenda and be presented as Item 1 on the regular agenda.

### REGULAR AGENDA

#### 1. **5726 Byrd Drive Electronic Message Sign**

**Project Description:** The Planning Commission held a public hearing on February 22, 2016 to consider an appeal of the Planning Division's decision that an electronic message sign is not permitted on the I-25 frontage of 5726 Byrd Drive. The Commissioners voted 6-1 to reverse staff's decision and find that the applicant's property qualifies for an electronic sign on I-25. Staff has provided the Commission with a brief memo and a resolution for approval of the Findings and Conclusions documenting the Planning Commission's vote on February 22, 2016.

#### **COMMISSIONER COMMENTS:**

- **Commissioner Ray** stated that he was not in favor of appealing the staff's decision and wanted the commissioners to vote on the resolution approval.
- **Commissioners Molloy and McFall** both stated that they drove by the site and are in full support of their prior vote and their decision to allow the electronic sign.

*Commission Dowding moved to approve the Findings and Conclusions documenting the Planning Commission's vote on February 22, 2016 regarding the 5726 Byrd Drive Appeal. Upon as second by **Commissioner Forrest**, the motion was approved with 5 ayes and 1 nay.*

#### 2. **Fairgrounds 8<sup>th</sup>**

**Project Description:** This is a public hearing on a legislative matter to consider the annexation and zoning of a 4 acre property at 1040 S. Roosevelt Avenue. The property, which has been purchased by the city, is immediately west of the existing Loveland Fire Training Facility. It currently contains a few industrial buildings, and the industrial uses that were constructed prior to the city purchase continue to lease and operate on the property. The Fire Authority is interested in redeveloping the property as an expansion of the Fire Training Facility. The Fire Authority is beginning its master planning process for both development of the fire training use on this lot and for improvements to the existing facility on the lot to the east.

Staff believes that all key issues have been resolved based on city codes and standards



relevant to annexation and designation of the I-Developing Industrial zoning district for the property. The development of the lot as a Fire Training Facility will require a special review application and a neighborhood meeting along with a site development plan and building permit application. Upon submittal, these applications will be reviewed by staff for compliance with all code requirements.

**Noreen Smyth**, City Planner, described the location of the existing Fire Training Facility. The adjacent property was purchased with the intention of expanding the facility; however, this property must be annexed into the city and zoned Industrial prior to development. The Fire Training Facility would need to be approved through a Special Review prior to construction.

**Sam Eliason**, United Civil Design Group, representing the City, described the project and provided a brief description of the proposed site plan and discussed access roads to the surrounding sites.

#### **COMMISSIONER QUESTIONS AND COMMENTS:**

- **Commissioner Ray** asked how the River Walk project would be affected by building the Fire Training Facility. **Ms. Smyth** noted that the Parks and Recreation Department has reviewed the application and did not have any comments. **Ms. Smyth** noted that the Fire Training Facility would have dense buffering requirements and conflicts would be handled through the site development process.
- **Commissioner Dowding** asked what the existing Larimer County zoning is and **Ms. Smyth** noted that the property is currently zoned Industrial in the county.
- **Commissioner Forrest** asked if the property to the north is residential and if the city planned to purchase and annex any of this land. **Ms. Smyth** noted that the property to the north is under county jurisdiction and is zoned Industrial. The property appears to have residential uses. **Mark Miller**, Fire Chief, stated that this property is owned by the Probasco family and it will most likely not be feasible for the city to purchase.

#### **CITIZEN COMMENTS:**

**Commissioner Jersvig opened the public hearing at 7:05 p.m.**

There were no public comments.

**Commissioner Jersvig opened the public hearing at 7:05 p.m.**

#### **COMMISSIONER COMMENTS:**

- **Commissioner Forrest** stated concerns with access to the facility due to the potential closing of Fire Engine Road. **Mr. Paulsen** stated that access would be evaluated as part of the Special Review process.

- **Commissioner Molloy** stated support for the Industrial zoning designation because it is consistent with the surrounding zoning.
- **Commissioner Ray** asked what the implications of the 100 year and 500 year flood plains are for the proposed Fire Training Facility. **Mr. Eliason** explained the boundaries of flood plain and noted that a majority of the existing Fire Training facility is in the 500 year flood plain and nothing can be built in this area. In the proposed new location, a majority of the property is in the 100 year flood plain and structures can be built as long as they meet the requirements for raised buildings. A small portion of the new location would be outside of the flood plain and would not have building restrictions based on the flood plain.
- **Commissioner Jersvig** stated he was in favor of the annexation and zoning.

*Commissioner Dowding moved to make the findings listed in Section VIII of the Planning Commission staff report dated March 14, 2016 and, based on those findings, recommend that City Council approve the Fairgrounds Eighth Addition to the City of Loveland and zone said land as "I-Developing Industrial." Upon a second by Commissioner Ray, the motion was unanimously approved.*

**Commissioner Jersvig called for a recess at 7:15 p.m.**

**Commissioner Jersvig called the meeting to order at 7:26 p.m.**

### **3. Zoning Overlay District Code Amendments**

**Project Description:** This is a public hearing to consider incorporation of proposed chapter 18.44 – Flexible Zoning Overlay District into Title 18 of the Municipal Code. This amendment would allow property owners within designated areas to be exempted from standard zoning requirements. The purpose of this concept is to stimulate development in locations that are experiencing disinvestment or a lack of development activity. Consideration the proposed code amendment is a legislative matter.

**Mr. Paulsen** stated that a Planning Commission study session was held on January 25th and noted that the Zoning Overlay District code amendment is substantially the same; however, legal clarifications have been provided and a section was added that deals with the expiration of overlay districts. **Mr. Paulsen** gave a general overview of the provisions as provided in the Staff Report.

**Mr. Paulsen** stated that after the study session, staff reached out to the community for their input on the proposed code amendment. This included emailing over 100 developers and development consultants, posting the information on the city's website, and publication of a newspaper article and editorial in the Reporter Herald. **Mr. Paulsen** received 6 inquiries from the outreach efforts. Of these inquiries, **Mr. Steinbicker** was the only citizen that provided written comments. A copy of the email was provided to the commissioners stating **Mr. Steinbicker's** support for the Zoning Overlay District code amendments.

**Mr. Paulsen** noted that this code amendment does not proactively change the zoning on any property; an application must be submitted and approved before zoning standards are altered.

**Mr. Paulsen** noted that the underlying zoning stays in place, indicating that the underlying zoning provisions are superseded while the flexible zoning overlay district is in place. In the event that the overlay expires or is otherwise eliminated, the underlying zoning would be re-activated.

**Mr. Paulsen** provided a PowerPoint presentation, providing a summary of the code provisions, the process for adoption of an overlay district and an explanation of how the overlay would work. He also outlined changes and updates made to the proposed code amendment since the January study session. **Mr. Paulsen** outlined the application process and noted that the provisions were originally structured in such a way that approval from surrounding property owners would be required. Following additional review, it was determined that the normal public hearing process would be sufficient to receive and address citizen's concerns. Through this process, the Planning Commission would be able to provide recommended conditions to City Council.

#### COMMISSIONER QUESTIONS

- **Commissioner Molloy** asked if the applicant would need to submit a conceptual master plan, allowing the commissioners to see what the proposed use and project site would look like. **Mr. Paulsen** stated that the process requires the applicant to provide a conceptual plan for the project that is reviewed by staff, the Planning Commission and City Council.
- **Commissioner Molloy** asked if an applicant can potentially subdivide a large piece of property and leave some of the property out of the overlay. **Mr. Paulsen** stated that the code has no provisions to prevent this from happening.
- **Commissioner Jersvig** asked how the applicant can terminate the overlay once it is approved. **Mr. Paulsen** stated that the applicant would need to go before City Council to request a termination prior to expiration date.

#### CITIZEN COMMENTS:

**Commissioner Jersvig opened the public hearing at 8:00 p.m.**

There were no public comments.

**Commissioner Jersvig opened the public hearing at 8:00 p.m.**

#### COMMISSIONER COMMENTS:

- **Commissioner Forrest** stated she is in favor of the amendment as it allows flexibility for the applicant and the city.
- **Commissioner McFall** stated he is in favor of the amendment as this could provide a less costly option for an applicant to develop a property.
- **Commissioner Ray** stated he is generally in favor of the amendment; however, he expressed concerns that "no zoning" puts the Planning Commission in a position to

catch all potential conflicts. However, the use of overlay expirations would allow the city to try this on a temporary basis to determine effectiveness.

- **Commissioner Molloy** stated he is in favor of the amendment and agreed that the overlay expiration is necessary.
- **Commissioner Dowding** stated she is in favor of the amendment as many areas of town may benefit from this approach.
- **Commissioner Jersvig** stated he is in favor of the amendment and feels it is very well written.

*Commissioner Dowding moved to recommend that City Council approve the proposed Flexible Zoning Overlay District and incorporate these provisions into the Municipal Code as Chapter 18.44 as presented to the Planning Commission in a public hearing on March 14, 2016 and as described in the Planning Commission staff report dated March 14, 2016 as specified in the attachments thereto and as further amended on the record. Upon a second by Commissioner McFall, the motion was unanimously approved.*

#### **ADJOURNMENT**

**Commissioner Ray** made a motion to adjourn. Upon a second by **Commissioner Forrest**, the motion was unanimously adopted.

**Commissioner Jersvig adjourned the meeting at 8:07 p.m.**

Approved by: \_\_\_\_\_

  
Jeremy Jersvig, Planning Commission Chair

  
Jenell Cheever, Planning Commission Secretary



## City Council Public Hearing

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### Flexible Zoning Overlay District—

- Public Hearing on a Legislative matter
- Code amendment to Title 18
- New chapter 18.44 of the zoning code



CITY OF LOVELAND

# Flexible Zoning Overlay District

## PURPOSE

- **Facilitate new development/redevelopment and promote reinvestment**
- **Provide regulatory relief as alternative to \$ incentives**
- **Allow broadly within the community**
- **Keep initial planning costs low**
- **Overlay may be used on a trial basis**



# Flexible Zoning Overlay District

## BACKGROUND

- Idea originated at City Council
- Developed with Title 18 Committee input
- Favorable response from development customers
- Planning Commission Study Session: January 25<sup>th</sup>
- Planning Commission Hearings:
  - ❑ March 14<sup>th</sup>
  - ❑ April 25<sup>th</sup>
  - ❑ May 9<sup>th</sup>



# Flexible Zoning Overlay District

## CONCEPT

- **Overlay District would “float” over existing zoning—regular zoning would be suspended**
- **Overlay District and District Plan would set development standards within specific boundaries**
- **Zoning standards (use, height, landscaping, setbacks, lot size) could be waived or altered**
- **Infrastructure requirements (street, stormwater, water, sewer, emergency services and building safety) could not be waived.**





# Flexible Zoning Overlay District

## CONCEPT

- **No size requirement for Districts (1 or more properties)**
- **Application: concept plans & narrative standards**
- **Initial application (discretionary review) would not require detailed engineering / architecture**
- **Districts established for 48 months**
- **Expiration date can be extended by Council**



# Flexible Zoning Overlay District

## PROCESS

**Step 1: Concept review meeting**

**Step 2: DRT review—of concept plan/narrative**

**Step 3: Neighborhood meeting**

**Step 4: Planning Commission public hearing**

**Step 5: City Council public hearing**

**Step 6: Site Development Plan (administrative) approval**

**Step 7: Building Permit**

**AGENDA ITEM:** 2.7  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Leah Browder, Public Works  
**PRESENTER:** Steve Kibler, Fleet Manager  
 Theresa Wilson, Budget Manager

**TITLE:**

**An Ordinance Enacting A Supplemental Budget And Appropriation To The 2016 City Of Loveland Budget For An Administrative Change In The Method Of Purchasing Fleet Vehicles**

**RECOMMENDED CITY COUNCIL ACTION:**

Public comment and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended.
2. Deny the action. (If denied, the vehicles cannot be purchased)
3. Adopt a modified action. (Specify in motion)
4. Refer back to staff for further development and consideration. (If the ordinance is referred back to staff, the purchasing of the vehicles would be delayed hampering winter snow operations)

**SUMMARY:**

Currently, some vehicles are purchased by the Fleet Replacement Fund (500) and other vehicles are purchased by other funds (enterprise and special revenue funds). Fleet Management amortizes vehicles purchased within the Fleet Replacement Fund to ensure funds are set aside for future replacement costs. Most vehicles purchased by other funds are amortized within those funds, however, the occasional vehicle has missed being amortized. This item is being presented to streamline and increase efficiency of the vehicle purchasing and amortization process. This item proposes the supplemental budget and appropriation necessary to transfer currently budgeted 2016 funds from the Transportation, Stormwater, Transit, and Police CEF Funds into the Fleet Replacement Fund to make this administrative change for vehicle purchases budgeted outside of the Fleet Replacement Fund in 2016. This streamlined method will be built in to the budget for 2017 and beyond for future years.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

There is no budgetary impact citywide. The funding requested has already been appropriated. This request is shifting the current appropriations from their current funds to the Fleet Fund.

**BACKGROUND:**

The Finance and Public Works Departments have determined that centralizing purchasing and amortizing vehicle replacement funding in the Fleet Replacement Fund (500) will increase efficiency and consistency. Enterprise Funds and select Special Revenue Funds will be excluded from this procedural change at this time. For Enterprise Funds, vehicles/equipment will continue to be purchased directly and amortized within those funds. For select Special Revenue

Funds, such as the Conservation Trust Fund, any applicable vehicles/equipment will be purchased and amortized directly within the Special Revenue Fund due to the nature of the special revenue being restricted for specific purposes (for accounting and auditing reasons). City Staff will make a determination regarding whether Enterprise Funds should be included in such a procedural change at a future date after additional review and analysis. Budgeted 2016 vehicle purchases will occur after the budget amendments outlined below are approved. These amendments involve transferring existing budget from the Transportation, Stormwater, Transit, and Police CEF Funds into the Fleet Replacement Fund and have a net zero budget impact. Fleet Management will amortize vehicle/equipment costs over the expected life of these assets to generate funds for the future replacement of these assets within the Fleet Replacement Fund. This procedural change will increase transparency, fluidity, and tracking of vehicles.

Although Stormwater is an Enterprise Fund, staff recommends that the particular "Truck with Plow, Deicer" purchase be made directly within the Fleet Replacement Fund for logistical ease of procuring two similar vehicles (one for Stormwater and the other for Transportation).

Previously approved and budgeted vehicles/equipment proposed to be purchased by the Fleet Fund rather than other funds are as follows:

<u>Replacements</u>	<u>Appropriated Funds</u>	<u>Currently Budgeted In:</u>
Snowplow	\$ 32,182	Transportation Fund
Tractor Truck	\$ 73,000	Transportation Fund
Truck with Plow, Deicer	\$129,162 [@ 50% cost-share]	Stormwater Fund
Transit bus	\$ 24,000 [@ 20% City match]	Fleet Fund – s/be Transit Fund
<u>New Vehicle Additions</u>	<u>Appropriated Funds</u>	<u>Currently Budgeted In:</u>
Eight (8) Police Vehicles	\$400,000	Police CEF Fund

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**REVIEWED BY CITY MANAGER:**

**SCA**

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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING:** August 16, 2016

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

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2016 CITY OF LOVELAND BUDGET FOR AN ADMINISTRATIVE CHANGE IN THE METHOD OF PURCHASING FLEET VEHICLES**

**WHEREAS**, the City has reserved funds previously appropriated at the time of the adoption of the 2016 City budget for an administrative change in the method of purchasing Fleet vehicles; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2016 City budget for an administrative change in the method of purchasing Fleet vehicles, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$105,182 from existing appropriations in the Transportation Fund are available for appropriation. That reserves in the amount of \$400,000 from existing appropriations in the Police Capital Expansion Fee Fund are available for appropriation. That reserves in the amount of \$129,162 from existing appropriations in the Stormwater Enterprise Fund are available for appropriation. Such revenues in the total amount of \$634,344 are hereby appropriated to the 2016 City budget for an administrative change in the method of purchasing Fleet vehicles. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Transit Fund 105**

<b>Revenues</b>		
105-23-234-0000-37500	Transfers from Fleet	(24,000)
<b>Total Revenue</b>		<b>(24,000)</b>
<b>Appropriations</b>		
<b>Total Appropriations</b>		-

**Supplemental Budget  
Transportation Fund 211**

<b>Revenues</b>		
<b>Total Revenue</b>		-
<b>Appropriations</b>		
211-23-233-0000-48240	Machinery & Equipment	(105,182)
211-23-233-0000-47500	Transfers to Fleet	105,182
<b>Total Appropriations</b>		-

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

<b>Revenues</b>		
<b>Total Revenue</b>		-
<b>Appropriations</b>		
265-21-201-2102-48244	Motor Vehicle	(400,000)
265-21-201-2102-47500	Transfers to Fleet	400,000
<b>Total Appropriations</b>		-

**Supplemental Budget  
Stormwater Enterprise Fund 345**

**Revenues**

**Total Revenue** -

**Appropriations**

345-23-283-0000-48240 Machinery & Equipment (129,162)

345-23-283-0000-47500 Transfers to Fleet 129,162

**Total Appropriations** -

**Supplemental Budget  
Fleet Replacement Fund 500**

**Revenues**

500-23-260-0000-37211 105,182

500-23-260-0000-37265 400,000

500-23-260-0000-37345 129,162

**Total Revenue** **634,344**

**Appropriations**

500-23-260-0000-47105 Transfers to Transit (24,000)

500-23-260-0000-48244 Motor Vehicle 658,344

**Total Appropriations** **634,344**

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

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

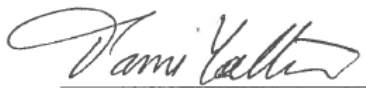
ADOPTED this \_\_\_\_ day of August, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:



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

**AGENDA ITEM:** 2.8  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Brett Limbaugh, Development Services  
**PRESENTER:** Kerri Burchett, Current Planning




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**TITLE:**

**A Resolution Finding A Certain Petition For Annexation Known As Mirasol Second Addition, Filed July 29, 2016, To Be In Substantial Compliance With Section 30 Of Article II Of The Colorado Constitution And With The Requirements Of Section 31-12-107(1), C.R.S.; And Establishing A Date, Time, And Place For A Hearing To Determine Whether The Proposed Annexation Complies With The Applicable Requirements Of Sections 31-12-104 And 31-12-105, C.R.S., And Is Eligible For Annexation To The City Of Loveland, Colorado**

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution setting a public hearing date for September 20, 2016.

**OPTIONS:**

1. Adopt the action as recommended.
2. Adopt a modified action setting an alternate public hearing date. A revised resolution would be needed with this option.

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**SUMMARY:**

This resolution sets a public hearing date of September 20, 2016 for the consideration of an annexation of 6.8 acres to be known as the Mirasol Second Addition. The property is located at the southeast corner of the intersection of 4<sup>th</sup> Street SE and S. St. Louis Avenue. Included with the annexation is a request to zone the property Mirasol Community Planned Unit Development and include the property into the Mirasol General Development Plan. The GDP seeks to allow the construction of a 60 unit apartment complex and 10 single family/duplex units on the property. The applicant is the Housing Authority of the City of Loveland.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

State Statutes require that City Council adopt a resolution finding that the annexation petition is in compliance with applicable requirements in 31-12-107 (1) C.R.S. The annexation petition for the Mirasol Second Addition was accepted by the City Clerk on July 29, 2016. The petition demonstrates that; 1) the landowners of more than fifty percent of the area to be annexed have petitioned for annexation, 2) the annexation petition was considered complete as it contains all required information, 3) the annexation petition was submitted with an accompanying complete annexation map, and 4) the annexation petition was filed no more than 180-days from when it was signed. As a result of deeming the annexation petition complete, a public hearing date of September 20, 2016 can be set.



A neighborhood meeting was held on July 21, 2016. There were 66 neighbors in attendance; 56 were residents of the Mirasol development and 10 were neighbors in the surrounding area. Concerns were voiced regarding traffic speeds through Mirasol, lack of safe pedestrian connections to the downtown, and changes to the rural character along 4<sup>th</sup> Street SE that would result from the development. The annexation and zoning request is scheduled for a Planning Commission public hearing on August 22, 2016.

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**REVIEWED BY CITY MANAGER:****SCA**

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**LIST OF ATTACHMENTS:**

1. Resolution
2. Annexation Map

**RESOLUTION NO. R-73-2016**

**A RESOLUTION FINDING A CERTAIN PETITION FOR ANNEXATION KNOWN AS MIRASOL SECOND ADDITION, FILED JULY 29, 2016, TO BE IN SUBSTANTIAL COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE COLORADO CONSTITUTION AND WITH THE REQUIREMENTS OF SECTION 31-12-107(1), C.R.S.; AND ESTABLISHING A DATE, TIME, AND PLACE FOR A HEARING TO DETERMINE WHETHER THE PROPOSED ANNEXATION COMPLIES WITH THE APPLICABLE REQUIREMENTS OF SECTIONS 31-12-104 AND 31-12-105, C.R.S., AND IS ELIGIBLE FOR ANNEXATION TO THE CITY OF LOVELAND, COLORADO**

WHEREAS, on July 29, 2016, a Petition for Annexation was filed with the City Clerk by persons alleging to comprise more than fifty percent (50%) of the landowners in the area described on **Exhibit A**, attached hereto and incorporated herein, who assert ownership of 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; and

WHEREAS, the City Council has determined that said Petition for Annexation is in substantial compliance with Section 30(1)(b) of Article II of the Colorado Constitution and of §31-12-107(1), C.R.S.; and

WHEREAS, the City Council desires to set a date, time, and place for public hearing to determine whether the proposed annexation complies with Section 30 of Article II of the Colorado Constitution and the applicable requirements of §§31-12-104 and 31-12-105, C.R.S., and is eligible for annexation;

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Loveland, Colorado, that:**

1. The City Council hereby finds and determines:

(a) That a Petition for Annexation has been filed with the City Clerk signed by persons alleging to comprise more than fifty percent (50%) of the landowners who assert ownership of more than fifty percent (50%) of the area described on **Exhibit A**, attached hereto and incorporated herein, excluding public streets and alleys;

(b) That said Petition requests the City of Loveland to annex said area;  
and

(c) 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.

2. Pursuant to §31-12-108, C.R.S., a public hearing is scheduled for August 16, 2016, at the hour of 6:00 p.m., for the purpose of enabling the City Council to determine whether the area proposed to be annexed complies with Section 30 of Article II of the Colorado Constitution and with the applicable requirements 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. Said hearing shall be held at the Loveland Municipal Complex, 500 East Third Street, Loveland, Colorado.

3. The City Clerk shall give notice of said hearing in the manner prescribed by §31-12-108(2), C.R.S.

4. This Resolution shall become effective on the date and at the time of its adoption.

ADOPTED this 16<sup>th</sup> day of August, 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

A RESOLUTION FINDING A CERTAIN PETITION FOR ANNEXATION KNOWN AS MIRASOL SECOND ADDITION, FILED JULY 29, 2016, TO BE IN SUBSTANTIAL COMPLIANCE WITH SECTION 30 OF ARTICLE II OF THE COLORADO CONSTITUTION AND WITH THE REQUIREMENTS OF §31-12-107(1), C.R.S.; AND ESTABLISHING A DATE, TIME, AND PLACE FOR A HEARING TO DETERMINE WHETHER THE PROPOSED ANNEXATION COMPLIES WITH THE APPLICABLE REQUIREMENTS OF SECTIONS 31-12-104 AND 31-12-105, C.R.S., AND IS ELIGIBLE FOR ANNEXATION TO THE CITY OF LOVELAND, COLORADO

## EXHIBIT A

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A parcel of land, being that parcel as described in the Quit Claim Deed recorded April 25, 1994 at Reception No. 94035703 of the records of the Larimer County Clerk and Recorder (LCCR), the abutting Right of Way of Fourth Street Southeast, the abutting Right of Way of South Saint Louis Avenue and the Right of Way of South Saint Louis Avenue abutting Mirasol Second Subdivision as recorded April 12, 2011 at Reception No. 20110021993 of the LCCR, located in the Northeast Quarter (NE1/4) of Section Twenty-four (24), Township Five North (T. 5N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast Sixteenth corner of said Section 24 and assuming the West line of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) as bearing South 00°12'50" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1320.21 feet and with all other bearings contained herein relative thereto;

THENCE South 00°12'50" West along said West line a distance of 355.89 feet to the Northwest corner of said Mirasol Second Subdivision and to the POINT OF BEGINNING;

THENCE South 00°12'50" West continuing along said West line and along the West line of said Mirasol Second Subdivision and along the East Right of Way line of South Saint Louis Avenue a distance of 358.63 feet to the most Northerly Southwest corner of Mirasol Second Subdivision;

THENCE North 89°47'10" West a distance of 60.00 feet to a line parallel with and 60.00 feet West of, as measured at a right angle, the West line of the SE1/4NE1/4 of said Section 24 and to the East line of Ballard Place Subdivision as recorded at Reception No. 65143 of the LCCR said line being the West Right of Way line of South Saint Louis Avenue;

THENCE North 00°12'50" East along said parallel line and along said East line of Ballard Place a distance of 743.80 feet to the Southeast corner of Lot 8, Block 3, Ballard Place and to an extension of a line parallel with and 30.00 feet North of, as measured at a right angle, the North line of the SE1/4NE1/4 said line being the North Right of Way line of Fourth Street Southeast;

THENCE North 89°31'31" East along said North line a distance of 722.03 feet to the Northwest corner of Hamm Estates Subdivision as recorded January 14, 1992 at Reception No. 92002377 of the LCCR;

THENCE South 00°18'41" West along the West line of said Hamm Estates Subdivision a distance of 386.19 feet to the Southwest corner of said Hamm Estates Subdivision and to the North line of Mirasol First Subdivision as recorded February 28, 2006 at Reception No. 20060014474 of the LCCR;

THENCE South 89°33'00" West along said North line of said Mirasol First Subdivision and along the North line of said Mirasol Second Subdivision a distance of 661.36 feet to the POINT OF BEGINNING;

Said described parcel of land contains 300,068 Square Feet or 6.889 Acres, more or less.

# MIRASOL SECOND ADDITION

Being an Annexation of a Parcel of land  
 Situate in the Southeast Quarter of the Northeast Quarter of Section 24, Township 5 North, Range 69 West of the 6th P.M.,  
 County of Larimer, State of Colorado

### PROPERTY DESCRIPTION

A parcel of land, being that parcel as described in the Quit Claim Deed recorded April 25, 1994 at Reception No. 94035703 of the records of the Larimer County Clerk and Recorder (LC&R), the abutting Right of Way of Fourth Street Southeast, the abutting Right of Way of South Saint Louis Avenue and the Right of Way of South Saint Louis Avenue abutting Mirasol Second Subdivision as recorded April 12, 2011 at Reception No. 20110021993 of the LC&R, located in the Northeast Quarter (NE1/4) of Section Twenty-four (24), Township Five North (T. 5N.), Range Sixty-nine West (R. 69W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast Sixteenth corner of said Section 24 and assuming the West line of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) as bearing South 00°12'50" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1320.21 feet and with all other bearings contained herein relative thereto;

THENCE South 00°12'50" West along said West line a distance of 355.89 feet to the Northwest corner of said Mirasol Second Subdivision and to the POINT OF BEGINNING;

THENCE South 00°12'50" West continuing along said West line and along the West line of said Mirasol Second Subdivision and along the East Right of Way line of South Saint Louis Avenue a distance of 358.63 feet to the most Northerly Southwest corner of Mirasol Second Subdivision;

THENCE North 89°47'10" West a distance of 60.00 feet to a line parallel with and 60.00 feet West of, as measured at a right angle, the West line of the SE1/4NE1/4 of said Section 24 and to the East line of Ballard Place Subdivision as recorded at Reception No. 65143 of the LC&R said line being the West Right of Way line of South Saint Louis Avenue;

THENCE North 00°12'50" East along said parallel line and along said East line of Ballard Place a distance of 743.80 feet to the Southeast corner of Lot 8, Block 3, Ballard Place and to an extension of a line parallel with and 30.00 feet North of, as measured at a right angle, the North line of the SE1/4NE1/4 said line being the North Right of Way line of Fourth Street Southeast;

THENCE North 89°31'31" East along said North line a distance of 722.03 feet to the Northwest corner of Hamm Estates Subdivision as recorded January 14, 1992 at Reception No. 92002377 of the LC&R;

THENCE South 00°18'41" West along the West line of said Hamm Estates Subdivision a distance of 386.19 feet to the Southwest corner of said Hamm Estates Subdivision and to the North line of Mirasol First Subdivision as recorded February 28, 2006 at Reception No. 20060014474 of the LC&R;

THENCE South 89°33'00" West along said North line of said Mirasol First Subdivision and along the North line of said Mirasol Second Subdivision a distance of 661.36 feet to the POINT OF BEGINNING;

Said described parcel of land contains 300,068 Square Feet or 6.889 Acres, more or less (±), and is subject to any right of way or other easements of record or as now existing on said described parcel of land.

### SURVEYOR'S CERTIFICATE

I, Steven Parks, a Licensed Land Surveyor in the State of Colorado, do hereby certify that the annexation map shown hereon is a reasonably accurate depiction of the parcel of land described hereon and, to the extent described herein, is at least one sixth (1/6) of the peripheral boundary of said parcel is contiguous to the boundary of the City of Loveland, Colorado. The map was compiled using existing plats, deeds, legal descriptions, and other documents and is not based on a field survey nor should it be construed as a boundary survey.

## PRELIMINARY

Steven Parks - On Behalf Of King Surveyors  
 Colorado Licensed Professional  
 Land Surveyor #38348

### NOTARIAL CERTIFICATE

STATE OF \_\_\_\_\_ )  
 ss. \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ )  
 The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 Witness my hand and official seal.

My commission expires \_\_\_\_\_  
 \_\_\_\_\_  
 Notary Public

### MAYOR CERTIFICATE

This map is approved by the City Council of the City of Loveland, Larimer County, Colorado by Ordinance No. \_\_\_\_\_, passed on second reading on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for filing with Clerk and Recorder of Larimer County.

Mayor \_\_\_\_\_  
 Attest: City Clerk \_\_\_\_\_

### BASIS OF BEARINGS AND LINEAL UNIT DEFINITION

Assuming the West line of the Southeast Quarter of the Northeast Quarter of Section 24, T.5N., R.69W. monumented as shown, as bearing North 00°12'50" East being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 1320.21 feet with all other bearings contained herein relative thereto.

The lineal dimensions as contained herein are based upon the "U.S. Survey Foot."

### TITLE COMMITMENT NOTE

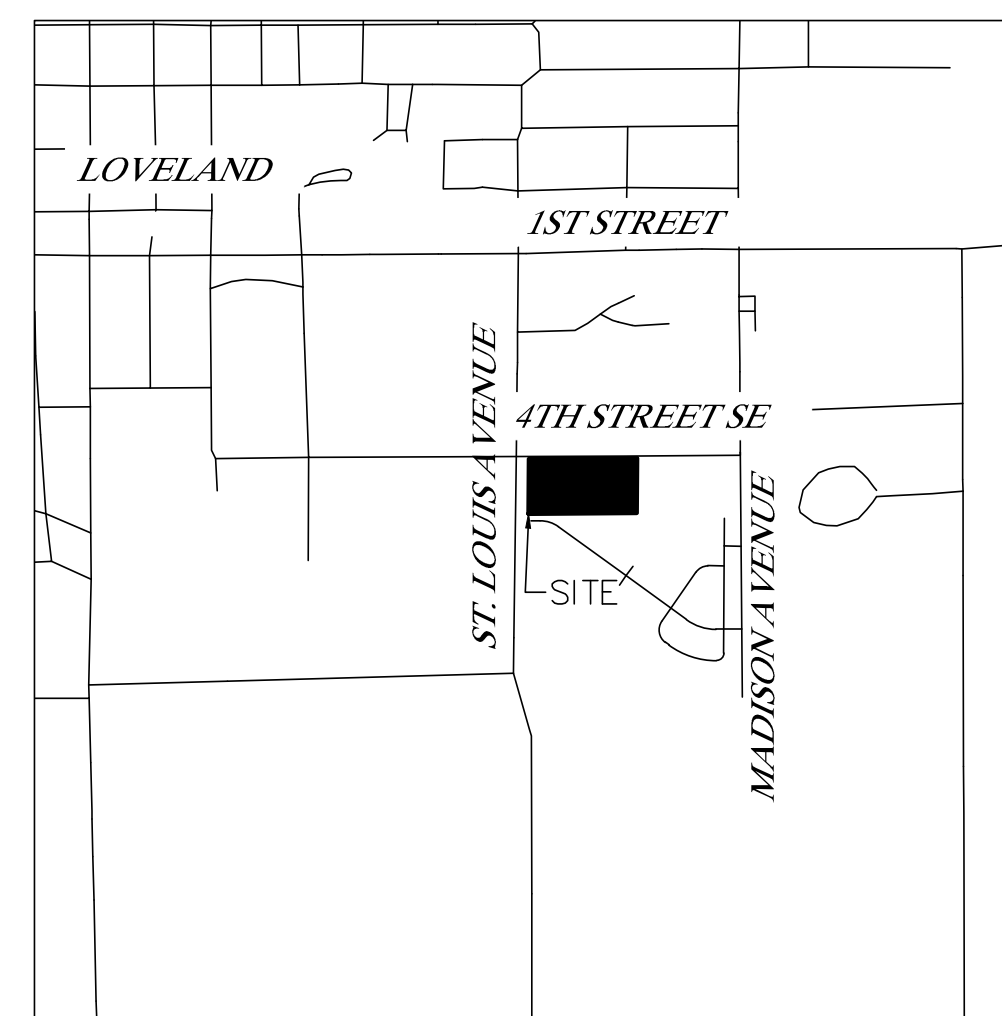
This survey does not constitute a title search by King Surveyors to determine ownership or easements of record. For all information regarding easements, rights-of-way and title of records, King Surveyors relied upon Property Information Binder Number 0225353911671683, dated June 13, 2016 at 5:00 PM as prepared by Land Title Guarantee Company to delineate the aforesaid information.

### NOTICE

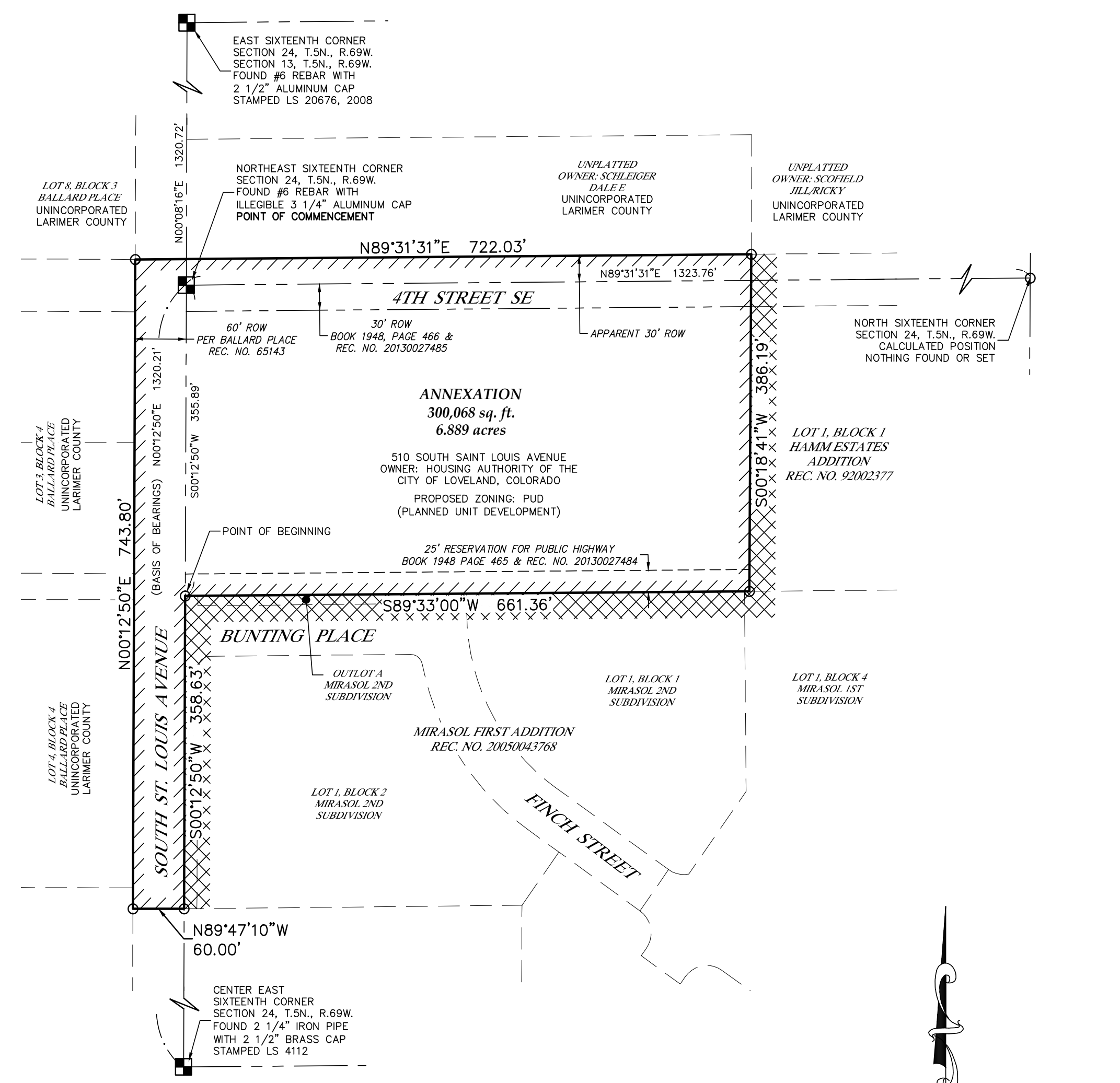
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 2012)

### FLOOD PLAIN NOTE

Entire property is in flood zone "X", areas determined to be outside the 0.2% annual chance of floodplain" per FEMA flood map 08069C1189F revised December 19, 2006 and per FEMA flood map 08069C1193F revised December 19, 2006.



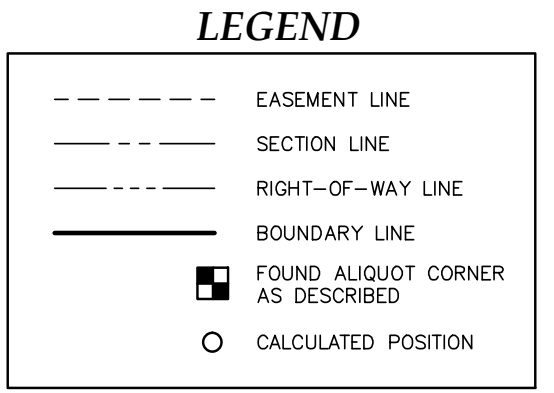
VICINITY MAP  
 (NOT TO SCALE)



### CONTIGUITY

Total Perimeter of Property = 2932.01 L.F.  
 Perimeter Contiguous to the City = 1406.18 L.F.  
 1/6 Total Perimeter of Property = 488.67 L.F.  
 Ratio = 1:2.085

XXXXXXXX DENOTES CONTIGUOUS BOUNDARY



DATE:	6/21/2016
FILE NAME:	20160048ANX
SCALE:	1"=100'
DRAWN BY:	CSK
CHECKED BY:	SIP

**KING SURVEYORS**  
 650 E. Garden Drive | Windsor, Colorado 80550  
 phone: (970) 686-5011 | fax: (970) 686-5821

DATE:	7/19/16
REVISIONS:	REVISED PER CITY COMMENTS
	LEC

MIRASOL SECOND ADDITION  
 FOR  
 LOVELAND HOUSING AUTHORITY  
 375 WEST 37TH STREET, SUITE 200  
 LOVELAND, CO 80538

PROJECT #  
 20160048

**1**  
 SHT 1 OF 1

MIRASOL SECOND ADDITION

**AGENDA ITEM:** 2.9  
**MEETING DATE:** 8/16/2016  
**TO:** City Council  
**FROM:** Marilyn Hilgenberg, Parks & Recreation  
**PRESENTER:** Marilyn Hilgenberg, Open Lands and Trails Manager




---

**TITLE:**

**1. A Resolution Of The Loveland City Council Approving - The Acquisition Of The 78-Acre, More Or Less, Including Appurtenant Water Rights, Ward Trust Property On Cedar Valley Drive For Open Space Purposes.**

**2. A Resolution Of The Loveland City Council Approving A Grant Of Conservation Easement On The Ward Trust Property From The City Of Loveland To Larimer County.**

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the resolutions supporting the acquisition of the Ward Trust Property and associated conservation easement.

**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:**

The City applied for and was awarded a Great Outdoors Colorado ("GOCO") grant for the Ward Trust Property Open Lands Acquisition, which includes the acquisition of a 78-acre, more or less, parcel and associated George Rist Ditch water rights. This is an administrative action to approve the acquisition of the property and authorize the City Manager to sign the Conservation Easement on behalf of the City.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

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**BACKGROUND:**

The Board of Great Outdoors Colorado (GOCO) approved an Open Space grant award to the City of Loveland in the amount of \$500,000 towards the acquisition of the Ward Trust property at its meeting on December 10, 2015. The acquisition consists of the 78-acre Ward Trust property and approximately 60 acre-feet of George Rist Ditch water rights. These water rights are tied for use on the property only and will not be part of the City's municipal portfolio.

The GOCO grant award is for \$500,000. The grant requires that the City and its partners provide the remainder of the funding for this acquisition. A supplemental appropriation for \$2,100,000 from the Open Space Tax Fund was approved by Council at the February 16, 2016 meeting. In addition, Larimer County has committed \$250,000 funding for this project. GOCO

requires that a Conservation Easement be placed on the property to insure that the property will remain open space in perpetuity. Larimer County will hold the Conservation Easement as part of their partnership for this acquisition. Larimer County will conduct annual monitoring visits.

Loveland has worked with the Trust for Public Land (TPL) to negotiate with the landowner to conserve this property. TPL secured the option to purchase the property from the Ward Trust and will transfer the fee simple interest to Loveland at closing per the terms of a formal conveyance agreement between TPL and Loveland. The closing must take place by August 26, 2016. The Conservation Easement to Larimer County will be granted simultaneously with the closing.

Acquisition of the Ward Trust Property will provide public access to open lands while conserving wetland, riparian and grassland habitat, water rights, irrigated farmland, and scenic views along the Big Thompson River corridor in west Loveland. Trail connections for bicycle and pedestrian access to adjacent open lands will also be made possible by this project, with the use of ranch roads and ditch access throughout the property.

The Ward Trust Property is part of the West Loveland Priority Area identified in A Bigger Vision for the Big T: A Recreation and Conservation Assessment, a partnership plan approved by Loveland and Larimer County in 2015. The site is also identified as an open land priority in the 2014 Parks & Recreation Master Plan. The property is an addition to the adjacent 32-acre Morey Wildlife Reserve and a key parcel in the west Big Thompson Open Lands complex.

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**REVIEWED BY CITY MANAGER:**

**SCA**

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**LIST OF ATTACHMENTS:**

1. Resolution Approving The Acquisition Of The 78-Acre, More Or Less, Ward Trust Property On Cedar Valley Drive For Open Space Purposes.
2. Resolution Approving A Grant Of Conservation Easement
3. Location Map



**RESOLUTION NO. R-74-2016**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING -  
THE ACQUISITION OF THE 78-ACRE, MORE OR LESS, INCLUDING  
APPURTENANT WATER RIGHTS, WARD TRUST PROPERTY ON  
CEDAR VALLEY DRIVE FOR OPEN SPACE PURPOSES.**

**WHEREAS**, the State Board of the Great Outdoors Colorado Trust Fund (“GOCO”) is a political subdivision of the State of Colorado created by Article XXVII of the Colorado Constitution, adopted at the November 1992 General Election, which Article appropriates a portion of the net proceeds of the Colorado Lottery to GOCO and directs GOCO to invest those proceeds in the state’s parks, wildlife, open space, and recreational resources; and

**WHEREAS**, in 1994, GOCO created a statewide grant program pursuant to which eligible entities could apply for grants for local government parks and outdoor recreation projects; and

**WHEREAS**, the City of Loveland, Colorado submitted a grant application to GOCO for funding to acquire the Ward Trust Property, a 78 acre, more or less, parcel of real property, which includes 60 acre-feet on average of consumptive use water from George Rist Ditch water rights; and

**WHEREAS**, GOCO approved the City’s grant application and awarded \$500,000 towards the acquisition of the Ward Trust Property;

**WHEREAS**, on February 16, 2016, City Council approved a supplemental appropriation in the amount of \$2,100,000 from the Open Space Tax Fund for the acquisition of the Ward Trust Property; and

**WHEREAS**, acquisition of the Ward Trust Property will provide public access to open lands while conserving wetland, riparian and grassland habitat, water rights, irrigated farmland, and scenic views along the Big Thompson River corridor in west Loveland. Trail connections for bicycle and pedestrian access to adjacent open lands will also be made possible by this project, with the use of ranch roads and ditch access throughout the property; and

**WHEREAS**, the City Council desires to approve the acquisition of the Ward Trust Property for Opens Space purposes on behalf of the City.

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

**Section 1.** That the Acquisition of the Ward Trust Property is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to execute any contracts, agreements and closing documents necessary to acquire the Ward Trust Property from the Trust for Public Land under such terms and in form or

substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

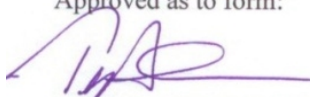
**ADOPTED** this 16th day of August, 2016.

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

ATTEST:

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

Approved as to form:



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

**RESOLUTION NO. R-75-2016****A RESOLUTION APPROVING A GRANT OF CONSERVATION EASEMENT ON  
THE WARD TRUST PROPERTY FROM THE CITY OF LOVELAND TO  
LARIMER COUNTY**

**WHEREAS**, the City of Loveland and Larimer County, Colorado (collectively, the “Parties”) are political subdivisions of the State of Colorado duly organized and existing in accordance with Colorado law; and

**WHEREAS**, the City of Loveland, Colorado submitted a grant application to the State Board of the Great Outdoors Colorado Trust Fund (“GOCO”) for funding to acquire the Ward Trust Property, a 78 acre parcel of real property, which also includes 60 acre-feet on average of consumptive use water from George Rist Ditch water rights; and

**WHEREAS**, GOCO approved the City’s grant application and awarded \$500,000 towards the acquisition of the Ward Trust Property; and

**WHEREAS**, GOCO requires that a conservation easement be placed on the property to insure that the property will remain open space in perpetuity; and

**WHEREAS**, Larimer County (“the County”) has committed \$250,000 in funding toward the City’s acquisition of Ward Trust Property and desires to hold the Conservation Easement as part of their partnership for this acquisition and has agreed to conduct annual monitoring visits; and

**WHEREAS**, the Parties seek to authorize said conservation easement from the City to the County by execution of the Deed of Conservation Easement attached hereto as Exhibit “A” and incorporated herein by reference; and

**WHEREAS**, the City Council finds that it is in the best interest of its citizens to approve said Deed of Conservation Easement to the County.

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

**Section 1.** The Deed of Conservation Easement attached hereto as Exhibit “A” and incorporated herein by reference is hereby approved.

**Section 2.** The City Manager is hereby authorized and directed to enter into said Deed of Conservation Easement, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

**Section 3.** That this Resolution shall go into effect as of the date and time of its adoption.

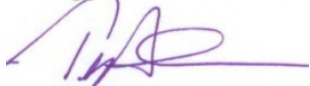
ADOPTED 16th day of August, 2016.

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

ATTEST:

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

Approved as to form:



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

**DEED OF CONSERVATION EASEMENT**

**WARD TRUST**

*NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH GRANT #16127 (“GRANT”) FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND (“BOARD”). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY, WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.*

THIS DEED OF CONSERVATION EASEMENT (the “**Deed**”) is granted on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (“**Effective Date**”), by the CITY OF LOVELAND, COLORADO, having its address at 500 E. 3rd Street, Loveland, Colorado, 80537 (“**Grantor**”), to and for the benefit of the Board of County Commissioners of LARIMER COUNTY, COLORADO, a governmental subdivision of the state of Colorado, having its principal address at 200 West Oak Street, Fort Collins, Colorado, 80521 (“**Grantee**”). (Grantor and Grantee may be individually referred to as a “**Party**” and collectively referred to as “**Parties.**”) The following exhibits are attached and incorporated:

- |           |   |                                                                                        |
|-----------|---|----------------------------------------------------------------------------------------|
| Exhibit A | - | Legal Description of Property                                                          |
| Exhibit B | - | Map of Property [including Building Envelopes and other areas designated in this Deed] |
| Exhibit C | - | Baseline Acknowledgement                                                               |
| Exhibit D | - | Notice of Building Envelope Designation Form                                           |
| Exhibit E | - | Water Rights                                                                           |

RECITALS

A. Grantor is the sole owner in fee simple of approximately 77.97 acres of real property located in Larimer County, Colorado, more particularly described in **Exhibit A** and generally depicted on **Exhibit B** (the “**Property**”).

B. The Property possesses relatively natural habitat, scenic enjoyment, open space, outdoor recreation and agricultural education, and significant public benefit (collectively, “**Conservation Values**”) of great importance to Grantor, the people of Loveland and Larimer County and the people of the State of Colorado. In particular, the Property contains the following characteristics, which are also included within the definition of Conservation Values.

i. Relatively Natural Habitat [§1.170A-14(d)(3)]. The Property contains a combination of cottonwood stands, wetlands, and irrigated pastures near the Big Thompson River corridor. The diverse habitat on the property provides food, shelter, breeding grounds, and migration corridors for several wildlife species, including elk,

Final Draft – 7/20/2016

white-tailed and mule deer, black bear, coyote, great blue heron, bald eagle, red-tailed hawk, barn owl, numerous migratory bird species, and western chorus frog.

ii. Scenic Enjoyment. The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast, and variety to the overall landscape. The Property is visible to the public from Cedar Valley Drive, and the Morey Wildlife Reserve pedestrian trail, both of which are open to and actively used by residents of the City of Loveland, Larimer County, and the State of Colorado. The Property is also highly visible from the “keyhole” of nearby Devil’s Backbone Open Space, an extremely popular regional hiking and mountain biking destination.

iii. Open Space [§1.170A-14(d)(4)]. The Property qualifies as open space because it has been preserved for the scenic enjoyment of the public and will yield a significant benefit.

iv. Outdoor Recreation and Education of the General Public [§1.170A-14(d)(2)]. The Property provides public access for passive outdoor recreation and education and trail connections, which will enhance associated public use and enjoyment of the Morey Wildlife Reserve.

v. Significant Public Benefit. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. As a large parcel of open space, preservation will continue to buffer critical wildlife habitat, add to an important stopover for migratory raptors, songbirds, shorebirds, and waterfowl, and provide breeding habitat for reptiles and amphibians.

vi. Agriculture. The Property is currently used for agricultural purposes including irrigated hay production. Approximately 50 acres are under irrigation.

vii. Conservation of the Property is consistent with the following, state and local governmental policies:

- a) C.R.S. § 33-1-101, et seq., which provide that "it is the policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."
- b) C.R.S. § 33-2-101 to 33-2-106, which provide that “it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this

state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere.”

- c) C.R.S. § 33-10-101 to 33-10-114, which provide that “it is the policy of the State of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.”
- d) C.R.S. § 35-3-102, et seq., which provides in part that “the soil resources and fertility of the land of this state...the prosperity of the farming population...and the waters of the rivers of this state...are matters affected with a public interest.”
- e) C.R.S. § 33-3-102, et seq., which provides in part that “the welfare of this state has been impaired and is in danger of being further impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful unscientific use of its soil resources...”
- f) C.R.S. § 38-30.5-101, et seq., providing for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity..."
- g) C.R.S. § 35-1-101, et seq., provide in part that “it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products” and that “the resources and fertility of the land . . . and the prosperity of the farming population . . . and the waters of the rivers are matters affected with a public interest.”
- h) Larimer County Master Plan (1997) – Sec. 6-2-2. Important Wildlife Habitat: establishes four criteria for preserving wildlife habitat. These include: rare vegetation types, areas known to contain rare and threatened species, areas supporting an unusually large number of species, and areas providing habitat for species of importance to the people of Larimer County.
- i) Larimer County Open Lands Master Plan (2015) Chapter 3 establishes “priority areas” for conservation including the Laramie Foothills, Livermore, Buckeye, Buckhorn/Redstone, and Blue Mountain as well as partnership areas in Estes Valley, the Foothills Corridor, Bellvue, the Wellington Separator and the Laramie River Valley and states that “the Open Lands Program will primarily focus on the natural landscapes, areas of high ecological value, river corridors, and

agricultural priority areas with willing landowners beyond municipal Growth Management Areas.”

- j) Larimer County Environmental Responsibility Policy states that Larimer County will "make every effort to protect the environmental integrity of the County's natural resources by developing policy to address these 12 environmental issues: Wildlife Habitat and Migration Corridors, Threatened and endangered species, Unique vegetation and critical plant communities, Wetlands/riparian/waterways, Aquatic/water quality, hydrology/Groundwater, Unique Geological features, Agriculture, Viewsheds, Air Quality, Cultural and Traditional use features."
- k) Larimer County Master Plan states that "to protect rural character, the County shall maintain current zoning and provide new standards and performance requirements for Adequate Public Facilities, Rural Conservation (cluster) Development, neighborhood compatibility, protection of environmental resources and restrictions in hazardous areas" and that "agriculture shall be recognized as an important economic, cultural and environmental resource value-provider for the County" and "to retain agriculture and the resulting open space, environmental quality, wildlife habitat, etc., afforded by it, it is necessary to adopt programs that will help agriculture be economically viable and reasonably competitive with other potential uses of agricultural land."
- l) A Bigger Vision for the Big T – A Recreation and Conservation Assessment (2015) establishes “Areas of Potential Interest” for conservation and recreation in the Big Thompson River corridor from west Loveland to Estes Park, following the destruction of 2013 flood. The Loveland West Area identified the Property as well as adjacent protected lands and other high quality natural areas in the river corridor as an area for continuing conservation efforts and developing additional recreational opportunities.
- m) City of Loveland Parks and Recreation Master Plan (2014) identifies potential open lands including the Big Thompson River corridor and other high value natural areas in west Loveland as priority areas for continuing conservation. The plan also emphasized the need for more opportunities for public access to open lands and additional trails connecting neighborhoods, open lands and parks throughout Loveland and with adjacent communities and regional trail systems.
- n) City of Loveland Open Lands Plan (2003) describes a group of highly desirable priorities for open lands protection and trail development. The Property is within the Morey West Proposed Protection Area identified in the plan.



C. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibit any uses that would materially adversely affect the Conservation Values or that otherwise would be inconsistent with the Purpose (defined below). The Parties acknowledge and agree that uses expressly permitted by this Deed and Grantor's current land use patterns on the Property, including without limitation those relating to farming and ranching existing on the Effective Date (as defined in **Section 30**, below), do not materially adversely affect the Conservation Values and are consistent with the Purpose.

D. By granting this Deed, Grantor further intends to create a conservation easement interest that binds Grantor as the owner of the Property and also binds future owners of the Property and to convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

E. Grantee is a governmental subdivision of the State of Colorado, with an open space program dedicated to land conservation, and a "qualified organization" under I.R.C. § 170(h) and Treas. Reg. § 1.170A-14(c), whose primary purpose is to preserve and protect significant open space, natural areas, wildlife habitat, and develop parks and trails for present and future generations.

F. Grantee is qualified to hold conservation easements as a governmental entity under C.R.S. § 38-30.5-104. Grantee is certified as license number CE0035 by the State of Colorado's Division of Real Estate pursuant to C.R.S. § 12-61-724 and 4 C.C.R. 725-4, Chapter 2, to hold conservation easements for which a tax credit is claimed.

G. Funding for this project has been provided in part by the Great Outdoors Colorado Trust Fund program. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grant programs and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

H. Grantee agrees by accepting this Deed to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101, *et seq.*, and in consideration of the recitals set forth above, and the mutual covenants, terms, conditions, and restrictions contained in this Deed, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a conservation easement in gross in perpetuity over the Property for the Purpose set forth below and of the nature and character and to the extent set forth in this Deed.

1. Purpose. The purpose of this Deed is to ensure that Grantor preserve and protect in perpetuity the Conservation Values as they exist upon the Effective Date and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14 and C.R.S. § 38-30.5-101 *et seq.* (“**Purpose**”). To effectuate the Purpose, Grantor and Grantee agree: (i) to allow those uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Deed or will materially adversely affect the Conservation Values. Notwithstanding the foregoing, nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. Baseline Documentation Report. The Parties acknowledge that a written report dated July 19, 2016 has been prepared by ERO Resources Corporation and has been reviewed and approved by the Parties, which documents the Property’s condition as of the Effective Date (the “Baseline Report”). The Baseline Report contains a natural resources inventory of the Property and also documents existing improvements on and current uses of the Property. A copy of the Baseline Report shall be kept on file with each Party and by this reference made a part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represents the condition of the Property as of the Effective Date, and the Parties have acknowledged the same in a signed statement, a copy of which is attached as **Exhibit C**. The Parties will use the Baseline Report to ensure that any future changes to the Property are consistent with the Purpose. However, the Parties agree that the existence of the Baseline Report shall in no way limit the Parties’ ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the Effective Date.

3. Rights of Grantee. To accomplish the Purpose, in addition to the rights of the Grantee described in C.R.S. § 38-30.5-101 *et seq.*, and the rights of Grantee described elsewhere in this Deed, the Deed conveys the following rights to Grantee:

- a. To preserve and protect the Conservation Values in perpetuity; and
- b. To enter upon the Property at reasonable times to monitor Grantor’s compliance with and, if necessary, to enforce the terms of this Deed. Such entry shall be made upon prior reasonable notice to Grantor, except in the event Grantee reasonably determines that immediate entry upon the Property is necessary to prevent or mitigate a violation of this Deed. In the case where Grantee has determined that immediate entry is necessary, a reasonable attempt will be made to notify Grantor prior to such entry. Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property when exercising any such rights; and
- c. To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Deed and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent use; and

d. To require Grantor to consult with Grantee regarding the negotiations of any and all agreements between Grantor and third parties that may impact or disturb any portion of the surface of the Property, including but not limited to easement agreements, utility easements, right of way agreements, surface use agreements, and lease agreements (other than those specifically related to the agricultural and recreational operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed. Nothing in this Deed is intended to require Grantee to approve any action or agreement that is inconsistent with the terms of this Deed.

4. Reserved Rights. Subject to the terms of the Deed, Grantor reserves to Grantor, and to Grantor's successors and assigns, all rights accruing from Grantor's ownership of the Property, including (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and retain income derived from the Property from all sources, unless otherwise provided in this Deed, that are consistent with the terms of this Deed. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Deed or that materially adversely affects the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the specific rights set forth below.

a. Right to Convey. Grantor may sell, give, lease, bequeath, devise, mortgage, or otherwise encumber or convey the Property, subject to the following: (i) any lease, deed, or other conveyance or encumbrance is subject to this Deed, and any such document shall specifically incorporate the terms and conditions of this Deed by reference to this Deed; (ii) any lease or deed or other conveyance document shall specifically state which reserved rights have been exercised, if at all, and which reserved rights are specifically allocated to the new owner or lessee; and (iii) notice of any proposed conveyance or encumbrance as set forth in this **Section 4.a** shall be subject to the provisions of **Section 21** and **Section 22** of this Deed.

b. Resource Management. To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of **Section 6** of this Deed. Specifically, Grantor agrees to conduct the activities listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted if they are consistent with the Purpose.

(1) Habitat Management. Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the

Property, provided that such activities do not have more than a limited, short-term adverse effect on the Conservation Values.

(2) Agriculture. Grantor reserves the right for agricultural uses such as irrigating and fertilizing forage crops, raising and cultivating forage crops and grazing cattle, sheep and other livestock. Grantor shall conduct all agricultural activities using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover.

(3) Timber Management. Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, to promote forest health, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Dead trees may also be cut for firewood and other uses on the Property. Any large-scale fire mitigation activities or commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester. Any large-scale fire mitigation activities or timber harvesting shall be conducted in a manner that is consistent with the Purpose. A copy of the forest management plan shall be approved by Grantee and provided to the Board prior to any large-scale fire mitigation activities or commercial timber harvesting.

c. Recreational Activities. Grantor reserves the right to allow the public to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, bicycling, cross-country skiing, snowshoeing, hunting and other similar low-impact recreational uses. Trails are permitted only in accordance with **Section 4.e (3)** of this Deed.

d. Non-Residential Improvements. Grantor reserves the right to construct or place Non-Residential Improvements necessary to the management of the Property as public open space and as a working agricultural Property, as defined below, and Grantor shall provide prior notice of such construction to Grantee in accordance with **Section 7** of this Deed. Once constructed, Grantor may maintain, repair, replace and reasonably enlarge such new improvements in their initially constructed locations without Grantee's approval. "**Non-Residential Improvements**" shall mean covered or uncovered agricultural and non-residential improvements that are not intended for human habitation, and are further limited to bathrooms, outhouses and unenclosed improvements, including but not limited to hay sheds, storage areas, well houses, gazebos, picnic areas, and parking areas. Grantor reserves the right to construct Minor Non-Residential Improvements, defined below, without Grantee's approval. "**Minor Non-Residential Improvements**" shall mean minor agricultural or non-residential improvements including but not limited to fences (subject to the terms of **Section 4.f** of this Deed), corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, wildlife viewing platforms, sprinklers,

water lines, water wells, ditches, information kiosks, trail markers and trash receptacles. Furthermore, it is the intent of the Grantor to demolish all of the existing improvements presently found on the Property after this Deed of Conservation Easement has been granted.

(1) Building Envelope. Grantor may designate a building envelope (“**Building Envelope**”) of no more than 2.5 acres, only within the 6.77-acre building area Grantor has designated in the location depicted on **Exhibit B** (the “**Building Area**”). Prior to construction of the first new Non-Residential Improvement within the Building Envelope, Grantor shall present Grantee with a plan describing and depicting the proposed boundaries of the Building Envelope within the Building Area. Grantee shall review the proposed location of the Building Envelope to ensure that it is located wholly within the Building Area. Upon acknowledgement that the boundaries of the proposed Building Envelope are located wholly within the Building Area, Grantor and Grantee shall record in the property records of the county or counties in which the Property is located Notice of Building Envelope Designation in a form similar to the form attached as **Exhibit D**, which shall also include a revised **Exhibit B**, which revision shall describe, depict and establish the boundaries of the Building Envelope. After a properly executed Notice of Building Envelope Designation is recorded, new Non-Residential Improvements may be built within the Building Envelope subject to the following limitations:

- (i) maximum number of Non-Residential Improvements is 7
- (ii) maximum cumulative square footage is 5,000 square feet
- (iii) maximum building height is subject to Larimer County building code

e. Roads and Trails. Maintenance of existing Roads and Trails is permitted. “**Roads**” shall mean any road that is graded, improved or maintained, including seasonal unimproved roads and two-track roads. “**Trails**” shall mean any unimproved or improved path, or paved or unpaved trail constructed or established by human use, but shall not include game trails established and used by wildlife only. Prior to the construction or establishment of any Road or Trail, Grantor shall provide notice to Grantee in accordance with **Section 7** of this Deed.

(1) Within the Building Envelope. Grantor may construct Roads and parking areas within the Building Envelope (which Roads and parking areas may be paved) to access Non-Residential Improvements expressly permitted within the Building Envelope by **Section 4.d** of this Deed. Grantor shall not construct or establish any Road wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed.

(2) Outside the Building Envelope. Grantor shall not construct or establish Roads outside the Building Envelope except those existing Roads depicted on **Exhibit B** and a new Road to be constructed in the location depicted on **Exhibit B** to access the Building Envelope, or such other Roads that Grantee determines are consistent with the Purpose. Grantor shall not construct or establish any Road wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements