



## 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. Recognition re 2006 National Snow Plow Rodeo Results
  - B. Proclamation re Red Ribbon Week
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
  - A. Financial Report for September 2006
  - B. Revised Employment Agreement with Martin R. McCullough
  - C. McKay Lake Fishing Pier Construction Award
  - D. 2006 Fiber Optic Project
  - E. Bus Passenger Shelters Amended Agreement
  - F. IGA with the City of Thornton re Design and Construction of Improvements to McKay Drainageway
  - G. Second Reading Councillor's Bill No. 58 re 2007 Infrastructure Fee and 2008 Stormwater Utility Fee Rate
  - H. Second Reading Councillor's Bill No. 59 re 2007 and 2008 Appropriations
  - I. Second Reading Councillor's Bill No. 60 re "Hourly Non-Benefited" as a Category of Appointment in the WMC
  - J. Second Reading Councillor's Bill No. 61 re Municipal Judge Salary
  - K. Second Reading Councillor's Bill No. 62 re Pension Plan Amendments
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Public Hearing re Rezoning for S & R Art and Antiques at 3698 W. 72<sup>nd</sup> Avenue
  - B. Councillor's Bill No. 63 re Rezoning for S & R Art and Antiques from M-1 (Industrial) to C-1 (Commercial)
  - C. Councillor's Bill No. 64 re 2006 3<sup>rd</sup> Quarter Budget Supplemental Appropriation
  - D. Resolution No. 59 in Support of Adams School District 50 Ballot Proposal
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
  - A. City Council
13. Adjournment

## **GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, OCTOBER 23, 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. Stephen P. Smithers, Acting City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Dittman moved, seconded by Price, to approve the minutes of the regular meeting of October 9, 2006, as written and presented. The motion passed unanimously.

CITY COUNCIL COMMENTS

Mayor Pro Tem Kauffman commented on the success of the annual Business Appreciation event sponsored by the City in recognition of the many businesses operating within the community. Special recognition had been given to businesses with long-standing tenure, and the whole event had been well received. He congratulated staff.

Councillor Major reported having been the guest of third grade students at Harris Park Elementary School earlier in the day. He enjoyed the opportunity to speak to them about being a City Councillor.

Councillor Kaiser echoed the Mayor Pro Tem's sentiments about the Business Appreciation event and commended staff's organization.

Councillor Price reported that the Wine Around the World event had been held on October 20 to benefit the Westminster Legacy Foundation. Additionally, the North Metro Arts Alliance had held the 17<sup>th</sup> Avenue All Stars Concert over the weekend and the Children's Chorale was scheduled on December 1.

Mayor McNally invited everyone to attend the City Park Recreation Center's 20<sup>th</sup> anniversary party on November 4. She congratulated Susan Grafton on the Business Appreciation event noting that it continued to grow each year.

PRESENTATION

Councillor Kaiser was joined by Ray Porter, Street Operations Manager, and Ron Wagoner, Chairman of the American Public Works Association's 2006 National Snow Plow Roadeo, to give special recognition to six Westminster employees who had not only participated in the competition, but also placed in the top four snowplow driving and top two loader operating events. Receiving awards were Teammates Billy Morgan and Tom Berdahl and Jess Rudey and Matt Bueno who had competed in the Tandem competition; and JR Miller and Heath Dietz who had represented the City in individual Front End Loader operating competition. Messrs. Morgan and Berdahl had taken 1<sup>st</sup> place in the Tandem competition.

PROCLAMATIONS

Mayor Pro Tem Kauffman proclaimed October 21 through 31 to be Red Ribbon Week to promote a drug-free community in coordination with the Westminster Area Community Awareness Action Team (CAAT), local schools, churches, and area businesses. He presented the proclamation to Cindy Jeffries, Skeet Hartman, and Eleanor Scott of the CAAT Board of Directors.

### CITIZEN COMMUNICATION

Becky Hogan of EDge Consulting, 56 Steele Street in Denver, represented Isabelle Estates with respect to the Intergovernmental Agreement with the City of Thornton concerning the design and construction of improvements to the McKay drainageway. She distributed a handout to City Council and advised that her clients appreciated the City's sensitivity to the cost of improvements.

Jane Fancher, 7260 Lamar Court, suggested that both fee charges within the infrastructure fee of Councillor's Bill No. 58 should be reflected on utility customers' monthly billings. Additionally, financing of the Promenade parking garage should be the responsibility of someone other than the City, and she requested a copy of an agreement with Inland Pacific.

Eric "Rick" White, representing property owners at I-25 and 136<sup>th</sup> Avenue, applauded the City Council for stimulating growth in that corridor and spoke about financing of the McKay Lake drainage system improvements.

Ernie Frey, 4015 West 103<sup>rd</sup> Court and a representative of the Windings Homeowners' Association (HOA), asked that the City's expectations for HOA maintenance of common area that had been deeded to the City by the HOA be reduced to writing in order to avoid any confusion in the future.

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: the September 2006 financial report; authority for the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2007 with an effective date of January 1, 2007, and an automatic renewal for 2008 unless terminated by City Council; authority for the City Manager to sign a \$202,000 contract with a 5% contingency of \$10,100 with AJI Landscape for construction of the fishing pier at McKay Lake; award the bid for installation of underground conduit and fiber optic cable to Integrated Electric, Inc., the low bidder, in the amount of \$165,892 and authorize a \$16,600 contingency; authority for the City Manager to execute an amended agreement with Outdoor Promotions, Inc. for installation of additional bus passenger shelters at official Regional Transportation District (RTD) bus stops within the City; authority for the Mayor to sign an Intergovernmental Agreement between the Cities of Thornton and Westminster to share costs and cooperate on the design and construction of the proposed improvements to the McKay Drainageway between Huron and Washington Streets; final passage of Councillor's Bill No. 58 repealing Chapter 6 of Title IV "Concrete Replacement Program," enacting Chapter 8 of Title IX, W.M.C., and amending Chapter 13 of Title VIII, W.M.C., establishing an infrastructure fee for concrete replacement and streetlight costs, and increasing the monthly base rate portion of the stormwater service fee; final passage of Councillor's Bill No. 59 appropriating funds for the 2007 and 2008 budgets; final passage of Councillor's Bill No. 60 approving a change in Personnel Management Program in the Westminster Municipal Code to establish "Hourly Non-benefited" as a Category of Appointment; final passage of Councillor's Bill No. 61 establishing the compensation paid to John A. Stipech for his services as Presiding Judge effective January 1, 2007; and final passage of Councillor's Bill No. 62 amending the City's General Employee and Police Pension Plan ordinances.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. Councillor Kaiser requested that the McKay Lake fishing pier construction contract award (item 8C) be removed from the consent agenda.

It was moved by Councillor Major and seconded by Councillor Dittman to approve the consent agenda, excluding item 8C. The motion passed unanimously.

### MCKAY LAKE FISHING PIER CONSTRUCTION CONTRACT AWARD

Mayor Pro Tem Kauffman moved to authorize the City Manager to sign a contract with AJI Landscape in the amount of \$202,000 for the construction of the fishing pier at McKay Lake and to approve a 5%

contingency fund of \$10,100 for a total project budget of \$212,100. Councillor Dittman seconded the motion.

Councillor Kaiser recused himself from voting due to a potential conflict.

The motion carried on a 6:1 vote with Councillor Kaiser abstaining.

PUBLIC HEARING REGARDING S & R ART AND ANTIQUES REZONE AT 3678 WEST 72<sup>ND</sup> AVENUE

At 7:39 p.m., the Mayor opened a public hearing to consider rezoning approximately 0.5 acres at 3698 West 72<sup>nd</sup> Avenue from M-1 (Industrial) to C-1 (Commercial). David Shinneman, Planning Manager, introduced the public hearing and provided background information. The property contained three building structures and a shed. The applicants, Richard and Shirley Anderson, were seeking the rezone so the existing stucco building on the north end of the property could be used for art and antiques sales. Other structures on the property would remain with no changes in use. Mr. Shinneman entered the agenda memorandum and attendant documents in the record and advised that notice of this hearing had been published in the *Westminster Window*, property owners within 300 feet had been mailed notice of the hearing and requested change, and the property had been posted in advance of the hearing.

Mayor McNally opened the hearing to public testimony. Richard and Shirley Anderson were present but did not testify. No others wished to speak. In conclusion, Mr. Shinneman advised that the Planning Commission had considered this request on October 10, 2006, and had voted to recommend approval. The hearing was closed at 7:42 p.m.

COUNCILLOR'S BILL NO. 63 TO REZONE S & R ART AND ANTIQUES PROPERTY

Upon a motion by Councillor Price, seconded by Councillor Major, the Council voted unanimously at roll call to adopt Councillor's Bill No. 63 on first reading to rezone the proposed S & R Art and Antiques property from M-1 (Industrial) to C-1 (Commercial) based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code had been met.

COUNCILLOR'S BILL NO. 64 RE 2006 3<sup>RD</sup> QUARTER BUDGET SUPPLEMENTAL APPROPRIATION

Councillor Major moved to pass Councillor's Bill No. 64 on first reading providing for supplementary appropriations to the 2006 budget of the General, General Capital Improvement, and Open Space Funds. Councillor Price seconded the motion, and it passed unanimously at roll call.

RESOLUTION NO. 59 IN SUPPORT OF ADAMS SCHOOL DISTRICT 50 BALLOT PROPOSAL

It was moved by Councillor Dittman and seconded by Councillor Price to adopt Resolution No. 59 in support of the Adams School District 50 Bond Issue appearing on the November 7 ballot. At roll call vote, the motion carried with all Council members voting yes.

CITIZEN PRESENTATIONS

Jane Fancher, 7260 Lamar Court and president of SWORD (South Westminster Organized for Responsible Development), said that personal remarks about the City Manager that had been made by Russell Weisfield, vice president of SWORD, at the October 9, 2006 City Council meeting were not sanctioned by SWORD. SWORD

members objected to the 7% increase in salary the City Manager would receive in 2007, as it was considerably higher than the 2.5% other City employees would receive. SWORD was striving to become an educational and informational resource within the community and was working hard to create a positive atmosphere and attitude in Westminster.

ADJOURNMENT

There was no further business to come before the City Council, and the Mayor adjourned the meeting at 7:53 p.m.

ATTEST:

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

\_\_\_\_\_  
Mayor



## Agenda Item 6 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 23, 2006



**SUBJECT:** 2006 National Snow Plow Roadeo Results

**Prepared By:** Ray Porter, Street Operations Manager

### Recommended City Council Action

Provide special recognition to the six Westminster Snow Fighters for their participation in the 26<sup>th</sup> Annual American Public Works Association, Colorado Chapter's 2006 National Snow Plow Roadeo.

### Summary Statement

- The City of Westminster Snow Plow drivers qualified to compete at the 2006 APWA Western Snow and Ice Conference and National Snow Plow Roadeo, held in Estes Park, Colorado, by placing in the top four snowplow driving and top two loader operating at the City's Snowplow Roadeo event.
- The drivers were able to compete in two classifications; Tandem Snow Plow, and Front End Loader.
- Councillor Kaiser along with National Roadeo Chairman, Ron Wagoner, will present Awards to 1<sup>st</sup> Place Tandem Snow Plow driving team. In addition, four other Westminster Snow Fighters will be recognized for their participation in the Roadeo.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The top four drivers (representing two teams) from the City’s Tandem Snow Plow Roadeo competed as teams in the National Roadeo against fifty-three other teams from around the country. Two-person teams were required to switch seats at the halfway point of the course.

Tandem drivers had to maneuver their snow plows through an obstacle course which included a serpentine section and an “S” curve that were maneuvered both forward and backwards, alley docking, parallel parking, peripheral vision maneuver, blind curve maneuver, plowing between parked cars, side mirror clearance maneuver and finally a stop bar judgment finish line. The drivers not only had to beat a maximum time of five minutes, but were also judged on accuracy of driving, written test, and an equipment diagnostic test.

Employees representing the City of Westminster for the Tandem competition included:

Teammates:

<b><u>1<sup>st</sup> Place</u></b> - Billy Morgan	Equipment Operator I	Utilities Division
<b><u>1<sup>st</sup> Place</u></b> - Tom Berdahl	Meter Repair Worker	Utilities Division
Jess Rudey	Equipment Operator I	Street Operations Division
Matt Bueno	Maintenance Worker	Utilities Division

The top two drivers from the City’s Front End Loader Roadeo competed individually against forty-four other drivers from around the country.

Loader drivers had to maneuver their Loader through an obstacle course which included backing and parking, rolling a ball up a channel with the bucket of the Loader and having the ball drop into a pail, maneuvering through an “S” curve, backing and precision bucket handling and finally placement of bucket on the finish line. Drivers were required to do this in less than six minutes, while demonstrating driving accuracy.

Employees representing the City of Westminster for the Loader competition included:

JR Miller	Equipment Operator II	Street Operations Division
Heath Dietz	Equipment Operator I	Utilities Division

The APWA Western Snow and Ice Conference and National Snow Plow Roadeo are held annually and are a training tool that the City of Westminster uses for their Snow Fighter Training Program.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 6 B

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Proclamation re Red Ribbon Week

**Prepared by:** Linda Yeager, City Clerk

**Recommended City Council Action**

Proclaim October 21 through 31 to be Red Ribbon Week in the City of Westminster.

**Summary Statement**

- Red Ribbon Week is a nationally recognized campaign that serves as a vehicle to promote the creation of a drug-free America.
- As in the past, the City is joining the Westminster Area Community Awareness Action Team (CAAT), local schools, churches, and area businesses to encourage a drug-free lifestyle.
- Board members of the Westminster Area Community Awareness Action Team will be present to accept this proclamation from Mayor Pro Tem Tim Kauffman.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Proclamation re Red Ribbon Week

Page 2

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

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

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

Through its participation, the City of Westminster joins thousands of other municipalities throughout the country so that Ribbon by Ribbon...Neighbor by Neighbor...we unite in support of a drug-free youth and a drug-free America.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

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

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

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

**WHEREAS**, The Red Ribbon Campaign will be celebrated in communities across the nation during Red Ribbon Week, October 21 through October 31, 2006; and

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

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

**NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim October 21 through October 31, 2006 as**

## **RED RIBBON WEEK**

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

Signed this 23<sup>rd</sup> day of October, 2006.

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Nancy McNally, Mayor

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Financial Report for September 2006

**Prepared By:** Tammy Hitchens, Finance Director

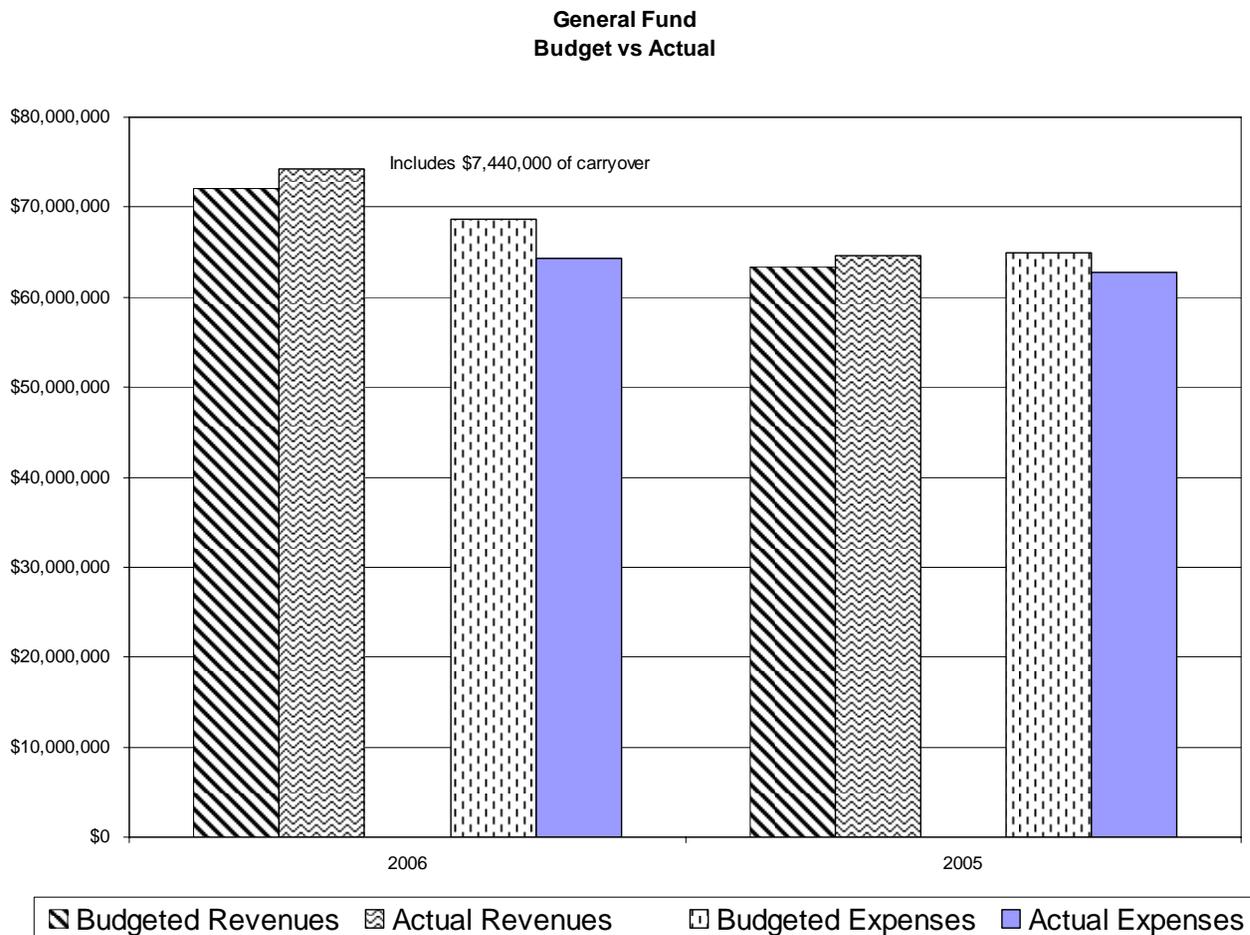
**Recommended City Council Action**

Accept the Financial Report for September as presented.

**Summary Statement**

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

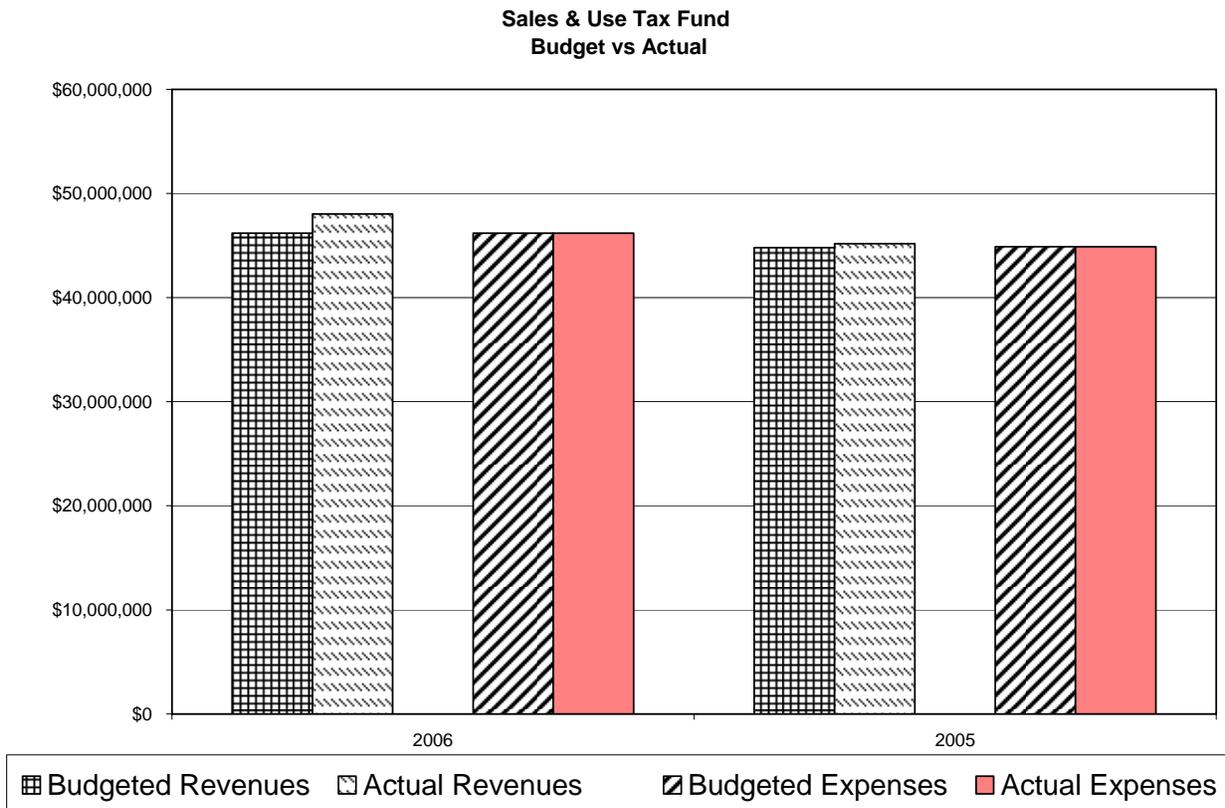
The General Fund revenues and carryover exceed expenditures by \$9,860,000. The following graph represents Budget vs. Actual for 2005 – 2006.



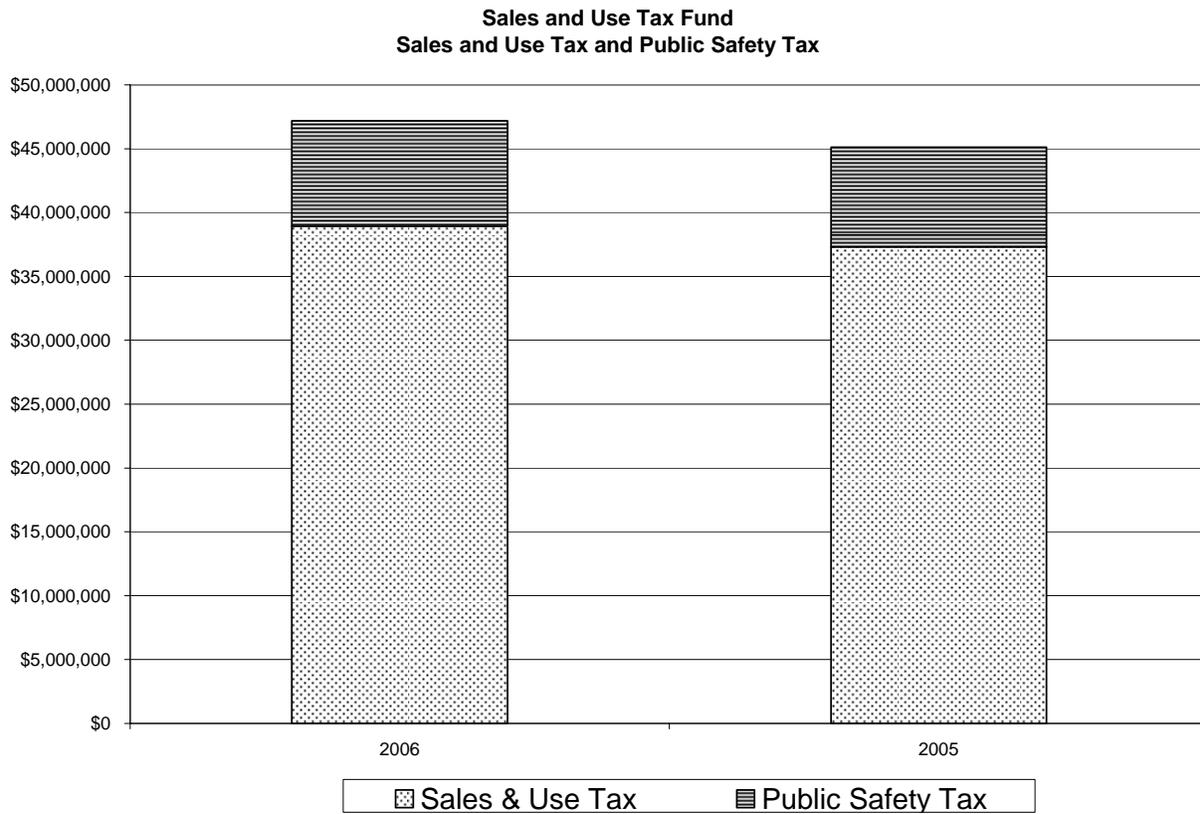
The Sales and Use Tax Fund's revenues and carryover exceed expenditures by \$1,828,000

- On a year-to-date basis, sales & use tax returns are up 4.0%.
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 2.1% from the prior years. This includes Urban Renewal Area money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are up 0.7%.
- The top 50 Sales Taxpayers, who represent about 63% of all collections, were up 3.3% after adjusting for one time audit revenue and Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 8% on a year-to-date basis.
- Building Use Tax is up 13.9% year-to-date over 2005.
- Auto Use Tax is down 10.9% year-to-date over 2005.

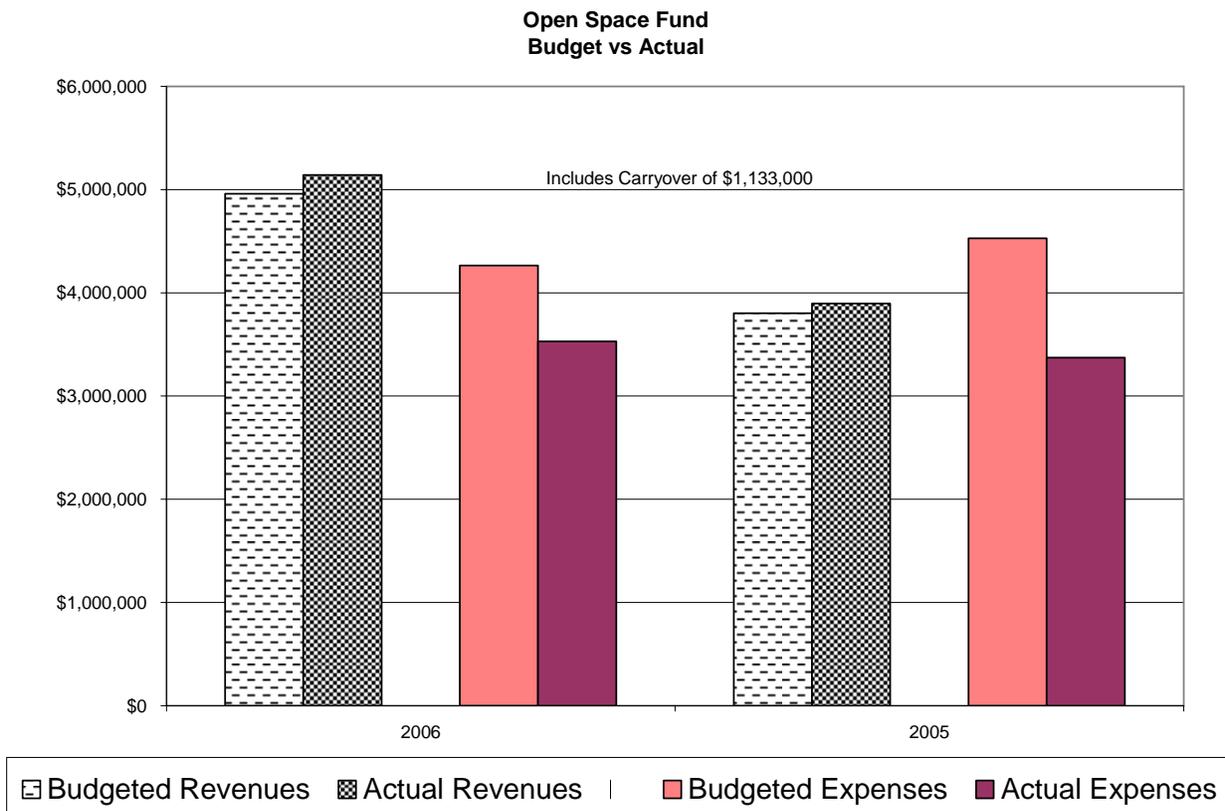
The numbers reflect less reliance on the top producers of sales tax and a diversification of and additional sales tax payers.



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

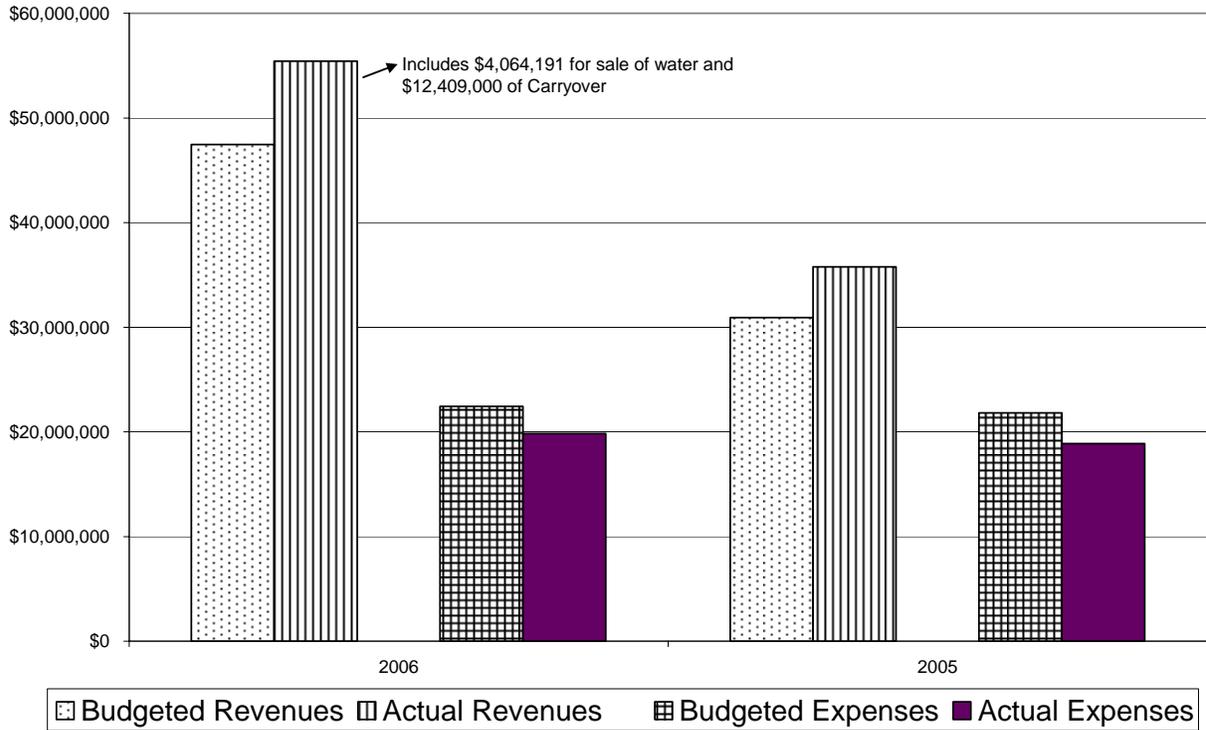


The Open Space Fund revenues exceed expenditures by \$1,612,000.



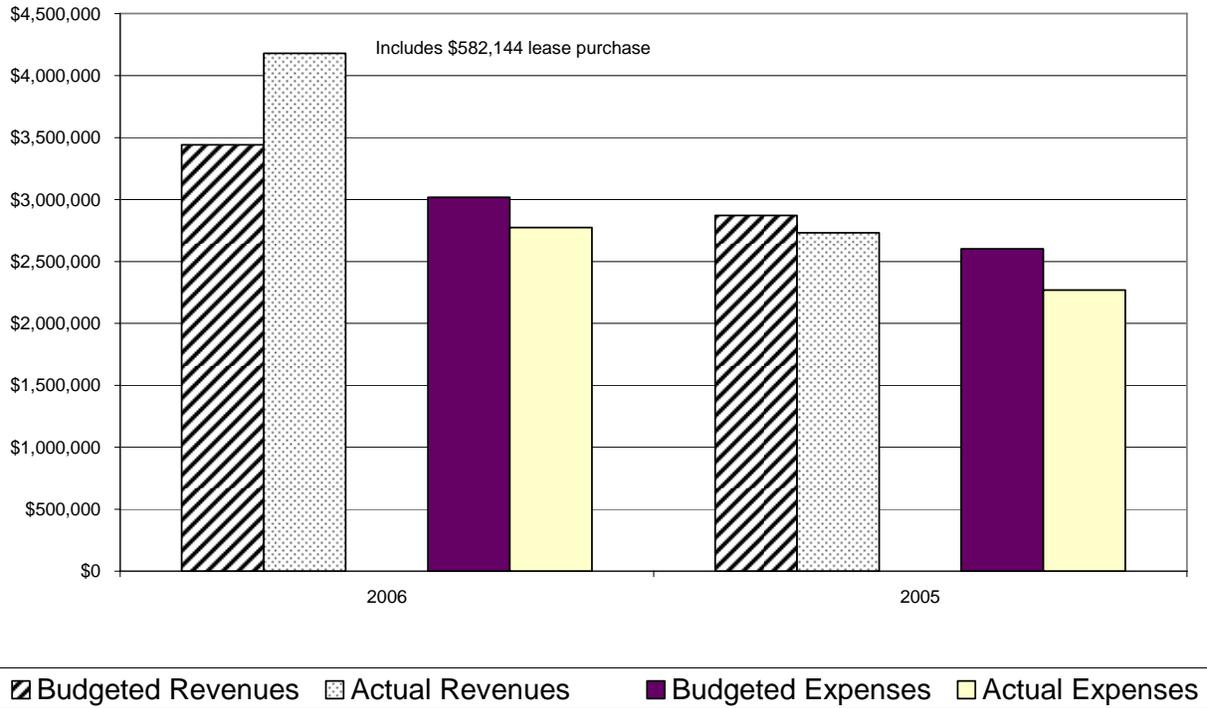
The combined Water & Wastewater Funds' revenues and carryover exceed expenses by \$35,583,055. \$24,001,000 is budgeted for capital projects. The City sold water to Southwest Adams Country Water and Sanitation District for \$4,064,000 in March. Central charges reflect a larger positive variance due to contingency funds.

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



The combined Golf Course Funds' revenues exceed expenditures by \$1,405,000. This number includes a transfer of \$750,000 from the General fund to assist in decreasing the negative cash balance at year end. The \$750,000 was not budgeted in the golf course fund as it is not available to spend. The golf courses made a quarterly lease payment for golf carts and equipment in January. When comparing 2005 expenditures to 2006, the 2006 Heritage figures include a lease purchase, for golf carts and maintenance equipment, of \$582,144.

**Golf Course Enterprise  
Budget vs Actual**



**Policy Issue**

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

**Alternative**

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

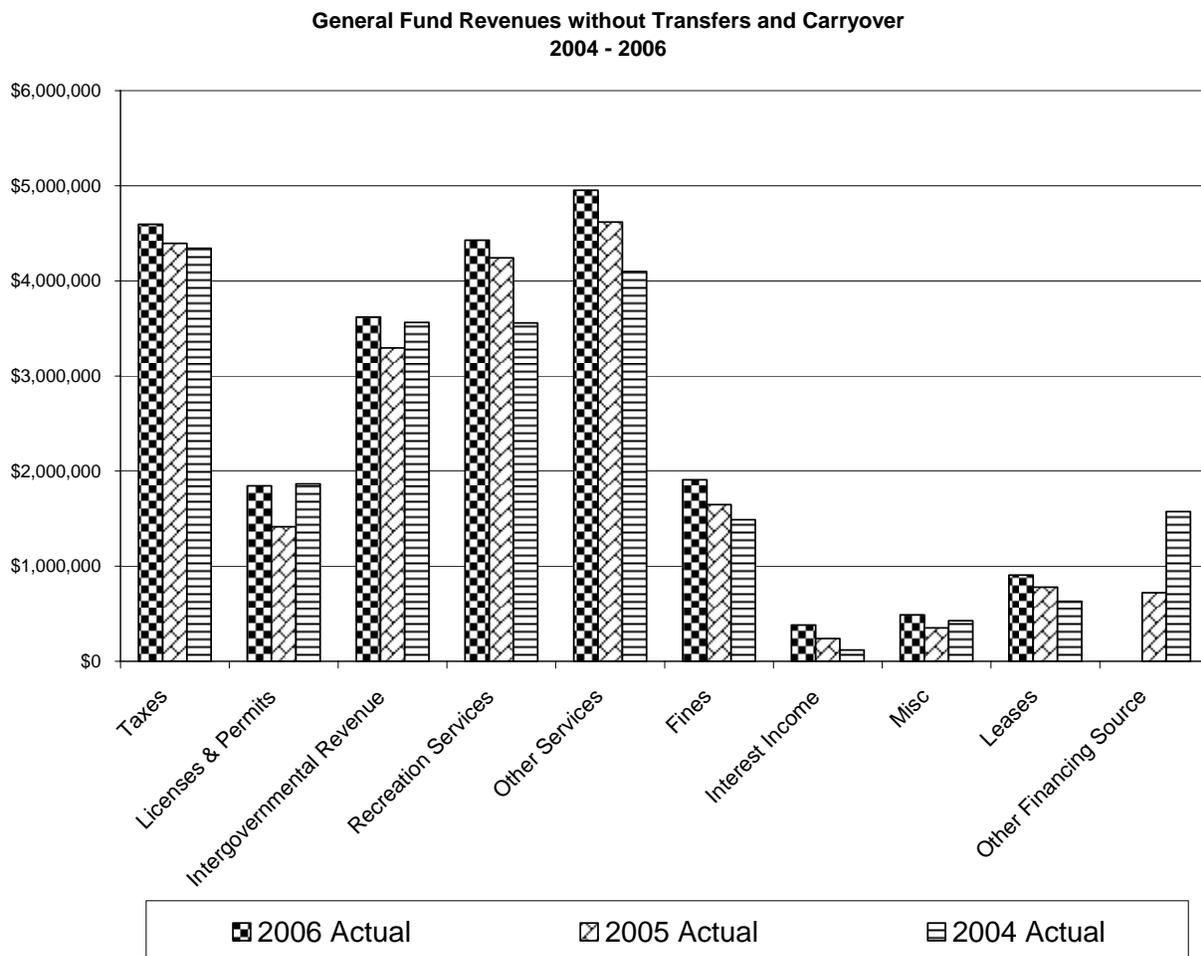
**Background Information**

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

**General Fund**

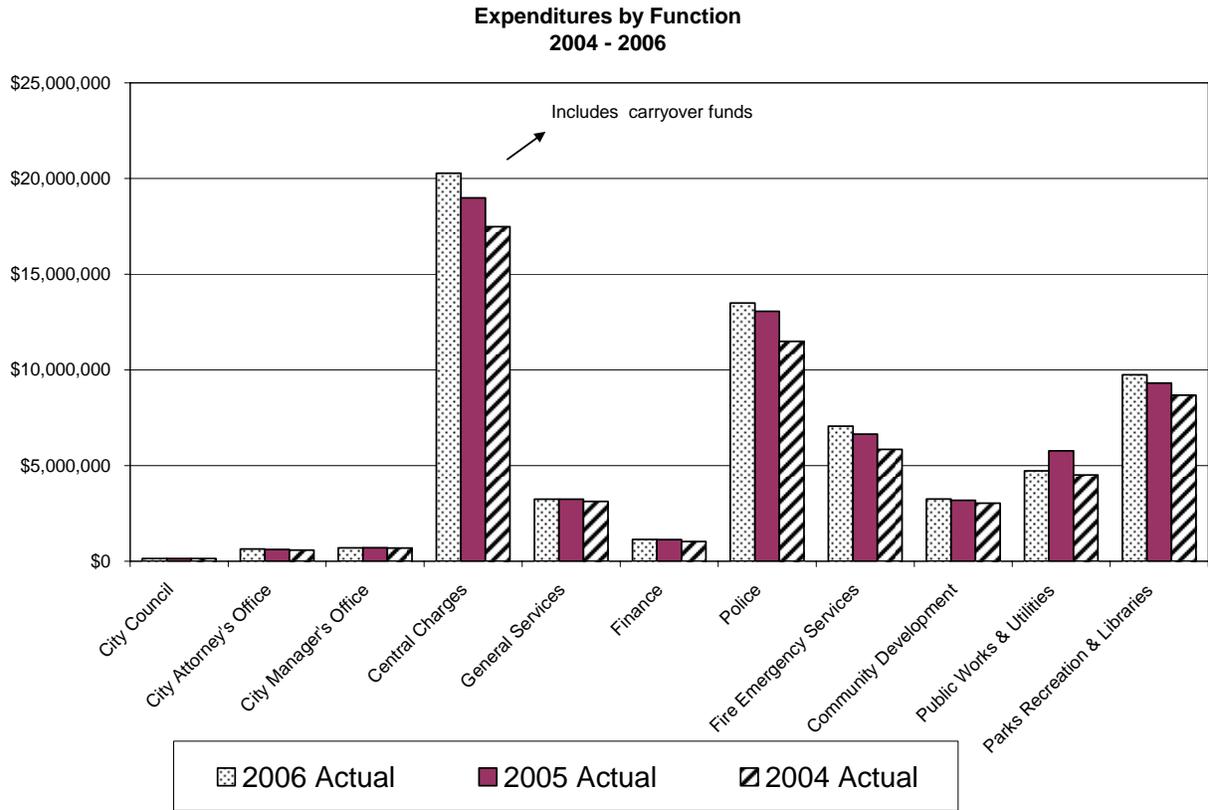
This fund reflects the results of the City’s operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions; City Manager, City Attorney, Finance, and General Services.

The following chart represents the trend in actual revenues from 2004 – 2006 year-to-date.



Other Financing Source reflects 2005 lease financing proceeds used to purchase City computers. The 2004 Other Financing Source is computer lease proceeds and interfund borrowing.

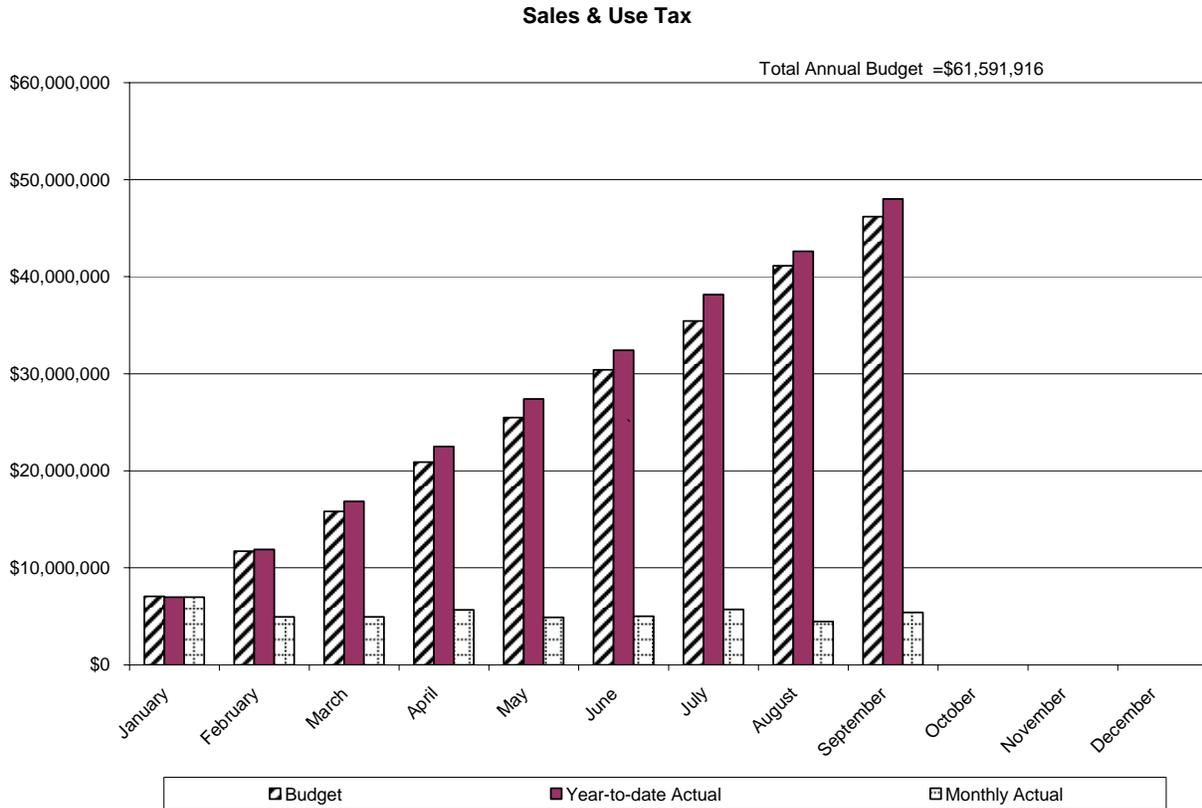
The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2004 –2006.



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

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

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

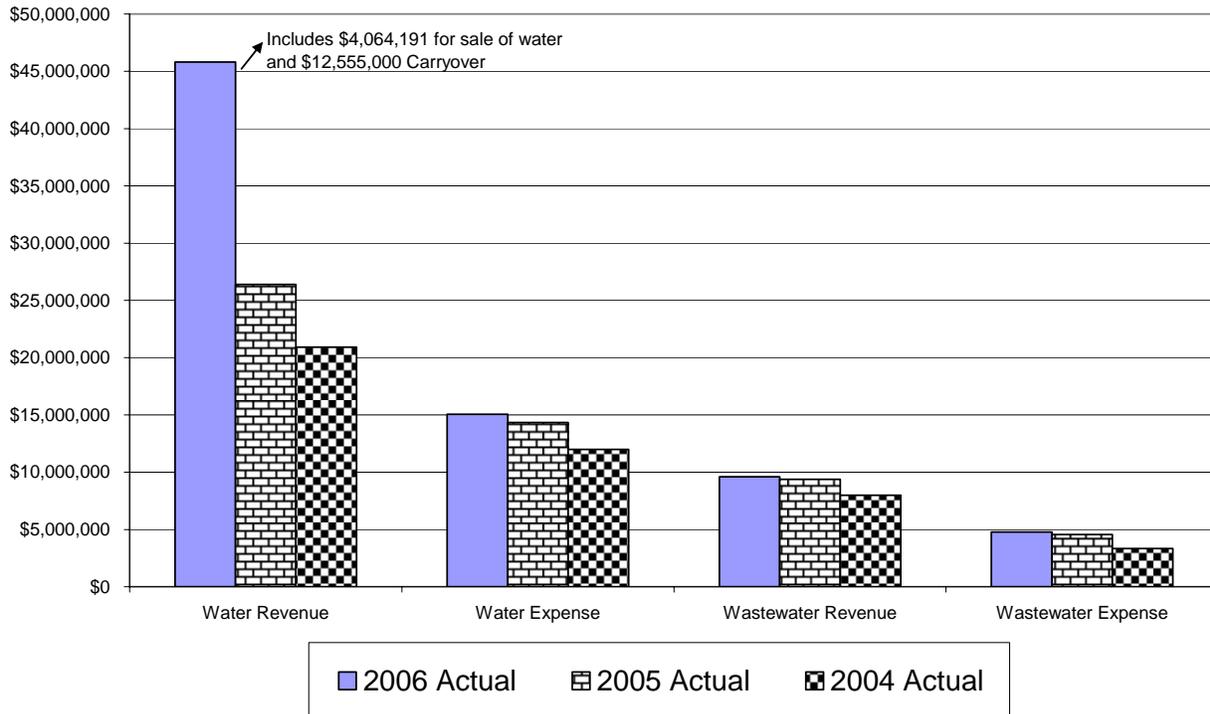


**Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)**

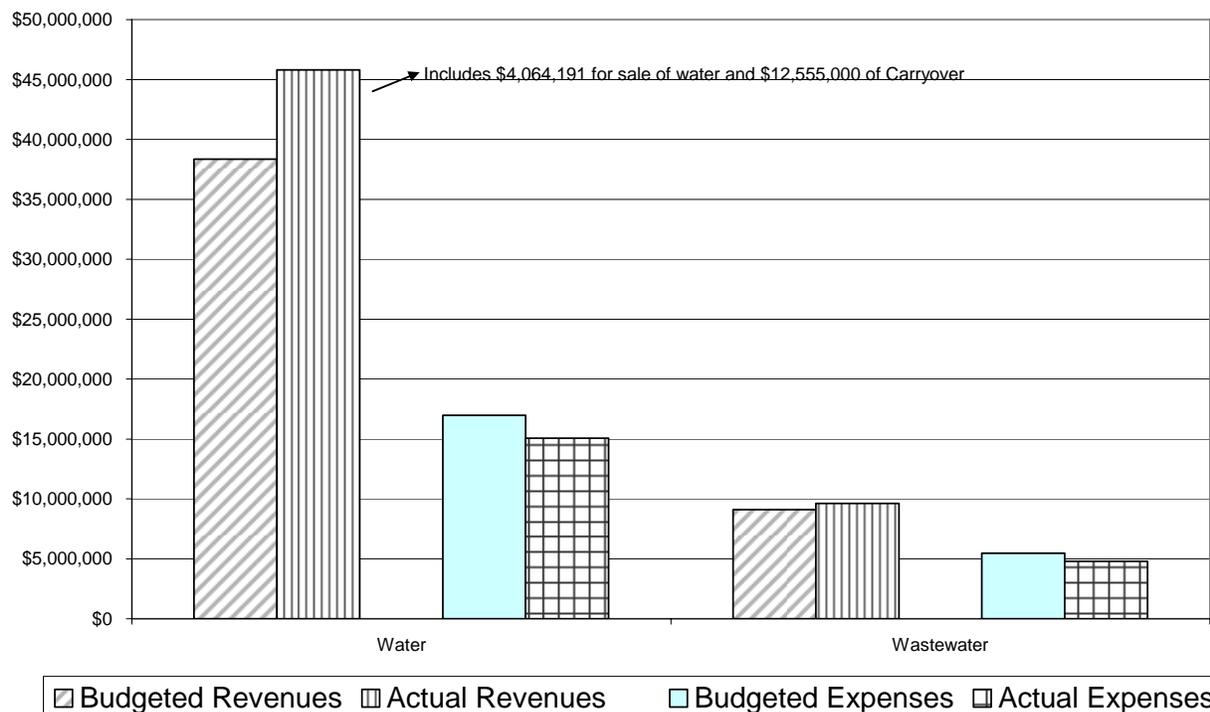
This fund reflects the operating results of the City's water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects.

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

**Water and Wastewater Funds  
Revenue and Operating Expenses 2004-2006**



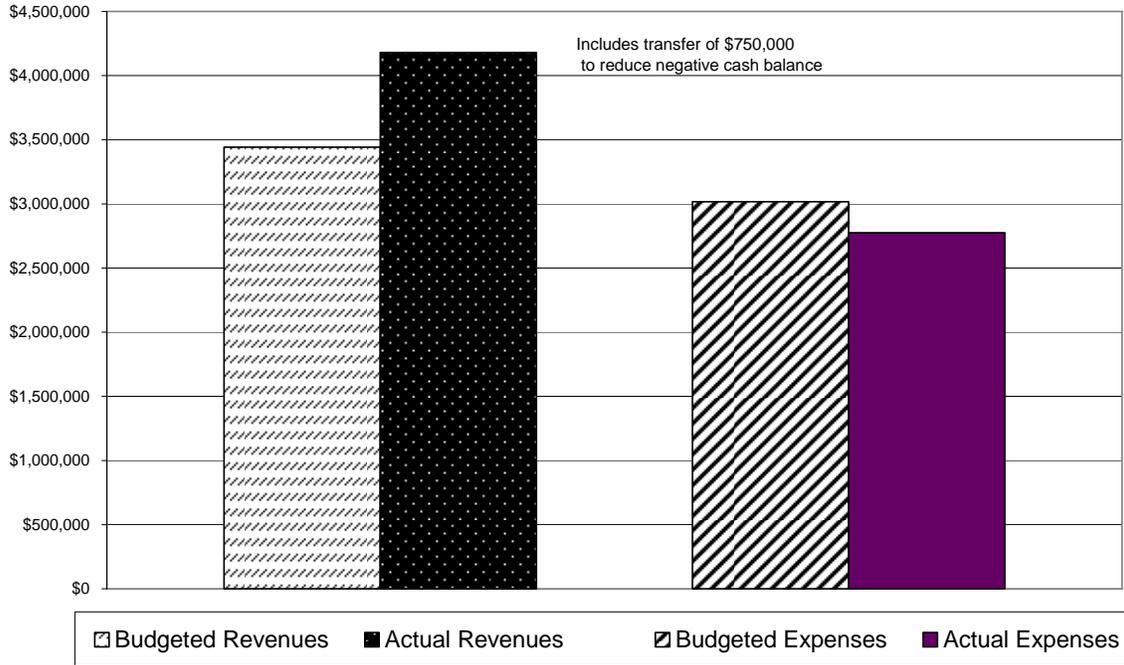
**Water and Wastewater Funds  
Budget vs Actual**



**Golf Course Enterprise (Legacy and Heritage Golf Courses)**

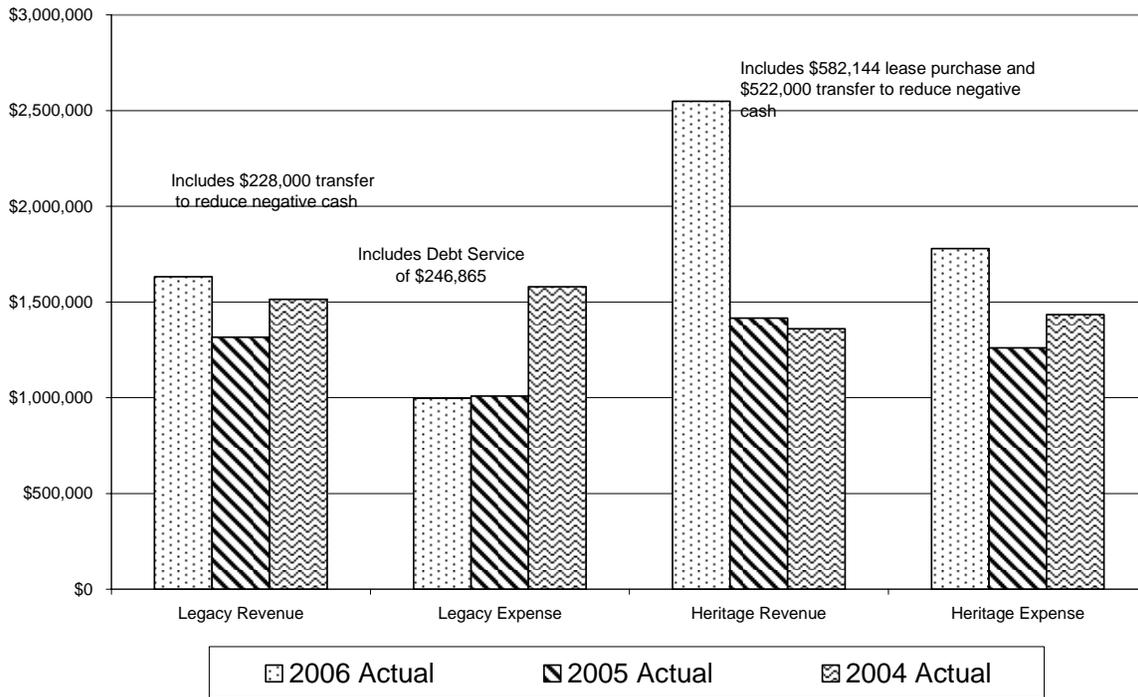
This enterprise reflects the operations of the City's two municipal golf courses.

**Combined Golf Courses  
Budget vs Actual**

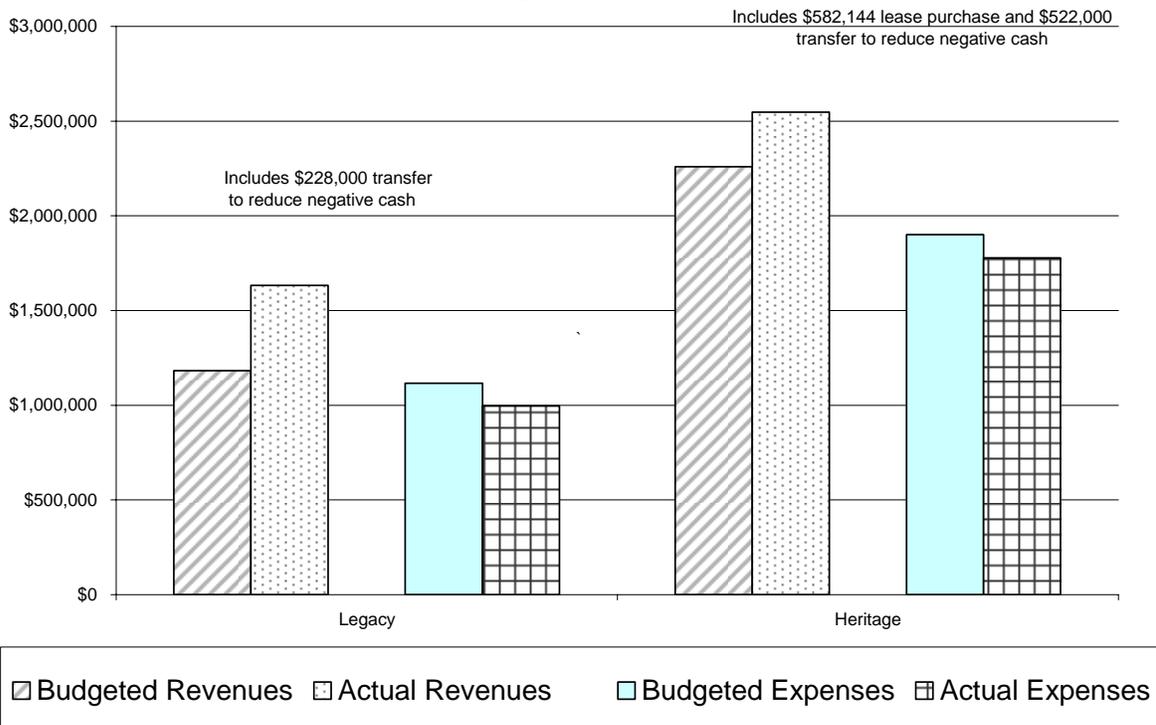


The following graphs represent the information for each of the golf courses.

**Legacy and Heritage Golf Courses  
Revenue and Expenses 2004 - 2006**



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



Respectfully submitted,

**City of Westminster  
Financial Report  
For the Nine Months Ending September 30, 2006**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Revenues and Carryover</b>						
Taxes	4,873,125	4,690,923		4,594,678	(96,245)	97.9%
Licenses & Permits	1,838,000	1,438,771		1,845,675	406,904	128.3%
Intergovernmental Revenue	4,875,818	3,556,573		3,619,511	62,938	101.8%
Charges for Services						
Recreation Services	5,324,515	3,845,634		4,428,871	583,237	115.2%
Other Services	6,511,616	4,533,507		4,953,849	420,342	109.3%
Fines	2,050,000	1,529,300		1,908,462	379,162	124.8%
Interest Income	308,163	231,122		381,315	150,193	165.0%
Misc	367,508	275,631		489,847	214,216	177.7%
Leases	1,175,000	881,250		906,250	25,000	102.8%
Refunds	(70,000)	(52,500)		-	52,500	N/A
Interfund Transfers	58,224,502	43,668,377		43,668,377	-	100.0%
Sub-total Revenues	<u>85,478,247</u>	<u>64,598,588</u>		<u>66,796,835</u>	<u>2,198,247</u>	<u>103.4%</u>
Carryover	7,439,910	7,439,910		7,439,910	-	100.0%
Revenues and Carryover	<u>92,918,157</u>	<u>72,038,498</u>		<u>74,236,745</u>	<u>2,198,247</u>	<u>103.1%</u>
<b>Expenditures</b>						
City Council	205,023	158,372		133,673	(24,699)	84.4%
City Attorney's Office	913,667	665,770		640,136	(25,634)	96.1%
City Manager's Office	1,110,469	806,175		699,911	(106,264)	86.8%
Central Charges	29,013,236	21,710,460		20,273,167	(1,437,293)	93.4%
General Services	4,974,076	3,605,101		3,238,165	(366,936)	89.8%
Finance	1,721,619	1,257,475		1,142,146	(115,329)	90.8%
Police	19,360,711	14,115,454		13,487,881	(627,573)	95.6%
Fire Emergency Services	10,152,513	7,369,721		7,055,619	(314,102)	95.7%
Community Development	4,653,528	3,367,808		3,244,812	(122,996)	96.3%
Public Works & Utilities	7,400,025	5,793,794		4,723,246	(1,070,548)	81.5%
Parks, Recreation & Libraries	13,413,290	9,864,429		9,737,552	(126,877)	98.7%
Total Expenditures	<u>92,918,157</u>	<u>68,714,559</u>		<u>64,376,308</u>	<u>(4,338,251)</u>	<u>93.7%</u>
Revenues and Carryover Over(Under) Expenditures	<u>-</u>	<u>3,323,939</u>		<u>9,860,437</u>	<u>6,536,498</u>	

CITY OF WESTMINSTER

GENERAL RECEIPTS BY CENTER - SUMMARY (CC)  
MONTH OF SEPTEMBER 2006

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART	416,826	21,693	438,519	276,134	15,734	291,868	51	38	50
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	375,303	15,290	390,593	458,957	2,087	461,044	-18	633	-15
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	255,529	1,542	257,071	194,364	804	195,168	31	92	32
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN COMP USA/CIRCUIT CITY	212,416	348	212,764	206,221	430	206,651	3	-19	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	157,179	28,817	185,996	132,178	31,541	163,719	19	-9	14
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	177,834	926	178,760	174,195	14,303	188,497	2	-94	-5
SHERIDAN CROSSING SE CORNER 120TH & SHER ALBERTSONS	166,077	1,239	167,315	156,671	6,962	163,633	6	-82	2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	153,667	7,852	161,519	107,689	406	108,095	43	1835	49
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	89,913	64	89,977	84,462	96	84,558	6	-33	6
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	79,913	768	80,681	84,419	2,278	86,697	-5	-66	-7
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	60,860	136	60,996	56,299	158	56,457	8	-14	8
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	56,239	59	56,298	68,643	432	69,075	-18	-86	-19
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	9,895	45,239	55,133	11,433	25,492	36,925	-13	77	49
WILLOW RUN 128TH & ZUNI SAFEWAY	51,806	112	51,918	57,044	322	57,366	-9	-65	-10
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH	50,648	97	50,745	56,451	117	56,568	-10	-17	-10

CITY OF WESTMINSTER

GENERAL RECEIPTS BY CENTER - SUMMARY (CC)  
MONTH OF SEPTEMBER 2006

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
SAFEWAY WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	49,958	368	50,326	49,436	324	49,760	1	14	1
NORTHVIEW S SIDE 92ND YATES-SHER ALBERTSONS	45,464	275	45,740	43,933	95	44,029	3	189	4
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	41,256	254	41,510	41,335	288	41,622	0	-12	0
COUNTRYDALE BUSINESS PARK S SIDE 108TH & WADSWORTH BALL CORPORATION	298	35,512	35,810	327	7,061	7,388	-9	403	385
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	34,081	1,042	35,123	34,696	0	34,696	-2	15682	1
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	30,252	870	31,123	23,842	442	24,285	27	97	28
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	28,689	0	28,689	33,512	0	33,512	-14	*****	-14
HIDDEN LAKE NE CORNER 72 & SHERIDAN ALBERTSONS	28,255	163	28,417	29,810	44	29,854	-5	269	-5
FEDERAL STRIP W SIDE FEDERAL 68TH-72ND BOVAS	26,956	42	26,998	35,742	21	35,764	-25	96	-25
WESTMINSTER SQUARE NW CORNER 74TH & FED ARC THRIFT STORE	25,063	31	25,094	28,086	320	28,406	-11	-90	-12
	2,624,379	162,738	2,787,117	2,445,880	109,756	2,555,636	7	48	9

CITY OF WESTMINSTER

GENERAL RECEIPTS BY CENTER - SUMMARY YTD (CC)  
MONTH OF SEPTEMBER 2006

Center Location Major Tenant	YTD 2006			YTD 2005			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART	3,624,235	51,542	3,675,777	2,854,705	60,572	2,915,277	27	-15	26
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	3,618,403	51,381	3,669,783	3,960,046	30,190	3,990,235	-9	70	-8
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,110,477	5,675	2,116,152	1,953,557	3,743	1,957,300	8	52	8
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN COMP USA/CIRCUIT CITY	2,049,862	17,400	2,067,262	2,073,007	9,361	2,082,367	-1	86	-1
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,741,750	17,076	1,758,826	1,763,842	40,849	1,804,691	-1	-58	-3
SHERIDAN CROSSING SE CORNER 120TH & SHER ALBERTSONS	1,546,524	12,470	1,558,994	1,490,837	29,997	1,520,835	4	-58	3
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,243,681	36,126	1,279,807	908,644	20,405	929,049	37	77	38
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,234,770	183,455	1,418,225	1,133,396	248,539	1,381,935	9	-26	3
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	906,097	10,512	916,609	875,295	43,925	919,219	4	-76	0
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	846,904	2,830	849,735	852,521	6,334	858,855	-1	-55	-1
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	624,594	3,126	627,720	706,379	5,340	711,719	-12	-41	-12
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	547,026	3,021	550,047	570,058	5,767	575,825	-4	-48	-4
WILLOW RUN 128TH & ZUNI SAFEWAY	497,193	1,960	499,153	505,101	11,607	516,708	-2	-83	-3
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	483,829	1,382	485,210	518,649	1,902	520,551	-7	-27	-7
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH	450,444	5,709	456,153	471,058	6,941	477,998	-4	-18	-5

CITY OF WESTMINSTER

GENERAL RECEIPTS BY CENTER - SUMMARY YTD (CC)  
MONTH OF SEPTEMBER 2006

Center Location Major Tenant	YTD 2006			YTD 2005			%Change			
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total	
SAFEMAY										
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	385,949	9,234	395,183	380,594	3,389	383,983	1	172	3	
NORTHVIEW S SIDE 92ND YATES-SHER ALBERTSONS	380,789	4,780	385,568	407,870	4,697	412,568	-7	2	-7	
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	308,290	2,651	310,941	480,490	5,640	486,130	-36	-53	-36	
HIDDEN LAKE NE CORNER 72 & SHERIDAN ALBERTSONS	271,174	3,500	274,675	304,147	3,101	307,247	-11	13	-11	
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	263,745	6,495	270,240	237,877	13,641	251,519	11	-52	7	
WESTMINSTER SQUARE NW CORNER 74TH & FED ARC THRIFT STORE	237,035	4,450	241,485	224,638	7,807	232,445	6	-43	4	
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	223,689	5,821	229,511	230,639	11,870	242,509	-3	-51	-5	
FEDERAL STRIP W SIDE FEDERAL 68TH-72ND BOVAS	220,125	6,713	226,838	183,910	270	184,180	20	2386	23	
BROOKHILL IV E SIDE WADS 90TH-92ND HANCOCK FABRICS	204,282	1,791	206,072	289,662	2,541	292,203	-29	-30	-29	
SUMMIT SQUARE NE CORNER 84TH & FED SAFEMAY	184,461	1,207	185,668	196,649	1,283	197,932	-6	-6	-6	
	24,205,329	450,307	24,655,636	23,573,568	579,711	24,153,280	3	-22	2	



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Revised Employment Agreement with Martin R. McCullough

**Prepared by:** Matt Lutkus, Deputy City Manager for Administration

**Recommended City Council Action**

Authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2007 with an effective date of January 1, 2007 and an automatic renewal for 2008 unless terminated by City Council.

**Summary Statement**

- City Council is requested to approve a revised Employment Agreement with Martin McCullough for services as City Attorney beginning January 1, 2007. The Agreement will be automatically renewed for 2008 unless it is terminated by City Council no later than October 31, 2007.
- The continuation of this employment agreement reflects Council's positive appraisal of Mr. McCullough's work performance during 2006.
- Under the proposed revised Agreement, Mr. McCullough's compensation will be \$148,400, which represents a 6 percent increase over his annual compensation for 2006. Included in this compensation will be Mr. McCullough's base salary and an amount designated by him as a lump sum payment into his deferred compensation account. Mr. McCullough will also receive a fringe benefits package that includes benefits currently provided to City Department Heads.
- The attached proposed agreement with Mr. McCullough is similar to the current employment agreement with the exceptions of the total allocated for base salary and deferred compensation and the change in the effective dates for the contract.

**Expenditure Required:** \$148,400 plus the cost of fringe benefits as described in the attached Employment Agreement

**Source of Funds:** General Fund - City Attorney's Office Budget

**Policy Issue**

Whether to continue essentially the same employment agreement with Martin McCullough for 2007.

**Alternative**

Council could make further adjustments to the employment agreement with Mr. McCullough.

**Background Information**

Martin McCullough was appointed City Attorney on February 10, 1986, after serving as Acting City Attorney since September 1985. Prior to holding these positions, he was an attorney with the municipal law firm of Calkins, Kramer, Grimshaw and Harring. Mr. McCullough holds a B.A. from the University of Virginia, an M.S. from Florida State University and graduated magna cum laude from the University of Houston School of Law in 1982. He is admitted to practice law in Texas and Colorado and is a member of the National Institute of Municipal Law Officers and the Colorado and Denver Bar Associations. Mr. McCullough has served as president of the Attorneys' Section of the Colorado Municipal League, is past president of the Metro City Attorneys' Association, and is a member and past chairperson of the Local Government Committee of the Colorado Bar Association. Mr. McCullough is also a past recipient of the Metro City Attorney's Association's "City Attorney of the Year" and "Leadership" awards. During 2004, Mr. McCullough was designated a Fellow In Local Government Law by the International Municipal Lawyers' Association.

During the past twelve months, Mr. McCullough and his staff have been closely involved in a number of development projects, capital improvement projects, intergovernmental agreements, land acquisitions, various claims and lawsuits and a number of employee disciplinary matters. The City Attorney's Office was successful in obtaining judicial authorization to demolish the abandoned section of the Holly Park Town Home project, helped finalize the agreement that led to the acquisition of the Metzger Farm open space and continued to assist in the City's South Westminster Revitalization and the Historic Preservation Programs. The Office provided significant staff support in the 144<sup>th</sup> Avenue project and the Orchard retail center, one of the most significant economic development projects in the City's history. Five major sales/use tax protests were resolved. A significant financial settlement of the City's claim for back sales and use taxes was reached in a case where the business had filed for bankruptcy. Judgments in the City's favor were reached in two police liability cases. Over the past 12 months, there were a number of personnel actions, all of which were resolved without a Personnel Board hearing.

The increase in police officers as a result of the Public Safety Tax translated into a substantially increased workload for the City Prosecutor's Office (CPO) over the last 12 months. Prosecutors had over 11,000 direct contacts with Municipal Court defendants. Thus far in 2006, criminal case filings are up by 13%. Traffic case filings (excluding parking violations) are up 34%. There has been a corresponding increase in requests for trials. Additional trial dockets have been added to deal with the increase. From September 2005 through August 2006, the City Prosecutor's Office prepared over 700 cases for trial. 204 cases were tried to the Court, compared to 129 for this same time period the year before, and 65 for the year prior. There were 22 jury trials compared to 19 the year before.

City Council met with Mr. McCullough for his annual performance and salary review on October 9. The City Attorney's employment agreement includes the changes in the agreement requested by City Council as a result of that meeting. The proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2007.

Respectfully submitted,

J. Brent McFall, City Manager  
Attachment

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2007, by and between the CITY OF WESTMINSTER, State of Colorado, a municipal corporation, hereinafter called "CITY" as party of the first part, and MARTIN R. McCULLOUGH, hereinafter called "EMPLOYEE," as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of MARTIN R. McCULLOUGH, as City Attorney of the City of Westminster as provided by City Charter, Chapter IV, Section 4.13; and

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

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

WHEREAS, EMPLOYEE previously accepted employment as City Attorney of said CITY.

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

### SECTION 1. DUTIES:

A. CITY hereby agrees to continue the employment of EMPLOYEE as City Attorney of CITY to perform the duties and functions specified in Section 4.13 of the City Charter, Chapter 16 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

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

C. EMPLOYEE shall supervise the staff of the City Attorney's Office as may be authorized by the City Council. All employees of the City Attorney's Office shall be employed by the City Attorney in accordance with the provisions of section 1-16-3 of the City Code.

### SECTION 2. TERMS:

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as City Attorney for calendar years 2007 and 2008. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of CITY. EMPLOYEE agrees neither to seek, to accept, nor to become employed by any other employer until said termination date, unless said termination date is effected as hereinafter provided.

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

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

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

D. This Employment Agreement expires December 31, 2007 but shall be automatically renewed for 2008 unless terminated no later than October 31, 2007.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Attorney, then and in that event, the CITY agrees to give EMPLOYEE six (6) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing six (6) months, provided however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, CITY has no obligation to give notice or pay the aggregate severance sum designated in this paragraph.

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

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

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

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

### SECTION 4. SALARY:

A. Effective January 1, 2007, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$148,400. The EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid.

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

SECTION 5. HOURS OF WORK:

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

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the Council. Provided, that such consulting or other non-City connected business does not constitute a conflict of any nature with EMPLOYEE'S work as City Attorney. City Council shall be the sole judge of such conflicts whose determination shall be final.

SECTION 6. DUES AND SUBSCRIPTIONS:

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

SECTION 7. PROFESSIONAL DEVELOPMENT:

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

SECTION 8. GENERAL EXPENSES:

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

SECTION 9. FRINGE BENEFITS:

EMPLOYEE will be allowed all benefits as are extended to all Department Head level employees, except that when such benefits are in conflict with this Agreement, said Agreement shall control.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

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

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

SECTION 11. GENERAL PROVISIONS:

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

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

C. This agreement becomes effective on January 1, 2007 and if automatically renewed shall be in effect through December 31, 2008.

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

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

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

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement both effective as of the day and year first above written.

Approved by Westminster City Council this 23<sup>rd</sup> day of October, 2006.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Mayor

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

\_\_\_\_\_  
Martin R. McCullough



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** McKay Lake Fishing Pier Construction Award

**Prepared By:** Brad Chronowski, Landscape Architect II

**Recommended City Council Action**

Authorize the City Manager to sign a contract with AJI Landscape in the amount of \$202,000 for the construction of the fishing pier at McKay Lake and approve a 5% contingency fund of \$10,100, for a total project budget of \$212,100.

**Summary Statement:**

- On August 8, 2005, City Council appropriated \$76,000 in Colorado Division of Wildlife access grants funds for design and construction of the fishing pier at McKay Lake.
- This project will provide accessible fishing to anglers of all ages and abilities on a lake with a fluctuating water level.
- The completed project will include a floating pier, suspended gangway, elevated boardwalk (with recycled plastic decking and railings), pedestrian bridge, culvert crossing and an accessible trail.
- The chosen materials will reduce maintenance and greatly increase longevity for a facility of this type.
- The boardwalk portion of this project presented the challenge of maintaining access for users during the months when the lake collects and stores surplus water, including runoff.
- The City's financial responsibility is \$136,100 (including \$10,100 contingency), not including in-kind services valued at \$10,000 to construct a gravel trail.
- Funds are available in the Trails Development Project budget to cover the City's portion of the project.

**Expenditure Required:** \$212,100

**Source of Funds:** General Capital Improvement Funds –  
Trails Development Project - \$136,100  
Colorado Division of Wildlife Grant - \$76,000

**Policy Issue**

Should the City continue with fishing improvements at McKay Lake?

**Alternative**

City Council could choose not to continue with the fishing improvements at McKay Lake. Staff would not recommend this alternative, however, as the City would forfeit \$76,000 in grant funding for this desirable and highly-supported improvement. Current funding levels would not allow the City to pursue this project without grant assistance.

**Background Information**

The current level of improvements at McKay Lake consists of one small parking lot and a partial informal trail system, both dedicated to pedestrian use of the facility. While regarded as a good local fishery, the anglers are forced to fish from the shore and maneuver across a dangerous fractured stone dam face to gain access. Currently there is no universally accessible fishing access on McKay Lake. The proposed boardwalk and floating pier will allow users and anglers a safe pathway to the lake shore and ultimately guide them to the trail that will surround the lake.

The department of Parks, Recreation and Libraries intends to construct a trail around the lake in the future. This trail will be incorporated into the proposed boardwalk structure to preserve access and minimize damage to the landscape. Funds have not been budgeted for the remainder of the trail and the alignment will be decided in conjunction with the City and County of Broomfield. The future trail will be developed with city funds and an anticipated grant from Adams County Open Space.

The project description includes the following amenities:

- Accessible gravel trail
- Pedestrian bridge
- One ditch crossing
- Accessible boardwalk (224 lineal feet)
- Floating fishing pier (380 sq. ft.)
- Future parking lot expansion

At the time of application, Staff estimated the cost of the improvements to be \$115,000. However, upgrades to the pier and floating dock have increased the project cost. The City does not have control over the water level at McKay Lake. Therefore, in order to prevent the boardwalk and dock from seasonal flooding it must be elevated up to 6' above the ground. This situation requires the addition of hand rails along the boardwalk. Also, the expense related to the floating dock that must remain accessible in low or high water situations added unanticipated costs to the project. The consulting engineer verified that the project costs are reasonable.

The bids received are as follows:

AJI Landscape	\$213,295.51
GL Hoff	\$217,763.10
WM Brown	NO BID
JHL Constructors	NO BID
Pirnack Walters	NO BID

WM Brown indicated that they were interested but did not have enough time to submit a bid. JHL and Pirnack Walters were not interested in a project of that size.

Staff has employed value engineering concepts to negotiate the contract down from the bid prices shown above.

Respectfully submitted,

# McKay Lake Fishing Improvements

## Site Plan

### Overall Plan



### Fishing Improvements Plan





## Agenda Item 8 D

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 23, 2006



**SUBJECT:** 2006 Fiber Optic Project

**Prepared By:** Greg Olson, Transportation Systems Coordinator

### Recommended City Council Action

Award the bid to the low bidder, Integrated Electric, Inc. in the amount of \$165,892, for the installation of underground conduit and fiber optic cable; authorize a construction contingency of \$16,600.

### Summary Statement

- In 1988, the City installed a fiber optic cable network between City Hall, the Public Safety Center and the Municipal Service Center for data transmissions.
- In 2000 and 2004, the fiber optic cable network was expanded to include a total of 28 City buildings receiving high speed data services.
- The Colorado Department of Transportation (CDOT) will soon be constructing a fiber optic cable network on Wadsworth Parkway. An agreement has been made with CDOT to allow the City to have the State contractor install a City-owned fiber optic cable. A similar arrangement was made two years ago when CDOT installed a fiber optics network on Federal Boulevard.
- Formal bids were requested for the installation of fiber optic cable on 88<sup>th</sup> Avenue from the Municipal Service Center (MSC) to Wadsworth Parkway and on Church Ranch Boulevard from Wadsworth Parkway to Old Wadsworth Boulevard.
- This new fiber optic network expansion will provide additional high speed data services to City buildings and traffic signal facilities and provide for more efficient use of the City's existing fiber optic resources.
- Adequate funds are available in the New Traffic Signals Project account to cover the costs of this project.

**Expenditure Required:** \$182,492

**Source of Funds:** General Capital Improvement Fund – New Traffic Signals Project

**Policy Issue**

Should City Council approve the expansion of the fiber optic cable network at a cost of \$182,492?

**Alternative**

Do not approve the proposed project. This alternative is not recommended as reliable data services for City facilities are highly desirable.

**Background Information**

In 1988, with the construction of City Hall, a fiber optic cable network was built linking City Hall to the old Public Safety Building and the Municipal Service Center (MSC) on 88<sup>th</sup> Avenue. Because the system works so well, it has been expanded to now service 28 City buildings. Additional functions have been installed on the system, including a traffic signal control system, control of the reclaimed water system, the Supervisory Control and Data Acquisition (SCADA) water system, the library data system and the availability of all data applications to all City facilities.

The proposed 2006 Fiber Optic Project will provide high speed communication capability on 88<sup>th</sup> Avenue from the MSC to Wadsworth Parkway, continuing north to Church Ranch Boulevard and east to Wadsworth Boulevard. The fiber extension will connect a total of six traffic signals located on 88<sup>th</sup> Avenue, 92<sup>nd</sup> Avenue and Church Ranch Boulevard to ICONS, the City's high speed Advanced Transportation Management System (ATMS), installed late last year. The project also provides for a fiber optic connection to Fire Station No. 3 on 90<sup>th</sup> Avenue by providing a new data connection that is 99 times faster than the current radio link from City Hall. In addition, the project introduces Ethernet technology that reduces the total number of fiber optic lines required for traffic signal devices and provides a backup communication loop from City Hall to 112<sup>th</sup> Avenue should a major break occur to the existing fiber optic backbone on Sheridan Boulevard. The reduction in traffic signal fiber optic requirements will ensure that high speed connections are available to the north Huron Street corridor, which requires nine new traffic signal communication links and a proposed police substation at The Orchard Development.

In April 2006, City Council authorized an agreement between the City and ICG Telecom Group (now Level 3) for the installation of Level 3 fiber optic cable in City conduit in exchange for high speed communication capability. A portion of that agreement includes the extension of fiber optic cable in existing City conduit from the Municipal Service Center on 88<sup>th</sup> Avenue west to Wadsworth Parkway and then continuing north to 92<sup>nd</sup> Avenue. The existing conduit system on 88<sup>th</sup> Avenue contains hardware cable installed in the late 1980's that is not compatible with the high speed capabilities of ICONS. A portion of the 2006 Fiber Optic Project will condition and repair portions of that existing conduit system in preparation for installation of new fiber optic cable by Level 3.

In June of this year, the City learned that CDOT was planning to implement a project that included the installation of a fiber optic system along Wadsworth Parkway. City Staff contacted CDOT and received permission to have a City-owned fiber optic cable installed in the CDOT conduit. The City would only have to pay for the cable installation, thereby avoiding approximately \$50,000 in construction costs. This joint CDOT and City fiber optic cable pull will provide the "missing link" on Wadsworth Parkway to existing City conduits on 92<sup>nd</sup> Avenue and Church Ranch Boulevard for a continuous data link to Wadsworth and Church Ranch Boulevards. The new fiber optic cable system will then connect to the existing end of the fiber optic cable that currently runs on Church Ranch Boulevard from Westminster Boulevard west to Wadsworth Boulevard.

On October 3<sup>rd</sup>, City Staff received formal bids for the repair and conditioning of conduits on 88<sup>th</sup> Avenue, the installation of Ethernet equipment at 16 traffic signals and the installation of City-owned fiber optic cable on Church Ranch Boulevard from Wadsworth Parkway to Old Wadsworth Boulevard that provides for connectivity to the CDOT project on Wadsworth Parkway with the following bid results:

Bidder	Amount of Bid
Integrated Electric	\$165,892
Sturgeon Electric	\$180,984
Guarantee Electric	\$189,497
DKS Enterprises	\$211,090
WL Contractors	\$233,920

The low bid from Integrated Electric meets City specifications for the bid.

The addition of this link to the west side of the City will extend the total length of the City's fiber optic cable network to over 30 miles.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Bus Passenger Shelters Amended Agreement

**Prepared By:** Dave Downing, City Engineer

**Recommended City Council Action**

Authorize the City Manager to execute the attached Amended Agreement with Outdoor Promotions, Inc. for the installation of additional bus passenger shelters at official Regional Transportation District (RTD) bus stops within the City of Westminster.

**Summary Statement**

- In 2001, the City Council passed an Ordinance to amend Title IX of the Westminster Municipal Code that added a new chapter pertaining to bus passenger shelters. According to the terms of this ordinance, if the Council elected to award a contract for the installation of shelters, the selected vendor would have the exclusive right to place shelters within the City limits for the term of the executed contract.
- In April of 2001, a contract was awarded to Outdoor Promotions that allowed the company to install and operate twenty bus shelters with advertising panels for a 15-year term. In exchange for the right to operate these shelters, the vendor provided 120 non-advertising bus benches for use by transit riders in the City.
- This program has been highly successful. It is Staff's opinion that Outdoor Promotions maintains the shelters in an impeccable fashion, demonstrates great discretion with the content of the advertisements and cooperates fully with the City on the selection of shelter locations. No negative feedback has been received from the public.
- With the strong endorsement of the Westminster Transportation Commission (WTC), the vendor has requested an amendment to the existing contract that would allow Outdoor Promotions to install and operate an additional 25 shelters and extend the term of the contract to the year 2026. As compensation for the right to operate these additional shelters, the vendor has offered 25 more non-advertising bus benches and extensive use of advertising panels within the shelters by the City to promote public events.
- Staff and the WTC recommend Council's approval of the attached Amended Agreement.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should additional bus passenger shelters containing advertising panels be allowed within the City limits? Is the form of compensation offered by the vendor acceptable to the City Council?

**Alternative**

The City Council is under no obligation to allow the installation of additional bus shelters within the City. However, due to the fine past performance of the vendor and the great service that these shelters provide to Westminster transit users, it is recommended that additional shelters be permitted.

The form of compensation being offered by Outdoor Promotions for this second phase of the program is very different from the payment that was offered with the initial phase. Under the original contract, the compensation from the vendor was geared to provide comfort for transit riders at a number of bus stops within the City. With this proposed amendment, the compensation is focused more upon the City's free use of advertising space. It is Staff's belief that the number of shelters and non-advertising benches that will be provided through both phases of this program are sufficient to accommodate the vast majority of bus patrons in the City, thus allowing the Council to accept the different form of compensation that is being proposed. Statistics pertaining to bus rider-ship at bus stops within Westminster will be presented later in this Memorandum.

**Background Information**

City Staff and the members of the WTC have monitored the pilot phase of the bus passenger shelter program over the past five years to gauge its success. Initial concerns that the public might object to the introduction of another form of advertising within the City's street rights-of-ways have not been realized. On the contrary, the vendor's provision of 120 non-advertising bus benches allowed Staff to enforce a prohibition of advertising bus benches in the City, and several residents have communicated their opinions that the result has been a vast improvement in the appearance of the City's streetscapes. Furthermore, Staff occasionally receives citizen requests for the installation of more bus shelters at various bus stops.

Convinced that there are no negative aspects to the program, the WTC has taken the lead in engaging in discussions with Outdoor Promotions to consider the implementation of a second phase. With the recent revision to RTD Route 120, which now provides service to the previously bypassed portion of 120<sup>th</sup> Avenue between Huron Street and Pierce Street, the Commission believes that the provision of more shelters would be beneficial. Targeted locations for new shelters would be portions of 120<sup>th</sup> Avenue in the vicinity of Bradburn Subdivision and the Academy of Charter Schools as well as several sites along Federal Boulevard – the most heavily traveled local bus route in Westminster – where only benches or no form of seating currently exist.

During these recent discussions with Staff and the WTC, the vendor warned that escalating materials costs (e.g. steel and concrete) would prevent the company from making as attractive an offer of compensation as was extended with the initial phase of the program. The City's representatives studied recent ridership data supplied by RTD Staff and concluded that, perhaps, a different form of compensation would be fitting. Of the approximately 360 official bus stops within the City limits, only the top 50 experience greater than an average of nine boardings per day and only the top 136 experience greater than an average of one boarding per day. Staff is quick to point out that the data supplied by RTD was not scientifically collected; counts of riders were performed by RTD bus drivers who are frequently distracted from this task by traffic and other concerns. But, the information was reliable enough to allow Staff and the WTC to conclude that the combination of 45 advertising shelters and 145 non-advertising benches that would be furnished for transit patrons if Council approves the proposed Amended Agreement would provide seating at all but the most sporadically used bus stops in the City. For that reason, the City's representatives negotiated for the provision of only 25 additional non-advertising bus benches plus a whole new form of compensation to the City.

Respecting the vendor's claim that the provision of many additional non-advertising benches would be too expensive to offer, Staff pursued a mutually beneficial compensation package that might represent more "soft dollar" costs to the vendor yet still be valuable to the City. Input from the City's Public Information Office revealed that there was much interest in the potential use of the advertising panels contained within the bus passenger shelters to publicize City-sponsored events and issues. Following negotiations between City Staff and Outdoor Promotions, the two parties agreed that, in addition to the installation of 25 new non-advertising benches, the vendor would provide the design, artwork and posting of four advertising posters on six different occasions each calendar year for the full term of the Agreement at no cost to the City. The vendor has estimated the value of these services to be \$16,500 per year (at today's prices). The posters would be rotated among the inventory of shelters within the City in order to achieve widespread publicity of the event being advertised. While there is no denying that the City's posters would likely appear on panels that were not currently being rented by Outdoor Promotions, the value to the City is the same. This recommended form of compensation from the vendor truly represents a "win-win" proposition for both parties.

In order to assure that Outdoor Promotions will be able to accrue sufficient proceeds from the rental of advertising space on these shelters to offset the costs of the non-advertising benches and the above-described offer of advertising services to the City, the vendor has requested that the term of the Agreement with the City be extended to the year 2026. Based upon the positive experience that the City has enjoyed with Outdoor Promotions, Staff and the WTC wholeheartedly endorse this request.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Agreement

**AMENDMENT TO THE  
AGREEMENT BETWEEN THE  
CITY OF WESTMINSTER AND OUTDOOR PROMOTIONS WEST, LLC.  
FOR BUS PASSENGER SHELTERS  
DATED APRIL 30, 2001**

The City of Westminster (hereinafter referred to as "Westminster") and Outdoor Promotions, Inc. (hereinafter referred to as "Contractor") agree to amend the Agreement described above as follows:

1. In accordance with the Consent dated March 9, 2004, the Agreement has been assigned to Outdoor Promotions, Inc.
2. Section III. CONSIDERATION shall be amended as follows:

In consideration for the benefits and privileges granted to OUTDOOR PROMOTIONS under this Agreement, including consideration for the permission to use WESTMINSTER rights-of-way, OUTDOOR PROMOTIONS shall install ~~120~~ **145** non-advertising bus benches, one (1) newspaper corral, and one (1) non-advertising bus passenger shelter at locations identified in Exhibit "B." **THE 145 NON-ADVERTISING BUS BENCHES SHALL BECOME THE PERMANENT PROPERTY OF WESTMINSTER.** OUTDOOR PROMOTIONS shall be entitled to install up to ~~twenty (20)~~ **FORTY-FIVE (45)** commercial advertising bus passenger shelters at locations identified in Exhibit "C." **ADDITIONALLY, OUTDOOR PROMOTIONS SHALL DEDICATE FOUR OF THE PROMOTIONAL PANELS WITHIN THE INVENTORY OF FORTY-FIVE COMMERCIAL ADVERTISING BUS PASSENGER SHELTERS TO BE AVAILABLE AT ALL TIME FOR USE BY WESTMINSTER. SIX (6) TIMES PER YEAR FOR THE TERM OF THIS AGREEMENT, OUTDOOR PROMOTIONS SHALL PROVIDE THE LAYOUT, DESIGN, PRODUCTION AND INSTALLATION OF FOUR (4) ADVERTISING POSTERS AS DIRECTED BY WESTMINSTER AND AT NO COST TO WESTMINSTER. OUTDOOR PROMOTIONS SHALL FREQUENTLY ROTATE THE WESTMINSTER POSTERS AMONG THE ENTIRE INVENTORY OF COMMERCIAL ADVERTISING BUS PASSENGER SHELTERS TO ACHIEVE ENHANCED VISIBILITY OF THE ADVERTISEMENT WITHIN THE CITY OF WESTMINSTER.** OUTDOOR PROMOTIONS shall not be required to share advertising revenues with WESTMINSTER.

3. The first sentence of Section XIII. TERMINATION shall be amended as follows:

This Agreement shall terminate ~~fifteen (15) years after WESTMINSTER'S issuance of a written Notice to Proceed~~ **ON APRIL 30, 2026 UNLESS AN EXTENSION OF THE TERMINATION DATE IS MUTUALLY AGREED UPON BY THE TWO PARTIES. . . .**

4. Exhibits "B" and "C" are amended as shown on the attached.
5. All other terms and conditions of this Agreement shall remain in effect.

This Amendment is dated the \_\_\_\_\_ day of October, 2006.

**CONTRACTOR**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

(Corporate Seal,  
if applicable)

**CITY OF WESTMINSTER**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

(Seal)

Approved as to legal form and content:

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

## **EXHIBIT "B"**

Locations for the installation of ~~120~~ **145** non-advertising bus benches, one (1) newspaper corral and one (1) non-advertising bus passenger shelter:

### Non-advertising bus benches:

**UNLESS OTHERWISE DIRECTED BY THE CITY'S REPRESENTATIVE**, Outdoor Promotions shall replace existing, advertising bus benches with non-advertising benches at locations within the boundaries of the City of Westminster along the following streets, in the listed order of priority, until a total of ~~120~~ **135** benches have been replaced:

- 1.) Federal Boulevard
- 2.) 92<sup>nd</sup> Avenue
- 3.) Sheridan Boulevard
- 4.) Wadsworth Parkway
- 5.) **120<sup>th</sup> AVENUE**

**THE REMAINING 10 NON-ADVERTISING BENCHES SHALL BE HELD IN STORAGE BY OUTDOOR PROMOTIONS FOR FUTURE INSTALLATION AS DIRECTED BY THE CITY'S REPRESENTATIVE.** At those RTD bus stops at which more than one advertising bench may currently exist, Outdoor Promotions shall verify with the City's representative the City's desire to provide one or more non-advertising benches as replacements.

### Newspaper corral:

Outdoor Promotions shall verify with the City's representative the desired location of the one (1) newspaper corral to be installed under this contract.

### Non-advertising bus passenger shelter:

Outdoor Promotions shall verify with the City's representative the desired location of the one (1) non-advertising bus passenger shelter to be installed under this contract.

## EXHIBIT "C"

Locations for the installation of ~~twenty (20)~~ **FORTY-FIVE (45)** commercial advertising bus passenger shelters (i.e., ~~Outdoor Promotions is authorized to install advertising shelters at twenty (20) of these twenty three (23) locations:~~

- 1.) ~~120<sup>th</sup> & Pecos SW~~ **1.) 104<sup>th</sup> & WOLFF SE**
- 2.) ~~Federal & 80<sup>th</sup> SW~~ **2.) 104<sup>th</sup> & HOOKER SE**
- 3.) ~~Federal & 104<sup>th</sup> SW~~
- 4.) ~~Federal & 96<sup>th</sup> SW~~ **4.) 72<sup>nd</sup> & YATES NW**
- 5.) ~~72<sup>nd</sup> & Federal NW~~
- 6.) ~~92<sup>nd</sup> & 5800 West NW~~ **6.) 72<sup>nd</sup> & SHERIDAN SE**
- 7.) ~~92<sup>nd</sup> & Wadsworth NE~~ **7.) 92<sup>nd</sup> & SHERIDAN SE**
- 8.) ~~88<sup>th</sup> & Sheridan NW~~
- 9.) ~~88<sup>th</sup> & 5800 West SE~~
- 10.) ~~Wadsworth & 90<sup>th</sup> SW (La Estrellita)~~ **10.) SHERIDAN & 9400 NORTH SW**
- 11.) ~~Sheridan & 72<sup>nd</sup> NE~~ **11.) 92<sup>nd</sup> & PIERCE NW**
- 12.) ~~Wadsworth & 88<sup>th</sup> NE~~ **12.) 88<sup>th</sup> & PIERCE NW**
- 13.) ~~Wadsworth & 100<sup>th</sup> SW~~ **13.) 112<sup>th</sup> & IRVING SE**
- 14.) ~~Wadsworth & Church Ranch NE~~ **14.) 112<sup>th</sup> & FEDERAL NW**
- 15.) ~~Sheridan & Turnpike Drive SW~~ **15.) 104<sup>th</sup> & BRYANT NW**
- 16.) ~~72<sup>nd</sup> & Lowell NW~~ **16.) 104<sup>th</sup> & WESTMINSTER BLVD. SE**
- 17.) ~~Sheridan & 92<sup>nd</sup> NE~~
- 18.) ~~Sheridan & 112<sup>th</sup> SW~~
- 19.) ~~Sheridan & 9400 North NE~~
- 20.) ~~72<sup>nd</sup> & Raleigh SE~~
- 21.) ~~Sheridan & 76<sup>th</sup> NE~~
- 22.) ~~104<sup>th</sup> & Bryant NW~~
- 23.) ~~104<sup>th</sup> & Westminster Blvd. SE~~

**OTHER COMMERCIAL ADVERTISING BUS PASSENGER SHELTERS SHALL BE INSTALLED AT OFFICIAL RTD BUS STOPS WITHIN THE CITY OF WESTMINSTER SUBJECT TO THE SPECIFIC APPROVAL OF THE CITY'S REPRESENTATIVE.**

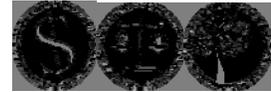
Locations in **bold print** were previously identified by the Westminster Transportation Commission as desired sites for bus shelters.



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Intergovernmental Agreement with the City of Thornton for the Design and Construction of Improvements to McKay Drainageway

**Prepared By:** Stephen C. Baumann, Assistant City Engineer

**Recommended City Council Action**

Authorize the Mayor to sign an Intergovernmental Agreement (IGA) between the Cities of Thornton and Westminster to share costs and cooperate on the design and construction of the proposed improvements to the McKay Drainageway between Huron Street and Washington Street.

**Summary Statement**

- McKay Drainageway runs from McKay Lake Reservoir, crossing Huron Street between 140<sup>th</sup> Avenue and 144<sup>th</sup> Avenue, ultimately joining Big Dry Creek in Thornton at 140<sup>th</sup> Avenue and Washington Street. The flow path is poorly-defined and Interstate 25 acts as a dam, resulting in a broad and shallow floodplain that covers approximately 96 acres of the area between the Interstate and Huron Street and between 136<sup>th</sup> Avenue and 144<sup>th</sup> Avenue (see attached map). About 34 acres are similarly affected in Thornton in areas of importance to both cities' future land use planning.
- A drainage planning study prepared in 2001 identified improvements that would confine and convey the flows and recover most of the floodplain land. Portions of these improvements have already been installed, including the McKay Lake dam renovation for flood attenuation, and a channel through the Huntington Trails Subdivision and to a point just east of Huron Street. Because a large crossing of I-25 is needed and because the downstream end of the improvements is in Thornton, a cooperative approach to the design and construction of the final reach of these improvements is needed. The cities have been discussing the project for several years and have finally arrived at a cost-sharing method that has received preliminary concurrence by the respective City staffs.
- The project has a projected concept level cost of between \$8 and \$10 million dollars that is intended to cover design and construction of a channel in an 80 to 110 foot right-of-way with crossing structures at the Bull Canal, I-25 and Washington Street. Trail improvements may be incorporated into the project if financially feasible. Westminster has been appropriating funds for this project for several years and \$7.3 million has been accumulated. While this may be sufficient to cover Westminster's costs, the current terms of the proposed Intergovernmental Agreement (IGA) has Westminster fronting the costs of the entire project with reimbursement by Thornton at some point in the future. The IGA will allow the development of more detailed cost estimates and construction options to address this funding gap.
- Thornton is anticipated to approve this agreement in the next 30-45 days.

**Expenditure Required:** Estimated at \$8 to 10 Million

**Source of Funds:** General Capital Improvement Fund-McKay Lake Outfall Drainage Project

**Policy Issue**

Should the City move forward with the Intergovernmental Agreement that allows design and pricing of improvements and apportions responsibilities and costs for the McKay Drainageway project?

**Alternative**

Do not authorize the execution of the Intergovernmental Agreement, leaving each City to deal with any floodplain mitigation in its own way. This choice accepts that the floodplain conditions on the west side of I-25 will remain largely unchanged in the future, because in order to reduce the extent of the floodplain on the Westminster side of I-25, a culvert under I-25 and channel improvements in Thornton must be made. Without the cooperation of Thornton, reduction of the floodplain can not be accomplished in any significant or cost effective way. This alternative is not recommended.

**Background Information**

1986, a Flood Hazard Area Delineation was prepared for the McKay Lake basin in Adams County, portions of Broomfield, and land in the cities of Westminster and Thornton. The basin, over 1700 acres in size, is tributary to Big Dry Creek at about Washington Street and 140<sup>th</sup> Avenue and has been modified by agricultural uses and some development over the years. In Westminster, the McKay Drainageway extends downstream from the dam of McKay Lake, across Huron Street to I-25, spreading over a large parcel of undeveloped land between Huron Street and I-25 (see attached map). In most locations, the floodplain is shallow and widespread as it follows an undefined channel. The extent of the floodplain is significant on the west side of Interstate 25, which acts as a dam. Major storms are calculated to overtop I-25 in a wide path and spread out in Thornton.

In the late 1990's Thornton, Westminster and the Urban Drainage and Flood Control District sponsored a Planning Study to determine what improvements would be needed to control and confine flows in this major drainageway, recognizing that the affected properties would be under pressure to develop over time. That study, completed in 2001, has been the basis for the renovation of the McKay Lake dam and the recently-completed channel improvements in the Huntington Trails Subdivision. McKay Lake acts as a large detention facility, reducing flows from major storms upstream. As a result, the floodplain downstream of McKay Lake is now confined to a channel that extends to and under Huron Street in a pedestrian box culvert at approximately 142<sup>nd</sup> Avenue.

The next segment of the McKay Drainageway that needs attention begins at the Huron Street crossing where it reverts to its historic shape - a wide, shallow floodplain of about 96 acres between Huron Street and I-25. East of I-25, a floodplain of about 34 acres is created that meanders east to flow across Washington Street and join Big Dry Creek. As can be seen in the attached vicinity map, the floodplain occupies significant portions of several properties in the North I-25 corridor, an area designated for mixed use development in Westminster's Comprehensive Land Use Plan and for similar development opportunities in Thornton.

Over the past several years, preliminary studies and discussion between the two cities have set the stage for a cooperative effort that is intended to cover commitments and responsibilities for the planning, design and construction of the final phase of improvements. Concept level costs are estimated in the range of \$8 million to \$10 million and would result in the construction of a channel to confine flood flows as well as structures to cross the Bull Canal, go under I-25 and carry Washington Street over the improved channel. The drainage corridor could be irrigated to re-establish native grasses and may include a pedestrian/bicycle trail. The culvert under I-25 would need to be oversized for that purpose. There are many issues and challenges that will need to be resolved as the project moves forward, from permitting and building the crossing of I-25 to wetlands mitigation and utility relocations. Rights-of-way for the improvements will need to be secured from six to ten different ownerships, depending on the route the channel follows. The final cost of this project will not be determined until additional design work is completed, and flexibility of project design will need to be pursued to assure that the project remains financially feasible.

A draft Intergovernmental Agreement proposes cost sharing between Westminster and Thornton based on the acreage of existing floodplain in each city between Huron Street and Washington Street. Several options for cost-sharing were explored, including shares based simply on the geographical location of the improvements. Another method used estimated developed impervious areas tributary to the drainageway in each jurisdiction as a measure of the utility and therefore the cost of the facilities. The option that was acceptable to Thornton was a proportionality equivalent to the amount of land in the floodplain now, most of which would be recovered for beneficial uses in the two jurisdictions. Of the approximately 130 acres now in the floodplain, Westminster has 96 acres (74.1%) and Thornton has 34 acres (25.9%). The cost shares based on the high end of the preliminary estimated costs are thus \$7.4 million and \$2.6 million respectively. Staff believes this is the best cost-sharing arrangement that will be possible to negotiate with Thornton.

Over the years, the City has appropriated \$7.3 million, but under the terms of the proposed IGA would need to front the cost of the entire project and be reimbursed by Thornton in the undetermined future, leaving an initial funding gap approximately equivalent to Thornton's share. Some of the gap (maybe \$1-\$2 million) might be funded by assessments of benefiting properties on Westminster's side, but the timing of payments is not known. The Foster family, one of three owners of property between Huron Street and I-25, has already contributed over \$1 million, which is already included in the \$7.3 million appropriated amount. The agreement requires Thornton to assess benefiting properties that get into their development process in advance of the project, but only after the McKay project design moves forward enough to refine the costs and justification for these assessments. Design engineering would be the next step and it is part of the commitments described in the IGA.

Interest in properties in the Huron Street-Washington Street corridor has been growing since the adoption of the I-25 Corridor Study and the planning and construction of the two interchange projects. Given the importance of the McKay project to those properties, it is suggested that the City go forward with the IGA and proceed with preliminary planning and design to refine the costs and identify construction alternatives for the project. This effort will not be wasted since at some point in the future some form of the improvements will need to be built. If this effort turns up reasons for not doing the project or points to a need to restructure the cost-sharing provisions, the IGA has a provision releasing Westminster from its commitments if a contract for construction is not awarded by January of 2009.

With both Westminster and Thornton's approval of the attached IGA, staff will develop contracts for the planning and design engineering services needed for the project. In general, planning and engineering efforts should begin in the late 2006 with potential for starting construction in the second half of 2007.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments: Intergovernmental Agreement  
Vicinity Map

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF THORNTON AND THE CITY OF  
WESTMINSTER FOR THE DESIGN, MANAGEMENT, FINANCING AND CONSTRUCTION  
OF THE MCKAY LAKE DRAINAGE BASIN PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2006 (the "Effective Date"), by and between the City of Thornton, a home-rule municipal corporation ("Thornton"), and the City of Westminster, a home-rule municipal corporation ("Westminster"), or collectively referred to as the "City or Cities, Party or Parties."

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the growth of residential and commercial development in the Cities is a matter of local concern to the Cities and such concern affects the health, safety and welfare of the citizens of each of the Cities; and

WHEREAS, developable land can be created by constructing improvements to the McKay Lake drainage basin that will channelize and contain drainage flows and remove portions of Thornton and Westminster property from the floodplain (the "Project"); and

WHEREAS, the Parties entered into an Intergovernmental Agreement dated October 30, 2003, to obtain professional consulting services to conduct engineering and economic analysis of proposed improvements within the McKay Lake Drainage Basin to determine an accurate and equitable assessment of the Project costs to properties located in Thornton and Westminster that would be affected by the installation of the Project (the "Cost Apportionment Analysis") and

WHEREAS, the Cost Apportionment Analysis identified three alternate methods for determining the equitable allocation of costs and the Parties desire to select an alternative; and

WHEREAS, the Parties desire to establish the framework for the design, management, financing and construction of the Project.

NOW, THEREFORE, in consideration of the promises and conditions contained herein the Cities hereto agree as follows:

**I. ASSESSMENT OF PROJECT COSTS**

**A. Planning Studies**

The Parties hereby elect to use Option 2 - Amount of Floodplain Recovered ("Option 2") as set forth in the Draft Preliminary Analysis Report/McKay Lake Drainageway Cost Apportionment Analysis dated April 14, 2004, conducted by McLaughlin Water Engineers for the Parties for purposes of determining the equitable assessment of costs for the Project (the "Study"). This option distributes total Project costs to each City based on the amount of floodplain area recovered from the existing floodplain as a result of the Project. The Study shows that 76% of the total Project costs should be attributable to benefited Properties within Westminster, and 24% of said costs to Properties in Thornton (the Properties") as further depicted on Figure II—1 of the Study. It is the intent of the Parties to assess those properties within their respective jurisdiction their fair share of the Total Project Costs of the Project, subject to the limitations and conditions in this Agreement. For the purposes of this Agreement, "Total Project Costs" shall exclude the Incremental Construction Cost defined in paragraph II.A.1.e., below.

## B. Appraisals

In conjunction with any assessment of Project costs pursuant to this Agreement, either Party may obtain any appraisals it deems necessary for all or any of the Properties located within that Party's jurisdiction. The Parties shall mutually agree to the selection of the appraiser for this assignment. Westminster shall enter into the contract with the appraiser and each Party shall pay the cost of the appraisals for the Properties located within each Party's jurisdiction. The Parties shall agree on the appraiser scope of services. For purposes of assessing Project Costs to individual properties, each of the Properties being appraised shall be valued in two ways: 1) valuation of the property in its current condition; and, 2) valuation as if the Project were completed. The difference between the two values equals the actual benefit to the Property as a result of the Project. Such benefit shall be reduced to a per square footage calculation.

## C. Assessments

1. Westminster agrees to fund 100% of the Total Project Costs of the Project. Thornton agrees to use its best efforts to assess and collect 24% of the Total Project Costs of the design and construction of the Project from the Properties within its jurisdiction.
2. As soon as the Preliminary Cost Estimate is available through the Preliminary Design process, Thornton shall calculate the estimated assessment for each Thornton Property based on the number of acres of property removed from the floodplain divided by the number of acres of property removed from the floodplain within Thornton times Thornton's share of 24% of the total Preliminary Cost Estimate.
3. In the event an appraisal shows that any proposed individual Property assessment of the Total Project Costs exceeds the amount of actual benefit to the property as a result of the Project, the assessment shall not exceed the amount of the actual benefit to the Property and the difference between such assessment and benefit shall be borne by Westminster.
4. Within thirty (30) days from execution of this Agreement by both parties, Thornton shall notify each Property located within its jurisdiction that Thornton shall seek payment for cost recovery for this Project and shall attach a copy of this Agreement.

## II. DESIGN AND CONSTRUCTION ADMINISTRATION

### A. Project Design

1. Westminster shall develop and the Parties shall jointly approve a scope for the design of the Project.
  - a. The scope shall include a Preliminary Project Design in accordance with the Project Design specifications provided by each Party associated with the properties located within its jurisdiction. The preliminary design shall also include estimated Preliminary Design Costs associated with each property.
  - b. The scope shall include the determination of right-of-way acquisition requirements for the Project.
  - c. The scope of the design of the Project shall be in general conformance with the Study and the 1988 Urban Drainage Flood Control District Outfall Systems Plan. The Project will extend from the east side of Huron Street on the west, to Big Dry Creek, on the east.
  - d. The design of the channel shall be a natural flowing, meandering stream which may require an oversized easement or right-of-way width to accommodate the channel undulations. Landscaping including grading, seeding, restoration and

temporary irrigation necessary to create and establish a natural riparian area shall be included in the Preliminary Design for the properties located within Thornton.

- e. The design will include a combination hydraulic/pedestrian crossing under Interstate 25 designed in accordance with standards and specifications mutually agreeable to the Parties. The design will include a calculation of the difference between the cost of a hydraulic crossing and a hydraulic/pedestrian crossing (“Incremental Construction Costs”).
2. Westminster shall select and award the Design Contract. Concurrence on the elements of the Final Design shall be evidenced by exchange of letters from each other to that effect in accordance with the notice provisions provided in Section IV herein. Both Parties shall have ownership rights to the work product of the Design Contractor.
3. Thornton shall be responsible for funding and paying for half of the Incremental Construction Costs associated with changing the I-25 crossing from a hydraulic crossing to a hydraulic/pedestrian crossing. Thornton shall pay its share of these costs within ninety (90) days of substantial completion of the Project.

B. Property Interests

Once the necessary property interest requirements are identified through the Project Design, Westminster shall acquire all necessary property interests for the Project with Thornton’s cooperation. All property interests necessary to construct the Project shall be acquired and documentation evidencing such acquisition shall be provided to Thornton prior to advertisement for bid. In the event Thornton is granted necessary property interests through the development process prior to advertising the construction contract for bid, Thornton will make such property interests available for the Project. All property acquisition costs shall be included in the Preliminary Design.

C. Reimbursement

1. Thornton shall reimburse Westminster for the Project costs associated with Thornton Properties up to the 24% share of the Total Project Cost apportioned to Thornton in the Study, subject to the limitations described in I(C)(3) herein.
2. Thornton may use any fee, cost recovery, or contractual mechanism normally and customarily used by municipalities to impose and collect similar public improvement related obligations. Such obligations shall include interest calculated at 5% per annum for the time period beginning upon the Date of Substantial Completion of the Project and ending on the date of payment of the assessment.
3. Each Thornton Property assessment plus interest shall become due and payable to Westminster 90 days after the first building permit is issued on such property. For properties in Thornton that are issued building permits or receive final plat approval prior to the completion of the Project, Thornton shall only be obligated to collect an assessment based on the Preliminary Cost Estimate, and Westminster shall be responsible for the difference between any such assessment based on the Preliminary Cost Estimate and that which would have been assessed based on the Total Project Costs. Thornton agrees to share its records and other information related to these assessments as Westminster may reasonably request.

D. Permits and other Approvals

The Parties hereto shall cooperate with each other and with the selected contractors in connection with any necessary municipal, state, federal or other permitting associated with the Project. All permits and approvals as required by local, state and federal authorities such as but not limited to

the Army Corps of Engineers' 404 Permit, Permits for work in CDOT right-of-way, and storm water permitting shall be acquired.

E. Project Management – Construction Services

Westminster shall provide the construction administration duties for the Project and shall enter into any contracts necessary to construct the Project. The Parties may agree to engage a project management firm to assist Westminster with administering and overseeing the construction of the Project.

F. Construction

1. Contracts Documents

- a. Upon completion of the design, and appropriation of necessary funds for the Project by Westminster it shall develop the contract documents for the construction portion of the Project.
- b. The plans and specifications in the contract documents for the portion of the Project located in the Colorado Department of Transportation right-of-way and improvements shall be prepared in compliance with Federal Highway Administration ("FHWA") requirements and to the extent required shall be prepared to comply with Colorado Department of Transportation ("CDOT") regulations.
- c. The Cities acknowledge that within the Project there are areas under the jurisdiction of each of the Cities. The Cities agree that the portion of the Project located outside of the CDOT right-of-way and located within its jurisdiction shall be designed and constructed in accordance with that City's standards and specifications.
- d. The contract documents will include a bid schedule to be used in the amendment of the Study.
- e. If prior to advertising the Project for construction bids, a development project located on a portion of the Thornton Properties is required to construct a portion of the Project, such construction may be performed and the scope of the Project shall be reduced accordingly.
- f. Upon finalization of the contract documents, Westminster shall provide 30 days written notice to Thornton of its intent to advertise the Project for construction bids. Westminster shall advertise for bids and upon receipt of the bids, Westminster may select the construction contractor based on the lowest responsible bidder.
- g. Westminster shall be responsible for all Project construction costs associated with the Project subject to the reimbursement provision in Paragraphs II(A)(3) and Section II(C) herein.
- h. Change Orders
  - (1) The City Representatives, as defined in Section V herein, shall meet on a regular basis to review Project status and all Project change orders. In the event the change orders are in excess of the amount provided in the Cost Apportionment Analysis, Westminster shall provide additional funding to cover such excess amount and such amounts shall be reimbursed in accordance with Paragraph II (C) herein.

- (2) In the event of a dispute regarding a proposed change order, the City Representatives shall use their best efforts to resolve the disputed change order to avoid any delay in the work. In the event the City Representatives are unable to resolve the disputed change order, the issue will be resolved in accordance with the dispute resolution provisions provided in Paragraph V herein.

G. Maintenance

Westminster shall provide for maintenance of the improvements located within its municipal boundaries and any portion of the improvements located within the CDOT right-of-way, whether in Westminster or Thornton. Thornton shall provide maintenance of the improvements located within its municipal boundaries, exclusive of CDOT right-of-way. The Parties agree to cooperate to qualify the project for maintenance by the Urban Drainage and Flood Control District.

**III. TERM**

This Agreement shall terminate upon the expiration of the warranties associated with the Contract Documents. However, the maintenance and the project funding provisions hereof shall survive. This Agreement shall terminate if Westminster has not awarded the construction contracts necessary for this Project on or before January 1, 2009. Notwithstanding the foregoing, Westminster shall use its best efforts to award the Project construction contracts by September, 2008.

**IV. NOTICE**

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party or Cities. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Thornton  
City Manager  
9500 Civic Center Drive  
Thornton, CO 80229

City of Westminster  
City Manager  
4800 West 92nd Avenue  
Westminster, CO 80030-6399

**V. DISPUTE RESOLUTION**

Each City shall appoint a City representative for the Project ("City Representative"). In the event of any disagreement associated with the Project and prior to the commencement of any formal proceedings, the Parties shall continue performance as set forth in this Agreement and the City Representatives in good faith shall attempt to resolve the dispute. In the event the City Representatives are unable to reach agreement and one of the City Representatives concludes that a good faith amicable resolution through continued negotiation of the matter at issue does not appear likely, such City Representative shall notify the other Party in writing.

In the event the Cities reach such an impasse relating to a decision or issue that threatens to significantly delay or stop construction of the Project, the Parties agree to retain, within five (5) business days following such notice, a mutually acceptable Independent Decision maker to make an interim decision and/or determination that will allow construction of the Project to proceed according to the Project's schedule. The Parties agree to share equally the fees of the Independent Decision maker.

While each City agrees to abide by said interim decision until the Project has been substantially completed, it shall do so under a complete reservation of its rights and without prejudice to any claims it may have against the other Party or others.

## **VI. LITIGATION**

Each Party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions.

## **VII. INTEGRATION AND AMENDMENT**

This Agreement represents the entire Agreement between the Cities and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Cities.

## **VIII. TERMINATION OF AGREEMENT**

This Agreement may be terminated if (1) the bids are in excess of the funds appropriated for the Project, (2) there are no contingent, outstanding contracts for construction. All costs associated with the cancellation of any joint contracts, e.g. the Consultant's contract or portion thereof, shall be paid in accordance with this Agreement.

## **IX. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

## **X. SEVERABILITY**

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

## **XI. WAIVER**

A waiver by any Party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

## **XII. PARAGRAPH CAPTIONS**

The captions of the paragraphs are set forth only for the convenience and reference of the Cities and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

## **XIII. GOVERNMENTAL IMMUNITY**

The Cities acknowledge that each Party, their officers and employees, are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Cities, their officers, or employees.

IN WITNESS WHEREOF, the Cities hereto have executed this Agreement to be effective as of the date first above written.

**CITY OF THORNTON**

\_\_\_\_\_  
Noel Busck, Mayor

ATTEST:

\_\_\_\_\_  
Nancy A. Vincent, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Margaret Emerich, City Attorney

**CITY OF WESTMINSTER**

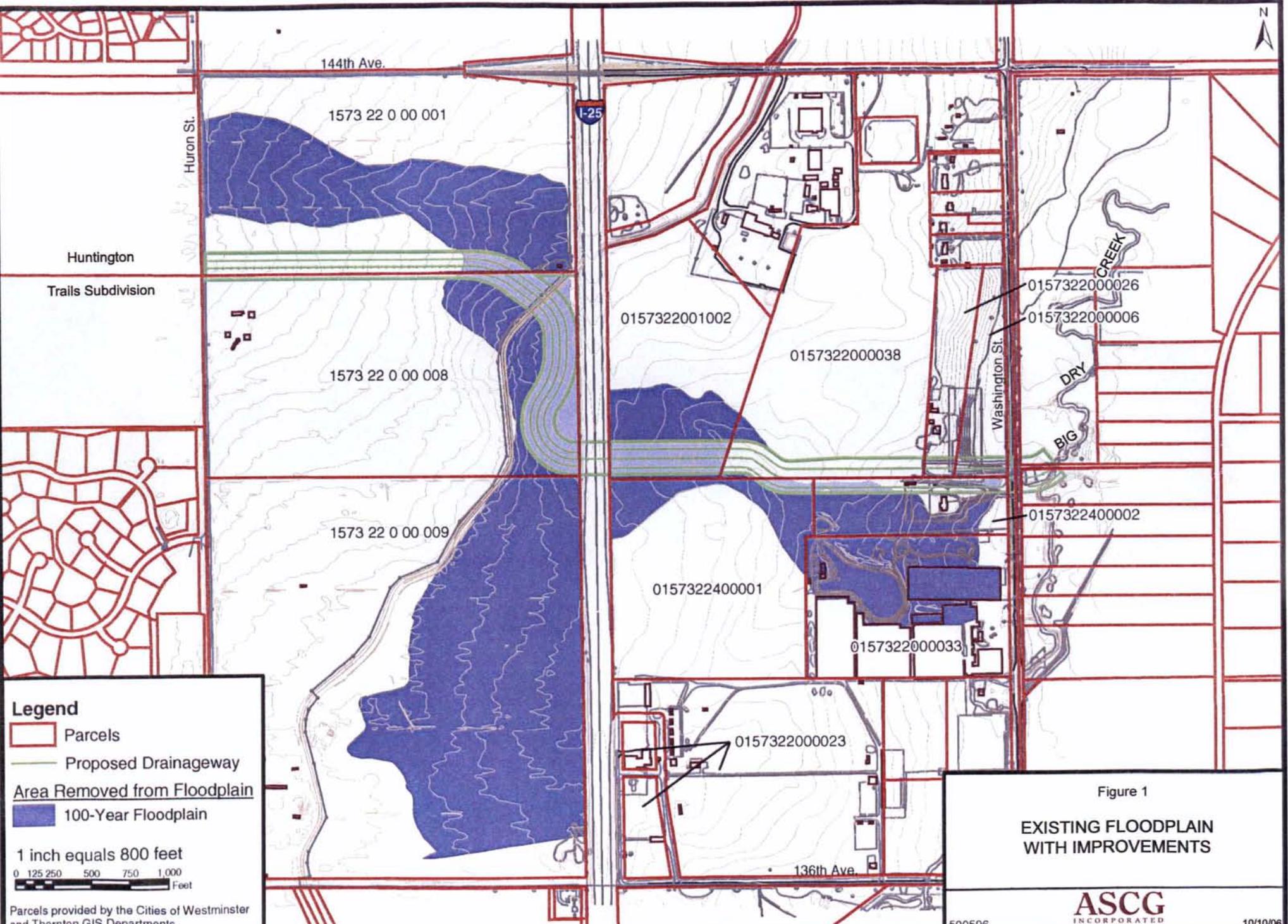
\_\_\_\_\_  
Nancy McNally, Mayor

ATTEST:

\_\_\_\_\_  
Linda Yeager, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Martin McCullough, City Attorney



- Legend**
- Parcels
  - Proposed Drainageway
  - Area Removed from Floodplain
  - 100-Year Floodplain

1 inch equals 800 feet

0 125 250 500 750 1,000  
 Feet

Parcels provided by the Cities of Westminster and Thornton GIS Departments

Figure 1  
**EXISTING FLOODPLAIN WITH IMPROVEMENTS**



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Second Reading of Councillor’s Bill No. 58 re Adoption of the Infrastructure Fee for Streetlight and Concrete Replacement for 2007 and Adoption of the Stormwater Utility Fee Rate for 2008

**Prepared By:** Ray Porter, Street Operations Manager (Public Works & Utilities)  
John Burke, P.E., Senior Engineer (Community Development)

**Recommended City Council Action**

Pass Councillor’s Bill No. 58 on second reading for an ordinance repealing Chapter 6 of Title IV “Concrete Replacement Program,” enacting Chapter 8 of Title IX, W.M.C., and amending Chapter 13 of Title VIII, W.M.C., establishing an infrastructure fee for concrete replacement and streetlight costs, and increasing the monthly base rate portion of the stormwater service fee.

**Summary Statement**

- Staff proposed with the 2007/2008 Budget that the Concrete Replacement Fee be increased from \$0.50/month per utility bill to \$1.00/month and that a fee of \$2.00/month per utility bill be added for the purposes of streetlight costs. These fees are proposed to be combined into one fee of \$3.00/month per utility bill as an Infrastructure Fee. The Concrete Replacement Fee will no longer appear on utility bill customers’ invoices. This fee will help address growing costs of the concrete replacement program and offset approximately half of the City’s current streetlight costs. This fee is recommended to be implemented January 1, 2007.
- In addition, as part of the 2007/2008 Budget, Staff proposed that the Stormwater Utility Fee base rate increase from \$1.50 per 3,100 square feet of impervious area to \$3.00 per 3,100 square feet of impervious area. The 3,100 square feet of impervious area is the estimated impervious area for a lot on which single family residence is located. The City of Westminster currently charges the lowest single family residential stormwater fee compared to the other Colorado municipalities that charge stormwater fees. This fee is recommended to be implemented January 1, 2008.
- Staff is recommending that City Council adopt the attached ordinance modifying the Municipal Code, repealing the chapter concerning concrete replacement, amending the chapter on fees to establish the combined infrastructure fee for concrete replacement and streetlight costs, and amending the chapter concerning the stormwater utility fee to increase the rate from \$1.50 to \$3.00/month. The ordinance mandates that all of the proceeds of the infrastructure fee be used for concrete replacement and streetlighting services.
- This Councillor’s Bill was passed on first reading on October 9, 2006.

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

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO. **3315**

COUNCILLOR'S BILL NO. **58**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**Price - Lindsey**

**A BILL**

**FOR AN ORDINANCE REPEALING CHAPTER 6 OF TITLE IV "CONCRETE REPLACEMENT PROGRAM," ENACTING CHAPTER 8 OF TITLE IX, W.M.C., AND AMENDING CHAPTER 13 OF TITLE VIII, W.M.C., ESTABLISHING AN INFRASTRUCTURE FEE FOR CONCRETE REPLACEMENT AND STREETLIGHT COSTS, AND INCREASING THE MONTHLY BASE RATE PORTION OF THE STORMWATER SERVICE FEE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title IV, Chapter 6, W.M.C., entitled "Concrete Replacement Program," is hereby REPEALED IN ITS ENTIRETY.

Section 2. Title IX, Chapter 8, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW CHAPTER entitled "Infrastructure Program for Streetlight Costs and Concrete Replacement," to read as follows:

**CHAPTER 8  
INFRASTRUCTURE PROGRAM FOR STREETLIGHT COSTS  
AND CONCRETE REPLACEMENT**

- 9-8-1: LEGISLATIVE INTENT
- 9-8-2: DEFINITIONS
- 9-8-3: INFRASTRUCTURE FEE ESTABLISHED
- 9-8-4: ADMINISTRATION
- 9-8-5: CONCRETE REPLACEMENT CRITERIA

**9-8-1: LEGISLATIVE INTENT.** THE CITY COUNCIL FINDS, DETERMINES AND DECLARES AS FOLLOWS:

(A) THE CITY OF WESTMINSTER HAS A PROGRAM TO REPLACE DETERIORATED CONCRETE CURB, GUTTER AND SIDEWALK ADJACENT TO CITIZEN'S PROPERTIES AND THROUGHOUT THE CITY, AS PART OF THE RECONSTRUCTION AND RESURFACING OF STREETS; AND,

(B) THE CITY OF WESTMINSTER PROVIDES AND MAINTAINS STREETLIGHTING, ON NEW AND EXISTING STREETS, AND PAYS FOR ITS ILLUMINATION; AND

(C) BOTH THE CONCRETE REPLACEMENT PROGRAM AND THE PROVISION AND MAINTENANCE OF STREETLIGHTING PROVIDE A DIRECT SERVICE TO BOTH OWNERS AND OCCUPANTS OF PROPERTIES WITHIN THE CITY AND TO RESIDENTS USING THE PUBLIC STREETS AND SIDEWALKS; AND

(D) AS BOTH CITY RESIDENTS AND NON-RESIDENT OWNERS OF PROPERTY RECEIVE THE HEALTH, SAFETY, AND AESTHETIC BENEFITS OF STREET ILLUMINATION AND SOUND AND SECURE SIDEWALKS, IT IS EQUITABLE AND REASONABLE TO FUND A PORTION OF THE COSTS OF SAID CONCRETE REPLACEMENT AND STREETLIGHTING BY IMPOSING AN INFRASTRUCTURE FEE ON EACH CONSUMER'S UTILITY BILL TO HELP DEFRAY PART OF THE CITY'S COSTS OF PROVIDING THESE SERVICES TO ITS USERS.

**9-8-2: DEFINITIONS:** FOR THE PURPOSE OF THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANING:

"**BILLING DATE**" MEANS THE DATE THAT APPEARS AS THE "BILLING DATE" ON THE UTILITY BILL FOR THE MONTH FOR WHICH THE CHARGE IS BEING ASSESSED.

"**CHARGE DUE**" MEANS THE AMOUNT OWING INCLUDING ANY COLLECTION FEE.

"**CODE**" MEANS WESTMINSTER MUNICIPAL CODE.

"**COLLECTION FEE**" MEANS THE FEE ADDED TO ANY PAST DUE INFRASTRUCTURE FEE.

"**CONCRETE REPLACEMENT COST**" MEANS THE COST OF MAINTAINING AND REPLACING CURBS, GUTTERS AND SIDEWALKS WITHIN THE CITY.

"**CONSUMER**" MEANS ANY PERSON RECEIVING WATER OR SEWER SERVICE FROM THE CITY.

"**FINANCE DIRECTOR**" MEANS THE FINANCE DIRECTOR OF THE CITY OF WESTMINSTER, OR HIS/HER APPOINTEE.

"**IN-CITY**" MEANS LOCATED WITHIN THE BOUNDARIES OF THE CITY.

"**INFRASTRUCTURE FEE**" MEANS THAT PORTION OF THE UTILITY BILL INTENDED TO COVER THE COSTS OF PROVIDING CITY STREETLIGHTING AND CONCRETE REPLACEMENT.

"**PERSON**" MEANS ANY INDIVIDUAL, FIRM, PARTNERSHIP, JOINT VENTURE, PUBLIC OR PRIVATE CORPORATION, ESTATE OR TRUST, RECEIVER, TRUSTEE, ASSIGNEE, LESSEE, AGENT OR ANY PERSON ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, WHETHER APPOINTED BY COURT OR OTHERWISE, OR ANY OTHER LEGAL ENTITY.

"**STREETLIGHT COST**" MEANS THE COST OF NEW STREETLIGHT INSTALLATIONS, MAINTENANCE AND REPAIR OF DAMAGED LIGHT POLES, AND THE COST OF ELECTRICITY REQUIRED FOR ILLUMINATION OF STREETLIGHTS.

"**UTILITY BILL**" MEANS THE MONTHLY BILLING STATEMENT FOR UTILITY ACCOUNTS SENT TO CONSUMERS OF CITY UTILITY SERVICES, WHICH MAY INCLUDE WATER, SEWER, STORMWATER MANAGEMENT, CONCRETE REPLACEMENT AND STREETLIGHTING.

**9-8-3: INFRASTRUCTURE FEE ESTABLISHED:**

THERE IS HEREBY ESTABLISHED AN INFRASTRUCTURE FEE IN THE AMOUNT OF THREE DOLLARS (\$3.00) PER MONTH ON EACH CONSUMER OF CITY UTILITY SERVICES. THIS FEE REPRESENTS A ONE DOLLAR (\$1.00) AMOUNT FOR CONCRETE REPLACEMENT COST AND A TWO DOLLAR (\$2.00) AMOUNT FOR STREETLIGHT COST. ALL PROCEEDS OF THE INFRASTRUCTURE FEE WILL BE USED TO OFFSET THE CITY'S COSTS, RESPECTIVELY, IN PROVIDING CONCRETE REPLACEMENT AND STREETLIGHTING SERVICES.

**9-8-4: ADMINISTRATION:**

(A) BILLING METHOD: BEGINNING WITH UTILITY BILLS HAVING A BILLING DATE OF JANUARY 1, 2007 OR LATER, THE FEE SHALL BE BILLED PERIODICALLY IN THE SAME MANNER AND TO THE SAME PERSON AS OTHER UTILITY ACCOUNTS.

(B) DUE DATE: THE CHARGE SHALL BE DUE AND COLLECTED IN THE SAME MANNER AS CITY WATER, SEWER, AND STORMWATER UTILITY FEES, EXCEPT THAT NO CITY UTILITY SERVICE SHALL BE DISRUPTED FOR NON-PAYMENT OF THE INFRASTRUCTURE FEE DUE.

(C) APPLICATION OF PAYMENT: ANY PAYMENT MADE TOWARDS THE AMOUNT OF THE BILL SHALL BE FIRST APPLIED TO PAYMENT OF THE INFRASTRUCTURE FEE.

(D) COLLECTION FEE: IF ANY CHARGE DUE IS NOT PAID WITHIN NINETY (90) DAYS OF THE BILLING DATE, A FEE OF TEN DOLLARS (\$10.00) SHALL BE LEVIED.

(E) ABATEMENT:

1. CHARGE. INFRASTRUCTURE FEES PROPERLY IMPOSED SHALL NOT BE ABATED.
2. COLLECTION FEE. ANY COLLECTION FEE LEVIED BY THIS SECTION MAY BE ABATED BY THE FINANCE DIRECTOR, IF THE FINANCE DIRECTOR FINDS GOOD CAUSE THEREFOR.

(F) SECURITY: THE CITY SHALL HAVE AS SECURITY FOR THE COLLECTION OF THE CHARGE DUE A LIEN UPON THE REAL PROPERTY LISTED AS THE SERVICE ADDRESS OF THE UTILITY BILL. SUCH LIENS SHALL BE GOVERNED BY TITLE I, CHAPTER 31 OF THIS CODE.

#### **9-8-5: CONCRETE REPLACEMENT CRITERIA:**

(A) CRITERIA FOR REPLACEMENT: CONCRETE REPLACEMENT MUST BE WARRANTED IN AT LEAST ONE OF THE FOLLOWING WAYS:

1. THE CONDITION OF THE CONCRETE IS A SAFETY, PEDESTRIAN, OR TRAFFIC HAZARD DUE TO HEAVING OR HAVING SETTLED CONDITIONS;
2. THE DETERIORATION OF THE SURFACE BY SPALLING/SCALING HAS CAUSED THE AGGREGATE TO BECOME LOOSE;
3. THE CURB, GUTTER OR SIDEWALK HAS CRACKED CAUSING INFILTRATION OF WATER INTO THE SUBGRADE, WHICH WILL RESULT IN HEAVING CONDITION AND/OR SETTLEMENT;
4. WHERE SEVERE SETTLEMENT OF GUTTERS HAS CAUSED WATER TO POND IN THE GUTTER, STREET, OR ON THE SIDEWALK, RESULTING IN ICY, HAZARDOUS CONDITIONS DURING THE WINTER MONTHS, AND STAGNANT, STANDING WATER IN THE SUMMER MONTHS.

(B) NO REPLACEMENT MAY BE AUTHORIZED BY STAFF WITHOUT MEETING THE CRITERIA DESCRIBED ABOVE.

Section 3. Section 8-13-2, W.M.C., is hereby AMENDED as follows:

**8-13-2: WORDS AND PHRASES DEFINED:** For the purposes of this Chapter, the following words and terms shall be defined as follows, unless the context in which they are used clearly indicates otherwise:

~~(A)~~ “Base Rate” means the monthly rate of assessment associated with each runoff area unit (RAU) calculated for a property.

~~(B)~~ “Director” means the Director of the Department of Community Development of the City of Westminster, Colorado, or his/her designee.

~~(C)~~ “Development” means any man-made change to real property including, but not limited to, buildings or other structures, streets, parking lots, mining, dredging, filling, grading, paving, or excavating.

~~(D)~~ “Impervious Surface” means surfaces on or in real property where the rate of infiltration of stormwater into the earth has been reduced by the works of man. For purposes of this chapter, buildings, man-made structures, driveways, patio areas, roofs, concrete or asphalt sidewalks, parking lots or storage areas, and other bricked, oiled, macadam or hard-surfaced areas which impede passage of stormwaters into the earth’s surface are deemed to be impervious.

~~(E)~~ —“Person” means a natural person, corporation, partnership, or other entity.

~~(F)~~ “Project Costs” means those costs of administration, management, planning, engineering, construction, reconstruction, right-of-way acquisition, replacement, contingencies, fiscal, legal, and all operation and maintenance costs of stormwater facilities including those costs to comply with federal, state or City laws regulating stormwater facilities or runoff.

~~(G)~~ “Runoff” means that part of snowfall, rainfall or other stormwater that is not absorbed, transpired, evaporated, or left in surface depressions, and that then flows controlled or uncontrolled into a street, storm sewer, watercourse or body of water.

~~(H)~~ “Runoff Area Unit (RAU)” means the average area of impervious surface on a single-family detached residential property as determined by random sampling of such properties in the City.

~~(I)~~ —“Service Fee” means the stormwater service fee as created by this ordinance.

~~(J)~~ “Stormwater Facilities” means any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage, or disposal lines; intercepting sewers; disposal plants; settling basins; outfall sewers; all pumping, power, and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities.

“UTILITY FEE” OR “FEE” MEANS THE STORMWATER UTILITY FEE CREATED BY THIS ORDINANCE.

~~(K)~~ “Watercourse” means a stream having a body or banks and usually discharging into some other stream or body of water.

Section 4: Section 8-13-4, W.M.C., is hereby AMENDED as follows:

**8-13-4: ESTABLISHING STORMWATER UTILITY FEE:**

(A) Fee established. There is hereby imposed on the owner of each and every lot or parcel of land within the City containing an impervious surface, a stormwater ~~service~~ UTILITY fee. This ~~service~~ fee is deemed reasonable and is necessary to pay for the project costs of existing and future City stormwater facilities. All of the proceeds of the service fee are for payment for use of the City’s stormwater facilities by the owners of real property upon which the ~~service~~ fee is imposed.

(B) Basis for fee. The basis for the amount of the ~~service~~ fee is the extent to which each parcel of land within the City makes use of the stormwater facilities, such use to be defined by the amount of impervious surface on the property. The fee is also based on the cost of including the parcel in the property and billing records, plans, and monitoring activities of the stormwater management program.

(C) Exemptions. All public highways, roadways, streets, alleys, railroad rights-of-way, irrigation canals, and undeveloped property shall be exempt from all charges imposed by this chapter.

(D) How fee collected. The ~~service~~ fee shall be payable monthly and shall be billed and collected with the City water and sewer bill.

(E) Calculation of fee. For purposes of imposing the stormwater ~~service~~ UTILITY fee, all lots and parcels within the City are classified into ~~the following~~ two (2) classes; NAMELY, SINGLE-FAMILY DETACHED RESIDENTIAL (SFDR) AND ALL OTHERS (NON-SFDR).

1. ~~Single family detached residential. (sfdr)~~
2. ~~All others. (non-sfdr)~~

The Director or his designee is directed to prepare a list of lots and parcels within the City and assign the appropriate classification to each lot or parcel, AS FOLLOWS:

1. Each single-family detached residential property shall be billed a flat fee as established herein for the average impervious area on the property. The single-family detached residential average area shall be referred to as the runoff area unit (RAU). The RAU will be determined by digitally measuring and summing the impervious area on a random sample of approximately 450 single-family detached residences in the City and averaging the total. The monthly fee to be charged for each single-family detached residential property ~~and~~ shall be referred to as the current base rate per month. Both the RAU and the base rate ~~shall~~ WILL be established by ~~City Council~~ ORDINANCE OR ~~R~~resolution OF CITY COUNCIL. Prior to consideration of aN ORDINANCE OR ~~R~~resolution to subsequently modify the RAU or the base rate, the City shall publicize the proposed fee modification and provide an opportunity for public input regarding the proposed fee change.
2. For all other properties not covered by ~~Subsection~~ PARAGRAPH (E)1. of this Section, the ~~service~~ fee shall be determined by dividing the calculated total square footage of impervious area on the property by the runoff area unit (RAU), multiplying the result by the base rate, and apportioning the result to the utility accounts which serve the property. The billing rate for non-SFDR properties may be updated by the Director based on any additions/subtractions to the impervious area.

(F) Additional fees. The ~~service~~ STORMWATER UTILITY fee shall be subject to additional fees for delinquent payment, uncollectible checks, liens and any other penalties which are the same as those imposed with City water or sewer utility charges.

Section 5: Section 8-13-5, subsection (A), W.M.C., is hereby AMENDED as follows:

#### **8-13-5: ADMINISTRATIVE AND JUDICIAL REVIEW:**

(A) Right to petition. A property owner may petition the Director for a revision or modification of the ~~service~~ STORMWATER UTILITY fee no later than thirty (30) days after having been billed for such charge. Any such petition may only be filed once in connection with the issue or issues presented in the petition, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition. The basis for the petition is limited to the following issues:

1. For single-family detached residential. An owner of single-family detached residential ~~detached~~ property may petition on the basis that his/her property has been incorrectly classified as such.
2. For all other properties (non-SFDR). An owner of property other than single-family detached residential may petition on the following basis:
  - a. The impervious area on the property has been improperly measured or calculated.
  - b. The property is exempt from the ~~service~~ fee pursuant to ~~w.m.e.~~ W.M.C. § 8-13-4(e)(C).
  - c. The property is improperly classified as non-SFDR.
  - d. A computational error was made in calculating the amount charged.

Section 6: Section 8-13-6, subsection (A), W.M.C., is hereby AMENDED as follows:

**8-13-6: ENFORCEMENT:**

(A) Lien declared. The City Council hereby finds and determines that it is the policy of the City that all stormwater facilities supplied and furnished by the City and supported by the ~~service~~ STORMWATER UTILITY fee shall be deemed to be supplied and furnished to the real property so served without regard to the actual person, business, organization or entity billed for stormwater facilities. Accordingly, in addition to other civil collection procedures, all fees and charges, together with all interest and penalties for default in payment, and all costs in collecting the same, until paid, shall constitute a perpetual lien on the property, on a parity with the tax lien of general, state, county, city, town, or school taxes, and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien for such fees, charges, interest, penalties, and costs.

Section 7. The base rate for the stormwater utility fee, referenced in Section 8-13-4(E)1., W.M.C., is hereby increased from one dollar and fifty cents (\$1.50) per 3,100 square feet of impervious area to three dollars (\$3.00) per 3,100 square feet of impervious area. This increase shall become effective on January 1, 2008.

Section 8. This ordinance, which increases the stormwater utility fee and the concrete replacement fee and creates a new infrastructure fee by incorporating the former concrete replacement fee and adding a street lighting fee, is reasonable and necessary to pay for the increased costs of providing these City services and, thus, is necessary to preserve the health, safety, and welfare of the citizens and residents of the City of Westminster.

Section 9. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



# Agenda Item 8 H

## WESTMINSTER COLORADO

### Agenda Memorandum

City Council Meeting  
October 23, 2006



**SUBJECT:** Second Reading of Councillor’s Bill No. 59 re 2007 and 2008 Appropriations

**Prepared By:** Steve Smithers, Assistant City Manager  
Barbara Opie, Assistant to the City Manager  
Robert Byerhof, Financial Analyst  
Aric Otzelberger, Management Intern II

### Recommended City Council Action

Pass Councillor’s Bill No. 59 on second reading appropriating funds for the 2007 and 2008 budgets.

### Summary Statement

- Under City Charter provisions, City Council is to hold a public hearing on the proposed City Budget for the ensuing year and adopt it no later than the fourth Monday in October. Two public meetings were held on June 12 and July 10 and a public hearing was held on the proposed 2007 and 2008 Budgets on September 18. A copy of the proposed 2007 and 2008 Budgets have been on file in the City Clerk’s Office for citizen review since September 1 and the appropriate legal notices have been published in the official City newspaper.
- The 2007 and 2008 Budgets reflect all City operations and services to be provided to Westminster citizens and businesses in 2007 and 2008. This budget is balanced based on no tax increases or new taxes. 2007 will be the fifteenth and 2008 will be the sixteenth years maintaining the City’s property tax mill levy at 3.65 mills. The 2007 and 2008 Budgets both reflect the City’s work towards sustainability and developing replacement revenues.
- The total Proposed 2007 Budget is \$160,102,718, excluding \$45,542,419 in reserves and \$1,000,000 in contingency. The total Proposed 2008 Budget is \$166,636,641, excluding \$41,217,454 in reserves and \$1,000,000 in contingency.
- This Councillor’s Bill was passed on first reading on October 9, 2006.

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

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO. **3316**

COUNCILLOR'S BILL NO. **59**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**Kauffman - Price**

**A BILL**

**FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2007 AND 2008 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW**

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Carryover as of December 31, along with revenue for the calendar and fiscal year are combined and reflected as the total in each of the following funds:

NON-EMERGENCY RESERVE AND NEW REVENUE

	Fiscal Year 2007	Fiscal Year 2008
a. General Fund	\$89,302,120	\$91,669,769
b. Utility Fund	53,056,737	56,955,607
c. General Capital Improvement Fund	8,145,000	8,434,000
d. Fleet Maintenance Fund	2,113,926	2,286,195
e. General Capital Outlay Replacement Fund	1,045,872	1,107,178
f. General Debt Service Fund	8,223,735	7,806,660
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	61,645,254	63,228,969
i. Parks Open Space & Trails Fund	4,958,779	5,336,876
j. General Reserve Fund	0	0
k. Utility Reserve Fund	4,125,594	5,893,222
l. Golf Course Fund	<u>3,637,034</u>	<u>3,693,251</u>
Total Funds Available	\$236,879,051	\$246,036,727
Less Transfers	<u>-75,776,333</u>	<u>-79,400,086</u>
 GRAND TOTAL	 \$161,102,718	 \$167,636,641

Section 2: The following amounts are hereby appropriated for expenditure by fund to be expended by the City Manager in accordance with the City Charter.

	Fiscal Year 2007	Fiscal Year 2008
a. General Fund	\$89,302,120	\$91,669,769
b. Utility Fund	53,056,737	56,955,607
c. General Capital Improvement Fund	8,145,000	8,434,000
d. Fleet Maintenance Fund	2,113,926	2,286,195
e. General Capital Outlay Replacement Fund	1,045,872	1,107,178
f. General Debt Service Fund	8,223,735	7,806,660
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	61,645,254	63,228,969
i. Parks Open Space & Trails Fund	4,958,779	5,336,876
j. General Reserve Fund	0	0
k. Utility Reserve Fund	4,125,594	5,893,222
l. Golf Course Fund	<u>3,637,034</u>	<u>3,693,251</u>
Total Funds Available	\$236,879,051	\$246,036,727
Less Transfers	<u>-75,776,333</u>	<u>-79,400,086</u>
 GRAND TOTAL	 \$161,102,718	 \$167,636,641

Section 3. This ordinance shall become effective January 1, 2007.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED  
PUBLISHED this 9<sup>th</sup> day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 23<sup>rd</sup> day of October, 2006.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Second Reading of Councillor's Bill No. 60 re Establishing "Hourly Non-Benefited" as a Category of Appointment in the Municipal Code

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

**Recommended City Council Action**

Pass Councillor's Bill No. 60 on second reading approving a change in Personnel Management Program in the Westminster Municipal Code that will establish "Hourly Non-Benefited" as a Category of Appointment.

**Summary Statement**

- At the October 9th City Council meeting Council approved the 2007 – 2008 Pay Plan for City employees. The Pay Plan and Proposed 2007 – 2008 City Budget included changes to Instructor employee pay systems. A new Category of Appointment is necessary to implement this approach to instructor pay and classification. The proposed new pay plan, replacing the Instructor Pay Plan, is called the Hourly Non-Benefited Pay Plan.
- This new classification approach will allow the City to employ individuals for an indefinite period of time with fluctuating schedules throughout the year.
- The attached Bill includes changes in the Municipal Code necessary to implement this new system.
- This Councillor's Bill was passed on first reading on October 9, 2006.

**Expenditure Required:** \$25,000 annually

**Source of Funds:** 2007 – 2008 General Fund Parks, Recreation and Libraries Budget

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3317**

COUNCILLOR'S BILL NO. **60**

SERIES OF 2006

INTRODUCED BY COUNCILLORS  
**Dittman - Lindsey**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-24-1, W.M.C, is hereby AMENDED BY THE ADDITION OF A NEW SECTION to read as follows:

**1-24-1: DEFINITIONS:** For the purposes of this Chapter, the following words and terms, unless the context clearly states otherwise, shall have the meaning indicated below:

**EMPLOYEE – HOURLY NON-BENEFITED:** AN EMPLOYEE APPOINTED TO PROVIDE SERVICES ON AN HOURLY BASIS IN SPECIFICALLY DESIGNATED AREAS AND WORK AN INTERMITTENT SCHEDULE WITH NO DEFINED NUMBER OF HOURS OR BENEFIT ELIGIBILITY.

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

**1-24-3: ADMINISTRATION:**

(M) Categories of Appointment. All appointments by an appointing authority shall be made into one of the following categories: probationary, part-time regular, temporary, temporary benefited indexed, special projects, seasonal, substitute, instructor, HOURLY NON-BENEFITED, provisional, emergency, regular and administrative officer. A description of these follows:

1. Probationary: All nonexempt and exempt employees new to a regular or part-time position shall be considered probationary until they have up to one year of satisfactory service in their position or as otherwise provided in rules promulgated by the City Manager. Probationary employees are subject to termination after a hearing at any time in accordance with the procedures specified by the City Manager.

2. Part-time Regular: An employee who has been appointed to a part-time authorized, nonexempt or exempt position to work less than forty (40) hours during a seven day period on a regular basis. Part-time employees shall be paid at an hourly rate. Part-time exempt employees will be paid on a salaried basis, prorated based on their full-time equivalency. Employees in positions authorized at twenty (20) or more hours per week are eligible for City fringe benefits and some benefits may be prorated. Authorized hours are determined by the full-time equivalency (FTE) assigned to the position. An employee may work beyond the authorized FTE, however, only the authorized FTE will be considered in determining an employee's level of benefits. After a part-time nonexempt or exempt employee has successfully completed the probationary period, the employee shall receive a regular part-time appointment with the City. Employees of this category are subject to termination for cause pursuant to the provisions of this Chapter.

3. Special Project: Employees in this category do not receive benefits except that the City Manager may determine that medical and dental benefits be provided. Special project employees are subject to termination by the Division Manager at any time without cause. A special project employee may be terminated due to cessation of funds for the project for which the employee was hired.

4. Temporary: Employees in this category are appointed to other than a temporary benefited position for a temporary period of time not to exceed one year. Temporary employees shall be paid at an hourly rate and are not eligible for any City fringe benefits. Employees in this category are subject to termination by the Division Manager at any time without cause. After one year, a temporary employee shall be terminated.

5. Temporary Benefited: Employees in this category serve as interns or are indexed to a predetermined workload. When the workload falls below the indexed level, the employee must be terminated subject to such notice provisions as may be established by the City Manager. Medical and dental insurance shall be provided and such other benefits as may be granted in the discretion of the City Manager. Temporary benefited employees are subject to termination by the Division Manager at any time without cause.

6. Seasonal: Employees in this category are those appointed for a specified period of time, normally a designated season. Seasonal classifications are listed in the seasonal section of the annual pay plan. Seasonal employees shall be paid at an hourly rate and are not eligible for any City fringe benefits. Employees in this category are subject to termination by the Division Manager at any time without cause. Seasonal employees will be terminated at the end of each season.

7. Instructor: Employees in this category are those appointed to provide SPECIFIC INSTRUCTIONAL ACTIVITIES CONDUCTED ON BEHALF OF THE CITY on a PART-TIME, periodic or occasional basis. Instructor classifications are listed IN THE HOURLY (NON-BENEFITED) section of the annual pay plan. INSTRUCTOR'S WORK IS PART-TIME, SCHEDULED WORK AND Supervisors may limit the PERIOD for the instructor employment based on class schedules or recreation program periods. Employees in this category shall be paid on an hourly basis and are NOT ELIGIBLE FOR ANY CITY FRINGE BENEFITS. EMPLOYEES IN THIS CATEGORY ARE subject to termination by the Division Manager at any time without cause.

8. Substitute: Employees in this category are those appointed to provide services working part time, occasional work on a "substitute" as needed, or on-call basis, to fill in for absences and staffing shortages. There is no limit to the length of time an employee may hold a position in this capacity. Substitute employees shall be paid on an hourly basis and are not eligible for any city fringe benefits. Employees in this category are subject to termination by the Division Manager at any time without cause.

9. HOURLY NON-BENEFITED: EMPLOYEES IN THIS CATEGORY ARE APPOINTED TO PROVIDE SERVICES ON AN HOURLY BASIS IN SPECIFICALLY DESIGNATED AREAS AND WORK AN INTERMITTENT SCHEDULE WITH NO DEFINED NUMBER OF HOURS. THIS CLASSIFICATION IS SPECIFIED IN THE HOURLY (NON-BENEFITED) SECTION OF THE ANNUAL PAY PLAN. EMPLOYEES IN THIS GROUP ARE ABLE TO WORK AN UNLIMITED NUMBER OF HOURS EVERY YEAR, AND THERE IS NO LIMIT TO THE LENGTH OF TIME AN EMPLOYEE MAY HOLD A POSITION IN THIS CAPACITY. EMPLOYEES SHALL BE PAID AN HOURLY RATE AND ARE NOT ELIGIBLE FOR ANY CITY FRINGE BENEFITS. EMPLOYEES IN THIS CATEGORY ARE SUBJECT TO TERMINATION BY THE DIVISION MANAGER AT ANY TIME WITHOUT CAUSE.

~~9~~10. Provisional: A department head or division manager may make a provisional appointment when a critical position vacancy occurs and, due to the length of time required to fill it or because of an extended leave of absence, it becomes necessary to appoint a replacement on a "provisional" basis. An appointment shall be considered provisional if the individual serving in the temporarily vacant position having a higher pay classification is required to do so for a period of more than 80 consecutive work hours. Should a temporary appointment, originally intended not to exceed 80 consecutive hours, extend beyond 80 hours, payment for the provisional status shall be made retroactively. An employee serving in provisional status for less than 80 hours shall not receive provisional pay.

Provisional pay for nonexempt employees serving in nonexempt positions on a provisional basis shall be moved to the first step of the range of the vacant position or a 5% increase over current salary, whichever is higher as long as the 5% increase does not exceed the last step of the range for the vacancy. Employees serving on a provisional basis in an exempt or administrative officer position shall receive the level of compensation determined by the Human Resources Manager. The employee may be allowed by the Human Resources Manager to credit the time served in a provisional status toward completion of the probationary period, should a probationary appointment to the position occur immediately subsequent to the provisional appointment.

~~10~~11. Emergency: In an emergency, to prevent undue delay or serious interference with the provision of necessary public services, a division manager may make emergency appointments for a period not to exceed ninety (90) calendar days. Successive emergency appointments involving the same

employee shall not be made. Emergency appointments may be made without regard to the formal selection provisions of this Chapter. Approval of the Human Resources Manager must be obtained prior to an emergency appointment. Emergency appointed employees are not eligible for any City fringe benefits.

~~11~~-12. Regular: After a full-time nonexempt or exempt employee has successfully completed the probationary period, the employee shall receive a regular appointment with the City. Regular nonexempt or exempt employees can only be terminated pursuant to the provisions of this Chapter.

~~12~~-13. Administrative Officer Service: Administrative officer positions receive salaries within the parameters of the existing pay plan as determined by department heads. Part-time administrative officers will be paid on a salaried basis, prorated based on their full-time equivalency. Individuals holding administrative officer positions are entitled to the fringe benefits approved by City Council. Administrative officers shall be subject to termination at the discretion of the City Manager. Such employees who are involuntarily separated shall be eligible for severance pay as determined by length of service and position as provided below, except that in the event that the employee is terminated because of the employee's conviction of any illegal action, the City has no obligation to provide severance compensation.

(a) Department Heads: Those employees employed as department heads more than six (6) months, but less than three (3) consecutive years shall be granted full pay and benefits for fifteen (15) working days following involuntary separation. Employees with at least three (3) years service in these classifications, but less than six (6) years service, shall receive forty-five (45) working days of full pay and benefits. Employees with at least six (6) years but less than ten (10) years of service shall received ninety (90) working days of full pay and benefits. Employees with service of ten (10) or more years shall receive one hundred thirty (130) working days of pay and benefits upon involuntary separation.

(b) All Other Administrative Officers: Those employees employed more than six (6) months, but less than two (2) years in these classifications shall be granted full pay and benefits for ten (10) working days following involuntary separation. After two (2) years, but less than five (5) years of administrative officer service, the employee shall receive fifteen (15) working days of full pay and benefits as severance pay. Employees with five (5) or more years of administrative officer service shall receive twenty (20) working days of pay and benefits upon involuntary separation.

~~13~~-14. Short Term Disability: An employee who is appointed to this category is receiving short term disability pay and has an authorized medical professional certification that they are unable to return to work.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



## Agenda Item 8 J

WESTMINSTER

COLORADO

### Agenda Memorandum

City Council Meeting  
October 23, 2006



**SUBJECT:** Second Reading of Councillor's Bill No. 61 re Municipal Judge Salary

**Prepared By:** Matt Lutkus, Deputy City Manager for Administration

#### Recommended City Council Action

Pass Councillor's Bill No. 61 on second reading establishing the compensation paid to John A. Stipech for his services as Presiding Judge effective January 1, 2007.

#### Summary Statement

- City Council previously approved a revised employment agreement with John A. Stipech for services as Presiding Judge for a one-year period beginning January 1, 2007. The agreement will automatically be renewed for 2008 unless it is terminated by City Council no later than October 31, 2007.
- Judge Stipech's 2007 combined salary and deferred compensation will be \$115,812, which represents a three percent increase over his annual compensation for 2006. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2007.
- The City Charter requires that the Presiding Judge's salary be approved by Ordinance.
- This Councillor's Bill was passed on first reading on October 9, 2006.

**Expenditure Required:** \$115,812 plus the cost of fringe benefits as described in the approved employment agreement

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

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3318**

COUNCILLOR'S BILL NO. **61**

SERIES OF 2006

INTRODUCED BY COUNCILLORS  
**Major - Price**

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

~~112,439~~ \$115,812 per annum payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation.

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect on January 1, 2007.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Second Reading of Councillor's Bill No. 62 re Pension Plan Amendments

**Prepared By:** Gordon Tewell, Pension Administrator

**Recommended City Council Action**

Pass Councillor's Bill No. 62 on second reading amending the City's General Employee and Police Pension Plan Ordinances.

**Summary Statement**

- Pension Administration and the Police and General Employee Pension Boards are recommending a series of changes to the City's Pension Ordinances. Several of the recommended changes are substantive while the remainder is of a housekeeping nature. State statutes mandate that 65% of the active participants in the Police Plans approve any changes before these changes can be implemented. The Police Plan members have approved the substantive changes by a vote of greater than 99% approval.
- The Internal Revenue Service (IRS) requires pension plan documents be amended to comply with changes to the Internal Revenue Code as the result of laws passed by Congress. Amendments to the City of Westminster Police and General Employee Plans are required in order for the Plans to conform to a number of laws passed by Congress known collectively as the GUST and EGTRRA Amendments. The changes must be amended into the plan documents and be filed with the IRS by January 31, 2009.
- The IRS requires that plans operate within the rules established by the plan document and that the plan document properly reflect the operational procedures of the plan. Several procedures outlined by the current pension plan documents cause administrative difficulties with the operation of the Plans or due to compliance with the document, hardship to the members of the plan.
- The Pension Ordinance currently references types of plans, plan features and investments not offered by the City of Westminster. In order to simplify and streamline the Pension Ordinance these sections and references will be removed.
- This Councillor's Bill was passed on first reading on October 9, 2006.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO. **3319**

COUNCILLOR'S BILL NO. **62**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**Major - Price**

**A BILL**

**FOR AN ORDINANCE AMENDING TITLE XIV OF THE WESTMINSTER MUNICIPAL  
CODE CONCERNING THE POLICE AND GENERAL EMPLOYEE PENSION PLANS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 14-1-1, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (C) to read as follows:

**14-1-1: NAME AND PURPOSE OF PLAN; HISTORY:**

(C) ON SEPTEMBER 1, 2004, THE CITY TRANSFERRED THE ASSETS OF THE FIREFIGHTER'S PENSION PLAN TO THE FIRE AND POLICE PENSION ASSOCIATION OF COLORADO DEFINED BENEFIT SYSTEM AND THE FIREFIGHTER'S PENSION PLAN WAS TERMINATED. PARTICIPANTS IN THE FIREFIGHTER'S PENSION PLAN BECAME PARTICIPANTS IN THE FPPA DEFINED BENEFIT SYSTEM. ASSETS IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) IN THE FIREFIGHTER'S PENSION PLAN WERE TRANSFERRED TO THE GENERAL EMPLOYEE'S PENSION PLAN FOR USE AS DEFINED IN SECTION 14-1-7(C)(4) OF THIS PLAN.

Section 2. Section 14-1-2, W.M.C., is hereby AMENDED to read as follows:

**14-1-2: DEFINITIONS:** When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person or entity who, pursuant to Section 14-1-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The Police Pension Plan Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "CODE": THE INTERNAL REVENUE CODE OF 1986, AS IT MAY BE AMENDED, OR RE-ENACTED OR REPLACED. REFERENCE TO A SPECIFIC SECTION OF THE CODE SHALL MEAN THE SECTION IN EFFECT AT THE DATE OF ADOPTION OF THIS PLAN, OR ANY SUCCESSOR SECTION TO SUCH SECTION.

~~(D)~~ (E) "COMPENSATION": The base pay of a Participant for services rendered to the City, ~~including longevity pay, but~~ excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE'S) budgeted for their positions.

~~(E)~~ (F) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

~~(F) "DIRECT ROLLOVER": A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.~~

~~(G) "DISTRIBUTE": A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Federal Internal Revenue Service Code, are distributees with regard to the interest of the spouse or former spouse.~~

~~(H) "ELIGIBLE RETIREMENT PLAN": An eligible retirement plan is an individual retirement account described in Section 408(a) of the Federal Internal Revenue Service (IRS) Code, an individual retirement annuity described in Section 408(b) of the IRS code, an annuity plan described in Section 403(a) of the IRS code, or a qualified trust described in Section 401(a) of the IRS code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

~~(I) "ELIGIBLE ROLLOVER DISTRIBUTION": An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Federal Internal Revenue Service Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).~~

~~(J) (G) "EMPLOYEE": Any person who fills an authorized position of Police Officer as defined in this Chapter that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.~~

~~(K) (H) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.~~

~~(L) (I) "INACTIVE PARTICIPANT": Any person who has been a Contributing Participant to this Plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of all respective interest in the Plan.~~

~~(M) (J) "INTEREST": The amount of a Participant's share in the Trust Fund including City contributions, employee contributions and earnings.~~

~~(N) (K) "PARTICIPANT": Any Contributing Participant or Inactive Participant.~~

~~(O) (L) "PLAN": The Pension Plan established in this Chapter and all subsequent amendments thereto.~~

~~(P) "PLAN ADMINISTRATOR": THE PERSON APPOINTED BY THE CITY MANAGER TO ADMINISTER THE PLAN.~~

~~(Q) (N) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.~~

~~(R) (O) "POLICE OFFICER": Any person who is employed by the City as a recognized law enforcement POLICE officer AS DEFINED BY TITLE III OF THIS CODE AND WHO EITHER IS THE CHIEF OF POLICE OR REPORTS TO THE CHIEF OF POLICE and who has sworn to enforce the ordinances of the City; the laws of the State of Colorado and the United States of America. The term Police Officer shall not include dispatchers, clerical employees, animal control personnel, civilian administrative~~

~~personnel, reserve officers, code enforcement personnel and any other employees who do not regularly enforce the traffic and criminal codes and ordinances of the City and State.~~

~~(R)~~ (P) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in ~~either the Fire or~~ General Employees' pension plan, without a break in municipal service, the person's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights have lapsed or, if a grievance is filed, on the date of the final decision by the City.

~~(S)~~ (Q) "TOTAL DISABILITY": A disability which permanently renders a Contributing Participant unable to perform satisfactorily the usual duties of his employment with the City, as determined by the Board, and which results in his termination of employment with the City.

~~(T)~~ (R) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

~~(U)~~ (S) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-1-10 and any duly appointed and qualified successor trustees.

Section 3. Section 14-1-3, subsection (A)(1), is hereby AMENDED to read as follows:

#### **14-1-3: PARTICIPATION OF EMPLOYEES:**

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). ~~Each person who was an employee on January 6, 1986, had the option to elect to become a Contributing Participant on January 6, 1986. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin.~~ By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

Section 4. Section 14-1-4, subsections (A)(2), (C)(1)(c), (C)(3), (D)(1) and (F), W.M.C., are hereby AMENDED to read as follows:

#### **14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS:**

(A) Contributions by the City.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan ~~on each payday~~ PAY PERIOD.

(C) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the ~~Trustee~~ PLAN CUSTODIAN, according to the provisions of this Chapter.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the Plan on each payday PAY PERIOD.

(D) Retirement Medical Savings Accounts:

(1) Subject to approval by the Internal Revenue Service, each participant shall have the option of designating up to 25% of his OR HER COMBINED mandatory and City contributions to be used for future medical expenses as provided for in Section 401(h) of the Federal Internal Revenue Service Code. Contributions to the medical savings accounts will not be taxed at ~~retirement~~ SEPARATION FROM SERVICE nor upon use for medical expenses ~~during retirement~~ AFTER SEPARATION FROM SERVICE. The retirement medical savings accounts will be subject to the rules and requirements as issued by the City Manager.

(F) CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE. THE EMPLOYER SHALL MAKE ALL CONTRIBUTIONS TO THE PLAN REQUIRED BY SECTION 414(U) OF THE CODE WHICH ARE ATTRIBUTABLE TO PERIODS OF QUALIFIED MILITARY SERVICE. IN ADDITION, THE EMPLOYER SHALL ALLOW ANY PARTICIPANT TO MAKE ELECTIVE CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE AND THE EMPLOYER SHALL MAKE ANY MATCHING CONTRIBUTIONS BASED UPON SUCH CONTRIBUTIONS AT THE RATE AT WHICH SUCH ELECTIVE CONTRIBUTIONS OF THE EMPLOYEE WOULD HAVE BEEN MADE DURING THE APPLICABLE PERIOD OF QUALIFIED MILITARY SERVICE, EACH AS REQUIRED BY SECTION 414(U) OF THE CODE. THE EMPLOYER MAY ELECT TO MAKE ADDITIONAL CONTRIBUTIONS BASED UPON SUCH QUALIFIED MILITARY SERVICE BASED UPON EMPLOYER CONTRIBUTIONS MADE DURING THE APPLICABLE PERIOD, PROVIDED SUCH ELECTION BY THE EMPLOYER IS MADE ON A NON-DISCRIMINATORY BASIS APPLICABLE TO ALL SIMILARLY SITUATED EMPLOYEES WHO HAVE QUALIFIED MILITARY SERVICE. ANY CONTRIBUTIONS MADE UNDER THIS SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 414(U) OF THE CODE AND THE PROVISIONS OF THIS PLAN SHALL BE APPLIED CONSIDERING ANY SUCH CONTRIBUTIONS AS HAVING BEEN MADE DURING THE PLAN YEAR TO WHICH THE CONTRIBUTIONS RELATE. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED MILITARY SERVICE" MEANS SERVICE IN THE UNIFORMED SERVICES OF THE UNITED STATES (AS DEFINED IN CHAPTER 43 OF TITLE 38, UNITED STATES CODE) BY ANY INDIVIDUAL IF SUCH INDIVIDUAL IS ENTITLED TO RE-EMPLOYMENT RIGHTS WITH RESPECT TO SUCH SERVICE.

Section 5. Section 14-1-5, W.M.C., is hereby AMENDED to read as follows:

**14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:**

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of ~~twenty-five~~ ONE HUNDRED percent (~~25%~~ 100%) of his OR HER compensation for such year or ~~\$30,000~~ 40,000 provided such figure shall ~~change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation.~~ BE ADJUSTED AS PROVIDED IN CODE SECTION 415(D). FOR LIMITATION YEARS BEGINNING BEFORE JANUARY 1, 2002, THE FOREGOING PERCENTAGE LIMITATION IS 25% AND THE FOREGOING DOLLAR LIMITATION IS \$30,000, AS ADJUSTED PURSUANT TO CODE SECTION 415(D). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar

limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the Plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000, subject to adjustment as provided for by law or regulation, for the account of any individual participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, roll over contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limit, shall be returned to the employer.

~~(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the plan year. The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer: (i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(c)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(c)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.~~

~~(6)~~ (5) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a participant under a plan established under Federal Internal Revenue Service Code Sections 125, ~~457, 401(k), or 403(b)~~ 132(F)(4), 402(G)(3), 457, 401(K), OR 403(B). THE ANNUAL COMPENSATION OF EACH PARTICIPANT TAKEN INTO ACCOUNT IN DETERMINING ALLOCATIONS FOR ANY PLAN YEAR BEGINNING AFTER DECEMBER 31, 2001, SHALL NOT EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000), AS ADJUSTED FOR COST-OF-LIVING INCREASES IN ACCORDANCE WITH §401(A)(17)(B) OF THE CODE. FOR YEARS BEGINNING PRIOR TO JANUARY 1, 2002, THE DOLLAR AMOUNT IN THE FOREGOING SENTENCE IS ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000). ANNUAL COMPENSATION MEANS COMPENSATION DURING THE PLAN YEAR OR SUCH OTHER CONSECUTIVE 12-MONTH PERIOD OVER WHICH COMPENSATION IS OTHERWISE DETERMINED UNDER THE PLAN (THE DETERMINATION PERIOD). THE COST-OF-LIVING ADJUSTMENT IN EFFECT FOR A CALENDAR YEAR APPLIES TO ANNUAL COMPENSATION FOR THE DETERMINATION PERIOD THAT BEGINS WITH OR WITHIN SUCH CALENDAR YEAR.

~~(C) Contribution percentage test for matching and employee contributions.~~

~~— (1) General Rule: The average contribution percentage in any year of all participants who are highly compensated employees may not exceed the greater of the following amounts:~~

~~— (a) 125% of the average contribution percentage for such year of all participants who are not highly compensated employees; or~~

~~— (b) The average contribution percentage for such year of all participants who are not highly compensated employees, plus two percentage points (2%), limited to two times the average contribution percentage for all such participants.~~

~~— For purposes of the foregoing, the average contribution percentage is the average of the sum of the City contributions under Section 14-1-4(A) allocated to the account of the applicable participant plus such participant's voluntary non-deductible contributions, divided by the total compensation of such participant for each such participant. If the amount to be contributed by the City and allocated to the accounts of participants who are highly compensated employees exceeds the foregoing limitations, then the amount so allocated shall be reduced, beginning with the highest dollar amount of contribution among such participants, to the extent necessary to satisfy such limitation and such excess amount, together with earnings thereof, and shall be distributed to such participants no later than 2 1/2 months after the end of the plan year in which such contributions were made.~~

~~— (2) Adjustment of Contribution Percentage: The employer may in its discretion make contributions to the Plan, which shall be designated as additional matching contributions and which shall be allocated to the accounts of participants who are not highly compensated employees, in order to increase the average contribution percentage of such participants. In applying the limitation above, the administrator shall take into account such designated employer contributions.~~

~~— (3) Excess Aggregate Contributions: Employer contributions and employee contributions in excess of the limitations of this Section are excess aggregate contributions.~~

~~— (4) Disposition of excess aggregate contributions.~~

~~— (a) General Rule: Notwithstanding any other provision of this Plan, excess aggregate contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than the last day of each Plan year to participants to whose accounts such excess aggregate contributions were allocated for the preceding Plan year. If such excess aggregate~~

contributions are distributed more than 2 1/2 months after the last day of the Plan year in which such excess amounts arose, a 10% excise tax will be imposed on the employer maintaining the Plan with respect to those amounts. Excess aggregate contributions shall be treated as annual additions under the Plan.

~~———— (b) Determination of Income or Loss: Excess aggregate contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to excess aggregate contributions is the sum of: (i) income or loss allocable to the participant's employee contribution account, matching contribution account (if any, and if all amounts therein are not used in the deferral percentage test under Internal Revenue Service Code Section 401(k)) and, if applicable, qualified non-elective contribution account and elective deferral account for the plan year multiplied by a fraction, the numerator of which is such participant's excess aggregate contributions for the year and the denominator of which is the participant's account balance(s) attributable to contribution percentage amount without regard to any income or loss occurring during such plan year; and (ii) 10% of the amount determined under (i) multiplied by the number of whole calendar months between the end of the Plan year and date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.~~

~~———— (c) Forfeitures of Excess Aggregate Contributions: Forfeitures of excess aggregate contributions shall be applied to reduce employer contributions.~~

~~———— (d) Accounting for Excess Aggregate Contributions: Excess aggregate contributions shall be forfeited, if forfeitable or distributed on a pro rata basis from the participant's employee contribution account, employer contribution account, and qualified matching contribution account, if any, (and, if applicable, the participant's qualified non-elective contribution account or elective deferral account, or both).~~

~~———— (e) Aggregate Limit: For purposes of this Section, the term "aggregate limit" shall mean the sum of (i) 125% of the greater of the deferral percentage of the non highly compensated employees for the plan year or the contribution percentage of the non highly compensated employees under the plan subject to Internal Revenue Service Code Section 401(m) for the plan year beginning with or within the plan year of the cash or deferred arrangement under Section 401(k) and (ii) The lesser of 200% of 2 plus the lesser of such deferral percentage or contribution percentage. The word "lesser" shall be substituted for "greater" in (i), above, and "greater" shall be substituted for "lesser" after "2 plus the" in (ii) if by substituting such terms would result in a larger aggregate limit.~~

~~———— (5) Special Rule:~~

~~———— (a) In the event that this plan satisfied the requirements of Sections 401(m), 401(a)(4), or 410(b) of the Internal Revenue Service Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Internal Revenue Service Code only if aggregated with this plan, then this Section shall be applied by determining the deferral percentage test under Internal Revenue Service Code Section 401(m) of employees as if all such plans were a single plan. For plan years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Internal Revenue Service Code only if they have the same plan year.~~

~~———— (6) Highly Compensated Employee: For purposes of this Section, an employee is treated as a "highly compensated employee" (HCE) if:~~

~~———— (a) During the preceding year, the employee received compensation in excess of \$80,000, to be indexed for cost of living increases; and the employee was also in the top paid twenty percent (20%) of employees during that year; or~~

~~———— (b) The employee was a five percent (5%) owner at any time during the year or the preceding year.~~

~~———— (c) Rules of Construction. The determination of who is a highly compensated employee, including the determinations of the number and identity of employees in the top paid group, will be made~~

~~in accordance with Section 414(q) of the Federal Internal Revenue Service Code and the regulations thereunder.~~

~~(D)~~ (C) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, ~~third party and administrative charges~~ and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants. THIRD PARTY AND ADMINISTRATIVE CHARGES SHALL BE ALLOCATED IN THE RATIO THAT THE TOTAL DOLLAR VALUE OF THE INTEREST OF EACH SUCH PARTICIPANT IN THE TRUST FUND BEARS TO THE AGGREGATE DOLLAR VALUE OF ALL OF SUCH INTERESTS OF ALL SUCH PARTICIPANTS OR EQUALLY TO ALL PARTICIPANTS.

~~(E)~~ (D) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

~~(F)~~ (E) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be at least the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event described in Section 14-1-7(A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

~~(G)~~ (F) Vesting of Participants' Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this chapter and not as a result of any transfer of said interest or account.

~~(H)~~ (G) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsection ~~(G)~~ (F) of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and nonforfeitable for all purposes.

(H) INVESTMENT OF PARTICIPANT'S ACCOUNT: A PARTICIPANT'S ACCOUNT SHALL BE INVESTED IN THE INVESTMENT OPTIONS IN ACCORDANCE WITH THE INVESTMENT ELECTIONS SPECIFIED BY THE PARTICIPANT. A PARTICIPANT MAY CHANGE THE INVESTMENT OF CONTRIBUTIONS AND MAY REALLOCATE AMOUNTS IN THEIR ACCOUNT AMONG THE INVESTMENT OPTIONS IN A MANNER DETERMINED BY THE PLAN CUSTODIAN AND SUBJECT TO SUCH PROVISIONS AS THE PLAN ADMINISTRATOR MAY ADOPT. ALLOCATION OF ASSETS AMONG INVESTMENT OPTIONS IS SOLELY THE

RESPONSIBILITY OF EACH PARTICIPANT. THE FACT THAT AN INVESTMENT OPTION IS AVAILABLE FOR INVESTMENT TO PARTICIPANTS UNDER THE PLAN SHALL NOT BE CONSTRUED AS A RECOMMENDATION FOR INVESTMENT IN THAT INVESTMENT OPTION.

Section 6. Section 14-1-6, subsections (A)(2) and (B)(3), W.M.C., are hereby AMENDED to read as follows:

**14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY**

(A) Retirement Date:

(2) Early Retirement: Any Contributing Participant who ~~has attained~~ WILL ATTAIN the age of fifty-five (55) DURING THE YEAR may elect to retire earlier than the normal retirement age.

(B) Beneficiaries:

(3) Insurance Policies: The Beneficiary of any insurance ~~or annuity contract~~ on a Participant's life shall be determined and designated as provided in Section 14-1-8(A).

Section 7. Section 14-1-7, subsections (C), (D), (F)(1), (G), (H) and (J), W.M.C., are hereby AMENDED to read as follows:

**14-1-7: DISTRIBUTION FROM TRUST FUND:**

(C) Distribution of Interests:

~~— (1) Distribution Upon Retirement or Total Disability: If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~— (2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after either the end of the plan year in which the Participant's death occurs or the date the Trustee determines the identity of the Beneficiary, whichever is later, unless the Beneficiary elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~— (3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.~~

(4) (1) Insurance ~~and Annuity Contracts~~: If there has been an investment in a life insurance ~~or annuity contract~~ for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance ~~or annuity contract~~ by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. ~~Any annuity purchased or acquired by the trustee and distributed to a participant under the provisions of the Subsection (C) shall, with respect to such participant, be nontransferable and the annuity contract will so provide.~~ After December 31, 1996, no new life insurance contracts may be adopted as pension investments.

(5) (2) Election to Defer Benefits: A Participant may elect, ~~with the consent of the Board,~~ to have DEFER the commencement of distribution of his OR HER benefit ~~deferred until a date later than the date~~

~~specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, before the date distribution would otherwise commence, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence if the deferral is approved by the Board. Any change to the terms of the deferral must be resubmitted in writing to the Board for approval unless the change in terms is a request for the rollover of funds to an individual retirement account or a qualified plan. No election to defer or change the method of payment may be made more than once every six months once payments have commenced.~~

~~(6) (3) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefore upon the Board. A participant's interest that is less than or equal to the minimum dollar amount as prescribed by the Internal Revenue Service may be distributed without receiving written application from the participant.~~

(4) BENEFITS PAYABLE FROM THE 401(h) ACCOUNT:

(a) BENEFITS ARE PAYABLE FROM THE RETIREMENT MEDICAL SAVINGS ACCOUNT ONLY UPON RETIREMENT, SEPARATION OF SERVICE, DEATH OR TOTAL DISABILITY.

(b) BENEFITS PAYABLE FROM A 401(h) ACCOUNT SHALL INCLUDE ONLY PAYMENTS OR REIMBURSEMENTS FOR MEDICAL CARE (AS DEFINED IN CODE SECTION 213(d)(1)).

(c) MEDICAL CARE PAYMENTS SHALL ONLY BE PAID PURSUANT TO A REIMBURSEMENT APPLICATION.

(d) NO REFUNDS OF CONTRIBUTIONS SHALL BE MADE. ALL CONTRIBUTIONS REMAIN IN THE 401(h) ACCOUNT UNTIL USED FOR MEDICAL CARE PAYMENTS.

(e) REIMBURSEMENTS MAY NOT BE MADE FOR ANY EXPENSE FOR WHICH THE RETIRED PARTICIPANT OR HIS OR HER SPOUSE OR DEPENDENTS RECEIVE, OR ARE ELIGIBLE TO RECEIVE, PAYMENT OR REIMBURSEMENT FROM ANOTHER SOURCE.

(f) IN ORDER TO RECEIVE BENEFITS FROM THE 401(h) ACCOUNT, THE RETIRED PARTICIPANT MUST AGREE TO PROVIDE APPROPRIATE DOCUMENTATION OF THE EXPENDITURE.

(D) Transfers between Qualified Plans:

(1) In General: The Trustee and the ~~Board~~ PLAN CUSTODIAN, upon their mutual agreement, are authorized to receive and add to the interest of any participant ~~his~~ THE PARTICIPANT'S vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer ~~satisfied~~ SATISFIES the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this plan and trust, CONCERNING EMPLOYER CONTRIBUTIONS. The trustee is also authorized, at the direction of the ~~Board~~ PLAN CUSTODIAN and at the request of the participant, to transfer such participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such participant, provided such transfer satisfied the requirements under law for such transfers.

(2) For Distributions Made on or After January 1, 1993: Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) FOR DISTRIBUTIONS MADE AFTER DECEMBER 31, 2001. AN ELIGIBLE RETIREMENT PLAN SHALL ALSO MEAN AN ANNUITY CONTRACT DESCRIBED IN §403(B)

OF THE CODE AND AN ELIGIBLE PLAN UNDER §457(B) OF THE CODE WHICH IS MAINTAINED BY A STATE, POLITICAL SUBDIVISION OF A STATE, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR POLITICAL SUBDIVISION OF A STATE AND WHICH AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS TRANSFERRED INTO SUCH PLAN FROM THIS PLAN. THE DEFINITION OF ELIGIBLE RETIREMENT PLAN SHALL ALSO APPLY IN THE CASE OF A DISTRIBUTION TO A SURVIVING SPOUSE, OR TO A SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATION ORDER, AS DEFINED IN §414(P) OF THE CODE. THE PLAN SHALL BE PERMITTED TO ACCEPT ROLLOVERS FROM ANY TYPE OF ELIGIBLE RETIREMENT PLAN EXCEPT TO THE EXTENT LIMITED IN SECTION 14-2-7.

(4) DEFINITIONS.

(1) ELIGIBLE ROLLOVER DISTRIBUTION. AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTE, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: (I) ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTE OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTE AND THE DISTRIBUTE'S DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; (II) ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER §401(A)(9) OF THE CODE; (III) ANY HARDSHIP DISTRIBUTION AS DESCRIBED IN §401(K)(2)(B)(I)(IV) OF THE CODE (APPLICABLE ONLY TO DISTRIBUTIONS AFTER DECEMBER 31, 1999); AND (IV) THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDABLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES). ANY AMOUNT THAT IS DISTRIBUTED ON ACCOUNT OF HARDSHIP SHALL NOT BE AN ELIGIBLE ROLLOVER DISTRIBUTION AND THE DISTRIBUTE MAY NOT ELECT TO HAVE ANY PORTION OF SUCH A DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN. A PORTION OF A DISTRIBUTION SHALL NOT FAIL TO BE AN ELIGIBLE ROLLOVER DISTRIBUTION MERELY BECAUSE THE PORTION CONSISTS OF AFTER-TAX EMPLOYEE CONTRIBUTIONS WHICH ARE NOT INCLUDIBLE IN GROSS INCOME. HOWEVER, SUCH PORTION MAY BE TRANSFERRED ONLY TO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN §408(A) OR (B) OF THE CODE, OR TO A QUALIFIED DEFINED CONTRIBUTION PLAN DESCRIBED IN §401(A) OR 403(A) OF THE CODE THAT AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS SO TRANSFERRED, INCLUDING SEPARATELY ACCOUNTING FOR THE PORTION OF SUCH DISTRIBUTION WHICH IS INCLUDIBLE IN GROSS INCOME AND THE PORTION OF SUCH DISTRIBUTION WHICH IS NOT SO INCLUDIBLE. THE PLAN SHALL NOT ACCEPT A ROLLOVER OF AFTER-TAX EMPLOYEE CONTRIBUTIONS UNLESS SPECIFICALLY ELECTED IN THE ADOPTION AGREEMENT OR A SUPPLEMENT THERETO.

(2) ELIGIBLE RETIREMENT PLAN. AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN §408(A) OF THE CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN §408(B) OF THE CODE, AN ANNUITY PLAN DESCRIBED IN §403(A) OF THE CODE, OR A QUALIFIED TRUST DESCRIBED IN §401(A) OF THE CODE, THAT ACCEPTS THE DISTRIBUTE'S ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

(3) DISTRIBUTE. A DISTRIBUTE INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS

DEFINED IN §414(P) OF THE CODE, ARE DISTRIBUTEES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

(4) DIRECT ROLLOVER. A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEE.

(F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; ~~provided, that nothing in this chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of setoff, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.~~

(G) Manner of Distribution: A Participant's interest may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY (OR UNTIL THE ACCOUNT IS EXHAUSTED) and not in installment frequency greater than monthly. THE MAXIMUM PERIOD SHALL BE DETERMINED UNDER THE APPLICABLE IRS TABLES AT THE TIME THE INITIAL MONTHLY INSTALLMENT PAYMENT BECOMES PAYABLE. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six months.

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

~~(4) If the Participant or Beneficiary fails to notify the Trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years unless the participant's interest meets the minimum automatic distribution allowed by Internal Revenue Service.~~

(H) Limitation on Duration of Payments: No distribution shall be made over a period exceeding ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable

to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(J) Special Rules for Distributions after the Participant's Death:

(4) RMSA DISTRIBUTIONS AFTER DEATH:

(a) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA, THE ACCOUNT MAY BE USED FOR THE BENEFIT OF THE PARTICIPANT'S SPOUSE AND DEPENDENTS UNDER THE TERMS OF SECTION 14-1-7(C)(4).

(b) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA AND WITHOUT A SPOUSE OR DEPENDENT, THE PARTICIPANT'S DESIGNATED BENEFICIARY, IF ANY NAMED, SHALL BE ELIGIBLE TO RECEIVE THE REMAINING BENEFITS.

Section 8. Section 14-1-9, subsection (B)(3), W.M.C., is hereby AMENDED to read as follows:

**14-1-9: POLICE PENSION BOARD:**

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. THE BOARD SHALL ADOPT VARIOUS INVESTMENT OPTIONS FOR THE INVESTMENT OF CONTRIBUTIONS BY THE PARTICIPANT AND SHALL MONITOR AND EVALUATE THE APPROPRIATENESS OF THE INVESTMENT OPTIONS OFFERED BY THE PLAN. THE BOARD MAY REMOVE OR PHASE OUT AN INVESTMENT OPTION IF THE INVESTMENT OPTION HAS FAILED TO MEET THE ESTABLISHED EVALUATION CRITERIA OR FOR OTHER GOOD CAUSE AS DETERMINED BY THE BOARD. ~~Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter.~~ Neither the Trustee, nor the Board, THE PLAN ADMINISTRATOR NOR THE CITY shall be held liable for any losses or changes to a Participant's interest that results from that Participant's choice of investment option.

Section 9. Section 14-1-9, subsection (H), W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBSECTION (5) to read as follows:

**14-1-9: POLICE PENSION BOARD:**

(H) Resignation and Removal of Members; Appointment of Successors:

(5) A MEMBER OF THE BOARD MAY BE REMOVED FROM THE BOARD IN THE MANNER DEFINED IN SECTION II(F) OF THE CITY OF WESTMINSTER POLICE AND GENERAL EMPLOYEE PENSION PLAN BY-LAWS.

Section 10. Section 14-1-10, subsection (A)(2)(c), W.M.C., is hereby AMENDED to read as follows:

**14-1-10: POWERS AND DUTIES OF THE TRUSTEE:**

(A) Investment of Trust Fund:

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, which contracts shall then become a part of this plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's General Employee ~~AND/OR FIRE~~ Pension Plan in which case the funds of the two ~~OR MORE~~ plans may be co-mingled for investment purposes.

Section 11. Section 14-1-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:

**14-1-12: MISCELLANEOUS:**

(B) Notices from Participants to be Filed with ~~Board~~ PLAN ADMINISTRATOR: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the ~~Board~~ PLAN ADMINISTRATOR for such purpose and filed with the ~~Board~~ PLAN ADMINISTRATOR, which shall not be effective until received by the ~~Board~~ PLAN ADMINISTRATOR.

Section 12. Section 14-2-1, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBSECTION (D) to read as follows:

**14-2-1: NAME AND PURPOSE OF PLAN; HISTORY:**

(D) ON SEPTEMBER 1, 2004, THE CITY TRANSFERRED THE ASSETS OF THE FIREFIGHTER'S PENSION PLAN TO THE FIRE AND POLICE PENSION ASSOCIATION OF COLORADO DEFINED BENEFIT SYSTEM AND THE FIREFIGHTER'S PENSION PLAN WAS TERMINATED. PARTICIPANTS IN THE FIREFIGHTER'S PENSION PLAN BECAME PARTICIPANTS IN THE FPPA DEFINED BENEFIT SYSTEM. ASSETS IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) IN THE FIREFIGHTER'S PENSION PLAN WERE TRANSFERRED TO THE GENERAL EMPLOYEE'S PENSION PLAN FOR USE AS DEFINED IN SECTION 14-2-7(C)(4) OF THIS PLAN.

Section 13. Section 14-2-2, W.M.C., is hereby AMENDED to read as follows:

**14-2-2: DEFINITIONS:** When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person or entity who, pursuant to Section 14-2-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The General Employee Pension Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "CODE": THE INTERNAL REVENUE CODE OF 1986, AS IT MAY BE AMENDED, OR RE-ENACTED OR REPLACED. REFERENCE TO A SPECIFIC SECTION OF THE CODE SHALL MEAN THE SECTION IN EFFECT AT THE DATE OF ADOPTION OF THIS PLAN, OR ANY SUCCESSOR SECTION TO SUCH SECTION.

~~(D)~~ (E) "COMPENSATION": The base pay of a Participant for services rendered to the City, ~~including longevity pay, but~~ excluding overtime pay, bonuses, insurance premiums, pension and retirement

benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE'S) budgeted for their positions.

~~(E)~~ (F) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

~~(F)~~ "DIRECT ROLLOVER": A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

~~(G)~~ "DISTRIBUTE": A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Federal Internal Revenue Service Code, are distributees with regard to the interest of the spouse or former spouse.

~~(H)~~ "ELIGIBLE RETIREMENT PLAN": An eligible retirement plan is an individual retirement account described in Section 408(a) of the Federal Internal Revenue Service (IRS) Code, an individual retirement annuity described in Section 408(b) of the IRS Code, an annuity plan described in Section 403(a) of the IRS Code, or a qualified trust described in Section 401(a) of the IRS Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

~~(I)~~ "ELIGIBLE ROLLOVER DISTRIBUTION": An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: Any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Service Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for new unrealized appreciation with respect to employer securities).

~~(J)~~ (G) "EMPLOYEE": Any person who fills an authorized position that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and police officers as defined in this Chapter, temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

~~(K)~~ "FIREFIGHTER": Any person who is employed in the Fire Department except clerical employees and volunteers.

~~(L)~~ (H) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.

~~(M)~~ (I) "INACTIVE PARTICIPANT": Any person who has been a contributing participant to this plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of all respective interest in the plan.

~~(N)~~ (J) "INTEREST": The amount of a participant's share in the trust fund including City contributions, employee contributions and earnings.

~~(O)~~ (K) "PARTICIPANT": Any contributing participant or inactive participant.

~~(P)~~ (L) "PLAN": The Pension Plan established in this chapter and all subsequent amendments thereto.

(M) "PLAN ADMINISTRATOR": THE PERSON APPOINTED BY THE CITY MANAGER TO ADMINISTER THE PLAN.

~~(Q)~~ (N) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.

~~(R)~~ (O) "POLICE OFFICER": Any person who is employed by the City as a ~~recognized law enforcement~~ POLICE officer AS DEFINED BY TITLE III OF THIS CODE AND WHO REPORTS TO THE CHIEF OF POLICE and who has sworn to enforce the ordinances of the City; the laws of the State of Colorado and the United States of America. The term Police Officer shall not include dispatchers, clerical employees, animal control personnel, civilian administrative personnel, reserve officers, code enforcement personnel and any other employees who do not regularly enforce the traffic and criminal codes and ordinances of the City and State.

~~(S)~~ (P) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in either the Police or Fire Pension Plan, without a break in municipal service, the employee's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

~~(T)~~ (Q) "TOTAL DISABILITY": A disability which permanently renders a participant unable to perform satisfactorily the usual duties of his employment with the City as determined by the Board and which results in his termination of employment with the City.

~~(U)~~ (R) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

~~(V)~~ (S) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-2-10 and any duly appointed and qualified successor trustees.

Section 14. Section 14-2-3, subsection (A)(1), W.M.C., is hereby AMENDED to read as follows:

### **14-2-3: PARTICIPATION OF EMPLOYEES:**

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). ~~Each person who is an employee on January 6, 1986 but who has not yet completed twenty two (22) months of service with the City may elect to become a Contributing Participant on January 6, 1986, or upon the attainment of the age of eighteen (18), whichever is later.~~

~~The election shall be made on a form prescribed by the Board and must be signed by the employee and submitted to the Trustee by January 6, 1986, or such later date as prescribed by the Board. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin. By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.~~

Section 15. Section 14-2-4, subsections (A)(2), (B)(1)(c), (B)(3), (C)(1) and (E), W.M.C., are hereby AMENDED to read as follows:

#### **14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS**

(A) Contributions by the City.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan ~~on~~ each pay ~~day~~ PERIOD.

(B) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the ~~Trustee~~ PLAN CUSTODIAN according to the provisions of this chapter.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the plan ~~on~~ each pay~~day~~ PERIOD.

(C) Retirement Medical Savings Account:

(1) Subject to approval by the Internal Revenue Service, each participant shall have the option of designating up to 25% of his OR HER COMBINED mandatory and City contribution to be used for future medical expenses as provided for in Section 401(h) of the Federal Internal Revenue Service Code. Contributions to the medical savings account will not be taxed at ~~retirement~~ SEPARATION FROM SERVICE nor upon use for medical purposes ~~during retirement~~ AFTER SEPARATION FROM SERVICE. The retirement medical savings accounts will be subject to the rules and requirements issued by the City Manager.

(E) CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE. THE EMPLOYER SHALL MAKE ALL CONTRIBUTIONS TO THE PLAN REQUIRED BY SECTION 414(U) OF THE CODE WHICH ARE ATTRIBUTABLE TO PERIODS OF QUALIFIED MILITARY SERVICE. IN ADDITION, THE EMPLOYER SHALL ALLOW ANY PARTICIPANT TO MAKE ELECTIVE CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE AND THE EMPLOYER SHALL MAKE ANY MATCHING CONTRIBUTIONS BASED UPON SUCH CONTRIBUTIONS AT THE RATE AT WHICH SUCH ELECTIVE CONTRIBUTIONS OF THE EMPLOYEE WOULD HAVE BEEN MADE DURING THE APPLICABLE PERIOD OF QUALIFIED MILITARY SERVICE, EACH AS REQUIRED BY SECTION 414(U) OF THE CODE. THE EMPLOYER MAY ELECT TO MAKE ADDITIONAL CONTRIBUTIONS BASED UPON SUCH QUALIFIED MILITARY SERVICE BASED UPON EMPLOYER CONTRIBUTIONS MADE DURING THE APPLICABLE PERIOD, PROVIDED SUCH ELECTION BY THE EMPLOYER IS MADE ON A NON-DISCRIMINATORY BASIS APPLICABLE TO ALL SIMILARLY SITUATED EMPLOYEES WHO HAVE QUALIFIED MILITARY SERVICE. ANY CONTRIBUTIONS MADE UNDER THIS SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 414(U) OF THE CODE AND THE PROVISIONS OF THIS PLAN SHALL BE APPLIED CONSIDERING ANY SUCH CONTRIBUTIONS AS HAVING BEEN MADE DURING THE PLAN YEAR TO WHICH THE CONTRIBUTIONS RELATE. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED MILITARY SERVICE" MEANS SERVICE IN THE UNIFORMED SERVICES OF THE UNITED STATES (AS DEFINED IN CHAPTER 43 OF TITLE 38, UNITED STATES CODE) BY ANY INDIVIDUAL IF SUCH INDIVIDUAL IS ENTITLED TO RE-EMPLOYMENT RIGHTS WITH RESPECT TO SUCH SERVICE.

Section 16. Section 14-2-5, W.M.C., is hereby AMENDED to read as follows:

#### **14-2-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:**

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of

each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of ~~twenty-five~~ ONE HUNDRED percent (~~25~~ 100%) of his OR HER compensation for such year or \$30,000 40,000, provided such figure shall ~~change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation~~ BE ADJUSTED AS PROVIDED IN CODE SECTION 415(D). FOR LIMITATION YEARS BEGINNING BEFORE JANUARY 1, 2002, THE FOREGOING PERCENTAGE LIMITATION IS 25% AND THE FOREGOING DOLLAR LIMITATION IS \$30,000, AS ADJUSTED PURSUANT TO CODE SECTION 415(D). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and non-deductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the non-deductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000.00, subject to adjustment as provided for by law or regulation, for the account of any individual participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the employer.

~~(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the~~

~~plan year. The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer:~~

~~(i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(c)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(c)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.~~

~~(6) (5) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a participant under a plan established under Federal Internal Revenue Service Code Sections 125, 457, 401(k), OR 403(b), 132(F)(4), 402(G)(3), 457, 401(K), OR 403(B). THE ANNUAL COMPENSATION OF EACH PARTICIPANT TAKEN INTO ACCOUNT IN DETERMINING ALLOCATIONS FOR ANY PLAN YEAR BEGINNING AFTER DECEMBER 31, 2001, SHALL NOT EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000), AS ADJUSTED FOR COST-OF-LIVING INCREASES IN ACCORDANCE WITH §401(A)(17)(B) OF THE CODE. FOR YEARS BEGINNING PRIOR TO JANUARY 1, 2002, THE DOLLAR AMOUNT IN THE FOREGOING SENTENCE IS ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000). ANNUAL COMPENSATION MEANS COMPENSATION DURING THE PLAN YEAR OR SUCH OTHER CONSECUTIVE 12-MONTH PERIOD OVER WHICH COMPENSATION IS OTHERWISE DETERMINED UNDER THE PLAN (THE DETERMINATION PERIOD). THE COST-OF-LIVING ADJUSTMENT IN EFFECT FOR A CALENDAR YEAR APPLIES TO ANNUAL COMPENSATION FOR THE DETERMINATION PERIOD THAT BEGINS WITH OR WITHIN SUCH CALENDAR YEAR.~~

~~(C) Contribution Percentage Test for Matching and Employee Contributions:~~

~~— (1) General Rule: The average contribution percentage in any year of all participants who are highly compensated employees may not exceed the greater of the following amounts:~~

~~— (a) 125% of the average contribution percentage for such year of all participants who are not highly compensated employees; or~~

~~— (b) The average contribution percentage for such year of all participants who are not highly compensated employees, plus two percentage points (2%), limited to two times the average contribution percentage for all such participants.~~

~~— For purposes of the foregoing, the average contribution percentage is the average of the sum of the City contributions under Section 14-1-4(A) allocated to the account of the applicable participant plus such participant's voluntary non-deductible contributions, divided by the total compensation of such participant for each such participant. If the amount to be contributed by the City and allocated to the accounts of participants who are highly compensated employees exceeds the foregoing limitations, then the amount so allocated shall be reduced, beginning with the highest dollar amount of contribution among such participants, to the extent necessary to satisfy such limitation and such excess amount, together with earnings thereof, and shall be distributed to such participants no later than 2 1/2 months after the end of the plan year in which such contributions were made.~~

~~— (2) Adjustment of Contribution Percentage: The employer may in its discretion make contributions to the Plan, which shall be designated as additional matching contributions and which shall be allocated to the accounts of participants who are not highly compensated employees, in order to increase the average contribution percentage of such participants. In applying the limitation above, the administrator shall take into account such designated employer contributions.~~

~~— (3) Excess Aggregate Contributions: Employer contributions and employee contributions in excess of the limitations of this Section are excess aggregate contributions.~~

~~— (4) Disposition of excess aggregate contributions.~~

~~— (a) General Rule: Notwithstanding any other provision of this Plan, excess aggregate contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than the last day of each Plan year to participants to whose accounts such excess aggregate contributions were allocated for the preceding Plan year. If such excess aggregate contributions are distributed more than 2 1/2 months after the last day of the Plan year in which such excess amounts arose, a 10% excise tax will be imposed on the employer maintaining the Plan with respect to those amounts. Excess aggregate contributions shall be treated as annual additions under the Plan.~~

~~— (b) Determination of Income or Loss: Excess aggregate contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to excess aggregate contributions is the sum of: (i) income or loss allocable to the participant's employee contribution account, matching contribution account (if any, and if all amounts therein are not used in the deferral percentage test under Internal Revenue Service Code Section 401(k)) and, if applicable, qualified non-elective contribution account and elective deferral account for the plan year multiplied by a fraction, the numerator of which is such participant's excess aggregate contributions for the year and the denominator of which is the participant's account balance(s) attributable to contribution percentage amount without regard to any income or loss occurring during such plan year; and (ii) 10% of the amount determined under (i) multiplied by the number of whole calendar months between the end of the Plan year and date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.~~

~~— (c) Forfeitures of Excess Aggregate Contributions: Forfeitures of excess aggregate contributions shall be applied to reduce employer contributions.~~

~~— (d) Accounting for Excess Aggregate Contributions: Excess aggregate contributions shall be forfeited, if forfeitable or distributed on a pro rata basis from the participant's employee contribution account, employer contribution account, and qualified matching contribution account, if any, (and, if applicable, the participant's qualified non-elective contribution account or elective deferral account, or both).~~

~~— (e) Aggregate Limit: For purposes of this Section, the term "Aggregate limit" shall mean the sum of (i) 125% of the greater of the deferral percentage of the non-highly compensated employees for the plan year or the contribution percentage of the non-highly compensated employees under the plan subject to Internal Revenue Service Code Section 401(m) for the plan year beginning with or within the plan year of the cash or deferred arrangement under Section 401(k) and (ii) The lesser of 200% of 2 plus the lesser of such deferral percentage or contribution percentage. The word "lesser" shall be substituted for "greater" in (i), above, and "greater" shall be substituted for "lesser" after "2 plus the" in (ii) if by substituting such terms would result in a larger aggregate limit.~~

~~— (5) Special Rule:~~

~~— (a) In the event that this plan satisfied the requirements of Sections 401(m), 401(a)(4), or 410(b) of the Internal Revenue Service Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Internal Revenue Service Code only if aggregated with this plan, then this Section shall be applied by determining the deferral percentage test under Internal Revenue Service Code Section 401(m) of employees as if all such plans were a single~~

~~plan. For plan years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Internal Revenue Service Code only if they have the same plan year.~~

~~(6) Highly Compensated Employee: For purposes of this Section, an employee is treated as a "Highly Compensated Employee" (HCE) if:~~

~~(a) During the preceding year, the employee received compensation in excess of \$80,000, to be indexed for cost of living increases; and the employee was also in the top paid twenty percent (20%) of employees during that year; or~~

~~(b) The employee was a five percent (5%) owner at any time during the year or the preceding year.~~

~~(c) Rules of Construction. The determination of who is a highly compensated employee, including the determinations of the number and identity of employees in the top paid group, will be made in accordance with Section 414(q) of the Federal Internal Revenue Service Code and the regulations thereunder.~~

~~(D)~~ (C) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, ~~third party and administrative charges~~ and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants. THIRD PARTY AND ADMINISTRATIVE CHARGES SHALL BE ALLOCATED IN THE RATIO THAT THE TOTAL DOLLAR VALUE OF THE INTEREST OF EACH SUCH PARTICIPANT IN THE TRUST FUND BEARS TO THE AGGREGATE DOLLAR VALUE OF ALL OF SUCH INTERESTS OF ALL SUCH PARTICIPANTS OR EQUALLY TO ALL PARTICIPANTS.

~~(E)~~ (D) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

~~(F)~~ (E) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be AT LEAST the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event described in Section 14-2-7 (A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

~~(G)~~ (F) Vesting of Participant's Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this Chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary

shall become entitled to distribution thereof as herein provided by virtue of the terms of this Chapter and not as a result of any transfer of said interest or account.

~~(H)~~ (G) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsection ~~(G)~~ (F) of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and non-forfeitable for all purposes.

(H) INVESTMENT OF PARTICIPANT'S ACCOUNT: A PARTICIPANT'S ACCOUNT SHALL BE INVESTED IN THE INVESTMENT OPTIONS IN ACCORDANCE WITH THE INVESTMENT ELECTIONS SPECIFIED BY THE PARTICIPANT. A PARTICIPANT MAY CHANGE THE INVESTMENT OF CONTRIBUTIONS AND MAY REALLOCATE AMOUNTS IN THEIR ACCOUNT AMONG THE INVESTMENT OPTIONS IN A MANNER DETERMINED BY THE PLAN CUSTODIAN AND SUBJECT TO SUCH PROVISIONS AS THE PLAN ADMINISTRATOR MAY ADOPT. ALLOCATION OF ASSETS AMONG INVESTMENT OPTIONS IS SOLELY THE RESPONSIBILITY OF EACH PARTICIPANT. THE FACT THAT AN INVESTMENT OPTION IS AVAILABLE FOR INVESTMENT TO PARTICIPANTS UNDER THE PLAN SHALL NOT BE CONSTRUED AS A RECOMMENDATION FOR INVESTMENT IN THAT INVESTMENT OPTION.

Section 17. Section 14-2-6, subsections (A)(2) and (B)(3), W.M.C., are hereby AMENDED to read as follows:

#### **14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:**

(A) Retirement Date:

(2) Early Retirement: Any contributing participant who ~~has attained~~ WILL ATTAIN the age of fifty-five (55) DURING THE YEAR may elect to retire earlier than the normal retirement age.

(B) Beneficiaries:

(3) Insurance Policies: The Beneficiary of any insurance ~~or annuity contract~~ on a Participant's life shall be determined and designated as provided in Section 14-2-8(A).

Section 18. Section 14-2-7, subsections (C), (D), (F)(1), (G), (H) and (J), W.M.C., are hereby AMENDED to read as follows:

#### **14-2-7: DISTRIBUTION FROM TRUST FUND**

(C) Distribution of Interests:

~~(1) Distribution Upon Retirement or Total Disability: If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~—(2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after the end of the plan year in which the participant's death occurs or the date the Trustee determines the identity of the beneficiary, whichever is later, unless the beneficiary elects to defer benefits pursuant to paragraph (5) of this Subsection.~~

~~—(3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, unless he elects to defer benefits pursuant to paragraph (5) of this Subsection.~~

~~(4) (1) Insurance and Annuity Contracts: If there has been an investment in a life insurance or annuity contract for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance or annuity contract by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. Any annuity purchased or acquired by the trustee and distributed to a participant under the provisions of this subsection (C) shall, with respect to such participant, be nontransferable and the annuity contract will so provide. After December 31, 1996, no new life insurance contracts may be adopted as pension investments.~~

~~(5) (2) Election to Defer Benefits: A Participant may elect, with the consent of the Board, to have DEFER the commencement of distribution of his OR HER benefit deferred until a date later than the date specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, before the date distribution would otherwise commence, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence if the deferral is approved by the Board. Any change to the terms of the deferral must be resubmitted in writing to the Board for approval unless the change in terms is a request for the rollover of funds to an individual retirement account or a qualified plan. No election to defer or change the method of payment may be made more than once every six months once payments have commenced.~~

~~(6) (3) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefore upon the Board. A participant's interest that is less than or equal to the minimum dollar amount as prescribed by the Internal Revenue Service may be distributed without receiving written application from the participant.~~

(4) BENEFITS PAYABLE FROM THE 401(h) ACCOUNT:

(a) BENEFITS ARE PAYABLE FROM THE RETIREMENT MEDICAL SAVINGS ACCOUNT ONLY UPON RETIREMENT, SEPARATION OF SERVICE, DEATH OR TOTAL DISABILITY.

(b) BENEFITS PAYABLE FROM A 401(h) ACCOUNT SHALL INCLUDE ONLY PAYMENTS OR REIMBURSEMENTS FOR MEDICAL CARE (AS DEFINED IN CODE SECTION 213(d)(1)).

(c) MEDICAL CARE PAYMENTS SHALL ONLY BE PAID PURSUANT TO A REIMBURSEMENT APPLICATION.

(d) NO REFUNDS OF CONTRIBUTIONS SHALL BE MADE. ALL CONTRIBUTIONS REMAIN IN THE 401(h) ACCOUNT UNTIL USED FOR MEDICAL CARE PAYMENTS.

(e) REIMBURSEMENTS MAY NOT BE MADE FOR ANY EXPENSE FOR WHICH THE RETIRED PARTICIPANT OR HIS OR HER SPOUSE OR DEPENDENTS RECEIVE, OR ARE ELIGIBLE TO RECEIVE, PAYMENT OR REIMBURSEMENT FROM ANOTHER SOURCE.

(f) IN ORDER TO RECEIVE BENEFITS FROM THE 401(h) ACCOUNT, THE RETIRED PARTICIPANT MUST AGREE TO PROVIDE APPROPRIATE DOCUMENTATION OF THE EXPENDITURE.

(D) Transfers Between Qualified Plans:

(1) In General: The Trustee and the Board PLAN CUSTODIAN, upon their mutual agreement, are authorized to receive and add to the interest of any Participant his THE PARTICIPANT'S vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfied SATISFIES the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this plan

and trust CONCERNING EMPLOYER CONTRIBUTIONS. The Trustee is also authorized, at the direction of the Board PLAN CUSTODIAN and at the request of the Participant, to transfer such Participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers.

(2) For Distributions Made on or after January 1, 1993: Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) FOR DISTRIBUTIONS MADE AFTER DECEMBER 31, 2001. AN ELIGIBLE RETIREMENT PLAN SHALL ALSO MEAN AN ANNUITY CONTRACT DESCRIBED IN §403(B) OF THE CODE AND AN ELIGIBLE PLAN UNDER §457(B) OF THE CODE WHICH IS MAINTAINED BY A STATE, POLITICAL SUBDIVISION OF A STATE, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR POLITICAL SUBDIVISION OF A STATE AND WHICH AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS TRANSFERRED INTO SUCH PLAN FROM THIS PLAN. THE DEFINITION OF ELIGIBLE RETIREMENT PLAN SHALL ALSO APPLY IN THE CASE OF A DISTRIBUTION TO A SURVIVING SPOUSE, OR TO A SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATION ORDER, AS DEFINED IN §414(P) OF THE CODE. THE PLAN SHALL BE PERMITTED TO ACCEPT ROLLOVERS FROM ANY TYPE OF ELIGIBLE RETIREMENT PLAN EXCEPT TO THE EXTENT LIMITED IN SECTION 14-2-7.

#### (4) DEFINITIONS.

1. ELIGIBLE ROLLOVER DISTRIBUTION. AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTE, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: (I) ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTE OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTE AND THE DISTRIBUTE'S DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; (II) ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER §401(A)(9) OF THE CODE; (III) ANY HARDSHIP DISTRIBUTION AS DESCRIBED IN §401(K)(2)(B)(I)(IV) OF THE CODE (APPLICABLE ONLY TO DISTRIBUTIONS AFTER DECEMBER 31, 1999); AND (IV) THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDABLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES). ANY AMOUNT THAT IS DISTRIBUTED ON ACCOUNT OF HARDSHIP SHALL NOT BE AN ELIGIBLE ROLLOVER DISTRIBUTION AND THE DISTRIBUTE MAY NOT ELECT TO HAVE ANY PORTION OF SUCH A DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN. A PORTION OF A DISTRIBUTION SHALL NOT FAIL TO BE AN ELIGIBLE ROLLOVER DISTRIBUTION MERELY BECAUSE THE PORTION CONSISTS OF AFTER-TAX EMPLOYEE CONTRIBUTIONS WHICH ARE NOT INCLUDABLE IN GROSS INCOME. HOWEVER, SUCH PORTION MAY BE TRANSFERRED ONLY TO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN §408(A) OR (B) OF THE CODE, OR TO A QUALIFIED DEFINED CONTRIBUTION PLAN DESCRIBED IN §401(A) OR 403(A) OF THE CODE THAT AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS SO TRANSFERRED, INCLUDING SEPARATELY ACCOUNTING FOR THE PORTION OF SUCH DISTRIBUTION WHICH IS INCLUDABLE IN GROSS INCOME AND THE PORTION OF SUCH DISTRIBUTION WHICH IS NOT SO INCLUDABLE. THE PLAN SHALL NOT ACCEPT A ROLLOVER OF AFTER-TAX EMPLOYEE CONTRIBUTIONS UNLESS SPECIFICALLY ELECTED IN THE ADOPTION AGREEMENT OR A SUPPLEMENT THERETO.

2. ELIGIBLE RETIREMENT PLAN. AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN §408(A) OF THE CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN §408(B) OF THE CODE, AN ANNUITY PLAN DESCRIBED IN §403(A) OF THE CODE, OR A QUALIFIED TRUST DESCRIBED IN §401(A) OF THE CODE, THAT ACCEPTS THE DISTRIBUTEES' ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

3. DISTRIBUTEES. A DISTRIBUTEES INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS DEFINED IN §414(P) OF THE CODE, ARE DISTRIBUTEES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

4. DIRECT ROLLOVER. A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEES.

(F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; ~~provided, that nothing in this Chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of set off, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.~~

(G) Manner of Distribution: A Participant's interest may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY (OR UNTIL THE ACCOUNT IS EXHAUSTED) and not in installment frequency greater than monthly. THIS MAXIMUM PERIOD SHALL BE DETERMINED UNDER THE APPLICABLE IRS TABLES AT THE TIME THE INITIAL MONTHLY INSTALLMENT PAYMENT BECOMES PAYABLE. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six months.

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

~~(4) If the Participant or Beneficiary fails to notify the trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence, the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years, unless the participant's account balance meets the minimum automatic distribution amount allowed by the Internal Revenue Service Regulations.~~

(H) Limitation on Duration of Payments: No distribution shall be made over a period exceeding ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(J) Special Rules for Distributions after the Participant's Death:

(4) RMSA DISTRIBUTIONS AFTER DEATH:

(a) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA, THE ACCOUNT MAY BE USED FOR THE BENEFIT OF THE PARTICIPANT'S SPOUSE AND DEPENDENTS UNDER THE TERMS OF SECTION 14-2-7(C)(4).

(b) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA AND WITHOUT A SPOUSE OR DEPENDENT, THE PARTICIPANT'S DESIGNATED BENEFICIARY, IF ANY NAMED, SHALL BE ELIGIBLE TO RECEIVE THE REMAINING BENEFITS.

Section 19. Section 14-2-9, subsections (B)(3) and (H), W.M.C., are hereby AMENDED to read as follows:

**14-2-9: GENERAL EMPLOYEE PENSION BOARD:**

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. THE BOARD SHALL ADOPT VARIOUS INVESTMENT OPTIONS FOR THE INVESTMENT OF CONTRIBUTIONS BY THE PARTICIPANT AND SHALL MONITOR AND EVALUATE THE APPROPRIATENESS OF THE INVESTMENT OPTIONS OFFERED BY THE PLAN. THE BOARD MAY REMOVE OR PHASE OUT AN INVESTMENT OPTION IF THE INVESTMENT OPTION HAS FAILED TO MEET THE ESTABLISHED EVALUATION CRITERIA OR FOR OTHER GOOD CAUSE AS DETERMINED BY THE BOARD. ~~Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter.~~ Neither the Trustee, ~~nor~~ the Board, THE PLAN ADMINISTRATOR NOR THE CITY shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment option.

(H) Resignation and Removal of Members; Appointment of Successors:

(6) A MEMBER OF THE BOARD MAY BE REMOVED FROM THE BOARD IN THE MANNER DEFINED IN SECTION II(F) OF THE CITY OF WESTMINSTER POLICE AND GENERAL EMPLOYEE PENSION PLAN BY-LAWS.

Section 20. Section 14-2-10, subsection (A)(2)(c), W.M.C., is hereby AMENDED to read as follows:

**14-2-10: POWERS AND DUTIES OF THE TRUSTEE:**

(A) Investment of Trust Fund:

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, which contracts shall then become a part of this plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's Police ~~and/OR Fire~~ Pension Plan in which case the funds of the two ~~OR MORE~~ plans may be co-mingled for investment purposes.

Section 21. Section 14-2-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:

**14-2-12: MISCELLANEOUS**

(B) Notices from Participants to be Filed with ~~Board~~ PLAN ADMINISTRATOR: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the ~~Board~~ PLAN ADMINISTRATOR for such purpose and filed with the ~~Board~~ PLAN ADMINISTRATOR, which shall not be effective until received by the ~~Board~~ PLAN ADMINISTRATOR.

Section 22. This ordinance shall take effect upon its passage after second reading.

Section 23. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO LEGAL FORM:

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



## Agenda Item 10 A&B

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Public Hearing and Action re Rezoning for S & R Art and Antiques  
(3698 W. 72<sup>nd</sup> Avenue) from M-1 (Industrial) to C-1 (Commercial)

**Prepared By:** Hazel Cho, Planner II

**Recommended City Council Action**

1. Hold a public hearing.
2. Approve Councillor's Bill No. 63 on first reading for the rezoning for the proposed S & R Art and Antiques property from M-1 (Industrial) to C-1 (Commercial). This recommendation is based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.

**Summary Statement**

- This rezoning application is City initiated for the property located at 3698 W. 72<sup>nd</sup> Avenue from M-1 (Industrial) to C-1 (Commercial). (See attached vicinity map.)
- The property is approximately 0.5 acres with three existing building structures and a shed. The purpose of the rezoning is to facilitate the property owner's desire to use the existing stucco building on the north end of the property for art and antiques sales. All other structures are proposed to remain on the property with no changes in use.
- The proposed C-1 rezoning will comply with the City of Westminster's Comprehensive Land Use Plan that designates the property for Retail Commercial use.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Planning Commission Action**

The Planning Commission reviewed this proposal on October 10, 2006, and voted unanimously (7-0) to recommend the City Council approve the rezoning. This recommendation is based on a determination that the findings set forth in Section 11-5-3 of the Westminster Municipal Code have been met.

No one spoke in favor or in opposition to this proposal. The Planning Commission Chairman expressed concern that this not turn into a used merchandise or thrift store. Under a C-1 (Commercial) zone district, the sale of used merchandise/thrift stores or pawn shops would not be permitted uses on the property.

**Policy Issue**

Should the City approve the rezoning of the S & R Art and Antiques property from M-1 (Industrial) to C-1 (Commercial)?

**Alternative**

The City Council can deny the rezoning of the S & R Art and Antiques property from M-1 (Industrial) to C-1 (Commercial). This action would prohibit the use of the property for Retail Commercial uses and keep in place the existing conflict between the M-1 zoning and the Comprehensive Land Use Plan designation of Retail Commercial.

**Background Information**

Nature of Request

The property owner and City Staff are interested in rezoning the property from M-1 (Industrial) to C-1 (Commercial) to allow for art and antique sales. Currently the zoning of M-1 is in conflict with the Retail Commercial designation on the Comprehensive Land Use Plan.

City Staff is initiating the rezoning for this property with support from the property owner to reinstate a previously allowed commercial use on the property that will be consistent with the CLUP designation for Commercial Retail development. Prior to the most recent amendment to the Urban Renewal Plan (URP) (approved by City Council on July 10, 2006), certain uses were permitted and prohibited if within the Urban Renewal Area. The former URP required new structures to be approved per an Official Development Plan with uses that were the same as or similar to items listed under permitted land uses or as allowed per the Westminster Municipal Code. On April 18, 2001, the City approved an Official Development Plan for the property at 3698 W. 72<sup>nd</sup> Avenue to be used for commercial use for Enterprise Rent-a-Car. The commercial use was allowed under the old URP although the building was zoned M-1 Industrial. The rezoning of the subject property from M-1 to C-1 is in compliance with the zone district regulations (i.e. setback, lot size, etc.) for C-1.

Location

The site is located at 3698 W. 72<sup>nd</sup> Avenue (please see attached vicinity map).

Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Rocky Mountain News on September 30, 2006.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. One sign was posted on the property on September 28, 2006.

- Written Notice: At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on September 29, 2006.

Property Owner

Richard and Shyrlee Anderson  
2510 W. 110<sup>th</sup> Avenue  
Westminster, CO 80234

Surrounding Land Use and Comprehensive Land Use Plan Designations

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: Mahins & Harris Park Subdivision;	B-1 & C-1	Retail/Commercial	Commercial
West: Unplatted properties with businesses (S & L Flooring and Nanelle Fine Jewelry)	M-1	Retail/Commercial	Commercial
East: Unplatted properties with businesses (Federal Valley Motors)	M-1	Retail/Commercial	Industrial
South: Burlington Northern Santa Fe Railroad and Replat of Wright Subdivision	M-1	Industrial	Railroad & Industrial

Public Comments

Only one phone call has been received by a nearby property owner asking for more information about the rezoning. His inquiry was neither in favor nor in opposition of the application.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Vicinity Map
- Zoning Ordinance
- Exhibit 1 (Legal Description)
- Exhibit 2 (Zoning Designation Map)
- Criteria and Standards for Land Use Applications

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **63**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AMENDING THE ZONING OF A PARCEL OF LAND  
APPROXIMATELY 0.5 ACRE IN SIZE LOCATED AT  
3698 WEST 72<sup>ND</sup> AVENUE, ADAMS COUNTY, COLORADO  
FROM M-1 INDUSTRIAL DISTRICT TO C-1 COMMERCIAL DISTRICT**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for the rezoning of the property generally located south of 72<sup>nd</sup> Avenue and Meade Street, as described in attached Exhibit 1, incorporated herein by reference, from the M-1 Industrial District zones to a C-1 Commercial District zone has been submitted to the City for its approval pursuant to W.M.C. §11-5-2.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on October 10, 2006 and has recommended approval of the requested amendments.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. § 11-5-3(A).

e. That based on the evidence produced at the public hearing, the proposed C-1 Commercial District zoning complies with all requirements of City Code, including, but not limited to, the criteria of W.M.C §11-5-3(A), and §11-4-3, requiring compliance with the Comprehensive Land Use Plan.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in attached Exhibit 1, from the M-1 Industrial District zoning districts to the C-1 Commercial District as depicted on Exhibit 2.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23<sup>rd</sup> day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13<sup>th</sup> day of November, 2006.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office

## **Exhibit 1**

### Legal Description

That part of the NE  $\frac{1}{4}$  of Section 6, Township 3 South, Range 68 West of the 6<sup>th</sup> P.M., more particularly described as follows:

BEGINNING at a point 396.6 feet West of the NE corner of said Section 6; thence South Parallel with the East line of said Section 6, a distance of 350 feet, more or less, to the Northerly right of way line of the Colorado and Southern Railway; thence Northwesterly along said right of way, a distance of 86.5 feet; thence North parallel with the East line of said Section 6, a distance of 305 feet, more or less, to a point on the North line of said Section 6; thence East along said North line, a distance of 75 feet to the True Point of Beginning,

Except any portion thereof lying within the right of way for West 72<sup>nd</sup> Avenue, County of Adams, State of Colorado.

## Criteria and Standards for Land Use Applications

### *Comprehensive Land Use Plan Amendments*

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

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

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

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

1. The Planned Unit Development (P.U.D.) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The P.U.D. exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The P.U.D. is compatible and harmonious with existing public and private development in the surrounding area.
5. The P.U.D. provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The P.U.D. has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.

9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

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

### ***Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)***

#### **11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)**

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

### ***City Initiated Rezoning***

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

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

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

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

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Official Development Plan.

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

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

# S&R Arts and Antiques Vicinity Map



Lowell Blvd

Meade St

Newton St

72nd Way

72nd Ave

71st Pl

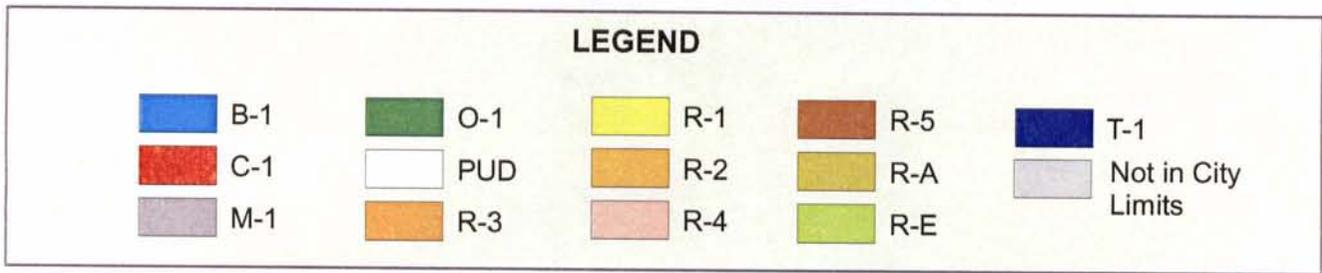
Newton St

Elk Dr



# S & R Arts and Antiques Zoning Designation

Exhibit 2



Description of Change: M-1 to C-1



# S & R Arts and Antiques New Zoning Designation





**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 23, 2006



**SUBJECT:** Councillor's Bill No. 64 re 2006 3rd Quarter Budget Supplemental Appropriation

**Prepared By:** Gary Newcomb, Accountant

**Recommended City Council Action**

Pass Councillor's Bill No. 64 on first reading providing for supplementary appropriations to the 2006 budget of the General, General Capital Improvement, and Open Space Funds.

**Summary Statement**

- At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the 2006 3rd quarter supplemental appropriation.
- General Fund amendments:
  - \$14,180 Police Department grants
  - \$23,930 Fire Department grants
  - \$22,750 Business Appreciation Event sponsor and exhibitor fees
  - \$10,182 Certificates of Participation (COP) Interest
- General Capital Improvement Fund amendments:
  - \$30,100 Tree Mitigation in-lieu payments
  - \$25,456 Sales & Use Tax Bond Interest
  - \$160,766 COPS interest
  - \$119,185 Adams County CIP participation
- Open Space
  - \$2,744 lease payments
  - \$23,889 sale of asset

**Expenditure Required:** \$433,182

**Source of Funds:** The funding sources for these expenditures include grants, sponsor and exhibitor fees, in-lieu payments, interest earnings, county CIP participation, lease payments, and sale of asset revenues.

**Policy Issue**

Does City Council support amending the appropriations for the 2006 budget of the General, General Capital Improvement and Open Space Funds?

**Alternative**

The alternative would be not to amend the 2006 budget appropriations for the General, General Capital Improvement and Open Space Funds and utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them in their current budget in anticipation of appropriations of the funds.

**Background Information**

This agenda memo and attached Councillor's Bill is a routine action addressing the need to appropriate additional revenues and offset expenditures that resulted from increased activity or events that were not anticipated during the normal budget process.

The Police Department received \$7,207 from the City of Thornton on behalf of the North Metro Drug Task Force for High Intensity Drug Trafficking Area (HIDTA) Investigations overtime reimbursement. This reimbursement was for overtime incurred by members of the Police Department while working on Federal HIDTA cases. (General Fund)

The Police Department received two Colorado Department of Transportation (CDOT) grant awards from the State of Colorado. The funding of \$1,528 was used for equipment used at DUI checkpoints and the funding of \$4,320 was reimbursement for overtime incurred by members of the Police Department while working on the Click It or Ticket Program. (General Fund)

The Police Department also received \$1,125 from Jefferson County for a VALE grant award. The funding reimburses overtime salaries incurred while providing training for the Police Department's Victim Advocates. (General Fund)

The Fire Department received a \$13,930 Fire Prevention and Safety Grant from the Homeland Security – Federal Emergency Management Agency (FEMA). The funding of was used to purchase a Sparkey's Hazard House used for fire safety education. (General Fund)

The Fire Department also received a grant from the State of Colorado, Division of Emergency Management (CDEM) in the amount of \$10,000. The funds are requested to be used for operation expenses in the Fire Department's Emergency Management Program. (General Fund)

Economic Development received \$22,750 from Westminster merchants as sponsor and exhibitor fees for the 2006 Westminster Business Appreciation Event. The funds are requested to be used for expenses that will be incurred in putting on the event. (General Fund)

Parks, Recreation and Libraries received \$7,200 from D Ruth Spresser, \$8,800 from Maxwell Builder and \$14,100 from Wal-Mart as in-lieu of tree preservation payments. The funds are requested to be used for the Public Grounds Reforestation Project. (General Capital Improvement Fund)

Interest was received throughout 2006 from the 2001 and the 2002 Sales and Use Tax bond proceeds in the amounts of \$8,620 and \$16,836 respectively. Bond covenants allow for these interest earnings to be used for completion of 136<sup>th</sup> Avenue and Huron Capital Project. (General Capital Improvement Fund)

Interest was also received throughout 2006 on Certificate of Participation (COPS) funds from the 144<sup>th</sup> Interchange COPS, Ice Centre COPS, Westminster Blvd COPS, Public Safety Building COPS, and the Capital Facilities COPS in the amounts of \$160,766, \$6,145, \$2,671, \$773, and \$593 respectively. Issuance restrictions require the interest earnings be appropriated for use on the respective projects or debt service. (General Fund and General Capital Improvement Fund)

Community Development received \$119,185 from Adams County for their participative share of the 80<sup>th</sup> and Federal Capital Improvement Project. The funds are requested to be used for expenses incurred on the project. (General Capital Improvement Fund)

The Open Space Fund received \$2,744 in monthly rental payments for the Bott House on Open Space property located at 10395 Wadsworth. The funds are requested to be used for future Open Space land purchases. (Open Space Fund)

At the September 12, 2006 Council Meeting, Council authorized the purchase of necessary rights-of-way for the Wolf Street Extension Project; \$23,889 of the right-of-way was purchased from the Open Space Fund. The funds are requested to be used for future Open Space land purchases. (Open Space Fund)

These adjustments will bring the City's accounting records up-to-date to reflect the various detailed transactions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **64**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL  
FOR AN ORDINANCE AMENDING THE 2006 BUDGETS OF THE GENERAL, GENERAL  
CAPITAL IMPROVEMENT AND OPEN SPACE 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 \$71,042 which, when added to the fund balance as of the City Council action on October 23, 2006 will equal \$92,989,199. 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, sponsor and exhibitor fees, and interest earnings.

Section 2. The \$71,042 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	100040610.0000	\$378,812	\$7,207	\$386,019
State Grants	1000.40620.0000	137,483	6,973	144,456
General	1000.43060.0000	232,508	23,930	256,438
Contributions	1000.43100.0000	224,832	22,750	247,582
Int Ice Center	1000.42530.0077	7,640	6,145	13,785
Int 1999 COPS	1000.42530.0276	427	2,671	3,098
Int 2001 COPS	1000.42530.0215	50	773	823
Int Capital Facilities	1000.42530.0209	46	593	639
Total Change to Revenues			<u>\$71,042</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Salaries OT- Inv Services	10020300.60400.0344	\$190,000	\$7,207	\$197,207
Other Equipment Traffic	10020500.76000.0347	17,000	1,528	18,528
Salaries OT Traffic	10020500.60400.0348	93,854	4,320	98,174
Career Dev – Inv Services	10020300.61800.0344	22,800	1,125	23,925
Special Promo	10025260.67600.0000	20,000	13,930	33,930
Contract Sves	10025260.67800.0000	24,085	10,000	34,085
Special Promo	10030340.67600.0000	21,900	22,750	44,650
Lease Pay Ice Cntr	10010900.67700.0077	1,044,303	6,145	1,050,448
Lease Pay Westy Blvd	10010900.67700.0276	1,713,219	2,671	1,715,890
Lease Pay-01 COPS	10010900.67700.0215	50	773	823
Lease Pay-Cap Fac	10010900.67700.0209	1,603,772	593	1,604,365
Total Change to Expenses			<u>\$71,042</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 \$335,507 which, when added to the fund balance as of the City Council action on October 23, 2006 will equal \$19,591,049. 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 in-lieu payments, interest earnings and county project participation.

Section 4. The \$335,507 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	7500.40210.0751	\$77,230	\$30,100	\$107,330
Interest 01 S&UT	7500.42520.0179	0	8,620	8,620
Interest 02 S&UT	7500.42520.0058	0	16,836	16,836
Interest 05 COPS	7500.42530.0274	194,095	160,766	354,861
Adams Cnty Revenue	7500.40640.0010	0	119,185	119,185
Total Change to Revenue			<u>\$335,507</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Tree Mitigation Proj	80575050425.80400.8888	\$0	\$30,100	\$30,100
136 <sup>th</sup> /Huron Project	80175030058.80400.8888	0	25,456	25,456
COP 144 <sup>th</sup> Interchange	80575030713.80400.8888	16,225,501	159,985	16,385,486
COP 144 <sup>th</sup> Inter. Cap I	80575030733.80400.8888	1,906,701	781	1,907,482
80 <sup>th</sup> & Federal Intersec	80475030603.80400.8888	240,000	119,185	359,185
Total Change to Expenses			<u>\$335,507</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 \$26,633 which, when added to the fund balance as of the City Council action on October 23, 2006 will equal \$6,125,595. 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 lease payments and sale of asset revenues.

Section 6. The \$26,633 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
Open Space General	5400.43060.0000	\$5,233	\$2,744	\$7,977
Sale of Assets	5400.43040.0000	0	23,889	23,889
Total Change to Expenses			<u>\$26,633</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$2,224,666	\$26,633	\$2,251,299
Total Change to Revenue			<u>\$26,633</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 23<sup>rd</sup> day of October, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13<sup>th</sup> day of November, 2006.

ATTEST:

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Mayor

---

City Clerk



## Agenda Item 10 D

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 23, 2006



**SUBJECT:** Resolution No. 59 in Support of Adams School District 50 Ballot Proposal

**Prepared By:** Steve Smithers, Assistant City Manager

#### Recommended City Council Action

Approve Resolution No. 59 in support of the Adams School District 50 Bond Issue appearing on the election Ballot on November 7.

#### Summary Statement

- City Council met with members of the Adams District 50 Board of Education on October 16 to discuss the pending ballot proposal by District 50 to issue approximately \$98 million in bonds to build new schools and to make improvements to the District's Building infrastructure.
- Based on the clear needs identified by the District to make capital improvements and the lack of current funding and bonding authority, City Council agreed to bring forward a resolution in support of the District's ballot proposal for consideration.
- The election takes place on November 7, 2006 and the School District's proposal will appear as item 3A.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should City Council pass the resolution in support of the District's Ballot Proposal?

**Alternative**

City Council could decide to not support the proposal.

**Background Information**

District 50 last passed a bond proposal 11 years ago to help fund improvements to existing schools. Since that time the District has continued to experience numerous difficulties related to the aging of its schools and associated infrastructure. In addition, the School District has identified shifting demographic and other trends in the District that present significant challenges that require creative approaches to reverse the negative trends. The ballot proposal is a first major step in turning the District in a positive direction.

The actual language of the ballot issue is as follows:

SHALL ADAMS COUNTY SCHOOL DISTRICT NO. 50 DEBT BE INCREASED \$98,600,000, WITH A REPAYMENT COST OF \$172,000,000 AND SHALL DISTRICT TAXES BE INCREASED \$9,500,000 ANNUALLY FOR THE PURPOSE OF (1) ACQUIRING, CONSTRUCTING OR PURCHASING BUILDINGS AND GROUNDS, (2) ENLARGING, IMPROVING, REMODELING, REPAIRING AND MAKING ADDITIONS TO SCHOOL BUILDINGS, (3) CONSTRUCTING OR ERECTING SCHOOL BUILDINGS; AND (4) EQUIPPING OR FURNISHING SCHOOL BUILDINGS WHICH MAY INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:

CONSTRUCT A NEW SIGNATURE HIGH SCHOOL TO REPLACE, COMBINE AND ENHANCE HIGH SCHOOL PROGRAMS;

CONSTRUCT A NEW ELEMENTARY SCHOOL TO REPLACE BAKER AND BERKELEY GARDENS ELEMENTARY SCHOOLS;

EXTEND THE LIFE OF CURRENT CLASSROOMS, SCHOOLS AND OTHER FACILITIES BY REPAIRING, MODERNIZING, RENOVATING, AND/OR REPLACING AGING, DETERIORATING OR OBSOLETE INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO ELECTRICAL SYSTEMS, HVAC SYSTEMS, PLUMBING AND SEWER SYSTEMS, INTERIOR AND EXTERIOR FINISHES, AND SUCH OTHER IMPROVEMENTS AS NECESSARY TO PROVIDE FOR HEALTH AND SAFETY REQUIREMENTS;

AND SHALL THE MILL LEVY BE INCREASED IN ANY YEAR, WITHOUT LIMITATION OF RATE AND IN AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY REFUNDING DEBT (OR TO CREATE A RESERVE FOR SUCH PAYMENT), SUCH DEBT TO BE EVIDENCED BY THE ISSUANCE OF GENERAL OBLIGATION BONDS BEARING INTEREST AT A MAXIMUM NET EFFECTIVE INTEREST RATE NOT TO EXCEED 5.85%; SUCH BONDS TO BE SOLD IN ONE SERIES OR MORE, FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT OF SUCH SERIES, ON TERMS AND CONDITIONS, AND WITH SUCH MATURITIES AS PERMITTED BY LAW AND AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT TO EXCEED THREE PERCENT; AND SHALL THE DISTRICT BE

AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION PROVIDED THAT SUCH REFUNDING DEBT, ALONG WITH ANY OTHER DEBT INCURRED BY THE DISTRICT PURSUANT TO THIS AUTHORIZATION, IS ISSUED ON TERMS WHICH DO NOT EXCEED THE PRINCIPAL, INTEREST AND REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL SUCH TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH BOND PROCEEDS AND TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **59**

INTRODUCED BY COUNCILLORS

SERIES OF 2006

WHEREAS, Adams County School District 50 resides in the county of Adams County, Colorado;  
and

WHEREAS, The City Council of Westminster does hereby recognize Adams County School District 50 commitment to educate the children of Westminster; and

WHEREAS, it has been 11 years since voters in Adams County School District 50 approved a bond issue to repair certain buildings, and more than 30 years since the district asked voters to pass a bond issue for a new school; and

WHEREAS, Ballot Issue 3A will help restore the aging schools in Adams County School District 50, help rebuild the district schools " the right way" to reduce costs, and help reinvent the district and get it back on track; and

WHEREAS, November 7, 2006 is the election date at which ballot issues proposing a bond referendum for the purposes set forth herein may be submitted to the eligible electors of the District pursuant to TABOR.

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

That the Westminster City Council supports Ballot Issue 3A and does encourage all registered voters to vote in support of the School District 50 Ballot Issue 3A

PASSED AND ADOPTED this 23rd of October, 2006.

\_\_\_\_\_  
Nancy McNally  
Mayor of Westminster

\_\_\_\_\_  
Tim Kauffmann  
Mayor Pro Tem

\_\_\_\_\_  
Chris Dittman  
Councillor

\_\_\_\_\_  
Mark L. Kaiser  
Councillor

\_\_\_\_\_  
Mary Lindsey  
Councillor

\_\_\_\_\_  
Scott Major  
Councillor

\_\_\_\_\_  
Jo Ann Price  
Councillor

## Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, October 23, 2006. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the October 9, 2006 regular meeting were approved.

Council gave special recognition to six Westminster Snow Fighters for their performances in the 26<sup>th</sup> Annual APWA Colorado Chapter's 2006 National Snow Plow Rodeo.

Council proclaimed October 21 to 31 to be Red Ribbon Week.

Council approved the following: September 2006 financial report; revised employment agreement with Martin R. McCullough; McKay Lake Fishing Pier construction award; 2006 fiber optic project; bus passenger shelters amended agreement; IGA with City of Thornton re design and construction of improvements to McKay drainageway; final passage of Councillor's Bill No. 58 re 2007 infrastructure fee and 2008 stormwater utility fee rate; final passage of Councillor's Bill No. 59 re 2007 and 2008 appropriations; final passage of Councillor's Bill No. 60 re "Hourly Non-Benefited" Category of Appointment in the WMC; final passage of Councillor's Bill No. 61 re Municipal Judge salary; and final passage of Councillor's Bill No. 62 re Pension Plan amendments.

Council conducted a public hearing concerning the S & R Art and Antiques rezone at 3698 W. 72<sup>nd</sup> Avenue.

Council adopted Resolution No. 59 in support of Adams County School District 50 ballot proposal.

Council passed the following Councillors' Bills on first reading:

**A BILL FOR AN ORDINANCE AMENDING THE ZONING OF A PARCEL OF LAND APPROXIMATELY 0.5 ACRE IN SIZE LOCATED AT 3698 WEST 72<sup>ND</sup> AVENUE, ADAMS COUNTY, COLORADO FROM M-1 INDUSTRIAL DISTRICT TO C-1 COMMERCIAL DISTRICT.** Purpose: To rezone 3698 W. 72<sup>nd</sup> Avenue from M-1 (Industrial) to C-1 (Commercial).

**A BILL FOR AN ORDINANCE AMENDING THE 2006 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2006 ESTIMATED REVENUES IN THE FUNDS.** Purpose: 3<sup>rd</sup> quarter supplemental appropriation.

The meeting adjourned at 7:53 p.m.

By Order of the Westminster City Council

Linda Yeager, City Clerk

Published in the Westminster Window on November 2, 2006

**A BILL**

**FOR AN ORDINANCE REPEALING CHAPTER 6 OF TITLE IV "CONCRETE REPLACEMENT PROGRAM," ENACTING CHAPTER 8 OF TITLE IX, W.M.C., AND AMENDING CHAPTER 13 OF TITLE VIII, W.M.C., ESTABLISHING AN INFRASTRUCTURE FEE FOR CONCRETE REPLACEMENT AND STREETLIGHT COSTS, AND INCREASING THE MONTHLY BASE RATE PORTION OF THE STORMWATER SERVICE FEE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title IV, Chapter 6, W.M.C., entitled "Concrete Replacement Program," is hereby REPEALED IN ITS ENTIRETY.

Section 2. Title IX, Chapter 8, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW CHAPTER entitled "Infrastructure Program for Streetlight Costs and Concrete Replacement," to read as follows:

**CHAPTER 8  
INFRASTRUCTURE PROGRAM FOR STREETLIGHT COSTS  
AND CONCRETE REPLACEMENT**

9-8-1: LEGISLATIVE INTENT

9-8-2: DEFINITIONS

9-8-3: INFRASTRUCTURE FEE ESTABLISHED

9-8-4: ADMINISTRATION

9-8-5: CONCRETE REPLACEMENT CRITERIA

**9-8-1: LEGISLATIVE INTENT.** THE CITY COUNCIL FINDS, DETERMINES AND DECLARES AS FOLLOWS:

(A) THE CITY OF WESTMINSTER HAS A PROGRAM TO REPLACE DETERIORATED CONCRETE CURB, GUTTER AND SIDEWALK ADJACENT TO CITIZEN'S PROPERTIES AND THROUGHOUT THE CITY, AS PART OF THE RECONSTRUCTION AND RESURFACING OF STREETS; AND,

(B) THE CITY OF WESTMINSTER PROVIDES AND MAINTAINS STREETLIGHTING, ON NEW AND EXISTING STREETS, AND PAYS FOR ITS ILLUMINATION; AND

(C) BOTH THE CONCRETE REPLACEMENT PROGRAM AND THE PROVISION AND MAINTENANCE OF STREETLIGHTING PROVIDE A DIRECT SERVICE TO BOTH OWNERS AND OCCUPANTS OF PROPERTIES WITHIN THE CITY AND TO RESIDENTS USING THE PUBLIC STREETS AND SIDEWALKS; AND

(D) AS BOTH CITY RESIDENTS AND NON-RESIDENT OWNERS OF PROPERTY RECEIVE THE HEALTH, SAFETY, AND AESTHETIC BENEFITS OF STREET ILLUMINATION AND SOUND AND SECURE SIDEWALKS, IT IS EQUITABLE AND REASONABLE TO FUND A PORTION OF THE COSTS OF SAID CONCRETE REPLACEMENT AND STREETLIGHTING BY IMPOSING AN INFRASTRUCTURE FEE ON EACH CONSUMER'S UTILITY BILL TO HELP DEFRAY PART OF THE CITY'S COSTS OF PROVIDING THESE SERVICES TO ITS USERS.

**9-8-2: DEFINITIONS:** FOR THE PURPOSE OF THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANING:

"**BILLING DATE**" MEANS THE DATE THAT APPEARS AS THE "BILLING DATE" ON THE UTILITY BILL FOR THE MONTH FOR WHICH THE CHARGE IS BEING ASSESSED.

"**CHARGE DUE**" MEANS THE AMOUNT OWING INCLUDING ANY COLLECTION FEE.

"**CODE**" MEANS WESTMINSTER MUNICIPAL CODE.

"**COLLECTION FEE**" MEANS THE FEE ADDED TO ANY PAST DUE INFRASTRUCTURE FEE.

"**CONCRETE REPLACEMENT COST**" MEANS THE COST OF MAINTAINING AND REPLACING CURBS, GUTTERS AND SIDEWALKS WITHIN THE CITY.

"**CONSUMER**" MEANS ANY PERSON RECEIVING WATER OR SEWER SERVICE FROM THE CITY.

"**FINANCE DIRECTOR**" MEANS THE FINANCE DIRECTOR OF THE CITY OF WESTMINSTER, OR HIS/HER APPOINTEE.

"**IN-CITY**" MEANS LOCATED WITHIN THE BOUNDARIES OF THE CITY.

"**INFRASTRUCTURE FEE**" MEANS THAT PORTION OF THE UTILITY BILL INTENDED TO COVER THE COSTS OF PROVIDING CITY STREETLIGHTING AND CONCRETE REPLACEMENT.

**"PERSON"** MEANS ANY INDIVIDUAL, FIRM, PARTNERSHIP, JOINT VENTURE, PUBLIC OR PRIVATE CORPORATION, ESTATE OR TRUST, RECEIVER, TRUSTEE, ASSIGNEE, LESSEE, AGENT OR ANY PERSON ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, WHETHER APPOINTED BY COURT OR OTHERWISE, OR ANY OTHER LEGAL ENTITY.

**"STREETLIGHT COST"** MEANS THE COST OF NEW STREETLIGHT INSTALLATIONS, MAINTENANCE AND REPAIR OF DAMAGED LIGHT POLES, AND THE COST OF ELECTRICITY REQUIRED FOR ILLUMINATION OF STREETLIGHTS.

**"UTILITY BILL"** MEANS THE MONTHLY BILLING STATEMENT FOR UTILITY ACCOUNTS SENT TO CONSUMERS OF CITY UTILITY SERVICES, WHICH MAY INCLUDE WATER, SEWER, STORMWATER MANAGEMENT, CONCRETE REPLACEMENT AND STREETLIGHTING.

**9-8-3: INFRASTRUCTURE FEE ESTABLISHED:**

THERE IS HEREBY ESTABLISHED AN INFRASTRUCTURE FEE IN THE AMOUNT OF THREE DOLLARS (\$3.00) PER MONTH ON EACH CONSUMER OF CITY UTILITY SERVICES. THIS FEE REPRESENTS A ONE DOLLAR (\$1.00) AMOUNT FOR CONCRETE REPLACEMENT COST AND A TWO DOLLAR (\$2.00) AMOUNT FOR STREETLIGHT COST. ALL PROCEEDS OF THE INFRASTRUCTURE FEE WILL BE USED TO OFFSET THE CITY'S COSTS, RESPECTIVELY, IN PROVIDING CONCRETE REPLACEMENT AND STREETLIGHTING SERVICES.

**9-8-4: ADMINISTRATION:**

(A) BILLING METHOD: BEGINNING WITH UTILITY BILLS HAVING A BILLING DATE OF JANUARY 1, 2007 OR LATER, THE FEE SHALL BE BILLED PERIODICALLY IN THE SAME MANNER AND TO THE SAME PERSON AS OTHER UTILITY ACCOUNTS.

(B) DUE DATE: THE CHARGE SHALL BE DUE AND COLLECTED IN THE SAME MANNER AS CITY WATER, SEWER, AND STORMWATER UTILITY FEES, EXCEPT THAT NO CITY UTILITY SERVICE SHALL BE DISRUPTED FOR NON-PAYMENT OF THE INFRASTRUCTURE FEE DUE.

(C) APPLICATION OF PAYMENT: ANY PAYMENT MADE TOWARDS THE AMOUNT OF THE BILL SHALL BE FIRST APPLIED TO PAYMENT OF THE INFRASTRUCTURE FEE.

(D) COLLECTION FEE: IF ANY CHARGE DUE IS NOT PAID WITHIN NINETY (90) DAYS OF THE BILLING DATE, A FEE OF TEN DOLLARS (\$10.00) SHALL BE LEVIED.

(E) ABATEMENT:

1. CHARGE. INFRASTRUCTURE FEES PROPERLY IMPOSED SHALL NOT BE ABATED.

2. COLLECTION FEE. ANY COLLECTION FEE LEVIED BY THIS SECTION MAY BE ABATED BY THE FINANCE DIRECTOR, IF THE FINANCE DIRECTOR FINDS GOOD CAUSE THEREFOR.

(F) SECURITY: THE CITY SHALL HAVE AS SECURITY FOR THE COLLECTION OF THE CHARGE DUE A LIEN UPON THE REAL PROPERTY LISTED AS THE SERVICE ADDRESS OF THE UTILITY BILL. SUCH LIENS SHALL BE GOVERNED BY TITLE I, CHAPTER 31 OF THIS CODE.

**9-8-5: CONCRETE REPLACEMENT CRITERIA:**

(A) CRITERIA FOR REPLACEMENT: CONCRETE REPLACEMENT MUST BE WARRANTED IN AT LEAST ONE OF THE FOLLOWING WAYS:

1. THE CONDITION OF THE CONCRETE IS A SAFETY, PEDESTRIAN, OR TRAFFIC HAZARD DUE TO HEAVING OR HAVING SETTLED CONDITIONS;

2. THE DETERIORATION OF THE SURFACE BY SPALLING/SCALING HAS CAUSED THE AGGREGATE TO BECOME LOOSE;

3. THE CURB, GUTTER OR SIDEWALK HAS CRACKED CAUSING INFILTRATION OF WATER INTO THE SUBGRADE, WHICH WILL RESULT IN HEAVING CONDITION AND/OR SETTLEMENT;

4. WHERE SEVERE SETTLEMENT OF GUTTERS HAS CAUSED WATER TO POND IN THE GUTTER, STREET, OR ON THE SIDEWALK, RESULTING IN ICY, HAZARDOUS CONDITIONS DURING THE WINTER MONTHS, AND STAGNANT, STANDING WATER IN THE SUMMER MONTHS.

(B) NO REPLACEMENT MAY BE AUTHORIZED BY STAFF WITHOUT MEETING THE CRITERIA DESCRIBED ABOVE.

Section 3. Section 8-13-2, W.M.C., is hereby AMENDED as follows:

**8-13-2: WORDS AND PHRASES DEFINED:** For the purposes of this Chapter, the following words and terms shall be defined as follows, unless the context in which they are used clearly indicates otherwise:

~~(A)~~ "Base Rate" means the monthly rate of assessment associated with each runoff area unit (RAU) calculated for a property.

~~(B)~~ "Director" means the Director of the Department of Community Development of the City of Westminster, Colorado, or his/her designee.

- (C) “Development” means any man-made change to real property including, but not limited to, buildings or other structures, streets, parking lots, mining, dredging, filling, grading, paving, or excavating.
- (D) “Impervious Surface” means surfaces on or in real property where the rate of infiltration of stormwater into the earth has been reduced by the works of man. For purposes of this chapter, buildings, man-made structures, driveways, patio areas, roofs, concrete or asphalt sidewalks, parking lots or storage areas, and other bricked, oiled, macadam or hard-surfaced areas which impede passage of stormwaters into the earth’s surface are deemed to be impervious.
- ~~(E) “Person” means a natural person, corporation, partnership, or other entity.~~
- (F) “Project Costs” means those costs of administration, management, planning, engineering, construction, reconstruction, right-of-way acquisition, replacement, contingencies, fiscal, legal, and all operation and maintenance costs of stormwater facilities including those costs to comply with federal, state or City laws regulating stormwater facilities or runoff.
- ~~(G) “Runoff” means that part of snowfall, rainfall or other stormwater that is not absorbed, transpired, evaporated, or left in surface depressions, and that then flows controlled or uncontrolled into a street, storm sewer, watercourse or body of water.~~
- (H) “Runoff Area Unit (RAU)” means the average area of impervious surface on a single-family detached residential property as determined by random sampling of such properties in the City.
- ~~(I) “Service Fee” means the stormwater service fee as created by this ordinance.~~
- (J) “Stormwater Facilities” means any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage, or disposal lines; intercepting sewers; disposal plants; settling basins; outfall sewers; all pumping, power, and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities.
- “UTILITY FEE” OR “FEE” MEANS THE STORMWATER UTILITY FEE CREATED BY THIS ORDINANCE.
- ~~(K) “Watercourse” means a stream having a body or banks and usually discharging into some other stream or body of water.~~

Section 4: Section 8-13-4, W.M.C., is hereby AMENDED as follows:

**8-13-4: ESTABLISHING STORMWATER UTILITY FEE:**

- (A) Fee established. There is hereby imposed on the owner of each and every lot or parcel of land within the City containing an impervious surface, a stormwater ~~service~~ UTILITY fee. This ~~service~~ fee is deemed reasonable and is necessary to pay for the project costs of existing and future City stormwater facilities. All of the proceeds of the service fee are for payment for use of the City’s stormwater facilities by the owners of real property upon which the ~~service~~ fee is imposed.
- (B) Basis for fee. The basis for the amount of the ~~service~~ fee is the extent to which each parcel of land within the City makes use of the stormwater facilities, such use to be defined by the amount of impervious surface on the property. The fee is also based on the cost of including the parcel in the property and billing records, plans, and monitoring activities of the stormwater management program.
- (C) Exemptions. All public highways, roadways, streets, alleys, railroad rights-of-way, irrigation canals, and undeveloped property shall be exempt from all charges imposed by this chapter.
- (D) How fee collected. The ~~service~~ fee shall be payable monthly and shall be billed and collected with the City water and sewer bill.
- (E) Calculation of fee. For purposes of imposing the stormwater ~~service~~ UTILITY fee, all lots and parcels within the City are classified into ~~the following~~ two (2) classes; NAMELY, SINGLE-FAMILY DETACHED RESIDENTIAL (SFDR) AND ALL OTHERS (NON-SFDR).
1. ~~Single family detached residential. (sfdr)~~
  2. ~~All others. (non sfdr)~~

The Director or his designee is directed to prepare a list of lots and parcels within the City and assign the appropriate classification to each lot or parcel-, AS FOLLOWS:

1. Each single-family detached residential property shall be billed a flat fee as established herein for the average impervious area on the property. The single-family detached residential average area shall be referred to as the runoff area unit (RAU). The RAU will be determined by digitally measuring and summing the impervious area on a random sample of approximately 450 single-family detached residences in the City and averaging the total. The monthly fee to be charged for each single-family detached residential property ~~and~~ shall be referred to as the current base rate per month. Both the RAU and the base rate ~~shall~~ WILL be established by ~~City Council~~ ORDINANCE OR Rresolution OF CITY COUNCIL. Prior to consideration of aN ORDINANCE OR Rresolution to subsequently modify the RAU

or the base rate, the City shall publicize the proposed fee modification and provide an opportunity for public input regarding the proposed fee change.

2. For all other properties not covered by ~~Subsection~~ PARAGRAPH (E)1. of this Section, the service fee shall be determined by dividing the calculated total square footage of impervious area on the property by the runoff area unit (RAU), multiplying the result by the base rate, and apportioning the result to the utility accounts which serve the property. The billing rate for non-SFDR properties may be updated by the Director based on any additions/subtractions to the impervious area.

(F) Additional fees. The service STORMWATER UTILITY fee shall be subject to additional fees for delinquent payment, uncollectible checks, liens and any other penalties which are the same as those imposed with City water or sewer utility charges.

Section 5: Section 8-13-5, subsection (A), W.M.C., is hereby AMENDED as follows:

**8-13-5: ADMINISTRATIVE AND JUDICIAL REVIEW:**

(A) Right to petition. A property owner may petition the Director for a revision or modification of the service STORMWATER UTILITY fee no later than thirty (30) days after having been billed for such charge. Any such petition may only be filed once in connection with the issue or issues presented in the petition, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition. The basis for the petition is limited to the following issues:

1. For single-family detached residential. An owner of single-family detached residential ~~detached~~ property may petition on the basis that his/her property has been incorrectly classified as such.
2. For all other properties (non-SFDR). An owner of property other than single-family detached residential may petition on the following basis:
  - a. The impervious area on the property has been improperly measured or calculated.
  - b. The property is exempt from the service fee pursuant to ~~w.m.c.~~ W.M.C. § 8-13-4(e)(C).
  - c. The property is improperly classified as non-SFDR.
  - d. A computational error was made in calculating the amount charged.

Section 6: Section 8-13-6, subsection (A), W.M.C., is hereby AMENDED as follows:

**8-13-6: ENFORCEMENT:**

(A) Lien declared. The City Council hereby finds and determines that it is the policy of the City that all stormwater facilities supplied and furnished by the City and supported by the service STORMWATER UTILITY fee shall be deemed to be supplied and furnished to the real property so served without regard to the actual person, business, organization or entity billed for stormwater facilities. Accordingly, in addition to other civil collection procedures, all fees and charges, together with all interest and penalties for default in payment, and all costs in collecting the same, until paid, shall constitute a perpetual lien on the property, on a parity with the tax lien of general, state, county, city, town, or school taxes, and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien for such fees, charges, interest, penalties, and costs.

Section 7. The base rate for the stormwater utility fee, referenced in Section 8-13-4(E)1., W.M.C., is hereby increased from one dollar and fifty cents (\$1.50) per 3,100 square feet of impervious area to three dollars (\$3.00) per 3,100 square feet of impervious area. This increase shall become effective on January 1, 2008.

Section 8. This ordinance, which increases the stormwater utility fee and the concrete replacement fee and creates a new infrastructure fee by incorporating the former concrete replacement fee and adding a street lighting fee, is reasonable and necessary to pay for the increased costs of providing these City services and, thus, is necessary to preserve the health, safety, and welfare of the citizens and residents of the City of Westminster.

Section 9. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

**A BILL FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2007 AND 2008 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW**

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Carryover as of December 31, along with revenue for the calendar and fiscal year are combined and reflected as the total in each of the following funds:

**NON-EMERGENCY RESERVE AND NEW REVENUE**

	Fiscal Year 2007	Fiscal Year 2008
a. General Fund	\$89,302,120	\$91,669,769
b. Utility Fund	53,056,737	56,955,607
c. General Capital Improvement Fund	8,145,000	8,434,000
d. Fleet Maintenance Fund	2,113,926	2,286,195
e. General Capital Outlay Replacement Fund	1,045,872	1,107,178
f. General Debt Service Fund	8,223,735	7,806,660
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	61,645,254	63,228,969
i. Parks Open Space & Trails Fund	4,958,779	5,336,876
j. General Reserve Fund	0	0
k. Utility Reserve Fund	4,125,594	5,893,222
l. Golf Course Fund	<u>3,637,034</u>	<u>3,693,251</u>
Total Funds Available	\$236,879,051	\$246,036,727
Less Transfers	<u>-75,776,333</u>	<u>-79,400,086</u>
 GRAND TOTAL	 \$161,102,718	 \$167,636,641

Section 2: The following amounts are hereby appropriated for expenditure by fund to be expended by the City Manager in accordance with the City Charter.

	Fiscal Year 2007	Fiscal Year 2008
a. General Fund	\$89,302,120	\$91,669,769
b. Utility Fund	53,056,737	56,955,607
c. General Capital Improvement Fund	8,145,000	8,434,000
d. Fleet Maintenance Fund	2,113,926	2,286,195
e. General Capital Outlay Replacement Fund	1,045,872	1,107,178
f. General Debt Service Fund	8,223,735	7,806,660
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	61,645,254	63,228,969
i. Parks Open Space & Trails Fund	4,958,779	5,336,876
j. General Reserve Fund	0	0
k. Utility Reserve Fund	4,125,594	5,893,222
l. Golf Course Fund	<u>3,637,034</u>	<u>3,693,251</u>
Total Funds Available	\$236,879,051	\$246,036,727
Less Transfers	<u>-75,776,333</u>	<u>-79,400,086</u>
 GRAND TOTAL	 \$161,102,718	 \$167,636,641

Section 3. This ordinance shall become effective January 1, 2007.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9<sup>th</sup> day of October, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of October, 2006.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-24-1, W.M.C, is hereby AMENDED BY THE ADDITION OF A NEW SECTION to read as follows:

**1-24-1: DEFINITIONS:** For the purposes of this Chapter, the following words and terms, unless the context clearly states otherwise, shall have the meaning indicated below:

**EMPLOYEE – HOURLY NON-BENEFITED:** AN EMPLOYEE APPOINTED TO PROVIDE SERVICES ON AN HOURLY BASIS IN SPECIFICALLY DESIGNATED AREAS AND WORK AN INTERMITTENT SCHEDULE WITH NO DEFINED NUMBER OF HOURS OR BENEFIT ELIGIBILITY.

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

**1-24-3: ADMINISTRATION:**

(M) Categories of Appointment. All appointments by an appointing authority shall be made into one of the following categories: probationary, part-time regular, temporary, temporary benefited indexed, special projects, seasonal, substitute, instructor, HOURLY NON-BENEFITED, provisional, emergency, regular and administrative officer. A description of these follows:

1. Probationary: All nonexempt and exempt employees new to a regular or part-time position shall be considered probationary until they have up to one year of satisfactory service in their position or as otherwise provided in rules promulgated by the City Manager. Probationary employees are subject to termination after a hearing at any time in accordance with the procedures specified by the City Manager.

2. Part-time Regular: An employee who has been appointed to a part-time authorized, nonexempt or exempt position to work less than forty (40) hours during a seven day period on a regular basis. Part-time employees shall be paid at an hourly rate. Part-time exempt employees will be paid on a salaried basis, prorated based on their full-time equivalency. Employees in positions authorized at twenty (20) or more hours per week are eligible for City fringe benefits and some benefits may be prorated. Authorized hours are determined by the full-time equivalency (FTE) assigned to the position. An employee may work beyond the authorized FTE, however, only the authorized FTE will be considered in determining an employee's level of benefits. After a part-time nonexempt or exempt employee has successfully completed the probationary period, the employee shall receive a regular part-time appointment with the City. Employees of this category are subject to termination for cause pursuant to the provisions of this Chapter.

3. Special Project: Employees in this category do not receive benefits except that the City Manager may determine that medical and dental benefits be provided. Special project employees are subject to termination by the Division Manager at any time without cause. A special project employee may be terminated due to cessation of funds for the project for which the employee was hired.

4. Temporary: Employees in this category are appointed to other than a temporary benefited position for a temporary period of time not to exceed one year. Temporary employees shall be paid at an hourly rate and are not eligible for any City fringe benefits. Employees in this category are subject to termination by the Division Manager at any time without cause. After one year, a temporary employee shall be terminated.

5. Temporary Benefited: Employees in this category serve as interns or are indexed to a predetermined workload. When the workload falls below the indexed level, the employee must be terminated subject to such notice provisions as may be established by the City Manager. Medical and dental insurance shall be provided and such other benefits as may be granted in the discretion of the City Manager. Temporary benefited employees are subject to termination by the Division Manager at any time without cause.

6. Seasonal: Employees in this category are those appointed for a specified period of time, normally a designated season. Seasonal classifications are listed in the seasonal section of the annual pay plan. Seasonal employees shall be paid at an hourly rate and are not eligible for any City fringe benefits. Employees in this category are subject to termination by the Division Manager at any time without cause. Seasonal employees will be terminated at the end of each season.

7. Instructor: Employees in this category are those appointed to provide SPECIFIC INSTRUCTIONAL ACTIVITIES CONDUCTED ON BEHALF OF THE CITY on a PART-TIME, periodic or occasional basis. Instructor classifications are listed IN THE HOURLY (NON-BENEFITED) section of the annual pay plan. INSTRUCTOR'S WORK IS PART-TIME, SCHEDULED WORK AND Supervisors may limit the PERIOD for the instructor employment based on class schedules or recreation program periods. Employees in this category shall be

paid on an hourly basis and are NOT ELIGIBLE FOR ANY CITY FRINGE BENEFITS. EMPLOYEES IN THIS CATEGORY ARE subject to termination by the Division Manager at any time without cause.

8. Substitute: Employees in this category are those appointed to provide services working part time, occasional work on a "substitute" as needed, or on-call basis, to fill in for absences and staffing shortages. There is no limit to the length of time an employee may hold a position in this capacity. Substitute employees shall be paid on an hourly basis and are not eligible for any city fringe benefits. Employees in this category are subject to termination by the Division Manager at any time without cause.

9. HOURLY NON-BENEFITED: EMPLOYEES IN THIS CATEGORY ARE APPOINTED TO PROVIDE SERVICES ON AN HOURLY BASIS IN SPECIFICALLY DESIGNATED AREAS AND WORK AN INTERMITTENT SCHEDULE WITH NO DEFINED NUMBER OF HOURS. THIS CLASSIFICATION IS SPECIFIED IN THE HOURLY (NON-BENEFITED) SECTION OF THE ANNUAL PAY PLAN. EMPLOYEES IN THIS GROUP ARE ABLE TO WORK AN UNLIMITED NUMBER OF HOURS EVERY YEAR, AND THERE IS NO LIMIT TO THE LENGTH OF TIME AN EMPLOYEE MAY HOLD A POSITION IN THIS CAPACITY. EMPLOYEES SHALL BE PAID AN HOURLY RATE AND ARE NOT ELIGIBLE FOR ANY CITY FRINGE BENEFITS. EMPLOYEES IN THIS CATEGORY ARE SUBJECT TO TERMINATION BY THE DIVISION MANAGER AT ANY TIME WITHOUT CAUSE.

~~9~~10. Provisional: A department head or division manager may make a provisional appointment when a critical position vacancy occurs and, due to the length of time required to fill it or because of an extended leave of absence, it becomes necessary to appoint a replacement on a "provisional" basis. An appointment shall be considered provisional if the individual serving in the temporarily vacant position having a higher pay classification is required to do so for a period of more than 80 consecutive work hours. Should a temporary appointment, originally intended not to exceed 80 consecutive hours, extend beyond 80 hours, payment for the provisional status shall be made retroactively. An employee serving in provisional status for less than 80 hours shall not receive provisional pay.

Provisional pay for nonexempt employees serving in nonexempt positions on a provisional basis shall be moved to the first step of the range of the vacant position or a 5% increase over current salary, whichever is higher as long as the 5% increase does not exceed the last step of the range for the vacancy. Employees serving on a provisional basis in an exempt or administrative officer position shall receive the level of compensation determined by the Human Resources Manager. The employee may be allowed by the Human Resources Manager to credit the time served in a provisional status toward completion of the probationary period, should a probationary appointment to the position occur immediately subsequent to the provisional appointment.

~~10~~11. Emergency: In an emergency, to prevent undue delay or serious interference with the provision of necessary public services, a division manager may make emergency appointments for a period not to exceed ninety (90) calendar days. Successive emergency appointments involving the same employee shall not be made. Emergency appointments may be made without regard to the formal selection provisions of this Chapter. Approval of the Human Resources Manager must be obtained prior to an emergency appointment. Emergency appointed employees are not eligible for any City fringe benefits.

~~11~~12. Regular: After a full-time nonexempt or exempt employee has successfully completed the probationary period, the employee shall receive a regular appointment with the City. Regular nonexempt or exempt employees can only be terminated pursuant to the provisions of this Chapter.

~~12~~13. Administrative Officer Service: Administrative officer positions receive salaries within the parameters of the existing pay plan as determined by department heads. Part-time administrative officers will be paid on a salaried basis, prorated based on their full-time equivalency. Individuals holding administrative officer positions are entitled to the fringe benefits approved by City Council. Administrative officers shall be subject to termination at the discretion of the City Manager. Such employees who are involuntarily separated shall be eligible for severance pay as determined by length of service and position as provided below, except that in the event that the employee is terminated because of the employee's conviction of any illegal action, the City has no obligation to provide severance compensation.

(a) Department Heads: Those employees employed as department heads more than six (6) months, but less than three (3) consecutive years shall be granted full pay and benefits for fifteen (15) working days following involuntary separation. Employees with at least three (3) years service in these classifications, but less than six (6) years service, shall receive forty-five (45) working days of full pay and benefits. Employees with at least six (6) years but less than ten (10) years of service shall received ninety (90) working days of full pay and benefits. Employees with service of ten (10) or more years shall receive one hundred thirty (130) working days of pay and benefits upon involuntary separation.

(b) All Other Administrative Officers: Those employees employed more than six (6) months, but less than two (2) years in these classifications shall be granted full pay and benefits for ten (10) working days following involuntary separation. After two (2) years, but less than five (5) years of administrative officer service, the

employee shall receive fifteen (15) working days of full pay and benefits as severance pay. Employees with five (5) or more years of administrative officer service shall receive twenty (20) working days of pay and benefits upon involuntary separation.

~~13~~-14. Short Term Disability: An employee who is appointed to this category is receiving short term disability pay and has an authorized medical professional certification that they are unable to return to work.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

ORDINANCE NO. 3318  
SERIES OF 2006

COUNCILLOR'S BILL NO. 61  
INTRODUCED BY COUNCILLORS  
Major - Price

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

~~112,439~~ \$115,812 per annum payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation.

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect on January 1, 2007.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.

**A BILL FOR AN ORDINANCE AMENDING TITLE XIV OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE POLICE AND GENERAL EMPLOYEE PENSION PLANS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 14-1-1, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (C) to read as follows:

14-1-1: NAME AND PURPOSE OF PLAN; HISTORY:

(C) ON SEPTEMBER 1, 2004, THE CITY TRANSFERRED THE ASSETS OF THE FIREFIGHTER'S PENSION PLAN TO THE FIRE AND POLICE PENSION ASSOCIATION OF COLORADO DEFINED BENEFIT SYSTEM AND THE FIREFIGHTER'S PENSION PLAN WAS TERMINATED. PARTICIPANTS IN THE FIREFIGHTER'S PENSION PLAN BECAME PARTICIPANTS IN THE FPPA DEFINED BENEFIT SYSTEM. ASSETS IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) IN THE FIREFIGHTER'S PENSION PLAN WERE TRANSFERRED TO THE GENERAL EMPLOYEE'S PENSION PLAN FOR USE AS DEFINED IN SECTION 14-1-7(C)(4) OF THIS PLAN.

Section 2. Section 14-1-2, W.M.C., is hereby AMENDED to read as follows:

14-1-2: DEFINITIONS: When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person or entity who, pursuant to Section 14-1-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The Police Pension Plan Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "CODE": THE INTERNAL REVENUE CODE OF 1986, AS IT MAY BE AMENDED, OR RE-ENACTED OR REPLACED. REFERENCE TO A SPECIFIC SECTION OF THE CODE SHALL MEAN THE SECTION IN EFFECT AT THE DATE OF ADOPTION OF THIS PLAN, OR ANY SUCCESSOR SECTION TO SUCH SECTION.

~~(D)~~ (E) "COMPENSATION": The base pay of a Participant for services rendered to the City, ~~including longevity pay,~~ but excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE'S) budgeted for their positions.

~~(E)~~ (F) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

~~(F)~~ "DIRECT ROLLOVER": A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

~~(G)~~ "DISTRIBUTEES": A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Federal Internal Revenue Service Code, are distributees with regard to the interest of the spouse or former spouse.

~~(H)~~ "ELIGIBLE RETIREMENT PLAN": An eligible retirement plan is an individual retirement account described in Section 408(a) of the Federal Internal Revenue Service (IRS) Code, an individual retirement annuity described in Section 408(b) of the IRS code, an annuity plan described in Section 403(a) of the IRS code, or a qualified trust described in Section 401(a) of the IRS code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

~~(I)~~ "ELIGIBLE ROLLOVER DISTRIBUTION": An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Federal Internal Revenue Service Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

~~(J)~~ (G) "EMPLOYEE": Any person who fills an authorized position of Police Officer as defined in this Chapter that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

~~(K)~~ (H) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.

~~(L)~~ (I) "INACTIVE PARTICIPANT": Any person who has been a Contributing Participant to this Plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of all respective interest in the Plan.

~~(M)~~ (J) "INTEREST": The amount of a Participant's share in the Trust Fund including City contributions, employee contributions and earnings.

~~(N)~~ (K) "PARTICIPANT": Any Contributing Participant or Inactive Participant.

~~(O)~~ (L) "PLAN": The Pension Plan established in this Chapter and all subsequent amendments thereto.

(M) "PLAN ADMINISTRATOR": THE PERSON APPOINTED BY THE CITY MANAGER TO ADMINISTER THE PLAN.

~~(P)~~ (N) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.

~~(Q)~~ (O) "POLICE OFFICER": Any person who is employed by the City as a ~~recognized law enforcement~~ POLICE officer AS DEFINED BY TITLE III OF THIS CODE AND WHO EITHER IS THE CHIEF OF POLICE OR REPORTS TO THE CHIEF OF POLICE ~~and who has sworn to enforce the ordinances of the City; the laws of the State of Colorado and the United States of America. The term Police Officer shall not include dispatchers, clerical employees, animal control personnel, civilian administrative personnel, reserve officers, code enforcement personnel and any other employees who do not regularly enforce the traffic and criminal codes and ordinances of the City and State.~~

~~(R)~~ (P) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in ~~either the Fire or~~ General Employees' pension plan, without a break in municipal service, the person's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights have lapsed or, if a grievance is filed, on the date of the final decision by the City.

~~(S)~~ (Q) "TOTAL DISABILITY": A disability which permanently renders a Contributing Participant unable to perform satisfactorily the usual duties of his employment with the City, as determined by the Board, and which results in his termination of employment with the City.

~~(T)~~ (R) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

~~(U)~~ (S) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-1-10 and any duly appointed and qualified successor trustees.

Section 3. Section 14-1-3, subsection (A)(1), is hereby AMENDED to read as follows:

14-1-3: PARTICIPATION OF EMPLOYEES:

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). ~~Each person who was an employee on January 6, 1986, had the option to elect to become a Contributing Participant on January 6, 1986. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin.~~ By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

Section 4. Section 14-1-4, subsections (A)(2), (C)(1)(c), (C)(3), (D)(1) and (F), W.M.C., are hereby AMENDED to read as follows:

14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS:

(A) Contributions by the City.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan ~~on each pay day~~ PAY PERIOD.

(C) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the ~~Trustee~~ PLAN CUSTODIAN, according to the provisions of this Chapter.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the Plan ~~on each payday~~ PAY PERIOD.

(D) Retirement Medical Savings Accounts:

(1) Subject to approval by the Internal Revenue Service, each participant shall have the option of designating up to 25% of his OR HER COMBINED mandatory and City contributions to be used for future medical expenses as provided for in Section 401(h) of the Federal Internal Revenue Service Code. Contributions to the medical savings accounts will not be taxed at ~~retirement~~ SEPARATION FROM SERVICE nor upon use for medical expenses ~~during retirement~~ AFTER SEPARATION FROM SERVICE. The retirement medical savings accounts will be subject to the rules and requirements as issued by the City Manager.

(F) CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE. THE EMPLOYER SHALL MAKE ALL CONTRIBUTIONS TO THE PLAN REQUIRED BY SECTION 414(U) OF THE CODE WHICH ARE ATTRIBUTABLE TO PERIODS OF QUALIFIED MILITARY SERVICE. IN ADDITION, THE EMPLOYER SHALL ALLOW ANY PARTICIPANT TO MAKE ELECTIVE CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE AND THE EMPLOYER SHALL MAKE ANY MATCHING CONTRIBUTIONS BASED UPON SUCH CONTRIBUTIONS AT THE RATE AT WHICH SUCH ELECTIVE CONTRIBUTIONS OF THE EMPLOYEE WOULD HAVE BEEN MADE DURING THE APPLICABLE PERIOD OF QUALIFIED MILITARY SERVICE, EACH AS REQUIRED BY SECTION 414(U) OF THE CODE. THE EMPLOYER MAY ELECT TO MAKE ADDITIONAL CONTRIBUTIONS BASED UPON SUCH QUALIFIED MILITARY SERVICE BASED UPON EMPLOYER CONTRIBUTIONS MADE DURING THE APPLICABLE PERIOD, PROVIDED SUCH ELECTION BY THE EMPLOYER IS MADE ON A NON-DISCRIMINATORY BASIS APPLICABLE TO ALL SIMILARLY SITUATED EMPLOYEES WHO HAVE QUALIFIED MILITARY SERVICE. ANY CONTRIBUTIONS MADE UNDER THIS SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 414(U) OF THE CODE AND THE PROVISIONS OF THIS PLAN SHALL BE APPLIED CONSIDERING ANY SUCH CONTRIBUTIONS AS HAVING BEEN MADE DURING THE PLAN YEAR TO WHICH THE CONTRIBUTIONS RELATE. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED MILITARY SERVICE" MEANS SERVICE IN THE UNIFORMED SERVICES OF THE UNITED STATES (AS DEFINED IN CHAPTER 43 OF TITLE 38, UNITED STATES CODE) BY ANY INDIVIDUAL IF SUCH INDIVIDUAL IS ENTITLED TO RE-EMPLOYMENT RIGHTS WITH RESPECT TO SUCH SERVICE.

Section 5. Section 14-1-5, W.M.C., is hereby AMENDED to read as follows:

14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of ~~twenty-five~~ ONE HUNDRED percent (~~25%~~ 100%) of his OR HER compensation for such year or ~~\$30,000~~ 40,000 provided such figure shall ~~change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation.~~ BE ADJUSTED AS PROVIDED IN CODE SECTION 415(D). FOR LIMITATION YEARS BEGINNING BEFORE JANUARY 1, 2002, THE FOREGOING PERCENTAGE LIMITATION IS 25% AND THE FOREGOING DOLLAR LIMITATION IS \$30,000, AS ADJUSTED PURSUANT TO CODE SECTION 415(D). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the Plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000, subject to adjustment as provided for by law or regulation, for the account of any individual participant. For the purpose of applying the limitations of this Section,

compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, roll over contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limit, shall be returned to the employer.

~~(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the plan year. The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer: (i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(e)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(e)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.~~

~~(6)~~ (5) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a participant under a plan established under Federal Internal Revenue Service Code Sections 125, 457, 401(k), or 403(b)-132(F)(4), 402(G)(3), 457, 401(K), OR 403(B). THE ANNUAL COMPENSATION OF EACH PARTICIPANT TAKEN INTO ACCOUNT IN DETERMINING ALLOCATIONS FOR ANY PLAN YEAR BEGINNING AFTER DECEMBER 31, 2001, SHALL NOT EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000), AS ADJUSTED FOR COST-OF-LIVING INCREASES IN ACCORDANCE WITH §401(A)(17)(B) OF THE CODE. FOR YEARS BEGINNING PRIOR TO JANUARY 1, 2002, THE DOLLAR AMOUNT IN THE FOREGOING SENTENCE IS ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000). ANNUAL COMPENSATION MEANS COMPENSATION DURING THE PLAN YEAR OR SUCH OTHER CONSECUTIVE 12-MONTH PERIOD OVER WHICH COMPENSATION IS OTHERWISE DETERMINED UNDER THE PLAN (THE DETERMINATION PERIOD). THE COST-OF-LIVING ADJUSTMENT IN EFFECT FOR A CALENDAR YEAR APPLIES TO ANNUAL COMPENSATION FOR THE DETERMINATION PERIOD THAT BEGINS WITH OR WITHIN SUCH CALENDAR YEAR.

~~(C) Contribution percentage test for matching and employee contributions:~~

~~(1) General Rule: The average contribution percentage in any year of all participants who are highly compensated employees may not exceed the greater of the following amounts:~~

~~(a) 125% of the average contribution percentage for such year of all participants who are not highly compensated employees; or~~

\_\_\_\_\_ (b) The average contribution percentage for such year of all participants who are not highly compensated employees, plus two percentage points (2%), limited to two times the average contribution percentage for all such participants.

\_\_\_\_\_ For purposes of the foregoing, the average contribution percentage is the average of the sum of the City contributions under Section 14 1 4(A) allocated to the account of the applicable participant plus such participant's voluntary non-deductible contributions, divided by the total compensation of such participant for each such participant. If the amount to be contributed by the City and allocated to the accounts of participants who are highly compensated employees exceeds the foregoing limitations, then the amount so allocated shall be reduced, beginning with the highest dollar amount of contribution among such participants, to the extent necessary to satisfy such limitation and such excess amount, together with earnings thereof, and shall be distributed to such participants no later than 2 1/2 months after the end of the plan year in which such contributions were made.

\_\_\_\_\_ (2) Adjustment of Contribution Percentage: The employer may in its discretion make contributions to the Plan, which shall be designated as additional matching contributions and which shall be allocated to the accounts of participants who are not highly compensated employees, in order to increase the average contribution percentage of such participants. In applying the limitation above, the administrator shall take into account such designated employer contributions.

\_\_\_\_\_ (3) Excess Aggregate Contributions: Employer contributions and employee contributions in excess of the limitations of this Section are excess aggregate contributions.

\_\_\_\_\_ (4) Disposition of excess aggregate contributions:

\_\_\_\_\_ (a) General Rule: Notwithstanding any other provision of this Plan, excess aggregate contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than the last day of each Plan year to participants to whose accounts such excess aggregate contributions were allocated for the preceding Plan year. If such excess aggregate contributions are distributed more than 2 1/2 months after the last day of the Plan year in which such excess amounts arose, a 10% excise tax will be imposed on the employer maintaining the Plan with respect to those amounts. Excess aggregate contributions shall be treated as annual additions under the Plan.

\_\_\_\_\_ (b) Determination of Income or Loss: Excess aggregate contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to excess aggregate contributions is the sum of: (i) income or loss allocable to the participant's employee contribution account, matching contribution account (if any, and if all amounts therein are not used in the deferral percentage test under Internal Revenue Service Code Section 401(k)) and, if applicable, qualified non-elective contribution account and elective deferral account for the plan year multiplied by a fraction, the numerator of which is such participant's excess aggregate contributions for the year and the denominator of which is the participant's account balance(s) attributable to contribution percentage amount without regard to any income or loss occurring during such plan year; and (ii) 10% of the amount determined under (i) multiplied by the number of whole calendar months between the end of the Plan year and date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.

\_\_\_\_\_ (c) Forfeitures of Excess Aggregate Contributions: Forfeitures of excess aggregate contributions shall be applied to reduce employer contributions.

\_\_\_\_\_ (d) Accounting for Excess Aggregate Contributions: Excess aggregate contributions shall be forfeited, if forfeitable or distributed on a pro rata basis from the participant's employee contribution account, employer contribution account, and qualified matching contribution account, if any, (and, if applicable, the participant's qualified non-elective contribution account or elective deferral account, or both).

\_\_\_\_\_ (e) Aggregate Limit: For purposes of this Section, the term "aggregate limit" shall mean the sum of (i) 125% of the greater of the deferral percentage of the non-highly compensated employees for the plan year or the contribution percentage of the non-highly compensated employees under the plan subject to Internal Revenue Service Code Section 401(m) for the plan year beginning with or within the plan year of the cash or deferred arrangement under Section 401(k) and (ii) The lesser of 200% of 2 plus the lesser of such deferral percentage or contribution percentage. The word "lesser" shall be substituted for "greater" in (i), above, and "greater" shall be substituted for "lesser" after "2 plus the" in (ii) if by substituting such terms would result in a larger aggregate limit.

\_\_\_\_\_ (5) Special Rule:

\_\_\_\_\_ (a) In the event that this plan satisfied the requirements of Sections 401(m), 401(a)(4), or 410(b) of the Internal Revenue Service Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Internal Revenue Service Code only if aggregated with this plan, then this Section shall be applied by determining the deferral percentage test under Internal Revenue Service Code Section 401(m) of employees as if all such plans were a single plan. For plan years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Internal Revenue Service Code only if they have the same plan year.

~~(6) Highly Compensated Employee: For purposes of this Section, an employee is treated as a "highly compensated employee" (HCE) if:~~

~~(a) During the preceding year, the employee received compensation in excess of \$80,000, to be indexed for cost of living increases; and the employee was also in the top paid twenty percent (20%) of employees during that year; or~~

~~(b) The employee was a five percent (5%) owner at any time during the year or the preceding year.~~

~~(c) Rules of Construction. The determination of who is a highly compensated employee, including the determinations of the number and identity of employees in the top paid group, will be made in accordance with Section 414(q) of the Federal Internal Revenue Service Code and the regulations thereunder.~~

~~(D)~~ (C) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, ~~third party and administrative charges~~ and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants. THIRD PARTY AND ADMINISTRATIVE CHARGES SHALL BE ALLOCATED IN THE RATIO THAT THE TOTAL DOLLAR VALUE OF THE INTEREST OF EACH SUCH PARTICIPANT IN THE TRUST FUND BEARS TO THE AGGREGATE DOLLAR VALUE OF ALL OF SUCH INTERESTS OF ALL SUCH PARTICIPANTS OR EQUALLY TO ALL PARTICIPANTS.

~~(E)~~ (D) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

~~(F)~~ (E) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be at least the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event described in Section 14-1-7(A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

~~(G)~~ (F) Vesting of Participants' Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this chapter and not as a result of any transfer of said interest or account.

~~(H)~~ (G) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsection ~~(G)~~ (F) of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and nonforfeitable for all purposes.

(H) INVESTMENT OF PARTICIPANT'S ACCOUNT: A PARTICIPANT'S ACCOUNT SHALL BE INVESTED IN THE INVESTMENT OPTIONS IN ACCORDANCE WITH THE INVESTMENT ELECTIONS SPECIFIED BY THE PARTICIPANT. A PARTICIPANT MAY CHANGE THE INVESTMENT OF CONTRIBUTIONS AND MAY REALLOCATE AMOUNTS IN THEIR ACCOUNT AMONG THE INVESTMENT OPTIONS IN A MANNER DETERMINED BY THE PLAN CUSTODIAN AND SUBJECT TO SUCH PROVISIONS AS THE PLAN ADMINISTRATOR MAY ADOPT. ALLOCATION OF ASSETS AMONG INVESTMENT OPTIONS IS SOLELY THE RESPONSIBILITY OF EACH PARTICIPANT. THE FACT THAT AN INVESTMENT OPTION IS AVAILABLE FOR INVESTMENT TO PARTICIPANTS UNDER THE PLAN SHALL NOT BE CONSTRUED AS A RECOMMENDATION FOR INVESTMENT IN THAT INVESTMENT OPTION.

Section 6. Section 14-1-6, subsections (A)(2) and (B)(3), W.M.C., are hereby AMENDED to read as follows:  
14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY

(A) Retirement Date:

(2) Early Retirement: Any Contributing Participant who ~~has attained~~ WILL ATTAIN the age of fifty-five (55) DURING THE YEAR may elect to retire earlier than the normal retirement age.

(B) Beneficiaries:

(3) Insurance Policies: The Beneficiary of any insurance ~~or annuity contract~~ on a Participant's life shall be determined and designated as provided in Section 14-1-8(A).

Section 7. Section 14-1-7, subsections (C), (D), (F)(1), (G), (H) and (J), W.M.C., are hereby AMENDED to read as follows:

14-1-7: DISTRIBUTION FROM TRUST FUND:

(C) Distribution of Interests:

~~\_\_\_\_\_ (1) Distribution Upon Retirement or Total Disability: If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~\_\_\_\_\_ (2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after either the end of the plan year in which the Participant's death occurs or the date the Trustee determines the identity of the Beneficiary, whichever is later, unless the Beneficiary elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~\_\_\_\_\_ (3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~(4) (1) Insurance and Annuity Contracts: If there has been an investment in a life insurance or annuity contract for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance or annuity contract by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. Any annuity purchased or acquired by the trustee and distributed to a participant under the provisions of the Subsection (C) shall, with respect to such participant, be nontransferable and the annuity contract will so provide. After December 31, 1996, no new life insurance contracts may be adopted as pension investments.~~

~~(5) (2) Election to Defer Benefits: A Participant may elect, with the consent of the Board, to have DEFER the commencement of distribution of his OR HER benefit deferred until a date later than the date specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, before the date distribution would otherwise commence, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence if the deferral is approved by the Board. Any change to the terms of the deferral must be resubmitted in writing to the Board for approval unless the change in terms is a request for the rollover of funds to an individual retirement account or a qualified plan. No election to defer or change the method of payment may be made more than once every six months once payments have commenced.~~

~~(6) (3) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefore upon the Board. A participant's interest that is less than or equal to the minimum dollar amount as prescribed by the Internal Revenue Service may be distributed without receiving written application from the participant.~~

(4) BENEFITS PAYABLE FROM THE 401(h) ACCOUNT:

(a) BENEFITS ARE PAYABLE FROM THE RETIREMENT MEDICAL SAVINGS ACCOUNT ONLY UPON RETIREMENT, SEPARATION OF SERVICE, DEATH OR TOTAL DISABILITY.

(b) BENEFITS PAYABLE FROM A 401(h) ACCOUNT SHALL INCLUDE ONLY PAYMENTS OR REIMBURSEMENTS FOR MEDICAL CARE (AS DEFINED IN CODE SECTION 213(d)(1)).

(c) MEDICAL CARE PAYMENTS SHALL ONLY BE PAID PURSUANT TO A REIMBURSEMENT APPLICATION.

(d) NO REFUNDS OF CONTRIBUTIONS SHALL BE MADE. ALL CONTRIBUTIONS REMAIN IN THE 401(h) ACCOUNT UNTIL USED FOR MEDICAL CARE PAYMENTS.

(e) REIMBURSEMENTS MAY NOT BE MADE FOR ANY EXPENSE FOR WHICH THE RETIRED PARTICIPANT OR HIS OR HER SPOUSE OR DEPENDENTS RECEIVE, OR ARE ELIGIBLE TO RECEIVE, PAYMENT OR REIMBURSEMENT FROM ANOTHER SOURCE.

(f) IN ORDER TO RECEIVE BENEFITS FROM THE 401(h) ACCOUNT, THE RETIRED PARTICIPANT MUST AGREE TO PROVIDE APPROPRIATE DOCUMENTATION OF THE EXPENDITURE.

(D) Transfers between Qualified Plans:

(1) In General: The Trustee and the ~~Board~~ PLAN CUSTODIAN, upon their mutual agreement, are authorized to receive and add to the interest of any participant ~~his~~ THE PARTICIPANT'S vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer ~~satisfied~~ SATISFIES the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this plan and trust, CONCERNING EMPLOYER CONTRIBUTIONS. The trustee is also authorized, at the direction of the ~~Board~~ PLAN CUSTODIAN and at the request of the participant, to transfer such participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such participant, provided such transfer satisfied the requirements under law for such transfers.

(2) For Distributions Made on or After January 1, 1993: Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) FOR DISTRIBUTIONS MADE AFTER DECEMBER 31, 2001. AN ELIGIBLE RETIREMENT PLAN SHALL ALSO MEAN AN ANNUITY CONTRACT DESCRIBED IN §403(B) OF THE CODE AND AN ELIGIBLE PLAN UNDER §457(B) OF THE CODE WHICH IS MAINTAINED BY A STATE, POLITICAL SUBDIVISION OF A STATE, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR POLITICAL SUBDIVISION OF A STATE AND WHICH AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS TRANSFERRED INTO SUCH PLAN FROM THIS PLAN. THE DEFINITION OF ELIGIBLE RETIREMENT PLAN SHALL ALSO APPLY IN THE CASE OF A DISTRIBUTION TO A SURVIVING SPOUSE, OR TO A SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATION ORDER, AS DEFINED IN §414(P) OF THE CODE. THE PLAN SHALL BE PERMITTED TO ACCEPT ROLLOVERS FROM ANY TYPE OF ELIGIBLE RETIREMENT PLAN EXCEPT TO THE EXTENT LIMITED IN SECTION 14-2-7.

(4) DEFINITIONS.

(1) ELIGIBLE ROLLOVER DISTRIBUTION. AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTE, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: (I) ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTE OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTE AND THE DISTRIBUTE'S DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; (II) ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER §401(A)(9) OF THE CODE; (III) ANY HARDSHIP DISTRIBUTION AS DESCRIBED IN §401(K)(2)(B)(I)(IV) OF THE CODE (APPLICABLE ONLY TO DISTRIBUTIONS AFTER DECEMBER 31, 1999); AND (IV) THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDABLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES). ANY AMOUNT THAT IS DISTRIBUTED ON ACCOUNT OF HARDSHIP SHALL NOT BE AN ELIGIBLE ROLLOVER DISTRIBUTION AND THE DISTRIBUTE MAY NOT ELECT TO HAVE ANY PORTION OF SUCH A DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN. A PORTION OF A DISTRIBUTION SHALL NOT FAIL TO BE AN ELIGIBLE ROLLOVER DISTRIBUTION MERELY BECAUSE THE PORTION CONSISTS OF AFTER-TAX EMPLOYEE CONTRIBUTIONS WHICH ARE NOT INCLUDIBLE IN GROSS INCOME. HOWEVER, SUCH PORTION MAY BE TRANSFERRED ONLY TO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN §408(A) OR (B) OF THE CODE, OR TO A QUALIFIED DEFINED CONTRIBUTION PLAN DESCRIBED IN §401(A) OR 403(A) OF THE CODE THAT AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS SO TRANSFERRED, INCLUDING SEPARATELY ACCOUNTING FOR THE PORTION OF SUCH DISTRIBUTION WHICH IS INCLUDIBLE IN GROSS INCOME AND THE PORTION OF SUCH DISTRIBUTION WHICH IS NOT SO INCLUDIBLE. THE PLAN SHALL NOT ACCEPT A ROLLOVER OF AFTER-TAX EMPLOYEE CONTRIBUTIONS UNLESS SPECIFICALLY ELECTED IN THE ADOPTION AGREEMENT OR A SUPPLEMENT THERETO.

(2) ELIGIBLE RETIREMENT PLAN. AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN §408(A) OF THE CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN §408(B) OF THE CODE, AN ANNUITY PLAN DESCRIBED IN §403(A) OF THE CODE, OR A QUALIFIED TRUST DESCRIBED IN §401(A) OF THE CODE, THAT ACCEPTS THE DISTRIBUTEES' ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

(3) DISTRIBUTEES. A DISTRIBUTEES INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS DEFINED IN §414(P) OF THE CODE, ARE DISTRIBUTEES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

(4) DIRECT ROLLOVER. A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEES.

(F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; ~~provided, that nothing in this chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of setoff, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.~~

(G) Manner of Distribution: A Participant's interest may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY (OR UNTIL THE ACCOUNT IS EXHAUSTED) and not in installment frequency greater than monthly. THE MAXIMUM PERIOD SHALL BE DETERMINED UNDER THE APPLICABLE IRS TABLES AT THE TIME THE INITIAL MONTHLY INSTALLMENT PAYMENT BECOMES PAYABLE. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six months.

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

~~(4) If the Participant or Beneficiary fails to notify the Trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years unless the participant's interest meets the minimum automatic distribution allowed by Internal Revenue Service.~~

(H) Limitation on Duration of Payments: No distribution shall be made over a period exceeding ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(J) Special Rules for Distributions after the Participant's Death:

(4) RMSA DISTRIBUTIONS AFTER DEATH:

(a) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA, THE ACCOUNT MAY BE USED FOR THE BENEFIT OF THE PARTICIPANT'S SPOUSE AND DEPENDENTS UNDER THE TERMS OF SECTION 14-1-7(C)(4).

(b) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA AND WITHOUT A SPOUSE OR DEPENDENT, THE PARTICIPANT'S DESIGNATED BENEFICIARY, IF ANY NAMED, SHALL BE ELIGIBLE TO RECEIVE THE REMAINING BENEFITS.

Section 8. Section 14-1-9, subsection (B)(3), W.M.C., is hereby AMENDED to read as follows:  
14-1-9: POLICE PENSION BOARD:

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. THE BOARD SHALL ADOPT VARIOUS INVESTMENT OPTIONS FOR THE INVESTMENT OF CONTRIBUTIONS BY THE PARTICIPANT AND SHALL MONITOR AND EVALUATE THE APPROPRIATENESS OF THE INVESTMENT OPTIONS OFFERED BY THE PLAN. THE BOARD MAY REMOVE OR PHASE OUT AN INVESTMENT OPTION IF THE INVESTMENT OPTION HAS FAILED TO MEET THE ESTABLISHED EVALUATION CRITERIA OR FOR OTHER GOOD CAUSE AS DETERMINED BY THE BOARD. ~~Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter.~~ Neither the Trustee, ~~nor~~ the Board, THE PLAN ADMINISTRATOR NOR THE CITY shall be held liable for any losses or changes to a Participant's interest that results from that Participant's choice of investment option.

Section 9. Section 14-1-9, subsection (H), W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBSECTION (5) to read as follows:

14-1-9: POLICE PENSION BOARD:

(H) Resignation and Removal of Members; Appointment of Successors:

(5) A MEMBER OF THE BOARD MAY BE REMOVED FROM THE BOARD IN THE MANNER DEFINED IN SECTION II(F) OF THE CITY OF WESTMINSTER POLICE AND GENERAL EMPLOYEE PENSION PLAN BY-LAWS.

Section 10. Section 14-1-10, subsection (A)(2)(c), W.M.C., is hereby AMENDED to read as follows:  
14-1-10: POWERS AND DUTIES OF THE TRUSTEE:

(A) Investment of Trust Fund:

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, which contracts shall then become a part of this plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's General Employee ~~AND/OR FIRE~~ Pension Plan in which case the funds of the two ~~OR MORE~~ plans may be co-mingled for investment purposes.

Section 11. Section 14-1-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:  
14-1-12: MISCELLANEOUS:

(B) Notices from Participants to be Filed with ~~Board~~ PLAN ADMINISTRATOR: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the ~~Board~~ PLAN ADMINISTRATOR for such purpose and filed with the ~~Board~~ PLAN ADMINISTRATOR, which shall not be effective until received by the ~~Board~~ PLAN ADMINISTRATOR.

Section 12. Section 14-2-1, W.M.C., is hereby AMENDED BY THE ADDITION OF A NEW SUBSECTION (D) to read as follows:

14-2-1: NAME AND PURPOSE OF PLAN; HISTORY:

(D) ON SEPTEMBER 1, 2004, THE CITY TRANSFERRED THE ASSETS OF THE FIREFIGHTER'S PENSION PLAN TO THE FIRE AND POLICE PENSION ASSOCIATION OF COLORADO DEFINED BENEFIT SYSTEM AND THE FIREFIGHTER'S PENSION PLAN WAS TERMINATED. PARTICIPANTS IN THE FIREFIGHTER'S

PENSION PLAN BECAME PARTICIPANTS IN THE FPPA DEFINED BENEFIT SYSTEM. ASSETS IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) IN THE FIREFIGHTER'S PENSION PLAN WERE TRANSFERRED TO THE GENERAL EMPLOYEE'S PENSION PLAN FOR USE AS DEFINED IN SECTION 14-2-7(C)(4) OF THIS PLAN.

Section 13. Section 14-2-2, W.M.C., is hereby AMENDED to read as follows:

14-2-2: DEFINITIONS: When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person or entity who, pursuant to Section 14-2-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The General Employee Pension Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "CODE": THE INTERNAL REVENUE CODE OF 1986, AS IT MAY BE AMENDED, OR RE-ENACTED OR REPLACED. REFERENCE TO A SPECIFIC SECTION OF THE CODE SHALL MEAN THE SECTION IN EFFECT AT THE DATE OF ADOPTION OF THIS PLAN, OR ANY SUCCESSOR SECTION TO SUCH SECTION.

~~(D)~~ (E) "COMPENSATION": The base pay of a Participant for services rendered to the City, ~~including longevity pay,~~ but excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE'S) budgeted for their positions.

~~(E)~~ (F) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

~~(F)~~ "DIRECT ROLLOVER": A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

~~(G)~~ "DISTRIBUTE": A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Federal Internal Revenue Service Code, are distributees with regard to the interest of the spouse or former spouse.

~~(H)~~ "ELIGIBLE RETIREMENT PLAN": An eligible retirement plan is an individual retirement account described in Section 408(a) of the Federal Internal Revenue Service (IRS) Code, an individual retirement annuity described in Section 408(b) of the IRS Code, an annuity plan described in Section 403(a) of the IRS Code, or a qualified trust described in Section 401(a) of the IRS Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

~~(I)~~ "ELIGIBLE ROLLOVER DISTRIBUTION": An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: Any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Service Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for new unrealized appreciation with respect to employer securities).

~~(J)~~ (G) "EMPLOYEE": Any person who fills an authorized position that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and police officers as defined in this Chapter, temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

~~(K)~~ "FIREFIGHTER": Any person who is employed in the Fire Department except clerical employees and volunteers.

~~(L)~~ (H) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.

~~(M)~~ (I) "INACTIVE PARTICIPANT": Any person who has been a contributing participant to this plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of all respective interest in the plan.

~~(N)~~ (J) "INTEREST": The amount of a participant's share in the trust fund including City contributions, employee contributions and earnings.

~~(O)~~ (K) "PARTICIPANT": Any contributing participant or inactive participant.

~~(P)~~ (L) "PLAN": The Pension Plan established in this chapter and all subsequent amendments thereto.

(M) "PLAN ADMINISTRATOR": THE PERSON APPOINTED BY THE CITY MANAGER TO ADMINISTER THE PLAN.

~~(Q)~~ (N) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.

~~(R)~~ (O) "POLICE OFFICER": Any person who is employed by the City as a ~~recognized law enforcement~~ POLICE officer AS DEFINED BY TITLE III OF THIS CODE AND WHO REPORTS TO THE CHIEF OF POLICE ~~and who has sworn to enforce the ordinances of the City; the laws of the State of Colorado and the United States of America. The term Police Officer shall not include dispatchers, clerical employees, animal control personnel, civilian administrative personnel, reserve officers, code enforcement personnel and any other employees who do not regularly enforce the traffic and criminal codes and ordinances of the City and State.~~

~~(S)~~ (P) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in ~~either the Police or Fire~~ Pension Plan, without a break in municipal service, the employee's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

~~(T)~~ (Q) "TOTAL DISABILITY": A disability which permanently renders a participant unable to perform satisfactorily the usual duties of his employment with the City as determined by the Board and which results in his termination of employment with the City.

~~(U)~~ (R) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

~~(V)~~ (S) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-2-10 and any duly appointed and qualified successor trustees.

Section 14. Section 14-2-3, subsection (A)(1), W.M.C., is hereby AMENDED to read as follows:

14-2-3: PARTICIPATION OF EMPLOYEES:

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). ~~Each person who is an employee on January 6, 1986 but who has not yet completed twenty-two (22) months of service with the City may elect to become a Contributing Participant on January 6, 1986, or upon the attainment of the age of eighteen (18), whichever is later.~~

~~The election shall be made on a form prescribed by the Board and must be signed by the employee and submitted to the Trustee by January 6, 1986, or such later date as prescribed by the Board. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin.~~ By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

Section 15. Section 14-2-4, subsections (A)(2), (B)(1)(c), (B)(3), (C)(1) and (E), W.M.C., are hereby AMENDED to read as follows:

14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS

(A) Contributions by the City.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan ~~on~~ each pay ~~day~~ PERIOD.

(B) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the ~~Trustee~~ PLAN CUSTODIAN according to the provisions of this chapter.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the plan ~~on~~ each pay~~day~~ PERIOD.

(C) Retirement Medical Savings Account:

(1) Subject to approval by the Internal Revenue Service, each participant shall have the option of designating up to 25% of his OR HER COMBINED mandatory and City contribution to be used for future medical expenses as provided for in Section 401(h) of the Federal Internal Revenue Service Code. Contributions to the medical savings account will not be taxed at ~~retirement~~ SEPARATION FROM SERVICE nor upon use for medical purposes ~~during retirement~~ AFTER SEPARATION FROM SERVICE. The retirement medical savings accounts will be subject to the rules and requirements issued by the City Manager.

(E) CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE. THE EMPLOYER SHALL MAKE ALL CONTRIBUTIONS TO THE PLAN REQUIRED BY SECTION 414(U) OF THE CODE WHICH ARE ATTRIBUTABLE TO PERIODS OF QUALIFIED MILITARY SERVICE. IN ADDITION, THE EMPLOYER SHALL ALLOW ANY PARTICIPANT TO MAKE ELECTIVE CONTRIBUTIONS FOR PERIODS OF QUALIFIED MILITARY SERVICE AND THE EMPLOYER SHALL MAKE ANY MATCHING CONTRIBUTIONS BASED UPON SUCH CONTRIBUTIONS AT THE RATE AT WHICH SUCH ELECTIVE CONTRIBUTIONS OF THE EMPLOYEE WOULD HAVE BEEN MADE DURING THE APPLICABLE PERIOD OF QUALIFIED MILITARY SERVICE, EACH AS REQUIRED BY SECTION 414(U) OF THE CODE. THE EMPLOYER MAY ELECT TO MAKE ADDITIONAL CONTRIBUTIONS BASED UPON SUCH QUALIFIED MILITARY SERVICE BASED UPON EMPLOYER CONTRIBUTIONS MADE DURING THE APPLICABLE PERIOD, PROVIDED SUCH ELECTION BY THE EMPLOYER IS MADE ON A NON-DISCRIMINATORY BASIS APPLICABLE TO ALL SIMILARLY SITUATED EMPLOYEES WHO HAVE QUALIFIED MILITARY SERVICE. ANY CONTRIBUTIONS MADE UNDER THIS SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 414(U) OF THE CODE AND THE PROVISIONS OF THIS PLAN SHALL BE APPLIED CONSIDERING ANY SUCH CONTRIBUTIONS AS HAVING BEEN MADE DURING THE PLAN YEAR TO WHICH THE CONTRIBUTIONS RELATE. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED MILITARY SERVICE" MEANS SERVICE IN THE UNIFORMED SERVICES OF THE UNITED STATES (AS DEFINED IN CHAPTER 43 OF TITLE 38, UNITED STATES CODE) BY ANY INDIVIDUAL IF SUCH INDIVIDUAL IS ENTITLED TO RE-EMPLOYMENT RIGHTS WITH RESPECT TO SUCH SERVICE.

Section 16. Section 14-2-5, W.M.C., is hereby AMENDED to read as follows:

14-2-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of ~~twenty-five~~ ONE HUNDRED percent (~~25~~ 100%) of his OR HER compensation for such year or ~~\$30,000~~ 40,000, provided such figure shall ~~change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation~~ BE ADJUSTED AS PROVIDED IN CODE SECTION 415(D). FOR LIMITATION YEARS BEGINNING BEFORE JANUARY 1, 2002, THE FOREGOING PERCENTAGE LIMITATION IS 25% AND THE FOREGOING DOLLAR LIMITATION IS \$30,000, AS ADJUSTED PURSUANT TO CODE SECTION 415(D). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and non-deductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the non-deductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000.00, subject to adjustment as provided for by law or regulation, for the account of any individual participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer

maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the employer.

~~(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the plan year. The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer:~~

~~(i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(e)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(e)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.~~

~~(6) (5) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a participant under a plan established under Federal Internal Revenue Service Code Sections 125, 457, 401(k), OR 403(b)-132(F)(4), 402(G)(3), 457, 401(K), OR 403(B). THE ANNUAL COMPENSATION OF EACH PARTICIPANT TAKEN INTO ACCOUNT IN DETERMINING ALLOCATIONS FOR ANY PLAN YEAR BEGINNING AFTER DECEMBER 31, 2001, SHALL NOT EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000), AS ADJUSTED FOR COST-OF-LIVING INCREASES IN ACCORDANCE WITH §401(A)(17)(B) OF THE CODE. FOR YEARS BEGINNING PRIOR TO JANUARY 1, 2002, THE DOLLAR AMOUNT IN THE FOREGOING SENTENCE IS ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000). ANNUAL COMPENSATION MEANS COMPENSATION DURING THE PLAN YEAR OR SUCH OTHER CONSECUTIVE 12-MONTH PERIOD OVER WHICH COMPENSATION IS OTHERWISE DETERMINED UNDER THE PLAN (THE DETERMINATION PERIOD). THE COST-OF-LIVING ADJUSTMENT IN EFFECT FOR A CALENDAR YEAR APPLIES TO ANNUAL COMPENSATION FOR THE DETERMINATION PERIOD THAT BEGINS WITH OR WITHIN SUCH CALENDAR YEAR.~~

~~(C) Contribution Percentage Test for Matching and Employee Contributions.~~

~~(1) General Rule: The average contribution percentage in any year of all participants who are highly compensated employees may not exceed the greater of the following amounts:~~

~~(a) 125% of the average contribution percentage for such year of all participants who are not highly compensated employees; or~~

~~(b) The average contribution percentage for such year of all participants who are not highly compensated employees, plus two percentage points (2%), limited to two times the average contribution percentage for all such participants.~~

~~For purposes of the foregoing, the average contribution percentage is the average of the sum of the City contributions under Section 14 1-4(A) allocated to the account of the applicable participant plus such participant's voluntary non-deductible contributions, divided by the total compensation of such participant for each such participant. If the amount to be contributed by the City and allocated to the accounts of participants who are highly compensated employees exceeds the foregoing limitations, then the amount so allocated shall be reduced, beginning with the highest dollar amount of contribution among such participants, to the extent necessary to satisfy such limitation and such excess amount, together with earnings thereof, and shall be distributed to such participants no later than 2 1/2 months after the end of the plan year in which such contributions were made.~~

~~\_\_\_\_\_ (2) Adjustment of Contribution Percentage: The employer may in its discretion make contributions to the Plan, which shall be designated as additional matching contributions and which shall be allocated to the accounts of participants who are not highly compensated employees, in order to increase the average contribution percentage of such participants. In applying the limitation above, the administrator shall take into account such designated employer contributions.~~

~~\_\_\_\_\_ (3) Excess Aggregate Contributions: Employer contributions and employee contributions in excess of the limitations of this Section are excess aggregate contributions.~~

~~\_\_\_\_\_ (4) Disposition of excess aggregate contributions:~~

~~\_\_\_\_\_ (a) General Rule: Notwithstanding any other provision of this Plan, excess aggregate contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than the last day of each Plan year to participants to whose accounts such excess aggregate contributions were allocated for the preceding Plan year. If such excess aggregate contributions are distributed more than 2 1/2 months after the last day of the Plan year in which such excess amounts arose, a 10% excise tax will be imposed on the employer maintaining the Plan with respect to those amounts. Excess aggregate contributions shall be treated as annual additions under the Plan.~~

~~\_\_\_\_\_ (b) Determination of Income or Loss: Excess aggregate contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to excess aggregate contributions is the sum of: (i) income or loss allocable to the participant's employee contribution account, matching contribution account (if any, and if all amounts therein are not used in the deferral percentage test under Internal Revenue Service Code Section 401(k)) and, if applicable, qualified non-elective contribution account and elective deferral account for the plan year multiplied by a fraction, the numerator of which is such participant's excess aggregate contributions for the year and the denominator of which is the participant's account balance(s) attributable to contribution percentage amount without regard to any income or loss occurring during such plan year; and (ii) 10% of the amount determined under (i) multiplied by the number of whole calendar months between the end of the Plan year and date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.~~

~~\_\_\_\_\_ (c) Forfeitures of Excess Aggregate Contributions: Forfeitures of excess aggregate contributions shall be applied to reduce employer contributions.~~

~~\_\_\_\_\_ (d) Accounting for Excess Aggregate Contributions: Excess aggregate contributions shall be forfeited, if forfeitable or distributed on a pro-rata basis from the participant's employee contribution account, employer contribution account, and qualified matching contribution account, if any, (and, if applicable, the participant's qualified non-elective contribution account or elective deferral account, or both).~~

~~\_\_\_\_\_ (e) Aggregate Limit: For purposes of this Section, the term "Aggregate limit" shall mean the sum of (i) 125% of the greater of the deferral percentage of the non-highly compensated employees for the plan year or the contribution percentage of the non-highly compensated employees under the plan subject to Internal Revenue Service Code Section 401(m) for the plan year beginning with or within the plan year of the cash or deferred arrangement under Section 401(k) and (ii) The lesser of 200% of 2 plus the lesser of such deferral percentage or contribution percentage. The word "lesser" shall be substituted for "greater" in (i), above, and "greater" shall be substituted for "lesser" after "2 plus the" in (ii) if by substituting such terms would result in a larger aggregate limit.~~

~~\_\_\_\_\_ (5) Special Rule:~~

~~\_\_\_\_\_ (a) In the event that this plan satisfied the requirements of Sections 401(m), 401(a)(4), or 410(b) of the Internal Revenue Service Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Internal Revenue Service Code only if aggregated with this plan, then this Section shall be applied by determining the deferral percentage test under Internal Revenue Service Code Section 401(m) of employees as if all such plans were a single plan. For plan years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Internal Revenue Service Code only if they have the same plan year.~~

~~\_\_\_\_\_ (6) Highly Compensated Employee: For purposes of this Section, an employee is treated as a "Highly Compensated Employee" (HCE) if:~~

~~\_\_\_\_\_ (a) During the preceding year, the employee received compensation in excess of \$80,000, to be indexed for cost-of-living increases; and the employee was also in the top paid twenty percent (20%) of employees during that year; or~~

~~\_\_\_\_\_ (b) The employee was a five percent (5%) owner at any time during the year or the preceding year.~~

~~\_\_\_\_\_ (c) Rules of Construction. The determination of who is a highly compensated employee, including the determinations of the number and identity of employees in the top paid group, will be made in accordance with Section 414(q) of the Federal Internal Revenue Service Code and the regulations thereunder.~~

~~(D) (C) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, third party and administrative charges and changes in the fair market value of~~

the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants. THIRD PARTY AND ADMINISTRATIVE CHARGES SHALL BE ALLOCATED IN THE RATIO THAT THE TOTAL DOLLAR VALUE OF THE INTEREST OF EACH SUCH PARTICIPANT IN THE TRUST FUND BEARS TO THE AGGREGATE DOLLAR VALUE OF ALL OF SUCH INTERESTS OF ALL SUCH PARTICIPANTS OR EQUALLY TO ALL PARTICIPANTS.

~~(E)~~ (D) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

~~(F)~~ (E) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be AT LEAST the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event described in Section 14-2-7 (A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

~~(G)~~ (F) Vesting of Participant's Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this Chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this Chapter and not as a result of any transfer of said interest or account.

~~(H)~~ (G) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsection ~~(G)~~ (F) of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and non-forfeitable for all purposes.

(H) INVESTMENT OF PARTICIPANT'S ACCOUNT: A PARTICIPANT'S ACCOUNT SHALL BE INVESTED IN THE INVESTMENT OPTIONS IN ACCORDANCE WITH THE INVESTMENT ELECTIONS SPECIFIED BY THE PARTICIPANT. A PARTICIPANT MAY CHANGE THE INVESTMENT OF CONTRIBUTIONS AND MAY REALLOCATE AMOUNTS IN THEIR ACCOUNT AMONG THE INVESTMENT OPTIONS IN A MANNER DETERMINED BY THE PLAN CUSTODIAN AND SUBJECT TO SUCH PROVISIONS AS THE PLAN ADMINISTRATOR MAY ADOPT. ALLOCATION OF ASSETS AMONG INVESTMENT OPTIONS IS SOLELY THE RESPONSIBILITY OF EACH PARTICIPANT. THE FACT THAT AN INVESTMENT OPTION IS AVAILABLE FOR INVESTMENT TO PARTICIPANTS UNDER THE PLAN SHALL NOT BE CONSTRUED AS A RECOMMENDATION FOR INVESTMENT IN THAT INVESTMENT OPTION.

Section 17. Section 14-2-6, subsections (A)(2) and (B)(3), W.M.C., are hereby AMENDED to read as follows:

14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:

(A) Retirement Date:

(2) Early Retirement: Any contributing participant who ~~has attained~~ WILL ATTAIN the age of fifty-five (55) DURING THE YEAR may elect to retire earlier than the normal retirement age.

(B) Beneficiaries:

(3) Insurance Policies: The Beneficiary of any insurance ~~or annuity contract~~ on a Participant's life shall be determined and designated as provided in Section 14-2-8(A).

Section 18. Section 14-2-7, subsections (C), (D), (F)(1), (G), (H) and (J), W.M.C., are hereby AMENDED to read as follows:

14-2-7: DISTRIBUTION FROM TRUST FUND

(C) Distribution of Interests:

~~(1) Distribution Upon Retirement or Total Disability: If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.~~

~~———— (2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after the end of the plan year in which the participant's death occurs or the date the Trustee determines the identity of the beneficiary, whichever is later, unless the beneficiary elects to defer benefits pursuant to paragraph (5) of this Subsection.~~

~~———— (3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, unless he elects to defer benefits pursuant to paragraph (5) of this Subsection.~~

~~(4) (1) Insurance and Annuity Contracts: If there has been an investment in a life insurance or annuity contract for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance or annuity contract by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. Any annuity purchased or acquired by the trustee and distributed to a participant under the provisions of this subsection (C) shall, with respect to such participant, be nontransferable and the annuity contract will so provide. After December 31, 1996, no new life insurance contracts may be adopted as pension investments.~~

~~(5) (2) Election to Defer Benefits: A Participant may elect, with the consent of the Board, to have DEFER the commencement of distribution of his OR HER benefit deferred until a date later than the date specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, before the date distribution would otherwise commence, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence if the deferral is approved by the Board. Any change to the terms of the deferral must be resubmitted in writing to the Board for approval unless the change in terms is a request for the rollover of funds to an individual retirement account or a qualified plan. No election to defer or change the method of payment may be made more than once every six months once payments have commenced.~~

~~(6) (3) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefore upon the Board. A participant's interest that is less than or equal to the minimum dollar amount as prescribed by the Internal Revenue Service may be distributed without receiving written application from the participant.~~

(4) BENEFITS PAYABLE FROM THE 401(h) ACCOUNT:

(a) BENEFITS ARE PAYABLE FROM THE RETIREMENT MEDICAL SAVINGS ACCOUNT ONLY UPON RETIREMENT, SEPARATION OF SERVICE, DEATH OR TOTAL DISABILITY.

(b) BENEFITS PAYABLE FROM A 401(h) ACCOUNT SHALL INCLUDE ONLY PAYMENTS OR REIMBURSEMENTS FOR MEDICAL CARE (AS DEFINED IN CODE SECTION 213(d)(1)).

(c) MEDICAL CARE PAYMENTS SHALL ONLY BE PAID PURSUANT TO A REIMBURSEMENT APPLICATION.

(d) NO REFUNDS OF CONTRIBUTIONS SHALL BE MADE. ALL CONTRIBUTIONS REMAIN IN THE 401(h) ACCOUNT UNTIL USED FOR MEDICAL CARE PAYMENTS.

(e) REIMBURSEMENTS MAY NOT BE MADE FOR ANY EXPENSE FOR WHICH THE RETIRED PARTICIPANT OR HIS OR HER SPOUSE OR DEPENDENTS RECEIVE, OR ARE ELIGIBLE TO RECEIVE, PAYMENT OR REIMBURSEMENT FROM ANOTHER SOURCE.

(f) IN ORDER TO RECEIVE BENEFITS FROM THE 401(h) ACCOUNT, THE RETIRED PARTICIPANT MUST AGREE TO PROVIDE APPROPRIATE DOCUMENTATION OF THE EXPENDITURE.

(D) Transfers Between Qualified Plans:

(1) In General: The Trustee and the Board PLAN CUSTODIAN, upon their mutual agreement, are authorized to receive and add to the interest of any Participant his THE PARTICIPANT'S vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfied SATISFIES the requirements under law for transfers between qualified plans or rollover contributions. In such event,

the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this plan and trust CONCERNING EMPLOYER CONTRIBUTIONS. The Trustee is also authorized, at the direction of the ~~Board~~ PLAN CUSTODIAN and at the request of the Participant, to transfer such Participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers.

(2) For Distributions Made on or after January 1, 1993: Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) FOR DISTRIBUTIONS MADE AFTER DECEMBER 31, 2001. AN ELIGIBLE RETIREMENT PLAN SHALL ALSO MEAN AN ANNUITY CONTRACT DESCRIBED IN §403(B) OF THE CODE AND AN ELIGIBLE PLAN UNDER §457(B) OF THE CODE WHICH IS MAINTAINED BY A STATE, POLITICAL SUBDIVISION OF A STATE, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR POLITICAL SUBDIVISION OF A STATE AND WHICH AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS TRANSFERRED INTO SUCH PLAN FROM THIS PLAN. THE DEFINITION OF ELIGIBLE RETIREMENT PLAN SHALL ALSO APPLY IN THE CASE OF A DISTRIBUTION TO A SURVIVING SPOUSE, OR TO A SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATION ORDER, AS DEFINED IN §414(P) OF THE CODE. THE PLAN SHALL BE PERMITTED TO ACCEPT ROLLOVERS FROM ANY TYPE OF ELIGIBLE RETIREMENT PLAN EXCEPT TO THE EXTENT LIMITED IN SECTION 14-2-7.

#### (4) DEFINITIONS.

1. ELIGIBLE ROLLOVER DISTRIBUTION. AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTE, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: (I) ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTE OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTE AND THE DISTRIBUTE'S DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; (II) ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER §401(A)(9) OF THE CODE; (III) ANY HARDSHIP DISTRIBUTION AS DESCRIBED IN §401(K)(2)(B)(I)(IV) OF THE CODE (APPLICABLE ONLY TO DISTRIBUTIONS AFTER DECEMBER 31, 1999); AND (IV) THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDABLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES). ANY AMOUNT THAT IS DISTRIBUTED ON ACCOUNT OF HARDSHIP SHALL NOT BE AN ELIGIBLE ROLLOVER DISTRIBUTION AND THE DISTRIBUTE MAY NOT ELECT TO HAVE ANY PORTION OF SUCH A DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN. A PORTION OF A DISTRIBUTION SHALL NOT FAIL TO BE AN ELIGIBLE ROLLOVER DISTRIBUTION MERELY BECAUSE THE PORTION CONSISTS OF AFTER-TAX EMPLOYEE CONTRIBUTIONS WHICH ARE NOT INCLUDIBLE IN GROSS INCOME. HOWEVER, SUCH PORTION MAY BE TRANSFERRED ONLY TO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN §408(A) OR (B) OF THE CODE, OR TO A QUALIFIED DEFINED CONTRIBUTION PLAN DESCRIBED IN §401(A) OR 403(A) OF THE CODE THAT AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS SO TRANSFERRED, INCLUDING SEPARATELY ACCOUNTING FOR THE PORTION OF SUCH DISTRIBUTION WHICH IS INCLUDIBLE IN GROSS INCOME AND THE PORTION OF SUCH DISTRIBUTION WHICH IS NOT SO INCLUDIBLE. THE PLAN SHALL NOT ACCEPT A ROLLOVER OF AFTER-TAX EMPLOYEE CONTRIBUTIONS UNLESS SPECIFICALLY ELECTED IN THE ADOPTION AGREEMENT OR A SUPPLEMENT THERETO.

2. ELIGIBLE RETIREMENT PLAN. AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN §408(A) OF THE CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN §408(B) OF THE CODE, AN ANNUITY PLAN DESCRIBED IN §403(A) OF THE CODE, OR A QUALIFIED TRUST DESCRIBED IN §401(A) OF THE CODE, THAT ACCEPTS THE DISTRIBUTE'S ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

3. DISTRIBUTE. A DISTRIBUTE INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE

PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS DEFINED IN §414(P) OF THE CODE, ARE DISTRIBUTEES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

4. DIRECT ROLLOVER. A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEE.

(F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; ~~provided, that nothing in this Chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of set-off, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.~~

(G) Manner of Distribution: A Participant's interest may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY (OR UNTIL THE ACCOUNT IS EXHAUSTED) and not in installment frequency greater than monthly. THIS MAXIMUM PERIOD SHALL BE DETERMINED UNDER THE APPLICABLE IRS TABLES AT THE TIME THE INITIAL MONTHLY INSTALLMENT PAYMENT BECOMES PAYABLE. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six months.

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

~~(4) If the Participant or Beneficiary fails to notify the trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence, the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years, unless the participant's account balance meets the minimum automatic distribution amount allowed by the Internal Revenue Service Regulations.~~

(H) Limitation on Duration of Payments: No distribution shall be made over a period exceeding ~~twenty (20) years~~ THE JOINT LIFE EXPECTANCY OF THE PARTICIPANT AND HIS BENEFICIARY. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(J) Special Rules for Distributions after the Participant's Death:

(4) RMSA DISTRIBUTIONS AFTER DEATH:

(a) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT (RMSA) DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA, THE ACCOUNT MAY BE USED FOR THE BENEFIT OF THE PARTICIPANT'S SPOUSE AND DEPENDENTS UNDER THE TERMS OF SECTION 14-2-7(C)(4).

(b) SHOULD A PARTICIPANT WITH A BALANCE IN THE RETIREMENT MEDICAL SAVINGS ACCOUNT DIE PRIOR TO EXHAUSTING THE BALANCE IN THE RMSA AND WITHOUT A SPOUSE OR DEPENDENT, THE PARTICIPANT'S DESIGNATED BENEFICIARY, IF ANY NAMED, SHALL BE ELIGIBLE TO RECEIVE THE REMAINING BENEFITS.

Section 19. Section 14-2-9, subsections (B)(3) and (H), W.M.C., are hereby AMENDED to read as follows:

14-2-9: GENERAL EMPLOYEE PENSION BOARD:

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. THE BOARD SHALL ADOPT VARIOUS INVESTMENT OPTIONS FOR THE INVESTMENT OF CONTRIBUTIONS BY THE PARTICIPANT AND SHALL MONITOR AND EVALUATE THE APPROPRIATENESS OF THE INVESTMENT OPTIONS OFFERED BY THE PLAN. THE BOARD MAY REMOVE OR PHASE OUT AN INVESTMENT OPTION IF THE INVESTMENT OPTION HAS FAILED TO MEET THE ESTABLISHED EVALUATION CRITERIA OR FOR OTHER GOOD CAUSE AS DETERMINED BY THE BOARD. ~~Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter.~~ Neither the Trustee, ~~nor~~ the Board, THE PLAN ADMINISTRATOR NOR THE CITY shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment option.

(H) Resignation and Removal of Members; Appointment of Successors:

(6) A MEMBER OF THE BOARD MAY BE REMOVED FROM THE BOARD IN THE MANNER DEFINED IN SECTION II(F) OF THE CITY OF WESTMINSTER POLICE AND GENERAL EMPLOYEE PENSION PLAN BY-LAWS.

Section 20. Section 14-2-10, subsection (A)(2)(c), W.M.C., is hereby AMENDED to read as follows:  
14-2-10: POWERS AND DUTIES OF THE TRUSTEE:

(A) Investment of Trust Fund:

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, which contracts shall then become a part of this plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's Police ~~and/OR Fire~~ Pension Plan in which case the funds of the two ~~OR MORE~~ plans may be co-mingled for investment purposes.

Section 21. Section 14-2-12, subsection (B), W.M.C., is hereby AMENDED to read as follows:  
14-2-12: MISCELLANEOUS

(B) Notices from Participants to be Filed with ~~Board~~ PLAN ADMINISTRATOR: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the ~~Board~~ PLAN ADMINISTRATOR for such purpose and filed with the ~~Board~~ PLAN ADMINISTRATOR, which shall not be effective until received by the ~~Board~~ PLAN ADMINISTRATOR.

Section 22. This ordinance shall take effect upon its passage after second reading.

Section 23. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of October, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of October, 2006.