



WESTMINSTER

Staff Report

TO: The Mayor and Members of the City Council

DATE: August 15, 2007

SUBJECT: Study Session Agenda for August 20, 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

1. Building Permit Fees for Photo Voltaic Solar Systems
 2. Update on 2007 Municipal Court Remodel Projects
 3. Rail Technology for Northwest Rail Corridor
 4. 2007 Storm Drainage Study
 5. Municipal Code Modifications to Chapter 11 Title VIII Stormwater Quality
- 6:30 P.M.

EXECUTIVE SESSION

None at this time.

INFORMATION ONLY ITEMS – Does not require action by City Council

1. Monthly Residential Development Report (Attachment)
2. Residential Building Valuations

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
August 20, 2007



SUBJECT: Building Permit Fees for Photo Voltaic Solar Systems

PREPARED BY: Dave Horras, Chief Building Official

Recommended City Council Action

Consider the information from other local jurisdictions and determine if the City of Westminster should establish a flat permit fee for this type of project.

Summary Statement

Don and Margie McGill approached City Council during City Council meetings in June, to request that the City of Westminster provide an incentive for residential photo voltaic (PV) solar systems by reducing fees charged for the installation of these systems. The McGill's contend that the City of Westminster's fees are more expensive than those charged in neighboring jurisdictions and that these fees act as a disincentive for Westminster homeowners to install these expensive systems.

Staff has completed a survey of neighboring jurisdictions to determine how the City of Westminster's permit fees and use tax collection compare with other local jurisdiction's fees. Building permit fees in the surveyed jurisdictions ranged from a low of \$59 in the City and County of Denver to a high of \$2,521 in the City of Northglenn. With the exception of the City of Denver, which does not collect a pre-payment of use tax when a permit is issued, a large portion of any jurisdiction's permit fee is the use tax collected as part of the building permit process. The use tax varied based on the tax rate for the jurisdiction but none of the surveyed jurisdictions waived, and only one modified, the collection of use tax on these projects.

In addition, the McGill's are concerned with the City of Westminster's construction standards that require that roof mounted solar panels be installed on the roof on supports that are attached directly to the roof structure and properly flashed and sealed. They contend that the City of Westminster is the only jurisdiction to require this as part of the installation and this requirement adds further additional costs.

Expenditure Required: \$0

Source of Funds:

Policy Issue

Should the fee schedule used to establish building permit fees for PV solar systems and similar types of environmentally friendly projects be modified to help make these projects more affordable?

Alternative(s)

- Don't change the current fee structure
- Establish a "flat fee" rate for these types of permits
- Reduce the current cost of the permit by an established percentage
- Waive the permit fees and/or use tax on a broaden range of energy conservation projects
- Any combination of the above

Background Information

The McGill's are planning to install a PV solar system with a total cost of \$68,000, of which XCEL will rebate back about \$34,800. When their contractor made application for the building permit to install the system, the building permit was calculated based on the \$68,000 valuation. Based on the provided valuation, the permit fee has been calculated at \$1,241 with the estimated use tax of \$1,309 for a total permit cost of \$2,550. In presentations to City Council, the McGill's contend that the permitting costs in the City of Westminster are a disincentive for residents to install PV solar systems. They have asked City Council to consider a reduction in "usage fees" by 50% to 75% to demonstrate support for alternative sources of energy and provide an incentive for more residents to consider solar power.

To understand how the fees charged for PV solar system permits in the City of Westminster compare with other local jurisdictions a survey was conducted. The survey was based on what the permit fees and use tax would be on a PV solar system valued at \$36,000, the valuation stated by the McGill's when questioned by City Council. The survey results are contained in the attachment and reveal that there is little consistency among the jurisdictions surveyed. Many jurisdictions are charging a flat fee for solar systems and all, except the City and County of Denver, collect use tax based on materials costs. Denver is different in that they don't collect a pre-payment of estimated use tax on building permits, but require contractors to register and remit use tax monthly on an actual basis. The only jurisdiction that had any type of documented incentive program was the City of Boulder which offers a 15% rebate of the city collected use tax for PV or thermal solar systems.

If City Council is in support of modifying the current fee schedule, staff would recommend that the building permit fee schedule be modified to establish a flat fee for PV or thermal solar systems. A flat fee of \$300 would offset the typical direct costs for plan review and inspection services provided by the building division. A \$300 permit fee is also the recommended permit fee as determined by the Sierra Club in a recent study of solar permit fees conducted in California. Unless City Council desires to provide additional incentives by reducing the use tax, use tax would continue to be due based on the materials costs. This material cost is the actual materials cost before any rebates or tax credits. If

a flat fee is established as recommended, building permit revenue would be reduced. Based on the 10 building permits issued for PV solar systems during the first half of 2007 permit fees exceeded \$300 on 8 of 10 permits. If a \$300 flat fee building permit would have been in place, year-to-date revenues would be reduced by \$2,310, or by an average of \$231 per permit.

An additional item brought to the attention of City Council was the City of Westminster's requirements for mounting these systems to the roof. Council received an e-mail regarding the use of "L" brackets to mount a PV solar system on the roof of the Governor's residence. The McGill's were correct in noting that the installation at the Governor's residence using the "L" brackets attached through the roof covering material would not be approved in the City of Westminster. The

attachment of “L” brackets using screws installed through the roofing material and protected with caulking is not considered as adequately protecting the structure from moisture in the City of Westminster. The International Residential Code (IRC) requires flashing on penetrations of the roofing materials and considers it critical to keeping moisture out of the structure. In addition, any type of surface attachment would void most warranties on the roofing material and require the complete removal and replacement of all mounting hardware during re-roofing.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

PV Solar Permit Fees

<u>Jurisdiction</u>	<u>Fees as Presented by McGill's</u>	<u>Current Fees Based on Project Valued at \$36,000</u>
Arvada		
Permit	\$206	\$70 (flat)
Use Tax	<u>\$208</u>	<u>\$622</u>
	\$414	\$692
Denver		
Permit	\$55 - \$59	\$59 (flat)
Use Tax	Use Tax is not collected as part of the permit	
Lafayette		
Permit	\$54	\$54
Use Tax	<u>\$498</u>	<u>\$896</u>
	\$552	\$950
Louisville		
Elec Permit	\$44	\$492
Use Tax	<u>\$81</u>	<u>\$117</u>
	\$125	\$609
Thornton		
Permit	N/A	\$114
Use Tax		<u>\$675</u>
		\$789
Northglenn		
Permit	N/A	\$829
Use Tax		<u>\$1692</u>
		\$2521
Broomfield		
Permit	N/A	\$586
Use Tax		<u>\$747</u>
		\$1333
Boulder		
Permit	N/A	\$68 (flat)
Use Tax		<u>\$662</u> (after 15% rebate)
		\$730
Westminster		
Permit	\$1241	\$810
Use Tax	<u>\$1309</u>	<u>\$693</u>
	\$2550	\$1503
Westminster (Proposed)		
Permit		\$300
Use Tax		<u>\$693</u>
		\$993



WESTMINSTER

Staff Report

City Council Study Session Meeting
August 20, 2007



SUBJECT: Update on 2007 Municipal Court Remodel Projects

PREPARED BY: Carol J. Barnhardt, Municipal Court Administrator

Recommended City Council Action

This item is for information only; no City Council action is requested. Municipal Court staff will present information about the Municipal Court remodel projects for 2007.

Summary Statement

- Staff will be present at the August 20, 2007 City Council Study Session to present a brief PowerPoint presentation of the Municipal Court remodel projects for 2007.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council support and concur with the direction of the remodel projects for the Municipal Court?

Alternatives

City Council could provide feedback to staff on remodel projects they would like to see completed.

Background Information

During the past couple of years, the City has invested approximately \$377,358 and numerous in-house staff hours for remodel work, security improvements, and general maintenance in the Municipal Court Building. Ongoing maintenance and upgrades to this facility are very important when one considers the amount of public use and the visibility of this building in south Westminster. The following is a list of the major projects in the building since late 2005:

- In late 2005, security improvements (card key cabling, camera wiring, and door alarms) were completed totaling approximately \$9,858. The funds for these projects were allocated in the Court Security Improvement CIP budget.
- In 2006, various security improvements (card key installation, burglar alarm system, fire alarm system, metal detector, camera system) were completed totaling approximately \$70,183. The funds for these projects were allocated in the Court Security Improvement CIP budget.
- In 2006, a remodel of the open stairwell and movement of a doorway in the east wing was completed totaling approximately \$7,000. The funds for these projects were allocated in the BO&M Major Maintenance CIP budget and Court Security Improvement CIP budget.
- In 2006, mechanical and lighting upgrades as part of the Siemens energy project were completed. The funds for these projects totaling approximately \$85,000 were allocated in the BO&M HVAC Siemens Energy Project Account.
- In 2006, water penetration and mitigation issues (drainage problems, removal of old pond area) were completed totaling approximately \$4,500. The funds for these projects were allocated in the BO&M Major Maintenance CIP budget.
- In 2006, six projects (power wash exterior, paint exterior, paint interior, replace windows, replace blinds, asbestos study on employee restrooms) were completed totaling approximately \$100,400. The funds for this project were allocated in the Court Facility Improvement CIP budget.
- In 2007, two projects (remodel of break room and employee restrooms) have been completed totaling approximately \$49,600. The funds for this project were allocated in the Court Facility Improvement CIP budget.
- In 2007, various security projects have been or are being completed (window in doorway by judicial / jail hallway, upgrading front security area) totaling approximately \$4,964. The funds for these projects are allocated in the Court Security Improvement CIP budget. Other security improvements to the jail cell area are being bid at this time.

- In 2007, one project (carpet replacement in east wing, entry, probation section) was completed totaling approximately \$45,853. The funds for this project were allocated in the BO&M Major Maintenance CIP budget.

Staff has scheduled time on Monday evening's study session to give Council a brief PowerPoint presentation on the before and after improvements that have been made in 2007 and a description of enhancements that are planned.

Given the importance and visibility of the Court, the ongoing maintenance of the facility is important in achieving two of the City's goals in the Strategic Plan: Safe and Secure Community and Beautiful City.

Respectfully submitted,

J. Brent McFall
City Manager



Staff Report

City Council Study Session Meeting
August 20, 2007



SUBJECT: Rail Technology for the Northwest Rail Corridor

PREPARED BY: Dave Downing, City Engineer

Recommended City Council Action:

Consider the merits of the two possible alternatives for rail vehicles – Diesel Multiple Units (DMU) and Electric Multiple Units (EMU) – on the Northwest Rail Corridor and direct City Staff to support Council's selected alternative during the upcoming preparation of the Environmental Assessment.

Summary Statement

- For budgeting purposes, the original FasTracks Plan assumed that Locomotive Hauled Coaches would be used along the Northwest Rail Corridor. However, the sponsors and the local governments along the Corridor quickly discarded this option early in the environmental process in favor of either DMUs or EMUs.
- There are certain environmental and financial concerns attached to each of the technology options. For example, EMUs are generally considered to emit less air pollution, but such a conclusion ignores emissions that are discharged into the air at the source of electricity generation. The overhead web of electric lines needed to power EMUs can be visually intrusive in neighborhoods and present an eyesore that is not experienced with DMUs. Finally, the implementation of DMU technology in the Northwest Rail Corridor would have a much lower initial capital cost (EMU capital costs are estimated at \$90 million more than DMU capital costs) than the EMU technology, but long-term operating costs (i.e. the cost of fuel) cause the overall expenses, based on the current diesel fuel cost assumptions, to become comparable beyond 30 years into the future.
- City Staff has been advised that the Regional Transportation District (RTD) intends to move quickly with the decision-making process for choosing the rail technology for this Corridor. The October 16, 2007 meeting of the RTD Board of Directors has been targeted for this purpose. Council's direction on this matter is urgently needed prior to the commencement of discussions on this topic with the other members of the Northwest Rail Governments Team (NWRGT) in early September.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the City Council favor one of the two alternatives for rail car technology to be used on the Northwest Rail Corridor?

Alternatives

There are only two alternatives – Diesel Multiple Units (DMU) or Electric Multiple Units (EMU) – to be considered for use on the Northwest Rail Corridor.

Background Information

Within the next two months, the RTD Board of Directors will issue a decision on the choice of rail technology to be implemented on the Northwest Rail Corridor, the FasTracks rail line that will operate through the City of Westminster between Denver Union Station and Longmont. Previously, the City Council has indicated a preference for the DMU technology over the EMU technology due to its significantly lower cost and potential for shifting to more environmentally friendly fuels (such as biodiesel) in the future. Likewise, RTD representatives seem to favor the DMUs, mainly due to the substantially lower initial capital cost for this option. However, comments received from the public during the July 11 public meeting at the City Park Recreation Center as well as recent comments from representatives of certain local jurisdictions along the corridor seem to indicate that there will be opposition to the proposed implementation of the DMU technology. It is Staff's observation that much of the public's apprehension over DMUs stems from a false impression of the amount of fumes and noise emitted by these vehicles.

Attached to this Staff Report is a copy of a slide presentation prepared by the RTD FasTracks team in September of 2006 that provides a comparison of the two commuter rail vehicle options for the East Corridor and the North Metro Corridor as well as the Northwest Rail Corridor. Since the date that this slide presentation was prepared, a decision was made to use EMUs on the East Corridor. It should be noted, however, that the "break even" point (i.e. the future date at which the lower operating costs of the EMUs offset the higher initial capital costs) for the two technologies as applied to the East Corridor is only 15 years into the future as opposed to the 30+ years for the Northwest Rail Corridor.

Appropriate City Staff will be in attendance at the August 20 City Council Study Session to discuss this item and answer questions for Council.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Commuter Rail Vehicle Technology, September 2006 slide presentation



Staff Report

City Council Study Session Meeting
August 20, 2007



SUBJECT: 2007 Storm Drainage Study

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Staff requests City Council feedback on the 2007 Storm Drainage Study. Specific projects identified in this study will be presented to City Council as part of the 2008 budget amendment process and/or future year budget preparation processes. Additionally, Staff is recommending the allocation of funds to the Department of Parks, Recreation and Libraries for the maintenance of drainageways identified in this study.

Summary Statement

- This study was prepared by Muller Engineering under an engineering contract authorized by City Council on March 12, 2007 intended to assist the City with the prioritization of local drainage improvement projects based upon greatest risk to public health, safety, welfare and protection of existing infrastructure.
- An increase of the stormwater utility fee to fund the backlog of needed drainage improvements was adopted by City Council during the two-year budget process in 2006. This increase from \$1.50 per 3,100 square feet of impervious area to \$3.00 per 3,100 square feet of impervious area will be effective on January 1, 2008. Even with the increase in the fee, Westminster remains well below the average rate for other front range municipalities, which is \$5.29
- Muller Engineering staff reviewed existing drainage master plans, walked approximately 68 miles of major drainageways throughout the City and completed stream inspection reports with photographs to assist in determining the highest priority drainage projects for the City.
- Every potential major drainageway project was prioritized. The top ten recommended drainage capital improvement projects are further detailed in this study.
- Maintenance of the drainageways was also a critical factor reviewed in this study. Currently, the City's drainageways are maintained by the Department of Parks, Recreation and Libraries (PR&L), the Department of Public Works and Utilities Streets Division, private owners associations or the Urban Drainage and Flood Control District. The vast majority of maintenance responsibility of open channels was previously delegated to PR&L.
- Currently, PR&L does not receive any funding from the Stormwater Utility for these maintenance activities. One of the alternatives identified in the study suggests an annual funding allocation to PR&L from the SWU of \$200,000 for this maintenance work.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City accept the recommendations of this storm drainage study and pursue future funding allocations for the top ten drainage capital improvement projects?

Should Stormwater Utility funds be allocated to the Department of Parks, Recreation and Libraries for the maintenance of drainageways throughout the City?

Alternative

City Council could recommend changes to the storm drainage study or accept it without modification.

City Council could decide not to fund any of the PR&L maintenance activities with Stormwater Utility funds or suggest a different amount to allocate.

Background Information

Since the inception of the City of Westminster's Stormwater Utility in 2001, the City has maintained the National Pollutant Discharge Elimination System (NPDES) permit through the State of Colorado, performed maintenance activities on a variety of drainageways, trained City Staff on environmental issues, created the reusable grocery bag (green bag) campaign, created the hard-to-recycle guide, funded the household hazardous waste pickup program and designed and constructed more than 25 drainage improvement projects.

The 2007 Storm Drainage Study reports the results of an extensive review of the existing major storm drainage infrastructure and has prioritized a list of potential drainage capital improvement projects that should be constructed within the next several years. Rough cost estimates and a proposed schedule for the completion of those projects (based upon the 2008 fee structure) were also included in the study. Staff requests Council's concurrence with the prioritized list of drainage projects to be pursued through funding from the SWU.

Additionally, maintenance of the storm drainage system was evaluated. Currently, the Department of Public Works and Utilities (PW&U) is allocated \$100,000 per year from the Stormwater Utility to provide maintenance on storm sewer inlets, piping networks and some open channels. In 2008, street sweeping operations will also be fully funded through the Stormwater Utility in the amount of \$260,400. This contract is administered by the PW&U Streets Division.

PR&L staff identified approximately \$550,000 of annual drainageway maintenance activities that they currently provide that are not funded through the Stormwater Utility. One of the alternatives suggested in the storm drainage study is to allocate \$200,000 from the SWU to PR&L to help pay for the costs of some of these drainageway maintenance activities. Staff recommends that this proposal be implemented beginning in 2008. The total additional funds projected to be generated from the increase in the Stormwater in 2008 is \$920,000.

Staff will be present on Monday night to provide an overview of the study results and to answer City Council's questions.

Respectfully submitted,

J. Brent McFall
City Manager



Staff Report

City Council Study Session Meeting
August 20, 2007



SUBJECT: Municipal Code Modifications to Chapter 11 Title VIII Stormwater Quality

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Concur with Staff recommendation to bring the attached Councillor's Bill forward for action that repeals and reenacts Chapter 11 of Title VIII of the Westminster Municipal Code concerning stormwater quality.

Summary Statement

- In 2003, the City was required by the federal Environmental Protection Agency to apply for a National Pollutant Discharge Elimination System (NPDES) permit through the Colorado Department of Public Health and Environment. This is a five-year permit, up for renewal in 2008.
- The City is required by this permit to minimize the amount of pollutants that enter into our channels, streams and lakes. There are six program areas with specific measurable goals that the City must fulfill and document in an annual report. These include: 1) Public Education and Outreach, 2) Public Participation and Involvement, 3) Illicit Discharge Detection and Elimination, 4) Construction Site Runoff Control, 5) Post-Construction Site Runoff Control and 6) Pollution Prevention and Good Housekeeping.
- For the past four years, the City has sent brochures to businesses and provided public education activities during City events including the Westminster Faire, Earth Day, Public Works Week and the Water Festival; published articles in the City's newsletter and in the Weekly Edition to inform the public of the NPDES program and the need to protect water quality.
- One of the specific requirements of the "illicit discharge detection and elimination" and "post-construction site runoff control" program areas is to update the City's stormwater quality ordinance to include enforcement mechanisms for water quality violations. The City's current stormwater quality ordinance does not provide this enforcement mechanism.
- The proposed ordinance will provide the enforcement mechanisms to protect and enhance the quality of water discharged into the City of Westminster's storm drainage system.
- Although this ordinance would put into place enforcement mechanisms, Staff's approach to Stormwater management will continue to place a strong emphasis on education with businesses and the public.

Expenditure Required: \$0

Source of Funds: N/A

Staff Report - Municipal Code Modifications to Stormwater Quality

Policy Issue

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

Alternative

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

Background Information

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

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

Highlights of the proposed Municipal Code changes are as follows:

- Defines “Illicit Discharges” and enforcement against any party that causes an illicit discharge into the storm sewer system such as a cross connection from the sanitary sewer into the storm sewer system or a sanitary sewer overflow into the storm drainage system.
- Defines responsibilities for developers, builders, business owners, homeowners associations and landowners to install and maintain BMPs.
- Should the owner of a permanent BMP fail to maintain their facility, the City will now have the ability to perform the maintenance work and charge the owner for services rendered or put a lien on the property per Title I, Chapter 31.
- Establishes administrative fines of up to \$1,000 per violation per day as an enforcement option for water quality violations. Administrative fines can be used as an alternative to formal action in court. These fines are subject to appeal using a process already established by Municipal Code.

This ordinance will give the City the much needed ability to protect and enhance the quality of water entering into our streams and lakes so that the residents of Westminster can safely enjoy their open spaces and other natural environments.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

AN ORDINANCE

BY AUTHORITY

ORDINANCE NO. _____

COUNCILLOR'S BILL NO. _____

SERIES OF 2007

INTRODUCED BY COUNCILLORS

A BILL

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

THE CITY OF WESTMINSTER ORDAINS:

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

CHAPTER 11

STORMWATER QUALITY

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

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

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

8-11-2: GENERAL REQUIREMENTS:

(A) Any person who undertakes or causes to be undertaken any activity, which involves disturbance of the surface of land shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

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

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

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

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

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

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

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

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

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

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

(HH) **“Surety”** means a Letter of Credit or cash in the amount of 115% of the cost of constructing or installing all items associated with the Land Disturbance Permit. The surety will guarantee the completion of all terms and

conditions of the Land Disturbance Permit as well as payment of any fines and interest assessed due to non-compliance with any section of the Land Disturbance Permit or this ordinance.

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

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

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

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

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

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

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

(A) Developers shall be responsible for ensuring that:

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

(B) Builders shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed prior to lot purchase from developer and/or owner are being properly maintained and are in good working order;
2. Final stabilization as completed by the Developer is maintained or repaired if damaged by the Builder;
3. Any temporary and/or permanent BMPs necessary for the building site(s) have been properly installed, maintained and remain in good working order until the property has been sold to a business, land or landowner; and

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

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

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

2. Final stabilization has been achieved and maintained;

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

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

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

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

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

8-11-8: ILLICIT DISCHARGES:

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

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

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

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

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

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

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

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

(B) **Right of Entry:**

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

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

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

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

(E) **Stop Work Orders.** Whenever the City determines that any activity is occurring which is not in compliance with an approved permit and/or the requirements of this ordinance, the City can order such activity stopped upon service of written notice upon the person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate person cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any person to fail to comply with a stop work order.

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

(G) The remedies provided by this Section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, or a prerequisite for, taking other action against a violator.

8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES:

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

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

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

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

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

1. Immediately comply with all requirements; and

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

(F) **Administrative Fines:**

1. When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may fine such user in an amount not to exceed \$1,000.00 per violation per day.

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

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

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

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

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

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

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

8-11-11: JUDICIAL ENFORCEMENT REMEDIES:

(A) **Injunctive Relief:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may petition the District Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the land disturbance permit, order, or other requirement imposed by this ordinance on activities of the user. The City Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(B) **Civil Penalties:**

1. A user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall be liable to the City for a

maximum civil penalty of \$1,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

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

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

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

(C) Criminal Prosecution:

1. A user who willfully or negligently violates any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 per violation, per day, or imprisonment for not more than one (1) year, or both.

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

3. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, land disturbance permit, or order issued hereunder shall, upon conviction, be punished by a fine of not more than \$1,000 per violation, per day, or imprisonment for not more than one (1) year, or both.

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

8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION:

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

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

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

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

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of August, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of August, 2007.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



Staff Report

Information Only Staff Report
August 20, 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 (-4.4%) in new residential construction for 2007 year-to-date compared to 2006 year-to-date totals.
Residential development activity so far in 2007 reflects decreases in single-family detached (-9.3%) and single-family attached (-48%), an increase in senior housing (26 units in 2007 compared to no new units in 2006), and no changes in multi-family development when compared to last year at this time.

NEW RESIDENTIAL UNITS (2006 AND 2007)

Table with 7 columns: UNIT TYPE, JULY (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 July 2007, service commitments were issued for 46 new housing units within the subdivisions listed on the attached table. There were a total of 20 single-family detached, no single-family attached or multi-family, and 26 senior housing utility permits issued in July.

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.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

ACTIVE RESIDENTIAL DEVELOPMENT

<u>Single-Family Detached Projects:</u>	Jun-07	Jul-07	2006 YTD	2007 YTD	# Rem.*	2006 Total
Bradburn (120th & Tennyson)	3	9	12	17	85	31
CedarBridge (111th & Bryant)	0	1	0	1	5	0
Country Club Highlands (120th & Zuni)	7	0	0	10	108	0
Countryside Vista (105th & Simms)	0	0	0	0	9	0
Huntington Trails (144th & Huron)	7	2	9	22	162	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	1	1	1	4	4
Park Place (95th & Westminster Blvd.)	3	2	20	14	64	21
Ranch Reserve (114th & Federal)	0	1	4	1	3	5
South Westminster (Shoenberg Farms)	2	4	0	11	53	0
Various Infill	0	0	4	1	7	8
Village at Harmony Park (128th & Zuni)	0	0	31	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>	22	20	86	78	640	152
<u>Single-Family Attached Projects:</u>						
Alpine Vista (88th & Lowell)	0	0	0	0	84	0
Bradburn (120th & Tennyson)	0	0	18	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	18	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	2	0	0	66
<i>SUBTOTAL</i>	0	0	50	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	26	0	26	0	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	26	0	26	175	0
TOTAL (all housing types)	22	46	136	130	1838	310

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



WESTMINSTER

Staff Report

Information Only Staff Report
August 20, 2007



SUBJECT: Residential Building Valuations
PREPARED BY: Dave Horras, Chief Building Official

Summary Statement:

This report is for City Council information only and requires no action by City Council. Staff has determined that the estimated building valuations used in determining building permit fees is being under estimated. Staff will be adjusting the estimated building valuations to more closely approximate the current cost of residential construction in the City of Westminster. This adjustment will result in a direct increase in building permit fees as well as the estimated use tax collected at time of permit issuance.

Background Information

The Building Division uses a cost per square foot to estimate construction valuation for new residential construction. The Finance Department recently completed audits of new single family detached residential builders, which determined that the square footage cost being used by the Building Division to establish these building valuations was underestimated by a considerable amount. The estimated building valuations are used to assess building permit fees as well as to collect estimated building use tax at the time of permit issuance.

Since 1999 the Building Division has used information provided by the Finance Department to establish a three tiered estimate of residential building valuations to best estimate the values of new homes. Estimated valuations are determined based on classification as standard, semi-custom and custom housing types, as determined by the builder.

Residential building valuations were last raised in July of 2002. Since that time the recent audit information shows that the cost of residential construction has increased substantially. The recent audit information has shown that building valuations have been underestimated on average between 40% and 50%. Based on the audit information, published valuation data from the International Code Council (ICC) and comparison with other local jurisdictions, finished areas will be raised from \$61.92 to \$94 a square foot on standard homes, from \$85 to \$127 on semi-custom and from \$102 to \$152 on custom homes.

The increase in building valuation will have a direct impact on the building permit cost and the estimated use tax that is collected on every building permit for new residential construction. Estimated building use tax will increase in direct proportion to the increase in estimated valuation and, because of the escalating permit fee schedule, building permits will increase slightly less. Because this is an increase to the building valuation and not an increase to the fee schedule this action does not require City Council action. Per the City Code, the final determination of valuation shall be made by the Building Official. This adjustment will make sure that the City is properly collecting

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fees and tax based on the currently adopted fee schedule and tax rate. Further, by collecting the proper use tax up front, builders will not be surprised later by an audit resulting in more use tax being owed.

Because this increase will have an impact on the fees that are collected with the issuance of a building permit, the increase will be put in effect on September 15, 2007 in order to provide notice to the home builders.

Respectfully submitted,

J. Brent McFall
City Manager

**City of Westminster City Council Study Session
August 20, 2007**

Mayor Nancy McNally called the Study Session to order at 6:40 PM. All Council was in attendance.

City Staff in attendance included: Assistant/Acting City Manager Steve Smithers; Deputy City Manager Matt Lutkus; Budget and Special Projects Coordinator Barbara Opie; City Attorney Marty McCoullough; Community Development Director John Carpenter; City Engineer Dave Downing; Senior Engineer John Burke; Management Analyst Aric Otzelberger; Fire Marshall Doug Hall; Park Services Manager Rich Dahl; Facilities Manager Jerry Cinkosky; Municipal Judge John Stipech; Court Administrator Carol Barnhardt; Chief Building Official Dave Horras; Sales Tax Manager Barb Dolan; and Management Intern Phil Jones.

The guest in attendance was Rachel Ceccarelli with the Westminster Window; and two engineering consultants from Muller engineering.

Building Permit Fees for Photo Voltaic Solar Systems

Don and Margie McGill approached City Council during City Council meetings in June to request that the City of Westminster provide an incentive for residential photo voltaic (PV) solar systems by reducing fees charged for the installation of these systems. The McGill's contend that the City of Westminster's fees are more expensive than those charged in neighboring jurisdictions and that these fees act as a disincentive for Westminster homeowners to install these expensive systems. Staff has completed a survey of neighboring jurisdictions to determine how the City of Westminster's permit fees and use tax collection compare with other local jurisdiction's fees. Building permit fees in the surveyed jurisdictions ranged from a low of \$59 in the City and County of Denver to a high of \$2,521 in the City of Northglenn. With the exception of the City of Denver, which does not collect a pre-payment of use tax when a permit is issued, a large portion of any jurisdiction's permit fee is the use tax collected as part of the building permit process. The use tax varied based on the tax rate for the jurisdiction but none of the surveyed jurisdictions waived, and only one modified, the collection of use tax on these projects.

In addition, the McGill's are concerned with the City of Westminster's construction standards that require that roof mounted solar panels be installed on the roof on supports that are attached directly to the roof structure and properly flashed and sealed. They contend that the City of Westminster is the only jurisdiction to require this as part of the installation and this requirement adds further additional costs. The use of L-brackets is not approved by the international building code.

Council discussed the city's proposed fees and was appreciative of the effort put forward by the building division staff in researching area fees for solar systems. Council was supportive of a flat permit fee for photo voltaic solar panels. Council also discussed the L-brackets and mounting options for solar panels and was supportive of the international building codes' method for attaching the solar panels. Council directed staff to bring the issue forward at a future council meeting.

Update on 2007 Municipal Court Remodel Projects

During the past few years, the City has invested approximately \$377,358 and numerous in-house staff hours for remodel work, security improvements, and general maintenance in the Municipal Court Building. Ongoing maintenance and upgrades to this facility are very important when one considers the amount of public use and the visibility of this building in south Westminster.

Some updates include:

- In late 2005, security improvements (card key cabling, camera wiring, and door alarms) were completed totaling approximately \$9,858. The funds for these projects were allocated in the Court Security Improvement CIP budget.
- In 2006, various security improvements (card key installation, burglar alarm system, fire alarm system, metal detector, camera system) were completed totaling approximately \$70,183. The funds for these projects were allocated in the Court Security Improvement CIP budget.
- In 2006, six projects (power wash exterior, paint exterior, paint interior, replace windows, replace blinds, asbestos study on employee restrooms) were completed totaling approximately \$100,400. The funds for this project were allocated in the Court Facility Improvement CIP budget.
- In 2007, various security projects have been or are being completed (window in doorway by judicial / jail hallway, upgrading front security area) totaling approximately \$4,964. The funds for these projects are allocated in the Court Security Improvement CIP budget. Other security improvements to the jail cell area are being bid at this time.

Council enjoyed the presentation and looks forward to the future improvements.

Rail Technology for the Northwest Rail Corridor

Within the next two months, the RTD Board of Directors will issue a decision on the choice of rail technology to be implemented on the Northwest Rail Corridor, the FasTracks rail line that will operate through the City of Westminster between Denver Union Station and Longmont. Previously, the City Council has indicated a preference for the DMU technology over the EMU technology due to its significantly lower cost and potential for shifting to more environmentally friendly fuels (such as biodiesel) in the future. Likewise, RTD representatives seem to favor the DMUs, mainly due to the substantially lower initial capital cost for this option. However, comments received from the public during the July 11 public meeting at the City Park Recreation Center as well as recent comments from representatives of certain local jurisdictions along the corridor seem to indicate that there will be opposition to the proposed implementation of the DMU technology. It is Staff's observation that much of the public's apprehension over DMUs stems from a false impression of the amount of fumes and noise emitted by these vehicles.

Council was very supportive of DMU locomotives, especially after learning the new infrastructure requirements of the EMU power lines. Council also directed staff and Public Information to work with the community to share information with the general public about the facts behind DMU locomotives.

2007 Storm Drainage Study

This study was prepared by Muller Engineering under an engineering contract authorized by City Council on March 12, 2007 intended to assist the City with the prioritization of local drainage improvement projects based upon greatest risk to public health, safety, welfare and protection of existing infrastructure. An increase of the stormwater utility fee to fund the backlog of needed drainage improvements was adopted by City Council during the two-year budget process in 2006. This increase from \$1.50 per 3,100 square feet of impervious area to \$3.00 per 3,100 square feet of impervious area will be effective on January 1, 2008. Even with the increase in the fee, Westminster remains well below the average rate for other front range municipalities, which is \$5.29

Muller Engineering staff reviewed existing drainage master plans, walked approximately 68 miles of major drainageways throughout the City and completed stream inspection reports with photographs to assist in determining the highest priority drainage projects for the City. Every potential major drainageway project was prioritized. Currently, the City's drainageways are maintained by the Department of Parks, Recreation and Libraries (PR&L), the Department of Public Works and Utilities Streets Division, private owners associations or the Urban Drainage and Flood Control District. The vast majority of maintenance responsibility of open channels was previously delegated to PR&L. Currently, PR&L does not receive any funding from the

Stormwater Utility for these maintenance activities. One of the alternatives identified in the study suggests an annual funding allocation to PR&L from the SWU of \$200,000 for this maintenance work.

Council discussed the methods and procedures behind the study and learned about the highest priorities in the storm drainage system in Westminster. Council also talked about the funding options of storm drainage projects and future needs. Specific stormwater projects will be brought back to City Council for authorization with future budgets.

Municipal Code Modifications to Chapter 11 Title VII Stormwater Quality

In 2003, the City was required by the federal Environmental Protection Agency to apply for a National Pollutant Discharge Elimination System (NPDES) permit through the Colorado Department of Public Health and Environment. This is a five-year permit, up for renewal in 2008. The City is required by this permit to minimize the amount of pollutants that enter into our channels, streams and lakes. There are six program areas with specific measurable goals that the City must fulfill and document in an annual report. These include: 1) Public Education and Outreach, 2) Public Participation and Involvement, 3) Illicit Discharge Detection and Elimination, 4) Construction Site Runoff Control, 5) Post-Construction Site Runoff Control and 6) Pollution Prevention and Good Housekeeping.

For the past four years, the City has sent brochures to businesses and provided public education activities during City events including the Westminster Faire, Earth Day, Public Works Week and the Water Festival; published articles in the City's newsletter and in the Weekly Edition to inform the public of the NPDES program and the need to protect water quality. One of the specific requirements of the "illicit discharge detection and elimination" and "post-construction site runoff control" program areas is to update the City's stormwater quality ordinance to include enforcement mechanisms for water quality violations. The City's current stormwater quality ordinance does not provide this enforcement mechanism.

The proposed ordinance will provide the enforcement mechanisms to protect and enhance the quality of water discharged into the City of Westminster's storm drainage system. Although this ordinance would put into place enforcement mechanisms, Staff's approach to Stormwater management will continue to place a strong emphasis on education with businesses and the public.

Council discussed the proposed changes to the ordinance and directed staff to bring the proposed changes before council at a future council meeting.

Mayor McNally adjourned the Study Session at 7:32 PM.