



## 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. Many items have been previously discussed at a Council Study Session.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is 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.

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
  - B. Maintenance Solutions Financial Management Achievement Award to Building Operations and Maintenance
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. 2012 Utility Materials and Water Pipe Purchase
  - B. 2012 City Facilities Parking Lot Patching Project Ratification
  - C. Reclaimed Water Treatment Facility Chemical Tank Liner Construction Contract
  - D. Stipulation and Plan re Exclusion of Property from Southwest Adams County Fire Protection District
  - E. Second Reading of Councillor's Bill No. 46 to Amend the W.M.C. re Municipal Judge Salary
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Continued Public Hearing on the Second Amended PDP and Eighth Amended ODP for Hyland Village Subdivision
  - B. Second Amended Preliminary Development Plan for the Hyland Village Subdivision
  - C. Eighth Amended Official Development Plan for the Hyland Village Subdivision
  - D. Resolution No. 36 re Exclusion from Southwest Adams County Fire Protection District
  - E. Resolution No. 37 re Support for the Rocky Flats Cold War Museum
  - F. Councillor's Bill No. 47 to Amend W.M.C. Title V Chapter 7 re Solid Waste Collection
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
  - A. City Council
13. Adjournment

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**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.



**WESTMINSTER**  
**Strategic Plan**  
**2012-2017**  
**Goals and Objectives**

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**STRONG, BALANCED LOCAL ECONOMY**

- Maintain/expand healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Develop business-oriented mixed use development in accordance with Comprehensive Land Use Plan
- Retain and expand current businesses
- Develop multi-modal transportation system that provides access to shopping and employment centers
- Develop a reputation as a great place for small and/or local businesses
- Revitalize Westminster Center Urban Reinvestment Area



**FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES**

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Institutionalize the core services process in budgeting and decision making
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



**SAFE AND SECURE COMMUNITY**

- Citizens are safe anywhere in the City
- Public safety departments: well equipped and authorized staffing levels staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own safety and well being
- Manage disaster mitigation, preparedness, response and recovery
- Maintain safe buildings and homes
- Protect residents, homes, and buildings from flooding through an effective stormwater management program



**VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY**

- Develop transit oriented development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Have HOAs and residents taking responsibility for neighborhood private infrastructure
- Develop Westminster as a cultural arts community
- Have a range of quality homes for all stages of life (type, price) throughout the City
- Have strong community events and active civic engagement



**BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY**

- Have energy efficient, environmentally sensitive city operations
- Reduce energy consumption citywide
- Increase and maintain greenspace (parks, open space, etc.) consistent with defined goals
- Preserve vistas and view corridors
- A convenient recycling program for residents and businesses with a high level of participation



***Mission statement: We deliver exceptional value and quality of life through SPIRIT.***

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, OCTOBER 22, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Boy Scout Eric Bean of Troop 76 led the Mayor, Council, Staff and audience in the Pledge of Allegiance. He was attending the meeting to earn his Citizenship in Community badge, and Mayor McNally welcomed him.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Mayor Pro Tem Winter, to approve the minutes of the regular meeting of October 8, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. McFall advised there would be no City Council meeting or study session on October 29, the fifth Monday of the month.

Final passage of the appropriation ordinance 2013/2014 City Budget was scheduled for consideration on the consent agenda. Mr. McFall proudly emphasized that passage of the ordinance would constitute the 21<sup>st</sup> and 22<sup>nd</sup> consecutive year that Westminster's property tax rate had been set at 3.65 mills. City Council was responsible for keeping property tax rates low, and it was a significant achievement for the citizenry.

CITY COUNCIL REPORTS

Councillor Briggs acknowledged that former Mayor Ed Moss was in the audience.

RED RIBBON WEEK PROCLAMATION

Councillor Major presented a proclamation for Red Ribbon Week to members of the Westminster Community Awareness and Action Team. Red Ribbon Week would be observed from October 23 through 31. This year's theme was "The Best Me is Drug Free." Accepting the proclamation were Board members Mike Pascoe, Cathy Pascoe, Phyllis and Phil Aschenbrenner, and Eleanor Scott.

CITIZEN COMMUNICATION

Mike Pascoe spoke in opposition to Amendment 64 on the November ballot to legalize marijuana. He distributed a position paper prepared by the Adams County Youth Initiative, containing statistical information about the risk that marijuana usage had on youth. He urged a no vote on the amendment and asked the City Council to formally adopt the same position.

Ed Moss, former Mayor, gave a heartfelt tribute to Gary Smith, a former Westminster Mayor, Councillor, and Board and Commission member who had passed away recently in northern Virginia at the age of 53. He appreciated the influence Gary Smith had on him, noting that he and others had never considered involvement in local government politics until urged to participate by their friend, Mr. Smith. Gary and his wife, Suzanne, had both served on the Westminster City Council and were strong advocates for the community.

CONSENT AGENDA

The following items were submitted for Council’s consideration on the consent agenda: accept the September Financial Report as presented; accept the Third Quarter 2012 Insurance Claims Report; authorize the City Manager to sign a contract with Nancy Cornish Rodgers of Kissinger & Fellman, P.C. to serve as the Personnel Board Attorney to provide legal services to the Board on an as-needed basis; determine that the public interest would be best served by ratifying the purchase of diesel fuel with Hill Petroleum and with Chief Petroleum not to exceed \$436,680 through year end, by ratifying the purchase of tires through Tire Centers Inc. not to exceed \$125,000 through year end, and by approving Fleet Maintenance cumulative purchases with Gray Oil for purchases of diesel fuel not to exceed \$70,000 through year end; authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2013 with an effective date of January 1, 2013, and automatic renewal for 2014 unless terminated pursuant to the provisions of the agreement; authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2013 with an effective date of January 1, 2013, and an automatic renewal for 2014 unless terminated pursuant to the terms of the agreement; final passage on second reading of Councillor’s Bill No. 41 to amend the Comprehensive Land Use Plan for the 100<sup>th</sup> Avenue and Alkire Street property by designating the property as City-Owned Open Space; final passage on second reading of Councillor’s Bill No. 42 to annex the 100<sup>th</sup> Avenue and Alkire Street property into the City; final passage on second reading of Councillor’s Bill No. 43 to establish a zoning designation of Open Area (O-1) for the 100<sup>th</sup> Avenue and Alkire Street property; final passage on second reading of Councillor’s Bill No. 44 to implement water and sewer rate adjustments for 2013 and 2014 by amending sections 8-7-7 and 8-8-5 of the Westminster Municipal Code; and final passage on second reading of Councillor’s Bill No. 45 to appropriate funds for the 2013/2014 Budget.

No items were removed from the consent agenda for individual consideration and it was moved by Councillor Major and seconded by Mayor Pro Tem Winter to approve the consent agenda, as presented. The motion carried.

REVISED EMPLOYMENT AGREEMENT WITH JOHN A. STIPECH

It was moved by Councillor Atchison and seconded by Councillor Major to authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2013 with an effective date of January 1, 2013, and an automatic renewal for 2014 unless terminated by City Council. The motion carried unanimously.

COUNCILLOR’S BILL NO. 46 AMENDING THE MUNICIPAL JUDGE’S SALARY IN TITLE I, W.M.C.

It was moved by Councillor Briggs and seconded by Councillor Kaiser to pass on first reading Councillor’s Bill No. 46 to set the salary for the Municipal Judge for 2013. The motion passed unanimously on roll call vote.

RESOLUTION NO. 35 TO ACQUIRE PROPERTY INTERESTS FOR WESTMINSTER STATION

It was moved by Mayor Pro Tem Winter and seconded by Councillor Kaiser to adopt Resolution No. 35 authorizing City Staff to proceed with the acquisition of fee simple and easement interests necessary for the Westminster Station project, including the use of eminent domain, if necessary; and authorize all reasonable costs associated with the acquisitions. On roll call vote, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser and seconded by Councillor Atchison to adjourn. The motion passed and the Mayor adjourned the meeting at 7:21 p.m.

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 6 A

### Agenda Memorandum

City Council Meeting  
November 12, 2012



**SUBJECT:** Presentation of Employee Service Awards

**Prepared By:** Debbie Mitchell, General Service Director  
Dee Martin, Workforce Planning & Compensation Manager

### Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20 or more years of service with the City and in five year increments thereafter.

### Summary Statement

- 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 the sixth grouping of 2012, employees with 20, 25, and 30 years of service will be celebrated tonight.
  - Presentation of 20-year certificates and pins- Mayor Pro Tem Faith Winter
  - Presentation of 25-year certificates, pins and checks - Mayor Nancy McNally
  - Presentation of 30-year certificate and pin - Councillor Herb Atchison

**Expenditure Required:** \$ 12,500

**Source of Funds:** \$10,000 - Fire Department Operating Budget  
\$ 2,500 - Parks, Recreation & Libraries Operating Budget

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

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

Troy Gordanier	Senior Police Officer	Police Department
Mike Sarconi	Senior Police Officer	Police Department
Scott Takahashi	Sergeant	Police Department

The following 25-year employees will be presented with a check, certificate and service pin:

Pam Darwin	Guest Relations Clerk II	Parks, Recreation & Libraries
Tim Foster	Fire Engineer	Fire Department
Michael Lynch	Fire Lieutenant	Fire Department
John O'Brien	Fire Captain	Fire Department
Chris Redig	Fire Engineer	Fire Department

The following 30-year employee will be presented with a certificate and service pin:

Michelle Shjandemaar	Senior Systems Analyst	Information Technology
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On November 14, 2012, the City Manager will host an employee awards luncheon. During this time, 6 employees will receive their 15-year service pin, 5 employees will receive their 10-year service pin, and 11 employees will receive their 5-year service pin. Recognition will also be given to those celebrating their 20<sup>th</sup>, 25<sup>th</sup>, and 30<sup>th</sup> anniversaries. This is the sixth luncheon in 2012 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the sixth luncheon is 410 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.

The recognition of employee's years of service addresses Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services 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 most valuable resource – employees.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 6 B

### Agenda Memorandum

City Council Meeting  
November 12, 2012



**SUBJECT:** Presentation of Maintenance Solutions Financial Management Achievement Award to the Building Operations and Maintenance Division

**Prepared By:** Rachel Harlow-Schalk, Sr. Projects Officer

### Recommended City Council Action

Councillor Kaiser to present to Facilities Manager Jerry Cinkosky, Maintenance Foreman Brian Grucelski, and HVAC Specialists Greg Pries and Rus McNeff the Achievement Award for Financial Management from Maintenance Solutions magazine.

### Summary Statement

- The City of Westminster runs a cost efficient energy, heating and cooling program within 41 buildings citywide.
- Over 720,000 square feet of facility heating and cooling systems are maintained by only two employees within the Building Operations and Maintenance Division.
- In addition to maintenance, the Building Operations and Maintenance Division has proactively improved the energy efficiency of heating and cooling systems through energy performance contracts saving hundreds of thousands of dollars in long-term operating costs for maintenance and energy spending.
- For their financial saving achievements, the Building Operations and Maintenance Division was recognized by their peers with an achievement award for excellence in facilities management that was written up in Maintenance Solutions magazine.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The City of Westminster's Building Operations and Maintenance Division (BO&M) is responsible for maintaining over 720,000 square feet in 41 buildings, keeping staff and citizens comfortable. These facilities include offices, recreation centers, swimming pools, golf course clubhouses, libraries, and fire stations. The City accomplishes this work with only two full-time heating, ventilation and air conditioning (HVAC) specialists. These two specialists are responsible for all of the preventative maintenance, emergency repair, comfort calls and building automation systems.

In 2007, aging HVAC equipment began to require more maintenance and emergency repair. As a result, the City partnered with an energy services company to implement, through two phases, an energy performance contract (EPC). The EPC's first phase included \$2.3 million in retrofits within City facilities with an expected savings of over \$110,000 annually. In 2009, the second phase included \$3.3 million in retrofits with an expected savings of almost \$300,000 annually.

By spending money on facility retrofits and building automation systems (BAS) through the EPC, the City chose to replace equipment and utilize the energy consumption savings annually to pay for the upgrades over time. This also allowed the City to maintain the use of only two HVAC specialists to focus on the dual tasks of preventative maintenance and BAS control scheduling.

An example of the results of this work is City Hall. Prior to the investment in equipment and controls, the facility operated 27 autonomous heat pumps. These pumps operated through localized thermostats that often began at the same time in the morning, driving up electrical demand and costs, and sometimes conflicting with each other resulting in increased electricity consumption. After the retrofit, the BAS system now coordinates the pumps to stage temperature recovery in various portions of the building ultimately reducing peak demand and utility charges significantly.

Another example is the Public Safety Center (PSC). Operations at the PSC fluctuate between fully occupied during weekdays to partially occupied during nights and holidays. The existing HVAC system was not sophisticated enough to allow for portions of the building to be set back during low occupancy leading to needless energy consumption. After the installation of a sophisticated control system, the HVAC specialists have been able to schedule portions of the building to go into setback mode while maintaining comfortable conditions in constant use areas.

Mechanical preventative maintenance is a key component of the Division's energy reduction strategy. Filter replacement, belt checks and visual verification of actuators and other control devices allow HVAC specialists to maintain the equipment in top performance conditions and replace parts on a schedule. This schedule reduces emergencies and extended downtimes that impact facility use.

Because the energy savings achieved through preventative maintenance and control systems is difficult to quantify, the vital role these HVAC specialists is demonstrated in reduced energy bill amounts to significant savings each year. In 2011, the City spent \$2,751,431 compared to spending \$3,013,519 in 2010 – nearly a 10% savings. In these times of energy cost increases, a 10% savings is relatively unheard of without significant management and maintenance efforts.

**SUBJECT:** Maintenance Solutions Financial Management Achievement Award to BO&M Page 3

What sets Westminster's energy saving and facility maintenance program apart is the ability of the HVAC specialists to do so many things from deep computer programming to rooftop unit replacements. Their dedication, professionalism, focus on customer service and sheer ability to maintain a wide variety of equipment in a multitude of situations while saving the City money is a substantial Financial Management Achievement warranting recognition by City Council and their peers through Maintenance Solutions magazine.

Investment in well-maintained and sustainable city infrastructure by the Building Operations and Maintenance Division supports the City's Strategic Plan goals of a Financially Sustainable City government Providing Exceptional Services and a Beautiful and Environmentally Sensitive City because the resulting improvements increase facility energy efficiency and reduce energy consumption and saves tens of thousands of dollars annually.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 A

### Agenda Memorandum

City Council Meeting  
November 12, 2012



**SUBJECT:** 2012 Utility Materials and Water Pipe Purchase

**Prepared By:** Phil Jones, Utilities Operations Manager  
Robert Booze, Distribution and Collection Superintendent

### Recommended City Council Action

Authorize the City Manager to purchase waterworks materials and water pipe from the low bidders Dana Kepner, HD Supply, and Mountain States Pipe and Supply in the amount of \$314,598; and authorize cumulative 2012 purchases from Dana Kepner Company in an amount not to exceed \$238,000 and from HD Supply in an amount not to exceed \$180,000.

### Summary Statement

- This request consists of the purchase of eight individual lots of related waterworks materials and one individual bid for water pipe.
- Formal bids for these materials were issued and a bid opening took place on October 29, 2012. A total of three vendors provided bids on this purchase.
- Dana Kepner was the lowest bidder on four material lots totaling \$177,812. HD Supply was the lowest bidder on two material lots and the water pipe bid totaling \$98,816. Mountain States was low bidder on two lots totaling \$37,970.
- The suggested motion authorizes cumulative purchases from these vendors taking into account the purchases referenced above, and other purchases made during the year in accordance with the City's purchasing policy. These purchases include parts for the meter shop, and miscellaneous parts purchased during the year for the field crew and construction crew that did not fit into the bids being awarded in this agenda memorandum.
- Adequate funds are budgeted in the Utilities Operations budget for this expense.

**Expenditure Required:** \$314,598

**Source of Funds:** Utility Fund - Utilities Operations Division Operating Budget

**Policy Issue**

Should the City authorize the purchase of waterworks materials and water pipe from the low bidders?

**Alternative**

Purchase materials only on an as-needed basis and negotiate prices for each purchase individually. This would take a large amount of staff time and likely increase the prices for each piece of material purchased. Also, this option would require City Council action for each expenditure that exceeds \$50,000. This option is not recommended since the City requested and received bids for these materials and would most likely receive higher unit costs if items were purchased on an as-needed basis.

**Background Information**

On an annual basis, the City purchases commonly used waterworks materials and water pipe for use by the Utilities Operations Division for the replacement, repair, and maintenance of water mains. The material purchase was advertised on the Internet site “Demand Star” with bids being opened on October 29, 2012. As written, each lot was a separate purchase and a bidder could submit pricing for any or all lots of material. Delivery is to be immediate and in one shipment.

The results of the submitted bids are as follows (numbers in bold indicate low bid):

Lot Description	Dana Kepner	HD Supply	Mountain States
1. Mechanical Joint Fittings	\$34,937.70	\$35,880.99	<b>\$32,599.25</b>
2. Mechanical Joint Restraints	\$13,571.70	<b>\$13,460.90</b>	\$19,110.00
3. Fire Hydrants	<b>\$55,999.72</b>	\$75,856.20	NO BID
4. Valves	<b>\$49,999.90</b>	\$51,750.00	51,612.00
5. Brass/Copper	<b>\$64,398.49</b>	\$66,496.65	\$81,305.00
6. Miscellaneous	\$35,585.50	<b>\$33,784.70</b>	\$40,707.25
7. Water Main Repair Clamps	\$5,528.86	\$6,454.74	<b>\$5,370.00</b>
8. Fire Hydrant Parts	<b>\$7,413.09</b>	NO BID	NO BID

Pipe Bid	Dana Kepner	HD Supply	Mountain States
Water Pipe Bid Totals	\$54,000.00	<b>\$51,570.00</b>	\$56,050.00

Based on previous and pending purchases by the Utilities Operations Division from these companies for different material, it is requested that the upper limit for annual purchases for 2012 from Dana Kepner be \$238,000 and from HD Supply be \$180,000.

These purchases help achieve the City Council’s Strategic Plan Goals of “Financially Sustainable City Government, Safe and Secure Community and Vibrant Neighborhoods and Commercial Areas” by meeting the following objectives: well-maintained City infrastructure and facilities; citizens are safe anywhere in the City; and maintain and improve neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
November 12, 2012



**SUBJECT:** 2012 City Facilities Parking Lot Patching Project Ratification

**Prepared By:** Kurt Muehlemeyer, Pavement Management Coordinator  
Dave Cantu, Street Operations Manager

**Recommended City Council Action**

Based on the report and recommendation of the City Manager, determine that the public interest will be best served by ratifying the expenditure of \$54,120 for city facilities parking lot patching.

**Summary Statement**

- On July 31, 2012, Street Division staff solicited quotes to perform 5 inch, full depth asphalt patching, at four City facility parking lots. The low quotation at that time was submitted by Martin Marietta Materials, Inc. The total contract amount was \$35,547 and did not require Council authorization.
- Upon excavation, many of the areas earmarked for patching were found to be 7 inches thick and required more asphalt to complete. Staff estimated 417 tons of asphalt would be needed to complete the patching and the actual amount of asphalt used was 636 tons.
- Given the extent of the pavement deterioration, considering loss of appropriate weather window if project were placed on hold while traversing the approval process and increased project costs for remobilization of the contractor, staff deemed proceeding with the project to be in the best interest of the City. This increased the contract amount from \$35,547 to \$54,120 and now requires Council approval.
- Funds are available for this expense in the General Capital Improvements Fund, City Facilities Parking Lot Maintenance Project.

**Expenditure Required:** \$54,120

**Source of Funds:** General Capital Improvement Fund -  
City Facilities Parking Lot Maintenance Project

**Policy Issue**

Should City Council approve and ratify expenditures for the City facilities parking lot patching services?

**Alternative**

Council could choose to not approve expenditures as outlined. This alternative is not recommended because of the critical need for the work performed. While it could be argued that each City Facility to receive asphalt patching represents a separate purchase, City Staff believes that a more conservative and prudent approach is to treat the smaller transactions as cumulative larger purchases that are subject to Council approval. In addition, Martin Marietta Materials, Inc. provided a competitive quotation for the work and has performed the work in good faith.

**Background Information**

The City's computerized pavement management system identified 4 City facility parking lots with poor ratings. The worst areas being the entrances to the maintenance yards at The Heritage Golf Course, Legacy Ridge Golf Course, as well as the recycle dumpster areas at the West View Recreation Center and Westminster Municipal Court. Each had critical pavement failures requiring removal and replacement type patch work.

On July 31, 2012, in accordance with city purchasing regulations for a project of this size and estimated cost (\$29,623) staff solicited quotations for 417 tons of 5 inch asphalt patching from 6 different vendors with three responding. Martin Marietta Materials, Inc. submitted the lowest quotation for the work. Their quotation was \$35,547 which was 20% higher than estimated. Quotations came in higher than estimated cost due to the type of patching required, smaller scale quantity of work and mobilization to the 4 different sites. Since the contract total was under \$50,000, City Council authorization was not needed to approve the expenditure at the time.

Martin Marietta began construction on August 31, 2012. Many of the parking lot pavement areas marked for patching were estimated at 5 inch thick patching, however once excavated, pavement thickness was found to be 7 inches thick. The industry standard for asphalt patching is to replace at least existing pavement thickness as a minimum. Staff looked at all possible alternatives to minimize the potential overrun. One alternative was to scale back the project and not patch all of the pavement failures. Staff determined that this was not a viable option because many of the areas slated to be patched were areas frequented by maintenance equipment, trash and recycling trucks and had deteriorated to a point where vehicles could incur damage as a result of the poor pavement condition. A second alternative was to use road base to make up the 2 inch thickness difference and use only 5 inches of asphalt. Staff determined that this could possibly reduce the longevity of the asphalt patch and lead to future pavement failures. A third alternative would have been to have city in-house crews perform the patching; however in-house crews were still preparing streets for this year's Sealcoating program in Arrowhead subdivision at the time.

Another concern was stopping the project and going through the approval process would have resulted in additional costs for mobilization fees and getting the contractor back in to complete the work prior to weather becoming a factor would be difficult. It was determined that the best course of action would be to complete that patching with 7 inches of asphalt while the contractor was progressing on the project. Martin Marietta used an additional 219 tons of asphalt on this project costing an additional \$18,573. This overrun has increased the contract amount to \$54,120 and now requires City Council ratification. Funds are available to cover the overrun in the General Capital Improvement Fund, City Facilities Parking Lot Maintenance Project due to favorable pricing on 2012 concrete replacement and crack sealing phases of work which were also performed in these parking lots.

The proposed Council action helps achieve City Council's goals of "Financially Sustainable City Government Providing Exceptional Services" and "Vibrant Neighborhoods in One Livable Community" by meeting the objectives of well maintained city infrastructure and city facilities and maintained and improved neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
November 12, 2012



**SUBJECT:** Reclaimed Water Treatment Facility Chemical Tank Liner Construction Contract

**Prepared By:** Kent Brugler, Senior Engineer  
Steve Grooters, Senior Projects Engineer

**Recommended City Council Action**

Authorize the City Manager to execute a contract with the low bidder Glacier Construction Co., Inc. in the amount of \$149,880 for construction of the sodium hypochlorite storage tank liners at the Reclaimed Water Treatment Facility and authorize a 10 percent construction contingency in the amount of \$14,988 for a total construction budget of \$164,868.

**Summary Statement**

- During the construction of the recently completed expansion of the Reclaimed Water Treatment Facility (RWTF), advanced corrosion was discovered in the two 4,500 gallon steel sodium hypochlorite storage tanks.
- The expansion project engineer, Black & Veatch, completed a condition assessment of one of the tanks, evaluated over a dozen alternatives for repair or replacement of both tanks and recommended the replacement of the existing liners with a more robust, dual liner system. The liners must be replaced between November 2012 and April 2013 while the Reclaimed Water Plant is normally off.
- Black & Veatch completed the final design of the liner replacement work under a separate engineering services contract.
- Staff solicited bids from four contractors and received two bids on October 16, 2012. Glacier Construction Co., Inc. presented the lowest responsible bid in the amount of \$149,880. The bid from Glacier Construction Co., Inc. was reviewed and is recommended for award.
- Funding for the project is available due to savings in the recently completed Reclaimed Expansion project.

**Expenditure Required:** \$164,868

**Source of Funds:** Utility Fund Capital Improvements - RWTF Expansion Project

**Policy Issue**

Should the City proceed with the construction of the chemical tank liners at the Reclaimed Water Treatment Facility by awarding the construction contract to Glacier Construction Co., Inc.?

**Alternatives**

1. The City could choose to award the contract to the other contractor who submitted a bid to construct the project. However, Staff reviewed both proposals submitted and determined that Glacier Construction Co., Inc. provided the most competitive and responsible bid, and the City would incur unnecessary additional cost by selecting another contractor.
2. The City could choose to implement this project at a later date. This alternative is not recommended as the tanks have experienced significant corrosion and delaying the liner installation may impact the ability to operate the RWTF for the 2013 irrigation season.

Neither of these alternatives is recommended by Staff.

**Background Information**

During the recent construction of the expansion of the Reclaimed Water Treatment Facility, advanced corrosion was discovered inside the two steel 4,500 gallon sodium hypochlorite storage tanks. City Staff requested the project engineer, Black & Veatch, to assess the conditions of the tanks and evaluate over a dozen options for repair or replacement of the tanks. The recommended alternative includes the removal of the internal corrosion and existing liners and installing a double liner system consisting of a primary PVC bladder liner and a secondary robust coating liner system on the interior of each tank. Since the work must be done during the non-irrigation season and due to the long lead-time for fabrication of the PVC liners, the liners were pre-purchased as part of the RWTF Phase 2 Expansion project. Black & Veatch completed the final design of the tank liner replacement work and related bidding services under a separate contract, and bid documents were distributed to four contractors identified as being capable of performing this specialized type of work.

The City received two bids on October 16, 2012, and the results are summarized below:

<u>Contractor</u>	<u>Bid Amount</u>
Garney Companies, Inc.	\$323,000
Glacier Construction Co., Inc.	\$149,880
Moltz Constructors, Inc.	NO BID
RN Civil Construction	NO BID
<b>Engineer's Opinion of Probable Cost</b>	\$229,900

After completing a review of the bids received, Staff determined that Glacier Construction Co., Inc. presented the lowest and most responsible bid and recommends award of the contract to Glacier. Construction will commence following award of the contract with completion anticipated by April 1, 2013. Sufficient funds are available from project savings in the recently completed Reclaimed Water Treatment Facility expansion capital account.

The construction of the chemical tank liners at the Reclaimed Water Treatment Facility helps achieve the City Council's Strategic Plan goals of "Financially Sustainable City Government Providing Exceptional Services" by contributing to the objective of well-maintained and operated City facilities and "Beautiful and Environmentally Sensitive City" by enhancing the City's reclaimed water and potable water systems.

Respectfully submitted,

J. Brent McFall  
City Manager



**Agenda Memorandum**

City Council Meeting  
November 12, 2012



**SUBJECT:** Stipulation and Plan re Exclusion of Property from Southwest Adams County Fire Protection District

**Prepared by:** Bev Smith, Paralegal

**Recommended City Council Action**

Approve the Stipulation and Plan for exclusion of recently annexed territory from the Southwest Adams County Fire Protection District.

**Summary Statement**

- The City has been negotiating with Southwest Adams County Fire Protection District (the “District”) regarding the exclusion of recently annexed property from the District. The District considered the Stipulation on October 18, 2012 and adopted the Stipulation thereafter.
- This Stipulation (copy attached) will allow the City to proceed in an uncontested manner in Adams County District Court for the purpose of obtaining an Order excluding a parcel of property recently annexed by the City and covered under the Stipulation. The parcel is within Adams County.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City approve the Stipulation agreeing to provide fire protection services to property recently annexed to the City and proposed to be excluded from the District?

**Alternative**

Do not approve the Stipulation and Plan for exclusion of property from the Southwest Adams County Fire Protection District. This is not recommended, since it would result in double taxation and duplicative fire protection services to the property.

**Background Information**

The important components of the Stipulation are as follows: (1) An agreement that the quality of fire protection service to be provided by the City will be comparable and not inferior to the fire protection service now provided by the District; (2) Existing indebtedness of the District for which the excluded property would remain liable; (3) An agreement that the District shall have the right to assess and collect a mill levy not to exceed 0.5 mill against the excluded property for five consecutive years for the District's Volunteer Firemen's Pension Fund; and (4) Transfer of fire protection service responsibilities to be effective January 1, 2013. A vicinity map showing the area to be excluded is also attached.

Action on this item supports City Council's Strategic Plan Goal of a Safe and Secure Community by assuring that the appropriate fire protection services are provided to this newly annexed area.

Respectfully submitted,

J. Brent McFall  
City Manager

**Attachments**

- Stipulation and Plan
- Order for Exclusion
- Vicinity Map – Little Dry Creek Annexation

District Court, Adams County, Colorado Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601 303-659-1161	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>Petitioners:</b>  THE CITY OF WESTMINSTER, COLORADO, a home-rule City, and THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER  <b>Respondants:</b>  THE BOARD OF DIRECTORS OF THE SOUTHWEST ADAMS COUNTY FIRE PROTECTION DISTRICT, and All Taxpaying Electors of the SOUTHWEST ADAMS COUNTY FIRE PROTECTION DISTRICT, as a class.	
City of Westminster Martin R. McCullough, #13364 City Attorney 4800 West 92 <sup>nd</sup> Avenue Westminster, CO 80031 Phone: 303-658-2400 Fax: 303-706-3920 E-mail: mmccullo@cityofwestminster.us	Case Number: _____  Division: ____  Courtroom: ____
<b>STIPULATION AND PLAN FOR EXCLUSION OF CERTAIN TERRITORY FROM          THE SOUTHWEST ADAMS COUNTY FIRE PROTECTION DISTRICT</b>	

COME NOW the parties hereto, by their respective counsel, and stipulate as follows:

PREAMBLE

1. This action is based upon the Petition of the City of Westminster pursuant to section 32-1-502, et seq., C.R.S., as amended, to exclude certain territory from the Southwest Adams County Fire Protection District (the "District") because that territory is located within the City of Westminster which also provides fire protection service. The territory sought to be excluded is described in Exhibit "A" attached hereto and incorporated herein by reference.

2. This Stipulation and Plan is submitted pursuant to and in satisfaction of the requirements of section 32-1-502(2)(c) which provides that, as a condition to the exclusion of the property which is the subject of this petition, the governing body of the City and the board of directors of the District shall each submit a plan for the disposition of assets and continuation of services to all areas of the District, and that said plans shall include, if applicable, provisions for the maintenance and continuity of facilities to be utilized by the territories both within and without the municipal boundaries and of services to all territories served or previously served by the special district, and further, that if the City and the District agree upon a single plan and enter into a contract incorporating its provisions, the court shall review such contract and, if it finds the contract to be fair and equitable, the Court shall approve the contract and incorporate its provisions into its exclusion order.

3. The City Council of the City of Westminster, as its governing body, has met, considered and approved all of the terms of this Stipulation and Plan.

4. The Board of Directors of the District, as its governing body, has met, considered and approved all of the terms of this Stipulation and Plan.

#### STIPULATION AND PLAN

5. All notice requirements of the statute and of the Colorado Rules of Civil Procedure have been fully, completely and properly complied with. No objection to the exclusion has been made by any taxpaying elector, individually or on behalf of the class designated Taxpaying Electors. The District and the City consent to the exclusion of the property described in Exhibit "A," subject to the provisions of this Stipulation and Plan.

6. The parties further stipulate that:

A. The City of Westminster has provided and is now providing comparable fire protection services that the District provided in or to the territory proposed for exclusion.

B. The governing body of the City of Westminster agrees, and has agreed by resolution, to provide the service provided by the District to the area described in the exclusion petition effective immediately upon entry of the exclusion order regardless of its later effective date.

C. The quality of fire protection service to be provided by the City of Westminster will not be inferior to the fire protection service now provided by the District in the territory proposed for exclusion and described in the Petition for Exclusion.

D. No election has been held or is required to be held pursuant to subsection (5) of section 32-1-502, C.R.S., as amended, and it is stipulated that the quality of service including, but not limited to, the fire insurance costs for the improvements within the excluded area will not be adversely affected by this exclusion.

E. The District owns no facilities or assets located within the territory that is proposed for exclusion.

F. The District has a current outstanding bonded indebtedness of \$580,570.

7. Commencing the taxable year 2013, the District, for a period of five (5) years, shall have the right to assess and collect the proceeds of a mill levy of one-half (1/2) mill against the assessed value of the applicable excluded property, which proceeds shall be paid to and for the exclusive benefit of the District's Firemen's Pension Fund.

8. Pursuant to section 32-1-502, C.R.S., as amended, District and City agree to the following plan for disposition of assets and continuation of services to all areas of the District:

A. The District owns no real property or improvements within the territory described in the Petition for Exclusion and the City does not seek ownership of any such assets located in any other part of the District.

B. The City does not seek ownership of any firefighting equipment or other personal property now owned by the District and the Order of Exclusion may so state.

C. The City shall provide fire protection to the territory described in the Petition and shall continue to honor any mutual aid agreement with the District applicable to any District territory not excluded.

D. All other resources of the City Fire Department will be available to respond as the circumstances of any emergency or other situation may require.

E. City officers will also be responsible for safety inspections and other fire code enforcement within the territory described in the Petition.

F. Primary responsibility for fire protection in all territory of the District not proposed for exclusion shall remain with the District.

9. The City of Westminster shall assume fire protection service responsibility to the excluded area from the District effective January 1, 2013. Nothing in this Stipulation and Plan shall impair or negate the validity or effectiveness of any existing mutual aid agreement between the parties.

10. The District and its firefighters, including those residing in the excluded area, shall continue to have the right to operate District and personal vehicles and equipment as authorized emergency vehicles within said excluded area and the City of Westminster, for bona fide emergency purposes, as the District may deem necessary in fulfilling District obligations. Authorized emergency vehicles shall be those as defined by section 42-1-102, C.R.S., as

amended, and shall include the right of District firefighters who reside in the excluded area to respond to emergency calls in personal vehicles and District vehicles which are operated as emergency vehicles.

11. Pursuant to section 32-1-503, C.R.S., as amended:

A. The change of boundaries of the District, which is accomplished by the Court Order, shall not impair nor affect its organizations, nor shall it affect, impair or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

B. For the taxable year 2013 and thereafter, the excluded property shall not be subject to any property tax levied by the District for operating costs.

C. For the purpose of retiring the District's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the applicable excluded territory shall be obligated to the same extent as all other property within the District but only for that proportion of the District's outstanding indebtedness and the interest thereon existing immediately prior to January 1, 2013.

D. The excluded territory shall in no event become obligated for the payment of any bonded indebtedness created after the date of the Court's exclusion order.

E. Commencing the taxable year 2013, the District, for a period of five (5) years, shall have the right to assess and collect the proceeds of a mill levy of one-half (1/2) mill against the assessed value of the applicable excluded property, which proceeds shall be paid to and for the exclusive benefit of the District's Firemen's Pension Fund.

12. This Court may, immediately upon presentation of this Stipulation and Plan, enter an Order consistent herewith excluding the territory described in Exhibit "A" from the District. The Order shall become effective, as provided by statute, on January 1, 2013. The form of the Order is attached hereto as Exhibit "B" and all of the terms of said Order are hereby incorporated by reference in this Stipulation and Plan.

13. The Court's Exclusion Order shall become effective January 1, 2013.

Respectfully submitted,

IRELAND STAPLETON PRYOR &  
PASCOE, PC

CITY OF WESTMINSTER

By: Michelle B. Ferguson  
Michelle B. Ferguson, #33536  
Attorney for Respondent District  
1675 Broadway, Suite 2600  
Denver, CO 80202  
(303) 623-2700

By: M.R. McCullough #13364  
Martin R. McCullough  
Attorney for Petitioners  
4800 W. 92nd Avenue  
Westminster, CO 80031  
Telephone: (303) 658-2400

APPROVED:

SOUTHWEST ADAMS COUNTY FIRE  
PROTECTION DISTRICT

CITY OF WESTMINSTER, a home-rule City

By: Greg Neal  
Greg Neal, President

By: \_\_\_\_\_  
Nancy McNally, Mayor

By: George Ditolla  
George Ditolla, Chief

By: \_\_\_\_\_  
J. Brent McFall, City Manager

ATTEST:

ATTEST:

By: Anthony Spang  
Anthony Spang, Secretary

By: \_\_\_\_\_  
Linda Yeager, City Clerk

**EXHIBIT A**

A PORTION OF SECTION 5 AND A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 6; ALL IN TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING A PORTION OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY AND THE FOLLOWING PARCELS CONVEYED TO THE CITY OF WESTMINSTER AND THE WESTMINSTER HOUSING AUTHORITY:

NOTE:

1. THE BASIS OF BEARINGS IS THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 5, T3S, R68W 6TH P.M. AS MONUMENTED WITH AN ALUMINUM CAP PLS 16406 IN A MONUMENT BOX ON THE WEST AND AN ALUMINUM CAP PLS 26288 ON THE EAST WITH A BEARING OF N 89°47'54" E A DISTANCE OF 2635.75 FEET (CITY OF WESTMINSTER DATUM).

CITY OF WESTMINSTER PARCELS:

RECEPTION NUMBER 2011000067850;

BOOK 4996 PAGE 59;

RECEPTION NUMBERS 200800000229 AND 200800000231, LESS RECEPTION NUMBER 2011000082324;

RECEPTION NUMBER 2010000065696;

BOOK 4852 PAGE 403;

RECEPTION NUMBER 2010000031068;

BOOK 4866 PAGE 156;

BOOK 5088 PAGE 621 AND CORRECTED IN BOOK 5158 PAGE 820;

WESTMINSTER HOUSING AUTHORITY PARCELS:

RECEPTION NUMBER 20050422000421310

RECEPTION NUMBER 200411160011162080;

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 5, AN ALUMINUM CAP PLS 26288; THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 125.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, AS DESCRIBED IN BOOK 749 AT PAGE 342, AND THE POINT OF BEGINNING;  
THENCE S 00°47'33" W, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 48, BLOCK 8 COLLEGE CREST SUBDIVISION, BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST 68TH AVENUE;  
THENCE S 89°47'54" W, ALONG SAID NORTHERLY LINE OF LOT 48, BLOCK 8, A DISTANCE OF 64.36 FEET TO THE NORTHWEST CORNER OF SAID LOT 48, BLOCK 8;  
THENCE S 00°04'54" E, ALONG THE WESTERLY LINE OF SAID LOT 48, BLOCK 8, A DISTANCE OF 50.04 FEET TO A POINT OF INTERSECTION WITH SAID WESTERLY LINE AND THE SOUTHERLY LINE OF OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL A, EXTENDED EASTERLY;

THENCE S 89°47'57" W, ALONG SAID SOUTHERLY LINE AND SAID SOUTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 200.87 FEET TO A POINT ON THE EASTERLY LINE OF BLOCK 7 COLLEGE CREST SUBDIVISION, BEING THE WESTERLY RIGHT OF WAY LINE OF GREEN STREET;

THENCE N 00°04'35" W, ALONG SAID EASTERLY LINE, A DISTANCE OF 50.03 FEET TO THE NORTHEAST CORNER OF LOT 48, BLOCK 7 COLLEGE CREST SUBDIVISION;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID BLOCK 7, BLOCK 6 AND A PORTION OF BLOCK 5 COLLEGE CREST SUBDIVISION, A DISTANCE OF 745.33 FEET TO THE INTERSECTION OF SAID NORTHERLY LINE OF BLOCK 5 WITH THE EASTERLY LINE OF THE AMENDED PLAT DOOSE SUBDIVISION, RECORDED AT FILE 10 MAP 7, EXTENDED SOUTHERLY;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 451.11 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL D;

THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF SAID PARCEL D, A DISTANCE OF 160.33 FEET TO A POINT OF NON TANGENT CURVATURE ON THE TEMPORARY TURN AROUND AS SHOWN ON AMENDED PLAT DOOSE SUBDIVISION;

THENCE ALONG A CURVE TO THE LEFT, ALONG SAID TEMPORARY TURN AROUND, A DISTANCE OF 118.38 FEET TO A POINT OF NON TANGENCY ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED AT 2011000082324, SAID CURVE HAVING A RADIUS OF 45.00 FEET, A DELTA ANGLE OF 150°43'28" AND A CHORD DISTANCE OF 87.08 FEET WHICH BEARS N 54°44'12" W;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 4.47 FEET TO THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED AT 2011000082324;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED AT 2011000082324, A DISTANCE OF 104.12 FEET TO THE EASTERLY LINE OF RESUBDIVISION OF LINDIE HEIGHTS SUBDIVISION, RECORDED IN PLAT BOOK 5 PAGE 31 (FILE 10 MAP 77);

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE AND THE EASTERLY LINE OF NASH SUBDIVISION, RECORDED AT FILE 17 MAP 341, A DISTANCE OF 233.06 FEET TO THE NORTHEAST CORNER OF SAID NASH SUBDIVISION;

THENCE S 89°53'23" W, ALONG THE NORTHERLY LINE OF SAID NASH SUBDIVISION, A DISTANCE OF 581.98 FEET TO A POINT ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 8.40 FEET THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159 AND SAID NORTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 582.00 FEET TO A POINT ON THE WEST LINE OF SECTION 5;

THENCE N 89°21'18" W A DISTANCE OF 40.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF LOWELL BOULEVARD BEING A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 596 A70-4;

THENCE N 00°38'42" E, ALONG SAID ORDINANCE 596 A70-4, A DISTANCE OF 242.76 FEET TO A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 550 A68-1;

THENCE ALONG SAID ORDINANCE 550 A68-1, THE FOLLOWING FOUR (4) COURSES:

1. THENCE S 89°21'18" E A DISTANCE OF 10.00 FEET;
  2. THENCE N 00°38'42" E A DISTANCE OF 326.16 FEET;
  3. THENCE S 89°54'05" E A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST LINE OF SECTION 6;
  4. THENCE N 89°05'58" E A DISTANCE OF 1084.14 FEET;
- THENCE S 57°36'54" E, CONTINUING ALONG SAID ORDINANCE 550 A68-1, ALONG ORDINANCE 710 A72-10 AND ALONG ORDINANCE 1873 A88-4, A DISTANCE OF 1825.55 FEET;

THENCE CONTINUING ALONG ORDINANCE 1873 A88-4, THE FOLLOWING TWO (2) COURSES:

1. THENCE N 00°47'33" E A DISTANCE OF 58.70 FEET;
  2. THENCE S 57°36'54" E A DISTANCE OF 129.14 FEET TO THE NORTHWEST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 200607000687800;
- THENCE ALONG SAID RECEPTION NUMBER 200607000687800, THE FOLLOWING THREE (3) COURSES:

1. THENCE S 00°47'33" W A DISTANCE OF 39.92 FEET;
  2. THENCE S 57°36'54" E A DISTANCE OF 511.45 FEET;
  3. THENCE N 32°23'06" E A DISTANCE OF 34.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;
- THENCE S 57°36'54" E, ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 237.75 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 14 AS DESCRIBED IN BOOK 5088 AT PAGE 621 AND CORRECTED IN BOOK 5158 AT PAGE 820;

THENCE ALONG SAID PARCEL 14, THE FOLLOWING FIVE (5) COURSES:

1. THENCE S 84°16'12" E A DISTANCE OF 196.66 FEET;
  2. THENCE S 57°36'54" E A DISTANCE OF 130.95 FEET;
  3. THENCE S 42°19'48" E A DISTANCE OF 182.93 FEET;
  4. THENCE S 57°36'54" E A DISTANCE OF 382.30 FEET;
  5. THENCE S 00°31'06" W A DISTANCE OF 47.10 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;
- THENCE S 32°23'06" W A DISTANCE OF 150.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;
- THENCE N 57°36'54" W ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1844.06 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, PROJECT NO. F004-1(20) AS DESCRIBED IN BOOK 749 AT PAGE 342;
- THENCE S 00°47'33" W, ALONG SAID WESTERLY LINE, A DISTANCE OF 279.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 45.839 ACRES MORE OR LESS.

EXCEPTING THEREFROM:

LOTS 1-9 NORTH MOUNTAIN VIEW SUBDIVISION, FILE 9 MAP 126, LESS THAT PORTION OF LOWELL BOULEVARD RIGHT OF WAY, RECEPTION NUMBERS C0747799 AND C0810426; CONTAINING 1.642 ACRES MORE OR LESS.

TOTAL ANNEXATION CONTAINING IN TOTAL 44.197 ACRES MORE OR LESS.

District Court, Adams County, Colorado Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601 303-659-1161	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Petitioners:</b></p> <p>THE CITY OF WESTMINSTER, COLORADO, a home-rule City, and THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER</p> <p><b>Respondents:</b></p> <p>THE BOARD OF DIRECTORS OF THE SOUTHWEST ADAMS COUNTY FIRE PROTECTION DISTRICT, and All Taxpaying Electors of the NORTH METRO FIRE PROTECTION DISTRICT, as a class.</p>	
City of Westminster Martin R. McCullough, #13364 City Attorney 4800 West 92 <sup>nd</sup> Avenue Westminster, CO 80031 Phone: 303-658-2400 Fax: 303-706-3920 E-mail: mmccullo@cityofwestminster.us	Case Number: _____  Division: ____  Courtroom: ____
<b>ORDER FOR EXCLUSION OF CERTAIN TERRITORY FROM SOUTHWEST ADAMS COUNTY FIRE PROTECTION DISTRICT</b>	

THIS MATTER comes before the Court this \_\_\_\_ day of \_\_\_\_\_, 2012, upon the Stipulation and Plan of the parties to this action for entry of an Order excluding certain territory from the Southwest Adams County Fire Protection District, upon terms and conditions set forth in the Stipulation and Plan and hereinafter approved and adopted.

The parties appear by Martin R. McCullough, City Attorney, counsel of record for Petitioners, and Michelle B. Ferguson, counsel for Respondents, the Board of Directors of the Southwest Adams County Fire Protection District. No other parties or counsel have appeared in this action.

The Court, having reviewed the Stipulation and Plan, heard statements of counsel, and being fully advised of the facts and circumstances surrounding this action,

DOTH ORDER, ADJUDGE AND DECREE:

1. The Stipulation and Plan for Exclusion of Certain Territory from the Southwest Adams County Fire Protection District presented to the Court this date, which Stipulation and Plan was approved by counsel for both parties to the action and by the governing bodies of the City of Westminster, Colorado, and the Southwest Adams County Fire Protection District, as evidenced by the signatures of the appropriate officers of each governing body, hereby finds that the Stipulation and Plan for Exclusion constitutes a contract which is fair and equitable. The provisions of said Stipulation and Plan are hereby approved and incorporated in the remaining paragraphs of this Order.

2. All notice requirements of the statute and of the Colorado Rules of Civil Procedure have been duly, completely and properly complied with. No objection to the exclusion has been made by any taxpaying elector, individually or on behalf of the class designated Taxpaying Electors.

3. The Court has jurisdiction of all necessary parties and of the subject matter of this action.

4. The Court finds:

A. The City of Westminster has provided and is now providing comparable fire protection services which the Southwest Adams County Fire Protection District has provided in or to the territory proposed for exclusion.

B. The governing body of the City of Westminster agrees, and has agreed by resolution, to provide the service provided by the Southwest Adams County Fire Protection District to the area described in the exclusion petition effective immediately upon entry of the exclusion order regardless of its later effective date.

C. The quality of fire protection service to be provided by the City of Westminster will not be inferior to the fire protection service now provided by the Southwest Adams County Fire Protection District in the territory proposed for exclusion and described in the Petition for Exclusion.

D. No election has been held or is required to be held pursuant to subsection (5) of section 32-1-502, C.R.S., as amended, and the quality of service including, but not limited to, the fire insurance costs for the improvements within the excluded area will not be adversely affected by this exclusion.

E. The District owns no facilities or assets located within the territory which is proposed for exclusion.

F. The District has a current outstanding bonded indebtedness of \$580,570.

G. The District owns no real property or improvements within the territory described in the Petition for Exclusion and the City does not seek ownership of any such assets located in any other part of the District.

H. The City does not seek ownership of any firefighting equipment or other personal property now owned by the District and the Order of Exclusion may so state.

I. The City shall provide fire protection to the territory described in the Petition and shall continue to honor any mutual aid agreement with the District applicable to any District territory not excluded.

J. City officers will also be responsible for safety inspections and other fire code enforcement within the territory described in the Petition.

K. Primary responsibility for fire protection in all territory of the District not proposed for exclusion shall remain with the District.

5. The Court orders:

A. Pursuant to C.R.S. §32-1-502, the Court Orders that the territory more particularly described on the legal description attached as **Exhibit A** is excluded from the jurisdiction and boundaries of the Southwest Adams County Fire Protection District effective as of January 1, 2013.

B. The City of Westminster shall assume fire protection service responsibility to the excluded area from the District effective January 1, 2013.

Nothing in the Stipulation and Plan shall impair or negate the validity or effectiveness of any existing mutual aid agreement between the parties.

C. The Southwest Adams County Fire Protection District and its firefighters, including those residing in the excluded area, shall continue to have the right to operate District and personal vehicles and equipment as authorized emergency vehicles within said excluded area and the City of Westminster, for bona fide emergency purposes, as the District may deem necessary in fulfilling District obligations.

Authorized emergency vehicles shall be those as defined by section 42-1-102, C.R.S., as amended, with privileges as provided by section 42-4-108, C.R.S., as amended, and shall include the right of District firefighters who reside in the excluded area to respond to emergency calls in personal vehicles and District vehicles which are operated as emergency vehicles.

D. The change of boundaries of the District, which is accomplished by this Court Order, shall not impair nor affect its organization, nor shall it affect, impair or discharge

any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

E. For the taxable year 2013 and thereafter, the excluded property shall not be subject to any property tax levied by the District for operating costs.

F. For the purpose of retiring the District's outstanding indebtedness and the interest thereon existing on January 1, 2013, the applicable excluded property shall be subject only for that proportion of the District's outstanding indebtedness and the interest thereon existing immediately prior to January 1, 2013.

G. The excluded territory shall in no event become obligated for the payment of any bonded indebtedness created after the effective date of this Exclusion Order.

H. This Order shall become effective January 1, 2013.

DONE AND SIGNED in Open Court this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
District Court Judge

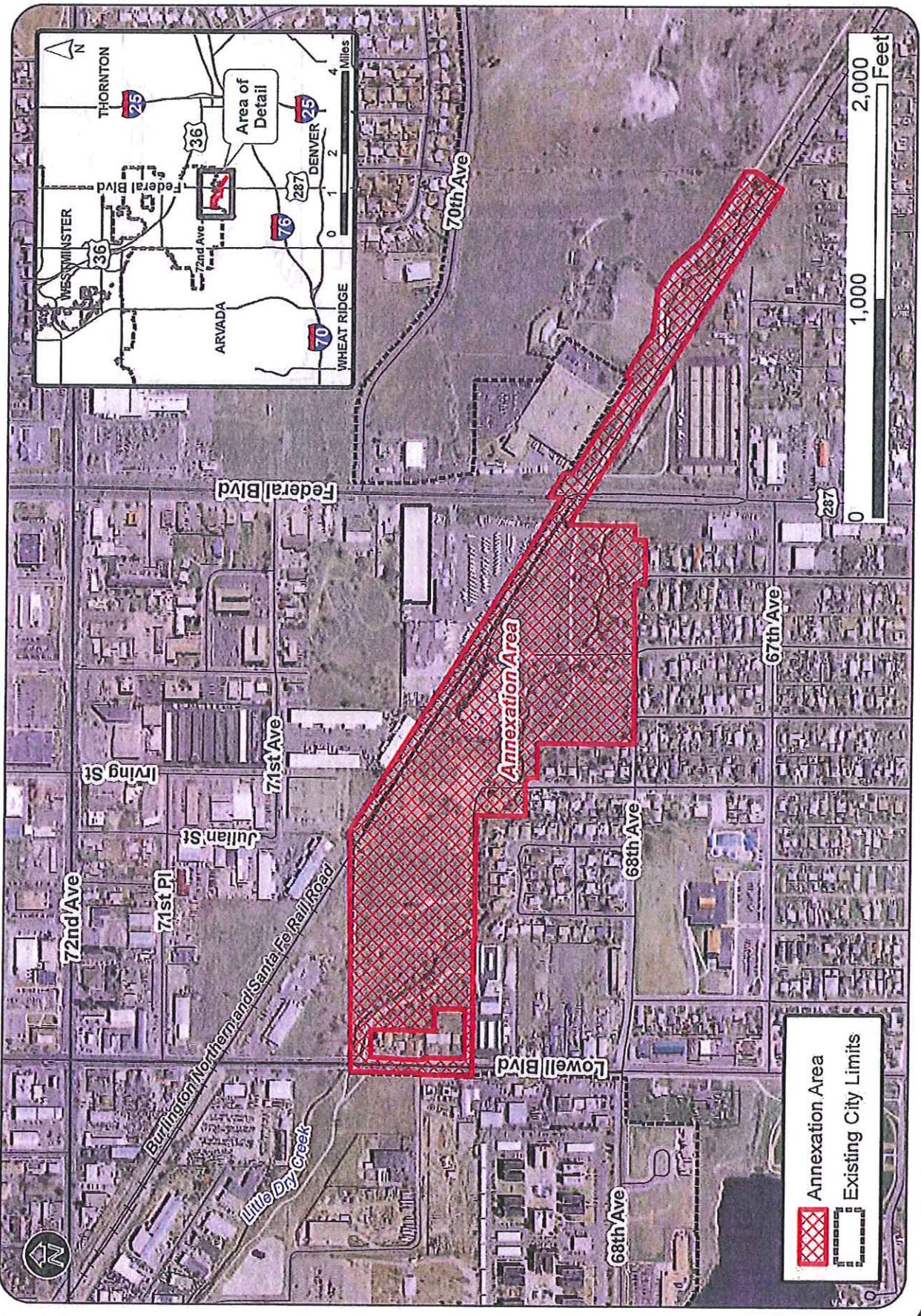
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Martin R. McCullough #13364  
City Attorney for Petitioners  
City of Westminster  
4800 W. 92nd Avenue  
Westminster, CO 80031

By: \_\_\_\_\_  
Michelle B. Ferguson, #33536  
Attorney for Respondent District  
Ireland Stapleton Pryor & Pascoe PC  
1675 Broadway, Suite 2600  
Denver, Colorado 80202

# Little Dry Creek Annexation

ATTACHMENT A





## Agenda Item 8 E

### Agenda Memorandum

City Council Meeting  
November 12, 2012



**SUBJECT:** Second Reading of Councillor's Bill No. 46 to Amend the Westminster Municipal Code re Municipal Judge Salary

**Prepared By:** Debbie Mitchell, General Services Director

### Recommended City Council Action

Pass Councillor's Bill No. 46 on second reading amending Section 1-7-2 of the Westminster Municipal Code by setting the salary for the Municipal Judge for 2013.

### Summary Statement

- City Council previously approved a revised employment agreement with John A. Stipech for services as Presiding Judge. The agreement will go into effect January 1, 2013, contingent upon the approval of this ordinance on second reading.
- In the previously approved agreement, Judge Stipech's 2013 combined salary and deferred compensation will be \$134,144. This 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 2013. The new combined salary and deferred compensation for 2013 is three percent higher than the Judge's compensation in 2012.
- The previously approved agreement with Judge Stipech is similar to the current employment agreement with the exceptions of the effective dates of the contract and the changes in compensation.
- The City Charter requires that the Presiding Judge's salary be approved by ordinance.
- The Councillor's Bill was passed on first reading on October 22, 2012.

**Expenditure Required:** \$134,144 plus the cost of fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund - Municipal Court Division Budget

Respectfully submitted,

J. Brent McFall  
City Manager

### Attachments

- Ordinance
- Employment Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2012

INTRODUCED BY COUNCILLORS  
**Briggs - Kaiser**

**A BILL**

**FOR AN ORDINANCE SETTING THE SALARY OF THE MUNICIPAL JUDGE FOR 2013**

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:

~~\$130,237~~\$134,144 per annum, effective January 1, ~~2012~~2013, payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation. Such deferred compensation amount may, at the Municipal Judge's option, be paid as a lump sum at the beginning of the calendar year. ~~A bonus of \$5,000 shall be payable on or before January 20, 2012.~~

Section 2. 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 22<sup>nd</sup> day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of November, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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

## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT, effective as of the 1st day of January, 2013, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "the 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 of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of 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 or when the 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. The CITY hereby agrees to continue the employment of EMPLOYEE as Presiding Municipal Judge of the 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 Municipal 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.

E. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated June 30, 2010, as amended ("Personnel Policies and Rules").

SECTION 2. TERM

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as Presiding Judge for calendar years 2013 and 2014. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, 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 to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 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 of this Agreement.

D. This Agreement is for a one-year term, but shall be automatically renewed for 2014 unless terminated no later than October 31, 2013.

SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAYMENT:

A. In the event the City Council decides to terminate EMPLOYEE's employment with the CITY 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' prior written notice or, if no such notice is given, to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing six (6) months, plus or minus the pro rata share of deferred compensation to which EMPLOYEE is entitled based on his termination date and the amount of deferred compensation already paid to EMPLOYEE for that year (the "Severance Payment"). 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 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, the CITY has no obligation to give notice or pay the Severance Payment .

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 written suggestion by at least four (4) members of 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 and be entitled to the Severance Payment as described in subsection A of this Section 3.

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 no less than sixty (60) days notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

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

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 Severance Payment described therein.

SECTION 4. SALARY AND EVALUATIONS:

A. Effective January 1, 2013, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of \$134,144 which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take in deferred compensation. EMPLOYEE may elect to receive a portion of his Gross Salary in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The Base Salary shall be payable in installments at the same time as other employees of the CITY are paid.

B. The CITY agrees to review 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.

C. Pursuant to the City Charter, the Base Salary and deferred compensation provided in this Section shall be approved by ordinance of the City Council.

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, in compliance with the Personnel Policies and Rules.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$500 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The 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 8. PROFESSIONAL DEVELOPMENT:

The 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 calendar year.

SECTION 9. GENERAL EXPENSES:

The 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 10. FRINGE BENEFITS:

The CITY shall provide EMPLOYEE with all benefits that are provided to Department Head level employees by the Personnel Policies and Rules; provided that when such benefits are in conflict with this Agreement, this Agreement shall control. 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's benefits is computed.

SECTION 11. 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 the provisions of this Agreement, the City Charter or any other law.

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

SECTION 12. 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, 2013, and, if automatically renewed, shall be in effect through December 31, 2014.

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 Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Effective January 1, 2013, this Agreement replaces and supersedes prior employment agreements between CITY and EMPLOYEE.

G. Nothing in this Agreement shall be construed as creating a multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

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 has voluntarily signed and executed this Agreement.

APPROVED by the Westminster City Council on November 12, 2012, 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 LEGAL FORM:

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



## Agenda Item 10 A-C

### Agenda Memorandum

City Council Meeting  
November 12, 2012



**SUBJECT:** Public Hearing and Action on the Second Amended Preliminary Development Plan and Eighth Amended Official Development Plan for Hyland Village Subdivision

**Prepared By:** Terri Hamilton, Planner III

### Recommended City Council Action

1. Reopen the continued public hearing from October 10, 2011, on the Second Amended Preliminary Development Plan and Eighth Amended Official Development Plan for the Hyland Village Subdivision.
2. Deny the Second Amended Preliminary Development Plan for the Hyland Village Subdivision. This recommendation is based on a finding that the proposed change to allow rental multi-family use fails to meet the criteria set forth in Section 11-5-14(A)5 and 11-5-14(A)6, without addressing the potential reduction of HOA revenues needed to maintain previously approved subdivision improvements.
3. Deny the Eighth Amended Official Development Plan for the Hyland Village Subdivision. This recommendation is based on a finding that the proposed change to allow rental multi-family use fails to meet the criteria set forth in Section 11-5-15(A)6 and 11-5-15(A)7, without addressing the potential reduction of HOA revenues needed to maintain previously approved subdivision improvements.

### Summary Statement

- On October 10, 2011, City Council opened and continued the public hearing on this request due to concerns and issues brought up by residents at the 2011 Planning Commission meeting regarding the homeowner association in Hyland Village. The item was continued in order for the applicant to have further time to address questions regarding financial impacts of the proposed Preliminary Development Plan (PDP)/Official Development Plan (ODP) amendments to the home owners association.
- The 71-acre Hyland Village Subdivision is located at the southwest corner of 98<sup>th</sup> Avenue and Sheridan Boulevard. The subdivision consists of parcels for mixed use, multi-family, townhome, single-family detached and public land dedication/open space. Existing construction consists of 12 townhome units and 4 single-family homes.
- A 5-acre undeveloped multi-family parcel is located within the interior of the subdivision at the northeast corner of 96<sup>th</sup> Avenue and Ames Street.
- The multi-family parcel is designated for approximately 150 dwelling units and restricted to a development marketed to individual buyers (condominiums).

- The proposed Second Amended Preliminary Development Plan (PDP) and Eighth Amended Official Development Plan (ODP) would allow the use of the multi-family parcel to be marketed to individual buyers (condominiums) or as a rental project (apartments).
- City staff has changed its original recommendation of approval at the time of the Planning Commission to one of denial because staff was subsequently informed that a rental product would not provide the same financial contribution to the homeowners' association.
- Staff is recommending denial of the proposed change to these development plans for the following reasons:
  - 1) The development of this Planned Unit Development (PUD) has already started under the existing plans and there are 16 existing homeowners in the subdivision;
  - 2) The financial burden of these homeowners to pay for the previously approved subdivision improvements and amenities would increase significantly if the currently approved condominium use was converted to a rental project with only one, instead of multiple owners responsible for sharing in the HOA's financial obligations; and
  - 3) The owner of the land requesting the addition of multi-family rental use to the owner's permitted uses has not agreed to assume responsibility for the assessments that the condominium project would have otherwise paid, and has not come up with any other satisfactory arrangement to address this concern.

**Expenditure Required:** \$0

**Source of Funds:** N/A

### **Planning Commission Recommendation**

This request was heard by the Planning Commission on September 27, 2011. Six people spoke at the public hearing: two consultants representing Provident (West Hyland Holdings) and the Pappageorge, Hintz and Minnick property owners spoke in favor of the request - one noting that, for comparison, the Bradburn subdivision has apartments that look good. Four residents of the subdivision spoke against the association impacts and issues; and one person was neutral about the project, but also concerned about homeowners' association impacts.

The Planning Commission voted 5-2 to approve the Second Amended Preliminary Development Plan and Eighth Amended Official Development Plan for Hyland Village Subdivision, with Commissioners Mayo, Colling, McConnell, Boschert and Carpenter voting for approval. Commissioners Anderson and McClung voted against the amendment stating that:

- The City has several apartment complexes contemplated or that could break ground next year but does not have a variety of options for condominiums.
- There are more options for rental apartments up and down Sheridan Boulevard close to this site but not condominiums or townhouses.
- They are not ready to concede that condominiums or future condominium projects should be converted to apartment complexes.
- One of the great advantages of this site was to have owner occupied residents throughout the site, and that was of interest to Planning Commission/the City when the project was approved in 2007.
- Not wanting to set a precedent for changing a condominium project to apartments.
- We owe the residents who live there the certainty of what will happen.

### **Policy Issue**

Should the City Council approve the Second Amended Preliminary Development Plan and Eighth Amended Official Development Plan for Hyland Village Subdivision, allowing the multi-family parcel the option to be developed as apartments?

### **Alternative**

Affirm the recommendation of the Planning Commission to approve the Second Amended Preliminary Development Plan and Eighth Amended Official Development Plan for Hyland Village Subdivision.

City staff no longer supports a recommendation for approval due to the significant financial impact to the homeowners association (HOA) that a rental project would have. When City staff recommended approval of the proposed revisions at Planning Commission, this impact was not known and the applicant was asked to be prepared to address questions of this nature at the October 10, 2012, City Council public hearing. Since the continued public hearing, in an attempt to address this impact, and address apparent desires of a future apartment developer, the applicant and the current HOA Founder (Provident) has proposed a financial agreement whereby the apartment owner would provide an ongoing financial contribution to the HOA for its share of the maintenance of private improvements throughout the subdivision, but excluding the future neighborhood pool and clubhouse. The apartment site would then provide their own pool. City staff does not agree that adding a second pool and modifying the previously approved scope of private amenities to address the added financial burden on the HOA from a rental project compared to a condominium project is in the best interest of the current or future residents. City staff would support the PDP and ODP amendment only if the change in ownership to rental had no significant impact to the current homeowners and the future viability of the HOA.

A recommendation of denial supports the original intent of this Planned Unit Development (PUD) - to provide a variety of housing options within the subdivision marketed to individual buyers, not as rental projects. There are existing apartments in the vicinity of Hyland Village, but fewer condominiums.

**Background Information**

Nature of Request

The applicant is requesting the option of constructing a rental apartment project on the existing multi-family parcel that is currently restricted to be marketed to individual buyers. The adjacent undeveloped village green parcel, under the same ownership, is not proposed to be altered.

Location

The multi-family parcel, platted as Lot 1 Block 9, is approximately a 5-acre parcel located in the interior of the subdivision at the northeast corner of 96<sup>th</sup> Avenue and Ames Street. The village green parcel, platted at Tract SS, is surrounded on three sides by the multi-family parcel. (See Attachment A - vicinity map).

There are sixteen residents within Hyland Village located within four single-family homes and two six-plex row houses. Other owners of undeveloped lots within the subdivision are indicated on the attached ownership map. (See Attachment B - ownership map)

Public Notification

Westminster Municipal Code 11-5-13 requires the following three public notification procedures:

- Published Notice: Notice of public hearing scheduled before City Council shall be published and posted at least 4 days prior to such hearing and at least four days prior to City Council public hearings. Notice for the City Council hearing has published in the Westminster Window on Thursday, November 1, 2012.
- Property Posting: Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Three signs were posted on Thursday November 1, 2012.
- Written Notice: At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on Tuesday, October 30, 2012. All residents and property owners within the subdivision were mailed notices, as well as, property owners within 300 feet of the entire subdivision.

Applicant/Property Owner

1225 Prospect, LLC  
5723 Arapahoe Avenue #2B  
Boulder, Colorado 80303  
Contact: Michael Markel, Manager

Surrounding Land Use and Comprehensive Land Use Plan Designations

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: Future Townhomes - Hyland Village	PUD	Traditional Mixed-Use Neighborhood Development	Primarily Vacant
South: Future Townhomes - Hyland Village	PUD	Traditional Mixed-Use Neighborhood Development	Vacant
East: Future Mixed Use – Hyland Village	PUD	Traditional Mixed-Use Neighborhood Development	Vacant
West: Future Single-Family and Private Park - Hyland Village	PUD	Traditional Mixed-Use Neighborhood Development	Primarily Vacant

Site Plan Information

- Site Design: The multi-family parcel is in the interior of the Hyland Village Subdivision and is surrounded by public streets. The design of the multi-family parcel will occur with a future amendment to the Hyland Village ODP and will address site design, traffic and transportation, landscape design, architecture, signage and lighting. The specific design details of the project will be evaluated for compatibility with the surrounding existing or future development, function, and quality, regardless if the project is for ownership or rental of units. The City has design guidelines for Traditional Mixed Use Neighborhood Developments (TMUND) projects and multi-family development that are used during the review of a specific proposal. The maximum allowable density on this parcel would not change if apartments are allowed.
- Public Land Dedication/School Land Dedication: The required public land dedication for Hyland Village has previously occurred, with the City owning open space parcels at the northeast and southeast and south portions of the subdivision. A cash-in-lieu payment for school land dedication has also been completed. These dedications or payments are not affected by the ownership or rental of the multi-family units.

Council Goals and Objectives

The Hyland Village subdivision supports the Goal and Objectives of providing Vibrant Neighborhoods in One Livable Community. Examples of this are to maintain and improve neighborhood infrastructure and housing, have HOAs and residents taking responsibility for neighborhood private infrastructure, and have a range of quality homes for all stages of life (type, price) throughout the City.

The subdivision also supports the Goal and Objectives of providing a Beautiful and Environmentally Sensitive City. Examples of this are to increase and maintain green space (parks, open space, etc.) consistent with defined goals and to preserve vistas and view corridors.

Service Commitment Category

Service Commitments have been previously awarded and will not be impacted with the Second Amended PDP or Eighth Amended ODP.

Referral Agency Responses

Not applicable

Neighborhood Meeting and Public Comments

Two neighborhood meetings have been held regarding this proposal. The first meeting was held Monday, August 8, 2011. There were eleven attendees. Questions from attendees were varied. There was both support and lack of support for the request. Notes by the City Planner indicate questions and responses from that meeting. (Attachment C – Meeting Notes and Emails) Also, several emails were sent to the City Planner, also attached to this memorandum. For those who did not support this request, concerns and questions generally were as follows

- Rental property would negatively affect the value of homes
- Maintenance and architecture quality of rental property is less than an ownership property
- Questions regarding impact to the homeowners’ association (primarily financial impact)
  - The collection of a per unit “recreation” fee at closing (McStain did this)
  - A reduction of homeowners’ association fees generated from the apartment project
  - Access of apartment residents to the future pool/clubhouse

A second neighborhood meeting was held on April 4, 2012, after the continued City Council meeting. There were eight attendees. The applicant explained that they had reached a financial agreement with Provident, the landowner, who has the fiduciary role with the HOA. (Attachment D – Letter from Provident) Again, there was a mixed reaction from attendees with the general reaction from attendees as negative. Concerns were similar to the August neighborhood meeting and also, that Provident, in their fiduciary duty, may not necessarily represent the existing sixteen homeowners’ best interests. There was also interest in reviewing the financial agreement.

Since that time, the applicant has met on several occasions with various home owners in meetings without City staff in attendance. The applicant believes that the majority of home owners are now satisfied and will no longer oppose their proposal. However, when requested to respond to City staff as to their support, there were only 7 responses, which were still mixed, and generally not supportive. (Attachment E – June 2012 Emails)

Municipal Code Criteria

***Preliminary Development Plan (PDP) Amendment Application***

Section 11-5-14(A) sets forth the Standards for Approval of Planned Unit Development, Preliminary Development Plans and Amendments to Preliminary Development Plans.

Staff is of the opinion that the proposed amendment to the Hyland Village Preliminary Development Plan fails to meet the following criteria:

5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.

Staff Comment: The option of allowing a rental multi-family product within the PUD could result in financial impacts/loss in revenue to the homeowners association, resulting in a reduction in capital to maintain private improvements such as the future pool and clubhouse, landscape areas, private parks, etc. The HOA structure and documents are private documents which City Staff does not review, approve or monitor. They are subject to change. The applicant has advised staff that it has arrived at an agreement with the HOA whereby the apartment developer would provide their own pool and pay an annual amount for use and maintenance of the remaining private improvements within the subdivision. However, City staff has no control over these private agreements. In addition, this proposal does not reduce the cost to maintain the previously approved pool and clubhouse and duplicating such amenities is not in the best interest of either the current or future residents of the subdivision. City staff believes that a change to allow a rental product creates a potentially adverse influence within the development and this Code criteria is therefore not met.

6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.

Staff Comment: City Staff believes that a change to allow a rental product creates a potentially adverse impact upon the future development of the immediate area by negatively impacting HOA revenue (see above explanation in Code criteria number five). With the potential of adverse impact within the PUD, this Code criterion is not met.

Westminster Municipal Code 11-5-14(B) provides that the failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan. As staff has evaluated this proposal, two of the criteria have not been satisfied.

***Official Development Plan (ODP) Amendment Application***

11-5-15(A) Sets forth the Standards for Approval of Official Development Plans and Amendments to Official Development Plans. Staff is of the opinion that the proposed amendment to the Hyland Village Official Development Plan fails to meet the following criteria:

6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.  
Staff Comment: The option of allowing a rental multi-family product within the PUD could result in financial impacts/loss in revenue to the homeowners association, resulting in a reduction in capital to maintain private improvements such as the future pool and clubhouse, landscape areas, private parks, etc. The HOA structure and documents are private documents which City Staff does not review, approve or monitor. They are subject to change. The applicant has advised staff that it has arrived at an agreement with the HOA whereby the apartment developer would provide their own pool and pay an annual amount for use and maintenance of the remaining private improvements within the subdivision. However, City staff has no control over these private agreements. In addition, this proposal does not reduce the cost to maintain the previously approved pool and clubhouse and duplicating such amenities is not in the best interest of either the current or future residents of the subdivision. As there could be a financial loss to the HOA as result of this application, City Staff believes that a change to allow a rental product creates a potentially adverse influence within the development and this Code criteria is therefore not met.
  
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.  
Staff Comment: City Staff believes that a change to allow a rental product creates a potentially adverse impact upon the future development of the immediate area by negatively impacting HOA revenue (see above explanation in Code criteria number five. City staff believes that a change to allow a rental project creates a potentially adverse impact within the development and this Code criteria is therefore not met.

Westminster Municipal Code Section 11-5-15(B) provides that failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan. As staff has evaluated this criteria, two of the criteria have not been satisfied.

Respectfully submitted,

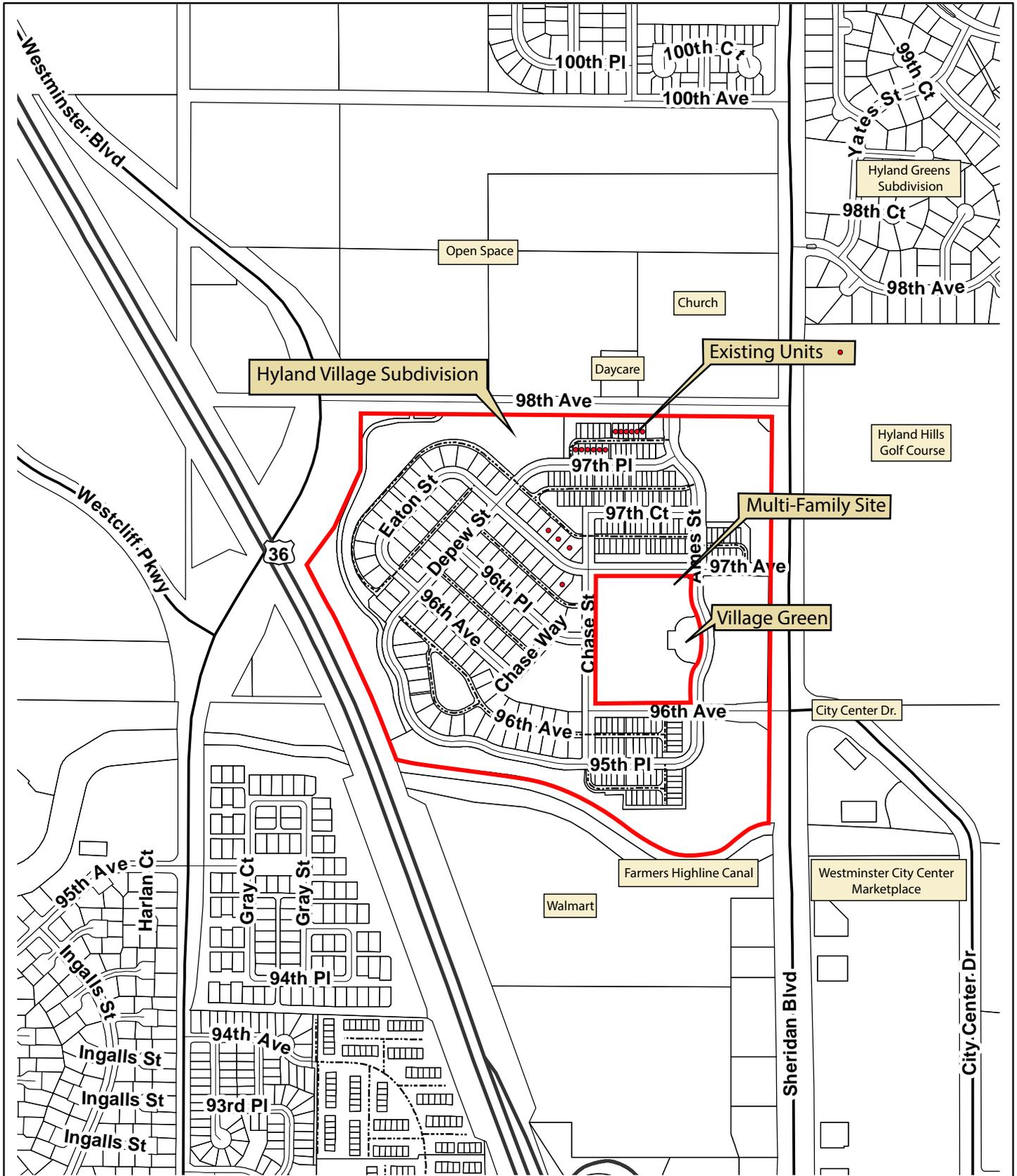
J. Brent McFall  
City Manager

Attachments

- Attachment A (Hyland Village Map)
- Attachment B (Ownership Map)
- Attachment C (August 2011 Neighborhood Meeting Notes and Emails)
- Attachment D (Letter from Provident re HOA Agreement)
- Attachment E (June 2012 Emails)
- Attachment F (Criteria and Standards for Land Use Applications)

The Hyland Village PDP/ODP is available for review in the City Clerk's Office.

# Hyland Village Map



GIS-Apps\WestGIS\ArcGIS93\Templates\Westminster\_Basic\_93.mxd



City of Westminster





City of Westminister



Meeting Notes Hyland Village Neighborhood meeting 8/8/11, 6:30-8 P.M.

Questions/answers

- How would apartments affect the HOA? (Markel: apartment project might not want to be included in the HOA, not certain.)
- How many apartments are planned to occur with the redevelopment of the Westminster Mall? (Terri: I don't know the answer to that.)
- Will apartments here complete with apartments at the Westminster Mall? (Markel: depends on who builds and owns the project.)
- Can apartments be converted to condos in the future? (Markel: possibly at a later date but would be an up-scale project either way. Terri: unknown, the project developer might have to pre-determine that with building construction.)
- Could these apartments be low-income? (Markel: unlikely to happen with desire to build the higher number of units which would likely result in parking under the building as well as surface parking and also elevators. Markel had done preliminary site planning and thought this would be the probable approach. Terri: City wouldn't regulate the rental price but would be looking at the aesthetics of the project- quality of building materials, landscaping, layout...If the project does involve a level of parking below the units and elevators, and with the four story limit it may result in a higher cost project.)
- Couldn't the developer build fewer and cheaper units? (Markel: Very unlikely to occur given the cost he plans to sell the property for. Terri: Fewer units than 150 could be constructed. The City will be evaluating any project rental or otherwise for a quality development.)
- Concern that property values would be negatively affected by apartments versus condos. (Markel: No interest in condos from a developer. Very hard to finance or he would build a condo project. Apartments would likely be up-scale. Westminster uses criteria in project review that results in quality development.)
- Comment that it's hard to support the change to rental without an actual project as part of the proposal. (Markel: although we have a party that is very interested in purchasing and developing this site we didn't think it was appropriate to show examples of the type of development that may occur because it isn't for certain.)
- Comment that "apartments in Westminster don't wear well." (Terri: That perception is a concern- one we don't want. The City works to get quality development with quality building materials etc.)
- Is this project (Hyland Village) similar to Bradburn? (Terri: Bradburn does have a variety in housing types including a significant number of apartments, townhomes, and single family....the vision for Hyland Village includes a one-sided "Main Street with commercial uses" along Ames Street with the village green on the west side of Ames as part of the MF development, and the variety of residential like Bradburn of single family, townhome and multi-family.)

Hamilton, Terri

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**From:** Hamilton, Terri  
**Sent:** Monday, August 08, 2011 1:47 PM  
**To:** 'Amy Shoemaker'  
**Subject:** RE: Hyland Village Subdivision

Hi Amy,

I have your email. Thanks for responding. Your comments will be taken into consideration.

I'm sorry to hear of the mis-information you received when you purchased your townhome. Feel free to call me if you ever have questions about what is, or might be going on in the future, in your neighborhood. I'm very familiar with this project/neighborhood.

This project will go to Planning Commission and City Council and if you like, or are available, you are welcome to attend and speak directly to them also. You'll get notice of when these meetings get scheduled. Thanks again for your response!

Terri



*Terri Hamilton, Planner III  
 303-658-2096  
 thamilto@cityofwestminster.us  
 Starting 8/2/10 City Hall new business hours M-Thurs. 7-6 (closed Fridays)*

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**From:** Amy Shoemaker [mailto:ashoemak@kcoe.com]  
**Sent:** Thursday, August 04, 2011 5:03 PM  
**To:** Hamilton, Terri  
**Subject:** Hyland Village Subdivision

Hi Terri

Thank you for sharing the Development Plan for the Hyland Village Subdivision and for your willingness to hear our feedback.

I bought the last townhouse at 5471 W. 97<sup>th</sup> Place on June 6, 2011. I made an offer on the townhouse on March 11, 2011. When I made the offer, I was told that formal development plans were being revised and were not available for my review. However I was assured that the lot north of our townhome would either be used for the community center or 2 story town homes and that no future construction would block our view of the mountains. I was considering several townhomes and the mountain-view was an important priority in selecting this townhome.

You can imagine my surprise and disappointment to receive the ODP 5 weeks after closing on July 19<sup>th</sup> showing that a 4 story townhome would be built on that property and my mountain-view will now be my neighbors' garage, kitchen, and bathroom. I have heard from several sources that the builder wasn't going to build a lot more townhomes because they cost more to build than they sold for and they made more money from the single-family homes.

I'm trying to offer a win-win solution that would allow the builder to maximize their profitability while still honoring the promise they made to me when I bought the house. I would propose that we move the club house to the area north and west of the current townhomes. It would provide access to a main road if residents want to entertain guests at the club house. It would also free up land where they could build another single-family home or two in the current location – which should be more profitable for them and maintain our mountain-view. They could also use that area for parking for the townhome owners. The residents currently use the parking lots north of our building and south of the other townhouse building for their vehicles and guests. The loss of parking would require the residents to park in the street, which might be in violation of your city ordinances regarding street access for fire trucks.

I also have concerns about offering rental properties in our neighborhood and the impact that would have on the resale value of our homes. We have taken a chance and made an investment in a partially completed subdivision. I hope the builders will respect the trust and faith we put in them when we purchased our homes and collaborate with us to develop a plan that maximizes their profit while maintaining our standard of living.

I'm sorry that I have a conflicting meeting and won't be able to attend the meeting on August 8<sup>th</sup>. I appreciate you reading my feedback and considering it, along with the feedback you receive at the meeting.

Please call or email me if you have questions or wish to discuss any of the items in this email.

Thanks again for your time to read my feedback,  
Amy

 KENNEDY AND COE, LLC

Amy L. Shoemaker, PHR, Certified Master Coach  
Director, People Growth Strategies  
Denver: (303) 993-2364  
Loveland: (970)685-3415

 <http://www.facebook.com/kcoe.careers>

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Hamilton, Terri

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**From:** Michael Palmer [remaxmikep@gmail.com]  
**Sent:** Tuesday, August 09, 2011 11:25 AM  
**To:** Hamilton, Terri  
**Subject:** Hyland Village

Hello Terri,

Once again thank you for attending the meeting last night and for all of your great information. I live in one of the 4 single family homes (5533 W 97th Ave). Only 2 of the 4 single family homes were able to participate in the meeting either due to vacation or for work related reasons. I know the other families are very set against apartments vs the original plans of condos and I am sure that they will attend future meetings if they are available. They wanted me to ask a few questions that I am unsure if either you, representing the city, nor the representatives from Markel could answer as they pertain more to the neighborhood itself and/or how this would effect the HOA (i.e. increases in payments, etc). One question they did have that you might have some insight about is regarding the pool and clubhouse. I was unaware that Mcstain had to bond 115% of the project which included the pool and clubhouse. With the original plans, neighborhood development had to be at a total of 60% completion for the pool/clubhouse to be built. My neighbors fears (as well as for my own household) is that we won't see a 60% completion for many, many years (especially without fully understanding how the impact of the potential apartment building will have). When we closed on our house, we had to pay a small percentage fee called the "recreation fee" (which resulted in a few thousand dollars) which we were told was being used to help fund the pool and clubhouse. We are all now anxious how this loss of @ 150 "recreation fees" will play into the development. Do you have any insight as to how the bond payments could be used to speed up the process of building it? With the loss of 150 recreation fees, we are also worried about the original plans of the pool and clubhouse. We are hoping that most of the original plans/ideals for the clubhouse and pool will be upheld as we also do not want something that is just "slapped together" just for the sake of doing so. During previous meetings with the representatives from Mcstain, questions were also asked about building any "pocket parks" or anything of the like. We were told that this probably would not happen as this would be considered a hinderance for any future developers as they would have to work around the parks and/or would have to essentially destroy the park areas during times of construction. Any truth to that statement that you are aware of? Any other insight/opinions would be greatly appreciated.

Best regards,

Michael Palmer

RE/MAX Alliance

office 303.403.2607

cell: 303.995.7253

[www.homesincolorado.com/mpalmer](http://www.homesincolorado.com/mpalmer)

Hamilton, Terri

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**From:** Hamilton, Terri  
**Sent:** Tuesday, August 09, 2011 12:29 PM  
**To:** 'Michael Palmer'  
**Cc:** 'chad'; Easley, Jana; Cummins, Mac  
**Subject:** RE: Hyland Village

Hi Michael,

Thanks for attending last night and your info/comments below.

I wish I had more concrete info to pass on re the timing of the clubhouse and pool- if there is an obligation to build it sooner if we are able to collect on the bond \$\$....???...there are (complicated) issues that remain to be figured out but we are working on it. To start with we have been primarily focused on how much of the bond \$\$ we might be able to collect- and how long that might take. So, we don't have specific answers yet but I appreciate your info.

I know one of the pocket parks (Single Family area south end of the property) was in a second phase so no bond \$\$ was established for it. The timing of it is not known and would probably be established to occur at the time of housing in that area.

The other pocket park site is located between the rowhouse/townhome area and Single Family on the north end of the site within the original phase I. There may be bond \$\$ for it as my understanding is that Phase I was originally bonded. Again, the timing of the construction isn't known yet. However I certainly understand the interest in having a pocket park amenity available sooner versus later.

The "Village Green" is a tract that I think we would require construction of when the multi-family site is constructed. As you now know, there has been some interest to building apartments which is not currently allowed, but not interest (that we know of) in condos- which is currently allowed.

Thanks for the info about the neighbors unable to attend last night. I hope they can attend future meetings- or send me an email I could provide to Planning Commission and City Council.

Please feel free to contact me periodically to see if I have any updates.

Terri



*Terri Hamilton, Planner III*  
 303-658-2096

[thamilto@cityofwestminster.us](mailto:thamilto@cityofwestminster.us)

*Starting 8/2/10 City Hall new business hours M-Thurs. 7-6 (closed Fridays)*

Hamilton, Terri

---

**From:** Shane Furlong [S.Furlong@cablelabs.com]  
**Sent:** Wednesday, September 14, 2011 4:41 PM  
**To:** Hamilton, Terri  
**Subject:** Hyland Village Subdivision

Hi Terri,

We spoke earlier this week about concerns that I have over the change in the development plan for the Hyland Village subdivision. I am the homeowner at 5543 W. 97<sup>th</sup> Ave in the development. As we spoke about on that call my concern was that in discussing the plan to change the one section from townhomes to apartments with Hammersmith Management, the HOA manager, the idea was floated that the developer was considering removing that section from the HOA. I have several concerns about this and would not be supportive of allowing the change of the plan if this was going to be allowed. If that part of the development is removed from the HOA then the HOA would lose some of the funding for the building of the clubhouse and pool as well as the maintenance of it.

Those of us who purchased the existing homes or condos on that property paid a percentage of the purchase price into an escrow account for that purpose. I am assuming that there would be no payment for the apartments which would make it that much later until we get the pool built. Also if they are not part of the HOA the on-going maintenance of the pool would be more expensive and may entail a higher fee for the homeowners remaining which would not seem fair to me considering that the homes were bought with a certain expectation. As you and I talked about having this pool and clubhouse built is in the interest of the city as well so I think looking into all of this is of concern to you as well. Additionally if the pool is somehow built with the apartments not in the HOA then I envision some real problems developing over access. The apartments will not have their own pool and those of us in the neighborhood will be paying to maintain one in their backyard. I can imagine that the apartment residents will try to use the pool and that conflicts will come up repeatedly.

Lastly I am concerned that the architectural and maintenance standards that we get from the HOA would not apply to the apartments which I don't think is in the best interest of any of the residents or the city of Westminster. I know we all want that neighborhood to look nice and to meet the standards that were originally envisioned. I bought a home there with the assurance that the neighborhood would be maintained to a standard by the HOA and I am not in favor of allowing a portion of it out of those standards and do not think this is fair to the 16 homeowners in the current neighborhood who bought in good faith. I am resigned to the portion of the neighborhood becoming apartments and as I said to you there may be a plus side to this for the neighborhood if it means there is on-site management versus absentee owners but I do believe that the city should insist that the apartments must continue as members of the HOA in order to be permitted.

Thanks,  
Patrick Furlong

*Shane Furlong*

Senior Software Architect

CableLabs®

Direct: 303-661-3802

Hamilton, Terri

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**From:** Hamilton, Terri  
**Sent:** Thursday, September 15, 2011 8:16 AM  
**To:** 'Shane Furlong'  
**Cc:** Cummins, Mac; Easley, Jana  
**Subject:** RE: Hyland Village Subdivision

Hi Shane,

Thank you for your email. I have requested that the applicant/existing property owner of the multi-family parcel address the questions coming up re HOA membership and he is looking into it. I'll let you know what the response is. Your email will be provided to the Planning Commission and City Council as well.

Terri



*Terri Hamilton, Planner III*  
 303-658-2096  
[thamilto@cityofwestminster.us](mailto:thamilto@cityofwestminster.us)  
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**From:** Shane Furlong [<mailto:S.Furlong@cablelabs.com>]  
**Sent:** Wednesday, September 14, 2011 4:41 PM  
**To:** Hamilton, Terri  
**Subject:** Hyland Village Subdivision

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Those of us who purchased the existing homes or condos on that property paid a percentage of the purchase price into an escrow account for that purpose. I am assuming that there would be no payment for the apartments which would make it that much later until we get the pool built. Also if they are not part of the HOA the on-going maintenance of the pool would be more expensive and may entail a higher fee for the homeowners remaining which would not seem fair to me considering that the homes were bought with a certain expectation. As you and I talked about having this pool and clubhouse built is in the interest of the city as well so I think looking into all of this is of concern to you as well.

Additionally if the pool is somehow built with the apartments not in the HOA then I envision some real problems developing over access. The apartments will not have their own pool and those of us in the neighborhood will be paying to maintain one in their backyard. I can imagine that the apartment residents will try to use the pool and that conflicts will come up repeatedly.

Lastly I am concerned that the architectural and maintenance standards that we get from the HOA would not apply to the apartments which I don't think is in the best interest of any of the residents or the city of Westminster. I know we all want that neighborhood to look nice and to meet the standards that were originally envisioned. I bought a home there with the assurance that the neighborhood would be maintained to a standard by the HOA and I am not in favor of allowing a portion of it out of those standards and do not think this is fair to the 16 homeowners in the current neighborhood who bought in good faith. I am resigned to the portion of the neighborhood becoming apartments and as I said to you there may be a plus side to this for the neighborhood if it means there is on-site management versus absentee owners but I do believe that the city should insist that the apartments must continue as members of the HOA in order to be permitted.

Thanks,  
Patrick Furlong

*Shane Furlong*

Senior Software Architect

**CableLabs®**

Direct: 303-661-3802

Cell: 303-887-8916

[s.furlong@cablelabs.com](mailto:s.furlong@cablelabs.com)

WEST-HY HOLDINGS, LLC  
5400 LBJ FREEWAY, SUITE 975  
DALLAS, TEXAS 75240  
972-239-8500

September 27, 2011

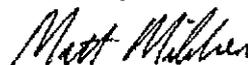
Mr. Mac Cummins  
Planning Manager  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031  
*Sent via email*

Dear Mac,

West-Hy Holdings, LLC is the owner of 141 developed and/or platted lots within the Hyland Village Subdivision Planned Unit Development. Our property is adjacent to Lot 1 of Block 9 that was originally approved to be developed into a multi-family for-sale product. We have received notice that the owner of this tract is requesting an amendment to the Development Plan to allow for a change in use of the product to a *for-rent* program. Due to the current market conditions, we believe that the change in use would be beneficial to the project. We are concerned with how this change in use will affect the homeowners association and this tract's ability to pay for its pro-rata portion of the common area maintenance for the Hyland Village Subdivision. However, we believe that this issue can be resolved amongst the parties involved at a later date. This letter shall serve as our support to allow for the use of multi-family residential on Lot 1 of Block 9 as a development marketed to individual buyers or as a *rental project*.

Feel free to contact me with any questions or comments.

Sincerely,



Matt Mildren  
Vice President

Cc: Michael Markel  
Davis Reinhart

**Losasso, Betty**

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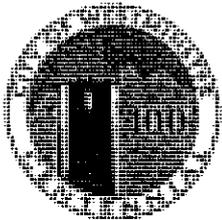
**From:** Hamilton, Terri  
**Sent:** Tuesday, September 27, 2011 3:14 PM  
**To:** David Ware  
**Cc:** Cummins, Mac; chad; Losasso, Betty  
**Subject:** RE: Hyland Village Planning Commission

Hi David,

We will provide this email to the Planning Commission tonight. It will suffice in your absence.

Thanks!

Terri



*Terri Hamilton, Planner III*  
 303-658-2096  
[thamilto@cityofwestminster.us](mailto:thamilto@cityofwestminster.us)  
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**From:** David Ware [<mailto:dbw@mcstain.com>]  
**Sent:** Tuesday, September 27, 2011 2:56 PM  
**To:** Hamilton, Terri  
**Cc:** Tom Hoyt; [michael@markelhomes.com](mailto:michael@markelhomes.com)  
**Subject:** Hyland Village Planning Commission  
**Importance:** High

Terri,

I am not going to be able to attend tonight's planning commission hearing at 7:00pm to consider the 8th Amended Official Development Plan for the Hyland Village Subdivision which proposes to allow the use of the multi-family residential on Lot 1 Block 9 as a development marketed to individual buyers or as a rental project. Can you or someone from Staff provide or state this email at tonight's hearing? Please let me know if this is adequate in our absence.

"McStain Neighborhoods, a property owner at the Hyland Village Subdivision, hereby supports the 8th Amended ODP to develop Lot 1 Block 9 as a rental project. We feel introducing a rental component into the neighborhood will bring much need life and activity to the project. This activity will in turn support and leverage the remaining for-sale components.

Our support is conditional upon the rental project participating in whole or in part within the existing structure of the Hyland Village Homeowner's Association. The project provides common, general amenities for all residential owners (for-sale and rental). Rental owners have the ability to use these amenities as the community develops; without current restrictions. Furthermore, a portion of the on-site public and private infrastructure (i.e. detention pond, under drain system, and other improvements) have been installed to facilitate the construction of this parcel. These elements require HOA maintenance and thus create a cost burden. Again, McStain supports the rental housing request proposed by Markel Homes with this condition".



## PROVIDENT REALTY ADVISORS

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February 27, 2012

Mac Cummins  
City of Westminster  
Planning Manager  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

RE: Hyland Village Land Use Application 1225 Prospect LLC – Rental Restriction  
Hearing

Dear Mr. Cummins:

Westminster-Hyland LP took over the HOA “Founder Rights” from McStain Enterprises in 2010. As the Founder of the Hyland Village Association (HOA), we have a fiduciary responsibility to the HOA, the majority voting position and the right to enter private 3<sup>rd</sup> party agreements on behalf of the HOA.

1225 Prospect LLC is the applicant for a land use application to remove the “for sale” limitation on their property Lot 1 Block 9 (Parcel B). They approached us to reach an agreement that would provide financial contributions to the HOA if their property was not included in the HOA. We reached an amicable agreement that will benefit the HOA and maintain current dues of existing residents.

As the Founder of the Hyland Village HOA we are in support of the land use application from 1225 Prospect LLC and look forward to seeing the project completed.

Sincerely,

Matt Mildren  
Westminster-Hyland LP  
Hyland Village Association - Founder

**Hamilton, Terri**

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**From:** chad [chad@markelhomes.com]  
**Sent:** Tuesday, May 22, 2012 9:51 AM  
**To:** Steve Gruber; Donna M. Ellinger, OD; Amy Shoemaker; Michael Palmer; jblack@scf.com; Denise Atencio; aberle777@gmail.com; David & Luis; Kevin Hunt  
**Cc:** Catherine Hawkins; michael; Hamilton, Terri  
**Subject:** Westy Potential Junk: RE: Homeowners Meeting - Follow Up

*Hi Everyone:*

*Thanks for meeting last week to discuss Hyland Village with us. It was nice to see everyone in a more informal setting. I'm sorry to trouble you with this, but the City of Westminster requested that I contact you and get a quick email response on a couple items, since they were not in attendance at the last meeting.*

*I'm working with Terri Hamilton (cc:ed above) at the City of Westminster to setup the next City Council hearing. She was hoping to get a response or positive acknowledgement to the questions below. Based on our last meeting, I felt there was neighborhood support on both of the items below.*

*Are you comfortable that the proposed land use change will not adversely affect the viability of the Hyland Village HOA?*

*Are you comfortable with the land use change?*

*Please respond to this email and cc: [THamilto@CityofWestminster.us](mailto:THamilto@CityofWestminster.us) with a yes or an explanation by the end of the week. Thanks again for your support and timely response on this matter.*

*Regards,*

**Chad Kipfer**  
Project Manager  
**Markel Homes Construction Company**  
5723 Arapahoe Ave. #2B  
Boulder, CO 80303  
303-339-6116 Direct  
303-444-2798 Fax

**Hamilton, Terri**

---

**From:** Donna M. Ellinger, OD [donnaellinger@gmail.com]  
**Sent:** Wednesday, May 23, 2012 10:47 AM  
**To:** chad  
**Cc:** Hamilton, Terri  
**Subject:** Westy Potential Junk: Re: Homeowners Meeting - Follow Up

Hi, Chad!

I'm okay with it.

Donna Ellinger  
5471 W 97th Place, Unit A

On Tue, May 22, 2012 at 9:50 AM, chad <[chad@markelhomes.com](mailto:chad@markelhomes.com)> wrote:

*Hi Everyone:*

*Thanks for meeting last week to discuss Hyland Village with us. It was nice to see everyone in a more informal setting. I'm sorry to trouble you with this, but the City of Westminster requested that I contact you and get a quick email response on a couple items, since they were not in attendance at the last meeting.*

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Regards,

**Chad Kipfer**

**Hamilton, Terri**

**From:** Steve Gruber [steve@neugeborenlaw.com]  
**Sent:** Thursday, May 24, 2012 3:15 PM  
**To:** chad  
**Cc:** Hamilton, Terri  
**Subject:** Westy Potential Junk: RE: Homeowners Meeting - Follow Up

Chad,

Thank you for speaking with the homeowners last week and for the delicious food. I'm sorry that more people did not turn out. My answers are as follows:

*Are you comfortable that the proposed land use change will not adversely affect the viability of the Hyland Village HOA?*  
 Yes.

*Are you comfortable with the land use change?*

No. I do not feel that the apartments are necessary or will add value to Hyland Village. I also do not think that leaving that space vacant until financing for condos returns will detriment Hyland Village. The only thing holding back Hyland Village is the bond issue.

Stephen S. Gruber  
 Patent Attorney  
 NEUGEBOREN O'DOWD PC  
 1227 Spruce St., Suite 200  
 Boulder, CO 80302  
 720 536 4908 (direct)  
[steve@neugeborenlaw.com](mailto:steve@neugeborenlaw.com)

---

**From:** chad [<mailto:chad@markelhomes.com>]  
**Sent:** Tuesday, May 22, 2012 9:51 AM  
**To:** Steve Gruber; Donna M. Ellinger, OD; Amy Shoemaker; Michael Palmer; [jblack@scf.com](mailto:jblack@scf.com); Denise Atencio; [aberle777@gmail.com](mailto:aberle777@gmail.com); David & Luis; Kevin Hunt  
**Cc:** Catherine Hawkins; michael; [THamilto@CityofWestminster.us](mailto:THamilto@CityofWestminster.us)  
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*Regards,*

**Chad Kipfer**  
 Project Manager

**Hamilton, Terri**

---

**From:** Amy Shoemaker [ashoemak@kcoe.com]  
**Sent:** Monday, June 04, 2012 2:54 PM  
**To:** 'chad'; Hamilton, Terri  
**Subject:** Westy Potential Junk: RE: Homeowners Meeting - Follow Up Reminder

Hi Chad and Terri

I attended the meeting where we discussed and agreed that the multifamily site's monetary contributions would benefit the HOA and all the homeowners present expressed being comfortable with the change in land use for the multifamily site, as long as they are high-end apartments that would help maintain the value of the properties currently in the area.

Thanks, Amy

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**From:** chad [mailto:chad@markelhomes.com]  
**Sent:** Monday, June 04, 2012 11:59 AM  
**To:** Steve Gruber; Donna M. Ellinger, OD; Amy Shoemaker; Michael Palmer; jblack@scf.com; Denise Atencio; aberle777@gmail.com; David & Luis; Kevin Hunt  
**Cc:** Catherine Hawkins; michael; THamilto@CityofWestminster.us  
**Subject:** RE: Homeowners Meeting - Follow Up Reminder

Hi Everyone:

I only received a few email responses in acknowledgement of our last informal meeting on 15 May 2012. The City of Westminster needs to hear from you, explaining how our meeting went, since they didn't have a representative present. Please email Terri Hamilton at [THamilto@CityofWestminster.us](mailto:THamilto@CityofWestminster.us) and cc me with your support and understanding of the last meeting.

We felt the meeting went well; with an understanding of how the multifamily site's monetary contributions would benefit the HOA and a comfort level with the land use change. Please email a response soon, so the City of Westminster can understand the meeting from your perspective.

Thanks,

**Chad Kipfer**  
 Project Manager  
 Markel Homes Construction Company  
 5723 Arapahoe Ave. #2B  
 Boulder, CO 80303  
 303-339-6116 Direct  
 303-444-2798 Fax

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----- IRS CIRCULAR 230 NOTICE -----

IRS Circular 230 regulates written tax communications between tax advisors and clients. In compliance with these IRS requirements, we are required to inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties imposed by any governmental taxing authority or agency. If you would like us to provide written tax advice to protect against penalties, please contact us.

In addition, any tax advice contained in this communication (including any attachments) cannot be used for promoting, marketing or recommending to another party any transaction or matter addressed. Any taxpayer who is not the addressee of this letter should seek specific advice based on that taxpayer's particular circumstances from an independent tax advisor.

\*\*\*\*\* Internet Email Confidentiality Notice \*\*\*\*\*

**Hamilton, Terri**

---

**From:** Denise Atencio [denise.atencio@gmail.com]  
**Sent:** Tuesday, May 29, 2012 10:51 AM  
**To:** Hamilton, Terri  
**Subject:** Hyland Village

Terri, I am not convinced that the proposed land use change will not adversely affect the viability of the Hyland Village HOA. I am not comfortable with the land use change.

--

*Denise Atencio, Proud Resident of  
5520 W 97th Ave  
Westminster, CO 80020*

**Hamilton, Terri**

---

**From:** LUIS LORENZO [lhylmdco@msn.com]  
**Sent:** Tuesday, June 12, 2012 12:24 PM  
**To:** Hamilton, Terri  
**Cc:** chad@markelhomes.com  
**Subject:** Westy Potential Junk: FW: Homeowners Meeting - Follow Up Reminder

Teri,

Per Chad's request, I'm sending you this email to acknowledge that David Twitchell and I were at the meeting on May 15, 2012. Among things discussed, we heard proposal about the prospective buyer of the multifamily site contributing money to the HOA to offset their impact for not being part of the HOA.

The meeting was cordial and there were many questions asked and answered but at the end of the day both David and I still feel strongly against the proposed land use change.

Sincerely,

Luis Lorenzo  
 5411-F W.97th PL

---

**To:** [lhylmdco@msn.com](mailto:lhylmdco@msn.com)  
**Subject:** Fwd: Homeowners Meeting - Follow Up Reminder  
**From:** [twitch1900@aol.com](mailto:twitch1900@aol.com)  
**Date:** Tue, 5 Jun 2012 18:56:54 -0400

-----Original Message-----

**From:** chad <[chad@markelhomes.com](mailto:chad@markelhomes.com)>  
**To:** Steve Gruber <[steve@neugeborenlaw.com](mailto:steve@neugeborenlaw.com)>; Donna M. Ellinger, OD <[donnaellinger@gmail.com](mailto:donnaellinger@gmail.com)>; Amy Shoemaker <[ashoemak@kcoe.com](mailto:ashoemak@kcoe.com)>; Michael Palmer <[remaxmikep@gmail.com](mailto:remaxmikep@gmail.com)>; jblack <[jblack@scf.com](mailto:jblack@scf.com)>; Denise Atencio <[denise.atencio@gmail.com](mailto:denise.atencio@gmail.com)>; aberle777 <[aberle777@gmail.com](mailto:aberle777@gmail.com)>; David & Luis <[twitch1900@aol.com](mailto:twitch1900@aol.com)>; Kevin Hunt <[kevinalanhunt@gmail.com](mailto:kevinalanhunt@gmail.com)>  
**Cc:** Catherine Hawkins <[CHawkins@e-hammersmith.com](mailto:CHawkins@e-hammersmith.com)>; michael <[michael@markelhomes.com](mailto:michael@markelhomes.com)>; THamilto <[THamilto@CityofWestminster.us](mailto:THamilto@CityofWestminster.us)>  
**Sent:** Mon, Jun 4, 2012 12:00 pm  
**Subject:** RE: Homeowners Meeting - Follow Up Reminder

Hi Everyone:

I only received a few email responses in acknowledgement of our last informal meeting on 15 May 2012. The City of Westminster needs to hear from you, explaining how our meeting went, since they didn't have a representative present. Please email Terri Hamilton at [THamilto@CityofWestminster.us](mailto:THamilto@CityofWestminster.us) and cc me with your support and understanding of the last meeting.

We felt the meeting went well; with an understanding of how the multifamily site's monetary contributions would benefit the HOA and a comfort level with the land use change. Please email a response soon, so the City of Westminster can understand the meeting from your perspective.

Thanks,

**Chad Kipfer**  
 Project Manager  
 Markel Homes Construction Company  
 5723 Arapahoe Ave. #2B

**Hamilton, Terri**

---

**From:** Jim Black [jblack@frii.com]  
**Sent:** Tuesday, June 12, 2012 9:28 PM  
**To:** Hamilton, Terri  
**Subject:** Hyland Village Development Comments

Hello Terri,

Jim Black@5520 97th Ave of Hyland Village.

I think the financial deal that Markel has struck with the HOA has been put forth in good faith. The plan is adequate for the HOA needs going forward.

The process and discussions have educated me on our rights and privileges as home owners under the circumstances we face as a community.

To me, McStain presented a vision for this community that made it special, unique and almost magic. No matter how the development is implemented, I want to see the special nature of Hyland Village perpetuated for the generations to come who will call Hyland Village home. I hope someday photographs and commentary of the founding of Hyland Village will be displayed in City Hall with the same pride that we display the heritage of our Westminster founders now.

Although many words of reassurance have been made, there really is no guarantee how the Hyland Village community will turn out based on the desire to "kick start development." I hope the City will "kick start" long term, forward thinking guidance for Hyland Village. I see hope within us evidenced by the vision for Westminster Mall. I feel like we are moving too quick at Hyland Village with the sole purpose "to get out of jam."

Thank you for all the work you, the planning commission, City Council and the staff at City Hall have done for us.

Sincerely,

Jim

## Criteria and Standards for Land Use Applications

### *Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)*

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.

### *Official Development Plan (ODP) Application*

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.
9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an Official Development Plan or an amendment to an Official Development Plan.



## Agenda Item 10 D

### Agenda Memorandum

City Council Meeting  
November 12, 2012



**SUBJECT:** Resolution No. 36 re Exclusion from Southwest Adams County Fire Protection District

**Prepared by:** Bev Smith, Paralegal

### Recommended City Council Action

Adopt Resolution No. 36 approving the exclusion of recently annexed property from the Southwest Adams County Fire Protection District.

### Summary Statement

- This item is related to the approval of the Stipulation and Plan for exclusion also appearing on the November 12 City Council agenda. The parcel to be excluded is within Adams County.
- City Council has acted on this annexation (listed in Exhibit A) over the last several months. This action is necessary to complete the technical requirements for exclusion from the Southwest Adams County Fire Protection District.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City approve the exclusion of recently annexed property from the District in order to avoid double taxation and duplicative fire protection services?

**Alternative**

Do not approve the exclusion of recently annexed property from the District. This is not recommended, since it would result in double taxation and duplicative fire protection services to the property.

**Background Information**

In order for the City Attorney's Office to proceed with the filing of the exclusion documents, the exclusion statutes require that City Council adopt the attached Resolution indicating the City's agreement to provide the fire protection services provided by the District to the area described in the Stipulation and Plan within one year from the effective date of the exclusion order as required by statute.

Action on this item supports City Council's Strategic Plan Goal of a Safe and Secure Community by assuring that the appropriate fire protection services are provided to this newly annexed area.

Respectfully submitted,

J. Brent McFall  
City Manager

**Attachments**

- Resolution
- Vicinity Map – Little Dry Creek Annexation

RESOLUTION

RESOLUTION NO. **36**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

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**EXCLUSION OF TERRITORY FROM THE SOUTHWEST ADAMS COUNTY FIRE  
PROTECTION DISTRICT**

WHEREAS, it is in the public interest and a policy of the City of Westminster to eliminate the overlapping of services provided by local governments and the double taxation that may occur because of annexation when all or part of the territory lies within the boundaries of both the City of Westminster and a special district; and

WHEREAS, Colorado statutes provide an orderly procedure to eliminate such overlapping of services and double taxation, which procedure is found in section 32-1-502, et seq., C.R.S., as amended; and

WHEREAS, the City Council of the City of Westminster has been informed by City Staff and now finds that such a situation exists in the area described on Exhibit "A" attached hereto and incorporated herein by reference and that there is an overlapping of fire protection services by the City of Westminster and the Southwest Adams County Fire Protection District (hereinafter "District") and double taxation resulting from the territory described in Exhibit "A" being within the boundaries of both the City and the District; and

WHEREAS, the City Council, based upon information provided by its Staff, has found that the quality of service to be provided by the City of Westminster will not be inferior to the service provided by the District in the territory described in Exhibit "A" attached hereto, based upon the Westminster Fire Department's service capability, which includes operations out of six (6) existing fire stations that are strategically located throughout the City; an extensive fleet of sophisticated firefighting and emergency medical vehicles including five (5) fire engines, two (2) aerial trucks, three (3) reserve fire engines, five (5) ambulances, two (2) reserve ambulances, two (2) attack units, one (1) Heavy Rescue and other support apparatus, operated by an authorized full-time career staff of one hundred and thirty-six (136) personnel, one hundred and seventeen (117) of which are highly trained front-line firefighters and paramedics; and

WHEREAS, evidence gathered in previous proceedings for exclusion from other Districts, and applicable to this proceeding also, establishes that fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

WHEREAS, City officials and representatives of the District are negotiating the City's proposal to exclude from the Fire District, and are working toward a mutually acceptable exclusion agreement; and

WHEREAS, the City Council of the City of Westminster is willing to agree by this Resolution to provide the service provided by the District to the area described in Exhibit "A" within one year from the effective date of the exclusion order as required by statute, and more specifically, immediately upon the effective date of the exclusion order;

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

1. That the City proceed at once to exclude the territory described in Exhibit "A" from the District by filing its Petition in the District Court of Adams County, pursuant to the provisions of section 32-1-502, et seq., C.R.S., as amended.

2. That the City Council of the City of Westminster agrees, by this Resolution, to provide the service provided by the District to the area described in Exhibit "A" within one year from the effective date of the exclusion order as required by statute, and specifically, immediately upon the effective date of the exclusion order.

3. That the quality of service to be provided by the City of Westminster will not be inferior to the service provided by the District in the territory described in Exhibit "A" and the fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

4. That the City Attorney is instructed to petition the Court and carry out all notification requirements as contained in applicable state statutes.

PASSED AND ADOPTED this 12th day of November, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office

**EXHIBIT A**

A PORTION OF SECTION 5 AND A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 6; ALL IN TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING A PORTION OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY AND THE FOLLOWING PARCELS CONVEYED TO THE CITY OF WESTMINSTER AND THE WESTMINSTER HOUSING AUTHORITY:

NOTE:

1. THE BASIS OF BEARINGS IS THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 5, T3S, R68W 6TH P.M. AS MONUMENTED WITH AN ALUMINUM CAP PLS 16406 IN A MONUMENT BOX ON THE WEST AND AN ALUMINUM CAP PLS 26288 ON THE EAST WITH A BEARING OF N 89°47'54" E A DISTANCE OF 2635.75 FEET (CITY OF WESTMINSTER DATUM).

CITY OF WESTMINSTER PARCELS:

RECEPTION NUMBER 2011000067850;

BOOK 4996 PAGE 59;

RECEPTION NUMBERS 200800000229 AND 200800000231, LESS RECEPTION NUMBER 2011000082324;

RECEPTION NUMBER 2010000065696;

BOOK 4852 PAGE 403;

RECEPTION NUMBER 2010000031068;

BOOK 4866 PAGE 156;

BOOK 5088 PAGE 621 AND CORRECTED IN BOOK 5158 PAGE 820;

WESTMINSTER HOUSING AUTHORITY PARCELS:

RECEPTION NUMBER 20050422000421310

RECEPTION NUMBER 200411160011162080;

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 5, AN ALUMINUM CAP PLS 26288; THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 125.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, AS DESCRIBED IN BOOK 749 AT PAGE 342, AND THE POINT OF BEGINNING:

THENCE S 00°47'33" W, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 48, BLOCK 8 COLLEGE CREST SUBDIVISION, BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST 68TH AVENUE;

THENCE S 89°47'54" W, ALONG SAID NORTHERLY LINE OF LOT 48, BLOCK 8, A DISTANCE OF 64.36 FEET TO THE NORTHWEST CORNER OF SAID LOT 48, BLOCK 8;

THENCE S 00°04'54" E, ALONG THE WESTERLY LINE OF SAID LOT 48, BLOCK 8, A DISTANCE OF 50.04 FEET TO A POINT OF INTERSECTION WITH SAID WESTERLY LINE AND THE SOUTHERLY LINE OF OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL A, EXTENDED EASTERLY;

THENCE S 89°47'57" W, ALONG SAID SOUTHERLY LINE AND SAID SOUTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 200.87 FEET TO A POINT ON THE EASTERLY LINE OF BLOCK 7 COLLEGE CREST SUBDIVISION, BEING THE WESTERLY RIGHT OF WAY LINE OF GREEN STREET;

THENCE N 00°04'35" W, ALONG SAID EASTERLY LINE, A DISTANCE OF 50.03 FEET TO THE NORTHEAST CORNER OF LOT 48, BLOCK 7 COLLEGE CREST SUBDIVISION;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID BLOCK 7, BLOCK 6 AND A PORTION OF BLOCK 5 COLLEGE CREST SUBDIVISION, A DISTANCE OF 745.33 FEET TO THE INTERSECTION OF SAID NORTHERLY LINE OF BLOCK 5 WITH THE EASTERLY LINE OF THE AMENDED PLAT DOOSE SUBDIVISION, RECORDED AT FILE 10 MAP 7, EXTENDED SOUTHERLY;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 451.11 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 2011000067850 PARCEL D;

THENCE S 89°47'54" W, ALONG THE SOUTHERLY LINE OF SAID PARCEL D, A DISTANCE OF 160.33 FEET TO A POINT OF NON TANGENT CURVATURE ON THE TEMPORARY TURN AROUND AS SHOWN ON AMENDED PLAT DOOSE SUBDIVISION;

THENCE ALONG A CURVE TO THE LEFT, ALONG SAID TEMPORARY TURN AROUND, A DISTANCE OF 118.38 FEET TO A POINT OF NON TANGENCY ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED AT 2011000082324, SAID CURVE HAVING A RADIUS OF 45.00 FEET, A DELTA ANGLE OF 150°43'28" AND A CHORD DISTANCE OF 87.08 FEET WHICH BEARS N 54°44'12" W;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 4.47 FEET TO THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED AT 2011000082324;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED AT 2011000082324, A DISTANCE OF 104.12 FEET TO THE EASTERLY LINE OF RESUBDIVISION OF LINDIE HEIGHTS SUBDIVISION, RECORDED IN PLAT BOOK 5 PAGE 31 (FILE 10 MAP 77);

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE AND THE EASTERLY LINE OF NASH SUBDIVISION, RECORDED AT FILE 17 MAP 341, A DISTANCE OF 233.06 FEET TO THE NORTHEAST CORNER OF SAID NASH SUBDIVISION;

THENCE S 89°53'23" W, ALONG THE NORTHERLY LINE OF SAID NASH SUBDIVISION, A DISTANCE OF 581.98 FEET TO A POINT ON THE EASTERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;

THENCE N 00°38'42" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 8.40 FEET THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159;

THENCE S 89°47'54" W, ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN BOOK 3009 AT PAGE 159 AND SAID NORTHERLY LINE EXTENDED WESTERLY, A DISTANCE OF 582.00 FEET TO A POINT ON THE WEST LINE OF SECTION 5;

THENCE N 89°21'18" W A DISTANCE OF 40.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF LOWELL BOULEVARD BEING A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 596 A70-4;

THENCE N 00°38'42" E, ALONG SAID ORDINANCE 596 A70-4, A DISTANCE OF 242.76 FEET TO A POINT ON THE CITY OF WESTMINSTER CORPORATE LIMITS, ORDINANCE 550 A68-1;

THENCE ALONG SAID ORDINANCE 550 A68-1, THE FOLLOWING FOUR (4) COURSES:

1. THENCE S 89°21'18" E A DISTANCE OF 10.00 FEET;
2. THENCE N 00°38'42" E A DISTANCE OF 326.16 FEET;
3. THENCE S 89°54'05" E A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST LINE OF SECTION 6;

4. THENCE N 89°05'58" E A DISTANCE OF 1084.14 FEET;  
THENCE S 57°36'54" E, CONTINUING ALONG SAID ORDINANCE 550 A68-1, ALONG ORDINANCE 710 A72-10 AND ALONG ORDINANCE 1873 A88-4, A DISTANCE OF 1825.55 FEET;

THENCE CONTINUING ALONG ORDINANCE 1873 A88-4, THE FOLLOWING TWO (2) COURSES:

1. THENCE N 00°47'33" E A DISTANCE OF 58.70 FEET;
2. THENCE S 57°36'54" E A DISTANCE OF 129.14 FEET TO THE NORTHWEST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NUMBER 200607000687800;

THENCE ALONG SAID RECEPTION NUMBER 200607000687800, THE FOLLOWING THREE (3) COURSES:

1. THENCE S 00°47'33" W A DISTANCE OF 39.92 FEET;
2. THENCE S 57°36'54" E A DISTANCE OF 511.45 FEET;
3. THENCE N 32°23'06" E A DISTANCE OF 34.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE S 57°36'54" E, ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 237.75 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 14 AS DESCRIBED IN BOOK 5088 AT PAGE 621 AND CORRECTED IN BOOK 5158 AT PAGE 820;

THENCE ALONG SAID PARCEL 14, THE FOLLOWING FIVE (5) COURSES:

1. THENCE S 84°16'12" E A DISTANCE OF 196.66 FEET;
2. THENCE S 57°36'54" E A DISTANCE OF 130.95 FEET;
3. THENCE S 42°19'48" E A DISTANCE OF 182.93 FEET;
4. THENCE S 57°36'54" E A DISTANCE OF 382.30 FEET;
5. THENCE S 00°31'06" W A DISTANCE OF 47.10 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE S 32°23'06" W A DISTANCE OF 150.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE N 57°36'54" W ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1844.06 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FEDERAL BOULEVARD, A.K.A. US HIGHWAY 287, PROJECT NO. F004-1(20) AS DESCRIBED IN BOOK 749 AT PAGE 342;

THENCE S 00°47'33" W, ALONG SAID WESTERLY LINE, A DISTANCE OF 279.27 FEET TO THE POINT OF BEGINNING.

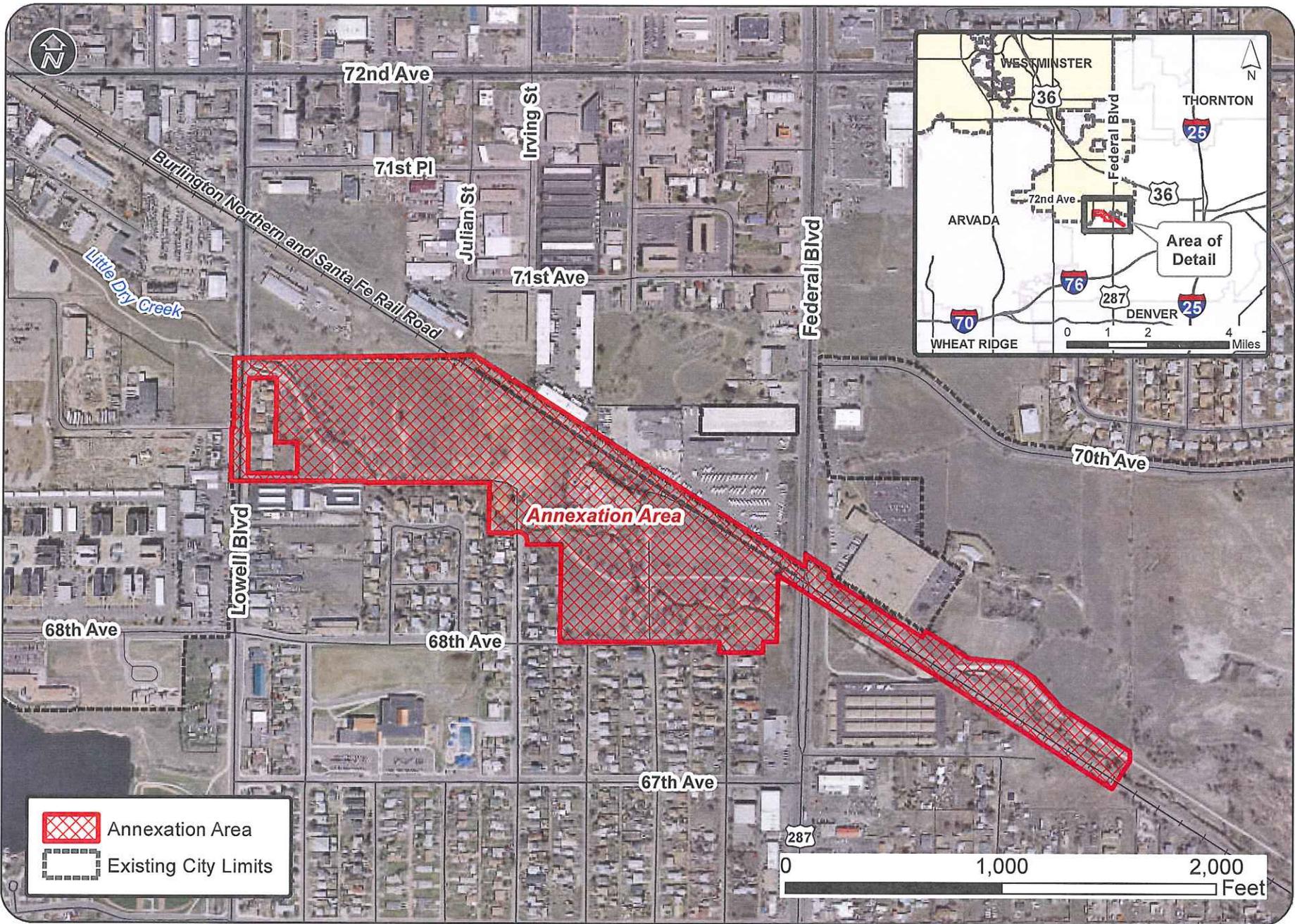
CONTAINING 45.839 ACRES MORE OR LESS.

EXCEPTING THEREFROM:

LOTS 1-9 NORTH MOUNTAIN VIEW SUBDIVISION, FILE 9 MAP 126, LESS THAT PORTION OF LOWELL BOULEVARD RIGHT OF WAY, RECEPTION NUMBERS C0747799 AND C0810426; CONTAINING 1.642 ACRES MORE OR LESS.

TOTAL ANNEXATION CONTAINING IN TOTAL 44.197 ACRES MORE OR LESS.

# Little Dry Creek Annexation





**Agenda Memorandum**

City Council Meeting  
November 12, 2012



**SUBJECT:** Resolution No. 37 re Support for the Rocky Flats Cold War Museum

**Prepared By:** Mary Fabisiak, Water Quality Administrator

**Recommended City Council Action**

Adopt Resolution No. 37 supporting the Rocky Flats Cold War Museum.

**Summary Statement**

- The Rocky Flats plant was an important part of the local, national and international history of the Cold War.
- The City of Westminster is a member of the Rocky Flats Stewardship Council, which was created to allow local governments to work together on the continuing oversight of the activities occurring on the Rocky Flats site.
- The Rocky Flats Cold War Museum was created as an independent, not-for-profit 501(c)3 organization in 2001.
- The Rocky Flats Cold War Museum Board of Directors has been working with others to preserve the history of the Rocky Flats site.
- The City of Westminster supports the museum's efforts to preserve the legacy of the Rocky Flats site.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City adopt the Resolution supporting the Rocky Flats Cold War Museum?

**Alternative**

The City of Westminster could determine that it is not in the best interest of the City to adopt the Resolution supporting the Rocky Flats Cold War Museum. This alternative is not recommended since this resolution recognizes the importance of documenting the history and legacies of Rocky Flats.

**Background Information**

The Rocky Flats nuclear weapons plant produced plutonium cores for nuclear weapons from 1951 until 1992. The site provided jobs and economic development for the City of Westminster and other area cities for more than 50 years. Unfortunately, weapons production also created environmental contamination and heightened worker and public health risks. The site has been decommissioned and remediated.

The Rocky Flats Cold War Museum was formed in 2001 by concerned stakeholders to preserve the history of Rocky Flats and is dedicated to documenting the historical, environmental and scientific aspects of Rocky Flats and educating the public about the legacies of Rocky Flats and the Cold War. The Museum's Board has collected key artifacts and is designing exhibits for the museum that is located in Arvada. Safety equipment, photos, documents and other memorabilia related to the former nuclear plant will be used in future displays.

Monitoring and overseeing activities at the site will be important for the foreseeable future. The Rocky Flats site operations and closure cover over six decades of very complex operations, negotiations, and agreements; and include numerous local, regional, and national organizations. Oversight of the clean up and closure activities required intense discussions and negotiations between the Environmental Protection Agency, the Colorado Department of Public Health and Environment, the Department of Energy and the local communities. The City of Westminster participated to the fullest extent possible to ensure the long-term stewardship of the site would protect our citizens. Displays and educational materials at the Rocky Flats Cold War Museum will provide factual information to new staff and area residents trying to understand the multi-faceted history of Rocky Flats.

This action helps achieve the City Council's strategic Plan Goal of a Safe and Secure Community by overseeing the City's interests and ensuring long-term stewardship and education of City residents about the complex history and issues at the Rocky Flats Site.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. **37**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

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**ENCOURAGING SUPPORT  
FOR THE ROCKY FLATS COLD WAR MUSEUM**

WHEREAS, the site for the Rocky Flats nuclear weapons plant was selected in 1951 in northern Jefferson County, west of the City of Westminster, and operated until 1992 to mass produce plutonium cores for nuclear weapons for the U.S. Department of Defense as part of the nation's Nuclear Weapons Complex and the cores remain in weapons today around the world; and

WHEREAS, Rocky Flats was an important part of the local, national and international history of the Cold War, the central conflict of the second half of the 20<sup>th</sup> century, in which two superpowers, the United States and the former Soviet Union, developed nuclear weapons and political alliances to protect their interests; and

WHEREAS, operations at Rocky Flats produced significant legacies for local communities, the State of Colorado and the United States, but institutional memory of the plant's activities is being lost over time; and

WHEREAS, unfortunately, weapons production also created environmental contamination and heightened worker and public health risks, and the site has since been decommissioned and remediated; and

WHEREAS, in response to the planned demolition and cleanup of the plant site, concerned stakeholders began in 1998 to explore ways to preserve the history of Rocky Flats and in July 2001 an independent 501(c)(3) non-profit organization was formed to develop a Rocky Flats Cold War Museum; and

WHEREAS, the mission of the Rocky Flats Cold War Museum (RFCWM) is to document the historical, social, environmental, and scientific aspects of Rocky Flats, and to educate the public about Rocky Flats, the Cold War, and their legacies through preservation of key artifacts and development of interpretive and educational programs; and.

WHEREAS, the RFCWM Board of Directors has been collaborating with officials from the U.S. Department of Energy, Office of Legacy Management and U.S. Fish and Wildlife Service, and Rocky Flats-related organizations, as well as civic, community and educational organizations in preserving the history, inviting their involvement and making presentations; and

1. We encourage the RFCWM to continue documenting the history and the social, scientific, political, economic and environmental contamination legacies of Rocky Flats; and
2. We support the continuing collection of Rocky Flats-related artifacts and oral histories to document the multi-faceted history of this site; and
3. We acknowledge the potential for such a museum to support the U.S. Department of Energy and local stakeholders in meeting their responsibilities for long-term stewardship at Rocky Flats.

PASSED AND ADOPTED this 12th day of November, 2012.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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City Clerk

By: \_\_\_\_\_  
City Attorney's Office



**Agenda Memorandum**

City Council Meeting  
November 12, 2012



**SUBJECT:** Councillor's Bill No. 47 to Amend Westminster Municipal Code Title V Chapter 7 re Solid Waste Collection

**Prepared By:** Rachel Harlow-Schalk, Sr. Projects Officer  
Lisa Bressler, Environmental Advisory Board Chairperson  
Nick Pizzuti, Environmental Advisory Board Vice Chairperson

**Recommended City Council Action**

Pass Councillor's Bill No. 47 on first reading implementing revisions to the Solid Waste Collection section of the Westminster Municipal Code as recommended by the Environmental Advisory Board to improve recycling in the community.

**Summary Statement**

- Since 2009, the Environmental Advisory Board and the Green Team have worked on recommendations to improve recycling in the Westminster community.
- After an extensive community engagement project, on June 4, 2012 the Board presented to City Council recommended improvements to recycling in the community including edits to the Solid Waste Collection section of the Westminster Municipal Code (attached).
- The proposed revisions to the Solid Waste Collection section will improve the availability of recycling in the community and allow for portions of the annual trash collector recycling report to be held in confidence to the extent authorized by the Colorado Open Records Act.

**Expenditure Required:** \$0

**Source of Funds:** N/A

## **Policy Issue**

Should the City adopt revisions to the Solid Waste Collection section of the Westminster Municipal Code?

## **Alternatives**

Council could choose not to approve the recommended revisions to the Solid Waste Collection section of the Westminster Municipal Code in whole or part. This alternative is not recommended as the investment of the Environmental Advisory Board, businesses, trash collectors, volunteer residents and staff has been significant so that these revisions are well informed and have community support.

## **Background Information**

Since 2009, the Environmental Advisory Board (EAB) and the Green Team have worked on recommendations to improve recycling in the Westminster community. On June 4, 2012, these recommendations were presented to City Council and staff received direction on areas to continue working in order to improve recycling. A portion of the recommendations included revisions to the Solid Waste Collection section of the Municipal Code. On October 15, 2012, City Council was presented the attached proposed revisions for further discussion and Council directed the revisions be brought before Council for first reading.

Specifically, the Code revisions will:

- **Define single-family home owners associations (HOAs) neighborhoods as residential units in the City Code.** HOAs are currently considered business units and therefore trash collectors are not required to offer recycling to them. Changing the definition in the Code will require trash collectors to offer recycling to HOAs. (see 5-7-1: Definitions)
- **Require trash collectors to offer recycling opportunities to all residential units and businesses.** This will ensure that multi-family units and businesses will be offered recycling. (see 5-7-8: Recycling Requirements)
- **Ensure collectors providing only large collection bin service for short-term projects are not required to offer recycling.** These collectors are often providing service for short-term construction and demolition activities and they may offer, but are not required to offer, recycling (see 5-7-8: Recycling Requirements)
- **Modify the trash collector annual recycling report.** The annual trash collector report that is already required will be modified to ask collectors to provide total tons taken to the landfill, total tons recycled, and total tons diverted (tons recycling, tons composted, etc.). Reporting of collector data to the community would be aggregated and data noted as proprietary will be held in confidence. (see 5-7-12: Records and Reports)

In addition to the Code revisions being recommended, the Solid Waste/Recycling Collector Business License will be revised to remove the days of the week collection restriction for a pilot period of one year. Currently in Westminster, trash collectors are only allowed to collect materials on three days during the week from residential customers. There is not a restriction on the days of the week materials are collected from businesses. Once HOAs are no longer considered businesses, trash collectors noted the impact the three day of the week restriction will have on their routing and ultimately, increased costs and inconvenience to residents. Because this is an administrative requirement within the Collector License, the one year pilot study will allow for a review of the impact on the community.

On September 12, 2012, the EAB invited all HOAs and licensed trash collectors to their September 27, 2012, meeting to voice any concerns with the proposed revisions to the Code, License or Reporting Requirements—in all, 104 invitations were mailed. Only one HOA representative attended the meeting and voiced their support for the work being done. No trash collectors responded to the invitation. It is believed the lack of response reflects the investment by the EAB, businesses, trash collectors, and volunteer residents to make well informed improvements to the Solid Waste Collection section of the Municipal Code, Solid Waste Collector Annual Recycling Report and Solid Waste/Recycling Collector Business License.

The recommended revisions to solid waste and recycling collection in Westminster support the City's Strategic Plan goal of a Beautiful and Environmentally Sensitive City by pursuing the objective of a convenient recycling program for businesses and residents with a high level of participation.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **47**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AMENDING CHAPTER 5-7 OF THE WESTMINSTER MUNICIPAL  
CODE CONCERNING SOLID WASTE COLLECTION**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-7-1, W.M.C., is hereby AMENDED as follows:

**5-7-1: DEFINITIONS:** (247 1959 2017 2984) The following words, terms and phrases, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Collector” shall mean the person or entity providing collection service for solid waste or recyclable materials.

“Commercial Customers” shall mean any premise utilizing collection service where a commercial, industrial or institutional enterprise is carried on, including, without limitation, restaurants, hospitals, schools, day care centers, office buildings, nursing homes, clubs, churches and public facilities and multi-family customers.

“Curbside” shall mean at or near the perimeter of residential premises, whether or not there is a curb, but does not mean or permit placement on the sidewalk or in the street.

“Curbside Collection” shall mean the collection of solid waste or recyclables placed at a curbside location.

“Multi-family Customers” shall mean attached housing or multi-family residential properties for which there is a communal system for the collection of solid waste.

“Recyclable Materials” shall mean materials that have been separated from solid waste and can be recovered as useful materials and are properly prepared for the purpose of recycling, provided that such materials have been designated by the City Manager as recyclable pursuant to Section 5-7-9 (A), W.M.C.

“Recycling” shall mean the process of recovering useful materials from solid waste, including items for re-use.

“Residential Customers” shall mean all residential properties, regardless of whether or not individual units are included in homeowners’ associations. ~~for which there is a curbside collection system for the collection of solid waste.~~

“Service” shall mean collecting, transporting or disposing of solid waste or recyclable materials.

“Solid Waste” shall mean all putrescible and nonputrescible waste, excluding discarded or abandoned vehicles or parts thereof, sewage, sludge, septic tank and cesspool pumpings or other sludge, discarded home or industrial appliances, hazardous wastes, materials used as fertilizers or for other productive purposes and recyclable materials that have been source separated for collection.

“Solid Waste Collector” shall mean the person who provides solid waste collection service on a regular, recurring schedule.

“Source Separation” shall mean to separate recyclable materials from solid waste at the waste source.

Section 2. Section 5-7-8, is hereby AMENDED as follows:

**5-7-8: RECYCLING REQUIREMENT:** (247 1959 2017 2984)

(A) All collectors providing solid waste collection services to residential customers shall offer and provide curbside recycling collection services to all such customers who desire such services for such materials as are designated from time to time by the City Manager as provided in Section 5-7-9, W.M.C.

(B) Collection of recyclable materials shall be offered by a collector to all multifamily and commercial customers.

(C) Collectors providing only large collection bin services to customers for short-term projects, such as roll-off dumpsters for construction and demolition activities, may but are not required to offer recycling services to these customers for this activity.

~~(D)~~ (C) All licensed collectors of recyclable materials and solid waste operating within the City shall have the following duties and rights:

(1) Except for materials that customers have not properly prepared for recycling, collectors may not dispose of recyclable materials set out by recycling customers by any means that may result in the materials not being recycled or being improperly disposed of in an improper manner.

(2) The collector shall establish such policies and procedures as are necessary to provide for the orderly collection of recyclable materials, including requirements regarding the preparation of materials for collection, the collection of recyclable materials and requirements for source separation.

(3) In the event that a collector elects to perform collection of solid waste or recyclable materials through subcontractors or agents, such agency relationship shall not relieve the collector of responsibility for compliance with the provisions of this Code and the rules promulgated hereunder.

(4) All recyclable materials placed for collection shall be owned by and be the responsibility of the customer until the materials are collected by the collector. The material then shall become the property and the responsibility of the collector.

~~(D)~~ (E) FREQUENCY OF COLLECTION:

(1) Curbside recycling collection services shall be provided to residential customers on at least a once-monthly basis and on the same day as the day of collection of solid waste from the customer.

(2) Collectors providing collection services to multi-family or commercial customers shall provide services for the collection of recyclable materials from such customers who desire such service on such frequency as is necessary to prevent overflow of the recycling containers.

Section 3. Section 5-7-12, W.M.C., is hereby AMENDED as follows:

**5-7-12: RECORDS AND REPORTS:** (247 1959 2017 2984)

(A) Each collector licensed pursuant to this Chapter shall submit to the City Clerk as a part of the license application a written plan describing how the recycling collection services will be provided, including the prices, the manner of separation and collection, and the frequency of collection. Any changes to the plan shall be submitted to the City Clerk prior to implementation of the change. This information may be disseminated by the City for public information purposes. A collector may request in writing that sections of their plan be held in confidence as a trade secret or confidential commercial information. Such requests shall be honored by the City to the extent authorized by the Colorado Open Records Act, as determined by the City in its sole discretion.

(B) All collectors shall report to the City by March 31<sup>st</sup> of each year an annual recycling report for the previous year on forms to be provided by the City. A collector may request in writing that sections of the report be held in confidence as a trade secret or confidential commercial information. Such requests shall be honored by the City to the extent authorized by the Colorado Open Records Act, as determined by the City in its sole discretion.

(C) The Environmental Advisory Board shall review a business' annual recycling report for compliance with the recycling requirements of this Chapter. The review and any recommendations of the Board shall be submitted to the City Manager, who may consider the recommendations when deciding to approve or deny license applications, renewal, suspension or revocation pursuant to this Chapter.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of November, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of November 2012.

ATTEST:

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

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Mayor

APPROVED AS TO LEGAL FORM:

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City Attorney's Office