



CITY COUNCIL AGENDA

NOTICE TO READERS: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration except when addressing the City Council during Section 12 of the agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
 - A. Financial Report for June 2007
 - B. Quarterly Insurance Report for April – June 2007
 - C. Security System Installation Contract re Former Westminster Police Department Building
 - D. Reclaimed/Raw Water Interconnect Engineering Contract
 - E. Open-cut Waterline and Sanitary Sewer Construction Contract
 - F. Intergraph Corporation CAD, Records Management and Mobile Application Systems Software Upgrade
 - G. Second Reading Councillor's Bill No. 40 re Public Hearing Notice Procedures for Land Development Approvals
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing re Exclusion of Property from Metro Wastewater Reclamation District
 - B. Councillor's Bill No. 41 re Exclusion of Property from Metro Wastewater Reclamation District
 - C. Councillor's Bill No. 42 re Modification to WMC Title XVI - Competitive Cable TV Franchise Application
 - D. Councillor's Bill No. 43 re Amending Titles III, IV, and V of WMC Concerning Tax Administration
 - E. Councillor's Bill No. 44 re Adoption of New Election Code & Amending WMC re Privacy Issues
 - F. Resolution No. 24 re Fall 2007 Adams County Open Space Grant Applications
 - G. Resolution No. 25 re Ganzhorn Annexation Petition Compliance Hearing
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
 - A. City Council
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JULY 23, 2007 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor McNally led the Council, Staff, and audience in the Pledge of Allegiance.

ROLL CALL

Mayor McNally and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call. Mayor Pro Tem Kauffman was absent (excused). J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Price moved to approve the minutes subject to the addition of Mayor McNally in the listing of those who had attended the Colorado Municipal League Annual Conference, which was reflected in Councillor Price's comments under Council Reports. The motion was seconded by Kaiser and passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported there would be no meeting on July 30, as it was the fifth Monday of the month. Additionally, he reminded everyone that the Westminster Faire would be held August 18 at City Park. The day's activities would include the Holy COW Stampede (5 and 10K walk/runs), booths, music, and games. Plans were underway to start the day with a Pancake Breakfast to raise funds for the Armed Forces Tribute Garden. Mr. McFall was pleased to report that phase I construction of the Tribute Garden had begun. It was hoped the facility could be dedicated this Veterans' Day.

CITY COUNCIL COMMENTS

Councilor Price reported that on July 12 the Department of Energy had transferred Rocky Flats to the Department of the Interior and the property officially became a Wildlife Refuge. She was pleased to have been involved in the process and to witness government at many different levels work toward a common goal.

Councillor Lindsey reported that the recent concert in the Summer Concert Series was a success. It had also been a "We're All Ears" event, and Council had enjoyed hearing from many residents. It had presented an opportunity to hand out graffiti cards and enlist the community's help to eradicate that problem. Council members handed out over 300 bags of popcorn to attendees and then enjoyed the concert with everyone else.

Mayor McNally reported that she and Councillors Kaiser and Lindsey, as well as Congressman Perlmutter, had attended ceremonies on July 21 to recognize Lao Mung veterans who had served in the United States military during the Vietnam War. Also on July 21 and 22, Mayor McNally reported having spoken at the Church of the Nazarene, which was celebrating its 50th anniversary. Members of the church's three Westminster congregations were engaged in community activities and had selected a liaison with whom the Mayor had been asked to communicate regarding the City's needs for volunteers and events.

CITIZEN COMMUNICATION

Denis Emily, 10001 Ames Street, speaking on behalf of a homeowners' association opined that a 25 MPH sign installed within the subdivision where he lived was a waste of taxpayers' funds that could be used elsewhere. He requested that staff conduct a site tour with him so he could demonstrate his position. He noted that the sign had been installed in lieu of his request for installation of a 15 MPH sign, which speed limitation he understood was not permissible according to City Code.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: acceptance of the June 2007 financial report; acceptance of the 2nd Quarter 2007 insurance report; authority for the City Manager to execute a \$66,174.18 contract with National Network Inc. for the installation of a security system in the former Police Department building and for a \$6,174 contingency; based on the report and recommendation of the City Manager, Council found the public interest would best be served by authorizing the City Manager to execute a \$454,501 contract with Stantec Consulting Inc., as the sole source for engineering design and construction management services for the Reclaimed/Raw Water Interconnect Project and authority for a \$22,725 contingency; authority for the City Manager to execute a \$1,401,506 contract with Tierdael Construction Company for construction of sanitary sewer and waterlines and for a \$140,151 contingency; authority for the City Manager to sign a \$83,600 agreement with Intergraph Corporation for a computer-aided dispatch (CAD), records management system (RMS), and mobile application systems software upgrade; and final passage of Councillor's Bill No. 40 amending the Westminster Municipal Code regarding public hearing notice procedures for land development approvals.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. There were no requests, and Councillor Dittman moved to approve the consent agenda as presented. Councillor Price seconded the motion and it passed unanimously.

PUBLIC HEARING RE EXCLUSION OF PROPERTY FROM METRO WASTEWATER RECLAMATION

At 7:12 p.m., Mayor McNally opened a public hearing to consider the exclusion of property in the vicinity of Sunset Ridge West Subdivision from being served by the Metro Wastewater Reclamation District pursuant to C.R.S. §32-4-508 (1) (d). Abel Moreno, Acting Public Works and Utilities Director, recapped background information concerning the proposed replacement of the 94th Avenue and Quitman Street Lift Station with a gravity sanitary sewer that would divert flows to the Big Dry Creek Wastewater Treatment Facility (BDCWWTF) and eliminate all potential failures related to electrical and mechanical equipment malfunctioning. Flows were currently routed to the Metro Wastewater Reclamation District. Other benefits resulting from elimination of the 94th Avenue and Quitman Street Lift Station included the riddance of operations and maintenance costs of the existing lift station, reduction in the annual treatment cost paid to the District, and increased effluent to BDCWWTF for reclaimed water supply. Notice of this public hearing had been published in the *Denver Post* and *Rocky Mountain News* in accordance with state statute and the proof of publication was on file in the City Clerk's office.

Mr. McCullough stated that the Metro Wastewater Reclamation District and the City had a long-standing contract, and the process being followed was one that the District believed necessary, not the City. Council would be asked to adopt an emergency ordinance requesting exclusion of the Sunset Ridge West Subdivision after this public hearing was concluded. The emergency ordinance was to accommodate the Metro District's Board of Directors meeting schedule and to preserve the ability to move forward with installation of the necessary infrastructure for the gravity flow facility in November 2007. The construction schedule was significant because it involved installation across a portion of Hyland Hills Golf Course.

Mayor McNally opened the hearing to public testimony. No one wished to comment and there was nothing further from staff. The public hearing was closed at 7:22 p.m.

COUNCILLOR'S BILL NO. 41 RE EXCLUSION OF PROPERTY FROM METRO DISTRICT

It was moved by Councillor Major and seconded by Councillor Dittman to pass Councillor's Bill No. 41 as an emergency ordinance, requesting the exclusion of property in the vicinity of Sunset Ridge West Subdivision from being served by Metro Wastewater Reclamation District. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 42 RE COMPETITIVE CABLE TV FRANCHISE APPLICATION PROCESS

Upon a motion by Councillor Dittman, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 42 as an emergency ordinance, amending the Westminster Municipal Code Title XVI concerning competitive cable franchise application process.

COUNCILLOR'S BILL NO. 43 RE TAX ADMINISTRATION CODE AMENDMENTS

It was moved by Councillor Price and seconded by Councillor Kaiser to pass Councillor's Bill No. 43 on first reading amending Titles III, IV, and V of the Westminster Municipal Code concerning tax administration. On roll call vote, the motion passed unanimously.

COUNCILLOR'S BILL NO. 44 RE ELECTIONS AND PRIVACY ISSUES

Councillor Lindsey moved, seconded by Kaiser, to pass Councillor's Bill No. 44 on first reading to repeal and reenact the City's Election Code, to amend Section 1-11-2 concerning qualifications of City Councillors and to amend Section 2-1-1 concerning appointment of Board and Commission members. The motion passed with all Council members voting affirmatively at roll call.

RESOLUTION NO. 24 RE FALL 2007 ADAMS COUNTY OPEN SPACE GRANT APPLICATIONS

Councillor Major moved, seconded by Price, to adopt Resolution No. 24 authorizing the Department of Parks, Recreation and Libraries and the Department of Community Development to pursue grants with Adams County Open Space during the 2007 fall cycle for the development of City Center Park located at 92nd Avenue and City Center Drive and for the acquisition of the Doulos Ministries Property located at 124th Avenue and Zuni Street. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 25 RE GANZHORN ANNEXATION PETITION COMPLIANCE HEARING

It was moved by Councillor Dittman and seconded by Councillor Kaiser to adopt Resolution No. 25 accepting the annexation petition submitted by Conrad Ganzhorn, owner; making the findings required by Colorado Statute on the sufficiency of the petition; and setting August 27, 2007 as the date for the annexation public hearing. At roll call, the motion passed unanimously.

ADJOURNMENT

There was no further business to come before the City Council, and the meeting was adjourned at 7:25 p.m.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

Agenda Item 8 A

City Council Meeting
July 23, 2007



SUBJECT: Financial Report for June 2007
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

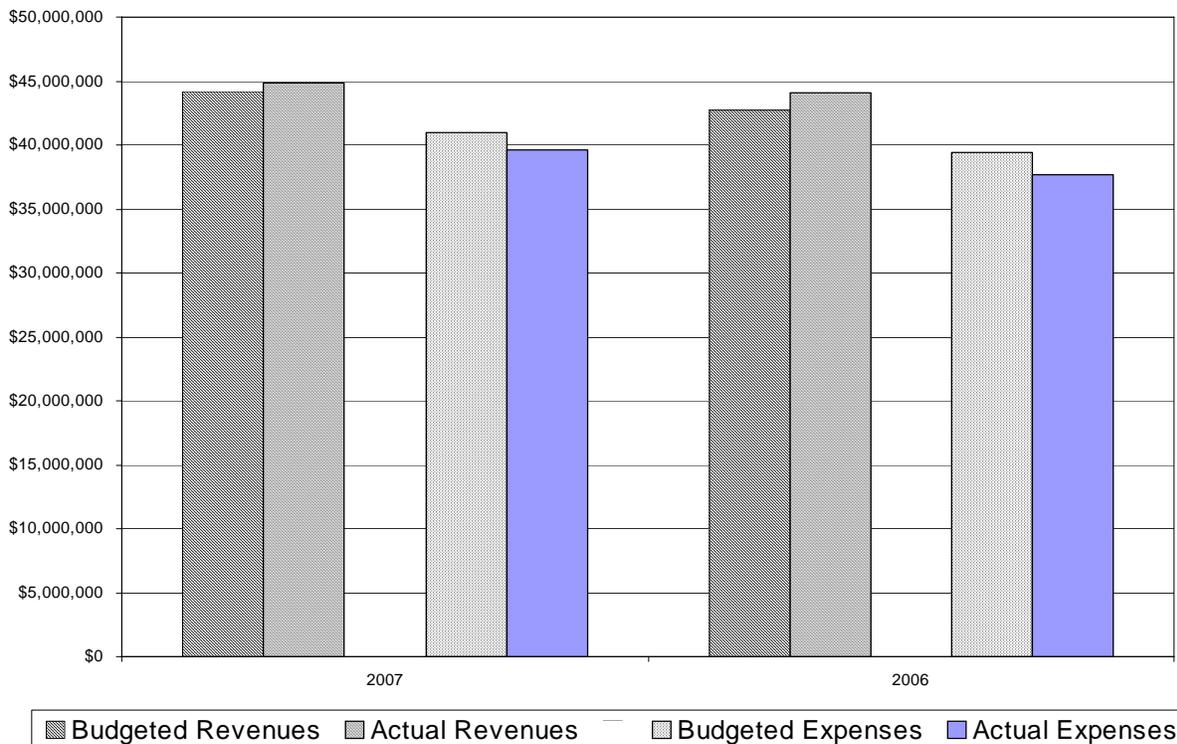
Accept the Financial Report for June as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, “budget” refers to the pro-rated budget. Revenues also include carryover where applicable. The revenues are pro-rated based on 10-year historical averages. Expenses are also pro-rated based on 5-year historical averages.

The General Fund revenues and carryover exceed expenditures by \$5,285,000. The following graph represents Budget vs. Actual for 2006 – 2007. The \$32,944,900 Refunding Certificates of Participation, Series 2007 has been omitted from the graph in order to more accurately reflect operations and to reflect a more appropriate comparison to 2006.

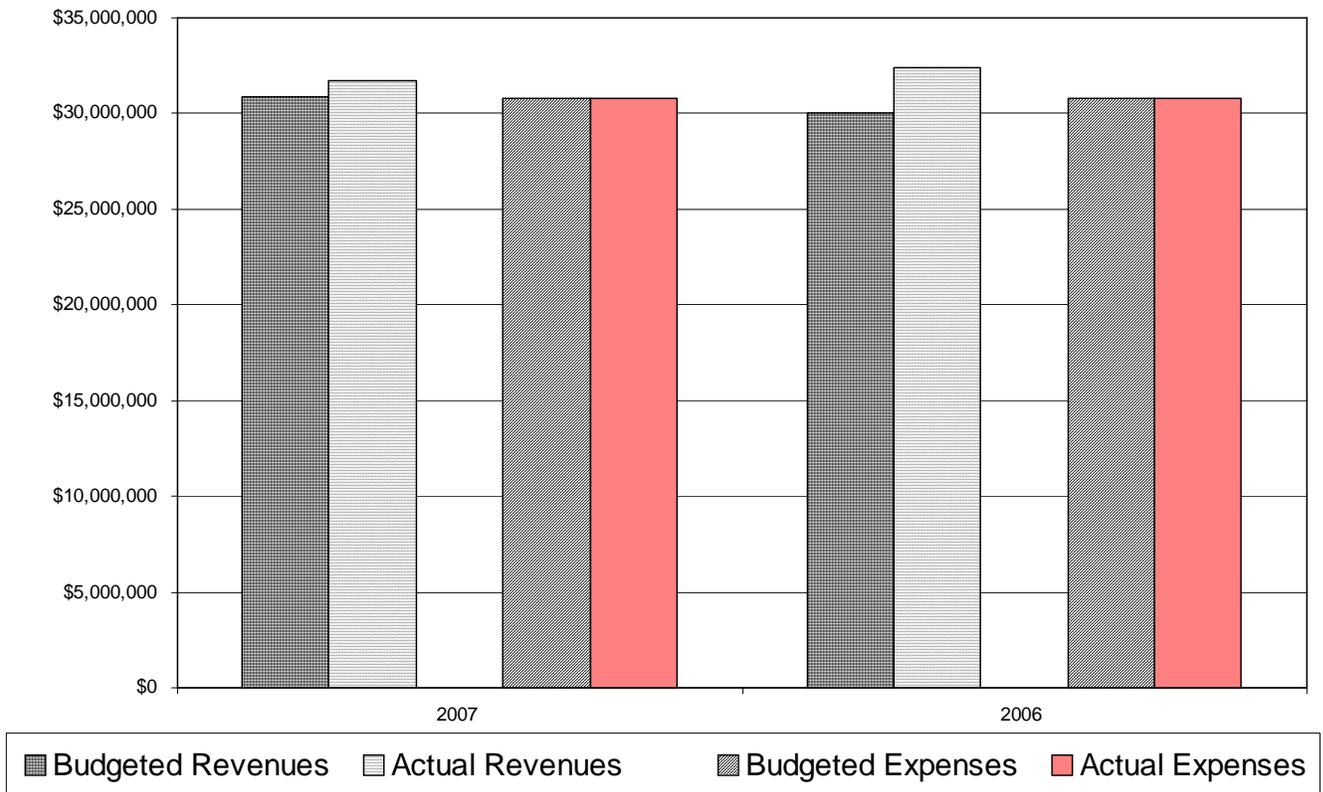
**General Fund
Budget vs Actual**



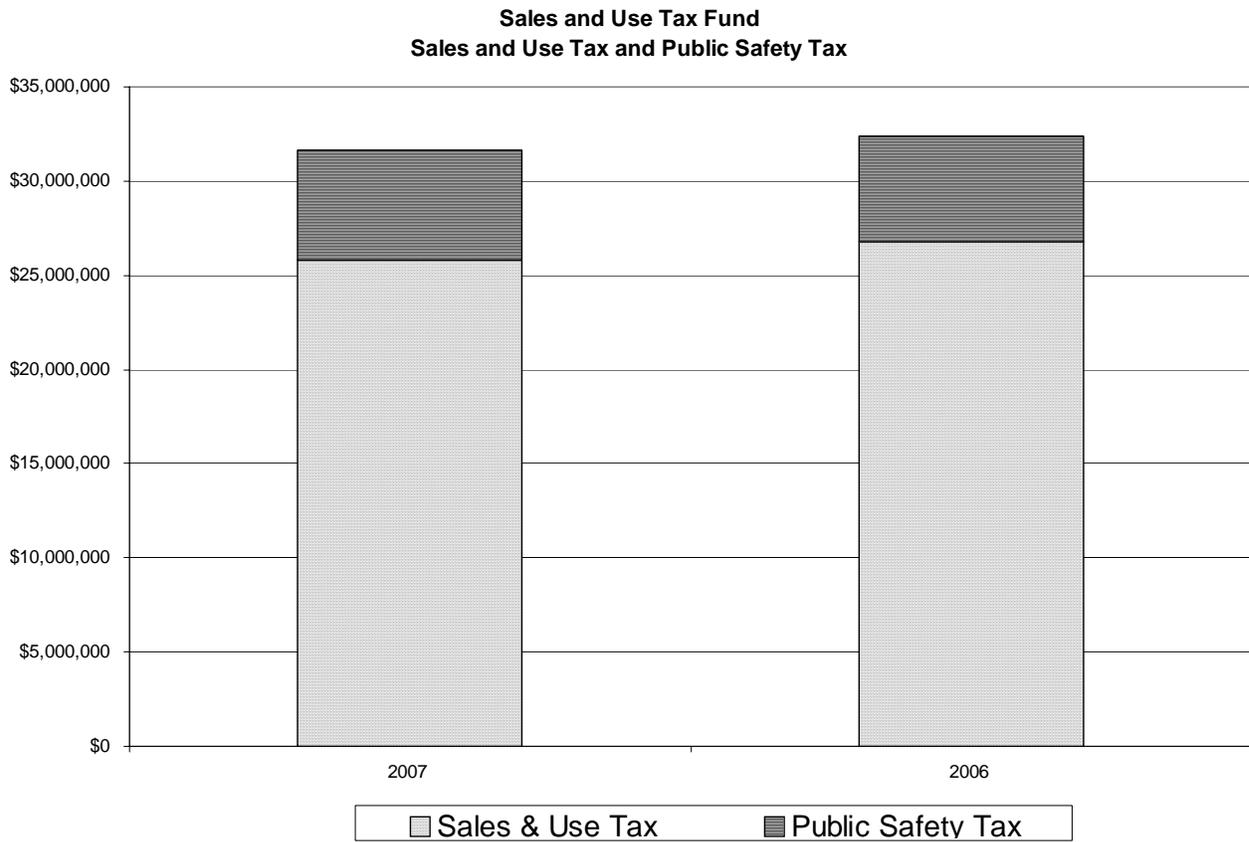
The Sales and Use Tax Fund’s revenues and carryover exceed expenditures by \$893,000.

- On a year-to-date cash basis, sales & use tax returns are down 2.7%. This does not include a \$149,000 refund that was given.
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 9.0% from the prior years. Included in the Shopping Center report is \$455,000 of audit revenue from 2 different audits. It also includes Urban Renewal Area (URA) money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are down 3.3%. This reflects of the significant contribution to Sales Tax the URA’s are making, and will ultimately benefit the General Fund.
- The top 50 Sales Taxpayers, who represent about 58% of all collections, were down 2.0% after adjusting for one time audit revenue and Urban Renewal Area money.
- The Westminster Mall is down 13% on a year-to-date basis. This includes an audit payment of \$138,000.
- Building Use Tax is down 11.5% year-to-date over 2006.

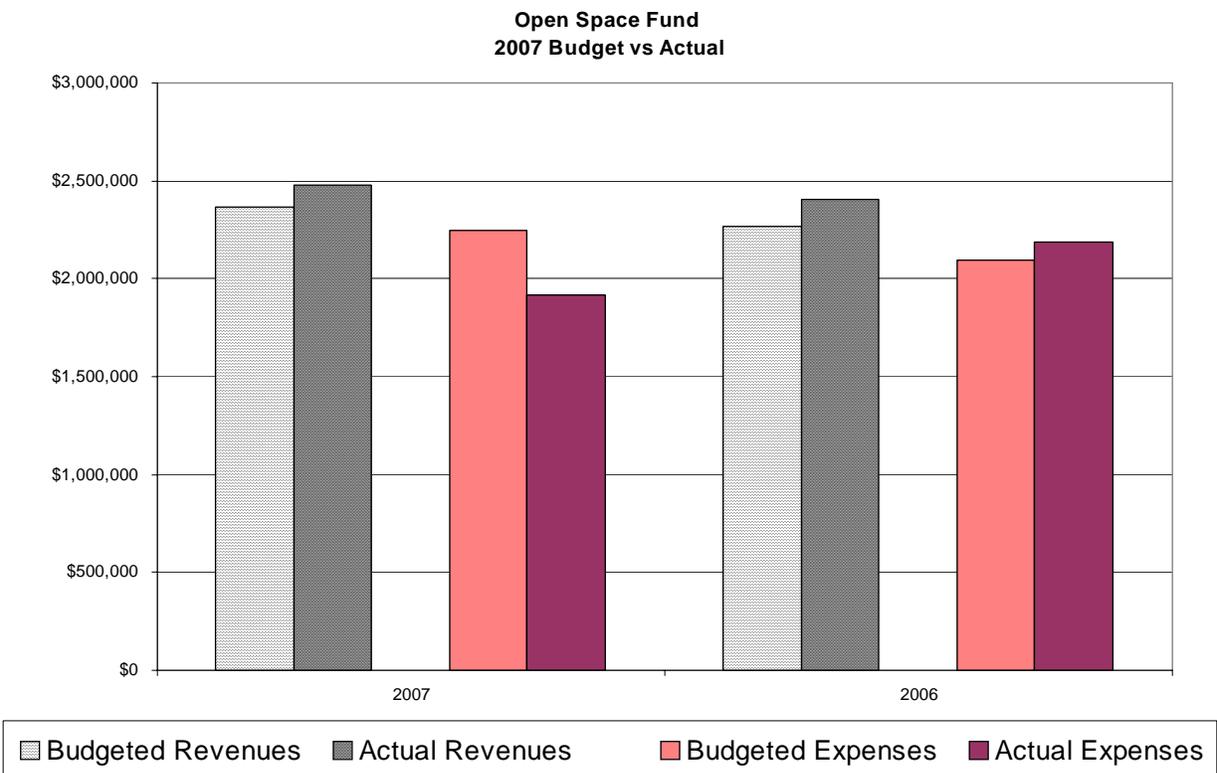
**Sales & Use Tax Fund
Budget vs Actual**



The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.

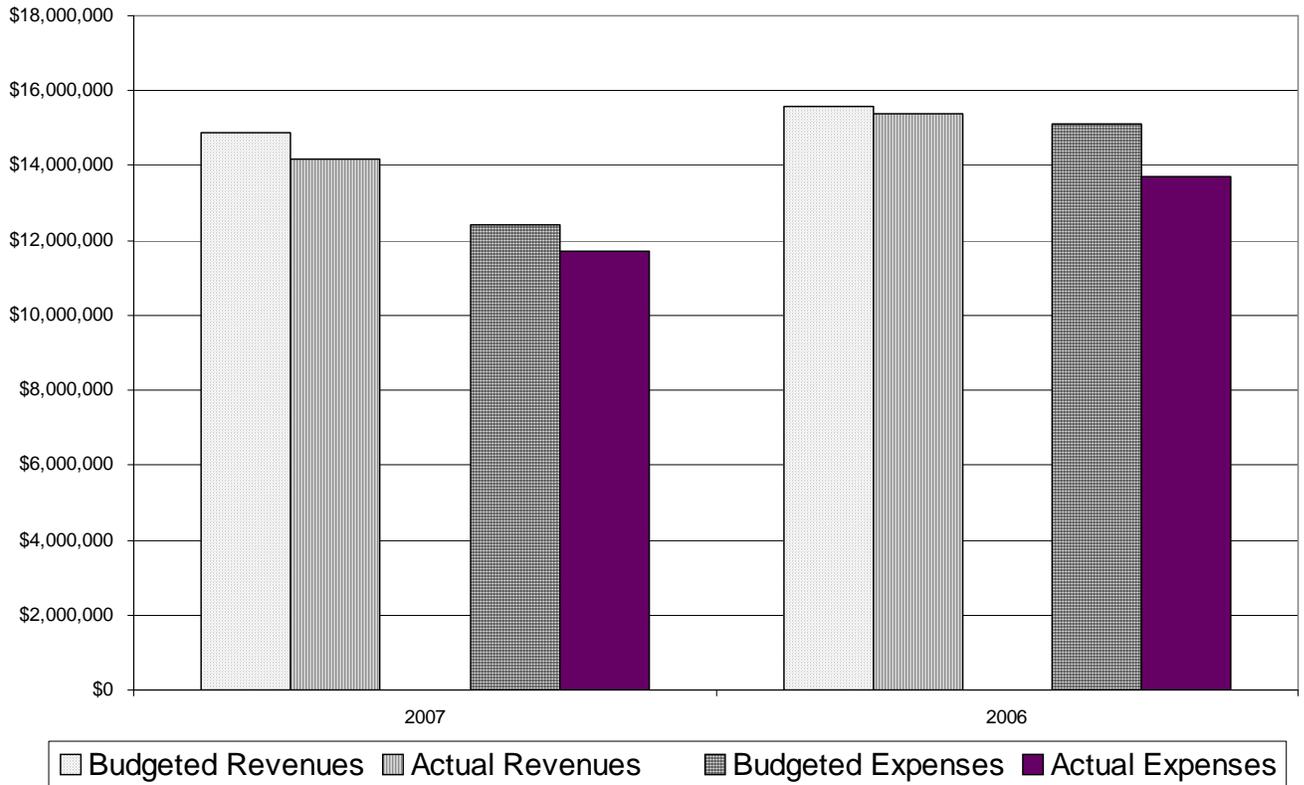


The Open Space Fund revenues exceed expenditures by \$564,000.



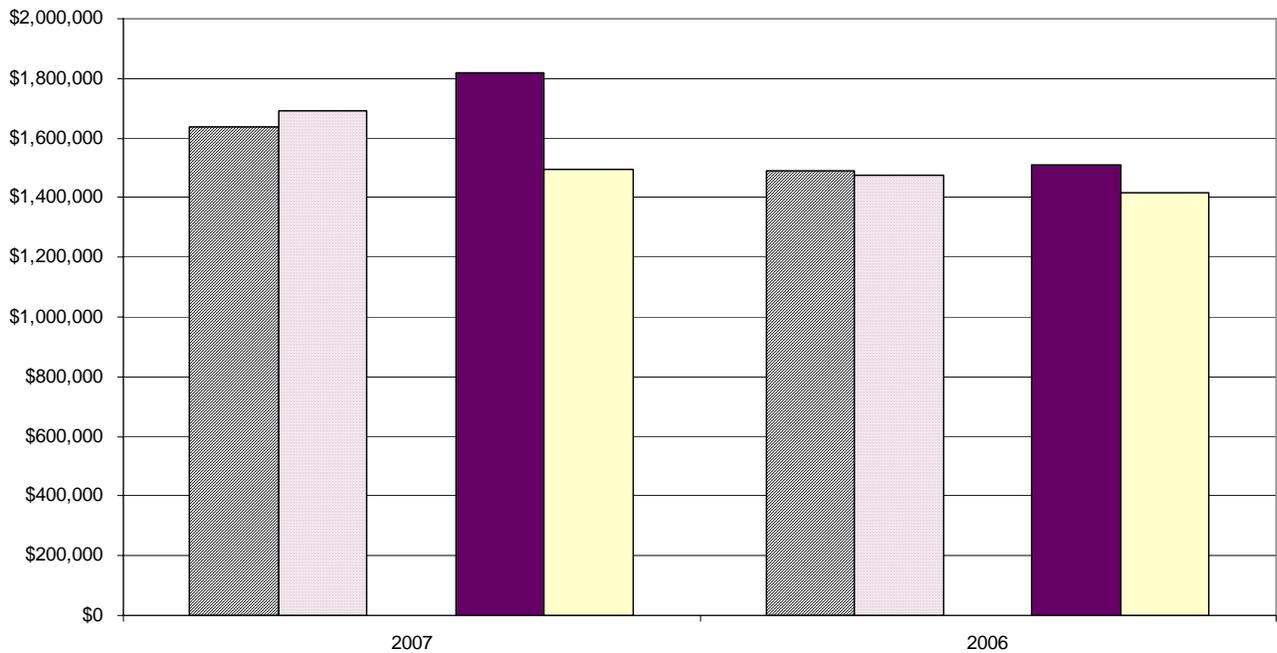
The combined Water & Wastewater Funds' operating revenues and carryover exceed operating expenses by \$7,145,000. \$18,523,000 is budgeted for capital projects and reserves. Year-to-date, the City has collected \$1,986,000 less in tap fees than in 2006. In addition, water sales are down \$1,727,000 due to the wet spring.

**Combined Water and Wastewater Funds
2007 Operating Budget vs Actual**



The combined Golf Course Funds' revenues exceed expenditures by \$197,000. Year to date revenues for Charges for Services are \$136,000 higher than 2006. A one time Other Financing Source and Use of \$547,000, which was a lease purchases of maintenance equipment at Legacy Ridge, is omitted from 2007. A one time Other Financing Source and Use of \$582,144, which was for a lease purchase of golf carts, is not included in 2006. This adjustment was made in order to reflect a more appropriate comparison between years.

**Golf Course Enterprise
Budget vs Actual**



Budgeted Revenues
 Actual Revenues
 Budgeted Expenses
 Actual Expenses

Policy Issue

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

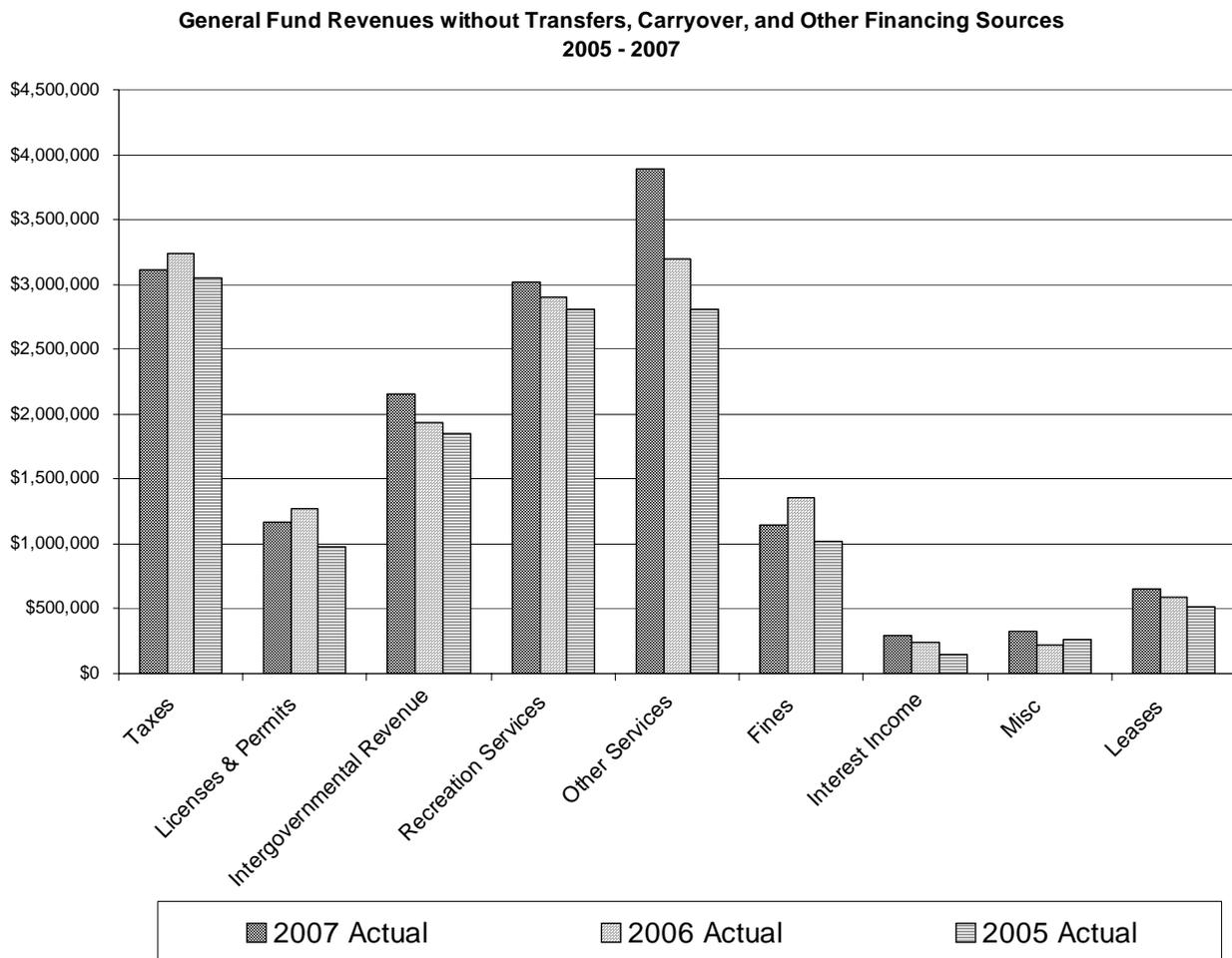
Background Information

This section includes a discussion of highlights of each fund presented.

General Fund

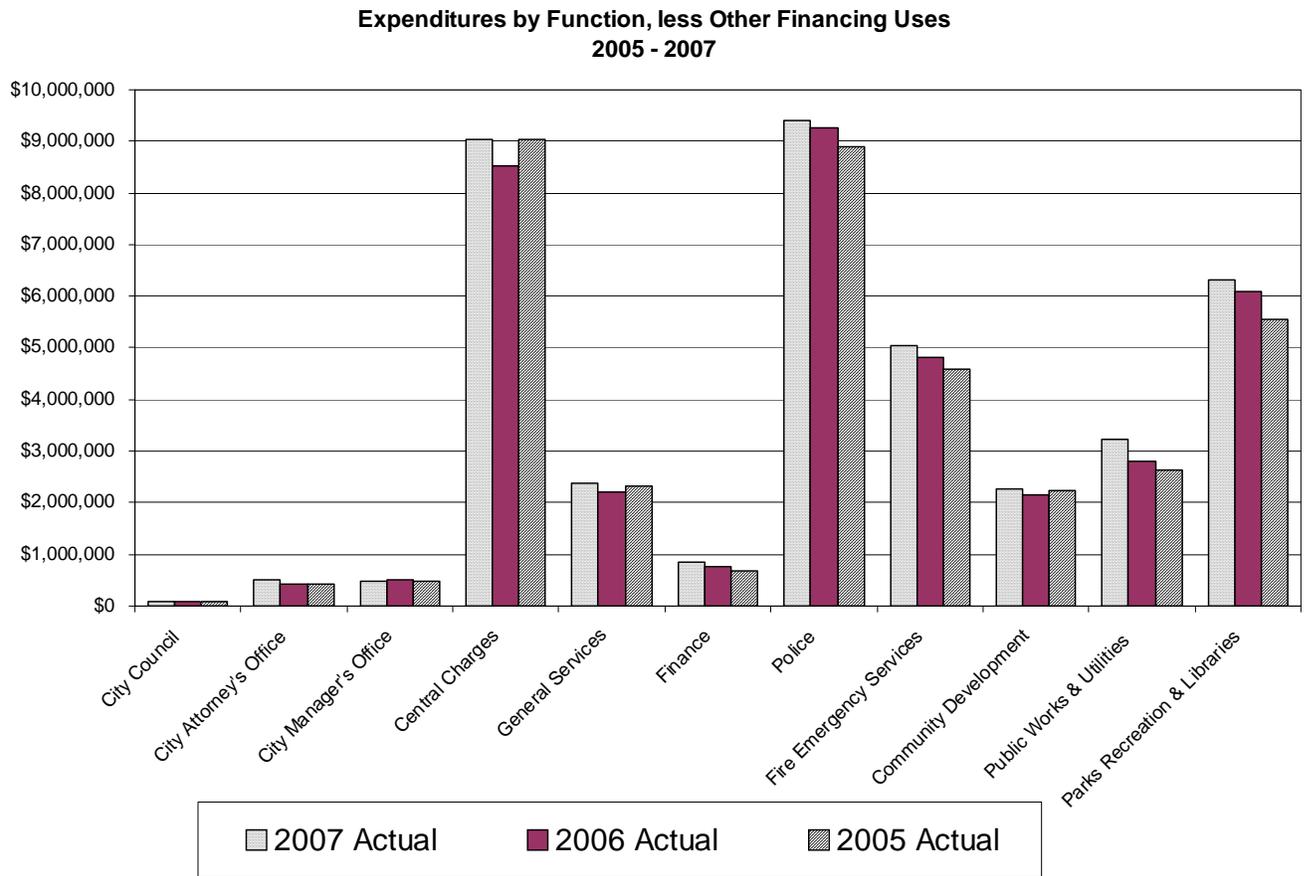
This fund reflects the results of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions; City Manager, City Attorney, Finance, and General Services.

The following chart represents the trend in actual revenues from 2005 – 2007 year-to-date.



The increase in Other Services reflects the Infrastructure fee. The increase in Recreation Services reflects the Standley Lake boat permits. As reflected in the Licenses & Permits of the Financial Report, commercial building permits are up significantly, causing a positive variance. Intergovernmental revenues are also up compared to the budget amount. This is primarily due to the FEMA reimbursement and an increase in road & bridge taxes from both counties and grant revenue.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2005 –2007.

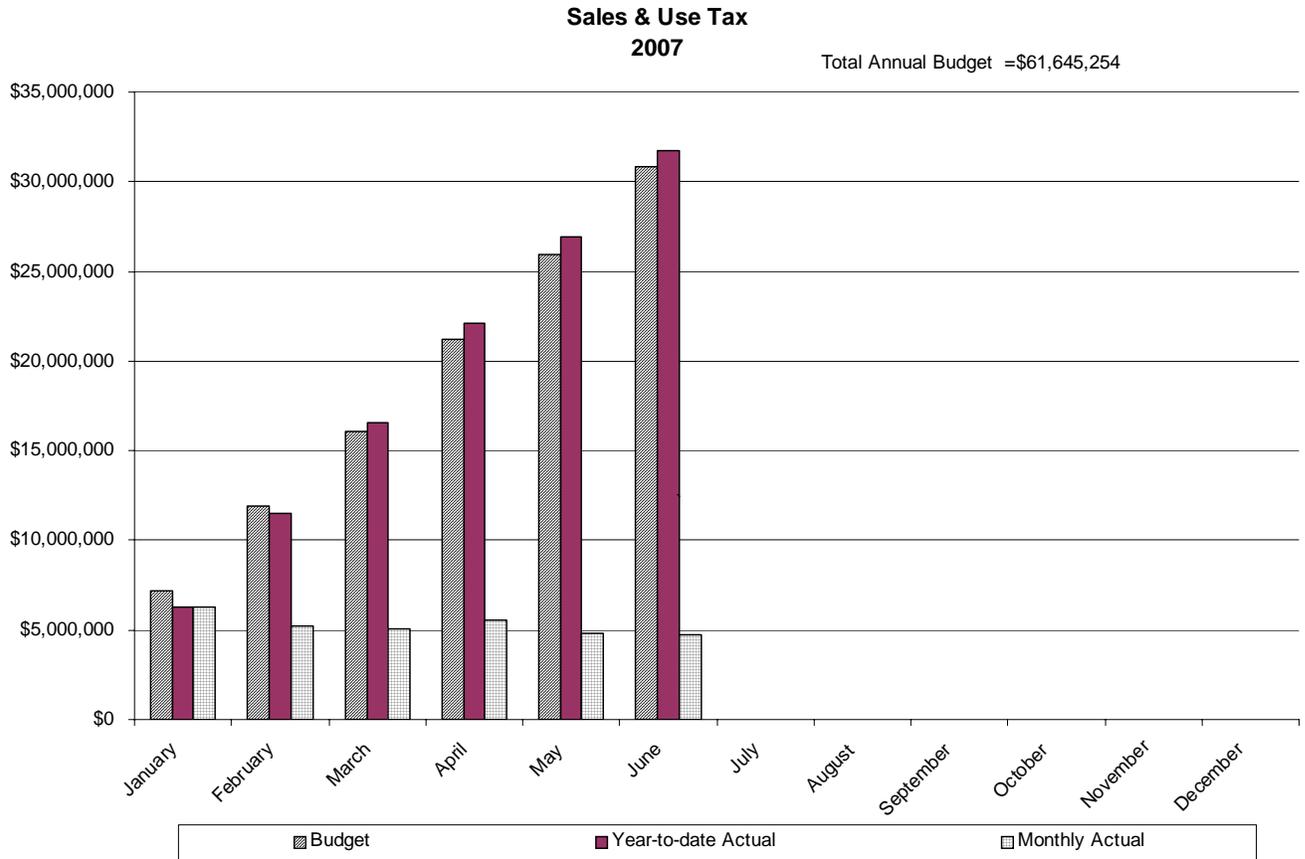


Public Works and Utilities have incurred additional expenses associated with the snow storms. They have spent 115% of the annual contractual services budget as well as 84.60% of the annual snow removal materials budget. The historical average is about 38%. The positive variances seen in CMO, Finance, Police and Fire are mostly related to salary savings. The savings reflected in Parks, Recreation and Libraries is related to utility savings as well as some salary savings.

Sales and Use Tax Funds (Sales & Use Tax Fund and Open Space Sales & Use Tax Fund)

These funds are the repositories for the 3.85% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the Capital Project Fund, the Golf Course Fund and the Debt Service Fund. The Open Space Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, buy open space, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Open Space Sales & Use Tax.

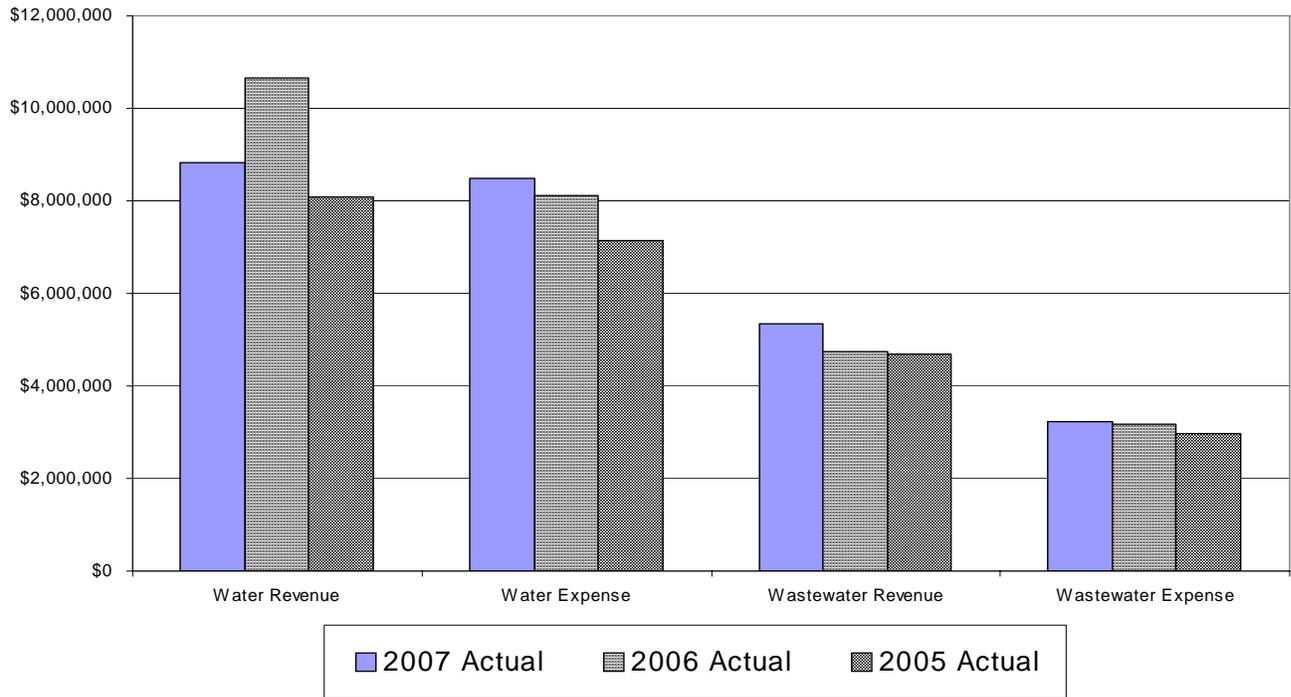


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

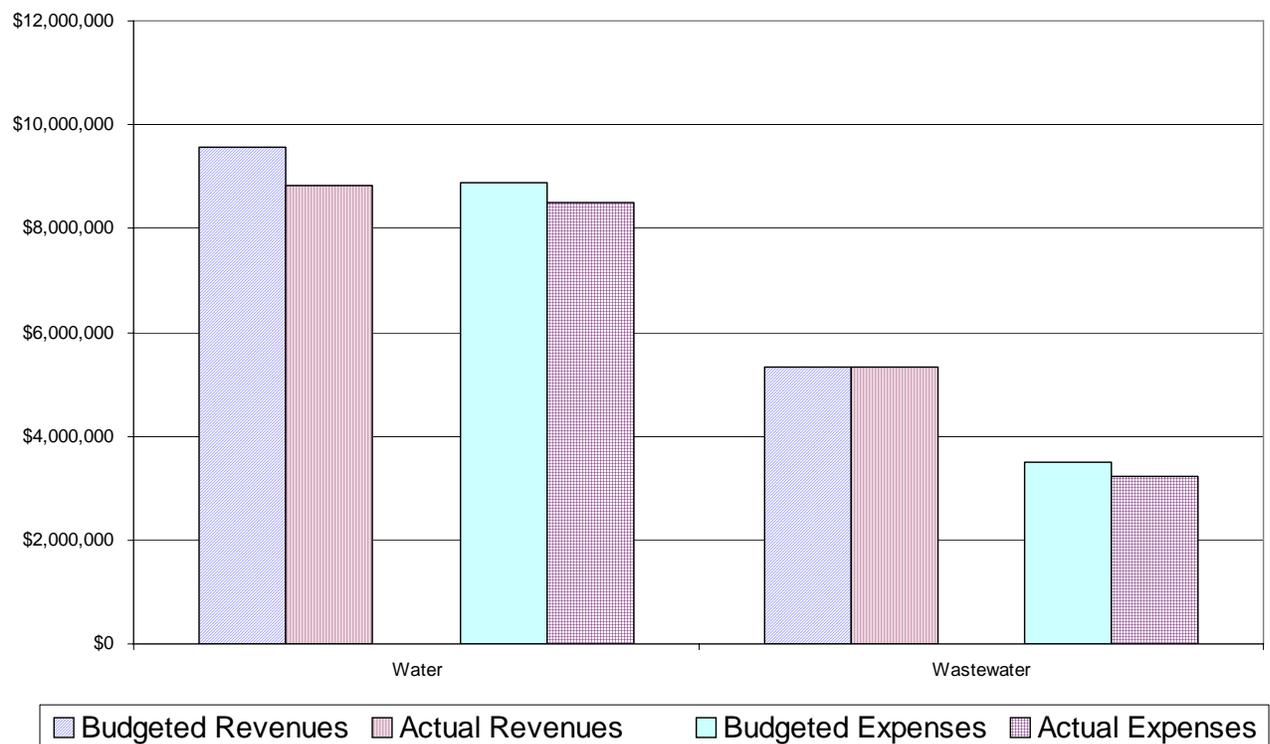
This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects.

These graphs represent the segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2005-2007**



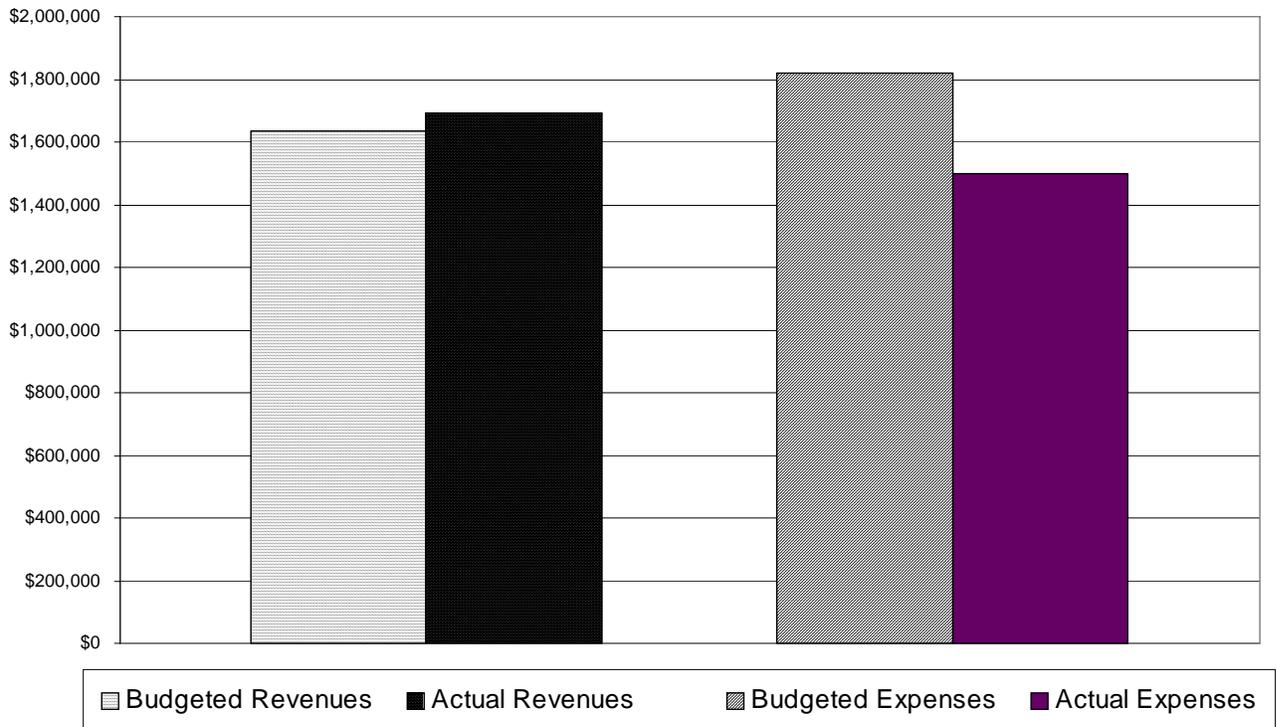
**Water and Wastewater Funds
2007 Operating Budget vs Actual**



Golf Course Enterprise (Legacy and Heritage Golf Courses)

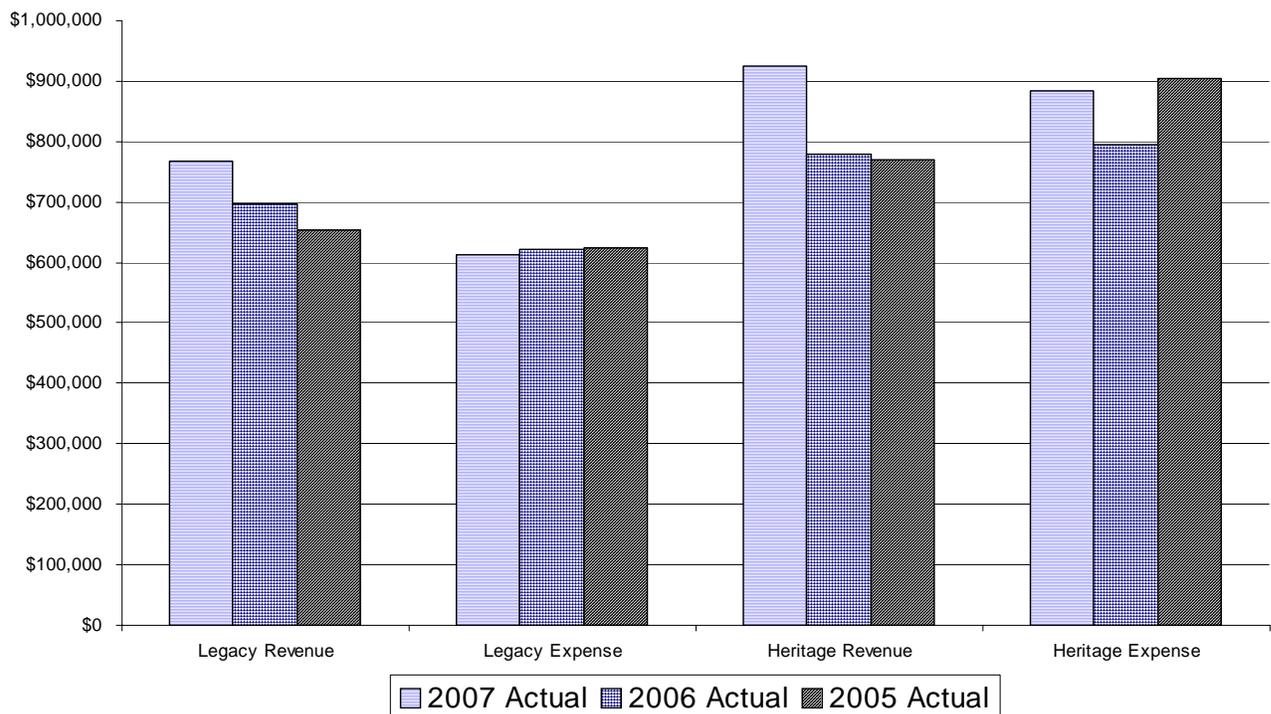
This enterprise reflects the operations of the City's two municipal golf courses.

**Combined Golf Courses
2007 Budget vs Actual**



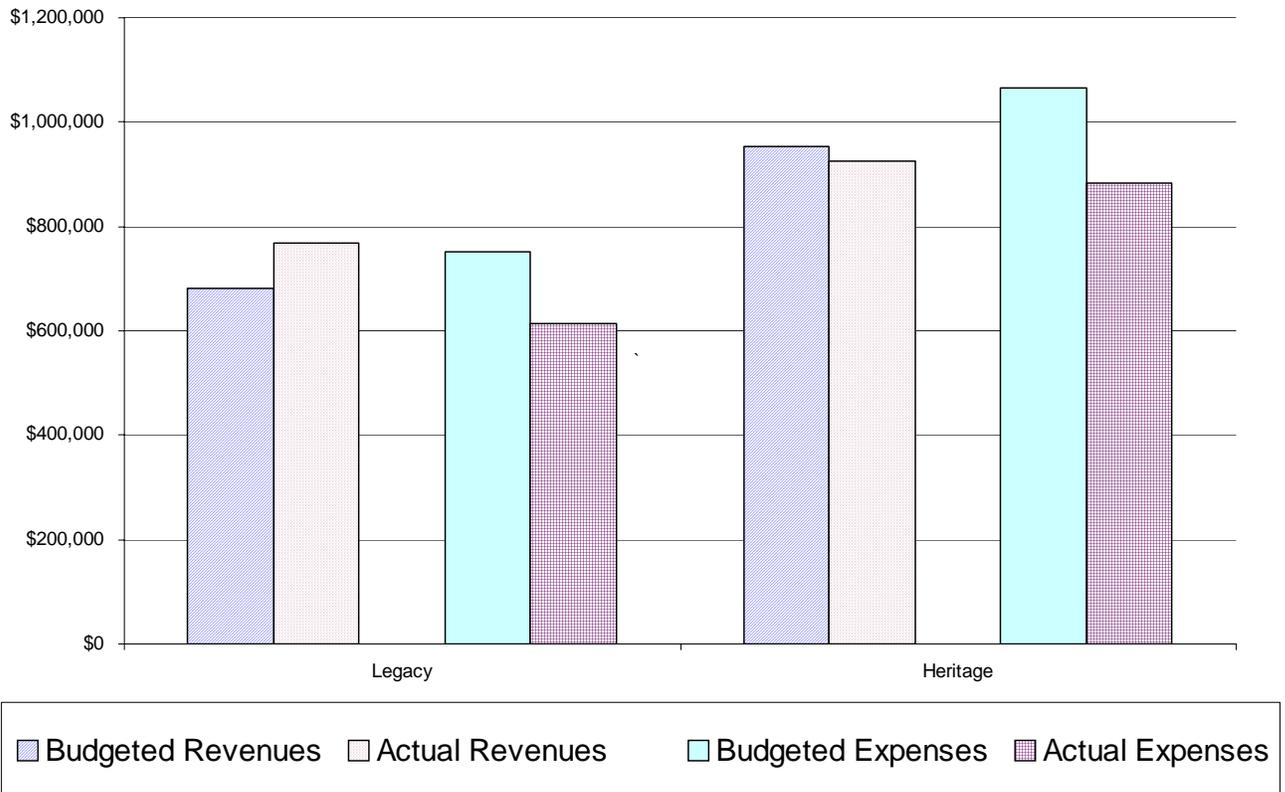
The following graphs represent the information for each of the golf courses.

**Legacy and Heritage Golf Courses
Revenue and Expenses 2005-2007**



Heritage's expenses reflect the lease payments that were started in July of 2006. A one time Other Financing Source and Use of \$547,000, which was a lease purchases of maintenance equipment, is omitted from 2007. A one time Other Financing Source and Use of \$582,144, which was a lease purchase of golf carts, is omitted from 2006 Heritage Revenue and Expense for comparison purposes. The increase in revenue can be attributed to the sale of corporate passes and an increase in transfers in. The financial statements reflect a positive variance in Recreation Facilities versus the budget. This is primarily due to salary and utility savings.

**Legacy and Heritage Golf Courses
2007 Budget vs Actual**



Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**City of Westminster
Financial Report
For Six Months Ending June 30, 2007**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues and Carryover						
Taxes	4,870,787	3,326,250		3,115,968	(210,282)	93.7%
Licenses & Permits	1,675,000	869,585		1,170,976	301,391	134.7%
Intergovernmental Revenue	4,721,000	1,946,502		2,152,774	206,272	110.6%
Recreation Services	5,611,336	2,815,958		3,018,248	202,290	107.2%
Other Services	8,420,624	3,747,458		3,885,985	138,527	103.7%
Fines	2,311,250	1,132,513		1,150,877	18,364	101.6%
Interest Income	360,000	180,000		294,595	114,595	163.7%
Misc	1,534,114	228,991		329,425	100,434	143.9%
Leases	1,564,170	782,085		650,100	(131,985)	83.1%
Interfund Transfers	58,249,468	29,124,734		29,124,734	-	100.0%
Other Financing Sources	-	-	(2)	-	-	N/A
Sub-total Revenues	<u>89,317,749</u>	<u>44,154,076</u>		<u>44,893,682</u>	<u>739,606</u>	<u>101.7%</u>
Carryover	-	-		-	-	N/A
Revenues and Carryover	<u>89,317,749</u>	<u>44,154,076</u>		<u>44,893,682</u>	<u>739,606</u>	<u>101.7%</u>
Expenditures						
City Council	205,023	113,516		83,301	(30,215)	73.4%
City Attorney's Office	1,064,790	531,363		506,598	(24,765)	95.3%
City Manager's Office	1,121,996	557,567		480,688	(76,879)	86.2%
Central Charges	23,791,551	9,417,292	(2)	9,047,462	(369,830)	96.1%
General Services	5,030,427	2,528,156		2,387,231	(140,925)	94.4%
Finance	1,806,674	902,052		850,911	(51,141)	94.3%
Police	19,794,580	9,860,015		9,405,503	(454,512)	95.4%
Fire Emergency Services	10,663,724	5,293,897		5,028,769	(265,128)	95.0%
Community Development	4,594,371	2,284,033		2,275,415	(8,618)	99.6%
Public Works & Utilities	7,376,630	2,766,137	(1)	3,235,905	469,768	117.0%
Parks, Recreation & Libraries	13,867,983	6,730,505		6,306,582	(423,923)	93.7%
Total Expenditures	<u>89,317,749</u>	<u>40,984,533</u>		<u>39,608,365</u>	<u>(1,376,168)</u>	<u>96.6%</u>
Revenues and Carryover						
Over(Under) Expenditures	<u>-</u>	<u>3,169,543</u>		<u>5,285,317</u>	<u>2,115,774</u>	

(1) Public Works and Utilities has incurred unusually high costs related to the snow storms in early 2007.

(2) Other financing sources and & uses of \$32,944,900 relate to refunding of the 1998 & 1999 COPs.

They have been omitted from this statement in order to better reflect results of operations.

CITY OF WESTMINSTER

GENERAL RECEIPTS BY CENTER - SUMMARY (CC)
MONTH OF JUNE 2007

Center Location Major Tenant	Current Month General Sales	Current Month General Use	Total	General Sales	Last Year General Use	Total Sales	Use Total	%Change
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART	381,808	2,057	383,866	363,221	914	364,134	5 125	5
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	267,455	1,533	268,987	81,941	1,060	83,001	226 45	224
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	223,069	2,695	225,764	342,319	2,112	344,432	-35 28	-34
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN COMP USA/CIRCUIT CITY	217,155	1,981	219,136	208,322	385	208,707	4 414	5
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	194,266	1,326	195,592	200,254	753	201,008	-3 76	-3
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	182,336	3,881	186,218	213,757	431	214,188	-15 800	-13
SHOPS AT WALNUT CREEK 104TH & REED TARGET	165,179	5,726	170,905	132,238	3,879	136,117	25 48	26
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	133,542	17,234	150,776	123,772	16,193	139,965	8 6	8
SHERIDAN CROSSING SE CORNER 120TH & SHER	112,641	1,059	113,701	162,414	1,575	163,988	-31 -33	-31
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	102,917	127	103,044	105,034	1,149	106,183	-2 -89	-3
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SCOOPERS	92,400	111	92,511	87,018	401	87,419	6 -72	6
THE ORCHARD 144TH & I-25 JC PENNEY	68,686	165	68,851	0	0	0	*****	*****
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SCOOPERS	63,667	192	63,859	58,546	101	58,647	9 91	9
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	59,752	419	60,170	62,025	137	62,162	-4 205	-3
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH	53,336	122	53,459	52,733	114	52,846	1 7	1

CITY OF WESTMINSTER

GENERAL RECEIPTS BY CENTER - SUMMARY (CC) MONTH OF JUNE 2007

Center Location Major Tenant	Current Month General Sales	Current Month General Use	Total	General Sales	Last Year General Use	Total Sales	Use Total	%Change
SAFEWAY	53,243	166	53,409	49,149	184	49,333	8 -10	8
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH								
SAFEWAY	51,467	390	51,857	56,331	213	56,545	-9	83 -8
WILLOW RUN 128TH & ZUNI								
SAFEWAY	44,494	21	44,515	49,085	169	49,253	-9	-87 -10
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR								
AMERICAN FURNITURE WAREHOUSE VILLAGE AT PARK CENTRE	40,070	587	40,657	42,436	260	42,695	-6	126 -5
NW CORNER 120TH & HURON CB & POTTS								
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED	39,049	494	39,543	28,661	655	29,315	36	-25 35
ELWAY MOTORS MISSION COMMONS	31,886	250	32,136	32,907	10	32,917	-3	2354 -2
W SIDE WADSWORTH 88-90TH BIG 5 SPORTS								
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL	6,775	24,831	31,606	7,016	53,433	60,449	-3	-54 -48
LUCENT TECHNOLOGY STANDLEY PLAZA	25,684	575	26,259	24,572	937	25,509	5	-39 3
SW CORNER 88TH & WADS WALGREENS								
NORTHVIEW S SIDE 92ND YATES-SHER	24,610	279	24,888	45,993	1,698	47,691	-46	-84 -48
FEDERAL STRIP W SIDE FEDERAL 68TH-72ND								
BOVAS	23,001	15	23,016	26,134	36	26,170	-12	-58 -12
	2,658,489	66,236	2,724,725	2,555,877	86,798	2,642,675	4	-24 3

CITY OF WESTMINSTER

**GENERAL RECEIPTS BY CENTER - SUMMARY YTD (CC)
MONTH OF JUNE 2007**

Center Location Major Tenant	YTD 2007 General Sales	YTD 2007 General Use	Total	YTD 2006 General Sales	YTD 2006 General Use	Total Sales	Use Total	%Change
SAFEWAY	317,155	1,328	318,483	328,105	1,077	329,181	23	-3
STANDLEY LAKE MARKETPLACE								
NE CORNER 99TH & WADSWORTH								
SAFEWAY	312,325	1,377	313,702	332,463	1,583	334,046	-13	-6
WILLOW RUN								
128TH & ZUNI								
SAFEWAY	239,775	11,536	251,311	258,088	8,276	266,364	39	-6
VILLAGE AT PARK CENTRE								
NW CORNER 120TH & HURON								
CB & POTTS								
NORTHVIEW	213,154	5,557	218,711	243,222	3,566	246,788	56	-11
S SIDE 92ND YATES-SHER								
MISSION COMMONS								
W SIDE WADSWORTH 88-90TH								
BIG 5 SPORTS	197,780	1,234	199,014	199,630	1,182	200,812	4	-1
ELWAY/DOUGLAS CORRIDOR								
NE CORNER 104TH & FED								
ELWAY MOTORS	167,480	5,214	172,694	169,005	4,169	173,174	25	0
BOULEVARD SHOPS								
94TH & WADSWORTH CORRIDOR	159,002	2,059	161,061	82,478	5,032	87,510	93	-59
AMERICAN FURNITURE WAREHOUSE								
STANDLEY PLAZA	150,614	6,079	156,693	150,653	4,233	154,886	44	1
SW CORNER 88TH & WADS								
WALGREENS	130,297	1,153	131,450	180,889	2,838	183,727	-59	-28
HIDDEN LAKE								
NE CORNER 72 & SHERIDAN								
SUMMIT SQUARE	125,574	585	126,159	121,728	1,000	122,729	3	-42
NE CORNER 84TH & FED								
SAFEWAY								
	17,800,411	282,651	18,083,061	16,329,137	257,637	16,586,774	10	9



Agenda Item 8 B

WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Quarterly Insurance Report: April - June 2007

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Accept the 2nd Quarter 2007 Insurance Report.

Summary Statement

- The attached report provides detailed information on each claim including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office to make sure that the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Management Officer, acting as the City Manager's designee, has the authority to settle claims of less than \$30,000. However, under our contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjuster and settlement of claims proceed with the concurrence of both CIRSA and the Risk Management Officer. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 2nd quarter of 2007 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee Representatives and Department Heads. Follow up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the 2nd quarter of 2007, Staff has noted the following summary information:

- Seven of the 12 claims reported in the 2nd quarter of 2007 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

Department	2 nd Qtr 2007			YTD
	Total Claims	Open	Closed	Total
Police	3	3	0	9
PR&L	2	1	1	7
PWU - Streets	2	0	2	13
PWU - Utilities	2	0	2	5
N/A	1	1	0	1
GS – BO&M	1	0	1	1
CD	1	0	1	1
TOTAL	12	5	7	37

The Risk Management program addresses Council’s Strategic Plan goals of Financially Sustainable City Government and Safe and Secure Community by working to mitigate the cost of claims to the City and maintaining a loss control program to keep our city streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**Quarterly Insurance Report
April - June 2007**

Claim Number	Loss Date	Dept	Claimant	Address	Claim Description	Payment	Status	Notes
2007-198	4/19/2007	PWU - Util	Michele Harrelson	10942 W 106th Pl., Westminster, CO 80021	Claimant alleges she suffered injuries and damages when she drove her vehicle through a work zone she claims was not properly posted and hit a large hole in the street	\$19,869.12	Closed	
2007-203	4/24/2007	GS - BOM	Conrad Sparks	12493 Home Farm Ct., Westminster, CO	The gate to the BO&M offices was not secured and blew into the claimant's vehicle.	\$1,029.14	Closed	
2007-204	4/24/2007	CD - Engineering	James & Susan Ferraro	8385 W 108th Ave., Westminster, CO 80021	Claimants allege basement flooding due to overflowing drainage ditches in their neighborhood.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2007-210	4/27/2007	PD	Bret & Rachel Tredway	4081 W 105th Way, Westminster, CO 80031	Police officer driving his City issued motorcycle rear-ended claimants' vehicle being driven by their daughter.	\$1,269.37	Closed	
2007-218	5/2/2007	PD	Kelly Shoemate	10295 Quail St., Westminster, CO 80021	Police officer driving an undercover car was involved in a chase of a suspect and collided in an intersection with an unrelated vehicle being driven by the claimant's brother-in-law	\$0.00	Open	CIRSA Investigating
2007-224	5/2/2007	PWU - Util	Clint & Diane Nordstrom	10916 W 102nd Ct., Westminster, CO 80021	Claimants allege water damage to their home's crawl space and landscaping due to problems in the city water mains.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of leaks in the city mains.
2007-227	5/7/2007	PRL	Bev Jones	6645 W 114th Ave., Westminster, CO 80031	Claimant alleges damage to a retaining wall on her property due to water overflow from a greenbelt area behind her house.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2007-237	5/25/2007	PRL	Edna Pelzmann	2297 W 118th Ave., Denver, CO 80234	A City Parks employee driving a City vehicle backed into the claimant's parked vehicle	\$943.48	Open	Awaiting final estimates
2007-280	6/7/2007	PD	Shane Burden	Colorado Dept. of Corrections #62763, PO Box 1000, Crowley, CO 81034	Claimant alleges he was assaulted at the Adams County Detention Center and was forced to share a cell with an undercover Westminster police officer.	\$0.00	Open	CIRSA Investigating
CLAIMS SUBMITTED IN 2nd QUARTER WITH OCCURRENCE DATES PRIOR TO 2nd QUARTER 2007:								
2007-216	1/25/2007	PWU - Streets	David Weber	9270 Upham Way, Westminster, CO 80031	Claimant alleges he was injured when he tripped in a hole in the street while walking	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Claimant was referred to Xcel Energy and their contractor who had pulled a work permit for the area.

Claim Number	Loss Date	Dept	Claimant	Address	Claim Description	Payment	Status	Notes
2007-228	2/1/2007	PWU - Streets	Brittany Amos	8013 W. 78th Cr., Arvada, CO 80005	Claimant alleges she suffered injuries and damages when her vehicle was struck by another vehicle due to the icy and snowy conditions of the road.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
					GRAND TOTAL	\$23,111.11		



Agenda Item 8 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Security System Installation Contract for the Former Westminster Police Department Building

Prepared By: Carl F. Pickett, Purchasing Officer

Recommended City Council Action

Authorize the City Manager to execute a contract for the installation of a security system in the former Police Department building to National Network Inc. for \$66,174.18 and authorize a contingency amount of \$6,174 to cover the potential for unexpected costs during this installation project.

Summary Statement

- City Council has approved a lease agreement with the State of Colorado Department of Corrections (CDOC) for the former Westminster Police Department Building.
- On July 9, 2007, City Council approved a contract for the demolition and tenant finish of the former Police Department Building.
- This security system installation is separate from that contract. The funding for this contract is coming from CDOC, and will not affect the lease or the lease rate.
- The contractor, National Network Inc., has a competitive bid award with the State of Colorado. That pricing is being offered to the City.

Expenditure required: \$72,348.18

Source of Funds: Cash Funding from Colorado Department of Corrections

Policy Issue

Should City Council approve a State of Colorado contract with National Network Inc. for the purpose of installing a security system in the former Westminster Police Department facility?

Alternative

Direct Staff to open the project for bids. Staff is not recommending this action based on the fact that the State of Colorado has already bid for this service for all State agencies.

Background Information

For the past two years, City Staff has been negotiating with the CDOC and CDOT on a lease agreement between the three entities that will allow for the CDOC to take occupancy of the former Westminster Police Department facility.

In April 2007, the CDOC was notified by their current landlord that their existing lease for office space would not be renewed when it expired on May 30, 2007. The CDOC immediately contacted City Staff requesting assistance with expediting the lease negotiations to try and accomplish an occupancy date of July 1, 2007 of the former Police Department facility.

The expedited process was needed to avoid a double move for the CDOC and to keep approximately 35 CDOC staff working in the Westminster area. Even with expedited orders on materials, the lead time required has caused the projected occupancy date to be moved back from July 1 to October 1, as specified in the recently signed lease agreement between the City and CDOC.

To date, the CDOC has requested and been invoiced for over \$300,000 that will be applied to the overall lease buy-down, initial cost for architectural services, total payment of leasing agent fees, the demolition costs associated with the work completed to date and the security system installation. The contract for installation of the security system will not affect the lease or lease rate.

The security system will consist of an Intrusion Detection System and a Video Surveillance System. The installation needs to be coordinated with the General Contractor, AMA, and needs to take place now so that the installation can occur before the walls and ceilings are rebuilt at the former PD Building. With City Council's approval this contract, the former Police Department facility contractor should be able to stay on target with an occupancy date by CDOC of October 1, 2007.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Reclaimed/Raw Water Interconnect Engineering Contract

Prepared By: Dan Strietelmeier, P.E., Senior Engineer

Recommended City Council Action

Based on the report and recommendation of the City Manager, City Council finds the public interest will best be served by authorizing the City Manager to execute a contract in the amount of \$454,501 with Stantec Consulting Inc. as the sole source for engineering design and construction management services for the Reclaimed/Raw Water Interconnect Project, and authorize a contingency in the amount of \$22,725 for a total design and construction management budget of \$477,226.

Summary Statement

- In March 2007, proposals were received from two engineering firms for Westminster's Raw Water Transmission System Evaluation and Reclaimed/Raw Water Interconnect Alternatives Analysis and Design. Four other firms stated they could not commit adequate resources to complete this project.
- On March 26, 2007 City Council authorized execution of a contract with Stantec Consulting Inc. (Stantec) for the evaluation of Westminster's Raw Water Transmission System and Reclaimed/Raw Water Interconnect Alignment Alternatives Analysis.
- Although a scope of work for design was included in the original proposal, Stantec's March 26th contract did not include a fee for design services as a wide range of alternatives were possible for the Reclaimed/Raw Water Interconnect alignment.
- Stantec has now completed the Raw Water Transmission Evaluation and the alternatives analysis, making a recommendation for a Reclaimed/Raw Water Interconnect alignment.
- Staff has negotiated a scope of work and fee with Stantec for engineering design and construction management services for the recommended alternative, which consists of constructing 2,500 feet of pipeline between the Northwest Water Treatment Facility (see attached map) and the Reclaimed system pipeline at 108th Avenue, constructing a five million gallons per day pump station at the Northwest Water Treatment Facility and connecting new customers to the Reclaimed system in the area. The new pump station will pump raw water from available capacity in the existing 36 inch pipeline that supplies Northwest Water Treatment Facility from Standley Lake.
- The authorized Utility Fund Capital Improvement Project budget for the Reclaimed/Raw Water interconnect is \$7,200,000, (\$1,000,000 in 2007), which assumed construction of over two miles (12,750 feet) of new interconnect pipeline due to uncertainties regarding available capacity in Standley Lake to Northwest pipeline. Stantec's revised estimate has construction costs for the pump station and shorter pipeline segment at approximately \$3 million, a savings of over \$4 million. Stantec's fee is approximately 15% of the total estimated construction cost, which is considered reasonable based on the scope of work.
- The design phase should be completed in the 4th quarter of 2007 and completion of construction is anticipated for the 2nd quarter of 2008.

Expenditure Required: \$477,226

Source of Funds Utility Fund Capital Improvement Program – Reclaimed/Raw Water Interconnect Project

Policy Issue

Should the City award a sole source contract to Stantec for engineering design and construction management services for the Reclaimed/Raw Water Interconnect design and construction management?

Alternative

As an alternative to awarding the contract to Stantec, the City could choose to solicit proposals for project design from several engineering firms. However, if another firm was selected they would not be familiar with the work that Stantec has completed and only one other firm proposed on the original request for proposals.

The City could choose not to approve the contract, place the project on hold or instruct Stantec to propose a scope and fee for a different Reclaimed/Raw Water Interconnect alternative. Staff believes that Stantec provided the most qualified technical proposal and proposed a reasonable design fee. Therefore, neither of these alternatives is recommended.

Background Information

The Reclaimed Water Master Plan completed in 2006 recommended supplementing the Reclaimed Water system supply of Big Dry Creek Wastewater Treatment Facility effluent, with raw water for peak demand shaving from the Standley Lake raw water pipelines. Stantec performed an evaluation of the Standley Lake raw water pipelines that included potholing for visual inspection of pipe material and an evaluation of the corrosion protection capability. Westminster's raw water transmission system includes two parallel pipelines between Standley Lake and the Semper Water Treatment Facility and a pipeline between Standley Lake and the Northwest Water Treatment Facility. An evaluation of the raw water transmission system was also recommended by URS Corporation in the recently completed Infrastructure Master Plan. In addition to evaluating the pipeline system's condition, Stantec also coordinated a flow test of the system requiring the water treatment facilities to run at full capacity for a short period of time in order to determine the capacity of the raw water transmission system under a full lake level from Standley Lake. As a result of the flow test, Stantec determined that capacity is available in the 36 inch Northwest Water Treatment Facility pipeline for both the Reclaimed and potable supply needed to meet build out demands.

Stantec's evaluation concluded that the pipelines are all in good condition and in no need of immediate repair or replacement. Using the results from the evaluation and capacity determination, Stantec together with Public Works and Utilities Staff developed alternatives for interconnecting the raw water system to the Reclaimed Water system. In a series of workshops, five alternatives were analyzed in a decision support based process. During the process, the alternatives were given a benefit/cost score using criteria such as constructability, reliability and ease of operation. The recommended alternative of using existing Northwest pipeline capacity, building a five million gallons per day pump station at Northwest and constructing the interconnect pipeline to the Reclaimed system in 108th Ave (see map) scored well above all other alternatives, and was the lowest cost alternative.

In January of 2007, Staff sent a Request for Proposals (RFP) to six firms that qualified for the 2007 Reclaimed/Raw Water Interconnect project, and received proposals from two of the firms. The short list of engineering firms qualified for this type of work was developed based on the review of 63 Engineering firms who submitted Statements of Qualifications (SOQ's) to the City for Utility Fund Capital Improvement Projects. Staff evaluated the two technical proposals that were submitted and compared the firms based on their technical approach to the project, experience on similar projects, proposed cost for the evaluation phase and administrative ability to complete the project within the City's requirements. Based on these evaluations, interviews, and references, Staff determined that Stantec provided the most comprehensive and responsive proposal that addressed all of the project requirements.

Stantec's original proposal included their fee for the evaluation phase and standard billing rates for time and materials, which were found to be more competitive than the rates and fee in the other firm's proposal. It was anticipated at that time that the same billing rates would be used for the design phase; however, the time or hourly breakdown for the design phase tasks would have been difficult for the consultant to submit at that stage of the project without a more accurate understanding of the construction route, complexity and estimated duration of construction. The proposals were evaluated based on the consultant's project approach, project team and experience with pipeline design and construction. Stantec performed well during the evaluation phase and has now submitted a reasonable fee proposal using the same billing rates for the design phase of this project. The construction management phase covers a seven month period, which is a conservative estimate of the construction time.

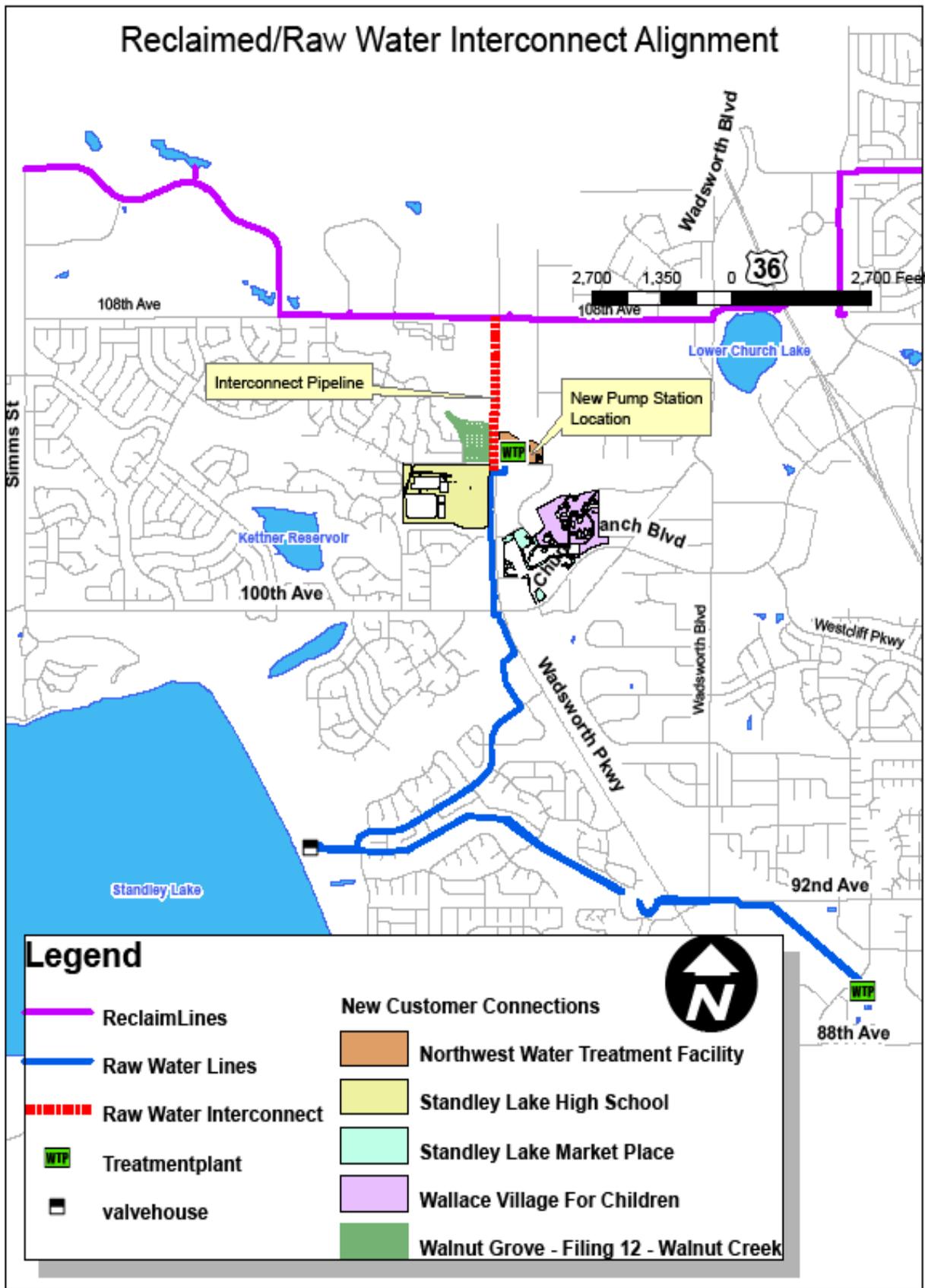
Staff recommends that City Council authorize the City Manager to sign the contract with Stantec for engineering and construction management services for the Raw/Reclaimed Interconnect because it is a natural extension of the work they have just completed for the City. The new reclaimed customer connections that will be part of this project are also included in the 2007/2008 Utility Fund Capital Improvement Budget. Staff anticipates that a contract for the construction phase will be presented to City Council in the 4th quarter of 2007. The Raw/Reclaimed Interconnect Project will assist the City in meeting the goal of a "Financially Sustainable City Government" by promoting good stewardship with the use of reclaimed water and also will help maintain a "Beautiful City" using this water for irrigation of Parks, Open Spaces and common areas. This project will be needed for full development of the Reclaimed water system providing the City with additional water supply yield by freeing up demand from the potable water system.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Reclaimed/Raw Water Interconnect Alignment





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Open-Cut Waterline and Sanitary Sewer Construction Contract

Prepared By: Stephanie Bleiker, Senior Engineer, Capital Projects & Budget Management

Recommended City Council Action

Authorize the City Manager to execute a contract with Tierdael Construction Company in the amount of \$1,401,506 for construction of a sanitary sewer and waterlines and authorize a ten percent construction contingency in the amount of \$140,151 for a total project budget of \$1,541,657.

Summary Statement

- Most of the water and sewer lines scheduled for replacement are 40-50 years old, and serve neighborhoods where frequent breaks and capacity problems have occurred in recent years.
- Many of the waterlines are undersized for current fire flow requirements and existing fire hydrant spacing falls short of current standards for residential property.
- Based on break history and waterline size and flow capacity, Staff has identified approximately 9,200 feet of waterlines that should be replaced.
- Every three years, the Utilities Operations Division completes an inspection program of all of the City's sewer collection system, and identifies pipelines that must be repaired or replaced. As a result of the current inspections, Staff has identified approximately 3,600 feet of sewer lines that must be replaced in 2007 due to physical deficiencies.
- In addition to old pipe being replaced in the vicinity of the Lake Park, Hidden Lake and Plaza Park Subdivisions, new waterline is being constructed to improve the networking of the existing water distribution system.
- The City advertised the project for bids on June 13, 2007 and received three qualified bids on July 3, 2007. Tierdael Construction Company presented the lowest responsible bid in the amount of \$1,401,506.
- Construction is tentatively scheduled to begin August 1, 2007 and be completed by November 29, 2007.
- The requested funding is within the funding authorized by City Council in the 2007 Utility Fund Budget for water and sewer line replacement.

Expenditure Required: \$1,541,657.

Source of Funds: Utility Fund Capital Improvement Program
- Open Cut Water Line Replacements
- PACP Sewer Line Open Cut Replacement

Policy Issue

Should the City proceed with the replacement of these aged water and sanitary sewer lines?

Alternatives

1. The City could choose to replace this sanitary sewer and waterline at a later date; however, existing pipe capacity limitations and pipe conditions will likely only become worse, interfering with water and sewer service in the future.
2. The City could award the contract to another bidder, however this would only unnecessarily increase the project costs since the low bidder is responsible and qualified to perform this work.
3. The City could choose to re-bid the project as currently designed; however, the cost proposal received is below the Engineer’s estimate.

Staff does not recommend any of these alternatives.

Background Information

Staff has identified portions of the existing water distribution system where frequent waterline breaks have occurred. The neighborhoods scheduled for waterline replacement experience interrupted water service caused by the waterline breaks. Many of the waterline cast-iron pipes are particularly vulnerable to breaking as they age, due to the brittle nature of the pipe material. When these pipes were installed, approximately 40-50 years ago, the fire flow requirements of that period justified a 6-inch diameter pipe. However, as fire flow requirements have increased in the past several years, 6-inch diameter pipe no longer has sufficient capacity to deliver the flows that current standards call for. The new waterline pipe material will be 8-inch diameter polyvinylchloride (PVC). Along with the pipe, new fire hydrants will be installed. Present day fire hydrant spacing requirements for residential properties will provide for an overall increase in the number of fire hydrants throughout these subdivisions.

Staff also identified a portion of the existing sanitary sewer in the general vicinity of the waterline replacements project in Shaw Heights where the sewer collection system requires replacement. The Shaw Heights portion of this project is identified as Section 1 in the attachment portion of the agenda memo. While many sanitary sewer improvements can be made using trenchless technologies, the sewer conditions in the Shaw Heights area do not lend themselves to trenchless technology methods. The new sanitary sewer will be increased in its capacity to improve the overall performance of the collection system. The revised alignment of the sanitary sewer, moving it away from the private property and diminishing its proximity to the school building footprint and playground, will decrease the potential of future complications between the Utilities Divisions, the school and residents.

This project includes the installation of approximately 3,600 feet of 8-inch, 10-inch and 12-inch sanitary sewer PVC pipe. It includes approximately 9,200 feet of 8-inch waterline PVC pipe, 22 new fire hydrants, ten fire hydrant abandonments and numerous valves. The networking of the water distribution system will be enhanced in the vicinity of 69th Avenue, 70th Avenue and 70th Place. These distribution system network improvements will impact the Lake Park Addition, Hidden Lake, and Plaza Park Subdivisions near a number of apartment complexes and older residential properties. Improvements to the distribution system network can generally be expected to improve fire protection, water quality and fire flow capacity. The portion of this project that lies in the Lake Park Addition, Hidden Lake, and Plaza Park Subdivisions is identified as Section 2 in the attachment portion of the agenda memo.

The project was advertised for bids on June 13th, 2007 and the City received three qualified bids on May 1, 2007. The following is a summary of the bids received:

<u>Contractor Name</u>	<u>Base Bid Amount</u>
Tierdael Construction Company	\$1,401,505.64
Brannan Construction Company	\$ 1,578,448.35
Northern Colorado Constructors	\$ 1,765,072.03

After thoroughly reviewing all three bids and checking references, Staff is recommending award to Tierdael Construction Company who has successfully completed water line installation projects for the City. Following award of the contract, construction is tentatively scheduled to start on August 1, 2007 and be completed by November 29, 2007.

The approximate breakdown of funding for the project is as follows:

Item	Amount
Design Services	\$253,038
Design/Construction Management Contingency	\$25,034
Construction	\$1,401,506
Construction Contingency (10%)	\$140,151
Street Cut Impact Fees	\$24,000
Geotechnical Services	\$22,000
Easements	\$20,000
Total	\$1,885,729
Current Authorized Budget	\$2,000,000
Budget Surplus/(Shortfall)	\$114,271

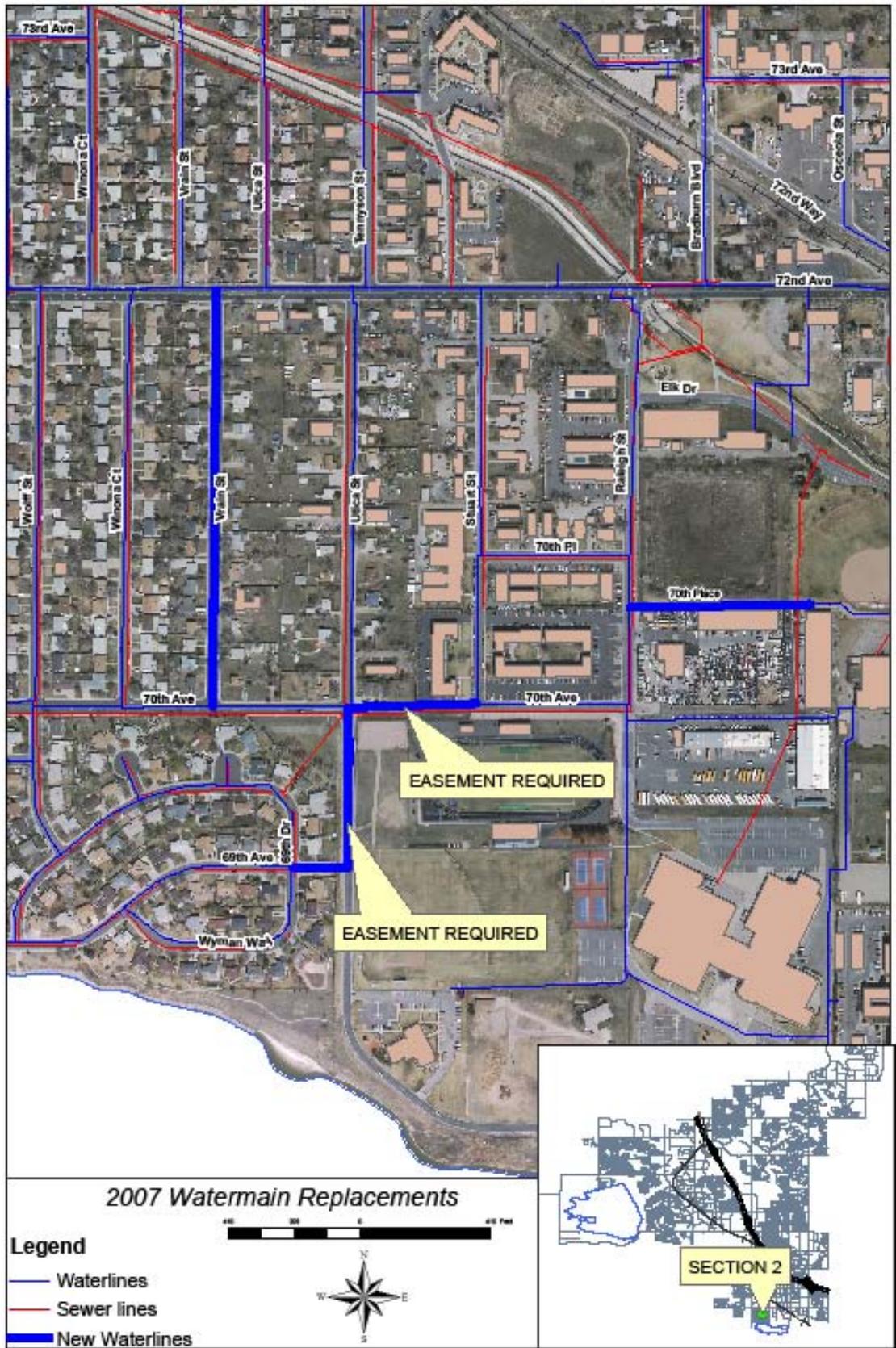
This project achieves City Council’s Strategic Plan Goals of, “Financially Sustainable City Government, Safe and Secure Community and Vibrant Neighborhoods and Commercial Areas” by contributing to the following objectives:

- Well-maintained City infrastructure and facilities
- Citizens are safe anywhere in the City
- Maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:
Section 1: Waterline and Sanitary Sewer Replacements
Section 2: Waterline Replacements and Installation





WESTMINSTER
COLORADO

Agenda Item 8 F

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Intergraph Corporation Computer Aided Dispatch, Records Management and Mobile Application Systems Software Upgrade

Prepared By: Darrin Bacca, Police Records Supervisor
Rich Welz, Fire Department Technical Services Coordinator

Recommended City Council Action

Authorize the City Manager to sign an agreement with Intergraph Corporation for a Computer Aided Dispatch (CAD), Records Management System (RMS), and Mobile Application Systems software upgrade in the amount of \$83,600.

Summary Statement

- The Police and Fire Departments, with the assistance of the Information Technology Department, will implement a major software upgrade to the existing Computer Aided Dispatch (CAD), Records Management (RMS), and Mobile Application Systems in February 2008. The Scope of Work document outlining the upgrades, services, and training that will be provided to the City has been reviewed and approved by staff in the Police Department, Fire Department, Information Technology Department, and City Attorney's Office. A discount of \$23,500 was negotiated with Intergraph Corporation if the upgrade was scheduled by March 15, 2008.
- This upgrade is needed for significant user enhancements and to resolve major program issues. The Intergraph Corporation has strongly recommended the software upgrade for Westminster and Staff recommends that the upgrade be accomplished in February 2008, in lieu of waiting until later in the year because of limitations and issues with the current applications. The finalization of the Fire Department's field reporting system is pending this upgrade because of the current software limitations.
- Funds were budgeted and approved by City Council for this expense in the 2008 Public Safety Major Software Upgrades CIP; however, staff is requesting moving up the timing of the project and funding is available in the CAD/RMS CIP for this expense.

Expenditure Required: \$83,600

Source of Funds: General Capital Improvement Fund – CAD/RMS Project and Major Software Upgrades (2008)

Policy Issues

Should the City proceed with upgrade work by Intergraph Corporation upgrade that will provide enhanced software, services and training to the Police and Fire Departments?

Alternatives

Do not approve the Intergraph software upgrade to the new version in 2008 and the Police and Fire Departments will continue with the software versions currently being used. This is not recommended as the upgrades will substantially improve the operations of the CAD/RMS system.

Background Information

The Intergraph Corporation system was purchased by the City in the year 2000. The system includes a Computer Aided Dispatch (CAD), Police RMS (records management system), Fire RMS (records management system), Mobile Application and various system interfaces to include E911 and Automatic Vehicle Locating. The system was designed to integrate all applications and components together to allow for a seamless transmission of data. Communications staff input "service events" into a database and in turn field units are able to receive those service events through their mobile data computers and consequently submit on line offense reports into the Police RMS. The Police RMS is a repository for police crime reports, arrest data, impounded evidence and stolen property. It allows for the department to generate monthly and annual crime statistics that are required to be reported to the Federal Bureau of Investigations. The Fire RMS component is used for tracking building inspections, EMS reporting and National Fire Incident Reporting (NFIRS).

Version upgrades are significant software modifications or additions to include security fixes and database application updates. During an upgrade, all components of the system are updated with the most recent version to ensure that all applications will continue to operate with the new functionality and without error. Regular upgrades are based on the recommendation from Intergraph to ensure that they are compliant with any new State or Federal guidelines, that new functionality is released and that new changes are made to the applications to prevent system errors. These upgrades also fall in line with the Information Technology Department's policy that departments remain current with software applications in order to avoid any system problems.

An example of some of the problems or limitations that will be corrected with the upgrade is the emphasized improvement in the property and evidence features and inventory control. Other important updates include the ability to redact information in reports which may be required by law or for investigative purposes, and enhancements in investigative tools. The new upgrade will allow the Police Department to track a number of officer and dispatch activities, and provide improved statistical and performance measurement reports to staff.

The finalization of the Fire Department's field reporting system is pending the upgrade due to the limitations with the current software. Because the Fire Department does not have a working electronic field reporting system yet, they are forced to do double reporting. Once the upgrade is in place, the Fire Department will be able to complete their field reporting system project, which has been pending for several years.

The following upgrades, services, and training will be provided by Intergraph during the upgrade:

- CAD/I-Leads Current System Assessment
- Upgrade of the CAD System.
- Upgrade of the RMS System
- Upgrade the Fire RMS CADLink application
- Mobile applications for Fire and Police

- CAD interface upgrade to include mobile applications, E911 interface and other interfaces
- Project Management Services
- User training

This upgrade project will begin in 2007 and be completed in 2008.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Second Reading of Councillor's Bill No. 40 re Public Hearing Notice Procedures for Land Development Approvals

Prepared By: Terri Hamilton, Planner III

Recommended City Council Action

Pass Councillor's Bill 40 on second reading amending the Westminster Municipal Code regarding public hearing notice procedures for land development approvals.

Summary Statement

- Councillor's Bill No. 40 was approved on first reading by City Council on July 9, 2007.
- The Westminster Municipal Code (WMC) requires mailed public notice for land development approvals to occur by certified first-class mail. This requires the mailing's recipient to be present when the notice is delivered, or the mailing's recipient has to pick up the notice at the post office if they are not home at the time of mail delivery. Staff has received complaints from residents about the inconvenience that sending these notices by certified mail creates for them.
- The WMC requires the land development applicant to use a title company to prepare the list of property owners to be mailed notification of the public hearing. This requirement has become obsolete as fewer title companies provide this service and the applicant can easily obtain this information from the County Assessor's Office and prepare the required documentation themselves.
- Staff is recommending that the WMC be modified to eliminate the existing requirement for public notices to be mailed by certified first class mail (notices would be sent via first class mail) and to eliminate the requirement that a title company prepare the list of property owners who receive notice. This is in response to complaints from Westminster residents and applicants requesting land development approvals that require public hearings and notice.

Expenditure Required: \$ 0
Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER
MUNICIPAL CODE CONCERNING PUBLIC HEARINGS FOR LAND DEVELOPMENT
APPROVALS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-5-13, subsection (A), W.M.C., is hereby AMENDED BY REVISING CERTAIN REQUIREMENTS CONTAINED THEREIN to read as follows:

11-5-13: PUBLIC HEARINGS FOR LAND DEVELOPMENT APPROVALS: (2534)

(A) The following public hearing procedure shall apply to any PDP, amended PDP, ODP, or amended ODP required in this Chapter to be reviewed and approved by the Planning Commission or City Council.

1. A public hearing before the Planning Commission shall be scheduled by the City.
2. Notice of public hearings scheduled before Planning Commission shall be published and posted at least ten days prior to such hearing.
3. Notice of public hearings scheduled before City Council shall be published and posted at least four days prior to such hearing.
4. Notice of the public hearing shall be published by the City by one publication in the official newspaper of the City.
5. The Notice of the public hearing shall also be posted on the property by the City using at least one sign with a minimum area of 30 square inches with lettering not less than 1-1/4 inches in height at an appropriate location which is reasonably visible to vehicular and pedestrian traffic passing adjacent to the site.
6. Mailed notice of the public hearing shall be given by the ~~City~~ APPLICANT by sending such notice by first-class mail to all owners within the area covered by the PDP, ODP, or PDP or ODP amendment, and any owners and any homeowner's associations registered with the City within 300' of the subject property, provided, however, the City may extend this distance beyond 300' based on the location and configuration of adjacent properties, neighborhoods and business areas.
7. It shall be the responsibility of the applicant to:
 - a. Prepare the list of property owners who are required to receive notice. ~~Such list shall be provided in the form of an ownership report issued by a title company acceptable to the City~~ CONTAIN THE NAME AND MAILING ADDRESS OF PROPERTY OWNERS FROM THE COUNTY'S RECORDS, KEYED TO THE APPROPRIATE LOT AND BLOCK NUMBER ON THE COUNTY ASSESSOR'S MAPS.
 - b. Prepare a map USING COUNTY ASSESSOR'S MAPS identifying the SUBJECT SITE, AND THE location and LOT AND BLOCK NUMER ~~addresses~~ of the ~~property owners~~ PROPERTIES TO BE NOTIFIED.
 - c. DELIVER TO THE PLANNING MANAGER THE ~~The~~ items listed above IN A FORMAT ACCEPTABLE to the Planning Manager at least fifteen days prior to the date of hearing.
 - d. ~~At least ten (10) days prior to the date of the hearing, the applicant shall mail, Mail, by eertified~~ first class mail, the individual notices to the listed property owners, AT LEAST TEN (10) DAYS PRIOR TO THE DATE OF THE HEARING. ALSO, THE ~~The~~ applicant shall ~~also~~ provide the Planning Manager prior to the hearing, a certification that the required notices were mailed and the date of such mailing(s).

8. The City shall prepare the form of the notice to be issued. At the public hearing, the Planning Manager shall verify that the required notices were issued. Any person with actual notice of the public hearing shall have no standing to object to the commencement or conduct of the public hearing, even if such person failed to receive one or more of the forms of notice prescribed above.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of July, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of July, 2007.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Councillor’s Bill No. 41 re Exclusion of Property from Metro Wastewater Reclamation District

Prepared By: Michael C. Wong, Senior Engineer
Abel Moreno, Capital Projects and Budget Manager

Recommended City Council Action

- 1) Hold a public hearing on the exclusion of property in the vicinity of the Sunset Ridge West subdivision from being served by the Metro Wastewater Reclamation District pursuant to CRS 32-4-508 (1) (d).
- 2) Adopt Councillor’s Bill No. 41 as an emergency ordinance, requesting the exclusion of property in the vicinity of Sunset Ridge West subdivision from being served by Metro Wastewater Reclamation District.

Summary Statement

- City Council action is requested to pass an emergency ordinance to request the exclusion of the property in the vicinity of Sunset Ridge West subdivision from being served by Metro Wastewater Reclamation District (Metro) by diverting the flows at the 94th Avenue and Quitman Street Lift Station to the Big Dry Creek Wastewater Treatment Facility (BDCWWTF).
- The existing service agreement between the City of Westminster and Metro stipulates that request for partial exclusion of property from being served by Metro requires an ordinance passed by City Council prior to Metro evaluating the City’s request.
- The existing 94th Avenue and Quitman Street Lift Station can be replaced by a new gravity sanitary sewer, which will divert sewer flows (currently going to Metro) to BDCWWTF. This change will eliminate all potential failure related to electrical and mechanical equipment malfunctioning.
- The BDCWWTF has adequate capacity to take on the additional 0.5 MGD flows from this facility.
- Other benefits as a result of the 94th Avenue and Quitman Street Lift Station Elimination project include eliminating the operations and maintenance costs of the existing lift station, reducing the annual treatment cost paid to Metro, and increasing the effluent at BDCWWTF for reclaimed water supply.
- Staff has previously informed City Council of the proposed elimination of the 94th Avenue and Quitman Street Lift Station through various updates including the April 16, 2007 City Council Study Session and through the 2007/2008 Capital Improvement Projects budget adoption.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should City Council pass the ordinance requesting exclusion of property from the Metro Wastewater Reclamation District?

Alternative

City Council could choose not to exclude this service area from Metro. This alternative is not recommended, since the 94th Avenue and Quitman Street Lift Station has experienced prior mechanical problems and eliminating the subject lift station is in the City's best interest.

Background Information

The 94th Avenue and Quitman Street Lift Station was built in the 1970's and is located in a fully developed residential neighborhood. The existing wet well and sewer pipeline does not have adequate storage capacity for wastewater in the event of equipment malfunction or major power outage. Sewage backups from this facility have occurred in residential basements in the past. To continue current operations and maintenance of the lift station by investing additional mechanical equipment that is subject to failure is not in the best interest of the City. Eliminating this lift station will also benefit the City by not having to repair aging mechanical equipment, energy charges, and Metro service charges.

In accordance with Article III, Section 302 and 303 of the Service Contract between the City of Westminster and Metro, the City can request exclusion of property subject to approval by Metro. The formal request requires passing an ordinance by the City Council and submitting it to Metro according to due process as stated in the Service Contract. The request for service area exclusion has to be reviewed by four standing committees and approved by the full Board of Directors that meets only once a month. Staff anticipates that Metro will consider the City's request at its September 2007 Board Meeting.

The engineering design of the new gravity sanitary sewer line is currently in progress and is being performed by URS Corporation (URS). City Council approved a design and construction management contract with URS at the March 26, 2007 City Council meeting. Staff anticipates construction to commence in November 2007 and to be completed by March 2008.

At the April 16, 2007 Study Session, Staff informed City Council of the desire to eliminate this lift station due to the reasons mentioned above. Staff has not previously requested this exclusion of partial service from Metro in order to allow URS adequate time to perform hydraulic analysis to ensure that the system could properly flow by gravity.

Staff is requesting that City Council pass this Councillor's Bill as an emergency ordinance due to the amount of time Metro needs to approve the exclusion and the City's need to have the project under construction by November 1, 2007 due to other scheduling conflicts involving the Hyland Hills Golf Course.

In order to comply with CRS 32-4-508 (1) (d), which requires the City to advertise three times in a general circulation periodical serving the Metro District, Staff has advertised a Notice of Public Hearing in the Denver Post on June 28, June 5, and July 12, 2007.

City Staff has been in communication with Metro Staff to discuss Metro's procedure on excluding property. Over the course of several discussions, issues including revenue impacts and wastewater flows have been raised by Metro Staff that are still being discussed. City Staff is recommending that the City proceed with the emergency ordinance in anticipation of working through the issues with the Metro District. The City is the only connector out of approximately 58 that treats a portion of its own wastewater (60%). The estimated 500,000 gallons per day that this lift station transports to Metro is approximately 3/10 of 1 percent of Metro's estimated 160,000,000 million gallons per day flow.

This project supports City Council's strategic goal of Safe and Secure Community by providing a safe and healthy environment to the citizen, and the goal of Financially Sustainable City Government by improving the operations and maintenance of the City's infrastructure and facilities.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments



City of Westminster

94th & Quitman Lift Station Location Map



URS Corporation
8181 East Tufts Ave.
Denver, CO 80237

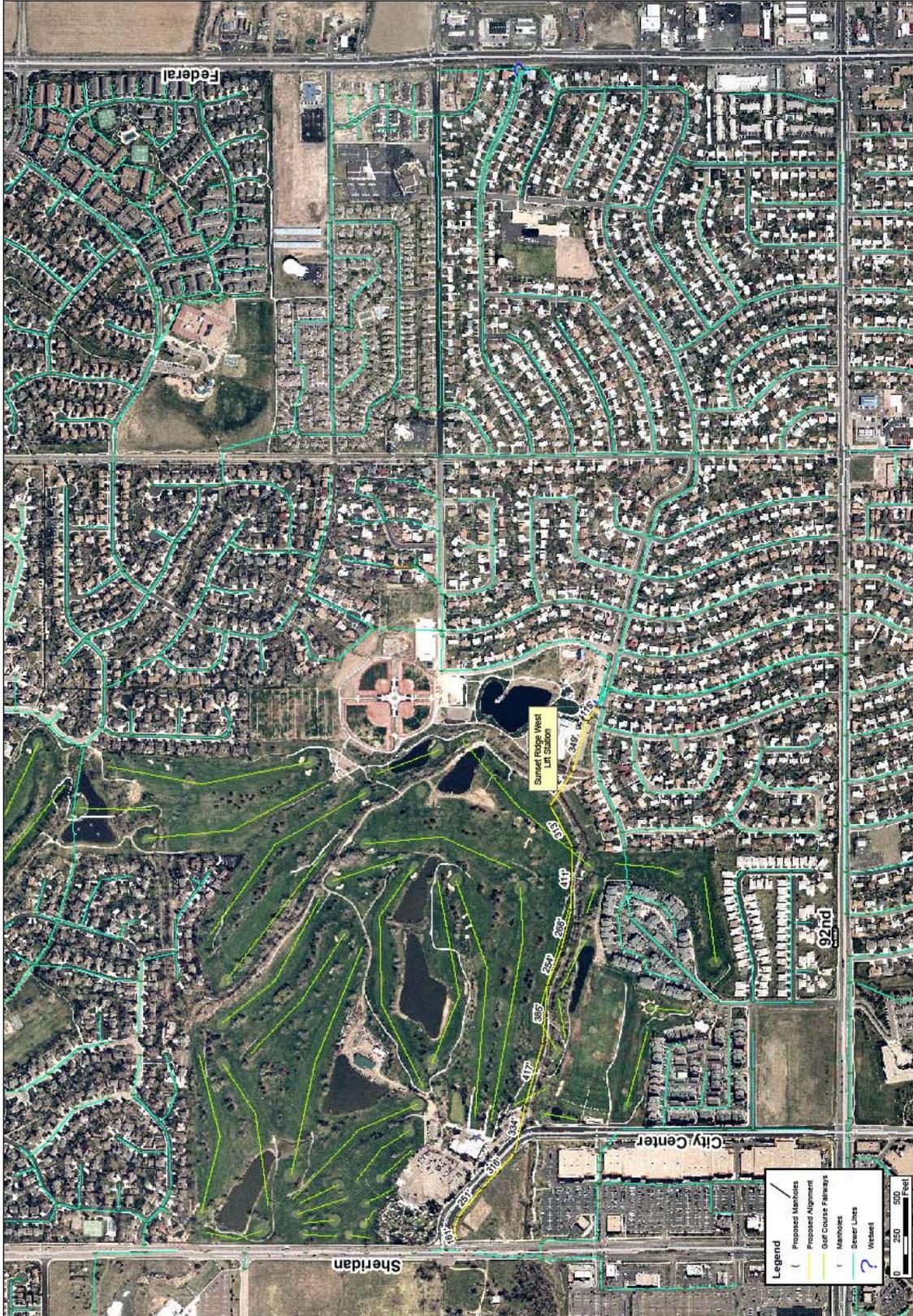


EXHIBIT A

BY AUTHORITY

ORDINANCE NO. **3369**

COUNCILLOR'S BILL NO. **41**

SERIES OF 2007

INTRODUCED BY COUNCILLORS
Major - Dittman

A BILL

FOR AN EMERGENCY ORDINANCE REQUESTING THE EXCLUSION OF THE SUNSET RIDGE WEST SUBDIVISION FROM THE METRO WASTEWATER RECLAMATION DISTRICT, AND DIRECTING CITY STAFF TO TAKE CERTAIN NECESSARY ACTIONS RELATED THERETO

WHEREAS, sanitary sewer service to the Sunset Ridge West Subdivision and other property adjacent thereto (the "Property") is currently provided by the Metro Wastewater Reclamation District ("District") pursuant to a certain Sewage Treatment and Disposal Agreement dated March 30, 1964, as amended; and

WHEREAS, the Property is generally bounded by 92nd Avenue on the south, 97th Avenue on the north, Federal Boulevard on the east, and Xavier Street on the west; and

WHEREAS, sewer flows from the Property have been delivered to the District by means of a sanitary sewer lift station located at approximately 94th Avenue and Quitman (the "Lift Station"); and

WHEREAS, the Lift Station was built in the 1970's and has experienced an increase in mechanical and storage capacity problems, resulting in an unacceptable risk of failure and resulting sewer backups within the Property; and

WHEREAS, City Council finds it is no longer feasible for the Property to be served by the District's facilities because it is no longer feasible, practical or safe to operate the Lift Station necessary to deliver sanitary sewer flows to the District; and

WHEREAS, City Council finds that the public health and safety concerns of the City in general, and the residents within the Property in particular, require the abandonment of the Lift Station and the replacement of the Lift Station with a gravity flow line to the City's Big Dry Creek Wastewater Treatment Plant; and

WHEREAS, C.R.S. § 32-4-515 provides that should the governing body of any municipality that is included within a metropolitan sewage disposal district determine by ordinance, adopted after a public hearing called and held as provided in C.R.S. § 32-4-508(1)(d), that any portion of the municipality cannot feasibly be served by the districts in that small district's facilities, such municipality may file with the district a certified copy of such ordinance and request that the portion designated by the municipality be excluded from the District; and

WHEREAS, the requisite public hearing required by C.R.S. § 32-4-515 has been duly noticed and held.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council of the City of Westminster hereby determines by this ordinance that the property described on Exhibit "A," attached hereto and incorporated herein by this reference, can no longer feasibly be served by the District because of the City's inability to deliver sewer flows from the Property to the District as a result of the failing Lift Station located at 94th Avenue and Quitman.

Section 2. Because of the relative elevations of the existing District plant and the Property, delivery of sewer flows from the Property may not be physically or feasibly delivered to the District without a Lift Station.

Section 3. The City Council of the City of Westminster hereby finds that it is not feasible or practical to replace the necessary Lift Station.

Section 4. The City Council of the City of Westminster hereby requests the Board of Directors of the District to determine by resolution that the Property described on Exhibit "A" cannot be feasibly served by the District's facilities and to order that the Property be excluded from the District.

Section 5. The City Clerk is hereby directed to provide a certified copy of this ordinance to the Metro Wastewater Reclamation District.

Section 6. The City Clerk is hereby further directed to (1) file a certified copy of the Resolution of the Board of Directors of the District approving the exclusion of the Property with the Director of the Division of Local Government and the Department of Local Affairs, together with a request that said Director, pursuant to C.R.S. § 32-4-515(3)(b), issue forthwith a Certificate of Exclusion describing the Property so excluded, and transmit to the City Clerk three certified copies of such Certificate of Exclusion and (2) upon receipt, to forthwith record a copy of such Certificate in the Office of the County Clerk and Recorder of Adams County and Jefferson County, and to deliver a copy of said Certificate of Exclusion to the County Assessors and County Treasurers of Adams and Jefferson Counties.

Section 7. An emergency is declared to exist because any unnecessary delay in obtaining the exclusion of the Property would result in delaying the commencement of construction of the sewer line improvements necessary to remedy the current health and safety issues presented by the failing Lift Station at 94th and Quitman. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on July 23, 2007, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 8. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 23rd day of July, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Councillor's Bill No. 42 re Modifications to Westminster Municipal Code Title XVI to Include Competitive Cable TV Franchise Application Process

Prepared By: David Puntteney, Information Technology Director

Recommended City Council Action

Pass Councillor's Bill 42 as an emergency ordinance amending the Westminster Municipal Code Title XVI concerning competitive cable franchise application process.

Summary Statement

In December, 2006 the Federal Communications Commission (FCC) adopted a rule establishing new requirements for local franchise authorities (LFAs) in considering applications for competitive cable television franchise agreements. Included in these rules are timeframes under which LFAs must grant or deny a competitive franchise application. These new rules were adopted as a result of findings by the FCC that LFAs were creating unreasonable barriers and preventing competition in the cable TV market. The City of Westminster needs to adopt an ordinance defining the competitive cable TV application process and requirements. Staff is recommending an ordinance to amend title XVI of the Westminster City Code to include a section for the competitive cable franchise process. Staff based the ordinance on the model competitive franchise application ordinance developed by the Greater Metropolitan Telecommunications Consortium.

City Council is requested to pass this as an emergency ordinance to address regulatory timelines established by the Federal Office of Management and Budget.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council concur with the recommendations for amendments to Title XVI of the Westminster Municipal Code to comply with FCC ruling regarding competitive cable TV franchise applications and to establish a fee of \$2,000 to cover the administrative cost associated with the review and approval of competitive cable TV franchise applications?

Does City Council wish to include requirements that applicants define how their future geographic area of cable service and deployment timetable will not result in service being denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides (redlining)?

Alternative

Do not approve the amendments. Staff does not recommend this option as amendments to the code are required to clearly establish a formal process for competitive cable TV franchise applications and to establish a means of collecting all information required to expedite review and to make a determination to grant or deny franchise applications.

Background Information

Federal law provides the regulatory framework regarding cable services. The Federal Cable Act allows local governments to require franchises of cable operators, and addresses a variety of matters that can be regulated in a cable franchise. These include customer service standards, categories of programming services offered, payment of franchise fees up to 5% of the cable operator's gross revenue, requirement of channel capacity and equipment for public, educational and government access, financial assurances, capabilities of the cable system and enforcement of technical standards, limited rate regulation, prohibition of exclusive franchises and other matters. Local franchising authorities negotiate franchise agreements with cable operators that address these and other topics.

Federal law requires that a cable operator be awarded a franchise renewal if it has the legal, technical, and financial capability to comply with a franchise that meets the future cable related needs of the community. The City has only one cable franchise agreement, and that agreement is with Comcast.

On December 20, 2006, the Federal Communications Commission (FCC) adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007, that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the "Competitive Franchise Application Rule" or "CFAR"). The CFAR outlines certain information that is required as part of the franchise application. In addition, the rulings provide that local franchising authorities may require additional information from an applicant for a competitive cable franchise. The application requirements and application review/determination in the ordinance being proposed by Staff are intended to comply with the new FCC rules.

The CFAR restricts local franchising authorities from denying entry into the market based on level playing field provisions and universal build-out requirements. However, the Communications Act "forbids access to cable service from being denied to any group of potential residential cable subscribers because of neighborhood income. The statute is thus clear that no provider of cable services may deploy services with the intent to redline and "that access to cable service [may not be] denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides." Therefore, staff recommends the franchise application include a requirement for vendors to describe how their future geographic cable services area and timetable will not result in service being denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides (redlining).

The City of Westminster is a member of the Greater Metropolitan Telecommunication Consortium. The Greater Metro Telecommunications Consortium (GMTC) is a board of local government representatives who work together on telecommunications issues. Originally formed in 1992 to facilitate franchise agreements with local cable television companies, members share information and resources pertaining to technologies, laws, ordinances, and policies that govern the impact and implementation of services, and business transactions involving telecommunication related industries. The GMTC has developed a model competitive franchise application ordinance for member agencies to adopt if needed to comply with the CFAR and to standardize the application process. Several Denver Metro Cities have adopted the GMTC model competitive cable TV franchise agreement as drafted by the GMTC.

City Council may have seen recent articles expressing concern on the part of one potential franchise applicant in providing information that they consider to be “sensitive competitive information.” Staff has investigated and determined that information such as build out plans and timetables are not subject to the open records act and therefore can be submitted as confidential information. Staff recommends inclusion of build out plans and timetables as defined in the GMTC model application ordinance in the Westminster ordinance.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3370**

COUNCILLOR'S BILL NO. **42**

SERIES OF 2007

INTRODUCED BY COUNCILLORS
Dittman - Kaiser

A BILL

FOR AN ORDINANCE REPEALING AND REENACTING CHAPTERS 1, 3, AND 4 OF TITLE XVI OF THE WESTMINSTER MUNICIPAL CODE, ADOPTING A COMPETITIVE CABLE FRANCHISE REVIEW AND EVALUATION PROCESS IN CONNECTION WITH ANY FRANCHISE APPLICATION SUBMITTED PURSUANT TO §76.41 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS AS A NEW CHAPTER 3 OF TITLE XVI, MAKING CONFORMING CHANGES TO TITLE XVI, AND DECLARING AN EMERGENCY

WHEREAS, On December 20, 2006, the Federal Communications Commission (“FCC”) adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007, that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the “Competitive Franchise Application Rule” or “CFAR”); and

WHEREAS, the CFAR provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR; and

WHEREAS, the City Council has determined that the best interests of the citizens of Westminster will be served by adoption and codification of a comprehensive evaluation process; and

WHEREAS, the re-ordering of certain Chapters, and minor updates and conforming changes to the language of Title XVI concerning Utilities and Franchises has become necessary.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 1 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 4 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 2. Chapter 3 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 1 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 3. A new Chapter 3 of Title XVI, W.M.C., entitled “Competitive Cable Franchise Application Process” is hereby adopted as follows:

CHAPTER 3

COMPETITIVE CABLE FRANCHISE APPLICATION PROCESS

16-3-1: LEGISLATIVE INTENT

16-3-2: INSTRUCTIONS AND DEFINITIONS

16-3-3: REQUISITE INFORMATION

16-3-4: LEGAL QUALIFICATIONS

16-3-5: FINANCIAL QUALIFICATIONS

16-3-6: TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS

16-3-7: AFFIDAVIT OF APPLICANT

16-3-8: OPEN RECORDS/CONFIDENTIALITY

16-3-9: APPLICATION FEE

16-3-10: REVIEW PROCESS

16-3-11: PUBLIC HEARING

16-3-12: REVIEW CRITERIA

16-3-13: NON-CFAR FRANCHISE APPLICATIONS

16-3-1: LEGISLATIVE INTENT: The City Council does hereby find, determine and declare as follows:

(A) The “Competitive Franchise Application Rule” (CFAR), adopted on December 20, 2006, by the Federal Communications Commission (FCC) provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR.

(B) In order to comprehensively evaluate whether or not to grant a competitive cable franchise, the City will require certain information from applicants in addition to the information required by the CFAR.

(C) To ensure compliance with the CFAR and provide notice to prospective applicants, the review process for applications for competitive cable franchises and the criteria upon which the final decision of the City will be based should be codified.

(D) The application requirements and the processes for application review and determination set forth in this Chapter are intended to comply with the new FCC rules.

16-3-2: INSTRUCTIONS AND DEFINITIONS: The following instructions shall apply to all applications, except those filed under Section 16-3-13:

(A) An applicant for a competitive cable franchise (“Applicant”) shall include the requisite information set forth below, in writing, in its franchise application, in addition to any information required by 47 Code of Federal Regulations §76.41 and applicable state and local laws and the application fee set by Section 16-3-9, herein.

(B) The City shall accept and review only those applications that include complete responses to every requirement of this Chapter. Submission of an application that does not include the requisite information set forth in Sections 16-3-3, 4, 5, 6, 7, and 9, as applicable shall not commence the time period for granting or denying the application set forth in 47 Code of Federal Regulations §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City’s review of the application.

(C) Applications shall be made to the Director of Information Technology, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.

(D) Upon request, the City will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Colorado open records laws.

(E) For the purposes of the application, the terms, phrases, and their derivations set forth below shall have the meanings given, unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.

1. “Affiliated Entity” or “Affiliate” means any entity having ownership or control in common with the Applicant, in whole or in part, including, without limitation, Applicant’s Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

2. “Applicant” means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule (“CFAR”) set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.

3. “City” means the City of Westminster, a Colorado home-rule municipality.

4. “Control” is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

5. “Interest” includes officers, directors and shareholders owning five percent (5%) or more of the Applicant’s outstanding stock or any equivalent voting interest of a partnership or joint venture.

6. “Parent Corporation” includes any entity with ownership or control of the Applicant.

7. “Principal” includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which owns or controls five percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Applicant.

8. “Regulatory Authority” includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the Applicant or its operations.

16-3-3: REQUISITE INFORMATION:

(A) Identification and Ownership Information. The application shall include:

1. The name, address, telephone number and web site (if applicable) of the Applicant and the proposed franchisee (if different from Applicant), and

2. The name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the City during its consideration of the franchise(s) requested, including the Applicant’s primary contact and any additional authorized contacts.

(B) Business Structure.

1. If a corporation, the Applicant shall provide:

(a) A list all officers and members of the Board of Directors, their principal affiliations and their addresses;

(b) A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and

(c) A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement and provide the documents in subparagraphs (a) and (b) above for the controlling corporation or legal entity.

2. If a partnership, the Applicant shall:

(a) Describe the structure of the partnership and the interests of general and limited partners; and

(b) State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and provide the documents in subparagraphs 1.(a) and 2.(b) above for the controlling entity, partnership or legal entity.

(C) Experience.

1. **Current Franchises.** An Applicant shall list all cable systems in which it or any Affiliate owns more than five percent (5%) of the system. For each system Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (indicate date).

2. **Potential Franchises.** An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. The Applicant shall include the name of communities, date of application, and date of expected action.

(D) Management Structure. Every application for a competitive franchise shall include a management/organizational chart, showing the management structure of the Applicant. A similar chart shall also be provided showing the relationship of the Applicant to all general partners, Parent Corporations, subsidiaries, Affiliates and all other subsidiaries of Parent Corporations, including a brief description of each entity's relationship to the Applicant.

16-3-4: LEGAL QUALIFICATIONS:

(A) Media Cross-Ownership.

1. Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533 (a), and applicable FCC rules prohibit certain forms of media cross-ownership. An Applicant shall state whether it or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, or whether the Applicant holds or operates any company or business operating jointly with any of the following:

(a) A national broadcast television network (such as ABC, CBS or NBC, etc.).

(b) A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the City's service area, or an application for license to operate such a station.

(c) A telecommunications or telephone company whose service area includes any portion of the City's service area.

2. If the response to any of subsection 1 (a) – (c) above is affirmative, the Applicant shall state the name of the Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

(B) Franchise Violations. An Applicant shall state whether it or any Affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, the Applicant shall identify the

judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

(C) Other Violations. An Applicant shall state whether it has been found in violation by a Regulatory Authority of any other type (e.g. utility) of franchise, ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

16-3-5: FINANCIAL QUALIFICATIONS:

(A) Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation.

(B) Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

16-3-6: TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS:

(A) The application shall describe the Applicant's planned initial and proposed cable services geographic area, including a map of all areas proposed to be served and proposed timetable for offering service to each area. The application shall additionally state whether the Applicant proposes to provide cable services to the entire franchise area, and if so, a proposed timetable for meeting that goal.

(B) The applicant shall describe how its proposed service area will not result in denial of service to any group of potential residential cable customers because of the income of the residents of the local area in which such group resides.

(C) If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas listed in subsection (A) above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(D) The Applicant shall describe with particularity its planned residential cable services, including basic cable services, other cable programming service tiers, and any additional pay-per-view, on-demand or digital services and the projected rates for each category or tier or service.

(E) The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant's technology will be deployed so as to be able to successfully offer cable services in the proposed locations.

(F) The Applicant shall describe with particularity its planned non-residential cable services.

(G) The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy and describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable.

16-3-9: APPLICATION FEE: An application fee in the amount of \$2,000.00 shall accompany any franchise application to cover the reasonable cost of processing applications under this Chapter.

16-3-10: REVIEW PROCESS:

(A) Acceptance of Application.

1. Within 5 business days of receipt of an application, the City shall review the application to ensure all requisite information is included in the application.

2. If the application is not complete, the City will notify the Applicant in writing, listing the requisite information that is required to complete the application and notifying the Applicant the that time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received.

3. If the application is complete, the City will notify the Applicant in writing that all requisite information has been received.

(B) Staff Review. The City staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City. After completing the review, staff shall provide an analysis of the application to the City Council.

(C) Franchise Negotiations. Within the time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable franchise agreement with the applicant, and within that time period, schedule the application and any proposed franchise for public hearing as set forth in Section 16-3-11.

16-3-11: PUBLIC HEARING: The City shall hold a public hearing before acting on the application, affording the public, the applicants, and the City a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises.

16-3-12: REVIEW CRITERIA: The City may deny an application if, based on the information provided in the application, at the public hearing and/or any terms of a proposed franchise agreement:

(A) The Applicant does not have the financial, technical, or legal qualifications to provide cable service;

(B) The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or

(C) The Applicant's proposed terms do not comply with applicable federal, state and local laws and regulations including, but not limited to, local customer service standards, or relevant existing contractual obligations of the City.

(D) The Applicant's proposed service plan will result in denial of service to a group of potential residential cable customers because of the income of the residents of the local area in which such group resides.

16-3-13: NON-CFAR FRANCHISE APPLICATIONS: Notwithstanding any other provisions of this Chapter, any competitive cable services franchise applicant may elect to submit a cable franchise application to the City and/or engage in cable franchise negotiations without regard to the application of the FCC CFAR. Such election must be clearly stated in writing at the time the Applicant files its application with the City. In such cases, the City will negotiate the terms of a competitive cable franchise without regard to 47 CFR §76.41 and the other provisions of this Chapter. Agreement by any applicant to negotiate a franchise without regard to 47 CFR §76.41 and the other provisions of this Chapter shall not be deemed by the City to effect a waiver of any applicant's right to terminate its franchise negotiations with the City and to file a new franchise application that will be subject to the application of the FCC CFAR.

Non-CFAR applications shall include the following information:

- (1) the applicant's name
- (2) the names of the applicant's officers and directors
- (3) the applicant's business address
- (4) the name and contact information of the applicant's contact

Section 4. Chapter 4 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 6 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 5. Due to the fact that the FCC CFAR regarding timing for consideration of competitive franchise applications, including information to be provided pursuant to such applications will be effective upon approval of federal application forms by the Office of Management and Budget, expected by July, 2007, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on July 23, 2007, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 6. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 23rd day of July, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Councillor’s Bill No.43 re Amendments to Titles III, IV, and V of the Westminister Municipal Code Concerning Tax Administration

Prepared By: Barb Dolan, Sales Tax Manager
Josh Pens, Tax Audit Supervisor
James MacDonald, Tax Auditor

Recommended City Council Action

Adopt Councillor’s Bill No. 43 on first reading amending Titles III, IV, and V of the Westminister Municipal Code (“W.M.C.”) concerning tax administration.

Summary Statement

- Colorado has a unique, home-rule tax system not found in most other states. Due to the complex nature of self-collected home-rule cities, coupled with their evolving and shared boundaries, frustration is frequently expressed by the business community about how to determine, with any level of precision, in which taxing jurisdiction a delivery is made.
- The City’s current Code offers no protection to retailers who rely upon certain electronic databases for the collection of sales tax. Adopting the hold harmless provision in the attached Councillor’s Bill will protect the retailer from the assessment of tax, penalty, and interest that would otherwise be due based solely on an error in the State-certified electronic database, upon the demonstration by the retailer that it used the most current information available at the time of the sale.
- The City of Westminister is one of several home-rule jurisdictions that Staff is aware of that have adopted or intend to adopt similar hold harmless language into their respective ordinance. Among those jurisdictions that have passed legislation adopting this language are the State of Colorado, statutory counties, cities, and towns, and the City and County of Denver.
- Staff conducted a review of the current tax code and identified other changes to Titles III, IV and V that will allow for the more effective and efficient administration of the City’s tax program, along with those updates necessary subsequent to the passing of Ballot Issue 2A extending collection of the 0.25 percent open-space, parks, recreation, and trails sales and use tax through 2032.
- Staff’s recommendations are based on: 1) the amendments provide retailers with a reasonable and limited liability process for the collection of the City’s sales tax through the use of a comprehensive, state-certified address locator database; 2) the amendments will implement the most recent voter-approved sales and use tax increases; and 3) the amendments establish a more legally consistent and defensible ordinance.
- Occasional revisions are a necessity in the administration of a dynamic ordinance. Changes in technology, business climate, state and federal regulations, bankruptcy law, and related case law have required the current amendments in an effort to properly facilitate and clarify the legislative intent of Titles III, IV, and V of the City Code.
- These changes support the goals of a Financially Sustainable City and Balanced, Sustainable Local Economy.
- This item was reviewed with City Council at the July 16 Study Session and Staff was directed to bring the ordinance forward for action.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City modify Titles III, IV, and V of the Westminster Municipal Code to adopt the Use of Electronic Location Database Ordinance, amend Section 4-2-3 to incorporate the voter-approved extension of the City's Open-Space Tax, and make other administrative amendments?

Alternatives

1. Council could direct Staff to leave the current Code provisions in place and not adopt the hold harmless provision or make other recommended changes. Staff does not recommend this alternative. To remain idle with regard to contemporizing the Code may have the real effect of making its application, defense, and understanding difficult in light of the changing municipal tax environment. Further, electing not to adopt the provisions relating to the electronic location database may jeopardize future voluntary compliance by non-nexus retailers.
2. Council could direct Staff to make only certain changes to the Code while excluding others. While this approach would help address some of the issues, it may not address certain prospective legal concerns and it would not completely address the issue of a comprehensive and contemporary ordinance. Staff does not recommend this alternative.

Background Information

The amendments identified in the attached Councillor's Bill directly support two components of the City of Westminster Strategic Plan: Financially Sustainable Government and Balanced, Sustainable Local Economy. Incorporating the State Address Locator provision into the ordinance, and making the other recommended amendments, should result in a higher degree of taxpayer compliance through a more universally understood and accepted tax collection process. Further, these proposed amendments will improve the administration and collection of taxes by reducing costs and increasing revenues. Finally, offering an automated solution for sourcing deliveries with a corresponding safe-harbor may entice non-nexus retailers, such as internet retailers, to voluntarily collect and remit the City's tax.

If adopted, the State Address Locator ordinance will hold retailers harmless if they fail to remit tax to the correct municipality, specifically the City of Westminster, based solely on an error in the State-certified address locator database. By adopting this ordinance, the City encourages the use of these universal databases, which will result in more accurate municipal collections upon the sale and delivery of goods. This ordinance demonstrates the willingness of the City to work with the business community and other home-rule cities to identify areas of the Code that can be improved for the purpose of tax simplification. Taxpayers utilizing a state-certified database will increase the likelihood that tax will be properly remitted to the City, which equates to higher tax revenues by mitigating loss from incorrect payments to other municipalities.

Adoption of a model State Address Locator Ordinance has been the goal of a multi-year tax simplification effort involving the Colorado Municipal League (CML), the business community, and the CML Sales Tax Committee which includes representatives from each self collected home-rule municipality, including the City of Westminster. The project has been unanimously endorsed by the CML Executive Board and the CML Sales Tax Simplification Committee. The first hurdle to implementation was overcome by the 2004 General Assembly's approval of HB 04-1237, which put this program in place at the State level. This legislation directed the Department of Revenue to develop regulations for review and certification of address locator databases and provides that retailers utilizing a State-certified database would be held harmless as to State-collected sales and use taxes (including statutory municipalities).

Due to the changing and shared boundaries of Colorado municipalities like Westminster, coupled with the complex nature of self-collected home-rule cities, complaints have often been made from the business community that it is difficult to determine precisely in which taxing jurisdiction a delivery is made. The result, of this inability to collect the correct municipal tax with a level of certainty, is the remittance of tax to the wrong jurisdiction and the potential for subsequent action against the retailer from the jurisdiction that was properly due. This action may often come after any refund rights have lapsed, which effectively forces the retailer to "pay twice." Further, these complexities discourage non-nexus retailers from collecting City tax voluntarily. The hold harmless provision has been viewed as a "win-win" for both the adopting municipality and the taxpayer.

After the overwhelming support expressed by voters in the recent November election, W.M.C. section 4-2-3 must be amended to reflect the extension of the 0.25 percent sales and use tax related to open-space, parks, recreation, and trails. Based on the passing of Ballot Issue 2A, the ordinance needs to be updated changing the sunset date of this tax from 2016 through 2032.

Finally, the remaining amendments will provide for improved tax collection while contributing to the containment of costs associated with the tax recovery process. These amendments serve the purpose of minimizing potential legal challenges due to unclear language or inconsistent applications of the tax code, which reduces costs incurred by both the City and taxpayers associated with litigation. The following are some highlights of these revisions.

Staff has reviewed W.M.C. section 4-1-3 regarding the collection fee retained by taxpayers for timely filed returns. The purpose of this proposed revision is to eliminate the cost and administrative burden incurred by the City to issue a refund when the credit is not properly taken as outlined in the Code. The average vendor fee taken in 2006 was approximately \$18. Staff believes that the cost and staff time related to issuing and following up on overpayment notices and administering refund claims outweighs any benefit forfeited by the taxpayer, especially considering that many taxpayers never claim the overpayment even after receiving the notice. By not refunding the vendors fee on those returns where a taxpayer failed to apply the credit, the City will increase voluntary compliance through encouraging taxpayers to acquire a better understanding of tax reporting while saving the City the time and cost associated with administering these specific overpayments.

Based on the recent increase in tax protests, Staff believes it is important to address the interest rate imposed on outstanding tax liabilities. Currently, the rate of interest on outstanding tax liabilities changes annually based on the rate established by the State Commissioner of Banking. Staff feels that this low interest rate may discourage voluntary compliance and encourage protests for the sole purpose of postponing the tax payment. Further, a change will provide for the accrual of interest during the protest period. The amendment to W.M.C. section 4-1-22 will impose a rate of 1 percent each month on any properly assessed tax deficiency. The City is not alone in this interest rate imposition. The City and County of Denver, City of Boulder, City and County of Broomfield, City of Arvada, City of Federal Heights, and the City of Northglenn impose a flat rate of interest in this fashion ranging from one (1) to one and one-half (1.5) percent.

The remaining amendments will clarify ambiguous Code sections. For example, Staff recommends clarifying how and when a tax lien arises, to what property it attaches, the status of a tax lien in various circumstances, and to ensure consistency with related sections. Staff also recommends revising the jeopardy assessment provisions to clarify the treatment of disputed assessments, distraint and sale changes address the disposition of distrained property, service notice, disposal procedures, and the City's authority to levy in its collection efforts. Another proposed addition to the ordinance is the imposition of a fee for recurring distraint and seizure due to noncompliance with the City's tax program. This imposition will specifically address the increased frequency and additional costs incurred by the City when utilizing this enforcement remedy.

Finally, Staff has reviewed Title IV, Chapter 7 of the Code relating to business and occupation taxes, and has determined that moving specific sections will streamline the ordinance while strengthening its administration. This includes the deletion of portions of Chapter 7 while incorporating language stating this Chapter will be administered under Chapter 1 of Title IV of the Code. This change will effectively ensure all taxes collected under Title IV are similarly administered.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE AMENDING TITLES III, IV AND V OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING TAX ADMINISTRATION**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 3-6-4, W.M.C., is hereby DELETED IN ITS ENTIRETY AND THE INDEX AMENDED ACCORDINGLY:

CHAPTER 6

DEPARTMENT OF FINANCE

3-6-1: DEPARTMENT CREATED

3-6-2: APPOINTMENT OF DIRECTOR OF FINANCE

3-6-3: DUTIES OF THE DIRECTOR OF FINANCE

~~3-6-4: SALES TAX ENFORCEMENT OFFICER~~

~~3-6-4: SALES TAX ENFORCEMENT OFFICER:~~

~~(A) There is hereby created the position of Sales Tax Enforcement Officer.~~

~~(B) It shall be the duty of the Sales Tax Enforcement Officer to enforce Title IV, Chapters 1, 5, 6, and 8, of Title V and Sections 5-9-1 and 5-9-3 of this Code.~~

~~(C) The Sales Tax Enforcement Officer shall be deemed a peace officer for the limited purpose of enforcing the provisions delineated in Subsection (B) of this Section and shall have the power to issue complaints and summonses for violations of those provisions pursuant to Rule 206, Municipal Court Rules of Procedures, and Section 1-22-18 of this Code.~~

~~(D) The Sales Tax Enforcement Officer shall not be deemed to be a sworn member of the Police Department pursuant to Section 3-1-4.~~

Section 2. Section 4-1-1, subsections (H) through (S), W.M.C., are hereby AMENDED as follows:

4-1-1: DEFINITIONS WORDS AND PHRASES DEFINED:

(H) **"Occupation Taxes"** MEANS THE TAXES LEVIED BY CHAPTER 5 AND CHAPTER 7 OF THIS TITLE.

~~(H)~~(I) **"Person"** means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise or any group or combination acting as a unit.

~~(I)~~(J) **"Price"** for purposes of this Chapter shall include any definition of "price" included in other Chapters of this Title.

~~(J)~~(K) **"Purchase" or "Sale"** for purposes of this Chapter, shall include any definition of "purchase" or "sale" included in other Chapters of this Title.

~~(K)~~(L) "**Retailer**" for purposes of this Chapter, shall include any definition of "retailer", "operator" or "vendor" included in other Chapters of this Title.

~~(L)~~(M) "**Return**" for purposes of this Chapter shall include any definition of "return" included in other Chapters of this Title MEANS ANY FORM PRESCRIBED BY THE FINANCE DIRECTOR FOR COMPUTING AND REPORTING A TOTAL TAX LIABILITY.

~~(M)~~ (N) "**Tax**" for purposes of this Chapter shall include any definition of "tax" included in other Chapters in this Title.

~~(N)~~ (O) "**Tax Deficiency**" means any amount of tax that is not reported or not paid on or before the due date.

~~(O)~~ (P) "**Taxable Sales**" means gross sales less any exemptions and deductions specified in this Title.

~~(P)~~ (Q) "**Taxable Services**" means services subject to the tax pursuant to this Title.

~~(Q)~~ (R) "**Taxpayer**" for the purposes of this title, means any person obligated to pay, collect or remit tax under the terms of this Title.

~~(R)~~ (S) "**Tax Policy**" means, for the purposes of Colorado Constitution Article X, Section 20, the provisions of this title that govern the persons upon whom the City's tax is imposed and the transactions to which the City's tax applies, including tax exemptions and tax deductions, but excluding any provisions concerning fees, interest changes, or penalties related to the administration and enforcement of said tax policy.

~~(S)~~ (T) "**Total Tax Liability**" means the total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Section 3. Section 4-1-2, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (C) to read as follows:

4-1-2: EXEMPTION; BURDEN OF PROOF:

(C) THE BURDEN OF PROVING THAT ANY TAXPAYER IS EXEMPT FROM REMITTING THE OCCUPATION TAXES SHALL BE ON THE TAXPAYER UNDER SUCH REASONABLE REQUIREMENTS OF PROOF AS THE FINANCE DIRECTOR MAY PRESCRIBE.

Section 4. Section 4-1-3, subsection (C), W.M.C., is hereby AMENDED to read as follows:

4-1-3: DEDUCTIONS AND CREDITS:

(C) Collection Fee. For each reporting period, ~~the City shall pay a retailer~~ EVERY RETAILER SHALL BE ENTITLED TO a collection and remittance fee equal to the lesser of ONE HUNDRED DOLLARS (\$100) or two and one-half percent (2 1/2%) of the sum of the tax computed and any excess tax collected. A retailer ~~may~~ SHALL apply this fee as an offset against the amount of tax due to the City at the time of remittance. Such fee shall be forfeited for any tax that is not reported and paid by the due date. FAILURE TO APPLY THIS FEE AS AN OFFSET AGAINST THE AMOUNT OF TAX DUE AT THE TIME OF REMITTANCE SHALL RESULT IN FORFEITURE OF THE COLLECTION FEE. ~~Forfeiture of the fee shall be prima facie evidence that the retailer was in violation of this Title.~~ This paragraph shall not apply to use tax.

Section 5. Section 4-1-5, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (E) to read as follows:

4-1-5: RETAILER RESPONSIBLE FOR COLLECTION AND PAYMENT OF TAX:

(E) USE OF ELECTRONIC LOCATION DATABASE; RETAILER HELD HARMLESS:

1. ANY RETAILER RESPONSIBLE FOR THE COLLECTION AND PAYMENT OF TAX UNDER THIS TITLE MAY USE AN ELECTRONIC DATABASE OF STATE ADDRESSES THAT IS CERTIFIED BY THE STATE DEPARTMENT OF REVENUE PURSUANT TO § 39-26-105.3, C.R.S., TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED.
2. ANY RETAILER THAT USES THE DATA CONTAINED IN AN ELECTRONIC DATABASE CERTIFIED BY THE STATE DEPARTMENT OF REVENUE PURSUANT TO § 39-26-105.3 C.R.S., TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED SHALL BE HELD HARMLESS FOR ANY TAX, PENALTY, OR INTEREST OWED TO THE CITY THAT OTHERWISE WOULD BE DUE SOLELY AS A RESULT OF AN ERROR IN THE ELECTRONIC DATABASE PROVIDED THAT THE RETAILER DEMONSTRATES THAT IT USED THE MOST CURRENT INFORMATION AVAILABLE IN SUCH ELECTRONIC DATABASE ON THE DATE THAT THE SALE OCCURRED. EACH RETAILER SHALL KEEP AND PRESERVE SUCH RECORDS AS PRESCRIBED BY THE FINANCE DIRECTOR TO DEMONSTRATE THAT IT USED THE MOST CURRENT INFORMATION AVAILABLE IN THE ELECTRONIC DATABASE ON THE DATE THAT THE SALE OCCURRED. NOTWITHSTANDING THE ABOVE, IF THE ERROR IN COLLECTING AND REMITTING IS A RESULT OF A DECEPTIVE REPRESENTATION, A FALSE REPRESENTATION, OR FRAUD, THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY.
3. THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO USE TAX.

Section 6. Section 4-1-7, W.M.C., is hereby AMENDED to read as follows:

4-1-7: FILING RETURNS; DUE DATE:

(A) EXCEPT AS PROVIDED IN THIS SECTION, every taxpayer shall file a return, whether or not tax is due, and remit any tax due to the City on or before the twentieth day following the end of the reporting period. RETURNS OF THE TAXPAYER SHALL CONTAIN SUCH INFORMATION AND BE MADE IN SUCH MANNER AND UPON SUCH FORMS AS THE FINANCE DIRECTOR MAY PRESCRIBE. THE SIGNATURE OF THE TAXPAYER OR DULY AUTHORIZED AGENT SHALL APPEAR ON ALL RETURNS. A VALID DIGITAL SIGNATURE OR THE EQUIVALENT THEREOF, ON A FILED RETURN TRANSMITTED ELECTRONICALLY OVER THE INTERNET OR SIMILAR MEANS, OR A SIGNATURE ON A RETURN SENT VIA FACSIMILE OR OTHER FORM ACCEPTABLE TO THE FINANCE DIRECTOR, IS ACCEPTED AND HELD AS A WRITTEN SIGNATURE.

(B) EVERY TAXPAYER REQUIRED TO REPORT AND REMIT OCCUPATION TAXES SHALL FILE A RETURN AND REMIT ANY TAX DUE PURSUANT TO THE APPLICABLE PROVISIONS OF CHAPTER 5 AND CHAPTER 7 OF THIS TITLE.

(C) EVERY PERSON WHO USES CONSTRUCTION EQUIPMENT IN THE CITY SHALL FILE A CONSTRUCTION EQUIPMENT DECLARATION AND REMIT ANY TAX DUE TO THE CITY ON OR BEFORE THE DATE THE CONSTRUCTION EQUIPMENT IS LOCATED IN THE CITY.

(D) EVERY PERSON WHO PAYS AN ESTIMATED PREPAYMENT OF USE TAX AT THE TIME A BUILDING PERMIT IS ISSUED SHALL FILE A RETURN AND REMIT ANY USE TAX DUE IN EXCESS OF THE AMOUNT PREPAID ON OR BEFORE THE THIRTIETH (30TH) DAY FOLLOWING THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. A RETURN SHALL NOT BE REQUIRED IF NO ADDITIONAL USE TAX IS DUE.

~~(B)~~ (E) A retailer engaged in business in the City at two or more locations, whether inside or outside the City, who collects tax, may file one return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

~~(C)~~ (F) Any consumer reporting use tax due from two or more locations may file one return for all such locations.

~~(D)~~ (G) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying or remitting tax due.

~~(E)~~ (H) No person shall make any false statement in connection with a return.

Section 7. Section 4-1-8, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

4-1-8: REPORTING PERIODS:

(A) Unless otherwise required or approved, taxpayers must file returns and pay tax as follows:

1. A taxpayer whose monthly tax due is less than ten dollars (\$10) may file returns and remit tax annually, ~~semi-annually~~, quarterly or monthly;

~~2. A taxpayer whose monthly tax due is less than twenty dollars (\$20) may file returns and remit tax semi-annually, quarterly or monthly;~~

~~3.~~ 2. A taxpayer whose monthly tax due is less than forty dollars (\$40) may file returns and remit tax quarterly or monthly; or

~~4.~~ 3. A taxpayer whose monthly tax due is forty dollars (\$40) or more shall file returns and remit tax monthly.

(B) The reporting period for an initial use tax return shall ~~be~~ INCLUDE ALL TRANSACTIONS UP TO AND INCLUDING THE LAST DAY PRIOR TO THE FIRST DAY OF BUSINESS AND SHALL END ON SUCH DATE. ~~the calendar month of the date of sale if a business was purchased or opening day of business if a business is new.~~

Section 8. Section 4-1-10, subsections (D)(1) and (H), W.M.C., are hereby AMENDED to read as follows:

4-1-10: AUTHORITY OF THE FINANCE DIRECTOR: The administration of this Title is hereby vested in the Finance Director.

(D) Subpoenas: The Finance Director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts and records.

1. Any subpoena issued under the terms of this Title shall be served as set forth in the Colorado Rules of Civil Procedure, including the payment of witness fees. ~~When the witness is subpoenaed at the insistence of the City, such fees shall be paid by the City.~~ When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.

(H) Partial Payments; PAYMENT IN INSTALLMENTS: The Finance Director may accept any partial payment made and apply such payments towards the TOTAL tax LIABILITY ~~due~~ OR ALLOW PAYMENT OF A TOTAL TAX LIABILITY ON AN INSTALLMENT BASIS. PAYMENT OF PART BUT LESS THAN THE TOTAL TAX LIABILITY SHALL BE FIRST APPLIED TO PENALTY, IF ANY, SECONDLY TO ACCRUED INTEREST, AND, LASTLY, TO THE TAX DEFICIENCY ITSELF. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated. INTEREST SHALL CONTINUE TO ACCRUE ON THE REMAINING TAX DEFICIENCY UNTIL PAID AS PROVIDED BY THIS CHAPTER.

Section 9. Section 4-1-21, W.M.C., is hereby AMENDED to read as follows:

4-1-21: PENALTIES:

(A) Penalty for Late Remittance of Sales, Use and Accommodations Tax DEFICIENCY: A penalty of fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, shall be levied on any tax deficiency.

~~(B) Penalty for Late Remittance of Admissions Tax: A penalty shall be levied on any tax deficiency.~~

- ~~1. For transactions consummated prior to January 1, 1992, such penalty shall be twelve percent (12%) of the tax deficiency.~~
- ~~2. For transactions consummated on or after January 1, 1992, such penalty shall be fifteen dollars (\$15) or ten percent (10%) of the tax deficiency, whichever is greater.~~

~~(C)~~ (B) Penalty for Fraud: If any tax deficiency is due to fraud or the intent to evade the tax, the penalty shall be fifty percent (50%) of the total tax deficiency.

~~(D)~~ (C) Penalty for Repeated Enforcement: If three Notices of Assessment for the same type of tax have been issued to the same taxpayer within thirty-six (36) consecutive months, a special penalty of fifteen percent (15%) of the total tax liability, or twenty five dollars (\$25), whichever is greater, shall be levied.

(D) PENALTY FOR RECURRING DISTRAINT: IF ANY TAXPAYER REPEATEDLY FAILS, NEGLECTS, OR REFUSES TO PAY THE TAXES LEVIED BY THIS TITLE WITHIN THE TIME REQUIRED BY THIS TITLE AND THE CITY HAS BEEN REQUIRED TO ISSUE DISTRAINT WARRANTS TO ENFORCE THE COLLECTION OF THE TAX DUE FROM SUCH TAXPAYER, THE FINANCE DIRECTOR IS AUTHORIZED TO COLLECT THE TAX DEFICIENCY TOGETHER WITH ALL INTEREST AND PENALTIES THEREON PROVIDED BY LAW AND ALSO AN ADDITIONAL PENALTY OF TWO HUNDRED FIFTY DOLLARS (\$250) EACH FOR THE SECOND AND ALL SUBSEQUENT DISTRAINT WARRANTS REGARDING THE TAXPAYER THAT ARE ISSUED BY THE CITY PURSUANT TO THIS CHAPTER.

(E) ~~Other Penalties; Power to Waive~~: If the Finance Director determines that a person has registered or caused to be registered a motor vehicle outside the City and that such motor vehicle should have been registered at an address in the City, the Finance Director is authorized to assess a civil penalty of five hundred dollars (\$500) against the person. A written notice of the penalty assessment shall be issued, paid and protested in the same manner as a notice of assessment. The Finance Director may enforce collection of the penalty assessment in the same manner as provided in this title for the collection of tax due. Assessment and collection of this penalty shall not preclude the collection of any tax due or fee or the imposition of any other civil or criminal penalty provided by law.

(F) Abatement of Penalty: Any penalty assessed in this Section may be abated by the Finance Director if the Finance Director finds good cause therefore. ~~and:~~

- ~~1. If the taxpayer submits a written request for such abatement on or before the payment due date of the applicable Notice of Assessment; or~~
- ~~2. If no assessment was issued, within 60 days after payment of the tax.~~

Section 10. Section 4-1-22, W.M.C., is hereby AMENDED to read as follows:

4-1-22: INTEREST: Interest shall be levied AT THE RATE OF ONE (1) PERCENT EACH MONTH, OR FRACTION THEREOF, ~~on~~ THAT any tax deficiency REMAINS UNPAID. EXCEPT AS PROVIDED IN THIS CHAPTER, INTEREST PROPERLY ASSESSED ON ANY TAX DEFICIENCY SHALL NOT BE ABATED AND SHALL BE COLLECTED AND PAID IN THE SAME MANNER AS THE TAX ITSELF.

~~(A) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.~~

- ~~1. For transactions consummated on or after January 1, 1994, the annual rate of interest assessed shall be FIXED AT the rate established by the State Commissioner of Banking pursuant to Section 39-21-110.5 C.R.S. IN EFFECT ON THE DATE THE TAX WAS DUE.~~
- ~~2. For transactions consummated prior to January 1, 1994, the annual rate of interest assessed shall be fifteen percent (15%).~~

~~(B) When a timely protest is made to a Notice of Assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the interest date of such assessment and the~~

~~payment date established in an informal meeting or thirty (30) days after the date of a Findings of Fact, Conclusion and Decision issued after a hearing.~~

~~(C) Interest properly assessed on any tax deficiency shall not be abated.~~

Section 11. Section 4-1-24, W.M.C., is hereby AMENDED to read as follows:

4-1-24: ABATEMENT OF TAX DEFICIENCY:

(A) The Finance Director may abate up to 10% of any tax deficiency, or five thousand dollars (\$5,000), whichever is greater, AND THE PENALTY AND INTEREST ASSESSED THEREON, if the Finance Director finds good cause therefor. The Finance Director shall submit a report of amounts abated in excess of five hundred dollars (\$500) to the City Manager.

(B) IF THE FINANCE DIRECTOR ISSUES AN ESTIMATED NOTICE OF ASSESSMENT TO A TAXPAYER WHO NEGLECTS TO FILE A RETURN BY THE DUE DATE, AND THE TAXPAYER SUBSEQUENTLY DEMONSTRATES TO THE SATISFACTION OF THE FINANCE DIRECTOR THAT THE AMOUNT SO ESTIMATED IS GREATER THAN THE ACTUAL TOTAL TAX LIABILITY, THE FINANCE DIRECTOR MAY, FOR GOOD CAUSE SHOWN, ABATE THE ESTIMATED TOTAL TAX LIABILITY TO THE EXTENT IT EXCEEDS THE ACTUAL TOTAL TAX LIABILITY.

Section 12. Section 4-1-25, W.M.C., is hereby AMENDED to read as follows:

4-1-25: PROTEST OF NOTICE OF ASSESSMENT OR DENIAL OF REFUND:

(A) Any Notice of Assessment may be protested by the taxpayer to whom it is issued.

1. A protest of a Notice of Assessment issued to a vendor or taxpayer for failure to file a return, for underpayment of tax owed, or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the Notice of Assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.
2. When a timely protest is made, no further enforcement action will be instituted by the City for the portion of the assessment being protested unless:
 - a. the taxpayer fails to pursue the protest in a timely manner; OR
 - b. THE TOTAL TAX LIABILITY WILL BE JEOPARDIZED BY DELAY AND THE CITY MANAGER HAS ISSUED A JEOPARDY ASSESSMENT AND DEMAND FOR PAYMENT PURSUANT TO THIS CHAPTER.

(B) Protest of Denial of Refund: A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the protest.

(C) Any timely protest entitles a taxpayer to a hearing under the provisions of this Title.

1. If, in the opinion of the Finance Director, the issues involved in such protest may be resolved administratively, the Finance Director may recommend an informal meeting with the taxpayer.
2. Participation in such an informal meeting does not prevent either the taxpayer or the City from holding a hearing if the dispute cannot be resolved by such meeting.
3. If the issues are satisfactorily resolved at an informal meeting and a hearing is not requested, the remaining total tax liability, if any, shall be paid on or before ten (10) days after the date of the notification of the amount due.

Section 13. Section 4-1-28, W.M.C., is hereby AMENDED to read as follows:

4-1-28: LIEN FOR TAX DUE: THE TAX IMPOSED BY THIS TITLE, TOGETHER WITH THE INTEREST AND PENALTIES HEREIN PROVIDED, AND ANY COSTS OF COLLECTION THAT MAY BE INCURRED SHALL AUTOMATICALLY BE AND, UNTIL PAID, REMAIN A LIEN UPON THE REAL PROPERTY OF AND TANGIBLE PERSONAL PROPERTY, INCLUDING GOODS, STOCK IN TRADE, AND BUSINESS FIXTURES, OWNED OR USED BY ANY TAXPAYER INCLUDING TANGIBLE PERSONAL PROPERTY USED UNDER LEASE, INSTALLMENT SALE, OR OTHER CONTRACT AGREEMENT. EXCEPT AS PROVIDED IN THIS SECTION, SUCH LIEN SHALL BE A FIRST AND PRIOR LIEN AND SHALL TAKE PRECEDENCE ON ALL SUCH PROPERTY OVER ALL OTHER LIENS OR CLAIMS OF WHATSOEVER KIND OR NATURE.

(A) PRIORITY OF LIENS UPON REAL PROPERTY: A LIEN UPON THE REAL PROPERTY OF THE TAXPAYER SHALL BE A FIRST AND PRIOR LIEN AND SHALL HAVE PRECEDENCE OVER ALL OTHER LIENS OF WHATSOEVER KIND OR NATURE, EXCEPT AS TO PREEXISTING CLAIMS OR LIENS OF A BONA FIDE MORTGAGEE, PLEDGEE, JUDGMENT CREDITOR OR PURCHASER WHOSE RIGHTS SHALL HAVE ATTACHED PRIOR TO THE FILING OF A NOTICE OF LIEN BY THE FINANCE DIRECTOR AS HEREINAFTER PROVIDED.

(B) IMPROVEMENTS TO REAL PROPERTY: THE USE TAX IMPOSED BY THIS TITLE UPON ANY ARTICLE OF TANGIBLE PERSONAL PROPERTY THAT IS ATTACHED AND AFFIXED TO REALTY OR THE IMPROVEMENTS AND STRUCTURES LOCATED THEREON, SITUATED WITHIN THE CITY, TOGETHER WITH INTEREST AND PENALTIES HEREIN PROVIDED, SHALL CONSTITUTE A FIRST AND PRIOR LIEN UPON SUCH REALTY AND THE IMPROVEMENTS LOCATED THEREON, SO BENEFITED BY THE ATTACHING AND AFFIXING OF SUCH ARTICLES OF TANGIBLE PERSONAL PROPERTY THERETO, WHICH LIEN SHALL HAVE PRECEDENCE OVER ALL OTHER LIENS OF WHATSOEVER KIND OR NATURE, EXCEPT AS TO PREEXISTING CLAIMS OR LIENS OF A BONA FIDE MORTGAGEE, PLEDGEE, JUDGMENT CREDITOR OR PURCHASER WHOSE RIGHTS SHALL HAVE ATTACHED PRIOR TO THE FILING OF A NOTICE OF LIEN BY THE FINANCE DIRECTOR AS HEREINAFTER PROVIDED.

~~(A) Issuance (C) NOTICE OF LIEN: If any total tax liability is not paid by the payment date of a Notice of Assessment, the Finance Director may issue~~ SERVE a Notice of Lien IN SUCH FORM AS THE FINANCE DIRECTOR MAY PRESCRIBE WITH THE OWNER OR POSSESSOR OF PROPERTY ON WHICH A LIEN HAS ATTACHED OR FILE SAID NOTICE WITH THE SECRETARY OF STATE OR THE CLERK AND RECORDER OF ANY COUNTY IN COLORADO IN WHICH THE REAL OR PERSONAL PROPERTY IS LOCATED. ~~on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the total tax liability, the date of the accrual thereof, and the location of the property, and shall be certified by the Finance Director.~~

~~(B) Filing: The Notice of Lien shall be filed in the office of the Clerk and Recorder of any county in Colorado in which the real or personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.~~

~~(C) Priority (D) EXEMPTION FROM LIEN: The attachment and priority of such lien shall be as follows:~~

- ~~1. Such lien shall be a first and prior lien upon the goods, stock in trade, and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.~~
- ~~2. Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade, and business fixtures shall be a first and prior lien except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.~~

- 3.—1. The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded WITHIN TEN (10) DAYS OF EXECUTION with the SECRETARY OF STATE OR county clerk and recorder of the county where the property is located or based.
- 4.—2. Motor vehicles that are properly registered in this state, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed the fair market value, or similar interest which is or may be credited to the lessee.
- 5.—3. Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this Section.

~~(D)~~ (E) Enforcement Against Real Property: If a Notice of Lien is filed against real property, the Finance Director may direct the City Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property, and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale, and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

Section 14. Section 4-1-32, subsection (A), W.M.C., is hereby AMENDED to read as follows:

4-1-32: JEOPARDY ASSESSMENT:

(A) Issuance: If the collection of any total tax liability from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the City Manager may declare the taxable period immediately terminated, order the Finance Director to determine the total tax liability, and issue a Jeopardy Assessment and Demand for Payment. NOTWITHSTANDING THE PROVISIONS OF SECTION 4-1-25(A), Any total tax liability so assessed shall be due and payable immediately.

Section 15. Section 4-1-33, , W.M.C., is hereby AMENDED to read as follows:

4-1-33: LEVY, DISTRAINT AND SALE:

(A) ~~Unless such property is exempt by State Statute from distraint and sale,~~ The City Manager may sign and issue a warrant directed to any employee or agent of the City, or any sheriff of any county in Colorado, SOMETIMES IN THIS SECTION COLLECTIVELY REFERRED TO AS “AGENT” commanding the LEVY UPON, AND distraint and sale of ~~personal~~ ALL property AND RIGHTS TO PROPERTY, EXCEPT AS EXEMPTED BY THIS SECTION of the taxpayer OR on which a lien has attached for the payment of the total tax liability.

1. Such warrant may be issued if the total tax liability is not remitted on or before twenty (20) days from the ~~due~~ date of a Notice of Assessment and no protest of such assessment has been timely filed.
2. SUCH WARRANT MAY BE ISSUED IF THE TOTAL TAX LIABILITY IS NOT PAID WITHIN THIRTY (30) DAYS FROM THE FINAL DECISION ISSUED BY THE FINANCE DIRECTOR AFTER A HEARING ON A TIMELY PROTESTED NOTICE OF ASSESSMENT AND NO PETITION FOR APPEAL HAS BEEN TIMELY FILED AS PROVIDED BY THIS TITLE.
3. Such warrant may be issued immediately if a Jeopardy Assessment and Demand for Payment has been issued.

(B) ~~If the taxpayer does not volunteer entry to the premises,~~ The City Manager may apply to the municipal court of the City for a warrant authorizing any employee or agent of the City to search for and distrain property located inside the City to enforce the collection of total tax liability.

1. The City Manager shall demonstrate to the Court that the premises to which entry is sought contains property that is subject to distraint and sale for total tax liability.
2. If a Jeopardy Assessment and Demand for Payment has been issued, the City Manager shall specify to the court why collection of the total tax liability will be jeopardized.
3. The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

(C) LEVY MAY BE MADE BY SERVING A NOTICE OF LEVY OR DISTRAINT WARRANT ON ANY PERSON IN POSSESSION OF, OR OBLIGATED WITH RESPECT TO, PROPERTY OR RIGHTS TO PROPERTY SUBJECT TO LEVY, INCLUDING RECEIVABLES, BANK ACCOUNTS, EVIDENCES OF DEBT, AND SECURITIES.

~~(C)~~ (D) Disposal of Distraigned Property:

1. THE AGENT CHARGED WITH THE COLLECTION SHALL MAKE OR CAUSE TO BE MADE AN ~~signed~~ inventory of the property distrained, A COPY OF WHICH, SIGNED BY THE AGENT MAKING SUCH DISTRAINT, SHALL BE SERVED, BY LEAVING IT WITH ~~shall be made by the City or its agent. Prior to the sale~~ the owner or possessor OF THE PROPERTY; OR AT THE PERSON'S USUAL PLACE OF ABODE; OR WITH ANY OFFICER, MANAGER, ACCOUNTANT, BOOKKEEPER, GENERAL AGENT, REGISTERED AGENT, OR AGENT FOR PROCESS; OR FINALLY BY MAILING BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE OWNER OR POSSESSOR TOGETHER WITH A COPY OF THE WARRANT, ~~shall be served with a copy of said inventory,~~ a notice of the sum of the total tax liability and related expenses incurred to date, and NOTICE OF the time and place of sale.
2. A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where distraint is made, and in at least two other places within such county.
3. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the City or agent for no more than ninety (90) days from the date originally fixed for the sale EXCEPT, HOWEVER, IF THE PROPERTY DISTRAINED CONSISTS OF LIVE ANIMALS, PERISHABLE GOODS, OR IS OF OTHER SUCH NATURE THAT WOULD, IN THE OPINION OF THE FINANCE DIRECTOR, MAKE IT DANGEROUS OR OTHERWISE INADVISABLE TO RETAIN FOR SAID PERIOD MAY BE IMMEDIATELY SOLD OR DISPOSED OF BY THE AGENT.
4. The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the City and the City shall file a release of lien thereof. If the property is purchased by the City, such property may be disposed of in the same manner as other City property.
5. The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the City or its agent may accept the higher bid.
6. The property offered for sale SHALL BE RESTORED TO THE OWNER OR POSSESSOR IF, NOT LESS THAN TWENTY-FOUR (24) HOURS PRIOR TO THE SALE, THE TOTAL TAX LIABILITY TOGETHER WITH ALL COSTS OF COLLECTION ARE PAID BY ~~may be redeemed~~ if the owner or possessor or other person holding an unperfected chattel mortgage or

other right of possession. ~~pays the total tax liability and all collection costs no less than twenty-four (24) hours before the sale.~~

7. The City or its agent shall issue to each purchaser a certificate of sale that shall be prima facie evidence of its right to make the sale AND CONCLUSIVE EVIDENCE OF THE REGULARITY OF ITS PROCEEDINGS IN MAKING THE SALE and SHALL transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold.
 - (a) When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company, or association to record the transfer on its books and records.
 - (b) When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.
 - (c) WHEN THE PROPERTY SOLD CONSISTS OF A MOTOR VEHICLE, THE CERTIFICATE OF SALE SHALL BE NOTICE, WHEN RECEIVED, TO ANY PUBLIC OFFICIAL CHARGED WITH THE REGISTRATION OF TITLE TO MOTOR VEHICLES, OF SUCH TRANSFER AND SHALL BE AUTHORITY TO RECORD THE TRANSFER IN THE SAME MANNER AS IF THE CERTIFICATE OF TITLE TO SUCH MOTOR VEHICLE WERE TRANSFERRED OR ASSIGNED BY THE PARTY HOLDING THE SAME, IN LIEU OF ANY ORIGINAL OR PRIOR CERTIFICATE, WHICH SHALL BE VOID, WHETHER CANCELED OR NOT.
8. Any surplus remaining after satisfaction of the total tax liability plus any costs of making the distraint and advertising the sale may be distributed by the City first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.
9. The Finance Director shall submit a written account of the sale to the City Manager.

~~(D)~~ (E) PROPERTY SUBJECT TO DISTRAINT; Exempt Property: Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale, or other contract arrangement. Property exempt from distraint and sale shall include the personal property described as such in Section 4-1-28(D).

~~(E)~~ (F) Return of the Property: The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the City Manager, or the Municipal Court, if the property was seized pursuant to a warrant issued by the Court, for the return of the property.

1. The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the City's interest or that the property is exempt from the City's lien.
2. The factfinder shall receive evidence on any issue of fact necessary to the decision of the petition. If the factfinder determines, by a preponderance of the evidence, in favor of the taxpayer or other petitioner, the property shall be returned.

(G) NOTICE OF INTENT TO LEVY: EVERY NOTICE OF ASSESSMENT ISSUED BY THE FINANCE DIRECTOR SHALL CONTAIN NOTICE OF THE CITY'S RIGHT TO ENFORCE COLLECTION OF THE SUM DEMANDED BY LEVY, DISTRAINT AND SALE PURSUANT TO THIS SECTION.

Section 16. Section 4-1-34, W.M.C., is hereby AMENDED to read as follows:

4-1-34: STATUS OF TAX DUE IN BANKRUPTCY AND RECEIVERSHIP: Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, the total tax liability shall ~~be~~ REMAIN a ~~prior and preferred~~

CLAIM AND lien against all the property of the taxpayer TO WHICH A LIEN HAS ATTACHED PURSUANT TO THIS CHAPTER. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the Finance Director the amount of the total tax liability. The officer shall remit any total tax liability before making payment to any judgment creditor or other claimants.

Section 17. Section 4-1-35, subsection (C), W.M.C., is hereby AMENDED to read as follows:

4-1-35: VIOLATIONS; SUMMONS AND COMPLAINT; PENALTY:

(C) Violations of this Title ARE CRIMINAL OFFENSES AND shall be punished by a fine or imprisonment or both pursuant to ~~the limits established in Section 1-8-1~~ TITLE VI of this Code. Each and every twenty-four (24) hour continuation of any violation shall constitute a distinct and separate offense.

Section 18. Section 4-1-36, W.M.C., is hereby AMENDED to read as follows:

4-1-36: STATUTE OF LIMITATIONS: Unless the limitation period has been extended as provided in this Section, the Statute of Limitations for provisions contained in this Title shall be as follows:

(A) Refunds:

1. ~~Any claim for~~ NO refund ~~for~~ OF disputed total tax liability shall be ISSUED UNLESS A CLAIM FOR REFUND IS submitted to the City BY THE PURCHASER on or before sixty (60) days from the date of such purchase.
2. ~~Any claim for~~ NO refund ~~resulting from~~ OF OVERPAYMENT FROM RETURNS SHALL BE ISSUED UNLESS a Notice of Overpayment ~~shall be~~ IS submitted to the City on or before thirty (30) days after the date of such Notice of Overpayment.
3. ~~Any~~ NO other ~~claim for~~ refund shall be ISSUED UNLESS A CLAIM FOR REFUND IS filed on or before three years after the date such overpayment was paid to the City.

(B) Assessments: ~~No Notice of Assessment shall be issued more than three years after:~~

EXCEPT AS PROVIDED IN THIS SECTION AND UNLESS SUCH PERIOD IS EXTENDED, THE TAX LEVIED BY THIS TITLE AND THE PENALTY AND INTEREST APPLICABLE THERETO, OTHER THAN INTEREST ACCRUING THEREAFTER, SHALL BE ASSESSED WITHIN THREE (3) YEARS AFTER THE RETURN IS FILED, OR A CERTIFICATE OF OCCUPANCY IS ISSUED FOR A CONSTRUCTION PROJECT REQUIRING A BUILDING PERMIT, AND NO NOTICE OF LIEN SHALL BE FILED OR DISTRAINT WARRANT ISSUED OR SUIT FOR COLLECTION INSTITUTED OR ANY OTHER ACTION TO COLLECT THE SAME COMMENCED AFTER THE EXPIRATION OF SUCH PERIOD UNLESS THE FINANCE DIRECTOR ISSUES A NOTICE OF ASSESSMENT WITHIN SUCH PERIOD.

1. ~~The due date of such total tax liability; or~~ FOR PURPOSES OF THIS SECTION, A RETURN SHALL INCLUDE A CONSTRUCTION EQUIPMENT DECLARATION, AN INITIAL USE TAX RETURN, AND ANY OTHER FORM PRESCRIBED BY THE FINANCE DIRECTOR FOR REPORTING A TOTAL TAX LIABILITY.
2. ~~For a construction project which requires a City building permit, the date the final Certificate of Occupancy was issued for such project; or~~ FOR PURPOSES OF THIS SECTION, A RETURN FILED BEFORE THE LAST DAY PRESCRIBED BY LAW OR BY REGULATION PROMULGATED PURSUANT TO THIS TITLE FOR THE FILING THEREOF SHALL BE CONSIDERED AS FILED ON SUCH LAST DAY.
3. ~~For a construction project not requiring a City building permit, the date of completion of the project.~~ WHEN A TAXPAYER FAILS OR REFUSES TO FILE A RETURN, OR FILES A FALSE OR FRAUDULENT RETURN WITH INTENT TO EVADE TAX, THE TOTAL TAX LIABILITY MAY BE ASSESSED AND COLLECTED AT ANY TIME.

~~(C) **Liens:** No Notice of Lien shall be issued more than three years after the due date of the total tax liability. If the limitation period is extended, a Notice of Lien may be filed on or before thirty (30) days from the date of the Notice of Assessment issued for such extended period.~~

~~(D) **Returns:**~~

- ~~1. When a taxpayer fails or refuses to file a return, the total tax liability may be assessed and collected at any time.~~
- ~~2. In the case of a false or fraudulent return filed with intent to evade tax, the total tax liability may be assessed, or proceedings for the collection of such total tax liability may be begun at any time.~~

~~(E) (C) **Protests:** No protest of a Notice of Assessment or Denial of a Claim for Refund shall be valid if submitted to the Finance Director in other than written form or after the period allowed in this Chapter.~~

(D) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A COMPLAINT OR ACTION FOR A VIOLATION OF THIS TITLE SHALL BE INSTITUTED WITHIN THREE (3) YEARS AFTER THE ALLEGED VIOLATION.

~~(E) (E) EXCEPT FOR THE PERIOD DESCRIBED IN SUBSECTIONS C AND D OF THIS SECTION, the period of limitation may be extended before its expiration.~~

1. The taxpayer and the Finance Director may agree in writing to extend the period.
2. If the City provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Chapter, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the Notice of Assessment or Notice of Overpayment issued as a result of such audit. "Audit Period" includes all reporting periods with due dates which fall within the thirty-six (36) month period preceding the date of the notice of audit, or if a City building permit is required, the period between the issuance of such building permit and the issuance of a final Certificate of Occupancy.

~~(F) (F) Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this Section.~~

Section 19. Section 4-2-2, subsections (D), (T) and (AA), W.M.C., are hereby AMENDED to read as follows:

4-2-2: WORDS & PHRASES DEFINED:

(D) "**Coin Operated Device**" means any device operated by coins or currency OR ANY SUBSTITUTE THEREFOR.

(T) "**Prescription Drugs**" means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq. and the regulations promulgated thereunder to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription" BEAR, AT A MINIMUM, THE SYMBOL "RX ONLY", and is, in fact, dispensed, delivered, or administered to a person or animal by, or pursuant to the direction of, a licensed practitioner of the healing arts or veterinary medicine.

(AA) "**Return**" means the sales and use tax reporting form used to report sales and use tax. FOR PURPOSES OF THIS CHAPTER SHALL INCLUDE ANY DEFINITION OF "RETURN" INCLUDED IN OTHER CHAPTERS OF THIS TITLE.

Section 20. Section 4-2-3, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

4-2-3: RATE; IMPOSITION AND COLLECTION; DISTRIBUTION:

(A) Sales Tax: There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 4-2-5.

1. For sales transacted on or after January 1, 2004, but prior to January 1, ~~2017~~, 2033, the rate levied shall be three and eighty-five hundredths percent (3.85%). Unless otherwise lawfully provided, the 3.85% tax rate shall be reduced to THREE AND SIX TENTHS PERCENT (3.6%) ~~percent~~ on January 1, ~~2017~~ 2033.

2. For sales transacted on or after January 1, 1986 but prior to January 1, 2004, the rate levied shall be three and one-quarter percent (3.25%).

3. For sales transacted prior to January 1, 1986, the rate levied shall be three percent (3%).

(B) Use Tax: There is hereby levied a tax or excise upon the privilege of using, storing, distributing, or otherwise consuming in the City any article of tangible personal property or taxable services purchased, leased or rented from sources inside or outside the City, on which the City sales tax has not been paid.

1. For sales transacted on or after January 1, 2004, but prior to January 1, ~~2017~~ 2033, the rate levied shall be three and eighty-five hundredths percent (3.85%). Unless otherwise lawfully provided, the 3.85% tax rate shall be reduced to THREE AND SIX TENTHS PERCENT (3.6%) ~~percent~~ on January 1, ~~2017~~ 2033.

2. For sales transacted on or after January 1, 1986 but prior to January 1, 2004, the rate levied shall be three and one-quarter percent (3.25%).

3. For sales transacted prior to January 1, 1986, the rate levied shall be three percent (3%).

Section 21. Section 4-2-12, W.M.C., is hereby AMENDED to read as follows:

4-2-12: INCEPTION OF BUSINESS; INITIAL USE TAX: Any person who purchases or establishes a business inside the City shall file an initial use tax return.

(A) Existing businesses: Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great or greater than the fair market value of such property. Where the transfer of ownership is a lump sum transaction, the use tax shall be due on the book value established by the purchaser for income tax depreciation purposes, or fair market value if no determination has been made. When a business is taken over by other than the most recent seller in return for the assumption of outstanding indebtedness, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. Such tax shall be reported on an initial use tax return. The reporting period for such return shall be the PERIOD ENDING ONE DAY PRIOR TO THE FIRST DAY OF BUSINESS BY THE NEW OWNER ~~calendar month of the date of sale~~.

(B) New businesses: Use tax shall be due on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased for use inside the City. Such tax shall be reported on the initial use tax return. The reporting period for such return shall be the PERIOD ENDING ONE DAY PRIOR TO ~~calendar month of the opening~~ FIRST day of business.

Section 22. Section 4-3-2, subsection (H), W.M.C., is hereby AMENDED to read as follows:

4-3-2: DEFINITIONS:

(H) "**Return**" ~~means the admissions tax reporting form used to report admissions tax.~~ FOR PURPOSES OF THIS CHAPTER SHALL INCLUDE ANY DEFINITION OF "RETURN" INCLUDED IN OTHER CHAPTERS OF THIS TITLE.

Section 23. Section 4-4-1, subsection (D), W.M.C., is hereby AMENDED to read as follows:

4-4-1: WORDS AND PHRASES DEFINED:

(D) "**Return**" ~~means the accommodation tax reporting form used to report the accommodations tax.~~ FOR PURPOSES OF THIS CHAPTER SHALL INCLUDE ANY DEFINITION OF "RETURN" INCLUDED IN OTHER CHAPTERS OF THIS TITLE.

Section 24. Sections 4-7-5 through 4-7-9, W.M.C., are hereby AMENDED to read as follows:

~~**4-7-5: FAILURE TO PAY:** If any telephone utility company subject to the provisions of this Chapter shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) due and owing from such company to the City. The City Attorney upon direction of the City Council shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt.~~

~~**4-7-6: PENALTY CLAUSE:** If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Chapter shall fail, neglect, refuse to make or file the annual statement of accounts provided in Section 4-7-4, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty five dollars (\$25) nor more than three hundred dollars (\$300); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect, or refuse to make and file such statement shall be considered a separate and distinct offense.~~

~~**4-7-7: INSPECTION OF RECORDS:** The City, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Chapter and to make copies of the entries or contents thereof.~~

~~**4-7-8 4-7-5: LOCAL PURPOSE:** The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Chapter be construed to mean that any telephone utility company is issued a franchise by the City.~~

~~**4-7-9 4-7-6: TAX IN LIEU OF OTHER BUSINESS AND OCCUPATION TAXES:** The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the City on any telephone utility company subject to the provisions of this Chapter and in addition shall be in lieu of any free service furnished the City by any said telephone utility.~~

~~**4-7-7: ADMINISTRATION:** THIS CHAPTER SHALL BE ADMINISTERED IN ACCORDANCE WITH CHAPTER 1 OF THIS TITLE.~~

~~Section 25. Section 5-4-4, W.M.C., is hereby amended BY THE DELETION OF SUBSECTION (B) as follows:~~

~~**5-4-4: LICENSE APPLICATION AND ADMINISTRATION:**~~

~~(B) An application for renewal shall be filed with the City Clerk. Licenses shall be in effect for one year and shall be renewed upon renewal of the Business License or Home Occupation License, or upon completion of a license renewal request. Renewal of a license may be denied as provided below.~~

~~(C)-(B) Each license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.~~

~~(D) (C) No license shall be transferable. After any sale of a business, the new owner shall apply for a new license.~~

~~Section 26. This ordinance shall take effect upon its passage after second reading.~~

~~Section 27. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.~~

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 23rd day of July, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 13th day of August, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 10 E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Councillor's Bill No. 44 re Adopting a New Chapter 1 of Title VII re Elections and Amending Sections 1-11-2 and 2-1-1, W.M.C. re Privacy Issues Concerning Council, Board and Commission Members

Prepared By: Jane W. Greenfield, Assistant City Attorney
Linda Yeager, City Clerk

Recommended City Council Action

Pass Councillor's Bill No. 44 on first reading repealing and reenacting the City's Election Code, amending Section 1-11-2 concerning qualifications of City Councillors, and amending Section 2-1-1 concerning appointment of Board and Commission members.

Summary Statement

- In November 2006, Westminster voters approved the Charter amendment making revisions to the Initiative, Referendum, and Recall sections of the Westminster Charter.
- This amendment anticipated, and its language provides for, revisions to the Elections' Chapter that would place in the Code the detailed procedures and requirements for exercising the powers of initiative, referendum, and recall so that they might easily be updated as state and county election requirements change and election technology evolves.
- At the same time, certain outdated provisions in the election code are being deleted.
- The issue of protecting confidential information, provided by Council and Board candidates pursuant to Charter Section 5.1(d), is being addressed in this ordinance.
- At its July 2, 2007 Study Session, Council reviewed the proposed ordinance and suggested proposed revisions, which are included in the attached ordinance.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the Council amend the election code, conforming it to recently adopted Charter changes, providing specific procedures for the manner of exercising the petition process, and insuring the confidentiality of certain information required to be disclosed by Council and Board member candidates?

Alternative

The Council could elect not to adopt the proposed ordinance. Staff does not recommend this approach since it would result in continuing certain ambiguous and confusing provisions in the current election code that would not be consistent with the electorate's recent adoption of the Charter amendments in November, 2006. Also, the application of Charter Section 5.1(d) needs to be clarified in order to protect confidential personal information about Council and Board member candidates in order to avoid discouraging persons from seeking to fill these positions.

Background Information

On November 7, 2006, the Westminster voters approved the Charter amendment dealing with revisions to the recall, initiative and referendum sections. At the time of submitting the measure to the electorate, the City Council directed Staff to place the more detailed substantive and procedural requirements for the manner of exercising these powers into a revised election code. This approach is consistent with that anticipated by Article V, Section 1(9), Colorado Constitution. Placing these technical requirements in the Code will eliminate many questions currently left unanswered by the broader Charter language. Additional benefits of including such procedures in the Code include: (1) confirming those requirements that apply to local election issues that may be different (based on our home-rule authority) than those expressed in state statutes on the subject, and (2) allowing the City to respond quickly and efficiently to changes made in state law that the City may need to follow in order to use the coordinated election process.

Many minor changes and procedural clarifications have been included in this proposed election code; however, none of the changes affect the process for the 2007 City election for Council candidates. Some changes are listed below:

- Deletes the list of individual precincts since precinct boundaries are now set by the counties for coordinated elections.
- Addresses the City's authorization to conduct elections by mail ballot, when needed.
- Provides for Council to fix the ballot title for any initiated or referred measure and provides a hearing process in the event of a protest to the ballot title wording.
- Provides that, in the context of a recall election, the charges against the official and the official's response in defense thereof will be printed on the recall ballot.
- Recognizes that write-in candidates are permitted in municipal elections, subject to the candidate affidavit filing requirements of state law.
- Per City Council direction at the July 2 Study Session, the process for establishing the order of names on the ballot in Adams and in Jefferson Counties will continue to be done through two separate drawings by lot.

Additionally, the balance of the ordinance provides new language in the Code's chapters on City Council and Boards and Commissions that preserves the confidentiality of personal information of candidates, when such information is provided in order to comply with the background checks required under Charter Section 5.1(d).

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 1 OF TITLE VII OF THE WESTMINSTER MUNICIPAL CODE CONCERNING ELECTIONS AND AMENDING SECTION 1-11-2 CONCERNING QUALIFICATIONS OF CITY COUNCILLORS AND SECTION 2-1-1 CONCERNING APPOINTMENT OF BOARD AND COMMISSION MEMBERS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title VII, Chapter 1, W.M.C., is hereby REPEALED AND REENACTED to read as follows:

CHAPTER 1

ELECTIONS

- 7-1-1: LEGISLATIVE INTENT**
- 7-1-2: ADOPTION AND APPLICABILITY OF STATE LAW**
- 7-1-3: WARDS; PRECINCTS; POLLING PLACES**
- 7-1-4: ELECTION OFFICIAL**
- 7-1-5: ELECTION COMMISSION**
- 7-1-6: COORDINATED ELECTIONS**
- 7-1-7: MAIL BALLOT ELECTIONS**
- 7-1-8: MUNICIPAL CANDIDATE ELECTIONS**
- 7-1-9: ELECTIONS ON INITIATIVE OR REFERENDUM MEASURES**
- 7-1-10: ELECTIONS ON RECALL PETITIONS**
- 7-1-11: SPECIAL ELECTIONS**
- 7-1-12: PENALTIES FOR ELECTION OFFENSES**
- 7-1-13: FAIR CAMPAIGN PRACTICES ACT**

7-1-1: LEGISLATIVE INTENT:

(A) The purpose of this chapter is the establishment of procedures for the regular and special elections of the City of Westminster, whether or not those elections are conducted as coordinated elections with Adams and Jefferson Counties.

(B) The Council intends that interpretations of this chapter be consistent with the City's home rule authority to regulate its municipal elections under Article XX of the Colorado Constitution.

7-1-2: ADOPTION AND APPLICABILITY OF STATE LAW:

(A) Subject to the Charter of Westminster and provisions of this Chapter, City elections will be conducted in accordance with the relevant portions of the Uniform Election Code of 1992, Articles 1 to 13 of Title 1, C.R.S., and the Colorado Municipal Election Code, Article 10 of Title 31, C.R.S., as they may be amended from time to time. As the Uniform Election Code was adopted by the legislature to cover many types of elections, various portions of that code are not applicable to municipal elections. In

some instances, the Uniform Election Code and the Colorado Municipal Election Code have differing provisions regarding the same subject. For these reasons, in the event of a conflict of laws or an inconsistent provision therein, these laws shall be applied in the following order of priority:

1. the provisions of the Charter of Westminster
2. the provisions of the Westminster Municipal Code
3. the provisions of the Colorado Municipal Election Code of 1965, and
4. the relevant provisions of the Uniform Election Code of 1992.

(B) Notwithstanding the prioritization listed in subsection (A), when a City election is being conducted as a coordinated election, the Colorado Revised Statutes governing coordinated elections will control, to the extent said statutes are applicable to municipal elections.

7-1-3: WARDS; PRECINCTS; POLLING PLACES:

(A) The City shall consist of one ward.

(B) The Council shall, by resolution, from time to time, establish convenient election precincts, when required in order to conduct a City election.

(C) No later than thirty (30) days before an election, other than a mail ballot election or a coordinated election, the City Council shall designate, by motion, the official polling places for said election.

(D) When required in order to conduct a City election, City precinct boundaries will be reviewed by the Election Commission after any State redistricting or County reprecincting has occurred. The Election Commission will then make a recommendation to Council if any precinct changes are necessary.

7-1-4: ELECTION OFFICIAL:

The City Clerk is the designated election official of the City of Westminster for all purposes specified in the Charter, this Code, or any applicable state statute.

7-1-5: ELECTION COMMISSION:

The Election Commission, created by Charter Section 3.10, consists of the City Clerk and four (4) qualified and registered electors of the City, who during their term of office shall not be City officers or employees or candidates or nominees for elective City office. Such four (4) members shall be appointed by the Council for a term of two (2) years at the first January Council meeting following a regular City election. They shall serve without compensation. The City Clerk shall be chairperson. The Election Commission shall appoint the Board of Election, judges and clerks for each precinct and have charge of all activities and duties required of it by applicable statute, this Code, and the Charter relating to the conduct of elections in the City. In any case where election procedure is in doubt, the Election Commission shall prescribe the procedure to be followed. The Election Commission shall provide for ballots and sample ballots, for voting machines or electronic voting equipment, for determination of the winner in event of a tie vote, for canvas of returns, and for issuance of appropriate certificates.

7-1-6: COORDINATED ELECTIONS:

(A) City elections shall be conducted, whenever possible, as a coordinated election conducted by Adams County or Jefferson County or both.

(B) For all coordinated elections, the City Council shall adopt, by resolution or ordinance as appropriate, the language of ballot issues or ballot questions prior to the date of the City Clerk's required certification of ballot contents to the respective county election official.

(C) The City Manager is authorized to sign all intergovernmental agreements regarding coordinated elections with the respective counties.

(D) For all coordinated elections, election precincts and polling places shall be determined by the coordinated election official of the respective county.

7-1-7: MAIL BALLOT ELECTIONS:

(A) Upon the call of an election by the City Council, the City Clerk is authorized to conduct elections by mail ballot.

(B) Unless provided otherwise by the Charter or this Code, such elections will be conducted pursuant to the requirements of Article 7.5 of Title 1, C.R.S., the Colorado Mail Ballot Election Act, as it may be amended from time to time, except the following provisions thereof:

1. Section 1-7.5-107.3, C.R.S.
2. Section 1-7.5-109, C.R.S. and
3. Any provisions of the Act that the City determines are inconsistent with the City's authority over its elections pursuant to Article XX of the Colorado Constitution.

7-1-8: MAYOR AND COUNCILLOR ELECTIONS:

(A) **General Conditions.** Part 3 of Article 10 of Title 31, C.R.S., shall govern City elections for the Mayor or Councillors, except as provided in this section.

(B) **Nominating Petitions.** Except as provided in (C) below, for all Councillor elections except recall elections, nominating petitions for the office of Mayor or Councillor may be circulated and signed beginning ninety-one (91) days prior to the election, and shall be filed with the City Clerk not later than seventy-one (71) days prior to the election. All candidates must be residents of the City for at least one (1) year immediately prior to the last day for filing nominating petitions.

(C) **Nominating Petitions for Special Councillor Elections.** For elections to fill a vacancy in elective offices pursuant to Section 5.7(b) of the Charter, the dates for the filing and circulating of nominating petitions shall be established by the City Council in the resolution setting the special election.

(D) **Nominated Candidates.** Only candidates whose names have been placed in nomination through the process designated in this chapter are eligible to be placed on the ballot.

(E) **Vacancies in Nominations.** If any candidate dies or withdraws his or her name from nomination prior to the date upon which the City Clerk submits the ballot content to the ballot printer or, in the case of a coordinated election, to the respective County election official, the City Clerk shall use his or her best efforts to cause the candidate's name to be removed from the ballot.

(F) **Content of Ballot.** Every ballot shall contain the names of all duly nominated candidates for offices to be voted for at that election, except those who have died or withdrawn, and the ballot shall contain no other names. The arrangement of the names on the ballot shall be established by lot at any time prior to the certification of the ballot. The City Clerk shall notify the candidates of the time and place of the lot-drawings for the ballot. Two separate lot-drawings shall be held to establish the order of names on the respective ballots of Adams County and Jefferson County. The drawings shall be performed by the City Clerk or the Clerk's designee.

(G) **Write-in Candidate Affidavit.** No write-in vote for any elective officer shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written in indicating

that such person desires the office and is qualified and eligible to assume the duties of that office if elected. Such affidavit of intent shall be filed by the close of business on the sixty-fourth day before a regular municipal election or, for a special election, on the date set in the Council resolution for the filing of nominating petitions.

(H) **Notice.** At least ten (10) days before election for the office of Mayor or Councillor, the City Clerk shall publish notice in at least one newspaper having general circulation in the City, stating the day and date of the election, the hours during which the polls will be open unless it is a mail ballot election, naming the officers to be elected, and listing the names of those candidates as nearly as possible in the form in which such nominations shall appear upon the official ballot. Additionally, a copy of such notice shall be posted until after the election in a conspicuous place in the office of the City Clerk.

7-1-9: ELECTIONS ON INITIATED OR REFERRED MEASURES: The procedures for exercising the initiative and referendum powers reserved to the City's electors by the City Charter and the Colorado Constitution shall be as follows:

(A) **General Conditions.** An ordinance may be initiated by petition or a referendum on an ordinance enacted by the City Council may be had by petition. Either an initiative or a referendum petition shall be signed by not less than ten (10) percent of the number of persons who were registered electors of the City as of the date of the last regular City election prior to the filing of the petition. In the case of a referendum on an ordinance granting a public utility franchise, said petition shall be signed by not less than five (5) percent of the number of persons who were registered electors of the City as of the date of the last regular City election. No petition shall propose to repeal more than one ordinance nor to initiate an ordinance containing more than one subject.

(B) **Form of Petition.** The City Clerk shall maintain and provide a blank form of petition; however, the Clerk shall not review or comment on the proposed wording of the petition's measure nor prepare a summary thereof. An initiative or referendum petition signed by the requisite number of signatures shall be addressed to the Council. Said petition may be in sections of one or more sheets fastened securely at the top. All sections of the petition shall be filed as one instrument, with the endorsement of the names and mailing addresses of three (3) registered electors of the City designated as the committee of petitioners filing the same. To each petition section there shall be attached a signed, notarized, and dated affidavit by the circulator of that section stating the number of signers thereof and the affiant's printed name and address, that the affiant is eighteen (18) years of age or older, that each signature thereon is the genuine signature of the person whose name it purports to be, and that each signature was made in the presence of the affiant circulator.

At the top of each section of the petition and at the top of each signature page shall be printed the following warning in bold-faced type:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to sign such petition when not a registered elector.

Do not sign this petition unless you are a registered elector. To be a registered elector, you must be a citizen of Colorado and registered to vote in Westminster.

Do not sign this petition unless you have read or have had read to you the proposed measure in its entirety and understand its meaning.

Below the warning shall be printed, at the top of each section of an initiative petition, a short summary of the proposed ordinance and below the summary the full text of the proposed ordinance. Below the

warning and at the top of each section of a referendum petition, shall be printed a meaningful summary identifying the matter proposed for repeal, and then set forth the full text of the ordinance or part thereof or code section proposed to be repealed.

The signature pages shall consist of the warning and the summary, followed by ruled lines numbered consecutively for registered electors' signatures. If a petition section contains multiple signature pages, all signature lines shall be numbered consecutively, and the section pages shall be numbered consecutively from the first section page through the last.

(C) **Petition signatures.** Each registered elector signing an initiative or referendum petition shall add the signer's printed name, the date of signing, his or her place of residence by street and number, and the county designation after his or her signature. All signatures on a referendum petition shall be obtained after the effective date of the ordinance proposed for repeal.

(D) **Filing and Examination of Petition.** An initiative petition shall be filed in the office of the City Clerk. No signature on an initiative petition may be counted if it was signed more than 180 days from the date of filing. A referendum petition shall be filed in the office of the City Clerk not more than thirty (30) days after the effective date of the ordinance proposed for repeal. Within fifteen (15) days of the filing of an initiative or referendum petition, the City Clerk shall ascertain by examination of the petition and the county voter registration records whether the petition is signed and appropriately dated by the requisite number of registered electors and shall attach thereto his or her certificate showing the result of such examination. If the petition as initially filed shows on its face an insufficient number of signatures, the City Clerk shall not be required to canvass the signatures and the petition shall be null and void. If the petition contains a sufficient number of signatures but an insufficient number of registered electors' signatures, the City Clerk shall forthwith notify by first class and electronic mail, if available, each of the persons designated as a member of the committee of petitioners. The petition may then be amended by the filing of additional petition signatures within fifteen (15) days from the filing of the certificate. The City Clerk, within five (5) days after such amendment, shall make like examination of the amended petition and attach thereto a second certificate of the result. If the petition is still insufficient, the City Clerk shall issue a certificate of insufficiency, a copy of which shall be provided to one (1) of the persons designated as the committee of petitioners. If the petition or amended petition is found sufficient, the City Clerk shall submit the same with his or her certificate to the Council at its next regular meeting. The City Clerk's determination of sufficiency or insufficiency is final.

(E) **Council Action Upon Petition.** Within thirty (30) days of receipt of the City Clerk's certificate establishing sufficiency of an initiative or referendum petition, the Council shall either:

1. Adopt the ordinance as submitted in an initiative petition;
2. Repeal the ordinance, or part thereof, requested for repeal in a referendum petition; or
3. Submit the proposal provided for in the petition to the electors at the next election, occurring not less than sixty (60) days after Council's decision to submit the proposal, held in the City for any other purpose or, in the Council's discretion, at a special election called specifically for that purpose.

(F) **Content of Ballot.** If an election has been ordered pursuant to Subsection (E) above, the Council shall fix a ballot title for each initiative or referendum, which ballot title shall correctly and fairly express the true intent and meaning of the measure, in the resolution calling the election. Any person protesting the wording of the ballot title shall file such protest with the City Clerk within seven (7) days of the Council's action. The Council shall consider said protest at their next regularly scheduled meeting or, at Council's discretion, at a special meeting called for that purpose and the Council's determination of the ballot title shall be final.

7-1-10: ELECTIONS ON RECALL PETITIONS: The procedure to recall an elective officer of the City shall be as follows:

(A) **General Conditions.** Any elective officer, as that term is defined in Article XXI of the Colorado Constitution, may be removed from office by the qualified electors of the City after the officer has held said office for at least six (6) months. Prior to the filing of any recall petition one (1) or more registered electors of the City shall file with the City Clerk a notarized affidavit, of not more than two hundred (200) words, stating the reasons for the recall of the officer sought to be removed. The City Clerk shall, within forty-eight (48) hours after the filing of said affidavit, mail a copy by registered mail to the officer sought to be recalled, who may file with the City Clerk a sworn statement of not more than three hundred (300) words in defense of charges made against him or her.

(B) **Form of Petition.** A petition for the recall of the officer sought to be removed and demanding an election of a successor to the officer named in the petition, signed by the requisite numbers of signatures, as detailed below, shall be addressed to the Council. The petition shall include the name of only one (1) person to be recalled. Said petition may be in sections of one (1) or more sheets fastened securely at the top. All sections of the petition shall be filed as one (1) instrument, with the endorsement of the names and mailing addresses of three (3) registered electors of the City designated as the committee of petitioners filing the same. To each petition section there shall be attached a signed, notarized, and dated affidavit by the circulator of that section stating the number of signers thereof and the affiant's printed name and address, that the affiant is eighteen (18) years of age or older, that each signature thereon is the genuine signature of the person whose name it purports to be, and that each signature was made in the presence of the affiant circulator.

At the top of each section of the petition and of each signature page shall be printed the following warning in bold-faced type:

**WARNING:
IT IS AGAINST THE LAW:**

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to sign such petition when not a registered elector.

Do not sign this petition unless you are a registered elector. To be a registered elector, you must be a citizen of Colorado and registered to vote in Westminster.

Do not sign this petition unless you have read or have had read to you the proposed measure in its entirety and understand its meaning.

Below the warning shall be printed the title: "Petition to recall (name of person sought to be recalled) from the office of (title of office)". Below the title shall be printed a copy of the charges previously filed with the City Clerk.

(C) **Petition Signatures.** Each registered elector signing the petition shall add the signer's printed name, the date of signing, his or her place of residence by street and number, and the county designation, after his or her signature. If the petition seeks the recall of the Mayor, then the petition shall be signed by registered electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent (25%) of the entire vote cast for the office of Mayor at the last preceding regular election held in the City for that office.

If the petition seeks the recall of a non-mayoral Councillor, then the recall petition shall be signed by registered electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent (25%) of the entire vote cast at the last preceding regular election held in

the City for all non-mayoral candidates, such entire vote being divided by the number of all officers elected to the office of Councillor at the last preceding regular election held in the City.

(D) **Filing and Examination of Petition.** The petition shall be filed in the office of the City Clerk not more than sixty (60) days after the affidavit making charges against said officer has been filed. Within fifteen (15) days of the filing of said petition the City Clerk shall ascertain by examination of the petition and the registration books whether the petition is signed by the requisite number of registered electors and shall attach thereto his or her certificate showing the result of such examination. If the petition is insufficient, the City Clerk shall forthwith, in writing, notify one (1) or more of the persons designated as the committee of petitioners. The petition may be withdrawn and amended within fifteen (15) days from the filing of the certificate. The City Clerk, within five (5) days after such amendment, shall make like examination of the amended petition and attach thereto a certificate of the result. If the petition is still insufficient, the City Clerk shall return it to each of the persons designated as a member of the committee of petitioners, without prejudice to the filing of a new petition for the same person. If the petition or amended petition is found sufficient, the City Clerk shall submit the same with his or her certificate to the Council without delay. The City Clerk's determination of sufficiency or insufficiency is final.

(E) **Call for Election.** Upon receipt of the City Clerk's certificate, the Council, if the officer sought to be removed does not resign within (5) days thereafter, shall order an election by resolution, which shall contain the time periods for candidates to file their nomination petitions to succeed the person sought to be recalled. Such election shall be held on a Tuesday fixed by the Council not less than forty-five (45) nor more than sixty (60) days from the date that the City Clerk's certificate was filed; provided that, if any other City election is to occur within ninety (90) days but more than sixty (60) days from the date of the City Clerk's certificate, the Council shall postpone and consolidate the recall election with such other City election.

(F) **Content of Ballot.** On the official ballot at the recall election shall be printed, in not more than two hundred (200) words, the reasons set forth in the petition for demanding an officer's recall, and in not more than three hundred (300) words there shall also be printed, if desired by the officer, the officer's response in defense as filed with the City Clerk. There shall be printed on the official ballot the words: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (.....)?" Following such question shall be the words "Yes" and "No."

If recall petitions for more than one officer have been certified as sufficient to be placed on the ballot, the officers shall be listed in alphabetical order on the ballot. On such ballot, under the question or questions, there shall be printed, in alphabetical order, the names of those persons who have been nominated as candidates to succeed the person or persons sought to be recalled. Any qualified elector desiring to become a candidate at the recall election shall do so by petition, as required by Sections 3.1 and 5.1 of the Westminster Charter, which petition if presented to the City Clerk shall entitle the petitioner to have his or her name placed on the ballot. The name of the person sought to be recalled shall not appear on the ballot as a candidate for the office. If the majority of those voting on said question of the recall of any incumbent from office shall vote "NO," said incumbent shall continue in said office; if a majority shall vote "YES," such incumbent shall thereupon be deemed removed from such office upon the qualification of his or her successor.

(G) **Write-in Candidate Affidavit.** In a recall election, no write-in vote for any elective officer shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written in indicating that such person desires the office and is qualified and eligible to assume the duties of that office if elected. Such affidavit of intent shall be filed by the close of business on the date set for the filing of nominating petitions for the recall election.

(H) **Vacancy.** If a vacancy occurs in said office after a recall election has been ordered, the election to fill the vacancy shall nevertheless proceed as in this section provided.

(I) **Notice.** At least ten (10) days before a recall election, the City Clerk shall publish notice in at least one newspaper having general circulation in the municipality, stating the day of the election, the hours during which the polls will be open unless it is a mail ballot election, naming the officer whose recall is to be voted upon, and listing the names of those candidates in alphabetical order nominated to succeed the person sought to be recalled. Additionally, a copy of such notice shall be posted until after the election in a conspicuous place in the office of the City Clerk.

(J) **Effect of Recall.** No person who has been recalled or has resigned while recall proceedings were pending against him or her shall serve the City in any capacity within two (2) years after such removal or resignation.

7-1-11: SPECIAL ELECTIONS:

(A) Special elections shall be held when called by resolution of the Council at least forty (40) days in advance of such election, or when required by this Code, the Charter, or applicable statute. Any resolution calling a special election shall set forth the purpose of such election.

(B) The conduct of special elections shall be as nearly as practicable the same as for general elections.

7-1-12: PENALTIES FOR ELECTION OFFENSES: In addition to any penalties established for violation of this Code, it is the intention of the City Council to authorize the district attorneys of Adams and/or Jefferson County and the attorney general to prosecute violations of any election offenses occurring within the City as provided for in Part 15 of Article 10 of Title 31, C.R.S., regarding Election Offenses. The penalties for violation of these offenses shall be as established, from time to time, by the Colorado General Assembly.

7-1-13: FAIR CAMPAIGN PRACTICES ACT: All relevant provisions of the Fair Campaign Practices Act, found at Article 45 of Title 1, C.R.S., as amended from time to time, are herewith adopted and all candidates and committees in support of or in opposition to any municipal candidates or municipal issues, shall file documents and reports required under that Act with the City Clerk.

Section 2. Section 1-11-2, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (E) to read as follows:

1-11-2: QUALIFICATIONS:

(E) ANY PERSONALLY IDENTIFYING INFORMATION, OTHER THAN NAME AND ADDRESS, PROVIDED BY A CANDIDATE FOR CITY COUNCIL, PURSUANT TO CHARTER SECTION 5.1(D) OR IN CONNECTION WITH A CANDIDATE PETITION OR APPLICATION FOR OFFICE, WILL BE DEEMED AS HAVING BEEN RECEIVED IN CONFIDENCE AND NOT SUBJECT TO DISCLOSURE UNDER THE COLORADO OPEN RECORDS ACT, EXCEPT AS MAY BE REQUIRED BY AN ORDER OF DISTRICT COURT. ANY SUCH PERSONALLY IDENTIFYING INFORMATION CONTAINED IN A REPORT, REQUIRED TO BE MAINTAINED PURSUANT TO CHARTER SECTION 5.1(D), SHALL BE REDACTED BY THE CITY CLERK PRIOR TO DISCLOSURE OF THE REMAINDER OF THE REPORT.

Section 3. Section 2-1-1, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (G) to read as follows:

2-1-1: APPOINTMENT OF MEMBERS; TERMS:

(G) ANY PERSONALLY IDENTIFYING INFORMATION, OTHER THAN NAME AND ADDRESS,

PROVIDED BY A CANDIDATE FOR A BOARD OR COMMISSION, PURSUANT TO CHARTER SECTION 5.1(D) OR IN CONNECTION WITH AN APPLICATION FOR OFFICE, WILL BE DEEMED AS HAVING BEEN RECEIVED IN CONFIDENCE AND NOT SUBJECT TO DISCLOSURE UNDER THE COLORADO OPEN RECORDS ACT, EXCEPT AS MAY BE REQUIRED BY AN ORDER OF DISTRICT COURT. ANY SUCH PERSONALLY IDENTIFYING INFORMATION CONTAINED IN A REPORT, REQUIRED TO BE MAINTAINED PURSUANT TO CHARTER SECTION 5.1(D), SHALL BE REDACTED BY THE CITY CLERK PRIOR TO DISCLOSURE OF THE REMAINDER OF THE REPORT.

Section 4. This ordinance shall take effect immediately upon passage.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of July 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of August, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Resolution No. 24 re Fall 2007 Adams County Open Space Grant Applications

Prepared By: Richard Dahl, Park Services Manager
Heather Cronenberg, Open Space Coordinator

Recommended City Council Action:

Adopt Resolution No. 24 authorizing the Department of Parks, Recreation and Libraries and the Department of Community Development to pursue grants with Adams County Open Space during the 2007 fall cycle for the development of City Center Park, located at 92nd Avenue and City Center Drive, and for the acquisition of the Doulos Ministries Property, located at 124th Avenue and Zuni Street.

Summary Statement

- The Department of Parks, Recreation and Libraries wishes to pursue a grant from Adams County Open Space for funding assistance with City Center Park.
- Staff recommends requesting a \$500,000 grant to be matched by Parks, Trails and Open Space bond funds for development of this nine-acre park site to include a fountain, playground, extensive plaza area, terraced seating, custom shelter, art work and landscaping. The total project budget is currently estimated at \$1.8 million.
- The City has budgeted \$125,000 for design of the City Center Park from the bond issue approved in November, 2006.
- The Department of Community Development wishes to pursue a grant from Adams County Open Space for funding to assist with the acquisition of the Doulos Ministries property.
- Staff recommends requesting up to \$1,375,000 for a grant to match City open space funds to purchase the 38-acre Doulos Ministries property, located at 124th Avenue and Zuni Street.
- The Open Space Fund, using Open Space bond funds, will match this grant amount up to \$1,375,000 to purchase this property. The Open Space Advisory Board considers the acquisition of the Doulos property a high priority and recommends this purchase.

Expenditure Required: \$1,875,000 (City matching funds)

Source of Funds: Parks, Trail, and Open Space Bond Issue

Policy Issue

Should the City attempt to seek assistance for the development or acquisition of these projects by pursuing grant monies from the Adams County Open Space Grant Program?

Alternative

Council could choose not to pursue additional funding for City Center Park and proceed solely with Parks, Trails, and Open Space bond funds. Council could also choose not to pursue additional funding for the acquisition of the Doulos Ministries property and use only the Open Space Fund monies to purchase this property. However, Staff recommends attempting to secure additional funding for these projects through this grant opportunity to allow for both a more fully developed park and open space acquisition assistance.

Background Information

The Departments of Parks, Recreation and Libraries and Community Development have been successful in applying for and receiving grants from a variety of sources in the past. In recent years, the City has received grant money from Adams County Open Space for park and trail development projects as well as open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Recent Adams County grants include: two grants in the spring of 2007 for Cheyenne Ridge Park and 128th Avenue and Big Dry Creek Park for \$80,000 and \$500,000 respectively; a 2005 grant in the amount of \$600,060 for Westfield Village Park; a 2005 grant in the amount of \$775,000 for Tanglewood Creek Open Space Acquisition; and three grants in 2003 and 2004 for the Metzger Farm Open Space Acquisition totaling \$1,502,500.

The City Center Park project would develop the ten-acre park site located directly across from City Hall on 92nd Avenue. The master plan includes seating walls, a plaza area, shelter, planting areas and a large fountain. This park, because of its location, is not a traditional neighborhood park but more of an urban park that will include a extensive amount of hardscape.

The Duolos Ministries parcel is the location of a residential treatment facility for youth. The property has been for sale for several years. The owner's appraisal values the land at \$2,750,000. The City hired Peter Bowes & Associates to review the appraisal. They concluded that the owner's appraisal amount is reasonable. Staff has negotiated a sale price at \$100,000 less than the appraisal amount.

The Doulos Ministries property is a high-priority open space acquisition for the City's Open Space Advisory Board. This property is the last remaining privately owned property along Big Dry Creek within the City. The Big Dry Creek trail that crosses the parcel is on a temporary trail easement subject to immediate revocation. The property has extensive wetlands and floodplain areas and affords beautiful mountain views. Acquisition of this property would preserve a 1,600 foot wide wildlife corridor along the creek in this location. The existing buildings on the site would be demolished and the land revegetated once under city ownership.

These grant requests and projects support the City's Strategic Plan Goals of "Financially Sustainable City Government" and "Beautiful City" by increasing revenues that support defined City projects and by providing the City with new community park development and increased open space.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **24**

INTRODUCED BY COUNCILLORS

SERIES OF 2007

GRANT REQUESTS FOR THE 2007 OPEN SPACE GRANT PROGRAM

WHEREAS, Adams County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements and open space acquisition; and

WHEREAS, The City of Westminster has budgeted for improvements for City Center Park and;

WHEREAS, grant money received from Adams County would significantly enhance the improvements for the above-mentioned project.

WHEREAS, The City of Westminster has a strong interest in purchasing the Doulos Ministries property for open space.

WHEREAS, grant money received from Adams County would reduce the amount of funds needed from the Open Space fund to purchase the Doulos Ministries property.

NOW, THEREFORE, the Westminster City Council hereby resolves that City of Westminster Staff submit grant applications to the Adams County Open Space Grant program for the fall funding cycle of 2007, requesting funding in the amount of \$500,000 to enhance the development of City Center Park and up to \$1,375,000 to purchase the Doulos Ministries property for open space.

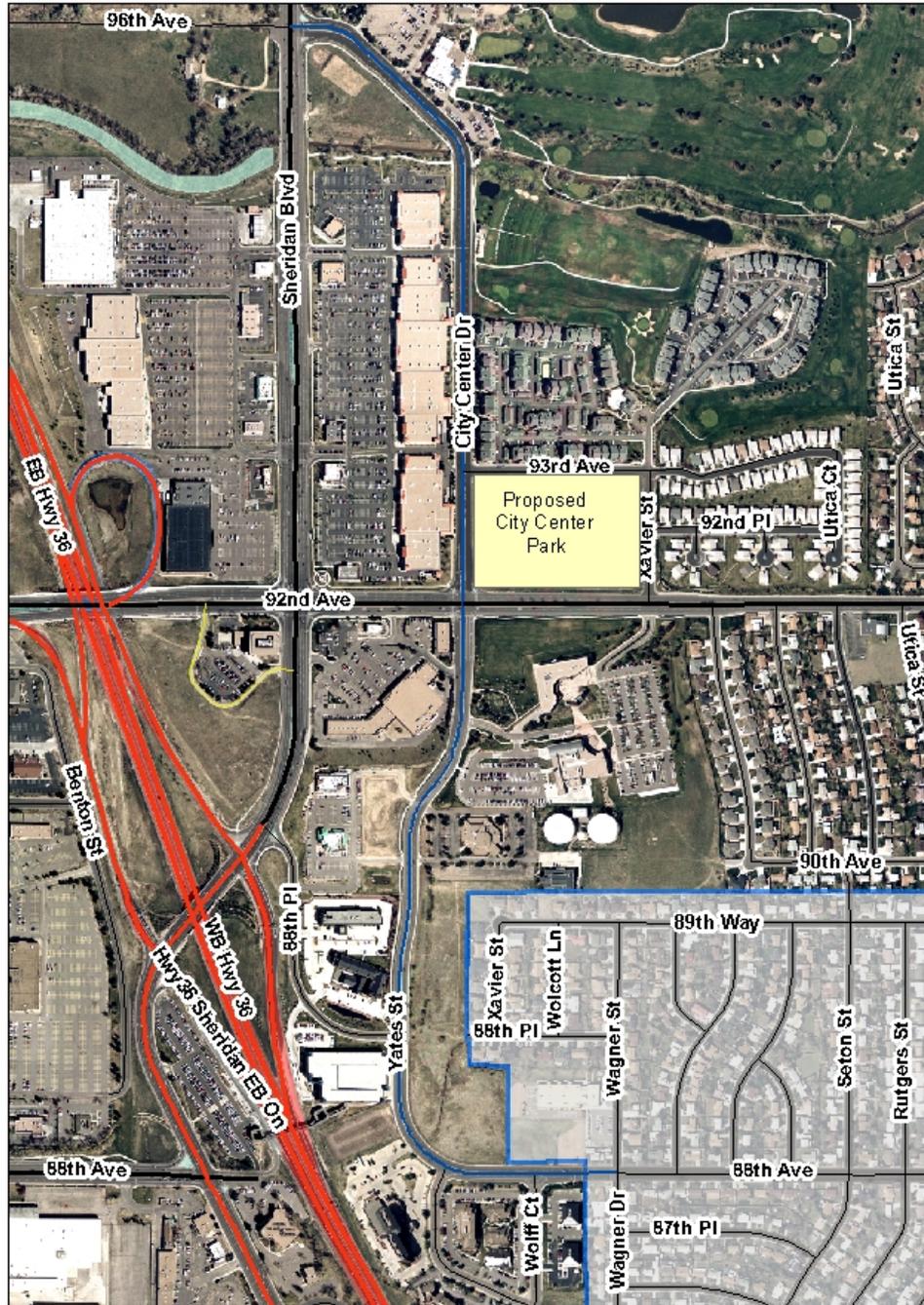
Passed and adopted this 23rd day of July 2007.

Attest:

Mayor

City Clerk

City Center Park

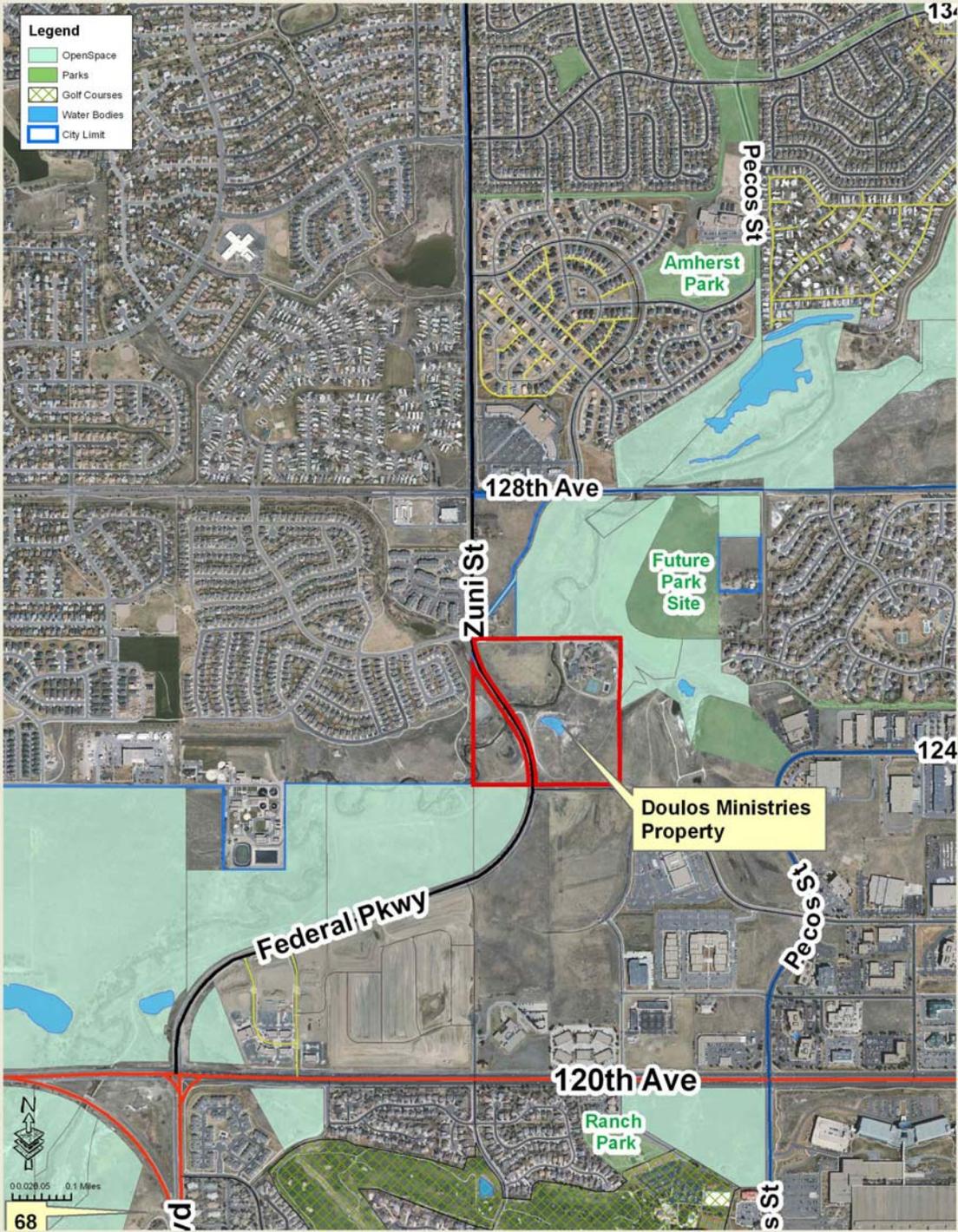


Not to Scale



Indicates proposed park

Doulos Ministries Property





Agenda Item 10 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
July 23, 2007



SUBJECT: Resolution No. 25 re Compliance Hearing for the Ganzhorn Annexation Petition

Prepared By: David Falconieri, Planner III

Recommended City Council Action

Adopt Resolution No. 25 accepting the annexation petition submitted by Conrad Ganzhorn, owner, and make the findings required by State Statute on the sufficiency of the petition. This resolution sets the date of August 27, 2007, for the annexation hearing.

Summary Statement

- The Ganzhorn property is located at 10385 Wadsworth Boulevard and consists of approximately 1.1 acres.
- The applicant wishes to annex in order to enhance his ability to sell the property and to make in-City rates for water and Sewer service available to any future developer.
- The property is subject to the requirements of the Northeast Comprehensive Development Plan that permits general retail, office and mixed use developments. Staff will recommend that a CLUP designation of Retail Commercial be placed on the property.
- In order to meet contiguity requirements, this annexation must be accomplished as two sequential annexations.

Expenditure Required: \$0

Source of Funds: NA

Policy Issue

Whether to annex the Ganzhorn property at this time.

Alternative

Make a finding that there is no community of interest with the Ganzhorn property and take no further action. If this course is taken, the property in question will remain unincorporated, and the owners could proceed with their proposed development in the Jefferson County. The City would still be required to provide water and sewer service if this action is taken.

Background

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

- 1) Is signed by the landowners of more than 50% of the area, excluding streets and alleys.
- 2) Contains an allegation that the annexation is desirable and necessary.
- 3) Contains an allegation that the requirements of Section 31-12-104 and 31-12-105 C.R.S have been met. (These sections are to be reviewed by the Council at the formal public hearing.)
- 4) Contains mailing addresses of the signers and the date each signed (In this case, Conrad Ganzhorn, signer of the petition, owns 100% of the property.)
- 5) Contains the legal description of the land to be annexed.
- 6) Contains the affidavit of the circulator stating that each signature is the signature of the person whose name it purports to be.
- 7) Is accompanied by a map showing the boundaries of the area, the location of each ownership, including the lots and blocks if platted, and the contiguous boundaries of any abutting municipalities.

Planning Staff has reviewed the petition and has determined that it complies with the above requirements.

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date (August 27, 2007) at which time the Council will review the merits of the proposed annexation.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:

- Petition
- Resolution
- Exhibit A (Property Descriptions)
- Vicinity Map

RESOLUTION

RESOLUTION NO. **25**

INTRODUCED BY COUNCILLORS

SERIES OF 2007

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City;

WHEREAS, the City Council has been advised by the City Staff that the petition submitted by Conrad Ganzhorn and accompanying map are in substantial compliance with Sections 31-12-107 (1), Colorado Revised Statutes, as amended;

NOW, THEREFORE, be it resolved that by City Council of the City of Westminster that:

1. City Council finds the said petition and annexation map to be in substantial compliance with the requirements of Section 31-12-107 (1), C.R.S.
2. City Council hereby establishes August 27, 2007, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. Section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with Section 31-12-108 (2), C.R.S.

Passed and adopted this 23rd day of July, 2007.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

Parcel 1 (Property Description)

The north ½ of Tracts B1 & B2, Mandalay Gardens, County of Jefferson, State of Colorado.

Considering the north line of the Northeast ¼ of Section 14, Township 2 South, Range 69 West of the 6th P.M., to bear North 88°52'39" East, with all bearings herein relative thereto.

Commencing at the northwest corner of the Northeast ¼ of said Section 14; thence South 03°31'50" West, a distance of 640.66 feet to the northeast corner of said tracts and the point of beginning; thence coincident with the east line of said tracts South 21°07'49" East, a distance of 170.43 feet to the south line of the North ½ of said tracts; thence coincident with the south line of the North ½ of said tracts South 89°38'23" West, a distance of 284.56 feet to the west line of said tracts; thence coincident with the west line of said tracts North 00°48'52" East, a distance of 159.21 feet to the northwest corner of said tracts; thence coincident with the north line of said tracts North 89°35'40" East, a distance of 220.86 feet to the point of beginning.

Parcel 2 (Property Description)

A part of Old Wadsworth Boulevard, located in Section 14, Township 2 South, Range 69 West of the 6th P.M., County of Jefferson, State of Colorado, described as follows:

Considering the north line of the Northeast ¼ of Section 14, Township 2 South, Range 69 West of the 6th P.M. to bear North 88°52'39" East, with all bearings herein relative thereto.

Commencing at the northwest corner of the Northeast ¼ of said Section 14, thence South 08°07'18" East, a distance of 660.31 feet to the point of beginning at the intersection of the east right-of-way line of said Old Wadsworth Boulevard and the north right-of-way line of 103rd Avenue, also being the southwest corner of Lot 1, first replat Church Ranch Home Place Filing No. 1, recorded at Reception No. F0321019; thence North 89°40'44" West, a distance of 90.00 feet to the west right-of-way line of said Old Wadsworth Boulevard and the east boundary of Lot 2, platting exemption agreement Case No. E53-6-85, recorded at Reception No. 85072556 in the official records of said County; thence coincident with the east right-of-way line of said Old Wadsworth and the east line of said Lot 2 South 00°19'16" West, a distance of 13.43 feet to the southeast corner of said Lot 2; thence coincident with the west right-of-way line of said Old Wadsworth Boulevard and the southwest line of said Lot 2 North 21°07'49" West, a distance of 29.37 feet to the southeast corner of parcel of land described in Reception No. 194693; thence coincident with the south line of said parcel of land described at Reception No. 194693 South 89°35'40" West, a distance of 32.08 feet to the northeast corner of Tract B1 and B2, Mandalay Gardens, recorded at Reception No. 194693; thence coincident with the east line of said Tract B1 and B2 and the west right-of-way line of said Wadsworth Boulevard South 21°07'49" East, a distance of 187.03 feet to the north line of that portion of annexation map recorded at Reception No. F1186035; thence coincident with the north line of said portion of Wadsworth Boulevard North 89°48'38" East, a distance of 64.24 feet to the east right-of-way line of said Old Wadsworth Boulevard and the west line of Tract 57B, of said Mandalay Gardens; thence coincident with the west line of said Tract 57B North 21°07'49" West, a distance of 107.07 feet to the northwest corner of said Tract 57B; thence coincident with the north line of said Tract 57B North 89°48'38" East, a distance of 39.33 feet to the west line of that portion annexed to the City of Westminster by annexation map recorded at Reception No. 88080480; thence coincident with said west line North 00°19'16" East, a distance of 60.00 feet to the point of beginning.



WESTMINSTER

1

Department of Community Development

ANNEXATION PETITION

- 1. It is desirable and necessary that the area shown on the attached annexation map be annexed into the City of Westminster.
- 2. The requirements of Sections 31-12-104 and 31-12-105 C.R.S. 1973, as amended, exist or have been met.
- 3. The signers of this petition comprise the landowners of more than fifty percent of the territory included in the area proposed to be annexed exclusive of streets and alleys.
- 4. The undersigned hereby request the City of Westminster to approve the annexation of the area proposed to be annexed.

By William Humphrey or Catherine Wynne
Entrust New Direction IRA, Inc.
It's Authorized Signer

5. Signature of landowner

[Handwritten Signature]

Title CATHERINE WYNNE, VP END-IRA INC.

- FBO CONRAD GANZHEIN, IRA

6. Mailing address of signer

1300 PLAZA COURT NORTH STE 105

LAFAYETTE, CO 80086

7. Legal description of land owned by signer:

See Exhibit A Attached

8. Date of Signing

4/16/07

9. Subscribed and sworn to before me this

16

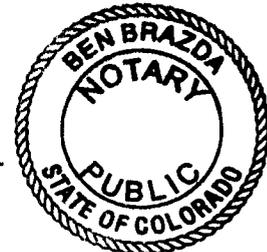
day of APRIL

2007.

Witness my hand and Official Seal.

My Commission expires 2/10/2010

[Handwritten Signature]
Notary Public



My Commission Expires 02/10/2010

* No signature is valid if date is more then 180 days prior to filing the Petition with the City Clerk.

Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, July 23, 2007. Mayor McNally and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call. Mayor Pro Tem Kauffman was absent and excused.

The minutes of the July 9, 2007 regular meeting were corrected and approved.

Council approved the following: June 2007 Financial Report; April – June 2007 Quarterly Insurance Report; security system installation contract re former Westminster Police Department Building; reclaimed/raw water interconnect engineering contract; open-cut waterline and sanitary sewer construction contract; Intergraph Corporation CAD, Records Management and Mobile Application Systems software upgrade; and final passage of Councillor's Bill No. 40 re public hearing notice procedures for land development approvals.

Council adopted Resolution No. 24 re fall 2007 Adams County Open Space Grant applications and Resolution No. 25 re the Ganzhorn annexation petition compliance hearing.

Council conducted a public hearing to consider the exclusion of property from the Metro Wastewater Reclamation District.

Council adopted the following emergency ordinances:

A BILL FOR AN EMERGENCY ORDINANCE REQUESTING THE EXCLUSION OF THE SUNSET RIDGE WEST SUBDIVISION FROM THE METRO WASTEWATER RECLAMATION DISTRICT, AND DIRECTING CITY STAFF TO TAKE CERTAIN NECESSARY ACTIONS RELATED THERETO.

Purpose: requesting exclusion of property in the vicinity of Sunset Ridge West Subdivision from being served by Metro Wastewater Reclamation District.

A BILL FOR AN ORDINANCE REPEALING AND REENACTING CHAPTERS 1, 3, AND 4 OF TITLE XVI OF THE WESTMINSTER MUNICIPAL CODE, ADOPTING A COMPETITIVE CABLE FRANCHISE REVIEW AND EVALUATION PROCESS IN CONNECTION WITH ANY FRANCHISE APPLICATION SUBMITTED PURSUANT TO §76.41 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS AS A NEW CHAPTER 3 OF TITLE XVI, MAKING CONFORMING CHANGES TO TITLE XVI, AND DECLARING AN EMERGENCY.

Purpose: amending the Westminster Municipal Code Title XVI concerning competitive cable franchise application process.

Council passed the following Councillors' Bill on first reading:

A BILL FOR AN ORDINANCE AMENDING TITLES III, IV AND V OF THE WESTMINSTER MUNICIPAL CODE CONCERNING TAX ADMINISTRATION. Purpose: Amending the City Code concerning tax administration.

A BILL FOR AN ORDINANCE AMENDING CHAPTER 1 OF TITLE VII OF THE WESTMINSTER MUNICIPAL CODE CONCERNING ELECTIONS AND AMENDING SECTION 1-11-2 CONCERNING QUALIFICATIONS OF CITY COUNCILLORS AND SECTION 2-1-1 CONCERNING APPOINTMENT OF BOARD AND COMMISSION MEMBERS. Purpose: Repealing and Reenacting the City's Election Code, amending Section 1-11-2 concerning qualifications of City Councillors, and amending Section 2-1-1 concerning appointment of Board and Commission members.

The meeting adjourned at 7:25 p.m.

By Order of the Westminster City Council
Linda Yeager, City Clerk

Published in the Westminster Window on August 2, 2007

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE CONCERNING PUBLIC HEARINGS FOR LAND DEVELOPMENT APPROVALS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-5-13, subsection (A), W.M.C., is hereby AMENDED BY REVISING CERTAIN REQUIREMENTS CONTAINED THEREIN to read as follows:

11-5-13: PUBLIC HEARINGS FOR LAND DEVELOPMENT APPROVALS: (2534)

(A) The following public hearing procedure shall apply to any PDP, amended PDP, ODP, or amended ODP required in this Chapter to be reviewed and approved by the Planning Commission or City Council.

1. A public hearing before the Planning Commission shall be scheduled by the City.
2. Notice of public hearings scheduled before Planning Commission shall be published and posted at least ten days prior to such hearing.
3. Notice of public hearings scheduled before City Council shall be published and posted at least four days prior to such hearing.
4. Notice of the public hearing shall be published by the City by one publication in the official newspaper of the City.
5. The Notice of the public hearing shall also be posted on the property by the City using at least one sign with a minimum area of 30 square inches with lettering not less than 1-1/4 inches in height at an appropriate location which is reasonably visible to vehicular and pedestrian traffic passing adjacent to the site.
6. Mailed notice of the public hearing shall be given by the ~~City~~ APPLICANT by sending such notice by first-class mail to all owners within the area covered by the PDP, ODP, or PDP or ODP amendment, and any owners and any homeowner's associations registered with the City within 300' of the subject property, provided, however, the City may extend this distance beyond 300' based on the location and configuration of adjacent properties, neighborhoods and business areas.
7. It shall be the responsibility of the applicant to:
 - a. Prepare the list of property owners who are required to receive notice. Such list shall ~~be provided in the form of an ownership report issued by a title company acceptable to the City~~ CONTAIN THE NAME AND MAILING ADDRESS OF PROPERTY OWNERS FROM THE COUNTY'S RECORDS, KEYED TO THE APPROPRIATE LOT AND BLOCK NUMBER ON THE COUNTY ASSESSOR'S MAPS.
 - b. Prepare a map USING COUNTY ASSESSOR'S MAPS identifying the SUBJECT SITE, AND THE location and LOT AND BLOCK NUMER addresses of the ~~property owners~~ PROPERTIES TO BE NOTIFIED.
 - c. DELIVER TO THE PLANNING MANAGER THE ~~The~~ items listed above IN A FORMAT ACCEPTABLE to the Planning Manager at least fifteen days prior to the date of hearing.
 - d. ~~At least ten (10) days prior to the date of the hearing, the applicant shall mail,~~ Mail, by certified first class mail, the individual notices to the listed property owners, AT LEAST TEN (10) DAYS PRIOR TO THE DATE OF THE HEARING. ALSO, THE ~~The~~ applicant shall ~~also~~ provide the Planning Manager prior to the hearing, a certification that the required notices were mailed and the date of such mailing(s).
8. The City shall prepare the form of the notice to be issued. At the public hearing, the Planning Manager shall verify that the required notices were issued. Any person with actual notice of the public hearing shall have no standing to object to the commencement or conduct of the public hearing, even if such person failed to receive one or more of the forms of notice prescribed above.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of July, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of July, 2007.

A BILL FOR AN EMERGENCY ORDINANCE REQUESTING THE EXCLUSION OF THE SUNSET RIDGE WEST SUBDIVISION FROM THE METRO WASTEWATER RECLAMATION DISTRICT, AND DIRECTING CITY STAFF TO TAKE CERTAIN NECESSARY ACTIONS RELATED THERETO

WHEREAS, sanitary sewer service to the Sunset Ridge West Subdivision and other property adjacent thereto (the "Property") is currently provided by the Metro Wastewater Reclamation District ("District") pursuant to a certain Sewage Treatment and Disposal Agreement dated March 30, 1964, as amended; and

WHEREAS, the Property is generally bounded by 92nd Avenue on the south, 97th Avenue on the north, Federal Boulevard on the east, and Xavier Street on the west; and

WHEREAS, sewer flows from the Property have been delivered to the District by means of a sanitary sewer lift station located at approximately 94th Avenue and Quitman (the "Lift Station"); and

WHEREAS, the Lift Station was built in the 1970's and has experienced an increase in mechanical and storage capacity problems, resulting in an unacceptable risk of failure and resulting sewer backups within the Property; and

WHEREAS, City Council finds it is no longer feasible for the Property to be served by the District's facilities because it is no longer feasible, practical or safe to operate the Lift Station necessary to deliver sanitary sewer flows to the District; and

WHEREAS, City Council finds that the public health and safety concerns of the City in general, and the residents within the Property in particular, require the abandonment of the Lift Station and the replacement of the Lift Station with a gravity flow line to the City's Big Dry Creek Wastewater Treatment Plant; and

WHEREAS, C.R.S. § 32-4-515 provides that should the governing body of any municipality that is included within a metropolitan sewage disposal district determine by ordinance, adopted after a public hearing called and held as provided in C.R.S. § 32-4-508(1)(d), that any portion of the municipality cannot feasibly be served by the districts in that small district's facilities, such municipality may file with the district a certified copy of such ordinance and request that the portion designated by the municipality be excluded from the District; and

WHEREAS, the requisite public hearing required by C.R.S. § 32-4-515 has been duly noticed and held. NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council of the City of Westminster hereby determines by this ordinance that the property described on Exhibit "A," attached hereto and incorporated herein by this reference, can no longer feasibly be served by the District because of the City's inability to deliver sewer flows from the Property to the District as a result of the failing Lift Station located at 94th Avenue and Quitman.

Section 2. Because of the relative elevations of the existing District plant and the Property, delivery of sewer flows from the Property may not be physically or feasibly delivered to the District without a Lift Station.

Section 3. The City Council of the City of Westminster hereby finds that it is not feasible or practical to replace the necessary Lift Station.

Section 4. The City Council of the City of Westminster hereby requests the Board of Directors of the District to determine by resolution that the Property described on Exhibit "A" cannot be feasibly served by the District's facilities and to order that the Property be excluded from the District.

Section 5. The City Clerk is hereby directed to provide a certified copy of this ordinance to the Metro Wastewater Reclamation District.

Section 6. The City Clerk is hereby further directed to (1) file a certified copy of the Resolution of the Board of Directors of the District approving the exclusion of the Property with the Director of the Division of Local Government and the Department of Local Affairs, together with a request that said Director, pursuant to C.R.S. § 32-4-515(3)(b), issue forthwith a Certificate of Exclusion describing the Property so excluded, and transmit to the City Clerk three certified copies of such Certificate of Exclusion and (2) upon receipt, to forthwith record a copy of such Certificate in the Office of the County Clerk and Recorder of Adams County and Jefferson County, and to deliver a copy of said Certificate of Exclusion to the County Assessors and County Treasurers of Adams and Jefferson Counties.

Section 7. An emergency is declared to exist because any unnecessary delay in obtaining the exclusion of the Property would result in delaying the commencement of construction of the sewer line improvements necessary to remedy the current health and safety issues presented by the failing Lift Station at 94th and Quitman. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on July 23, 2007, by an

affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 8. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY
ORDINANCE this 23rd day of July, 2007.

A BILL FOR AN ORDINANCE REPEALING AND REENACTING CHAPTERS 1, 3, AND 4 OF TITLE XVI OF THE WESTMINSTER MUNICIPAL CODE, ADOPTING A COMPETITIVE CABLE FRANCHISE REVIEW AND EVALUATION PROCESS IN CONNECTION WITH ANY FRANCHISE APPLICATION SUBMITTED PURSUANT TO §76.41 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS AS A NEW CHAPTER 3 OF TITLE XVI, MAKING CONFORMING CHANGES TO TITLE XVI, AND DECLARING AN EMERGENCY

WHEREAS, On December 20, 2006, the Federal Communications Commission (“FCC”) adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007, that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the “Competitive Franchise Application Rule” or “CFAR”); and

WHEREAS, the CFAR provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR; and

WHEREAS, the City Council has determined that the best interests of the citizens of Westminster will be served by adoption and codification of a comprehensive evaluation process; and

WHEREAS, the re-ordering of certain Chapters, and minor updates and conforming changes to the language of Title XVI concerning Utilities and Franchises has become necessary.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 1 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 4 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 2. Chapter 3 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 1 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 3. A new Chapter 3 of Title XVI, W.M.C., entitled “Competitive Cable Franchise Application Process” is hereby adopted as follows:

**CHAPTER 3
COMPETITIVE CABLE FRANCHISE APPLICATION PROCESS**

16-3-1: LEGISLATIVE INTENT

16-3-2: INSTRUCTIONS AND DEFINITIONS

16-3-3: REQUISITE INFORMATION

16-3-4: LEGAL QUALIFICATIONS

16-3-5: FINANCIAL QUALIFICATIONS

16-3-6: TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS

16-3-7: AFFIDAVIT OF APPLICANT

16-3-8: OPEN RECORDS/CONFIDENTIALITY

16-3-9: APPLICATION FEE

16-3-10: REVIEW PROCESS

16-3-11: PUBLIC HEARING

16-3-12: REVIEW CRITERIA

16-3-13: NON-CFAR FRANCHISE APPLICATIONS

16-3-1: LEGISLATIVE INTENT: The City Council does hereby find, determine and declare as follows:

(A) The “Competitive Franchise Application Rule” (CFAR), adopted on December 20, 2006, by the Federal Communications Commission (FCC) provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR.

(B) In order to comprehensively evaluate whether or not to grant a competitive cable franchise, the City will require certain information from applicants in addition to the information required by the CFAR.

(C) To ensure compliance with the CFAR and provide notice to prospective applicants, the review process for applications for competitive cable franchises and the criteria upon which the final decision of the City will be based should be codified.

(D) The application requirements and the processes for application review and determination set forth in this Chapter are intended to comply with the new FCC rules.

16-3-2: INSTRUCTIONS AND DEFINITIONS: The following instructions shall apply to all applications, except those filed under Section 16-3-13:

(A) An applicant for a competitive cable franchise (“Applicant”) shall include the requisite information set forth below, in writing, in its franchise application, in addition to any information required by 47 Code of Federal Regulations §76.41 and applicable state and local laws and the application fee set by Section 16-3-9, herein.

(B) The City shall accept and review only those applications that include complete responses to every requirement of this Chapter. Submission of an application that does not include the requisite information set forth in Sections 16-3-3, 4, 5, 6, 7, and 9, as applicable shall not commence the time period for granting or denying the application set forth in 47 Code of Federal Regulations §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City’s review of the application.

(C) Applications shall be made to the Director of Information Technology, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.

(D) Upon request, the City will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Colorado open records laws.

(E) For the purposes of the application, the terms, phrases, and their derivations set forth below shall have the meanings given, unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.

1. “Affiliated Entity” or “Affiliate” means any entity having ownership or control in common with the Applicant, in whole or in part, including, without limitation, Applicant’s Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

2. “Applicant” means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule (“CFAR”) set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.

3. “City” means the City of Westminster, a Colorado home-rule municipality.

4. “Control” is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

5. “Interest” includes officers, directors and shareholders owning five percent (5%) or more of the Applicant’s outstanding stock or any equivalent voting interest of a partnership or joint venture.

6. “Parent Corporation” includes any entity with ownership or control of the Applicant.

7. “Principal” includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which owns or controls five percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Applicant.

8. “Regulatory Authority” includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the Applicant or its operations.

16-3-3: REQUISITE INFORMATION:

(A) Identification and Ownership Information. The application shall include:

1. The name, address, telephone number and web site (if applicable) of the Applicant and the proposed franchisee (if different from Applicant), and

2. The name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the City during its consideration of the franchise(s) requested, including the Applicant’s primary contact and any additional authorized contacts.

(B) Business Structure.

1. If a corporation, the Applicant shall provide:

(a) A list all officers and members of the Board of Directors, their principal affiliations and their addresses;

(b) A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and

(c) A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement and provide the documents in subparagraphs (a) and (b) above for the controlling corporation or legal entity.

2. If a partnership, the Applicant shall:

- (a) Describe the structure of the partnership and the interests of general and limited partners; and
- (b) State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and provide the documents in subparagraphs 1.(a) and 2.(b) above for the controlling entity, partnership or legal entity.

(C) Experience.

1. **Current Franchises.** An Applicant shall list all cable systems in which it or any Affiliate owns more than five percent (5%) of the system. For each system Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (indicate date).

2. **Potential Franchises.** An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. The Applicant shall include the name of communities, date of application, and date of expected action.

(D) Management Structure. Every application for a competitive franchise shall include a management/organizational chart, showing the management structure of the Applicant. A similar chart shall also be provided showing the relationship of the Applicant to all general partners, Parent Corporations, subsidiaries, Affiliates and all other subsidiaries of Parent Corporations, including a brief description of each entity's relationship to the Applicant.

16-3-4: LEGAL QUALIFICATIONS:

(A) Media Cross-Ownership.

1. Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533 (a), and applicable FCC rules prohibit certain forms of media cross-ownership. An Applicant shall state whether it or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, or whether the Applicant holds or operates any company or business operating jointly with any of the following:

(a) A national broadcast television network (such as ABC, CBS or NBC, etc.).

(b) A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the City's service area, or an application for license to operate such a station.

(c) A telecommunications or telephone company whose service area includes any portion of the City's service area.

2. If the response to any of subsection 1 (a) – (c) above is affirmative, the Applicant shall state the name of the Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

(B) Franchise Violations. An Applicant shall state whether it or any Affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

(C) Other Violations. An Applicant shall state whether it has been found in violation by a Regulatory Authority of any other type (e.g. utility) of franchise, ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

16-3-5: FINANCIAL QUALIFICATIONS:

(A) Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation.

(B) Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

16-3-6: TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS:

(A) The application shall describe the Applicant's planned initial and proposed cable services geographic area, including a map of all areas proposed to be served and proposed timetable for offering service to each area. The application shall additionally state whether the Applicant proposes to provide cable services to the entire franchise area, and if so, a proposed timetable for meeting that goal.

(B) The applicant shall describe how its proposed service area will not result in denial of service to any group of potential residential cable customers because of the income of the residents of the local area in which such group resides.

(C) If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas listed in subsection (A) above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(D) The Applicant shall describe with particularity its planned residential cable services, including basic cable services, other cable programming service tiers, and any additional pay-per-view, on-demand or digital services and the projected rates for each category or tier or service.

(E) The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant's technology will be deployed so as to be able to successfully offer cable services in the proposed locations.

(F) The Applicant shall describe with particularity its planned non-residential cable services.

(G) The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy and describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable.

(H) The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities.

(I) The Applicant shall describe its plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of the City's local cable customer service standards.

16-3-7: AFFIDAVIT OF APPLICANT: Each application shall be accompanied by an affidavit substantially in the form set forth below:

This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the Applicant and certifies the representations are true and correct.

The Applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a denial of an application by the City.

The Applicant shall comply with all applicable local laws.

Consent is hereby given to the City and its representatives to make inquiry into the legal, character, technical, financial and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

Name of Applicant's Authorized Representative: _____

Affiant's Signature: _____

Date: _____

Official Position: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this ___day of _____, 200_, by _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: _____.

NOTARY PUBLIC

16-3-8: OPEN RECORDS/CONFIDENTIALITY: Unless otherwise provided by law, information submitted as part of an application is open to public inspection and subject to the Colorado Open Records Act. It is the Applicant's responsibility to be familiar with the Colorado Open Records Act. An Applicant may specifically identify any information it considers proprietary. In the event that the City receives a request from another party to disclose any information that the Applicant has deemed proprietary, the City will tender to the Applicant the defense of any request to compel disclosure. By submitting information that the Applicant deems proprietary or otherwise exempt from disclosure, the Applicant agrees to defend and hold harmless the City from any claim for disclosure including but not limited to any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the City for the attorneys' fees of the party requesting disclosure.

16-3-9: APPLICATION FEE: An application fee in the amount of \$2,000.00 shall accompany any franchise application to cover the reasonable cost of processing applications under this Chapter.

16-3-10: REVIEW PROCESS:

(A) Acceptance of Application.

1. Within 5 business days of receipt of an application, the City shall review the application to ensure all requisite information is included in the application.
2. If the application is not complete, the City will notify the Applicant in writing, listing the requisite information that is required to complete the application and notifying the Applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received.
3. If the application is complete, the City will notify the Applicant in writing that all requisite information has been received.

(B) Staff Review. The City staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City. After completing the review, staff shall provide an analysis of the application to the City Council.

(C) Franchise Negotiations. Within the time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable franchise agreement with the applicant, and within that time period, schedule the application and any proposed franchise for public hearing as set forth in Section 16-3-11.

16-3-11: PUBLIC HEARING: The City shall hold a public hearing before acting on the application, affording the public, the applicants, and the City a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises.

16-3-12: REVIEW CRITERIA: The City may deny an application if, based on the information provided in the application, at the public hearing and/or any terms of a proposed franchise agreement:

(A) The Applicant does not have the financial, technical, or legal qualifications to provide cable service;

(B) The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or

(C) The Applicant's proposed terms do not comply with applicable federal, state and local laws and regulations including, but not limited to, local customer service standards, or relevant existing contractual obligations of the City.

(D) The Applicant's proposed service plan will result in denial of service to a group of potential residential cable customers because of the income of the residents of the local area in which such group resides.

16-3-13: NON-CFAR FRANCHISE APPLICATIONS: Notwithstanding any other provisions of this Chapter, any competitive cable services franchise applicant may elect to submit a cable franchise application to the City and/or engage in cable franchise negotiations without regard to the application of the FCC CFAR. Such election must be clearly stated in writing at the time the Applicant files its application with the City. In such cases, the

City will negotiate the terms of a competitive cable franchise without regard to 47 CFR §76.41 and the other provisions of this Chapter. Agreement by any applicant to negotiate a franchise without regard to 47 CFR §76.41 and the other provisions of this Chapter shall not be deemed by the City to effect a waiver of any applicant's right to terminate its franchise negotiations with the City and to file a new franchise application that will be subject to the application of the FCC CFAR.

Non-CFAR applications shall include the following information:

- (1) the applicant's name
- (2) the names of the applicant's officers and directors
- (3) the applicant's business address
- (4) the name and contact information of the applicant's contact

Section 4. Chapter 4 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 6 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 5. Due to the fact that the FCC CFAR regarding timing for consideration of competitive franchise applications, including information to be provided pursuant to such applications will be effective upon approval of federal application forms by the Office of Management and Budget, expected by July, 2007, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on July 23, 2007, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 6. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 23rd day of July, 2007.