



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council

DATE: July 11, 2007

SUBJECT: Study Session Agenda for July 16, 2007

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

A light dinner will be served in the Council Family Room 6:00 P.M.

CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

PRESENTATIONS

6:30 P.M.

1. Historic Resources Intensive Survey Results: Harris Park and Pillar of Fire Neighborhoods and Selected Transportation Resources
2. Modifications to Westminster Municipal Code Title XVI to Include Competitive Cable TV Franchise Application Process - Attachment
3. Proposed Amendments to Titles III, IV, and V of the Westminster Municipal Code Concerning Tax Administration

EXECUTIVE SESSION

None at this time.

INFORMATION ONLY ITEMS – Does not require action by City Council

1. Monthly Residential Development Report - Attachment
2. Battle of the Bands
3. Delivery of The City's Performance Report, *Take a Closer Look: How Performance Measures Build a Better City*

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER

Staff Report

City Council Study Session Meeting
July 16, 2007



SUBJECT: Historic Resources Intensive Survey Results: Harris Park and Pillar of Fire
Neighborhoods and Selected Transportation Resources

PREPARED BY: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action:

Review staff report and provide feedback on proposed future historic resources survey work and efforts to encourage private owners to nominate their property for historic landmark designation.

Summary Statement:

The City received a grant in the amount of \$38,750 from the Colorado Historical Society Certified Local Government (CLG) program to conduct a historic resources survey of 135 properties in 2006, including 100 Harris Park properties, 25 in the Pillar of Fire neighborhood, and ten “transportation resources.” The survey work is complete and will soon be released for public review. Staff will present the results of this survey, along with photo examples of the resources surveyed, at the City Council’s July 16th study session.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues:

Does City Council support continued historic resources survey work in Westminster?

Does City Council support Staff's recommendation to encourage private property owners to apply for local historic landmark designation?

Alternative:

Provide other direction for staff if the further survey work and efforts to encourage historic landmark nominations are not what City Council desires.

Background Information:

In 2005, the City completed the Historic Resources Survey Plan, available online at the City's website: http://www.ci.westminster.co.us/city/hp/default_surveypage.htm, which was also funded by a CLG grant from the Colorado Historical Society. The survey found more than 1700 buildings that were more than 50 years of age in Westminster, most of them outside of the historic Westminster roots in the Harris Park neighborhood (the area bounded by Lowell and Bradburn Boulevards, and 72nd to 80th Avenue). The Survey Plan set forth factors to be considered in establishing priorities for survey work. Based on these factors, it was decided to start with the Harris Park neighborhood and work outward through the City from there. The City applied for another CLG grant and received \$38,750 in 2006 to proceed with survey of at least 100 properties in Harris Park, 25 in the Pillar of Fire neighborhood, and ten transportation resources.

Some fine points in the 2006-07 survey report are still being reviewed by the State Historic Preservation Office (SHPO), however, copies have been provided to City Council and to the Historic Landmark Board. The survey report is also on the City's website for public review, although appendices will not be posted until the details are finalized with the SHPO.

Points of Interest

Some of the points of interest from this survey include the following:

- A number of buildings have been identified as eligible for the National Register of Historic Places. The exact number is under review by the SHPO staff, but the figure appears to be about thirteen properties.
- Many more (58) buildings have been identified as eligible for local historic landmark designation based on architectural integrity alone. More may eventually qualify under the City's ordinance if the owners research the history of their properties, which may provide a basis for landmark designation independent of the architecture.

- The survey of the Harris Park neighborhood provides the background for the development patterns that occurred from the late 19th century until the 1950s, resulting in the idiosyncratic urban neighborhood where 100-year-old houses are interspersed into 1950s and later homes.
- Identification of the specific development patterns in the Harris Park and Pillar of Fire neighborhoods is relevant to the concept of whether local historic districts can be established, what a district would mean in the context of local development patterns, and how this local type of historic district could be managed.
- The survey of the Pillar of Fire neighborhood helped to distinguish between houses associated with the Westminster University era versus the post-University period.
- Conclusions could not be drawn about the significance of particular examples in the Pillar of Fire neighborhood because only houses within annexed Westminster territory were surveyed. City staff has since been advised that it would be appropriate to apply for a grant to survey the rest of the Pillar of Fire neighborhood, including the unincorporated area. Until all of the historic buildings in this neighborhood are surveyed, it is not possible to develop a good historic context for the neighborhood's development and it is not possible to determine how significant a particular house may be to the neighborhood.
- The SHPO staff believes that transportation resources are an important subject for research due to the very strong influence the automobile has had on American society and also because these buildings are being demolished very quickly. Survey of eleven of these resources, even though many lack strong architectural significance, provided an opportunity to develop the historic context of gas stations and motor hotels as part of the growth of Westminster. This portion of the survey report is interesting reading.

Observations

An important theme in presenting the results of this survey is that the survey itself has no impact on the status of any of the surveyed buildings. At least one surveyed house was demolished by the Pillar of Fire Church during the survey period and more of the surveyed structures will probably be demolished in the future. The goal of the survey is to gather and present information so that the community can better understand its historic resources and make decisions on their future status.

Another point has to do with the type of review involved with properties eligible for the National Register of Historic Places as compared to buildings that may be eligible for local landmark designation. The National Register standards are strict and are prescribed by federal agencies pursuant to the standards set forth by the U.S. Secretary of Interior. The federal regulations are directly connected to federal preservation tax credits, so a tight rein is held on interpretation of these regulations.

However, local historic designation is a local matter. The Westminster Historic Landmark Board decides whether a property should be designated a landmark pursuant to the criteria established by the City Council by ordinance. Local criteria include:

Properties receiving historic designations shall be at least fifty (50) years old except as otherwise provided herein and possess architectural, social, or geographical/ environmental importance by meeting one or more of the following:

1. Exemplifies specific elements of an architectural style or period;
2. Is an example of the work of an architect or builder who is recognized for expertise nationally, statewide, regionally, or locally;
3. Demonstrates superior craftsmanship or high artistic value;
4. Represents an innovation in construction, materials or design;
5. Represents a style particularly associated with the Westminster area;
6. Represents a built environment of a group of people in an era of history;
7. Represents a pattern or grouping of elements representing at least one of the above criteria;
8. Has undergone significant historic remodel;
9. Is the site of historic event that had an effect upon society;
10. Exemplifies cultural, political, economic or social heritage of the community;
11. Represents an association with a notable person or the work of a notable person;
12. Represents a typical example/association with a particular ethnic group;
13. Represents a unique example of an event in Westminster's history;
14. Enhances sense of identity of the community;
15. Is an established and familiar natural setting or visual feature of the community.

Westminster Municipal Code section 11-13-5(A).

Therefore, while there are many buildings in Westminster that represent fine examples of architecture, the significance of others may rest on associations with particular people who were influential in the development of Westminster or exemplify social heritage. This survey recognizes many structures that have architectural significance, but the fact that a building was not found eligible for designation in this survey does not mean that the Historic Landmark Board cannot consider other factors as outlined in the City Code. Also, there are many historic homes outside of the survey area that are eligible for landmark designation. As a result of the publicity surrounding the Harris Park survey work, one owner west of the Harris Park neighborhood has contacted staff about a possible landmark designation for her historic home.

With regard to the concept of establishing local historic districts, this survey work documented historic patterns of development. While in many communities, blocks of adjacent houses were built during a particular decade, thereby creating what is commonly regarded today as a “historic district,” Westminster originally was a collection of small adjacent farms. Few houses were built side-by-side. Therefore, the historic development of Harris Park and the area south of Pillar of Fire included establishment of a few structures from 1890 to 1900. Then there was quite a bit of small farm development on tracts of one to five acres during the next two decades. These small farms were then largely filled in by 1950s era development. Therefore, the pattern of development from several historic periods tells the story of Westminster’s development over a period of 70 years. Typical historic districts comprised of same-vintage buildings are rare in Westminster.

A few areas hold concentrations of building from the earliest periods of Westminster history, including the Pillar of Fire campus, West 73rd Avenue, Wilson Court and Orchard Court north of 73rd Avenue, and Bradburn and Lowell Boulevards. If the concept of a historic district is interpreted to include all development from the birth of community until a neighborhood was “filled in,” it is possible to define many areas as “districts,” referring to the fact that they were fully and gradually developed over a period of 60 years, from 1890 to the 1950s. City staff will be exploring ideas on what defines these neighborhoods and what steps can be taken, including voluntary programs and incentives, to preserve the early 20th century ambiance enjoyed by the residents of these neighborhoods.

Follow-up

The results of this survey work will be made widely available, for example, in City offices and libraries, as well as the Westminster Historic Society office and the Bowles House Museum. Even if a person does not own or live in a house that is considered significant for its architecture or history, the historic context developed in the survey report is detailed, thoughtful and provides a perspective that perhaps has not been recognized until now, when we have the vantage point of looking back over more than a century of Westminster history. This context should provide fascinating reading to anyone who is curious about the development patterns and historic context for the growth of Westminster.

For buildings that are found to be eligible for nomination to the National Register of Historic Places, the owners will be notified of this finding. If owners wish to proceed with the nomination, City staff will assist them with the process.

For buildings that are found to be eligible for local landmark designation, the owners will be notified of this finding. If they are interested in learning more, City staff will assist them with the nomination process, the hearing before the Historic Landmark Board and City Council, and help them understand the process by which they can apply for review of qualified rehabilitation expenses for purposes of obtaining state income tax credits.

It is not necessary for the City Council to take any particular action on the plan, such as approval or adoption. Some communities “take it under advisement,” and use a survey as one point of information in reviewing landmark nominations and developing policies for historic resources.

The Colorado Historical Society and State Historical Fund staff are strongly urging the City to continue to apply for grant funding for ongoing historic resources survey work. The 2005 Survey Plan identified about 75 “scattered” historic resources related to the agricultural heritage of the City.

Staff Report – Historic Resources Intensive Survey Results: Harris Park and Pillar of Fire

Neighborhoods and Selected Transportation Resources

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Several of these have been demolished in the past two years. The CHS and SHF staff are hopeful that the City will work to document and understand these resources, both for historical research purposes and also to support decisions to encourage preservation by citizens of these scattered buildings.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Historic Architectural Survey: 2006-07



WESTMINSTER

Staff Report

City Council Study Session Meeting
July 16, 2007



SUBJECT: Modifications to Westminster Municipal Code Title XVI to Include Competitive Cable TV Franchise Application Process

PREPARED BY: David Puntteney, Information Technology Director

Recommended City Council Action:

Direct Staff to prepare an ordinance for Council action to amend Title XVI of the Westminster Municipal Code to include a section for competitive cable franchise application process.

Summary Statement:

In December, 2006 the Federal Communications Commission (“FCC”) adopted a rule establishing new requirements for local franchise authorities (LFAs) in considering applications for competitive cable television franchise agreements. Included in these rules are timeframes under which LFAs must grant or deny a competitive franchise application. These new rules were adopted as a result of findings by the FCC that LFAs were creating unreasonable barriers and preventing competition in the cable TV market. The City of Westminster needs to adopt an ordinance defining the competitive cable TV application process and requirements. Staff is recommending an ordinance to amend title XVI of the Westminster City Code to include a section for the competitive cable franchise process. Staff will base the ordinance on the model competitive franchise application ordinance developed by the Greater Metropolitan Telecommunications Consortium.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue:

Does City Council concur with the recommendations for amendments to Title XVI of the Westminster Municipal Code to comply with FCC ruling regarding competitive cable TV franchise applications and to establish a fee of \$2,000 to cover the administrative cost associated with the review and approval of competitive cable TV franchise applications?

Does City Council wish to include requirements that applicants define how their future geographic area of cable service and deployment timetable will not result in service being denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides (redlining)?

Alternative:

Do not approve the amendments. Staff does not recommend this option as amendments to the code are required to clearly establish a formal process for competitive cable TV franchise applications and to establish a means of collecting all information required to expedite review and to make a determination to grant or deny franchise applications.

Background Information:

Federal law provides the regulatory framework regarding cable services. The Federal Cable Act allows local governments to require franchises of cable operators, and addresses a variety of matters that can be regulated in a cable franchise. These include customer service standards, categories of programming services offered, payment of franchise fees up to 5% of the cable operator's gross revenue, requirement of channel capacity and equipment for public, educational and government access, financial assurances, capabilities of the cable system and enforcement of technical standards, limited rate regulation, prohibition of exclusive franchises and other matters. Local franchising authorities negotiate franchise agreements with cable operators that address these and other topics.

Federal law requires that a cable operator be awarded a franchise renewal if it has the legal, technical, and financial capability to comply with a franchise that meets the future cable related needs of the community. The City has only one cable franchise agreement, and that agreement is with Comcast.

On December 20, 2006, the Federal Communications Commission ("FCC") adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007, that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the "Competitive Franchise Application Rule" or "CFAR"). The CFAR outlines certain information that is required as part of the franchise application. In addition, the rulings provide that local franchising authorities may require additional information from an applicant for a competitive cable franchise. The application requirements and application review/determination in the ordinance being proposed by Staff are intended to comply with the new FCC rules.

The CFAR restricts local franchising authorities from denying entry into the market based on level playing field provisions and universal build-out requirements. However, the Communications Act “forbids access to cable service from being denied to any group of potential residential cable subscribers because of neighborhood income. The statute is thus clear that no provider of cable services may deploy services with the intent to redline and “that access to cable service [may not be] denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.” Therefore, staff recommends the franchise application include a requirement for vendors to describe how their future geographic cable services area and timetable will not result in service being denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides (redlining).

The City of Westminster is a member of the Greater Metropolitan Telecommunication Consortium. The Greater Metro Telecommunications Consortium (GMTC) is a board of local government representatives who work together on telecommunications issues. Originally formed in 1992 to facilitate franchise agreements with local cable television companies, members share information and resources pertaining to technologies, laws, ordinances, and policies that govern the impact and implementation of services, and business transactions involving telecommunication related industries. The GMTC has developed a model competitive franchise application ordinance for member agencies to adopt if needed to comply with the CFAR and to standardize the application process. Several Denver Metro Cities have adopted the GMTC model competitive cable TV franchise agreement as drafted by the GMTC.

City Council may have seen recent articles expressing concern on the part of one potential franchise applicant in providing information that they consider to be “sensitive competitive information.” Staff has investigated and determined that information such as build out plans and timetables are not subject to the open records act and therefore can be submitted as confidential information. Staff recommends inclusion of build out plans and timetables as defined in the GMTC model application ordinance in the Westminster ordinance.

A copy of the draft ordinance is attached. Staff is still in the process of making minor changes to this draft, so any final version brought back for official action may appear slightly different.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. _____

COUNCILLOR'S BILL NO. _____

SERIES OF 2007

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE REPEALING AND REENACTING CHAPTERS 1, 3, AND 4 OF TITLE XVI OF THE WESTMINSTER MUNICIPAL CODE, ADOPTING A COMPETITIVE CABLE FRANCHISE REVIEW AND EVALUATION PROCESS IN CONNECTION WITH ANY FRANCHISE APPLICATION SUBMITTED PURSUANT TO §76.41 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS AS A NEW CHAPTER 3 OF TITLE XVI, MAKING CONFORMING CHANGES TO TITLE XVI, AND DECLARING AN EMERGENCY

WHEREAS, On December 20, 2006, the Federal Communications Commission (“FCC”) adopted a new rule, set forth in a Report and Order and Further Notice of Proposed Rulemaking that was released March 5, 2007, that among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the “Competitive Franchise Application Rule” or “CFAR”); and

WHEREAS, the CFAR provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR; and

WHEREAS, the City Council has determined that the best interests of the citizens of Westminster will be served by adoption and codification of a comprehensive evaluation process; and

WHEREAS, the re-ordering of certain Chapters, and minor updates and conforming changes to the language of Title XVI concerning Utilities and Franchises has become necessary.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 1 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 4 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 2. Chapter 3 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 1 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 3. A new Chapter 3 of Title XVI, W.M.C., entitled “Competitive Cable Franchise Application Process” is hereby adopted as follows:

CHAPTER 3

COMPETITIVE CABLE FRANCHISE APPLICATION PROCESS

16-3-1: LEGISLATIVE INTENT

16-3-2: INSTRUCTIONS AND DEFINITIONS

16-3-3: REQUISITE INFORMATION

16-3-4: LEGAL QUALIFICATIONS

16-3-5: FINANCIAL QUALIFICATIONS

16-3-6: TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS

16-3-7: AFFIDAVIT OF APPLICANT

16-3-8: OPEN RECORDS/CONFIDENTIALITY

16-3-9: APPLICATION FEE

16-3-10: REVIEW PROCESS

16-3-11: PUBLIC HEARING

16-3-12: REVIEW CRITERIA

16-3-13: NON-CFAR FRANCHISE APPLICATIONS

16-3-1: LEGISLATIVE INTENT: The City Council does hereby find, determine and declare as follows:

(A) The “Competitive Franchise Application Rule” (CFAR), adopted on December 20, 2006, by the Federal Communications Commission (FCC) provides that local franchising authorities may require application information from an applicant for a competitive cable franchise, in addition to the information set forth in the CFAR.

(B) In order to comprehensively evaluate whether or not to grant a competitive cable franchise, the City will require certain information from applicants in addition to the information required by the CFAR.

(C) To ensure compliance with the CFAR and provide notice to prospective applicants, the review process for applications for competitive cable franchises and the criteria upon which the final decision of the City will be based should be codified.

(D) The application requirements and the processes for application review and determination set forth in this Chapter are intended to comply with the new FCC rules.

16-3-2: INSTRUCTIONS AND DEFINITIONS: The following instructions shall apply to all applications, except those filed under Section 16-3-13:

(A) An applicant for a competitive cable franchise (“Applicant”) shall include the requisite information set forth below, in writing, in its franchise application, in addition to any information required by 47 Code of Federal Regulations §76.41 and applicable state and local laws and the application fee set by Section 16-3-9, herein.

(B) The City shall accept and review only those applications that include complete responses to every requirement of this Chapter. Submission of an application that does not include the requisite information set forth in Sections 16-3-3, 4, 5, 6, 7, and 9, as applicable shall not commence the time period for granting or denying the application set forth in 47 Code of Federal Regulations §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City's review of the application.

(C) Applications shall be made to the Director of Information Technology, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.

(D) Upon request, the City will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Colorado open records laws.

(E) For the purposes of the application, the terms, phrases, and their derivations set forth below shall have the meanings given, unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Affiliated Entity" or "Affiliate" means any entity having ownership or control in common with the Applicant, in whole or in part, including, without limitation, Applicant's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

2. "Applicant" means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule ("CFAR") set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.

3. "City" means the City of Westminster, a Colorado home-rule municipality.

4. "Control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

5. "Interest" includes officers, directors and shareholders owning five percent (5%) or more of the Applicant's outstanding stock or any equivalent voting interest of a partnership or joint venture.

6. "Parent Corporation" includes any entity with ownership or control of the Applicant.

7. “Principal” includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which owns or controls five percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Applicant.

8. “Regulatory Authority” includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the Applicant or its operations.

16-3-3: REQUISITE INFORMATION:

(A) Identification and Ownership Information. The application shall include:

1. The name, address, telephone number and web site (if applicable) of the Applicant and the proposed franchisee (if different from Applicant), and

2. The name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the City during its consideration of the franchise(s) requested, including the Applicant’s primary contact and any additional authorized contacts.

(B) Business Structure.

1. If a corporation, the Applicant shall provide:

(a) A list all officers and members of the Board of Directors, their principal affiliations and their addresses;

(b) A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and

(c) A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement and provide the documents in subparagraphs (a) and (b) above for the controlling corporation or legal entity.

2. If a partnership, the Applicant shall:

(a) Describe the structure of the partnership and the interests of general and limited partners; and

(b) State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and provide the documents in subparagraphs 1.(a) and 2.(b) above for the controlling entity, partnership or legal entity.

(C) Experience.

1. **Current Franchises.** An Applicant shall list all cable systems in which it or any Affiliate owns more than five percent (5%) of the system. For each system Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (indicate date).

2. **Potential Franchises.** An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. The Applicant shall include the name of communities, date of application, and date of expected action.

(D) **Management Structure.** Every application for a competitive franchise shall include a management/organizational chart, showing the management structure of the Applicant. A similar chart shall also be provided showing the relationship of the Applicant to all general partners, Parent Corporations, subsidiaries, Affiliates and all other subsidiaries of Parent Corporations, including a brief description of each entity's relationship to the Applicant.

16-3-4: LEGAL QUALIFICATIONS:

(A) **Media Cross-Ownership.**

1. Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533 (a), and applicable FCC rules prohibit certain forms of media cross-ownership. An Applicant shall state whether it or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, or whether the Applicant holds or operates any company or business operating jointly with any of the following:

(a) A national broadcast television network (such as ABC, CBS or NBC, etc.).

(b) A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the City's service area, or an application for license to operate such a station.

(c) A telecommunications or telephone company whose service area includes any portion of the City's service area.

2. If the response to any of subsection 1 (a) – (c) above is affirmative, the Applicant shall state the name of the Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

(B) **Franchise Violations.** An Applicant shall state whether it or any Affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and

result or disposition of that proceeding.

(C) Other Violations. An Applicant shall state whether it has been found in violation by a Regulatory Authority of any other type (e.g. utility) of franchise, ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

16-3-5: FINANCIAL QUALIFICATIONS:

(A) Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation.

(B) Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

16-3-6: TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS:

(A) The application shall describe the Applicant's planned initial and proposed cable services geographic area, including a map of all areas proposed to be served and proposed timetable for offering service to each area. The application shall additionally state whether the Applicant proposes to provide cable services to the entire franchise area, and if so, a proposed timetable for meeting that goal.

(B) The applicant shall describe how its proposed service area will not result in denial of service to any group of potential residential cable customers because of the income of the residents of the local area in which such group resides.

(C) If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas listed in subsection (A) above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(D) The Applicant shall describe with particularity its planned residential cable services, including basic cable services, other cable programming service tiers, and any additional pay-per-view, on-demand or digital services and the projected rates for each category or tier or service.

(E) The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant's technology will be deployed so as to be able to successfully offer cable services in the proposed locations.

(F) The Applicant shall describe with particularity its planned non-residential cable services.

(G) The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy and describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable.

(H) The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities.

(I) The Applicant shall describe its plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of the City's local cable customer service standards.

16-3-7: AFFIDAVIT OF APPLICANT: Each application shall be accompanied by an affidavit substantially in the form set forth below:

This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the Applicant and certifies the representations are true and correct.

The Applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a denial of an application by the City.

The Applicant shall comply with all applicable local laws.

Consent is hereby given to the City and its representatives to make inquiry into the legal, character, technical, financial and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

Name of Applicant's Authorized Representative: _____

Affiant's Signature: _____

Date: _____

Official Position: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this ___ day of _____, 200_, by _____.

WITNESS MY HAND AND OFFICIAL SEAL.
My Commission expires: _____.

16-3-8: OPEN RECORDS/CONFIDENTIALITY: Unless otherwise provided by law, information submitted as part of an application is open to public inspection and subject to the Colorado Open Records Act. It is the Applicant's responsibility to be familiar with the Colorado Open Records Act. An Applicant may specifically identify any information it considers proprietary. In the event that the City receives a request from another party to disclose any information which the Applicant has deemed proprietary, the City will tender to the Applicant the defense of any request to compel disclosure. By submitting information which the Applicant deems proprietary or otherwise exempt from disclosure, the Applicant agrees to defend and hold harmless the City from any claim for disclosure including but not limited to any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the City for the attorneys' fees of the party requesting disclosure.

16-3-9: APPLICATION FEE: An application fee in the amount of \$2,000.00 shall accompany any franchise application to cover the reasonable cost of processing applications under this Chapter.

16-3-10: REVIEW PROCESS:

(A) Acceptance of Application.

1. Within 5 business days of receipt of an application, the City shall review the application to ensure all requisite information is included in the application.

2. If the application is not complete, the City will notify the Applicant in writing, listing the requisite information that is required to complete the application and notifying the Applicant the that time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received.

3. If the application is complete, the City will notify the Applicant in writing that all requisite information has been received.

(B) Staff Review. The City staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City. After completing the review, staff shall provide an analysis of the application to the City Council.

(C) Franchise Negotiations. Within the time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable franchise agreement with the applicant, and within that time period, schedule the application and any proposed franchise for public hearing as set forth in Section 10.

16-3-11: PUBLIC HEARING: The City shall hold a public hearing before acting on the application, affording participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises.

16-3-12: REVIEW CRITERIA: The City may deny an application if, based on the information provided in the application, at the public hearing and/or any terms of a proposed franchise agreement:

(A) The Applicant does not have the financial, technical, or legal qualifications to provide cable service;

(B) The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or

(C) The Applicant's proposed terms do not comply with applicable federal, state and local laws and regulations including, but not limited to, local customer service standards, or relevant existing contractual obligations of the City.

(D) The Applicant's proposed service plan will result in denial of service to a group of potential residential cable customers because of the income of the residents of the local area in which such group resides.

16-3-13: NON-CFAR FRANCHISE APPLICATIONS: Notwithstanding any other provisions of this Chapter, any competitive cable services franchise applicant may elect to submit a cable franchise application to the City and/or engage in cable franchise negotiations without regard to the application of the FCC CFAR. Such election must be clearly stated in writing at the time the Applicant files its application with the City. In such cases, the City will negotiate the terms of a competitive cable franchise without regard to 47 CFR §76.41 and the other provisions of this Chapter. Agreement by any applicant to negotiate a franchise without regard to 47 CFR §76.41 and the other provisions of this Chapter shall not be deemed by the City to effect a waiver of any applicant's right to terminate its franchise negotiations with the City and to file a new franchise application that will be subject to the application of the FCC CFAR.

Non-CFAR applications shall include the following information:

- (1) the applicant's name
- (2) the names of the applicant's officers and directors
- (3) the applicant's business address
- (4) the name and contact information of the applicant's contact

Section 4. Chapter 4 of Title XVI, W.M.C., is hereby REPEALED AND REENACTED as Chapter 6 of Title XVI, W.M.C., and all sections therein are renumbered accordingly.

Section 5. Due to the fact that the FCC CFAR regarding timing for consideration of

competitive franchise applications, including information to be provided pursuant to such applications will be effective upon approval of federal application forms by the Office of Management and Budget, expected by July, 2007, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on July 9, 2007, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 6. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 23rd day of July, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



WESTMINSTER

Staff Report

City Council Study Session Meeting

July 16, 2007



SUBJECT: Proposed Amendments to Titles III, IV, and V of the Westminster Municipal Code Concerning Tax Administration

PREPARED BY: Barb Dolan, Sales Tax Manager
Josh Pens, Tax Audit Supervisor
James MacDonald, Tax Auditor

Recommended City Council Action:

Direct Staff to prepare an ordinance for Council consideration to amend Titles III, IV, and V of the Westminster Municipal Code concerning tax administration.

Summary Statement:

In response to the business community's concern regarding the difficulties of sourcing sales, Staff recommends adopting the Electronic Address Locator provision and other administrative amendments to the tax code. The recommended changes would:

- Provide retailers with a reasonable and limited liability process for the collection of the City's sales tax through the use of a comprehensive, state-certified address locator database;
- Implement the most recent voter-approved sales and use tax extension for open space;
- Establish a more legally consistent and defensible ordinance, and;
- Directly support two components of the City of Westminster Strategic Plan: Financially Sustainable Government and Balanced, Sustainable Local Economy.

Adopting a hold harmless provision related to the Electronic Address Locator will protect retailers from the assessment of tax, penalty, and interest that would otherwise be due based solely on an error in State-certified electronic databases. In addition, staff believes this protection will encourage non-nexus retailers to voluntarily collect City sales tax. The City is one of many jurisdictions that have adopted or intend to adopt similar hold harmless language into their tax codes.

In addition to the Electronic Address Locator, Staff has identified other changes to Titles III, IV and V, which will allow for the more effective administration of the City's tax program. Changes in technology, business climate, state and federal regulations, bankruptcy law, and related case law require the proposed amendments in an effort to properly facilitate and clarify the legislative intent of the Code. Included in these updates is the implementation of Ballot Issue 2A which extends collection of the open-space, parks, recreation, and trails sales and use tax through 2032.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue:

Should the City amend Titles III, IV, and V of the Westminster Municipal Code to adopt the Electronic Address Locator ordinance, amend Section 4-2-3 to incorporate the voter-approved extension of the City's open space tax, and make other administrative amendments?

Alternatives:

1. Council could direct Staff to leave the current Code provisions in place and not adopt the Electronic Address Locator provision or make other recommended changes. Staff does not recommend this alternative. To remain idle with regard to contemporizing the Code may have the real effect of making its application, defense, and understanding difficult in light of the changing municipal tax environment. Further, electing not to adopt the provisions relating to the Electronic Address Locator may jeopardize future voluntary compliance by non-nexus retailers.
2. Council could direct Staff to make only certain changes to the Code while excluding others. While this approach would help address some of the issues, it may not address certain prospective legal concerns and it would not completely address the issue of a comprehensive and contemporary ordinance. Staff does not recommend this alternative.

Background Information:

The amendments identified in the attached Councillor's Bill directly support two components of the City of Westminster Strategic Plan: Financially Sustainable Government and Balanced, Sustainable Local Economy. Incorporating the Electronic Address Locator provision into the Code, and making the other recommended amendments, should result in a higher degree of taxpayer compliance through a more universally understood and accepted tax collection process. Further, these proposed amendments will improve the administration and collection of taxes by reducing costs. Finally, offering an automated solution for sourcing deliveries with a corresponding safe-harbor may entice non-nexus retailers, such as internet retailers, to voluntarily collect and remit the City's tax.

If adopted, the Electronic Address Locator ordinance will hold retailers harmless if they fail to remit tax to the correct municipality, specifically the City of Westminster, based solely on an error in the State-certified electronic address locator database. By adopting this ordinance, the City encourages the use of these universal databases, which will result in more accurate municipal collections upon the sale and delivery of goods. This ordinance demonstrates the willingness of the City to work with the business community and other home-rule cities to identify areas of the Code that can be updated for the purpose of tax simplification. Utilization of a state-certified electronic address database will increase the likelihood that tax will be properly remitted to the City, which equates to higher tax revenues by mitigating loss from incorrect payments to other municipalities.

Adoption of a model Electronic Address Locator ordinance has been the goal of a multi-year tax simplification effort involving the Colorado Municipal League (CML), the business community, and the CML Sales Tax Committee. The first hurdle to implementation was overcome with the 2004 General Assembly's approval of HB 04-1237, which put this program in place at the State level. This legislation directed the Department of Revenue to develop regulations for review and certification of address locator databases and provided that retailers utilizing a State-certified database would be held harmless as to State-collected sales and use taxes (including statutory municipalities).

Due to the changing and shared boundaries of Colorado municipalities like Westminster, comments have often been made from the business community that it is difficult to determine precisely in which taxing jurisdiction a delivery is made. The result of this inability to collect the correct municipal tax may be the remittance of tax to the wrong jurisdiction and the potential for subsequent action against the retailer from the jurisdiction that was properly due. Further, these complexities may discourage non-nexus retailers from collecting City tax voluntarily. The hold harmless provision has been viewed as a “win-win” for both the adopting municipality and the taxpayer.

After the overwhelming support expressed by voters in the recent November election, Code section 4-2-3 must be amended to reflect the extension of the 0.25 percent sales and use tax related to open space, parks, recreation, and trails. Based on the passing of this ballot issue, the ordinance needs to be updated extending the sunset date of this tax from 2016 through 2032.

Finally, the remaining amendments will provide for improved tax collection while contributing to the containment of costs associated with the tax recovery process. These amendments serve the purpose of minimizing potential legal challenges due to unclear language or inconsistent applications of the tax code, which reduces costs incurred by both the City and taxpayers associated with litigation. The following are some highlights of these revisions.

Staff has reviewed Code section 4-1-3 regarding the collection fee, referred to as a vendor’s fee, retained by taxpayers for timely filed returns. The purpose of this proposed revision is to eliminate the cost and administrative burden incurred by the City to issue a refund when the credit is not properly taken as outlined in the Code. The average collection fee taken in 2006 was approximately \$18. Staff believes that the cost and staff time related to issuing and following up on overpayment notices and administering refund claims outweighs any benefit forfeited by the taxpayer, especially considering that many taxpayers never claim the overpayment even after receiving the notice. By not refunding the vendors fee on those returns where a taxpayer failed to apply the credit, the City will increase voluntary compliance through encouraging taxpayers to acquire a better understanding of tax reporting while saving the City the time and cost associated with administering these specific overpayments.

Based on the recent increase in tax protests, Staff believes it is important to address the interest rate imposed on outstanding tax liabilities. Currently, the rate of interest on outstanding tax liabilities changes annually based on the rate established by the State Commissioner of Banking. Staff feels that this low interest rate may discourage voluntary compliance and encourage protests for the sole purpose of postponing the tax payment. Moreover, changing to a fixed rate will simplify the computation of interest due for taxpayers. The amendment to Code section 4-1-22 will impose a rate of 1 percent per month on any properly assessed tax deficiency. This change will also provide for the accrual of interest during the protest period. The City is not alone in this interest rate imposition. The City and County of Denver, City of Boulder, City and County of Broomfield, City of Arvada, City of Federal Heights, and the City of Northglenn impose a flat rate of interest in this fashion ranging from one (1) to one and one-half (1.5) percent per month.

The remaining amendments will clarify ambiguous Code sections. For example, Staff recommends clarifying how and when a tax lien arises, to what property it attaches, the status of a tax lien in various circumstances, and to ensure consistency with related sections. Staff also recommends revising the jeopardy assessment provisions to clarify the treatment of disputed assessments; distraint and sale changes address the disposition of distrained property, service notice, disposal procedures;

Proposed Amendments to Titles III, IV, and V of the Westminster Municipal Code Concerning Tax Administration

July 16, 2007

Page 4

and the City's authority to levy in its collection efforts. Another proposed addition to the ordinance is the imposition of a fee for recurring distraint and seizure due to noncompliance with the Code. This imposition will specifically address the increased frequency and additional costs incurred by the City when utilizing this enforcement remedy.

Finally, Staff has reviewed Title IV, Chapter 7 of the Code relating to business and occupation taxes, and has determined that amending sections will streamline the ordinance while strengthening its administration. This includes the deletion of portions of Chapter 7 while incorporating language stating this Chapter will be administered under Chapter 1 of Title IV of the Code. This change will effectively ensure all taxes collected under Title IV are similarly administered.

The proposed ordinance is attached for City Council's review. The changes to the ordinance incorporate the Electronic Address Locator provision along with the amendment related to the open space tax extension, and various other administrative amendments.

Staff will attend the July 16th Study Session to discuss the changes.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Proposed Councillor's Bill No. 33

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF XXXX
COUNCILLORS

INTRODUCED BY

A BILL

**FOR AN ORDINANCE AMENDING TITLES III, IV AND V OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING TAX ADMINISTRATION**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 3-6-4, W.M.C., is hereby DELETED IN ITS ENTIRETY AND THE INDEX AMENDED ACCORDINGLY:

**CHAPTER 6
DEPARTMENT OF FINANCE**

3-6-1: DEPARTMENT CREATED

3-6-2: APPOINTMENT OF DIRECTOR OF FINANCE

3-6-3: DUTIES OF THE DIRECTOR OF FINANCE

~~3-6-4: SALES TAX ENFORCEMENT OFFICER~~

3-6-4: SALES TAX ENFORCEMENT OFFICER:

(A) There is hereby created the position of Sales Tax Enforcement Officer.

(B) It shall be the duty of the Sales Tax Enforcement Officer to enforce Title IV, Chapters 1, 5, 6, and 8, of Title V and Sections 5-9-1 and 5-9-3 of this Code.

(C) The Sales Tax Enforcement Officer shall be deemed a peace officer for the limited purpose of enforcing the provisions delineated in Subsection (B) of this Section and shall have the power to issue complaints and summonses for violations of those provisions pursuant to Rule 206, Municipal Court Rules of Procedures, and Section 1-22-18 of this Code.

(D) The Sales Tax Enforcement Officer shall not be deemed to be a sworn member of the Police Department pursuant to Section 3-1-4.

Section 2. Section 4-1-1, subsections (H) through (S), W.M.C., are hereby AMENDED as follows:

4-1-1: DEFINITIONS WORDS AND PHRASES DEFINED:

(H) "**Occupation Taxes**" MEANS THE TAXES LEVIED BY CHAPTER 5 AND CHAPTER 7 OF THIS TITLE.

~~(H)~~(I) "**Person**" means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise or any group or combination acting as a unit.

~~(H)~~(J) "**Price**" for purposes of this Chapter shall include any definition of "price" included in other Chapters of this Title.

~~(H)~~(K) "**Purchase**" or "**Sale**" for purposes of this Chapter, shall include any definition of "purchase" or "sale" included in other Chapters of this Title.

~~(K)~~(L) "**Retailer**" for purposes of this Chapter, shall include any definition of "retailer", "operator" or "vendor" included in other Chapters of this Title.

~~(L)~~(M) "**Return**" for purposes of this Chapter shall include any definition of "return" included in other Chapters of this Title MEANS ANY FORM PRESCRIBED BY THE FINANCE DIRECTOR FOR COMPUTING AND REPORTING A TOTAL TAX LIABILITY.

~~(M)~~ (N) "Tax" for purposes of this Chapter shall include any definition of "tax" included in other Chapters in this Title.

~~(N)~~ (O) "Tax Deficiency" means any amount of tax that is not reported or not paid on or before the due date.

~~(O)~~ (P) "Taxable Sales" means gross sales less any exemptions and deductions specified in this Title.

~~(P)~~ (Q) "Taxable Services" means services subject to the tax pursuant to this Title.

~~(Q)~~ (R) "Taxpayer" for the purposes of this title, means any person obligated to pay, collect or remit tax under the terms of this Title.

~~(R)~~ (S) "Tax Policy" means, for the purposes of Colorado Constitution Article X, Section 20, the provisions of this title that govern the persons upon whom the City's tax is imposed and the transactions to which the City's tax applies, including tax exemptions and tax deductions, but excluding any provisions concerning fees, interest changes, or penalties related to the administration and enforcement of said tax policy.

~~(S)~~ (T) "Total Tax Liability" means the total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Section 3. Section 4-1-2, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (C) to read as follows:

4-1-2: EXEMPTION; BURDEN OF PROOF:

(C) THE BURDEN OF PROVING THAT ANY TAXPAYER IS EXEMPT FROM REMITTING THE OCCUPATION TAXES SHALL BE ON THE TAXPAYER UNDER SUCH REASONABLE REQUIREMENTS OF PROOF AS THE FINANCE DIRECTOR MAY PRESCRIBE.

Section 4. Section 4-1-3, subsection (C), W.M.C., is hereby AMENDED to read as follows:

4-1-3: DEDUCTIONS AND CREDITS:

(C) Collection Fee. For each reporting period, ~~the City shall pay a retailer~~ EVERY RETAILER SHALL BE ENTITLED TO a collection and remittance fee equal to the lesser of ONE HUNDRED DOLLARS (\$100) or two and one-half percent (2 1/2%) of the sum of the tax computed and any excess tax collected. A retailer ~~may~~ SHALL apply this fee as an offset against the amount of tax due to the City at the time of remittance. Such fee shall be forfeited for any tax that is not reported and paid by the due date. FAILURE TO APPLY THIS FEE AS AN OFFSET AGAINST THE AMOUNT OF TAX DUE AT THE TIME OF REMITTANCE SHALL RESULT IN FORFEITURE OF THE COLLECTION FEE. ~~Forfeiture of the fee shall be prima facie evidence that the retailer was in violation of this Title.~~ This paragraph shall not apply to use tax.

Section 5. Section 4-1-5, W.M.C., is hereby amended BY THE ADDITION OF A NEW SUBSECTION (E) to read as follows:

4-1-5: RETAILER RESPONSIBLE FOR COLLECTION AND PAYMENT OF TAX:

(E) USE OF ELECTRONIC LOCATION DATABASE; RETAILER HELD HARMLESS:

1. ANY RETAILER RESPONSIBLE FOR THE COLLECTION AND PAYMENT OF TAX UNDER THIS TITLE MAY USE AN ELECTRONIC DATABASE OF STATE ADDRESSES THAT IS CERTIFIED BY THE STATE DEPARTMENT OF REVENUE PURSUANT TO § 39-26-105.3, C.R.S., TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED.

2. ANY RETAILER THAT USES THE DATA CONTAINED IN AN ELECTRONIC DATABASE CERTIFIED BY THE STATE DEPARTMENT OF REVENUE PURSUANT TO § 39-26-105.3 C.R.S., TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED SHALL BE HELD HARMLESS FOR ANY TAX, PENALTY, OR INTEREST OWED TO THE CITY THAT OTHERWISE WOULD BE DUE SOLELY AS A RESULT OF AN ERROR IN THE ELECTRONIC DATABASE PROVIDED THAT THE RETAILER DEMONSTRATES THAT IT USED THE MOST CURRENT INFORMATION AVAILABLE IN SUCH ELECTRONIC DATABASE ON THE DATE THAT THE SALE OCCURRED.

EACH RETAILER SHALL KEEP AND PRESERVE SUCH RECORDS AS PRESCRIBED BY THE FINANCE DIRECTOR TO DEMONSTRATE THAT IT USED THE MOST CURRENT INFORMATION AVAILABLE IN THE ELECTRONIC DATABASE ON THE DATE THAT THE SALE OCCURRED. NOTWITHSTANDING THE ABOVE, IF THE ERROR IN COLLECTING AND REMITTING IS A RESULT OF A DECEPTIVE REPRESENTATION, A FALSE REPRESENTATION, OR FRAUD, THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY.

3. THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO USE TAX.

Section 6. Section 4-1-7, W.M.C., is hereby AMENDED to read as follows:

4-1-7: FILING RETURNS; DUE DATE:

(A) EXCEPT AS PROVIDED IN THIS SECTION, every taxpayer shall file a return, whether or not tax is due, and remit any tax due to the City on or before the twentieth day following the end of the reporting period. RETURNS OF THE TAXPAYER SHALL CONTAIN SUCH INFORMATION AND BE MADE IN SUCH MANNER AND UPON SUCH FORMS AS THE FINANCE DIRECTOR MAY PRESCRIBE. THE SIGNATURE OF THE TAXPAYER OR DULY AUTHORIZED AGENT SHALL APPEAR ON ALL RETURNS. A VALID DIGITAL SIGNATURE OR THE EQUIVALENT THEREOF, ON A FILED RETURN TRANSMITTED ELECTRONICALLY OVER THE INTERNET OR SIMILAR MEANS, OR A SIGNATURE ON A RETURN SENT VIA FACSIMILE OR OTHER FORM ACCEPTABLE TO THE FINANCE DIRECTOR, IS ACCEPTED AND HELD AS A WRITTEN SIGNATURE.

(B) EVERY TAXPAYER REQUIRED TO REPORT AND REMIT OCCUPATION TAXES SHALL FILE A RETURN AND REMIT ANY TAX DUE PURSUANT TO THE APPLICABLE PROVISIONS OF CHAPTER 5 AND CHAPTER 7 OF THIS TITLE.

(C) EVERY PERSON WHO USES CONSTRUCTION EQUIPMENT IN THE CITY SHALL FILE A CONSTRUCTION EQUIPMENT DECLARATION AND REMIT ANY TAX DUE TO THE CITY ON OR BEFORE THE DATE THE CONSTRUCTION EQUIPMENT IS LOCATED IN THE CITY.

(D) EVERY PERSON WHO PAYS AN ESTIMATED PREPAYMENT OF USE TAX AT THE TIME A BUILDING PERMIT IS ISSUED SHALL FILE A RETURN AND REMIT ANY USE TAX DUE IN EXCESS OF THE AMOUNT PREPAID ON OR BEFORE THE THIRTIETH (30TH) DAY FOLLOWING THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. A RETURN SHALL NOT BE REQUIRED IF NO ADDITIONAL USE TAX IS DUE.

~~(B)~~ (E) A retailer engaged in business in the City at two or more locations, whether inside or outside the City, who collects tax, may file one return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

~~(C)~~ (F) Any consumer reporting use tax due from two or more locations may file one return for all such locations.

~~(D)~~ (G) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying or remitting tax due.

~~(E)~~ (H) No person shall make any false statement in connection with a return.

Section 7. Section 4-1-8, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

4-1-8: REPORTING PERIODS:

(A) Unless otherwise required or approved, taxpayers must file returns and pay tax as follows:

1. A taxpayer whose monthly tax due is less than ten dollars (\$10) may file returns and remit tax annually, ~~semi-annually~~, quarterly or monthly;

~~2. A taxpayer whose monthly tax due is less than twenty dollars (\$20) may file returns and remit tax semi-annually, quarterly or monthly;~~

~~3.~~ 2. A taxpayer whose monthly tax due is less than forty dollars (\$40) may file returns and remit tax quarterly or monthly; or

~~4.~~ 3. A taxpayer whose monthly tax due is forty dollars (\$40) or more shall file returns and remit tax monthly.

(B) The reporting period for an initial use tax return shall ~~be~~ INCLUDE ALL TRANSACTIONS UP TO AND INCLUDING THE LAST DAY PRIOR TO THE FIRST DAY OF BUSINESS AND SHALL END ON SUCH DATE. ~~the calendar month of the date of sale if a business was purchased or opening day of business if a business is new.~~

Section 8. Section 4-1-10, subsections (D)(1) and (H), W.M.C., are hereby AMENDED to read as follows:

4-1-10: AUTHORITY OF THE FINANCE DIRECTOR: The administration of this Title is hereby vested in the Finance Director.

(D) Subpoenas: The Finance Director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts and records.

1. Any subpoena issued under the terms of this Title shall be served as set forth in the Colorado Rules of Civil Procedure, including the payment of witness fees. ~~When the witness is subpoenaed at the insistence of the City, such fees shall be paid by the City.~~ When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.

(H) Partial Payments; PAYMENT IN INSTALLMENTS: The Finance Director may accept any partial payment made and apply such payments towards the TOTAL tax LIABILITY ~~due~~ OR ALLOW PAYMENT OF A TOTAL TAX LIABILITY ON AN INSTALLMENT BASIS. PAYMENT OF PART BUT LESS THAN THE TOTAL TAX LIABILITY SHALL BE FIRST APPLIED TO PENALTY, IF ANY, SECONDLY TO ACCRUED INTEREST, AND, LASTLY, TO THE TAX DEFICIENCY ITSELF. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated. INTEREST SHALL CONTINUE TO ACCRUE ON THE REMAINING TAX DEFICIENCY UNTIL PAID AS PROVIDED BY THIS CHAPTER.

Section 9. Section 4-1-21, W.M.C., is hereby AMENDED to read as follows:

4-1-21: PENALTIES:

(A) Penalty for ~~Late Remittance of Sales, Use and Accommodations Tax~~ DEFICIENCY: A penalty of fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, shall be levied on any tax deficiency.

~~(B) Penalty for Late Remittance of Admissions Tax: A penalty shall be levied on any tax deficiency.~~

~~1. For transactions consummated prior to January 1, 1992, such penalty shall be twelve percent (12%) of the tax deficiency.~~

~~2. For transactions consummated on or after January 1, 1992, such penalty shall be fifteen dollars (\$15) or ten percent (10%) of the tax deficiency, whichever is greater.~~

~~(C) (B) Penalty for Fraud: If any tax deficiency is due to fraud or the intent to evade the tax, the penalty shall be fifty percent (50%) of the total tax deficiency.~~

~~(D) (C) Penalty for Repeated Enforcement: If three Notices of Assessment for the same type of tax have been issued to the same taxpayer within thirty-six (36) consecutive months, a special penalty of fifteen percent (15%) of the total tax liability, or twenty five dollars (\$25), whichever is greater, shall be levied.~~

(D) PENALTY FOR RECURRING DISTRAINT: IF ANY TAXPAYER REPEATEDLY FAILS, NEGLECTS, OR REFUSES TO PAY THE TAXES LEVIED BY THIS TITLE WITHIN THE TIME REQUIRED BY THIS TITLE AND THE CITY HAS BEEN REQUIRED TO ISSUE DISTRAINT WARRANTS TO ENFORCE THE COLLECTION OF THE TAX DUE FROM SUCH TAXPAYER, THE FINANCE DIRECTOR IS AUTHORIZED TO COLLECT THE TAX DEFICIENCY TOGETHER WITH ALL INTEREST AND PENALTIES THEREON PROVIDED BY LAW AND ALSO AN ADDITIONAL PENALTY OF TWO HUNDRED FIFTY DOLLARS (\$250) EACH FOR THE SECOND AND ALL SUBSEQUENT DISTRAINT WARRANTS REGARDING THE TAXPAYER THAT IS ISSUED BY THE CITY PURSUANT TO THIS CHAPTER.

(E) Other Penalties; ~~Power to Waive:~~ If the Finance Director determines that a person has registered or caused to be registered a motor vehicle outside the City and that such motor vehicle should have been registered at an address in the City, the Finance Director is authorized to assess a civil penalty of five hundred dollars (\$500) against the person. A written notice of the penalty assessment shall be issued, paid and protested in the same manner as a notice of assessment. The Finance Director may enforce collection of the penalty assessment in the same manner as provided in this title for the collection of tax due. Assessment and collection of this penalty shall not preclude the collection of any tax due or fee or the imposition of any other civil or criminal penalty provided by law.

(F) Abatement of Penalty: Any penalty assessed in this Section may be abated by the Finance Director if the Finance Director finds good cause therefore. ~~and:~~

1. ~~If the taxpayer submits a written request for such abatement on or before the payment due date of the applicable Notice of Assessment; or~~
2. ~~If no assessment was issued, within 60 days after payment of the tax.~~

Section 10. Section 4-1-22, W.M.C., is hereby AMENDED to read as follows:

4-1-22: INTEREST: Interest shall be levied AT THE RATE OF ONE (1) PERCENT EACH MONTH, OR FRACTION THEREOF, ~~ON~~ THAT any tax deficiency REMAINS UNPAID. EXCEPT AS PROVIDED IN THIS CHAPTER, INTEREST PROPERLY ASSESSED ON ANY TAX DEFICIENCY SHALL NOT BE ABATED AND SHALL BE COLLECTED AND PAID IN THE SAME MANNER AS THE TAX ITSELF.

~~(A) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.~~

1. ~~For transactions consummated on or after January 1, 1994, the annual rate of interest assessed shall be FIXED AT the rate established by the State Commissioner of Banking pursuant to Section 39-21-110.5 C.R.S. IN EFFECT ON THE DATE THE TAX WAS DUE.~~

2. ~~For transactions consummated prior to January 1, 1994, the annual rate of interest assessed shall be fifteen percent (15%).~~

~~(B) When a timely protest is made to a Notice of Assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the interest date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a Findings of Fact, Conclusion and Decision issued after a hearing.~~

~~(C) Interest properly assessed on any tax deficiency shall not be abated.~~

Section 11. Section 4-1-24, W.M.C., is hereby AMENDED to read as follows:

4-1-24: ABATEMENT OF TAX DEFICIENCY:

(A) The Finance Director may abate up to 10% of any tax deficiency, or five thousand dollars (\$5,000), whichever is greater, AND THE PENALTY AND INTEREST ASSESSED THEREON, if the Finance Director finds good cause therefor. The Finance Director shall submit a report of amounts abated in excess of five hundred dollars (\$500) to the City Manager.

(B) IF THE FINANCE DIRECTOR ISSUES AN ESTIMATED NOTICE OF ASSESSMENT TO A TAXPAYER WHO NEGLECTS TO FILE A RETURN BY THE DUE DATE, AND THE TAXPAYER SUBSEQUENTLY DEMONSTRATES TO THE SATISFACTION OF THE FINANCE DIRECTOR THAT THE AMOUNT SO ESTIMATED IS GREATER THAN THE ACTUAL TOTAL TAX LIABILITY, THE FINANCE DIRECTOR MAY, FOR GOOD CAUSE SHOWN, ABATE THE ESTIMATED TOTAL TAX LIABILITY TO THE EXTENT IT EXCEEDS THE ACTUAL TOTAL TAX LIABILITY.

Section 12. Section 4-1-25, W.M.C., is hereby AMENDED to read as follows:

4-1-25: PROTEST OF NOTICE OF ASSESSMENT OR DENIAL OF REFUND:

(A) Any Notice of Assessment may be protested by the taxpayer to whom it is issued.

1. A protest of a Notice of Assessment issued to a vendor or taxpayer for failure to file a return, for underpayment of tax owed, or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the Notice of Assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.

2. When a timely protest is made, no further enforcement action will be instituted by the City for the portion of the assessment being protested unless:

- a. the taxpayer fails to pursue the protest in a timely manner; OR

- b. THE TOTAL TAX LIABILITY WILL BE JEOPARDIZED BY DELAY AND THE CITY MANAGER HAS ISSUED A JEOPARDY ASSESSMENT AND DEMAND FOR PAYMENT PURSUANT TO THIS CHAPTER.

(B) Protest of Denial of Refund: A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the protest.

(C) Any timely protest entitles a taxpayer to a hearing under the provisions of this Title.

1. If, in the opinion of the Finance Director, the issues involved in such protest may be resolved administratively, the Finance Director may recommend an informal meeting with the taxpayer.

2. Participation in such an informal meeting does not prevent either the taxpayer or the City from holding a hearing if the dispute cannot be resolved by such meeting.

3. If the issues are satisfactorily resolved at an informal meeting and a hearing is not requested, the remaining total tax liability, if any, shall be paid on or before ten (10) days after the date of the notification of the amount due.

Section 13. Section 4-1-28, W.M.C., is hereby AMENDED to read as follows:

4-1-28: LIEN FOR TAX DUE: THE TAX IMPOSED BY THIS TITLE, TOGETHER WITH THE INTEREST AND PENALTIES HEREIN PROVIDED, AND ANY COSTS OF COLLECTION THAT MAY BE INCURRED SHALL AUTOMATICALLY BE AND, UNTIL PAID, REMAIN A LIEN UPON THE REAL PROPERTY OF AND TANGIBLE PERSONAL PROPERTY, INCLUDING GOODS, STOCK IN TRADE, AND BUSINESS FIXTURES, OWNED OR USED BY ANY TAXPAYER INCLUDING TANGIBLE PERSONAL PROPERTY USED UNDER LEASE, INSTALLMENT SALE, OR OTHER CONTRACT AGREEMENT. EXCEPT AS PROVIDED IN THIS SECTION, SUCH LIEN SHALL BE A FIRST AND PRIOR LIEN AND SHALL TAKE PRECEDENCE ON ALL SUCH PROPERTY OVER ALL OTHER LIENS OR CLAIMS OF WHATSOEVER KIND OR NATURE.

(A) PRIORITY OF LIENS UPON REAL PROPERTY: A LIEN UPON THE REAL PROPERTY OF THE TAXPAYER SHALL BE A FIRST AND PRIOR LIEN AND SHALL HAVE PRECEDENCE OVER ALL OTHER LIENS OF WHATSOEVER KIND OR NATURE, EXCEPT AS TO PREEXISTING CLAIMS OR LIENS OF A BONA FIDE MORTGAGEE, PLEDGEE, JUDGMENT CREDITOR OR PURCHASER WHOSE RIGHTS SHALL HAVE ATTACHED PRIOR TO THE FILING OF A NOTICE OF LIEN BY THE FINANCE DIRECTOR AS HEREINAFTER PROVIDED.

(B) IMPROVEMENTS TO REAL PROPERTY: THE USE TAX IMPOSED BY THIS TITLE UPON ANY ARTICLE OF TANGIBLE PERSONAL PROPERTY THAT IS ATTACHED AND AFFIXED TO REALTY OR THE IMPROVEMENTS AND STRUCTURES LOCATED THEREON, SITUATED WITHIN THE CITY, TOGETHER WITH INTEREST AND PENALTIES HEREIN PROVIDED, SHALL CONSTITUTE A FIRST AND PRIOR LIEN UPON SUCH REALTY AND THE IMPROVEMENTS LOCATED THEREON, SO BENEFITED BY THE ATTACHING AND AFFIXING OF SUCH ARTICLES OF TANGIBLE PERSONAL PROPERTY THERETO, WHICH LIEN SHALL HAVE PRECEDENCE OVER ALL OTHER LIENS OF WHATSOEVER KIND OR NATURE, EXCEPT AS TO PREEXISTING CLAIMS OR LIENS OF A BONA FIDE MORTGAGEE, PLEDGEE, JUDGMENT CREDITOR OR PURCHASER WHOSE RIGHTS SHALL HAVE ATTACHED PRIOR TO THE FILING OF A NOTICE OF LIEN BY THE FINANCE DIRECTOR AS HEREINAFTER PROVIDED.

~~(A) Issuance (C) NOTICE OF LIEN: If any total tax liability is not paid by the payment date of a Notice of Assessment, the Finance Director may issue~~ SERVE a Notice of Lien IN SUCH FORM AS THE FINANCE DIRECTOR MAY PRESCRIBE WITH THE OWNER OR POSSESSOR OF PROPERTY ON WHICH A LIEN HAS ATTACHED OR FILE SAID NOTICE WITH THE SECRETARY OF STATE OR THE CLERK AND RECORDER OF ANY COUNTY IN COLORADO IN WHICH THE REAL OR PERSONAL PROPERTY IS LOCATED. ~~on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the total tax liability, the date of the accrual thereof, and the location of the property, and shall be certified by the Finance Director.~~

~~(B) Filing: The Notice of Lien shall be filed in the office of the Clerk and Recorder of any county in Colorado in which the real or personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.~~

~~(C) Priority (D) EXEMPTION FROM LIEN: The attachment and priority of such lien shall be as follows:~~

~~1. Such lien shall be a first and prior lien upon the goods, stock in trade, and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.~~

~~2. Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade, and business fixtures shall be a first and prior lien except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.~~

~~3.——1. The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease~~

if the lease is recorded WITHIN TEN (10) DAYS OF EXECUTION with the SECRETARY OF STATE OR county clerk and recorder of the county where the property is located or based.

4.——2. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed the fair market value, or similar interest which is or may be credited to the lessee.

5.——3. Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this Section.

~~(D)~~ (E) Enforcement Against Real Property: If a Notice of Lien is filed against real property, the Finance Director may direct the City Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property, and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale, and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

Section 14. Section 4-1-32, subsection (A), W.M.C., is hereby AMENDED to read as follows:

4-1-32: JEOPARDY ASSESSMENT:

(A) Issuance: If the collection of any total tax liability from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the City Manager may declare the taxable period immediately terminated, order the Finance Director to determine the total tax liability, and issue a Jeopardy Assessment and Demand for Payment. NOTWITHSTANDING THE PROVISIONS OF SECTION 4-1-25(A), Any total tax liability so assessed shall be due and payable immediately.

Section 15. Section 4-1-33, , W.M.C., is hereby AMENDED to read as follows:

4-1-33: LEVY, DISTRAINT AND SALE:

(A) ~~Unless such property is exempt by State Statute from distraint and sale,~~ The City Manager may sign and issue a warrant directed to any employee or agent of the City, or any sheriff of any county in Colorado, SOMETIMES IN THIS SECTION COLLECTIVELY REFERRED TO AS “AGENT” commanding the LEVY UPON, AND distraint and sale of ~~personal~~ ALL property AND RIGHTS TO PROPERTY, EXCEPT AS EXEMPTED BY THIS SECTION of the taxpayer OR on which a lien has attached for the payment of the total tax liability.

1. Such warrant may be issued if the total tax liability is not remitted on or before twenty (20) days from the ~~due~~ date of a Notice of Assessment and no protest of such assessment has been timely filed.

2. SUCH WARRANT MAY BE ISSUED IF THE TOTAL TAX LIABILITY IS NOT PAID WITHIN THIRTY (30) DAYS FROM THE FINAL DECISION ISSUED BY THE FINANCE DIRECTOR AFTER A HEARING ON A TIMELY PROTESTED NOTICE OF ASSESSMENT AND NO PETITION FOR APPEAL HAS BEEN TIMELY FILED AS PROVIDED BY THIS TITLE.

3. Such warrant may be issued immediately if a Jeopardy Assessment and Demand for Payment has been issued.

(B) ~~If the taxpayer does not volunteer entry to the premises,~~ The City Manager may apply to the municipal court of the City for a warrant authorizing any employee or agent of the City to search for and distraint property located inside the City to enforce the collection of total tax liability.

1. The City Manager shall demonstrate to the Court that the premises to which entry is sought contains property that is subject to distraint and sale for total tax liability.

2. If a Jeopardy Assessment and Demand for Payment has been issued, the City Manager shall specify to the court why collection of the total tax liability will be jeopardized.

3. The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

(C) LEVY MAY BE MADE BY SERVING A NOTICE OF LEVY OR DISTRAINT WARRANT ON ANY PERSON IN POSSESSION OF, OR OBLIGATED WITH RESPECT TO, PROPERTY OR RIGHTS TO PROPERTY SUBJECT TO LEVY, INCLUDING RECEIVABLES, BANK ACCOUNTS, EVIDENCES OF DEBT, AND SECURITIES.

~~(C)~~ (D) Disposal of Distrainted Property:

1. THE AGENT CHARGED WITH THE COLLECTION SHALL MAKE OR CAUSE TO BE MADE AN ~~signed~~ inventory of the property distrained, A COPY OF WHICH, SIGNED BY THE AGENT MAKING SUCH DISTRAINT, SHALL BE SERVED, BY LEAVING IT WITH ~~shall be made by the City or its agent. Prior to the sale~~ the owner or possessor OF THE PROPERTY; OR AT THE PERSON'S USUAL PLACE OF ABODE; OR WITH ANY OFFICER, MANAGER, ACCOUNTANT, BOOKKEEPER, GENERAL AGENT, REGISTERED AGENT, OR AGENT FOR PROCESS; OR FINALLY BY MAILING BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE OWNER OR POSSESSOR TOGETHER WITH A COPY OF THE WARRANT, ~~shall be served with a copy of said inventory,~~ a notice of the sum of the total tax liability and related expenses incurred to date, and NOTICE OF the time and place of sale.

2. A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where distraint is made, and in at least two other places within such county.

3. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the City or agent for no more than ninety (90) days from the date originally fixed for the sale EXCEPT, HOWEVER, IF THE PROPERTY DISTRAINED CONSISTS OF LIVE ANIMALS, PERISHABLE GOODS, OR IS OF OTHER SUCH NATURE THAT WOULD, IN THE OPINION OF THE FINANCE DIRECTOR, MAKE IT DANGEROUS OR OTHERWISE INADVISABLE TO RETAIN FOR SAID PERIOD MAY BE IMMEDIATELY SOLD OR DISPOSED OF BY THE AGENT.

4. The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the City and the City shall file a release of lien thereof. If the property is purchased by the City, such property may be disposed of in the same manner as other City property.

5. The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the City or its agent may accept the higher bid.

6. The property offered for sale SHALL BE RESTORED TO THE OWNER OR POSSESSOR IF, NOT LESS THAN TWENTY-FOUR (24) HOURS PRIOR TO THE SALE, THE TOTAL TAX LIABILITY TOGETHER WITH ALL COSTS OF COLLECTION ARE PAID BY ~~may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession. pays the total tax liability and all collection costs no less than twenty four (24) hours before the sale.~~

7. The City or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale AND CONCLUSIVE EVIDENCE OF THE REGULARITY OF ITS PROCEEDINGS IN MAKING THE SALE and SHALL transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold.

(a) When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company, or association to record the transfer on its books and records.

(b) When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.

(c) WHEN THE PROPERTY SOLD CONSISTS OF A MOTOR VEHICLE, THE CERTIFICATE OF SALE SHALL BE NOTICE, WHEN RECEIVED, TO ANY PUBLIC OFFICIAL CHARGED WITH THE REGISTRATION OF TITLE TO MOTOR VEHICLES, OF SUCH TRANSFER AND SHALL BE AUTHORITY TO RECORD THE TRANSFER IN THE SAME MANNER AS IF THE CERTIFICATE OF TITLE TO SUCH MOTOR VEHICLE WERE TRANSFERRED OR ASSIGNED BY THE PARTY HOLDING THE SAME, IN LIEU OF ANY ORIGINAL OR PRIOR CERTIFICATE, WHICH SHALL BE VOID, WHETHER CANCELED OR NOT.

8. Any surplus remaining after satisfaction of the total tax liability plus any costs of making the distraint and advertising the sale may be distributed by the City first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.

9. The Finance Director shall submit a written account of the sale to the City Manager.

~~(D)~~ (E) PROPERTY SUBJECT TO DISTRAINT; Exempt Property: Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale, or other contract arrangement. Property exempt from distraint and sale shall include the personal property described as such in Section 4-1-28(D).

~~(E)~~ (F) Return of the Property: The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the City Manager, or the Municipal Court, if the property was seized pursuant to a warrant issued by the Court, for the return of the property.

1. The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the City's interest or that the property is exempt from the City's lien.

2. The factfinder shall receive evidence on any issue of fact necessary to the decision of the petition. If the factfinder determines, by a preponderance of the evidence, in favor of the taxpayer or other petitioner, the property shall be returned.

(G) NOTICE OF INTENT TO LEVY: EVERY NOTICE OF ASSESSMENT ISSUED BY THE FINANCE DIRECTOR SHALL CONTAIN NOTICE OF THE CITY'S RIGHT TO ENFORCE COLLECTION OF THE SUM DEMANDED BY LEVY, DISTRAINT AND SALE PURSUANT TO THIS SECTION.

Section 16. Section 4-1-34, W.M.C., is hereby AMENDED to read as follows:

4-1-34: STATUS OF TAX DUE IN BANKRUPTCY AND RECEIVERSHIP: Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, the total tax liability shall ~~be~~ REMAIN a ~~prior and preferred~~ CLAIM AND lien against ~~at~~ the property of the taxpayer TO WHICH A LIEN HAS ATTACHED PURSUANT TO THIS CHAPTER. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the Finance Director the amount of the total tax liability. The officer shall remit any total tax liability before making payment to any judgment creditor or other claimants.

Section 17. Section 4-1-35, subsection (C), W.M.C., is hereby AMENDED to read as follows:

4-1-35: VIOLATIONS; SUMMONS AND COMPLAINT; PENALTY:

(C) Violations of this Title ARE CRIMINAL OFFENSES AND shall be punished by a fine or imprisonment or both pursuant to ~~the limits established in Section 1-8-1~~ TITLE VI of this Code. Each and every twenty-four (24) hour continuation of any violation shall constitute a distinct and separate offense.

Section 18. Section 4-1-36, W.M.C., is hereby AMENDED to read as follows:

4-1-36: STATUTE OF LIMITATIONS: Unless the limitation period has been extended as provided in this Section, the Statute of Limitations for provisions contained in this Title shall be as follows:

(A) Refunds:

1. ~~Any claim for~~ NO refund ~~for~~ OF disputed ~~total tax liability~~ shall be ISSUED UNLESS A CLAIM FOR REFUND IS submitted to the City BY THE PURCHASER on or before sixty (60) days from the date of such purchase.

2. ~~Any claim for~~ NO refund ~~resulting from~~ OF OVERPAYMENT FROM RETURNS SHALL BE ISSUED UNLESS a Notice of Overpayment ~~shall be~~ IS submitted to the City on or before thirty (30) days after the date of such Notice of Overpayment.

3. ~~Any~~ NO other ~~claim for~~ refund shall be ISSUED UNLESS A CLAIM FOR REFUND IS filed on or before three years after the date such overpayment was paid to the City.

(B) Assessments: ~~No Notice of Assessment shall be issued more than three years after:~~

EXCEPT AS PROVIDED IN THIS SECTION AND UNLESS SUCH PERIOD IS EXTENDED, THE TAX LEVIED BY THIS TITLE AND THE PENALTY AND INTEREST APPLICABLE THERETO, OTHER THAN INTEREST ACCRUING THEREAFTER, SHALL BE ASSESSED WITHIN THREE (3) YEARS AFTER THE RETURN IS FILED, OR A CERTIFICATE OF OCCUPANCY IS ISSUED FOR A CONSTRUCTION PROJECT REQUIRING A BUILDING PERMIT, AND NO NOTICE OF LIEN SHALL BE FILED OR DISTRAINT WARRANT ISSUED OR

SUIT FOR COLLECTION INSTITUTED OR ANY OTHER ACTION TO COLLECT THE SAME COMMENCED AFTER THE EXPIRATION OF SUCH PERIOD UNLESS THE FINANCE DIRECTOR ISSUES A NOTICE OF ASSESSMENT WITHIN SUCH PERIOD.

1. ~~The due date of such total tax liability; or~~ FOR PURPOSES OF THIS SECTION, A RETURN SHALL INCLUDE A CONSTRUCTION EQUIPMENT DECLARATION, AN INITIAL USE TAX RETURN, AND ANY OTHER FORM PRESCRIBED BY THE FINANCE DIRECTOR FOR REPORTING A TOTAL TAX LIABILITY.

2. ~~For a construction project which requires a City building permit, the date the final Certificate of Occupancy was issued for such project; or~~ FOR PURPOSES OF THIS SECTION, A RETURN FILED BEFORE THE LAST DAY PRESCRIBED BY LAW OR BY REGULATION PROMULGATED PURSUANT TO THIS TITLE FOR THE FILING THEREOF SHALL BE CONSIDERED AS FILED ON SUCH LAST DAY.

3. ~~For a construction project not requiring a City building permit, the date of completion of the project.~~ WHEN A TAXPAYER FAILS OR REFUSES TO FILE A RETURN, OR FILES A FALSE OR FRAUDULENT RETURN WITH INTENT TO EVADE TAX, THE TOTAL TAX LIABILITY MAY BE ASSESSED AND COLLECTED AT ANY TIME.

~~(C) Liens: No Notice of Lien shall be issued more than three years after the due date of the total tax liability. If the limitation period is extended, a Notice of Lien may be filed on or before thirty (30) days from the date of the Notice of Assessment issued for such extended period.~~

~~(D) Returns:~~

1. ~~When a taxpayer fails or refuses to file a return, the total tax liability may be assessed and collected at any time.~~

2. ~~In the case of a false or fraudulent return filed with intent to evade tax, the total tax liability may be assessed, or proceedings for the collection of such total tax liability may be begun at any time.~~

~~(E) (C) Protests:~~ No protest of a Notice of Assessment or Denial of a Claim for Refund shall be valid if submitted to the Finance Director in other than written form or after the period allowed in this Chapter.

(D) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A COMPLAINT OR ACTION FOR A VIOLATION OF THIS TITLE SHALL BE INSTITUTED WITHIN THREE (3) YEARS AFTER THE ALLEGED VIOLATION.

~~(E) (E)~~ EXCEPT FOR THE PERIOD DESCRIBED IN SUBSECTIONS C AND D OF THIS SECTION, the period of limitation may be extended before its expiration.

1. The taxpayer and the Finance Director may agree in writing to extend the period.

2. If the City provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Chapter, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the Notice of Assessment or Notice of Overpayment issued as a result of such audit. "Audit Period" includes all reporting periods with due dates which fall within the thirty-six (36) month period preceding the date of the notice of audit, or if a City building permit is required, the period between the issuance of such building permit and the issuance of a final Certificate of Occupancy.

~~(G) (F)~~ Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this Section.

Section 19. Section 4-2-2, subsections (D), (T) and (AA), W.M.C., are hereby AMENDED to read as follows:

4-2-2: WORDS & PHRASES DEFINED:

(D) "**Coin Operated Device**" means any device operated by coins or currency OR ANY SUBSTITUTE THEREFOR.

(T) "**Prescription Drugs**" means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq., and the regulations promulgated thereunder to ~~be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription"~~ BEAR, AT A MINIMUM, THE SYMBOL "RX ONLY", and is, in fact, dispensed, delivered, or administered to a person or animal by, or pursuant to the direction of, a licensed practitioner of the healing arts or veterinary medicine.

(AA) "**Return**" ~~means the sales and use tax reporting form used to report sales and use tax.~~ FOR PURPOSES OF THIS CHAPTER SHALL INCLUDE ANY DEFINITION OF "RETURN" INCLUDED IN OTHER CHAPTERS OF THIS TITLE.

Section 20. Section 4-2-3, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

4-2-3: RATE; IMPOSITION AND COLLECTION; DISTRIBUTION:

(A) Sales Tax: There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 4-2-5.

1. For sales transacted on or after January 1, 2004, but prior to January 1, ~~2017~~, 2033, the rate levied shall be three and eighty-five hundredths percent (3.85%). Unless otherwise lawfully provided, the 3.85% tax rate shall be reduced to THREE AND SIX TENTHS PERCENT (3.6%) ~~percent~~ on January 1, ~~2017~~ 2033.

2. For sales transacted on or after January 1, 1986 but prior to January 1, 2004, the rate levied shall be three and one-quarter percent (3.25%).

3. For sales transacted prior to January 1, 1986, the rate levied shall be three percent (3%).

(B) Use Tax: There is hereby levied a tax or excise upon the privilege of using, storing, distributing, or otherwise consuming in the City any article of tangible personal property or taxable services purchased, leased or rented from sources inside or outside the City, on which the City sales tax has not been paid.

1. For sales transacted on or after January 1, 2004, but prior to January 1, ~~2017~~ 2033, the rate levied shall be three and eighty-five hundredths percent (3.85%). Unless otherwise lawfully provided, the 3.85% tax rate shall be reduced to THREE AND SIX TENTHS PERCENT (3.6%) ~~percent~~ on January 1, ~~2017~~ 2033.

2. For sales transacted on or after January 1, 1986 but prior to January 1, 2004, the rate levied shall be three and one-quarter percent (3.25%).

3. For sales transacted prior to January 1, 1986, the rate levied shall be three percent (3%).

Section 21. Section 4-2-12, W.M.C., is hereby AMENDED to read as follows:

4-2-12: INCEPTION OF BUSINESS; INITIAL USE TAX: Any person who purchases or establishes a business inside the City shall file an initial use tax return.

(A) Existing businesses: Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great or greater than the fair market value of such property. Where the transfer of ownership is a lump sum transaction, the use tax shall be due on the book value established by the purchaser for income tax depreciation purposes, or fair market value if no determination has been made. When a business is taken over by other than the most recent seller in return for the assumption of outstanding indebtedness, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. Such tax shall be reported on an initial use tax return. The reporting period for such return shall be the PERIOD ENDING ONE DAY PRIOR TO THE FIRST DAY OF BUSINESS BY THE NEW OWNER ~~calendar month of the date of sale.~~

(B) New businesses: Use tax shall be due on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased for use inside the City. Such tax shall be reported on the initial use tax return. The reporting period for such return shall be the PERIOD ENDING ONE DAY PRIOR TO ~~calendar month of the opening~~ FIRST day of business.

Section 22. Section 4-3-2, subsection (H), W.M.C., is hereby AMENDED to read as follows:

4-3-2: DEFINITIONS:

(H) "**Return**" ~~means the admissions tax reporting form used to report admissions tax.~~ FOR PURPOSES OF THIS CHAPTER SHALL INCLUDE ANY DEFINITION OF "RETURN" INCLUDED IN OTHER CHAPTERS OF THIS TITLE.

Section 23. Section 4-4-1, subsection (D), W.M.C., is hereby AMENDED to read as follows:

4-4-1: WORDS AND PHRASES DEFINED:

(D) "**Return**" means the accommodation tax reporting form used to report the accommodations tax. FOR PURPOSES OF THIS CHAPTER SHALL INCLUDE ANY DEFINITION OF "RETURN" INCLUDED IN OTHER CHAPTERS OF THIS TITLE.

Section 24. Sections 4-7-5 through 4-7-9, W.M.C., are hereby AMENDED to read as follows:

~~**4-7-5: FAILURE TO PAY:** If any telephone utility company subject to the provisions of this Chapter shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) due and owing from such company to the City. The City Attorney upon direction of the City Council shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt.~~

~~**4-7-6: PENALTY CLAUSE:** If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Chapter shall fail, neglect, refuse to make or file the annual statement of accounts provided in Section 4-7-4, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty five dollars (\$25) nor more than three hundred dollars (\$300); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect, or refuse to make and file such statement shall be considered a separate and distinct offense.~~

~~**4-7-7: INSPECTION OF RECORDS:** The City, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Chapter and to make copies of the entries or contents thereof.~~

~~**4-7-8 4-7-5: LOCAL PURPOSE:** The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Chapter be construed to mean that any telephone utility company is issued a franchise by the City.~~

~~**4-7-9 4-7-6: TAX IN LIEU OF OTHER BUSINESS AND OCCUPATION TAXES:** The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the City on any telephone utility company subject to the provisions of this Chapter and in addition shall be in lieu of any free service furnished the City by any said telephone utility.~~

~~**4-7-7: ADMINISTRATION:** THIS CHAPTER SHALL BE ADMINISTERED IN ACCORDANCE WITH CHAPTER 1 OF THIS TITLE.~~

Section 25. Section 5-4-4, W.M.C., is hereby amended BY THE DELETION OF SUBSECTION (B) as follows:

~~**5-4-4: LICENSE APPLICATION AND ADMINISTRATION:**~~

~~(B) An application for renewal shall be filed with the City Clerk. Licenses shall be in effect for one year and shall be renewed upon renewal of the Business License or Home Occupation License, or upon completion of a license renewal request. Renewal of a license may be denied as provided below.~~

~~(C) (B) Each license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.~~

~~(D) (C) No license shall be transferable. After any sale of a business, the new owner shall apply for a new license.~~

Section 26. This ordinance shall take effect upon its passage after second reading.

Section 27. 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 25th day of June, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED
PUBLISHED this 9th day of July, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Staff Report

Information Only Staff Report
July 16, 2007



SUBJECT: Monthly Residential Development Report
PREPARED BY: Shannon Sweeney, Planning Coordinator

Summary Statement:

This report is for City Council information only and requires no action by City Council.

- The following report updates 2007 residential development activity per subdivision...
The table below shows an overall decrease (-12.5%) in new residential construction for 2007 year-to-date compared to 2006 year-to-date totals.
Residential development activity so far in 2007 reflects a decrease in single-family detached (-15.9%), a decrease in single-family attached (-3.7%), and no changes in multi-family or senior housing development when compared to last year at this time.

NEW RESIDENTIAL UNITS (2006 AND 2007)

Table with 7 columns: UNIT TYPE, JUNE (2006, 2007), % CHG., YEAR-TO-DATE (2006, 2007), % CHG. Rows include Single-Family Detached, Single-Family Attached, Multiple-Family, Senior Housing, and TOTAL.

Background Information

In June 2007, service commitments were issued for 22 new housing units within the subdivisions listed on the attached table. There were a total of 22 single-family detached and no single-family attached, multi-family, or senior housing utility permits issued in June.

The column labeled “# Rem.” on the attached table shows the number of approved units remaining to be built in each subdivision.

Total numbers in this column increase as new residential projects (awarded service commitments in the new residential competitions), Legacy Ridge projects, build-out developments, etc. receive Official Development Plan (ODP) approval and are added to the list. In June, the Legacy Ridge Senior Housing ODP received approval, and those 168 units have been added to the attached table.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

ACTIVE RESIDENTIAL DEVELOPMENT

<u>Single-Family Detached Projects:</u>	May-07	Jun-07	2006 YTD	2007 YTD	# Rem.*	2006 Total
Bradburn (120th & Tennyson)	0	3	5	8	94	31
CedarBridge (111th & Bryant)	0	0	0	0	6	0
Country Club Highlands (120th & Zuni)	0	7	0	10	108	0
Countryside Vista (105th & Simms)	0	0	0	0	9	0
Huntington Trails (144th & Huron)	4	7	7	20	164	26
Hyland Village (96th & Sheridan)	0	0	0	0	111	0
Legacy Ridge West (104th & Leg. Ridge Pky.)	0	0	5	0	7	15
Lexington (140th & Huron)	0	0	0	0	4	1
Meadow View (107th & Simms)	0	0	1	0	5	4
Park Place (95th & Westminster Blvd.)	0	3	17	12	66	21
Ranch Reserve (114th & Federal)	0	0	4	0	4	5
South Westminster (Shoenberg Farms)	0	2	0	7	57	0
Various Infill	0	0	4	1	7	8
Village at Harmony Park (128th & Zuni)	0	0	26	0	0	41
Winters Property (111th & Wads. Blvd.)	0	0	0	0	8	0
Winters Property South (110th & Wads. Blvd.)	0	0	0	0	10	0
<i>SUBTOTAL</i>	4	22	69	58	660	152
<u>Single-Family Attached Projects:</u>						
Alpine Vista (88th & Lowell)	0	0	0	0	84	0
Bradburn (120th & Tennyson)	0	0	12	2	3	38
CedarBridge (111th & Bryant)	0	0	0	0	0	2
Cottonwood Village (88th & Federal)	0	0	0	0	72	0
East Bradburn (120th & Lowell)	0	0	0	0	117	0
Highlands at Westbury (112th & Pecos)	0	0	3	11	36	24
Hollypark (96th & Federal)	0	0	0	0	20	0
Hyland Village (96th & Sheridan)	0	0	0	0	165	0
Legacy Village (113th & Sheridan)	0	0	8	8	62	24
South Westminster (Shoenberg Farms)	0	0	0	5	55	0
Summit Pointe (W. of Zuni at 82nd Pl.)	0	0	0	0	58	0
Sunstream (93rd & Lark Bunting)	0	0	4	0	18	4
Walnut Grove (104th & Wadsworth Pkwy.)	0	0	0	0	0	66
<i>SUBTOTAL</i>	0	0	27	26	690	158
<u>Multiple-Family Projects:</u>						
Bradburn (120th & Tennyson)	0	0	0	0	54	0
Hyland Village (96th & Sheridan)	0	0	0	0	150	0
Mountain Vista Village (87th & Yukon)	0	0	0	0	24	0
Prospector's Point (87th & Decatur)	0	0	0	0	29	0
South Westminster (East Bay)	0	0	0	0	64	0
South Westminster (Harris Park Sites I-IV)	0	0	0	0	12	0
<i>SUBTOTAL</i>	0	0	0	0	333	0
<u>Senior Housing Projects:</u>						
Covenant Retirement Village	0	0	0	0	26	0
Crystal Lakes (San Marino)	0	0	0	0	7	0
Legacy Ridge (112th & Federal)	0	0	0	0	168	0
<i>SUBTOTAL</i>	0	0	0	0	201	0
TOTAL (all housing types)	4	22	96	84	1884	310

* This column refers to the number of approved units remaining to be built in each subdivision.



WESTMINSTER

Staff Report

Information Only Staff Report
July 16, 2007



SUBJECT: Battle of the Bands

PREPARED BY: Peggy Boccard, Recreation Services Manager

Summary Statement:

- This report is for City Council information only and requires no action by City Council.
- The North Metro Arts Alliance (NMAA) will be hosting a young adult “Battle of the Bands” event on Friday, July 27, 2007, from approximately 6 to 9 p.m. at City Park.
- NMAA has a great deal of experience in organizing concerts and will be responsible for the event, including all costs, with the exception of Parks, Recreation and Libraries staff needed to set up and take down the stage.
- To ensure the concert is well supervised, NMAA will hire off-duty officers.

Background Information

In 1983, the Westminster Rotary Club and other community leaders founded the non-profit Westminster Community Artist Series, now known as the North Metro Artist Series (NMAA). The City collaborates with NMAA to provide a wide range of artistic and cultural programs in the Westminster area. Recently, board members from NMAA began to receive requests to provide an activity for the young adult population. Specifically, they were asked to provide an opportunity for local youth to perform for their peers. City Staff agreed that this would be a positive experience for the youth in our community and granted the use of a venue and stage for the activity.

This event supports the City’s Strategic Plan Goal of “Beautiful City” by increasing public and cultural arts.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER

Staff Report

Information Only Staff Report
July 16, 2007



SUBJECT: Delivery of The City's Performance Report, *Take a Closer Look: How Performance Measures Build a Better City*

PREPARED BY: Aric Otzelberger, Management Analyst

Summary Statement:

This report is for City Council information only and requires no action by City Council.

As part of the City of Westminster's commitment to accountability, open communication, continuous improvement, and SPIRIT (Service, Pride, Integrity, Responsibility, Innovation, and Teamwork), Staff continues to utilize performance measurement as a management tool. Performance measurement allows the City to continuously evaluate the effectiveness and efficiency of its operations, while providing information necessary to improve the delivery of services and the management of resources. *Take a Closer Look* is the City's annual performance report and reflects Staff's desire to share meaningful information regarding the City's performance measurement efforts and accomplishments in an easy-to-read format. *Take a Closer Look* organizes performance measurement outcomes and activities according to the City's Strategic Plan goals.

Background Information

The City of Westminster has had a rigorous performance measurement program in place for more than six years. The program's goals are to encourage strategic planning and goal setting, gather meaningful data to help managers make informed decisions, foster critical reasoning throughout the organization, compare the City's accomplishments and practices to other cities, and add an extra layer of credibility to managers' policy recommendations. The performance measurement program enhances accountability with the public and allows the organization to give the community a more meaningful assessment of the City's achievements. The performance measurement program requires that employees step back from their day-to-day work and assess why the City provides each service and how those services are provided. This focus on analysis has helped Staff to ensure that it is working effectively and efficiently toward achieving community goals.

The City's performance measurement program is comprised of two parts. The first consists of the City of Westminster's internal performance measures. These measures are designed by Staff in each department to show year-to-year trends for City programs and projects and to describe progress that is made toward achieving the Strategic Plan goals. The second part of the program involves collecting and utilizing comparative statistics from the International City/County Management Association's (ICMA) Center for Performance Measurement (CPM) and other professional associations. This aspect of the performance measurement program gives the City an opportunity to compare its operations to governmental entities nationwide. CPM citywide and service area comparison cities are chosen according to key criteria such as population, square miles, or size and makeup of General Fund operating budget. Most of the comparative information Council will see in this year's *Take a Closer Look* reflects 2005 CPM data. CPM will release 2006 data later this summer, and this information will be included in next year's report.

Take a Closer Look reflects Staff's desire to share meaningful information regarding the City's service efforts and accomplishments in an easy-to-read format. *Take a Closer Look* organizes performance measurement data in a broad, Citywide fashion according to the Strategic Plan goals. *Take a Closer Look* presents a sampling of the City's 400+ performance measures in a concise, visually appealing manner. Staff believes that this format is effective in providing an understandable, meaningful and useful report. The report will also be posted on the City's Website.

The City of Westminster is recognized as a leader in performance measurement efforts by professional organizations and the local government community. Staff continues to respond to performance measurement questions from numerous local governments in the Front Range and across the nation. Recently, the City of Westminster was highlighted for its performance measurement efforts in two separate articles in "Performance Matters," a regular newsletter published by ICMA's Center for Performance Measurement. In addition, the City of Westminster has applied for ICMA's "Certificate of Distinction" Award for exceptional accomplishments with performance measurement. Staff will be notified in early fall if the City is selected to receive this recognition.

Efforts are currently underway to improve the City's performance measurement program. One exciting development is the formation of a State of Colorado performance measurement consortium through ICMA's Center for Performance Measurement. This consortium includes several Front Range cities and promises to provide more relevant comparison data for the City of Westminster. Hopefully, data from the consortium will be available in next year's report. In addition to the consortium, Staff is in the process of changing the performance measurement reporting process to provide timelier data, improve benchmark comparisons, and better integrate performance

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measurement with the City's budget process. In addition, several departments are in the process of improving upon their existing performance measurement efforts.

The City's performance measurement program helps gauge progress toward achieving the City's Strategic Plan's Goal and Objectives.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**City of Westminster City Council Study Session
July 16, 2007**

Mayor Nancy McNally called the Study Session to order at 6:36 PM. All Council was in attendance.

City Staff in attendance included: City Manager Brent McFall, Assistant City Manager Steve Smithers; Deputy City Manager Matt Lutkus; City Attorney Marty McCoullough, Community Development Program Coordinator Vicky Bunsen; Community Development Director John Carpenter; Finance Director Tammy Hitchens; Sales Tax Manager Barb Dolan; Sales Tax Audit Supervisor Josh Pens; Sales Tax Auditor James MacDonald; IT Director David Puntenney; Information Systems Manager Scott Rope; Public Information Specialist Carol Jones; and Management Intern Phil Jones.

The guest in attendance was Rachel Ceccarelli with the Westminster Window.

Historic Resources Intensive Survey Results

In 2005, the City completed the Historic Resources Survey Plan, available online at the City's website: http://www.ci.westminster.co.us/city/hp/default_surveypage.htm, which was also funded by a CLG grant from the Colorado Historical Society. The survey found more than 1700 buildings that were more than 50 years of age in Westminster, most of them outside of the historic Westminster roots in the Harris Park neighborhood (the area bounded by Lowell and Bradburn Boulevards, and 72nd to 80th Avenue). The City applied for another CLG grant and received \$38,750 in 2006 to proceed with survey of at least 100 properties in Harris Park, 25 in the Pillar of Fire neighborhood, and ten transportation resources.

An important theme in presenting the results of this survey is that the survey itself has no impact on the status of any of the surveyed buildings. At least one surveyed house was demolished by the Pillar of Fire Church during the survey period and more of the surveyed structures will probably be demolished in the future. The goal of the survey is to gather and present information so that the community can better understand its historic resources and make decisions on their future status.

It is not necessary for the City Council to take any particular action on the plan, such as approval or adoption. Some communities "take it under advisement," and use a survey as one point of information in reviewing landmark nominations and developing policies for historic resources.

Council commended the staff's thorough report and was supportive of the effort.

Modifications to Westminster Municipal Code Title XVI to Include Competitive Cable TV Franchise Application Process

In December, 2006 the Federal Communications Commission ("FCC") adopted a rule establishing new requirements for local franchise authorities (LFAs) in considering applications for competitive cable television franchise agreements. Included in these rules are timeframes under which LFAs must grant or deny a competitive franchise application. These new rules were adopted as a result of findings by the FCC that LFAs were creating unreasonable barriers and preventing competition in the cable TV market. The City of Westminster needs to adopt an ordinance defining the competitive cable TV application process and requirements. Staff is recommending an ordinance to amend title XVI of the

Westminster City Code to include a section for the competitive cable franchise process. Staff will base the ordinance on the model competitive franchise application ordinance developed by the Greater Metropolitan Telecommunications Consortium (GMTC).

City Council may have seen recent articles expressing concern on the part of one potential franchise applicant in providing information that they consider to be “sensitive competitive information.” Staff has investigated and determined that information such as build out plans and timetables are not subject to the open records act and therefore can be submitted as confidential information. Staff recommends inclusion of build out plans and timetables as defined in the GMTC model application ordinance in the Westminster ordinance.

Council discussed the proposed ordinance and directed staff to present it as an agenda item for the next council meeting.

Proposed Amendments to Titles III, IV, and V of the Westminster Municipal Code Concerning Tax Administration

In response to the business community’s concern regarding the difficulties of sourcing sales, Staff recommends adopting the Electronic Address Locator provision and other administrative amendments to the tax code. The recommended changes would:

- Provide retailers with a reasonable and limited liability process for the collection of the City’s sales tax through the use of a comprehensive, state-certified address locator database;
- Implement the most recent voter-approved sales and use tax extension for open space;
- Establish a more legally consistent and defensible ordinance, and;
- Directly support two components of the City of Westminster Strategic Plan: Financially Sustainable Government and Balanced, Sustainable Local Economy.

Adopting a hold harmless provision related to the Electronic Address Locator will protect retailers from the assessment of tax, penalty, and interest that would otherwise be due based solely on an error in State-certified electronic databases. In addition, staff believes this protection will encourage non-nexus retailers to voluntarily collect City sales tax. The City is one of many jurisdictions that have adopted or intend to adopt similar hold harmless language into their tax codes.

In addition to the Electronic Address Locator, Staff has identified other changes to Titles III, IV and V, which will allow for the more effective administration of the City’s tax program. Changes in technology, business climate, state and federal regulations, bankruptcy law, and related case law require the proposed amendments in an effort to properly facilitate and clarify the legislative intent of the Code. Included in these updates is the implementation of Ballot Issue 2A that extends collection of the open-space, parks, recreation, and trails sales and use tax through 2032.

Council was appreciative of staff’s efforts and directed staff to proceed with bringing this item to council for action.

Mayor McNally adjourned the Study Session at 7:57 PM.