



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. Employee Service Awards Presentation
 - B. ICMA Certificate of Distinction in Performance Measurement Award Presentation
 - C. National Safety Council's "Alive at 25" National Instructor of the Year Recognition
 - D. Red Ribbon Week Proclamation
7. **Citizen Communication (5 minutes or less)**

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

8. **Consent Agenda**
 - A. Financial Report for September 2007
 - B. Quarterly Insurance Report: July – September 2007
 - C. Purchase of Four Tandem Cab and Chassis
 - D. 72nd Avenue Streetscape – Planning and Engineering Design Services
 - E. Second Reading Councillor's Bill No. 55 re Amendment to the 2008 Adopted Budget
 - F. Second Reading Councillor's Bill No. 56 re Economic Development Agreement with The Bedrin Organization
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
 - A. Public Hearing re Amended Service Plan for Hyland Village Metropolitan Special District
 - B. Resolution No. 39 re Hyland Village Metropolitan Special District Service Plan Amendments
 - C. Resolution No. 40 re Compliance Hearing for the Accent Village Annexation
 - D. Councillor's Bill No. 58 re Economic Development Agreement with McKesson Information Solutions
 - E. Revised Employment Agreement with John A. Stipech
 - F. Councillor's Bill No. 59 re Municipal Judge Salary
 - G. Councillor's Bill No. 60 re Municipal Code Modifications to Chapter 24 of Title I Personnel Management
 - H. Councillor's Bill No. 61 re Municipal Code Modifications to Chapter 11 of Title VIII Stormwater Quality
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session**
 - A. City Council
13. **Adjournment**

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

20-Years

Pam Darwin has spent most of her 20-year career with the City of Westminster in Parks, Recreation & Libraries. She is currently a Secretary, and is very knowledgeable about the City and all Recreation events and classes. She especially enjoys walking her dog, and watching her grandchildren grow. She feels the time she gets to spend with each of them is priceless. She also enjoys traveling, cooking and eating what she cooks! Pam spends a great deal of time visiting a local nursing home, getting to know the residents and learning about their lives. She feels the stories and history of people from earlier generations is fascinating.

Harrison Davis III grew up in Hampton, Virginia. He graduated from the University of Virginia in 1974. Harrison was drafted in the 4th round and played professional football for the San Diego Chargers. Harrison also spent 5 years in Algeria working on a liquefied natural gas processing plant for Bechtel International Corporation of San Francisco. Harrison moved to Colorado as a supervisor for the Western Company of North America. Harrison joined the City in November 1987 as a Firefighter II and promoted to Fire Paramedic in November of 1990, a position he currently holds. Harrison completed his Masters Degree in Instructional Technology in 2003 and is also finishing his 18th year with the American Heart Association as a Regional Administrator. Harrison is married to Stacy and has 4 children, Harrison IV, Jordan, Jaelen, and Amanda.

JC Engdahl was hired as a Firefighter I in November 1987 and promoted in March of 1993 to his current position as Fire Engineer. His responsibilities as an engineer are to safely drive the fire apparatus to all fire and medical emergencies as well as maintain all the equipment on the truck making sure each piece is operable. JC currently works on the C Shift crew, at Fire Station 3. JC has been a member of the Department's fitness committee since its inception, assisting with the annual fitness testing and recordkeeping for his shift. JC also maintains and repairs the lanterns on all fire apparatus. He enjoys playing volleyball and drag racing his 1969 Dodge Charger when off duty.

Mike Lynch was hired as a Firefighter II in November, 1987, and promoted through the ranks to Engineer in July of 1991 and to Lieutenant in May 2004, a position he currently holds. Mike has been a member of the Apparatus Committee for 12 years, assisting the department with the procurement of major fire apparatus. The Westminster Public Safety Recognition Foundation has presented Mike with 2 awards. In 2004, he received the Lifesaving Medal for his actions at an early morning fire in July 1997, when by ladder he saved the lives of three residents that were trapped on an upper floor of an apartment building that was on fire. In 2003, Mike received a Lifesaving Pin for his assistance in rescuing a drowning victim at Ketner Reservoir. While off duty, Mike's hobbies include golf, working out and spending time with his family, wife Melanie and two daughters, Kellie and Kendra.

Tim Foster was a Volunteer Firefighter with the City for two and a half years before he was hired as a Firefighter II in November 1987. Prior to employment with the City, he worked for the Jefferson County Sheriff's Department. Tim promoted to Fire Engineer in 1992, a position he currently holds. Tim is a member of the Jefferson County Haz-mat Team, the Fire Department Fitness Committee and the Fire Department Honor Guard. Tim is assigned to Station 4, B Shift crew.

John O'Brien was hired by the City of Westminster as a Firefighter II in 1987. He promoted through the ranks to Fire Engineer, Fire Prevention Specialist and in 1999 he was promoted to Fire Captain, a position he currently holds. Captain O'Brien is currently assigned to A Shift, and works out of Fire Station 1. John's education includes a Bachelor's Degree, Double Major in Business Administration and Sociology, as well as an Associates Degree in Fire Science Technology. John is currently a member of the Fire Department Safety Committee, a Firefighter Academy Instructor, and a Logistics Manager with FEMA Urban Search and Rescue. John's past accomplishments include being a member of the Department's Dive Team, which participated in the initial operational development of the multi-jurisdiction Metro Dive Rescue Team. When off duty, John spends time with his wife Wendy and two boys, Daniel and Andrew. Until recently, John had been heavily involved with the sport of Rugby as a player, coach, and administrator.

Chris Redig joined the Westminster Fire Department as a Volunteer Firefighter in 1984 until he was hired as a career firefighter in November 1987. Chris is state certified as a paramedic and advanced his career to his present position of Fire Engineer. As a Fire Engineer, Chris is responsible to drive the fire apparatus to all fire and medical emergencies, as well as maintain all the equipment on the truck making sure every piece is operable. Chris was nominated and honored to receive the Fire Department's Life Saving medal for responding to an apartment building fire in July 1997 where he rescued an elderly woman and a child from their burning apartment. Chris is proud to be a Colorado native of 52 years, having been born, raised and still residing in Arvada. Chris has two children, a 19-year-old daughter in her second year of college and a 17-year-old son in high school. In his spare time, he enjoys bike riding, working out at the gym, cooking and most of all gardening.

25-Years

Michelle Shjandemaar started her career in 1982 as a Student Trainee in Fire Administration working out of Station #1. She worked in Fire Administration for 11 years, and then switched over to the world of Information Technology where she has been for 14 years and counting. She is currently a 20-hour Systems Analyst I and a 16-hour Help Desk Technician, which keeps her busy solving problems and answering countless questions. Michelle enjoys the mountains, traveling and spending time with family and friends. Her spouse, Dan Shjandemaar also works for the City. Together, they have a daughter, Marissa.

35-Years

Jack Rudey is currently the Public Works & Utilities Utility Supervisor. In 1972, he started as a Field Operation Maintenance worker. He has helped to reorganize Utility field operations to include the in-house construction line replacement crew, which is still in place today. Over his 35-year career, he has watched the City of Westminster grow from under 20,000 to just over 100,000 residents. Jack enjoys riding motorcycles, camping, boating, outdoor activities, and traveling to events with family and friends.



WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, Human Resources Manager
Dee Martin, Human Resources Administrator

Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20, 25 and 35 years of service with the City, and provide special recognition to the City's 25-year employees with the presentation of a \$2,500 bonus.

Summary Statement

- City Council is requested to present service pins and certificates of appreciation to those employees who are celebrating their 20th, 25th, and 35th anniversaries of employment with the City.
- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In 1986, City Council adopted a resolution to award individuals who have given 25 years of service to the City with a \$2,500 bonus to show appreciation for such a commitment. Under the program, employees receive \$100 for each year of service, in the aggregate, following the anniversary of their 25th year of employment. The program recognizes the dedicated service of those individuals who have spent most, if not all, of their careers with the City.
- There is one employee celebrating 25 years of service, and she will receive a check for \$2,500, less income tax withholding following her 25th anniversary date.
 - Councillor Dittman will present the 35-year certificate
 - Mayor McNally will present the 25-year certificate
 - Councillor Major will present the 20-year certificates

Expenditure Required: \$ 2,500

Source of Funds: Utility Fund -Information Technology Department \$2,500

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with a certificate and service pin:

Pam Darwin	Parks, Recreation & Libraries	Secretary
Harrison Davis	Fire	Fire Paramedic
J.C. Engdahl	Fire	Fire Engineer
Tim Foster	Fire	Fire Engineer
Michael Lynch	Fire	Fire Lieutenant
John O'Brien	Fire	Fire Captain
Chris Redig	Fire	Fire Engineer

The following 25-year employee will be presented with a certificate, service pin and check for \$2,500, minus amounts withheld for Federal and State income taxes after her anniversary date:

Michelle Shjandemaar	Information Technology	Systems Analyst I
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The following 35-year employee will be presented with a certificate and service pin:

Jack Rudey	Public Works & Utilities	Utility Supervisor
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On October 24, 2007, the City Manager will host an employee awards luncheon at which time 2 employees will receive their 15 year service pin, 7 employees will receive their 10 year service pin, and 6 employees will receive their 5 year service pin, while recognition will also be given to those who are celebrating their 20th, 25th, and 35th anniversary. This is the fourth luncheon for 2007 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees is 330 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Biographies of each individual being recognized are attached.

The recognition of employee's years of service addresses Council's Strategic Plan goal of Financially Sustainable City Government as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their valuable employee resource.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Presentation of the International City and County Management Association Certificate of Distinction in Performance Measurement Award

Prepared By: Aric Otzelberger, Management Analyst

Recommended City Council Action

Present the International City and County Management Association (ICMA) Certificate of Distinction in Performance Measurement Award to members of the City's Performance Measurement Team.

Summary Statement

- The City of Westminster's performance measurement program recently received the Certificate of Distinction Award from the International City and County Management Association (ICMA). The Certificate of Distinction Award recognizes local governments whose performance measurement programs exceed the standards established by the ICMA Center for Performance Measurement.
- The City of Westminster was selected for the award based on its utilization of performance measurement in decision making, strategic planning, employee training, and public reporting. The city's performance measurement program was also selected based on its commitment to accountability, transparency, and quality service delivery.
- This is the third time that the City of Westminster's performance measurement program has been awarded a Certificate of Distinction from ICMA for its performance measurement program. The City was one of 24 cities nationwide, and the only jurisdiction in Colorado, to receive this award.
- Councillor Price will present the award to members of the City's Performance Measurement Team.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified.

Alternative

None identified

Background Information

For the third time, the City of Westminster's performance measurement program has been recognized by the International City and County Management Association (ICMA) with a Certificate of Distinction. This award recognizes local governments whose performance measurement programs exceed the standards established by the ICMA Center for Performance Measurement (CPM) for the utilization of performance measurement in the management of local government operations. The criteria for the Certificate of Distinction Award were determined by CPM's Steering Committee and staff. Communities receiving the Certificate of Distinction Award report performance data to the public through budgets, newsletters, and information provided to elected officials. These communities also perform staff training in performance measurement and perform data verification to ensure performance data's reliability. In addition, communities receiving the Certificate of Distinction utilize performance measurement in management decision making and strategic planning. Finally, these communities share their performance measurement knowledge with other local governments through presentations, site visits, and other networking.

Performance measurement is one of the tools the City of Westminster uses to judge how well it is managing its operations. Performance measurement acts much like a scorecard, reflecting what progress the City has made in the past year toward achieving its goals, specifically those outlined in the City's Strategic Plan. Performance measurement involves clearly defining program purposes and goals, establishing objectives to meet those goals, developing quantitative and qualitative measures to monitor and evaluate progress, and reporting results to City Staff, City Council and the public. The City gathers performance measurement data through internal performance measures that describe City goals and show year-to-year trends for City programs, divisions and projects. The City also gathers performance measurement data through the biennial Citizen Survey and through ICMA's Center for Performance Measurement, both of which give the City an opportunity to compare its operations to local governments nationwide. The primary venue for reporting performance measurement results is the City's annual performance measurement report which is available on-line, entitled "Take A Closer Look: How Performance Measures Build A Better City." Performance measurement supports the City's commitment to accountability, open communication, and continuous improvement.

This award was presented to the City on October 7 at the annual ICMA conference held in Pittsburgh, PA.

Members of the City's Performance Measurement Team will be present Monday evening to accept this award from City Council.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Recognition of the National Safety Council's "Alive at 25"
National Instructor of the Year

Prepared By: Mike Cressman, Deputy Chief of Police
Al Wilson, Police Commander

Recommended City Council Action

Recognize Senior Police Officer Phillip Maimone's achievement as the recipient of the National Safety Council's "Alive at 25" National Instructor of the Year.

Summary Statement

- In 2004, after several tragic accidents involving young drivers, the Westminster Police Department partnered with the Colorado State Patrol in teaching The National Safety Council's "Alive at 25" program. This program is targeted towards drivers ranging from age 15 to 25 years of age.
- Senior Police Officer Phillip Maimone was selected as an instructor. As a result of his genuine passion for teaching this course, he quickly developed into one of the state's top instructors. In addition to this responsibility, he now "trains the trainers."
- In 2007, Officer Maimone was presented with The National Safety Council's "Alive at 25" National Instructor of the Year. He received this well deserved recognition at the National Safety Council Exposition in Chicago on October 13, 2007.
- Mayor McNally will recognize Officer Maimone.

Expenditure Required: \$0

Source of Funds: N/A

SUBJECT: National Safety Council's "Alive at 25" National Instructor of the Year
Page 2

Policy Issue

None Identified

Alternative

None Identified

Background Information

In 2004, as part of the Neighborhood Traffic Program, the Westminster Police Department Traffic Section began looking for a way to reach teen drivers. This effort began after the department experienced several tragic accidents involving young drivers. The Colorado State Patrol was teaching a four hour teen driving course sponsored by the National Safety Council and directed specifically at the 15 to 25 year old driver. The program was unique in that it was taught solely by officers and the course content involved instructing drivers in taking responsibility for their actions. The approach was unique in that previous courses focused on the mechanics of driving.

The Westminster Police Department partnered with the Colorado State Patrol (the first agency in Colorado to do so) and selected four Traffic Officers to teach the "Alive at 25" driving curriculum. Senior Police Motorcycle Officer Phil Maimone was selected as one of the first officers to instruct. After passing an unusually difficult instructor's class in December of 2004, Officer Maimone began instructing in 2005. Shortly after beginning as an instructor, student feedback indicated that Phil was well respected by students and that he was an exceptional instructor. To date, Phil has instructed more than 715 students in 33 classes.

The "Alive at 25" Course continued to grow throughout Colorado and in 2006, Phil began training other instructors to teach classes. He was immediately recognized as an exceptional instructor and became one of a handful of Instructor/Trainer Advisors for the more than 100 Colorado "Alive at 25" instructors. This required Phil to evaluate other instructors and to ensure the curriculum was being properly instructed. Phil has participated in several high school assemblies that are held as a kick-off to "Alive at 25" programs at the high school level. He has also attended many safety events, press events and car rallies to promote the program.

The "Alive at 25" Driving Program enjoyed significant success in reducing teen driving fatalities and in 2006, the Colorado State Patrol Program moved into a national effort. In 2006, Phil traveled to California to instruct other officers for six northern California Law Enforcement Agencies. In 2007, Phil traveled to South Dakota to train additional Law Enforcement officers as instructors. In February of 2006, Phil received an award as one of the top two instructors in Colorado. On October 13, 2007, in Chicago, Illinois at the National Safety Council Exposition, Phil was selected as the top "Alive at 25" Instructor nationwide. Phil has taken his personal vacation time to travel to many of the events he has attended and to instruct outside of Colorado. Phil is an exceptional individual who truly believes that the "Alive at 25" program makes a difference in saving lives.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 6 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Proclamation re Red Ribbon Week

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Proclaim October 23 through 31, 2007 to be Red Ribbon Week in the City of Westminster.

Summary Statement

- Red Ribbon Week is a nationally recognized campaign that serves as a vehicle to promote a drug-free America.
- As in the past, the City is joining the Westminster Area Community Awareness Action Team, local schools, churches, and area businesses to take a visible stand against drugs and to show a personal commitment to a drug-free lifestyle through the symbol of the Red Ribbon.
- Clifford "Skeet" Hartman, Eleanor Scott, Kathy Pascoe, and Mike Pascoe, members of the Westminster Area Community Awareness Action Team Board of Directors will be present to accept the proclamation from Councillor Lindsey.

Expenditure Required: \$0

Source of Funds: N/A

SUBJECT: Proclamation re Red Ribbon Week

Page 2

Policy Issue

None identified

Alternative

None identified

Background Information

Red Ribbon Week emerged from the creation of Camarena Clubs, which were established in 1985 to honor the memory of Drug Enforcement Agent Enrique “Kiki” Camarena, who was killed in the line of duty.

By wearing red ribbons during the last week in October, Americans demonstrate their ardent support of a healthy, drug-free lifestyle and pay homage to all men and women who have made the ultimate sacrifice in support of our nation’s struggle against drug trafficking and abuse.

Through its participation, the City of Westminster joins thousands of other municipalities in Colorado and the United States to present a unified and visible commitment to create a drug-free America.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, Alcohol, tobacco and other drug use by our youth is a threat to the future of our Nation; and

WHEREAS, It is imperative that a unified and visible commitment of prevention efforts by community members be continued to reduce the demand for illegal drugs; and illegal use of legal drugs; and

WHEREAS, The National Family Partnership and the Westminster Area Community Awareness Action Team (C.A.A.T.) are sponsoring the national, statewide and local Red Ribbon Campaign, offering citizens the opportunity to demonstrate their commitment toward helping children stay drug free as they grow up; and

WHEREAS, The Red Ribbon Campaign will be celebrated in communities across the nation during Red Ribbon Week, October 23 through October 31, 2007; and

WHEREAS, Westminster area school students and faculty, businesses, government, law enforcement, religious institutions, service organizations, youth, health providers, senior citizens, sports teams, and individuals will demonstrate their commitment to drug-free lifestyles by wearing and displaying red ribbons during this week-long campaign; and

WHEREAS, The City of Westminster commits its resources to ensure the success of the Red Ribbon Campaign.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, on behalf of the entire City Council and Staff, do hereby proclaim October 23 through October 31, 2007 as

RED RIBBON WEEK

in the City of Westminster, and encourage our citizens to participate in drug prevention education activities, making a visible statement that we are strongly committed to a drug-free community.

Signed this 22nd day of October, 2007.

Nancy McNally, Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



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

Recommended City Council Action

Accept the Financial Report for September as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, “budget” refers to the pro-rated budget. Revenues also include carryover where applicable. With the exception of the Sales and Use Tax Fund, the revenues are pro-rated based on 10-year historical averages. The Sales and Use Tax Fund pro-rated revenue has been changed to reflect the pattern of 2006 and expected pattern of 2007. This pattern has changed over time and a 10-year trend is no longer an appropriate comparison. Expenses are also pro-rated based on 5-year historical averages.

The General Fund revenues and carryover exceed expenditures by \$7,941,000. The following graph represents Budget vs. Actual for 2006 – 2007. The \$32,944,900 Refunding Certificates of Participation, Series 2007 has been omitted from the graph in order to more accurately reflect operations and to reflect a more appropriate comparison to 2006.

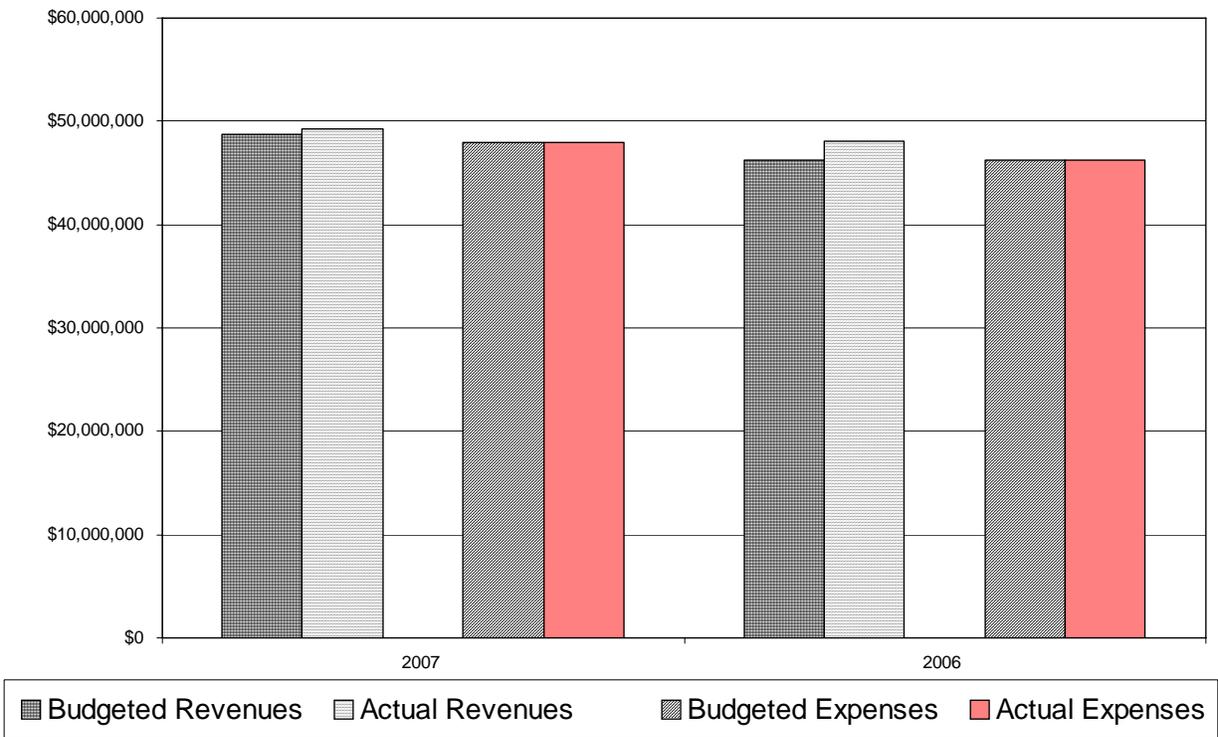
**General Fund
Budget vs Actual**



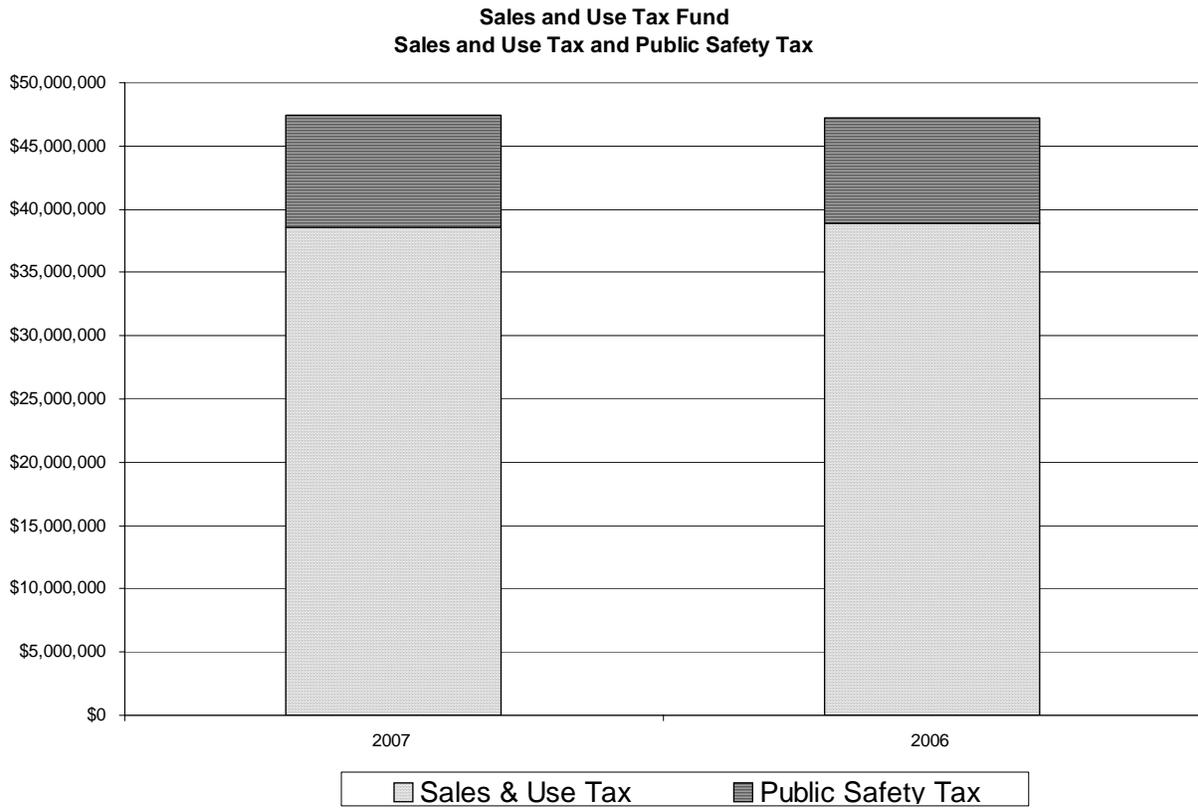
The Sales and Use Tax Fund's revenues and carryover exceed expenditures by \$1,302,000.

- On a year-to-date cash basis, sales & use tax returns are down 2.9%. This does not include a \$149,000 refund that was given.
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 9.4% from the prior year. Included in the Shopping Center report is \$455,000 of audit revenue from 2 different audits. It also includes Urban Renewal Area (URA) money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are down 4.0%. This reflects the significant contribution to Sales Tax the URAs are making.
- The top 50 Sales Taxpayers, who represent about 58% of all collections, were down 1.7% after adjusting for one time audit revenue and Urban Renewal Area money.
- The Westminster Mall is down 13% on a year-to-date basis. This includes an audit payment of \$138,000.
- Building Use Tax is down 4.3% year-to-date over 2006.

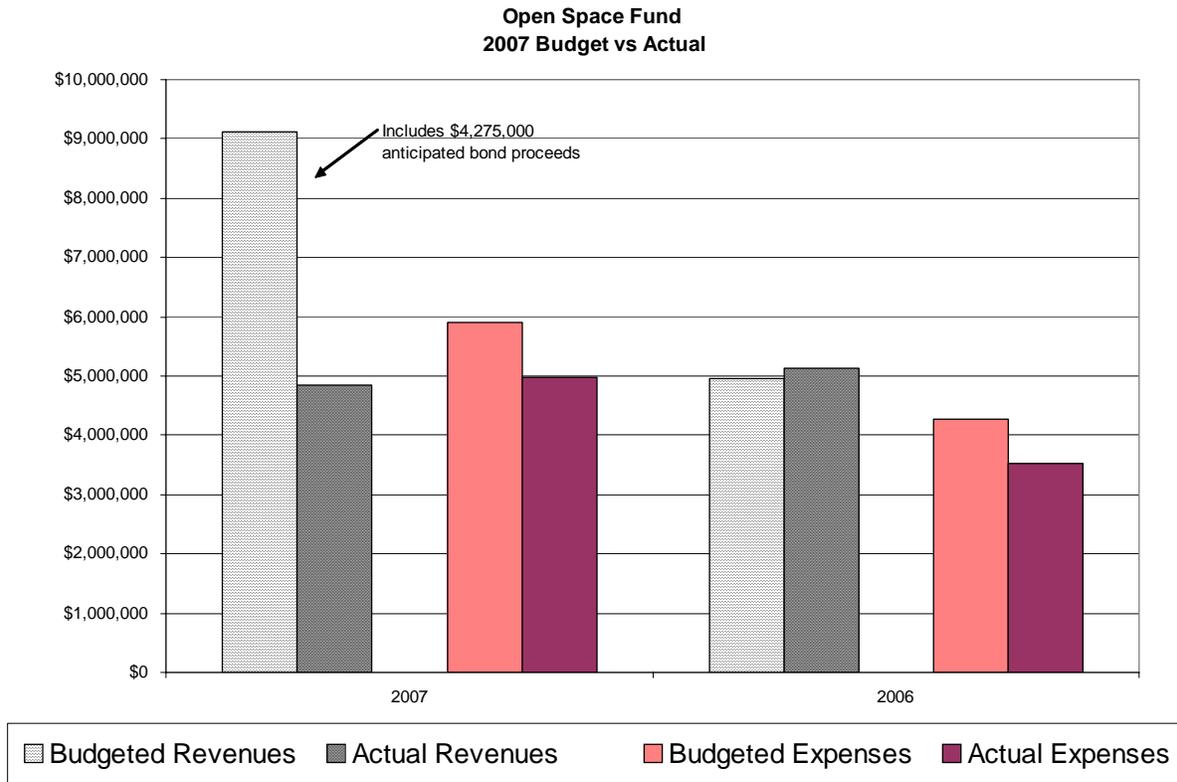
**Sales & Use Tax Fund
Budget vs Actual**



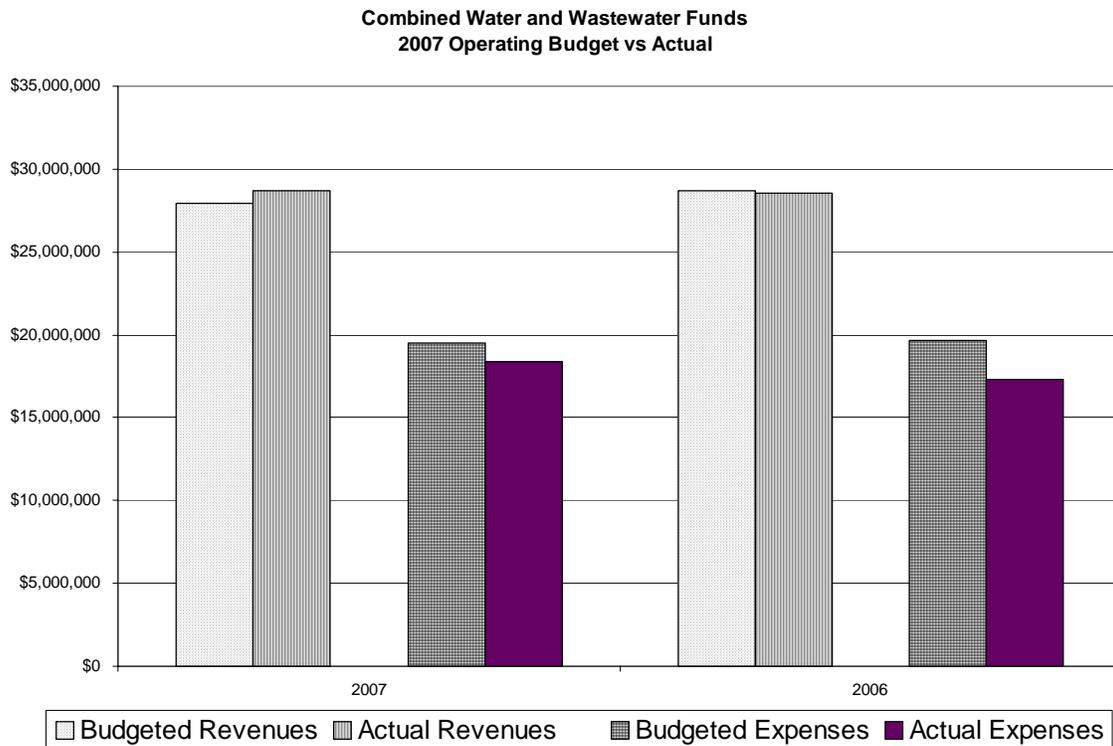
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



The Open Space Fund expenditures exceed revenues by \$148,000. This reflects the utilization of the expected bond proceeds through the reimbursement resolution. It is anticipated that the bonds will be issued in December.



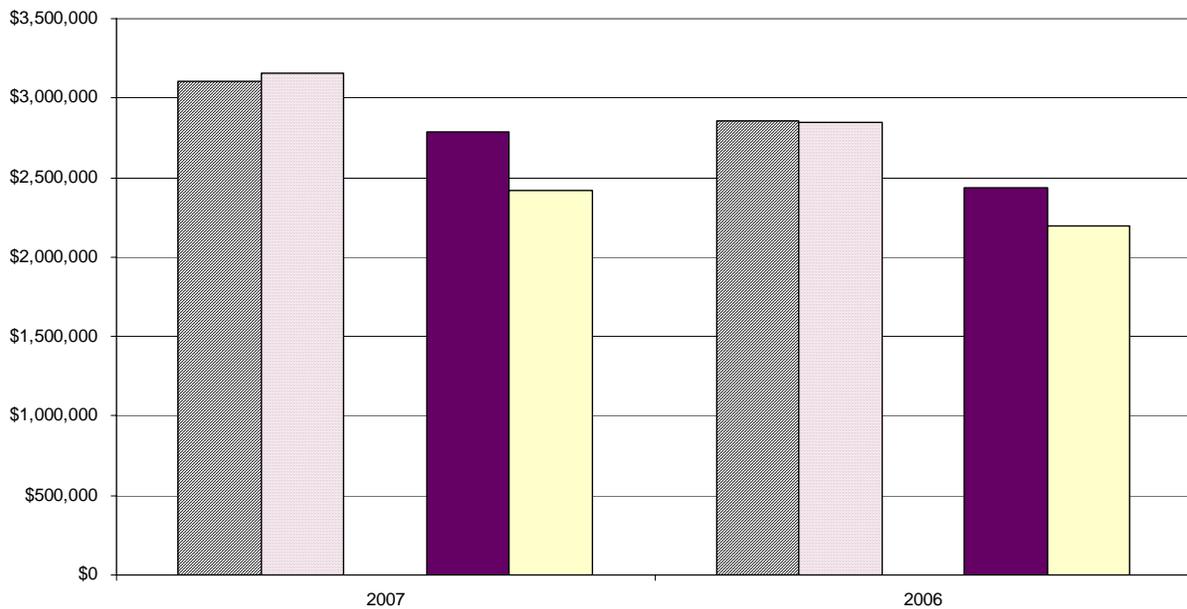
The combined Water & Wastewater Funds' operating revenues and carryover exceed operating expenses by \$18,072,000. \$18,898,000 is budgeted for capital projects and reserves. Year-to-date, the City has collected \$3,305,000 less in tap fees than in 2006.



The combined Golf Course Funds' revenues exceed expenditures by \$735,000. Year to date revenues for Charges for Services are \$183,000 higher than 2006. The following transactions have been omitted in order to reflect a more appropriate comparison between years and results of operations.

Account	Purpose	2007	2006
Other Financing Source & Use	Legacy Maintenance Equip	547,000	
Other Financing Source & Use	Heritage Golf Carts		582,144
Transfers In	Reduce Negative Cash	700,000	750,000

**Golf Course Enterprise
Budget vs Actual**



Policy Issue

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

Alternative

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

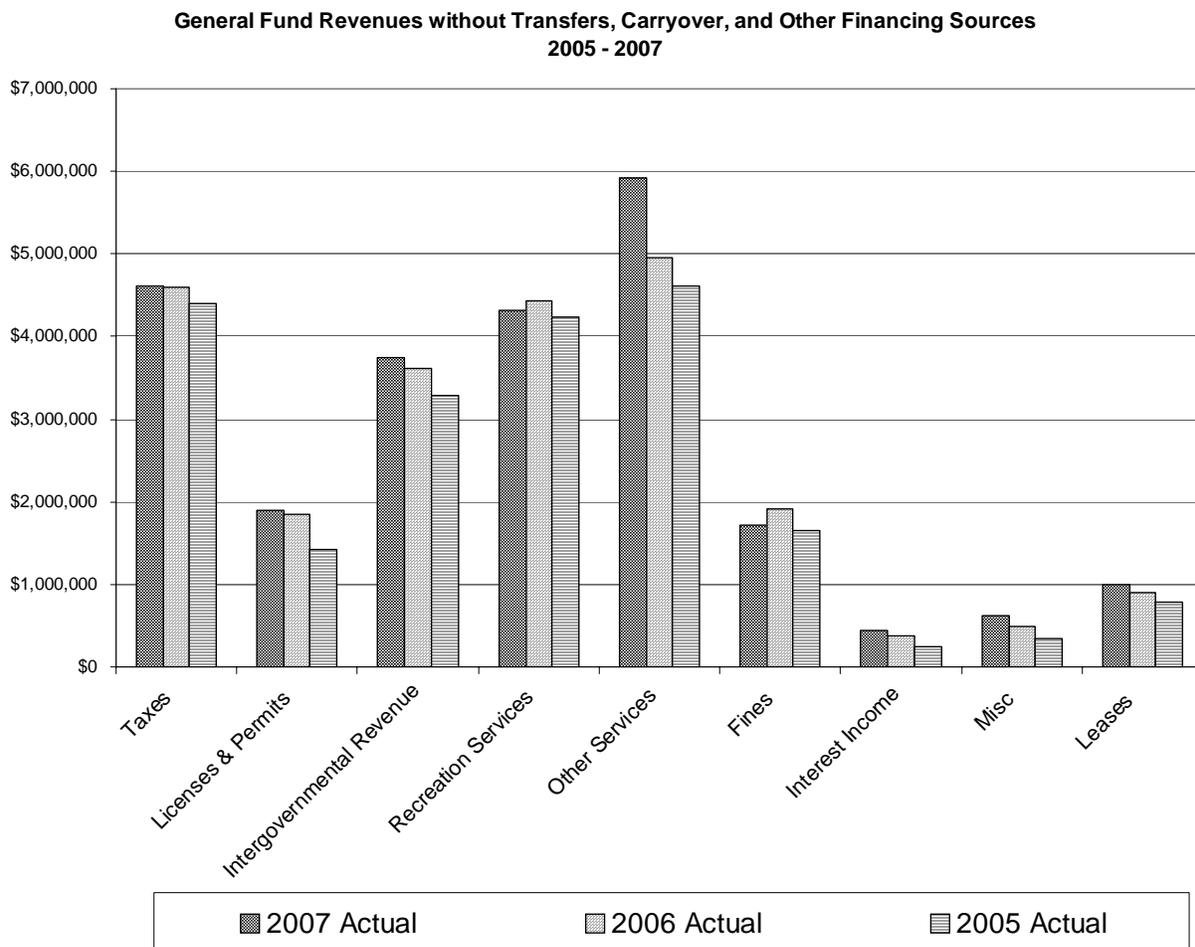
Background Information

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

General Fund

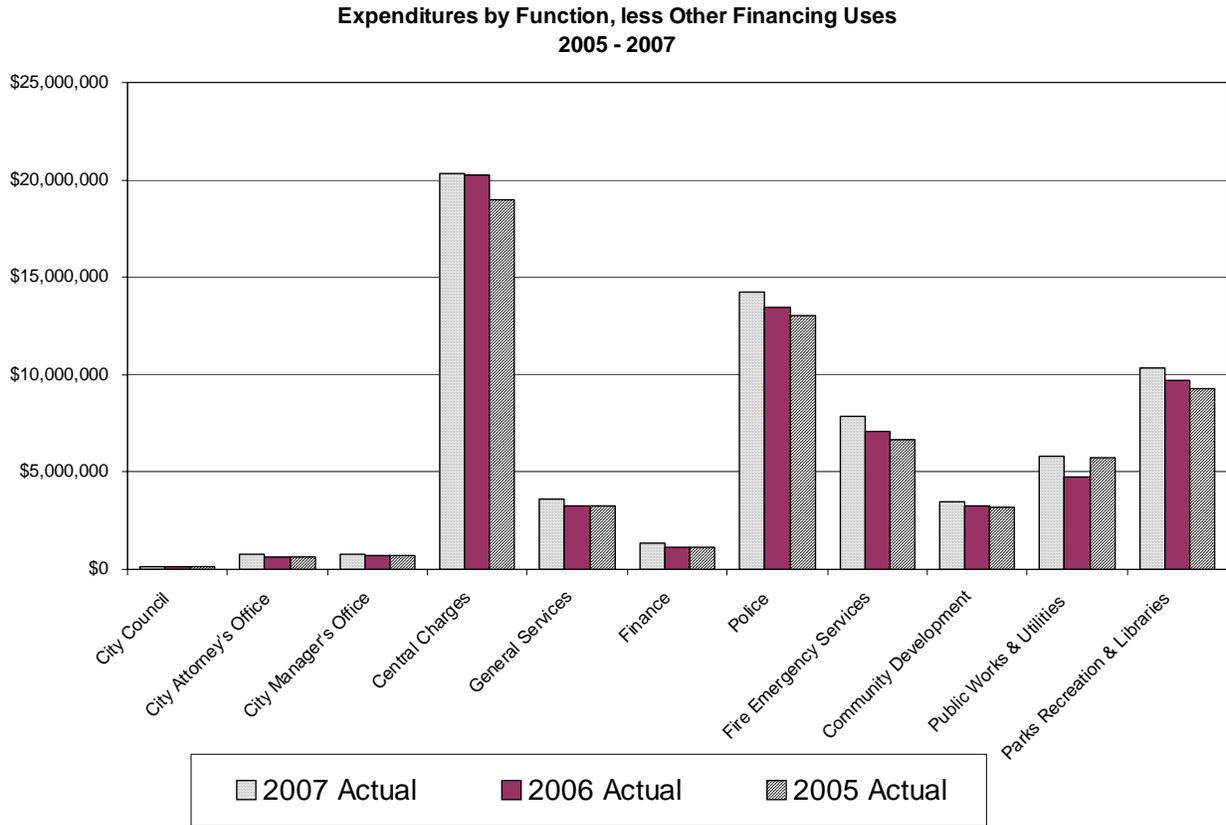
This fund reflects the results of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

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



The increase in Other Services reflects the Infrastructure fee. As reflected in the Licenses & Permits of the Financial Report, commercial building permits are up significantly, causing a positive variance. Intergovernmental revenues are also up compared to the budget amount. This is primarily due to the Federal Emergency Management Agency (FEMA) reimbursement and an increase in road & bridge taxes from both counties and grant revenue. Leases are lower than anticipated (per the budget) due to the delay in getting the former police building leased.

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

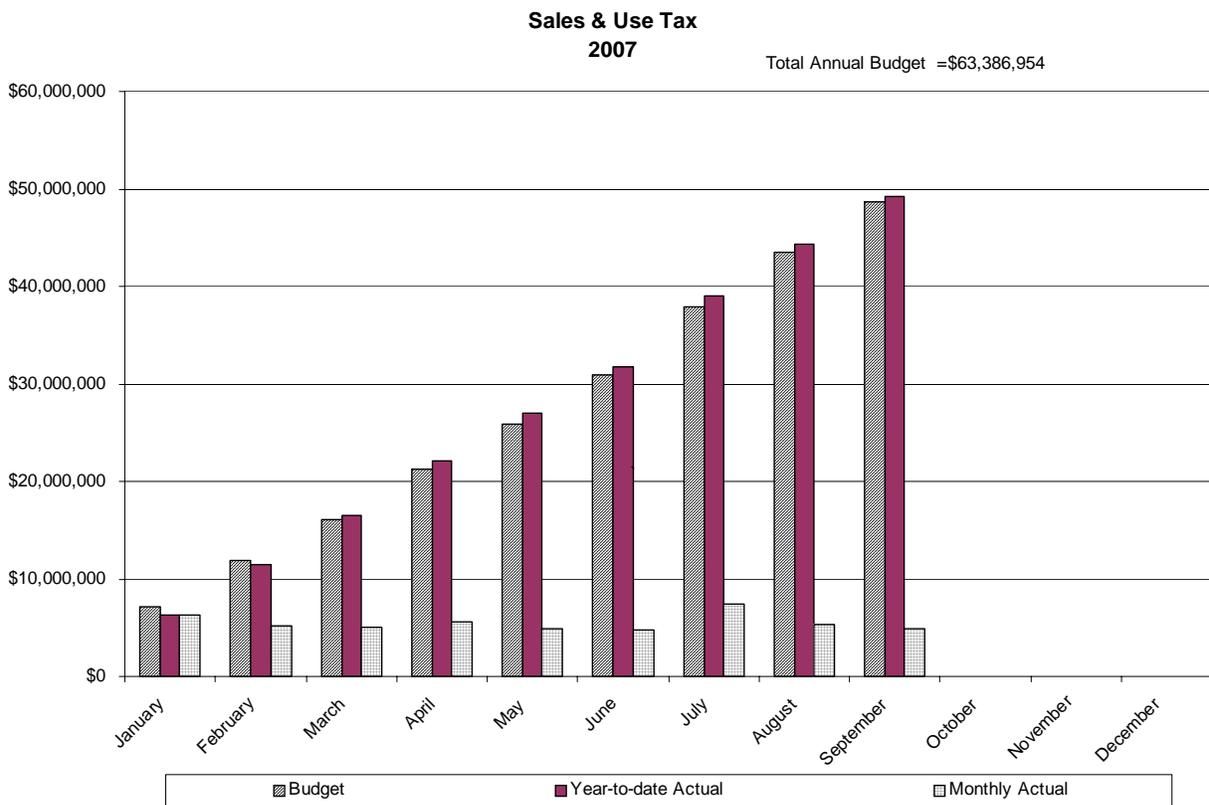


The positive variance seen on the attached spreadsheets (page 1) in CMO is mostly related to salary savings. Although one particular area does not stand out, City Council’s budget reflects a positive variance due to overall less spending.

Sales & Use Tax Funds (Sales & Use Tax Fund & Parks, Open Space & Trails Sales & Use Tax Fund)

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

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

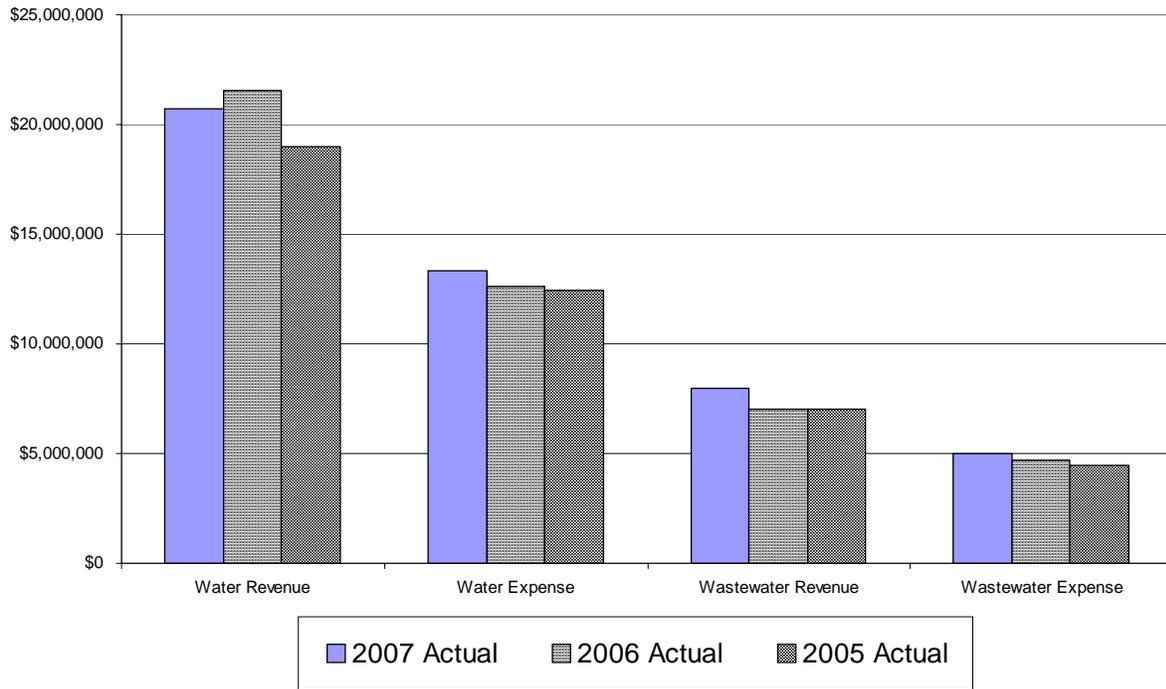


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

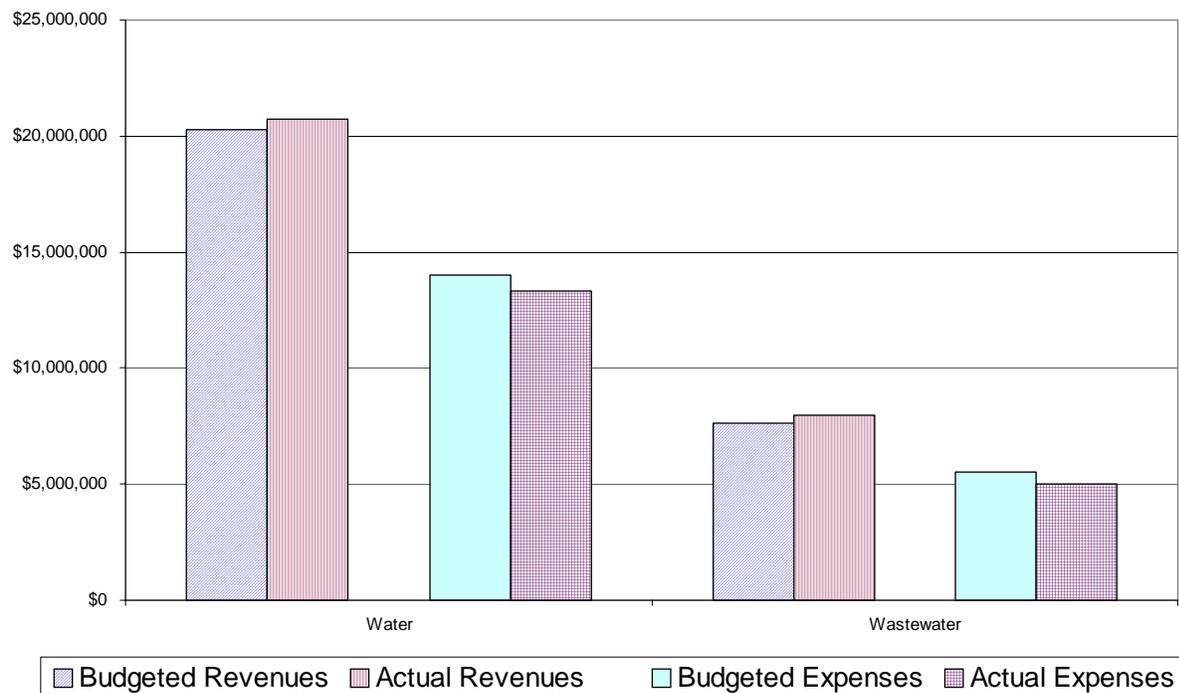
This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects. The variance between 2006 and 2007 can be attributed to an unusually high 2006 and a slightly low 2007.

These graphs represent the segment information for the water and wastewater funds.

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



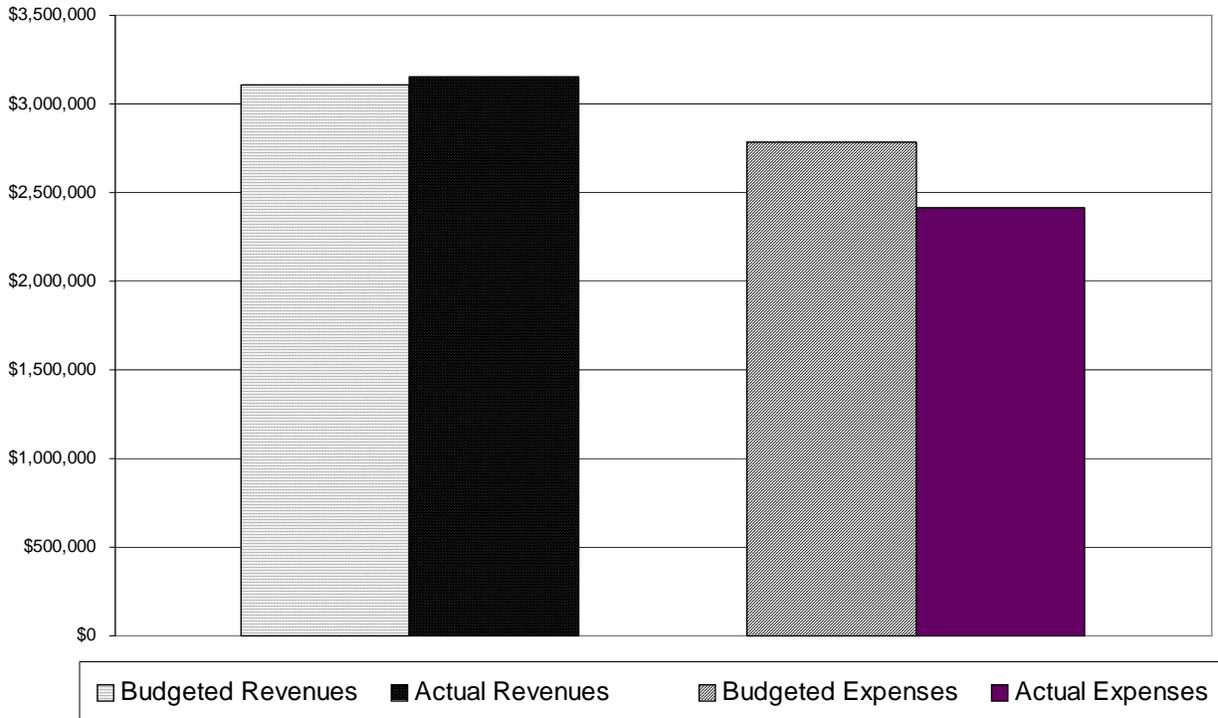
**Water and Wastewater Funds
2007 Operating Budget vs Actual**



Golf Course Enterprise (Legacy and Heritage Golf Courses)

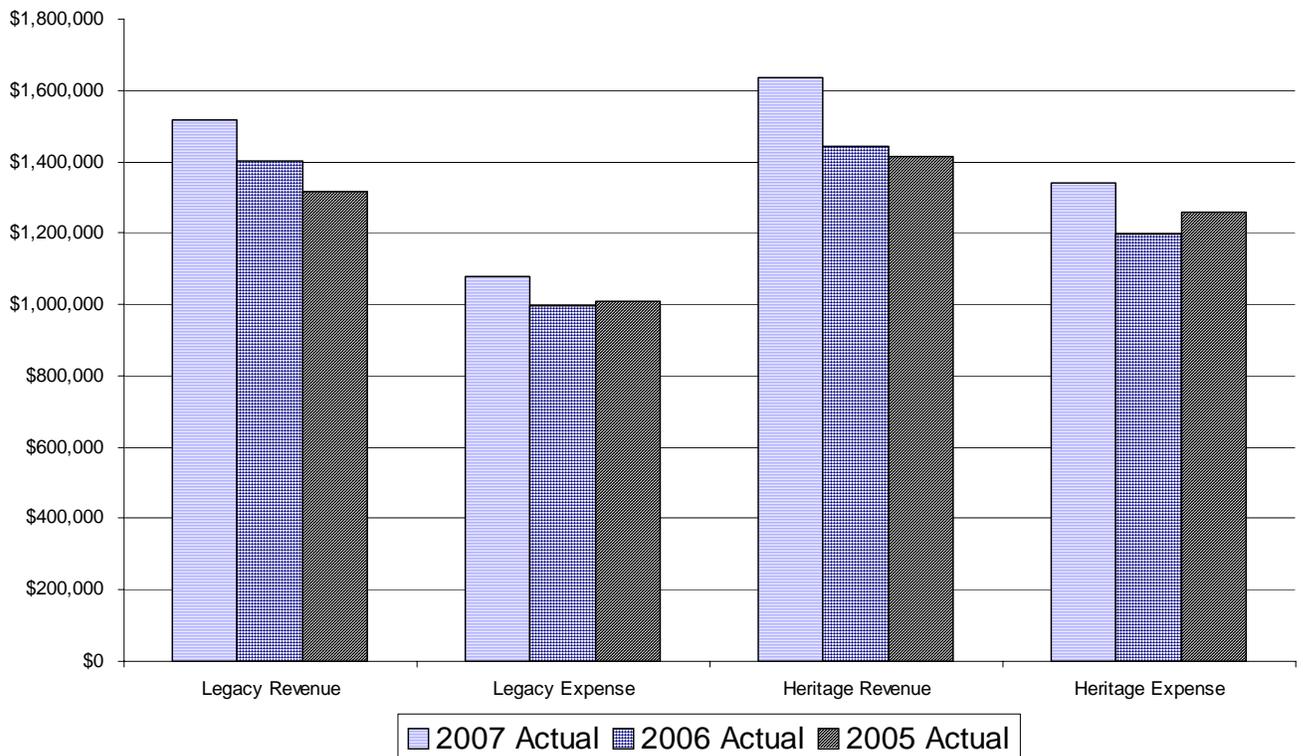
This enterprise reflects the operations of the City's two municipal golf courses.

**Combined Golf Courses
2007 Budget vs Actual**



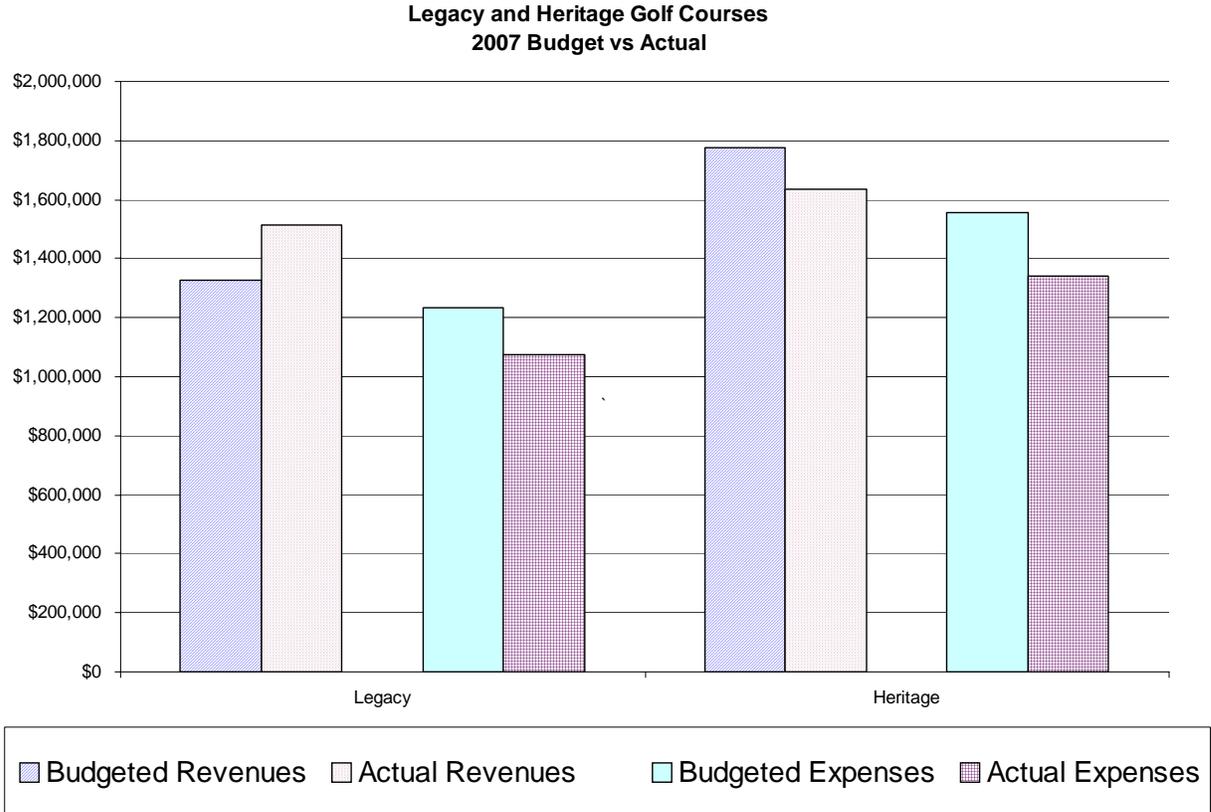
The following graphs represent the information for each of the golf courses.

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



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

The financial statements reflect a positive variance in Recreation Facilities versus the budget. This is primarily due to salary and utility savings.



Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2007**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Charges for Services	1,678,976	1,440,561		1,301,173	(139,388)	90.3%
Interfund Transfers	448,200	336,150	(1)	336,150	-	100.0%
Total Revenues	<u>2,127,176</u>	<u>1,776,711</u>		<u>1,637,323</u>	<u>(139,388)</u>	<u>92.2%</u>
Expenses						
Central Charges	104,100	77,867		74,847	(3,020)	96.1%
Recreation Facilities	1,522,613	1,329,241		1,118,531	(210,710)	84.1%
Sub-Total Expenses	<u>1,626,713</u>	<u>1,407,108</u>		<u>1,193,378</u>	<u>(213,730)</u>	<u>84.8%</u>
Operating Income	500,463	369,603		443,945	74,342	120.1%
Debt Service Expense	500,463	147,731		147,731	-	100.0%
Revenues over (under) Expenditures	<u>-</u>	<u>221,872</u>		<u>296,214</u>	<u>74,342</u>	

(1) Carryover funds from the General Fund in the amount of \$700,000 were transferred into the Heritage Fund for the purpose of reducing a negative cash balance. The transfer has been omitted from the statements to better reflect operations.

CITY OF WESTMINSTER

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

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART	409,480	2,338	411,817	416,826	21,693	438,519	-2	-89	-6
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	252,608	716	253,324	47,241	220	47,461	435	226	434
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	239,333	2,446	241,780	375,572	15,290	390,863	-36	-84	-38
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN COMP USA/CIRCUIT CITY	212,882	736	213,618	212,416	348	212,764	0	112	0
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	185,020	940	185,960	177,834	926	178,760	4	1	4
SHOPS AT WALNUT CREEK 104TH & REED TARGET	174,428	5,730	180,159	153,667	7,852	161,519	14	-27	12
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	171,216	1,027	172,244	255,529	1,542	257,071	-33	-33	-33
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	132,978	19,159	152,137	157,179	28,817	185,996	-15	-34	-18
SHERIDAN CROSSING SE CORNER 120TH & SHER	114,599	1,208	115,807	166,077	1,239	167,315	-31	-3	-31
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	92,124	404	92,528	89,913	64	89,977	2	529	3
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	78,580	135	78,715	79,913	768	80,681	-2	-82	-2
THE ORCHARD 144TH & I-25 JC PENNEY	74,988	224	75,211	0	13,002	13,002	*****	-98	478
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	63,752	297	64,049	60,860	136	60,996	5	119	5
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	62,070	591	62,661	56,239	59	56,298	10	908	11
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH	55,600	306	55,907	50,648	97	50,745	10	216	10

CITY OF WESTMINSTER

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

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
SAFEWAY WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	52,182	348	52,530	49,958	368	50,326	4	-6	4
WILLOW RUN 128TH & ZUNI SAFEWAY	49,284	222	49,506	51,806	112	51,918	-5	98	-5
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	41,292	289	41,581	41,256	254	41,510	0	14	0
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	35,707	544	36,251	30,252	870	31,123	18	-38	16
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	32,476	313	32,788	34,081	1,042	35,123	-5	-70	-7
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	28,852	0	28,852	28,689	0	28,689	1	*****	1
FEDERAL STRIP W SIDE FEDERAL 68TH-72ND BOVAS	28,252	51	28,303	26,956	42	26,998	5	21	5
VALLE VISTA NW CORNER 104TH & FEDERAL BRIGHT SMILE	20,831	7,234	28,065	0	0	0	*****	*****	*****
NORTHVIEW S SIDE 92ND YATES-SHER	25,503	70	25,574	45,464	275	45,740	-44	-74	-44
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	25,347	188	25,535	24,322	306	24,628	4	-39	4
	2,659,385	45,516	2,704,901	2,632,701	95,323	2,728,024	1	-52	-1

CITY OF WESTMINSTER

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

Center Location Major Tenant	/----- YTD 2007 -----/	/----- YTD 2006 -----/	/--- %Change ---/
	General Sales	General Use	Total
	General Sales	General Use	Total Sales Use Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART	3,770,998	19,006	3,790,004
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	3,165,295	32,174	3,197,469
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN COMP USA/CIRCUIT CITY	2,212,679	14,178	2,226,857
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,900,795	9,977	1,910,772
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	1,881,061	57,048	1,938,109
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,694,914	15,039	1,709,954
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,646,602	21,142	1,667,744
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,592,405	145,691	1,738,096
SHERIDAN CROSSING SE CORNER 120TH & SHER	1,173,148	11,715	1,184,863
THE ORCHARD 144TH & I-25 JC PENNEY	1,033,502	11,581	1,045,083
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	898,327	12,916	911,243
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	871,967	2,682	874,649
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	612,928	2,416	615,344
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	542,367	5,323	547,690
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH	486,417	2,225	488,642
			424,018
			2,110,477
			41,176
			465,194
			344
			39
			317
			17,076
			1,758,826
			-3
			-12
			-3
			36,126
			1,279,807
			32
			-41
			30
			1,234,770
			183,455
			1,418,225
			29
			-21
			23
			1,546,524
			12,470
			1,558,994
			-24
			-6
			-24
			0
			45,222
			45,222

			-74
			2211
			846,904
			2,830
			849,735
			6
			356
			7
			906,097
			10,512
			916,609
			-4
			-74
			-5
			624,594
			3,126
			627,720
			-2
			-23
			-2
			547,026
			3,021
			550,047
			-1
			76
			0
			483,829
			1,382
			485,210
			1
			61
			1

CITY OF WESTMINSTER

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

Center Location Major Tenant	YTD 2007			YTD 2006			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
SAFEWAY WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	481,164	2,178	483,342	450,444	5,709	456,153	7	-62	6
WILLOW RUN 128TH & ZUNI SAFEWAY	466,943	1,776	468,719	497,193	1,960	499,153	-6	-9	-6
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	363,245	14,274	377,519	385,949	9,234	395,183	-6	55	-4
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	294,808	1,817	296,624	308,290	2,651	310,941	-4	-31	-5
NORTHVIEW S SIDE 92ND YATES-SHER	292,277	6,085	298,362	380,789	4,780	385,568	-23	27	-23
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	270,018	15,978	285,996	263,745	6,495	270,240	2	146	6
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	237,528	3,776	241,304	163,757	5,942	169,699	45	-36	42
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	226,719	7,838	234,557	223,689	5,821	229,511	1	35	2
FEDERAL STRIP W SIDE FEDERAL 68TH-72ND BOVAS	195,933	824	196,757	220,125	6,713	226,838	-11	-88	-13
SUMMIT SQUARE NE CORNER 84TH & FED SAFEWAY	192,543	862	193,405	184,461	1,207	185,668	4	-29	4
	26,504,581	418,522	26,923,103	24,080,950	532,905	24,613,855	10	-21	9



Agenda Item 8 B

WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Quarterly Insurance Report: July - September 2007

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Accept the 3rd Quarter 2007 Insurance Report.

Summary Statement

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

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 3rd quarter of 2007 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee Representatives and Department Heads. Follow up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the 3rd quarter of 2007, Staff has noted the following summary information:

- Eight of the 26 claims reported in the 3rd quarter of 2007 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

Department	3rd Qtr 2007			YTD
	Total Claims	Open	Closed	Total
Police	3	3	0	12
PR&L	9	5	4	16
PWU - Streets	0	0	0	13
PWU - Utilities	13	9	4	18
N/A	0	0	0	1
GS – BO&M	0	0	0	1
GS – COURT	1	1	0	1
CD	0	0	0	1
TOTAL	26	18	8	63

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**Quarterly Insurance Report
July - September 2007**

Claim Number	Loss Date	Dept	Claimant	Address	Claim Description	Payment	Status	Notes
2007-325	7/7/2007	PWU - Util	David Farley	14547 Jason Dr., Westminster, CO 80023	Citizen alleges City work on a water main in his neighborhood caused water damage to his home.	\$500.00	Closed	Claim denied based on Colorado Governmental Immunity Act, but due to coincidence of two homes in the neighborhood being damaged on the same day, claimant was paid under the City's "good neighbor" settlement program.
2007-325	7/7/2007	PWU - Util	Ron Beehler	14457 Jason Dr., Westminster, CO 80023	Citizen alleges City work on a water main in his neighborhood caused water damage to his home.	\$500.00	Closed	Claim denied based on Colorado Governmental Immunity Act, but due to coincidence of two homes in the neighborhood being damaged on the same day, claimant was paid under the City's "good neighbor" settlement program.
2007-310	7/11/2007	PRL	Michelle Boyette	9595 Pecos St. #721, Thornton, CO 80260	Claimant alleges a City employee operating a weed eater threw a rock up and broke a window in her vehicle.	\$0.00	Open	CIRSA Investigating
2007-366	7/27/2007	PD	Shane Burden	Colorado Dept. of Corrections #62763, PO Box 1000, Crowley, CO 81034	Claimant has filed numerous Summons & Complaints against the Police Department, but it is unclear exactly what his claims against the City are for.	\$0.00	Open	CIRSA Investigating
2007-330	7/31/2007	PRL	Jeri Elliott	4934 E. 116th Dr., Thornton, CO 80233	City employee operating a large mower near the claimant's parked vehicle damaged her vehicle.	\$829.00	Closed	
2007-340	8/2/2007	GS - Court	Ethan Abbott	6700 W. 44th Ave., Wheat Ridge, CO 80033	Claimant alleges he was a victim of harassment and intimidation as well as a deprivation of his rights regarding a municipal court proceeding.	\$0.00	Open	CIRSA Investigating
2007-382	8/7/2007	PRL	Constitution State/Kirk Severson	PO Box 2930 Overland Park, KS 66201	Constitution State Services, as third party claims administrator for AMC Entertainment Inc., notified the City of a potential claim from a citizen (Kirk Severson) who was allegedly injured in the plaza area at the Promenade.	\$0.00	Open	CIRSA Investigating
2007-362	8/9/2007	PWU - Util	Paul & Gail Kinnes	9200 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to their home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$16,157.87	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	H.U.D.	9201 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to their home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$475.00	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.

Claim Number	Loss Date	Dept	Claimant	Address	Claim Description	Payment	Status	Notes
2007-362	8/9/2007	PWU - Util	Bill Pashell	9211 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to his home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$10,951.59	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	Ken Bacher	9220 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to his home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$11,337.65	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	Marie Reyes & Jason Jennings	9221 West 104th Pl., Westminster, CO 80021	Claimant suffered property damage to their home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$7,276.72	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	Don Coe	9231 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to his home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$5,000.00	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	Tim Becker	9240 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to his home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$13,252.74	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	Roberto Alonso	9241 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to his home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$7,343.99	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-362	8/9/2007	PWU - Util	Sharon Maeze	9250 W. 104th Pl., Westminster, CO 80021	Claimant suffered property damage to her home as a result of a sewer backup that the City believes was caused by the actions of City contractor ACE Pipeline Cleaning.	\$14,321.24	Open	The contractor is denying all claims. The City is paying the damages and will seek reimbursement from the contractor.
2007-370	8/15/2007	PWU - Util	Andrea Vasquez (renter)	7412 Beach Ct., Westminster, CO 80030	Claimant's home suffered damage due to a sewer backup in her basement as a result of City employees hitting her sewer line during a project.	\$289.50	Closed	
2007-373	8/23/2007	PWU - Util	Wayne Smith / Smith World Travel	3520 W. 92nd Ave., Westminster, CO 80031	Claimant alleges his business telephone lines were cut on two separate dates by the City hired contractor doing construction near his place of business.	\$0.00	Closed	Claimant was referred to the contractor.
2007-401	9/7/2007	PRL	Eugene Green	9700 Wadsworth Blvd., Broomfield, CO 80021	Claimant alleges that the City open space personnel damaged a underground lateral pipe he owns, while installing a fence.	\$0.00	Closed	Claim denied as investigation found no evidence of negligence on the part of the City.

Claim Number	Loss Date	Dept	Claimant	Address	Claim Description	Payment	Status	Notes
2007-408	9/18/2007	PRL	Robert Bentley	8240 W. 93rd Way, Westminster, CO 80021	Claimant alleges a City employee operating a mower in a City park threw a rock up and broke a window in the claimant's home.	\$0.00	Open	CIRSA Investigating
CLAIMS SUBMITTED IN 3rd QUARTER WITH OCCURRENCE DATES PRIOR TO 3rd QUARTER 2007:								
2007-396	2/7/2007	PD	Shane Burden	Colorado Dept. of Corrections #62763, PO Box 1000, Crowley, CO 81034	Claimant has filed numerous Summons & Complaints against the Police Department, but it is unclear exactly what his claims against the City are for.	\$0.00	Open	CIRSA Investigating
2007-381	2/24/2007	PD	Marnie Anderson	3734 W. 80th Dr., Westminster, CO 80031	Claimant alleges she was assaulted by police officers.	\$0.00	Open	CIRSA Investigating
2007-331	4/10/2007	PRL	Lori Soulliere	75 S. 8th Ave., Brighton, CO 80601	Claimant collided with a fence while riding her bicycle and alleges the City is responsible for her injuries.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2007-383	4/15/2007	PRL	Shawn Sullivan	7402 Church Ranch Blvd. Unit 635, Westminster, CO 80021	Claimant collided with a fence type structure while riding his bicycle and alleges the City is responsible for his injuries.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2007-287	6/25/2007	PRL	Harriet Hamilton	4901 W. 103rd Cr., Westminster, CO 80031	Claimant alleges property damage to her vehicle and personal injury as result of a Parks employee backing his City vehicle into her stopped vehicle.	\$0.00	Open	CIRSA Investigating
2007-287	6/25/2007	PRL	Paige Curtis	10070 Vrain Ct., Westminster, CO 80031	Claimant alleges personal injury as a result of a Parks employee backing his City vehicle into the vehicle in which she was a passenger.	\$0.00	Open	CIRSA Investigating
GRAND TOTAL						\$86,406.30		



Agenda Item 8 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Purchase of Four Tandem Cab and Chassis

Prepared By: Carl F. Pickett, Purchasing Officer

Recommended City Council Action

Award the bid for four tandem dump truck cab and chassis to the low bidder, Transwest Trucks, for model LT 9500 Sterling trucks in the amount of \$332,840 and charge the expense for three units to the General Capital Outlay Replacement Fund and for one unit to the 2008 Utility Fund.

Summary

- These vehicles are used by the Department of Public Works and Utilities as snow plows in the winter and dump trucks for hauling asphalt and dirt the rest of the year.
- Funding for these vehicles was approved by City Council in the General Capital Outlay Replacement Fund and in the 2008 Utility Fund.

Expenditure Required: \$332,840

Source of Funds: General Capital Outlay Replacement Fund and Utility Fund

Policy Issue

Should the City purchase four tandem cab and chassis from the low bid, Transwest Trucks?

Alternative

Do not purchase the proposed replacement cab and chassis. This is not recommended by the Fleet Maintenance Division because these vehicles have a maintenance history that makes it impractical to keep them in service.

Background Information

As part of the General Capital Outlay Replacement Fund and in the 2008 Utility Fund, City Council approved the purchase of four replacement tandem dump trucks for the Department of Public Works and Utilities—three units in the Street Division and one unit in the Utilities Division. These vehicles are used for hauling asphalt and dirt and as snow plows in the winter.

All vehicles have reached a point that they are no longer economically reasonable to maintain. Information regarding these vehicle replacements and trade-ins is as follows:

UNIT #	YEAR	HOURS	COST OF VEHICLE MAINTENANCE TO DATE	TRADE IN ALLOWANCE	DIVISION	FUND
6204	1997	6,635	\$80,767.62	\$18,000.00	Street	General Capital Outlay Replacement Fund
6106	1997	7,473	\$96,447.17	\$18,000.00	Street	General Capital Outlay Replacement Fund
6111	1998	6,285	\$94,151.80	\$18,000.00	Street	General Capital Outlay Replacement Fund
9794	1985	1,352	\$12,602.26	Auctioned in 2007 No trade-in allowance	Utilities	Utility Fund

All three Street Division vehicles have each had over fifty shop invoices in their life history. No single repair stands out as reason for the high cost of maintenance for these vehicles. Due to the present condition and maintenance history of these vehicles, the Fleet Maintenance Division does not recommend the City continue to operate them.

Earlier in 2007, the Utilities Division vehicle (a 1985 International crane truck) failed, requiring its auction. Thankfully, vehicle 9794 was scheduled for replacement as a snow plow in 2008, allowing the City to bid all four vehicles at once and reduce costs. (City Council authorized the purchase of the replacement truck mounted crane unit at their September 10, 2007 meeting.)

Bids were solicited from vendors for the cab and chassis. All major truck dealers were notified and only International and Transwest Trucks responded. The low bid unit price of \$96,710 from Transwest Trucks for the cab and chassis meets all specifications and requirements set by the City. The total cost for the four tandem cabs and chassis after trade in is \$332,840; an amount well within the City Council authorized expense for these vehicles.

Respectfully submitted,

J. Brent McFall, City Manager



Agenda Item 8 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: 72nd Avenue Streetscape - Planning and Engineering Design Services

Prepared By: Stephen C. Baumann, Assistant City Engineer

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest will be best served by a negotiated contract with Carter-Burgess, Inc. for planning and engineering design services for 72nd Avenue between Meade Street and Raleigh Street; and authorize the City Manager to execute the contract in an amount not to exceed \$135,000, plus an additional \$15,000 for contingency, and charge the expense to the appropriate General Capital Improvement fund account.

Summary Statement

- The success of revitalization efforts for South Westminster will rely in part on planning and engineering that evaluates the infrastructure needed to support it. A priority area is 72nd Avenue between Meade Street and Raleigh Street that will serve the redevelopment expected to accompany the Regional Transportation District's FasTracks project and other existing and future development projects in the area. This portion of the corridor also includes the railroad tracks crossing 72nd Avenue at Newton Street, the intersections of Raleigh Street and Bradburn Boulevard and the Little Dry Creek drainage/trail corridor. Most of these elements are expected to need upgrading in the future to realize the goals of the City's Strategic Plan.
- The City requested proposals for planning and preliminary engineering services for the 72nd Avenue corridor. The effort will take into account the expected higher density of future development, the need to improve safety and access to transit facilities for pedestrians and vehicles, and then propose needed modifications to streets, pedestrian facilities, utilities and streetscape appearance. The resultant information will be used to guide planning for adjacent developments and serve as a starting point for planning/budgeting for rehabilitation or reconstruction of this portion of 72nd Avenue.
- Proposals were received from ten firms with the necessary qualifications. Staff is recommending that a contract be awarded to Carter-Burgess, a full service planning and engineering firm with capabilities that are well-matched to this assignment. The Carter-Burgess proposal showed good understanding of the assignment and was competitive in terms of fees with other comprehensive proposals. Carter-Burgess also brings to the project their experience and reputation from their ongoing involvement with the FasTracks project, which will have a significant effect on the 72nd Avenue area. Authorization of \$150,000 to cover the contract and a small contingency is requested.

Expenditure Required: \$150,000

Source of Funds: General Capital Improvement Fund Account for the 72nd Avenue Streetscape Project

Policy Issue

Should the City contract for planning and engineering services for the 72nd Avenue Streetscape project?

Alternative

City Council could elect not to pursue the 72nd Avenue Streetscape project at all. This is contrary to objectives stated in the City's Strategic Plan under the goal of Vibrant Neighborhoods and Commercial Areas. 72nd Avenue is one of the primary transportation corridors in South Westminster and if upgrades to it and the surrounding infrastructure are needed, the planning for those changes must begin soon to support that goal. Funding for this project was also approved in the Adopted Budget for 2007-2008. Staff recommends that this initial project move forward as planned.

Background Information

In 1997, the City completed an extensive streetscape project along 72nd Avenue between Eliot Circle and Meade Street as well as Federal Boulevard between 71st and 73rd Avenues. The streets were reconstructed and widened, and overhead utilities were placed underground. Decorative lighting and landscaped planters were installed. Over 30 non-conforming pole signs were replaced by more attractive monument signs. Funding at the time did not permit the project to extend west to Raleigh Street to coincide with the western edge of the South Westminster retail area.

Since that time, Arvada has completed improvements to 72nd Avenue to west of Wadsworth Boulevard, which has resulted in increased traffic on 72nd Avenue. The new FasTracks station at approximately 70th Avenue and Irving Street and the projected redevelopment throughout South Westminster will further tax the capacity of 72nd Avenue west of Meade Street, which has narrower than desirable lane widths, poor pedestrian facilities and other operational shortcomings. These and other concerns prompted the approval of \$150,000 in the 2007-2008 Budget to do preliminary planning and engineering for 72nd Avenue between Meade Street and Raleigh Street.

72nd Avenue is the primary east-west transportation artery in South Westminster and the area between Lowell Boulevard and Raleigh Street will be an activity center. The Burlington Northern/Santa Fe tracks that cross 72nd Avenue will need to be expanded with FasTracks, generating a significant increase in crossing operations in the future. The consultant will evaluate the cost to convert this crossing to a "quiet zone" to eliminate the need for trains to use their whistles as they approach the crossing.

Bradburn Boulevard and Raleigh Street intersections now operate poorly and are expected to need modification to respond to changing land uses on the two sides of 72nd Avenue. One of the alternatives that will be explored to address this problem is a realignment of Bradburn Boulevard north of 72nd Avenue to line up with the signalized Raleigh Street. On the pedestrian side, the Little Dry Creek drainage and trail corridor has been improved and extended over past years but is expected to take a more prominent function as the FasTracks project and redevelopment promote more bicycle and pedestrian activities.

The City's Strategic Plan focuses on revitalization and recognizes that advance planning is necessary to prepare for it. Planning and preliminary engineering for the portion of 72nd Avenue between Lowell Boulevard and Raleigh Street is an important component of this preparation. Concepts for future land uses have been developed for the area near the proposed FasTracks station and areas north of 72nd Avenue between Lowell and Bradburn Boulevards. Generally, they show more concentrated development that can be expected to strain existing street, pedestrian and utility facilities. Getting a handle on the extent to which these facilities must be upgraded or replaced is the first step to planning and budgeting for those improvements. The target schedule for FasTracks puts it less than eight years away.

The City received proposals for the planning and engineering studies for 72nd Avenue from ten firms and following review, reduced the pool to the firms of Short, Elliot and Hendricksen, Inc. (SEH), and Carter-Burgess, Inc (C-B) based on experience and technical expertise. Their fee proposals were very similar as are their technical capabilities. Both firms have performed consulting services for the City, with SEH actively engaged in the Lowell Boulevard Improvements project (75th Avenue to 78th Avenue). Although the two firms are close in capability and experience, Staff is recommending the contract be awarded to Carter-Burgess because of their participation in the development of the FasTracks project and their ongoing involvement as it moves ahead. FasTracks will be a significant stimulus to revitalization efforts in South Westminster and C-B's role there can only benefit the City's 72nd Avenue project. C-B's skill, ability and capacity to perform the necessary services was ranked at the top of the group that proposed for the project. Staff also felt it valuable at this early stage to involve more than one firm in planning and engineering projects in South Westminster so there is a larger stable of resources familiar with the area for other revitalization projects in the future.

Funds to begin the planning and preliminary engineering are budgeted in the 2007 General Capital Improvement Fund for the 72nd Avenue Streetscape project. The base contract amount for the Carter-Burgess contract will be \$135,000 with a contingency of \$15,000, bringing the requested authorization amount to \$150,000.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Item 8 E

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Second Reading of Councillor's Bill No. 55 re Amendment to the 2008 Adopted Budget

Prepared By: Steve Smithers, Assistant City Manager
Barbara Opie, Budget & Special Projects Manager
Aric Otzelberger, Management Analyst
Phil Jones, Management Intern II

Recommended City Council Action

Pass Councillor's Bill No. 55 on second reading amending the FY2008 budgets of the General, Utility, Utility Reserve, Stormwater Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails (POST), General Capital Improvement and Debt Service Funds.

Summary Statement

- At the September 17 Council Study Session, Staff reviewed with City Council recommended modifications to the Adopted 2008 Budget, new citizen requests, and miscellaneous financial issues that Staff or Council wished to raise.
- A public meeting on the 2008 Adopted Budget was held on Monday, September 10, providing the public an opportunity to receive a financial update and make any requests of Council for the 2008 budget year. At that meeting and through other communications, City Council received seven requests from citizens that were addressed in the original agenda memorandum (for the first reading).
- City Council action is requested to pass the attached Councillor's Bill on second reading.
- This Councillor's Bill was passed on first reading on October 8, 2007.

Expenditure Required: 2008: \$169,243,195, plus \$50,934,049 in reserves and \$5,114,990 in contingency accounts

Source of Funds: General, Utility, Utility Reserve, Stormwater Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails (POST), General Capital Improvement and Debt Service Funds

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3385**

COUNCILLOR'S BILL NO. **55**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

Price - Major

A BILL

FOR AN ORDINANCE AMENDING THE 2008 BUDGETS OF THE GENERAL FUND; UTILITY ENTERPRISE FUNDS; UTILITY RESERVE FUND; GOLF COURSE FUND; FLEET MAINTENANCE FUND; GENERAL CAPITAL OUTLAY REPLACEMENT FUND; SALES AND USE TAX FUND; PARKS, OPEN SPACE, AND TRAILS FUND; GENERAL CAPITAL IMPROVEMENT FUND AND DEBT SERVICE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION OR UN-APPROPRIATION FROM THE 2008 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General; Utility Enterprise Funds; Utility Reserve Fund; Golf Course Fund; Fleet Maintenance Fund; General Capital Outlay Replacement; Sales and Use Tax; Parks, Open Space, and Trails Fund; General Capital Improvement Fund and Debt Service Fund, initially appropriated by Ordinance No. 3316 are hereby increased in aggregate by \$5,551,739. This appropriation is due a budget amendment for revised revenue projections and expenditure estimates for 2008.

Section 2. The net amount of increases or (decreases) of \$5,551,739 shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A-C dated October 8, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$1,871,070
Utility Enterprise Funds	674,089
Utility Reserve Fund	527,854
Golf Course Fund	2,722
Fleet Maintenance Fund	0
General Capital Outlay Replacement Fund	13,700
Sales and Use Tax Fund	372,464
Parks, Open Space, and Trails Fund	(140,854)
General Capital Improvement Fund	1,737,000
Debt Service Fund	<u>493,694</u>
Total	<u>\$5,551,739</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 8th day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of October, 2007.

ATTEST:

City Clerk

Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Second Reading for Councillor’s Bill No. 56 re Economic Development Agreement with The Bedrin Organization

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor’s Bill No. 56 on second reading authorizing the City Manager to execute and implement an Economic Development Agreement with The Bedrin Organization.

Summary Statement

- This Councillor’s Bill was passed on first reading on October 8, 2007.
- City Council action is requested to pass the attached Councillor’s Bill that authorizes the execution of the attached Economic Development Agreement (EDA) with The Bedrin Organization to assist with the redevelopment of the Brookhill V retail center and with the attraction of Steve and Barry’s, a clothing store. Brookhill V is located at the southeast corner of 92nd Avenue and Wadsworth Parkway.
- The \$883,920 EDA will be funded with rebates of the sales tax resulting from the new store, as well as from permit fees and use tax on construction.
- This Economic Development Agreement will assist in filling vacancies in the Brookhill V Shopping Center, one of City Council’s strategic plan objectives.
- The EDA rebate shall terminate after five years.
- If Steve and Barry’s ceases business operations in the City within five years of when new operations commence, any payments made to The Bedrin Organization under this agreement shall be reimbursed to the City unless a replacement tenant is found.

Expenditure Required: Approximately \$883,920 (Rebates)

Source of Funds: The EDA with The Bedrin Organization will be funded through revenue received from permit fees, construction use tax, and sales tax revenues directly generated from the remodeling and operation of Steve and Barry’s.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. **3386**

COUNCILLOR'S BILL NO. **56**

SERIES OF 2007

INTRODUCED BY COUNCILLORS
Dittman - Price

**A BILL
FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT
WITH THE BEDRIN ORGANIZATION
FOR THE ATTRACTION OF "STEVE AND BARRY'S" TO THE BROOKHILL V SHOPPING
CENTER WESTMINSTER, COLORADO**

WHEREAS, the successful attraction and retention of high quality retail development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to generate additional sales tax revenue and remain competitive with other local governments in offering assistance for occupancy of existing retail space in the City; and

WHEREAS, The Bedrin Organization plans to redevelop and fill a portion of the vacant space in the Brookhill V Shopping Center with a Steve and Barry's store; and

WHEREAS, a proposed Economic Development Agreement between the City and The Bedrin Organization is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with The Bedrin Organization in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. 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 8th day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of October, 2007.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

ECONOMIC DEVELOPMENT AGREEMENT WITH THE BEDRIN ORGANIZATION FOR A "STEVE AND BARRY'S" STORE

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and THE BEDRIN ORGANIZATION; a New Jersey LLC.

WHEREAS, the City wishes to provide certain assistance to The Bedrin Organization to encourage the location of a Steve and Barry's store in the Brookhill V Shopping Center; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below the City and The Bedrin Organization agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to The Bedrin Organization 40% of the building related permit fees for the Steve and Barry's tenant finish required under W.M.C. Section 11-10-3 (E), excluding water and sewer tap fees. The rebate is estimated to be \$7,290.

2. Use Tax Rebate- Construction. The City shall rebate to The Bedrin Organization 40% of the building use tax on the construction materials (excluding the City's .25% open space tax and .6% public safety tax), resulting from the Steve and Barry's tenant finish, required under W.M.C. sections 4-2-9 and 4-2-3. The rebate is estimated to be \$12,000.

3. Sales Tax Rebate. The City shall rebate to The Bedrin Organization 50% of the sales tax collected from Steve and Barry's for the first five years (60 months) of operation of the new Steve and Barry's store. Such rebate shall be payable exclusively from sales tax revenue collected by the City from Steve and Barry's and attributable to the imposition of the City's 3.0% general sales tax (excluding the City's .25% open space tax and .6% public safety tax). The sales tax rebate shall not continue past five years (60 months) of operation and shall be administered as follows:

- (a) Sales Tax Rebate Amount. Any rebates provided by the City to The Bedrin Organization pursuant to this agreement will be from the sales tax generated by Steve and Barry's. The City shall rebate to The Bedrin Organization 50% of the sales tax generated.
- (b) Payment. The sales tax rebate amount will be paid to The Bedrin Organization in quarterly payments, made within 20 days after the end of each quarter. The sales tax rebate payment will be submitted electronically to The Bedrin Organization designated financial institution.
- (c) End of Sales Tax Rebate. The sales tax rebate shall commence on issuance of the Certificate of Occupancy for Steve and Barry's and end on the fifth (5th) anniversary there of, or when the total rebate amount (as outlined in paragraphs 1, 2, and 3) reaches \$900,000.

4. Entire Agreement. This instrument shall constitute the entire agreement between the City and The Bedrin Organization concerning the Steve and Barry's retail store and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this agreement with respect to its subject matter.

5. Termination. This Economic Development Agreement shall terminate and become void and of no force or effect upon the City if Steve and Barry's has not moved into their new space in Brookhill V

on or before March, 2008; or, should The Bedrin Organization or Steve and Barry's fail to comply with any City code and/or approval process.

6. Business Termination. In the event that Steve and Barry's ceases business operations in the City within five years after the new operations commence, The Bedrin Organization shall reimburse the City for any amounts rebated to or otherwise provided to The Bedrin Organization pursuant to this Agreement, unless the City approves a successor to the initial approved user within 12 months of the closing of Steve and Barry's, which is substantially similar in quality and sales tax production as the approved user.

7. Subordination. The City's obligations pursuant to this agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

8. Annual Appropriation. Nothing in this agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

9. Governing Law: Venue. This agreement shall be governed and construed in accordance with the laws of the State of Colorado. This agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.

THE BEDRIN ORGANIZATION,
A NEW JERSEY LLC

CITY OF WESTMINSTER

Gerald Bedrin,
Managing Member

J. Brent McFall
City Manager

ATTEST:

ATTEST:

Linda Yeager
City Clerk

Adopted by Ordinance No.



Agenda Item 10 A&B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Public Hearing and Action re the Amended Service Plan for Hyland Village Metropolitan Special District

Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Resolution No. 39 approving the Amended Service Plan for Hyland Village.

Summary Statement

- On August 28, 2006, City Council approved the service plan for Hyland Village Metropolitan Special District (MSD). This approval allowed the developer, McStain Enterprises, Inc., to proceed with the formation of the district at the November 2006 election. The district was not allowed to levy any tax, impose any fee, construct any improvements or incur any debt until the Amended Service Plan is reviewed by City staff and approved by Council.
- Hyland Village consists of approximately 72 acres of predominately residential development, with a small portion of commercial development. McStain submitted an Amended Service Plan for the City's review and approval. The City hired two consultants, at the developer's expense, to assist in the evaluation of the Amended Service Plan. Those consultants were Clifton Gunderson, LLP, Certified Public Accountants to review the financing plan and King & Associates to do a market feasibility analysis. Both consultants opined that the service plans were reasonable and the results attainable. In addition, the City hired Sherman and Howard, again at the developer's expense, to work with the developers and their Counsel to ensure legal compliance.
- Subsequent to the opinions received from the consultants, it was determined that McStain will likely need to modify the street design in order to respond to the very high water table on the site. The incremental added cost could be up to \$1 million. Although the current MSD policy limits the mill levy in residential districts to 25, Staff recommends increasing the maximum mill levy from 25 to up to 30 mills to allow McStain to partially finance this added expense. The service plan has been modified to allow up to 5 additional mills, above 25, but not to exceed the amount needed to finance the actual cost of the road underdrain system. Staff will have final approval of the amount of increased mills based upon review of cost estimates or bids.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should City Council approve the Amended Service Plan submitted for Hyland Village?

Alternatives

1. Do not approve the Amended Service Plan. This would cause significant financial burden to the developer and would possibly cause the development to not be completed.
2. Direct Staff to work with the developer to reduce the amount of debt and associated mill levy. The developer has indicated that this is the amount needed to construct the required public improvements.

Background Information

The developer of Hyland Village requested that the City approve a MSD to fund infrastructure to serve the development. The development is located at approximately 96th Avenue and Sheridan Boulevard.

Council approved a “skeleton” service plan on August 28, 2006. The skeleton service plan was approved to allow the issue of district formation to be placed on the fall 2006 ballot (where it passed). However, no bonds can be issued or property taxes levied until the comprehensive service plans are approved by City Council.

McStain submitted an Amended Service Plan to Finance the construction of some of the public improvements for the Hyland Village development. The relevant terms of the service plans are as follows:

Maximum Debt	\$6,500,000
Initial Debt	\$4,500,000
Maximum total mill levy	30 mills except for Gallagher effect*
Proposed mill levy	25 to 30 mills based on cost of additional street improvements
Assessed valuation at buildout	\$15,379,636
Year of buildout	2012
Total Public Improvements	\$25,329,000 plus the costs of the additional street improvements to address the high water table
Public Improvements Paid by District	\$4,500,000 plus the costs of the additional street improvements

* In 1982, the voters of Colorado approved an amendment to the Colorado Constitution that included the so-called "Gallagher Amendment." The Gallagher Amendment requires that the assessment rate for residential property be adjusted to maintain the assessed valuation at a 45% to 55% ratio to all other property. This can result in the assessed valuation of a residential property to go down despite the fact that the actual value is going up. In order to generate the same amount of revenue, the mill levy will need to be raised. This is the only situation that would allow the mill levy to go over the defined maximum mill levy. Bonds would be difficult if not impossible to issue if this exception was not allowed.

The City engaged King and Associates to complete a market feasibility analysis of the Hyland Village MSD service plan. Based on the information in the final amended service plan, King & Associates opined that the absorption schedules are attainable. They also opined that the price points for the proposed residential development in the District are attainable.

SUBJECT: Resolution re Hyland Village Metropolitan District

Page 3

In addition, the City engaged Clifton Gunderson, LLP, Certified Public Accountants to review the financing plan presented in the service plan. They opined that the service plans were reasonable and in compliance with City policy regarding special district formation.

The costs associated with the independent analysis of these plans were paid for by the developer.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. 39

INTRODUCED BY COUNCILLORS

SERIES 2007

**RESOLUTION APPROVING THE AMENDED SERVICE PLAN
FOR HYLAND VILLAGE METROPOLITAN SPECIAL DISTRICT**

WHEREAS, a service plan dated July 31, 2006 was approved by City Council of the City of Westminster (the "City") for the Hyland Village Metropolitan Special District (the "District") in compliance with § 32-1-204.5, and City policies (hereinafter referred to as the "Service Plan"); and

WHEREAS, the District and the City anticipated that the Service Plan would be revised in the future, such revision to be approved by the City; and

WHEREAS, the territories of the proposed Districts are located wholly within the boundaries of the City; and

WHEREAS, the District has submitted an Amended Service Plan for review; and

WHEREAS, adequate notice has been published and sent to property owners and interested parties of a public hearing of the City Council of the City of Westminster to review the Amended Service Plan; and

WHEREAS, the City Council of the City of Westminster has conducted a public hearing on the Amended Service Plan for the Hyland Village Metro District.

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

Section 1. That notice of the hearing was properly given and the City Council has jurisdiction to hear this matter.

Section 2. The City Council makes the following findings:

a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special districts.

b. The existing service in the areas to be served by the proposed special districts is inadequate for present and projected needs.

c. The proposed special districts are capable of providing economical and sufficient service to the areas within their proposed boundaries.

d. The areas to be included in the proposed special districts have, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Amended Service Plan for the Hyland Village is hereby approved. Nothing herein limits the City's powers with respect to the District, the property within the District, or the improvements to be constructed by the District. The City's findings are based solely upon the evidence in the Service Plan and such other evidence presented at the public hearing, and the City has not conducted any independent investigation of the evidence presented at the public hearing. The City makes no guarantee as to the financial viability of the Districts or the achievability of the results.

PASSED AND ADOPTED this 22nd day of October 2007.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM

City Attorney



Agenda Item 10 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Resolution No. 40 re Compliance Hearing for the Accent Village Annexation

Prepared By: David Falconieri, Planner III

Recommended City Council Action

Adopt Resolution No. 40 accepting the annexation petition submitted by Petros Petrides, owner, and make the findings required by State Statute on the sufficiency of the petition. This resolution also sets the date of December 10, 2007, for the annexation hearing.

Summary Statement

- The Accent Village property is located at southwest corner of 102nd Place and Wadsworth Boulevard and consists of approximately 3.7 acres.
- The applicant wishes to annex and acquire approval of a preliminary development plan for a retail shop and 6 single family residential home sites.
- The property is subject to the requirements of the Northeast Comprehensive Development Plan which permits general retail, office and mixed use developments. Staff will recommend a Comprehensive Land Use Plan designation of Retail Commercial be placed on the lot adjacent to Wadsworth Boulevard and R-2.5 Single Family Detached Residential on the residential portion of the property.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City schedule a public hearing to annex the Accent Village property?

Alternative

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

Background

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

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

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

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Resolution
- Petition
- Vicinity Map

RESOLUTION

RESOLUTION NO. **40**

INTRODUCED BY COUNCILLORS

SERIES OF 2007

ACCENT VILLAGE ANNEXATION

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

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

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

1. City Council finds the said petition and annexation map to be in substantial compliance with the requirements of Section 31-12-107 (1) C.R.S.,
2. City Council hereby establishes December 10, 2007, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by Subsection 31-12-108 (1), C.R.S.,
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with Subsection 31-12-108 (2), C.R.S.

PASSED AND ADOPTED this 22nd day of October, 2007.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER

Department of Community Development

ANNEXATION PETITION

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

5. Signature of landowner *Patricia & Johnnie* *
Patricia & Johnnie
 Title *Owners*

6. Mailing address of signer *13991 E. Mariner dr. #402*
AURORA CO 80014

7. Legal description of land owned by signer:
 See Exhibit A Attached

8. Date of Signing *July 6, 2007*
 9. Subscribed and sworn to before me this *06* day of *July*,
 20*07*.

Witness my hand and Official Seal.

My Commission expires *November 23 - 2009*

Marilyn A. Anger
Notary Public

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

EXHIBIT A

ACCENT VILLAGE ANNEXATION PETITION

A PARCEL OF LAND CONSISTING OF TRACTS B-7, B-8 AND B-9, MAP OF MANDALAY GORDENS RECORDED AT RECEPTION NO. 194695 AT THE JEFFERSON COUNTY CLERK AND RECORDER'S OFFICE, STATE OF COLORADO, LOCATED IN THE NORTH ONE-HALF OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

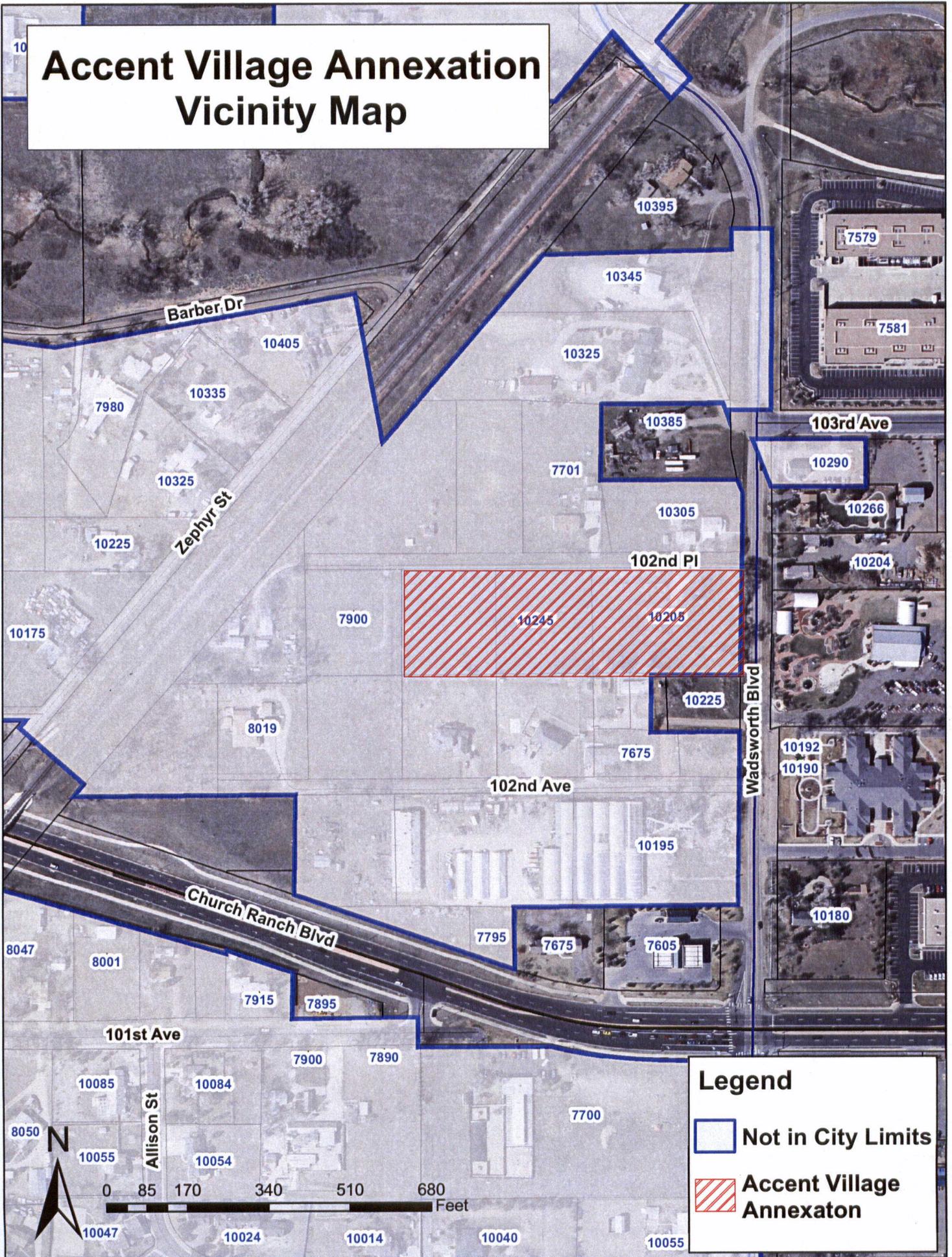
BASIS OF BEARINGS: THE EAST LINE OF THE NORTHWEST ONE-QUARTER SECTION 14 IS ASSUMED TO BEAR NORTH 00 44' 45" WEST A DISTANCE OF 2643.05 BETWEEN A FOUND 2 ½ " ALUMINUM CAP STAMPED PLS 16412 PER MONUMENT RECORD DATED SEPTEMBER 23, 1999 AT THE SOUTHEAST CORNER OF SAID NORTHWEST ONE-QUARTER AND A FOUND 3 ¼ " ALUMINUM CAP STAMPED 22097 PER MONUMENT RECORD DATED JUNE 30, 1986 AT THE NORTHEAST CORNER OF SAID NORTHWEST ONE-QUARTER.

COMMENCING AT SAID SOUTHEAST CORNER; THENCE NORTH 00 16'34" WEST A DISTANCE OF 1435.54 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF WADSWORTH BOULEVARD PER SAID MAP, A FOUND YELLOW PLASTIC CAP STAMPED PLS 14112, THE SOUTHEAST CORNER OF SAID TRACT B-9 AND THE TRUE POINT OF BEGINNING;

THENCE DEPARTING SAID WEST RIGHT OF WAY LINE SOUTH 89 40'31" WEST ALONG THE SOUTH LINE OF SAID TRACTS B-7, B-8 AND B-9 A DISTANCE OF 731.75 FEET TO A FOUND ½ " SQUARE PIN AND THE SOUTHWEST CORNER OF SAID TRACT B-7; THENCE NORTH 00 37'01" EAST ALONG THE WEST LINE OF SAID TRACT B-7, A DISTANCE OF 219.67 TO A FOUND 1/2" SQUARE PIN AND THE NORTHWEST CORNER OF SAID Tract b-7; THENCE NORTH 89 39'36" EAST ALONG THE NORTH LINE OF SAID TRACTS B-7, B-8, AND B-9 A DISTANCE OF 731.84 FEET TO A POINT ON SAID WEST RIGHT OF WAY LINE AND NORTHEAST CORNER OF SAID TRACT B-9; THENCE SOUTH 00 38'19" WEST ALONG SAID WEST RIGHT OF WAY LINE AND THE EAST LINE OF SAID TRACT B-9 A DISTANCE OF 219.86 FEET TO THE SAID SOUTHEAST CORNER OF TRACT B-9 AND THE TRUE POINT OF BEGINNING;

CONTAINING 160,800 SQUARE FEET OR 3.69 ACRES, MORE OR LESS.

Accent Village Annexation Vicinity Map





Agenda Item 10 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Councillor's Bill No. 58 re Economic Development Agreement with McKesson Information Solutions

Prepared By: Susan F. Grafton, Economic Development Manager

Recommended City Council Action

Pass Councillor's Bill No. 58 on first reading authorizing the City Manager to execute and implement the Economic Development Agreement for McKesson Information Solutions.

Summary Statement

- McKesson Information Solutions (MIS) is a subsidiary of McKesson International, a provider of a variety of health care services.
- The company is leasing 125,000 square feet in Westmoor Technology Park located northeast of 108th Avenue and Simms Street.
- Their employment at move-in is expected to be about 600 people, with average salaries between \$85,000 and \$91,400.
- The proposed assistance is based on the City's desire to fill existing office space and to attract basic employers to Westminster. The Economic Development Agreement (EDA) totals \$157,897, which includes \$15,247 in permit fee rebates, \$29,250 in construction use tax rebates and \$113,400 in equipment use tax rebates.
- Should MIS relocate outside of Westminster within 5 years of approval of this EDA, the assistance would have to be paid back to the City by the company.
- MIS also considered sites in Louisville and Broomfield.

Expenditure Required: Approximately \$157,897 (Rebates)

Source of Funds: The EDA with MIS will be funded through revenue received from permit fees, construction use tax, and use tax on furniture, fixtures, and equipment at move-in.

Policy Issue

Should the City provide assistance to MIS based on the attraction of primary jobs to the City?

Alternatives

1. Do Nothing: One alternative to offering the business assistance package is to offer nothing to this company. Though the City may not lose the project if assistance is not provided, the result would be that the City’s value of retaining existing businesses and retaining primary jobs would not be supported.
2. Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is consistent with other business retention packages.
3. Provide More: A third alternative would be to provide a greater amount of assistance than recommended. There is financial capacity for additional funding. However, it is Staff’s opinion that additional assistance is not needed, as it is consistent with other business retention packages.

Background Information

McKesson Information Solutions, LLC (MIS) is a subsidiary of McKesson International, a Fortune 500 healthcare services provider. MIS, also known as McKesson Provider Technologies, provides technology products, services, and support to healthcare providers.

The move to 125,000 s.f. in Westmoor Technology Park will allow the company to consolidate operations currently located in Louisville and Broomfield, as well as to expand. MIS will initially bring approximately 600 employees to Westminster and expects to add 100 more jobs over the next 3 years. Salaries will average between \$85,000 to \$91,400, resulting in an annual payroll over \$55 million. It is estimated that MIS will generate approximately \$263,000 in permit fees and use tax when they move in to their new facility in Westmoor Technology Park.

Proposed Assistance

Staff recommends the following assistance to be paid at time of tenant finish and during the first year of operation:

	<u>Approximate Value</u>
<u>Building Permit Fee Rebate</u>	\$15,247
60% of building permit fees (excluding water and sewer tap fees) will be rebated (\$25,412 x 60% = \$15,247)	
<u>Construction Use Tax Rebate</u>	\$29,250
60% of the Use Tax on construction materials for this project will be Rebated (Estimated Use Tax \$48,750 x 60% = \$29,250)	
<u>Use Tax on Furniture and Fixtures Rebate</u>	\$113,400
For the period 3 months prior and the 3 months after MIS obtains a final Certificate of Occupancy, the City will rebate 60% of the Use Tax (excludes the City’s 0.25% Parks, Open Space and Trail Tax and 0.6% Public Safety Tax) collected on the furnishings and equipment purchased for MIS. Westminster facility (\$6,300,000 x 3% = \$189,000 Use Tax x 60% = \$113,400)	
Total Proposed Assistance Package	\$157,897

SUBJECT: Councillor's Bill re EDA with McKesson Information Solutions

Page 3

This assistance package is based upon the City's goals to add primary jobs, fill existing space and supports the Strategic Plan goal of a Balanced, Sustainable Local Economy. MIS is an exciting and growing business. Staff believes that this is the type of growth company the City desires for the community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **58**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT
WITH MCKESSON INFORMATION SOLUTIONS**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, McKesson Information Solutions (MIS) plans to lease 125,000 square feet in Westmoor Technology Park in Westminster; and

WHEREAS, a proposed Economic Development Agreement between the City and MIS is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with MIS in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. 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 22nd day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

**ECONOMIC DEVELOPMENT AGREEMENT FOR
MCKESSON INFORMATION SOLUTIONS IN THE CITY OF WESTMINSTER**

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and the MCKESSON INFORMATION SOLUTIONS LLC, a Delaware limited liability company ("MIS").

WHEREAS, the City wishes to provide assistance to MIS to aid in the relocation of this company in the City; and

WHEREAS, MIS plans to lease and furnish 125,000 square feet of office space in Westmoor Technology Park, thus providing primary job growth within the City; and

WHEREAS, City Council finds the execution of this Economic Development Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and MIS agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to MIS 60% of the building permit fees, that are otherwise required under W.M.C. Section 11-10-3 (E). This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$15,247.

2. Use Tax Rebate- Construction. The City shall rebate to MIS 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on the construction materials, collected from MIS that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The rebate will be approximately \$29,250.

3. Use Tax Rebate- Furniture and Fixtures. The City will rebate 60% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased during the period three months prior and three months after MIS obtains a final Certificate of Occupancy for their new facility. This rebate will be approximately \$113,400.

4. Payments of Rebates. The rebates to MIS by the City shall be paid in quarterly installments from revenue actually collected and received by the City in connection with the move by MIS into the new facility. Payments of each quarterly installment shall be paid to MIS by the City within twenty (20) days following the end of each calendar quarter. All payments by the City shall be submitted by check payable to McKesson Information Solutions LLC and sent to McKesson Corporation, One Post Street, 34th Floor, San Francisco, California 94104; Attention: Glen Hallford, Tax Department.

5. Entire Agreement. This Agreement shall constitute the entire agreement between the City and MIS and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if MIS has not moved into the Westmoor offices by August 1, 2008 or should MIS not comply with the City regulations or code following written notice of non-compliance from the City.

7. Business Termination. In the event MIS ceases business operations within the City at any time prior to January 31, 2013, then MIS shall pay to the City the total amount of fees and taxes that were paid by or for MIS to the City and were subsequently rebated by the City to MIS pursuant to this Agreement.

8. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

9. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

10. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this Agreement shall be in the District Court for Jefferson County, Colorado.

MCKESSON INFORMATION SOLUTIONS

CITY OF WESTMINSTER

By: _____
Print Name: _____
Its: _____

J. Brent McFall
City Manager

ATTEST:

Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Adopted by Ordinance No.



WESTMINSTER
COLORADO

Agenda Item 10 E&F

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Revised Employment Agreement with John A. Stipech and
Councillor's Bill No. 59 re Municipal Judge Salary

Prepared By: Matt Lutkus, Deputy City Manager

Recommended City Council Action

1. Authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2008 with an effective date of January 1, 2008 and an automatic renewal for 2009 unless terminated by City Council.
2. Pass Councillor's Bill No. 59 on first reading amending the salary for the Municipal Judge for 2008.

Summary Statement

- City Council is requested to approve a revised employment agreement with John A. Stipech for services as Presiding Judge for a one-year period beginning January 1, 2008. The agreement will automatically be renewed for 2009 unless it is terminated by City Council no later than October 31, 2008.
- Judge Stipech's 2008 combined salary and deferred compensation will be \$121,603, which represents a five percent increase over his annual compensation for 2007. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2008.
- The attached proposed agreement with Judge Stipech is similar to the current employment agreement with the exceptions of the total allocated for salary and deferred compensation and a change in the effective dates of the contract.

Expenditure Required: \$121,603 plus the cost of fringe benefits as described in the attached employment agreement

Source of Funds: General Fund, Municipal Court Division Budget

Policy Issue

Should the City continue essentially the same employment agreement with John A. Stipech for 2008?

Alternative

Council could make further adjustments to the employment agreement with Judge Stipech.

Background Information

Since July 1991, City Council has used an employment agreement for Presiding Judge services. This approach is consistent with the practice of having employment agreements with the City Manager and the City Attorney who also serve at the pleasure of City Council. The agreement with the Presiding Judge addresses the overall duties of the position, the term of the agreement, compensation and benefits, professional development, and termination and separation provisions.

Judge Stipech graduated from the University of Utah in 1967 with a Bachelor of Arts Degree and received his Juris Doctorate degree from the University of Denver Law School in 1971. In July 1979, he was appointed as an Associate Judge in Westminster's Municipal Court and has served as Presiding Judge since January 1, 1996. He is a member of the Colorado and Adams County Bar Associations and the Colorado Municipal Judges' Association. Judge Stipech is an advisor to recipients of Habitat for Humanity homes, a member of the Westminster Rotary Club, and a member of the School District 50 Education Foundation Board of Directors.

The proposed employment agreement with Judge Stipech is similar to the current agreement that Council approved in October 2006 with the exception of the effective dates of the agreement and the level of compensation.

City Council met with Judge Stipech on October 1 to review his job performance since his last performance appraisal and to determine his compensation for the coming year. The revised agreement incorporates the changes requested by Council and will provide for a combined salary and deferred compensation of \$121,603. This amount is \$5,791 or 5% higher than his total salary and deferred compensation for 2007. The employment agreement allows the Judge to designate a portion of his salary as deferred compensation up to the maximum allowed under Federal law. As in previous years, the proposed employment agreement with Judge Stipech provides that the Judge will receive the same fringe benefits as those extended to all department heads.

Funds are available in the 2008 Budget to provide for the salary and fringe benefits described in the agreement.

Section 16.2 of the Westminster City Charter requires that the Council set the Presiding Judge's salary by ordinance. The Councillor's Bill fulfills this requirement by updating the salary in the Municipal Code to reflect the amount listed in the proposed employment agreement.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2008, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "CITY," and JOHN A. STIPECH, hereinafter called "EMPLOYEE," both of whom understand as follows:

WHEREAS, the CITY desires to continue to employ the services of John A. Stipech as Presiding Municipal Judge of the City of Westminster as provided by City Charter, Chapter XVI, Section 16.2; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties due to age or disability or when CITY may desire to otherwise terminate his employ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. DUTIES:

A. CITY hereby agrees to commence the employment of EMPLOYEE as Presiding Municipal Judge of CITY to perform the duties and functions specified in Section 16.2 of the City Charter, Chapter 22 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall administer the judicial component of the Municipal Court and shall be responsible for providing judicial coverage to insure efficient and expeditious hearing of all matters scheduled for hearing in the Court.

C. EMPLOYEE and the Court Administrator shall prepare and submit jointly a proposed budget for the Municipal Court, following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

D. EMPLOYEE shall supervise the judicial staff of the Municipal Court as may be authorized by the City Council. EMPLOYEE shall provide advice and direction to the Court Administrator in connection with the governance of the Court staff.

SECTION 2. TERMS:

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as Presiding Judge for calendar years 2008 and 2009. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of CITY. Subject to the provisions of Section 2.D. and Section 3 of this Agreement, EMPLOYEE will serve as Presiding Municipal Judge for calendar years 2008 and 2009. EMPLOYEE is employed as a full-time employee and shall be compensated based upon his devoting normal business hours to his duties as Presiding Municipal Judge.

The term "employed" shall not be construed to include other judicial service, private law practice, teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, Paragraph A and B of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3, paragraph C of this Agreement.

D. This Employment Agreement is for a one-year term, but shall be automatically renewed for 2009 unless terminated no later than October 31, 2008.

SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time EMPLOYEE is willing and able to perform the duties of Presiding Municipal Judge, then, and in that event, the CITY agrees to give EMPLOYEE six (6) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing six (6) months. In the event the City elects to terminate this Agreement without giving EMPLOYEE six (6) months' advance written notice thereof, the EMPLOYEE shall have as his sole and exclusive remedy the severance payment equal to six (6) months of EMPLOYEE'S base salary as provided in this paragraph and EMPLOYEE shall have no other rights or claims against the CITY and hereby expressly waives and releases the same; provided, however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, CITY has no obligation to give notice or pay the aggregate severance sum designated in this paragraph.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such resignation, within the meaning and content of the six (6) months' severance pay provisions herein.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY four (4) months' notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in paragraphs A and C of this Section 3, and paragraph D in Section 2.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3.A hereof and shall entitle EMPLOYEE to the lump sum cash payment described therein.

SECTION 4. SALARY:

A. Effective January 1, 2008, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$121,603. EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid, except that the EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then-current maximum allowed by law.

B. CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY. Such evaluation shall consider the salary of judges of similar municipalities.

SECTION 5. HOURS OF WORK:

It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

SECTION 6. DUES AND SUBSCRIPTIONS:

CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 7. PROFESSIONAL DEVELOPMENT:

CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the CITY, including, but not limited to, the American Bar Association, the Colorado Bar Association, the Colorado Municipal Judges Association, and continuing legal education courses and seminars related to topics of the judiciary. In addition to reasonably funding educational/training programs for EMPLOYEE'S professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each year.

SECTION 8. GENERAL EXPENSES:

CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 9. FRINGE BENEFITS:

EMPLOYEE will be allowed all benefits as are extended to Department Head level employees, including the monthly car allowance, except that when such benefits are in conflict with this contract, said contract shall control. The EMPLOYEE'S years of service with the City in an unbenefited capacity will be treated as years of continuous municipal service when the level of employee benefits is computed.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to EMPLOYEE as they would to other employees of CITY, in addition to said benefits enumerated specifically for the benefit of EMPLOYEE, except as herein provided.

C. EMPLOYEE is ultimately responsible for providing judicial coverage of all docketed matters in the Westminster Municipal Court.

SECTION 11. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on January 1, 2008, and, if automatically renewed, shall be in effect through December 31, 2009.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. The parties agree that this contract is entered into and shall be governed by the laws of the State of Colorado.

F. Effective January 1, 2008, this Agreement replaces and supersedes prior employment agreements between CITY and EMPLOYEE.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE.

Approved by the Westminster City Council on October 22, 2007, contingent upon approval of the Councillor's Bill amending the Municipal Judge salary.

ATTEST:

Nancy McNally, Mayor

City Clerk

John A. Stipech

APPROVED AS TO FORM:

City Attorney

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **59**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE SALARY OF THE MUNICIPAL JUDGE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-7-2, W.M.C., is hereby AMENDED as follows:

1-7-2: MUNICIPAL JUDGE: The salary of the Municipal Judge shall be as follows:

~~\$115,812~~ \$121,603 per annum payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation.

Section 2. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect on January 1, 2008.

Section 4. 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 22nd day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Councillor's Bill No. 60 re Municipal Code Modifications to Chapter 24 of Title I Personnel Management

Prepared By: Debbie Mitchell, Human Resources Manager
Matt Lutkus, Deputy City Manager

Recommended City Council Action

Pass Councillor's Bill No. 60 on first reading amending the Westminster Municipal Code, Chapter 24 of Title 1, concerning Personnel Management.

Summary Statement

- Staff is proposing a number of changes to the Personnel Management chapter in the Westminster Municipal Code. These changes will reduce the City Code directives regarding personnel management to those required in the City Charter. The sections being removed from the Code will continue to be included in the Personnel Policies and Rules promulgated by the City Manager. This change will streamline the process for making personnel policy changes, allowing for most changes to be made administratively by the City Manager. The Personnel Management Chapter of the Municipal Code contains less than 50% of the personnel policies reflected in the Personnel Policies and Rules document used to guide day-to-day personnel management.
- The following changes are being proposed in the Westminster Municipal Code:
 - Removal of the definitions that will no longer apply to this document if the other recommended changes are approved
 - Reorganization of the Chapter by moving several sections
 - Removal of the Compensation and Benefits section
 - Removal of the Employee Conduct and Discipline section
 - Removal of the substance abuse policy
 - Addition of a paragraph currently in the Personnel Policies and Rules urging cooperative resolution of personnel issues, if possible
 - Addition of a sentence requiring maintenance of a grievance record
- Per City Council direction provided at the October 15, 2007 Study Session, the City Manager will provide City Council with a quarterly report if any substantive changes are made to administrative personnel policies in the previous quarter. This reporting requirement has been added to the ordinance.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does Council concur with Staff recommendation to remove certain sections of the Personnel Management section of the Westminster Code so that only those sections that are required by City Charter to be approved by Ordinance are included in the Code?

Alternatives

1. Consider modifications to this Chapter of the Code to include changes being made to the Personnel Policies and Rules without eliminating any sections in the Code.
2. Adopt the entire Personnel Policies and Rules modifying the current Personnel Management Chapter in the Code.

Background Information

In August of 1994, the City reviewed the Personnel Management section of the Municipal Code and decided to take a large portion of the chapter out of the Code, leaving these provisions in the Personnel Policies and Rules. Up to that time, Chapter 24 of the Municipal Code contained the same information reflected in the Personnel Policies and Rules. The intent was to include only the sections required by the City Charter in the Municipal Code. The City Manager has the authority in the Charter to develop rules with regard to employment so there was not a need to have this information also established and authorized by City Council.

A recent review of the Personnel Management Chapter of the Municipal Code by the City Attorney's Office determined that some sections of the Personnel Policies and Rules included were required by the Charter, while other sections did not need to be included. The current Personnel Management Chapter reflects only a small portion of the adopted Personnel Policies and Rules. Staff recommends a further streamlining of Chapter 24 of the City Municipal Code to reflect only the sections required and established by the City Charter. If Council concurs with Staff's recommendation to eliminate sections of this Chapter of the Code, the rules covered in these sections will continue to be addressed in the Personnel Policies and Rules document approved administratively by the City Manager.

In addition to the recommended deletions, Staff is recommending changes to sections of the Personnel Management Chapter that will continue to be in the Code. These changes are:

- Addition of a paragraph currently in the Personnel Policies and Rules urging cooperative resolution of personnel issues if possible.
- Addition of a sentence requiring maintenance of a grievance record.

The recommended ordinance changes also include a modification requiring the City Manager to keep City Council apprised of any substantive changes in administrative personnel policies. Updates will be made to Council on a quarterly basis if a substantive change has occurred.

City Staff recently completed a thorough review of the Personnel Policies and Rules. The last comprehensive update was completed in early 2002. The document includes the following substantive changes:

- FLSA cycle in for sworn Police employees changed from 28 day/171 hour cycle to 14 day/80 hour cycle
- Employment of relatives – nepotism policy loosened when security and confidentiality can be protected through technology and systemic changes
- Temporary employees - extend from one to two years maximum employment period
- Major Illness Leave - maximum Major Illness Leave use established for three year period (960 hours for general employees and 1344 hours for Fire shift employees - current policy provides up to 480 hours for general employees and 672 for Fire shift employees per year)
- Withholding or delaying salary increases and extending probation in no less than 6 month increments

- Extended Leave – supervisors may delay extended leave authorization for up to one year based on organizational needs
- Leave cash out at separation - no general leave will be allowed during last two weeks of employment unless the leave is designated as vacation leave
- Facility closure(s) - employees must use general leave if employee unable to work due to facility closures
- Employees bidding on City Contracts – generally prohibited unless exception approved by the City Manager

If the proposed Councillor's Bill is approved, all nine of these rule modifications will be made in the administrative document and will not be addressed in the City Code. All of these recommended changes are being reviewed by the Personnel Board and the Employee Advisory Committee.

The Personnel Management Ordinance addresses Council's Strategic Plan goal of Financially Sustainable City Government by putting in place expectations of the organization for staffing, compensation and employee dispute resolution. It clearly outlines the responsibility of the City Manager and other administrative officers to develop and maintain fair and consistent employment practices, enabling the organization to effectively deliver quality services to the community.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **60**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING CHAPTER 24 OF TITLE I,
WESTMINSTER MUNICIPAL CODE,
CONCERNING PERSONNEL MANAGEMENT**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The index for Chapter 24 of Title I, W.M.C., is hereby AMENDED to read as follows:

CHAPTER 24

PERSONNEL MANAGEMENT

- 1-24-1: DEFINITIONS**
- 1-24-2: GENERAL PROVISIONS PRINCIPLES AND IMPLEMENTATION**
- ~~**1-24-3: ADMINISTRATION**~~
- ~~**1-24-4: COMPENSATION AND BENEFITS**~~
- ~~**1-24-5: EMPLOYEE CONDUCT AND DISCIPLINE**~~
- ~~**1-24-6 3: GRIEVANCES AND APPEALS**~~
- ~~**1-24-7: SUBSTANCE ABUSE POLICY**~~

Section 2. Section 1-24-1, W.M.C., is hereby AMENDED to read as follows:

1-24-1: DEFINITIONS: For the purposes of this chapter, the following words and terms, unless the context clearly states otherwise, shall have the meaning indicated below. (2248 2603 2922 3317)

ADMINISTRATIVE OFFICER: THE ADMINISTRATIVE OFFICERS OF THE CITY SHALL BE THE CITY MANAGER, CITY ATTORNEY, CITY CLERK AND FINANCE DIRECTOR, AND SUCH ADDITIONAL ADMINISTRATIVE OFFICERS AS MAY BE CREATED BY CITY COUNCIL. THE ADDITIONAL ADMINISTRATIVE OFFICERS SHALL BE THOSE EMPLOYEES SERVING IN CLASSIFICATIONS LISTED AS "ADMINISTRATIVE OFFICERS" IN THE PAY AND CLASSIFICATION PLAN APPROVED BY CITY COUNCIL RESOLUTION.

Appeal: The action taken by an employee in order to have the employee's suspension, demotion or dismissal reviewed by the Personnel Board and the City Manager.

~~Appointing Authority: A Division Manager or higher level position who has the authority to make original appointments or recommend such appointments.~~

Board: The Personnel Board.

~~Charter: The home rule charter of the City of Westminster.~~

~~City Code: The City of Westminster Municipal Code.~~

Class: A position or group of positions, which are sufficiently similar with respect to skill, effort and responsibility, that they may be properly designated by the same title, and equitably compensated from the same range of pay under substantially the same employment conditions.

~~Compensatory Time: Leave hours earned for hours worked beyond the scheduled work day, scheduled work period or beyond the work period designated for Fair Labor Standards Act compliance.~~

~~Continuous Municipal Service: Uninterrupted length of service in a position or positions designated as receiving general leave, medical and dental insurance and other fringe benefits.~~

~~Corrective Action: The verbal counseling or verbal reprimand of an employee for the purpose of communicating deficiencies in the employee's conduct or performance.~~

~~Council: The City Council of Westminster, Colorado.~~

~~Demotion: The movement of an employee from a position in one class to a position in another class, having a lower maximum salary rate than the original class, or the movement of an employee to a lower salary in the same class.~~

Department Head: An individual who is regularly responsible for directing and managing the overall operations of a City department as authorized by the Charter or City Code, and who has been designated as a department head by the City Manager. The City Manager, ASSISTANT CITY MANAGER, DEPUTY CITY MANAGER and the City Attorney shall assume duties assigned to department heads in this Chapter for carrying out those actions involving positions, which report directly to them.

~~Disciplinary Action: A written reprimand, suspension, demotion, dismissal, or any other documented action taken in a disciplinary manner involving an employee, but not including a corrective action.~~

Division Manager: An individual appointed by the department head to manage a work group designated as a division within the department. For purposes of this Chapter, the City Manager, ASSISTANT CITY MANAGER, DEPUTY CITY MANAGER, department head or the City Attorney shall assume the responsibilities assigned to division manager when the employee in question reports to a department head, the City Attorney, DEPUTY CITY MANAGER, ASSISTANT CITY MANAGER, or the City Manager.

Employee: A person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay which has been approved by the Human Resources Manager. This definition shall include all full-time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, HOURLY, instructor, indexed, intern, special project, short term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City.

~~Employee – Administrative Officer: A full time or part time employee holding a position that is specifically designated as a department head or division manager in the City's administrative officer pay plan. Employees in this category are at will employees.~~

Employee - eExempt: An employee who is eExempt from the overtime provisions of the fFair lLabor sStandards aAct. Reference to eExempt employees WHEN CAPITALIZED refers to those employees whose positions are listed in the eExempt employee pay schedule in the eCity pPay pPlan. All employees in the exempt employee pay schedule are exempt from overtime provisions of the Fair Labor Standards Act with the exception of the classification of administrative secretary and legal secretary. These two classifications are eligible for overtime after they have utilized the administrative leave they receive as part of the exempt employee benefit package.

~~Employee – Hourly Non-benefited: An employee appointed to provide services on an hourly basis in specifically designated areas and work an intermittent schedule with no defined number of hours or benefit eligibility.~~

~~Employee – Indexed: An employee appointed to serve for a limited period of time indexed to a particular workload level below which the employee position shall be terminated.~~

~~Employee – Instructor: An employee who has received an appointment for specific instructional activities conducted on behalf of the City. Instructor's work is part time, scheduled work and there is no time limit to the amount of time an employee may hold a position in this capacity.~~

~~Employee – Intern: An employee appointed to a position in an intern capacity for a period of up to two years.~~

Employee – Non-exempt: An employee who is entitled to overtime pay or compensatory leave time under circumstances specified by the Fair Labor Standards Act. Reference to non-exempt employees refers to those employees whose positions are listed in the non-exempt employee pay schedule in the City pay plan.

Employee - Part-Time Regular: An employee who has been appointed to a part-time authorized ~~Non-exempt or e~~Exempt position to work less than forty (40) hours during a seven-day period on a regular basis, and who has successfully completed the initial probationary period.

~~Employee – Probationary: An individual who has been appointed to an authorized position in the municipal service, but who has not yet completed the probationary period.~~

Employee - Regular: An employee who has been appointed to a full-time authorized ~~Non-exempt or e~~Exempt position in the municipal service, and who has successfully completed the initial probationary period.

~~Employee – Seasonal: An employee who has received an appointment for a specified period of time, normally on a seasonal basis or for a specific activity for a designated season.~~

~~Employee – Short Term Disability: An employee who is appointed to this category is receiving short term disability pay and has an authorized medical professional certification that they are unable to return to work.~~

~~Employee – Special Projects: An employee who has received a temporary appointment for a specified project, period of time not to exceed one year.~~

~~Employee – Substitute: An employee who has received an appointment to a position part time, occasional work on a “substitute” as needed, or on call basis, to fill in for absences and staffing shortages. There is no limit to the length of time an employee may hold a position in this capacity.~~

~~Employee – Temporary: An employee who has received an appointment for a period of time not to exceed one year who is not serving in a temporary benefited position.~~

~~Employee – Temporary Benefited Indexed: An employee appointed to serve for a temporary period of time indexed to a particular workload level, funding source or other criteria established by City Council.~~

~~Employee – Temporary Benefited:~~

~~An employee who has received an appointment for a period of time not to exceed one year, who is serving in a temporary benefited position.~~

~~Employee – Temporary Intern:~~

~~An employee who has received an appointment to a temporary position in an Intern capacity for a period of up to three years.~~

~~Employee – Temporary Special Project:~~

~~An employee who has received an appointment to a temporary position for a specified project.~~

~~Employee – Emergency:~~

~~An employee who has received an appointment to a position during an emergency situation, to prevent undue delay or serious interferences with the provision of necessary public services.~~

~~Employee – Provisional:~~

~~An employee who has received a temporary appointment to a position, due to a vacancy or extended absence of the incumbent.~~

Examination: ~~A written, oral, physical, or skill test, or a combination of these tests specifically used to assist in evaluating an applicant's qualifications for a particular position, including a promotional examination in which admission to the examination is limited to employees who meet the qualifications set forth in the job specifications.~~

Fringe Benefit: ~~Any form of compensation in addition to the base salary as adopted by Council. General leave, health and life insurance, uniforms, cleaning allowance, educational reimbursement, safety shoes, and other benefits shall be considered as fringe benefits.~~

Grievance: A disagreement regarding the meaning, interpretation, application, or alleged violation of ~~this Chapter,~~ THESE policies and rules adopted hereunder, departmental policies, ~~and~~ rules or any other administrative policies of the City, WHICH HAS BEEN FORMALLY PRESENTED FOR REVIEW PURSUANT TO SECTION 1-24-3 OF THIS CHAPTER.

Holiday: ~~The period between 12:01 a.m. and the following midnight of the date on which a designated holiday falls.~~

Job Description: The written description of a class, including the title, a statement of the nature of the work, examples of duties and responsibilities, and the requirements that are ~~necessary~~ ESSENTIAL and/or desirable for the satisfactory performance of the duties of the class.

Job Title: The title assigned to any particular class, and used for reference to that class.

Lateral Transfer: ~~The movement of an employee from one position to another for which the employee is qualified.~~

Layoff: ~~The separation of an employee from the municipal service, which has been made necessary by lack of work or funds or other reasons not related to fault, delinquency, or misconduct on the part of the employee. This term shall include those separations initially expected to be temporary as well as those resulting from the elimination of a position.~~

Original Appointment: ~~The appointment of a person to a position in the municipal service.~~

Position: A group of current duties and responsibilities requiring the full-time, temporary, or part-time services of one employee.

Probationary Period: ~~A working test period following an original appointment, a promotion, a lateral transfer or a demotion during which a regular employee is required to demonstrate the ability to satisfactorily perform and learn in the assigned position.~~

Promotion: ~~The movement of an employee from a position of one class to a position of another class having greater or increased responsibilities and pay.~~

Reclassification: ~~The official determination by the City Manager that a position be assigned to a class different from the one to which it was previously assigned.~~

Reemployment List: ~~A list of persons who have been regular employees in a particular class, and who are entitled to have their names certified for appointment to a position in that class.~~

Relative: ~~The employee's spouse, child, stepchild, grandchild, parent, grandparent, sibling, half sibling, or any of these relationships arising through adoption.~~

Separation: ~~The voluntary or involuntary severing of an employee's employment with the City.~~

Supervisor: Any individual having authority, in the interest of the City, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or having responsibility to direct them,

or to adjust their grievances, or effectively having the authority to recommend such action, if the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

Suspension: The temporary separation of an employee from performing his or her regularly assigned duties with or without pay for disciplinary reasons, or pending the outcome of an investigation involving the employee.

~~Vacation Leave: General leave that is taken from normal working hours for vacation or leisure purposes.~~

Section 3. Section 1-24-2, W.M.C., is hereby AMENDED to read as follows:

1-24-2: GENERAL PROVISIONS PRINCIPLES AND IMPLEMENTATION: (2248 2922)

(A) Intent of Chapter: IN ENACTING THIS CHAPTER, It is the intent of the City Council ~~that this Chapter shall~~ TO provide for a professional and impartial personnel management system in accordance with the provisions of the City Charter. This Chapter supersedes any previously distributed ordinances, resolutions, rules, policies and employee handbooks. The language of this Chapter is not intended to create, nor is it to be construed to constitute, a contract between the City of Westminster and any one or all of its employees. ~~Employees have the right to terminate employment at any time for any reason and the City retains the right to terminate employment at any time for the reasons specified in this Chapter.~~

(B) Persons Covered by Chapter: This Chapter applies to all positions and employees in the ~~civil service system as instituted by the City Charter~~ CITY. In addition, unless specifically noted otherwise, it shall also apply to ~~Administration~~ ADMINISTRATIVE Officers and other categories of municipal employment where not inconsistent with provisions of the Charter or other ordinances.

(C) Administrative Regulations: The City Manager shall have the authority to establish such policies and rules deemed necessary for the efficient and orderly administration of the personnel management system. Such authority may be delegated to department heads, division managers and supervisors as deemed appropriate by the City Manager. THE CITY MANAGER WILL PROVIDE CITY COUNCIL WITH A QUARTERLY REPORT IF ANY SUBSTANTIVE CHANGES ARE MADE TO ADMINISTRATIVE PERSONNEL POLICIES IN THE PREVIOUS QUARTER. All such policies and rules must be in writing and be consistent and compatible with this Chapter and the Charter., AND, AT A MINIMUM, INCLUDE THE FOLLOWING:

1. CLASSIFICATION PLAN: A CLASSIFICATION PLAN RESULTING FROM AN ANALYSIS AND EVALUATION OF ALL POSITIONS IN THE MUNICIPAL SERVICE SHALL BE DEVELOPED BY THE CITY MANAGER, OR HIS/HER DESIGNEE, AND MAINTAINED BY THE HUMAN RESOURCES MANAGER. IT SHALL CONSIST OF A LISTING WHICH GROUPS ALL POSITIONS IN CLASSES, BASED ON THE SKILL, EFFORT, RESPONSIBILITY, AND QUALIFICATIONS THAT ARE NECESSARY OR DESIRABLE FOR THE SATISFACTORY PERFORMANCE OF THE DUTIES OF THE CLASS. THE CLASSIFICATION PLAN SHALL INCLUDE TITLES AND WRITTEN JOB DESCRIPTIONS FOR ALL THE VARIOUS CLASSES OF POSITIONS. EACH CLASS SHALL INCLUDE ALL POSITIONS IN THE MUNICIPAL SERVICE, WHICH ARE SUFFICIENTLY SIMILAR WITH RESPECT TO DUTIES, RESPONSIBILITIES, AND AUTHORITY, SO THAT THE SAME DESCRIPTIVE TITLE MAY BE USED TO DESIGNATE EACH POSITION ALLOCATED TO THE CLASS. COUNCIL APPROVAL OF THE JOB TITLES AND PAY RANGES IN THE PAY PLAN SHALL CONSTITUTE APPROVAL OF THE CLASSIFICATION PLAN.
2. PREPARATION, ADOPTION AND AMENDMENT OF PAY PLAN: A CITYWIDE COMPENSATION PLAN, WHICH SHALL CONSIST OF MINIMUM AND MAXIMUM RATES OF PAY FOR EACH CLASS OR POSITION SHALL BE DEVELOPED AND MAINTAINED BY THE HUMAN RESOURCES MANAGER, AS THE REPRESENTATIVE OF THE CITY MANAGER. SALARY RANGES SHALL BE RELATED DIRECTLY TO THE POSITION CLASSIFICATION PLAN, AND SHALL BE DETERMINED WITH DUE REGARD TO RANGE OF PAY FOR OTHER CLASSES, REQUISITE QUALIFICATIONS,

PREVAILING RATE OF PAY FOR LIKE WORK IN OTHER PUBLIC AND PRIVATE ORGANIZATIONS, RECRUITING EXPERIENCE, WORKING CONDITIONS, SUGGESTIONS OF DEPARTMENT HEADS, MAINTENANCE OF OTHER BENEFITS RECEIVED BY EMPLOYEES, THE FINANCIAL POLICY OF THE CITY, AND OTHER ECONOMIC CONSIDERATIONS. IN ADDITION, THE HUMAN RESOURCES MANAGER SHALL DEVELOP, MAINTAIN AND UPDATE A SET OF SALARY COMPLEMENTS WHICH SHALL BE DESIGNED TO ASSIST IN ATTRACTING AND RETAINING QUALIFIED EMPLOYEES. THE PAY PLAN SHALL BE SUBMITTED TO COUNCIL BY THE CITY MANAGER FOR ADOPTION ON AN ANNUAL BASIS IN ORDER TO MAINTAIN THE COMPETITIVE NATURE OF THE CITY'S PERSONNEL PROGRAM.

3. EMPLOYEE POLITICAL ACTIVITY: ACTIVE PARTICIPATION BY EMPLOYEES IN THE MUNICIPAL POLITICS OF THE CITY OF WESTMINSTER SHALL BE RESTRICTED. IT SHALL BE THE POLICY OF THE CITY, HOWEVER, NOT TO DENY TO EMPLOYEES AND OFFICIALS THE RIGHTS TO ENGAGE IN THEIR NORMAL RIGHTS AND RESPONSIBILITIES AS CITIZENS.

- ~~(D)~~ 4. Nondiscrimination: No action affecting the employment status of any employee or applicant for a position in the municipal service, including examination, appointment, promotion, demotion, suspension, or removal shall be taken or withheld by reason of race, color, sex, national origin, political, or religious affiliation, age, disability or ~~Vietnam~~-MILITARY veteran status.

Section 4. Sections 1-24-3, 1-24-4, and 1-24-5, W.M.C., are hereby DELETED IN THEIR ENTIRETY.

Section 5. Section 1-24-6, W.M.C., is hereby AMENDED to read as follows:

~~1-24-6~~ 1-24-3: GRIEVANCES AND APPEALS: (2248 2603 2648 2922)

(A) General: Supervisory and administrative personnel shall strive to anticipate, and thereby eliminate, the cause of most misunderstandings, problems, complaints, or grievances. To the extent that they occur, the employee is encouraged to promptly seek the employee's immediate supervisor's assistance. Supervisory personnel shall not interfere with or discriminate against or make reprisals against any employee who files a grievance. The City strongly encourages the use of non-adversarial dispute resolution techniques to resolve grievances in a manner that is satisfactory to all affected parties. SUPERVISORY AND ADMINISTRATIVE PERSONNEL ARE STRONGLY ADVISED TO SEEK THE ADVICE AND SUPPORT OF THE HUMAN RESOURCES DIVISION AND CITY ATTORNEY'S OFFICE AT THE EARLIEST POSSIBLE TIME AFTER LEARNING OF A PROBLEM TO DEVELOP A MEANS TO COOPERATIVELY RESOLVE THE ISSUES. DEVELOPING THE LEAST ADVERSARIAL PATH TO RESOLUTION, BEFORE CONFLICT ESCALATES FURTHER, IS THE GOAL. WHILE ALTERNATIVE MEANS TO RESOLVE PERSONNEL ISSUES MAY BE DEVELOPED EITHER PRIOR TO THE FILING OF A FORMAL GRIEVANCE OR DURING THE INVESTIGATION AND FORMAL PROCESSING OF A GRIEVANCE, THE EARLIER THE BETTER. EMPLOYEES, TOO, ARE ENCOURAGED TO SUGGEST ALTERNATIVE MEANS OF RESOLVING DISPUTES WITHOUT COMPROMISING THEIR RIGHTS TO THE FORMAL PROCESS.

(B) GRIEVANCE: A GRIEVANCE IS A DISAGREEMENT REGARDING THE MEANING, INTERPRETATION, APPLICATION, OR ALLEGED VIOLATION OF THE PERSONNEL POLICIES AND RULES, DEPARTMENTAL POLICIES AND RULES, OR ANY OTHER ADMINISTRATIVE POLICIES OF THE CITY. WHEN DISPUTED, THE HUMAN RESOURCES MANAGER WILL DETERMINE WHETHER THE ACTION OR ALLEGED ACTION IS GRIEVABLE.

~~(B)~~(C) Filing a Grievance: Any employee with a grievance must file a written complaint with the employee's division manager (or the party who took the action being grieved if that party is of higher rank) with a copy to the Human Resources Manager within fourteen (14) calendar days following the grieved action. The division or department manager shall try to resolve the matter within ten (10)

calendar days from the receipt of the written grievance. If the employee is not satisfied that the difference has been resolved after action by the division manager, the employee may within ten (10) calendar days of receipt of the grievance response file the grievance with the department head (if not already reviewed by the department head). The department head shall try to resolve the matter within ten (10) calendar days of receipt of the grievance. The deadlines in this paragraph (b) may be extended with the mutual consent of the parties.

If the employee is not satisfied that the difference has been resolved after action by the department head, the employee may pursue the following procedure:

1. Actions other than suspension, demotion or dismissal. Within ten (10) calendar days after receipt of the department head's response, the employee may ask the Human Resources Manager in writing to investigate the grievance. If the department head has taken no action within ten (10) calendar days after receipt of the written grievance, the employee may request in writing that the Human Resources Manager investigate the grieved action. The Human Resources Manager shall, within twenty-one calendar days, investigate the grievance and consult with the employee and then make recommendations to the City Manager or the City Manager's designee who shall decide on the grievance within ten (10) calendar days. The City Manager's or the City Manager's designee's decision shall be final in all instances. The deadlines in this paragraph (1) may be extended with the mutual consent of the parties or because of an inability to do a complete investigation in the time allowed.

2. Suspension, demotion or dismissal. Within fourteen (14) calendar days after receipt of the department head's response, the employee may file an appeal to the Personnel Board or, if the department head has taken no action within ten (10) calendar days of receipt of the written grievance, the employee may file a written appeal to the Personnel Board within twenty-one calendar days after the department head's receipt of the written grievance.

3. FAILURE TO FILE. An employee loses any right to file a grievance or appeal with the Human Resources Manager or to file an appeal to the Board if the employee fails to file a written grievance within the time lines defined above. No organization or individual has the right to file a grievance on the employee's behalf and legal representatives shall not be permitted to attend any meeting with the grieved employee held for the purpose of investigating the grievance prior to the time an appeal has been filed pursuant to subsection (D) of this section.

4. Grievances Related to Disabilities. If an employee has, in the employee's view, suffered discrimination in violation of state or federal law based on a past or current disability, whether real or perceived, or association with an individual with a disability, the employee may file a grievance pursuant to this subsection ~~(B)~~ (C). A RECORD OF THE GRIEVANCE AND THE ACTION TAKEN TO RESOLVE IT SHALL BE MAINTAINED. This procedure is not a prerequisite to the pursuit of other legal remedies authorized by federal law. A disability-related grievance alleging a violation of federal laws protecting individuals with disabilities may be filed at any time.

~~(C)~~(D) Appeal: Only suspensions, demotions, or dismissals for disciplinary reasons can be appealed to the Personnel Board and only after all administrative remedies through the grievance procedure have been exhausted. Only regular ~~full~~-FULL-time employees and regular part-time benefited employees in authorized positions are eligible to appeal to the Board. Administrative officers have no appeal rights beyond the grievance process to the City Manager.

~~(D)~~(E) Filing an Appeal: The employee must file an appeal and request a hearing, in writing, setting forth the reasons for appeal in detail with the Human Resources Manager as set forth in subsection ~~(B)~~(C) of this section. The appeal must specify the grounds for appeal and shall contain a detailed statement of facts in support of the appeal. ANYONE CONSIDERING FILING AN APPEAL MAY CONTACT HUMAN RESOURCES FOR A COMPLETE COPY OF THE PERSONNEL BOARD RULES.

(F) FORWARDING AN APPEAL: The Human Resources Manager shall immediately forward copies of the written appeal to each member of the Board. The Human Resources Manager has the authority to return to the employee for correction any appeal that fails to conform to this provision regarding specifying grounds for appeal and containing detailed statement of facts in support of the appeal.

~~(E)~~(G) Appeal Procedure: Upon receipt of the appeal from the Human Resources Manager, the Board shall schedule a hearing on the appeal. Once the Board meets to hear the appeal, it may take the time necessary to obtain all the information deemed appropriate and in so doing the Board is not restricted to any particular time frame to conclude the hearing.

~~(F)~~(H) Subpoenas: The chairperson of the Board may issue a subpoena stating the title of the proceeding before the Board and commanding each person to whom it is directed to attend and give testimony at a hearing on an appeal before the Board at the time and place specified therein.

~~(G)~~(I) Findings and Decision: It is the interpretation of the City Council that the Charter of the City of Westminster establishes a personnel grievance process in which the Personnel Board has the responsibility of determining the facts of an appeal and determining when disciplinary action should be reconsidered and in such cases, the City Manager has the responsibility of reconsidering the disciplinary action and making the final disciplinary decision based on the facts determined by the Board. At the conclusion of the hearing, the Board shall send a written decision to the City Manager, which concludes that:

1. The action appealed was without justification and should be reconsidered. The Board may recommend that the appellant be restored to previous status and receive compensation for the period of the suspension, termination, or reduction in grade; ~~or~~
2. The action appealed was justified and should be confirmed; or
3. The action appealed was partially justified and should be reconsidered. The Board may recommend that the discipline be reduced under the conditions the Board deems proper.

The Board's decision shall contain findings of evidentiary fact on all material issues of fact and conclusions regarding the issues of law or discretion presented by the appeal.

~~(H)~~(J) Notice of Findings and Decision; Transcript: The Board shall report its findings and decision to the City Manager, the parties and their attorneys within thirty (30) days after the conclusion of the hearing. Notice shall be sent in the manner specified in subsection ~~(H)~~ (I) of this Section. The City shall make a record of the testimony and proceedings at an appeal hearing. Either the City or the employee may request a transcription of the testimony and proceedings at an appeal hearing. If the employee requests a hearing transcription, it shall be prepared at the employee's expense.

~~(I)~~(K) Decision of the City Manager:

1. When the Board has concluded that the discipline was justified, the City Manager shall confirm the decision of the Board;-
2. When the Board has concluded that the action appealed was without justification or was partially justified, the City Manager shall reconsider the suspension, demotion or discharge and either reinstate the employee, impose a lesser penalty, or confirm the original suspension, demotion or discharge; OR
3. When reconsidering a suspension, demotion or discharge, the City Manager shall be bound by the Board's findings of evidentiary fact. The City Manager may accept or reject the Board's findings of ultimate fact or conclusions and may accept or reject the Board's recommendation regarding discipline.

~~(J)~~(L) Administrative Procedure Jurisdictional: No employee may bring an appeal before the Board until the employee has received the written notice of the final action taken or contemplated by the department head. The filing of an appeal under any of the procedures described in this section shall not constitute grounds for delaying the administrative action against which the appeal is made.

~~(K)~~(M) Appeal from Decision of City Manager: The employee may appeal any action of the City Manager resulting in suspension, demotion or dismissal to the District Court.

~~(L)~~(N) Right to Legal Counsel: The employee may only be represented by a person who is licensed to practice law in the State of Colorado. ~~If the employee chooses to not be represented by legal counsel, the appointing authority shall not be represented by legal counsel. If the employee retains legal counsel, appointing authority shall be represented by the City Attorney.~~

~~(M)~~(O) Rules of Procedure: The Board may adopt additional rules of procedure to supplement the procedures outlined in this section.

Section 6. Section 1-24-7, W.M.C., is hereby DELETED IN ITS ENTIRETY.

Section 7. This ordinance shall take effect upon its passage after second reading.

Section 8. 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 22nd day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
October 22, 2007



SUBJECT: Councillor’s Bill No. 61 re Municipal Code Modifications to Chapter 11 of Title VIII Stormwater Quality

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Pass Councillor’s Bill No. 61 on first reading repealing and reenacting Chapter 11 of Title VIII of the Westminster Municipal Code concerning stormwater quality.

Summary Statement

- In 2003, the City was required by the Federal Environmental Protection Agency to apply for a National Pollutant Discharge Elimination System (NPDES) permit through the Colorado Department of Public Health and Environment. This is a five-year permit, up for renewal in 2008.
- The City is required by this permit to minimize the amount of pollutants that enter into our channels, streams and lakes. There are six program areas with specific measurable goals that the City must address and include in an annual report. These include: 1) Public Education and Outreach, 2) Public Participation and Involvement, 3) Illicit Discharge Detection and Elimination, 4) Construction Site Runoff Control, 5) Post-Construction Site Runoff Control and 6) Pollution Prevention and Good Housekeeping.
- One of the specific requirements of the illicit discharge detection and elimination and post-construction site runoff control program areas is to update the City’s stormwater quality ordinance to include enforcement mechanisms for water quality violations. The City’s current stormwater quality ordinance does not provide this enforcement mechanism.
- This proposed ordinance will provide these enforcement mechanisms to protect and enhance the quality of water discharged into the City of Westminster’s storm drainage system.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City of Westminster update the stormwater quality ordinance to provide for enforcement of water quality violations?

Alternative

City Council could direct staff to make changes to the proposed ordinance. Staff believes the proposed ordinance meets the requirements set forth by the EPA.

Background Information

The 1972 amendments to the Clean Water Act provided the statutory basis for the National Pollutant Discharge Elimination System (NPDES) permit program and the basic structure for regulating the discharge of pollutants in stormwater runoff to waters of the United States. The United States Environmental Protection Agency (EPA) oversees this program in conjunction with authorized states. In March of 2003, the City of Westminster applied for this permit from the Colorado Department of Public Health and Environment (CDPHE).

The City of Westminster is required to have an established enforcement mechanism specific to water quality violations per this NPDES permit as the City is ultimately responsible to ensure that Best Management Practices (BMPs) are installed and maintained. Examples of water quality violations include sanitary sewer overflows that impact our storm drainage system, failures to install and maintain BMPs at construction sites or failures to maintain permanent BMPs such as detention ponds at established residential subdivisions or commercial properties.

Highlights of the proposed Municipal Code changes are as follows:

- Defines "Illicit Discharges" and enforcement against any party that causes an illicit discharge into the storm sewer system such as a cross connection from the sanitary sewer into the storm sewer system or a sanitary sewer overflow into the storm drainage system.
- Defines responsibilities for developers, builders, business owners, homeowners associations and landowners to install and maintain BMPs.
- Establishes the City's authority to perform the maintenance work and charge the owner for services rendered or place a lien on the property (per Title I Chapter 31) should the owner of a permanent BMP fail to maintain that facility. The City will continue its current practice of educating and working with landowners and developers to assist them in compliance with Federal NPDES requirements.
- Establishes administrative fines of up to \$1000 as an enforcement option for water quality violations. Administrative fines can be used as an alternative to formal action in court. They are subject to appeal using a process already established by Municipal Code.

This ordinance will give the City the much needed ability to protect and enhance the quality of water entering our streams and lakes so the residents of Westminster and other jurisdictions can have safe drinking water and safely enjoy their open space and natural environment.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **61**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE REPEALING AND REENACTING CHAPTER 11 OF TITLE VIII OF
THE WESTMINSTER MUNICIPAL CODE CONCERNING STORMWATER QUALITY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 11 of Title VIII, W.M.C., is hereby REPEALED AND REENACTED to read as follows:

CHAPTER 11

STORMWATER QUALITY

- 8-11-1: PURPOSE AND POLICY
- 8-11-2: GENERAL REQUIREMENTS
- 8-11-3: DEFINITIONS
- 8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES
- 8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS
- 8-11-6: STORMWATER MANAGEMENT PLAN
- 8-11-7: MAINTENANCE REQUIREMENTS
- 8-11-8: ILLICIT DISCHARGES
- 8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES
- 8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES
- 8-11-11: JUDICIAL ENFORCEMENT REMEDIES
- 8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION

8-11-1: PURPOSE AND POLICY: (2335) The purpose of this Chapter is to establish procedures to protect and enhance the quality of water discharged into the City's storm drainage system by:

- (A) Requiring measures that prevent erosion and the loss of sediment and other pollutants from construction sites.
- (B) Requiring protection of soil surfaces before, during and after construction.
- (C) Establishing stormwater quality design requirements for the development and redevelopment of property.
- (D) Requiring the use of temporary and permanent Best Management Practices (BMP's) to achieve a reduction in the pollutant loading of stormwater runoff.
- (E) Establishing maintenance requirements for developers, builders, business owners and landowners.
- (F) Prohibition of illicit discharges into the City's storm sewer system.
- (G) Establishment of remediation and enforcement procedures.

8-11-2: GENERAL REQUIREMENTS:

- (A) Any person who undertakes or causes to be undertaken any activity, which involves disturbance of the surface of land shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of

receiving waters. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters.

(B) All temporary erosion control facilities and all permanent facilities intended to control erosion of any earth disturbance operation shall be installed before any earth disturbance operations take place.

(C) Any earth disturbances shall be conducted in such a manner to effectively reduce soil erosion and resulting sedimentation, and should not exceed the erosion expected to occur for the site in its totally undeveloped state.

(D) All persons engaged in earth disturbances shall design, implement, and maintain acceptable soil erosion and sedimentation control measures, in conformance with the erosion control technical standards adopted by the City.

(E) All earth disturbances shall be designed, constructed and completed in such a manner so that the exposed area of any disturbed land shall be limited to the shortest possible period of time.

(F) Sediment caused by accelerated soil erosion shall be removed from runoff water before it leaves the site of the earth disturbance.

(G) Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the earth disturbance area shall be designed to limit the water flow to a non-erosive velocity as defined in the City's "Storm Drainage Design and Technical Criteria Manual".

(H) Temporary soil erosion control facilities shall be removed once final stabilization has been achieved.

(I) Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area shall be completed within fourteen (14) calendar days after final grading, the final earth disturbance has been completed or in accordance with a City-approved phasing plan. When it is not possible to permanently stabilize a disturbed area after an earth disturbance has been completed or where significant earth disturbance activity ceases, temporary soil erosion control measures shall be implemented within fourteen (14) calendar days. All temporary soil erosion control measures shall be maintained until final stabilization is achieved.

8-11-3: DEFINITIONS: Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the following meanings:

(A) **"Applicant"** means a landowner or agent of a landowner who has filed an application for a grading and erosion control permit.

(B) **"Best Management Practices (BMPs)"** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal separate storm sewer system (MS4). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage of leaks, sludge or waste disposal, or drainage from raw material storage.

(C) **"Builder"** means a person undertakes construction activities.

(D) **"Business Owner"** means a person who owns title to a commercial property.

(E) **"City Inspector"** means the person or person(s) authorized by the City Manager to inspect a site for the purpose of determining compliance with the provisions of this chapter.

(F) **"City Manager"** as used in this ordinance refers to the City Manager or the Manager's appointed designee.

(G) **“Compliance Date”** means the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a stormwater quality standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable stormwater quality standard.

(H) **“Compliance Order”** means an administrative order that directs a user to comply with the provisions of this chapter, or of a permit or administrative order issued hereunder, by a specific date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

(I) **“Compliance Schedule or Schedule of Compliance”** means an enforceable schedule specifying a date or dates by which user must comply with a stormwater quality standard, a stormwater quality requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

(J) **“Construction Activities”** means clearing, grading, excavation, and other ground disturbance activities. Construction does not include routine maintenance performed by public agencies, or their agents to maintain original line grade, hydraulic capacity, or original purpose of facility.

(K) **“Construction Site Operator”** means a person who has been designated by the developer to perform routine inspections of BMPs and who is responsible for ensuring that the structural integrity of the BMPs are maintained and that the BMPs perform as designed.

(L) **“Critical BMPs”** means those BMPs such as, but not limited to, sediment ponds and dewatering structures, silt fence, wattles, vehicle tracking pads, inlet filters, that are installed to keep sediment and pollutants from leaving a construction site and discharging into receiving waters of the United States.

(M) **“Developer”** means a person who undertakes land disturbance activities.

(N) **“Development”** means any activity, excavation or fill, alteration, subdivision, change in land use, or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term “development” does not include the maintenance of stormwater runoff facilities.

(O) **“Disturbed Area”** means that area of the land’s surface disturbed by any work activity upon the property by means including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses.

(P) **“Drainage (Waterway)”** means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(Q) **“Final Stabilization”** is reached when all ground surface disturbing activities at the site have been completed, and uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

(R) **“Homeowners Association (HOA)”** means the entity responsible for management and maintenance of those elements of a residential subdivision owned in common by its homeowners.

(S) **“Illicit Discharge”** means any discharge to a municipal separate storm sewer system (MS4) that is not composed entirely of stormwater runoff, or the exceptions listed in section 8-11-8(A) of this Code.

(T) **“Land Disturbance Activity”** means any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

(U) **“Landowner”** means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

(V) **“Land Disturbance Permit”** means a permit issued by the City to conduct any land disturbance activity equal to or greater than one acre, earthwork involving moving more than two hundred (200) cubic yards or if grading occurs on a property that has a slope in excess of eight percent (8%).

(W) **“MS4”** means a municipal separate storm sewer system.

(X) **“Municipal Separate Storm Sewer System”** means a conveyance or system of conveyances (including but not limited to, roads with drainage system, municipal streets, inlets/catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to state waters;

2. Designed or used for collecting or conveying stormwater;

3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW).

(Y) **“Non-critical BMPs”** means those BMPs such as, but not limited to, silt fence, wattles, diversions, vehicle tracking pads, inlet filters, that are installed to minimize the impacts of construction by nonstructural and structural devices within the subject construction site.

(Z) **“Official Development Plan (ODP)”** means the planning document, approved by the Westminster City Council, that identifies improvements and other responsibilities associated with the development and/or redevelopment of parcel(s) of land.

(AA) **“Permanent BMPs”** means those BMPs such as, but not limited to, a vegetated swale, wetland, water quality structure, to be installed and regularly maintained in order to ensure long term water quality benefits.

(BB) **“Receiving Waters”** means a river, lake, stream, drainage ditch or other watercourse.

(CC) **“Sediment/Erosion Control Plan”** means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities

(DD) **“Stop Work Order”** means an order issued by the City which requires that all construction activity on a site be stopped.

(EE) **“Stormwater”** means precipitation-induced surface runoff.

(FF) **“Stormwater Construction Permit”** means a permit issued by the Colorado Department of Public Health & Environment Water Quality Control Division. This program is referred to as the Colorado Discharge Permit System, or CDPS, and regulates stormwater discharges from construction activities under the CDPS general permit for stormwater discharges associated with construction activities.

(GG) **“Stormwater Runoff”** means that part of snowfall, rainfall or other precipitation that is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into a watercourse or body of water.

(HH) **“Surety”** means a Letter of Credit or cash in the amount of 115% of the cost of constructing or installing all items associated with the Land Disturbance Permit. The surety will guarantee the completion of all terms and conditions of the Land Disturbance Permit as well as payment of any fines and interest assessed due to non-compliance with any section of the Land Disturbance Permit or this ordinance.

(II) **“Temporary BMPs”** means those temporary BMPs such as, but not limited to, silt fence, wattles, vehicle tracking pads, inlet filters, diversions, sediment ponds and dewatering structures, to be installed and regularly maintained until the site is sufficiently stabilized.

(JJ) **“Urban Drainage and Flood Control District” or “UDFCD”** means the District created by section 32-11-101, et seq., C.R.S.

(KK) **“Vegetative Cover”** means grasses, shrubs, bushes, trees, ground cover and other plants.

8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES: (2335) The City hereby requires the implementation of structural or non-structural measures to reduce or maintain the quality of stormwater on a temporary or permanent basis. Such measures will be designed and installed based on guidelines presented in VOLUME 3 - BEST MANAGEMENT PRACTICES, URBAN STORM DRAINAGE CRITERIA manual, published by the Urban Drainage and Flood Control District.

8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS: The Land Disturbance Permit is available from the Engineering Division in the Department of Community Development. See Section 11-7-7 of the Westminster Municipal Code for specific regulations. Surety must also be provided before a Land Disturbance Permit will be issued.

8-11-6: STORMWATER MANAGEMENT PLAN: (2335) Every development, redevelopment or construction project that requires a land disturbance permit requires the preparation of a stormwater management plan to include temporary and permanent Best Management Practices (BMP’s) designed to reduce the pollutant loading on the system. Any stormwater management plan prepared for a property in the City pursuant to the laws and regulations of the State of Colorado shall be submitted to the City for review and approval.

8-11-7: MAINTENANCE REQUIREMENTS: Developers, builders, business owners, homeowners associations and landowners shall be responsible for ensuring that all BMPs identified on the approved construction drawings, Official Development Plan and the Land Disturbance Permit application are properly installed, maintained and are in good working order as hereafter provided.

(A) Developers shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed are being properly maintained and are in good working order;
2. The site is fully developed and final stabilization has been reached;
3. Any deficiencies noted by the City prior to the expiration of the warranty period for public improvements have been corrected;
4. When individual lots have been sold to a Builder, the Developer shall explain the stormwater runoff quality requirements with the Builder at time of closing.

(B) Builders shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed prior to lot purchase from developer and/or owner are being properly maintained and are in good working order;
2. Final stabilization as completed by the Developer is maintained or repaired if damaged by the Builder;

3. Any temporary and/or permanent BMPs necessary for the building site(s) have been properly installed, maintained and remain in good working order until the property has been sold to a business, land or landowner; and

4. Stormwater runoff quality requirements of individual site(s) are explained to the purchaser at time of closing.

(C) Business owners, homeowners associations and landowners shall be responsible for ensuring that:

1. Any temporary BMPs installed prior to lot purchase from developer, owner, and/or builder are properly maintained and remain in good working order until the lot is stabilized;

2. Final stabilization has been achieved and maintained;

3. If not installed prior to individual lot purchase, temporary and/or permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and around the perimeter of the site where needed to prevent sediment from moving off-site and maintained until final stabilization has been achieved on the property; and

4. Permanent stormwater runoff quality measures constructed or installed on their property as shown on the approved Official Development Plan and/or construction plans are properly maintained.

(D) All temporary stormwater runoff quality control measures shall be removed within fourteen (14) calendar days after final stabilization has been achieved and the temporary measures are no longer needed.

(E) Should any developer, builder, business owner, homeowners association or landowner fail to adequately maintain the permanent stormwater runoff quality control measures or fail to remove the temporary measures, the City Manager or his representative may cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code.

(F) Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

8-11-8: ILLICIT DISCHARGES:

(A) **Prohibition of Illegal Discharges:** It is unlawful and constitutes a public nuisance for any person to discharge or cause to be discharged or spilled any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for: return flows from irrigation, de-chlorinated water from swimming pools, water from fire hydrants including water used for fire fighting, discharges from potable water sources, air conditioning condensation, uncontaminated groundwater and other water determined by the City Manager or designee to be non-contaminated and acceptable for return to the storm drainage system and receiving waters. Nothing contained herein shall be construed to relieve any person discharging or causing to be discharged or allowing to be discharged water into the storm drainage system from any liability for damage caused by the volume or quality of water thus discharged.

(B) **Prohibition of Illicit Connections:**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(C) **Enforcement:** Should any person discharge or cause to be discharged or spilled or maintain a condition upon any property that may result in the discharge of any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for the exceptions listed in section 8-11-8 (A) above, the City Manager or his representative may cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code. Alternatively, the City may make a demand on the surety to pay for these expenses.

8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES:

(A) **City Inspector:** If a City inspector, or any other authorized City representative determines that eroded soils are leaving a disturbed area, the City inspector or authorized representative may, in writing, direct the business owner, landowner or such owner's agents or representatives on the site to repair, replace and/or install any sediment and/or erosion controls that were proposed for the site, or require additional sediment and/or erosion controls be installed if deemed necessary by the City inspector or authorized representative to minimize said sediment from migrating off-site, including the issuance of stop work orders and/or suspension or revocation of any permit. It shall be unlawful for any business or landowner or such owner's agents or representatives to fail to take all necessary measures to comply with such written directive and take all measures necessary to prevent soil erosion from migrating off site.

(B) **Right of Entry:**

1. The City inspector, or any other authorized City representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance and any land disturbance permit or order issued hereunder. Users shall allow the City inspector or authorized representative ready access to all parts of the premises for the purposes of inspection, whether announced or unannounced, sampling, records examination and copying, and the performance of any additional duties.

2. If the City inspector or authorized representative has been refused access to the property and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City inspector or authorized representative may seek issuance of a search warrant from the Municipal Court.

(C) **Compliance Orders.** Whenever the City determines that any activity is occurring that is not in compliance with a Land Disturbance Permit and/or the requirements of this chapter, the City may issue a written compliance order to the construction site operator. The schedule shall contain specific actions the construction site operator must complete, including dates for the completion of the actions. It shall be unlawful for any construction site operator to fail to comply with any compliance order requirement.

(D) **Suspension and Revocation of Permit.** The City may suspend or revoke a construction site Land Disturbance Permit for violation of any provision of this chapter, violation of the permit, and/or misrepresentations by the permittee or the permittee's agents, employees, or independent contractors.

(E) **Stop Work Orders.** Whenever the City determines that any activity is occurring which is not in compliance with an approved permit and/or the requirements of this ordinance, the City can order such activity stopped upon service of written notice upon the person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the City to proceed.

If the appropriate person cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any person to fail to comply with a stop work order.

(F) **Violations and Penalties.** It shall be unlawful for any person to violate any provision of a construction site Land Disturbance Permit and/or the requirements of this chapter, as adopted and modified by the City. Any person violating any provision of the construction site Land Disturbance Permit and/or the requirements of this chapter, as adopted and modified by the City, shall be deemed guilty of a misdemeanor, and subject to the penalties as set forth in Chapter 8 of Title I of this Code.

(G) The remedies provided by this Section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES:

(A) **Notification of Violation:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may serve upon that user a written Notice of Violation. The Notice of Violation may include specific required actions and may require the user to submit an explanation of the violation and a plan for the satisfactory correction and prevention thereof. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(B) **Consent Orders:** The City Manager may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8-11-10(D) and 8-11-10(E) of this ordinance and shall be judicially enforceable.

(C) **Show Cause Hearing:** The City Manager may order a user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, to appear before the City Manager or designated representative and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fourteen (14) days prior to the hearing. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) **Compliance Orders:** When The City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may issue an order to the user responsible for the discharge, directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, storm sewer service may be discontinued unless adequate Best Management Practices are installed and properly maintained. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and best management practices designed to minimize the amount of pollutants discharged to the storm sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(E) **Cease and Desist Orders:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, or that the user's past violations are likely to recur, the City

Manager may issue an order to the user directing it to cease and desist all such violations and directing the user to:

1. Immediately comply with all requirements; and

2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(F) Administrative Fines:

1. When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may fine such user in an amount not to exceed \$1000.00 per violation per day.

2. Unpaid charges, fines, and penalties shall be assessed and accrue interest in accordance with the provisions of Chapter 8 of Title I, Westminster Municipal Code, entitled "Penalties and Interest," as it may be amended from time to time. The City may also collect unpaid fines and interest by placing a demand on the surety provided with the Land Disturbance Permit.

3. Users desiring to dispute such fines must file a written request for the City Manager to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the City Manager may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City Manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

4. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(G) Emergency Suspensions: The City Manager may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons, or which presents, or may present, an endangerment to the environment.

1. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City Manager may take such steps as deemed necessary, including immediate severance of the storm sewer connection, to prevent or minimize damage to the receiving waters, or endangerment to any individuals. The City Manager may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed.

2. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the City Manager prior to the date of any show cause or termination hearing under Sections 8-11-10(C) of this Code.

(H) Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this section.

8-11-11: JUDICIAL ENFORCEMENT REMEDIES:

(A) Injunctive Relief: When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may petition the District Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or

compels the specific performance of the land disturbance permit, order, or other requirement imposed by this ordinance on activities of the user. The City Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(B) Civil Penalties:

1. A user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall be liable to the City for a maximum civil penalty of \$1000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

2. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

3. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

4. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(C) Criminal Prosecution:

1. A user who willfully or negligently violates any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

2. A user who willfully or negligently introduces any substance into the MS4 which causes personal injury or property damage shall be subject to the penalty provisions of State law. This penalty shall be in addition to any other civil cause of action for personal injury or property damage available under State law.

3. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, land disturbance permit, or order issued hereunder shall, upon conviction, be punished by a fine of not more than \$1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

(D) Remedies Nonexclusive: The remedies provided for in this ordinance are not exclusive. The City Manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of stormwater quality violations will generally be in accordance with the City's enforcement response plan. However, the City Manager may take other action against any user when the circumstances warrant. Further, the City Manager is empowered to take more than one enforcement action against any noncompliant user.

8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION:

(A) Liability Insurance: The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user who has failed to comply with any provision of this ordinance, a previous land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the MS4 caused by their illicit discharge.

(B) **Payment of Outstanding Fees and Penalties:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous land disturbance permit, or order issued hereunder.

(C) **Water Supply Severance:** Whenever a user has violated or continues to violate any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(D) **Public Nuisances:** A violation of any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City Manager. Any person(s) creating a public nuisance shall be subject to the provisions of the Westminster Municipal Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

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 22nd day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, OCTOBER 22, 2007 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman and Councillors Dittman, Kaiser, Lindsey, Major, and Price 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 Lindsey moved, seconded by Kauffman, to approve the minutes of the regular meeting of October 8, 2007, as presented. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall advised that Council would not be meeting on October 29, the fifth Monday of the month. He reminded the public that ballots for the November 6, 2007, election had been mailed and had to be returned at a drop-off site or received in the respective County Clerk's Election Office by no later than 7 p.m. on Tuesday, November 6, regardless of stamp date if mailed via the US Postal Service. The City Clerk's Office was a drop-off location and would be open 8 a.m. to 5 p.m. every day except Election Day when hours would be from 7 a.m. to 7 p.m. He urged citizens to become informed and to cast a ballot. The candidates elected to four-year terms would be sworn into office on November 12. Councillors would then elect a Mayor Pro Tem who would serve a two-year term.

CITY COUNCIL COMMENTS

Mayor Pro Tem Kauffman said the annual Business Appreciation event had been held October 19. More than 400 businesses had attended. He commended Staff on the success of the event and thanked all businesses for the contributions they provided to the overall welfare of the community.

EMPLOYEE SERVICE AWARDS

Councillor Major presented certificates and pins for 20 years of service to JC Engdahl, Mike Lynch, Harrison Davis, John O'Brien, and Chris Redig. Mayor McNally presented a certificate, pin and monetary stipend for 25 years of service to Michelle Shjandemaar. Councillor Dittman presented a certificate and pin for 35 years of service to Jack Rudey.

PRESENTATIONS

Councillor Price presented the International City and County Management Association (ICMA) Certificate of Distinction in Performance Measurement Award to members of the City's Performance Measurement Team.

Mayor McNally recognized Senior Police Officer Phillip Maimone's achievement as the recipient of the "Alive at 25" National Instructor of the Year Award from the National Safety Council.

Councillor Lindsey read a proclamation declaring October 23 through 31 to be Red Ribbon Week. She presented the proclamation to Clifford "Skeet" Hartman, Eleanor Scott, Kathy Pascoe, and Mike Pascoe, members of the Westminster Area Community Awareness Action Team Board of Directors.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: acceptance of the September 2007 Financial Report; acceptance of the 3rd Quarter 2007 Insurance Report; award the bid for four tandem dump truck cab and chassis to the low bidder, Transwest Trucks, for model LT 9500 Sterling trucks in the amount of \$332,840, charging the expense for three units to the General Capital Outlay Replacement Fund and for one unit to the 2008 Utility Fund; based on the recommendation of the City Manager, find that the public interest would be best served by a negotiated contract with Carter-Burgess, Inc. for planning and engineering design services for 72nd Avenue between Meade and Raleigh Streets, and authorize the City Manager to execute the contract in an amount not to exceed \$135,000, plus an additional \$15,000 for contingency, and charge the expense to the appropriate General Capital Improvement fund account; final passage of Councillor's Bill No. 55 amending the FY 2008 budgets of the General, Utility, Utility Reserve, Stormwater Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales and Use Tax, Parks Open Space & Trails (POST), General Capital Improvement and Debt Service Funds; and final passage of Councillor's Bill No. 56 authorizing the City Manager to execute and implement an Economic Development Agreement with The Bedrin Organization.

Mayor McNally asked if any member of Council wished to remove an item from the consent agenda for discussion purposes or separate vote. There was no request.

It was moved by Councillor Major and seconded by Dittman to approve the consent agenda as presented. The motion passed unanimously.

PUBLIC HEARING ON AMENDED SERVICE PLAN FOR HYLAND VILLAGE METRO SPECIAL DISTRICT

At 7:35 p.m., the Mayor opened a public hearing to consider the Amended Service Plan for Hyland Village Metropolitan Special District. Council had approved a service plan for the District so that the developer, McStain Enterprises, Inc., could proceed with the formation of the District at the November 2006 election. The District was not allowed to levy any tax, impose any fee, construct any improvements or incur any debt until the Amended Service Plan was reviewed by City staff and approved by Council.

Responding to a question from Mayor Pro Tem Kauffman, Colleen Rosier of McStain Enterprises reported that the commercial portion of the project was included in the District.

The Mayor invited public testimony. No one wished to speak, and Mayor McNally closed the hearing at 7:38 p.m.

RESOLUTION NO. 39 APPROVING THE AMENDED SERVICE PLAN FOR HYLAND VILLAGE

It was moved by Mayor Pro Tem Kauffman and seconded by Councillor Price to adopt Resolution No. 39 approving the Amended Service Plan for Hyland Village Metropolitan Special District. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 40 RE ACCENT VILLAGE ANNEXATION COMPLIANCE HEARING

Councillor Lindsey moved to adopt Resolution No. 40 accepting the annexation petition submitted by Petros Petrides, owner; make the findings required by State Statute on the sufficiency of the petition; and setting December 10, 2007, as the date of the annexation hearing. The motion was seconded by Councillor Dittman and passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 58 RE MC KESSON INFORMATION SOLUTIONS EDA

It was moved by Councillor Price, seconded by Councillor Major, to pass Councillor's Bill No. 58 on first reading authorizing the City Manager to execute and implement an Economic Development Agreement for McKesson Information Solutions. At roll call, the motion passed unanimously.

REVISED EMPLOYMENT AGREEMENT WITH JOHN A. STIPECH

Councillor Dittman moved to authorize the Mayor to execute a revised employment agreement for 2008 with John A. Stipech for his services as Presiding Judge with an effective date of January 1, 2008, and an automatic renewal for 2009 unless terminated by City Council. Councillor Lindsey seconded the motion and it passed unanimously.

COUNCILLOR'S BILL NO. 59 RE MUNICIPAL JUDGE SALARY FOR 2008

It was moved by Councillor Dittman and seconded by Councillor Major to pass Councillor's Bill No. 59 on first reading amending the salary for the Municipal Judge for 2008. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 60 RE CODE MODIFICATIONS ON PERSONNEL MANAGEMENT

Upon a motion by Councillor Major, seconded by Councillor Dittman, the Council voted unanimously to pass Councillor's Bill No. 60 on first reading amending the Westminster Municipal Code, Chapter 24 of Title 1, concerning Personnel Management. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 61 RE CODE MODIFICATIONS ON STORMWATER

It was moved by Councillor Lindsey and seconded by Councillor Price to pass Councillor's Bill No. 61 on first reading to repeal and reenact Chapter 11 of Title VIII of the Westminster Municipal Code concerning stormwater quality. At roll call, the motion passed unanimously.

ADJOURNMENT

There was no further business to come before the City Council, and the Mayor adjourned the meeting at 7:45 p.m.

ATTEST:

Mayor

City Clerk

Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, October 22, 2007. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the October 8, 2007 regular meeting were approved.

Council presented service awards to recognize City employees with 20, 25, and 35 years of tenure.

Council presented the IIMC Certificate of Distinction in Performance Measurement Award to the members of the Performance Measurement Team.

Council recognized Senior Police Officer Phillip Maimone's achievement as the recipient of the National Safety Council's "Alive at 25" National Instructor of the Year Award.

The Mayor proclaimed October 23 through 31 to be Red Ribbon Week.

Council approved the following: September 2007 Financial Report; 3rd Quarter Insurance Report; purchase of 4 tandem cab and chassis; planning and engineering design services contract for 72nd Avenue streetscape; final passage of Councillor's Bill No. 55 re amendment to the 2008 Adopted Budget; final passage of Councillor's Bill No. 56 re The Bedrin Organization Economic Development Agreement; and the revised employment agreement with John A. Stipech.

Council conducted a public hearing re the Amended Service Plan for Hyland Village Metropolitan Special District.

Council adopted the following Resolutions: Resolution No. 39 re Hyland Village Metropolitan Special District Service Plan Amendments and Resolution No. 40 setting the compliance hearing to consider the Accent Village annexation.

Council passed the following Councillors' Bills on first reading:

A BILL FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT WITH MCKESSON INFORMATION SOLUTIONS. Purpose: authorize the City Manager to execute and implement McKesson Information Solutions EDA.

A BILL FOR AN ORDINANCE AMENDING THE SALARY OF THE MUNICIPAL JUDGE. Purpose: increase the Municipal Judge's salary for 2008.

A BILL FOR AN ORDINANCE AMENDING CHAPTER 24 OF TITLE I, WESTMINSTER MUNICIPAL CODE, CONCERNING PERSONNEL MANAGEMENT. Purpose: amending City Code concerning personnel management.

A BILL FOR AN ORDINANCE REPEALING AND REENACTING CHAPTER 11 OF TITLE VIII OF THE WESTMINSTER MUNICIPAL CODE CONCERNING STORMWATER QUALITY. Purpose: repealing and reenacting City Code provisions concerning stormwater quality.

The meeting adjourned at 7:45 p.m.

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

Published in the Westminster Window on November 1, 2007

A BILL

**FOR AN ORDINANCE AMENDING THE 2008 BUDGETS OF THE GENERAL FUND;
UTILITY ENTERPRISE FUNDS; UTILITY RESERVE FUND; GOLF COURSE FUND; FLEET
MAINTENANCE FUND; GENERAL CAPITAL OUTLAY REPLACEMENT FUND; SALES
AND USE TAX FUND; PARKS, OPEN SPACE, AND TRAILS FUND; GENERAL CAPITAL
IMPROVEMENT FUND AND DEBT SERVICE FUND AND AUTHORIZING A
SUPPLEMENTAL APPROPRIATION OR UN-APPROPRIATION FROM THE 2008
ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General; Utility Enterprise Funds; Utility Reserve Fund; Golf Course Fund; Fleet Maintenance Fund; General Capital Outlay Replacement; Sales and Use Tax; Parks, Open Space, and Trails Fund; General Capital Improvement Fund and Debt Service Fund, initially appropriated by Ordinance No. 3316 are hereby increased in aggregate by \$5,551,739. This appropriation is due a budget amendment for revised revenue projections and expenditure estimates for 2008.

Section 2. The net amount of increases or (decreases) of \$5,551,739 shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A-C dated October 8, 2007 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

GENERAL FUND	\$1,871,070
UTILITY ENTERPRISE FUNDS	674,089
UTILITY RESERVE FUND	527,854
GOLF COURSE FUND	2,722
FLEET MAINTENANCE FUND	0
GENERAL CAPITAL OUTLAY REPLACEMENT FUND	13,700
SALES AND USE TAX FUND	372,464
PARKS, OPEN SPACE, AND TRAILS FUND	(140,854)
GENERAL CAPITAL IMPROVEMENT FUND	1,737,000
DEBT SERVICE FUND	<u>493,694</u>
TOTAL	<u>\$5,551,739</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 8th day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of October, 2007.

A BILL
FOR AN ORDINANCE AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT
WITH THE BEDRIN ORGANIZATION
FOR THE ATTRACTION OF "STEVE AND BARRY'S" TO THE BROOKHILL V SHOPPING
CENTER WESTMINSTER, COLORADO

WHEREAS, the successful attraction and retention of high quality retail development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to generate additional sales tax revenue and remain competitive with other local governments in offering assistance for occupancy of existing retail space in the City; and

WHEREAS, The Bedrin Organization plans to redevelop and fill a portion of the vacant space in the Brookhill V Shopping Center with a Steve and Barry's store; and

WHEREAS, a proposed Economic Development Agreement between the City and The Bedrin Organization is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with The Bedrin Organization in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. 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 8th day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of October, 2007.

EXHIBIT A
ECONOMIC DEVELOPMENT AGREEMENT
WITH THE BEDRIN ORGANIZATION
FOR A "STEVE AND BARRY'S" STORE

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, between the CITY OF WESTMINSTER (the "City"), and THE BEDRIN ORGANIZATION; a New Jersey LLC.

WHEREAS, the City wishes to provide certain assistance to The Bedrin Organization to encourage the location of a Steve and Barry's store in the Brookhill V Shopping Center; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below the City and The Bedrin Organization agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to The Bedrin Organization 40% of the building related permit fees for the Steve and Barry's tenant finish required under W.M.C. Section 11-10-3 (E), excluding water and sewer tap fees. The rebate is estimated to be \$7,290.

2. Use Tax Rebate- Construction. The City shall rebate to The Bedrin Organization 40% of the building use tax on the construction materials (excluding the City's .25% open space tax and .6% public safety tax), resulting from the Steve and Barry's tenant finish, required under W.M.C. sections 4-2-9 and 4-2-3. The rebate is estimated to be \$12,000.

3. Sales Tax Rebate. The City shall rebate to The Bedrin Organization 50% of the sales tax collected from Steve and Barry's for the first five years (60 months) of operation of the new

Steve and Barry's store. Such rebate shall be payable exclusively from sales tax revenue collected by the City from Steve and Barry's and attributable to the imposition of the City's 3.0% general sales tax (excluding the City's .25% open space tax and .6% public safety tax). The sales tax rebate shall not continue past five years (60 months) of operation and shall be administered as follows:

- (a) Sales Tax Rebate Amount. Any rebates provided by the City to The Bedrin Organization pursuant to this agreement will be from the sales tax generated by Steve and Barry's. The City shall rebate to The Bedrin Organization 50% of the sales tax generated.
- (b) Payment. The sales tax rebate amount will be paid to The Bedrin Organization in quarterly payments, made within 20 days after the end of each quarter. The sales tax rebate payment will be submitted electronically to The Bedrin Organization designated financial institution.
- (c) End of Sales Tax Rebate. The sales tax rebate shall commence on issuance of the Certificate of Occupancy for Steve and Barry's and end on the fifth (5th) anniversary thereof, or when the total rebate amount (as outlined in paragraphs 1, 2, and 3) reaches \$900,000.

4. Entire Agreement. This instrument shall constitute the entire agreement between the City and The Bedrin Organization concerning the Steve and Barry's retail store and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this agreement with respect to its subject matter.

5. Termination. This Economic Development Agreement shall terminate and become void and of no force or effect upon the City if Steve and Barry's has not moved into their new space in Brookhill V on or before March, 2008; or, should The Bedrin Organization or Steve and Barry's fail to comply with any City code and/or approval process.

6. Business Termination. In the event that Steve and Barry's ceases business operations in the City within five years after the new operations commence, The Bedrin Organization shall reimburse the City for any amounts rebated to or otherwise provided to The Bedrin Organization pursuant to this Agreement, unless the City approves a successor to the initial approved user within 12 months of the closing of Steve and Barry's, which is substantially similar in quality and sales tax production as the approved user.

7. Subordination. The City's obligations pursuant to this agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

8. Annual Appropriation. Nothing in this agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

9. Governing Law: Venue. This agreement shall be governed and construed in accordance with the laws of the State of Colorado. This agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.