



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
 - A. 100th Anniversary of Boy Scouts of America Proclamation
 - B. Adams County Fair Charity Beef Show – “Best of the Show for Municipality” Award Presentation
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. Lao-Hmong Memorial Foundation Agreement
 - B. 2010 Water System Pump Purchases
 - C. Armed Forces Tribute Garden Shade Structures Purchase
 - D. Huron Street/Big Dry Creek – Purchase of Wetland Credits
 - E. Saint Anthony North Hospital Waterline Construction Contracts
 - F. Water Distribution System Model Updates and Engineering Analysis Contract
 - G. Second Reading of Councillor's Bill No. 43 re FY 2009 Carryover Appropriation into FY 2010
 - H. Second Reading of Councillor's Bill No. 44 re 2010 2nd Quarter Budget Supplemental Appropriation
9. Appointments and Resignations
 - A. Resolution No. 31 re Appointments to Fill Vacancies on Various Boards and Commissions
10. Public Hearings and Other New Business
 - A. Public Hearing on 2011 and 2012 City Budget
 - B. Public Hearing on Adoption of the 2009 International Building and Fire Codes
 - C. Second Reading of Councillor's Bill No. 45 re Adoption of the 2009 International Building and Fire Codes
 - D. Resolution No. 32 re 2010 Private Activity Bond Allocation and Assignment
 - E. Councillor's Bill No. 46 re Bowles House Rehabilitation Grant Supplemental Appropriation
 - F. Councillor's Bill No. 47 re Citylife Church Lease Agreement at the Ice Centre at the Promenade
 - G. Councillor's Bill No. 48 re Amendments to Title IV of the Westminster Municipal Code re Tax Administration
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
 - B. Executive Session – Obtain direction from City Council re Proposed Economic Development Agreement with LGS Innovations pursuant to WMC 1-11-3(C)(4), WMC 1-11-3 (C)(7) and CRS 24-6-402(4)(e)
13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

WESTMINSTER HOUSING AUTHORITY MEETING (separate agenda)

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, AUGUST 23, 2010 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Chris Dittman, and Councillors Bob Briggs, Mark Kaiser, Mary Lindsey, Scott Major, and Faith Winter were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Mayor Pro Tem Dittman, to approve the minutes of the regular meeting of August 9, 2010, as written. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the Westminster Faire had great weather and was one of the most successful events of its kind that the City had ever organized and sponsored. He thanked the employees and volunteers who had poured so much effort, planning, and coordination into what became a fun family and community event.

The public was welcome to attend a post-meeting briefing in the Board Room following this meeting. Presentations would focus on proposed water regulation changes and proposed system-wide SCADA communications radio support structures. At the conclusion of the post-meeting briefing, Council would convene in executive session to provide direction relative to a proposed Economic Development Incentive Agreement with the Bedrin Organization; and to discuss strategy and progress on negotiations related to the Westminster Urban Reinvestment Project and provide instructions to the City's negotiators pursuant to Westminster Municipal Code §1-11-3(C)(4), §1-11-3(C)(7), and Colorado Revised Statutes §24-6-402(4)(e).

In conclusion, Mr. McFall announced that City Council's next meeting would be on September 13 because next Monday, August 30, was the 5th Monday of the month when Council traditionally held no meetings and the following Monday, September 6, was Labor Day.

COUNCIL REPORTS

Councillor Major reported that the Holy COW Trail Stampede preceding the Westminster Faire was as successful as the faire had been with lots of runners who enjoyed the experience. Staff had done an excellent job in orchestrating both events.

Councillor Briggs reported that the Butterfly Pavilion would host a program on the Legend of the Tarantula at 5:30 p.m. on September 2. The public was encouraged to attend.

Mayor McNally added her gratitude to staff and volunteers for the Westminster Faire. The community event was well attended and great fun.

Councillor Lindsey reported that she and her dog had attended the Doggie Dive-in over the weekend at Countryside Pool. This event was the last activity at the pool each year and provided an opportunity for anyone's pet dog to jump, swim and play in the water with its owner or other dogs on a hot summer day. The animals were not aggressive toward one another and it was enjoyable to watch their playfulness. She was glad that Westminster sponsored such an event.

PRESENTATIONS

Mayor McNally proclaimed September 6 through 10 to be City of Westminster Employee Appreciation Week. Understanding this had been a year with some difficult challenges, Council was pleased that employees were finding time to celebrate accomplishments with one another. The Mayor planned to attend the Employee Breakfast to distribute a gift to each employee. After reading the proclamation, she presented it to members of the Employee Advisory Committee and of the Employee Recognition Action Team.

CITIZEN COMMUNICATION

Bill Schroer, 3464 West Milan Avenue in Sheridan, distributed and summarized his suggestions for fiscal and service opportunities in recycling, energy and other fields, which he was disseminating to local governments throughout the metro Denver area.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the July 2010 Financial Report as presented; authorize the Finance Director to retain Sherman & Howard, L.L.C. for special legal services to include advice pertaining to Qualified Domestic Relations Orders relating to the Retirement Medical Savings Account and other pension related legal issues that might arise; and final passage of Councillor's Bill No. 42 on second reading amending Title IV of the Westminster Municipal Code concerning the time to file tax protests.

No items were removed for individual consideration, and it was moved by Councillor Kaiser, seconded by Councillor Major, to approve the consent agenda as presented. The motion carried unanimously.

COUNCILLOR'S BILL NO. 43 APPROPRIATING FY2009 CARRYOVER TO FY2010

It was moved by Councillor Briggs, seconded by Mayor Pro Tem Dittman, to pass Councillor's Bill No. 43 on first reading, appropriating FY2009 carryover funds into the FY2010 budgets of the General, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Golf Course, Parks Open Space and Trails (POST), and General Capital Outlay Replacement Funds. At roll call, the motion carried unanimously.

COUNCILLOR'S BILL NO. 44 PROVIDING 2010 2ND QUARTER SUPPLEMENTAL APPROPRIATION

Councillor Winter moved, seconded by Councillor Kaiser, to pass Councillor's Bill No. 44 on first reading providing for supplemental appropriation of funds to the 2010 budget of the General, Utility, and General Capital Improvement Funds. On roll call vote, the motion was unanimously adopted.

COUNCILLOR'S BILL NO. 45 TO ADOPT 2009 INTERNATIONAL BUILDING AND FIRE CODES

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Major, the Council voted unanimously at roll call to pass Councillor's Bill No. 45 on first reading, adopting the 2009 editions of the International Building and Fire Codes, the 2008 edition of the National Electric Code and other minor miscellaneous revisions to the codes. The motion passed unanimously on roll call vote.

RESOLUTION NO. 30 AUTHORIZING FALL 2010 GOCO GRANT APPLICATION

It was moved by Councillor Lindsey and seconded by Councillor Winter to adopt Resolution No. 30 authorizing the Parks, Recreation and Libraries Department to apply for a grant from Great Outdoors Colorado (GOCO) during the Fall 2010 cycle for renovations at Countryside Park. The motion carried unanimously at roll call.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Dittman and seconded by Major to adjourn. The motion carried and the meeting adjourned at 7:20 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010

SUBJECT: Proclamation Recognizing the 100th Anniversary of Boy Scouts of America

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Mayor McNally to present the proclamation for 100 Years of Scouting Day in the City of Westminster.

Summary Statement

- 2010 marks the 100th anniversary of the Boy Scouts of America and a year-long schedule of activities and events to celebrate the occasion.
- Locally, Scouts have:
 - Conducted U.S. Flag retirement ceremonies
 - Participated in many community projects (cleanups, Westminster Faire, etc.)
 - Collected food and other items for food banks
 - Donated services to non-profit organizations
 - Provided a safe place for the youth of Westminster and surrounding cities to learn timeless values with an emphasis on community service and a love of the outdoors
- Boy Scouts from throughout the community will be present to accept the proclamation.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Boy Scouts of America (BSA) was incorporated on February 8, 1910 in the District of Columbia by W. D. Boyce. Throughout the years since, the organization has chartered a diverse array of scouting opportunities based on age and interest groups, such as the Cub Scouts, the Sea Scouts (a co-ed group of 13-21 year olds), and the Venture Scouts. The BSA has seen tremendous growth with its 100 millionth youth registered during the 2000's.

The Boy Scouts of America has a history of national service that is rooted in local communities, ranging from President Roosevelt's Good Turn Program during the 1930's to the distribution of defense bonds, stamp, and air-raid posters during World War II to Project SOAR (Save Our American Resources) in the 1970s and Good Turn for America, a national initiative launched by BSA during the first decade of this century to address the problems of hunger, homelessness/inadequate housing, and poor health.

Cub Pack 324, Westminster's first Boy Scouts of America Pack, was formed in 1957 under sponsorship of the Westminster Presbyterian Church. This was followed by the formation of the Boy Scout Troop and in recent years a Sea Scout Troop. Sea Scouts is aquatics oriented and this Troop's service projects have been incorporated into adventure rafting trips on the Colorado River, as well as Scuba diving to relocate Sea Urchins on a coral reef in the Bahamas. Boy Scout Troop 324 has developed over 100 Eagle Scouts, one of the largest number of Eagle Scouts produced by a single Troop. In celebration of the 100th Anniversary, this unit participated in the National Jamboree simulcast on July 31 by Presenting the Colors and the Pack Flag. Additionally, Pack 324 was one of many scouting groups recognized by the Colorado Rockies during pre-game activities on August 28.

Eagle Scouts from Westminster have added tremendous value to the City's historic preservation efforts by developing renovation plans, obtaining donations of material and craft labor, and leading projects to reclaim structures at Semper Farm, Shoenberg Farm, and the original City Hall at the Bowles House.

Scouts from throughout the City have been invited to participate in acceptance of a proclamation in celebration of the organizations 100th anniversary. Boy Scout Troop 324 will be present at the City Council meeting to Present the Colors and lead in the Pledge of the Allegiance to the Flag.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, the Boy Scouts of America was established in 1910 to teach patriotism, courage, self-reliance and kindred values; and

WHEREAS, the Boy Scouts of America today is the largest youth service organization in America, with nearly 3 million members learning responsible citizenship, character development, and self-reliance through participation in a wide range of outdoor activities, educational programs and career-oriented programs in partnership with community organizations; and

WHEREAS, the Boy Scouts of America is celebrating its 100th Anniversary in 2010; and

WHEREAS, a core value of the Boy Scouts of America is service to others.

THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim September 14, 2010, to be

**BOY SCOUTS OF AMERICA
100 YEARS OF SCOUTING DAY**

to not only recognize the impact of this great organization, but also the importance of its years of service to the citizens of Westminster and other communities across America.

Signed this 13th day of September, 2010

Nancy McNally, Mayor



Agenda Item 6 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Presentation to Mayor McNally re Adams County Fair Charity Beef Show –
“Best of the Show for Municipality” Award

Prepared By: Mary Joy Barajas, Executive Secretary

Recommended City Council Action

Tom McBride will be present to recognize Mayor McNally for her “Best of the Show for Municipality” award and present the award money to CureSearch.

Summary Statement

- Tom McBride, Adams County Extension Director, will be in attendance to present a check to the Mayor in recognition of her “win” at the annual Adams County Extension Charity Beef Show.
- Mayor McNally has chosen CureSearch as the recipient for the prize money.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None Identified

Background Information

For the past several years’ Mayor McNally has participated in the Adams County Extension Charity Beef Show, which is held during the annual Adams County Fair. The Charity Beef Show is a chance for elected officials to take part in the fair by exhibiting a steer or heifer with the help of a 4-H member. This is the second year that Nancy has taken the “Best of the Show for Municipality” award and Reserved Grand Champion. This year’s “Best of the Show for Municipality” winner was asked to choose an organization to receive \$400 in prize money.

Mayor McNally has chosen CureSearch as the organization to receive the \$400 check. This organization is near and dear to the Mayor’s heart as they are the only organization that provides funding for research of childhood cancers. Shay Martin, co-captain of the Rocky Mountain Children’s Hospital Team, will be in attendance at Monday night’s meeting to accept the donation. The Rocky Mountain Children’s Hospital Team will be participating in the upcoming Cure Walk on September 11, 2010. Nancy and her family are members of this team and will be participating in this event.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Lao-Hmong Memorial Foundation Agreement

Prepared By: Becky Eades, Landscape Architect II

Recommended City Council Action

Authorize the City Manager to sign an Agreement with the Lao-Hmong Foundation for the design, construction and ongoing maintenance of a Lao-Hmong Memorial at City Park in substantially the same form as the attached agreement.

Summary Statement

- At the July 19, 2010 Study Session, Council directed Staff to move forward with an agreement with the Lao-Hmong Foundation regarding the construction of a memorial honoring the service and sacrifice of the Hmong people of Laos during the Vietnam War.
- The Lao-Hmong Foundation has verbally committed to raising all funds for the design, construction and ongoing maintenance of the memorial.
- City Staff will serve as project manager for the memorial project overseeing design and construction.
- No portion of the project, design or construction will be initiated without all funds being secured ahead of time by the Lao-Hmong Memorial Foundation.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does Council wish to enter into an agreement with the Lao-Hmong Memorial Foundation to permit the inclusion of a privately-funded memorial to a specific cultural group at City Park?

Alternative

Council could direct Staff to not move forward with the agreement at this time.

Background Information

Colonel Bob Resling first contacted the City on behalf of the Lao-Hmong Memorial Foundation in November of 2006 with a request to include a tribute to the Hmong people as part of the City's Armed Forces Tribute Garden (AFTG) located at 6001 W 104th Avenue. After reviewing this proposal with Colonel Resling and members of the Lao-Hmong Memorial Foundation, Staff determined that the desire to honor a specific, though worthy, group, such as the Hmong, did not fit in with the intent of the AFTG. Additionally, the design of the AFTG was too far along to look at modifications for the purpose of honoring the Hmong sacrifices during the Vietnam War.

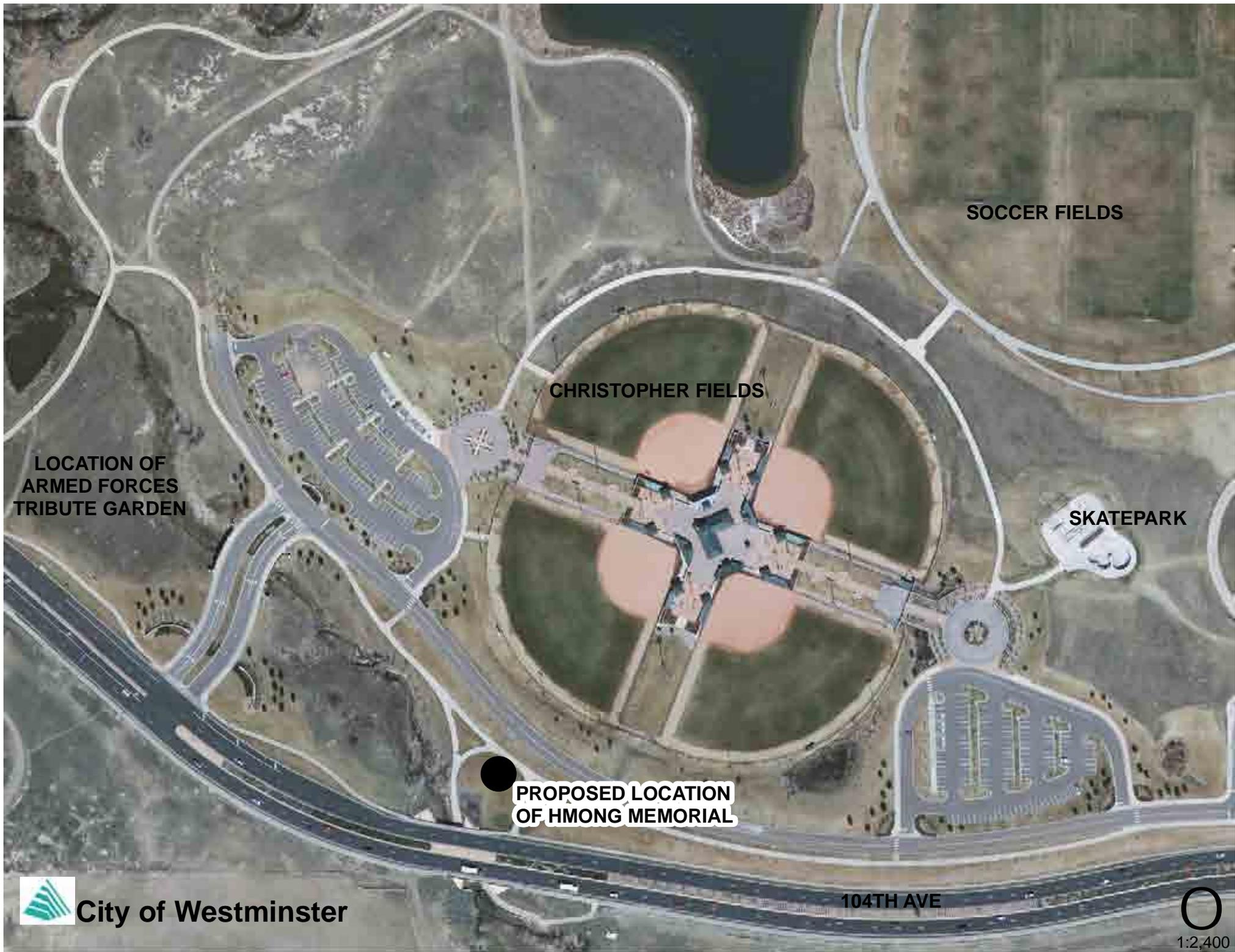
The Lao-Hmong Memorial Foundation has remained in contact with Staff. Working together, a more appropriate location for a Hmong Memorial (not far from the Armed Forces Tribute Garden) has been determined. Staff has suggested the location shown on the attached map as a suitable location for the Lao-Hmong Memorial. As stated in the agreement, once the Foundation has raised sufficient funds to cover design costs (an estimated \$50,000), Staff will work with the Foundation to hire a landscape architect to begin the design process. Staff will return to Council with design plans as they develop. A copy of the proposed agreement is also attached for Council's review.

This project fulfills the City's Strategic Plan Goals of "Vibrant Neighborhoods and Livable Communities" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments



SOCCER FIELDS

CHRISTOPHER FIELDS

LOCATION OF
ARMED FORCES
TRIBUTE GARDEN

SKATEPARK

PROPOSED LOCATION
OF HMONG MEMORIAL

104TH AVE

AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
THE LAO-HMONG MEMORIAL FOUNDATION

This Agreement (the "Agreement") is made and entered into this ____ day of _____ 2010, by and between City of Westminster, a Colorado home rule municipality (the "City") and the Lao-Hmong Memorial Foundation (the "Foundation").

WHEREAS, the City owns the property commonly known as Westminster City Park located approximately at the northeast corner of 104th Avenue and Sheridan Boulevard ("City Park" or "Property"); and

WHEREAS, the City is desirous of developing in cooperation with the Foundation, a Lao-Hmong Memorial to memorialize the service and sacrifice of the Hmong people of Laos who fought for the United States during the years between 1961 to 1975 (the "Memorial"); and

WHEREAS, a conceptual design of the Memorial contemplates the construction of a monument consisting of a memorial wall, obelisk plaques, flag poles and supportive sculptures, together with landscaping and lighting; and

WHEREAS, the Foundation has agreed to pay for the costs required to design and construct the Memorial; and

WHEREAS, City has agreed to coordinate the design and construction of the Memorial; and

WHEREAS, after the construction of the Memorial, the City shall own, operate and maintain the Memorial; and

WHEREAS, the Foundation has agreed to establish an endowment to fund the maintenance of the Memorial; and

WHEREAS, the City and the Foundation desire to cooperate in the design, construction and maintenance of the Memorial.

NOW, THEREFORE, in consideration of the recitals stated above and the mutual covenants and promises of the parties hereto, the receipt and sufficiency of which is acknowledged, the City and the Foundation agree as follows:

I. FUNDING

1.1 The Foundation shall be responsible for the total cost for the design, construction, and maintenance of the Memorial. The estimated design cost at this time is approximately \$50,000 (the "Funds"). Should the City and the Foundation agree to a design cost estimate in excess of \$50,000, the difference shall be deposited with the City

prior to execution of a contract between the City and the landscape architect. The estimated construction cost will be determined in conjunction with the design process and formalized in an addendum to this agreement.

1.2 Prior to the letting of an RFP for the design of the Memorial, the Foundation shall deposit with the City the Funds for the design; likewise, prior to the solicitation of bids for the construction of the Memorial the Foundation shall deposit with the City the Funds for the estimated cost of construction. The parties agree that the Foundation shall have until June 30, 2011 (“Due Date”) to deposit the Funds for design with the City. If the Funds are not deposited by the Due Date, the City shall have the option of terminating this Agreement.

1.3 The Foundation shall establish an endowment to fund the maintenance of the Memorial (the “Endowment”). The estimated cost of maintenance, and the structure of the Endowment, will be determined upon completion of the Memorial design and an addendum to this Agreement will be processed at that time. The amount of the Endowment shall be sufficient to cover the future anticipated cost of maintenance; the Memorial shall be perpetual in duration, and subject to termination upon removal of the Memorial. The parties agree that the Foundation shall establish the Endowment prior to bidding the construction of the project. It is the parties’ intent that interest from the Endowment will cover the annual cost of maintaining the Memorial.

II. DESIGN AND CONSTRUCTION

2.1 The Foundation shall provide a conceptual design for the Memorial which shall be subject to review by the City.

2.2 City shall solicit proposals for professional landscape architectural services for final design of the Memorial, which will be coordinated with the City, the Foundation, and the project sculptor. Upon approval of the design, the landscape architect shall prepare construction drawings and bid documents and assist the City with the solicitation of bids for construction services.

2.3 City will oversee design, construction, and construction administration of the Memorial.

2.4 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the City may designate in writing:

Becky Eades, Landscape Architect II
4800 West 92nd Avenue
Westminster, Colorado 80031
(303) 658-2400

2.5 Prior to awarding any contract or contracts for design or construction of the Memorial, the City shall submit such proposed contract or contracts to the Foundation for its review and approval, which approval shall not be unreasonably withheld. In the event the parties are unable to reach an agreement regarding the cost of any such contract,

either party may terminate this Agreement. Upon such termination, any funds belonging to the Foundation shall be returned to the Foundation, and each party shall thereupon be relieved of all further obligations and liabilities under this Agreement.

III. MAINTENANCE AND EVENT SCHEDULING

3.1 The City shall be responsible for performing basic routine maintenance of the Memorial, including, but not limited to, mowing, landscape maintenance, and irrigation maintenance. The Foundation shall be responsible for any non-routine maintenance or repair, including damage, graffiti, or vandalism to any sculpture piece or other such art work, of the Memorial features. The Foundation shall also be responsible for any capital repairs to the Memorial that may be required over time, in the City's reasonable judgment. The City shall invoice the Foundation or the Endowment Trustee quarterly for maintenance work performed by the City, which the Foundation agrees to pay within 30 days of the date of such invoice.

3.2 Any events that the Foundation holds at the Memorial shall be scheduled with the City a minimum of 30 days prior to the event.

IV. TERMINATION/SPECIFIC PERFORMANCE

4.1 This Agreement may be terminated by the City upon the occurrence of any of the following:

- a. For any reason specified in this Agreement.
- b. Failure by the Foundation to deposit the Funds by the Due Date.
- c. A default by the Foundation in the performance of its obligations hereunder.

4.2 This Agreement may be terminated by the Foundation in the event of a material default by the City if the City fails to remedy said default after receiving 60 days written notice given by the Foundation of such default.

4.3 As an alternative to termination, in the event of default, the City may elect to treat this Agreement as being in full force and effect and shall have the right to specific performance or damages or both.

4.4 No failure by either party to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, and no failure by either party to exercise any right or remedy under this Agreement, shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any such default.

4.5 In the event of termination by the City, the City may request the Foundation to remove the Memorial within one (1) year following such termination. If the Foundation fails or refuses to so remove the Memorial, the City may remove the Memorial and invoice the Foundation for the cost thereof, which the Foundation agrees to pay within 30 days of the date of such invoice.

V. NOTICES

All notices or other communications required hereunder shall be delivered by first class mail, return receipt requested, addressed as follows:

The Lao-Hmong Memorial Foundation:
Colonel Bob Resling
P.O. Box 1174
Westminster, CO 80036-1174

City of Westminster:
Becky Eades,
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

VI. MISCELLANEOUS PROVISIONS

6.1 No amendment or waiver of any covenant, condition or provision contained herein shall be valid unless in writing and duly executed by all parties.

6.2 This Agreement supersedes all prior written and oral agreements and understandings between the parties relating to the subject matter thereof.

6.3 This Agreement shall be binding upon the parties hereto, their respective successors or assigns.

6.4 All terms contained in this Agreement are severable and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid term or condition is not contained herein.

6.5 The signatories to this Agreement affirm and warrant that they are authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

6.6 This Agreement does not and shall not be deemed to confer upon or grant to any third party any right enforceable at law or equity arising out of any term, covenant, or condition herein or the breach thereof.

6.7 This Agreement shall be governed by the laws of the State of Colorado, the Charter of the City of Westminster and the Westminster Municipal Code. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties.

6.8 In the event any party to this Agreement commences an action to enforce any of the provisions hereof, the prevailing party in such action shall recover from the other the prevailing party's costs and reasonable attorney fees.

6.9 The Foundation shall not assign this Agreement, or grant any concession or license to the Memorial or any part thereof. Any such assignment, concession or license, shall be void and shall, at the City's option, terminate this Agreement.

6.10 This Agreement may be signed in counterparts, and each counterpart will be considered an original. This Agreement may be executed by facsimile signature.

IN WITNESS WHEREOF the parties have executed this indenture the day and year first above written.

Attest: CITY OF WESTMINSTER

By: _____ By: _____
City Clerk City Manager

Attest: Lao-Hmong Memorial Foundation:

By: _____ By: _____
Secretary President

Approved as to legal form:

City Attorney's Office



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: 2010 Water System Pump Purchases

Prepared By: Richard A. Clark, P.E., Utilities Operations Manager

Recommended City Council Action

Based on the recommendation of the City Manager, City Council finds that the public interest will best be served by authorizing the City Manager to execute a sole source purchase with, Lee Mathews Equipment Company for one new 1,850 gallon per minute water pump, three replacement rotating elements and various other utilities system equipment in an aggregate amount not to exceed \$75,000.

Summary Statement

- Staff requests approval to purchase one Aurora pump and motor, Model 6 x 8 x 15, with 1850 gallon per minute pumping capability to replace an existing pump at the Wandering View Pump Station. This new pump will replace an obsolete & unusable pump in order to provide more efficient and reliable pumping ability, along with reducing power demands and energy costs. The cost of the pump is \$24,893.00
- Staff requests approval to purchase two replacement rotating elements for existing pumps at the Countryside Pumping Station. The rotating element consists of all the moving parts in the pump and result in an almost new pump. The new rotating elements will increase the capacity of the existing pumps in order to provide more efficient and reliable pumping ability, along with reducing power demands and energy costs. The cost of the two rotating elements is \$7,026.00 each.
- Staff requests approval to purchase one replacement rotating element for an existing pump at the Silo Pumping Station. The rotating element consists of all the moving parts in the pump and result in an almost new pump. The new rotating element will return the existing pump to the original capacity. The cost of the rotating element is \$6,013.00.
- Funding for the purchase of this material and other utilities equipment is available in the Utility Fund Capital Improvement Fund.
- Staff is requesting to purchase these pumps from sole source provider, Lee Mathews Equipment Company, since these pumps are a specialized replacement item that is only available from this vendor.

Expenditure Required: Not to exceed \$75,000

Source of Funds: Utility Fund - Capital Improvement Projects Budget

Policy Issue

Should Council authorize the sole source purchase of a new Aurora pump, motor, and the 3 rotating elements and other utility system equipment?

Alternative

An alternative would be to delay the purchase and continue to run existing pumps that may require additional servicing and parts costs, along with inefficient power demands that increase monthly energy bills. This is not recommended as continued use of the current equipment could lead to pumping failures and lost water pressures throughout the water distribution system, resulting in poor water service to our customers.

Background Information

Utilities Staff has determined that the #4 water pump at the Wandering View water pumping station cannot be economically repaired and should be entirely replaced. The original Allis-Chalmers pump is poorly matched to the system's current hydraulics. An Aurora 6 x 8 x 15 pump suits the needs of the site and keeps the motor horsepower under 100, allowing a smaller variable speed drive for the pump. This particular pump is also identical to three other pumps already in use at the City's Zone 5 pump station, maintaining a commonality of parts, training, etc.

Utilities Staff has determined that 3 of the normal duty water pumps at the Countryside and Silo water pump stations are in need of major overhaul. Both of these pump stations are located in the western portion of the city, west of Wadsworth Blvd., between 90th Avenue and 100th Avenue. The pumps themselves continue to be fit for service, but the bearings, impellers and shafts are worn to the point that replacement is needed. The entire rotating element that contains all the moving parts of the pump can be purchased as a unit; cheaper than individual parts. Therefore, the entire rotating elements of all 3 pumps are recommended for replacement.

The new Aurora pump, motor, and the 3 rotating elements will be purchased from the local sole source vendor for Aurora Pump, Lee Mathews Equipment Company. Since the Utilities Division utilizes these same Aurora pumps at many pumping stations throughout the City, using the same pumps reduces the City's training and spare parts burden, now and in the future. Putting these pumps back into service will also add some additional capacity to each of the sites. Also, cost savings from more efficient pumping should occur, thus reducing the energy demand and costs to the city. Staff is confident that the pricing provided by Lee Mathews Equipment Company is fair and reasonable.

Lee Mathews Equipment Company is also the vendor for various pumping parts and maintenance services on pumps and equipment used throughout the water distribution system; the City has already spent funds totaling approximately \$22,000 for 2010. With the purchase of the new Aurora pump, motor, and the 3 rotating elements at a cost of \$44,958.00, payments going to this vendor will exceed the \$50,000 threshold, thus the need for City Council's review and approval. Additional purchases for the year from Lee Mathews are anticipated to total less than an aggregate \$75,000 for the entire year.

This purchase helps achieve the City Council's Strategic Plan Goal of "Financially Sustainable City Government" by contributing to the objective of well-maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Armed Forces Tribute Garden Shade Structures Purchase

Prepared By: Becky Eades, Landscape Architect II

Recommended City Council Action

Authorize the purchase and installation of six shade structures for the Armed Forces Tribute Garden from Triple M Recreation, LLC in the amount of \$75,650, and authorize a 6% construction contingency in the amount of \$4,832, for a total expenditure of \$80,482.

Summary Statement

- On May 17, 2008, the City dedicated Phase 1 of the Armed Forces Tribute Garden (AFTG).
- The initial design for the AFTG included shade structures over a portion of the seating in each service branch pod. The shelters were eliminated due to budget constraints.
- The Westminster Legacy Foundation and the 7:10 Rotary Club have continued with fundraising for the AFTG and have contributed \$80,482 to the City to pay for the addition of shade structures to the Garden.
- Councillor's Bill No. 44 regarding the supplemental appropriation for the donation of funds from the Westminster Legacy Foundation and the 7:10 Rotary Club was approved by Council on September 13, 2010.
- The shade structures that Staff is proposing are prefabricated structures manufactured as a sole source vendor item thru Triple M Recreation, LLC (see attachments).
- The pricing for these shade structures was obtained through the Government Services Administration (GSA) solicited bid program, which meets the City bidding requirement.
- Staff anticipates the installation of the shade shelters, and resultant landscape repair work to be completed well in advance of the 2011 Armed Forces Day event.

Expenditure Required: \$80,482

Source of Funds: General Capital Improvement Fund

Policy Issue

Should the City move forward with purchasing and installing shade structures at the AFTG with funding donated by contributions from the Westminster Legacy Foundation and 7:10 Rotary Club?

Alternative

City Council could choose not to move forward with the addition of shade structures at the AFTG; however, Staff believes that the visitor experience at the Garden would benefit from the addition of shaded seating opportunities, as was initially shown in the AFTG Master Plan.

Background Information

In January of 2003, Staff presented a conceptual master plan for the Armed Forces Tribute Garden to Council, and fundraising efforts began in July of 2004. The project was put out to bid in early 2007. The bid results were higher than expected and exceeded the project budget. After careful review, Staff reduced the project scope to be within the available budget. Under this scenario, several critical design elements, such as the granite columns and flagpole base walls, were removed from the design. Community Enhancement funds were made available to cover these elements and they were included with the phase one construction. The bid price for the custom shade structures as originally designed exceeded \$500,000. They were, therefore, postponed until a later phase.

Staff began exploring options for a scaled back shade structure in 2009, and is proposing a semi-custom cantilevered pergola. This design will allow the footers to be entirely constructed within the planting bed, minimizing disturbance to the hardscape. Staff believes that the design is complimentary to the existing garden and that its design is subtle enough to not compete with the memorial elements. The proposed design and location for the shade structures is attached.

Pricing for the AFTG shade structures from Triple M Recreation, LLC has been established through the Government Services Administration (GSA) solicited bid program. Therefore, it is not necessary for Staff to secure multiple bids for this work.

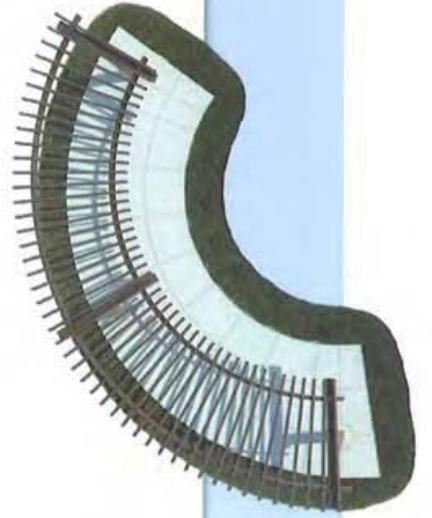
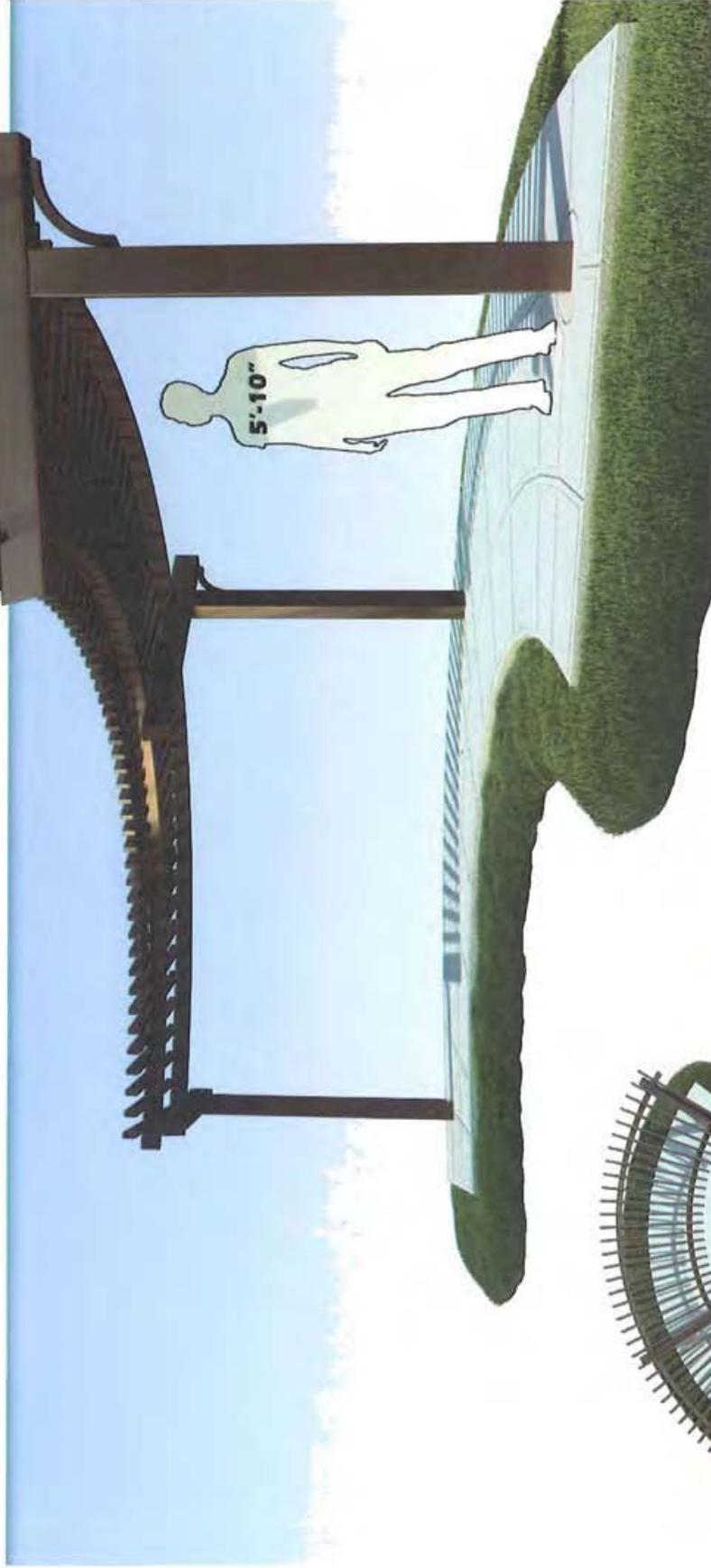
This project supports the Strategic Plan Goals of “Vibrant Neighborhoods and Livable Communities” and “Beautiful and Environmentally Sensitive City.”

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

AFTG Shade Shelter Design



6'x30' Custom Senn Park Pergola



Aerial perspective from AFTG Master Plan showing shade structure locations.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Huron Street/Big Dry Creek—Purchase of Wetland Credits

Prepared By: Stephen C. Baumann, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to sign an agreement with a qualified wetlands mitigation bank for the purchase of one acre of wetland replacement credit in an amount not to exceed \$65,000.

Summary Statement

- The Huron Street improvements project, constructed in 2005/2006, necessitated the mitigation of wetlands impacts at the crossing of Big Dry Creek. Over two acres of wetlands were created by the project under an individual permit from the United States Army Corps of Engineers. The wetland has been successfully vegetated, except for permit criteria limiting the presence of cattails to 10% of the vegetative cover.
- Efforts to reduce or control the extent of cattails in the mitigation area have not been successful over the past four years and must either be drastically increased or the wetlands will need to be partially reconstructed, costing from \$44,000 to \$66,000 over the next six years. There is risk that these approaches will not be successful and the permit period would have to be extended, continuing the costs beyond 2016. A third alternative, acceptable to the Corps of Engineers, is to purchase one acre of wetland credits from a qualifying wetland bank at a cost of \$65,000, thereby satisfying the permit requirements immediately.
- Staff is recommending purchase of the wetland credit since it is competitive in cost when all factors including potential future costs are considered. The wetland credit eliminates the risk that the mitigation efforts will be unsuccessful and the costs will rise beyond those estimated for the near term. Purchasing the credit will also satisfy all of the City's obligations under the permit from the Corps of Engineers, and allow the permit to be closed without further disturbance of the wetlands.

Expenditure Required: \$65,000

Source of Funds: General Capital Improvement Fund - Huron Street Project

Policy Issue

Should the City pursue a negotiated modification of the permit terms for wetlands mitigation at Huron Street and Big Dry Creek that will reduce the City's potential future cost exposure and satisfy the Corps of Engineers?

Alternative

Ultimately, the Corps of Engineers will need to be satisfied when it comes to wetlands mitigation allowed under the individual permit for the Huron Street/Big Dry Creek wetlands project. The proposal herein describes one alternative that the Corps is willing to consider in this case only. A discussion of the alternative is given below.

Background Information

In 2005 and 2006, Huron Street was rebuilt between 128th Avenue and 140th Avenue, including a bridge spanning Big Dry Creek (see vicinity map). Huron Street was made much wider and shifted to the west in this area, displacing wetlands and necessitating that an individual wetlands permit be obtained from the United States Army Corps of Engineers (USACE) to offset the loss of wetlands. The mitigation plan negotiated with USACE showed a rerouting of Big Dry Creek and committed the City to the creation of 2.19 acres of replacement wetlands in the immediate area. According to the permit, mitigation would be considered successful when for a three-year period without intervention, the area is at least 85% vegetated; the vegetation has an 85% survival rate, and; cattails and noxious weeds are not more than 10% of the total vegetative cover.

The permit also requires that a monitoring report be prepared and submitted to USACE each year until the mitigation area is successful. Smith Environmental, Inc, who designed the wetlands mitigation plan and assisted the City in securing the permit in 2004, has prepared these reports from the completion of construction in 2006 through 2009. At the City's direction, Smith has also coordinated and/or engaged in ongoing efforts to get the wetlands to meet USACE's criteria for success. While the overall vegetative cover has reached the required 85% level and is growing well, the limit of 10% cattails has proven almost impossible to reach and in fact, the cattails have been increasing despite the efforts to reduce them over the past three years. Those efforts have included modifying the water delivery facility for the wetlands, minor reshaping of the two wetland terraces that were constructed with the project and removal of cattails by hand.

The permit also states that if during the first three years after construction, site conditions indicate that success criteria are not likely to be achieved, the permittee agrees that remedial efforts will be undertaken after consultation with USACE. Staff has met with USACE several times to review the conditions that are thwarting efforts to keep the cattail coverage and growth in check. The biggest factor is that cattails are very common in the surrounding areas of the Big Dry Creek Open Space—approximately 15 acres of cattails exist in the half-mile upstream of the mitigation area. This provides a steady and abundant source of wind and waterborne cattail seeds, ready to take root in conditions that are ideal for their propagation. Nonetheless, the Corps of Engineers is unwilling to allow a variance from the permit-dictated limit of 10% cattail coverage.

Over the past four years, approximately \$71,000 has been spent on this wetlands mitigation project. The annual monitoring reports and related observations average \$4,000 and will continue to be necessary as long as the permit conditions have not been met. In addition to the monitoring reports, Smith has engaged in minor grading, hand removal of cattails and ongoing planting of competing plants to try to get ahead of the spread of cattails. In 2008, modifications were made to the water delivery system that supports the wetlands at a cost of over \$40,000. These efforts have improved the operation of the wetlands but have failed to get the cattail problem under control. At the City's request, Smith has prepared three alternative approaches to dealing with this problem.

One alternative is to step up the level of effort to control the cattails. A more aggressive program of hand-removal of cattails, or the implementation of an herbicide treatment program would be followed by planting of alternative species of wetland plants. This will require two to four years of treatment to reduce and stabilize the cattail coverage and, assuming the reduced coverage is reached and can be maintained, at least three more years of monitoring to be sure the cattail coverage stays under 10%. There is no guarantee of success and in the case of chemical treatment, since the herbicide is not selective (treatment is to spray herbicide on each individual cattail plant and wait for it to die), there are risks that desirable vegetation such as sedges and rushes will be killed as well, requiring increased re-vegetation efforts. Smith estimates this approach might cost \$45,000 or more over the next six years. The larger risk is that it might take more than six years and the costs would continue to mount.

A second alternative is a major remodeling of the wetlands area and replanting of non-cattail plant species. This would be done by excavating and removing soils to create deeper areas of open water, or by importing and placing soils such that the soil/groundwater characteristics are less likely to support cattail growth over that of species like rushes and sedges. The first of these approaches would take an amendment of the USACE permit to allow another acre of open water. Both of these approaches involve significant disturbance of the wetlands by heavy equipment. The estimated cost could run between \$44,000 and \$66,000 including maintenance and monitoring for four to five years after the major construction is completed. Once again there is risk that the effort may not meet Corps' requirements.

A third alternative was developed by Smith in discussions with the Corps of Engineers and consists of the purchase by the City of one acre of credit from a wetlands mitigation bank qualified by the Corps. A mitigation bank is a wetlands area established for the purpose of providing compensation for unavoidable impacts to aquatic resources permitted under Section 404 of the Clean Water Act. Where site conditions make wetlands restoration impossible or where mitigation cannot be fully realized, the Corps can allow purchase of a negotiated amount of "credit" instead, generally at a qualified wetlands bank in the same drainage basin. Based on proposals received from two such banks, this would cost \$65,000 and would release all further obligations associated with the USACE permit. This would essentially buy out the cattail limitation by substituting one acre of prequalified and established wetlands elsewhere in the area. No further expenditures and no annual monitoring would be necessary from the date the wetland bank credit is purchased. The 2004 permit requirements would be considered by the Corps of Engineers as having been met in full.

Under the first two alternatives, a minimum of six more years of management and monitoring will be needed and there is risk that the criteria might still not be met. If the 10% level of cattails is exceeded once it is reached, more remediation would be necessary and the time frame of the permit would be extended, adding to the cost. The third alternative, purchasing one acre of wetland bank credit makes certain that no other expenses will be incurred. It is important to note that the mitigation work done to date has resulted in a vegetated and healthy wetland. While cattails now make up over half of the vegetation, they are joined by willow bushes and quickly-maturing cottonwood trees, rushes and sedges and other wetland plant species that have resulted in a varied environment and good habitat for numerous birds and animal species. The third alternative is the only sure way to close out the permit without continuing to disrupt the now stable conditions there.

Staff is recommending that the one acre of wetland bank credit be purchased at a cost of \$65,000 so this issue can be resolved without further ongoing expenditures on what will continue to be a difficult goal. This approach aligns with City Council's Strategic Planning Goals of Financially Sound City Government and that of a Beautiful City—Attractive Green Spaces. It supports the first goal by eliminating the risk of ongoing and potentially increasing costs. As stated earlier, the permit criteria of a maximum of 10% cattail coverage has proven very tough to achieve and cannot be reached without significant additional cost. To trade that open-ended cost exposure for the certain closeout of the permit has economic justification. Funds for this expenditure are available in the Huron Street project account.

SUBJECT: Huron Street/Big Dry Creek Wetlands

Page 4

The second goal of Attractive Green Spaces has already been achieved by the mitigation effort and should not be disturbed by continuing to rework the site. From every other perspective but that stated in the USACE's permit criteria, the mitigation work has resulted in a successful restoration. The site is a functional wetland; fully offsetting the loss caused by the Huron Street project, and is now integrated into the larger Big Dry Creek Open Space. The alternatives above that continue to tinker with the wetlands are not only a potential open-ended path of expenditures, but are also an ongoing disturbance of what has already been achieved—a new wetlands site with a healthy plant and animal population that is balanced with the surrounding area and attractive to passers-by.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



Huron Street/Big Dry Creek Wetlands
- Vicinity Map -





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Saint Anthony North Hospital Waterline Construction Contracts

Prepared By: Kent Brugler, Senior Engineer, Utilities Planning and Engineering

Recommended City Council Action

Authorize the City Manager to enter into a contract with the low bidder Ricor, Inc. in the amount of \$313,190 for construction of new waterlines and appurtenances in the vicinity of Saint Anthony North Hospital and authorize a 10 percent construction contingency in the amount of \$31,319 for a total construction budget of \$344,509. In addition, authorize the City Manager to execute a contract amendment with J&T Consulting, Inc. in the amount of \$15,460 for additional construction management services to be provided during construction.

Summary Statement

- The existing 6-inch water mains serving the Saint Anthony Hospital are over 40 years old and undersized for current demands and water pressures in this area.
- Distribution system modeling performed in 2007/2008 determined that the waterlines in the vicinity of the hospital must be replaced with 12-inch pipelines to provide required fire supply and pressures to the hospital.
- The City solicited bids for the project from seven qualified contractors and received five bids on July 30, 2010. Ricor, Inc. presented the lowest qualified bid in the amount of \$313,190, which was 20% below the Engineer's estimate of \$393,843.
- The City contracted with J&T Consulting, Inc. in February 2010 to provide design, bidding and limited construction phase services for the project in the amount of \$42,080. This amendment increases their scope of work to account for the longer duration anticipated for the construction phase and additional inspection services requested by the City. The corresponding increase in their contract amount is \$15,460.
- There are sufficient funds available in the Open Cut Waterline Replacement account to fully fund this project through the construction phase.

Expenditure Required: \$359,969

Source of Funds: Open Cut Waterline Replacement CIP Account

Policy Issues

1. Should the City execute a contract with Ricor, Inc. for the replacement of waterlines in the vicinity of Saint Anthony North Hospital?
2. Should the City approve an amendment to J&T Consulting, Inc.'s engineering services agreement to include an increased level of construction phase services?

Alternatives

1. The City could choose to replace these waterlines at a later date. However, due to existing pipe capacity limitations, poor pipe conditions and the corresponding risk of a disruption in water service, Staff recommends their replacement at this time.
2. The City could award the contract to another bidder. This option is not recommended because Ricor, Inc. is qualified for this type of work and their bid is the most cost-competitive.
3. The City could choose to contract with a separate engineering firm to provide construction management services. This option is not recommended as it would likely result in higher costs to the City. J&T Consulting, Inc. was the design engineer, has intimate project knowledge and a history of successful projects with the City.

Background Information

As part of the distribution system modeling and evaluation conducted by the City in 2007 and 2008, the waterlines in the vicinity of 84th Avenue and Alcott Street were evaluated. The analysis indicated that pipelines serving the Saint Anthony North Hospital are undersized for the current system water demands and current fire flows/pressures. In addition, these water mains are 40 to 50 years old and in poor condition, which makes them particularly vulnerable to main breaks and system failures. For these reasons the timing is right to replace these lines with new larger pipes capable of meeting current water demands.

The Saint Anthony North Hospital Waterline project includes replacing 2,000 feet of existing 6-inch water main with new 12-inch diameter polyvinylchloride (PVC) piping. In addition, three new fire hydrants and twelve main line isolation valves will be installed to enhance the overall operation of the water distribution system in this area. The new waterlines will be designed with a looped connection to existing 12-inch water mains located on 84th Avenue and on Zuni Street to enhance system reliability and redundancy.

The City sent a Request for Bids to seven qualified contractors on July 9, 2010 and received five bids on July 30, 2010. The following is a summary of the bids received:

<u>Contractor Name</u>	<u>Bid Amount</u>
Ricor, Inc.	\$ 313,190.00
Brannan Construction Company	\$ 314,500.00
T. Lowell Construction, Inc	\$ 336,000.00
Northern Colorado Constructors, Inc.	\$ 340,559.35
BT Construction, Inc.	\$ 369,088.00
Engineer's Opinion of Probable Cost	\$ 393,843.20

After review of all bids received, Ricor, Inc.'s bid was determined to be valid, and the dollar amount is reasonable for the scope of the work. Ricor, Inc. successfully completed other water and sewer line replacement projects for the City and is qualified to complete this project. In addition, Ricor, Inc.'s bid is 20% less than the engineer's estimate. This indicates a favorable bid climate for the City and supports the notion that these bids are very competitive. For these reasons, Staff recommends executing a contract with Ricor, Inc. for construction of this project. Construction will commence following award of the contract with completion anticipated by December 31, 2010.

A second component of this project is related to engineering services during construction. The design of the new pipeline and system improvements was performed by J&T Consulting, Inc. They have intimate knowledge of the utilities in this area and experience working with the hospital on other waterline projects in this vicinity. In addition, J&T Consulting, Inc. has successfully completed many utility improvement projects for the City making them an ideal candidate for engineering services during construction for this project. The original contract with J&T Consulting, Inc. included design, bidding and limited construction phase services for this project in the amount of \$42,080. Based on project details finalized during the design phase, additional construction services are requested by the City to account for a longer construction duration and corresponding additional inspection services. An amendment to J&T's contract is requested in the amount of \$15,460 to account for this additional scope of work. This amendment increases their total contract amount to \$57,540.

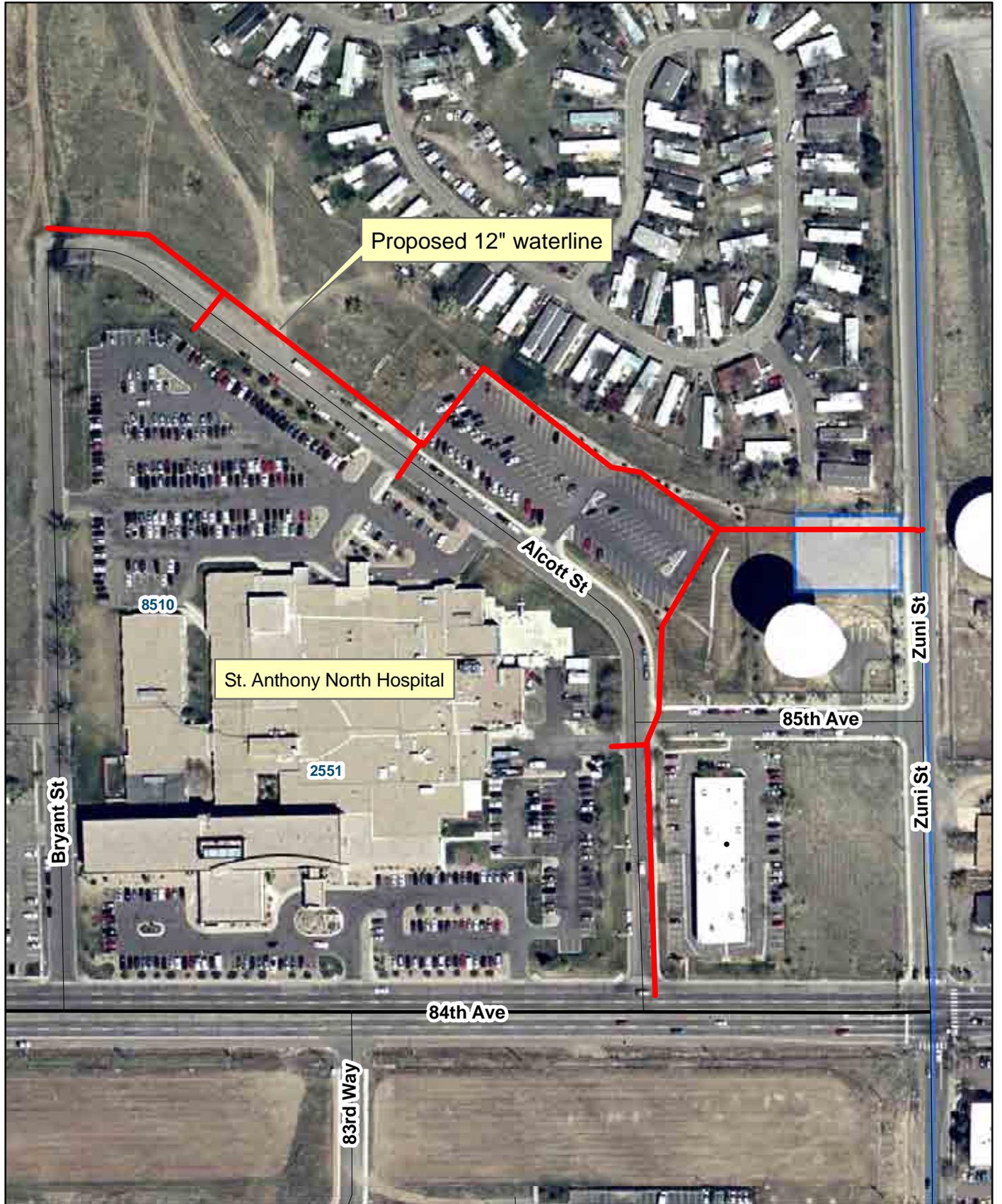
This project helps achieve three of the City Council's Strategic Plan Goals: 1) Achieving a "Financially Sustainable City Government" by contribution to the objective of well-maintained and operated City facilities, 2) Contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the reliability of the City's water distribution system, and 3) Achieving a "Safe and Secure Community" by increasing the reliability of the water system to meet fire flow demands.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Map

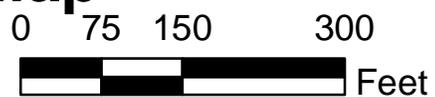
St. Anthony North Hospital Waterline Replacement



Location Map



Proposed 12" Waterline





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Water Distribution System Model Updates and Engineering Analysis Contract

Prepared By: Andy Walsh, P.E., Senior Engineer
Steve Grooters, P.E., Senior Projects Engineer

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest would best be served by authorizing the City Manager to execute a contract with URS Corporation in the amount of \$65,445 to provide water distribution system modeling and engineering services.

Summary Statement

- Water Distribution System modeling is a key component associated with ongoing utility planning efforts and the design of system capital improvements projects.
- Water Distribution System modeling is also used during the review of development plans to verify the impact of proposed new water demands and the ability of the system to provide sufficient fire fighting flow rates and pressures.
- Modeling and engineering analysis of the water distribution system is needed to support several in-progress planning and capital projects including construction of new water mains and improvements to many of the City's Pressure Zones.
- Because of the complex and specialized nature of the software used to simulate the water distribution system, the City relies on consultants who specialize in water system modeling to maintain, update and run the model.
- URS Corporation is uniquely qualified to perform these services, having provided the City's water and sanitary sewer computer modeling services for some time. This team is intimately familiar with the City's existing water infrastructure, water distribution system computer model and short and long-term updates targeted for the water supply system.
- Staff believes it is in the best interest of the City to execute a contract with URS to complete necessary modeling services. Staff has negotiated a scope of services and competitive fee with URS for this work and adequate funds are available.

Expenditure Required: \$65,445

Source of Funds: Utility Fund - GIS Mapping/Model Improvements Project and
South Westminster TOD Study Project

Policy Issue

Should the City award a contract to URS Corporation to provide water distribution system modeling and engineering analysis?

Alternatives

1. The City could choose to solicit proposals from other engineering consulting firms to complete this project. However, this project is of a specialized nature and requires intimate knowledge of the City's unique water distribution system and computer model database. Having developed and overhauled this water distribution system model in previous efforts, URS is uniquely qualified to provide this service to Westminster. Retaining URS for this work will facilitate a timely and cost-effective means to completing the project.
2. The City could choose to implement this project at a later date. This option is not recommended as the services associated with this project are necessary to adequately plan, design and construct improvements to the water distribution system within their required time frames.

Background Information

Each year the City implements water system rehabilitation projects, system upgrades and planning efforts for future water infrastructure needs. Over time, changes to the water system and its demands impact flow patterns, system pressures and flow rate capabilities. Through the use of computer modeling, the water distribution system can be simulated under a variety of operational scenarios. The results of these simulations can then be used to determine the most cost-efficient way to improve the water system and maintain a high level of service to City customers. In addition, modeling of the system can be used to verify the impact of proposed development and the ability of the system to maintain fire fighting flows when new demands are incurred. For these reasons, water distribution modeling is a key ongoing tool used by the City.

Currently there are several utility planning and design projects that require water system modeling. Services related to the modeling have been consolidated into one project, which includes simulations and engineering analysis related to five key areas including:

- 1) Improvements to Pressure Zone 5 of the system near Standley Lake - This zone of the system (essentially the Countryside Subdivision area) currently has several areas where water pressures are excessively high and areas where pressures are low. Modeling will help determine appropriate new boundaries for the zone and the pumping, piping and pressure reducing valve requirements needed to maintain consistent pressures and flows.
- 2) Design and construction of new water mains and improvements to the Meadowlark Subdivision - Due to the age and condition of the existing piping, new water mains are required in this subdivision. In addition, because the subdivision is located near the boundaries of two pressure zones, pressure reducing valves are required to provide City customers with consistent flow and pressure. Water system modeling will be used to size new water mains and to determine necessary pressure reducing valve set points required for fire flows.
- 3) Design and construction of new water mains and improvements to the Transit Oriented Development area - The Transit Oriented Development project located in South Westminster is at the edge of the City's water distribution system. Modeling will be used to confirm the size of new water main extensions needed in this area to serve new development and improve fire flow capabilities.

- 4) Planning of improvements to Pressure Zones 3 and 4 of the system for reliability and to support the Westminster Center Urban Redevelopment Project (WURP) – Currently pressure zone 4 (essentially the Silo Subdivision area) is fed through the use of a single pump station. A redundant pump station will be evaluated as part of the analysis to confirm improvements needed to maintain system flow and pressures in the case where the existing pump station is offline. Similarly, modeling simulations will be used to determine the water infrastructure required to serve build-out conditions resulting from the WURP.
- 5) Miscellaneous modeling services that result from ongoing efforts to review proposed development plans and projects - As part of the City’s services, plans for new development within the City are reviewed to verify their impact to the water distribution system. Particular emphasis is placed on new fire flow requirements. Modeling is used in these cases to determine what, if any, changes to the system are required in order to maintain adequate services to utility customers.

For several reasons Staff believes it is in the best interest of the City to sole source engineering services for this project to URS Corporation. The engineering staff at URS Corporation has successfully provided water and sanitary sewer modeling services to the City for many years. Through that effort, URS has become intimately familiar with our existing water infrastructure, its performance, necessary updates to the system and the City specific computer model database. Based on these qualifications, Staff negotiated with URS to establish the project scope of work and a corresponding fee. Staff believes the negotiated fee is appropriate for the project scope and is competitively priced. Retaining URS for this project will facilitate the project needs in a timely and cost-efficient manner.

No additional funds are required. Monies budgeted in two capital accounts have been identified to fund this project.

This project helps achieve two of the City Council’s Strategic Plan goals: 1) Achieving a “Financially Sustainable City Government” by determining the most cost-efficient projects needed to provide dependable water service to the City and 2) “Beautiful and Environmentally Sensitive City” by enhancing the reliability of the City’s water delivery system.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 43 re FY 2009 Carryover Appropriation into FY 2010

Prepared By: Steve Smithers, Assistant City Manager
Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Pass Councillors Bill No. 43 on second reading appropriating FY2009 carryover funds into the FY2010 budgets of the General, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Golf Course, Parks Open Space and Trails (POST), and General Capital Outlay Replacement Funds.

Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading appropriating FY2009 carryover funds into the FY2010 budget.
- The City Council annually reviews and appropriates carryover funds from the previous year’s budget into the current year budget for the following:
 - Those items and services included in the previous year’s budget but not received or provided until the current year’s budget;
 - New items and services not included in the previous year’s budget or funds that were identified as available for these new priorities in late 2009, but the items or services were not received or provided until the current year’s budget;
 - Existing or new capital projects and key operating priorities for which funds are needed and carryover funds are available.
- Total funding of \$9,825,310 to be appropriated for the items recommended in this memo comes from available revenues and unexpended 2009 funds in the various amounts identified. The attached ordinance reflects a total increase of 10,727,882. This amount differs from the \$9,825,310 noted in Expenditure Required due to the accounting of transfers required to properly reflect the transactions on the City’s books.
- This Councillor’s Bill was passed on first reading on August 23, 2010.

Expenditure Required: \$9,825,310

Source of Funds: 2009 Carryover from the General, Fleet, General Capital Improvement, Utility, Storm Drainage, Parks Open Space and Trails (POST), Conservation Trust, and General Capital Outlay Replacement Funds

Respectfully submitted,

J. Brent McFall
City Manager
Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

Briggs - Dittman

A BILL

FOR AN ORDINANCE INCREASING THE 2010 BUDGET OF THE GENERAL, FLEET, WATER, WASTEWATER, STORM DRAINAGE, GENERAL CAPITAL OUTLAY REPLACEMENT, PARKS OPEN SPACE & TRAILS, CONSERVATION TRUST, AND GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THESE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General, Fleet, Water, Wastewater, Storm Drainage, General Capital Outlay Replacement, Parks Open Space & Trails, Conservation Trust, and General Capital Improvement Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$10,727,882. This appropriation is due to the appropriation of 2009 carryover.

Section 2. The \$10,727,882 increase in the General, Fleet, Water, Wastewater, Storm Drainage, General Capital Outlay Replacement, Parks Open Space & Trails, Conservation Trust, and General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10A dated August 23, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$3,817,820
Fleet Fund	181,162
Water Fund	2,857,168
Wastewater Fund	10,083
Storm Drainage Fund	323,434
General Capital Outlay Replacement Fund	107,878
Parks Open Space & Trails Fund	256,100
Conservation Trust Fund	415,340
General Capital Improvement	<u>2,758,897</u>
Total	<u>\$10,727,882</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of August, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of September, 2010.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 44 re 2010 2nd Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor’s Bill No. 44 on second reading providing for supplemental appropriation of funds to the 2010 budget of the General, Utility, and General Capital Improvement Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor’s Bill on Second reading authorizing a supplemental appropriation to the 2010 budget of the General, Utility, and General Capital Improvement Funds.
 - General Fund amendments total: \$33,395
 - Utility Fund amendments total: (384,626)
 - General Capital Improvement Fund amendments total: 174,190
- This Councillor’s Bill was passed on first reading August 23, 2010.

Expenditure Required: (\$177,051)

Source of Funds: The funding sources for these budgetary adjustments include program revenues, grants, bond proceeds, cash-in lieu, contributions, and school land dedication fees.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Winter - Kaiser

A BILL

**FOR AN ORDINANCE AMENDING THE 2010 BUDGETS OF THE GENERAL, UTILITY AND
GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General, Utility, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby decreased in aggregate by \$177,051. This appropriation is due to the receipt of funds from program revenues, grants, bond proceeds, cash-in lieu, contributions, and school land dedication fees.

Section 2. The \$177,051 decrease shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10B dated August 23, 2010 (a copy of which may be obtained from the City Clerk) amending City fund budgets as follows:

General Fund	\$33,395
Utility Fund	(384,636)
General Capital Improvement Fund	<u>174,190</u>
Total	<u>(\$177,051)</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of August, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of September, 2010.

ATTEST:

Mayor

City Clerk



Agenda Item 9 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Resolution No. 31 Making Appointments to Fill Vacancies on Various Boards and Commissions

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 31 making appointments to fill vacancies on the Historic Landmark Board, the Human Services Board, the Planning Commission, and the Special Permit and License Board.

Summary Statement

- The Westminster Municipal Code establishes the membership composition of each City Board and Commission and in some instances sets forth expertise requirements for membership where professional experience is valuable to the Board's role.
- Resignations were received recently from five regular or alternate members appointed to the Historic Landmark Board, the Human Services Board, the Planning Commission, and the Special Permit and License Board.
- Citizens interested in being appointed to these boards were interviewed by Council earlier this year and have asked to be considered for appointment as vacancies occur throughout the year.
- If adopted, the attached resolution officially appoints five qualified citizens of Westminster to the previously mentioned vacancies so the groups can continue to function with full membership representation.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to fill vacancies on the Historic Landmark Board, the Human Services Board, the Planning Commission, and the Special Permit and License Board so a full complement of qualified members can fulfill established duties?

Alternative

None identified

Background Information

Dar Vriesman, the alternate member of the Historic Landmark Board, resigned. The Westminster Municipal Code contains specific experience criteria for 40 percent of the members of this Board to ensure well-rounded knowledge of applications submitted for the Board's review and approval. Chris Meschuk has the qualifications needed to satisfy the Code's criteria, and the proposed resolution, if adopted, names him the alternate member with a term of office to expire December 31, 2011.

Resignations that cited conflicts due to employment schedules and family commitments were received from Aurita Apodaca and Kristin Burns, members of the Human Services Board. The attached resolution names Tom Bruchmann, the current alternate, to fill the remainder of Ms. Apodaca's term; Jerry Hersey to fill the remainder of Ms. Burn's term; and Alison O'Kelly to be the alternate member. Mr. Bruchmann's term of office will expire December 31, 2010; Mr. Hersey's and Ms. O'Kelly's terms on December 31, 2011.

Donna Alengi resigned from the Planning Commission due to employment scheduling conflicts. The proposed resolution names the 1st alternate, Timothy McClung, to fill the balance of Ms. Alengi's term; the 2nd alternate, Hillary Calavitta, to replace Mr. McClung as the 1st alternate; and Tracy Colling to the 2nd alternate membership. The terms of both alternates will expire December 31, 2011; Mr. McClung's term on December 31, 2010.

Corey Ciocchetti resigned from the Special Permit and License Board in July. If adopted, the attached resolution names George Werkmeister, the current alternate, to fill Mr. Ciocchetti's vacancy and David Amin to replace Mr. Werkmeister as the alternate member. Mr. Werkmeister's term of office will expire December 31, 2010; Mr. Amin's term on December 31, 2011.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **31**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

A RESOLUTION FOR CITY OF WESTMINSTER BOARD AND COMMISSION APPOINTMENTS

WHEREAS, vacancies exist on four of the City's Boards and Commissions because of resignations received in recent months; and

WHEREAS, it is important to have each City Board or Commission working with its full complement of authorized members to carry out the business of the City of Westminster with citizen representation; and

WHEREAS, City Council interviewed citizens who applied for appointment to Boards and Commissions of personal interest to them.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the following individuals are hereby appointed to the City of Westminster Board or Commission and term of office expiration date listed below.

<u>BOARD/COMMISSION</u>	<u>APPOINTEE</u>	<u>TERM EXPIRATION DATE</u>
Historic Landmark Board	Chris J. Meschuk (alternate)	December 31, 2011
Human Services Board	Tom Bruchmann (regular) Jerry Hersey (regular) Alison O'Kelly (alternate)	December 31, 2010 December 31, 2011 December 31, 2011
Planning Commission	Timothy McClung (regular) Hillary Calavitta (1 st alternate) Tracy Colling (2 nd alternate)	December 31, 2010 December 31, 2011 December 31, 2011
Special Permit & License Board	George Werkmeister (regular) David Amin (alternate)	December 31, 2010 December 31, 2011

PASSED AND ADOPTED this 13th day of September, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 10 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Public Hearing on 2011 and 2012 City Budget

Prepared By: Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Hold a public hearing on the 2011 and 2012 City Budget and receive citizen comments.

Summary Statement

- Development and review of the 2011 and 2012 City Budget has been completed by the City Manager's Office. The draft budget has been distributed to City Council and has been made publicly available on the City's website, in the City Clerk's Office, and at City Libraries.
- Public meetings regarding the 2011 and 2012 Budget were held on June 14 and July 26 to receive citizen input.
- September 13 is the final public hearing before the City Council Budget Retreat, affording citizens one more opportunity to comment and provide feedback on the 2011 and 2012 City Budget.
- The General Fund is projected to reduce by 5 percent as part of the Proposed 2011/2012 Budget. The reductions are part of a comprehensive strategy to reduce spending to a point that is sustainable with very modest increases in revenue anticipated in coming years, and with a focus on the core services of local government. 72.733 full-time equivalent (FTE) positions are proposed for elimination in 2011 (this reduction in force was implemented this summer) and no staffing changes are proposed for 2012.
- In accordance with the City Charter, City Council must adopt the budget no later than the October 25th City Council meeting.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council wish to take citizen requests, comments and suggestions as they pertain to the 2011 and 2012 Budget?

Alternative

Council could choose to not conduct a public hearing at this time. This is not recommended as providing citizens an opportunity for input early on in the budget process plays an important role in assuring that the budget reflects community needs. In addition, a public hearing on the budget is required by the City Charter.

Background Information

City Council is scheduled to hold a public hearing to receive input on the 2011 and 2012 City Budget at the Monday, September 13, City Council meeting. Staff will make a brief presentation at Monday night's City Council meeting on the Proposed 2011 and 2012 Budget. This public hearing is intended to receive citizen requests, comments and suggestions for both of these budget years.

In June, City Council revisited the goals for 2011 and 2012. The City Council Goals are listed below:

- Financially Sustainable City Government Providing Exceptional Services
- Safe and Secure Community
- Strong, Balanced Local Economy
- Vibrant Neighborhoods in One Livable Community
- Beautiful and Environmentally Sensitive City

The direction provided by City Council through the core services prioritization process conducted in April and identification of these Strategic Plan goals in June assists City Staff as they develop the 2011 and 2012 City Budgets. Other considerations that go into developing a comprehensive budget are department priorities that strive to maintain existing service levels, and citizen, neighborhood or business input.

The Departments' efforts culminate in the distribution of the City Manager's Proposed 2011/2012 Budgets to City Council. After reviewing the Proposed Budget for two and a half weeks, City Council is scheduled to meet on Monday, September 20 at the Study Session on the Proposed 2011/2012 Budget to deliberate on final funding decisions on staffing levels, programs, services and capital projects.

Staff is recommending a General Fund budget for 2011 that is reduced from the Amended 2010 Budget by approximately 5 percent. The reductions are part of a comprehensive strategy to reduce spending to a point that is sustainable with very modest increases in revenue anticipated in coming years, and with a focus on the core services of local government. Staff utilized the City Council prioritized core services inventory from Council's April retreat to assist efforts to make lasting reductions to the budget. A total of 72.733 full-time equivalent (FTE) positions are proposed for elimination in 2011 and no staffing changes are proposed for 2012.

In November of 2000, Westminster voters approved a City Charter amendment that allows the City Council to adopt a formal two-year budget. The 2003/2004 Budget was the first officially adopted two-year budget. Staff is pleased to submit to City Council the fifth two-year budget for official adoption.

A copy of the Proposed 2011/2012 Budget document is available to the public in the City Clerk's Office and both City libraries. A copy of the proposed budget is also available on the City's website www.cityofwestminster.us under City Government, City Manager's Office, Budget.

Monday's public hearing was advertised in the *Westminster Window*, *Westsider*, *Weekly Edition* and *City Edition*; on cable Channel 8 and the City's website; and at various public meetings.

SUBJECT: Public Hearing on 2011 and 2012 City Budget

Page 3

Public meetings regarding the 2011 and 2012 Budget were held on June 14 and July 26. September 13 is the final public hearing before the City Council Budget Retreat, affording citizens one more opportunity to comment and provide feedback on the 2011 and 2012 City Budget.

Final adoption of the 2011 and 2012 Budget is required by October 25 per City Charter requirements. Staff will make a brief presentation at Monday night's City Council meeting on the Proposed 2011 and 2012 Budget.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 10 B&C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Hearing and Second Reading of Councillor's Bill No. 45 re Adoption of the 2009 International Building and Fire Codes

Prepared By: Dave Horras, Chief Building Official
Gary Pedigo, Fire Marshal

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Councillor's Bill No. 45 on second reading adopting the 2009 editions of the International Building and Fire Codes, the 2008 edition of the National Electric Code and other minor miscellaneous revisions to the codes.

Summary Statement

- Staff is requesting City Council to adopt, by reference, the 2009 editions of the International Building Codes developed and published by the International Code Council (ICC) as the building and fire codes for the City of Westminster. These codes would replace the 2006 edition of the International Codes that have been adopted as the City's building and fire codes since January 1, 2007.
- Staff is proposing the adoption of the following codes published by the International Code Council:
 - The International Building Code, 2009 edition
 - The International Fire Code, 2009 edition
 - The International Residential Code, 2009 edition
 - The International Plumbing Code, 2009 edition
 - The International Mechanical Code, 2009 edition
 - The International Fuel Gas Code, 2009 edition
 - The International Energy Conservation Code, 2009 edition
 - The International Existing Buildings Code, 2009 edition
- In addition to the above referenced codes, staff is also proposing the adoption of the 2008 edition of the National Electrical Code (NEC). The NEC is published by the National Fire Protection Association and is recognized as the Colorado adopted electrical code by the State Electrical Board.
- Staff is also proposing revisions to an administrative section of the current code addressing information required on construction documents and a section of the Rental Property Maintenance Code that will require carbon monoxide alarms.
- Staff has attached a letter from the Denver Metropolitan Home Builders Association (HBA) that was received after adoption of the code changes by City Council on first reading, which expresses the HBA's concerns with the residential sprinkler requirements. In the letter they do state that the delayed implementation of the requirements is an acceptable interim solution.

Expenditure Required: Approximately \$5,000 for code books and new handout materials

Source of Funds: General Fund - Building Division and Fire Prevention Operating Budgets

Policy Issue

Should the City of Westminster adopt, by reference, the most current editions of the International Codes as the building and fire codes for the City?

Alternatives

1. Continue with the currently adopted 2006 edition of the International Codes. This alternative would allow staff to continue to enforce codes with which they are very familiar. This alternative would also not require the purchase of new code books. However, the building and fire code development process is designed to evolve along with constantly changing building processes. This alternative would not keep the adopted building and fire codes current with the latest technologies nor provide for the use of advancements in building construction techniques or materials. This could discourage owners and developers from building in Westminster. Westminster would soon become an exception within the metropolitan area as other jurisdictions adopt the most current versions of the codes.
2. Adopt the codes as proposed but modify the effective date of the new requirement for residential fire sprinklers as recommended by the Board of Building Code Appeals (BBCA) from January 1, 2013 to July 1, 2013. Staff is not recommending this alternative because it is believed that it is appropriate to follow the recommended effective date of January 1, 2013 as proposed by the Joint Ad-Hoc Residential Sprinkler Committee.
3. Modify the proposed code amendments or code adoption to address any specific concerns. Staff does not have any specific concerns with the proposed codes that would warrant any substantive amendments.

Background Information

The City of Westminster has adopted the International Codes (I-Codes) since they were first published in 2000. The City of Westminster adopted the 2000 I-Codes effective in September of 2002 and most recently adopted the 2006 I-Codes effective January of 2007.

The 2009 edition of the International Codes represents the most current, comprehensive, integrated set of building and fire safety code regulations. The International Codes are an all-inclusive set of building construction codes covering all aspects of construction, including fire protection, mechanical, plumbing, energy conservation, and accessibility. The International Codes apply to new construction or alteration of existing structures and typically do not apply retroactively to existing structures.

Building code and fire protection technology is constantly evolving, and code and standards require continual updating to keep pace with new ideas and products. The City of Westminster needs to update the adopted building and fire codes so that owners, designers and contractors will not be restricted from taking advantage of new technologies and building practices. The I-Codes are currently the only published set of codes available to adopt as a correlated, contemporary set of building code regulations and represent the most up-to-date set of codes governing building construction.

It is proposed to adopt the I-Codes by reference, which will result in hundreds of changes in the minimum standards. The great majority of these changes will not be noticeable to the general public, however, some provisions that are new to the 2009 International Codes that may generate some comments from the public are:

- A requirement for all new residential dwelling units, including single family and townhomes, to be provided with fire sprinkler systems.
- Requirements to increase energy efficiency for both residential and commercial construction by approximately 15%.
- A requirement for carbon monoxide detectors to be installed in new dwelling units.

The most controversial item that has generated the most debate is the requirement to install residential fire sprinklers in all new residential dwelling units, including single family homes. This requirement, as written in the International Residential Code (IRC), will require sprinklers to be installed in all new homes effective as of January 1, 2011. Staff is in support of this new code requirement but is proposing an amendment to change the effective date to January 1, 2013. This recommended change to the effective date is based on a recommendation of a Joint Ad-Hoc Committee. The Joint Ad-Hoc Residential Sprinkler Committee was formed by the Fire Marshals' Association of Colorado and the Colorado Chapter of the International Code Council to address issues associated with the wide-spread adoption of the sprinkler requirements. The committee was made up of representatives of both organizations as well as industry experts and stakeholders including fire protection engineers, plumbing contractors, water purveyors, and the Denver Metro Home Builders Association. This committee has determined that a delay will provide time to address necessary legislative changes, train personnel, reduce system costs, and gain more acceptance for wide-spread residential sprinkler system installation.

The Westminster Board of Building Code Appeals reviewed the residential fire sprinkler requirements and supported the requirements with an effective date of July 1, 2013. The BBCA decision was based on additional time to determine what, if any, changes will appear in the 2012 edition of the IRC that will be published by the effective date of the residential sprinkler requirement. However, the changes to the 2012 edition of the IRC have since been finalized, and the 2012 edition will not include any changes to the residential sprinkler requirements.

Changes to the International Energy Conservation Code (IECC) continue to increase energy conservation requirements. Energy conservation is a priority of the U. S. Department of Energy, and the code development process and the IECC reflect these priorities. Future editions of the codes will continue to reflect these priorities. It is expected that future energy conservation requirements will become more demanding.

A requirement to install carbon monoxide alarms in single family, duplex and townhome dwelling units has been added to the IRC. This requirement is similar to what was approved by the state during the 2008 legislative session and will allow the enforcement of these alarm provisions. In addition, it is proposed to amend the Rental Property Maintenance Code to include enforcement provision for rental properties retroactively as required by the state standards.

In addition, Staff has proposed a limited number of amendments to the proposed Codes. All of the proposed amendments fall into one of the following categories:

- Amendments to "fill in the blanks" in the model codes to localize them to the City of Westminster based on weather factors and soil conditions.
- Amendments unique to the City of Westminster such as our restriction on the installation of solid fuel burning devices or the allowance of State "permissible fireworks" for a limited number of days.
- Amendments retaining previously adopted building codes that proved effective and are no longer included as part of the current International Codes.

It is proposed to amend the Fire Code portion of the City Municipal Code to reflect new Chapter and Section numbers of the 2009 code as well as move the City's already adopted standard for Emergency Responder Radio Coverage from the Electrical Code section to the Fire Code.

Solar photovoltaic systems installations have increased in the City in recent months. A series of meetings was held with the vendors and City staff to establish some minimum clearance and marking requirements to allow roof operations of Fire personnel. It is proposed to add an amendment reflecting these requirements.

It is proposed to establish the National Electrical Code as adopted by the State of Colorado State Electrical Board as the City of Westminster's adopted electrical code. Staff is proposing this change based on the passage of House Bill 10-1225 which requires that Colorado jurisdictions adopt the same minimum standards as the State Electrical Board within twelve months of the State electrical code adoption.

As with almost all new code provisions, new code requirements will only apply to new buildings or buildings that are undergoing a renovation. With the exception of smoke and carbon monoxide detectors, new provisions do not retroactively apply to existing buildings approved under a previous version of the codes. The fire code is used to maintain existing buildings from a building and fire safety perspective.

The International Codes have been adopted by the majority of jurisdictions in the State. Locally, most jurisdictions, including Arvada, Thornton, Broomfield and Jefferson County are either in the process, or have already updated to the 2009 editions of the I-Codes.

The adoption of the full family of International Codes is fully endorsed by many prominent national organizations. Some of the organizations that have formally shown support for the International Codes include:

- The American Institute of Architects (AIA)
- The National Association of Home Builders (NAHB)
- The Federal Emergency Management Agency (FEMA)
- The American Gas Association (AGA)
- The Building Owners and Managers Association (BOMA)
- The U.S. Department of Housing and Urban Development (HUD)
- The U. S. Department of Energy (DOE)
- The International City/County Management Association (ICMA)

The proposed adoption and local code amendments have been reviewed by the Westminster Board of Building Code Appeals and is currently being reviewed by the Denver Metro Home Builders Association. The Board of Building Code Appeals has indicated support for the adoption of the 2009 Editions of the International Codes, subject to delaying the residential sprinkler requirements an additional six months, beyond January 1, 2013 (which Staff is not recommending). The Home Builders Association would prefer that all of the residential sprinkler requirements be amended out of International Residential Code but indicate, in the attached letter, that the proposed delayed implementation is an acceptable interim solution.

The adoption of the 2009 International Codes is consistent with the goal of a Safe and Secure Community as outlined in the Strategic Plan. State Statute sets forth the timing for adoption of codes by reference. It dictates that the public hearing be held on second reading of the ordinance. City Council passed the attached Councillor's Bill on first reading during the August 23, 2010 City Council meeting. As required by State Statute notice of the public hearing was published in the Westminster Window 15 days, and again 8 days, prior to this meeting. If approved by City Council on second reading the revised coded will become effective October 1, 2010.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Councillor's Bill
- Home Builders Association Letter

A BILL

FOR AN ORDINANCE AMENDING CERTAIN SECTIONS OF TITLE XI, CHAPTERS 9 AND 10, OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE BUILDING AND FIRE CODES AND AMENDING SECTION 11-12-5 CONCERNING FIRE PROTECTION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-9-1, W.M.C., is hereby AMENDED to read as follows:

11-9-1: ADOPTION OF BUILDING CODES:

(A) Intent and Findings. The intent of this Chapter is to adopt by reference and with modifications the International Building Code, 2009 Edition; the International Residential Code, 2009 Edition; the National Electrical Code, 2008 Edition; the International Plumbing Code, 2009 Edition; the International Mechanical Code, 2009 Edition; the International Fuel Gas Code, 2009 Edition; the International Energy Conservation Code, 2009 Edition; and the International Existing Building Code, 2009 Edition.

Hereinafter, all such Codes may be referred to as "Building Codes." The City Council finds that the adoption of such Codes is essential in the preservation of the health, safety, and welfare of the citizens of Westminster.

(B) Adoption of Building Codes. The following documents, one copy each of which is on file in the Office of the City Clerk, being marked and designated as stated, are hereby referred to, adopted, and made a part hereof as if fully set forth in this codification with, however, the amendments indicated in the following sections of this Chapter.

(1) International Building Code. The "International Building Code, 2009 Edition," published by the International Code Council, Inc., and in particular Chapters 2 through 35 inclusive and Appendix Chapter I are hereby adopted as the Building Code of and for the City of Westminster.

(2) International Residential Code. The "International Residential Code, 2009 Edition," published by the International Code Council, Inc., and in particular Chapters 2 through 44 inclusive and Appendix Chapters A, G, H, and K inclusive are hereby adopted as the Residential Building Code of and for the City of Westminster.

(3) National Electrical Code. The "National Electrical Code," sponsored by the National Fire Protection Association, Quincy, Massachusetts, as adopted by the State of Colorado State Electrical Board and as may be amended from time to time, is hereby adopted as the Electrical Code of and for the City of Westminster.

(4) International Plumbing Code. The "International Plumbing Code, 2009 Edition," published by the International Code Council, Inc., in particular Chapters 2 through 13 inclusive and Appendix Chapters C, E, and G inclusive is hereby adopted as the Plumbing Code of and for the City of Westminster.

(5) International Mechanical Code. The "International Mechanical Code, 2009 Edition," published by the International Code Council, Inc., and in particular Chapters 2 through 15 inclusive is hereby adopted as the Mechanical Code of and for the City of Westminster.

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~~(6) International Fuel Gas Code. The "International Fuel Gas Code, 2009 Edition," published by the International Code Council, Inc., and in particular Chapters 2 through 8 inclusive is hereby adopted as the Fuel Gas Code of and for the City of Westminster.~~

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~~(7) International Energy Conservation Code. The "International Energy Conservation Code, 2009 Edition," published by the International Code Council, Inc., and in particular Chapters 2 through 6 inclusive, is hereby adopted as the Energy Code of and for the City of Westminster.~~

~~(8) International Existing Building Code. The "International Existing Building Code, 2009 Edition," published by the International Code Council, Inc., and in particular Chapters 2 through 15 inclusive and the Appendix B, is hereby adopted as the Existing Building Code of and for the City of Westminster.~~

Section 2. Section 11-9-3, subsection (C), W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBPARAGRAPH (2)(b) to read as follows:

11-9-3: PERMITS AND FEES:

(C) Application for Permit.

(2) (a) Plans and Specifications. Plans, engineering calculations, diagrams, and other data shall be submitted in accordance with the City's submittal requirements with each application for a permit. The construction documents shall be prepared by an architect or engineer licensed by the State of Colorado when required by section 11-9-3(C)3. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared. The Building Official may waive the submission of plans, calculations, construction inspection requirements and other data if it is found that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this Code.

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(b) Means of egress. The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of this code. In other than occupancies in Groups R-2, R-3, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

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Section 3. Sections 11-9-5 through 11-9-11, W.M.C., are hereby REPEALED AND REENACTED to read as follows:

11-9-5: INTERNATIONAL BUILDING CODE AMENDMENTS: (3327)

(A) Section 406.1.4, number 1 of the International Building Code is amended to read as follows:

406.1.4. Separation. Separations shall comply with the following:

1. The private garage shall be separated from the dwelling unit and its attic area by means of minimum 5/8-inch type "X" gypsum board applied to the garage side. Where the separation is horizontal the gypsum board shall be attached to framing members spaced no more than 16 inches on center and the structure supporting the separation shall also be protected by not less than 5/8-inch type "X" gypsum board or equivalent. Door openings between the garage and the dwelling unit shall be equipped with a self-closing, self-latching solid wood door not less than 1 3/8 inch thickness, solid or honeycomb core steel door not less than 1 3/8 inches thick, or doors in compliance with Section 715.4.3. Penetrations in the required separation shall be in conformance with item #2 below or Section 713. Openings from a garage directly into a room used for sleeping purposes shall not be permitted.

(B) Section 419.3 of the International Building Code is amended as follows:

419.3 Means of egress. Except as modified by this section, the means of egress components for a live/work unit shall be designed in accordance with Chapter 10 for the function served.

419.3.1 Egress Capacity. The egress capacity for each element of the live/work unit shall be based on the occupant load for the function served in accordance with Table 1004.1.1.

419.3.2 Sliding doors. Delete in its entirety.

419.3.3 Spiral stairways. Spiral stairways that conform to the requirements of Section 1009.9 shall be permitted.

419.3.4 Locks. Delete in its entirety.

(C) Section 419.7 of the International Building Code is amended as follows:

419.7 Accessibility. Accessibility shall be designed in accordance with Chapter 11 for the function served.

(D) The International Building Code is amended by the addition of Section 419.9 as follows:

419.9 Plumbing Facilities. The work area of the live/work unit shall be provided with minimum plumbing facilities as specified by Chapter 29, based on the function of the work area.

(E) The International Building Code is amended to add Section 424 to read as follows:

Section 424 Dwelling Unit Security.

424 Dwelling unit security. The provisions of this Section shall apply to openings into all dwelling units as well as to openings between attached garages and dwelling units. Except for vehicular access doors, door openings in attached garages shall be in accordance with the provisions of this Section.

424.1 Obstructing means of egress. Security methods of this Section shall not create a hazard to life by obstructing any means of egress. The provisions of this Section shall not supersede the requirements of Chapter 10 of this Code.

424.2 Entry vision. All main or front entry doors to dwelling units shall be so arranged so that the occupants have a view of the area immediately outside of the door without having to open the door. Such view can be provided by a window or by the use of a door viewer with a 180 degree field of view.

424.3 Swinging doors. All exterior doors shall be constructed of solid core wood a minimum of 1 3/8 inch thickness, a metal door constructed with at least 18-gauge metal or similar approved material.

424.3.1 Strike plate installation. In wood-frame construction, any open space between trimmers and wood doorjamb shall be solid shimmed not less than 12 inches above and below the strike plate. Strike plates shall be attached to the jamb with not less than two No. 8 by 3-inch screws, which have a minimum of 3/4 inch penetration into the nearest framing member. Strike plates when attached to metal shall be attached with not less than two No. 8 machine screws.

424.3.2 Hinges. When hinges are exposed to the exterior, at least one of the hinges shall be equipped with a non-removable hinge pin. Not less than three 4 1/2 inch steel butt hinges shall be fastened to both the door and jamb with not less than four No. 9 by 3/4 inch wood screws or to metal doors and jambs with not less than four No. 8 machine screws. In wood construction, any open space between trimmers and wood jambs shall be solid shimmed extending not less than 6 inches above and below each hinge.

424.3.3 Locking hardware. Swinging doors shall be equipped with an approved exterior key-operated deadbolt. Deadbolt locks shall have at least a one-inch bolt throw that will penetrate the strike at least 3/4 of an inch. See Chapter 10 of this Code for requirements on door operation for exiting.

(F) Section 709.3 of the International Building Code is amended as follows:

Section 709.3 Fire-resistance rating.

EXCEPTIONS: #1 and #2 are deleted in their entirety.

(G) Section 712.3 of the International Building Code is amended as follows:

Section 712.3 Fire-resistance rating.

EXCEPTION is deleted in its entirety.

(H) Section 1008.1.9.4 the International Building Code is amended as follows:

Section 1008.1.9.4 Bolt locks. Manually operated flush bolts or surface bolts are not permitted.

EXCEPTIONS:

1. Remains unchanged.
2. Remains unchanged.
- 3-5. Deleted in their entirety.

(I) Table 1018.1 of the International Building Code is amended to read as follows:

Table 1018.1 CORRIDOR FIRE-RESISTIVE RATING

R occupancy corridor serving an occupancy greater than 10 with sprinkler system is required to be 1 hour fire-resistive rated.

(J) Section 1023.4 of the International Building Code is amended as follows:

1023.4 Termination. *Exit passageways* shall terminate at an *exit discharge* or *public way*. Dead ends shall comply with Section 1018.4.

(K) Sections 1207.2 and 1207.3 of the International Building Code are amended as follows:

1207.2 Air-borne sound. Walls, partitions and floor/ceiling assemblies separating dwelling or sleeping units from each other or from public or service areas shall have a sound transmission class (STC) of not less than 50 (45 if field tested) for air-borne noise when tested in accordance with ASTM E 90. Penetrations or openings in construction assemblies for piping; electrical devices; recessed cabinets; bathtubs; soffits; or heating, ventilating or exhaust ducts shall be sealed, lined, insulated or otherwise treated to maintain the required ratings. This requirement shall not apply to dwelling unit entrance doors; however, such doors shall be tight fitting to the frame and sill.

1207.3 Structure-borne sound. Floor/ceiling assemblies between dwelling or sleeping units or between a dwelling unit and a public or service area within the structure shall have an impact insulation class (IIC) rating of not less than 50 (45 if field tested) when tested in accordance with ASTM E 492.

(L) Section 1510.3 of the International Building Code is amended by the addition to read as follows:

Section 1510.3 Recovering versus replacement.

4. For asphalt shingles, when a building is located in an area subject to moderate or severe hail exposure according to Figure R903.5 in the International Residential Code.

(M) Section 1608.2 of the International Building Code is amended to read as follows:

1608.2 Ground snow loads. The ground snow load to be used within the City of Westminster in determining the design snow loads for roofs is 30 pounds per square foot.

(N) Section 1609.3 of the International Building Code is amended to read as follows:

1609.3 Basic wind speed. The minimum basic wind speed, based on a 3-second gust, for any site within the limits of the City of Westminster shall be a minimum of 100 miles per hour (MPH) in areas located east of Sheridan Boulevard, 110 MPH in areas between Sheridan Boulevard and Wadsworth Parkway, and 120 MPH in areas west of Wadsworth Parkway. Exposure B shall be used unless specified as exposure C by the Building Official.

(O) Sections 1612.3 and 1612.4 of the International Building Code are amended to read as follows:

1612.3 Establishment of flood hazard areas. The flood hazard areas of the City of Westminster are established in Article 11, Chapter 8 of the Westminster Municipal Code.

1612.4 Design and construction. The design and construction of buildings and structures located in flood hazard areas, including flood hazard areas subject to high velocity wave action, shall be designed and constructed in accordance with City of Westminster standards and ASCE 24, whichever is the most restrictive.

(P) Section 2111.1 of the International Building Code is amended to read as follows:

2111.1 Definition. A masonry fireplace is a fireplace constructed of concrete or masonry, hereafter referred to as masonry. Masonry fireplaces shall be constructed in accordance with this Section and subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

(Q) Section 2304.11.5 of the International Building Code is amended as follows:

Section 2304.11.5 Supporting member for permanent appurtenances.

EXCEPTION is deleted in its entirety.

(R) Section 3109 of the International Building Code is amended as follows:

3109.3 Public swimming pools. Public swimming pools shall be completely enclosed by a fence as required by Sections 3109.4.1 through 3109.4.1.7.

3109.4 Swimming pools. Swimming pools associated with structures regulated by this Code shall comply with Sections 3109.4.1 through 3109.4.3.

EXCEPTION is deleted in its entirety.

3109.4.1 Barrier height and clearances. The top of the barrier shall be at least 60 inches, but not exceed 72 inches, above grade measured on the side of the barrier which faces away from the swimming pool. (remaining unchanged)

3109.4.1.7 Gates. Access gates shall comply with the requirements of section 3109.4.1.1 through 3109.4.1.6, and shall be equipped to accommodate a locking device. Access gates shall be self-closing and be equipped with a self-latching device located a minimum of 54 inches above the bottom of the gate. Where egress hardware is required by Chapter 10 of this Code, it shall be used instead of the required latching device. If egress hardware is used, the gate or fence shall have no openings larger than ½ inch within 18 inches of the hardware.

3109.4.1.8 Dwelling wall as a barrier. Delete this Section in its entirety.

11-9-6: INTERNATIONAL RESIDENTIAL CODE AMENDMENTS:

(A) Table R301.2(1) of the International Residential Code is amended to read:

TABLE R301.2(1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Ground snow load	Wind Speed	Seismic Design Category	Subject to Damage from			Winter Design Temp	Ice barrier Underlayment required	Air Freezing Index	Mean Annual Temp	Accumulated Snow level
			Weathering	Frost Depth	Termite					
30 PSF	100 – 120*	B	Severe	36"	Slight to Moderate	1°F	No	532	51.0	12 inches

* See amended IBC Section 1609.3

(B) Section R301.2.1.2 of the International Residential Code is deleted in its entirety.

(C) Section R301.2.4 of the International Residential Code is amended to read as follows:

R301.2.4 Floodplain construction. The design and construction of buildings and structures located in whole or in part in flood hazard areas, including flood hazard areas subject to high velocity wave action, shall be designed and constructed in accordance with City of Westminster standards and R322, whichever is the most restrictive.

(D) Section R302.2 of the International Residential Code is amended to read as follows:

EXCEPTION: A common 2-hour fire-resistance-rated wall is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4

(E) Section R302.2.4 of the International Residential Code is amended to read as follows:

EXCEPTIONS:

5. *Townhouses* separated by a common 2-hour fire-resistance-rated wall as provided in Section R302.2.

(F) Section R302.3 of the International Residential Code is amended to read as follows:

R302.3 Two-family dwellings.

EXCEPTIONS:

1. Exception #1 deleted in its entirety.
2. Wall assemblies need not extend through attic spaces when the ceiling is protected by not less than 5/8 inch Type X gypsum board and an attic draft stop constructed as specified in Section R302.12.1 is provided above and along the wall assembly separating the dwellings. The structural framing supporting the ceiling shall also be protected by not less than 5/8 inch type X gypsum board or equivalent.

(G) Section R302.5.1 of the International Residential Code is amended to read as follows:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and the residence shall be equipped with a self-closing, self-latching solid wood door not less than 1 3/8 inch in thickness, solid or honeycomb core steel door not less than 1 3/8 inches thick, or 20-minute fire-rated door assembly.

(H) Section R302.6 of the International Residential Code is amended to read as follows:

R302.6 Dwelling/Garage fire separation. The garage shall be separated from the residence and its attic space by not less than 5/8-inch type "X" gypsum board applied to the garage side. Table R302.6 is deleted in its entirety. Where the separation is horizontal the gypsum board shall be attached to framing members spaced no more than 16 inches on center and the structure supporting the separation shall also be protected by not less than 5/8-inch type "X" gypsum board or equivalent. Garages located less than 3 feet from a dwelling unit on the same lot shall be protected with not less than 5/8 inch type "X" gypsum board on the interior side of exterior walls. Openings in these walls shall be regulated by Section R302.5.

(I) Section R310.1.1 of the International Residential Code is amended as follows:

R310.1.1 Minimum opening area. Exception is deleted in its entirety.

(J) Section R310.1.4 of the International Residential Code is amended to read as follows:

R310.1.4 Operational constraints. Emergency escape and rescue openings shall be operational from the inside of the room without the use of keys, tools, special knowledge or removal of any part of the window assembly.

(K) Section R310.5 of the International Residential Code is amended to read as follows:

Section R310.5 Emergency escape windows under decks and porches. Emergency escape windows are allowed to be installed under decks and porches provided the location of the deck allows the emergency escape window to be fully opened and provides a path not less than 36 inches in height and 36 inches in width to a yard or court.

(L) Section R311.3.2 of the International Residential Code is amended as follows:

R311.3.2 Floor elevations for other exterior doors.

EXCEPTIONS: Exception is deleted in its entirety.

(M) Section R311.7.4.1 of the International Residential Code is amended to read as follows:

R311.7.4.1 Riser height. The maximum and minimum riser height shall be 7 ¾ inches and 4 inches respectively. The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch.

(N) Section R311.9 of the International Residential Code is amended to read as follows:

R311.9 Means of egress discharge location. Required egress doors, landings, stairways and ramps shall be located at least 5 feet (1524 mm) from adjacent lot lines and the imaginary line between two buildings on the same lot.

(O) Sections R313.1 and R313.2 of the International Residential Code are amended to read as follows:

R313.1 Townhome automatic fire sprinkler systems. Effective January 1, 2013, an automatic residential fire sprinkler system shall be installed in townhomes.

Exception remains unchanged.

R313.2 One-and two-family dwellings automatic fire systems. Effective January 1, 2013, an automatic residential fire sprinkler system shall be installed in one- and two-family dwellings.

Exception remains unchanged.

(P) Section R317.1.3 of the International Residential Code is amended to read as follows:

R317.1.3 Geographical areas. Approved naturally durable or pressure-preservative-treated wood shall be used for those portions of wood members that form the structural supports of buildings, balconies, porches or similar permanent building appurtenances when those members are exposed to the weather without adequate protection from a roof, eave, overhang or other covering that would prevent moisture or water accumulation on the surface or at joist between members. Such members shall include: (remainder of section unchanged)

(Q) Section R318.1 of the International Residential Code is amended to read as follows:

R318.1 Subterranean termite control methods. In areas subject to moderate to heavy or very heavy damage as indicated by Table R301.2(6) methods of protection shall be one of the following methods or a combination of these methods: (remainder of section unchanged)

(R) The International Residential Code is amended to add Section R324 to read as follows:

R324 BUILDING SECURITY

R324.1 General. The provisions of this Section shall apply to openings into all dwelling units as well as to openings between attached garages and dwelling units. Except for vehicular access doors, door openings in attached garages shall be in accordance with the provisions of this Section.

R324.2 Obstructing means of egress. Security methods of this Section shall not create a hazard to life by obstructing any means of egress. The provisions of this Section shall not supersede the requirements of section R311 of this Code.

R324.3 Entry vision. All main or front entry doors to dwelling units shall be so arranged so that the occupants have a view of the area immediately outside of the door without having to open the door. Such view can be provided by a window or by the use of a door viewer with a 180 degree field of view.

R324.4 Swinging doors. All exterior doors shall be constructed of solid core wood a minimum of 1 3/8 inch thickness or a metal door constructed with at least 18-gauge metal or similar approved material.

R324.4.1 Strike plate installation. In wood-frame construction, any open space between trimmers and wood doorjamb shall be solid shimmed not less than 12 inches above and below the strike plate. Strike plates shall be attached to the jamb with not less than two No. 8 by 3-inch screws, which have a minimum of 3/4 inch penetration into the nearest framing member. Strike plates when attached to metal shall be attached with not less than two No. 8 machine screws.

R324.4.2 Hinges. When hinges are exposed to the exterior, at least one of the hinges shall be equipped with a non-removable hinge pin. Not less than three 4 1/2 inch steel butt hinges shall be fastened to both the door and frame with not less than four No. 9 by 3/4 inch wood screws or to metal with not less than four No. 8 machine screws. In wood construction, any open space between trimmers and wood jambs shall be solid shimmed extending not less than 6 inches above and below each hinge.

R324.4.3 Locking hardware. Swinging doors shall be equipped with an approved exterior key-operated deadbolt. Deadbolt locks shall have at least a one-inch bolt throw that will penetrate the strike at least 3/4 of an inch. See section R311 for requirements on door operation for exiting.

(S) Section R502.3.1, Table R502.3.1(1), and Section R502.3.2 of the International Residential Code are amended as follows:

R502.3.1 Sleeping areas and attic joist. - Section is deleted in its entirety.

Table R502.3.1(1) FLOOR JOIST SPANS FOR COMMON LUMBER SPECIES. Table is deleted in its entirety.

R502.3.2 Other floor joist. Table 502.3.1(2) shall be utilized to determine the maximum allowable span of floor joist that support all areas of the building provided that the design live load does not exceed 40 psf and the design dead load does not exceed 20 psf.

(T) Section R801.3 of the International Residential Code is amended to read as follows:

Section 801.3 Roof drainage. All dwellings shall have a controlled method of water disposal from roofs that will collect and discharge all roof drainage to the ground surface at least five feet from the foundation walls or to an approved drainage system.

(U) The International Residential Code is amended to add Section R903.2.3 to read as follows:

R903.2.3 Drip edge. Drip edge shall be provided at eaves and gables of shingle roofs. Overlap shall be a minimum of 2". Eave drip edges shall extend .25" below sheathing and extend back on the roof a minimum of 2". Drip edge shall be mechanically fastened a maximum of 12" on center.

(V) Sections R1001.1 and R1004.1 the International Residential Code are amended to read as follows:

R1001.1 General. Masonry fireplaces shall be constructed in accordance with this Section and the applicable provisions of Chapters 3 and 4 of this Code and subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

R1004.1 General. Factory-built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory-built fireplaces shall be tested in accordance with UL127 and be subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

(W) Section R1004.4 of the International Residential Code is amended as follows:

R1004.4 Unvented gas log heaters. Section is deleted in its entirety.

(X) Section N1101.1 of the International Residential Code is amended to read as follows:

N1101.1 Scope.

Exception: Portions of the building envelope that do not enclose *conditioned space* are exempt from building thermal envelope provisions of this chapter.

(Y) Table N1102.1.2 of the International Residential Code is amended to read as follows:

Table N1102.1.2 EQUIVALENT U-FACTORS

Frame Wall U-Factor in Climate Zone 5 and Marine 4 changed to a U-factor of 0.057.

(Z) Section N1102.2.2 of the International Residential Code is amended to read as follows:

N1102.2.2 Ceilings without attic spaces. Where Section N1102.1 would require insulation levels above R-30 and the design of the roof/ceiling assembly does not allow sufficient space for the required insulation, the minimum required insulation for such roof/ceiling assemblies shall be R-30. This reduction of insulation from the requirements of Section 402.1.1 shall be limited to 500 square feet (46 m²) or 20 percent of the total insulated ceiling area, whichever is less. This reduction shall not apply to the U-factor alternative approach in Section N1102.1.2 and the total UA alternative in Section N1102.1.3.

(AA) Table N1102.4.2 of the International Residential Code is amended to read as follows:

TABLE N1102.4.2 AIR BARRIER AND INSULATION INSPECTION

“Air-permeable insulation is inside of an air barrier” is added as a criteria for Air barrier and thermal barrier.

(BB) Section N1102.5 of the International Residential Code is added to read as follows:

1102.5 Maximum fenestration U-Factor and SHGC. The area-weighted average maximum fenestration U-factor permitted using trade-offs from Section 402.1.4 or 404 shall be 0.48 in Zones 4 and 5 and 0.40 in Zones 6 through 8 for vertical fenestration, and 0.75 in Zones 4 through 8 for skylights. The area-weighted average maximum fenestration SHGC permitted using trade-offs from Section 405 in Zones 1 through 3 shall be 0.50.

(CC) Section N1103.8.3 of the International Residential Code is amended added to read as follows:

N1103.8.3 Pool Covers. Add an exception to read as follows:

Exception: Pools deriving over 60 percent of the energy or heating from site-recovered energy or solar energy source.

(DD) The International Residential Code is amended to add Section M1416 to read as follows:

M1416 Unvented room heaters

M1416.1 General. Unvented room heater, fireplaces, gas logs or other similar unvented devices are prohibited.

(EE) Section M1502.4.4.2 of the International Residential Code is amended as follows:

Section M1502.4.4.2 Manufacture's instructions. Section is deleted in its entirety.

(FF) Section M1801.1 of the International Residential Code is amended to read as follows:

M1801.1 Venting required. Fuel-burning appliances shall be vented to the outside in accordance with their listing and label and manufacturer's installation guidelines or instructions. Venting systems shall consist of approved chimneys or vents, or venting assemblies that are integral parts of labeled appliances. Gas-fired appliance shall be vented in accordance with Chapter 24.

(GG) Section G2406.2 of the International Residential Code is amended as follows:

G2406.2 Prohibited locations. Items 3 and 4 are deleted in their entirety.

(HH) Section G2407.6.2 of the International Residential Code is amended as follows:

G2407.6.2 One-permanent-opening method. Section is deleted in its entirety.

(II) Section G2415.10 and Section G2415.10.1 of the International Residential Code are amended as follows:

G2415.10 Minimum burial depth. Underground metallic piping systems shall be installed a minimum depth of 12 inches below grade. Underground plastic piping systems shall be installed a minimum depth of 18 inches below grade.

G2415.10.1 Individual outside appliances. Section is deleted in its entirety.

(JJ) Sections G2417.4 and G2417.4.1 of the International Residential Code are amended to read as follows:

G2417.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than three times the test pressure.

G2417.4.1 Test pressure. The minimum test pressure to be used on threaded pipe shall be 20 psi gauge pressure. For welded pipe the minimum test pressure shall be 60 psi gauge pressure.

(KK) Sections G2420.5.1, G2420.5.2 and G2420.5.3 of the International Residential Code are amended as follows:

G2420.5.1 Located within the same room. Each appliance shall be provided with a shutoff valve separate from the appliance. The shutoff valve shall be located in the same room as the appliance. (remainder of the section to remain the same)

G2420.5.2 Vented decorative appliances and room heaters. Section is deleted in its entirety.

G2420.5.3 Located at manifold. Section is deleted in its entirety.

(LL) Section G2425.8 of the International Residential Code is amended as follows:

G2425.8 Equipment not required to be vented. Item #7 is deleted.

(MM) Section G2445 of the International Residential Code is amended as follows:

G2445 Unvented room heaters. Section is deleted in its entirety.

(NN) Section P2603.6.1 of the International Residential Code is amended to read as follows:

P2603.6.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be a minimum of 42 inches below finished grade at the point of septic tank connection. Building sewers shall be a minimum of 42 inches below grade.

(OO) Section P2903.8.5 of the International Residential Code is amended to read as follows:

P2903.8.5 Valving. Fixture valves shall be located at both the fixture and at the manifold. Valves located at the manifold shall be labeled indicating the fixture served.

(PP) Section P2904.1 of the International Residential Code is amended to read as follows:

P2904.1 General. Where installed, residential fire sprinklers systems, or portions thereof, shall be in accordance with this section. Residential fire sprinklers systems using any other standard, including NFPA 13D, shall be specifically approved by the building official. Section P2904 shall apply to stand-alone and multipurpose wet-pipe sprinkler systems that do not include use of antifreeze. (Remainder of Section is unchanged)

(QQ) Section P3201.5 of the International Residential Code is amended as follows:

P3201.5 Prohibited trap designs. The following types of traps are prohibited:

- 1-5. (Unchanged)
6. Running traps.

(RR) Table P3201.7 of the International Residential Code is amended to read as follows:

TABLE P3201.7 SIZE OF TRAPS AND TRAP ARMS FOR PLUMBING FIXTURES is amended to reflect the trap size minimum for a shower is 2 inches.

(SS) The General Statement of Chapter 34 and Section E3401.1 of the International Residential Code are amended to read as follows:

CHAPTER 34 GENERAL REQUIREMENTS

The Electrical Part is produced and copyrighted by the National Fire Protection Association (NFPA) and is based on the 2008 National Electrical Code, copyright 2007 National Fire Protection Association, all rights reserved. Use of the Electrical part is pursuant to license with the NFPA.

E3401.1 Applicability. Add the following to the section: Whenever there is a conflict between this Code and the 2008 NEC, the provisions of the NEC will govern.

(TT) Section AG105.2 and AG105.5 of the International Residential Code are amended as follows:

AG 105.2 Outdoor swimming pool.

1. The top of the barrier shall be at least 60 inches, but not exceed 72 inches, above grade measured on the side of the barrier which faces away from the swimming pool. (remainder of section unchanged)

8. Access gates shall comply with the requirements of section AG105.2, Items 1 through 7, and shall be equipped to accommodate a locking device. Access gates shall be self-closing and be equipped with a self-latching device located a minimum of 54 inches above the bottom of the gate. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism and openings shall comply with the following:

8.1 The release mechanism shall be located on the pool side of the gate at least 3 inches below the top of the gate, and

8.2 The gate and barrier shall have no opening greater than ½ inch within 18 inches of the release mechanism.

9. Where a wall of a dwelling unit serves as part of the barrier, doors through the wall need not be equipped with self-closing or self-latching devices.

AG105.5 Barrier exceptions. Outdoor pools, spas and hot tubs provided with a safety cover that complies with ASTM F1346 or hot tubs provided with a locking cover shall be provided with a barrier at least 36 inches in height which complies with Section AG105.2, items 1 through 10 as amended.

(UU) The International Residential Code is amended to add Section AG109 to read as follows:

AG109 Testing of swimming pool piping.

AG109.1 Pressure test. Pressure piping and section piping serving permanent residential swimming pools shall be tested at 35 pound for a minimum of 15 minutes.

AG109.2 Supply water. All permanent residential swimming pools shall fill by an indirect means when supplied by potable water.

Exception. Supply piping protected in accordance with Section P2902 of this Code.

11-9-7: NATIONAL ELECTRICAL CODE AMENDMENTS:

(A) Article 230.70(A)(1) of the National Electrical Code is amended to read as follows:

230.70 (A)(1) Location. The service disconnecting means shall be installed at a readily accessible location on the outside of the building unless approved by the Building Official. No service disconnecting means shall be installed inside a residential dwelling unit.

Exception. The service disconnecting means may be installed inside the garage of a residential dwelling unit when it is located back-to-back to the meter.

11-9-8 INTERNATIONAL PLUMBING CODE AMENDMENTS: (3327)

(A) The International Plumbing Code is amended to add Section 601.5 to read as follows:

Section 601.5 Water conservation. Water recycling systems shall be mandatory for all automatic full-service commercial car wash facilities constructed in the City after December 23, 1982. Water recycling systems shall not be mandatory for manual self-service commercial car wash facilities.

(B) The International Plumbing Code is amended to add Section 704.5 and 704.6 to read as follows:

704.5 Dead ends. In the installation or removal of any part of a drainage system, dead ends shall be prohibited. Cleanout extensions and approved future fixture drainage piping shall not be considered as dead ends.

704.6 Grease waste identification. All underground or under floor grease waste lines shall be permanently identified by an approved means.

(C) Section 904.1 of the International Plumbing Code is amended to read as follows:

904.1 Roof extension. Each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than twelve inches above the roof not less than one foot from any vertical surface. Where the roof is used for any purpose other than weather protection the vent extension shall terminate at least 7 feet above the roof.

(D) Section 1002.3 of the International Plumbing Code is amended as follows:

1002.3 Prohibited traps. The following types of traps are prohibited:

- 1.-6. Unchanged
7. Running traps

(E) Section 1003.2 and section 1003.3.4.1 of the International Plumbing Code are amended to read as follows:

1003.2 Approval. The size, type and location of each grease interceptor shall be designed and installed in accordance with City of Westminster specifications, the manufactures installation instructions, the requirements of this Section and the anticipated conditions of use. Wastes that do not require treatment or separation shall not be discharged into any interceptor.

1003.3.4.1 Grease trap capacity. When, in the judgment of the Building Official, it would be impractical or unnecessary to install a grease interceptor due to the anticipated use of an establishment, the installation of a grease trap may be approved. Grease traps shall be sized in accordance with City specifications and have the grease retention capacity indicated in Table 1003.3.4.1 for the flow-through rates indicated.

11-9-9 INTERNATIONAL MECHANICAL CODE AMENDMENTS:

(A) The International Mechanical Code is amended to add Section 405.2 to read as follows:

405.2 Public Toilet Rooms. Mechanical ventilation systems serving public toilet rooms shall be provided automatic controls.

Exception: Ventilation systems that operate anytime the toilet room is illuminated.

(B) Section 504.6.4.2 of the International Mechanical Code is amended as follows:

504.6.4.2 Manufacturer's instructions. Section is deleted in its entirety.

(C) Section 506.3.10.2 of the International Mechanical Code is amended as follows:

506.3.10.2 Field-applied grease duct enclosure.

Commercial kitchen grease ducts constructed in accordance with Section 506.3.1 shall be enclosed by a field-applied grease duct enclosure that is a listed and labeled material, system, product or method of construction specifically evaluated in accordance with ICC-ES Acceptance Criteria for Grease Duct Enclosure Systems (AC101) or ASTM E2336. (Remainder of section is unchanged)

(D) Section 506.3.10.4 of the International Mechanical Code is amended as follows:

506.3.10.4 Duct enclosure not required. Section is deleted in its entirety.

(E) Section 903.1 and Section 903.3 of the International Mechanical Code are amended as follows:

903.1 General. Factory-built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory-built fireplaces shall be tested in accordance with UL127 and be subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

903.3 Unvented gas log heaters. Section is deleted in its entirety.

11-9-10 INTERNATIONAL FUEL GAS CODE AMENDMENTS: (3327)

(A) Section 303.3 of the International Fuel Gas Code is amended as follows:

303.3 Prohibited locations. Items 3 and 4 are deleted in their entirety.

(B) Section 304.6.2 of the International Fuel Gas Code is amended as follows:

304.6.2 One-permanent-opening method. Section is deleted in its entirety.

(C) Section 404.9 and Section 404.9.1 of the International Fuel Gas Code are amended as follows:

404.10 Minimum burial depth. Underground metallic piping systems shall be installed a minimum depth of 12 inches below grade. Underground plastic piping systems shall be installed a minimum depth of 18 inches below grade.

404.10.1 Individual outside appliances. Section is deleted in its entirety.

(D) Section 406.4, 406.4.1 and 406.4.2 of the International Fuel Gas Code are amended to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than three times the test pressure.

406.4.1 Test pressure. The minimum test pressure to be used on threaded pipe shall be 20 psi gauge pressure. For welded pipe the minimum test pressure shall be 60 psi gauge pressure.

406.4.2 Test duration. The test duration shall be not less than 15 minutes.

(E) Section 409.5.1 of the International Fuel Gas Code is amended as follows:

409.5.1 Located within the same room. Each appliance shall be provided with a shutoff valve separate from the appliance. The shutoff valve shall be located in the same room as the appliance. (remainder of the section to remain the same)

(F) Section 409.5.2 and 409.5.3 of the International Fuel Gas Code is amended as follows:

409.5.2 Vented decorative appliances and room heaters. Section is deleted in its entirety.

409.5.3 Located at manifold. Section is deleted in its entirety.

(G) Section 501.8 of the International Fuel Gas Code is amended as follows:

501.8 Equipment not required to be vented. Items 8 and 10 are deleted in their entirety.

(H) Section 621 of the International Fuel Gas Code is amended as follows:

621.1 General. Unvented room heater, fireplaces, gas logs or other similar devices are prohibited.
(Remainder of Section 621 is deleted)

11-9-11: INTERNATIONAL ENERGY CONSERVATION CODE AMENDMENTS: (3327)

(A) Section 302.1 of the International Energy Conservation Code is amended as follows:

302.1 Interior design conditions. The interior design temperatures used for heating and cooling load calculations shall be a maximum of 70°F for heating and a minimum of 75°F for cooling.

Section 4. Chapter 10 of Title XI, W.M.C., is hereby REPEALED AND REENACTED to read as follows:

CHAPTER 10

FIRE CODES

11-10-1: INTENT

11-10-2: ADOPTION OF FIRE CODE

11-10-3: CHAPTER 1 ADMINISTRATION AMENDMENTS

11-10-4: CHAPTER 5 FIRE SERVICE FEATURES AMENDMENTS

11-10-5: CHAPTER 9 FIRE PROTECTION SYSTEMS AMENDMENTS

11-10-6: CHAPTER 33 EXPLOSIVES AND FIREWORKS AMENDMENTS

11-10-7: CHAPTER 38 LIQUIFIED PETROLEUM GASES AMENDMENTS

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11-10-1: INTENT: The intent of this chapter is to adopt by reference and with modifications the International Fire Code, 2009 Edition. Hereinafter, this Code may be referred to as the "Fire Code." The City Council of the City of Westminster finds that the adoption of the Fire Code is essential for fire prevention and the preservation of the health, safety, and welfare of the citizens of Westminster. The City Council finds that the adoption of such Codes is essential in the preservation of the health, safety, and welfare of the citizens of Westminster. (3327)

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11-10-2: ADOPTION OF FIRE CODE: That certain document, one (1) copy of which is on file in the Office of the City Clerk, being marked and designated as the International Fire Code, 2009 Edition, published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401 and, in particular Chapters 1 through 47, inclusive and Appendix B - Fire Flow Requirements For Buildings, Appendix C - Fire Hydrant Location And Distribution, Appendix D - Fire Apparatus Access Roads, Appendix E - Hazard Categories, Appendix F - Hazard Ranking, and Appendix G - Cryogenic Fluids - Weight And Volume Equivalents, Appendix H – Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions, Appendix I – Fire Protection Systems—Noncompliant Conditions is hereby adopted as the Fire Code of and for the City. These sections of the Fire Code, as modified in this Chapter, are hereby referred to, adopted, and made a part of the Code as if fully set forth. (3327)

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11-10-3: CHAPTER 1 ADMINISTRATION AMENDMENTS: (3327)

(A) DEPARTMENT OF FIRE PREVENTION. Section 103 of the International Fire Code is amended as follows:

103.4 Liability. Subsection is deleted in its entirety.

103.4.1 Legal Defense. Subsection is deleted in its entirety.

(B) ENFORCEMENT AUTHORITY. The Fire Chief and his designees are hereby authorized to enforce the provisions of this ordinance as specified in Section 104.1 of the International Fire Code, 2009 Edition.

(C) REQUIRED OPERATIONAL PERMITS. Subsection 105.6 of the International Fire Code is amended to read as follows.

105.6 Required Operational Permits. An operational permit shall be obtained from the Prevention Bureau prior to engaging in the following activities, functions, operations, or practices as defined in accordance with the Fire Code, unless otherwise specified in this Code:

1. **105.6.2 Amusement buildings.**
2. **105.6.4 Carnivals and fairs.**
3. **105.6.4.1 Block parties and event street closures.**
4. **105.6.10 Cryogenic fluids.**
5. **105.6.14 Explosives, explosive materials, and fireworks.**
6. **105.6.16 Flammable and combustible liquids.**

a. To remove Class I or II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes.

b. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank.

c. To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.

7. **105.6.19 Fumigation and thermal insecticidal fogging.**

8. **105.6.19.1 Fumigation and/or associated operations for removing biological, chemical, or other naturally occurring agents, chemicals, organisms, or substances.**

9. **105.6.20 Hazardous Materials.**

10. **105.6.26 Liquid- or gas-fueled vehicles or equipment in buildings for display, demonstrating, or operation.** This shall not apply to parking garages, private garages, repair garages, or other buildings normally utilized for the operation, repair, restoration, and storage of motor vehicles.

11. **105.6.27 LP-gas.**

12. **105.6.28 Magnesium.**

13. **105.6.30 Open burning.**

14. **105.6.35 Private fire hydrants.**

15. **105.6.36 Pyrotechnic special effects material.**

16. **105.6.43 Temporary membrane structures and tents.**

(D) REQUIRED CONSTRUCTION PERMITS. Subsection 105.7 of the International Fire Code is amended to read as follows:

105.7 Required Construction Permits. Upon approval of required construction documents, as required by Subsection 105.4, a fire protection permit shall be obtained from the Fire Prevention Bureau prior to initiating any alterations, construction, installation, modification, remodel, of any fire protection system or other fire- or life-safety system, as defined by the Fire Code. The following fire protection systems shall require submittal of plans, specifications, design and installation criteria, as required by the Fire

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Code Official, prior to issuance of a fire protection permit, those not listed are excluded from the requirements of this Section:

- 1. ~~105.7.1 Automatic fire-extinguishing systems~~
- 2. ~~105.7.3 Compressed gases~~

~~3. 105.7.4 Cryogenic Fluids~~

- ~~4. 105.7.5 Fire alarm and detection systems and related equipment~~
- ~~5. 105.7.6 Fire pumps and related equipment~~
- ~~6. 105.7.7 Flammable and combustible liquids~~
- ~~7. 105.7.8 Hazardous materials~~
- ~~8. 105.7.10 LP-gas~~
- ~~9. 105.7.11 Private fire hydrants~~
- ~~10. 105.7.12 Spraying and dipping~~
- ~~11. 105.7.13 Standpipe systems~~
- ~~12. 105.7.14 Temporary membrane structures, and tents,~~

(E) FEES. Section 105 of the International Fire Code is amended to add Sections 105.8 and 105.9 to read as follows:

105.8 Operational Permit Fees. The fee for operational permits required by Subsection 105.6 of this Code shall be as set forth in the fee schedule adopted by Resolution by the City Council. Fees shall be collected by the Fire Prevention Bureau. The Fire Code Official is authorized to waive the fee in accordance with approved standard operating guidelines for administering permits for activities described in Subsection 105.8.

105.9 Construction Permit Fees. Permit fees and taxes are required for fire protection and life safety systems required by Subsection 105.7 of this Code for initiating any alterations, construction, installation, modification, remodel, of any fire protection system or other fire- or life-safety system, as defined by the Fire Code. These fees shall be assessed by and paid to the City of Westminster in accordance with the provisions of the fee schedule adopted by Resolution by the City Council.

(F) BOARD OF APPEALS. Section 108 of the International Fire Code is amended as follows:

108.1 Board of Appeals. Appeals of orders, decisions, or determinations made by the Building Official or Fire Code Official relative to the application and interpretation of the Building and Fire Codes, and amendments thereto, shall be made to the Board of Building Code of Appeals pursuant to Title II, Chapter 10, of this Code. No such appeal shall be heard by the Board of Building Code Appeals unless the appeal is filed within 30 calendar days after the date of the action of the Building Official or Fire Chief.

108.2 Limitations on authority. Subsection is deleted in its entirety.

108.3 Qualifications. Subsection is deleted in its entirety.

(G) VIOLATIONS. Section 109 of the International Fire Code is amended to read as follows:

109.1 Unlawful Acts. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building, occupancy, premises or system regulated by this Code, or cause same to be done, in conflict with or in violation of any of the provisions of this Code.

109.2 Notice of Violation. When the Fire Code Official finds a building, premises, vehicle, storage facility or outdoor area that is in violation of this Code, the Fire Code Official is authorized to prepare a written notice of violation describing the conditions deemed unsafe and, when compliance is not immediate, specifying a time for re-inspection.

109.2.1 Service. A notice of violation issued pursuant to this Code shall be served upon the owner, operator, occupant, or other person responsible for the condition or violation, either by personal service,

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mail, or by delivering the same to, and leaving it with, some person of responsibility upon the premises. For unattended or abandoned locations, a copy of such notice of violation shall be posted on the premises in a conspicuous place at or near the entrance to such premises and the notice of violation shall be mailed by first class mail to the owner of the subject property at the address shown in the County Assessor records for the county in which the property is located. Notice shall be deemed served on the date of receipt by the owner, if personally served, or upon the fifth day after mailing of the notice.

109.2.2 Compliance with Orders and Notices. A notice of violation issued or served as provided by this Code shall be complied with by the owner, operator, occupant or other person responsible for the condition or violation to which the notice of violation pertains.

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109.2.3 Prosecution of Violations. If the notice of violation is not complied with promptly, the Fire Code Official is authorized to request the legal counsel of the jurisdiction to institute the appropriate legal proceedings at law or in equity to restrain, correct or abate such violation or to require removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Code or of the order or direction made pursuant hereto.

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109.2.4 Unauthorized Tampering. Signs, tags or seals posted or affixed by the Fire Code Official shall not be mutilated, destroyed or tampered with or removed without authorization from the Fire Code Official.

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109.3 Violation Penalties. Any person who violates any of the provisions of this Code, or who fails to comply therewith, or who builds any structure in violation of a detailed statement of specifications or plans submitted and approved pursuant to this Code and from which no appeal has been taken, or who fails to comply with a final order issued pursuant to this Code within the time fixed therein shall be guilty of a misdemeanor punishable by a fine or imprisonment pursuant to the limits set forth in Section 1-8-1 of the Westminster Municipal Code, or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time and, when not otherwise specified, each day that a prohibited condition is maintained shall constitute a separate offense. The imposition of a criminal penalty shall not prevent the abatement of prohibited conditions.

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109.3.1 Abatement of Violation. In addition to the imposition of the penalties herein described, the Fire Code Official is authorized to institute appropriate action to prevent unlawful construction or to restrain, correct or abate a violation; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act, conduct of business or occupancy of a structure on or about any premises.

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(H) STOP WORK ORDER. Section 111 of the International Fire Code is amended as follows:

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111.4 Failure to Comply. Subsection is deleted in its entirety.

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11-10-4: CHAPTER 5 FIRE SERVICE FEATURES AMENDMENTS: (2965 3327)

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(A) FIRE APPARATUS ACCESS ROADS. Section 503.1 of the International Fire Code is amended to add Section 503.1.4 to read as follows:

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503.1.4 Block Parties and Street Obstructions. The Fire Department is authorized to issue operational permits for street closures intended for block parties, City of Westminster sponsored events, neighborhood events, or for similar purposes where such events will not impede delivery of emergency services and does not create an additional risk to public safety. Applicable fees may be waived for City of Westminster events and events sponsored by non-profit entities and organizations.

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(B) MARKINGS. Section 503.3 of the International Fire Code is amended to add Section 503.3.1 to read as follows:

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503.3.1. The marking of fire lanes on private property devoted to public use shall be approved by the Fire Code Official in accordance with the Fire Code and the Uniform Traffic Control Manual.

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(C) OBSTRUCTION OF FIRE APPARATUS ACCESS ROADS. Section 503.4 of the International Fire Code is amended to add Section 503.4.1 to read as follows:

503.4.1. The Fire Code Official or any of his subordinates, or the Police Department with knowledge of the existence of any vehicle parked in the fire lane, or in such manner as to interfere with the use of any fire hydrant, or in any manner in violation of this Section may have such vehicle towed away and the charges of such towing shall be assessed to the owner of such vehicle. The aforesaid violation shall be sufficient grounds to cause a citation to be issued. In the event of a fire, the Fire Department shall have the authority to cause the vehicle blocking a fire hydrant or fire lane to be removed with any subsequent damage to the vehicle being paid by the owner of said vehicle. The towing of any vehicle pursuant to this Section shall comply with the provisions of Chapter 1 of Title X of the Westminster Municipal Code.

(D) PREMISES IDENTIFICATION. Section 505.1 of the International Fire Code is amended to add Section 505.1.1 and 505.1.2 to read as follows:

505.1.1. Buildings having exterior rear or side access doors shall have approved address numbers, building numbers or approved building identification placed in a position approved by the Fire Code Official.

505.1.2. Buildings with multiple tenants with interior access doors shall have approved unit or space identification numbers, address numbers or other approved means of identifying individual tenant spaces or units.

(E) PRIVATELY OWNED HYDRANT SYSTEMS. Section 507 of the International Fire Code is amended to add Section 507.5.3.1 and 507.5.7 to read as follows:

507.5.3.1. Privately owned hydrants shall be maintained at the expense of the private property owner, subject to the direction and requirements of the Fire Code Official. Such private hydrants shall be flushed and tested periodically according to the Fire Code. In the event such testing reveals that the flow from private hydrants is inadequate according to applicable standards, modifications necessary to meet these standards shall be ordered by the Fire Code Official and made at the expense of the property owner. All private hydrants shall be painted the same color as hydrants on public rights-of-way or elsewhere throughout the City. Appropriate markings or signs restricting parking in front of or adjacent to fire hydrants shall be designated by the Fire Code Official and implemented at the expense of the owner of the property. No point of connection to any private fire hydrant shall be left uncapped without permission of the Fire Code Official.

507.5.7. Existing Private Fire Hydrants. Existing hydrants which do not conform to City specifications or which do not face in the direction most consistent with emergency use by the Fire Department, as established by the Fire Code Official, shall be changed to meet the City's requirements by the property owner and at the property owner's expense, within 15 days of service of notice of the required changes upon the property owner or its resident agent.

(F) PUBLIC SAFETY RADIO AMPLIFICATION SYSTEMS. Section 510 of the International Fire Code is deleted and replaced with the following new Section 510 to read as follows:

510 Purpose. The purpose of this part is to provide minimum standards to insure a reasonable degree of reliability for emergency services communication from within certain buildings and structures within the city to and from emergency communication centers. It is the responsibility of the emergency service provider to receive the signal to and from the building or structure.

510.1 Existing Buildings. Buildings determined to present a hazard to public safety personnel due to inadequate radio communication capability shall be required to comply with Section 510.

510.2 Acceptance Testing and Approval. Approval and acceptance of radio amplification system installations shall require concurrent approval of the Fire Department and the Police Department.

510.3. Scope. The provisions of this Article shall apply to:

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a. New buildings and structures of Type I, Type II, or Type III construction greater than 50,000 square feet or additions or modifications that cause the buildings to be greater than 50,000 square feet.

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b. All basements over 10,000 square feet where the design occupant load is greater than 50, regardless of the occupancy.

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c. Existing buildings and structures of any size or construction type where the Police Chief or the Fire Chief determines that lack of adequate radio coverage for emergency services providers either constitutes a special hazard to occupants or emergency responders or would otherwise likely result in unduly difficult conduct of emergency operations.

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d. For purposes of this Section, fire walls cannot be used to define separate buildings.

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510.4. Radio Coverage. Except as otherwise provided in this Article, no person shall erect, construct, or modify any building or structure or any part thereof, or cause the same to be done which fails to support adequate radio coverage for emergency services providers.

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a. After a building permit has been issued, upon request by the owner or the owner's agent, the police department will, within ten to fourteen days, identify the frequency range or ranges that must be supported.

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b. In the event that an emergency service provider modifies its communications equipment in any way that impairs its ability to communicate with an existing system installed in accordance with this part, such agency shall be responsible for all costs associated with reestablishing communications within the affected building or structure.

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c. Adequate radio coverage for emergency services providers requires:

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(1) That on each floor, 85% of valid tests conducted in accordance with Section 510.6 result in intelligible two-way communications between the appropriate dispatch center and the tester in the building; and

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(2) That 100% of valid tests conducted in accordance with Section 510.6 result in intelligible two-way communications between the appropriate dispatch center and the tester within the following building spaces:

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(a) Throughout vertical exit enclosures and horizontal exit passageways;

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(b) Fire command centers, if provided;

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(c) Police substation;

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(d) FCC Authorization: If amplification is used in the system, all FCC authorizations must be obtained prior to the use of the system. A copy of these authorizations shall be provided to the City.

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510.5. Enhanced Amplification Systems.

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a. Where buildings and structures are required to provide amenities to achieve adequate signal strength, such buildings and structures shall be equipped with any of the following to achieve the required adequate radio coverage: radiating cable systems, internal multiple antenna systems with a frequency range as established in Section 510.4, with amplification systems as needed, voting receiver system, or any other approved system.

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b. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operation on an independent battery and/or generator system for a period of at least four hours without external power input or maintenance. The battery system shall automatically charge in the presence of external power input.

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510.6. Testing Procedures. Method to conduct the tests:

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a. Measurements shall be made using the following guidelines:

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(1) Each measurement shall be made using a portable radio in general use by each emergency service-provider agency, which agencies minimally include the police department and the fire department. Any digital, non-simplex channel programmed into such radio may be used during testing; the same channel need not be used for all tests.

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(2) Portable radios used in testing shall not be displaying "low battery" indications.

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(3) During test transmissions, the portable radio shall be held approximately two (2) inches from the mouth of the tester, at approximately a 45-degree angle with the tester's face, with the built-in microphone and speaker directed towards the tester's mouth, and with the antenna in a vertical orientation above the radio. The antenna of each radio shall be mounted directly on the top of the radio body/case. The built-in microphone shall be used for all testing; shoulder or other attached microphones/headsets shall not be used for testing.

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(4) The tester shall orient himself or herself so as to be facing towards the exterior wall of the building nearest the point of the test.

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(5) Both initial and annual tests shall be conducted by persons employed by the emergency service-provider agency. At least one tester from the police department and one tester from the fire department shall conduct initial and annual tests, unless alternate arrangements are approved by both agencies.

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(6) Each tester shall be solely responsible for determining whether or not radio messages received in the building are intelligible; the dispatcher at the emergency-agency dispatch center shall be solely responsible for determining whether or not radio messages received in the dispatch center are intelligible. An unintelligible message constitutes a failure of the test at the specific location being tested (see below).

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(7) The tester in the building shall initiate each test by attempting to transmit a message to the dispatch center. Failure to receive a reply from the dispatch center constitutes a failure of the test at the specific location being tested.

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(8) The tester in the building shall exercise reasonableness and discretion in the conduct of all tests. If the tester believes a particular test is not valid (e.g., is flawed by human error), then the results of that test may be discarded and the test shall be repeated.

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b. Initial tests.

(1) Each floor of the structure shall be divided into 100-foot grids, and testing shall be performed at the center of each grid. In critical areas, including (but not limited to) those areas enumerated in Section 510.4(c)(2), the grids shall be reduced to 25 feet. At least one test shall be conducted at the center of every room having a use identified in Section 510.4(c)(2)b or 510.4(c)(2)c. The size of the grids may also be further reduced upon recommendation of any tester in areas where displays, equipment, stock, or any other obstruction may significantly affect communications or attenuate radio signals.

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(2) A test shall be performed on every landing within vertical exit enclosures.

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c. Required tests.

(1) Annual tests will be conducted by both the fire department and the police department if the communications appear to have degraded or at the discretion of the Police or Fire Department. If the testing fails to demonstrate adequate system performance, the owner of the building or structure shall remedy the problem and restore the system in a manner consistent with the original approval criteria.

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(2) If the degradation to the system is due to building additions or remodeling, the owner of the building or structure is required to remedy the problem and restore the system in a manner consistent with the original approval criteria in order to obtain a final inspection for occupancy.

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(3) Any system degradation or failure not related to the performance of the owner's on-site system will be the responsibility of the appropriate emergency service agency.

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11-10-5: Chapter 6 Building Services and Systems:

(A) Section 611 is added to the International Fire Code to read as follows:

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611 Solar Photovoltaic Installations:

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611.1. Roof Clearances for Installation:

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a. Panels shall not be placed closer than 2'0" to the ridge of any roof.

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b. Panels shall be placed no closer than 2'0" to the head wall at the top of any roof slope.

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c. Panels shall be placed no closer than an average of 18" from an roof valley.

d. Additional roof access may be required based on unique site conditions as determined by the Fire Department

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611.2 Direct Current (DC) Wiring:

a. Direct current (DC) conduit, wiring, and raceways shall be located below the solar array or a minimum of 24" below the roof sheathing.

611.3 Labeling:

a. For residential applications, a label stating CAUTION,SOLAR PHOTO VOLTAIC SYSTEM ON PREMISES, shall be placed at or within the main electrical service disconnect.

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11-10- 6: CHAPTER 9 FIRE PROTECTION SYSTEMS AMENDMENTS: (2965 3327)

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(A) AUTOMATIC SPRINKLER SYSTEMS. Section 903 of the International Fire Code is amended to delete Section 903.3.2 and add the following new subsections to read as follows:

903.2.8.1. New Construction. Group R-2 Occupancies required to be protected with an automatic fire sprinkler system shall provide fire sprinkler coverage for all exterior balconies. This requirement shall apply to all retroactive installations for Group R-2 Occupancies.

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EXCEPTION: Existing R-2 buildings and occupancies constructed prior to the adoption of this Code.

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903.2.8.2 New Construction. Group R-4 Occupancies required to be protected with an automatic fire sprinkler system shall provide fire sprinkler coverage for all exterior balconies. This requirement shall apply to all retroactive installations for Group R-4 Occupancies.

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EXCEPTION: Existing R-4 buildings and occupancies constructed prior to the adoption of this Code.

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903.3.2 Residential Automatic Sprinkler Heads. Where automatic sprinkler systems are required by this Code, only residential automatic sprinkler heads shall be permitted in:

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a. Throughout all spaces within a smoke compartment containing patient sleeping rooms in Group I-2 in accordance with the International Building Code

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b. Dwelling units, guestrooms, and sleeping rooms in Group R and I-1 occupancies.

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903.3.2.1 Quick-response Automatic Sprinkler Heads. Quick-response sprinkler heads shall be installed in light hazard occupancies as defined in NFPA 13. Residential automatic sprinkler heads are prohibited.

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903.3.2.2 Residential and Quick-response Automatic Sprinkler Heads. All installation of residential and quick-response automatic sprinkler heads shall be in strict accordance with their listings. Where listings authorize installation where prohibited in 903.3.2 and 903.3.2.1 the Fire Code Official may waive the requirements mandated by 903.3.2 and 903.3.2.1.

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903.3.7.1 The Fire Department connection (FDC) shall be located whenever possible on the street addressed side of the building in a location visible to the responding fire engine. The FDC shall have a fire hydrant within 100 feet in a location approved by the Fire Department.

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Deleted: The FDC shall be located at a location visible from the exterior of the main entrance door where the fire alarm annunciator is located.

(B) STANDPIPE SYSTEMS. Section 905 of the International Fire Code is amended to add the following:

905.3.1. Building Height shall be amended by adding the following exceptions:

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EXCEPTION 6: Class I standpipes are allowed to be manual systems.

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EXCEPTION 7: Fire hose is not required for Class I standpipes. Standpipe hose outlets shall be 2-1/2-inch outlets with a 2-1/2-inch to 1-1/2-inch reducing cap.

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905.3.8 Bridges and Roadway Overpasses. Where required to extend water supply to streets, highways, and rail systems a dry standpipe shall be installed in accordance with Fire Department requirements.

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(C) FIRE ALARM AND DETECTION SYSTEMS. Section 907 of the International Fire Code is amended to add Section 907.7.3.3 to read as follows:

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907.7.3.3 The Fire Code Official shall determine the extent of zone coverage for fire alarm systems in all buildings and structures.

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11-10-7: CHAPTER 33 EXPLOSIVES AND FIREWORKS AMENDMENTS: (3327)

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(A) GENERAL. Section 3301 of the International Fire Code is amended as follows:

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3301.1.3 Fireworks. Exception 1, Exception 2, and Exception 4 are deleted in their entirety and new exceptions are added to read as follows:

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EXCEPTIONS:

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1. State of Colorado defined "permissible fireworks" will be allowed for possession, handling, and use only during the timeframe beginning at 12:00 AM on July 3rd and ending at 12:00 PM on July 5th of any given calendar year.

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2. Fireworks shall be prohibited in all City of Westminster parks and open spaces unless approved by the Director of Parks, Recreation, and Libraries and the Fire Department.

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4. As provided in W.M.C. Section 6-8-3.

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(B) EXPLOSIVES MATERIALS STORAGE AND HANDLING. Section 3304 of the International Fire Code is amended to add Section 3304.1.1 to read as follows:

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3304.1.1 General Storage Limitations. The storage of explosives and blasting agents is prohibited within all zones except PUD (Planned Unit Development) where such storage is specifically listed as an allowed use, except for temporary storage for use in connection with approved blasting operations; provided, however, that this prohibition shall not apply to wholesale and retail stocks of small arms, ammunition, explosive bolts, explosive rivets, or cartridges for explosive-actuated power tools in aggregate quantities involving less than 500 pounds of explosive material.

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11-10-8: CHAPTER 38 LIQUEFIED PETROLEUM GASES AMENDMENTS: (3327)

(A) Subsection 3804.2 of the International Fire Code is amended to add the following text to read as follows:

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3804.2 Maximum Capacity within Established Limits.

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This maximum capacity limitation specifically applies to the following zoning areas: RA, RE, R1, R2, R3, R4, R5, B1, C1, T1, and PUD (Planned Unit Development) zoned districts.

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Section 5. Section 11-12-5, subsection (B), W.M.C., is hereby AMENDED AND A NEW SUBSECTION (C) IS ADDED to read as follows:

11-12-5: FIRE PROTECTION:

(B) Rental Dwelling Units. Smoke detectors shall be installed in all rental dwelling units or guest rooms as required by the Building Codes as adopted by the City of Westminster.

Deleted: in section 11-10-6(A) of the Westminster Municipal Code

(C) Carbon Monoxide Alarms. Any single-family dwelling or dwelling unit in a multi-family dwelling used for rental purposes and that includes fuel-fired appliances or an attached garage where interior alterations, repairs, fuel-fired appliance replacement or additions, any of which requires a building permit to be issued, or has a change in tenant or occupancy, shall have carbon monoxide alarms installed as required by the Building Code.

Section 6. This ordinance shall take effect October 1, 2010.

Section 7. 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 August, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of September, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

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New Construction. Buildings constructed in accordance with the criteria of Section 810.80 of the City of Westminster Electrical Code shall be required to install a radio amplification system.		
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For a better quality of life.



HOME BUILDERS
ASSOCIATION
of
METRO DENVER®

August 31, 2010

Mr. Dave Horras
Chief Building Official
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Via electronic delivery and U.S. Mail

Dear Dave,

Thank you for the opportunity to review and discuss the proposed adoption of the 2009 codes. As Council prepares to consider the adoption of the 2009 International Codes we welcome the opportunity to provide our comments.

As we have discussed, the area of change from the 2006 to the 2009 IRC of most concern to the HBA and our members is the new requirement for residential fire sprinklers in town homes and 1 and 2 family homes. The HBA acknowledges that life safety is a leading concern for our members. However, the HBA does not support the implementation of a mandatory fire sprinkler requirement.

We find the requirement over reaching, unnecessary, costly and not desired by the market. We strongly believe its adoption was the result of the failure of ICC to guard against undue influence of special interest groups. We are hopeful that ICC will move to correct the policies and processes that allowed such failure, but have not seen any meaningful movement in that direction thus far. We urge Council to consider whether these requirements were the result of the interests of a special group or if they were the result of a truly legitimate life safety issue. We believe they were the former.

The HBA recommends that City Council entirely amend out the requirements for sprinklers for both town homes and 1 and 2 family homes upon adoption of the 2009 IRC. We do appreciate your recommendation to Council to amend the effective date of those sprinkler requirements until 2013 for both town homes and one- and two- family homes. Short of entirely striking this requirement, this is an acceptable interim solution.

If the requirement is retained but delayed, as is included in your proposed amendments, there are issues that will need to be addressed as we approach that date. If the requirement is to become effective in the future, regardless of date, we will seek a grandfathering clause that would exclude from the sprinkler requirement projects that have already been approved under existing code, or are 50% or more complete at the time of the effective date, or that have infrastructure in place that will not support a fire sprinkler system.

The bases for these recommendations include:

- There is a lack of statistical evidence that these systems are needed to preserve life safety in homes built to today's codes. Residential fire injuries and deaths primarily occur in older homes or other substandard housing stock not built to improved code standards. Nonetheless, fire deaths and injuries in Colorado - even in older homes - is far below the national average.
- There are regulatory issues to resolve. While one step in state legislative reform has been taken, there are additional regulatory reforms that must be enacted prior to implementation, should these requirements be retained
- The various water provider issues created by the requirement – district by district – have not been identified and resolved, which will impact the uniformity of adoption and enforcement.
- We remain in the midst of an economic crisis that has crippled the housing industry and anticipate that recovery will be slow in coming. Adding unnecessary costs to new housing in the foreseeable future will only further delay the ability of willing buyers to afford new housing; reduce the number of people who can afford to purchase new housing; limit the addition of new homes to the housing stock; further the stagnation of building-related revenue to the city, and further damage an industry that is historically a key economic driver.
- If the requirements are adopted, regardless of effective date, projects already approved will need to be excluded from the requirements for both practical and market-based reasons. Projects with not-yet built-out lots will nonetheless have water delivery infrastructure in place that may not be capable of supporting the fire sprinkler systems. Additionally, it will be challenging for builders to overcome the cost differential between unsold homes completed without sprinklers side by side with homes that do include the expensive addition of these systems. Builders have concluded that buyers do not see value in the systems and hence will not pay the additional costs, leaving the builder with even further eroded profit margins.
- During the code hearings that resulted in the sprinkler requirement ICC failed to protect the accepted government-approved consensus process, allowed an undue and inappropriate influence by a particular interest group, and failed to provide a fair and open process in the code hearings. Had these failures not occurred we firmly believe these requirements would not have been adopted.

To restate our recommendations, Council should amend out entirely the residential fire sprinkler requirements for town homes and 1 and 2 family homes upon adoption of the 2009 IRC. If this is not the preference of Council, at a minimum they should delay the

effective date of these provisions until January 1, 2013 as included in your recommendations. If the requirement is adopted, regardless of timing, a grandfathering clause will need to be adopted prior to that date excluding from the sprinkler requirement any projects that have already been approved under existing code, or are 50% or more complete at the time of the effective date, or that have infrastructure in place that will not support a fire sprinkler system.

Thank you for considering our concerns and recommendations and bringing them forward to Council. We look forward to continuing our dialogues on this and other matters of concern to our members, and as always appreciate the opportunity to do so.

Best regards,

A handwritten signature in black ink, appearing to read "Kim Calomino". The signature is fluid and cursive, with the first name "Kim" written in a larger, more prominent script than the last name "Calomino".

Kim Calomino

VP Technical and Regulatory Affairs



Agenda Item 10 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Resolution No. 32 re 2010 Private Activity Bond Allocation and Assignment

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Adopt Resolution No. 32 authorizing the assignment of \$3,000,000 of the City's private activity bond allocation for 2010 to the Westminster Housing Authority, and \$1,919,445 of the City's private activity bond allocation for 2010 to the Colorado Housing and Finance Authority for the qualified purposes set forth in the resolution, and authorize the Mayor to execute the necessary documents.

Summary Statement

- The City's 2010 private activity bond (PAB) allocation is \$4,919,445. This allocation needs to be assigned or it will be kept by the State of Colorado for projects to be determined by the Department of Local Affairs.
- The Westminster Housing Authority (WHA) needs to finance rehabilitation expenses for Westminster Commons, a 130-unit low-income senior housing apartment complex. The City Council assigned the entire 2009 PAB allocation of \$4,843,305 to the WHA for this purpose. It is anticipated that up to \$3,000,000 in 2010 PAB capacity is needed for the project in addition to the 2009 assignment.
- The Colorado Housing and Finance Authority (CHFA) has requested that the City assign PAB capacity to CHFA for use in its affordable single-family mortgage program. The City could also assign PAB capacity to CHFA for rental housing, but there is no demand for that type of financing at this time.
- If the City's PAB allocation is not assigned or carried forward by September 15, 2010, it will revert to the State pool.
- The attached Resolution has been reviewed and approved by the City Attorney's Office and is ready for City Council's formal action. This Resolution will assign the allocation to the Westminster Housing Authority. The Authority will also need to take action to accept the assignment and carry it forward.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City assign the City's 2010 private activity bond allocation to the Westminster Housing Authority and the Colorado Housing Finance Authority or allow the allocation to revert back to the state pool?

Alternative

Take no action and allow the City's allocation to revert to the State pool, or make a different assignment. This option is not recommended as the Westminster Housing Authority needs the assignment in order to finance rehabilitation work at Westminster Commons and CHFA has requested the City's PAB capacity for its single-family loan program.

Background Information

When cities intend to issue tax-exempt bonds to finance certain eligible "private activities" as allowed by the Internal Revenue Code, they can do so only to the extent they have received a PAB allocation from the federal government. Each year, the City of Westminster receives an allocation of private activity bonds to use towards bond financing of certain eligible "private activities" as defined by federal law. The issuance of low-interest, tax-exempt bonds can save developers and the City from the higher costs of commercial financing that can provide a significant savings to the project. Qualified purposes of the bonds include:

- Qualified single-family mortgage revenue bonds, and mortgage credit certificates;
- Qualified manufacturing industrial development bonds;
- Qualified residential rental multi-family housing bonds;
- Student loans;
- Certain types of exempt facility bonds; and
- Qualified redevelopment bonds.

If the PAB allocation is not specifically designated to a specific project by September 15, 2010, federal law allows the allocation to be carried forward and preserved through February 15th of the following year. By February 15, 2011, a specific assignment of the allocation must be made or the City and the State will lose the PAB allocation and it will revert to the State pool. To maintain flexibility and to consider competitive projects, it is important that the City act to either assign or carry forward this allocation.

In recent years, PAB has been allocated by the City Council for both single-family and multi-family residential purposes. The Authority owns Westminster Commons, a 130-unit senior housing complex. The Commons is thirty years old and is in need of substantial reinvestment. Staff has been studying various means of financing this reinvestment and private activity bonds will most likely be a part of the financing solution. The City Council assigned the 2009 PAB cap of \$4,843,305 to the WHA to use on the Commons project. The WHA financial advisors believe that up to \$3,000,000 additional cap is needed for the project. Therefore, it is recommended that \$3,000,000 in 2010 cap be assigned to the WHA.

CHFA has requested that the City assign cap for its single-family loan program. While CHFA also assists in the financing of affordable multi-family housing, there is low demand for that type of PAB financing this year and CHFA already has sufficient PAB cap to handle the demand. Karen Harkin, Manager of Housing for CHFA, wanted to convey that, if a multi-family rental project in Westminster requires PAB cap over the next year, CHFA would work to provide that cap to a developer in Westminster.

SUBJECT: Resolution re 2010 Private Activity Bond Allocation and Assignment

Page 3

The City will be receiving its 2011 allocation in December 2010 and will have the opportunity to assist any new proposed projects in 2011.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **32**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION CONCERNING THE ASSIGNMENT OF THE
CITY'S PRIVATE ACTIVITY BOND ALLOCATION TO THE
WESTMINSTER HOUSING AUTHORITY AND TO THE
COLORADO HOUSING AND FINANCE AUTHORITY**

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Westminster, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling in the amount of \$4,919,445 (the "2010 Allocation"); and

WHEREAS, the Westminster Housing Authority (the "Authority") has requested that the City assign \$3,000,000 of its 2010 Allocation to the Authority pursuant to Section 24-32-1706 of the Allocation Act to be used to issue bonds to finance the acquisition, rehabilitation and equipping of a rental housing project to be located in the City (the "Authority Project"); and

WHEREAS, the Colorado Housing and Finance Authority ("CHFA") has requested that the City assign \$1,919,445 of its 2010 Allocation to CHFA pursuant to Section 24-32-1706 of the Allocation Act to be used to issue for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families (the "CHFA Project"); and

WHEREAS, the City desires to assign the 2010 Allocation to the Authority and CHFA; and

WHEREAS, there has been presented to the City Council (the "Council") forms of an Assignment of Allocation to the Authority and CHFA (the "Assignments").

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

Section 1. The City hereby authorizes the assignment of \$3,000,000 of the 2010 Allocation to the Authority for use solely in connection with the financing of the Authority Project.

Section 2. The City hereby authorizes the assignment of \$1,919,445 of the 2010 Allocation to CHFA for use solely in connection with the financing of the CHFA Project.

Section 3. The officers of the City shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution and the Assignments.

Section 4. The form, terms and provisions of the attached Assignments are hereby approved and the officers of the City are hereby authorized and directed to execute and deliver the Assignments, with such changes therein as are approved by the officers of the City executing the Assignments. The execution of the Assignments shall be conclusive evidence of the approval by the City of such documents in accordance with the terms hereof.

Section 5. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 6. All action not inconsistent with the provisions of this Resolution heretofore taken by the Council and the officers of the City directed toward the assignment of the 2010 Allocation and the authorization of the Assignments hereby are ratified, approved and confirmed.

Section 7. This Resolution shall be in full force and effect upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this September 13, 2010.

Mayor

(SEAL)

Attest:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

ASSIGNMENT OF ALLOCATION

THIS ASSIGNMENT (the "Assignment") dated this 13th day of September, 2010, is between the City of Westminster, Colorado, a home rule municipality (the "Assignor"), and the Westminster Housing Authority, Colorado, a body corporate and politic (the "Assignee").

RECITALS

A. The Assignee intends to finance a project consisting of the acquisition, rehabilitation and equipping of a rental housing project to be located in the City of Westminster, Colorado (the "Project"). The Project will be designed to qualify as a "project" within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the "Act").

B. The Assignee intends to provide for the issuance of its Multi-family Housing Revenue Bonds in the maximum aggregate principal amount of \$3,000,000 (the "Proposed Bonds"), pursuant to the provisions of the Act for the purpose of financing the Project.

C. The Assignee, pursuant to a resolution adopted by the Board of Commissioners of the Assignee on September 13, 2010, declared its intention to take all steps necessary or advisable to effect the issuance of the Proposed Bonds for the financing of the Project.

D. The Assignee has requested that the Assignor assign to the Assignee \$3,000,000 of the Assignor's 2010 allocation under the bond ceiling for the State of Colorado and its issuing authorities (the "State Ceiling") computed under Section 146(d) of the Internal Revenue Code of 1986 (the "Code") as provided for the Assignor as a "designated local issuing authority" under part 17 of article 32 of title 24, Colorado Revised Statutes (the "Allocation Act"), for use in connection with the financing of the Project.

E. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, \$3,000,000 of the Assignor's 2010 allocation from the State Ceiling, which allocation the Assignor has committed and reserved for the Project.

ASSIGNMENT

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee, the Assignor's 2010 allocation from the State Ceiling for private activity bonds in an amount equal to \$3,000,000 for the purpose of issuing the Proposed Bonds to finance the Project. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the "Statewide Balance" as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2010, or (b) Section 24-32-1706(3)(c), C.R.S., applies.

2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.

3. The Assignee hereby:

a. accepts the assignment of \$3,000,000 of the Assignor's allocation from the State Ceiling described above; and

b. agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such allocation.

4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute the debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF WESTMINSTER, COLORADO, as
Assignor

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

WESTMINSTER HOUSING AUTHORITY, as
Assignor

Chair

(SEAL)

Attest:

Secretary

ASSIGNMENT OF ALLOCATION

This Assignment of Allocation (the "Assignment"), dated this 13th day of September, 2010, is between the City of Westminster, Colorado (the "Assignor") and the Colorado Housing and Finance Authority (the "Assignee").

WITNESSETH:

WHEREAS, the Assignor and the Assignee are authorized and empowered under the laws of the State of Colorado (the "State") to issue revenue bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), restricts the amount of tax-exempt bonds ("Private Activity Bonds") which may be issued in the State to provide such mortgage loans and for certain other purposes (the "State Ceiling"); and

WHEREAS, pursuant to the Code, the Colorado legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), providing for the allocation of the State Ceiling among the Assignee and other governmental units in the State, and further providing for the assignment of allocations from such other governmental units to the Assignee; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act, the Assignor has an allocation of the 2010 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to **September 15, 2010**, the ("Allocation"); and

WHEREAS, the Assignor has determined that, in order to increase the availability of adequate affordable housing for low- and moderate-income persons and families within the City of Westminster, Colorado and elsewhere in the State, it is necessary or desirable to provide for the utilization of \$1,919,445 of the Allocation (the "CHFA Allocation"); and

WHEREAS, the Assignor has determined that the CHFA Allocation, or a portion thereof, can be utilized most efficiently by assigning it to the Assignee to issue Private Activity Bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families ("Revenue Bonds"), and the Assignee has expressed its willingness to attempt to issue Revenue Bonds with respect to the CHFA Allocation; and

WHEREAS, the Westminster City Council of the Assignor has determined to assign to the Assignee \$1,919,445 of its CHFA Allocation, and the Assignee has agreed to accept such assignment, which is to be evidenced by this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. The Assignor hereby assigns to the Assignee the CHFA Allocation, subject to the terms and conditions contained herein. The Assignor represents that it has received no monetary consideration for said assignment.

2. The Assignee hereby accepts the assignment to it by the Assignor the CHFA Allocation, subject to the terms and conditions contained herein. The Assignee agrees to use its best efforts to issue and sell Revenue Bonds, in one or more series, and to make proceeds of such Revenue Bonds available from time to time during the period of two (2) years from the date of this Assignment for the purchase of mortgage loans in at least the aggregate amount of \$1,919,445 to finance single-family housing facilities located in the City of Westminster. Unless otherwise agreed to in writing, the mortgage loans will be subject to all applicable current requirements of Assignee's mortgage revenue bond program, including Assignee's income and purchase price limits.

3. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

4. The Assignor and Assignee each agree that it will take such further action and adopt such further proceedings as may be required to implement the terms of this Assignment.

5. Nothing contained in this Assignment shall obligate the Assignee to finance mortgage loans in any particular amount or at any particular interest rate or to use any particular percentage of the proceeds of its Revenue Bonds to provide mortgage loans to finance single-family housing facilities located in the City of Westminster.

6. This Assignment is effective upon execution and is irrevocable.

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

CITY OF WESTMINSTER

[S E A L]

By: _____

ATTEST:

Title: Mayor

By: _____

Title: City Clerk

COLORADO HOUSING AND FINANCE
AUTHORITY

[S E A L]

By: _____

ATTEST:

Chief Financial Officer

By: _____

Assistant Secretary



Agenda Item 10 E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Councillor's Bill No. 46 re Bowles House Rehabilitation Grant Supplemental Appropriation

Prepared By: Patrick Caldwell, Planner II

Recommended City Council Action

Pass Councillor's Bill No. 46 on first reading appropriating funds granted by the State Historical Fund in the amount of \$72,000 for the City's rehabilitation of the Bowles House east porch and repair of a wall crack.

Summary Statement

- On February 1, 2010, the State Historical Fund awarded the City a grant in the amount of \$72,000 for the rehabilitation of the Bowles House east porch and repair of a wall crack. The property is located at 3924 West 72nd Avenue.
- In order to complete this project, the City is required to contribute a cash match of up to \$24,000, which was budgeted in 2010.

Expenditure Required: \$72,000

Source of Funds: State Historical Fund Grant

Policy Issue

Should the State Historical Fund grant be appropriated to the General Capital Improvement Fund BO&M Major Maintenance Capital account to pay for the rehabilitation of the east porch and repair of a wall crack at the Bowles House?

Alternative

The alternative would be to not amend the 2010 General Capital Improvement Fund budget and decline the State Historical Fund grant money. Staff does not recommend this alternative as no other funding is available to complete the rehabilitation of the Bowles House east porch and to repair the large wall crack at the northeast corner of the building.

Background Information

The intergovernmental agreement with the State Historical Fund (SHF), previously approved by City Council on May 24, 2010, provides a grant of \$72,000 for the rehabilitation of the Bowles House east porch, repair of the wall crack, and requires a City cash match of up to \$24,000. The funds will permit the rehabilitation of the east porch, which is severely deteriorated, and repair of the significant wall crack at the northeast corner of the building. The repairs will improve the access to the house and improve the structural integrity of the house.

These appropriations will amend the General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	7500.40620.0000	\$0	<u>\$72,000</u>	\$72,000
Total Change to Revenues			<u>\$72,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Bowles House Porch Rehabilitation CIP	81075030959.80400.8888	\$0	<u>\$72,000</u>	\$72,000
Total Change to Expenses			<u>\$72,000</u>	

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2010 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3432 is hereby increased by \$72,000. This appropriation is due to the receipt of state grant funds.

Section 2. The \$72,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10E, September 13, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$72,000</u>
Total	<u>\$72,000</u>

Section 3 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of September, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of September, 2010.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Councillor's Bill No. 47 re Citylife Church Lease Agreement at the Ice Centre at the Promenade

Prepared By: Bill Walenczak, Director of Parks, Recreation and Libraries

Recommended City Council Action

Pass Councillor's Bill No. 47 on first reading authorizing the City Manager to sign a lease agreement between the City of Westminster, Hyland Hills Park and Recreation District (through its Recreational Facilities enterprise) and Citylife Church d/b/a Redemption City Church for the lease of approximately 1,375 square feet of space in the Ice Centre at the Promenade.

Summary Statement

- In May 2010 the previous tenant, Westminster Promenade Development LLC (aka Inland Pacific Corporation), notified the Ice Centre Manager that it was vacating the office space that it had leased since 2001.
- Once the leased space was vacated, Ice Centre Manager Bob Bebber began advertising for a new lessee.
- Citylife Church approached Mr. Bebber about the possibility of leasing the space for its administrative offices.
- The Church will not hold meetings, such as Sunday school or services, at this location; their use will be for administrative offices only.
- The lease duration is for one year at a rate of \$13.96 per square foot for a total of \$19,200 for the year. A six-month option to renew is included in the lease agreement. There will also be a security deposit of \$1,600 for any potential damages to the facility.
- This use has been reviewed and approved by the City's Planning Manager.

Expenditure Required: \$0

Source of Fund: N/A

Policy Issue

Does City Council wish to approve a lease for administrative office use at the Ice Centre at the Promenade?

Alternative

City Council could deny this lease and instruct Hyland Hills Parks and Recreation District and City Staff to seek out a lessee willing to commit to a longer lease term.

Background Information

The Ice Centre at the Promenade began full operations in 2000. Part of the business plan for the facility was to construct additional retail, restaurant and office space to be leased to private companies for additional revenue. Currently, Benders Bar and Grill, AT&T and the Hyland Hills Hockey Association lease space at the Ice Centre. Up until July of 2010, the Westminster Promenade Development LLC leased approximately 1,375 square feet of space that is now vacant. Once vacated, the space was advertised for lease by Hyland Hills Ice Centre Manager Bob Bebber. Board members from the Citylife Church approached Mr. Bebber with a proposal to lease the space for one year with an option to renew for an additional six months.

The lease rate of \$13.96 per square foot is, in Staff's opinion, a good rate based on the current rental market conditions. Considering that other store front space at the Promenade has remained vacant for some time now, Staff believes the City is fortunate to have a willing lessee for this space.

This action meets City Council Strategic Plan goal of "Financially Sustainable City Government providing Exceptional Services."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **47**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY,
HYLAND HILLS PARK AND RECREATION DISTRICT, AND CITYLIFE CHURCH d/b/a
REDEMPTION CITY CHURCH FOR THE LEASE OF A PORTION OF THE ICE CENTRE AT
THE WESTMINSTER PROMENADE FOR ADMINSTRATIVE OFFICES**

WHEREAS, City Council previously authorized an intergovernmental agreement between the City and the Hyland Hills Park and Recreation District for the purpose of constructing and operating an Ice Centre at the Westminster Promenade; and

WHEREAS, the City and Hyland Hills have selected Citylife Church as one of the tenants at the Ice Centre's retail/office space; and

WHEREAS, the final form of the lease agreement has been agreed to by the parties.

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Pursuant to City Charter Section 13.4, the Lease Agreement between the City, Hyland Hills Park and Recreation District, acting by and through its Recreational Facilities Enterprise, and Citylife Church d/b/a Redemption City Church for the lease of a portion of the Ice Centre at the Westminster Promenade for administrative offices attached hereto as Exhibit A is hereby approved.

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 13th day of September, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of September, 2010.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

LEASE

This Lease, made and entered into this ___ day of _____, 2010, by and between HYLAND HILLS PARK AND RECREATION DISTRICT and THE CITY OF WESTMINSTER, hereinafter collectively referred to as "Landlord" and CITYLIFE CHURCH d/b/a/ REDEMPTION CITY CHURCH, a Colorado nonprofit corporation, hereinafter referred to as "Tenant".

1. LEASED PREMISES:

Upon the terms, conditions, covenants, limitations and agreements, and at the rental and for the terms as hereinafter set forth, Landlord hereunto leases unto Tenant and Tenant hereby leases from Landlord the Leasehold Premises ("Premises") at Landlord's Ice Centre, 10710 Westminster Blvd., Jefferson County, Colorado, as more fully described in Exhibit A attached hereto.

2. TERM:

The term of this Lease and the right of Tenant to take possession and occupy the Premises, pursuant to this Lease, shall commence at 12:01 a.m. on the 1st day of October, 2010 and, unless sooner terminated or later extended, as provided herein, shall expire at 12:01 a.m. on the 1st day of October, 2011.

3. USE OF PREMISES:

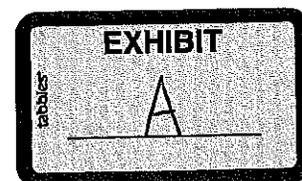
3.1 Tenant shall occupy, use and operate the Leasehold Premises as office space.

3.2 Tenant shall not:

a. Permit any unlawful practice to be carried on or committed on the Leasehold Premises;

b. Make any use or allow the Leasehold Premises or any part thereof to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by Landlord, for any purposes other than those hereinabove specified, nor for any purpose that shall constitute a public or private nuisance, shall be in violation of any governmental laws, ordinances or regulations, shall be contrary to any restrictive covenants, agreements or limitations of record, or shall render the premises, or any part thereof, uninsurable with standard insurance at ordinary rates.

c. Keep or permit to be kept or used on the Leasehold Premises any flammable fluids, toxic materials, or substances of any nature reasonably deemed



dangerous by the Lessor or the Lessor's insurance carriers without obtaining prior written consent of the Lessor, except for small quantities of cleaning products incidental to their permitted uses described in this Agreement;

d. Use the Leasehold Premises for any purpose which creates a nuisance or injures the reputation of the Leasehold Premises or the Lessor;

e. Deface or injure the Leasehold Premises, or commit or suffer any waste in or about the Leasehold Premises:

f. Permit any odors to emanate from the Leasehold Premises in violation of any local, state or federal law or regulation;

g. Use any portion of the Leasehold Premises for storage or other purposes except as is necessary and required with its use specified in this Agreement.

h. Keep or permit to be kept or used on the Leasehold Premises any pets except for guide animals pursuant to the provisions of the federal Americans With Disabilities Act and/or corresponding state statute or local ordinance.

4. RENT AND SECURITY DEPOSIT:

4.1 Tenant shall pay to Landlord, as minimum rent for the term of this Lease, the sum of \$19,200.00, together with any additional rents as may hereinafter be reserved. Said rental, exclusive of any additional rents, shall be payable in equal monthly payments of \$1,600.00, payable in advance, commencing on the effective date, and on that same date of the month for every month of the rental term thereafter.

Every such payment referenced above shall be payable at the office of Landlord, 1800 West 89th Avenue, Denver, Colorado 80260, without notice or demand whatsoever.

4.2 Any other sums of money or charges to be paid by the Tenant, pursuant to the provisions of this Lease, shall be designated as "additional rent". A failure to pay additional rent shall be treated in all events as the failure to pay rent.

4.3 If the payment of any rent or any other monies payable under the terms of this Lease shall not be paid when due, and Tenant shall not have paid such arrears within three business days of Landlord providing Tenant with notice thereof, Tenant agrees that additional rent, in the amount of five (5) percent of the arrearage amount, shall be immediately due and payable from Tenant to Landlord.

4.4 Tenant shall pay to Landlord, upon execution of this Agreement, the sum of \$1,600.00 as a security deposit. Said security deposit will be returned, together with interest thereon, minus any amounts retained and applied to damages (ordinary wear and

tear excepted), caused by Tenant, or rent owing to Landlord from Tenant, upon completion of all necessary repairs to the Premises or within ninety (90) days of termination of the this Lease, whichever comes earlier.

5. OCCUPANCY OF THE PREMISES:

Occupancy of all or a part of the Premises by Tenant shall be deemed an acceptance of the same in good and suitable condition by said Tenant.

6. PARKING:

Tenant understands that existing adjacent parking lots are available for patrons of the Premises and that no parking spaces shall be reserved for Tenant's employees, customers or others.

7. UTILITIES:

Tenant shall pay all charges for, gas and electrical utilities and trash removal.

8. MAINTENANCE AND REPAIRS:

8.1 Tenant shall keep and maintain the Premises, excluding all sewer and water connections and HVAC systems, in good condition and repair at the sole expense of Tenant and, at the expiration of this Lease, Tenant shall surrender and deliver up the said Premises in as good order, condition and repair, loss by inevitable accident or Act of God excepted, as said Premises were accepted by Tenant at the commencement of this Lease, excepting therefrom normal wear and tear. Tenant shall not make any modifications to Premises without Landlord's written approval and Tenant shall be liable for any damage caused to such connections and system due to Tenant's occupancy of the Premises.

8.2 Tenant shall keep the Premises clean and in the sanitary condition required by the ordinances and health and police regulations of the City of Westminster, County of Jefferson and State of Colorado. Tenant shall neither permit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Premises.

8.3 If Tenant shall fail or refuse to complete or perform any maintenance, repairs or upkeep required pursuant to the terms of this paragraph 8 within fifteen (15) days after request by Landlord so to do, Landlord may cause such maintenance, repairs or upkeep to be made or done and may thereafter charge the reasonable cost thereof to Tenant and the same shall be and constitute additional rent due hereunder.

9. LIENS AND CLAIMS AGAINST LANDLORD:

9.1 Tenant shall pay, when due, for all work performed on or for the benefit of, or materials furnished to, the Premises by any person at Tenant's request. In this regard,

Tenant shall indemnify and hold harmless and defend Landlord from any and all liability and expense resulting from any lien, claim of lien, or claim against Landlord arising from such work or labor. Tenant shall have the right to contest the validity of such lien, claim of lien, or claim.

9.2 Tenant shall not contract for the performance of any such labor or the acquisition of or delivery of any such materials, or the installation of any such improvements unless Tenant shall first obtain Landlord's written approval thereof.

10. INSURANCE:

10.1 Tenant shall procure and continuously maintain at its own expense the minimum insurance coverages listed below, with forms and insurers acceptable to Landlord. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

a. Commercial General Liability Insurance with combined single limit of \$3,000,000 per occurrence. This policy must include Contractor Liability; Products Liability; Broad Form Property Damage including, but not limited to, coverage for any damage to any Landlord personal or real property due to fire or water related to Tenant's operations pursuant to this Agreement; and Personal Injury;

b. Owned, hired, and non-owned automobile liability coverage with \$600,000 limit;

c. Statutory workers' compensation on all employees;

d. All risk insurance for full insurable replacement value of Landlord-owned equipment and personal property.

10.2 The required insurance policies shall be endorsed to include the City of Westminster and Hyland Hills Park and Recreation District as an additional insured as their interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City of Westminster and/or Hyland Hills Park and Recreation District, their respective elected officials, officers, employees, or others working on their behalf, or carried by or provided through any self-insurance pool of the City or Hyland Hills, shall be excess and not contributory insurance to that provided by Tenant. Each party to this Agreement agrees to waive subrogation on respective property insurance.

10.3 The Certificate of Insurance provided to Landlord shall be completed by Tenant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Landlord prior to the commencement of the Agreement.

The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Landlord. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

Executive Director
Hyland Hills Park and Recreation District
1800 W. 89th Ave
Denver, Colorado 80260

A certified copy of any policy shall be provided to the Landlord upon its request.

10.4 The parties hereto understand and agree that the City of Westminster and Hyland Hills Park and Recreation District are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitation (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to them and their elected officials, officers, or employees.

10.5 Tenant covenants that it will neither permit nor suffer the Premises or the walls or floors thereof to be endangered by overloading, nor said Premises to be used for any purpose which would render the insurance void or the insurance risk more hazardous.

10.6 Tenant will indemnify, defend and hold Landlord, its officers, directors and agents harmless from any and all claims by third parties (including without limitation, all costs, actions, proceedings, liabilities, judgments, expenses, damages and reasonable attorneys' fees) which arise out of or in connection with: (a) the Tenant's breach of this agreement or any representation or warranty made by the Tenant herein; (b) any act or omission to act of the Tenant or its employees, officers or agents; (c) any act or omission to act of any vendor, promoter, or subtenant of the Premises or other contractor of Tenant in the Premises; or, (d) any personal injury or property damage occurring at or about the Premises, except to the extent that the injury of damage is caused by the negligence or actions or omissions of Landlord.

11. DAMAGE BY FIRE OR OTHER CASUALTY:

11.1 Unless as set forth in subparagraph 11.2, below, this Lease and all agreements, covenants, terms and conditions contained herein shall remain in full force and effect notwithstanding damage to or destruction of any of the furniture, fixtures, inventory or equipment maintained upon the Premises and, regardless of the nature or extent of the damage and Tenant shall not be entitled to any reduction in or abatement of the rental hereinabove reserved, nor shall Tenant be entitled to any reduction, abatement,

or postponement of any of the monthly rental installments hereinabove reserved for or on account of such damage or destruction.

11.2 However, in the event that such damage or destruction was not caused by any act of Tenant, its officers, employees, agents, invitees or licensees or by any action of any person(s) (excluding Landlord's officers, employees or agents) directly related to the conduct of Tenant's business operations upon the Premises, then in that event, Landlord shall inform Tenant, within thirty (30) days of the date of destruction or damage, of Landlord's intent to remedy such damage or destruction by replacement or renovation of the damaged property (except for such damage covered under the policies of insurance more fully described in paragraph 10, above). If Landlord does not replace or renovate the non-covered damage or destruction or if the Premises cannot be reasonably restored to the condition existing at the time of the damage or destruction, either within ninety (90) days of such damage or destruction, Tenant may, at Tenant's option terminate this Lease without further obligation on Tenant's part and Tenant shall vacate the Premises within twenty (20) days of such decision to terminate or Tenant may elect to continue the Lease and shall cooperate fully with Landlord in restoring/repairing the damage or destruction. If the Premises are untenantable, Tenant shall receive an apportionment of the rent until the Premises are tenantable.

12. ASSIGNMENT AND SUBLETTING:

12.1 Tenant may not assign, in whole or in part, this Lease or any interest therein, nor may Tenant sublet all or any part of the Premises without the prior written consent of Landlord being first had and obtained. Any assignment or sublease in violation of the provisions of this paragraph shall be null, void and of no effect whatsoever, regardless of the fact that Landlord may have received other sums of money or services from the proposed assignee or sublessee. Any sum so received shall be deemed to have been received from Tenant.

12.2 No attempted assignment or attempted subletting of all or any part of the Premises shall relieve Tenant from any of its obligations under the provisions of this Lease, including the payment of rent and any notice required to be given by the provisions of this Lease shall be deemed to be properly given to all putative assignees and putative sublessees when given to Tenant as herein provided.

12.3 Tenant may not grant any easement or license to any person or entity not a party hereto for any reason whatsoever without the express written consent of Landlord.

13. SURRENDER OF LEASEHOLD PREMISES:

Upon the expiration or other termination of this Lease or any extension thereof, Tenant shall quit and surrender the Premises to Landlord in as good order, condition and repair, loss by inevitable accident or Act of God excepted, as when said premises were accepted by Tenant at the commencement of this Lease, normal wear and tear excepted. Tenant's obligation to observe or perform the provisions of this paragraph

shall survive the expiration or termination of this Lease.

14. HOLDING OVER:

If, after the expiration or other termination hereof, Tenant shall remain in possession without a written agreement therefor, such holding over shall be deemed to be upon a month-to-month tenancy under the same terms, conditions and provision contained herein, and for a monthly rental equal to one hundred fifty percent (150%) of the amount of the last monthly installment of rent and additional rent paid pursuant to the terms hereof.

15. EXTENSION OF LEASE:

If, at the end of the lease term set forth in paragraph 2, above, Tenant shall not be in default of any of the provisions of this Lease, the term of this Lease shall be automatically extended for one additional six (6) month term on the same terms and conditions set forth herein. Provided, however, that if Tenant shall give Landlord written notice or Landlord shall give Tenant such written notice, no later than thirty (30) days prior to the expiration of the term of this Lease, of its desire not to extend the term of the Lease, this paragraph shall be null and void and of no effect. Additional extensions beyond the automatic extension shall be subject to negotiation between the parties.

16. DEFAULTS BY LESSEE AND REMEDIES:

16.1 Subject to the other provisions of this paragraph, each of the following shall constitute a default by Tenant and a breach of this Lease:

a. If the rent, additional rent, or any part thereof, as herein reserved, shall be unpaid when due.

b. If Tenant does not comply with any provision of this Lease.

c. If Tenant should violate or fail to comply with any of the statutes, ordinances, rules, orders, regulation or requirements, as the same exist or may hereinafter be established, of the government of the United States of America, the State of Colorado, County of Jefferson and the City of Westminster, or of any bureau, department or subdivision thereof.

d. If the Premises should be abandoned or vacated. Abandonment or vacation shall include the attempted removal of equipment, furniture and/or fixtures such as to degrade the ability of Tenant to carry on its business upon the Premises or cessation of a substantial portion of Tenant's normal business dealings at the Premises.

e. If Tenant should attempt to sell, assign, sublet or mortgage all or any part of either the Premises or the leasehold interest herein created without the prior written consent of Landlord having been first had and obtained.

f. If by operation of law this Lease should be transferred to, or pass to, or devolve upon, any person or entity other than Tenant.

g. If Tenant should be adjudicated as bankrupt or insolvent and such proceeding should not be vacated within thirty (30) days.

h. If Tenant should file a petition in bankruptcy or make a general assignment for the benefit of creditors.

i. If Tenant should file a petition or answer seeking reorganization or readjustment under Federal bankruptcy laws.

j. If a Receiver or Trustee should be appointed with respect to all or substantially all property of Tenant in any suit or proceeding against Tenant or in any bankruptcy proceeding.

k. If any execution or attachment shall be issued against Tenant, or any of Tenant's property, whereby someone other than Tenant shall take or occupy the Premises.

16.2 Upon the occurrence of any of the events of default set forth above, then, and at any time thereafter, Landlord may, at Landlords' sole option and in addition to all other rights available to Landlord at law or equity or contained in this Lease, either:

a. Give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice or on any later date specified herein, upon which date Tenant's right to use, occupancy and possession of the Premises shall cease and this Lease shall thereupon be terminated; or

b. Re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate.

Should Landlord take such possession pursuant to the terms of this agreement, legal proceedings or pursuant to any notice provided by law or this Lease, Landlord may: (1) terminate this Lease at any time; or (2) from time to time without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises but reserving to Landlord the right at any time to elect to terminate this Lease as paragraph 16.2 (a) provides.

16.3 Unless Landlord shall have exercised its right to re-enter and take possession of the Premises pursuant to 16.2(b), in the event Landlord shall elect to terminate this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of such default and of Landlord's election so to terminate. If such default exists at the expiration of such twenty (20) day period, and Landlord shall not have

waived the same by written instrument, this Lease, and the term hereof, together with any and all right, title and interest in the Premises as herein granted to Tenant, shall terminate on the date fixed in said notice with the same force and effect (except as to the continuance of Tenant's liability) as if the date fixed by notice were the expiration of the term originally granted herein.

16.4 In the event Landlord shall elect to retake the Premises without terminating this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of any such default and of Landlord's election to retake under the terms hereof. If such default exists at the expiration of said twenty (20) day period, and Landlord shall not have waived the same by written instrument, Landlord may, without terminating this Lease, retake possession of the Premises.

16.5 In the event that Landlord does not elect to terminate this Lease as permitted in paragraph 16.2 (a), but on the contrary elects to take possession as provided in paragraph 16.2 (b), then such possession of the Premises by Landlord shall not relieve Tenant of its liability and obligation under this Lease, all of which shall survive such repossession. In the event of such repossession, Tenant shall pay the fixed rent and all additional rent as herein provided up to the time of termination of this Lease (which Landlord can declare at any time), and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such repossession, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord as liquidated current damages:

a. The minimum rent and additional rent as herein provided which would be payable hereunder if such possession had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation all repossession costs, legal expenses and attorneys' fees and expenses of preparation for such reletting.

Tenant shall pay such current damages to Landlord on the days on which the fixed rent would have been payable hereunder if Landlord had not repossessed, and Landlord shall be entitled to receive the same from Tenant on each such day.

b. If Tenant breaches or defaults any term of this Lease and abandons or vacates the Premises before the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of a breach or default of this Lease, Landlord may recover from Tenant a judgment from a court of law having appropriate jurisdiction, in addition to any other damages provided for at law, in equity, in this Lease, or otherwise, a sum equal to the unpaid lost rent for the balance of the rental term, or any exercised extension thereto, minus the amount of such rental loss for the same period the Tenant proves could be reasonably avoided.

16.6 Tenant shall, at the expiration of the twenty (20) days notice periods set forth above and Tenant has not cured any default, immediately quit and surrender to Landlord the entire Premises, and Landlord may enter into or repossess the Premises

either by force, summary proceedings, or otherwise. Tenant further agrees that, in the event of repossession by Landlord, Landlord may, without notice to Tenant, sell such of Tenant's inventory, furniture, fixtures or equipment as then remain upon the Premises in such manner and for such amount as Landlord may deem advisable. Thereafter, Landlord shall remit the proceeds of such sale, after deduction for the costs of the sale and any monies owed to Landlord by Tenant pursuant to the term of this Lease, to Tenant.

16.7 In the event of any default by Tenant pursuant to subparagraph 16.1d, above, or if Tenant violates the provisions of Section 17, below, and notwithstanding any other provision herein, Landlord shall have the right at Landlord's sole option and without any necessity of notice (and without restricting or surrendering any of Landlord's other rights hereunder), and Tenant hereby agrees and consents thereto, to immediately take possession of the Premises and all equipment, inventory, contents, furniture and fixtures therein, of whatever kind or ownership, and to, within a reasonable time and in a reasonable manner, cause the same to be sold and the proceeds thereof applied to any monies owned to Landlord by Tenant pursuant to this Lease.

17. LESSEE'S BUSINESS OPERATIONS:

During the term of this Lease, and as the same may be extended or renewed, Tenant shall continuously conduct and carry on Tenant's business activities in the entire Premises.

18. IMPROVEMENTS TO LEASEHOLD PREMISES:

18.1 All Premises improvements that constitute fixtures, however denominated, existing at the time of execution of this Lease shall be and remain the property of Landlord and may not be removed by Tenant at any time, from the Premises, without the express written consent of Landlord.

18.2 Tenant shall make no improvements to the Premises without the prior written consent of Landlord and only upon such terms and conditions as set forth by Landlord. All such improvements, however denominated, shall be and remain the property of Landlord and may not be removed by Tenant at any time, from the Premises, without the express written consent of Landlord, except for those improvements which can be removed by Tenant without damage to the Premises.

19. SIGNAGE:

Tenant may cause to be installed one or more signs in such design(s) and location(s) as shall be approved by Landlord and in conformance with the City of Westminster Municipal Code. Such sign(s) shall be and remain the property of Tenant and Tenant shall be solely responsible for the purchase, installation, operation and maintenance of the sign(s) and all associated costs. Tenant shall maintain all signs or advertisements approved by Landlord in good and attractive condition. Landlord shall assist with the

electrical hook-up of said sign(s). Upon the termination of the Lease, unless otherwise agreed to by Landlord, Tenant shall cause such sign(s) and any associated improvements to be immediately removed from the premises and repair any resulting damage to the Premises all at Tenant's expense.

20. RELATIONSHIP OF PARTIES:

Landlord and Tenant are not nor shall they become, by virtue of this Lease, anything other than Landlord and Tenant. Landlord and Tenant are not joint venturers, partners, or agents of one another nor is either party employed by the other.

21. NOTICES:

All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served if deposited in the United State mails, registered or certified, postage prepaid, and addressed as indicated below:

Landlord:

Executive Director
Hyland Hills Park and Recreation District
1800 West 89th Avenue
Denver, Colorado 80221

Tenant:

Russ Doty
President/Pastor
10792 Zuni Dr.
Westminster, CO 80234

22. ENTIRE AGREEMENT:

This Lease, with all exhibits and schedules annexed hereto, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, waive, release, discharge, terminate, or effect an abandonment of, this Lease, in whole or in part, unless such executory agreement is in writing and signed by both Landlord and Tenant.

23. SEVERABILITY:

If any provision, sentence, phrase, or word of this Lease, or application thereof to any person or circumstance, shall be held invalid, the remainder of this Lease, or the application of such provision, sentence, phrase or work to persons or circumstances other

than those as to which it is held invalid shall not be affected thereby.

24. BINDING EFFECT:

Except as is otherwise provided herein, this Lease shall be binding upon and inure to the benefit of the heirs, administrators, devisees, personal representatives, successors and assigns of Landlord and Tenant.

25. WAIVER:

No assent, express or implied, to any breach of any one or more of the covenants and agreements hereof shall be deemed or taken to be a waiver of any other or succeeding breach.

26. SURVIVAL CLAUSE:

All unperformed agreements, covenants and conditions herein contained shall survive the execution, expiration or termination hereof and shall not be merged therewith.

27. PARAGRAPH HEADINGS:

The paragraph headings contained herein are for convenience only and shall in no way change, alter, modify or affect any of the provisions or conditions herein contained.

28. ACKNOWLEDGMENT OF EXAMINATION:

The parties hereto acknowledge that they have carefully read and thoroughly understand the terms and conditions of this Lease. It contains the entire agreement and understanding under which they have entered into this Lease and the results and understandings of all of their negotiations have been merged in this Lease. Tenant and Landlord accept the terms and conditions hereof in all respects and agree to be bound thereby. Each of the parties hereto acknowledge that they have either had benefit of legal counsel in the negotiation and preparation hereof, or, in the alternative, they recognize the need for such counsel but have elected not to seek the same.

29. PERMITS AND LICENSES

Tenant shall procure, supply, and post, at its own expense, in places to be designated by Lessor, all permits and licenses necessary for the operation of the Leasehold Premises and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise.

30. ACCESS AND INSPECTION.

Lessor, its designated agents, employees, servants, and any other person

authorized by Lessor may enter the Leasehold Premises, at any reasonable time and upon reasonable written notice, for the purpose of inspecting the same. Any entry onto or inspection of the Leasehold Premises by Lessor pursuant to this section shall not constitute interference with the operations of Tenant and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope, timing and length of the inspection is reasonable.

31. OTHER PAYMENT OBLIGATION.

Tenant shall promptly pay all taxes and fees of whatever nature, applicable to the use, occupancy and operation of the Leasehold Premises, and shall maintain all licenses, municipal, state or federal, required for the conduct of business and shall not permit any of said taxes or fees to become delinquent. Tenant shall furnish to Lessor, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of the social security, unemployment compensation and all taxes and fees above referenced. Tenant shall pay promptly when due all bills, debts and obligations, including but not limited to its portion of charges for water, sewer, light and electricity as set out in Section herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Leasehold Premises and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of Lessor under this Agreement. All such costs and expenses of Tenant are to be borne by Tenant.

32. RELATIONSHIP TO TRUSTEE.

32.1 The parties hereto acknowledge that pursuant to that certain 1998 Ground Lease Agreement ("Lease") and that certain 1998 Lease Purchase and Sublease Agreement ("Sublease"), both by and between the City of Westminster and the City of Westminster Building Authority, the City has leased to the City of Westminster Building Authority the Ice Centre building and the improvements located therein and said Building Authority has subleased to the City said building and improvements.

32.2 The parties hereto further acknowledge that the City of Westminster Building Authority has assigned certain of its rights pursuant to the documents described in subparagraph 32.1 and that certain 1998 Mortgage and Indenture of Trust ("Indenture") to the U. S. Bank National Association d/b/a Colorado National Bank, as Trustee.

32.3 The parties hereto further acknowledge that, pursuant to paragraph 13.2 of the above-referenced Sublease:

(a) This Agreement is subordinate to the Lease, Sublease and Indenture;

(b) If a Termination Event occurs (as defined in said Sublease), Tenant shall pay to the Trustee all rents payable under this Agreement and this Agreement will be assigned to the Trustee;

(c) So long as Tenant is in compliance with the terms of this Agreement the Trustee shall not disturb Tenant's use of the Premises.

32.4 Landlord warrants that nothing in this Agreement violates any terms of the Ground Lease or any associated document, law, or regulation.

33. ATTORNEYS FEES:

If any dispute shall arise between the parties hereto regarding the interpretation of this lease or any provision thereof or the application of any provision, which dispute results in the filing of any suit or legal proceeding, the party adjudged by the judge or legal officer presiding over such proceedings to be the prevailing party shall be awarded its reasonable attorneys fees and costs from the non prevailing party.

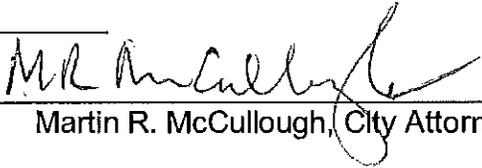
LANDLORD:

HYLAND HILLS PARK AND RECREATION DISTRICT

Greg Mastriona, Executive Director

Approved as to legal form: _____
Richard Fuller, Administrative Counsel

CITY OF WESTMINSTER

Approved as to legal form: 
Martin R. McCullough, City Attorney

TENANT:

CITYLIFE CHURCH d/b/a REDEMPTION CITY CHURCH



Agenda Item 10 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 13, 2010



SUBJECT: Councillor's Bill No. 48 re Amendments to Title IV of the Westminster Municipal Code concerning Tax Administration

Prepared by: Barb Dolan, Sales Tax Manager
Josh Pens, Audit Supervisor

Recommended City Council Action

Pass Councillor's Bill No. 48 on first reading amending Title IV of the Westminster Municipal Code concerning tax administration.

Summary Statement

- The *Westminster Municipal Code* ("Code") permits taxpayers who dispute assessments and refund claim denials to file written protests and request hearings before the Finance Director. The protests filed by taxpayers in some cases have highlighted the need for additional or improved protest and hearing procedures.
- Staff reviewed the current tax code and identified other changes to Title IV that will allow for more effective and efficient administration of the City's tax program. Occasional revisions are a necessity in the administration of a dynamic ordinance.
- These items, along with the previously adopted extension of the time to file protests, were reviewed with City Council at the July 19 Study Session and Staff was directed to bring an ordinance forward for action.
- These changes support the goals of a Financially Sustainable City and Strong, Balanced Local Economy.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City modify Title IV of the *Westminster Municipal Code* to revise the protest and hearing procedures and make other administrative amendments?

Alternatives

1. Leave the current Code provisions in place and not make the recommended changes. Staff does not recommend this alternative. Adopting the additional protest and hearing procedures allows for hearings to be more effective. Other recommended amendments address unintended deficiencies and improve the equitable collection of taxes.
2. Make only certain changes to the Code while excluding others. Although this approach would help address some of the issues, it may not address certain prospective legal concerns jeopardizing the City's ability to collect taxes lawfully due. 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 Strong, Balanced Local Economy. These proposed amendments will improve the administration and collection of taxes by reducing costs and increasing the potential recovery of delinquent taxes. Effective compliance programs promote economic equity by ensuring a level field of play among taxpayers.

If passed by City Council, the following proposed changes to Title IV of the Westminster Municipal Code will take effect on January 1, 2011. This delayed effective date will allow Staff time to notify taxpayers of changes to consolidated filing and offer sufficient time to change their reporting systems accordingly.

Protests & Hearings

The Code permits taxpayers to file written protests requesting modification of assessments or denials of refund claims. Protesting taxpayers are required to participate in a local administrative hearing before appealing the assessment to either the Colorado Department of Revenue or the District Court.

The administrative hearing process promotes several important policy interests. It conserves judicial resources and promotes administrative autonomy by allowing agencies with expertise in a matter to correct errors. To these ends, the hearing process is quasi-judicial, and requires some formality.

In some cases, taxpayers have presented broad and vague protests lacking the specificity needed for the City to adequately prepare a defense. On several occasions, the City has been presented with facts and legal arguments for the first time at hearing. These practices are particularly untenable given the lengthy audit that often precedes the protested assessment.

To make administrative hearings more effective, the proposed amendments require a more specific written petition. If adopted, Staff will review and update the current administrative regulations regarding hearings. Finally, the proposed ordinance includes provisions clarifying that taxpayers who fail to timely protest or appeal are barred from making additional claims for the same assessment by paying the assessment and then claiming a refund.

Other Administrative Amendments

Staff is recommending several other housekeeping amendments identified since the last amendments to Title IV in 2007. The proposed ordinance eliminates the codified thresholds for the various reporting frequencies. These thresholds have not been increased in some time and no longer reflect appropriate levels. Staff believes the regulation of reporting frequency should rest administratively with the Finance Director. The proposed ordinance also clarifies record keeping requirements to ensure that information, particularly electronic records, are accessible in the event of an audit.

The proposed ordinance eliminates consolidated filing. Currently, taxpayers with multiple locations in the City are permitted to file a single return with an attached schedule of location-specific detail. With approximately one-third of businesses in the City lying within urban renewal areas, precise accounting of where revenues are being generated is required. This change will ease the accounting for these revenues. Taxpayers will still be permitted to remit a single check for all returns being filed. This change will impact approximately 30 taxpayers.

The proposed ordinance imposes a penalty for failing to surrender levied property or funds. This penalty would apply to persons who fail to turn over property or funds levied upon for delinquent taxes. This change also provides relief for persons who lawfully surrender property or funds that have been levied. Attendant to these additions, the proposed ordinance corrects a deficiency in the Code's lien provisions with respect to repossessed property.

In Chapter 2, Staff included an item clarifying that when the prices of taxable and non-taxable items are bundled as a single charge to the customer, the entire charge is subject to tax. Additionally, the definition of "purchase and sale" is being amended to exclude certain transactions involving limited liability companies. Staff believes these entities should be treated by this definition similar to corporations or partnerships. Although this amendment will exclude additional events from sales and use taxes, Staff is not aware that the formation or dissolution limited liability companies have previously been taxed. As such, this change codifies current practice and has no revenue impact.

The proposed ordinance includes three clarifications arising from the numerous recent construction audits. Under exemptions, there is an addition clarifying that transient contractors using equipment in the City cannot avail themselves of the relocation exemption from use tax. The amendments further include additional terms for secured sales commonly used to describe such transactions. Finally, the amendments specify that returns for permitted projects are due either upon final inspection or the issuance of a Certificate of Occupancy (C.O.), as not all projects require a C.O.

In the admissions and accommodations tax chapters (chapters 3 and 4), an exemption for sales that the City is prohibited from taxing is being added as a constitutional safeguard. The need for this exemption was highlighted by a recent hotel stay by an institution that is not a Federal agency, but enjoys exemption from tax pursuant to a Federal statute.

With the exception of the changes related to limited liability companies, these changes are clarifying or administrative in nature. They make no change to the imposition of or exemption from the tax itself.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2010

COUNCILLOR'S BILL NO. **48**
INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING TITLE IV OF THE WESTMINSTER MUNICIPAL CODE
CONCERNING TAX ADMINISTRATION**

THE CITY OF WESTMINSTER ORDAINS:

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

4-1-1: DEFINITIONS: The following words and phrases as used in this Title shall have the following meaning unless specifically defined in another Chapter:

(O) "**Tax Deficiency**" means any amount of tax that is not reported in such manner as the Finance Director may prescribe or not paid on or before the due date.

Section 2. Section 4-1-4, W.M.C., is hereby AMENDED to read as follows:

4-1-4: ACQUISITION OF BUSINESS:

Deleted: , INCEPTION OR CESSATION

(A) Purchase of an Existing Business:

(1) Seller's responsibilities: Any person engaged in business in the City who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business.

(2) Purchaser's responsibilities:

(a) Any person who purchases an existing business shall be responsible for determining the total tax liability from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such total tax liability, unless the former owner produces a receipt from the City showing that the total tax liability has been paid or a certificate from the City that there is no total tax liability.

(b) Any amount so withheld shall be paid to the City within ten (10) days of the date of the sale of the business.

(c) Any purchaser who fails to withhold such total tax liability or fails to remit to the City the amount so withheld within the ten (10) day period allowed, shall, as well as the seller, be liable for any unpaid total tax liability.

(B) Acquisition of an Existing Business by Means Other Than Purchase. Any person who acquires or takes control of an existing business or the assets of an existing business by means other than purchase shall be responsible for payment of any total tax liability from that business.

Deleted: (C) . Cessation of Business. Every person engaged in business in the City who quits doing business in the City shall file a final return. The reporting period for such return shall end on the last day of business in the City.¶

Section 3. Section 4-1-7, W.M.C. is hereby AMENDED to read as follows:

4-1-7: RETURNS REQUIRED; TIME FOR FILING AND PAYING TOTAL TAX LIABILITY:

Deleted: FILING RETURNS; DUE DATE

(A) Except as provided in this Section, every taxpayer shall, on or before the twentieth day of the month, make a return to the Finance Director for the preceding calendar month, and file such return whether or not tax is due.

Deleted: file

(B) Occupation Taxes. 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.

Deleted: , and remit any tax due to the City on or before the twentieth day following the end of the reporting period.

(C) Construction Equipment. Every person who uses construction equipment in the City shall, on or before the date the construction equipment is located in the City, make a return to the Finance Director, and file such return whether or not tax is due.

Deleted: 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.

(D) Building Permits. Every person who pays an estimated prepayment of use tax at the time a building permit is issued shall, on or before the thirtieth day following the issuance of a Certificate of Occupancy, or the date of final inspection by the building official, whichever occurs later, make a return to the Finance Director and file such return. A return shall not be required if no additional use tax is due.

(E) Initial Use Tax. Every person who purchases or establishes a business inside the City shall, on or before the twentieth day of the month following the first day of business, make an initial use tax return to the Finance Director, and file such return whether or not tax is due.

Deleted: file a construction equipment declaration and remit any tax due to the City

(F) Cessation of Business. Any person who sells out or quits business shall, within ten days, make a return to the Finance Director and file such return whether or not tax is due.

Deleted: file a return and remit any use tax due in excess of the amount prepaid

(G) Time for Payment. When a return of tax is required under this Title, or regulations promulgated pursuant hereto, the person required to make such return shall, without assessment, pay such total tax liability to the Finance Director at the time and place fixed for filing the return.

Deleted: (30th)

(H) Alternate Reporting Schedule. If the accounting methods employed by the taxpayer, or other conditions, are such that returns made on a calendar month basis will impose unnecessary hardship, the Finance Director may, upon written request of the taxpayer, accept returns at such intervals as will, in the opinion of the Finance Director, better suit the convenience of the taxpayer, but not jeopardize the collection of the tax. The Finance Director may, by rule, permit taxpayers to make returns and pay taxes at intervals not greater than every twelve months. Authorization for such alternate method of reporting may be revoked by the Finance Director and immediately following notice of such revocation, the taxpayer shall file returns and remit tax on a monthly basis as if the alternate method of reporting and remitting the tax had never been granted.

Deleted: ¶
(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.

Deleted: ¶

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

Deleted: ¶

(I) Returns shall contain such information and be made in such manner and upon such forms as the Finance Director may prescribe.

(J) The signature of the taxpayer or the taxpayer's 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.

(K) 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.

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(L) It shall be unlawful for any person to make any false statement in connection with a return.

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Section 4. Section 4-1-8, W.M.C., REPORTING PERIODS, is hereby DELETED IN ITS ENTIRETY AND THE INDEX AMENDED ACCORDINGLY.

Section 5, Section 4-1-9, W.M.C., is hereby AMENDED to read as follows:

4-1-9: DUTY TO KEEP BOOKS AND RECORDS:

(A) Every person engaged in business in the City shall keep and preserve for at least three years ~~after the due date of the return or the payment of the tax, whichever is later, books, accounts, invoices, and other pertinent papers and records suitable in content and form to~~ allow the accurate determination of the tax due ~~on such return by the Finance Director.~~

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Deleted: The date of such taxable transactions for construction projects inside the City shall be the date the final certificate of occupancy is issued.

Deleted: the final certificate of occupancy for such project is issued,

(B) Every person who uses construction equipment inside the City shall keep and preserve, for at least three years after ~~the due date of the return or the payment of the tax,~~ records of the time each piece of construction equipment was located inside the City, ~~invoices or records of the price of such construction equipment,~~ and any sales or use tax paid on such construction equipment.

Deleted: (C) . Every person shall provide all such records for audit by the City during the City's normal business hours.

Section 6, Section 4-1-11, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

4-1-11: AUDIT OF RECORDS:

(A) For the purpose of ascertaining the correct total tax liability from any person engaged in business in the City, the Finance Director may ~~conduct an audit by examining all~~ books, accounts and records of such person.

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(B) ~~Upon demand by the Finance Director, all~~ books, accounts and records shall be open at any time during ~~the City's~~ regular business hours for examination ~~at the office of the Finance Director or some other place designated by the Finance Director for Examination. Any person under audit may elect to pay for costs or expenses incurred by the City in order to have such audit conducted at a place other than the place designated by the Finance Director, but in any case the time and place of the audit shall be designated by the Finance Director.~~ If any ~~person~~ refuses to voluntarily ~~produce~~ any of the foregoing information, the Finance Director may issue a subpoena to require that the taxpayer or their representative attend a hearing or produce any such books, accounts and records for examination.

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Deleted: by an authorized agent of the Finance Director

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Deleted: when requested by the Finance Director or authorized agent

Section 7, Section 4-1-16, W.M.C., is hereby AMENDED to read as follows:

4-1-16: TAX OVERPAYMENTS BY PURCHASERS: Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from ~~or not subject to~~ the tax may be requested by such purchaser by signing and submitting a Claim for Refund on or before sixty (60) days from the date of such purchase.

Deleted: REFUNDS OF DISPUTED

Section 8, Section 4-1-17, subsection (B), W.M.C., is hereby AMENDED to read as follows:

4-1-17: CLAIM FOR REFUND: No tax overpayment shall be refunded unless a Claim for Refund is signed and submitted to the City by the taxpayer.

(B) ~~Determination.~~ The Finance Director shall examine the Claim for Refund and give written notice ~~delivered in person or sent postpaid by first class mail~~ to the ~~last known address of the~~ taxpayer of the amount to be refunded or denied. ~~The determination of the Finance Director shall become final thirty (30) days from the date of personal service of the notice or the date of mailing of the notice; provided~~

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however, that within said thirty-day period, the taxpayer may petition the Finance Director in writing for a revision, modification, or cancellation of such determination in accordance with this Chapter. A taxpayer who fails to protest the determination of the Finance Director within thirty (30) days shall be forever enjoined from claiming a refund of the amounts denied therein, excepting, however, that the Finance Director may, at his or her sole discretion, grant leave to file a second claim in order to avoid a protest by an aggrieved taxpayer pursuant to this Chapter.

Section 9. Section 4-1-19, W.M.C., is hereby AMENDED to read as follows:

4-1-19: FAILURE TO FILE RETURN; FAILURE TO PROVIDE ADEQUATE RECORDS FOR AUDIT; ESTIMATED NOTICE OF ASSESSMENT:

(A) If any taxpayer neglects or refuses to file a return by the due date, the Finance Director shall estimate the total tax liability as soon as practicable thereafter. Such estimate shall be based upon such information as may be available, with or without employing the investigative powers vested in the Finance Director by this Chapter, and a Notice of Assessment shall be issued. Such estimate may be adjusted if a return showing the actual total tax liability is filed within thirty (30) days from the date of personal service of the notice or the date of mailing of the notice.

(B) If the Finance Director determines that any taxpayer has neglected or refused to provide adequate books, accounts and records requested for audit, the Finance Director shall estimate the total tax liability. Such estimate shall be based upon such information as may be available, with or without employing the investigative powers vested in the Finance Director by this Chapter, and a Notice of Assessment shall be issued.

(C) An estimated notice of assessment issued pursuant to this section shall be prima facie correct, and the burden of proof that the items, services, privileges, occupations, or other transactions, for which modifications or cancellations of such assessment are sought, are exempt from or not subject to taxation shall be on the taxpayer and such proof shall be by a preponderance of evidence.

Section 10. Section 4-1-21, subsections (E) and (F), W.M.C., are hereby AMENDED as follows:

4-1-21: PENALTIES:

(E) Penalty for Improper Registration of a Motor Vehicle. 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 shall levy a civil penalty of five hundred dollars (\$500).

(F) Assessment and Collection of Penalty. The penalties levied by this section shall be assessed, collected, and paid in the same manner as provided in this Title for the collection of tax due. Assessment and collection of a penalty shall not preclude the collection of any tax due, any interest due, or the imposition of any other civil or criminal penalty provided by law.

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

Section 11. Section 4-1-23, W.M.C., is hereby AMENDED to read as follows:

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Deleted: (A) . If any taxpayer neglects or refuses to obtain a license, the amount of the total tax liability shall be estimated, based upon such information as may be available, and a Notice of Assessment shall be issued. ¶

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Deleted: 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.¶

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4-1-23: NOTICE OF ASSESSMENT: The Finance Director shall issue a Notice of Assessment for any total tax liability. Notices of Assessment shall be in writing and delivered in person or sent postpaid by first class mail to the last known address of the taxpayer. Such total tax liability shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the City thirty (30) days from the date of personal services of the notice or the date of mailing of the notice; provided, however, that within said thirty-day period, the taxpayer may petition the Finance Director in writing for a revision, modification, or cancellation of such assessment in accordance with this Chapter. A taxpayer who fails to protest an assessment within said thirty-day period shall be forever enjoined from protesting or appealing said assessment or claiming a refund of amounts paid to the City pursuant thereto excepting, however, that the Finance Director may, at his or her sole discretion, grant leave to file a claim for refund in order to avoid a protest by an aggrieved taxpayer.

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(B) The payment due date for remittance of the total tax liability pursuant to a Notice of Assessment shall be twenty (20) days after the date of the Notice of Assessment.¶

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 taxpayer claiming an error in assessment shall submit a written protest to the Finance Director within thirty (30) days from the date of personal service or the date of mailing of the Notice of Assessment. Such protest shall state the facts and reasons for and the amount of the requested changes and shall otherwise comply with any rules and regulations promulgated by the Finance Director relating to protests and hearings.

Deleted: 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) The taxpayer may assert any facts and make any arguments which, in the opinion of the taxpayer, are pertinent to the protest. Only matters contained in the protest shall be considered by the Finance Director.

(3) The taxpayer shall be prohibited from amending the protest to assert new facts or make new arguments more than ten (10) days after the protest is received by the Finance Director unless the Finance Director issues an order either requiring more definite statements or granting leave to amend the protest.

(4) When a timely protest is made which conforms to the requirements of this Section, no further enforcement action will be instituted by the City for the portion of the assessment being protested unless:

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- (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.

(5) The filing of a protest shall not toll the accrual of interest on the amount of tax due.

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(B) Any notice that the Finance Director has denied a Claim for Refund, in whole or in part, may be protested by the taxpayer to whom it was issued

Deleted: 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.

(1) A taxpayer claiming an error in denial shall submit a written protest to the Finance Director within thirty (30) days from the date of personal service or the date of mailing of the notice of the Finance Director's determination. Such protest shall state the facts and reasons for and the amounts of the requested changes and shall otherwise comply with any rules and regulations promulgated by the Finance Director relating to protests and hearings.

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(2) The taxpayer may assert any facts and make any arguments which, in the opinion of the taxpayer, are pertinent to the protest. Only matters contained in the protest shall be considered by the Finance Director.

(3) The taxpayer shall be prohibited from amending the protest to assert new facts or make new arguments more than ten (10) days after the protest is received by the Finance Director unless the

Finance Director issues an order either requiring more definite statements or granting leave to amend the protest.

(C) Any timely protest which conforms to the requirements of this Section 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 4-1-26, W.M.C., is hereby AMENDED to read as follows:

4-1-26: HEARINGS:

(A) ~~The Finance Director shall notify the taxpayer in writing of the time and place fixed for hearing at least ten (10) days prior thereto unless the taxpayer agrees to a shorter time.~~

Deleted: The City shall commence a hearing within ninety (90) days after the City's receipt of the taxpayer's written protest; except the City may extend such period if the delay is requested by the taxpayer.

(B) Every hearing shall be held in the City before the Finance Director.

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(C) ~~The burden of proof that the items, services, privileges, occupations, or other transactions for which refunds of taxes are claimed, or for which modifications or cancellations of assessments are sought, are exempt from or not subject to taxation shall be on the taxpayer and such proof shall be by a preponderance of evidence.~~

Deleted: The taxpayer may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required.

(D) ~~At such hearing, the Finance Director is authorized to administer oaths and take evidence and hear argument. Pursuant to this Title, the Finance Director may issue subpoenas to compel the attendance of witnesses, the giving of testimony, and the production of books, papers, records or memoranda.~~

(E) ~~After such hearing, the Finance Director shall issue a Findings of Fact, Conclusions, and Decision which may modify or abate the tax, penalties and interest protested at the hearing, approve a refund, or uphold the assessment. The decision of the Finance Director shall be final upon its entry and shall be mailed to the taxpayer forthwith.~~

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(F) ~~After such hearing, the taxpayer shall not be entitled to a second hearing on the same Notice of Assessment or denial of refund, nor shall the taxpayer be entitled to file a claim for refund for amounts denied or paid pursuant to the final decision of the Finance Director on the same.~~

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(G) Unless the final decision of the Finance Director is appealed as provided in this Chapter, the remaining total tax liability, if any, shall be paid on or before thirty (30) days after its entry.

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~~Section 14~~, Section 4-1-27, W.M.C., is hereby AMENDED to read as follows:

Deleted: (G) The Finance Director may administer oaths and sign and issue subpoenas to compel the attendance of witnesses and the production of books, papers and other evidence when conducting hearings. Subpoenas shall be enforced as provided in Section 1-22-5.¶

4-1-27: APPEALS:

(A) ~~Should the taxpayer be aggrieved by the final decision of the Finance Director subsequent to a hearing held pursuant to this Chapter, the taxpayer may proceed to have the same reviewed in the District Court in and for Adams County pursuant to Rule 106 (a)(4) of the Colorado Rules of Civil Procedure as the same now provides or may hereinafter be amended.~~

Deleted: Subsequent to a hearing

Deleted: appeal the decision of the Finance Director

~~(1) The petition or complaint for review must be filed within thirty (30) days from the entry of the Finance Director's final decision.~~

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~~(2) Upon filing a petition or complaint pursuant to this subsection, the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount stated in the Finance Director's final decision, or deposit the unpaid amount with the Finance Director in lieu of posting a bond. Should the taxpayer deposit the unpaid amount with the Finance Director, no additional interest shall accrue on the tax deficiency. The taxpayer shall not be entitled to interest on any deposited amount returned in accord with the direction of the court.~~

(B) ~~Alternative Remedy for Sales and Use Tax. After exhausting the remedies provided in this Chapter, a taxpayer may elect to appeal a sales or use tax assessment or denial of a claim for a refund of a sales or use tax to the Colorado Department of Revenue pursuant to Section 29-2-106.1(3) of the Colorado Revised Statutes. A notice of this right shall be included in any Notice of Assessment or denial of refund in clear and conspicuous type.~~

Deleted: An appeal of a final decision of the Finance Director in a hearing held pursuant to Section 4-1-26 shall be commenced within thirty (30) days of such decision.

(C) ~~Any party, including the City, may appeal the decision of the District Court, the Executive Director of the Colorado Department of Revenue, or other such tribunal having jurisdiction, using all judicial, appellate, and extraordinary proceedings available.~~

Deleted: Upon appeal to the District Court the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director.

~~(D) A taxpayer who fails to timely appeal the final decision of the Finance Director pursuant to this section shall be forever enjoined from protesting or appealing the same or claiming a refund of amounts denied or paid to the City pursuant thereto.~~

Section 15. Section 4-1-29, subsection (B), W.M.C., is hereby AMENDED to read as follows:

4-1-29: PERPETUANCE OF LIEN:

(B) Any person who purchases or repossesses real or personal property upon which a lien has attached shall be liable for the payment of such total tax liability up to the value of the property taken or acquired.

Deleted: been filed by the Finance Director for total tax liability

Section 16. Section 4-1-33, subsection (C), W.M.C., is hereby AMENDED to read as follows:

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

(C) Levy and Distraint.

(1) Levy and distraint 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.

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(2) Any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made shall, upon demand of the City, surrender such property or rights to property or discharge such obligation to the City, except such part of the property or rights to property as is, at the time of such demand, subject to an attachment or execution under any judicial process.

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(3) A person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the City, is liable in person and estate to the City in a sum equal to the value of the

property or rights to property not so surrendered, but not exceeding the amount of the total tax liability for the collection of which such levy has been made, together with costs of collection and interest on such sum at the rate determined pursuant to Section 4-1-22 from the date of such levy. Any amount, other than costs and additional interest, recovered under this Paragraph shall be credited against the total tax liability for the collection of which this levy was made.

(4) A person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made who, upon demand by the City, surrenders the property or rights to property, or discharges the obligation to the City, or who pays a liability under Paragraph 3 of this Subsection is discharged from any obligation or liability of the delinquent taxpayer with respect to such property or rights to property arising from the surrender or payment.

(5) As used in this Subsection, "person" includes an officer or employee of a corporation; an officer, member, manager, or employee of a limited liability company; an officer, employee, or elected official of the State of Colorado, its departments or institutions, and the political subdivisions thereof; or a member or employee of a partnership, who as such officer, member, manager, elected official, or employee, is under a duty to surrender the property or rights to property, or to discharge the obligation.

Section 17, Section 4-1-36, subsections (A) and (B), W.M.C., are 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) No refund of tax ~~paid to a retailer by a purchaser shall be issued to such purchaser~~ 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.

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(2) No refund of overpayment from returns shall be issued unless a Notice of Overpayment is submitted to the City on or before thirty (30) days after the date of such Notice of Overpayment.

(3) No other 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. 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, ~~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.~~

Deleted: or a Certificate of Occupancy is issued for a construction project requiring a building permit,

(1) 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 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) 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.

Section 18, Section 4-2-2, subsection (U), paragraph (2), W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBPARAGRAPH (i):

4-2-2: WORDS AND PHRASES DEFINED: Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

- (2) "Price" or "Purchase Price" includes:
- (a) The amount of money received or due in cash and credits.
 - (b) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
 - (c) Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
 - (d) The total price charged on credit sales, including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
 - (e) Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.
 - (f) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
 - (g) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
 - (h) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.
 - (i) Charges for items or services exempt from or not subject to tax included in the purchase price and not separately stated.

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Section 19, Section 4-2-2, subsection (X), paragraph (2), W.M.C., is hereby AMENDED to read as follows:

4-2-2: WORDS AND PHRASES DEFINED: Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

- (X) **"Purchase" or "Sale"** means:
- (2) The terms "purchase" and "sale" do not include:
- (a) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership;
 - (b) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;
 - (c) The transfer of assets of shareholders in the formation or dissolution of professional corporations;
 - (d) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
 - (e) A transfer of a partnership interest;

- (f) The transfer in a reorganization qualifying under Section 368(a)(1) of the "Internal Revenue Code of 1954", as amended;
- (g) The formation of a partnership or limited liability company by the transfer of assets to the partnership or limited liability company or transfers to a partnership or limited liability company in exchange for proportionate interests in the partnership or limited liability company;
- (h) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (i) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- (j) The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (k) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this paragraph (k) shall constitute a sale. For the purposes of this paragraph (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

Section 20. Section 4-2-7, subsection (A), paragraph (3), W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBPARAGRAPH (c):

4-2-7: EXEMPTIONS FROM USE TAX:

(A) The tax levied by Section 4-2-3(B) shall not apply to the following:

- (1) Tangible personal property which is exempt from the sales tax pursuant to Section 4-2-6.
- (2) The storage of construction materials purchased on or after January 1, 1986.
- (3) Tangible personal property purchased by a taxpayer during a time when the taxpayer was located outside the City and which:

- (a) Was purchased on or after January 1, 1986, and was used by the taxpayer for a period of at least 3 years prior to the taxpayer's relocation to the City; or

- (b) Was first used inside the City on or after January 1, 1994 and was used by the taxpayer for a period of at least 6 months prior to the taxpayer's relocation to the City.

- (c) For purposes of this Subsection, the term "relocation" means the establishment of a fixed, permanent building, store, office, salesroom, or other place of business within the City by a person who was not previously engaged in business in the City, or who was engaged in business in the City on a transient basis. "Relocation" shall not include the use of construction equipment or other property in the City by a person located outside the City, or

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the transfer of property from a location outside the City to an existing location within the City.

- (4) Automotive vehicles if the owner is or was, at the time of purchase, a nonresident of the City who purchased the vehicle for use outside the City, and if the vehicle was previously registered, titled, and licensed outside the City.

Section 21. Section 4-2-8, W.M.C., is hereby AMENDED to read as follows:

4-2-8: SECURED SALES TRANSACTIONS: Whenever taxable tangible personal property is sold under a lease-purchase agreement, capital lease, or other conditional sales contract whereby the seller retains title as security for all or part of the price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the price, the full price of such property shall be reported for the period in which the sale was made. No refund or credit shall be allowed to either party to the transaction in case of repossession.

Section 22. Section 4-2-9, subsection (A), paragraph (1), W.M.C., is hereby AMENDED to read as follows:

- (1) Estimated prepayment. The estimated cost of construction materials shall be calculated by multiplying the total valuation of the construction project entered on the building permit by the City Building Division, by fifty percent (50%). Use tax on such estimated cost of construction materials shall be paid at the time the building permit is issued. Deleted: project, Upon the later of the date of final inspection by the building official or the date of issuance of a certificate of occupancy, the taxpayer shall compute the use tax due on the actual cost of construction materials and make a return of any tax due in excess of the estimated prepayment pursuant to Section 4-1-7. Use tax on the actual cost of materials may be subsequently determined through audit. If use tax is prepaid, interest on any tax deficiency related to construction materials shall be computed from the later of the date of final inspection by the building official or the date of issuance of the certificate of occupancy.

Section 23. Section 4-2-18, W.M.C., APPEAL, is hereby DELETED IN ITS ENTIRETY AND THE INDEX AMENDED ACCORDINGLY.

Section 24. Section 4-3-2, W.M.C. is hereby AMENDED to read as follows:

4-3-2: DEFINITIONS: Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

(A) "Admissions Charge" means:

- (1) Any charge for the right or privilege of admission to:
- (a) a performance of a motion picture open to the public; or
 - (b) an establishment open to the public which is licensed to sell, dispense or serve fermented malt beverages (3.2% beer) or alcoholic beverages (liquor) pursuant to State Law, or;
 - (c) any public display of live animals and/or plants, including insects or fish.
- (2) Any charge for the right or privilege to the use of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including charges for bowling by the line.

(3) Admissions charge includes the value of free passes and complimentary admissions tickets provided by the operator.

~~(B) "Charitable Organization" for purposes of this Chapter, shall include any definition of "Charitable Organization" included in other Chapters of this Title.~~

~~(C) "Gross Sales" means the total amount received in money, credit, property or other consideration valued in money for all admissions charges.~~

Deleted: B

~~(D) "Open to the Public" means any place or event or activity the admission or access to which is open to members of the public upon payment of a charge or fee.~~

Deleted: C

~~(E) "Operator" means any person, whether owner, operator, lessee or any other person, who charges or causes to be charged:~~

Deleted: D

- (1) Admission to a performance of a motion picture theater open to the public.
- (2) Admission to an establishment licensed to sell, dispense, or serve fermented malt beverages (3.2% Beer) or alcoholic beverages (liquor) pursuant to State Law; or
- (3) Admission to a bowling alley or fees for the utilization, lease or rental of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including charges for bowling by the line.
- (4) Admission to any public display of live animals and/or plants including insects or fish.

~~(F) "Price" means the aggregate value in money or any thing or things paid or delivered or promised to be paid or delivered for admissions charges.~~

Deleted: E

~~(G) "Public" means any individual, firm, copartnership, joint venture, corporation, society, club, league, association, joint stock company, 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, and the plural as well as the singular number.~~

Deleted: F

~~(H) "Purchase" or "Sale" means the acquisition or disposition for a price of:~~

Deleted: G

- (1) The right of privilege of admission to:
 - (a) a performance of a motion picture open to the public; or
 - (b) an establishment open to the public which is licensed to sell, dispense, or serve fermented malt beverages (3.2% beer) or alcoholic beverages (liquor) pursuant to State law; or
 - (c) any public display of live animals and/or plants, including insects or fish.
- (2) The right to the use of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including bowling by the line.

~~(I) "Return" for purposes of the Chapter shall include any definition of "return" included in other Chapters of this Title.~~

Deleted: H

~~(J) "Tax" means the admissions tax imposed by this Chapter.~~

Deleted: I

~~(K) "Vendor" means any operator as defined in Subsection (D) of this Section.~~

Deleted: J

Section 25. Section 4-3-3, W.M.C., is hereby AMENDED to read as follows:

4-3-3: EXCISE TAX BASED ON ADMISSIONS: There is hereby imposed an excise tax of three percent (3%) of the price paid by any person or charged by any vendor, for admissions charges as defined herein, operating within the limits of the City of Westminster. Said excise tax is imposed upon the purchaser. Every vendor shall collect the tax and remit it to the City. Said excise tax is in addition to all other taxes imposed by law.

Section 26. Section 4-3-4, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBSECTION (D):

4-3-4: EXEMPT TRANSACTIONS: The following persons, including vendors, are exempt from the payment or collection of the tax levied by this Chapter:

(D) Any other person who pays an admissions charge which the City is prohibited from taxing under the Constitution or laws of the United States, or of the State of Colorado.

Section 27. Section 4-4-1, W.M.C., is hereby AMENDED to read as follows:

4-4-1: WORDS AND PHRASES DEFINED: Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

(A) "Charitable Organization" for purposes of this Chapter, shall include any definition of "Charitable Organization" included in other Chapters of this Title.

(B) "Gross Sales" means the total amount received in money, credit, property or other consideration valued in money for all rooms or accommodations.

Deleted: A

(C) "Price" means the aggregate value in money or any thing or things paid or delivered or promised to be paid or delivered for rooms or accommodations.

Deleted: B

(D) "Purchase" or "Sale" means the acquisition or disposition for a price of the right to use rooms or accommodations.

Deleted: C

(E) "Return" for purposes of this Chapter shall include any definition of "return" in other Chapters of this Title.

Deleted: D

Deleted: c

(F) "Room or Accommodation" means a regular sleeping room or unit, a meeting room, display room, banquet room or other special room for which a charge is made.

Deleted: E

(G) "Tax" means the accommodation tax imposed by this Chapter.

Deleted: F

(H) "Vendor" means a motel, hotel, apartment hotel, lodging house, guest house, guest ranch, or any other place which provides sleeping rooms or facilities, offering rooms and accommodations for a consideration.

Deleted: G

Section 28. Section 4-4-2, Subsection (B), W.M.C., is hereby AMENDED to read as follows:

4-4-2: TAX ON ACCOMMODATIONS; COLLECTION:

(B) The tax specified in this Section is imposed upon the purchaser. Every vendor shall collect the tax and remit it to the City.

Deleted: vendor

Deleted: The

Deleted: Finance Director

Section 29. Section 4-4-3, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBSECTION (D):

4-4-3: EXEMPT TRANSACTIONS: The following transactions shall be exempt from the accommodations tax imposed under Section 4-4-2:

(D) All sales which the City is prohibited from taxing under the Constitution or laws of the United States, or the State of Colorado.

Section 30. This ordinance shall take effect January 1, 2011.

Section 31. 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 13th day of September, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of September, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, September 13, 2010
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (May 10, 2010)
- 3. New Business**
 - A. Special Legal Counsel for the Westminster Mall Litigation
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, MAY 10, 2010 AT 7:34 P.M.

ROLL CALL

Present at roll call were Vice Chairperson Dittman and Board Members Briggs, Kaiser, and Major. Chairperson McNally and Board Members Lindsey and Winter were absent and excused. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Kaiser, to approve the minutes of the meeting of March 22, 2010 with no additions or corrections. The motion carried unanimously.

PUBLIC HEARING ON FINAL 2009 HOUSEKEEPING SUPPLEMENTAL APPROPRIATION

At 7:34 p.m. the Vice Chairman opened a public hearing to consider the final 2009 budget amendment for the Westminster Economic Development Authority. The Executive Director reported that staff was present to answer any questions.

The Board had no questions and no one in the audience wished to speak. The Vice Chair closed the hearing at 7:35 p.m.

RESOLUTION NO. 120 AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO 2009 BUDGET

It was moved by Board Member Major, seconded by Kaiser, to adopt Resolution No. 120 authorizing a supplemental appropriation to the 2009 budget. The motion carried with all members voting affirmatively at roll call.

ADJOURNMENT

There being no other business to be considered, the meeting adjourned at 7:36 p.m.

ATTEST:

Secretary

Vice Chairperson

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
September 13, 2010



SUBJECT: Special Legal Counsel for the Westminster Mall Litigation

Prepared By: Susan Grafton, Economic Development Manager
Jeff Betz, Assistant City Attorney

Recommended Board Action

Authorize the Executive Director to enter into an agreement with Murray Dahl Kuechenmeister & Renaud, LLP for work related to the *Westminster Mall Company, et al. v. City of Westminster and WEDA* litigation.

Summary Statement

- Westminster Mall Company and other mall owners filed suit against the City and the Westminster Economic Development Authority (“WEDA”) in Jefferson County District Court alleging, among other things, that the City and WEDA abused their urban renewal authority in moving forward with their redevelopment efforts related to the Westminster Mall. The suit includes claims for inverse condemnation and seeks an injunction.
- Mr. Murray has served as special legal counsel in the past in connection with the City’s various urban renewal projects, including the Westminster Center Urban Reinvestment Project.
- City Council and the Authority have previously found merit in approving special legal counsel to assist the City Attorney’s Office as needed, rather than expanding staff.

Source of Funds: 2010 WEDA Budget – Westminster Center Urban Reinvestment Project

Policy Issue

Should WEDA retain special legal counsel to assist the City and the Westminster Economic Development Authority in connection with the Westminster Mall Company litigation?

Alternative

Do not retain this type of special legal counsel assistance or seek such assistance from another source. This alternative is not recommended given the need for specialized legal services in urban renewal law and potential eminent domain matters related to the redevelopment of the Westminster Mall site. Mr. Murray's proposed fee of \$200 per hour is well within the Denver area market for such services.

Background Information

Malcolm Murray is a partner in the firm of Murray Dahl Kuechenmeister & Renaud LLP. His practice specializes in urban renewal and land use matters and eminent domain litigation for both public and private entities. In addition to the Westminster Economic Development Authority, he currently advises the Denver Urban Renewal Authority, the Lakewood Reinvestment Authority, the Steamboat Springs Redevelopment Authority, and the Parker Authority for Reinvestment on urban renewal matters. Mr. Murray is a graduate of the University of Denver College of Law and has a M.A. in Government from Georgetown University and a B.S. from the United States Military Academy.

Mr. Murray's expertise is in redevelopment projects pursuant to the Colorado urban renewal law. Mr. Murray has been providing a significant amount of legal work to the City and WEDA related to the negotiation and drafting of one or more redevelopment agreements with the redeveloper for the Westminster Urban Reinvestment Project. Therefore, he is very familiar with the facts and issues involved in this litigation.

Section 31-25-112 of the Colorado Urban Renewal Law expressly authorizes the City to cooperate with and aid and financially assist the Westminster Economic Development Authority in connection with the planning and undertaking of the redevelopment of the Westminster Mall site through the Authority's Westminster Urban Reinvestment Project, including the defense of this lawsuit. The Board has previously been provided with a confidential memorandum regarding this litigation.

Respectfully submitted,

J. Brent McFall
Executive Director

WESTMINSTER HOUSING AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, September 13, 2010
7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (June 14, 2010)
- 3. New Business**
 - A. Resolution No. 40 re Accepting the Assignment of \$3,000,000 of Private Activity Bond Allocation from the City of Westminster
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, JUNE 14, 2010 AT 7:38 P.M.

ROLL CALL

Present at roll call were Housing Authority Chairperson McNally and Members Briggs, Kaiser, Major, and Winter. Vice Chairperson Dittman and Member Lindsey were absent. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

MINUTES OF PRECEDING MEETING

Member Briggs moved, seconded by Kaiser, to accept the minutes of the meeting of October 26, 2009 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 39 AUTHORIZING HOUSING CONTRACT WITH US DEPARTMENT OF HUD

It was moved by Member Kaiser, seconded by Major, to adopt Resolution No. 39 authorizing the Executive Director to execute a Project-based Section 8 Housing Assistance Payments Contract for a five-year term with the U.S. Department of Housing and Urban Development. At roll call, the motion passed unanimously.

ADJOURNMENT:

There being no further business to conduct, it was moved by Kaiser, seconded by Major to adjourn. The motion carried and the meeting adjourned at 7:40 p.m.

Chairperson

ATTEST:

Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
September 13, 2010



SUBJECT: Resolution No. 40 re Accepting the Assignment of \$3,000,000 of Private Activity Bond Allocation from the City of Westminster

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended Board Action

Adopt Resolution No. 40 accepting the assignment from the City of Westminster of \$3,000,000 of private activity bond allocation for 2010 for the qualified purposes set forth in the assignment, and authorize the Chair to execute the necessary documents.

Summary Statement

- The City of Westminster's 2010 private activity bond (PAB) allocation is \$4,919,445. The City has assigned \$3,000,000 of this allocation to the Westminster Housing Authority.
- The Westminster Housing Authority needs to finance rehabilitation expenses for Westminster Commons, a 130-unit low-income senior housing apartment complex. The PAB allocation can be used for this purpose.
- The attached Resolution has been reviewed and approved by the Authority Attorney's Office and is ready for the Board of Commissioners' formal action. This Resolution will accept the PAB allocation from the City.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Authority accept the assignment of the City's 2010 private activity bond?

Alternative

Take no action, and refuse to accept the assignment. This option is not recommended; as the Westminster Housing Authority needs the assignment in order to finance rehabilitation work at Westminster Commons.

Background Information

The Authority owns Westminster Commons, a 130-unit senior housing complex. The Commons is thirty years old and is in need of substantial reinvestment. Staff has been studying various means of financing this reinvestment and private activity bonds will most likely be a part of the financing solution. Therefore, the Authority is in need of this PAB capacity assigned by the City. Upon receipt of the assignment, the Authority will make this financing option available to a housing provider who would undertake the rehabilitation of Westminster Commons. Consideration of an alternative housing provider has been discussed with the Housing Authority and will be brought back for formal consideration this fall.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **40**

INTRODUCED BY COMMISSIONERS

SERIES OF 2010

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF THE
ASSIGNMENT OF \$3,000,000 OF THE CITY OF
WESTMINSTER'S PRIVATE ACTIVITY BOND ALLOCATION
FOR 2010 BY THE AUTHORITY**

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Westminster, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling in the amount of \$3,000,000 (the "2010 Allocation"); and

WHEREAS, the Westminster Housing Authority (the "Authority") has requested that the City assign the 2010 Allocation to the Authority pursuant to Section 24-32-1706 of the Allocation Act to be used to issue bonds to finance the acquisition, rehabilitation and equipping of a rental housing project to be located in the City (the "Project"); and

WHEREAS, the Authority desires to accept the assignment of the 2010 Allocation by the City; and

WHEREAS, there has been presented to the Board of Commissioners (the "Board") the form of an Assignment of Allocation (the "Assignment").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER HOUSING AUTHORITY:

Section 1. The Authority hereby accepts the attached assignment of the 2010 Allocation by the City for use solely in connection with the financing of the Project.

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

Section 3. The officers of the Authority shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution and the Assignment, including making a determination to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose pursuant to Section 24-32-1706(3)(c), C.R.S.

Section 4. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. All action not inconsistent with the provisions of this Resolution heretofore taken by the Board and the officers of the Authority directed toward the assignment of the 2010 Allocation and the authorization of the Assignment hereby are ratified, approved and confirmed.

Section 6. This Resolution shall be in full force and effect upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this September 13, 2010.

(SEAL)

Chair

Attest:

APPROVED AS TO LEGAL FORM:

Secretary

City Attorney's Office

ASSIGNMENT OF ALLOCATION

THIS ASSIGNMENT (the "Assignment") dated this 13th day of September, 2010, is between the City of Westminster, Colorado, a home rule municipality (the "Assignor"), and the Westminster Housing Authority, Colorado, a body corporate and politic (the "Assignee").

RECITALS

A. The Assignee intends to finance a project consisting of the acquisition, rehabilitation and equipping of a rental housing project to be located in the City of Westminster, Colorado (the "Project"). The Project will be designed to qualify as a "project" within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the "Act").

B. The Assignee intends to provide for the issuance of its Multi-family Housing Revenue Bonds in the maximum aggregate principal amount of \$3,000,000 (the "Proposed Bonds"), pursuant to the provisions of the Act for the purpose of financing the Project.

C. The Assignee, pursuant to a resolution adopted by the Board of Commissioners of the Assignee on September 13, 2010, declared its intention to take all steps necessary or advisable to effect the issuance of the Proposed Bonds for the financing of the Project.

D. The Assignee has requested that the Assignor assign to the Assignee \$3,000,000 of the Assignor's 2010 allocation under the bond ceiling for the State of Colorado and its issuing authorities (the "State Ceiling") computed under Section 146(d) of the Internal Revenue Code of 1986 (the "Code") as provided for the Assignor as a "designated local issuing authority" under part 17 of article 32 of title 24, Colorado Revised Statutes (the "Allocation Act"), for use in connection with the financing of the Project.

E. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, \$3,000,000 of the Assignor's 2010 allocation from the State Ceiling, which allocation the Assignor has committed and reserved for the Project.

ASSIGNMENT

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee, the Assignor's 2010 allocation from the State Ceiling for private activity bonds in an amount equal to \$3,000,000 for the purpose of issuing the Proposed Bonds to finance the Project. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the "Statewide Balance" as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2010, or (b) Section 24-32-1706(3)(c), C.R.S., applies.

2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.

3. The Assignee hereby:

a. accepts the assignment of \$3,000,000 of the Assignor's allocation from the State Ceiling described above; and

b. agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such allocation.

4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute the debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF WESTMINSTER, COLORADO,
as Assignor

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

WESTMINSTER HOUSING AUTHORITY,
as Assignee

Chair

(SEAL)

ATTEST:

Secretary