



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Proclamation of Public Works Week
 - B. Proclamation of Colorado Archeology and Historic Preservation Month
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. Purchase of Front End Loader
 - B. Purchase of Replacement Fire Engine and Award Sole Vendor Status
 - C. Country Club Highlands Waterline Upsizing
 - D. Middfoil Project for Control of Eurasian Watermilfoil in Standley Lake
 - E. Engineering Design Contract re Big Dry Creek Trail at Wadsworth Boulevard
 - F. Engineering Design Contract re Sheridan Blvd from 69th to 74th Avenues, 72nd Avenue from Depew to Wolff
 - G. Intersection and Street Widening Contracts re 125th Avenue at Huron Street and 128th Avenue at Delaware Street
 - H. IGA with Urban Drainage and Flood Control District for Quail Creek Improvements
 - I. IGA with Urban Drainage and Flood Control District for Cozy Corner Tributary No. 5 Design and Construction
 - J. Second Reading CB No. 28 re BAP Amendment with Pappas Restaurants
 - K. Second Reading CB No. 29 re 2005 Final Budget Supplemental Appropriation
 - L. Second Reading CB No. 30 re 2006 1st Quarter Budget Supplemental Appropriation
 - M. Second Reading CB No. 31 re Cost Recovery for 112th Avenue / Federal Boulevard Intersection Improvements
 - N. Second Reading CB No. 32 re Ordinance Change re Dangerous and Vicious Animals
9. Appointments and Resignations
 - A. Resolution No. 28 re New Appointments to Boards and Commissions
10. Public Hearings and Other New Business
 - A. Public Hearing re Application to Designate the Williams House as a Local Historic Landmark
 - B. Resolution No. 29 re Designating the Merton and Mary Williams House as a Local Historic Landmark
 - C. Resolution No. 30 re Revised Design Guidelines for Traditional Mixed Use Neighborhood Development
 - D. Resolution No. 31 re Changes to the 2006 Pay Plan – Street Operations Reorganization
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
 - A. City Council
 - B. Executive Session
 1. Obtain direction from City Council re proposed economic development incentive agreement with The Bedrin Organization pursuant to W.M.C. 1-11-3(C)(4) and 1-11-3(C)(7)
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MAY 8, 2006 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Dittman moved, seconded by Major, to approve the minutes of the regular meeting of April 24, 2006. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall said that Community Pride Day would be held on May 13, and more than 1,000 volunteers had signed up to participate. They would report to assigned locations throughout the City for the annual Spring Cleanup. The event would culminate with an afternoon cookout. Mr. McFall advised that Council would be meeting in executive session following this meeting to provide direction regarding a proposed economic development incentive agreement with the Bedrin Organization. Mr. McCullough added that Council also would be provided a legal update regarding Holly Park. Citations for applicable sections of the Westminster Municipal Code that authorized such discussions in executive session were stated.

CITY COUNCIL COMMENTS

Councillors Dittman reported that he and Councillor Price had attended a function at the Cleo Wallace Residential Treatment Center for Youth where there were valuable programs for at-risk youth.

Mayor Pro Tem Kauffman reported having attended National Day of Prayer activities hosted by numerous north metro churches on May 4. Prayers for the welfare of the community, the City and its officials were offered. Additionally, he had attended a ribbon-cutting ceremony held in association with the opening of Saint Anthony's North Hospital's new addition that would serve residents of the City well into the future. Finally, the County Club Village development had been recognized by Adams County Economic Development for multi-use aspects of the project and for the developer's work with the City.

Mayor McNally reported that metro Mayors had worn pedometers each day for the past month to encourage residents to improve fitness. They had walked over one million steps and had all noticed marked improvement in their energy levels. For supporting this effort and encouraging her, the Mayor gratefully presented pedometers to each member of Council and to Evie Hemphill of the *Westminster Window*. Mayor McNally reported having attended the Denver Regional Council of Governments (DRCOG) retreat. While many topics had been discussed, the biggest issue was the need for an estimated \$2 billion worth of transportation improvements and the lack of money to fund them. The Mayor also reported having attended the Citizen Police Academy graduation, the Westminster 5K run to benefit Special Olympics, and an evening activity for National Day of Prayer with Councillor Price at Covenant Village.

Councillor Major reported that Council went on a tour of open space with the Open Space Advisory Board, John Carpenter, and Ruth Becker. He had learned a lot. Councillors Kaiser and Price concurred and appreciated staff's efforts to organize the tour.

Councillor Price reported having attended a meeting hosted by the Adams County Commissioners to discuss a transportation tax.

PROCLAMATIONS

Councillor Major read the Public Works Week proclamation and presented it to Todd Anderson of the Street Division, who explained activities to be held throughout the week of May 21 to 27 and invited everyone to attend.

Councillor Lindsey read a proclamation declaring May to be Colorado Archaeology and Historic Preservation Month. Accepting the proclamation were April Luber, Kaaren Hardy, Linda Cherrington, and Sara Rothwell, who were all members of the Historic Landmark Board.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: award the Colorado Department of Transportation bid for a front-end loader to the low bidder, Power Equipment Company, for a Volvo Model L90C three-yard loader in the amount of \$106,920; based on the recommendation of the City Manager, Council found that the public interest would be best served by accepting the bid from Front Range Fire Apparatus and authorizing purchase of a Pierce Dash fire engine in an amount not to exceed \$502,703, the trade-in of the 1991 Pierce engine to Front Range Fire Apparatus for the amount of \$25,000, and designation of Pierce Manufacturing, Inc. as the sole vendor for fire apparatus purchases for a period of up to five years provided the product remained superior in quality and pricing remained competitive based on metro area comparisons; authorized the City Manager to enter into an agreement with John Laing Homes in an amount not to exceed \$300,000 for City-requested upgrades to the water transmission system to be installed as part of the Public Improvements Agreement related to the Country Club Highlands Filing No. 1; upon recommendation of the City Manager, City Council found that the public interest would best be served by a negotiated contract with EnviroScience, Inc. and authorized the City Manager to execute a contract with EnviroScience, Inc. for a sum not to exceed \$68,458 to be divided among the Standley Lake cities (\$30,806 - City of Westminster) for the implementation of a biological control method to address the Eurasian Watermilfoil concern in Standley Lake; authorized the City Manager to sign a contract with Muller Engineering Company, Inc. for the first phase of the final design contract of the Wadsworth Boulevard Bridge over Big Dry Creek project in an amount not to exceed \$349,000, with the understanding that the second phase of this contract would be incorporated by change order signed by the City Manager in the amount of \$47,000, as additional funds became available; authorized the City Manager to execute a contract with ASCG, Inc. for the final design of street improvements to Sheridan Boulevard from 69th to 74th Avenues and 72nd Avenue from Depew to Wolff Streets in an amount not to exceed \$186,912 and a \$19,000 design contingency; authorized the City Manager to execute a contract with New Design Construction Company in an amount not to exceed \$773,411 for the construction of the 128th Avenue/Huron Street Project, to execute a contract with Wilson & Company, Inc. in the amount of \$65,907 for construction engineering services for the Project, to execute a contract with Integrated Electric, Inc. in the amount of \$129,729 for the installation of traffic signal equipment, the expenditure of \$10,000 for school safety zone flashing lights, and the expenditure of \$15,000 to be paid to Xcel Energy for street lights associated with the Project; authorized the City Manager to sign an Intergovernmental Agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) for the design of drainage improvements for Quail Creek west of Huron Street and payment of \$50,000 as called for in the IGA; authorized the City Manager to execute an IGA with the UDFCD relating to the design and construction of Cozy Corner Tributary No. 5 Channel from the north end of the newly constructed Wolff Street project across the north side of City open space and downstream to Big Dry Creek, the expenditure of \$350,000 for the construction of this project with the expense charged to the Utility Fund – Storm Water Utility Account, and the use of City-owned open space east of Wolff Street and north of Westfield Village Park for the construction of the improvements; final passage of Councillor's Bill No. 28 authorizing the City Manager to execute the Amended and Restated Business Assistance Package between the Westminster Economic Development Authority, the City of Westminster and Pappas Restaurants; final passage of Councillor's Bill No. 29 providing for a final supplemental appropriation to the 2005 budget of the Open Space Fund and General Capital Improvement Fund;

final passage of Councillor's Bill No. 30 providing for a supplemental appropriation to the 2006 budget of the General, General Capital Improvement, Open Space and Utility Funds; final passage of Councillors Bill No. 31 establishing recovery payments due to the City for costs incurred in constructing roadway improvements at the intersection of 112th Avenue and Federal Boulevard; and final passage of Councillor's Bill No. 32 amending the Westminster Municipal Code as it relates to dangerous and vicious animals.

Mayor McNally removed final passage of Councillor's Bill No. 28 and asked if Council wished to remove any other items from the consent agenda for discussion purposes or separate vote. There was no additional request.

It was moved by Councillor Major and seconded by Dittman to approve the consent agenda, excluding Item 8J regarding final passage of Councillor's Bill No. 28. The motion passed unanimously.

COUNCILLOR'S BILL NO. 28 FOR BAP AMENDMENT WITH PAPPAS RESTAURANTS

It was moved by Councillor Major and seconded by Councillor Dittman to pass Councillor's Bill No. 28 on second reading authorizing the City Manager to execute the Amended and Restated Business Assistance Package between the Westminster Economic Development Authority, the City of Westminster, and Pappas Restaurant.

Councillor Kaiser opposed using property tax in tax incremental finance schemes.

At roll call the motion passed by a 6:1 margin with Councilor Kaiser voting no.

RESOLUTION NO. 28 MAKING NEW APPOINTMENT TO BOARDS AND COMMISSIONS

Mayor Pro Tem Kauffman moved, seconded by Councillor Price, to adopt Resolution No. 28 to fill a vacancy on the Special Permit and License Board by appointing Herb Atchison to fill the unexpired term of Bill Nordberg. At roll call, the motion passed with all Council members voting in favor.

PUBLIC HEARING TO DESIGNATE WILLIAMS HOUSE A LOCAL HISTORIC LANDMARK

At 7:29 p.m., the Mayor opened a public hearing to consider an application to designate the Merton and Mary Williams House a local historic landmark. Vicky Bunsen, Community Development Programs Coordinator, summarized the application, providing about the residence and Mr. and Mrs. Williams. To accommodate redevelopment of properties along Lowell Boulevard, the house, which had been built in 1922, was recently relocated from 7383 Lowell Boulevard to 7335 Wilson Court where it remained compatible with surrounding architectural styles of the same period. The Historic Landmark Board recommended the Williams House be designated a local historic landmark. Ms. Bunsen entered the agenda memorandum and attached application into the record and advised that notice of this hearing had been published, posted on the property, and mailed to property owners within 300 feet pursuant to requirements of the Westminster Municipal Code.

April Luber, 3406 West 111th Drive and Chair of the Historic Landmark Board, testified in support of the application.

At 7:45 p.m. Mayor McNally closed the public hearing.

RESOLUTION NO. 29 DESIGNATING THE WILLIAMS HOUSE A LOCAL HISTORIC LANDMARK

Councillor Lindsey moved, seconded by Dittman, to adopt Resolution No. 29 designating the Merton and Mary Williams House a local historic landmark pursuant to Section 11-13-5 of the Westminster Municipal Code. At roll call, the motion passed unanimously.

RESOLUTION NO. 30 APPROVING REVISED TMUND DESIGN GUIDELINES

Councillor Major moved to adopt Resolution No. 30 approving the Revised Design Guidelines for Traditional Mixed Use Neighborhood Development (TMUND). The motion was seconded by Councillor Price and passed unanimously on roll call vote.

RESOLUTION NO. 31 CHANGING THE 2006 PAY PLAN FOR STREET OPERATIONS REORGANIZATION

Upon a motion by Councillor Dittman, seconded by Councillor Major, at roll call vote the Council voted unanimously to adopt Resolution No. 31 amending the 2006 Pay Plan previously approved by City Council to reflect reorganization of Street Operations.

ADJOURNMENT:

There was no further business to come before City Council, and the meeting adjourned at 7:48 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Proclamation of Public Works Week

Prepared By: Ray Porter, Street Operations Manager

Recommended City Council Action

Proclaim the week of May 21-27, 2006 as Public Works Week in the City of Westminster. Councillor Scott Major will present the proclamation to Todd Anderson, Senior Maintenance Worker, Street Operations Division, for the City of Westminster.

Summary Statement

- The National American Public Works Association and State Chapters dedicate one week each year to inform and educate citizens of the importance of public works.
- The theme this year is “Public Works: The Heart of Every Community.”
- Efforts are made to educate the citizenry on public improvements such as safe, well-maintained streets, the treatment of drinking water, and the management of wastewater.
- Channel 8 will broadcast a program on how Public Works & Utilities operations affect daily life.
- Poster displays and brochures will be available at City Hall, City Recreation Centers, City Libraries, and the Westminster Mall.
- On Monday, May 22nd, a booth and the graffiti removal equipment will be set up in Westminster Mall and manned by Street Operations and Utilities Operations Divisions field personnel.
- Equipment will be displayed at the Municipal Service Center for interested groups or individuals to inspect.
- An e-mail invitation will be extended to all City employees and City Council members to stop by the Municipal Service Center on Thursday, May 25, between 11 a.m. and 1:30 p.m. to view the display and enjoy a hot dog. Again, this year we will be having a “Car Show” to spotlight City employee’s cars.
- Street Operations Division, Senior Maintenance Worker, Todd Anderson will be in attendance to receive the proclamation on behalf of the Department of Public Works and Utilities.

Expenditure Required: \$0

Source of Funds: N/A

SUBJECT: Proclamation of Public Works Week

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Policy Issue

None identified

Alternative

None identified

Background Information

Public works professionals throughout the United States and Canada will celebrate National Public Works Week, May 21-27, 2006.

Since 1960, the annual observance has been an opportunity to increase public awareness of the role that Public Works plays in all of our daily lives. The 2006 events are being coordinated in the State by the Colorado Chapter of the American Public Works Association.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, Public works and utilities services provided in our community are an integral part of our citizens' lives; and

WHEREAS, support of an understanding and informed citizenry is vital to the efficient operation of Public Works and Utilities and programs concerning the maintenance of water, sewers, streets and highways, public buildings, solid waste collection, and snow removal operations; and

WHEREAS, the health, safety, and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works and utilities departments is materially influenced by the people's attitude and understanding of the importance of the work they perform.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, on behalf of the entire City Council and Staff, do hereby proclaim the week of May 21 through 27, 2006, as

PUBLIC WORKS WEEK

in the City of Westminster and call upon all citizens and civic organizations to acquaint themselves with the challenges and opportunities involved in providing our public works and utilities and to recognize the contributions that public works and utilities officials make every day to our health, safety, and comfort.

Signed this 8th day of May, 2006.

Nancy McNally, Mayor



Agenda Item 6 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Proclamation of Colorado Archaeology and Historic Preservation Month

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Councillor Mary Lindsey proclaim the month of May as Archaeology and Historic Preservation Month in the City of Westminster.

Summary Statement

May is the statewide Archaeology and Historic Preservation Month. The Colorado Historical Society encourages local governments to recognize Archaeology and Historic Preservation Month by adopting proclamations and taking actions to educate the public concerning the benefits of archaeology and historic preservation in Colorado.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The Colorado Historical Society (CHS) encourages local governments to join in a month-long statewide celebration of Archaeology and Historic Preservation Month. In print media and on its website the CHS has been promoting events across the state to celebrate our state's rich archeological and historic heritage.

The Westminster Historical Society recognizes Archaeology and Historic Preservation Month by annually recognizing someone who has contributed significantly to historic preservation in Westminster. This year, the recognition will go to Russ and Aline Awalt, for their efforts in restoring their 1890s home. They will receive the 13th Annual WHS Historical Preservation Award at a celebration at the Awalt home, 7616 Bradburn Boulevard, Saturday, 1:00 p.m., May 20, 2006.

During the month of May, the City Council will be considering the local landmark designation of the Merton and Mary Williams House, 7335 Wilson Court, and will also be participating in a celebration of the acquisition of the historic Metzger Farm, West 120th and Lowell Boulevard, along with the City and County of Broomfield. At their May 10th meeting, the Historic Landmark Board will be reviewing the graphic design for the restoration of the Savery Savory Mushroom Farm Water Tower.

The City's historic preservation program has made strides since its inception in 2003, with preservation projects and planning for the Westminster Grange Hall, the Rodeo Market, the Semper Farm, the Savery Savory Mushroom Farm Water Tower and the Wesley Chapel Cemetery. The program also provides opportunities for private landowners to preserve their own historic homes and business properties and gain preservation income tax credits.

Chair April Luber and members of the Historic Landmark Board will be present to accept the proclamation.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, the Colorado Historical Society encourages local governments to join in a month-long statewide celebration of Archaeology and Historic Preservation Month, and

WHEREAS, the City of Westminster has achieved certified local government (CLG) status pursuant to the program managed by the Colorado Historical Society, and

WHEREAS, the City of Westminster has an active historic preservation program, with a number of locally designated historic landmarks, and

WHEREAS, archeological assessments were conducted in 2005 in two areas of the City of Westminster, and

WHEREAS, the City Council encourages the residents of the City of Westminster to learn more about archaeology and historic preservation and the educational and economic benefits of these pursuits,

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, on behalf of the entire City Council and Staff, do hereby proclaim the month of May as

ARCHAEOLOGY AND HISTORIC PRESERVATION MONTH

in the City of Westminster and call upon all citizens and civic organizations to acquaint themselves with the benefits of studying our history, identifying historically significant sites and structures, and adaptively re-using landmarked buildings for modern purposes.

Adopted this 8th day of May, 2006

Nancy McNally, Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Purchase of a Front End Loader

Prepared By: Carl F. Pickett, Purchasing Officer

Recommended City Council Action

Award the Colorado Department of Transportation (CDOT) bid for a Front End Loader to the low bidder, Power Equipment Company, for a Volvo Model L90C three yard loader in the amount of \$106,920.

Summary Statement

- City Council action is requested to award this vehicle purchase based on the CDOT award for pneumatic tired loaders.
- The City will save considerable dollars by purchasing this vehicle through the CDOT Bid.
- The vehicle recommended for purchase has been previously approved for replacement and is within the amount authorized by City Council in the 2006 Budget.

Expenditure Required: \$106,920

Source of Funds: Utility Fund Operating Budget

Policy Issue

Should the City approve the use of the CDOT Bid for purchase of this vehicle?

Alternatives

1. Reject the CDOT bid and instruct City Staff to re-bid vehicles. This is not recommended because the State Bid reflects the purchasing power of all the political sub-divisions in the state. The City would not be able to match the bid prices afforded by the CDOT Bid.
2. Do not purchase this replacement vehicle in 2006. This is not recommended because this vehicle has a maintenance history that makes it impractical to keep it in regular service.

Background Information

As part of the 2006 Budget, City Council approved the purchase of a replacement backhoe. After evaluating the current usage of the backhoe, Staff determined that a front end loader would serve the Utility crews in a better fashion. The daily uses for the loader include lowering pipe into trenches, loading trucks, backfilling and cutting asphalt for trench excavations. The majority of the time it will be assigned to the construction crew replacing deteriorated water lines. The front end loader will also be used for Snow removal operations and emergency water main repairs.

According to the Fleet Maintenance Division, Unit #9312 has reached a point that it is no longer economically reasonable to maintain it in service. Information regarding this vehicle replacement is as follows:

UNIT #	YEAR	MAKE	HOURS	VEHICLE MAINTENANCE COSTS LIFE TO DATE (LTD)
9312	1996	Caterpillar	4262	\$51,439.07

The present age, condition and maintenance history of this vehicle would make it impractical to continue to operate it in regular service.

The CDOT bid received from Power Equipment Company for a price of \$130,920, less the trade in allowance of \$24,000 for a total purchase price of \$106,920, meets all specifications and requirements set by the City and is within the amount previously budgeted for this purchase.

Respectfully submitted,

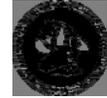
J. Brent McFall,
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Purchase of Replacement Fire Engine and Award Sole Vendor Status

Prepared By: Bill Work, Deputy Fire Chief
Tim Burandt & Mike Lynch, Fire Lieutenants

Recommended City Council Action

1. Authorize the purchase of a Pierce Dash fire engine from Front Range Fire Apparatus in an amount not to exceed \$502,703. Based upon the recommendation of the City Manager the City Council finds that the public interest would be best served by accepting the bid from Front Range Fire Apparatus.
2. Authorize trade-in of the 1991 Pierce engine to Front Range Fire Apparatus for the amount of \$25,000.
3. Designate Pierce Manufacturing, Inc. as the sole vendor for fire apparatus purchases for a period of up to five years provided the product remains superior in quality and pricing remains competitive based on metro area comparisons.

Summary Statement

- Funds have been allocated in the 2006 budget for a \$100,000 down payment for the replacement of a 1991 Pierce Fire Engine (#5111).
- Formal bids were received from three vendors: Mile-Hi Fire Apparatus (Smeal); Max Fire (Rosenbauer General); and Front Range Fire Apparatus (Pierce).
- Pierce Manufacturing, Inc. was not the low bid. Pierce’s bid, however, was the only bid that met all the preferred options. Final bid pricing considering base price, preferred options, associated equipment, manufacture discounts and missing items were as follows:
Pierce: \$518,000 Rosenbauer General: \$502,399 Smeal: \$504,705
- Pierce Manufacturing, Inc. has had a sole vendor relationship with the City for supplying fire apparatus since 1994.
- Having this sole vendor relationship with Pierce has allowed standardization in several areas: stocking spare parts, mechanic training, fire engineer training and operation, trouble shooting, and dealer support.
- Front Range Fire Apparatus is the only vendor that offered a trade-in price for the 1991 engine that is being replaced. This trade in amount is \$25,000.
- Staff has completed an extensive review of each bid package, completed a survey of current users of each product, and conducted on site visits of repair facilities.
- Additional equipment included in the recommended bid was reduced to keep lease purchase payments lower in future years.

Expenditure Required: \$502,703

Source of Funds: \$100,000 down payment
\$377,703 financed through future lease payments
\$25,000 from trade-in

Policy Issues

Does City Council want to accept the Pierce Manufacturing, Inc. bid, even though it was not the low bid?
Does City Council want to renew the sole vendor relationship with Pierce Manufacturing, Inc. that the City has had since 1994?

Alternatives

1. City Council could direct staff to accept one of the lower bids. Staff does not recommend this alternative for several reasons. The true value when comparing the three types of apparatus is not just the purchase price. Quality of product, the ability to meet the bid specifications, and the value to fleet maintenance and fire department operators to have consistency in the type of product they work on and operate have all been considered. The cost differential between the Pierce bid and the lowest bid is \$15,601 or 3% of the total cost.
2. City Council could choose not to establish sole vendor status with Pierce Manufacturing, Inc. for the next five years, choosing instead to go out to bid each time a new apparatus is authorized for purchase. Staff does not recommend this alternative because the City's past experience with this relationship has proven to be positive. Even though competitive bids are not solicited each time a new apparatus is to be purchased, staff does a comparative cost analysis with Pierce to assure fair pricing. An evaluation is also done annually to assure that the Pierce product continues to meet the standards and quality established by the City.
3. City Council could choose to not trade-in the old fire engine. This old fire engine could be sent to auction or marketed in some other fashion for resale. Staff does not believe either of these alternatives will net the City additional value. Trading in the old engine to Front Range Fire Apparatus also puts the burden of brokering the truck and the associated issues connected to that resale on the dealer instead of the City.

Background Information

The new fire engine will replace an existing 1991 Pierce engine that is currently being used by the Fire Department in a limited capacity as a reserve unit. This is the first of two "twin" Pierce engines that were bought in 1991 to be traded-in. It should be noted that the Pierce fire engines have held their value at time of trade-in better than any other manufacturer's fire engines the Fire Department has replaced. Justification for replacing this fire engine includes the following:

- Engine has over 124,500 miles and 7,576 hours of run time.
- Body and compartments are rusting requiring body work to repair.
- Engine has older two stroke diesel motor and has lost horse power that affects the pumping capabilities. With this older motor, smoke emissions are very visible.
- Engine is 15 years old and does not incorporate the latest safety features and firefighting capabilities. These missing features include independent front suspension with disc brakes, roll-over protection, multiplexed electrical systems, and compressed air foam systems.
- Repair and maintenance costs, excluding tire replacement, since January 2003 has exceeded \$38,000. This amount is excessive considering this engine is not the primary reserve unit utilized by the Fire Department.

Base Bid, Preferred Options, Factory Discounts:

The City Purchasing Agent sent out a request for bid proposals to six fire engine manufacturers. Vendors were provided with the fire engine specifications that also included preferred options and associated equipment. Bids were received from three vendors as follows:

Vendor Apparatus Make	<u>Mile-Hi</u> <u>(Smeal)</u>	<u>Max Fire</u> <u>(Rosenbauer General)</u>	<u>Front Range</u> <u>(Pierce)</u>
Base Cost	\$384,118	\$420,659	\$433,780
Preferred Options	\$87,050	\$58,913	\$63,663
Associated Equipment	\$30,337	\$28,149	\$29,976
Down Pay Discount	(\$5,900)	(\$7,677)	(\$6,520)
COD Discount	(\$1,900)	(\$0)	(\$2,899)
Items missing from bid	<u>\$11,000</u>	<u>\$2,345</u>	<u>\$ 0</u>
<u>Total:</u>	\$504,705	\$502,399	\$518,000

Preferred options are the compressed air foam system (CAFS), independent front suspension, multi-plexed electrical system and side-roll protection. CAFS has been part of the most recent City of Westminster Fire Department apparatus purchases. This advanced technology offers increased firefighting capability and safety by providing more effective extinguishment for a wide variety of fire situations such as weed fires, flammable liquid fires and structure fires. The independent front suspension is the latest engineering advance that allows improved stability and handling, and in Pierce’s case allows for front wheel disc brakes. This improved handling and braking capability are significant safety improvements. The multi-plexed electrical system is preferred due to reduced problems and ease of maintenance when it comes to electrical repairs. The side-roll protection is strictly a firefighter safety issue and enhances protections levels for the firefighters inside the cab in the event of a rollover type accident.

Associated Equipment is the equipment that is needed to place this new fire engine into service. A significant amount of equipment will be taken off the old engine and transferred to the new engine. However, some of this equipment is outdated or in need of upgrading. This associated equipment includes upgraded nozzles that provide better firefighting capability, a back-up camera that will help to minimize backing accidents and injuries, hose adapters, mounting hardware and fire hose. Staff reduced the amount of associated equipment to be purchased from the bid amount by \$15,297 in order to keep the future lease purchase costs more in line with what was originally anticipated.

Delivery time is significantly shorter with Pierce at eight to nine months. Rosenbauer General has a one year delivery time. Smeal bid a one year to 13 month delivery time. It is desired to receive this replacement engine as soon as possible.

Specification and Dealer Evaluations:

Staff did an extensive review of each of the bid packages and completed a reference check with current users of each apparatus make. Staff also conducted an on-site evaluation of each dealer’s facilities and assessed the ability to do warranty work and to provide support such as parts replacement.

The specification evaluation revealed that Pierce had the fewest exceptions and concerns in terms of meeting the specifications. One of the biggest concerns in this area was with the proposed compressed air foam systems (CAFS). Pierce is the only manufacture that provides a CAFS that is designed by Pierce for their fire apparatus. The other two vendors specified a third party product that created concerns for reliability, service work, compatibility with existing department owned CAFS and provided limited local experience by other fire departments to reference against.

Engineering:

- Pierce is the only manufacturer of the three that is ISO 9001 certified. This type of certification is highly regarded in terms of assuring quality and attention to detail in all aspects of the manufacturing process.
- The independent front suspension, which provides better driver control and operation, is a third party add-on for Smeal and the Rosenbauer General products.
- The electrical multi-plexing is an engineering feature that has greatly reduced maintenance issues in correcting electrical problems. The City's fleet maintenance personnel highly endorse this product. Pierce has had this type of electrical system design for seven years. The multi-plexing specified by the other manufacturers is a third party add-on that is relatively new to the industry and has a limited track record in terms of adequately assessing reliability.
- The ladder rack design on the two non-Pierce units incorporates a center mount system that reduces valuable compartment space that is not compromised with the Pierce design.

Warranty:

Warranty and service work after the sale are very important considerations that have been evaluated. Staff visited all three dealers repair facilities and conducted numerous surveys to evaluate the capabilities of these facilities to do warranty and factory authorized repair work. In addition, numerous fire departments were contacted and asked about their experience with each of these three dealers in terms of how they felt this type of work was handled. This comparison showed that Front Range Fire Apparatus and Pierce Manufacturing received the highest ratings and customer satisfaction. The City of Westminster Fire Department would rate its experience with Front Range Fire Apparatus and Pierce as excellent. There have been several complex repair issues over the last several years with the Pierce engines that were handled in a very expedient and professional manner by the dealer and manufacturer. One example involved a major motor problem with a unit purchased in 2004. Altitude issues required some major engineering and re-fabrication to upsize the turbo and still get the motor to fit within the cab. Pierce returned the fire engine back to the factory and corrected the problem satisfactorily. While the truck was out of service, Pierce provided a loaner fire engine in order to not compromise emergency services. This type of response to a problem is just one reason why staff has been very satisfied with the Pierce product.

Sole Vendor Status:

The City has a history of sole vendor status with Pierce Manufacturing, Inc. The City has been buying Pierce fire apparatus since 1988. The first sole vendor status was established in 1994. The most recent renewal of this sole vendor relationship was approved in 2001. Staff is recommending that this sole vendor status be renewed for another five year term if experience with the Pierce product continues to justify such. The Pierce product tends to be more expensive than their competitors, but buyers realize a higher quality product that has an excellent reputation in terms of quality, reliability, engineering, customer service and satisfaction.

Sole vendor status has several direct benefits for the City. Having fire apparatus from a sole source vendor has allowed the City to stock a number of Pierce parts. Having these parts in stock at Fleet Maintenance allows for a faster turn around time on a number of repairs. Sole source vending of fire apparatus has allowed several of the City's mechanics to develop their skills in very specific areas and has increased their expertise because they do not have to deal with a variety of different systems design. The City's Fleet Manager, Judy Workman, and the primary fire engine mechanic, Bill Ross, highly endorse granting Pierce sole vendor status again. Additionally, Fleet Maintenance has invested in the hardware and software needed to accommodate the diagnostic testing on the engine, transmission, and anti-lock braking systems of the Pierce units. The expertise that Fleet Maintenance has developed on other operating systems, such as the CAFS, ladder racks, multi-plexing and the like has greatly increased due to standardization of product. Fire Department operators/drivers have also benefited by having like apparatus to work with. Driving, handling, pump operation, routine maintenance, have all been improved by not having to deal with a variety of design and quality in the apparatus.

Trade-In:

The original bid specifications asked vendors to list as an option, their willingness to accept the old fire engine as a trade-in, and at what value. Mile-Hi did not respond to this request. Max Fire stated they would be willing to enter into negotiations with the City for the “fair market value” of the trade-in, if they were awarded the contract for the new engine. Front Range Fire Apparatus did submit an original guarantee of \$5,000 for the trade-in. Subsequent to the bid opening, Front Range Fire Apparatus has found a buyer (a Colorado Volunteer Fire Department) that is willing to pay \$25,000 for the 1991 Pierce engine. Front Range is willing to give us this full amount and be the broker of record. The buyer accepts the terms that delivery of the trade-in would not be for at least eight months and is conditional on when the Westminster Fire Department feels it can release the fire engine. This trade-in value is felt to be fair and significantly more than what sending the fire engine to auction would bring.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Country Club Highlands Waterline Upsizing

Prepared By: Kent W. Brugler, Senior Engineer, Capital Projects and Budget Management
Abel Moreno, Capital Projects and Budget Management Manager
Jim Arndt, P.E., Public Works and Utilities Director

Recommended City Council Action

Authorize the City Manager to enter into an agreement with John Laing Homes in an amount not to exceed \$300,000 for City requested upgrades to the water transmission system to be installed as part of the Public Improvements Agreement related to the Country Club Highlands Filing No. 1.

Summary Statement

- The City and John Laing Homes are finalizing a Public Improvements Agreement for the development of Country Club Highlands Filing No. 1.
- Part of the improvements addressed in the Agreement involves the relocation of an existing 12-inch water transmission main caused by the revised grading necessary for the development.
- The City has identified the need to increase the size of the transmission line in this area to 24-inch in order to provide a more reliable water supply to the service area north of 120th Avenue. Public Works and Utilities staff determined that the desired alignment for the 24-inch main coincides with the 12-inch alignment, and that it would be most economical to have the developer install the larger line at this time.
- The developer has presented a cost proposal in the amount of \$299,060 to extend and upsize the waterline across 120th Avenue and through the development to the limits of this first filing. Staff has reviewed these costs and found them to be both reasonable and competitive for this work. The cost for extending the line through additional filings for the development will be presented as a part of the Council's deliberation on the 2007 CIP.
- Funding for this work was previously appropriated by City Council at its October 10, 2005 meeting (Items G & H) as part of the 2006 mid-year amendment to the Utility Fund Capital Project Budget.

Expenditure Required: \$300,000

Source of Funds: Utility Fund Capital Improvement Program

Policy Issue

Should the City participate with the developer of Country Club Highlands to complete improvements to the City's water transmission system?

Alternatives

1. The City could elect to allow the developer to install the 12-inch water line and delay the installation of the 24-inch water line to a later date. However, this would result in much higher costs to construct later since the City would be required to excavate and restore a newly constructed street, and there would be additional disruptions to vehicle travel and businesses in this area.
2. The City could elect to delay the portion of the project involving the crossing of 120th Avenue. This would also likely result in higher costs to construct at a later date, and would require the excavation of a newly constructed roadway. A separate construction activity would also cause additional disruption to vehicle travel and businesses in this area.

Background Information

John Laing Homes (developer) has received planning approval from the City for the Country Club Highlands Filing No. 1 located in the vicinity of Zuni Street and 120th Avenue (see attached location map). The City and the developer are in the process of finalizing the Public Improvements Agreement that addresses, among other issues, the installation of utility infrastructure for dedication to the City. As required by the site development plan, a portion of the site must be regraded such that an existing 12-inch waterline must be removed and reinstalled at a lower grade at no cost to the City.

The City has identified the need to increase the size of the transmission main in this area to 24-inch in order to provide more reliable water supply to the service area north of 120th Avenue. Department of Public Works and Utilities staff reviewed the proposed utility plan for the development and determined that the alignment for the recommended 24-inch waterline coincided with the alignment of the 12-inch waterline that was intended to be replaced by the developer. Staff recommends that the developer install the 24-inch waterline in lieu of the 12-inch waterline at this time in order to reduce the overall costs to the City. By accomplishing the installation of the 24-inch waterline in this manner, the City only pays for the incremental cost difference between the 12-inch and 24-inch waterlines, and the newly constructed Zuni Street would not be excavated to install the line at a later date.

In addition to upsizing the waterline within the development, the City must extend a 16-inch waterline across 120th Avenue from an existing 24-inch line. Staff recommends that this work also be completed concurrently with the development improvements in order to avoid increased costs. As part of the development agreement, the developer will be constructing improvements to 120th Avenue in the vicinity of Zuni Street including the addition of travel and turn lanes, and the installation of a traffic signal at the intersection of Zuni Street and 120th Avenue. By having the developer complete this work now, the City avoids additional disruption of traffic and excavation of newly constructed roadways that would occur if the waterline is constructed at a later date.

The developer has presented the costs to upsize the 12-inch waterline and related work to a 24-inch line, and to bore a new 16-inch waterline under 120th Avenue to supplement the existing 12-inch line, which are \$100,025 and \$199,035 respectively, for a total cost of \$299,060. Staff has reviewed the detailed breakdowns of these costs and has found them to be both reasonable and competitive for this work.

\$300,000 for this work was previously appropriated by City Council on October 10, 2005 (Items G & H) as part of the mid-year amendment to the 2006 Utility Fund Capital Project Budget. A subsequent phase of the development, currently scheduled for 2007, will address the remainder of the upsizing of the waterline from the limits of this first phase north to the new Federal Boulevard extension. An additional appropriation for the second phase will be requested by staff during the CIP budgetary process for budget year 2007.

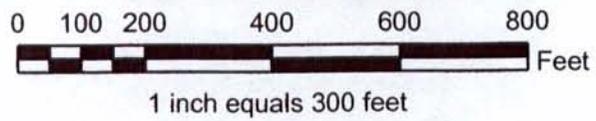
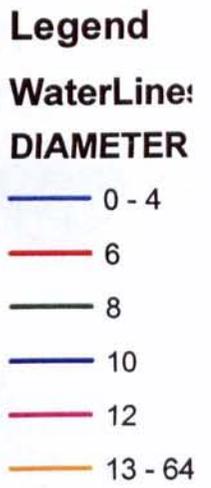
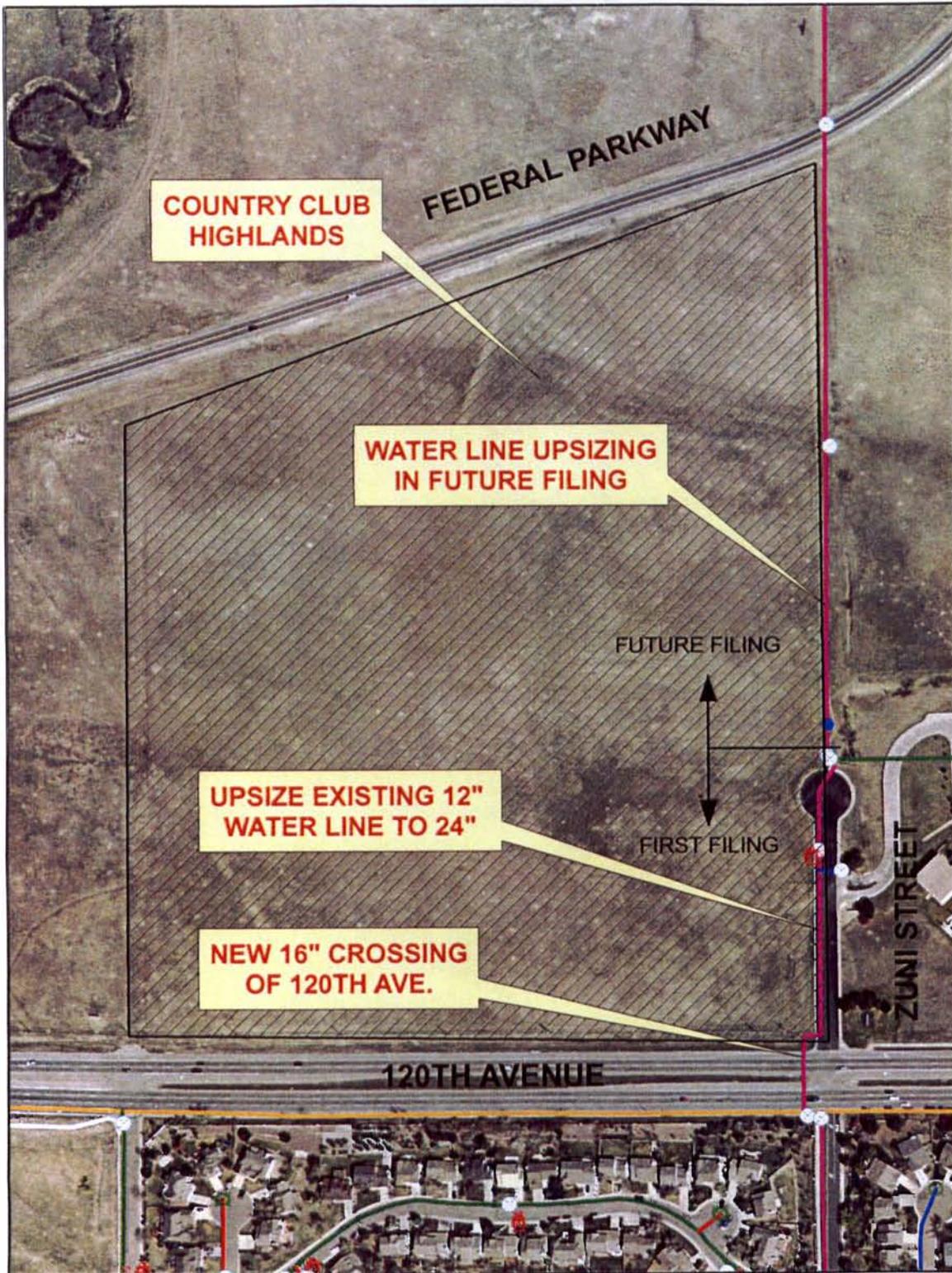
The long-term plan for providing increased volumes of water to the northern part of the City will include extending this new 24-inch waterline from Federal Boulevard and Zuni Street to approximately 128th Avenue and Zuni Street. By adding in these additional water lines north of 120th Avenue, the City will be providing redundant potable water to existing residential and new commercial developments. Currently the primary water transmission system is fed via Huron Street north to the City limits.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

COUNTRY CLUB HIGHLANDS WATER LINE UPSIZING





Agenda Item 8 D

WESTMINSTER COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Middfoil Project for Control of Eurasian Watermilfoil in Standley Lake

Prepared by: Mary Fabisiak, Water Quality Administrator
Kelly Cline, Laboratory Analyst

Recommended City Council Action

Upon recommendation of the City Manager, City Council finds that the public interest will best be served by a negotiated contract with EnviroScience, Inc. Authorize the City Manager to execute a contract with EnviroScience, Inc. for a sum not to exceed \$68,458 to be divided among the Standley Lake cities (\$30,806 - City of Westminster), for the implementation of a biological control method that will address the Eurasian Watermilfoil concern in Standley Lake.

Summary Statement

- Eurasian Watermilfoil is a non-native aquatic weed that was first identified in Standley Lake in 1995. It grows in dense mats and chokes out beneficial native species of aquatic vegetation.
- During the summer of 2002 dense mats of Eurasian Watermilfoil were prevalent along 60% of the shoreline of Standley Lake.
- The Eurasian Watermilfoil in these mats creates areas where blooms of blue-green algae can occur. These blue-green algae blooms can cause major taste and odor events in the drinking water supply. Additionally, the mats interfere with recreation activities on Standley Lake.
- In 2001 the Standley Lake Cities (Westminster, Northglenn and Thornton) investigated several methods of control including mechanical, chemical and biological, and selected biological control as the most appropriate method for Standley Lake.
- During 2002–2003 the Standley Lake Cities pilot tested a biological treatment method using aquatic weevils that consume watermilfoil, termed the Middfoil Process.
- In 2004, 46,000 weevil eggs and larvae were added to Standley Lake.
- In 2005, a sustaining weevil population was observed. The weevils had successfully over-wintered. An additional 46,000 eggs and larvae were stocked.
- Staff is recommending to fully implement the last scheduled Middfoil Process in 2006 to keep the Eurasian Watermilfoil in check.
- This is a joint project between the Standley Lake Cities (Westminster, Northglenn and Thornton) and costs will be split appropriately as indicated by the Standley Lake Water Quality Intergovernmental Agreement previously approved by City Council. Westminster's portion will be 45% of the \$68,458 or \$30,806. These funds are available in the 2006 Water Resources and Treatment operating budget.
- The Cities of Northglenn and Thornton have agreed to reimburse the City of Westminster for their share of the expenses (\$37,652).
- The Middfoil Process is a patented process and, at this time, there are no other similar processes available to solicit quotations from. Therefore, this is a sole source proposal.

Expenditure Required: \$68,458 (jointly funded by Westminster, Northglenn and Thornton, with Westminster's share totaling \$30,806).

Source of Funds: Utility Fund - Water Resources and Treatment Operating Budget

Policy Issue

Should the City contract with EnviroScience, Inc. as a sole source bid?

Alternatives

1. The City could choose to not enter into an agreement with EnviroScience, Inc. and select a different method of control for the Eurasian Watermilfoil. Other control methods will be more costly (mechanical) or incompatible with a drinking water supply (chemical).
2. The City could choose to not control the Eurasian Watermilfoil; however, there will be long-term impacts on drinking water quality and recreation at Standley Lake.

Background Information

Eurasian Watermilfoil was first observed in Standley Lake in the mid 1990's as mats of aquatic plants along the shoreline in more shallow portions of the reservoir. Over the next five years it progressively became worse in the amount of area that was colonized by the plant and the thickness of the beds. The plant was not positively identified until 2000, when at that time it was recognized that it was quickly taking over all of the shallow areas (less than 20 feet of water) of the Lake and creating thick dense mats of floating material. (Picture attached)

Eurasian Watermilfoil is not a native species to North America, but has been a significant problem in the Midwest, East Coast, and the Northwest for over 25 years. This plant quickly takes over lakes and other water bodies choking out native vegetation and forming a monoculture that is not healthy for other aquatic species that live in the water body. It forms dense floating mats that can entangle fishermen and water skiers. These dense mats also provide medium for the growth of blue-green algae, which can have significant implications on drinking water quality. The blue-green algae create taste and odor problems in the drinking water supply.

Staff from Northglenn, Thornton, and Westminster worked together to investigate appropriate control measures for the Eurasian Watermilfoil. Options that were evaluated included mechanical harvesting, chemical control, physical controls, and biological controls. In the spring of 2001 the Standley Lake Cities hosted a statewide workshop to solicit information on Eurasian Watermilfoil and alternate control methods. Mechanical controls include harvesting or vacuuming the weed from the lake. This methodology is labor intensive, tends to spread the weed to other locations, and creates an on-going maintenance issue. Chemical control is effective but would require Standley Lake to not be used as a drinking water supply for 12 to 14 days. Westminster and Northglenn do not have economical options to obtain drinking water from other sources for that period of time. Other biological methods were evaluated such as grass carp but no species was identified that preferentially preferred Eurasian Watermilfoil. At this time, the biological control method utilizing the Middfoil Process appears to be the most effective control that takes into account long term maintenance, short term and long-term costs, and compatibility with current recreation and drinking water uses.

The Middfoil Process consists of stocking the lake with an aquatic weevil that preferentially eats Eurasian Watermilfoil. The weevil hollows out the stems of the plant and it collapses upon itself. The process has been used successfully in over 20 lakes in the Midwest, however this is the first time it has been utilized in Colorado. The weevil is a native species to North America; however, it usually does not reproduce in large enough quantities to keep up with the rampant growth rate of Eurasian Watermilfoil. The Middfoil Process propagates sufficient numbers of the weevils that can be stocked in a given water body to provide the necessary level of control. Once the weevil population is established it should become self-sustaining to keep the Eurasian Watermilfoil in check.

The Standley Lake Cities performed a pilot test of this process during 2002 – 2003; however, the success of this project was over-shadowed by record setting environmental events. The drought of 2002 quickly forced the lake level to drop and the weevils did not have enough time to act on the Eurasian Watermilfoil. The lowering of the lake level also allowed the Eurasian Watermilfoil to colonize areas of the lake that had normally been too deep for roots to become established.

In 2003, the record setting March snowfall allowed Standley Lake to be refilled in a short period of time (approximately 30 days). This rapid refilling of Standley Lake did not allow the Eurasian Watermilfoil time to grow with the light and therefore effectively controlled the spread of the plant to approximately 1998 levels. Because milfoil was so scarce, no weevils could be planted in 2003.

In early summer 2004, EnviroScience, Inc. performed a survey to establish the quantity and distribution of Eurasian Watermilfoil in the lake. The result of this survey revealed again that milfoil was becoming more abundant and was spreading through large areas of the lake. Based on this, a recommendation was made to proceed with large scale weevil stocking program. On July 20-21, 2004, 46,000 weevil eggs and larvae were stocked in two locations on the west side preserve area of Standley Lake. These sites were resurveyed on September 16, 2004. At the time of the survey, numerous adult weevils and significant weevil damage was noted in both of the stocked sites, indicating that the newly stocked weevils were actively reproducing.

A follow-up survey conducted in the summer of 2005 determined that the Weevils had over-wintered. An additional 46,000 eggs and larvae were planted in two additional sites, which helped distribute more weevils throughout the lake, further establishing a more stable and reproducing population. At the end of the growing season, weevil damage was observed in the areas of the stocked milfoil beds, especially in the 2005 sites. The number of weevils per milfoil plant had increased to expected levels.

A follow-up survey scheduled for the summer of 2006 will determine how successful the Weevils have become. An additional 46,000 eggs and larvae will be planted in two additional sites on the East side of the lake, which will help distribute more weevils throughout the lake. This is the last scheduled stocking event for the weevils. At the end of the growing season, it is expected that a noticeable impact will be observed in the areas of the stocked milfoil beds. Once the weevil population has reached the right density the Eurasian Watermilfoil will be kept in check.

As has been past procedure, the City of Westminster will contract with EnviroScience, Inc. and will be reimbursed by the Cities of Northglenn and Thornton for their respective share of the expenses. Staff is very satisfied with EnviroScience, Inc.'s performance and believes continuation of their services is clearly in the City's best interest. Thornton and Northglenn are in agreement and support of this project and have approved the contract.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Eurasian Watermilfoil on Standley Lake south shore, August 2002





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Engineering Design Contract re Big Dry Creek Trail at Wadsworth Boulevard

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to sign a contract with Muller Engineering Company, Inc. for the first phase of the final design contract of the Wadsworth Boulevard Bridge over Big Dry Creek project in an amount not to exceed \$349,000; with the understanding that the second phase of this contract will be incorporated by change order signed by the City Manager in the amount of \$47,000, as additional funds become available.

Summary Statement

- It is necessary to phase the design contract for this project because there is currently only enough money in the budget to support the \$349,000 request. Once additional funds become available from 2005 General Fund Carryover in June, the City Manager will be requested to execute a change order for the remaining amount of the contract. This approach allows staff to begin design on this project immediately and the remaining portion of the contract will only be executed if funds become available. Staff has discussed this approach with Muller Engineering and they do not have any objections.
- Eventually, approximately 50% of these costs will be reimbursed by the Colorado Department of Transportation (CDOT) as the stewards for the Federal Aid program. Until this reimbursement, it is necessary for the City to front these expenses.
- This project includes the construction of approximately 1,100 feet of trail, 1,600 feet of Wadsworth Boulevard between 98th Avenue and 99th Place, and a new bridge over Big Dry Creek to accommodate the grade-separated trail under Wadsworth Boulevard.
- Half of the project costs are funded by the “ready-set-go” enhancement pool program administered by the Colorado Department of Transportation on behalf of the Denver Regional Council of Governments (DRCOG) and the Federal government. The City and Federal government’s contribution towards this project will each be \$2,145,000 for a total project cost of \$4,290,000.
- The “Request for Proposal” for the design of this project was advertised in the Daily Journal for three weeks and nine proposals were received. Staff from both the City and CDOT reviewed the proposals and short-listed and interviewed three of these firms with Muller Engineering Company receiving the highest ranking. Staff is very familiar with Muller Engineering, having worked with them on the recently-completed Wadsworth Boulevard corridor study and recommends them for this assignment.

Expenditure Required: \$349,000

Source of Funds: General Capital Improvement Fund

Policy Issue

Should the City proceed with the design work for the Big Dry Creek Trail at Wadsworth Boulevard project?

Alternative

An alternative includes postponing or abandoning the design of this project. Given the amount of Federal participation in this project (\$2,145,000) which would be lost if the City doesn't proceed with this project, this alternative is not recommended.

Background Information

The Big Dry Creek Trail at Wadsworth Boulevard Project is an important link in the Big Dry Creek trail system. The current trail crossing of Wadsworth Boulevard is the only location where the Big Dry Creek Trail crosses a major street at-grade rather than through an underpass. The major element of this project will be the construction of a new bridge on Wadsworth Boulevard to provide the necessary vertical clearance for the trail to pass under the street and to also accommodate the flow of 100-year storm waters under the bridge structure to prevent the flooding of any structures in the area. To meet these requirements, the roadway will need to be raised approximately nine feet above its current elevation at Big Dry Creek. Wadsworth Boulevard will be reconstructed from approximately 99th Place to a point south of 98th Avenue. The new section of trail installed as part of this project will tie into the existing trail on the east side of Wadsworth Boulevard and 99th Avenue to the west. The 99th Avenue roadway is currently used as the Big Dry Creek Trail in this vicinity. A separate project will later provide a detached trail along 99th Avenue between the limits of this project and the railroad underpass to the west.

In October 2003, the City of Westminster prepared an application to the Denver Regional Council of Governments (DRCOG) requesting funds in the 2005-2010 Transportation Improvement Program (TIP). The City was awarded Federal funds in the amount of \$2,145,000 under the condition that a local match of \$2,145,000 would be provided. On July 25, 2005, Council appropriated \$350,000 from the 2004 carryover to partially fund this project. CDOT has agreed to allow the City to use this amount as a partial local match until 2008 when the City will be required to budget the remaining local match of \$1,795,000. Under this arrangement, the federal funding available in 2006 is \$1,400,000, and the remaining federal funds of \$745,000 become available in 2008 when construction is planned. The total budget for this project in 2006 is \$1,750,000 (\$350,000 local and \$1,400,000 federal) which will be used to design the project and acquire right-of-way in preparation for construction in 2008.

Requests for proposals were advertised for three weeks in the Daily Journal and the City received nine proposals. From these nine proposals, three firms were short-listed and interviewed. The short-listed firms were Muller Engineering Company, Felsburg, Holt & Ullevig and URS Corporation. Based on the entire selection process, staff is recommending that Muller Engineering Company be awarded this contract. Because this is a Federal Aid project, the selection of a consultant can not be based on the lowest fee of all of the consultants that submitted proposals and must be qualification based only. This selection process requires that fees be based on negotiations with the selected consultant, therefore, staff prepared an estimate of design cost to use in these negotiations. The total design contract fee of \$396,000 proposed by Muller Engineering Company is below the design fee estimate prepared by staff. Staff is very familiar with Muller Engineering and has worked with this firm on other City projects, most recently the preliminary design of Wadsworth Boulevard from 92nd Avenue to 110th Avenue. On this project they stayed on time and within budget and did an excellent job. Staff recommends Muller Engineering Company as the best consultant for this particular assignment.

Respectfully submitted,

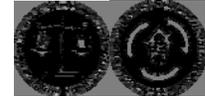
J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Engineering Design Contract re Sheridan Boulevard from 69th to 74th Avenues and 72nd Avenue from Depew Street to Wolff Street

Prepared By: John Burke, Senior Engineer

Recommended City Council Action:

Authorize the City Manager to execute a contract with ASCG, Inc. for the final design of street improvements to Sheridan Boulevard from 69th to 74th Avenues and 72nd Avenue from Depew Street to Wolff Street in an amount not to exceed \$186,912; and authorize a \$19,000 design contingency.

Summary Statement:

- During the public hearings for the redevelopment of the Shoenberg Shopping Center at the southwest corner of 72nd Avenue and Sheridan Boulevard, the City committed to reinvesting sales tax revenues into this Urban Renewal Area. One such reinvestment of sales tax dollars is the proposed widening and realignment of Sheridan Boulevard in this vicinity. Generally, these improvements will result in a six lane street section with auxiliary lanes from approximately 69th Avenue to 74th Avenue, including raised medians in Sheridan Boulevard, a landscaped area and detached sidewalk on the east side of Sheridan Boulevard between 70th and 72nd Avenues, and intersection improvements at 72nd Avenue to allow double left hand turns in every direction.
- A large portion of the cost of this roadway improvement project will be shared by the private redevelopment projects that will be located at the southwest and northwest corners of 72nd Avenue and Sheridan Boulevard.
- Proposals were requested from qualified engineering consultants and reviewed for their experience with similar projects, their familiarity with the area, and the value indicated by their proposed fees for the expected scope of the work. The firm of ASCG, Inc. was chosen from a group of four consultants for the design effort.
- The design contract with ASCG will be in an amount not to exceed \$186,912. A project contingency of \$19,000, which will be held in a separate account, is also requested.
- The funds for this design work will be borrowed from the General Capital Improvement Fund and paid back from the tax increment financing loan/bond funds that Staff anticipates will be available in January of 2007. Staff will be bringing a reimbursement resolution to City Council for action in the next 30 days that will put into place the necessary legal framework to allow for the repayment.

Expenditure Required: Not to exceed \$205,912

Source of Funds: General Capital Improvement Fund

Policy Issue

Should the City proceed with the design work for the Sheridan Boulevard improvements project between 69th Avenue and 74th Avenue and 72nd Avenue between Depew Street and Wolff Street?

Alternative

The alternative is to postpone or abandon the final design of these roadways. Given the desire of the City to revitalize this urban renewal area and the timing to have the road completed concurrently with the redevelopment projects, this alternative is not recommended.

Background Information

Sheridan Boulevard is designated as a six lane arterial street section between Interstate 76 and 120th Avenue on the Denver Regional Council of Governments (DRCOG) Regional Transportation Plan and has been for several years. This six-lane street section is also reflected on the City’s Roadway Master Plan. The existing Sheridan Boulevard street section does not meet current City standards for landscaping and setbacks with an attached sidewalk adjacent to the backyard fences of the single family residential units on the east side of the road between 70th and 72nd Avenues. Additionally, the Colorado Department of Transportation (CDOT) installed concrete barriers on the sidewalk, thus reducing the walk-able area to less than three feet of width. The proposed design and construction will more closely match the standard street section by creating a landscaped buffer and detached sidewalk on the east side of Sheridan Boulevard.

A month after the approval of the Shoenberg Shopping Center Redevelopment Official Development Plan by City Council action on June 27th, 2005, City staff issued a Request for Proposals to four firms that have exhibited excellent qualifications to perform this type of design work. All four firms were equally qualified to prepare the design, so the consultant selection was based upon the following fee proposals:

<u>Firm</u>	<u>Fees</u>
ASCG Incorporated	\$ 163,560
Burns & McDonnell	\$ 231,940
Kirkham Michael & Associates	\$ 246,732
Muller Engineering	\$ 384,500

A detailed review of the proposals by Staff concluded with the recommendation that the firm of ASCG be awarded the contract for design of the Sheridan Boulevard and 72nd Avenue improvements.

Due to the uncertainty of this project moving forward because of a petition for referendum on the City Council’s zoning decision, City Staff phased the propose engineering design effort. Staff administratively contracted with ASCG to provide a Phase I scope of services, in an amount not to exceed \$49,976, which relates to necessary coordination with CDOT, the City of Arvada and the developer of Willow Greens Subdivision in Arvada. These coordination meetings have successfully resulted in concurrence from CDOT and Arvada on the location of a proposed traffic signal at 70th Avenue and the street transition from Westminster into Arvada.

Though the phased approach limited the City’s risk by reducing the design scope of services before the election, the cost associated with the design work has increased due to loss of equities in coordinating activities and expanded scope of services. The major items include: utility locate costs with survey instead of at no cost with geotechnical borings, survey work for the brick walls along 72nd Avenue outside the Sheridan Boulevard project limits, various street layout alternatives with CDOT and the City of Arvada to mitigate concerns from the Willow Green Developer, additional design work for items requested by CDOT and Arvada and graphic renderings for public meetings.

SUBJECT:Sheridan Boulevard at 72nd Avenue Engineering Design Contract

Page 3

Now that CDOT, the City of Arvada and the City of Westminster have agreed to the proposed alignment of Sheridan Boulevard, the second phase of the design effort needs to be initiated. This Phase II scope of work will provide detailed construction drawings that will later be bid on by contractors. The proposal from ASCG for the Phase II Scope of Services is in a not to exceed amount of \$186,912. Additionally, \$19,000 is requested for project contingency which brings the total project cost to \$205,912.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Intersection and Street Widening Contracts re West 125th Avenue at Huron Street and West 128th Avenue at Delaware Street

Prepared By: Richard M. Kellogg, Jr., Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with New Design Construction Company in an amount not to exceed \$773,411 for the construction of the 128th Avenue/Huron Street Project; authorize the City Manager to execute a contract with Wilson & Company, Inc. in the amount of \$65,907 for construction engineering services for the Project; authorize the City Manager to execute a contract with Integrated Electric, Inc. in the amount of \$129,729 for the installation of traffic signal equipment; authorize the expenditure of \$10,000 for school safety zone flashing lights; and authorize the expenditure of \$15,000 to be paid to Xcel Energy for street lights associated with the Project.

Summary Statement

- Over the past couple of years, the City has negotiated with Adams Twelve Five Star Schools for the construction of a new high school to be located within Westminster at the southeast corner of the intersection of 128th Avenue and Huron Street. As discussed in those negotiations, the City is responsible for abutting infrastructure improvements to Huron Street and 128th Avenue. It is important to begin the construction of the 128th Avenue/Huron Street Project in May of 2006 so that the project's construction will be substantially complete by the opening of the school in August 2006.
- The construction of this project is being performed under two separate contracts, one for the roadway construction and one for the traffic signal installations. This separate construction approach is beneficial in that significant savings in traffic signal equipment are realized when the City purchases traffic signal components directly and then contracts with a specialty contractor for the installation of the traffic signal systems.
- Staff has conducted two separate construction bid processes, and it is recommended that a contract for the roadway construction of the 128th Avenue/Huron Street Project be awarded to New Design Construction Company, and a second construction contract for the installation of the traffic signal systems be awarded to Integrated Electric Inc. Staff additionally has conducted a request for proposal for construction engineering and material testing services and recommends a construction services contract be awarded to Wilson & Company, Inc.
- Staff is not requesting contingency funds at this time; however, Staff will be requesting contingency funds at a future City Council meeting subsequent to the 2005 Carry-Over fund allocations request.
- The Intergovernmental Agreement with School District 12 was approved by City Council on October 24, 2005.

Expenditure Required: \$994,047

Source of Funds: General Capital Improvement Fund
– New Development Participation Account

Policy Issue

Should the City enter into contracts with New Design Construction Company to construct the roadway improvements to Huron Street and West 128th Avenue; Integrated Electric, Inc. to install traffic signal equipment; Wilson & Company, Inc. to provide construction engineering and material testing services; Xcel Energy to install street lighting; and the purchase and installation of school zone safety flashing lights for the project?

Alternative

Council may conclude that the 128th Avenue/Huron Street Project should not be constructed at this time. Staff does not recommend this alternative since all of the proposed contracts are related to improvements specified in the Intergovernmental Agreement with Adams 12 Five Star Schools. Additionally, the high school’s planned opening is August 2006 at which time the proposed intersections at 125th Avenue and Huron Street and 128th Avenue and Delaware Street need to be in place and operational.

Background Information

During the months of March and April 2006, Staff conducted a consultant selection process for construction engineering services for the 128th Avenue/Huron Street Project. Staff requested construction engineering proposals from five engineering firms. Staff’s review of the proposals was based first on qualifications to perform the required work and secondly upon a review of proposed fees. These proposals were received March 14, 2006 and the results of this process are listed below:

<u>Consultant</u>	<u>Proposed fee</u>
Paramatrix Consulting	\$94,997
Wilson & Company	\$74,182
Felsburg Holt & Ullevig	Declined to respond
Kirkham Michael Consulting Engineers	Declined to respond
SEH (Short Elliot Hendrickson Inc.)	Declined to respond

Subsequent to the selection of Wilson & Company, Inc. as the recommended construction engineering firm for this project, Staff negotiated with representatives of that company on the proposed fee for the work. As a result of that negotiation, the fee for a refined scope of work was reduced to \$65,907. Wilson & Company, Inc. is a regional firm that is very experienced and capable of providing the required services to the City. Staff is extremely comfortable in recommending to Council that Wilson & Company, Inc. be awarded the construction engineering contract for this work.

Also, during the months of March and April 2006, Staff advertised in the Daily Journal, conducted the necessary pre-bid and accepted bids from five construction contractors for the 128th Avenue/Huron Street Project roadway construction and four contractors for installation of traffic signal equipment. All five of the submitted bids for the roadway construction and all four bids for the traffic signal equipment installations were received, opened and read publicly on April 21, 2006. The results of the bid openings are as follows:

<u>Roadway Contractor</u>	<u>Submitted Bid</u>
New Design Construction Company	\$773,411
Asphalt Specialties	\$791,197
Concrete Express, Inc.	\$800,347
Concrete Works of Colorado	\$989,918
K.E.C.I. Colorado Inc.	\$1,122,612

<u>Traffic Signal Contractor</u>	<u>Submitted Bid</u>
Integrated Electric Inc.	\$129,729
Sturgeon Electric	\$141,253
WL Electric	\$142,765
DKS	\$173,352

Staff recommends New Design Construction Company (Roadway Construction), Wilson & Company, Inc. (Construction Engineer) and Integrated Electric Inc. (Traffic Signal Construction) not only because of lower fee proposals but also because they are all highly regarded in the industry.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Intergovernmental Agreement with Urban Drainage and Flood Control District for Quail Creek Improvements

Prepared By: Steve Baumann, Assistant City Engineer

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) for the design of drainage improvements for Quail Creek west of Huron Street and authorize payment of \$50,000 as called for in the IGA.

Summary Statement

- Quail Creek west of Huron Street has inadequate slope and capacity to fully convey the 100-year storm flows. The resultant overgrown vegetation and standing water have long been a concern of the Quail Crossing neighborhood. Now that the Huron Street box culvert crossing is nearly complete, it will be possible to improve the slope of the channel and reduce or eliminate these problems, including reduction of the floodplain that encroaches on some of the residential streets.
- The City requested that the Urban Drainage and Flood Control District match the City's funding of \$50,000, budgeted in a Storm Water Utility account for 2006 for the design of the project and plan for a future match of \$200,000 in 2007 for the construction of these improvements. Therefore, the total estimated cost of the project is \$500,000 with each entity contributing 50% of the funds over the next two years. That request was approved. The IGA that is the subject of this action confirms the 2006 figures and allows amendment of the agreement upon adoption of budgets for 2007. Staff will request stormwater funds in the amount of \$200,000 in 2007.
- Under the IGA, UDFCD will manage the project, developing contracts for engineering design in 2006 and construction in 2007. The project is located adjacent to the Quail Crossing Park and is intended to include an extension of the trail now in place east of Huron Street. Staff representatives of the City's Department of Parks, Recreation and Libraries and Department of Community Development will work with area residents to coordinate the design effort.

Expenditure Required: \$50,000 (2006)

Source of Funds: Utility Fund - Storm Water Capital Improvement Account

Policy Issue

Should the City enter into an IGA with the Urban Drainage and Flood Control District to design improvements to Quail Creek upstream of Huron Street?

Alternative

Council could choose not to execute this IGA at this time, but proposed modifications to Quail Creek have been of high importance to the neighborhood, both in terms of improving the condition and operation of the channel and reducing the extent of floodplain. In addition, UDFCD is willing to fund 50% of the cost of this project. If Council chooses not to approve this IGA, these funds may not be available in the future.

Background Information

Quail Creek was first channelized in the 1980's with the development of the Quail Crossing subdivision. Constraints in the form of inadequate fall from Pecos Street east under Huron Street and down to I-25, and inadequate culvert sizes at street crossings have made for poor operation. The last ten years have seen ongoing and increasing concerns from the neighborhood focused on the overgrowth of vegetation and the pooling of water. Most of the downstream issues have been resolved. A project to relocate the Bull Canal in 2003 also realigned and lowered Quail Creek east of Huron Street to connect to Big Dry Creek west of I-25. The box culvert that will carry Quail Creek under Huron Street at a lower elevation will be completed in the summer of 2006. Together these projects will allow the creek west of Huron to be reshaped and realigned to solve the long-term drainage problems.

When the City's Storm Water Utility was created in 2001, Quail Creek was among the priority projects. In 2006, \$50,000 is budgeted for design activities and \$200,000 is anticipated to be budgeted in 2007 for construction. Seeking to stretch these resources, the City obtained matching funding from the Urban Drainage and Flood Control District (UDFCD). The estimated total budget for the project is \$500,000. The IGA that is being approved with this action identifies the funding commitment and the District's responsibility for project management of both the design engineering contract and construction. The agreement has provisions that anticipate incorporating by amendment the funding presently being requested by both parties in their respective 2007 budgets.

The \$50,000 expenditure being authorized by Council will allow design activities to get underway this spring and summer with the aim to begin construction in early 2007. Several neighborhood meetings are planned as a part of the design process. In addition to the long-awaited improvements, the modifications should make it possible to revise and reduce the extent of floodplain in the Quail Crossing area. This will improve the chances that flood insurance coverage will not be required by mortgagors of Quail Crossing homes.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Agreement (with map exhibit)

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
QUAIL CREEK IMPROVEMENTS, HURON STREET TO PECOS STREET,
CITY OF WESTMINSTER

Agreement No. 06-04.02

THIS AGREEMENT, made this _____ day of _____, 2006, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies that have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES and City and County of BROOMFIELD participated in a joint planning study titled McKay Lake and Quail Creek Outfall Systems Planning Study by Kiowa Engineering Corporation, dated October 2001 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Quail Creek, Huron Street to Pecos Street, City of Westminster (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 81, Series of 2005) for drainage and flood control facilities in which PROJECT was included in the 2006 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2006 subsequent to public hearing (Resolution No. 67, Series of 2005) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. __, Series of 2006); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

A. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall extend from approximately Huron Street to Pecos Street, as shown on Exhibit A.

B. Construction. PROJECT shall include construction by CITY of the drainage and flood control improvements as set forth in the final design.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Construction of improvements;
3. Contingencies mutually agreeable to PARTIES.

- B. It is understood that PROJECT costs as defined above are not to exceed \$100,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$100,000
2. Construction	*
3. Contingency	*
Grand Total	\$100,000

* Additional funds to be added by amendment.

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	50%	\$ 50,000
CITY	50%	50,000
TOTAL	100%	\$100,000

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973 and Resolution No. 49, Series of 1977), the cost sharing shall be after subtracting state, federal, or other sources of funding from third parties. However, monies CITY may receive from federal funds, the Federal Revenue Sharing Program, the Federal Community Development Program, or such similar discretionary programs as approved by DISTRICT's Board of Directors may be considered as and applied toward CITY's share of improvement costs.

Payment of each party's full share (CITY - \$50,000; DISTRICT - \$50,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining that are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for CITY. Payment for final design shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to CITY.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

PARTIES shall, prior to the recording by CITY of any document transferring title or another interest to property acquired pursuant to this Agreement to CITY, execute a memorandum of this Agreement (Exhibit B), specifically a verbatim transcript of Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE except for this sub-paragraph which shall not be contained in the memorandum. The memorandum shall reference by legal description the property being acquired by CITY and shall be recorded in the records of the Clerk and Recorder of Adams County immediately following the recording of the document transferring title or another interest to CITY.

8. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the assistance of CITY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with assistance and approval of CITY, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.
5. DISTRICT, with approval of CITY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.

7. DISTRICT shall review and approve contractor billings and send them to CITY for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.
 8. DISTRICT, with assistance and written concurrence by CITY, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide CITY a set of mylar reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.
9. MAINTENANCE
PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program. DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.
10. FLOODPLAIN REGULATION
CITY agrees to regulate and control the floodplain of Quail Creek within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.
PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of Quail Creek within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY shall cooperate fully.
11. TERM OF AGREEMENT
The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.
12. LIABILITY
Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.
13. CONTRACTING OFFICERS AND NOTICES
 - A. The contracting officer for CITY shall be the City Manager, 4800 West 92nd Avenue, Westminster, Colorado 80031.
 - B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
 - C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the

addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.

- D. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

14. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

15. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

16. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the CITY of Denver, State of Colorado.

17. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

18. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

19. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

20. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

21. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected design engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

22. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any

person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

23. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

24. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

City Attorney

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
QUAIL CREEK IMPROVEMENTS, HURON STREET TO PECOS STREET,
CITY OF WESTMINSTER

Agreement No. 06-04.02

Exhibit A



SAMPLE

**AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
QUAIL CREEK IMPROVEMENTS, HURON STREET TO PECOS STREET,
CITY OF WESTMINSTER**

Agreement No. 06-04.02

Exhibit B

MEMORANDUM

This MEMORANDUM is entered into this _____ day of _____, 20__ by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, a quasi-governmental entity, whose address is 2480 West 26th Avenue, Suite 156-B, Denver, Colorado 80211 (hereinafter called "DISTRICT") and _____, a governmental entity, whose address is _____ (hereinafter called "CITY") and collectively known as "PARTIES";

WHEREAS, PARTIES entered into "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for _____," Agreement No. _____ on or about _____, 20__, (hereinafter called "AGREEMENT"); and

WHEREAS, AGREEMENT is unrecorded, however PARTIES have agreed in AGREEMENT to record this MEMORANDUM in the records of the Clerk and Recorder of _____, State of Colorado, in order to put all who inquire on notice of AGREEMENT and in particular Paragraph 7.C of AGREEMENT; and

WHEREAS, in AGREEMENT, PARTIES agreed to participate equally (up to a maximum of \$_____ each) in the cost of the construction of drainage and flood control improvements for _____ within CITY boundaries which include _____ (hereinafter called "PROJECT"); and

WHEREAS, construction of PROJECT may require the acquisition by CITY of real property; and

WHEREAS, AGREEMENT further provides that CITY will own all real property required to construct the improvements and that CITY ownership of that real property shall be subject to the terms and conditions of AGREEMENT and in particular Paragraph 7 of AGREEMENT; and

WHEREAS, Paragraph 7 of AGREEMENT provides in appropriate part as follows:

"7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph

7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement."; and

WHEREAS, CITY has just acquired the real property described in Exhibit Z attached hereto and incorporated herein by reference, as if set forth verbatim herein, pursuant to the terms and conditions of AGREEMENT for the construction of PROJECT; and

WHEREAS, PARTIES intend that the terms and provisions of AGREEMENT, including but not limited to Paragraph 7 of AGREEMENT set forth verbatim above, shall apply to and control the real property described in Exhibit Z.

NOW THEREFORE IT IS AGREED by and between PARTIES that the terms and provisions of AGREEMENT, including but not limited to Paragraph 7 of AGREEMENT set forth verbatim above shall apply to and control the real property described in Exhibit Z, now owned by CITY.

This MEMORANDUM is not a complete summary of AGREEMENT. Provisions in this MEMORANDUM shall not be used in interpreting AGREEMENT's provision. In the event of conflict between this MEMORANDUM and the unrecorded AGREEMENT, the unrecorded AGREEMENT shall control.

WHEREFORE, PARTIES have caused this MEMORANDUM to be executed by properly authorized signatures as of the date and year above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF _____

(SEAL)

By _____

ATTEST:

Title _____

Date _____

Clerk and Recorder,

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

Attorney for the _____

By _____
Assistant Attorney

REGISTERED AND COUNTERSIGNED:

By _____

STATE OF COLORADO)
) ss.

CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this _____ day of _____, 20__, by
David W. Lloyd, Executive Director of Urban Drainage and Flood Control District.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires _____.

STATE OF COLORADO)
) ss.

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20__, by
_____.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires _____.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Intergovernmental Agreement with the Urban Drainage and Flood Control District for Cozy Corner Tributary No. 5 Channel Design and Construction

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

1. Authorize the City Manager to execute an Intergovernmental Agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) relating to the design and construction of Cozy Corner Tributary No. 5 Channel from the north end of the newly constructed Wolff Street project, across the north side of City open space and downstream to Big Dry Creek.
2. Authorize the expenditure of \$350,000 for the construction of this project and charge the expense to the Utility Fund – Storm Water Utility Account
3. Authorize the use of City-owned open space east of Wolff Street and north of Westfield Village Park for the construction of the improvements.

Summary Statement

- As part of the construction of the Wolff Street project, which is scheduled for completion in May 2006, a box culvert crossing was constructed to convey flows in Cozy Corner Tributary No. 5 drainage way under the new street. The Cozy Corner Tributary No. 5 is the drainage channel that runs in the east-west direction along the south side of Weatherstone Subdivision at the approximate 116th Avenue alignment. The slope of the channel in this stretch is very shallow, which allows the growth of cattails impeding the flow of water. In order to provide a steeper slope for the channel that will discourage future cattail growth, the box culvert was set at an elevation that is temporarily lower than the downstream existing channel. The work that is the subject of this Agenda Memorandum would provide improvements downstream of the box culvert so proper draining of the culvert can occur. Several alternatives will be explored during the design process to drain this culvert with the intent to minimize or even avoid any damage to the City's open space property in this area.
- The Urban Drainage and Flood Control District approached staff with a proposal that calls for the UDFCD and the City to equally share the costs of improving this channel. The total project cost is expected to be \$700,000. The UDFCD has agreed to pay 100% (\$50,000) of the design cost of this project in 2006 and 46% (\$300,000) of the estimated \$650,000 construction cost in 2007. The City would pay \$350,000 towards the construction of the project. The IGA has provisions for amending the document in the future to adjust the total project budget when the UDFCD construction funds become available in 2007.
- Under the terms of the IGA, the UDFCD will manage the project and hire an engineering firm to design the improvements with City of Westminster oversight.
- This project was approved by Council as part of the 2006 amended budget adoption, and the \$350,000 is within the amount budgeted for this project.

Expenditure Required: \$350,000

Source of Funds: Utility Fund – Storm Water Capital Improvement Account

Policy Issue

Should the City enter into an IGA with the Urban Drainage and Flood Control District to design and construct improvements to the Cozy Corner Tributary No. 5 Channel along the north side of City open space from the existing crossing of Wolff Street east to Big Dry Creek?

Alternative

Council could choose not to execute this IGA at this time. Staff does not recommend this alternative because improvements to this stretch of channel will provide benefits to several residents who live adjacent to the channel upstream of Wolff Street. In addition, the UDFCD is willing to fund the entire design cost and \$300,000 of the construction cost of this project. If Council chooses not to approve this IGA, these funds from the District may not be available in the future.

Background Information

The subject of this Agenda Memorandum is the design and construction of the reach of Cozy Corner Tributary No. 5 Channel along the north side of City open space from the recently constructed box culvert under Wolff Street to the east where it will intersect with Big Dry Creek. The proposed route of the Cozy Corner Tributary #5 channel is consistent with the route shown in the Outfall Systems Plan that was adopted by the City in 1986. This route traverses through the City's open space property that is adjacent to and north of the newly constructed Westfield Village Park. The channel through the open space property will be designed as an amenity to the open space with natural looking design elements in the channel itself.

The UDFCD proposal is to design and construct this channel in 2006 and 2007. It is proposed that the UDFCD pay for the \$50,000 design cost and \$300,000 of the construction cost of this project with the City's portion of the costs also being \$350,000. The attached copy of the IGA does not address the \$50,000 design cost because the District will use funds from their Maintenance Program to pay for this expense. Therefore, only the City's \$350,000 construction contribution is specifically listed in the IGA at this time. If, for some unanticipated reason, the District would fail to identify funds to cover their expected \$300,000 share of the construction expenses in 2007, the City would be under no obligation to continue with the project alone.

City Staff is very appreciative of the offer from the UDFCD to participate in this worthy project, and it is recommended that the City Council approve the IGA to allow the design effort to commence immediately.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Agreement (with map exhibit)

AGREEMENT REGARDING
CONSTRUCTION OF DRAINAGE
AND FLOOD CONTROL IMPROVEMENTS FOR
COZY CORNER BASIN TRIBUTARY 5 TO BIG DRY CREEK,
CITY OF WESTMINSTER

Agreement No. 06-03.04

THIS AGREEMENT, made this _____ day of _____, 2006, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies that have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Outfall Systems Planning Big Dry Creek (ADCO) and Tributaries" by Muller Engineering Company, dated January 1989 (hereinafter called "PLAN"); and

WHEREAS, the design portion of PROJECT shall be funded by DISTRICT's Maintenance Program; and

WHEREAS, PARTIES now desire to proceed with construction of drainage and flood control improvements for Cozy Corner Basin Tributary 5 to Big Dry Creek, City of Westminster (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 81, Series of 2005) for drainage and flood control facilities in which PROJECT was included in the 2007 calendar year; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT participation for PROJECT (Resolution No. __, Series of 2006); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

PROJECT shall include construction by CITY of the drainage and flood control improvements as set forth in the final design. PROJECT extends from approximately Big Dry Creek to Sheridan Boulevard, as shown on Exhibit A.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and limited to the following:
1. Construction of improvements;
 2. Contingencies mutually agreeable to PARTIES.
- B. It is understood that PROJECT costs as defined above are not to exceed \$350,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Construction	\$350,000
2. Contingency	-0-*
Grand Total	\$350,000

* These funds will be added by amendment at a future date.

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	0%	\$ -0-**
CITY	100%	350,000
TOTAL	100%	\$350,000

** It is anticipated that DISTRICT shall contribute financially in 2007 as outlined in the 5-year CIP.

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973 and Resolution No. 49, Series of 1977), the cost sharing shall be after subtracting state, federal, or other sources of funding from third parties. However, monies CITY may receive from federal funds, the Federal Revenue Sharing Program, the Federal Community Development Program, or such similar discretionary programs as approved by DISTRICT's Board of Directors may be considered as and applied toward CITY's share of improvement costs.

Payment of each party's full share (CITY - \$350,000; DISTRICT - \$-0-) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 12).

Within one year of completion of PROJECT if there are monies including interest earned remaining that are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 6 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

PARTIES shall, prior to the recording by CITY of any document transferring title or another interest to property acquired pursuant to this Agreement to CITY, execute a memorandum of this Agreement (Exhibit B), specifically a verbatim transcript of Paragraph 6. OWNERSHIP OF PROPERTY AND LIMITATION OF USE except for this sub-paragraph which shall not be contained in the memorandum. The memorandum shall reference by legal description the property being acquired by CITY and shall be recorded in the records of the Clerk and Recorder of Adams County immediately following the recording of the document transferring title or another interest to CITY.

7. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the assistance of CITY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with assistance and approval of CITY, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY

on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.

5. DISTRICT, with approval of CITY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 7. DISTRICT shall review and approve contractor billings and send them to CITY for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.
 8. DISTRICT, with assistance and written concurrence by CITY, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide CITY a set of mylar reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

8. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program. DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

9. FLOODPLAIN REGULATION

CITY agrees to regulate and control the floodplain of Cozy Corner Tributary 4 within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of Cozy Corner Tributary 5 within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY shall cooperate fully.

10. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 9. FLOODPLAIN REGULATION, Paragraph 6. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 8. MAINTENANCE, which shall run in perpetuity.

11. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

12. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for CITY shall be the City Manager, 4800 West 92nd Avenue, Westminster, Colorado 80031.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
- D. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

13. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

14. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

15. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the CITY of Denver, State of Colorado.

16. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the non-assigning party or parties to this Agreement.

17. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

18. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

19. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

20. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected design engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

21. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

22. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

23. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

City Attorney

AGREEMENT REGARDING
CONSTRUCTION OF DRAINAGE
AND FLOOD CONTROL IMPROVEMENTS FOR
COZY CORNER BASIN TRIBUTARY 5 TO BIG DRY CREEK,
CITY OF WESTMINSTER

Agreement No. 06-03.04

Exhibit A



SAMPLE

**AGREEMENT REGARDING
CONSTRUCTION OF DRAINAGE
AND FLOOD CONTROL IMPROVEMENTS FOR
COZY CORNER BASIN TRIBUTARY 5 TO BIG DRY CREEK,
CITY OF WESTMINSTER**

Agreement No. 06-03.04

Exhibit B

MEMORANDUM

This MEMORANDUM is entered into this _____ day of _____, 20__ by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, a quasi-governmental entity, whose address is 2480 West 26th Avenue, Suite 156-B, Denver, Colorado 80211 (hereinafter called "DISTRICT") and _____, a governmental entity, whose address is _____ (hereinafter called "CITY") and collectively known as "PARTIES";

WHEREAS, PARTIES entered into "Agreement Regarding Design and Construction of Drainage and Flood Control Improvements for _____," Agreement No. _____ on or about _____, 20__, (hereinafter called "AGREEMENT"); and

WHEREAS, AGREEMENT is unrecorded, however PARTIES have agreed in AGREEMENT to record this MEMORANDUM in the records of the Clerk and Recorder of _____, State of Colorado, in order to put all who inquire on notice of AGREEMENT and in particular Paragraph 6.C of AGREEMENT; and

WHEREAS, in AGREEMENT, PARTIES agreed to participate equally (up to a maximum of \$_____ each) in the cost of the construction of drainage and flood control improvements for _____ within CITY boundaries which include _____ (hereinafter called "PROJECT"); and

WHEREAS, construction of PROJECT may require the acquisition by CITY of real property; and

WHEREAS, AGREEMENT further provides that CITY will own all real property required to construct the improvements and that CITY ownership of that real property shall be subject to the terms and conditions of AGREEMENT and in particular Paragraph 5 of AGREEMENT; and

WHEREAS, Paragraph 6 of AGREEMENT provides in appropriate part as follows:

6. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 6 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement."; and

WHEREAS, CITY has just acquired the real property described in Exhibit Z attached hereto and incorporated herein by reference, as if set forth verbatim herein, pursuant to the terms and conditions of AGREEMENT for the construction of PROJECT; and

WHEREAS, PARTIES intend that the terms and provisions of AGREEMENT, including but not limited to Paragraph 6 of AGREEMENT set forth verbatim above, shall apply to and control the real property described in Exhibit Z.

NOW THEREFORE IT IS AGREED by and between PARTIES that the terms and provisions of AGREEMENT, including but not limited to Paragraph 6 of AGREEMENT set forth verbatim above shall apply to and control the real property described in Exhibit Z, now owned by CITY.

This MEMORANDUM is not a complete summary of AGREEMENT. Provisions in this MEMORANDUM shall not be used in interpreting AGREEMENT's provision. In the event of conflict between this MEMORANDUM and the unrecorded AGREEMENT, the unrecorded AGREEMENT shall control.

WHEREFORE, PARTIES have caused this MEMORANDUM to be executed by properly authorized signatures as of the date and year above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____

Clerk and Recorder,

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

Attorney for the _____

By _____

Assistant Attorney

REGISTERED AND COUNTERSIGNED:

By _____

STATE OF COLORADO)

) ss.

CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this _____ day of _____, 20__, by David W. Lloyd, Executive Director of Urban Drainage and Flood Control District.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires _____.

STATE OF COLORADO

)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20__, by

_____.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My Commission Expires _____.



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Second Reading for Councillor’s Bill No. 28 re Amendment to the Business Assistance Package with Pappas Restaurants

Prepared By: Marty McCullough, City Attorney
Susan Grafton, Economic Development Manager

Recommended Board Council Action

Pass Councillor’s Bill No. 28 on second reading authorizing the City Manager to execute the “Amended and Restated Business Assistance Package between the Westminster Economic Development Authority, the City of Westminster and Pappas Restaurants.”

Summary Statement

- This Councillor’s Bill was passed on first reading on April 24, 2006.
- A Business Assistance Package with Pappas Restaurants valued at \$347,000 was approved for the Pappadeaux Restaurant on Sheridan Boulevard in April 2004.
- The project is within WEDA’s Westminster Center East Urban Renewal Area (“WCE-URA”). A map is attached that illustrates the boundaries of WCE-URA.
- As originally structured, assistance under the agreement is to be paid exclusively from net incremental sales tax in the overall urban renewal district.
- Currently, property tax increment revenue is accruing in the WCE-URA account and is available to help fund the rebate.
- Staff recommends that the agreement be amended to provide that property tax increment, in addition to sales tax increment, may be utilized to pay WEDA’s rebate obligation for Pappas Restaurants. The total rebate amount would still be calculated based on the amount of sales tax revenues generated by the business and would not be increased by this City Council action.
- Staff also recommends that the payment obligation under the agreement be clarified to provide that WEDA shall pay the rebate amount over such period of time as may be necessary to satisfy the rebate amount. This extension would come into play only in the event that the combined property and sales tax increment was insufficient to meet the rebate obligation.
- Note: A minor edit to Paragraph 8 of the Agreement has been made for second reading to clarify intent. Edits can be seen on the attached document.

Expenditure Required: Not to exceed \$347,000 (rebate dollars only)

Source of Funds: Sales and property tax revenue collected directly from WCE-URA will be utilized to fund the rebate

Respectfully submitted,

J. Brent McFall
City Manager
Attachments

BY AUTHORITY

ORDINANCE NO. **3284**

COUNCILLOR'S BILL NO. **28**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
Major - Dittman

A BILL

FOR THE ORDINANCE AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE ASSISTANCE AGREEMENT WITH PAPPAS RESTAURANTS TO AID IN THE CONSTRUCTION OF A PAPPADEAUX SEAFOOD KITCHEN ON THE SOUTHWEST CORNER OF 92ND AVENUE AND SHERIDAN BOULEVARD IN WESTMINSTER

WHEREAS, the City of Westminster has indicated its desire to attract unique restaurants and increase sales tax generation at the southwest corner of 92nd Avenue and Sheridan Boulevard, within the Westminster Center Urban Renewal Area; and

WHEREAS, Pappas Restaurants ("Pappas") has all of the property either in ownership or under contract to purchase, that is necessary to proceed with the construction of an approximately 12,950 square foot Pappadeaux Seafood Kitchen in accordance with standard development review procedures established by the Westminster Municipal Code; and;

WHEREAS, an amended and restated three party Business Assistance Package between the City of Westminster, Westminster Economic Development Authority, and Pappas Restaurants is attached hereto as Exhibit A and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter in to the amended and restated three party Business Assistance Agreement with the Westminster Economic Development Authority and Pappas Restaurants in substantially the same form as the one attached as Exhibit A, and upon execution of the Agreement to implement said agreement.

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

**AMENDED AND RESTATED BUSINESS ASSISTANCE PACKAGE BETWEEN THE
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF
WESTMINSTER AND PAPPAS RESTAURANTS**

This Agreement is made this ___ day of _____, 2006, by and between the **CITY OF WESTMINSTER**, a Colorado home rule city ("City"), the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (WEDA)**, an urban renewal authority organized and existing pursuant to the provisions of Part 1, Article 25, Title 31, C.R.S. ("WEDA"), and **PAPPAS RESTAURANTS** ("Pappas").

WHEREAS, the City, WEDA, and Pappas are parties to that certain agreement identified as "Business Assistance Package between the Westminster Economic Development Authority, the City of Westminster, and Pappas Restaurants," and dated April 26, 2004 (the "Original Agreement"); and

WHEREAS, the parties now wish to supersede and replace the Original Agreement with this Amended and Restated Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, WEDA and Pappas agree as follows:

1. Sales Tax Rebate

WEDA shall rebate Pappas 50% of the Sales Tax collected from Pappadeaux Seafood Kitchen, located at the southwest corner of 92nd Avenue and Sheridan Boulevard, Westminster, Colorado, commencing as of the date of issuance of a Certificate of Occupancy for Pappas, and ending on the fifth anniversary thereof (the "Sales Tax Rebate"). This payment shall not exceed a total of \$347,000. The Sales Tax Rebate shall be paid by WEDA in annual installments from sales and property tax increment revenues paid into WEDA's special fund pursuant to the Westminster City Center East Urban Renewal Plan and the Urban Renewal Act. The Sales Tax Rebate shall be calculated in year one based on the tax collected during the periods between this issuance of the Certificate of Occupancy and November 30th. Thereafter, the Sales Tax Rebate shall be calculated based upon the prior 12 months of sales tax revenues paid by the Pappadeaux Seafood Restaurant from the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax), multiplied by 50%.

The payment of each annual installment of the Sales Tax Rebate shall be made on or before December 20th. Payments will be submitted electronically to Pappas Restaurants designated financial institution. In the event that property and sale tax increment revenues are insufficient to satisfy any of the five annual installment payments otherwise due under this Agreement, the balance of such obligation shall be satisfied as and when such revenues become available, even if doing so results in extending WEDA's payments hereunder beyond the fifth (5th) anniversary of the issuance of Pappas' Certificate of Occupancy.

2. Utility Easement Dedication

Pappas agrees to execute a 30-foot permanent easement for utility and other public purposes along Pappas' westerly property line from West 92nd Avenue to Sheridan Boulevard, which easement shall be in the form attached hereto as Exhibit A. In consideration of this conveyance, the City shall waive the recoveries associated with Pappas' site, which recoveries are described in Exhibit B. The permanent easement shall be recorded in the public land records of the Clerk and Recorder of Jefferson County and shall also be referenced on Pappas' final plat (formally known as Turnpike Commercial Subdivision). The waiver of recoveries shall be described in an administrative amendment to Pappas' ODP ((The Fifth Amended Official Development Plan Hyland Office Park, Lot 1, a Planned Unit Development in the City of Westminster, County of Jefferson, State of Colorado).

3. Entire Agreement

This instrument shall constitute the entire three party agreement between the City, WEDA and Pappas Restaurants and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. In the event of sale, staff may assign the business assistance package to Pappadeaux Seafood Restaurant's successor.

4. Condition of Rebate

Pappas Restaurant agree to build an approximately 12,950 square foot Pappadeaux Seafood Kitchen on the southwest corner of 92nd Avenue and Sheridan Boulevard in the City of Westminster, with construction anticipated to begin third quarter 2004 and completion by end of the third quarter 2006.

5. Termination of Agreement

The Sales Tax Rebate and this Business Assistance Agreement shall terminate and become void and of no force and effect upon WEDA or the City of Westminster if Pappadeaux Seafood Restaurant has not received the Certificate of Occupancy by December 31, 2006. The conveyance of the permanent easement and waiver of recoveries on the site shall not be affected by any termination or assignment of this agreement.

6. Business Termination

In the event that Pappadeaux Seafood Restaurant ceases business at the southwest corner of 92nd Avenue and Sheridan Boulevard, within the City of Westminster, within 5 years of the Certificate of Occupancy, any Sales Tax Rebate payments paid to Pappas shall be repaid to WEDA within 120 days of said cessation.

7. Subordination.

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

8. Governing Law: Venue

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

PAPPAS RESTAURANTS

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
Chris Pappas, Owner

J. Brent McFall
Executive Director

ATTEST:

ATTEST:

Title

Linda Yeager
Secretary

CITY OF WESTMINSTER

J. Brent McFall
City Manager

ATTEST:

Linda Yeager
City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Second Reading of Councillor's Bill No. 29 re 2005 Final Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 29 on second reading providing for a final supplemental appropriation to the 2005 budget of the Open Space Fund and General Capital Improvement Fund.

Summary Statement

- This supplemental appropriation includes the following adjustments:
 - Open Space Fund amendments total increase: • \$362,270
 - General Capital Improvement Fund amendments total decrease: • \$50,456
- This Councillor's Bill was passed on first reading April 24, 2006.

Expenditure Required: \$ 311,814

Source of Funds: The funding sources for these expenditures include contributions and grants.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3285**

COUNCILLOR'S BILL NO. **29**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
Dittman - Major

A BILL

FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE OPEN SPACE FUND AND GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the Open Space Fund initially appropriated by Ordinance No. 3162 in the amount of \$4,414,869 is hereby increased by \$362,270 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$6,845,669. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of contributions.

Section 2. The \$362,270 increase in the Open Space Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contributions	5400.43100.0000	\$158,000	\$362,270	\$520,270
Total Change to Revenues			<u>\$362,270</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchase	54010900.76600.0000	\$16,475,965	\$362,270	\$16,838,235
Total Change to Expenses			<u>\$362,270</u>	

Section 3. The 2005 appropriation for the GCIF initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby decreased by \$50,456 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$36,896,689. The actual amount in the GCIF on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of grant funds and an addendum to the IGA with Highland Hills Park and Recreation District.

Section 4. The \$50,456 decrease in the GCIF shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	7500.40620.0000	\$277,200	\$6,844	\$284,044
Contributions	7501.43100.0000	\$1,500,060	<u>(\$57,300)</u>	\$1,442,760
Total Change to Revenues			<u>(\$50,456)</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
South Westy Revital Appropriation Holding	80175030024.80400.8888	\$0	\$6,844	\$6,844
Park Capital Impr. Approp. Holding	80375050302.80400.8888	\$57,300	<u>(\$57,300)</u>	\$0
Total Change to Expenses			<u>(\$50,456)</u>	

Section 5. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 6. This ordinance shall take effect upon its passage after the second reading.

Section 7. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Second Reading of Councillor’s Bill No. 30 re 2006 1st Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor’s Bill No. 30 on second reading providing for a supplemental appropriation to the 2006 budget of the General, General Capital Improvement, Open Space and Utility Funds.

Summary Statement

- This recommended supplemental appropriation includes the following adjustments to the City’s 2006 budget:

• General Fund amendments total:	• \$26,282
• General Capital Improvement Fund amendments total:	• \$146,205
• Open Space Fund amendments total	• \$3,024
• Utility Fund amendments total	• \$4,064,191

- This Councillor’s Bill was passed on first reading April 24, 2006.

Expenditure Required: \$4,239,702

Source of Funds: The funding sources for these expenditures include grants, program revenues, in-lieu payments, easement agreements, rental lease payments, and water revenues.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3286**

COUNCILLOR'S BILL NO. **30**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
Price - Lindsey

**A BILL
FOR AN ORDINANCE AMENDING THE 2006 BUDGETS OF THE GENERAL, GENERAL
CAPITAL IMPROVEMENT, OPEN SPACE, AND UTILITY WATER FUNDS AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2006 ESTIMATED
REVENUES IN THE FUNDS.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$86,209,579 is hereby increased by \$26,282 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$85,395,609. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of grants and program revenues.

Section 2. The \$26,282 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$0	\$25,766	\$25,766
Off Duty Fire Svcs	1000.41340.0013	0	516	516
Total Change to Revenues			<u>\$26,282</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Equipment – Invest. Svcs	10020300.76000.0344	\$0	\$25,766	\$25,766
Fire Supplies – EMS	10025260.70200.0546	4,620	516	5,136
Total Change to Expenses			<u>\$26,282</u>	

Section 3. The 2006 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,668,000 is hereby increased by \$146,205 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$7,754,205. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of cash in lieu payments, state grants, and easement agreements.

Section 4. The \$146,205 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash in lieu future capital projects	7500.40210.0751	\$0	\$77,230	\$77,230
State Grants	7500.40620.0000	0	11,675	11,675
Contributions	7501.43100.0000	1,385,460	57,300	1,442,760
Total Change to Revenue			<u>\$146,205</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
New Art Projects – Appro. Holding	80575030426.80400.8888	\$0	\$38,230	\$38,230
South Westy Revital. – Appro. Holding	80175030024.80400.8888	315,400	50,675	366,075
Park Cap Improv. – Appro. Holding	80375050302.80400.8888	(57,300)	57,300	0
Total Change to Expenses			<u>\$146,205</u>	

Section 5. The 2006 appropriations for the Open Space Fund initially appropriated by Ordinance No. 3162 in the amount of \$4,563,535 is hereby increased by \$3,024 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$4,566,559. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of rental lease payments.

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Open Space General	5400.43060.0000	\$0	\$3,024	\$3,024
Total Change to Expenses			<u>\$3,024</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$749,739	\$3,024	\$752,763
Total Change to Revenue			<u>\$3,024</u>	

Section 6 The 2006 appropriations for the Utility Water Fund initially appropriated by Ordinance No. 3162 in the amount of \$29,510,392 is hereby increased by \$4,064,191 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$33,799,548. The actual amount in the Utility Water Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of rental lease payments.

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Water General	2000.43060.0000	\$300,000	\$4,064,191	\$4,364,191
Total Change to Expenses			<u>\$4,064,191</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Water Project Res. – Approp. Holding	80120035181.80400.8888	\$11,514,456	\$4,064,191	\$15,578,647
Total Change to Revenue			<u>\$4,064,191</u>	

Section 7 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 8. This ordinance shall take effect upon its passage after the second reading.

Section 9. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Second Reading of Councillor’s Bill No. 31 re Cost Recovery for 112th Avenue/Federal Boulevard Intersection Improvements

Prepared By: David R. Downing, City Engineer

Recommended City Council Action:

Pass Councillors Bill No. 31 on second reading establishing recovery payments due to the City for costs incurred in constructing roadway improvements at the intersection of 112th Avenue and Federal Boulevard.

Summary Statement

- In 2004, the City coordinated the installation of significant roadway improvements to the intersection of 112th Avenue and Federal Boulevard. The vast majority of the costs associated with the construction of this project were previously paid by the developers or owners of the parcels located at the four corners of the intersection.
- A portion of the construction costs that are attributable to the undeveloped parcel located at the southwest corner of the intersection was previously paid by the current owner of the land, the Bruchez Group, LLP. However, since cost recovery payments owed for City projects are not due until the time that adjacent properties are platted or until the time that building permits are requested, the Bruchez Group elected to defer the payment of the remaining balance of the amount owed to the City (\$115,667) until that later date.
- The attached Councillor’s Bill will establish a cost recovery against the property located at the southwest corner of the intersection of 112th Avenue and Federal Boulevard in the amount of \$115,667 plus any applicable interest.
- This Councillor’s Bill was passed on first reading on April 24, 2006.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3287**

COUNCILLOR'S BILL NO. **31**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
Major - Price

**A BILL
FOR AN ORDINANCE ESTABLISHING COST RECOVERIES FOR CITY-CONSTRUCTED
IMPROVEMENTS RELATED TO THE 112TH AVENUE/FEDERAL BOULEVARD
INTERSECTION IMPROVEMENTS PROJECT (PROJECT NO. S03-03)**

WHEREAS, Westminster Municipal Code § 11-6-7(B)(1) provides that the City shall have the authority to allocate and recover the costs of construction of public improvements or facilities to property owners based on the benefit of such improvement, facility, or service to said owners; and

WHEREAS, Westminster Municipal Code § 11-6-7(B)(3) provides that the City Council shall provide by ordinance for the recovery of appropriate costs for public improvements, facilities, or services constructed by the City, and that said ordinance shall establish the nature and extent of the recoveries due to the City, and that such ordinance may include provisions for simple interest payable to the City; and

WHEREAS, Westminster Municipal Code § 11-6-7(E)(2)(a) provides that any ordinance establishing cost recovery obligations for City-constructed improvements shall include a list of properties to be charged with cost recovery for said improvements, that said ordinance shall be recorded in the real estate records of the counties in which the properties to be charged with cost recoveries are located and, if available, shall include a final statement of construction costs for the improvements subject to recovery, or otherwise, an estimate of construction costs for the improvements to be constructed until a final statement of construction costs for the improvements may be determined and recorded following the completion of the improvements; and

WHEREAS, the City previously completed the installation of significant roadway improvements at the intersection of 112th Avenue and Federal Boulevard; and

WHEREAS, the City previously recovered, in conjunction with the City's development plan and building permit approval process, payments from the developers of the property located at the northeast corner of the intersection, and the southeast corner of the intersection; and

WHEREAS, the developer of the northwest corner of the intersection is not responsible for cost recoveries associated with this project since the developer constructed its portion of the intersection improvements in conjunction with the construction of its project; and

WHEREAS, the owners of the property located at the southwest corner of the intersection previously paid a portion of their proportionate share of the expenses in the amount of \$71,192, but have elected to defer the payment of the remainder of the proportionate share of the costs in the amount of \$115,667 until such time that the property is platted or a request for a building permit is made to the City; and

WHEREAS, the City, through this ordinance, now wishes to establish a cost recovery that will be owed to the City by the future developer of this site located at the southwest corner of the intersection of 112th Avenue and Federal Boulevard; and

WHEREAS, in consideration of the owner's previous advance payment in the amount of \$71,192, thereby reducing the amount of cash required by the City to fund its construction payments on this project, it is the intent of the City that interest on the remaining \$115,667 will not begin to accrue until January 1, 2010.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The nature and extent of the recoveries due to the City pursuant to this ordinance are the costs associated with the construction of the 112th Avenue and Federal Boulevard intersection improvements in the amount of \$865,278.08, less previous payments and in-kind contributions received by the City from the developers of the northwest, northeast, and southeast corners of the project, and the partial payment previously made by the owner of the southwest corner of the intersection (Bruchez Group, LLP) in the amount of \$71,192, for a total cost recovery obligation in the amount of \$115,667 (the "Recoverable Costs").

Section 2. The property described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Assessed Property"), is hereby charged with the Recoverable Costs. The Recoverable Costs shall be due and payable in accordance with the provisions of W.M.C. § 11-6-7 as the same may be amended.

Section 3. In the event the Assessed Property is developed and the \$115,667 balance is paid prior to January 1, 2010, no interest shall be due. Otherwise, the Recoverable Costs established pursuant to this ordinance shall accrue interest commencing on January 1, 2010, continuing until paid, and calculated in accordance with the rates established annually by the City Council pursuant to the Westminster Municipal Code.

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.

Section 6. The City Clerk shall cause a copy of this ordinance to be recorded in the real estate records of Adams County immediately following its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

Exhibit "A"

A tract of land located in the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 2 South, Range 68 West of the Sixth Principal Meridian, City of Westminster, County of Adams, State of Colorado, being more particularly described as follows:

Considering the North line of the Northwest Quarter of said Section 8 as bearing, N89°16'21"E, from a found aluminum monument in range box at the Northwest corner of said Section 8 to a found aluminum monument in range box at the North Quarter corner of said Section 8 and with all bearings contained herein relative thereto.

BEGINNING at Northwest corner of said Section 8, thence along said North line, N89°16'21"E, 2639.95 feet to the North Quarter corner of said Section 8;

Thence along the East line of the Northwest Quarter of said Section 8, S00°28'38"E, 2641.60 feet to the Southeast corner of the Northwest Quarter of said Section 8;

Thence along the South line of the said Northwest Quarter, S89°10'52"W, 2645.14 feet to the East Quarter corner of Section 7;

Thence along the South line of the Northeast Quarter of said Section 7, S89°46'13"W, 1318.48 feet to the Southwest corner of the East Half of the Northeast Quarter of said Section 7;

Thence along the West line of the said East Half, N00°27'38"W, 2644.51 feet to the Northwest corner of said East Half, thence along the North line of the Northeast Quarter of said Section 7, N89°42'44"E, 1322.87 feet to the Point of Beginning.

The above-described tract contains 240.575 acres, more or less and is subject to all easements, rights-of-ways and restrictions now on record or existing.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Second Reading Councillor's Bill No. 32 re Ordinance Change re Dangerous and Vicious Animals

Prepared By: Janice Kraft, Neighborhood Services Administrator
Eugene Mei, Assistant City Attorney

Recommended City Council Action

Pass Councillor's Bill No. 32 on second reading amending the Westminster Municipal Code as it relates to dangerous and vicious animals.

Summary Statement

- City Council is aware of the public's sensitivity to incidents involving animal bites and vicious animal attacks on humans or other domestic animals.
- City Council concurred with Staff's recommendation to adopt changes in the existing ordinance that are intended to require the animal owner to control and make modifications to the animal's behavior and which will strengthen requirements and penalties for animal owners convicted of violations relating to dangerous and vicious animals.
- Councillor's Bill No. 32 was passed on first reading by City Council on April 24, 2006.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3288**

COUNCILLOR'S BILL NO. **32**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
Kauffman - Major

**A BILL
FOR AN ORDINANCE AMENDING CHAPTER 7 OF THE WESTMINSTER MUNICIPAL
CODE CONCERNING ANIMALS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 7, W.M.C., Titles section, is hereby AMENDED to read as follows:

CHAPTER 7

ANIMALS

- 6-7-1: DEFINITIONS
- 6-7-2: RABIES CONTROL
- 6-7-3: REPORTING ANIMAL BITES
- 6-7-4: LICENSING OF DOGS (REPEALED ORDINANCE 2627)
- 6-7-5: ANIMALS RUNNING AT LARGE
- 6-7-6: REMOVAL OF ANIMAL EXCREMENT; DAMAGE TO PROPERTY
- 6-7-7: DISTURBANCE; PUBLIC NUISANCE
- 6-7-8: VICIOUS ANIMALS AND ~~GUARD DOGS~~ POTENTIALLY DANGEROUS ANIMALS
- 6-7-9: IMPOUNDED ANIMALS
- 6-7-10: KENNELS
- 6-7-11: PET SHOPS
- 6-7-12: RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS
- 6-7-13: CARE AND TREATMENT
- 6-7-14: CAPTURING ANIMALS
- 6-7-15: FEES
- 6-7-16: ~~ENFORCEMENT INTERFERENCE~~
- 6-7-17: PENALTIES
- 6-7-18: GUARD DOGS

Section 2. Section 6-7-1, W.M.C., is hereby AMENDED to read as follows:

6-7-1: DEFINITIONS: When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows: (1463 1890 1973 2066 2576 3062)

ANIMAL: Any organism in the kingdom animalia, other than a human being.

ANIMAL ~~CONTROL~~ MANAGEMENT OFFICER: An employee or agent of the City authorized by the Chief of Police to enforce the provisions of this chapter.

ANIMAL SHELTER: The Animal shelter designated by contract for care and shelter of abandoned or neglected animals or animals impounded by the City, and authorized by this chapter to provide other services for animals on behalf of the City. The designated shelter is, until changed by the City or the shelter, the Table Mountain Animal Center.

CAT: A domestic cat (felis catus) of either sex, including one neutered which can be vaccinated against rabies.

DOG: A domestic dog (*canis domesticus*) of either sex, including one neutered which can be vaccinated against rabies.

DOMESTIC ANIMAL: Domesticated dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and invertebrates, except livestock and exotic endangered and prohibited animals.

ENDANGERED SPECIES: Any species of animal, bird or reptile which is currently listed as endangered by the United States Department of interior or the Colorado Department of Natural Resources.

EXOTIC ANIMALS: Arachnids, crocodylians over one foot in length and other reptiles which are not prohibited animals, which are not commonly kept or harbored as a household pet.

GUARD DOGS: Any dog placed within an ~~enclosure~~ ENCLOSED AREA for the protection of persons or property by attacking or threatening to attack any person found within the ~~enclosure~~ ENCLOSED AREA patrolled by such dog.

HARBORING: The act of keeping and caring for an animal or of providing a premises to which the animal returns for food, shelter or care.

HUMANE TRAP: A box-type trap which does not cause bodily harm to the animal intended to be captured or to any other animal or person coming in contact with such trap.

KENNEL: Premises where more than five (5) nonlivestock animals excluding offspring not exceeding four (4) months of age belonging to one of the adult animals are kept for any purpose; including boarding or training. The term "kennel" does not include pet shop.

LIVESTOCK: Any animal commonly kept or harbored, as a source of food, hides, income through agricultural sale, as a pack animal or draft animal or for use as transportation. Livestock includes, but is not limited to, horses, mules, sheep, goats, cattle, swine, chickens, ducks, geese, pigeons, turkeys, pea fowl, guinea hens, and bees. In the event of uncertainty concerning whether a particular animal is a species of livestock, the presumption shall be that such animal is a species of livestock until the owner of such animal proves by a preponderance of the evidence to the satisfaction of the Municipal Court that the animal is not a species of livestock

OWNER: Any person who has right of property in an animal or harbors an animal or allows an animal to remain about his premises for a period of seventy two (72) hours or longer; Claims responsibility for an animal; or is declared by court decree to be the responsible party for an animal or the authorized agent of any such person. The parent or guardian of any minor claiming ownership of an animal shall be deemed to be the owner of the animal for purposes of this chapter.

PERSON: Any natural person, corporation, partnership, association, or other entity.

PET SHOP: An establishment engaged in the business of breeding, buying or selling animals, other than livestock, in commercial, wholesale or retail trade.

POTBELLIED PIG: A pig registered with a bona fine potbellied pig registry and weighing less than ninety-five (95) pounds.

POTENTIALLY DANGEROUS ANIMAL: ANY ANIMAL THAT MAY REASONABLY BE ASSUMED TO POSE A THREAT TO PUBLIC SAFETY AS DEMONSTRATED BY ANY OF THE FOLLOWING BEHAVIORS:

1. CAUSING AN INJURY TO A PERSON OR DOMESTIC ANIMAL THAT IS LESS SEVERE THAN A SERIOUS INJURY;
2. WITHOUT PROVOCATION, CHASING OR MENACING A PERSON OR DOMESTIC ANIMAL IN AN AGGRESSIVE MANNER; OR
3. ACTS IN A HIGHLY AGGRESSIVELY MANNER WITHIN A FENCED YARD/ENCLOSURE AND APPEARS TO A REASONABLE PERSON ABLE TO JUMP OVER OR ESCAPE.

PROHIBITED ANIMAL: Any animal which is ordinarily found in an unconfined state and is usually not kept as a household pet, including, but not limited to, lions, tigers, cheetahs, panthers, leopards, cougars, mountain lions, ocelots, any wild members of the genus felis, lynx, bobcats, foxes, minks, skunks, raccoons, bears, nonhuman primates, wolves and coyotes; poisonous snakes and lizards; lethal toads and arachnids (spiders, scorpions, and tarantulas) and nonpoisonous snakes over six feet in length. "Prohibited animal" shall not include domestic ferrets (*Mustela putorius*), livestock, rabbits, dogs, cats, and small rodents. Alleged domestication of any prohibited animal shall not affect its status under this definition. In the event of uncertainty whether a particular animal is a prohibited animal, it shall be presumed prohibited until proven not prohibited by a preponderance of the evidence to the satisfaction of the Municipal Court.

PROPER ENCLOSURE: SECURE CONFINEMENT INDOORS OR SECURE CONFINEMENT IN A LOCKED PEN, FENCED YARD, OR STRUCTURE MEASURING AT LEAST 6 FEET IN WIDTH, 12 FEET IN LENGTH, AND 6 FEET IN HEIGHT, CAPPED WITH SECURE SIDES AND CONSTRUCTED AT THE BOTTOM SO AS TO PREVENT ESCAPE BY DIGGING, WHICH PROVIDES PROPER PROTECTION FROM THE ELEMENTS FOR THE ANIMAL, IS SUITABLE TO PREVENT THE ENTRY OF YOUNG CHILDREN, AND IS DESIGNED TO PREVENT THE ANIMAL FROM ESCAPING WHILE ON THE OWNER'S PROPERTY. THE PROPER ENCLOSURE MUST COMPLY WITH ALL ZONING AND BUILDING ORDINANCES/REGULATIONS OF THE CITY, BE KEPT IN A CLEAN AND SANITARY CONDITION, AND BE APPROVED BY THE ANIMAL MANAGEMENT OFFICER, AND SUCH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD.

RABIES VACCINATION: Inoculation of a domestic animal with an anti-rabies vaccine approved by The Colorado Department Of Health and administered by a licensed veterinarian. The vaccination shall be valid for the period of time specified in writing by the veterinarian for the specific vaccine used.

RESPONSIBLE PERSON: A PERSON AT LEAST 18 YEARS OLD WHO IS FAMILIAR WITH THE ANIMAL, AND HAS THE SIZE, STRENGTH, AND EXPERIENCE TO BE ABLE TO KEEP THE ANIMAL UNDER COMPLETE CONTROL AT ALL TIMES.

RUNNING AT LARGE: An animal off the premises of the owner and not under the physical control of the owner.

SERIOUS INJURY: DEATH OR ANY PHYSICAL INJURY THAT RESULTS IN SEVERE BRUISING, MUSCLE TEARS, OR SKIN LACERATIONS REQUIRING PROFESSIONAL MEDICAL TREATMENT OR REQUIRES CORRECTIVE OR COSMETIC SURGERY.

STRAY ANIMAL: Any animal for which there is no identifiable owner.

VICIOUS ANIMAL: Any ~~unprovoked~~ animal that ~~bites or attacks a person or other animal at any place within the City which, regardless of the presence or absence of the owner:~~

1. ~~Bites or attacks a person or other animal or that threatens to attack a person or other animal~~ CAUSES A SERIOUS INJURY TO A PERSON OR DOMESTIC ANIMAL; or

2. ~~Has demonstrated tendencies that would cause a reasonable person to believe that the animal may inflict injury upon or cause the death of any person or other animal~~ HAS A PREVIOUS POTENTIALLY DANGEROUS ANIMAL CONVICTION AND CONTINUES TO ENGAGE IN BEHAVIOR THAT POSES A THREAT TO PUBLIC SAFETY AS DESCRIBED IN THIS CHAPTER'S DEFINITION OF POTENTIALLY DANGEROUS ANIMAL; or

3. Has engaged in or been trained for animal fighting as described and prohibited in Section 18-9-204, C.R.S.; OR

4. HAS A DEMONSTRATED HISTORY OF BEHAVIOR THAT WOULD CAUSE A REASONABLE PERSON TO BELIEVE THAT THE ANIMAL MAY INFLICT SERIOUS INJURY UPON ANY PERSON OR DOMESTIC ANIMAL.

Section 3. Section 6-7-2, W.M.C., is hereby AMENDED to read as follows:

6-7-2: RABIES CONTROL: (1463 1963 2045 2576 2657)

(A) Vaccinations: It shall be unlawful for any owner of a dog or cat four (4) months of age or older to fail to have such animal vaccinated against rabies. All dogs and cats shall be vaccinated at four (4) months of age and revaccinate thereafter at the expiration of the validity of the vaccine used, as shown on the written document prepared by a licensed veterinarian. The vaccination shall be valid for the period shown on the document. Any person moving into the City from a location outside the City shall comply with this Section within thirty (30) days after having moved into the City, by having the animal vaccinated or showing proof of current, valid vaccination. If the dog or cat has inflicted a bite on any person or another animal within the last ten (10) days, the owner of said dog shall report such fact to a veterinarian, and no rabies vaccine shall be administered until after a ten (10) day observation period.

~~(B) Duty of Veterinarian Performing Vaccination: It shall be Unlawful for any veterinarian to fail to perform vaccinations on dogs or cats four (4) months of age and older, which are presented in good health, and have not inflicted a bite within ten (10) days prior to inoculation. When inoculating any animal, it shall be the duty of the veterinarian to fill out a certificate of inoculation and immediately present a copy thereof to the owner of the inoculated animal.~~

~~(C)~~ Proof of Vaccination: It shall be unlawful for any person who owns a vaccinated animal to fail or refuse to exhibit his copy of the certificate of vaccination upon demand to any person charged with the enforcement of this Chapter. A current rabies tag shall be attached to a collar, harness or other devise and shall be worn by the vaccinated dog or cat at all times.

~~(D)~~(C) Harboring Unvaccinated dogs and cats: It shall be unlawful for any person to harbor any dog or cat which has not been vaccinated against rabies, as provided herein, or which cannot be identified as having a current vaccination certificate.

~~(E)~~(D) Non-Transferability: Vaccination certificates and tags are not transferable and cannot be used for any animal other than the animal which received the vaccination and for which the certificate was originally issued.

~~(F)~~(E) Exceptions: No person charged with violating subsections 6-7-2 (A), 6-7-2 ~~(C)~~(B) or 6-7-2 ~~(D)~~(C) shall be convicted if he produces in Court a bona fide and valid certificate of vaccination which was in full force and effect, as required by subsections 6-7-2 (A) and ~~6-7-2 (B)~~ at the time of the alleged violation.

Section 4. Section 6-7-3, W.M.C., is hereby AMENDED to read as follows:

6-7-3: REPORTING ANIMAL BITES: (1463 1890 1973 2066 2576)

(A) Duty to Report: It shall be unlawful for any person having knowledge that an animal has bitten a human to fail to immediately report the incident to the Westminster Police Department, ~~Westminster~~ THE Animal Control MANAGEMENT Officer or to the Colorado Department of Health. Every Physician or other medical practitioner who treats a person for such bites shall, within twelve (12) hours, report such treatment to the Westminster Police Department, ~~Westminster~~ THE Animal Control MANAGEMENT Officer, or the Colorado Department of Health, giving the name and precise location of the bitten person and such other information as the officer or agency may require.

(B) Exclusions: Bites to humans from rodents, rabbits, birds and reptiles are excluded from the reporting requirements of this Section, unless otherwise specified by the Colorado Department of Health.

(C) Suspected Rabies: It shall be unlawful for any veterinarian who clinically diagnoses rabies, or any person who suspects rabies in an animal to fail to immediately report the incident to the Westminster Police Department, ~~Westminster~~ THE Animal Control MANAGEMENT Officer or to the Colorado Department of Health, stating precisely where such animal may be found. If a known or suspected rabid animal bites or attacks another animal, such shall also be reported as required above.

(D) Confinement of Animals: Any dog or cat which has bitten a person may either be observed for a period of ten (10) days from the date of the bite, or analyzed for rabies virus by a laboratory. Ferrets, potbellied pigs, wolf hybrids, wolves and other wildlife WHICH HAVE BITTEN A PERSON must be

observed for a period of not less than thirty (30) days, or tested for rabies if required by Colorado Division of Wildlife or Department of Health regulations. The procedure and place of observation, or analysis, shall be designated by the investigating officer or responsible agency. If the animal is not confined on the owner's premises, confinement shall be by impoundment in the City animal shelter, a pet shop with a Class B license or at any veterinary hospital of the owner's choice within the City of Westminster. Such confinement shall be at the expense of the owner. Stray animals whose owners cannot be located shall be confined as designated by the City. The owner of any animal that has been reported to have inflicted a bite on any person shall on demand produce said animal for impoundment, as prescribed in this Section or for laboratory analysis. Refusal to produce said animal constitutes a violation of this Section, and each day of such refusal shall constitute a separate and continuing violation.

(E) Removal of Animals from Confinement: It shall be unlawful for any person to kill, remove or release any animal which has been confined, impounded, or is in the custody of the City or its agents as authorized under this chapter without the consent of the City or the impounding agency.

Section 5. Section 6-7-5, W.M.C. is hereby AMENDED to read as follows:

6-7-5: ANIMALS RUNNING AT LARGE: (1463 1890 1973 2657 2811)

(A) Animals Running at Large Prohibited:

1. It shall be unlawful for any owner of an animal to fail to restrain the animal by physical means from running at large. In addition to being a violation of this section, an animal running at large is declared to be a public nuisance which may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code. This subparagraph (A) 1, shall not apply to dogs running off-leash at an off-leash dog site as established in 13-1-3 (Z).

2. Neutering/spaying required: It shall be unlawful for any owner of an animal running at large to allow the animal to remain in a non-neutered or unspayed condition. ~~The Court shall assess a fine pursuant to Section 6-7-16 (C) 3, upon the owner of an animal running at large. If the animal has been neutered or spayed and proof has been presented to the Court, the fine shall be reduced as provided in section 6-7-16 (C) 3.~~

3. It shall be the burden of the owner to prove that the animal is neutered or spayed, by the production of a veterinarian's opinion or other documentary evidence.

(B) Confinement During Estrus: It shall be unlawful for any owner to fail to securely confine any unspayed female dog or cat in the state of estrus (heat), in a house, building or secure enclosure, in such a manner that such female dog or cat cannot come in contact with another animal except for planned breeding, and such that the animal does not create a nuisance by attracting other dogs or cats. When outside on the property of the owner for metabolic waste elimination, the animal must be physically restrained on a hand held leash. Owners who do not comply may be ordered to remove the dog or cat in heat to a boarding kennel, veterinary hospital or animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner of the dog or cat. Failure to comply with the removal order shall be a violation of this Section and the dog or cat shall then be impounded as prescribed in this Chapter.

(C) Sick or Injured Animals: Sick or injured animals found on public property may be impounded and given adequate veterinary medical treatment pending notification of the owner. If the animal is significantly injured or sick such that recovery is improbable, the animal may be euthanized, without liability to the City, Animal Shelter, their employees, officers, or agents, or to any veterinarian examining, diagnosing, or treating the animal. An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or police officer may humanely destroy any animal the officer reasonable believes to be so sick or injured that recovery is improbably even if veterinary care could be provided, in order to avoid further pain and suffering by the animal, without liability to the City or the officer. If the injured animal is treated or impounded, the owner of such animal shall be liable for all expenses of the treatment or impoundment.

Section 6. Section 6-7-7, subsection (B), W.M.C., is hereby AMENDED to read as follows:

6-7-7: DISTURBANCE; PUBLIC NUISANCE: (1463 1635 1973 2576)

(B) 1. No person shall be charged with violating this Section unless a written warning was given to the owner or person in custody of the animal by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or police officer within twelve (12) months preceding the first date alleged as a date of violation in the complaint. A warning is given under this subsection if it is personally given to the owner or person in custody of the animal or it is posted upon the property of the owner or person in custody or mailed first class to such person. Such records are prima facie evidence that such warnings were given.

2. No summons shall be issued and no person shall be convicted at trial for violating this Section unless two or more witnesses from different households testify to the loud and persistent or loud and habitual nature of the noise, or unless there is other evidence corroborating the testimony of a single witness. An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or a police officer who can corroborate the elements in this Section may issue summons and testify as the second witness.

Section 7. Section 6-7-8, W.M.C., is hereby AMENDED to read as follows:

6-7-8: VICIOUS ANIMALS AND ~~GUARD DOGS~~ POTENTIALLY DANGEROUS ANIMALS:
(1463 1635 1973 2576 2657 3062)

(A) ~~VICIOUS ANIMALS~~ OWNER RESPONSIBILITY AND LIABILITY: ANY OWNER OF A VICIOUS ANIMAL OR POTENTIALLY DANGEROUS ANIMAL SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE WITH ALL OTHER OWNERS OF SUCH ANIMAL FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION. FOR THE PURPOSE OF PROSECUTION FOR VIOLATION OF THIS SECTION, IT SHALL NOT BE NECESSARY IN ORDER TO OBTAIN A CONVICTION TO PROVE NOTICE OR KNOWLEDGE ON THE PART OF THE OWNER OF THE VICIOUS ANIMAL OR POTENTIALLY DANGEROUS ANIMAL THAT SAID ANIMAL WAS VIOLATING ANY OF THE PROVISIONS OF THIS SECTION.

(B) REQUIREMENTS FOR POSSESSION OF A POTENTIALLY DANGEROUS ANIMAL: IT SHALL BE UNLAWFUL FOR ANY PERSON TO OWN, POSSESS, KEEP, HARBOR, OR HAVE CUSTODY OR CONTROL OF A POTENTIALLY DANGEROUS ANIMAL EXCEPT IN COMPLIANCE WITH ALL OF THE FOLLOWING REQUIREMENTS:

1. THE OWNER SHALL BE 18 YEARS OF AGE OR OLDER.
2. THE OWNER SHALL NOT PERMIT A POTENTIALLY DANGEROUS ANIMAL TO BE OUTSIDE A PROPER ENCLOSURE ON THE OWNER'S PROPERTY UNLESS SUCH ANIMAL IS UNDER THE PHYSICAL CONTROL OF A RESPONSIBLE PERSON AND RESTRAINED BY A LEAD NOT EXCEEDING FOUR (4) FEET IN LENGTH.
3. THE POTENTIALLY DANGEROUS ANIMAL AND OWNER SHALL COMPLETE A SOCIALIZATION AND/OR BEHAVIOR PROGRAM APPROVED BY THE ANIMAL MANAGEMENT OFFICER.
4. THE POTENTIALLY DANGEROUS ANIMAL SHALL BE SPAYED OR NEUTERED BY A LICENSED VETERINARIAN OR A LICENSED SHELTER.
5. THE POTENTIALLY DANGEROUS ANIMAL SHALL BE PERMANENTLY IDENTIFIED THROUGH THE IMPLANTATION OF A MICROCHIP CONTAINING OWNER IDENTIFICATION INFORMATION BY A LICENSED VETERINARIAN OR A LICENSED SHELTER. THE MICROCHIP INFORMATION MUST BE REGISTERED WITH THE APPROPRIATE COMPANY RESPONSIBLE FOR MAINTAINING SUCH INFORMATION FOR THE MICROCHIP.
6. THE OWNER OF A POTENTIALLY DANGEROUS ANIMAL SHALL NOTIFY THE ANIMAL MANAGEMENT OFFICER IN PERSON OR BY TELEPHONE AS SOON AS PRACTICABLE BUT NO LATER THAN ONE (1) HOUR AFTER OWNER'S KNOWLEDGE OF

THE OCCURRENCE OF EITHER OF THE FOLLOWING EVENTS:

- (a) THE ANIMAL HAS ESCAPED OR HAS OTHERWISE CEASED TO BE IN THE CUSTODY OF THE OWNER FOR ANY REASON, UNLESS THE OWNER KNOWS SUCH ANIMAL TO BE PHYSICALLY SECURED AND RESTRAINED OR CONFINED IN THE CUSTODY OF ANOTHER COMPETENT ADULT; OR
- (b) THE ANIMAL HAS ATTACKED A HUMAN BEING OR DOMESTIC ANIMAL.

7. THE OWNER OF A POTENTIALLY DANGEROUS ANIMAL SHALL NOTIFY THE ANIMAL MANAGEMENT OFFICER IN PERSON OR BY TELEPHONE WITHIN TWENTY-FOUR (24) HOURS OF THE OCCURRENCE OF ANY ONE OF THE FOLLOWING EVENTS:

- (a) THE ANIMAL HAS BEEN SOLD, GIVEN, OR OTHERWISE TRANSFERRED TO THE OWNERSHIP OR POSSESSION OF ANOTHER PERSON, INCLUDING THE NAME, ADDRESS, AND TELEPHONE NUMBERS OF THE NEW OWNER AND THE EFFECTIVE DATE OF THE TRANSFER; OR
- (b) THE ANIMAL HAS DIED.

(C) REQUIREMENTS FOR POSSESSION OF A VICIOUS ANIMAL: IN ADDITION TO SATISFYING THE REQUIREMENTS FOR POSSESSION OF A POTENTIALLY DANGEROUS ANIMAL PURSUANT TO PARAGRAPH 6-7-8(B), IT SHALL BE UNLAWFUL FOR ANY PERSON TO OWN, POSSESS, KEEP, HARBOR, OR HAVE CUSTODY OR CONTROL OF A VICIOUS ANIMAL EXCEPT IN COMPLIANCE WITH ALL OF THE FOLLOWING REQUIREMENTS:

1. NOTWITHSTANDING PARAGRAPH 6-7-8(B)(2), THE OWNER SHALL NOT PERMIT A VICIOUS ANIMAL TO BE OUTSIDE A PROPER ENCLOSURE ON THE OWNER'S PROPERTY, UNLESS SUCH ANIMAL IS CAGED OR UNDER THE PHYSICAL CONTROL OF A RESPONSIBLE PERSON, PROPERLY MUZZLED, AND RESTRAINED BY A LEAD NOT EXCEEDING FOUR (4) FEET IN LENGTH. THE MUZZLE SHALL BE MADE IN A MANNER THAT WILL NOT CAUSE INJURY TO THE ANIMAL OR INTERFERE WITH ITS VISION OR RESPIRATION, BUT SHALL PREVENT IT FROM BITING ANY HUMAN BEING OR ANIMAL.

2. THE OWNER OF A VICIOUS ANIMAL SHALL MAINTAIN AT ALL TIMES EITHER A POLICY OF INSURANCE OR A SURETY BOND IN A MINIMUM AMOUNT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) TO COVER CLAIMS FOR ANY PERSONAL INJURIES OR PROPERTY DAMAGE INFLICTED BY THE VICIOUS ANIMAL. THE INSURER OR SURETY, AS THE CASE MAY BE, SHALL BE REQUIRED TO PROVIDE THE ANIMAL MANAGEMENT OFFICER WITH THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF ANY CANCELLATION, TERMINATION OR EXPIRATION OF THE POLICY OF INSURANCE OR SURETY BOND, RESPECTIVELY.

(D) IMPOUNDMENT; NUISANCE DECLARED: ~~1. VICIOUS ANIMALS UNLAWFUL: It shall be unlawful for any person to own or harbor a vicious animal within the City. Any animal which has bitten or attacked a person or other animal or which has demonstrated tendencies~~ EXHIBITED BEHAVIOR that would cause a reasonable person to believe that the animal ~~may inflict injury upon or cause the death of any person or other animal~~ IS A VICIOUS ANIMAL OR A POTENTIALLY DANGEROUS ANIMAL may be summarily impounded when the ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER ~~reasonable~~ REASONABLY believes the animal is a present threat to the health or safety of the community. Such animal is hereby declared to be a public nuisance, which may be abated by the Court in proceeding brought under the procedures established in this Code for the abatement of nuisances. If impoundment of said animal cannot be made with safety to the ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or other persons, the animal may be destroyed by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer without notice to the owner or harborer.

(E) EXCEPTIONS: NO ANIMAL SHALL BE FOUND TO BE A VICIOUS ANIMAL OR POTENTIALLY DANGEROUS ANIMAL UNDER THIS CHAPTER IF:

- 1. THE ANIMAL IS USED BY A PEACE OFFICER WHILE THE OFFICER IS ENGAGED

IN THE PERFORMANCE OF PEACE OFFICER DUTIES.

2. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A DOMESTIC ANIMAL, SAID ANIMAL WAS AT LARGE AND ENTERED UPON THE PROPERTY OF THE OWNER AND THE THREAT, BEHAVIOR, OR ATTACK BEGAN, BUT DID NOT NECESSARILY END, UPON SUCH PROPERTY.

3. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A DOMESTIC ANIMAL, SAID ANIMAL WAS BITING OR OTHERWISE ATTACKING THE DANGEROUS ANIMAL OR ITS OWNER.

4. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A PERSON, THE VICTIM WAS COMMITTING OR ATTEMPTING TO COMMIT A CRIMINAL OFFENSE AGAINST THE ANIMAL'S OWNER, AND THE THREAT, BEHAVIOR, OR ATTACK DID NOT OCCUR ON THE OWNER'S PROPERTY.

5. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A PERSON, THE VICTIM WAS COMMITTING OR ATTEMPTING TO COMMIT A CRIMINAL OFFENSE AGAINST A PERSON ON THE OWNER'S PROPERTY OR THE PROPERTY ITSELF AND THE THREAT, BEHAVIOR, OR ATTACK BEGAN, BUT DID NOT NECESSARILY END, UPON SUCH PROPERTY.

6. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A PERSON, THE VICTIM TORMENTED, PROVOKED, ABUSED, OR INFLICTED INJURY UPON THE ANIMAL IN SUCH AN EXTREME MANNER THAT IT RESULTED IN THE THREAT, BEHAVIOR, OR ATTACK.

7. THE EXCEPTIONS SET FORTH IN THIS PARAGRAPH 6-7-8(E) SHALL NOT APPLY TO ANY ANIMAL THAT HAS ENGAGED IN OR BEEN TRAINED FOR ANIMAL FIGHTING AS DESCRIBED AND PROHIBITED IN SECTION 18-9-204, C.R.S.

~~2. NEUTERING/SPAYING REQUIRED: It shall be unlawful for any owner of a vicious animal to allow the animal to remain in a non-neutered or unspayed condition. The Court shall assess a fine pursuant to Section 6-7-16(C) 3, upon the owner of a vicious animal. If the animal has been neutered or spayed and proof has been presented to the Court, the fine shall be reduced as provided in section 6-7-16(C) 3. It shall be the burden of the owner to prove that the animal is neutered or spayed, by the production of a veterinarian's opinion or other documentary evidence.~~

~~(B) Guard Dogs: It shall be unlawful to place or maintain any dog in any area for the protection of persons or property unless the dog is physically confined to a specific enclosed area, and is under complete and absolute control and the area posted as required. The area or premises in which a guard dog is confined must be conspicuously posted with warning signs bearing letters not less than two inches (2") high, with the following legend, "Warning—These Premises Patrolled by Guard Dogs Trained to Attack", accompanied by a decal that provides pictorial warning of a guard dog.~~

Section 8. Section 6-7-9, W.M.C., is hereby AMENDED to read as follows:

6-7-9: IMPOUNDED ANIMALS: (1463 1890 1973 2576)

(A) Impoundment: IF THERE IS PROBABLE CAUSE TO BELIEVE THAT AN ANIMAL IS owned or harbored in violation of this Chapter or any other ordinance, regulation, state statute or regulation, THE ANIMAL may be taken into custody by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or other designated official and impounded IN THE ANIMAL SHELTER. Stray animals may be similarly impounded.

(B) Disposition of Impounded Animals: As soon as practicable after impoundment, a bona fide effort shall be made to give notice of impoundment to the owner. Any impounded animal shall be released to the owner upon payment of the impoundment fee, boarding fee, veterinary care charges, and any other

costs associated with impoundment. If such animal is not redeemed within five (5) days, it shall be considered abandoned and may be euthanized or placed for adoption at the discretion of the Animal Shelter. The failure of the owner to redeem an animal shall release the City and the Animal Shelter, and their officers, employees, and agents, from any and all liability for the animal's subsequent euthanization or adoption.

(C) Disposition of Impounded Animal Being Held Pending Court Proceedings: If an animal is impounded, and is being held pending court proceedings for any violation of the provisions of this Chapter, the animal may not be released except on the order of the Court. The Court may ORDER SAID ANIMAL TO BE EUTHANIZED IN A HUMANE MANNER IF, AFTER A JUDICIAL HEARING, IT FINDS ~~upon making a finding~~ that: (A) such animal is vicious and that it represents a clear and present danger to the citizens or other animals in the community; OR (B) THE ANIMAL IS EXPERIENCING EXTREME PAIN OR SUFFERING ~~order said animal to be euthanized in a humane manner~~. Any animal which remains unclaimed for five (5) days after its release has been ordered by the court may be euthanized or placed for adoption at the discretion of the Animal Shelter. THE OWNER SHALL BE LIABLE FOR THE COSTS OF THE CARE, KEEPING OR DISPOSAL OF THE ANIMAL.

(D) Sale: Animals impounded and kept for five (5) days in a pet store with a Class B license, which have not been claimed by an owner shall be deemed abandoned and ~~may~~, at the discretion of the pet shop, be retained on the sixth day of impoundment and sold in lieu of reimbursement for all applicable boarding costs and veterinary fees.

(E) FAILURE TO PRODUCE ANIMAL: THE OWNER OF ANY ANIMAL SUBJECT TO IMPOUNDMENT UNDER PARAGRAPH (A) OF THIS SECTION SHALL, ON DEMAND OF THE ANIMAL MANAGEMENT OFFICER, OR OTHER PERSON WHO MAY BE SO AUTHORIZED BY THIS CHAPTER SHALL, PRODUCE THE ANIMAL FOR IMPOUNDMENT AS PRESCRIBED IN THIS SECTION. IT SHALL BE UNLAWFUL FOR THE OWNER OF ANY SUCH ANIMAL TO FAIL OR REFUSE TO PRODUCE THE ANIMAL ON DEMAND.

Section 9. Section 6-7-10, W.M.C., is hereby AMENDED to read as follows:

6-7-10: KENNELS: (1463 1890 1973 2576)

(A) Operation of Kennel Requirements: It shall be unlawful to maintain or operate a kennel without first obtaining a license from the City. A kennel may not be located within a residentially zoned district, ~~including~~ OR the residential area of a PUD zone district unless specifically allowed in the PUD.

(B) Licenses: Issuance; Renewal: Kennel licenses shall expire on the thirty-first (31st) day of December each year. No kennel license shall be issued until an inspection certificate has been issued by the ~~Animal Control Supervisor~~ ANIMAL MANAGEMENT OFFICER or Designee. The license issued shall specify the maximum number of animals permitted. It shall be unlawful for the licensee to keep any number of animals in excess of the maximum specified on the license. All applicants for a kennel license within the City, if required to be licensed by the Colorado Department of Health, must have a valid license issued by said Department to qualify for licensing by the City. The possession of a State license, however, shall not in itself assure that a City license will be granted to anyone. Standards and regulations affecting kennels may be adopted by the City, which are more restrictive than applicable State standards.

Section 10. Section 6-7-11, W.M.C., is hereby AMENDED to read as follows:

6-7-11: PET SHOPS: (1463 1890 1973)

(A) It shall be unlawful to own or operate a pet shop without having obtained a valid Class "A" or Class "B" pet shop license from the City.

2. A Class "B" license shall entitle the licensee to sell or offer for sale any exotic animals. At the request of the City a pet shop with a Class "B" license shall board any impounded exotic animals. Reimbursement for board of such animals shall be at the rates established in this Chapter. Impounded animals shall be clearly identified and kept separate from other pet shop animals. ~~Any release or~~

~~disposition of any impounded animal shall require the approval of an animal control officer.~~ THE LICENSEE SHALL PROVIDE WRITTEN NOTICE TO THE ANIMAL CONTROL OFFICER OF ANY RELEASE OR DISPOSITION OF ANY IMPOUNDED ANIMAL. A Class "B" pet shop may have an outside run or pen to be used solely for harboring reptiles, so long as the outside run or pen is fully enclosed and secure. Prior to issuance of a Class "B" license, the applicant shall provide a bond, issued to the City by a qualified corporate surety licensed to do business in the State of Colorado in a penal sum not less than ten thousand dollars (\$10,000), conditioned upon the faithful boarding of impounded animals pursuant to this Chapter and regulations issued by the Chief of Police.

(B) Licenses; Issuance; Renewal Requirements: Pet shop licenses shall expire on the thirty-first (31st) day of December of each year. No pet shop license shall be issued until an inspection certificate shall have been issued by the ~~Animal Warden~~ ANIMAL MANAGEMENT OFFICER or his designee. All applicants for a pet shop license within the City, if required to be licensed by the Colorado Department of Health, must have a valid license issued by said Department to qualify for licensing by the City. The possession of a State license, however, shall not in itself assure that a City license will be granted to anyone. Standards and regulations affecting pet shops may be adopted by the City which are more restrictive than applicable State standards.

Section 11. Section 6-7-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:

(B) Livestock Limited: It shall be unlawful to keep or maintain livestock in residential, business, commercial, and industrial zone districts, ~~including~~ AND Planned Unit Developments unless specifically allowed in the PUD, ~~and~~ excepting that livestock shall be permitted in parcels zoned 0-1 or in parcels of 10 acres or more in size in all zoning districts prior to commencement of construction on the parcel. In any case the number of animals kept in a PUD shall not exceed the number permitted by the provisions of the Official Development Plan. Livestock, excluding fowl, shall have one-half acre of pasture available for each animal.

Section 12. Section 6-7-14, W.M.C., is hereby AMENDED to read as follows:

6-7-14: CAPTURING ANIMALS: (1973 2576)

(A) An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer is authorized to enter in or upon private property, including motor vehicles and fenced areas but not private buildings, to apprehend an animal running at large, a vicious animal, an animal suspected of being infected with rabies, or an animal which the officer reasonably believes is neglected, sick or injured so that the animal faces a serious risk of death or substantially suffering.

(B) An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer is authorized to use tranquilizer guns, humane traps or other suitable devices to subdue or apprehend a stray animal, pet animal running at large, or wild animal, and is authorized to destroy an animal which the officer reasonably believes to be an immediate danger to the offer or to the public.

(C) An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer is authorized to place a humane trap on private property for the purpose of capturing a stray animal, wild animal, or pet animal running at large, when requested to do so by the owner or possessor of the property.

(D) It shall be unlawful for any person to set or cause to be set any steel-jaw leg hold trap, snare, or any trap other than a humane trap for the purpose of capturing an animal whether wild or domestic, excepting a licensed or recognized business which has been given permission by the Colorado Division of Wildlife, the Colorado Department of Health, or the ~~animal control supervisor~~ ANIMAL MANAGEMENT OFFICER to trap problem wildlife. Any trapping authorized under this chapter must be in compliance with the Colorado Constitution and Statutes.

Section 13. Section 6-7-16, W.M.C., is hereby AMENDED to read as follows:

6-7-16: ENFORCEMENT INTERFERENCE: (1463 1563 1973 2066 2657 3062)

(A) ~~Interference:~~

~~1-~~It shall be unlawful for any person, by using or threatening to use, violence, force, or physical interference, or obstacle, to knowingly obstruct, impair, or hinder an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer in the discharge of his duties as herein prescribed.

~~2-~~(B) It is no defense to a prosecution under this sSection that the ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer was acting in an illegal manner, if he was acting in the regular course of assigned duties and in good faith based upon surrounding facts and circumstances.

~~3-~~(C) It shall be unlawful for any person to refuse to reveal his correct name, address, and date of birth when requested to do so by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer engaged in any of his duties prescribed herein.

(B) ~~Penalty Clause:~~ **6-7-17: PENALTIES:**

~~1-~~(A) The following provisions of this chapter are hereby deemed criminal violations of this code. Any person who violates any of the provisions of this Chapter listed in this ~~subsection~~ PARAGRAPH (A) shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Section 1-8-1 of this Code, subject to any ~~mandatory~~ RECOMMENDED minimum fines which the Municipal Judge shall not have discretion to suspend or reduce:

Section 6-7-3 Animal Bites

SectionS 6-7-8 (AB) AND (C) Vicious Animals AND POTENTIALLY DANGEROUS ANIMALS

SECTION 6-7-9 (E) FAILURE TO PRODUCE ANIMAL

Section 6-7-10 (E) Care of Animals

Section 6-7-11 (D) Care of Animals

Section 6-7-13 Care and Treatment

Section 6-7-16 (A) Interference

~~2-~~(B) THE ANIMAL MANAGEMENT OFFICER, OR THE CITY ATTORNEY OR HIS DESIGNEE, MAY RECOMMEND THAT ONE OR MORE SPECIAL SANCTIONS OR CONDITIONS BE LEVIED AGAINST ANY OWNER CONVICTED A VIOLATION PURSUANT TO SECTION 6-7-8 (B) OR 6-7-8 (C). THIS RECOMMENDATION MAY BE PRESENTED TO THE MUNICIPAL JUDGE AS A PROPOSED CONDITION OF SENTENCING UPON CONVICTION AND MAY BE IN LIEU OF OR IN ADDITION TO THE REQUIREMENTS AND PENALTIES SPECIFIED IN THIS CHAPTER. PROOF THAT A RECOMMENDED SANCTION OR CONDITION HAS BEEN PREVIOUSLY SATISFIED OR WOULD NOT SERVE ITS INTENDED PURPOSE MAY BE PRESENTED TO THE MUNICIPAL JUDGE FOR CONSIDERATION IN SENTENCING.

(C) IF THE ANIMAL MANAGEMENT OFFICER, OR THE CITY ATTORNEY OR HIS DESIGNEE, RECOMMENDS DESTRUCTION OF THE ANIMAL IN A EXPEDITIOUS AND HUMANE MANNER OR PERMANENT REMOVAL OF THE ANIMAL FROM THE CITY, THE MUNICIPAL JUDGE SHALL CONDUCT A JUDICIAL HEARING TO DETERMINE THE DISPOSITION OF THE ANIMAL. AT SUCH JUDICIAL HEARING, THE MUNICIPAL JUDGE MAY TAKE INTO CONSIDERATION THE SEVERITY OF THE INCIDENT, THE PRIOR HISTORY OF THE OWNER AND/OR ANIMAL, AND THE RECOMMENDATION OF THE ANIMAL MANAGEMENT OFFICER, CITY ATTORNEY, OR AN ANIMAL BEHAVIOR PROFESSIONAL. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT IN ANY WAY LIMIT THE POWER OF THE MUNICIPAL JUDGE, ON ITS OWN MOTION, TO IMPOSE SPECIAL SANCTIONS AS IT DEEMS APPROPRIATE.

(D) THE FAILURE OR REFUSAL TO PRODUCE AN ANIMAL PURSUANT TO SECTION 6-7-9(E) SHALL SUBJECT THE OWNER TO IMMEDIATE ARREST SHOULD PROBABLE CAUSE EXIST TO BELIEVE THAT THE OWNER IS HARBORING OR KEEPING THE ANIMAL AND REFUSES TO PRODUCE IT UPON SUCH DEMAND. UPON ARREST, THE OWNER SHALL BE HELD TO APPEAR BEFORE THE MUNICIPAL JUDGE WHO MAY ORDER THE IMMEDIATE

PRODUCTION OF THE ANIMAL. EACH DAY OF SUCH WILLFUL REFUSAL TO PRODUCE THE ANIMAL SHALL CONSTITUTE A SEPARATE VIOLATION AND OFFENSE.

(E) All violations of this chapter not listed in ~~subsection 1~~ PARAGRAPH (A) above are hereby deemed civil infractions of this code, and upon conviction thereof ~~shall~~ MAY be punished by a RECOMMENDED fine only, subject to any mandatory minimum fines which the Municipal Judge shall not have discretion to suspend or reduce.

~~(C)~~(F) RECOMMENDED Minimum Fines: RECOMMENDED ~~M~~minimum fines upon conviction ~~shall~~ MAY be imposed as listed below, and the Municipal Court Judge shall not have discretion to suspend or reduce these fines:

1. First Offense - RECOMMENDED fine of not less than seventy-five dollars (\$75) Second and subsequent offenses - RECOMMENDED fine of not less than one hundred dollars (\$100):
 - 6-7-2 (B) Refusal to Provide Proof of Vaccination
 - 6-7-2 (C) Harboring Unvaccinated Dogs and Cats
 - 6-7-2 (D) Non-Transferability - Vaccination Certificates or Tags
 - 6-7-3 (A) Duty to Report Animal Bite
 - 6-7-3 (C) Failing to Report Suspected Rabies
 - 6-7-3 (D) Refusal to Produce Animal
 - 6-7-3 (E) Removal of Animals from Confinement
 - 6-7-5 (B) Failure to Confine
 - 6-7-6 (A) Removal of Animal Excrement
 - 6-7-6 (B) Damage to Property
 - 6-7-7 (A) Disturbance
 - 6-7-7 (C) Failure to exercise control
 - 6-7-10 (E) Failure to care for animals
 - 6-7-11 (D) Failure to care for animals
 - 6-7-12 (F) Potbellied pig requirements

2. First Offense - RECOMMENDED ~~F~~fine of not less than one hundred dollars (\$100). Second and subsequent offenses – RECOMMENDED fine of not less than one hundred fifty dollars (\$150)
 - 6-7-2 (A) Failure to have Dog or Cat Inoculated
 - ~~6-7-2 (B) Failure to Inoculate Against Rabies~~
 - ~~6-7-8 (B) Guard Dog~~ 6-7-9 (E) FAILURE TO PRODUCE ANIMAL
 - 6-7-10 (A) Unlicensed Kennel
 - 6-7-11 (A) Unlicensed Pet Shop
 - 6-7-12 (A) Animals in Residential Districts Limited
 - 6-7-12 (B) Livestock Limited
 - 6-7-12 (C) Prohibited, endangered and Exotic Animals
 - 6-7-12 (D) Federal or State Prohibited Animals
 - 6-7-13 (A) Cruelty to Animals
 - 6-7-13 (B) Poisoning Animals
 - 6-7-13 (C) Neglect of Animals
 - 6-7-13 (E) Abandoning Animals
 - 6-7-13 (G) Displaying or Sale of Dyed or Immature Animals
 - 6-7-13 (H) Fighting Animals
 - 6-7-16 ~~(A)~~ Interference

3. Reduced fine for neuter or spay:
 - 6-7-5 (A) Animals running at Large: First Offense – A RECOMMENDED fine of not less than two hundred seventy five dollars (\$275), except that if the animal has been neutered or spayed, the fine ~~shall~~ MAY be reduced to seventy-five dollars (\$75). Second and subsequent offenses – RECOMMENDED fine of not less than three hundred dollars (\$300), except that if the animal has been neutered or spayed, the fine ~~shall~~ MAY be reduced to one hundred dollars (\$100).

6-7-8 (AB) ~~Harboring a Vicious Animal~~ REQUIREMENTS FOR POSSESSION OF A POTENTIALLY DANGEROUS ANIMAL: First Offense – A RECOMMENDED fine of not less MORE than three hundred dollars (\$300), except that if the animal has ALREADY been neutered or spayed, the fine ~~shall~~ MAY be reduced to one hundred dollars (\$100).

6-7-8 (C) REQUIREMENTS FOR POSSESSION OF A VICIOUS ANIMAL: ~~Second-FIRST and subsequent~~ offenses – RECOMMENDED fine of not less than three hundred ~~fifty~~ dollars (\$~~350~~ 300), except that if the animal has ALREADY been neutered or spayed, the fine ~~shall~~ MAY be reduced to ~~one~~ TWO hundred ~~fifty~~ dollars (\$~~150~~ 200).

4. Any other section hereof not specifically listed above: First offense - RECOMMENDED fine of not less than fifty dollars (\$50). Second and subsequent offenses - RECOMMENDED fine of not less than seventy-five dollars (\$75).

Section 14. Title VI, Chapter 7, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SECTION 6-7-18 to read as follows:

6-7-18: GUARD DOGS: IT SHALL BE UNLAWFUL TO PLACE OR MAINTAIN ANY DOG IN ANY AREA FOR THE PROTECTION OF PERSONS OR PROPERTY UNLESS THE DOG IS PHYSICALLY CONFINED TO A SPECIFIC ENCLOSED AREA AT A COMMERCIAL ESTABLISHMENT, AND IS UNDER COMPLETE AND ABSOLUTE CONTROL.

Section 15. This ordinance shall take effect June 1, 2006.

Section 16. 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 24th day of April, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Agenda Item 9 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Resolution No. 28 re New Appointment to Boards and Commissions

Prepared by: Linda Yeager, City Clerk

Recommended City Council Action

Adopt Resolution No. 28 to fill a vacancy on the Special Permit and License Board.

Summary Statement

- City Council action is requested to appoint an eligible citizen to fill a vacancy on the Special Permit and License Board that was created by the recent death of a regular member.
- The term of this appointment will expire on December 31, 2006.
- If Council approves the recommended appointments, the Boards and Commissions pool of eligible applicants will be reduced to 12.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council want to fill a vacancy on the Special Permit and License Board so the Board has benefit of a full complement of members?

Alternative

No alternatives identified

Background Information

The recent death of William F. (Bill) Nordberg has created a vacancy on the Special Permit and License Board. Mr. Nordberg served the City with dedication as a member of this Board since January 2000. His current term of office would have expired on December 31, 2006.

If the attached resolution is adopted, an eligible resident wanting to serve on the Special Permit and License Board will be appointed to fill the unexpired portion of Mr. Nordberg's term.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **28**
SERIES OF 2006

INTRODUCED BY COUNCILLORS
KAUFFMAN - PRICE

CITY OF WESTMINSTER BOARD AND COMMISSION NEW APPOINTMENT

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

WHEREAS, The City Council has been notified of the death of William F. (Bill) Nordberg, a member of the Special Permit and License Board; and

WHEREAS, An eligible citizen of Westminster who has previously expressed interest in serving on one or more of the City's Boards and Commissions has been contacted and has voiced specific interest in being appointed to fill the vacancy created by Mr. Nordberg's untimely death.

NOW THEREFORE, the City Council of the City of Westminster does hereby resolve that:

Section 1. Herb Atchison is hereby appointed to regular membership on the Special Permit and License Board, term to expire December 31, 2006, to fill the vacancy created by the death of William F. Nordberg.

PASSED AND ADOPTED this 8th day of May, 2006.

ATTEST:

Mayor

City Clerk



Agenda Item 10 A&B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Resolution No. 29 re Application to Designate Merton and Mary Williams House (7335 Wilson Court) as a Local Historic Landmark

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

1. Hold a public hearing on the application to designate the Merton and Mary Williams House as a local historic landmark.
2. Adopt Resolution No. 29 designating the Merton and Mary Williams as a local historic landmark pursuant to Section 11-13-5 of the Westminster Municipal Code.

Summary

An application has been submitted to designate the Merton and Mary Williams House as a local historic landmark. The Merton and Mary Williams House is located at 7335 Wilson Court. It was built in 1922, is 84 years old, and is an example of a housing style associated with early 20th Century Westminster. An important fact is that this house was moved one block from its original location at 7383 Lowell Boulevard. The Historic Landmark Board recommends that the Williams House be designated as a local historic landmark.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the Merton and Mary Williams House, owned by the Westminster Housing Authority, be designated as a local historic landmark?

Alternatives

1. Do not designate the site as a local historic landmark.
2. Modify the list of features that should be designated as contributing to the historic significance of the house.

Staff does not recommend holding off on the designation of the Williams House as a local historic landmark. The home contributes to the historic context of the neighborhood. Protection of the structure and its architecture will be beneficial to the beauty and value of adjacent public and private properties.

Background Information

The Merton and Mary Williams house was occupied by the Williams family from 1929 until it was conveyed to the Westminster Housing Authority in 2003. The Williams family has been active in the history and development of Westminster for over one hundred continuous years.

A significant fact about this nomination is that the house has been moved from its original location at 7383 Lowell Boulevard. The appendix of photos shows the house at its original location on Lowell, photos of the neighborhood context on Wilson Court, the house in its current location on Wilson Court, and an aerial photograph showing the distance of the move and relationship of the new location with the former location.

This house was moved because the property on Lowell Boulevard was purchased by Community Builders in order to build new townhomes. Other adjacent houses on the west side of Lowell were demolished and the Williams House would also have been demolished except that the family refused to sell the property unless the house was moved and preserved. (Interview with Sharon Arnold, daughter of Merton and Mary Williams.) Because the house has been owned by the Williams family since 1929, the Williams were significant persons in the history of Westminster, and because the house would be moving only one block due west to Wilson Court and would be in a neighborhood of houses of similar age and design, City staff agreed with Mrs. Arnold and Community Builders to undertake the task of moving the house and submitting a local historic landmark application in order to protect it from future demolition.

While the house was moved one block west of its original location, it maintains architectural integrity and has been placed in a context similar to its original location. The new location provides a similar orientation, setback and neighborhood of homes of similar design and vintage. Therefore, the Historic Landmark Board recommends that it be designated a local historic landmark.

Compliance with Westminster Municipal Code

The Westminster Municipal Code requires an application to include the following content:

1. Description of the characteristics of the proposed historic landmark that justify its designation pursuant to this chapter;
2. A description of the particular features that should be preserved; and
3. A legal description of the location and boundaries of the historic property.

In compliance with Westminster Municipal Code, the application provides the name, location, legal description, and owner of the proposed landmark. It further provides a statement of significance with information to support the following two criteria for designation:

- 1 Represents a style particularly associated with the Westminster area and is at least 50 years old.
- 2 Represents an association with notable persons who were actively involved in the early development of Westminster.

Notice of the May 8, 2006, public hearing was published in the Westminster Window on May 4, 2006, which is at least four days prior to the public hearing. The property was posted by City Staff prior to May 4, 2006. The application was referred to the Westminster Historical Society on April 5, 2006, as required by the Westminster Municipal Code.

Section 11-13-7(A)(3) requires the Director of Community Development to review an application in the following respects: (a) its relationship to the comprehensive plan; (b) the effect of the designation on the surrounding neighborhood; (c) the criteria set forth in this chapter; and (d) such other planning considerations as may be relevant to the proposed designation.

The site is zoned residential. The landmark designation should be beneficial to the neighborhood because designation will help the neighborhood understand the history of the area and will protect the defining architectural characteristics of the house, thereby supporting the historic and residential character of the neighborhood. The application appears to meet the criteria set forth in the ordinance.

City Council Findings

The City Council needs to consider the following issues:

1. Does this house meet the ordinance requirements for historical significance justifying its designation as a local historic landmark?
2. What features of the house should be preserved in order to maintain the historical integrity of the house?
3. The Council's decision must also include the name, location and legal description of the designated landmark.

Recommendations by the Historic Landmark Board

The Historic Landmark Board recommends to the Westminster City Council that the Merton and Mary Williams House be designated as a local historic landmark pursuant to Section 11-13-5 of the Westminster Municipal Code. They recommend that the particular features that should be preserved include:

Front-gabled roof line and pitch, the large front-gable porch, the overhanging eaves of the roof and porch, the relation between the house roof and porch roof pitches, the side and front configuration of the front door and windows, and the wood siding.

The resolution of the Historic Landmark Board and the landmark application are attached.

Respectfully submitted,

J. Brent McFall, City Manager

Attachments:

- Landmark Application
- Historic Landmark Board resolution
- Proposed City Council resolution

**City of Westminster
Historic Landmark Application**

Name of proposed landmark: Merton and Mary Williams House

Address or location: 7335 Wilson Court

Legal description: Lots 10 and 11, Block 2, Wilson's Subdivision
Adams County, Colorado

UTM coordinates: UTM Zone 13
Datum NAD 27
Linear Unit: Meter
496984.46; 4408665.98

Nominated by: City of Westminster

Property owner: Westminster Housing Authority

Reasons for designation pursuant to W.M.C. section 11-13-5:

The Merton and Mary Williams House was built in 1922 and is currently 84 years old. It qualifies for designation as a Westminster historic landmark based on the following criteria in W.M.C. section 11-13-5:

1. The buildings represent a style particularly associated with the Westminster area and are at least 50 years old,
2. Represents an association with notable persons in the history of Westminster.

Description of features that should be preserved:

This one-story Eclectic style house was built by Howard Kratz in 1922 and purchased by Merton and Mary Williams in 1929. The style of this residence is primarily Craftsman, which can be seen in the low-pitched front gabled roof, a front porch with eaves that overhang and a porch supported by square columns extended to ground level. The features that should be preserved include the front-gabled roof line and pitch, the large front-gable porch, the overhanging eaves of the roof and porch, the relation between the house roof and porch roof pitches, the side and front configuration of the front door and windows, and the wood siding.

Summary

The Merton and Mary Williams house was occupied by the Williams family from 1929 until it was conveyed to the Westminster Housing Authority in 2003. The Williams family has been active in the history and development of Westminster for over one hundred continuous years. While the house was moved one block west of its original location, it maintains architectural integrity and has been placed in a context similar to its original location. The new location provides a similar orientation, setback and neighborhood of homes of similar design and vintage.

Historical Significance

Merton Leroy Williams arrived in Harris (now Westminster), Colorado, 1902, at the age of two years. The family traveled by covered wagon for three months from Oneida, Kansas. Merton had a twin, Berton, and three other siblings, with a sixth child born soon after the family's arrival in Harris. They settled on a farm at 80th and Sheridan Boulevard. Merton's parents were Eli Milton Williams, who died in Westminster in 1934 and Naomi Malakina Nelson Williams, the daughter of Swedish immigrants who lived in Westminster until her death in 1956.

Mary Spickard Williams was born and raised in Pagosa Springs, Colorado, and moved to Denver to attend Barnes Business College. She met Merton Williams at a dance at the Westminster Grange Hall. (Merton's mother, Naomi, was a charter member of the Grange when it was organized in 1910.) They were married on June 5, 1929, and moved into the house at 7383 Lowell Boulevard. They had two daughters, Charlotte and Sharon. Mary lived there for the rest of her life and the property passed to her daughter, Sharon Williams Arnold, who owned it until the land was sold for townhome development.

Merton and Mary were known for their life-long community service through the Westminster Grange, the Westminster Presbyterian Church and the local schools. Merton participated in countless parades over the years, driving a small black surrey pulled by his Shetland pony, Thunder. Mary provided themes and costumes for the events. Together, they were Mr. and Mrs. Santa Claus. Mary kept Santa's suits, wigs and beard in order, while Merton appeared around the community in the role of Santa Claus, including arrivals by helicopter at the Westminster Plaza Shopping Center.

Merton did farm work, operated a feed store with his twin brother Berton, dug the basement of Union High School using a team of horses, delivered the Denver Post on horseback, drove a horse and wagon for Carlson-Frink Dairy and was in trucking. After retirement, he was known for his cart and pony rides, prize-winning vegetables and imaginative garden ornaments at 7383 Lowell. He died March 31, 1976 after suffering a heart attack while working at the Grange Hall. Merton was honored in proclamations and dedications by the City of Westminster, the Chamber of Commerce and School District No. 50.

Mary was known as Grandma to the community, and worked extensively in the schools and church. She had a large home library and was an avid Broncos fan. She also was a founder of the Housedress Club in 1930, a women's social club that still meets today. She lived at 7383 Lowell from her marriage in 1929 until her death at the age of 92, twenty-two years to the day after Merton's passing.

Special Circumstances

A significant fact about this nomination is that the house has been moved from its original location at 7383 Lowell Boulevard. The appendix of photos shows the house at its original location on Lowell, photos of the neighborhood context on Wilson Court, the house in its current location on Wilson Court, and an aerial photograph showing the distance of the move and relationship of the new location with the former location.

This house was moved because the property on Lowell Boulevard was purchased by Community Builders in order to build new townhomes. Other adjacent houses on the west side of Lowell were demolished and the Williams House would also have been demolished except that the family refused to sell the property unless the house was moved and preserved. (Interview with Sharon Arnold, daughter of Merton and Mary Williams.) Because the house has been owned by the Williams family since 1929, the Williamses were significant persons in the history of Westminster, and because the house would be moving only one block due west to Wilson Court and would be in a neighborhood of houses of similar age and design, City staff agreed with Mrs. Arnold and Community Builders to undertake the task of moving the house and submitting a local historic landmark application in order to protect it from future demolition.

The lot at 7335 Wilson Court was purchased and a full basement foundation was designed and constructed. Because of the desire to provide living space in the basement and because of shallow groundwater, it was necessary to design a foundation that placed the house slightly higher (.5-1.0') from ground level than its original foundation on Lowell. Other than this change in elevation, no exterior changes were made. The house faced east at 7383 Lowell and still faces east at 7335 Wilson Court. The front yard setback is similar. Single-family homes of similar design and age surrounded the Williams House in both locations.

The interior rehabilitation and lot improvements are still underway. Because City staff wants to put the house on the market in May, it was decided that it was necessary to start the landmark nomination process in April, in hopes of finishing it in May (if recommended by the Historic Landmark Board).

Appendix



House in original location at 7383 Lowell Boulevard



Context on Wilson Court of lot before house was relocated





House at new location. 7335 Wilson Court (white house with covered windows)





Wilson Court

Lowell Boulevard

Former house site

Relocation Site

Merton and Mary Williams Residence

West 73rd Avenue

RESOLUTION

RESOLUTION NO. 2006-001

INTRODUCED BY BOARD MEMBER

SERIES OF 2006

April Luber

WHEREAS, the Merton and Mary Williams House is historically significant because:

1. The buildings represent a style particularly associated with the Westminster area and are at least 50 years old,
2. Represents an association with notable persons in the history of Westminster; and

WHEREAS, the City Staff has caused the historical significance of the property to be documented and has applied to this Board for a recommendation as to whether the property should be designated as a historic landmark,

NOW, THEREFORE, the Historic Landmark Board of the City of Westminster resolves that:

1. The Board recommends to the Westminster City Council that the Merton and Mary Williams House be designated as a local historic landmark pursuant to Section 11-13-5 of the Westminster Municipal Code.
2. Description of features that should be preserved: This one-story Eclectic style house was built by Howard Kratz in 1922 and purchased by Merton and Mary Williams in 1929. The style of this residence is primarily Craftsman, which can be seen in the low-pitched front gabled roof, a front porch with eaves that overhang and a porch supported by square columns extended to ground level. The features that should be preserved include the front-gabled roof line and pitch, the large front-gabled porch, the overhanging eaves of the roof and porch, the relation between the house roof and porch roof pitches, the side and front configuration of the front door and windows, and the wood siding.

3. The legal description and location of the property are:

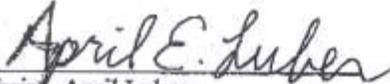
Address and general location: 7335 Wilson Court, north of West 73rd Avenue, one block west of Lowell Boulevard.

Legal description: Lots 10 and 11, Block 2, Wilson's Subdivision, Adams County, Colorado

UTM coordinates:

UTM Zone13
Datum NAD 27
Linear Unit: Meter
496984.46; 4408665.98

PASSED AND ADOPTED this 12th day of April, 2006.


Chair - April Luber

ATTEST:


Laurie Brandt - CD Secretary

RESOLUTION

RESOLUTION NO. **29**

INTRODUCED BY COUNCILLORS

SERIES OF 2006

LINDSEY - DITTMAN

WHEREAS, the Merton and Mary Williams House is historically significant because:

1. The house represents a style particularly associated with the Westminster area and is at least 50 years old,
2. It represents an association with notable persons in the history of Westminster; and

WHEREAS, the City Staff has caused the historical significance of the property to be documented and applied to the Historic Landmark Board for a recommendation as to whether the property should be designated as a local historic landmark; and

WHEREAS, the Historic Landmark Board adopted its Resolution 2006-001 in which the Board finds that the Merton and Mary Williams House is historically significant and designates the features that the Board recommends should be preserved,

NOW, THEREFORE, the City Council of the City of Westminster resolves that:

1. The Board recommends to the Westminster City Council that the Merton and Mary Williams House be designated as a local historic landmark pursuant to Section 11-13-5 of the Westminster Municipal Code.

2. Description of features that should be preserved:

Front-gabled roof line and pitch, the large front-gabled porch, the overhanging eaves of the roof and porch, the relation between the house roof and porch roof pitches, the side and front configuration of the front door and windows, and the wood siding.

3. The legal description and location of the property are:

Address and general location: 7335 Wilson Court, north of West 73rd Avenue, one block west of Lowell Boulevard.

Legal description: Lots 10 and 11, Block 2, Wilson's Subdivision, Adams County, Colorado

UTM coordinates:

UTM Zone 13, Datum NAD 27, Linear Unit: Meter, 496984.46; 4408665.98

PASSED AND ADOPTED this 8th day of May, 2006.

ATTEST:

Nancy McNally, Mayor

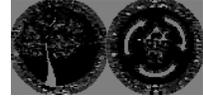
City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Resolution No. 30 re Revised Design Guidelines for Traditional Mixed Use Neighborhood Development (TMUND)

Prepared By: John Quinn, Planner II

Recommended City Council Action

Adopt Resolution No. 30 approving the Revised Design Guidelines for Traditional Mixed Use Neighborhood Development (TMUND) guidelines.

Summary Statement

- The City of Westminster adopted the current Traditional Mixed Use Neighborhood Development (TMUND) guidelines on September 27, 1999. The revised design guidelines for TMUNDS as proposed reflect changes based on Staff's experience with the Bradburn development, field visits to other similar projects in the Denver Metro area, and comments from the Architectural/Urban Design firms that participated in the review. The guidelines were reformatted and revised to make the document easier to understand. The Background section of this memorandum includes a summary of the proposed revisions to the Design Guidelines for TMUNDS. A copy of the proposed guidelines is attached.
- A draft of the revised guidelines was sent to the Denver Metro Homebuilders Association for review. No comments were received back.
- The proposed guidelines provide development standards for new TMUND developments.
- The Planning Staff reviewed the proposed revisions to the Design Guidelines for TMUND projects with the Planning Commission at their March 14, 2006 meeting. The Planning Commission passed the motion to recommend City Council approval of the revised Design Guidelines for Traditional Mixed Use Neighborhood Development (TMUND) with the additional recommendation that wood fencing be prohibited within TMUND developments.
- City Staff reviewed the proposed revisions with the City Council at their April 3, 2006 Study Session, and Council directed Staff to bring the guidelines back for official action.

Expenditure Required: \$0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Staff reviewed the proposed revisions to the Design Guidelines for TMUND projects with the Planning Commission at their March 14, 2006 meeting. The Planning Commission passed unanimously (6-0) the motion to recommend City Council approval of the revised Design Guidelines for Traditional Mixed Use Neighborhood Development (TMUND) with the additional recommendation that wood fencing be prohibited within TMUND developments.

Policy Issue

Should the City Council approve the revised Design Guidelines for Traditional Mixed Use Neighborhood Developments?

Alternatives

1. Approve the revised Design Guidelines for Traditional Mixed Use Neighborhood Development with additional revisions as noted;
2. Delay approval of the revised Design Guidelines for Traditional Mixed Use Neighborhood Development to provide an opportunity for further revisions; or
3. Do not revise the Design Guidelines for Traditional Mixed Use Neighborhood Development.

Background Information

City Council adopted the TMUND guidelines by Resolution on September 27, 1999.

The first development project to use the TMUND Guidelines was Bradburn developed by Continuum Partners LLC on the south side of 120th Avenue west of Lowell Boulevard. This project has served as a working case study for the City in how new urbanism projects function and the problems that can occur once a project is in place. The proposed changes to the TMUND guidelines are based on lessons learned during the development of Bradburn and field visits to other similar projects in the Denver Metro area.

Summary of Proposed Revisions

The changes listed below summarize the major points of revision to the existing guidelines. (See specified pages in the attached TMUND guidelines.)

Page 11 and 12

The developer is required to provide 3.5 to 5% of the developable land for private parks for the project. The guidelines now specify the types of recreational facilities that have to be provided in the private parks based on the number of dwelling units within the project. These criteria were not in the previous guidelines. Bradburn incorporates about 4.33 percent private parks and private open space. Also, the City's single-family design guidelines have a similar private park guideline.

Page 15

Trash enclosures are required to be constructed of the same materials as the main buildings and must have metal gates. Underground utilities (electrical, TV, telephone, transformers and similar service equipment) must be located in the alleys, and are prohibited in the front yards. These criteria were not in the previous guidelines.

Page 17

Building materials:

- Builders should strive to achieve a “Built Green” designation for the project.
- Masonry should be the predominant building material for commercial, townhomes, and multi-family buildings.
- Single-family homes shall have the equivalent area of 30% brick on the front of all of the individual buildings on a streetscape. Using this formula some homes on the street will have some brick on the front, some will have no brick on the front, and some homes will have brick to the top of the first floor of the home.
- These three criteria were not in the previous guidelines.

Page 20

A parking plan is required to determine the parking needs for each land use category and how the requirement will be met in the overall parking plan. Single-family detached homes require two spaces in the garage and two spaces on-site or off-site. Accessory dwelling units require an additional on-site parking space. These criteria were not in the previous guidelines.

The parking requirements in the “existing” guidelines for single-family homes stated each unit was required to have two cars parked in the garage and one on-street parking space. From observation at Bradburn and other similar projects in the metro area it is apparent that more parking was needed. The new requirement of providing two spaces in the garage and two on-site or off-site is similar to the requirement in the Design Guidelines for Single-Family Residences. The parking requirement for accessory dwelling units remains unchanged.

Page 21

Street Right of Way cross-sections are shown for four specific applications.

- The 44' cross-section is a one-way street with parking on one-side.
- The 50' cross-section is a one-way street with parking on both sides of the street, or a two-way street with parking on one-side of the street.
- The 54' cross-section permits parking on both sides of the street and two-way traffic.
- The 70' cross-section is a minor collector permitting parking on both sides of the street and two-way traffic.
- Street cross-sections were in the previous guidelines, however they provided a range of street cross-sections, sidewalk and tree lawn widths. These were continually debated by developers and City Staff and were difficult to understand.

Page 23 and 24

The sketches provide clear and concise diagrams of the design of an alley and the separation between the garage doors. Alley designs in the original Design Guidelines did not match the needs that were based on actual field experience.

Page 25

This section sets out specific lot sizes, building separation, building setbacks and porch criteria. Most of this material was in the previous Guidelines. The guidelines have been revised to show this information in one place rather than throughout the document.

Minimum lot sizes were increased based on comments from City Staff and from New Town Builders at Bradburn concerning the difficulty of meeting open yard requirements, building setbacks and building separations between garages and living units. Porch depths were increased to eight-feet based on previous experience in the 117th Avenue development that had six-foot porch depths and a usable depth of less than five feet. This narrow depth results in a porch of limited usability. All of the porches in Bradburn are eight feet in depth. Smaller lots will be accepted if all other yard, porch, and setback requirements are met.

Page 26

This section provides specific requirements for garage sizes for single-family developments in a TMUND project. These requirements assure that a garage will be a usable size for most types of vehicles and allow for some storage. The requirements are the same as those in the residential design guidelines. These were not part of the requirements in the previous Design Guidelines.

Page 27

This section was rewritten and specifically focuses on setbacks, building separations, roof and window encroachments into side yards, and private yard requirements for single-family dwelling units. Some of the material was in the existing Guidelines; however, most of the material is new.

Page 29

The Townhouse and Row House Design Criteria section specifies front setbacks, lot depth, and minimum open areas between the garage and living unit and rear deck requirements. This section is new material that was added to the Design Guidelines based on experience at Bradburn.

Page 30

Parking/Garages, and Build-to-Lines, Setbacks and Building Separations are new sections added to the Design Guidelines. These sections were added based upon experiences with the Bradburn development.

Page 31

Minimum requirements for Private Yards and Fences were added to the TMUND Guidelines based on the City's experience with Bradburn where drainage issues and the placement of air conditioning units severely limited the usability of the yard area available to the residents.

Page 33

The Parking/Garages criteria were added to the TMUND Guidelines to provide the same requirements as those found in the Design Guidelines for Multi-Family residential units.

Page 38

Signage, Build-to-Lines, and Setbacks were added to this section of the TMUND Guidelines in Commercial areas to clarify questions and issues that were raised as part of the development of the Commercial area in Bradburn. These requirements were not in the original Guidelines.

Page 41

These comments were added to include a few of the requirements found in the City's Commercial Design Guidelines.

Public Comment

The proposed TMUND Guidelines were sent to several Architectural/Urban Design firms and builders with experience in the "New Urbanist" field for review and comment. Redline comments from the design firms were made throughout the document and returned to Staff for consideration and possible inclusion in the final draft. Overall the comments received were favorable. However, there were some concerns regarding specific requirements. All of the comments were given consideration by Staff and some of the changes were incorporated in the preparation of the final revision of the TMUND Guidelines. Several copies of the draft guidelines were sent to the Denver Metro Home Builders Association; however, no comments were received.

Respectfully submitted,

J. Brent McFall, City Manager
Attachments

RESOLUTION

RESOLUTION NO. **30**
SERIES OF 2006

INTRODUCED BY COUNCILLORS
MAJOR - PRICE

**A RESOLUTION TO ADOPT THE REVISED DESIGN GUIDELINES
FOR TRADITIONAL MIXED USE NEIGHBORHOOD DEVELOPMENTS**

WHEREAS, the City Council adopted Design Guidelines for Traditional Mixed Use Neighborhood Developments in 1999, and has evaluated the application of said guidelines to several mixed use projects in the City; and

WHEREAS, Chapter 3 of Title XI of the Westminster Municipal Code, the City of Westminster has adopted a Growth Management Program for the period of December 11, 2000, and continuing through December 31, 2010; and

WHEREAS, W.M.C. Section 11-3-4(B) provides that Service Commitments for new residential developments within traditional mixed use neighborhood projects shall be awarded on a competitive basis and compliance with adopted Design Guidelines is required by W.M.C. Section 11-3-5(E) for Category B projects awarded service commitments on a competitive basis; and

WHEREAS, W.M.C. §11-4-16(C)(1) requires any use of land to comply with the Comprehensive Land Use Plan; and

WHEREAS, the City Council has determined that the Design Guidelines for Traditional Mixed Use Neighborhood Developments should be revised as provided in Exhibit A to insure high quality standards for development in the traditional mixed use neighborhood land use category of the Comprehensive Land Use Plan and other similar developments;

NOW, THEREFORE, the City Council of the City of Westminster resolves that:

1. The revised Design Guidelines for Traditional Mixed Use Neighborhood Developments, attached as Exhibit A hereto and incorporated herein by reference, are hereby adopted and shall apply to all future Preliminary Development Plans (PDP's) and amendments and future Official Development Plans (ODP's) and amendments for Traditional Mixed Use Neighborhood Developments.
2. The revised Design Guidelines for Traditional Mixed Use Neighborhood Developments shall govern the award of Service Commitments within Category B-4 projects as defined in W.M.C. Sections 11-3-4 and 11-3-5.
3. The revisions to the existing guidelines are in the best interests of the citizens in light of the City's desire for managed growth and the limited land available for future growth, and are necessary for the health, safety and welfare of the community.

PASSED AND ADOPTED THIS 8th day of May, 2006.

ATTEST:

Mayor

City Clerk

Design Guidelines

For

Traditional Mixed Use Neighborhood Developments



WESTMINSTER

Contact:
Department of Community Development
4800 West 92nd Avenue
Westminster, Colorado 80031
Phone: (303) 430-2400
Fax: (303) 426-5857

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A. TRADITIONAL MIXED USE NEIGHBORHOOD DEVELOPMENT PRINCIPLES

Traditional Mixed Use Neighborhoods

Traditional mixed use neighborhoods represent a pattern of development which can be found in cities and towns throughout the Front Range. Although each community varies in character defined by its individual environment there are a number of fundamental features and principles which they share. These include:



Stapleton
Compact/Walkable
Pedestrian Oriented District



Stapleton
A Mixed Use "Village" Center
With Retail/Office and Housing

Compact Walkable Development: Communities and towns historically have developed in a more compact manner with businesses, homes parks and civic uses in close proximity, easily walkable between destinations.

A Mixed Use "Village" Center: With Retail/Office and a variety of housing providing ample opportunity for residents to live in a variety of housing types and to walk to shops and services, parks and open space.

Pedestrian Oriented District: Where pedestrians, bicycles and automobiles have equal opportunity to traverse the community with convenience and safety.

Interconnected Street/Block Patterns: Which better integrates each area within a community and adjacent communities and projects, making driving, walking and biking more direct and convenient. This also disperses auto traffic onto a variety of streets and relies less on collector streets and arterial boulevards to get to shopping and businesses.

Narrower Streets: Designed for slow moving traffic, balancing the needs of auto circulation with the convenience and enjoyment of a walking community.

Variety of Parks: Range from the regional open space systems and community-wide large scale active recreation facilities to smaller neighborhood parks and tot lots. These become the identity and focus for individual neighborhoods as well as the larger Westminster community.

The Historic Westminster Community: is an example of these community patterns and principles. This pattern began in South Westminster, but it has waned over time.

The traditional mixed use neighborhoods provide an opportunity to bring back these fundamental building blocks. These guidelines help create a memorable community and give it a sense of place within Westminster and the Front Range. These guidelines encourage and illustrate the key components which are desired for traditional mixed use neighborhood development within the City of Westminster.



Narrower Streets
Designed for Slower Moving Traffic

B. PURPOSE AND APPLICATION OF THE DESIGN GUIDELINES

Purpose

The purpose of the design guidelines is not to modify existing zoning regulations, but to develop new review criteria for special areas or projects designated as Traditional Mixed Use Neighborhood Developments. A TMUND designation provides the opportunity for a high quality mixed use neighborhood developed with a set of design regulations which are different from other City's standards. The intent is to provide a clear set of design policies to guide users such as developers, property owners, architects and designers.

Application of the Design Guidelines

These guidelines will be used by the Staff, Planning Commission and City Council to evaluate project proposals. The goal is to facilitate the review process by clearly stating the City's desires for quality design of traditional mixed use and residential projects.

To assist the City's review, a project description is required for each submittal which discusses how the development proposal meets the various design guidelines for each topic, or how and why it varies from the guidelines, and any additional benefit the proposed project provides to the community. The intent of these Guidelines to be specific enough to be able to guide development, without precluding creative design solutions.

Applicants should review the Design Guidelines, background and purpose to understand the rationale and spirit of the guidelines. Applicants should contact the City of Westminster Planning Division early in the project planning and design process to determine application and processing requirements and discuss key issues particular to their specific site. Photographs, site plans and drawings should be submitted as appropriate, to show the relationship of the proposed project to the adjacent properties and surrounding neighborhoods.



Belle Creek

Single-family homes oriented to the pedestrian and neighborhood street.

Development Organization

The Department of Community Development is the City of Westminster's site plan and architectural approval agency and the Planning Division coordinates development review.

Discretionary Decision Making

Every project is unique and requires a review on a case-by-case basis. This process depends upon the exercise of discretionary judgment. While some Guidelines include quantitative standards, most require qualitative interpretation. The approving agency has the latitude to interpret the Guidelines, provided proposed projects meet their intent.

Comments and Suggestions

To ensure that the Guidelines help to achieve their objectives, they will be reviewed on a periodic basis. Comments and suggestions to improve them are welcome and should be made in writing to:

Department of Community Development
4800 West 92nd Avenue
Westminster, Colorado 80031
Phone: 303-430-2400
Fax: 303-426-5857



Prospect
Tree-lined streets with entry porches and homes connected to the neighborhood.

SECTION 1: COMMUNITY STRUCTURE FOR NEW NEIGHBORHOOD DEVELOPMENTS

1.1: Relationship to Adjacent Uses

Policy

Promote the connection of new developments to adjacent uses and neighborhoods, via biking, walking and driving to better integrate new projects into the existing community. Connections make it easier for residents to circulate throughout the neighborhoods.

The edges of a neighborhood should be formed by features shared with adjacent neighborhoods such as major streets, changes in street pattern, greenways or natural features such as streams and major drainage or riparian corridors.

DESIGN GUIDELINES

1.1.1: Connect to Existing Neighborhoods

New streets, bikeways, paths and trails should connect to existing adjacent neighborhoods. Traffic calming measures should be used to slow traffic, support pedestrian traffic and support a desirable living environment.

1.1.2: Transition of Land Uses and Intensity

Non-residential uses, larger buildings and attached multi-family housing should be encouraged to be located near commercial centers with a transition to smaller buildings closer to low density neighborhoods.

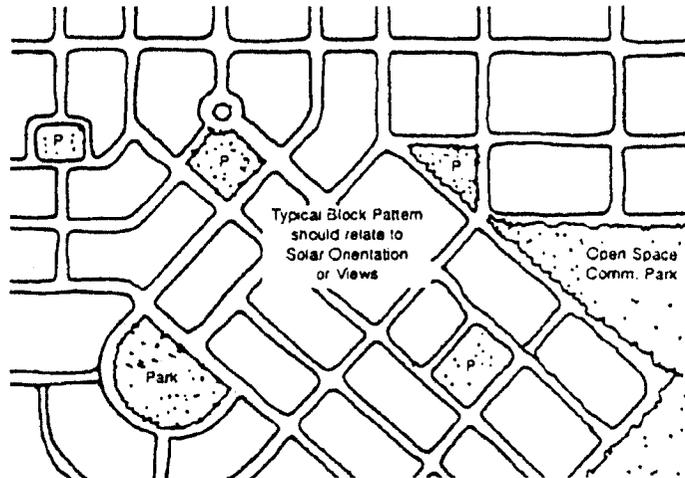
1.1.3: Pedestrian and Bike Connections

Pedestrian and bike connections should be made to residential neighborhoods, retail centers and open space systems. Pedestrian and bike and visual connections should also be made wherever auto connections are infeasible due to physical constraints or other considerations.

1.1.4: External Orientation

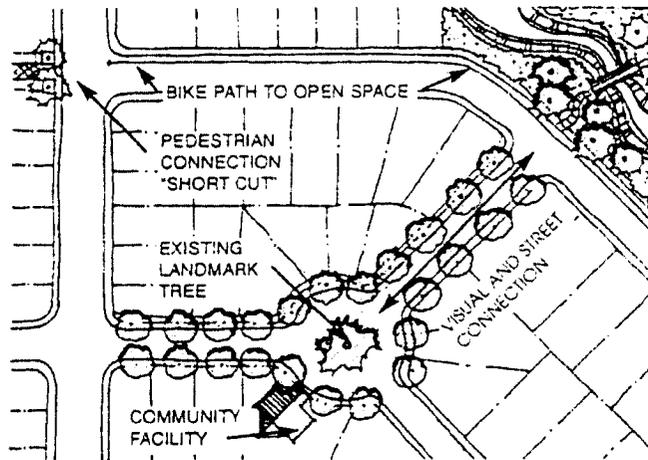
Where new TMUNDs abut major streets, land uses, building types and site planning should be used to connect with the street, eliminating the need for soundwalls and providing a high quality view of the neighborhood. New neighborhoods, which are adjacent to open space systems, should have views into open space and provide public access while protecting the natural environment. Include walking paths and bike paths where appropriate.

View corridors, open space and other natural features should be maintained wherever possible.



Pattern of Streets and Blocks

The street network should consist of a series of generally rectilinear blocks in a grid of interconnected pattern which is conducive to walking and biking. Block lengths should provide frequent connections and be between 300 and 700 feet maximum in length.



Vistas and Connections to Amenities

Internal street and path layouts should connect to open space systems, landmarks or amenity features such as parks or community buildings, tot lots or stands of major tree(s).

1.2: Structure of the Neighborhood

Policy

Promote neighborhood circulation and convenient connections with streets, pedestrian and bike paths to retail centers, parks, tot lots and other amenities. Make these amenities more visible to all residents and visitors by providing landmarks and views “down the street.” This provides orientation for residents, visitors, and children, and provides neighborhoods with a sense of identity.

DESIGN GUIDELINES

1.2.1: Pattern of Streets and Blocks

Multiple connecting streets within a residential neighborhood should knit a neighborhood together, not form barriers. Streets, bikeways and walkways should create a unifying circulation network that provides convenient routes to destinations within the neighborhood without forcing trips onto surrounding arterial streets.

The street network should consist of a series of generally rectilinear blocks in a grid or interconnected pattern that is conducive to walking and biking. Block lengths should provide frequent connections and be between 300 and 700 feet in length. Cul-de-sac streets should be minimized.

1.2.2: Connecting to Amenities

The street network should lead to major amenities such as retail centers, shops, schools, parks and community facilities. The more important streets should have wider sidewalks and accent crossings, bike paths, more landscape and prominent lighting.

1.2.3: View Corridor and Vistas

Streets and paths should focus on important vistas such as community buildings, mountains, public art, trees or open spaces.

1.2.4: Pedestrian and Bike Connections

Where loop street connections are not feasible, pedestrian and bike paths may be used as “shortcuts” to make walking and biking more convenient.



Bradburn
Pedestrian and Bike Connections

1.3: Parks and Open Space



Policy

Promote the creative design and use of a wide variety of City parks for Westminster's residents and visitors.

1.3.1: Variety of Parks and Open Space

A wide variety of parks and open space should be incorporated into traditional mixed use neighborhoods. Each type of park plays an important role in the activities of the neighborhood and larger Westminster Community. Park types include but are not limited to:

Regional Open Space Systems – provide an opportunity to define the edge of a neighborhood or community.

Locating smaller parks adjacent to these regional open space systems provides for active play areas while allowing potentially sensitive habitat to add more natural qualities to a developed park.



Belle Creek



Bradburn

Squares, Plazas or Greens – Located within a mixed use district, a green or plaza plays the role of a community gathering space. These spaces should incorporate seating areas, hardscape plazas, lawn and landscape areas where appropriate.



Prospect

Active Community Parks – Typically between three and ten acres, active community parks often contain multiple sports fields, community buildings and other active play areas. Less active and smaller scale areas of the park, such as tot lots, should be located to buffer residents from the more active and evening events. Appropriately located and well designed parking should be provided.



Belle Creek
Neighborhood Parks: Smaller parks of ½ to 3 acres are generally neighborhood oriented and become the focus and identity for the neighborhood.



Bradburn
Tot Lots: Play an important role in providing shared play areas within residential neighborhoods, particularly townhome and small lot single-family neighborhoods with homes containing small yards.

Neighborhood Parks – Smaller parks of ½ to 3 acres are oriented toward and become the focus and identity of the neighborhood. These parks are typically designed for smaller children and informal open play areas. Tot lots may be incorporated into these smaller parks. *In addition to the required Public Land Dedication an additional 3.5 to 5% minimum of (gross) land will be provided by the developer as private parks within the project.*

Tot Lots – Small parks for younger neighborhood children, tot lots are often located on parcels as small as 3,000 to 5,000 square feet and have equipment for smaller children. Small protected hardscape areas and shaded lawn areas are encouraged. These parks play an important role in small lot single-family neighborhoods. *Tot lots are private parks scattered throughout the project will be constructed by the developer.*

Public Land Dedication – No major land development shall be approved by the City unless the applicant for such development provides for the dedication of public lands to the City for park, open space, school and other public purposes as determined by the City in accordance with the City Code and these guidelines. The size and location of these public areas shall be determined as part of the ODP process.

RECREATION

The City requires private recreation facilities for residential developments for their residents in proportion to the number of residential units served. Such recreational facilities shall be included on private parks within all TMUND developments with a residential component. Facilities are to be owned and maintained by a homeowner's association or similar organization. The proposed development will be required to provide some or all of the facilities described below.

- An indoor clubhouse/meeting facility (1,000 S.F. min.) shall be provided for all projects with more than 300 units and 1,500 S.F. minimum for projects over 500 units.
- A pool (25' x 75' min.) and restroom facilities shall be provided for all projects with more than 150 units. For projects with more than 500 units, two pools and restrooms shall be required or one larger (25-yard minimum length) pool, and a combination of a childrens pool,

hot tubs, and restrooms. All pools shall have an average minimum deck width of 12 feet around the perimeter of each pool.

- A combination of hard-surface courts such as tennis courts (including fencing, striping, net, lighting, etc.) and/or basketball full courts (min. 50' x 84' including equipment, striping, lighting, etc.) may be required.
- Sand volleyball courts (30' x 60' min.) may be required.
- Play equipment area with swings, slide, climbing equipment, etc. (8,000 S.F. min.) may be required.

1.4: Mixed Use Districts Location and Connections

Policy

Encourage a successful mixed use center with a variety of uses that are connected by a strong structure of streets, buildings and open spaces. These land uses should generally transition in intensity from the commercial center to surrounding lower intensity residential neighborhoods. Traditional suburban large scale multi-family projects are discouraged.

DESIGN GUIDELINES



Stapleton

1.4.1: Variety of Uses

Mixed Use commercial districts should contain a combination of uses including retail, offices, services, civic uses, residential, parks and open space. Uses located on the ground floor that stimulate pedestrian activity are encouraged. Auto related uses (gas stations, auto repair and supply, etc.) are allowed only as secondary uses and located at peripheral locations. Large retail uses should incorporate the small scale pedestrian paths and the block pattern of the mixed use district.

1.4.2: Development Pattern

Street and block patterns, and pedestrian and bicycle connections should extend throughout mixed use commercial centers. A mixed use commercial district should maintain a coherent, continuous, visually related and functionally linked pattern within the district through street layout, site design, building scale and architectural character.

1.4.3: Location of Commercial Mixed Use Areas

Commercial mixed use areas should be located to maximize pedestrian access by the greatest number of residents and access by the surrounding community.

1.4.4: Transition Areas

Medium density/mixed use commercial centers are a focus for the surrounding neighborhood as a place to live, shop and work. These areas include denser attached and detached housing around a neighborhood commercial center with secondary uses above retail uses.

The surrounding neighborhoods contain moderate densities that form a transition and link between nearby lower density residential neighborhoods and heavier intensity commercial or light industrial/employment areas.

1.4.5: Structure of Mixed Use Areas

The structure of mixed use areas may vary, yet they will typically be one of two primary types:

1. **Nodal** centers generally focus on a civic space such as a square, plaza, village green or commons.
2. **Linear** mixed use areas generally feature “main streets” mixed use retail streets sometimes ending in a civic space, park or plaza.

1.4.6: Variety of Uses

A variety of grouped, non-residential land uses are appropriate to the mixed use area. These include:

- Transit station/park and ride
- Neighborhood serving retail uses
- Small businesses with low-traffic or visibility needs such as service businesses
- Small-scale offices and clinics
- Civic uses
- Daycare
- Places of worship and assembly
- Parks and other small recreation areas
- Schools



Belmar

1.4.7: Variety of Housing Types

A variety of housing types can fit into this higher activity area including:

- Residential units above retail shops or work places
- Multi-family housing
- Townhomes or duplexes
- Small lot single-family with accessory dwelling units

These housing types and other uses can easily share street frontage and provide opportunity for moderate cost housing adjacent to higher cost housing and non-residential uses.



Stapleton



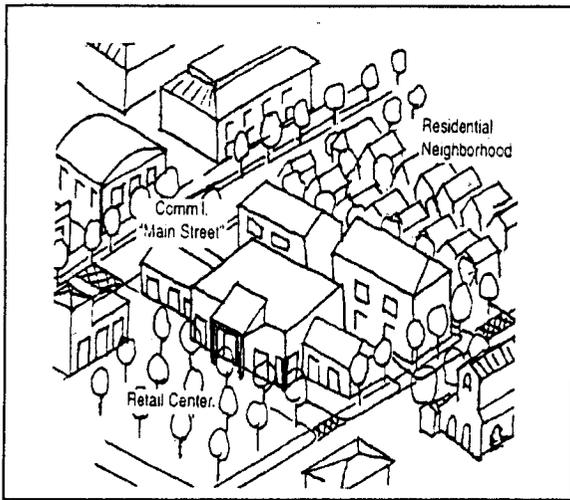
Prospect

1.4.8: Horizontally Mixed Land Uses

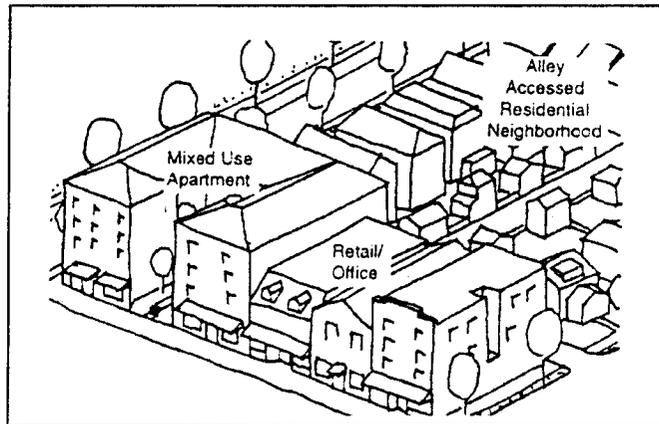
Horizontally mixed land uses unified by a pattern of streets and blocks with buildings fronting on public streets are strongly encouraged. This is an effective way to integrate commercial uses and housing in a mixed use area. More intense uses may share a block and an alley while fronting separate streets.

1.4.9: Vertically Mixed Land Uses

Vertically mixed uses are desirable, particularly on primary pedestrian streets. Streets lined with shops, with offices and residences above, provide added activity and informal observance of the streetlife.



Horizontally Mixed Land Uses
 Allows for single use developments that require extensive coordination and integration to develop into a successful mixed use district.



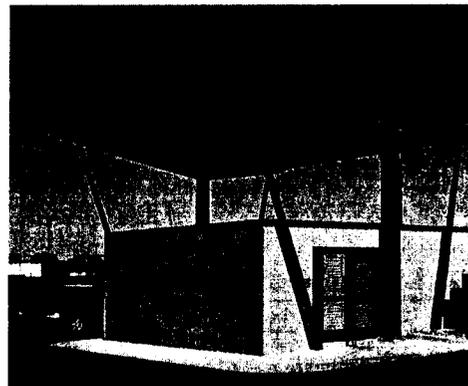
Vertically Mixed Land Uses
 Provides for a wide variety of development types, that allows for greater integration of land uses, while allowing for individual use buildings.

1.4.10: Trash Locations

Each type of land use within a project needs to provide the practical means and locations for trash pickup. Locations that are remote from the main building must provide trash container structures that are constructed of the same building materials as the principal building and have metal gates.

1.4.11: Utility Box Locations

All electrical, cable TV, telephone, transformers or similar service shall be located in the rear of the property or in easements along the alley. The location of these utilities in front yards is not permitted.



**Stapleton
 Trash Facilities**

1.5: Unique Front Range Characteristics

Policy

Promote developments that reflect the natural features of the Front Range landscape and its historic community patterns.

DESIGN GUIDELINES

1.5.1: Views and View Corridors

View corridors to the mountains, open space, and other local and regional landmarks should be a basic consideration in the arrangement of streets, commercial centers and shared spaces within both residential and mixed use districts.

1.5.2: Open Space Systems

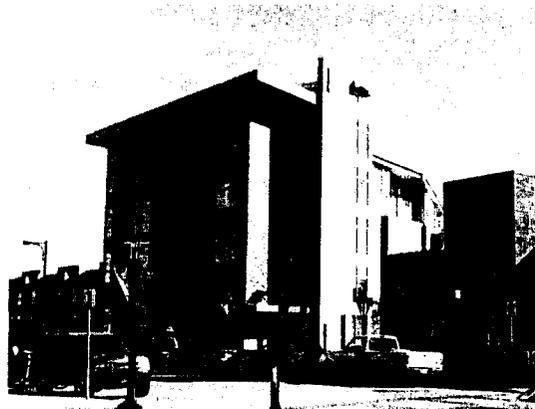
Greenways with trails and paths should line riparian corridors, drainage swales and retention areas, connecting natural open space with active open space destinations such as parks, schools, and recreation fields. Special attention should be paid to environmentally sensitive areas and trail design. Trails should not negatively impact wildlife corridors, flood plains, wetlands or regional drainage systems.

1.5.3: Topography

Topography is a landscape feature that should provide an opportunity for unique community character. Whether a “hillside down,” a bowl-shaped view corridor, or the town hall or mansion on the knoll, a town, a district or neighborhood may have its identity shaped by topography. New neighborhoods should be designed to take advantage of the natural topography by allowing them to be shaped by the land’s natural features. Extensive grading, which impacts the natural topographic character, is prohibited.

1.5.4: Building Prototypes

Building prototypes, and building elements should reflect the construction traditions and features found in communities along the Front Range. Environmental factors such as solar orientation, and protection from snow and wind should be considered.



Stapleton
Building Prototypes

1.5.5: Building Materials

- *Builders should strive to achieve a “Built Green” designation for the project. This promotes sustainability, quality and energy efficiency both for the building and community.*
- *Masonry should be the predominant construction material for the commercial, townhomes and multi-family buildings. Wood and stucco may be integral parts of the architectural fabric. Masonry is encouraged on single-family dwellings. The percentage of masonry required may be reduced based on the architectural design and character of the single-family homes proposed.*
- *In single-family residential construction, brick shall equal the equivalent area of having 30% brick on the front of all of the individual buildings on a streetscape (block) or other public space (i.e. park or street). In practice, this may result in some structures being all brick, while others have none or lesser amounts than 30% on the front.*
- *All buildings within the entire development must provide 360 degree architectural design character.*



Bradburn
360 Degree Architectural Design

SECTION 2: RESIDENTIAL DESIGN ELEMENTS

2.1: Street Design



Prospect

Policy

Street design should enhance the convenience and quality of the neighborhood through street design. Use street trees, detached sidewalks, street lamps, special paving, and intersection designs. These elements promote residentially scaled, aesthetic streetscapes and reinforce pedestrian and bicycle usage.

2.1.1: Public Streets and Alleys

Public streets are required, to access all buildings or public access as approved by the City. Interconnected street systems should be designed to maximize internal connections while minimizing high speed

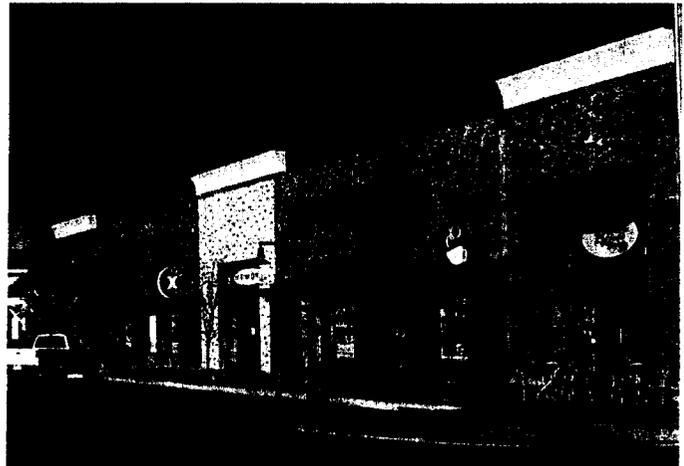
through circulation. Direct internal routes to local destinations, such as shops should be provided without forcing these trips onto arterial streets. Safety and convenience are primary objectives for street design. Slow moving traffic is desired over faster moving through traffic.

Streets and Drives

Typical residential streets should incorporate design features such as neckdown intersections, pedestrian scaled street lights, detached sidewalks with street trees within planting strips or in tree wells. Accent paving at neighborhood entries and crosswalks is strongly encouraged.

“Neckdown” Intersections

Neckdown curbs and decorative paving at crosswalks at primary intersections, entries and at parks and tot lots are strongly encouraged.



Bradburn

2.1.2: Hierarchy of Streets

A neighborhood or district should have a hierarchy of streets which provides interconnected roadways, bikeways and pedestrian walks.



Stapleton
Prominent Connector Streets



Prospect
On Street Parallel Parking for
Visitors is Permitted Along Residential Streets

Primary and Collector Streets

Detached sidewalks with trees, lawns or decorative tree grates are required for primary local and major residential streets.

2.1.3: Prominent Connecting Streets

Primary streets connecting to commercial centers, parks, schools and other civic elements should be designed with wider walks, bike paths, trees and lighting. Linear parks or landscape medians are encouraged.

2.1.4: On-Street Parking

Streets should incorporate curbside parking.

- Diagonal parking is appropriate on commercial streets fronting retail shops;
- Parallel parking for visitor, along residential streets or along retail/commercial streets is encouraged.

Minor streets, should have on-street parking and sidewalks on each side of the street. A minimum of two on-street parking spaces per home is required.



Bradburn



Belle Creek

2.1.5: Parking

A parking plan should be submitted indicating how the parking for each land use category will be met with the overall Plan. Single family homes require two spaces in a garage on site and two additional on or off site. Accessory units require an additional on site space.

Shared parking or other creative parking solutions can be considered as part of the design review process for the proposed development.

2.1.6: Emergency Access

- Interconnected street systems should provide convenient emergency access throughout mixed-use and residential neighborhoods.
- Cul-de-sacs may be provided at certain locations, but are generally discouraged.
- Hammer-head turn arounds are prohibited.

2.1.7: Intersection Design

Residential street intersections should be designed to slow traffic while allowing safe emergency access. Safety features should include:

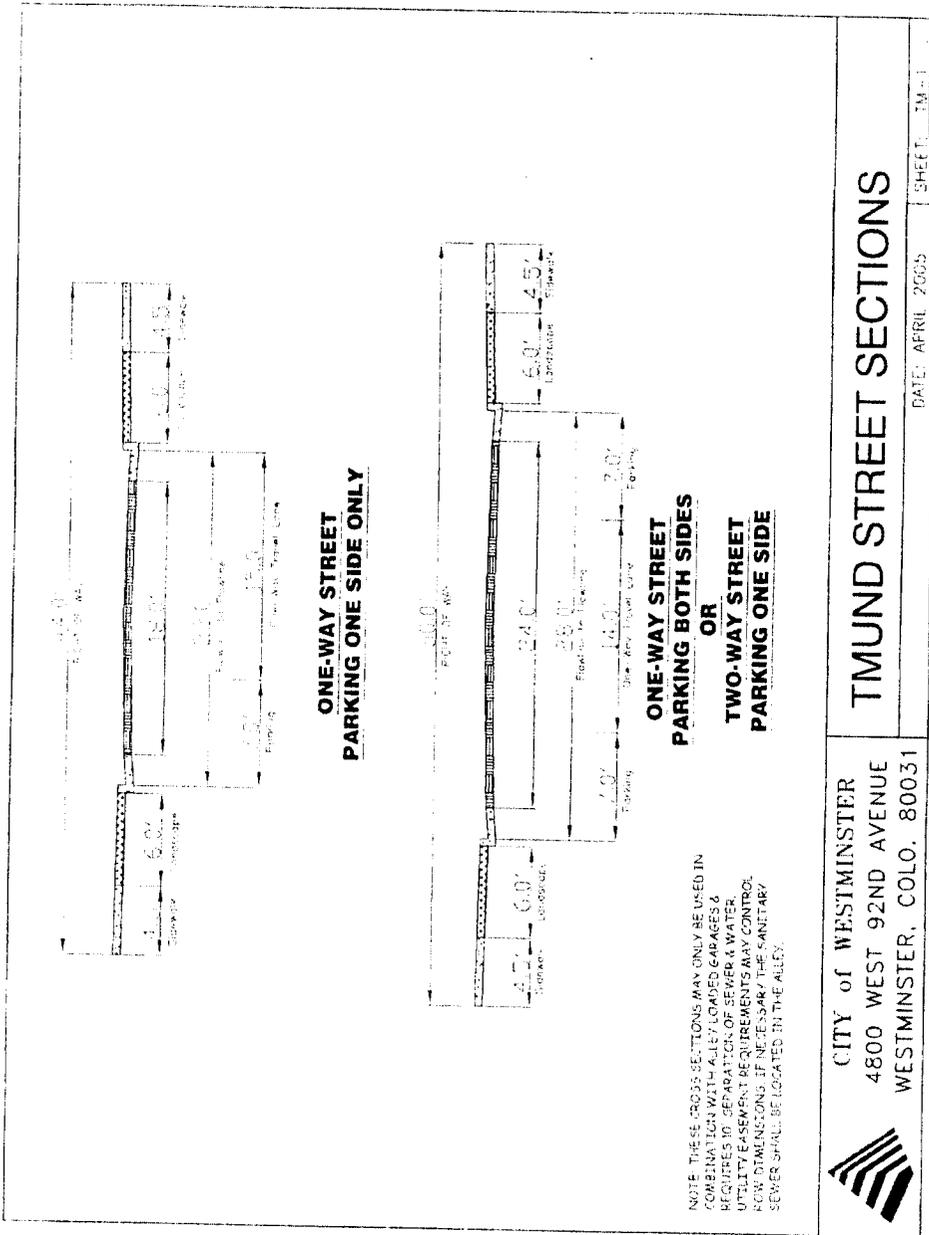
- Neckdown intersections which slow traffic and minimize crossing distances for pedestrians.
- At major street or pedestrian connections, accent paving at the crosswalks is strongly encouraged.
- Crossings that connect public facilities to residential neighborhoods should incorporate neckdowns and accent paving.

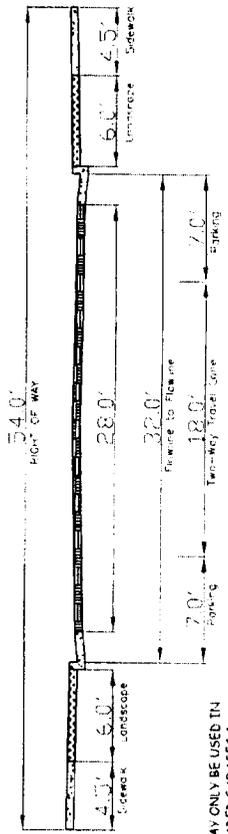


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2.1.8 Permitted Street Cross-Sections for TMUND Developments

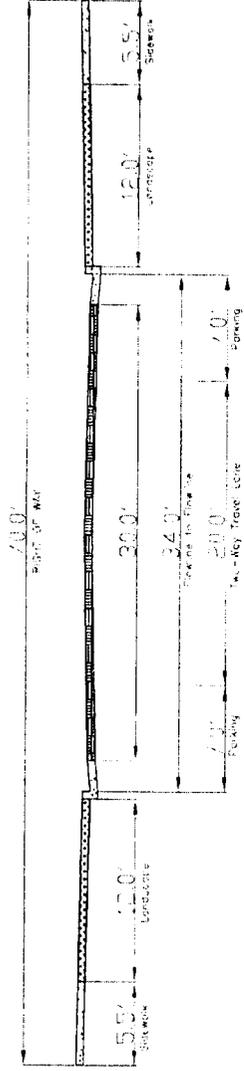
These streets sections can only be used in conjunction with an alley. Other city street section requirements shall comply with the sections shown in the Standards and Specifications for the design and construction of public improvements or as approved by the City in the Official Development Plan.





**TWO-WAY STREET
PARKING BOTH SIDES**

NOTE THIS CROSS SECTION MAY ONLY BE USED IN COMBINATION WITH ALLEY LOADED GARAGES & REQUIRES 10' SEPARATION OF SEWER & WATER. UTILITY EASEMENT REQUIREMENTS MAY CONTROL ROW DIMENSIONS. IF NECESSARY THE SANITARY SEWER SHALL BE LOCATED IN THE ALLEY



MINOR COLLECTOR



CITY of WESTMINSTER
4800 WEST 92ND AVENUE
WESTMINSTER, COLO. 80031

TMUND STREET SECTIONS

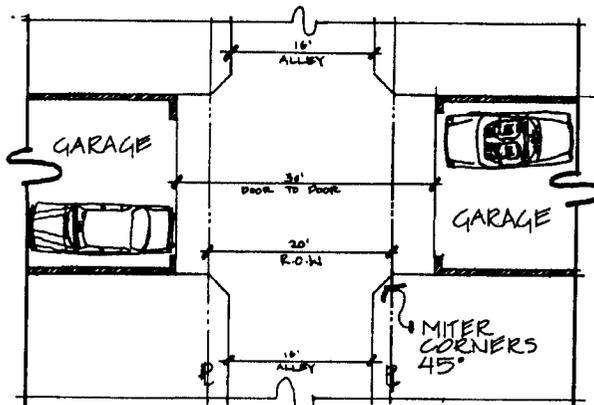
DATE: APRIL 2005 SHEET: IM-2

2.2: Alley or Lane Designs

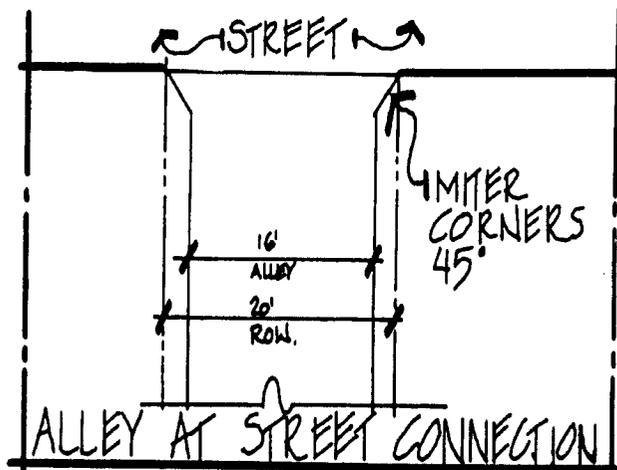
Policy

Alleys are encouraged to eliminate the impact of garage doors and driveways on the streetscape. Alleys also allow homes to front lot, parks or open space without a road separating the homes from such features. Alleys can provide additional parking where needed.

Mid block land use and density transitions can share alleys for appropriate vehicular access and minimize impacts to lower intensity residential uses. Alleys may support accessory residential units.



Alley Design

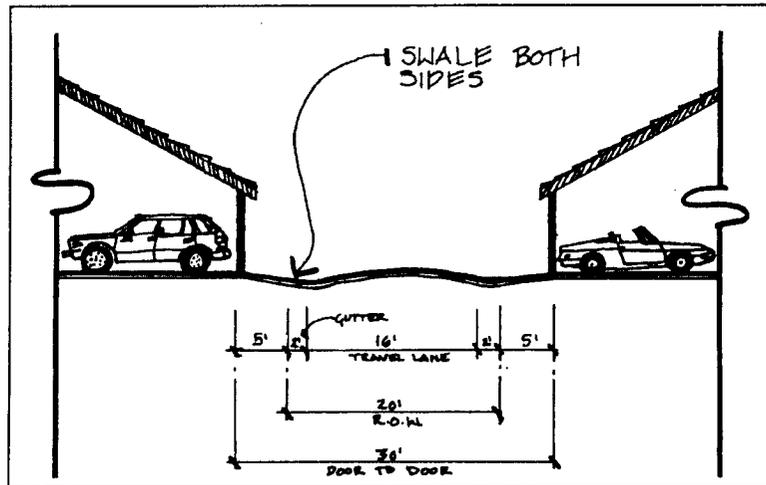


DESIGN GUIDELINES

2.2.1: Alley Design Principles

- Deadend alleys should be less than 100 feet long.
- Alleys should have a 20-foot right-of-way with a 16-foot concrete paved section centered in the right-of-way.
- Landscaping should be consistent with the rest of the development with a 5-foot landscape strip on each side of the alley (2-foot alley right-of-way and 3-feet on private property) or other 5 foot combination).

- d) Alleys should be crowned with a shallow curved gutter on each side to accommodate drainage.
- e) Where the garage driveway connects to the alley a 2-foot (45°) flared corner shall be installed to facilitate easy entry and exiting of the garage.
- f) Alleys connecting to public streets shall be flared 45° with each leg being 5 feet in length to accommodate vehicles entering or exiting.
- g) The garage floor shall be elevated above the alley grade to facilitate drainage.
- h) Garages shall be set back a minimum of five (5') feet from the alley.
- i) Fences shall be set back a minimum of 3 feet from the 20' alley right-of-way line.



Alley Design



Belle Creek



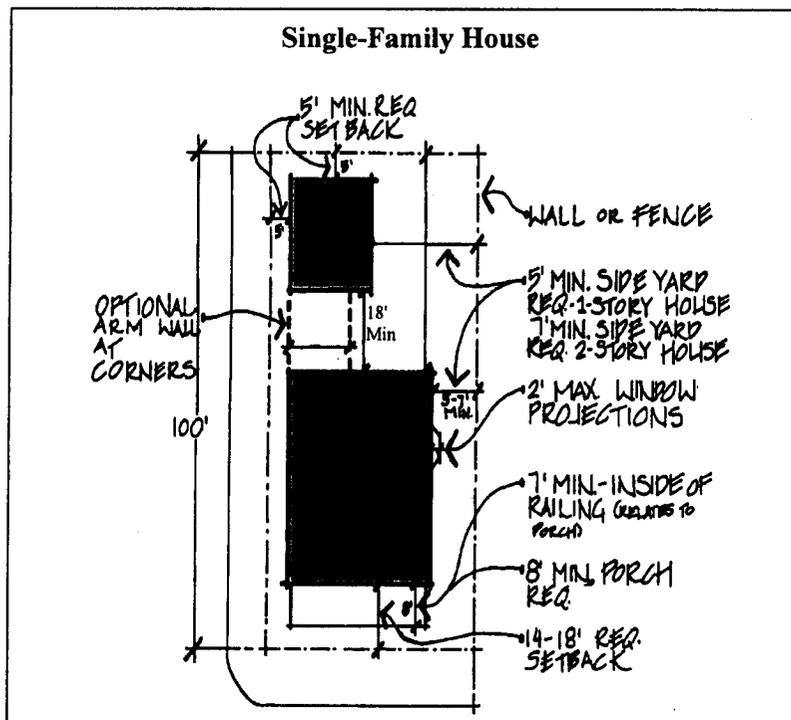
Belle Creek

2.3: Single-Family Residential

2.3.1: Lot Layouts and Building Configuration

General Site Planning

- Vary lot widths throughout the neighborhood.
- Vary one and two story homes and elements.
- Consider solar orientation when *laying out* streets, blocks, lots and homes.
- Minimize garage visibility from street.
- Minimize impervious surfaces at patios, alleys and side by drives.
- *Minimum lot depth shall be 90 feet for homes with attached garage.*
- *Minimum lot depth shall be 100 feet for lots with detached garages.*
- *A variety of home models/elevations will be required.*
- *Minimum lot size requirements may be reduced provided a lot specific product (dwelling unit) is shown on the ODP that meets all required setbacks, yard area, and porch size requirements.*

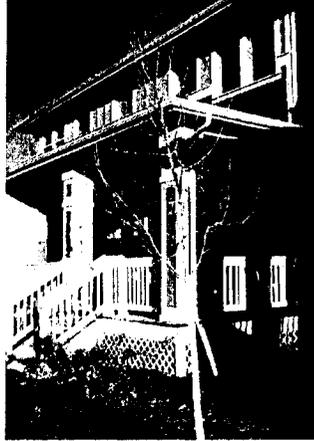


Single-family Residential with Detached Garage

Building Entry Locations

- Entries should be an important streetscape element.
- Entry porches must be a minimum 1/3 of building facade except as specifically permitted.
- *Porch/seating areas are strongly encouraged and may be required. Unobstructed porches shall be 6-8 feet in depth and a minimum of 90 square feet in area.*
- Raised porches are strongly encouraged.
- Covered porch with emphasis on materials and details strongly encouraged.
- *Stairs may not encroach into any right-of-way.*

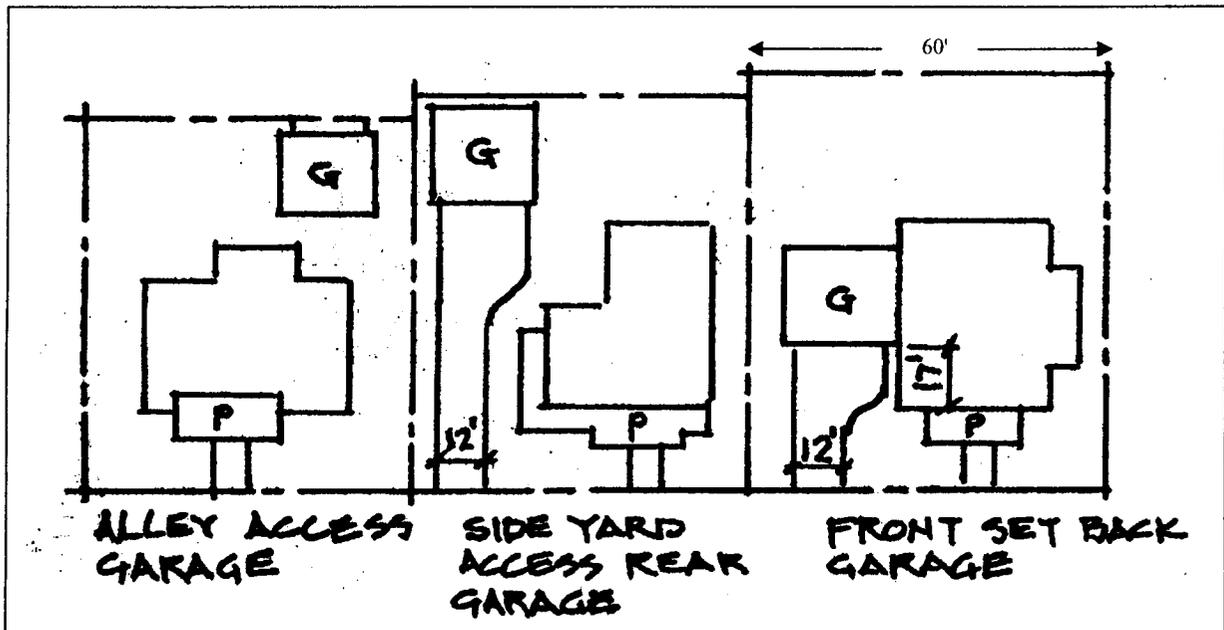
Bradburn



Prospect
Porch Seating Areas

Parking/Garages

- A minimum of 2 on-site (in a garage) and 2 on or off-site parking spaces are required for each unit.
- Maximum 12-foot front yard curb cut and driveway is encouraged where garage access is off of the street.
- Alley accessed garages are strongly encouraged.
- Side by side with rear yard garages are encouraged for 2-car street accessed parking.
- *Garages that are accessed from the street frontage must be setback from the face of the house fronting the street a minimum of 12 feet.*
- *Minimum dimensions of garage shall be as follows:*
 - Single car width: 12 feet
 - Double car width: 20 feet
 - Depth – single and double 22 feet
- *Garage door minimums dimensions shall be as follows:*
 - Height 7 feet
 - Width – 8 feet single, 16 feet double
- *Garages cannot be used as or converted to living space (this statement must be included in the Official Development Plan.)*



Build-to-Lines, Setbacks and Building Separations

- Build-to-Lines are desired to form consistent street frontages.
- Entries and porches should extend in front of main facade and be architecturally detailed.
- Building separation is emphasized over property line setback requirements.
- *All setbacks are measured from the property (right-of-way) line or back of sidewalk, whichever is greater.*
- *Rear yard dimensions are the minimum dimensions of the useable rear yard inside of the fence line.*
- *The minimum front setback shall be 6 feet to the porch. The front setback to the main structure shall be 14 feet. Setbacks shall vary along the street frontage.*
- *Side yard setbacks are 5 foot minimum for one story homes.*
- *Minimum side yard setbacks for two story buildings shall be 7 feet.*
- *Side yard setbacks adjacent to an alley shall be 10 feet.*
- *The front and side yard setbacks on corner lots shall be 6 feet to the porch and 14 feet to the main structure.*
- *Setbacks for garages shall be a minimum of 5 feet from the alley.*
- *For detached garages, an 18-20 foot building separation is required between the main part of the house and the garage.*
- *Lots siding on a street or alley may have bay windows encroaching into the side yards up to 2½ feet.*
- *Roof overhangs may encroach into any required yard area a maximum of 2 feet.*

Private Yards and Fencing

- Front yard fencing, where it occurs should be of a short design (approximately 3 feet in height), transparent and be compatible with the house architecture.
- Minimize side yard fencing at corner lots.
- Minimum of one 20-ft x 20-ft rear yard required for all lots. *A lesser dimension of 18 – 20 feet may be allowed if the overall area is at least 400 useable square feet (i.e. 18 ft x 22 ft). Pervious surfaces recommended. However decks and patios can be included in the 400 square foot area. The entire area used for this calculation shall be within the fenced in area (or area that could be fenced).*
- *A minimum setback of 3 feet for fencing is required from the alley right-of-way.*

2.3.2: Accessory Buildings or Residential Units

Accessory structures are smaller scaled buildings on the same lot with a single-family home as either secondary living or storage space.



Belle Creek

General Site Plan

- Accessory units may be permitted on alley accessed lots.
- An accessory unit may be:
 - Integrated within the main residence or;
 - Attached to the main residence or;
 - A separate structure within a rear yard or over the garage.
- Siting must consider the privacy and solar access for the main house and adjacent parcels.

Accessory Unit Entries

- Entries should be accessible and visible from the alley or street.
- Wherever possible, accessory units should be able to be entered from both the street or alley.

Parking/Garages

- One on-site 9 ft x 19 ft minimum parking space is required for each accessory unit.
- Areas above covered parking may be used as private open deck space by the accessory unit.

Build-to-Lines, Setbacks and Building Separations

- Accessory buildings used as storage are encouraged to be placed to maximize yard usage.
- Living spaces and accessory units shall be located to provide privacy from adjacent properties.

Private Yards

A semi-private outdoor space is *required* for every accessory unit. (*Minimum* unobstructed 100 square feet (10 ft x 10 ft.) *This can be on a porch or balcony, and must be open and cannot be obstructed by AC unit, window wells, etc.*

2.4: Townhomes and Row Houses

2.4.1: Lot Layouts and Building Configuration

Townhomes are attached single-family homes with zero lot line side yard configurations. They may have attached or detached garages and are frequently accessed by rear alleys or single car drives. Lots are typically 16 feet to 34 feet wide.

General Site Planning

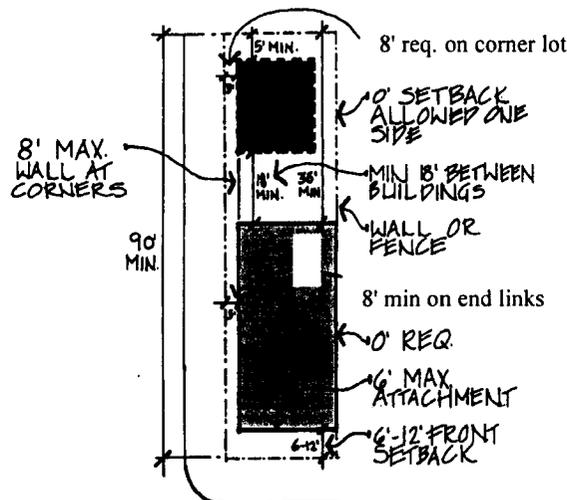
- Townhomes are required to have alley accessed drives to minimize the impact of garages on street frontages.
- Lot widths should vary between 16 feet to 34 feet.
- Individual lots, yards and units are typically emphasized in the architectural design of the building.
- Building entries are required to front on the street.
- Front Yards may be raised.
- Stoops or porches are desired.
- Mid-block pedestrian connections are desired to breakup long frontages of townhomes and provide alley access to pedestrians.
- Where attached garages are used, semi-private front yards and larger decks over garages are encouraged.
- Entry porches should be prominent architectural features.
- Front yard patios, porches and decks are encouraged to enliven the streetscape.
- *Stairs may not encroach into the right-of-way or sidewalk.*



Belle Creek

Townhouse Design Criteria

- *The Townhome is a party-wall configured residential building 2 to 3 stories in height. It can be from 16 to 34 feet wide with a rear yard/patio that separates it from an alley-served garage. The garage may contain an apartment above with an additional parking space on site. With a 6-12 foot front setback, the lot is typically 90 feet deep.*
- *Townhouses/Rowhouse units with tuck-under garages may reduce the lot depth to 72 feet. A rear deck will be required on each unit with a minimum size of 8'x 15'.*
- *If the garages are attached directly to the living unit the minimum lot depth shall be 80-ft. A deck over the garage shall be provided for each unit with a minimum size of 8'x 15'.*
- *Minimum lot size requirements may be reduced provided a lot specific product (dwelling unit) is shown on the ODP that meets all required setbacks, yard area, and porch size requirements.*

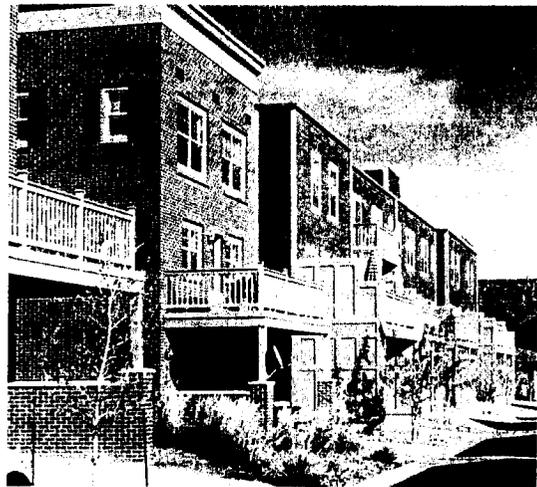


Parking/Garages

- Alley-accessed garages are encouraged.
- Detached garages provide a private yard space and a strong home/yard connection.
- Alleys should be designed per the standards described in these guidelines.
- *Garages minimum dimensions:*
 - Single car width: 12 feet
 - Double car width: 20 feet
 - Depth – single and double 22 feet
- *Garage door minimums*
 - Height: 7 feet
 - Width: 8 feet single, 16 feet double
- *Garages cannot be used as or converted to living space (this statement must be included in the Official Development Plan.)*
- Required off street parking; one and one-half (1.5) spaces per one bedroom or efficiency unit. Two (2) spaces per two or more bedroom units, plus one (1) space per three (3) units for guest parking.
- *Tuck-under garages are permitted as part of the townhouse/rowhouse design.*



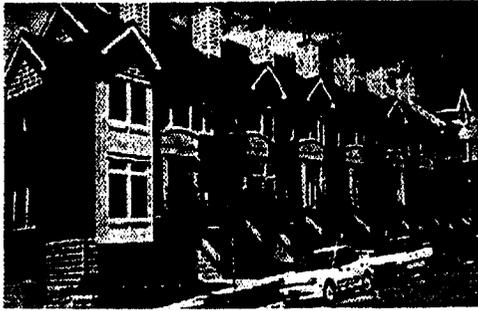
Prospect



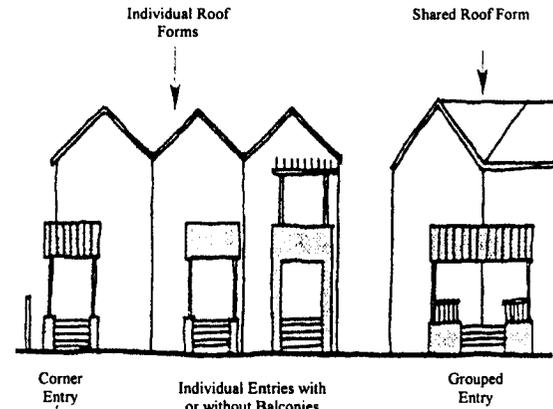
Belle Creek

Build-to-Lines, Setbacks Building Separations

- *All setbacks are measured from the property line or sidewalk whichever is greater.*
- *Buildings shall have a minimum front setback of 6 feet to 12 feet from the back of the sidewalk depending on the location of the units within the development.*
- *Front yards setbacks will be a minimum of 6 feet in depth measured to main structure, or window projection.*
- *Side yard setbacks on end units adjacent to a street or alley shall have a minimum 8-foot setback from the property line.*
- *Garages must have a 5-foot setback from the alley.*
- *A 20-foot minimum building separation must occur between building groups.*



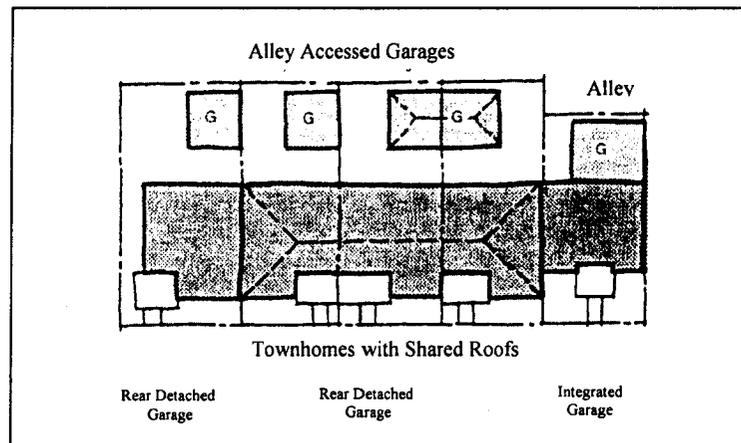
Townhouses



Building Entry Locations

Private Yards and Fencing

- *Special attention must be given to drainage in the private yard areas. All yard drainage must be accomplished via underground systems or an alternative systems approved by the ODP that takes into consideration the outdoor space connected to the storm drainage system within the development.*
- *A rear yard shall provide a minimum 18 foot depth from the house to the garage. An area 15 feet in depth should be free of AC units and window wells. Yard area can be reduced to 15 feet if free of window wells, AC units, drain pans, or similar obstructions.*
- *A private rear yard, front yard or balcony must be provided.*
 - *Private yard minimum 15 foot depth*
 - *Private balcony minimum 8 foot depth.*
- *Fencing must be setback a minimum of 3 feet from the alley right-of-way.*

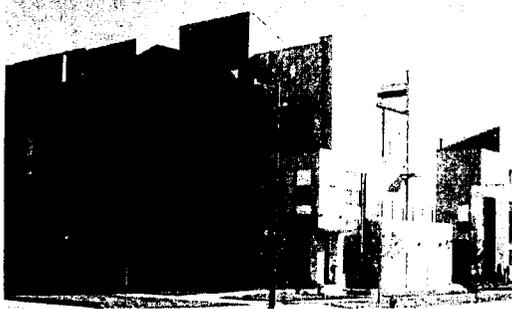


Site Planning Configurations

2.5: Multi-Family Apartments and Condominiums

2.5.1: Lot Layouts and Building Configuration

Multi-family units allow for town living at higher densities to support retail and transit and add vitality to the pedestrian oriented mixed-use center. Multi-family units form a good transition between mixed-use commercial areas and lower density residential neighborhoods.



Stapleton
Multi-Family Apartments/Condominiums



General Site Planning

- Apartment buildings should orient to the street with entries with porches and balconies.
- Parking should be located internal to the block, minimizing its impact to the streetscape.
- Multi-family housing within a residential neighborhood should reflect the pattern of the adjacent residences in massing, articulation, entry pattern and frequency.
- *Where first floor balcony or bay windows occur on a building the minimum setback will be 5 feet to the balcony or bay window from the sidewalk.*
- *Front yards may be provided with short (3-4 ft) transparent fences that provide semi-private space.*
- Individual street facing entries, accessing ground floor and partially raised residential units are encouraged.
- Entries should be prominent features located at important corners and along pedestrian-oriented streets. Small patios, porches and balconies are also encouraged.
- *Stairs may not encroach into the right-of-way or into a sidewalk.*
- Shared facilities should be designed and located near semi-public facilities such as a front door. Shared facilities at a prominent location add vitality and interest to an apartment complex.
- Buildings should have a minimum setback of 20 feet from back of curb. Walks with tree grates or a landscape strip (minimum of 8 feet) may be required in the setback area.

Belmar
Multi-Family
Apartment Entry as a
Prominent Feature



Prospect
Multi-Family Apartments
Individual Street Faced Entries and Porches

Parking/Garages

- Parking should be located within the interior of the block, with on-street parking available for visitor parking.



Bradburn
Multi-Family Apartments – Internal Block Parking

PARKING

Parking within a multi-family or condominium project shall meet the following criteria:

- All regular parking spaces (including carport spaces) shall be a minimum 9' x 19'. No compact parking spaces are permitted.
- All handicapped parking spaces shall be a minimum 9' x 19' with an adjacent 5' x 19' access aisle.
- Handicapped parking spaces shall be provided at a rate of one per 25 (or fraction thereof) regular parking spaces.
- At least one-third of the required parking shall be within carports or garages.
- 1.5 parking spaces shall be provided for every one-bedroom or efficiency unit.
- Two parking spaces shall be provided for every two-bedroom or larger unit.
- Guest parking shall be provided at one space per three units, and may be on-street.

GARAGES

Adequate interior garage space is essential to ensuring future residents have sufficient space to park vehicles and store recreational items within the garage area. Minimums are specified below to help reduce the future need for outdoor storage of these items.

Garage Interior – minimum dimensions:

Depth – Single – and double-car garages	22 feet
Width – Single-car garage	12 feet
Width – Double-car garage	20 feet

Garage Door – minimum dimensions:

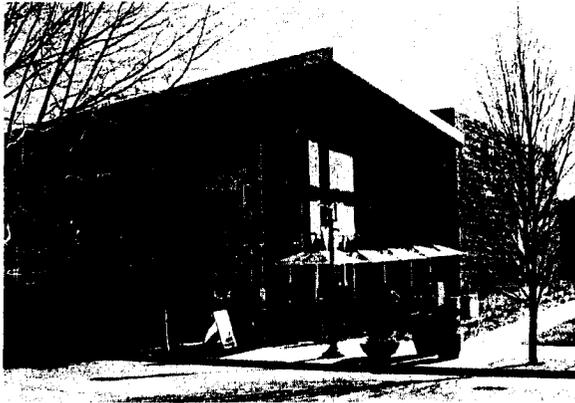
Height:	7 feet
Width:	
Single-car garage door	8 feet
Double-car garage door	16 feet

SECTION 3: MIXED USE COMMERCIAL DISTRICT

3.1: Mixed Use Districts General Overview

Policy

Mixed-Use Neighborhoods or districts will provide local needs for goods and services for the surrounding neighborhoods. Although, primarily a retail commercial and office area, a variety of uses including residential are desired to extend the activity time of the area. The district will be a pedestrian oriented place, serving as the focal point and identity for the surrounding neighborhoods.



Belmar
Variety of Uses

3.1.1: Location of Commercial Mixed Use Areas

Commercial Mixed Use areas should be centrally located to maximize pedestrian access by the greatest number of residents. Access for the surrounding community should also be considered in the design.

3.1.2: Variety of Uses

Mixed use commercial districts should contain a combination of uses including residential, retail, office, service, civic uses and open space. Uses located on the ground floor that stimulate pedestrian activity are encouraged. Auto related uses (gas stations, auto repair and supply, etc.) are allowed only as non-prominent secondary uses. Large retail uses should respect the small scale pedestrian and block pattern of the mixed use district.



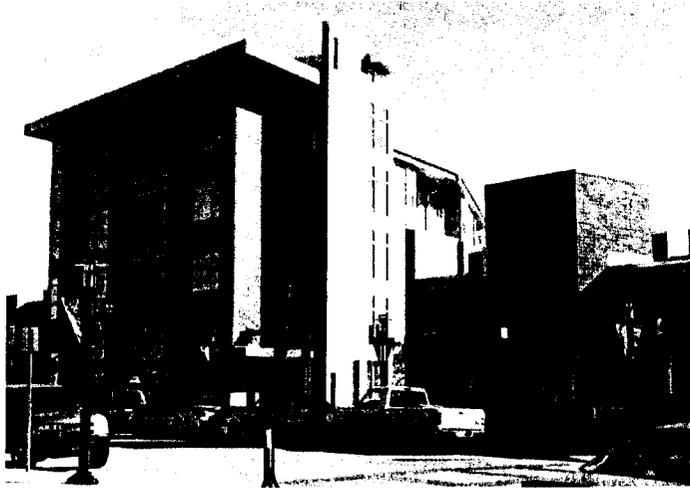
A mixed use commercial district should maintain a coherent, continuous, visually related and functionally linked pattern within the district in terms of street layout, site design, building scale and character.

Development Pattern

Street and block patterns, and pedestrian and bicycle paths from the surrounding neighborhoods should extend through the mixed use commercial district. A mixed use commercial district should maintain a coherent, continuous, visually related and functionally linked pattern within the district in terms of street layout, site design, building scale and character.

Transition of Area Uses

Medium density/mixed use commercial centers are a focus for the surrounding neighborhood, typically, denser attached multi-family housing around a neighborhood commercial center or commercial district with secondary uses above retail establishments. The surrounding neighborhoods contain moderate densities that form a transition and link between surrounding lower density residential neighborhoods and heavier intensity commercial or light industrial/employment areas.



Stapleton

The surrounding neighborhoods contain moderate densities which form a transition and link between surrounding lower density residential neighborhoods.

Urban Design Character

Buildings should be placed to form active commercial street fronts and create interconnecting pedestrian spaces, such as plazas and paseos. Two to three story buildings are encouraged to reinforce the neighborhood mixed use district as the focal point of activity and increase the potential for mixing uses, such as dwellings or offices over shops. The visual dominance of parking should be minimized through location, building placement, screening and landscaping.

3.2: Commercial Street Designs

Policy

Promote street designs which enhance and reinforce safe pedestrian activity and provide opportunity for convenient local shopping trips.

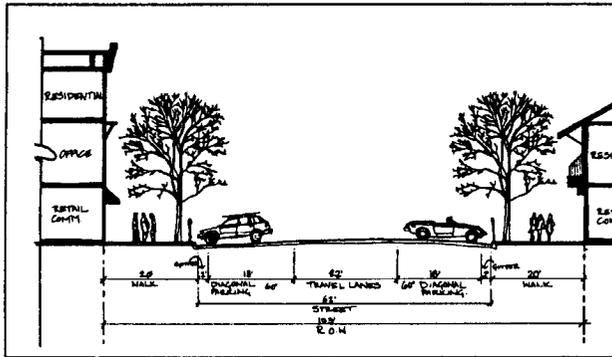


3.2.1: Streetscape Elements

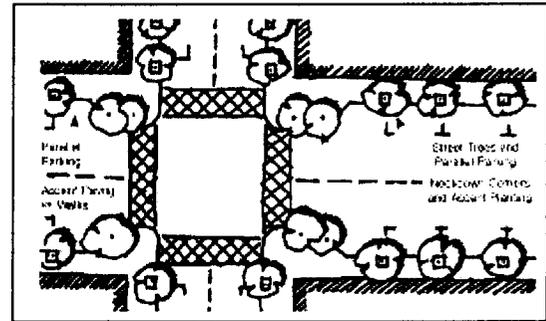
Sidewalk design, including street trees, furniture, pedestrian scale lighting, and signage and accent planting at pedestrian crossing areas will enhance the pedestrian environment.

Lighting

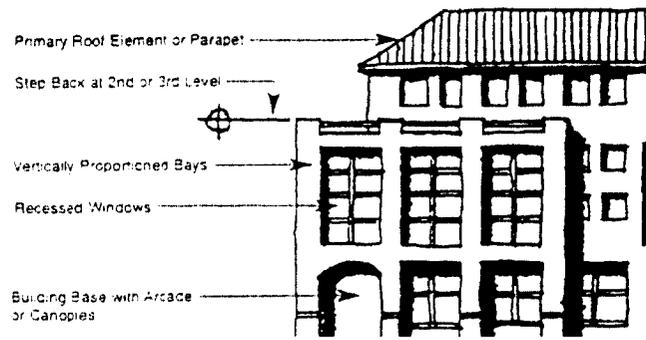
Street lights should be scaled for lighting the pedestrian walk ways. Optionally two level lights are appropriate within commercial areas. Additional lighting may include building and signage lighting and accent up-lights at accent landscaping.



Commercial Street Section



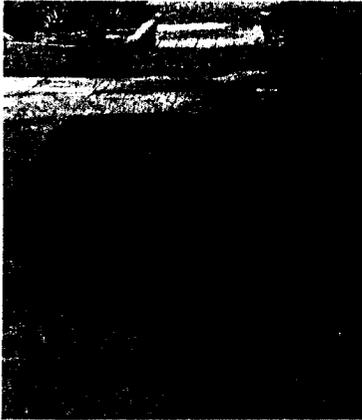
Commercial Street Intersection



Office Building Design Elements

Street Trees and Landscape Elements

Street trees should be placed at appropriate intervals with accent trees at intersections and mid-block crossings.



Accent Paving

Pedestrian Crossings and Sidewalks

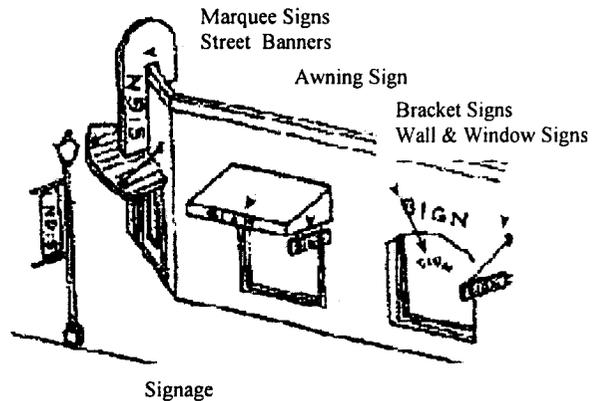
Accent paving such as interlocking pavers, brick in accent bands or scored and sand blasted concrete are strongly encouraged along mixed use pedestrian walks and crossings. Pervious surfaces are encouraged wherever appropriate.

Signage

Accents such as street names within sidewalk hardscapes or bollards are encouraged along the major commercial street. Unobstructed window areas are encouraged along streets by restricting window signs to no more than 10% of the window area. *A signage program for each TMUND shall be developed and approved as part of the Official Development Plan.*

Build-to-Lines, Setbacks, Building Separation

- *Two-story commercial buildings on the street frontage are encouraged.*
- *A pedestrian walk must be provided for pedestrian access of 15–25 feet depending on the volume of foot traffic. Where street trees or eating areas occur, the minimum pedestrian walk area should have an unobstructed width of 8-10 feet.*
- *All roof mounted equipment (HVAC etc.) must be screened to the full height by the parapet wall.*
- *Balconies are encouraged on floors above the street level, and may extend 3 feet into the public right-of-way.*



Signage

Furniture

Public street furniture is required. Bus stop seating and coordinated newspaper and other stands, and trash containers are desired. Furniture should be “zoned” along the street edge, with a separate private furniture zone along individual storefronts.

Mixed Use Parking

Mixed-use commercial districts present opportunities to meet parking demand through shared off-street and on-street guest parking for compatible uses (e.g. office building and movie theaters). A district parking study is required to demonstrate the adequacy of the parking supply as a substitute for individual guest parking standards, as provided in “Off-Street Parking Standards,” Section 11-7-4 of the Westminster Municipal Code.

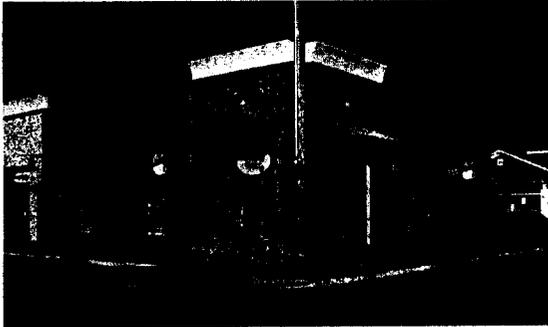


Stapleton Furniture

3.3: Commercial Mixed Use “Main Street” Site Planning

Policy

Promote a configuration of streets, buildings, parking and plazas within the mixed use commercial district that balances the needs of pedestrian and autos for convenient access, visibility and safety.



Bradburn
“Main Street” Retail Configurations

“Main Street” Retail Configuration

Buildings should contribute to a cohesive pattern and reinforce the main retail/commercial street while reinforcing the overall goal of creating a walkable district. Buildings along a “Main Street” should “build to” the sidewalk or edge of plaza with entries relating to the street or plaza. Parking is located on the street (in parallel or diagonal configurations), behind the buildings in a shared parking lot, or in small lots in non-prominent locations.

Retail Center Configurations

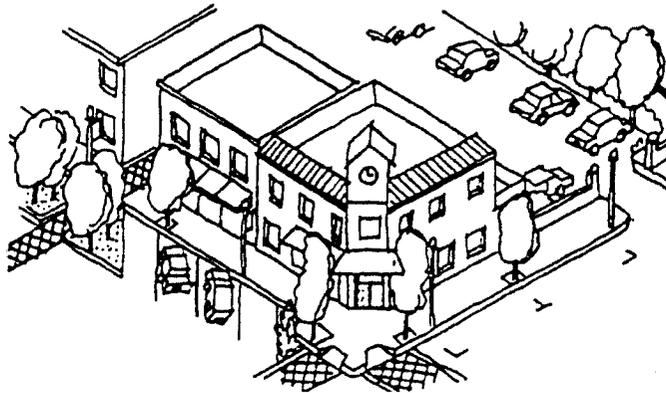
The visual dominance of parking should be minimized through building placement, screening and landscaping.

The Retail Center Configuration should have minimal building setbacks to public streets. Primary entrances to commercial buildings should orient to a pedestrian street or plaza, not a mid-block parking lot. Anchor buildings may have primary entries from off street parking lots. Secondary entries to street or plaza are strongly encouraged. Outdoor eating areas for restaurants and coffee shops are encouraged.

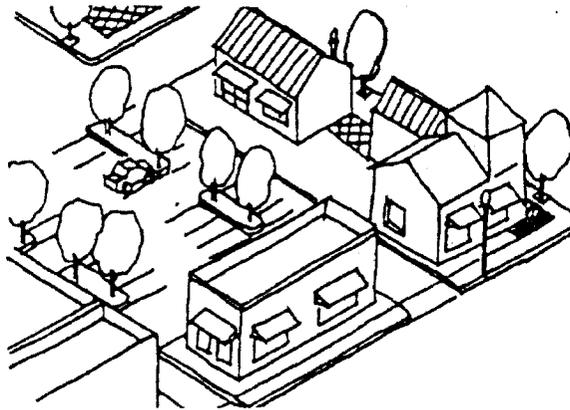
Parking Location and Design

- Commercial parking should typically be behind buildings and never located on corner lots.
- On-street parallel or diagonal parking is encouraged on new commercial streets.
- Parking lots should be screened by low walls, hedges and other landscaping.
- Mid-block pedestrian walks are encouraged.
- Parking area lighting and landscaping are required.
- Bicycle parking is required. The type, location and number shall be determined on the Official Development Plan.





Main Street – Parking Location and Design
Parking located behind mixed use street front and on-street parking.



Retail Center – Parking Location and Design
Parking lots located behind street front shops.

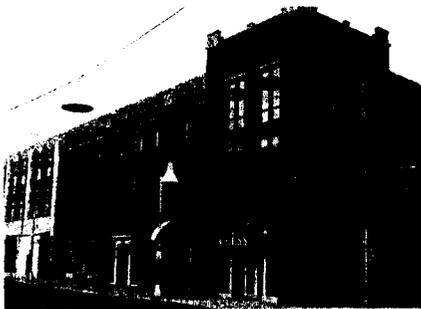
3.4: Commercial/Mixed Use Office Site Planning

Policy

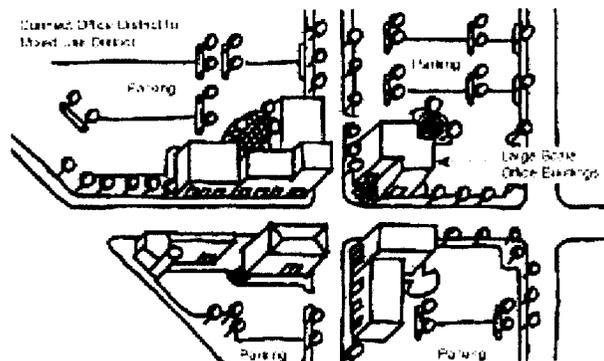
Provide for large scale office uses within a pedestrian framework emphasizing connections to the mixed use district. A commercial/office district contains primarily office uses with convenience retail. The larger office buildings are to be clustered to provide a pedestrian area with the understanding that a large amount of surface parking will also be provided.

Promote high quality site development and landscaping throughout the mixed use district. Insure the necessary provisions for utilities and services and their appropriate screening or enclosure *using the construction materials matching the primary building.*

- The siting of office buildings should provide a strong connection to the commercial/mixed use street or district without walking past or through a large parking area.
- The small amount of convenience retail/commercial should be located adjacent to the park or plaza or other open spaces.
- Shared parking should be calculated based on special parking studies. Overflow or event parking should be provided.
- Parking areas should be heavily landscaped with trees spaced to provide a substantial canopy over the paving areas within a ten year period.
- The office/commercial district should be located adjacent and connected to the mixed use district with high density residential also allowed.
- The office/commercial district buildings should be located to maximize the convenient connection to the mixed use district.



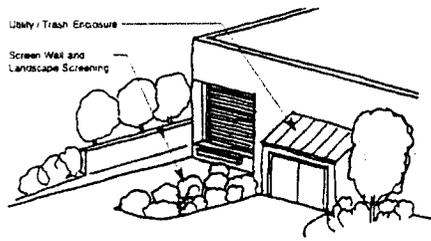
Belmar
Commercial/Office District



Public Open Space: Parks or Plazas

3.4.1: Commercial/Mixed Use: Parks or Plazas

- The office buildings should be clustered around a small park or plaza.
- Seating and shaded or covered areas are strongly encouraged.
- Plazas incorporated into mixed use projects should be very high quality.
- Formal plaza types are encouraged.
- Seating and tables, shaded areas and landscaping should be provided as appropriate to the space to encourage public use and activity.
- Small open spaces with seating areas are desirable when retail spaces such as cafes or lunch shops are located within office buildings.
- Pervious surfaces are encouraged whenever possible to maximize ground water retention. Examples of areas that potentially could include pervious surfaces are hardscape plazas and courtyard areas.



Trash & Loading Areas
Location, Screening and Enclosures



Commercial and Mixed Use Plazas
High quality seating, landscape and lighting are encouraged.

3.4.2: Trash, Loading Areas, and Utility Access: Location and Screening

- Trash collection areas should be located away from primary pedestrian walks and must be screened *with building materials matching the primary building.*
- Loading areas should be located away from pedestrian walks and screened from view.
- Provide for appropriate utilities and locate them away from primary pedestrian walks.
- Wherever possible locate utility access from alleys or rear yard easements.
- Where street side utility access is required provide for enclosure within utility rooms or screening within a landscape area if appropriate. Whenever possible provide utilities (such as transformers) below grade rather than on mounted pads.

3.4.3: Office Building Design Elements

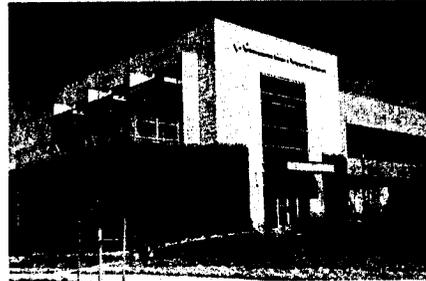
- Office buildings should provide canopies along pedestrian paths and pedestrian lighting.
- Office buildings should contain base, body and roof elements and provide features such as exterior roof decks and other scale giving features and articulating elements.
- *The predominant construction material for office and mixed use buildings should be brick or stone.*
- *The design and construction materials of office/commercial buildings must have a 360 degree architectural design character.*

3.4.4: General Landscape Guidelines

- Provide street trees per *the City of Westminster Landscape Regulations.*
- Provide accent planting and trees at intersection bulbs.
- Provide parking lot trees at spacing to create substantial shading of paved surface area within 10-year growth span.
- Provide landscape adjacent to pedestrian walks, walls and fencing as appropriate.
- Provide landscape for screening.
- Provide landscape elements such as trellises, fencing, landscape screen walls etc. to provide accents to the buildings and reinforce the pedestrian walkways throughout the community.
- *Provide tree grates (5 ft x 5 ft or 4 ft x 6 ft), or circular grates of equal area in all hard surfaced areas.*



Belmar
Commercial/Office District



Stapleton
Office Building Design Elements

Shared Parking

Mixed-density and mixed-use residential neighborhoods present opportunities to share on-street demand for guest parking among individual buildings. A neighborhood parking study may be used to demonstrate the adequacy of the on-street parking supply as a substitute for individual guest parking standards.

3.5: Commercial Mixed Use Building Prototypes and Design Elements

Policy

Promote the development of buildings that support the pedestrian-scaled mixed use district, particularly the “Main Street” commercial character.

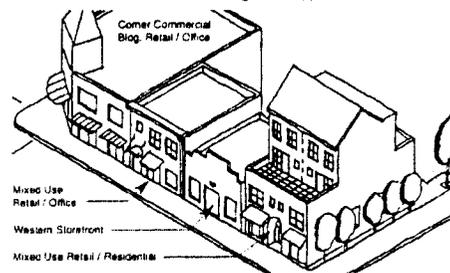
Encourage pedestrian oriented buildings, that provide visually interesting building elements and materials. Encourage a high level of design quality and material palette that reflects local and regional building practices.

3.5.1: Traditional Main Street Building Prototypes

- Ground floor retail or service commercial uses are required, especially at corner lots.
- “Main Street” building prototypes have “build-to” lines at the back of sidewalk or a consistent setback with hardscape to the building.
- Parking may be provided by on-street parking or should be located to the rear of buildings.
- Corner buildings should highlight their presence with special architectural elements or features.



Belmar
Main Street Building Prototype



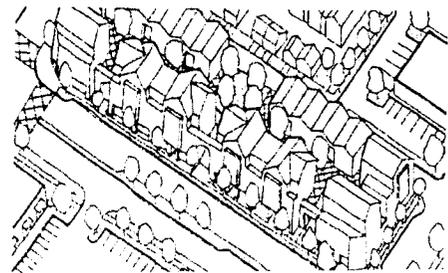
Traditional Main Street Building Prototypes

3.5.2: Mixed Use Building Prototypes

- Residential and office uses are strongly encouraged above the ground floor retail space.
- Street entrances to spaces above the ground floor are strongly encouraged.
- The retail base of the building should have large display windows and transparent entrances.
- Office or residential uses should reflect their character with window patterns etc.
- Balconies or roof decks are encouraged.

3.5.3: High Density and Mixed Use Residential Building Prototypes

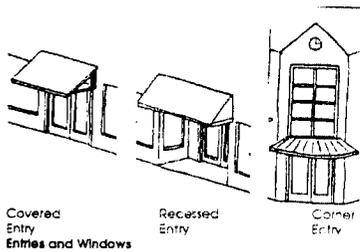
- High density mixed use buildings are encouraged as part of a major commercial area within a mixed use district.
- Retail or service commercial are required along primary pedestrian streets and walks.
- Parking should be within screened areas that are fronted by retail or residential uses.
- Buildings should step back from the commercial street at a relatively consistent height above either the second or third level.
- Retail parking should be allowed on street.



High Density and Mixed Use Residential
Building Prototypes

3.5.4: Building Elements

Encourage the design and selection of building elements so that a generally consistent urban design vocabulary is maintained. Allow variety within each building or complex.



Entries

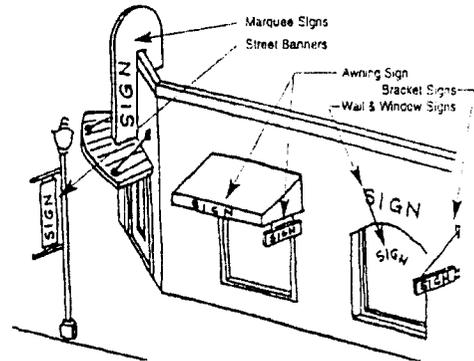
Transparent entries and large store front windows are strongly encouraged. Recessed, “punched” and other styles of window openings are desired.

Windows

Street-level storefront windows are strongly encouraged, to display the shop’s use. Retail windows should be large but office and residential windows *should be* smaller and operable yet organized in a generally regular pattern. Approximately 2/3 of ground level windows shall be glazed. Reflective glass or mirrored glass is prohibited unless determined otherwise by the City. Clear glass shall be used for store fronts, windows and doors. Window painting or view blocking materials or techniques are generally not permitted.



Bradburn Building Elements/Awnings



Signage

Awnings/Canopies

Awnings or canopies that provide a generally consistent cover along the pedestrian walk are strongly encouraged. Arcades are desired to maintain a more continuous weather protected walk. The design of arcades should be generally consistent in proportion and column frequency along streetscapes.

Signage

Signage should be pedestrian scaled and located for viewing by pedestrians, cyclists and drivers. Individual/unique signage is appropriate. “Box” signage is not appropriate. Signs should be individual letters.



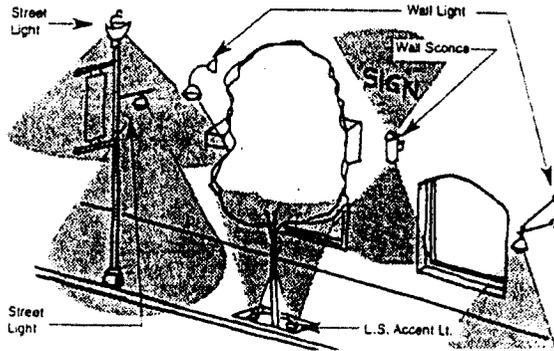
Bradburn Building Elements/Signage

Lighting

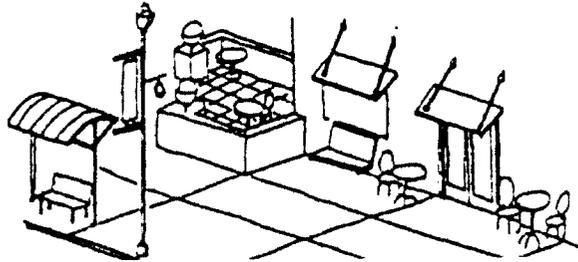
Lighting should be pedestrian scaled and located to light the pedestrian way, accent landscape, signage, shop displays and articulated building elements. Lighting should be consistent with the overall urban character.

Seating and Bus Stops

Seating along the pedestrian/commercial streets is strongly encouraged. Seating for bus stops should be incorporated into the building's design whenever possible. Informal retail seating is also encouraged.



Lighting



Seating: Bus Stops, Built-in building. Integration w/tables and chairs.

Public Art

A project that is more than 10 acres in size must include public art at a minimum cost of \$1,000 per acre, in a manner and design acceptable to the City. This is in addition to any open space, public or private parks within the project.

Design Guideline Definitions

These DESIGN *GUIDELINES* control those aspects of private buildings that affect the public realm. They are to be used in conjunction with the *OFFICIAL DEVELOPMENT PLAN*, which assigns a *Development Area Category* to each lot. These *Design Guidelines* define a selection of different Building Types and list that *Development Area Categories* are allowed for each Building Type. *The Official Development Plan* places each lot in one of the following three *Development Area Categories*, referenced in these Regulations.

Development Area Category

Neighborhood Center (NC): High density and multi-functional lots located in the town center. This zone is the most dense business, service and institutional area. It is centrally located and within walking distance of the surrounding residential areas.

Neighborhood General (NG): Medium density lots, primarily residential and nearest to the town center.

Neighborhood Edge (NE): Lowest density; residential lots towards the periphery of the neighborhood.

These regulations are strictly aesthetic in their intent. In cases of contradiction with local safety codes, these regulations may not apply. In no way does conformance with these regulations exempt a structure from compliance with other applicable codes.

DEFINITIONS

Attachment Zone The area adjacent to the building footprint designated for the encroachment of Porches, Balconies, Bay Windows and other attachments. The Attachment Zone is shaded in these Regulations.

Balcony An upper-story exterior living area *with or without a roof*.

Built Green *A voluntary program, its purpose is to encourage homebuilders to use technologies, products and practices that will:*

- *provide greater energy efficiency and reduce pollution*
- *provide healthier indoor air*
- *reduce water usage*
- *preserve natural resources*
- *improve durability and reduce maintenance*

Civic Building A building owned by a Homeowners' Association, local government, or otherwise occupied by a not-for-profit institution.

Building Height A height measured *as defined in the (IBC) International Builders Code*.

End Unit The first and last units in a party-wall building of multiple units, such as a row house or townhome building.

Frontage	A building wall that faces any public right-of-way other than a rear lane. Buildings at corners have two frontages.
Frontage Line	The setback line on which a frontage is required to be constructed.
Half-Story	A top floor of a building contained partially within the roof space, lit principally by dormers. To qualify as a half story, the window sills must be above the eaves of the principal roof.
Outbuilding	A separate garage structure at the rear of a lot, that may include living quarters above.
Path	A public right-of-way with pedestrian access only.
Porch	A raised platform 2-3 feet above the ground, possibly balustraded area at the front of a building. Porches may be several stories in height.
Rear Lane	A secondary public means of access to a lot, typically occurring at the rear.
Setback	The distance of a building wall from its nearest property line.
Wall	When not noted otherwise, the term Wall refers to a External Wall or Fence to provide privacy.
<i>Parking Mgt. Plan</i>	<i>A document that analyses the parking demand related to building uses in large mixed use areas of a development project.</i>

Design Guideline Criteria

This Design Guideline Criteria applies to all building types, unless otherwise stated below.

1. Lot sides against public rights-of-way (at corners) shall be considered lot fronts for the purposes of this *Design Guideline Criteria*. Corner buildings must therefore treat both of their street facades as Frontages as regards setbacks, attachments, and other details. In other words, corner buildings have two fronts, one back, and one side.
2. Buildings with alley access must access their garage from the rear lane, and are not allowed curb cuts on adjacent streets, (unless noted otherwise).
3. Walls and fences at Frontages and on front-yard side property lines shall be between 18 inches and 3 feet in height. Walls and fences at alleys and on rear-yard side property lines shall be between 3 feet and 6 feet in height. Walls and fences at the sides of row house gardens shall be between 5 feet and 7 feet in height. Walls and fences shielding parking lots from view shall be between 5 feet and 6 feet in height at streets, between 2 feet and 4 feet at alleys. All fences shall be setback a minimum of 3 ft from the alley right-of-way line or 5 ft from the alley pavement.
4. All row house patios and other shaped exterior spaces shall have a minimum dimension of 15 feet in all directions or as prescribed elsewhere in the Design Guidelines, but this dimension may be encroached by Attachments such as Porches and Balconies.
5. Additional attachments (Porches, Balconies, etc.) are always allowed *within* the building footprint provided. Therefore, the absence of an Attachment Zone does not mean that attachments *may* not be allowed *based on the individual review of specific projects*.
6. Zero-lot-line side building walls against private property may not provide any visual access into the adjoining lot.

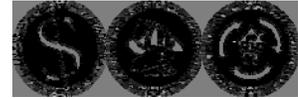


Agenda Item 10 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 8, 2006



SUBJECT: Resolution No. 31 re Changes to the 2006 Pay Plan – Street Operations Reorganization

Prepared By: Ray Porter, Street Operations Manager

Recommended City Council Action

Adopt Resolution No. 31 amending the 2006 Pay Plan previously approved by Council.

Summary Statement

- Based on a comprehensive review of benchmark and special survey positions in 2005 City Staff recommended and City Council approved a resolution adopting the 2005 and 2006 Pay Plans.
- Merging of the Infrastructure Improvements and Street Operations Divisions and recent retirements within the Street Operations Division (Sam LaConte, Street Operations Manager and Cliff Coffman, Street Operations Foreman) have combined to offer a unique opportunity to review how work is done in the Street Operations Division.
- Staff is recommending changes to the 2006 Pay Plan including title and grade adjustments impacting 7.0 full time equivalent positions in the Street Operations Division.
- The proposed Street Operations reorganization will result in a General Fund reduction of \$126,868.

Expenditure Required: (\$126,868)

Source of Funds: General Fund - Street Operations Budget

Policy Issue

Should City Council approve the proposed Street Operations Reorganization resulting in revisions to the previously approved 2006 Pay Plan?

Alternative

Do not approve the proposed Street Operations Reorganization or an amendment to the 2006 Pay Plan. Staff does not recommend this alternative because the proposed organizational structure provides a more efficient method for the Street Operations Division to accomplish work assignments, saves the City \$126,868, and is in the City's best interest.

Background Information

In January 2006 the Infrastructure Improvements and Street Operations Divisions were merged into a Street Operations Division that combined the tasks of both Divisions. The Street Operations Division reduces the workforce from 32.0 Full-Time Employees to 29.5 FTEs, which has a combined budget responsibility of \$7,298,840. A net annual savings of \$126,868 will be realized through implementing the following proposed organizational structure.

- Reclassify two Foremen (N-16) to Supervisor (E-8)
- Reclassify two Equipment Operators II (N-12) to Crew Leaders (N-13)
- Reclassify one Street Technician (N-12) to Crew Leader (N-13)
- Reclassify one Street Technician (N-12) to Street Inspector (N-13)
- Reclassify one Equipment Operator I (N-11) to Equipment Operator II (N12)
- Eliminate one Infrastructure Improvements Manager (A3)
- Eliminate one Foreman (N-16)
- Reduce Secretary by 0.25 FTE (1.25 FTE to 1.0 FTE)

The merger of the two divisions (Infrastructure Improvements and Street Operations) has created organizational restructuring flexibility. Coupled with the retirement of former Street Operations Manager (Sam LaConte) and Street Foreman (Cliff Coffman) the merger allowed staff to evaluate all Street functions within the previous Streets and Infrastructure Improvements Divisions.

Reclassifying the two remaining Foremen positions to Supervisors is warranted given the additional responsibilities being absorbed with the elimination of a Manager and a Foreman. The assigned tasks of the former Infrastructure Improvements Division and the Support Services Foreman will be re-assigned to these two individuals.

Reclassifying two Equipment Operator II and one Street Technician to Crew Leaders is necessary because of the front line supervisory role they now take on during daily activities assisting their Supervisor.

Reclassifying one Equipment Operator I to an Equipment Operator II maintains consistency throughout the Division by allowing for each Crew Leader to have an Equipment Operator II, the individual crew's key operator.

The Infrastructure Improvements and Street Operations Divisions merger has changed the way a Street Technician (Infrastructure Improvements Division) is utilized. The positions were utilized differently in each of the two divisions. Formerly in the Street Division the technician position was assigned to signing and striping and in the Infrastructure Improvements Division the position was assigned to handle the Concrete Replacement Program. With the restructuring, the plan is to utilize the three Street Inspectors (currently two inspectors and one technician) in the same manner.

The annual financial impact of the proposed Street Operations Division listed represent the difference in the top range of each classification listed:

Reclassify two Foremen N-16 to E-8	\$ 7,983
Reclassify two Equipment Operators II to Crew Leaders N-12 to N-13	\$ 6,822
Reclassify one Street Technician to Crew Leader N-12 to N-13	\$ 3,604
Reclassify one Street Technician to Street Inspector N-12 to N-13	\$ 3,516
Reclassify one Equipment Operator II N-11 to N-12	\$ 3,353
Eliminate Infrastructure Improvements Manager A3	(\$ 78,533)
Eliminate Foreman N-16	(\$ 64,178)
Reduce 0.25 FTE Secretary	(\$ 9,435)
TOTAL	(\$126,868)

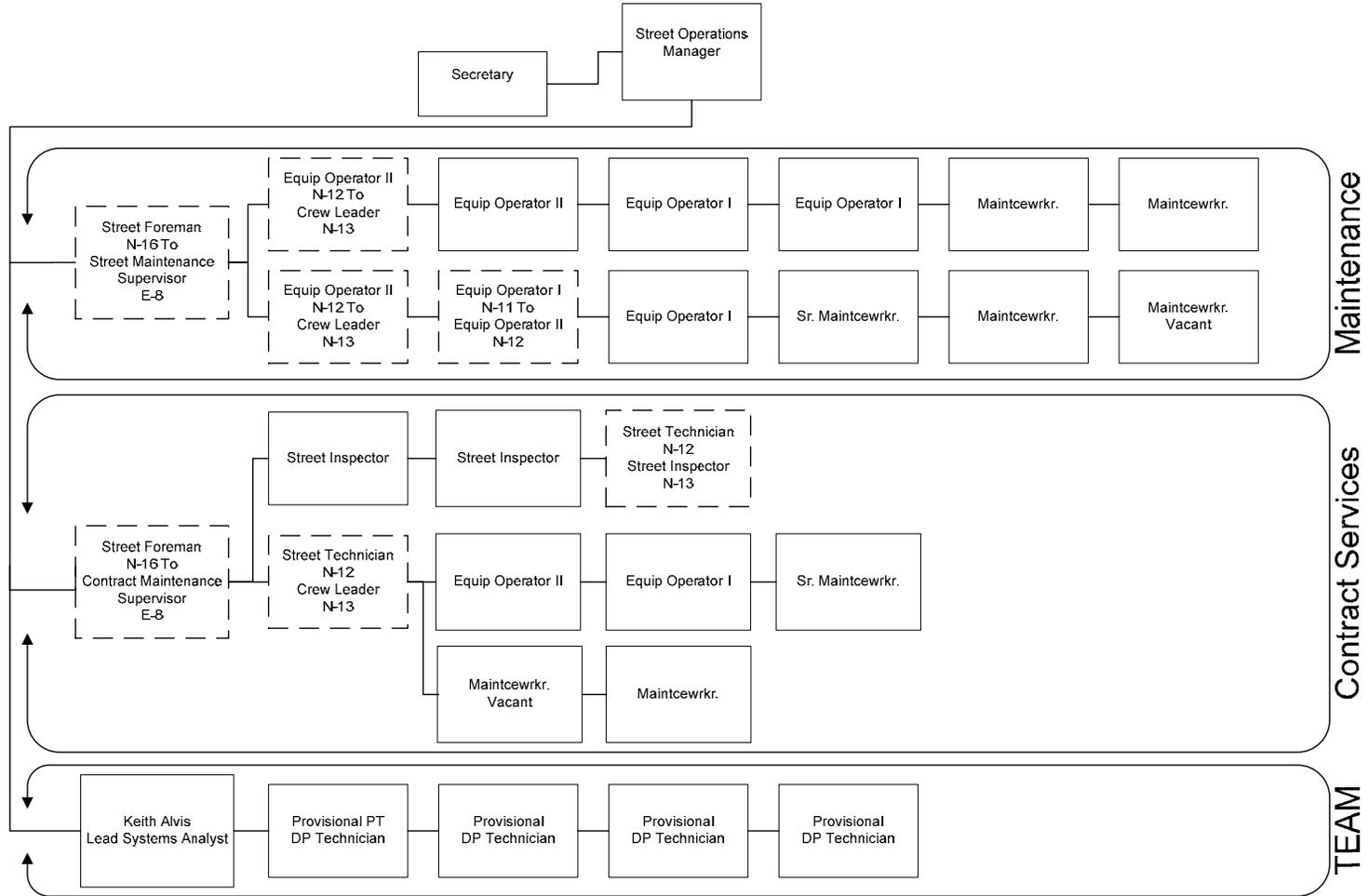
A net savings of \$126,868 will be realized through implementing this proposed organizational structure. Please see the attached proposed organization chart.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

PROPOSED 2006 RE-ORGANIZATION DEPARTMENT of PUBLIC WORKS & UTILITIES DIVISION of STREET OPERATIONS



---- Denotes positions proposed for 2006 changes

RESOLUTION

RESOLUTION NO. **31**

INTRODUCED BY COUNCILLORS

SERIES OF 2006

WHEREAS, Section 1-24-1 and 1-24-4 of the Official Code of the City of Westminster provides that the City Council, upon recommendation of the City Manager, shall by resolution establish the salary schedule for all position classifications in the municipal service; and

WHEREAS, the City Council previously approved the 2006 salary schedule as part of the 2005/2006 City Budget approval process; and

WHEREAS, as a result of a reorganization of the Street Operations Division within the Department of Public Works and Utilities, the 2006 Pay Plan be amended to reflect the Street Division restructuring; and

WHEREAS, the City Manager is recommending a number of pay grade adjustments for specific classifications and elimination of two positions, based on the Street Division's reorganization; and

WHEREAS, several reclassifications, and title adjustments are recommended as a result of organizational changes; and

NOW, THEREFORE, BE IT RESOLVED THAT THE WESTMINSTER CITY COUNCIL RESOLVES the attached amendment to the salary schedule and the authorized personnel schedule described in the 2006 Pay Plan are hereby adopted and approved and shall be put into effect on May 29, 2006.

PASSED AND ADOPTED this 8th day of May, 2006.

ATTEST:

Mayor

City Clerk

2006 AUTHORIZED FULL-TIME EQUIVALENT EMPLOYEES

<u>Position Title</u>	<u>2006</u> <u>Authorized</u>	<u>2006</u> <u>Midyear</u> <u>Changes</u> <u>5/06</u>	<u>2006</u> <u>Proposed</u>
Public Works & Utilities Department			
Street Maintenance Division			
Business Unit: 10035450			
Street Operations Manager	1.000		1.000
Foreman, Streets	3.000	-3.000	0.000
Streets Supervisor	0.000	2.000	2.000
Street Inspector	1.000	2.000	3.000
Equipment Operator I	5.000	-1.000	4.000
Equipment Operator II	4.000	-1.000	3.000
Crewleader	0.000	3.000	3.000
Maintenanceworker/Senior Maintenanceworker	9.000		9.000
Secretary	0.750	0.750	1.500
Street Technician	1.000	-1.000	0.000
Community Services Coordinator	<u>1.000</u>		<u>1.000</u>
Streets Subtotal	25.750	1.750	27.500
Infrastructure Improvements Division			
Business Unit: 10035430			
Infrastructure Improvements Manager	1.000	-1.000	0.000
Street Technician	1.000	-1.000	0.000
Street Inspector	1.000	-1.000	0.000
Secretary	<u>1.000</u>	<u>-1.000</u>	<u>0.000</u>
Infrastructure Improvements Subtotal	4.000	-4.000	0.000
Public Works and Utilities Department Total	29.750	-2.250	27.500

2006 AUTHORIZED EXEMPT POSITION TITLES

<u>Grade</u>	<u>Position</u>	<u>Class Code</u>
E6	Accountant	3107
E3	Administrative Coordinator	4602
E2	Administrative Secretary	4603
E7	Assistant City Attorney I	3502
E10	Assistant City Attorney II	3501
E12	Assistant City Engineer	3303
E3	Assistant Golf Professional	3912
E4	Assistant Golf Superintendent	3917
E5	Assistant Prosecuting Attorney I	3511
E7	Assistant Prosecuting Attorney II	3512
E9	Assistant to the City Manager	7107
E12	Associate Judge	2202
E11	Capital Projects Coordinator	3335
E4	Collections Supervisor	4405
E8	Community Development Program Coordinator	3402
E6	Contract Services Coordinator	5104
E9	Control Systems Engineer	3348
E6	Deputy Court Administrator	4403
E8	Economic Development Specialist	7115
E9	Emergency Management Coordinator	6116
E5	Employee Development Analyst	7128
E7	Engineer	3342
E9	Environmental and Administrative Services Officer	7136
E10	ERP Software Engineer	3217
E4	Executive Secretary to the City Manager	4601
E6	Financial Analyst	3109
E9	GIS Coordinator	3347
E6	Golf Professional	3911
E9	Golf Superintendent	3918
E9	Human Resources Administrator	3716
E4	Human Resources Analyst	3703
E4	Human Resources Analyst/HRIS	3713
E4	Human Resources Analyst/Recruitment	3714
E7	(I) Engineer	3343
E5	(I) Landscape Architect I	5325
E7	(I) Landscape Architect II	5326
E5	(I) Planner I	3811
E6	(I) Planner II	3808
E7	(I) Rocky Flats Coordinator	3329
E9	(I) Senior Engineer	3344
E12	(I) Senior Projects Engineer	3349
E7	(I) Water Resources Analyst	3341
E10	Information Systems Manager	3209
E6	Internal Auditor	3110
E9	Internet Software Engineer	3202
E12	Judge Pro Tem	2203
E7	Lake Operations Coordinator	5302
E5	Landscape Architect I	5329
E7	Landscape Architect II	5328

2006 AUTHORIZED EXEMPT POSITION TITLES

<u>Grade</u>	<u>Position</u>	<u>Class Code</u>
E7	Lead ERP Systems Analyst	3218
E9	Lead Prosecuting Attorney	3513
E11	Lead Software Engineer	3201
E7	Lead Systems Analyst	3213
E2	Legal Secretary	3514
E4	Librarian I	3603
E5	Librarian II	3602
E6	Library Services Coordinator	3615
E5	Library Supervisor	3604
E4	Management Analyst	7130
E5	Management Assistant	7113
E2	Management Intern II	7119
E5	Neighborhood Outreach Coordinator	7124
E12	Neighborhood Services Administrator	6223
E8	Network Administrator	3210
E8	Open Space Coordinator	7101
E4	Open Space Volunteer Coordinator	7120
E4	Paralegal	3510
E8	Park Supervisor	5320
E9	Pension Administrator	3106
E5	Planner I	3804
E6	Planner II	3803
E8	Planner III	3802
E9	Planning Coordinator	3809
E10	Plant Superintendent	3340
E12	Police Commander	6228
E5	Probation Services Coordinator	3505
E7	Projects Coordinator	3330
E9	Public Information Officer	7105
E5	Public Information Specialist	7109
E6	Purchasing Officer	7132
E10	Reclaimed System Coordinator	3352
E5	Reclaimed System Analyst	3350
E4	Recreation Specialist	3908
E4	Recreation Specialist - Wellness	3709
E7	Recreation Supervisor - City Park	3904
E6	Recreation Supervisor - Senior Center	3914
E6	Recreation Supervisor - Swim and Fitness	3905
E6	Recreation Supervisor - West View	3916
E4	Recreation Supervisor Assistant	5413
E7	Research & Analysis Coordinator	7117
E7	Revenue Administrator	3104
E4	Revenue Agent	3111
E9	Risk Management Officer	7126
E5	Sales Tax Auditor	3108
E9	Senior Engineer	3345
E7	Senior Human Resources Analyst	3710
E7	Senior Management Analyst	7131
E9	Senior Projects Coordinator	3806

2006 AUTHORIZED EXEMPT POSITION TITLES

<u>Grade</u>	<u>Position</u>	<u>Class Code</u>
E12	Senior Projects Engineer	3328
E9	Senior Projects Planner	3810
E6	Senior Public Information Specialist	7127
E9	Senior Telecommunications Administrator	7122
E7	Software Engineer I	3204
E9	Software Engineer II	3203
E8	Streets Supervisor	5519
E4	Systems Analyst I	3214
E5	Systems Analyst II	3215
E6	Systems Analyst III	3216
E7	Technical Services Coordinator	6227
E5	Transportation Systems Coordinator	3315
E7	Utilities Operations Coordinator	5611
E8	Utilities Supervisor	5602
E5	Victim Services Coordinator	3503
E4	Volunteer Coordinator	7112
E11	Water Resources Engineering Coordinator	3351
E10	Water Quality Administrator	3339
E7	Water Quality Specialist	3336

Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, May 8, 2006. Mayor McNally, Mayor Pro Tem Kauffman and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the April 24, 2006 regular meeting were approved.

Council issued proclamations for Public Works Week from May 21-27 and for Colorado Archaeology and Historic Preservation Month in May.

Council approved the following: purchase of a front end loader; purchase of replacement fire engine and award sole vendor status; Country Club Highlands waterline upsizing; Middfoil Project for control of Eurasian Watermilfoil in Standley Lake; engineering design contract for Big Dry Creek Trail at Wadsworth Blvd.; engineering design contract for Sheridan Blvd. from 69th to 74th Aves., 72nd Ave. from Depew to Wolff; intersection and street widening contracts for 125th Ave. at Huron St. and 128th Ave. at Delaware St.; IGA with Urban Drainage and Flood Control District for Quail Creek Improvements; IGA with Urban Drainage and Flood Control District for Cozy Corner Tributary No. 5 design and construction; final passage of CB No. 28 re BAP Amendment with Pappas Restaurants; final passage of CB No. 29 re 2005 Final Budget Supplemental Appropriation; final passage of CB No. 30 re 2006 1st Quarter Budget Supplemental Appropriation; final passage of CB No. 31 re Cost Recovery for 112th Ave/Federal Blvd intersection improvements; and final passage of CB No. 32 re Code amendment for dangerous and vicious animals.

Council adopted the following Resolutions: Res. No. 28 re appointments to Boards and Commissions; Res. No. 29 re designation of Merton and Mary Williams House as a local Historic Landmark; Res. No. 30 re Revised Design Guidelines for Traditional Mixed Use Neighborhood Development; and Res. No. 31 re changes to the 2005 Pay Plan for Street Operations reorganization.

The meeting adjourned at 7:48 p.m.

By Order of the Westminster City Council
Linda Yeager, City Clerk
Published in the Westminster Window on May 18, 2006

A BILL FOR THE ORDINANCE AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE ASSISTANCE AGREEMENT WITH PAPPAS RESTAURANTS TO AID IN THE CONSTRUCTION OF A PAPPADEAUX SEAFOOD KITCHEN ON THE SOUTHWEST CORNER OF 92ND AVENUE AND SHERIDAN BOULEVARD IN WESTMINSTER

WHEREAS, the City of Westminster has indicated its desire to attract unique restaurants and increase sales tax generation at the southwest corner of 92nd Avenue and Sheridan Boulevard, within the Westminster Center Urban Renewal Area; and

WHEREAS, Pappas Restaurants ("Pappas") has all of the property either in ownership or under contract to purchase, that is necessary to proceed with the construction of an approximately 12,950 square foot Pappadeaux Seafood Kitchen in accordance with standard development review procedures established by the Westminster Municipal Code; and;

WHEREAS, an amended and restated three party Business Assistance Package between the City of Westminster, Westminster Economic Development Authority, and Pappas Restaurants is attached hereto as Exhibit A and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter in to the amended and restated three party Business Assistance Agreement with the Westminster Economic Development Authority and Pappas Restaurants in substantially the same form as the one attached as Exhibit A, and upon execution of the Agreement to implement said agreement.

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

Exhibit A

AMENDED AND RESTATED BUSINESS ASSISTANCE PACKAGE BETWEEN THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF WESTMINSTER AND PAPPAS RESTAURANTS

This Agreement is made this ___ day of _____, 2006, by and between the **CITY OF WESTMINSTER**, a Colorado home rule city ("City"), the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (WEDA)**, an urban renewal authority organized and existing pursuant to the provisions of Part 1, Article 25, Title 31, C.R.S. ("WEDA"), and **PAPPAS RESTAURANTS** ("Pappas").

WHEREAS, the City, WEDA, and Pappas are parties to that certain agreement identified as "Business Assistance Package between the Westminster Economic Development Authority, the City of Westminster, and Pappas Restaurants," and dated April 26, 2004 (the "Original Agreement"); and

WHEREAS, the parties now wish to supersede and replace the Original Agreement with this Amended and Restated Agreement

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, WEDA and Pappas agree as follows:

1. Sales Tax Rebate

WEDA shall rebate Pappas 50% of the Sales Tax collected from Pappadeaux Seafood Kitchen, located at the southwest corner of 92nd Avenue and Sheridan Boulevard, Westminster, Colorado, commencing as of the date of issuance of a Certificate of Occupancy for Pappas, and ending on the fifth anniversary thereof (the "Sales Tax Rebate"). This payment shall not exceed a total of \$347,000. The Sales Tax Rebate shall be paid by WEDA in annual installments from sales and property tax increment revenues paid into WEDA's special fund pursuant to the Westminster

City Center East Urban Renewal Plan and the Urban Renewal Act. The Sales Tax Rebate shall be calculated in year one based on the tax collected during the periods between this issuance of the Certificate of Occupancy and November 30th. Thereafter, the Sales Tax Rebate shall be calculated based upon the prior 12 months of sales tax revenues paid by the Pappadeaux Seafood Restaurant from the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax), multiplied by 50%.

The payment of each annual installment of the Sales Tax Rebate shall be made on or before December 20th. Payments will be submitted electronically to Pappas Restaurants designated financial institution. In the event that property and sale tax increment revenues are insufficient to satisfy any of the five annual installment payments otherwise due under this Agreement, the balance of such obligation shall be satisfied as and when such revenues become available, even if doing so results in extending WEDA's payments hereunder beyond the fifth (5th) anniversary of the issuance of Pappas' Certificate of Occupancy.

Utility Easement Dedication

Pappas agrees to execute a 30-foot permanent easement for utility and other public purposes along Pappas' westerly property line from West 92nd Avenue to Sheridan Boulevard, which easement shall be in the form attached hereto as Exhibit A. In consideration of this conveyance, the City shall waive the recoveries associated with Pappas' site, which recoveries are described in Exhibit B. The permanent easement shall be recorded in the public land records of the Clerk and Recorder of Jefferson County and shall also be referenced on Pappas' final plat (formally known as Turnpike Commercial Subdivision). The waiver of recoveries shall be described in an administrative amendment to Pappas' ODP ((The Fifth Amended Official Development Plan Hyland Office Park, Lot 1, a Planned Unit Development in the City of Westminster, County of Jefferson, State of Colorado).

Entire Agreement

This instrument shall constitute the entire three party agreement between the City, WEDA and Pappas Restaurants and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. In the event of sale, staff may assign the business assistance package to Pappadeaux Seafood Restaurant's successor.

Condition of Rebate

Pappas Restaurant agree to build an approximately 12,950 square foot Pappadeaux Seafood Kitchen on the southwest corner of 92nd Avenue and Sheridan Boulevard in the City of Westminster, with construction anticipated to begin third quarter 2004 and completion by end of the third quarter 2006.

Termination of Agreement

The Sales Tax Rebate and this Business Assistance Agreement shall terminate and become void and of no force and effect upon WEDA or the City of Westminster if Pappadeaux Seafood Restaurant has not received the Certificate of Occupancy by December 31, 2006. The conveyance of the permanent easement and waiver of recoveries on the site shall not be affected by any termination or assignment of this agreement.

Business Termination

In the event that Pappadeaux Seafood Restaurant ceases business at the southwest corner of 92nd Avenue and Sheridan Boulevard, within the City of Westminster, within 5 years of the Certificate of Occupancy, any Sales Tax Rebate payments paid to Pappas shall be repaid to WEDA within 120 days of said cessation.

Subordination.

WEDA's obligations pursuant to this Agreement are subordinate to the State Urban Renewal Statutes for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and property tax revenues in excess of the sales and property tax revenues necessary to meet such existing or future bonded indebtedness. WEDA shall meet its obligations under this Agreement only after WEDA has satisfied all other obligations with

respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City or WEDA, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City or WEDA.

Governing Law: Venue

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

A BILL FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE OPEN SPACE FUND AND GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the Open Space Fund initially appropriated by Ordinance No. 3162 in the amount of \$4,414,869 is hereby increased by \$362,270 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$6,845,669. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of contributions.

Section 2. The \$362,270 increase in the Open Space Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Contributions	5400.43100.0000	\$158,000	\$362,270	\$520,270
Total Change to Revenues			<u>\$362,270</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchase	54010900.76600.0000	\$16,475,965	\$362,270	\$16,838,235
Total Change to Expenses			<u>\$362,270</u>	

Section 3. The 2005 appropriation for the GCIF initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby decreased by \$50,456 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$36,896,689. The actual amount in the GCIF on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of grant funds and an addendum to the IGA with Highland Hills Park and Recreation District.

Section 4. The \$50,456 decrease in the GCIF shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	7500.40620.0000	\$277,200	\$6,844	\$284,044
Contributions	7501.43100.0000	\$1,500,060	<u>(\$57,300)</u>	\$1,442,760
Total Change to Revenues			<u>(\$50,456)</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
South Westy Revital Appropriation Holding	80175030024.80400.88 88	\$0	\$6,844	\$6,844
Park Capital Impr. Approp. Holding	80375050302.80400.88 88	\$57,300	<u>(\$57,300)</u>	\$0
Total Change to Expenses			<u>(\$50,456)</u>	

Section 5. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by

a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 6. This ordinance shall take effect upon its passage after the second reading.

Section 7. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

Price - Lindsey

A BILL FOR AN ORDINANCE AMENDING THE 2006 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, OPEN SPACE, AND UTILITY WATER FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2006 ESTIMATED REVENUES IN THE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$86,209,579 is hereby increased by \$26,282 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$85,395,609. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of grants and program revenues.

Section 2. The \$26,282 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$0	\$25,766	\$25,766
Off Duty Fire Svcs	1000.41340.0013	0	516	516
Total Change to Revenues			<u>\$26,282</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Equipment – Invest. Svcs	10020300.76000.0344	\$0	\$25,766	\$25,766
Fire Supplies – EMS	10025260.70200.0546	4,620	516	5,136
Total Change to Expenses			<u>\$26,282</u>	

Section 3. The 2006 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,668,000 is hereby increased by \$146,205 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$7,754,205. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of cash in lieu payments, state grants, and easement agreements.

Section 4. The \$146,205 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Cash in lieu future capital projects	7500.40210.0751	\$0	\$77,230	\$77,230
State Grants	7500.40620.0000	0	11,675	11,675
Contributions	7501.43100.0000	1,385,460	57,300	1,442,760
Total Change to Revenue			<u>\$146,205</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
New Art Projects – Appro. Holding	80575030426.80400.8888	\$0	\$38,230	\$38,230
South Westy Revital. – Appro. Holding	80175030024.80400.8888	315,400	50,675	366,075

Park Cap Improv. – Appro. Holding	80375050302.80400.8888	(57,300)	57,300	0
Total Change to Expenses			<u>\$146,205</u>	

Section 5. The 2006 appropriations for the Open Space Fund initially appropriated by Ordinance No. 3162 in the amount of \$4,563,535 is hereby increased by \$3,024 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$4,566,559. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of rental lease payments.

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Open Space General	5400.43060.0000	\$0	\$3,024	\$3,024
Total Change to Expenses			<u>\$3,024</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$749,739	\$3,024	\$752,763
Total Change to Revenue			<u>\$3,024</u>	

Section 6 The 2006 appropriations for the Utility Water Fund initially appropriated by Ordinance No. 3162 in the amount of \$29,510,392 is hereby increased by \$4,064,191 which, when added to the fund balance as of the City Council action on April 24, 2006 will equal \$33,799,548. The actual amount in the Utility Water Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of rental lease payments.

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Water General	2000.43060.0000	\$300,000	\$4,064,191	\$4,364,191
Total Change to Expenses			<u>\$4,064,191</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Water Project Res. – Approp. Holding	80120035181.80400.8888	\$11,514,456	\$4,064,191	\$15,578,647
Total Change to Revenue			<u>\$4,064,191</u>	

Section 7 – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 8. This ordinance shall take effect upon its passage after the second reading.

Section 9. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

A BILL FOR AN ORDINANCE ESTABLISHING COST RECOVERIES FOR CITY-CONSTRUCTED IMPROVEMENTS RELATED TO THE 112TH AVENUE/FEDERAL BOULEVARD INTERSECTION IMPROVEMENTS PROJECT (PROJECT NO. S03-03)

WHEREAS, Westminster Municipal Code § 11-6-7(B)(1) provides that the City shall have the authority to allocate and recover the costs of construction of public improvements or facilities to property owners based on the benefit of such improvement, facility, or service to said owners; and

WHEREAS, Westminster Municipal Code § 11-6-7(B)(3) provides that the City Council shall provide by ordinance for the recovery of appropriate costs for public improvements, facilities, or services constructed by the City, and that said ordinance shall establish the nature and extent of the recoveries due to the City, and that such ordinance may include provisions for simple interest payable to the City; and

WHEREAS, Westminster Municipal Code § 11-6-7(E)(2)(a) provides that any ordinance establishing cost recovery obligations for City-constructed improvements shall include a list of properties to be charged with cost recovery for said improvements, that said ordinance shall be recorded in the real estate records of the counties in which the properties to be charged with cost recoveries are located and, if available, shall include a final statement of construction costs for the improvements subject to recovery, or otherwise, an estimate of construction costs for the improvements to be constructed until a final statement of construction costs for the improvements may be determined and recorded following the completion of the improvements; and

WHEREAS, the City previously completed the installation of significant roadway improvements at the intersection of 112th Avenue and Federal Boulevard; and

WHEREAS, the City previously recovered, in conjunction with the City's development plan and building permit approval process, payments from the developers of the property located at the northeast corner of the intersection, and the southeast corner of the intersection; and

WHEREAS, the developer of the northwest corner of the intersection is not responsible for cost recoveries associated with this project since the developer constructed its portion of the intersection improvements in conjunction with the construction of its project; and

WHEREAS, the owners of the property located at the southwest corner of the intersection previously paid a portion of their proportionate share of the expenses in the amount of \$71,192, but have elected to defer the payment of the remainder of the proportionate share of the costs in the amount of \$115,667 until such time that the property is platted or a request for a building permit is made to the City; and

WHEREAS, the City, through this ordinance, now wishes to establish a cost recovery that will be owed to the City by the future developer of this site located at the southwest corner of the intersection of 112th Avenue and Federal Boulevard; and

WHEREAS, in consideration of the owner's previous advance payment in the amount of \$71,192, thereby reducing the amount of cash required by the City to fund its construction payments on this project, it is the intent of the City that interest on the remaining \$115,667 will not begin to accrue until January 1, 2010.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The nature and extent of the recoveries due to the City pursuant to this ordinance are the costs associated with the construction of the 112th Avenue and Federal Boulevard intersection improvements in the amount of \$865,278.08, less previous payments and in-kind contributions received by the City from the developers of the northwest, northeast, and southeast corners of the project, and the partial payment previously made by the owner of the southwest corner of the intersection (Bruchez Group, LLP) in the amount of \$71,192, for a total cost recovery obligation in the amount of \$115,667 (the "Recoverable Costs").

Section 2. The property described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Assessed Property"), is hereby charged with the Recoverable Costs. The Recoverable Costs shall be due and payable in accordance with the provisions of W.M.C. § 11-6-7 as the same may be amended.

Section 3. In the event the Assessed Property is developed and the \$115,667 balance is paid prior to January 1, 2010, no interest shall be due. Otherwise, the Recoverable Costs established pursuant to this

ordinance shall accrue interest commencing on January 1, 2010, continuing until paid, and calculated in accordance with the rates established annually by the City Council pursuant to the Westminster Municipal Code.

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.

Section 6. The City Clerk shall cause a copy of this ordinance to be recorded in the real estate records of Adams County immediately following its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.

A BILL FOR AN ORDINANCE AMENDING CHAPTER 7 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING ANIMALS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 7, W.M.C., Titles section, is hereby AMENDED to read as follows:

CHAPTER 7

ANIMALS

- 6-7-1: DEFINITIONS
- 6-7-2: RABIES CONTROL
- 6-7-3: REPORTING ANIMAL BITES
- 6-7-4: LICENSING OF DOGS (REPEALED ORDINANCE 2627)
- 6-7-5: ANIMALS RUNNING AT LARGE
- 6-7-6: REMOVAL OF ANIMAL EXCREMENT; DAMAGE TO PROPERTY
- 6-7-7: DISTURBANCE; PUBLIC NUISANCE
- 6-7-8: VICIOUS ANIMALS AND GUARD DOGS POTENTIALLY DANGEROUS ANIMALS
- 6-7-9: IMPOUNDED ANIMALS
- 6-7-10: KENNELS
- 6-7-11: PET SHOPS
- 6-7-12: RESTRICTIONS ON SALE AND POSSESSION OF ANIMALS
- 6-7-13: CARE AND TREATMENT
- 6-7-14: CAPTURING ANIMALS
- 6-7-15: FEES
- 6-7-16: ENFORCEMENT INTERFERENCE
- 6-7-17: PENALTIES
- 6-7-18: GUARD DOGS

Section 2. Section 6-7-1, W.M.C., is hereby AMENDED to read as follows:

6-7-1: DEFINITIONS: When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows: (1463 1890 1973 2066 2576 3062)

ANIMAL: Any organism in the kingdom animalia, other than a human being.

ANIMAL ~~CONTROL~~ MANAGEMENT OFFICER: An employee or agent of the City authorized by the Chief of Police to enforce the provisions of this chapter.

ANIMAL SHELTER: The Animal shelter designated by contract for care and shelter of abandoned or neglected animals or animals impounded by the City, and authorized by this chapter to provide other services for animals on behalf of the City. The designated shelter is, until changed by the City or the shelter, the Table Mountain Animal Center.

CAT: A domestic cat (felis catus) of either sex, including one neutered which can be vaccinated against rabies.

DOG: A domestic dog (canus domesticus) of either sex, including one neutered which can be vaccinated against rabies.

DOMESTIC ANIMAL: Domesticated dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and invertebrates, except livestock and exotic endangered and prohibited animals.

ENDANGERED SPECIES: Any species of animal, bird or reptile which is currently listed as endangered by the United States Department of interior or the Colorado Department of Natural Resources.

EXOTIC ANIMALS: Arachnids, crocodilians over one foot in length and other reptiles which are not prohibited animals, which are not commonly kept or harbored as a household pet.

GUARD DOGS: Any dog placed within an ~~enclosure~~ ENCLOSED AREA for the protection of persons or property by attacking or threatening to attack any person found within the ~~enclosure~~ ENCLOSED AREA patrolled by such dog.

HARBORING: The act of keeping and caring for an animal or of providing a premises to which the animal returns for food, shelter or care.

HUMANE TRAP: A box-type trap which does not cause bodily harm to the animal intended to be captured or to any other animal or person coming in contact with such trap.

KENNEL: Premises where more than five (5) nonlivestock animals excluding offspring not exceeding four (4) months of age belonging to one of the adult animals are kept for any purpose; including boarding or training. The term "kennel" does not include pet shop.

LIVESTOCK: Any animal commonly kept or harbored, as a source of food, hides, income through agricultural sale, as a pack animal or draft animal or for use as transportation. Livestock includes, but is not limited to, horses, mules, sheep, goats, cattle, swine, chickens, ducks, geese, pigeons, turkeys, pea fowl, guinea hens, and bees. In the event of uncertainty concerning whether a particular animal is a species of livestock, the presumption shall be that such animal is a species of livestock until the owner of such animal proves by a preponderance of the evidence to the satisfaction of the Municipal Court that the animal is not a species of livestock

OWNER: Any person who has right of property in an animal or harbors an animal or allows an animal to remain about his premises for a period of seventy two (72) hours or longer; Claims responsibility for an animal; or is declared by court decree to be the responsible party for an animal or the authorized agent of any such person. The parent or guardian of any minor claiming ownership of an animal shall be deemed to be the owner of the animal for purposes of this chapter.

PERSON: Any natural person, corporation, partnership, association, or other entity.

PET SHOP: An establishment engaged in the business of breeding, buying or selling animals, other than livestock, in commercial, wholesale or retail trade.

POTBELLIED PIG: A pig registered with a bona fine potbellied pig registry and weighing less than ninety-five (95) pounds.

POTENTIALLY DANGEROUS ANIMAL: ANY ANIMAL THAT MAY REASONABLY BE ASSUMED TO POSE A THREAT TO PUBLIC SAFETY AS DEMONSTRATED BY ANY OF THE FOLLOWING BEHAVIORS:

1. CAUSING AN INJURY TO A PERSON OR DOMESTIC ANIMAL THAT IS LESS SEVERE THAN A SERIOUS INJURY;

2. WITHOUT PROVOCATION, CHASING OR MENACING A PERSON OR DOMESTIC ANIMAL IN AN AGGRESSIVE MANNER; OR

3. ACTS IN A HIGHLY AGGRESSIVELY MANNER WITHIN A FENCED YARD/ENCLOSURE AND APPEARS TO A REASONABLE PERSON ABLE TO JUMP OVER OR ESCAPE.

PROHIBITED ANIMAL: Any animal which is ordinarily found in an unconfined state and is usually not kept as a household pet, including, but not limited to, lions, tigers, cheetahs, panthers, leopards, cougars, mountain lions, ocelots, any wild members of the genus felis, lynx, bobcats, foxes, minks, skunks, raccoons, bears, nonhuman primates, wolves and coyotes; poisonous snakes and lizards; lethal toads and arachnids (spiders, scorpions, and tarantulas) and nonpoisonous snakes over six feet in length. "Prohibited animal" shall not include domestic ferrets (*mustelia furo*), livestock, rabbits, dogs, cats, and small rodents. Alleged domestication of any prohibited animal shall not affect its status under this definition. In the event of uncertainty whether a particular animal is a prohibited animal, it shall be presumed prohibited until proven not prohibited by a preponderance of the evidence to the satisfaction of the Municipal Court.

PROPER ENCLOSURE: SECURE CONFINEMENT INDOORS OR SECURE CONFINEMENT IN A LOCKED PEN, FENCED YARD, OR STRUCTURE MEASURING AT LEAST 6 FEET IN WIDTH, 12 FEET IN LENGTH, AND 6 FEET IN HEIGHT, CAPPED WITH SECURE SIDES AND CONSTRUCTED AT THE BOTTOM SO AS TO PREVENT ESCAPE BY DIGGING, WHICH PROVIDES PROPER PROTECTION FROM THE ELEMENTS FOR THE ANIMAL, IS SUITABLE TO PREVENT THE ENTRY OF YOUNG CHILDREN, AND IS DESIGNED TO PREVENT THE ANIMAL FROM ESCAPING WHILE ON THE OWNER'S PROPERTY. THE PROPER ENCLOSURE MUST COMPLY WITH ALL ZONING AND BUILDING ORDINANCES/REGULATIONS OF THE CITY, BE KEPT IN A CLEAN AND SANITARY CONDITION, AND BE APPROVED BY THE ANIMAL MANAGEMENT OFFICER, AND SUCH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD.

RABIES VACCINATION: Inoculation of a domestic animal with an anti-rabies vaccine approved by The Colorado Department Of Health and administered by a licensed veterinarian. The vaccination shall be valid for the period of time specified in writing by the veterinarian for the specific vaccine used.

RESPONSIBLE PERSON: A PERSON AT LEAST 18 YEARS OLD WHO IS FAMILIAR WITH THE ANIMAL, AND HAS THE SIZE, STRENGTH, AND EXPERIENCE TO BE ABLE TO KEEP THE ANIMAL UNDER COMPLETE CONTROL AT ALL TIMES.

RUNNING AT LARGE: An animal off the premises of the owner and not under the physical control of the owner.

SERIOUS INJURY: DEATH OR ANY PHYSICAL INJURY THAT RESULTS IN SEVERE BRUISING, MUSCLE TEARS, OR SKIN LACERATIONS REQUIRING PROFESSIONAL MEDICAL TREATMENT OR REQUIRES CORRECTIVE OR COSMETIC SURGERY.

STRAY ANIMAL: Any animal for which there is no identifiable owner.

VICIOUS ANIMAL: Any ~~unprovoked~~ animal that ~~bites or attacks a person or other animal at any place within the City which, regardless of the presence or absence of the owner:~~

1. ~~Bites or attacks a person or other animal or that threatens to attack a person or other animal~~ CAUSES A SERIOUS INJURY TO A PERSON OR DOMESTIC ANIMAL; or

2. ~~Has demonstrated tendencies that would cause a reasonable person to believe that the animal may inflict injury upon or cause the death of any person or other animal~~ HAS A PREVIOUS POTENTIALLY DANGEROUS ANIMAL CONVICTION AND CONTINUES TO ENGAGE IN BEHAVIOR THAT POSES A THREAT TO PUBLIC SAFETY AS DESCRIBED IN THIS CHAPTER'S DEFINITION OF POTENTIALLY DANGEROUS ANIMAL; or

3. Has engaged in or been trained for animal fighting as described and prohibited in Section 18-9-204, C.R.S.; OR

4. HAS A DEMONSTRATED HISTORY OF BEHAVIOR THAT WOULD CAUSE A REASONABLE PERSON TO BELIEVE THAT THE ANIMAL MAY INFLICT SERIOUS INJURY UPON ANY PERSON OR DOMESTIC ANIMAL.

Section 3. Section 6-7-2, W.M.C., is hereby AMENDED to read as follows:

6-7-2: RABIES CONTROL: (1463 1963 2045 2576 2657)

(A) Vaccinations: It shall be unlawful for any owner of a dog or cat four (4) months of age or older to fail to have such animal vaccinated against rabies. All dogs and cats shall be vaccinated at four (4) months of age and revaccinate thereafter at the expiration of the validity of the vaccine used, as shown on the written document prepared by a licensed veterinarian. The vaccination shall be valid for the period shown on the document. Any person moving into the City from a location outside the City shall comply with this Section within thirty (30) days after having moved into the City, by having the animal vaccinated or showing proof of current, valid vaccination. If the dog or cat has inflicted a bite on any person or another animal within the last ten (10) days, the owner of said dog shall report such fact to a veterinarian, and no rabies vaccine shall be administered until after a ten (10) day observation period.

~~(B) Duty of Veterinarian Performing Vaccination: It shall be Unlawful for any veterinarian to fail to perform vaccinations on dogs or cats four (4) months of age and older, which are presented in good health, and have not inflicted a bite within ten (10) days prior to inoculation. When inoculating any animal, it shall be the duty of the veterinarian to fill out a certificate of inoculation and immediately present a copy thereof to the owner of the inoculated animal.~~

~~(C) Proof of Vaccination: It shall be unlawful for any person who owns a vaccinated animal to fail or refuse to exhibit his copy of the certificate of vaccination upon demand to any person charged with the enforcement of this Chapter. A current rabies tag shall be attached to a collar, harness or other devise and shall be worn by the vaccinated dog or cat at all times.~~

~~(D)(C) Harboring Unvaccinated dogs and cats: It shall be unlawful for any person to harbor any dog or cat which has not been vaccinated against rabies, as provided herein, or which cannot be identified as having a current vaccination certificate.~~

~~(E)(D) Non-Transferability: Vaccination certificates and tags are not transferable and cannot be used for any animal other than the animal which received the vaccination and for which the certificate was originally issued.~~

~~(F)(E) Exceptions: No person charged with violating subsections 6-7-2 (A), 6-7-2 ~~(C)~~(B) or 6-7-2 ~~(D)~~(C) shall be convicted if he produces in Court a bona fide and valid certificate of vaccination which was in full force and effect, as required by subsections 6-7-2 (A) and ~~6-7-2 (B)~~ at the time of the alleged violation.~~

Section 4. Section 6-7-3, W.M.C., is hereby AMENDED to read as follows:

6-7-3: REPORTING ANIMAL BITES: (1463 1890 1973 2066 2576)

(A) Duty to Report: It shall be unlawful for any person having knowledge that an animal has bitten a human to fail to immediately report the incident to the Westminster Police Department, ~~Westminster~~ THE

Animal Control MANAGEMENT Officer or to the Colorado Department of Health. Every Physician or other medical practitioner who treats a person for such bites shall, within twelve (12) hours, report such treatment to the Westminster Police Department, ~~Westminster~~ THE Animal Control MANAGEMENT Officer, or the Colorado Department of Health, giving the name and precise location of the bitten person and such other information as the officer or agency may require.

(B) Exclusions: Bites to humans from rodents, rabbits, birds and reptiles are excluded from the reporting requirements of this Section, unless otherwise specified by the Colorado Department of Health.

(C) Suspected Rabies: It shall be unlawful for any veterinarian who clinically diagnoses rabies, or any person who suspects rabies in an animal to fail to immediately report the incident to the Westminster Police Department, ~~Westminster~~ THE Animal Control MANAGEMENT Officer or to the Colorado Department of Health, stating precisely where such animal may be found. If a known or suspected rabid animal bites or attacks another animal, such shall also be reported as required above.

(D) Confinement of Animals: Any dog or cat which has bitten a person may either be observed for a period of ten (10) days from the date of the bite, or analyzed for rabies virus by a laboratory. Ferrets, potbellied pigs, wolf hybrids, wolves and other wildlife WHICH HAVE BITTEN A PERSON must be observed for a period of not less than thirty (30) days, or tested for rabies if required by Colorado Division of Wildlife or Department of Health regulations. The procedure and place of observation, or analysis, shall be designated by the investigating officer or responsible agency. If the animal is not confined on the owner's premises, confinement shall be by impoundment in the City animal shelter, a pet shop with a Class B license or at any veterinary hospital of the owner's choice within the City of Westminster. Such confinement shall be at the expense of the owner. Stray animals whose owners cannot be located shall be confined as designated by the City. The owner of any animal that has been reported to have inflicted a bite on any person shall on demand produce said animal for impoundment, as prescribed in this Section or for laboratory analysis. Refusal to produce said animal constitutes a violation of this Section, and each day of such refusal shall constitute a separate and continuing violation.

(E) Removal of Animals from Confinement: It shall be unlawful for any person to kill, remove or release any animal which has been confined, impounded, or is in the custody of the City or its agents as authorized under this chapter without the consent of the City or the impounding agency.

Section 5. Section 6-7-5, W.M.C. is hereby AMENDED to read as follows:

6-7-5: ANIMALS RUNNING AT LARGE: (1463 1890 1973 2657 2811)

(A) Animals Running at Large Prohibited:

1. It shall be unlawful for any owner of an animal to fail to restrain the animal by physical means from running at large. In addition to being a violation of this section, an animal running at large is declared to be a public nuisance which may be abated pursuant to the provisions specified in Chapter 4 of Title VIII of this Code. This subparagraph (A) 1, shall not apply to dogs running off-leash at an off-leash dog site as established in 13-1-3 (Z).

2. Neutering/spaying required: It shall be unlawful for any owner of an animal running at large to allow the animal to remain in a non-neutered or unspayed condition. ~~The Court shall assess a fine pursuant to Section 6-7-16 (C) 3, upon the owner of an animal running at large. If the animal has been neutered or spayed and proof has been presented to the Court, the fine shall be reduced as provided in section 6-7-16 (C) 3.~~

3. It shall be the burden of the owner to prove that the animal is neutered or spayed, by the production of a veterinarian's opinion or other documentary evidence.

(B) Confinement During Estrus: It shall be unlawful for any owner to fail to securely confine any unspayed female dog or cat in the state of estrus (heat), in a house, building or secure enclosure, in such a manner that such female dog or cat cannot come in contact with another animal except for planned breeding, and such that the animal does not create a nuisance by attracting other dogs or cats. When outside on the property of the owner for metabolic waste elimination, the animal must be physically restrained on a hand held leash. Owners who do not comply may be ordered to remove the dog or cat in heat to a boarding kennel, veterinary hospital or animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner of the dog or cat. Failure to comply with the removal order shall be a violation of this Section and the dog or cat shall then be impounded as prescribed in this Chapter.

(C) Sick or Injured Animals: Sick or injured animals found on public property may be impounded and given adequate veterinary medical treatment pending notification of the owner. If the animal is significantly injured or sick such that recovery is improbable, the animal may be euthanized, without liability to the City, Animal Shelter, their employees, officers, or agents, or to any veterinarian examining,

diagnosing, or treating the animal. An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or police officer may humanely destroy any animal the officer reasonable believes to be so sick or injured that recovery is improbably even if veterinary care could be provided, in order to avoid further pain and suffering by the animal, without liability to the City or the officer. If the injured animal is treated or impounded, the owner of such animal shall be liable for all expenses of the treatment or impoundment.

Section 6. Section 6-7-7, subsection (B), W.M.C., is hereby AMENDED to read as follows:

6-7-7: DISTURBANCE; PUBLIC NUISANCE: (1463 1635 1973 2576)

(B) 1. No person shall be charged with violating this Section unless a written warning was given to the owner or person in custody of the animal by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or police officer within twelve (12) months preceding the first date alleged as a date of violation in the complaint. A warning is given under this subsection if it is personally given to the owner or person in custody of the animal or it is posted upon the property of the owner or person in custody or mailed first class to such person. Such records are prima facie evidence that such warnings were given.

2. No summons shall be issued and no person shall be convicted at trial for violating this Section unless two or more witnesses from different households testify to the loud and persistent or loud and habitual nature of the noise, or unless there is other evidence corroborating the testimony of a single witness. An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or a police officer who can corroborate the elements in this Section may issue summons and testify as the second witness.

Section 7. Section 6-7-8, W.M.C., is hereby AMENDED to read as follows:

6-7-8: VICIOUS ANIMALS AND ~~GUARD DOGS~~ POTENTIALLY DANGEROUS ANIMALS:

(1463 1635 1973 2576 2657 3062)

(A) ~~VICIOUS ANIMALS~~ OWNER RESPONSIBILITY AND LIABILITY: ANY OWNER OF A VICIOUS ANIMAL OR POTENTIALLY DANGEROUS ANIMAL SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE WITH ALL OTHER OWNERS OF SUCH ANIMAL FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION. FOR THE PURPOSE OF PROSECUTION FOR VIOLATION OF THIS SECTION, IT SHALL NOT BE NECESSARY IN ORDER TO OBTAIN A CONVICTION TO PROVE NOTICE OR KNOWLEDGE ON THE PART OF THE OWNER OF THE VICIOUS ANIMAL OR POTENTIALLY DANGEROUS ANIMAL THAT SAID ANIMAL WAS VIOLATING ANY OF THE PROVISIONS OF THIS SECTION.

(B) REQUIREMENTS FOR POSSESSION OF A POTENTIALLY DANGEROUS ANIMAL: IT SHALL BE UNLAWFUL FOR ANY PERSON TO OWN, POSSESS, KEEP, HARBOR, OR HAVE CUSTODY OR CONTROL OF A POTENTIALLY DANGEROUS ANIMAL EXCEPT IN COMPLIANCE WITH ALL OF THE FOLLOWING REQUIREMENTS:

1. THE OWNER SHALL BE 18 YEARS OF AGE OR OLDER.
2. THE OWNER SHALL NOT PERMIT A POTENTIALLY DANGEROUS ANIMAL TO BE OUTSIDE A PROPER ENCLOSURE ON THE OWNER'S PROPERTY UNLESS SUCH ANIMAL IS UNDER THE PHYSICAL CONTROL OF A RESPONSIBLE PERSON AND RESTRAINED BY A LEAD NOT EXCEEDING FOUR (4) FEET IN LENGTH.
3. THE POTENTIALLY DANGEROUS ANIMAL AND OWNER SHALL COMPLETE A SOCIALIZATION AND/OR BEHAVIOR PROGRAM APPROVED BY THE ANIMAL MANAGEMENT OFFICER.
4. THE POTENTIALLY DANGEROUS ANIMAL SHALL BE SPAYED OR NEUTERED BY A LICENSED VETERINARIAN OR A LICENSED SHELTER.
5. THE POTENTIALLY DANGEROUS ANIMAL SHALL BE PERMANENTLY IDENTIFIED THROUGH THE IMPLANTATION OF A MICROCHIP CONTAINING OWNER IDENTIFICATION INFORMATION BY A LICENSED VETERINARIAN OR A LICENSED SHELTER. THE MICROCHIP INFORMATION MUST BE REGISTERED WITH THE APPROPRIATE COMPANY RESPONSIBLE FOR MAINTAINING SUCH INFORMATION FOR THE MICROCHIP.
6. THE OWNER OF A POTENTIALLY DANGEROUS ANIMAL SHALL NOTIFY THE ANIMAL MANAGEMENT OFFICER IN PERSON OR BY TELEPHONE AS SOON AS PRACTICABLE BUT NO LATER THAN ONE (1) HOUR AFTER OWNER'S KNOWLEDGE OF THE OCCURRENCE OF EITHER OF THE FOLLOWING EVENTS:
 - (a) THE ANIMAL HAS ESCAPED OR HAS OTHERWISE CEASED TO BE IN THE CUSTODY OF THE OWNER FOR ANY REASON, UNLESS THE OWNER KNOWS SUCH ANIMAL TO BE PHYSICALLY SECURED AND RESTRAINED OR CONFINED IN THE CUSTODY OF ANOTHER COMPETENT ADULT; OR
 - (b) THE ANIMAL HAS ATTACKED A HUMAN BEING OR DOMESTIC ANIMAL.

7. THE OWNER OF A POTENTIALLY DANGEROUS ANIMAL SHALL NOTIFY THE ANIMAL MANAGEMENT OFFICER IN PERSON OR BY TELEPHONE WITHIN TWENTY-FOUR (24) HOURS OF THE OCCURRENCE OF ANY ONE OF THE FOLLOWING EVENTS:

(a) THE ANIMAL HAS BEEN SOLD, GIVEN, OR OTHERWISE TRANSFERRED TO THE OWNERSHIP OR POSSESSION OF ANOTHER PERSON, INCLUDING THE NAME, ADDRESS, AND TELEPHONE NUMBERS OF THE NEW OWNER AND THE EFFECTIVE DATE OF THE TRANSFER; OR

(b) THE ANIMAL HAS DIED.

(C) REQUIREMENTS FOR POSSESSION OF A VICIOUS ANIMAL: IN ADDITION TO SATISFYING THE REQUIREMENTS FOR POSSESSION OF A POTENTIALLY DANGEROUS ANIMAL PURSUANT TO PARAGRAPH 6-7-8(B), IT SHALL BE UNLAWFUL FOR ANY PERSON TO OWN, POSSESS, KEEP, HARBOR, OR HAVE CUSTODY OR CONTROL OF A VICIOUS ANIMAL EXCEPT IN COMPLIANCE WITH ALL OF THE FOLLOWING REQUIREMENTS:

1. NOTWITHSTANDING PARAGRAPH 6-7-8(B)(2), THE OWNER SHALL NOT PERMIT A VICIOUS ANIMAL TO BE OUTSIDE A PROPER ENCLOSURE ON THE OWNER'S PROPERTY, UNLESS SUCH ANIMAL IS CAGED OR UNDER THE PHYSICAL CONTROL OF A RESPONSIBLE PERSON, PROPERLY MUZZLED, AND RESTRAINED BY A LEAD NOT EXCEEDING FOUR (4) FEET IN LENGTH. THE MUZZLE SHALL BE MADE IN A MANNER THAT WILL NOT CAUSE INJURY TO THE ANIMAL OR INTERFERE WITH ITS VISION OR RESPIRATION, BUT SHALL PREVENT IT FROM BITING ANY HUMAN BEING OR ANIMAL.

2. THE OWNER OF A VICIOUS ANIMAL SHALL MAINTAIN AT ALL TIMES EITHER A POLICY OF INSURANCE OR A SURETY BOND IN A MINIMUM AMOUNT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) TO COVER CLAIMS FOR ANY PERSONAL INJURIES OR PROPERTY DAMAGE INFLICTED BY THE VICIOUS ANIMAL. THE INSURER OR SURETY, AS THE CASE MAY BE, SHALL BE REQUIRED TO PROVIDE THE ANIMAL MANAGEMENT OFFICER WITH THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF ANY CANCELLATION, TERMINATION OR EXPIRATION OF THE POLICY OF INSURANCE OR SURETY BOND, RESPECTIVELY.

(D) IMPOUNDMENT; NUISANCE DECLARED: ~~1. VICIOUS ANIMALS UNLAWFUL: It shall be unlawful for any person to own or harbor a vicious animal within the City. Any animal which has bitten or attacked a person or other animal or which has demonstrated tendencies~~ EXHIBITED BEHAVIOR that would cause a reasonable person to believe that the animal ~~may inflict injury upon or cause the death of any person or other animal~~ IS A VICIOUS ANIMAL OR A POTENTIALLY DANGEROUS ANIMAL may be summarily impounded when the ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER ~~reasonable~~ REASONABLY believes the animal is a present threat to the health or safety of the community. Such animal is hereby declared to be a public nuisance, which may be abated by the Court in proceeding brought under the procedures established in this Code for the abatement of nuisances. If impoundment of said animal cannot be made with safety to the ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or other persons, the animal may be destroyed by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer without notice to the owner or harborer.

(E) EXCEPTIONS: NO ANIMAL SHALL BE FOUND TO BE A VICIOUS ANIMAL OR POTENTIALLY DANGEROUS ANIMAL UNDER THIS CHAPTER IF:

1. THE ANIMAL IS USED BY A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE PERFORMANCE OF PEACE OFFICER DUTIES.

2. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A DOMESTIC ANIMAL, SAID ANIMAL WAS AT LARGE AND ENTERED UPON THE PROPERTY OF THE OWNER AND THE THREAT, BEHAVIOR, OR ATTACK BEGAN, BUT DID NOT NECESSARILY END, UPON SUCH PROPERTY.

3. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A DOMESTIC ANIMAL, SAID ANIMAL WAS BITING OR OTHERWISE ATTACKING THE DANGEROUS ANIMAL OR ITS OWNER.

4. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A PERSON, THE VICTIM WAS COMMITTING OR ATTEMPTING TO COMMIT A CRIMINAL OFFENSE AGAINST THE ANIMAL'S OWNER, AND THE THREAT, BEHAVIOR, OR ATTACK DID NOT OCCUR ON THE OWNER'S PROPERTY.

5. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A PERSON, THE VICTIM WAS COMMITTING OR ATTEMPTING TO COMMIT A CRIMINAL OFFENSE AGAINST A PERSON ON THE OWNER'S PROPERTY OR THE PROPERTY ITSELF AND THE THREAT, BEHAVIOR, OR ATTACK BEGAN, BUT DID NOT NECESSARILY END, UPON SUCH PROPERTY.

6. AT THE TIME OF THE THREAT, BEHAVIOR, OR ATTACK AGAINST A PERSON, THE VICTIM TORMENTED, PROVOKED, ABUSED, OR INFLICTED INJURY UPON THE ANIMAL IN SUCH AN EXTREME MANNER THAT IT RESULTED IN THE THREAT, BEHAVIOR, OR ATTACK.

7. THE EXCEPTIONS SET FORTH IN THIS PARAGRAPH 6-7-8(E) SHALL NOT APPLY TO ANY ANIMAL THAT HAS ENGAGED IN OR BEEN TRAINED FOR ANIMAL FIGHTING AS DESCRIBED AND PROHIBITED IN SECTION 18-9-204, C.R.S.

~~2. NEUTERING/SPAYING REQUIRED: It shall be unlawful for any owner of a vicious animal to allow the animal to remain in a non-neutered or unspayed condition. The Court shall assess a fine pursuant to Section 6-7-16 (C) 3, upon the owner of a vicious animal. If the animal has been neutered or spayed and proof has been presented to the Court, the fine shall be reduced as provided in section 6-7-16 (C) 3. It shall be the burden of the owner to prove that the animal is neutered or spayed, by the production of a veterinarian's opinion or other documentary evidence.~~

~~(B) Guard Dogs: It shall be unlawful to place or maintain any dog in any area for the protection of persons or property unless the dog is physically confined to a specific enclosed area, and is under complete and absolute control and the area posted as required. The area or premises in which a guard dog is confined must be conspicuously posted with warning signs bearing letters not less than two inches (2") high, with the following legend, "Warning—These Premises Patrolled by Guard Dogs Trained to Attack", accompanied by a decal that provides pictorial warning of a guard dog.~~

Section 8. Section 6-7-9, W.M.C., is hereby AMENDED to read as follows:

6-7-9: IMPOUNDED ANIMALS: (1463 1890 1973 2576)

(A) Impoundment: IF THERE IS PROBABLE CAUSE TO BELIEVE THAT AN Animals IS owned or harbored in violation of this Chapter or any other ordinance, regulation, state statuTe or regulation, THE ANIMAL may be taken into custody by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or other designated official and impounded IN THE ANIMAL SHELTER. Stray animals may be similarly impounded.

(B) Disposition of Impounded Animals: As soon as practicable after impoundment, a bona fide effort shall be made to give notice of impoundment to the owner. Any impounded animal shall be released to the owner upon payment of the impoundment fee, boarding fee, veterinary care charges, and any other costs associated with impoundment. If such animal is not redeemed within five (5) days, it shall be considered abandoned and may be euthanized or placed for adoption at the discretion of the Animal Shelter. The failure of the owner to redeem an animal shall release the City and the Animal Shelter, and their officers, employees, and agents, from any and all liability for the animal's subsequent euthanization or adoption.

(C) Disposition of Impounded Animal Being Held Pending Court Proceedings: If an animal is impounded, and is being held pending court proceedings for any violation of the provisions of this Chapter, the animal may not be released except on the order of the Court. The Court may ORDER SAID ANIMAL TO BE EUTHANIZED IN A HUMANE MANNER IF, AFTER A JUDICIAL HEARING, IT FINDS ~~upon making a finding~~ that: (A) such animal is vicious and that it represents a clear and present danger to the citizens or other animals in the community; OR (B) THE ANIMAL IS EXPERIENCING EXTREME PAIN OR SUFFERING ~~order said animal to be euthanized in a humane manner~~. Any animal which remains unclaimed for five (5) days after its release has been ordered by the court may be euthanized or placed for adoption at the discretion of the Animal Shelter. THE OWNER SHALL BE LIABLE FOR THE COSTS OF THE CARE, KEEPING OR DISPOSAL OF THE ANIMAL.

(D) Sale: Animals impounded and kept for five (5) days in a pet store with a Class B license, which have not been claimed by an owner shall be deemed abandoned andD may, at the discretion of the pet shop, be

retained on the sixth day of impoundment and sold in lieu of reimbursement for all applicable boarding costs and veterinary fees.

(E) FAILURE TO PRODUCE ANIMAL: THE OWNER OF ANY ANIMAL SUBJECT TO IMPOUNDMENT UNDER PARAGRAPH (A) OF THIS SECTION SHALL, ON DEMAND OF THE ANIMAL MANAGEMENT OFFICER, OR OTHER PERSON WHO MAY BE SO AUTHORIZED BY THIS CHAPTER SHALL, PRODUCE THE ANIMAL FOR IMPOUNDMENT AS PRESCRIBED IN THIS SECTION. IT SHALL BE UNLAWFUL FOR THE OWNER OF ANY SUCH ANIMAL TO FAIL OR REFUSE TO PRODUCE THE ANIMAL ON DEMAND.

Section 9. Section 6-7-10, W.M.C., is hereby AMENDED to read as follows:

6-7-10: KENNELS: (1463 1890 1973 2576)

(A) Operation of Kennel Requirements: It shall be unlawful to maintain or operate a kennel without first obtaining a license from the City. A kennel may not be located within a residentially zoned district, ~~including~~ OR the residential area of a PUD zone district unless specifically allowed in the PUD.

(B) Licenses: Issuance; Renewal: Kennel licenses shall expire on the thirty-first (31st) day of December each year. No kennel license shall be issued until an inspection certificate has been issued by the ~~Animal Control Supervisor~~ ANIMAL MANAGEMENT OFFICER or Designee. The license issued shall specify the maximum number of animals permitted. It shall be unlawful for the licensee to keep any number of animals in excess of the maximum specified on the license. All applicants for a kennel license within the City, if required to be licensed by the Colorado Department of Health, must have a valid license issued by said Department to qualify for licensing by the City. The possession of a State license, however, shall not in itself assure that a City license will be granted to anyone. Standards and regulations affecting kennels may be adopted by the City, which are more restrictive than applicable State standards.

Section 10. Section 6-7-11, W.M.C., is hereby AMENDED to read as follows:

6-7-11: PET SHOPS: (1463 1890 1973)

(A) It shall be unlawful to own or operate a pet shop without having obtained a valid Class "A" or Class "B" pet shop license from the City.

2. A Class "B" license shall entitle the licensee to sell or offer for sale any exotic animals. At the request of the City a pet shop with a Class "B" license shall board any impounded exotic animals.

Reimbursement for board of such animals shall be at the rates established in this Chapter. Impounded animals shall be clearly identified and kept separate from other pet shop animals. ~~Any release or disposition of any impounded animal shall require the approval of an animal control officer.~~ THE LICENSEE SHALL PROVIDE WRITTEN NOTICE TO THE ANIMAL CONTROL OFFICER OF ANY RELEASE OR DISPOSITION OF ANY IMPOUNDED ANIMAL. A Class "B" pet shop may have an outside run or pen to be used solely for harboring reptiles, so long as the outside run or pen is fully enclosed and secure. Prior to issuance of a Class "B" license, the applicant shall provide a bond, issued to the City by a qualified corporate surety licensed to do business in the State of Colorado in a penal sum not less than ten thousand dollars (\$10,000), conditioned upon the faithful boarding of impounded animals pursuant to this Chapter and regulations issued by the Chief of Police.

(B) Licenses; Issuance; Renewal Requirements: Pet shop licenses shall expire on the thirty-first (31st) day of December of each year. No pet shop license shall be issued until an inspection certificate shall have been issued by the ~~Animal Warden~~ ANIMAL MANAGEMENT OFFICER or his designee. All applicants for a pet shop license within the City, if required to be licensed by the Colorado Department of Health, must have a valid license issued by said Department to qualify for licensing by the City. The possession of a State license, however, shall not in itself assure that a City license will be granted to anyone. Standards and regulations affecting pet shops may be adopted by the City which are more restrictive than applicable State standards.

Section 11. Section 6-7-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:

(B) Livestock Limited: It shall be unlawful to keep or maintain livestock in residential, business, commercial, and industrial zone districts, ~~including~~ AND Planned Unit Developments unless specifically allowed in the PUD, ~~and~~ excepting that livestock shall be permitted in parcels zoned 0-1 or in parcels of 10 acres or more in size in all zoning districts prior to commencement of construction on the parcel. In any case the number of animals kept in a PUD shall not exceed the number permitted by the provisions of the Official Development Plan. Livestock, excluding fowl, shall have one-half acre of pasture available for each animal.

Section 12. Section 6-7-14, W.M.C., is hereby AMENDED to read as follows:

6-7-14: CAPTURING ANIMALS: (1973 2576)

(A) An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer is authorized to enter in or upon private property, including motor vehicles and fenced areas but not private buildings, to apprehend an animal running at large, a vicious animal, an animal suspected of being infected with rabies, or an animal which the officer reasonably believes is neglected, sick or injured so that the animal faces a serious risk of death or substantially suffering.

(B) An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer is authorized to use tranquilizer guns, humane traps or other suitable devices to subdue or apprehend a stray animal, pet animal running at large, or wild animal, and is authorized to destroy an animal which the officer reasonably believes to be an immediate danger to the offer or to the public.

(C) An ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer is authorized to place a humane trap on private property for the purpose of capturing a stray animal, wild animal, or pet animal running at large, when requested to do so by the owner or possessor of the property.

(D) It shall be unlawful for any person to set or cause to be set any steel-jaw leg hold trap, snare, or any trap other than a humane trap for the purpose of capturing an animal whether wild or domestic, excepting a licensed or recognized business which has been given permission by the Colorado Division of Wildlife, the Colorado Department of Health, or the ~~animal control supervisor~~ ANIMAL MANAGEMENT OFFICER to trap problem wildlife. Any trapping authorized under this chapter must be in compliance with the Colorado Constitution and Statutes.

Section 13. Section 6-7-16, W.M.C., is hereby AMENDED to read as follows:

6-7-16: ENFORCEMENT INTERFERENCE: (1463 1563 1973 2066 2657 3062)

(A) ~~Interference:~~

~~1-~~It shall be unlawful for any person, by using or threatening to use, violence, force, or physical interference, or obstacle, to knowingly obstruct, impair, or hinder an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer in the discharge of his duties as herein prescribed.

~~2-~~(B) It is no defense to a prosecution under this sSection that the ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer was acting in an illegal manner, if he was acting in the regular course of assigned duties and in good faith based upon surrounding facts and circumstances.

~~3-~~(C) It shall be unlawful for any person to refuse to reveal his correct name, address, and date of birth when requested to do so by an ~~animal control officer~~ ANIMAL MANAGEMENT OFFICER or peace officer engaged in any of his duties prescribed herein.

(B) ~~Penalty Clause:~~ **6-7-17: PENALTIES:**

~~1-~~(A) The following provisions of this chapter are hereby deemed criminal violations of this code. Any person who violates any of the provisions of this Chapter listed in this ~~subsection~~ PARAGRAPH (A) shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Section 1-8-1 of this Code, subject to any ~~mandatory~~ RECOMMENDED minimum fines ~~which the Municipal Judge shall not have discretion to suspend or reduce:~~

Section 6-7-3 Animal bBites

SectionS 6-7-8 (AB) AND (C) Vicious Animals AND POTENTIALLY DANGEROUS ANIMALS

SECTION 6-7-9 (E) FAILURE TO PRODUCE ANIMAL

Section 6-7-10 (E) Care of Animals

Section 6-7-11 (D) Care of Animals

Section 6-7-13 Care and Treatment

Section 6-7-16 (A) Interference

~~2-~~(B) THE ANIMAL MANAGEMENT OFFICER, OR THE CITY ATTORNEY OR HIS DESIGNEE, MAY RECOMMEND THAT ONE OR MORE SPECIAL SANCTIONS OR CONDITIONS BE LEVIED AGAINST ANY OWNER CONVICTED A VIOLATION PURSUANT TO SECTION 6-7-8 (B) OR 6-7-8 (C). THIS RECOMMENDATION MAY BE PRESENTED TO THE MUNICIPAL JUDGE AS A PROPOSED CONDITION OF SENTENCING UPON CONVICTION AND MAY BE IN LIEU OF OR IN ADDITION TO THE REQUIREMENTS AND PENALTIES SPECIFIED IN THIS CHAPTER. PROOF THAT A RECOMMENDED SANCTION OR CONDITION HAS BEEN PREVIOUSLY SATISFIED OR WOULD NOT SERVE ITS INTENDED PURPOSE MAY BE PRESENTED TO THE MUNICIPAL JUDGE FOR CONSIDERATION IN SENTENCING.

(C) IF THE ANIMAL MANAGEMENT OFFICER, OR THE CITY ATTORNEY OR HIS DESIGNEE, RECOMMENDS DESTRUCTION OF THE ANIMAL IN A EXPEDITIOUS AND HUMANE MANNER OR PERMANENT REMOVAL OF THE ANIMAL FROM THE CITY, THE MUNICIPAL JUDGE SHALL CONDUCT A JUDICIAL HEARING TO DETERMINE THE DISPOSITION OF THE ANIMAL.

AT SUCH JUDICIAL HEARING, THE MUNICIPAL JUDGE MAY TAKE INTO CONSIDERATION THE SEVERITY OF THE INCIDENT, THE PRIOR HISTORY OF THE OWNER AND/OR ANIMAL, AND THE RECOMMENDATION OF THE ANIMAL MANAGEMENT OFFICER, CITY ATTORNEY, OR AN ANIMAL BEHAVIOR PROFESSIONAL. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT IN ANY WAY LIMIT THE POWER OF THE MUNICIPAL JUDGE, ON ITS OWN MOTION, TO IMPOSE SPECIAL SANCTIONS AS IT DEEMS APPROPRIATE.

(D) THE FAILURE OR REFUSAL TO PRODUCE AN ANIMAL PURSUANT TO SECTION 6-7-9(E) SHALL SUBJECT THE OWNER TO IMMEDIATE ARREST SHOULD PROBABLE CAUSE EXIST TO BELIEVE THAT THE OWNER IS HARBORING OR KEEPING THE ANIMAL AND REFUSES TO PRODUCE IT UPON SUCH DEMAND. UPON ARREST, THE OWNER SHALL BE HELD TO APPEAR BEFORE THE MUNICIPAL JUDGE WHO MAY ORDER THE IMMEDIATE PRODUCTION OF THE ANIMAL. EACH DAY OF SUCH WILLFUL REFUSAL TO PRODUCE THE ANIMAL SHALL CONSTITUTE A SEPARATE VIOLATION AND OFFENSE.

(E) All violations of this chapter not listed in ~~subsection 1-PARAGRAPH (A)~~ above are hereby deemed civil infractions of this code, and upon conviction thereof ~~shall~~ MAY be punished by a RECOMMENDED fine only, ~~subject to any mandatory minimum fines which the Municipal Judge shall not have discretion to suspend or reduce.~~

~~(C)~~(F) RECOMMENDED Minimum Fines: RECOMMENDED ~~M~~minimum fines upon conviction shall MAY be imposed as listed below, ~~and the Municipal Court Judge shall not have discretion to suspend or reduce these fines:~~

1. First Offense - RECOMMENDED fine of not less than seventy-five dollars (\$75) Second and subsequent offenses - RECOMMENDED fine of not less than one hundred dollars (\$100):

6-7-2 (C) Refusal to Provide Proof of Vaccination

6-7-2 (D) Harboring Unvaccinated Dogs and Cats

6-7-2 (E) Non-Transferability - Vaccination Certificates or Tags

6-7-3 (A) Duty to Report Animal Bite

6-7-3 (C) Failing to Report Suspected Rabies

6-7-3 (D) Refusal to Produce Animal

6-7-3 (E) Removal of Animals from Confinement

6-7-5 (B) Failure to Confine

6-7-6 (A) Removal of Animal Excrement

6-7-6 (B) Damage to Property

6-7-7 (A) Disturbance

6-7-7 (C) Failure to exercise control

6-7-10 (E) Failure to care for animals

6-7-11 (D) Failure to care for animals

6-7-12 (F) Potbellied pig requirements

2. First Offense - RECOMMENDED fine of not less than one hundred dollars (\$100). Second and subsequent offenses – RECOMMENDED fine of not less than one hundred fifty dollars (\$150)

6-7-2 (A) Failure to have Dog or Cat Inoculated

6-7-2 (B) Failure to Inoculate Against Rabies

~~6-7-8 (B) Guard Dog~~ 6-7-9 (E) FAILURE TO PRODUCE ANIMAL

6-7-10 (A) Unlicensed Kennel

6-7-11 (A) Unlicensed Pet Shop

6-7-12 (A) Animals in Residential Districts Limited

6-7-12 (B) Livestock Limited

6-7-12 (C) Prohibited, endangered and Exotic Animals

6-7-12 (D) Federal or State Prohibited Animals

6-7-13 (A) Cruelty to Animals

6-7-13 (B) Poisoning Animals

6-7-13 (C) Neglect of Animals

6-7-13 (E) Abandoning Animals

6-7-13 (G) Displaying or Sale of Dyed or Immature Animals

6-7-13 (H) Fighting Animals

6-7-16 ~~(A)~~ Interference

3. Reduced fine for neuter or spay:

6-7-5 (A) Animals running at Large: First Offense – A RECOMMENDED fine of not less than two hundred seventy five dollars (\$275), except that if the animal has been neutered or spayed, the fine ~~shall~~ MAY be reduced to seventy-five dollars (\$75). Second and subsequent offenses – RECOMMENDED fine of not less than three hundred dollars (\$300), except that if the animal has been neutered or spayed, the fine ~~shall~~ MAY be reduced to one hundred dollars (\$100).

6-7-8 (AB) ~~Harboring a Vicious Animal~~ REQUIREMENTS FOR POSSESSION OF A POTENTIALLY DANGEROUS ANIMAL: First Offense – A RECOMMENDED fine of not ~~less~~ MORE than three hundred dollars (\$300), except that if the animal has ALREADY been neutered or spayed, the fine ~~shall~~ MAY be reduced to one hundred dollars (\$100).

6-7-8 (C) REQUIREMENTS FOR POSSESSION OF A VICIOUS ANIMAL: ~~Second~~ FIRST and ~~subsequent~~ offenses – RECOMMENDED fine of not less than three hundred ~~fifty~~ dollars (\$350 300), except that if the animal has ALREADY been neutered or spayed, the fine ~~shall~~ MAY be reduced to ~~one~~ TWO hundred ~~fifty~~ dollars (\$150 200).

4. Any other section hereof not specifically listed above: First offense - RECOMMENDED fine of not less than fifty dollars (\$50). Second and subsequent offenses - RECOMMENDED fine of not less than seventy-five dollars (\$75).

Section 14. Title VI, Chapter 7, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SECTION 6-7-18 to read as follows:

6-7-18: GUARD DOGS: IT SHALL BE UNLAWFUL TO PLACE OR MAINTAIN ANY DOG IN ANY AREA FOR THE PROTECTION OF PERSONS OR PROPERTY UNLESS THE DOG IS PHYSICALLY CONFINED TO A SPECIFIC ENCLOSED AREA AT A COMMERCIAL ESTABLISHMENT, AND IS UNDER COMPLETE AND ABSOLUTE CONTROL.

Section 15. This ordinance shall take effect June 1, 2006.

Section 16. 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 24th day of April, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of May, 2006.