

**LOVELAND CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 4, 2012
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO**

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMMODATION TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2343 OR TDD # 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

**5:30 P.M. DINNER - City Manager's Conference Room
6:30 P.M. REGULAR MEETING - City Council Chambers**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PROCLAMATION DECLARING SEPTEMBER 11, 2012 AS "911 COMMUNITY BLOOD DRIVE DAY"

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

- 1. CITY CLERK
 APPROVAL OF COUNCIL MINUTES
 Consideration of a motion approving Council minutes
 This is an administrative action to approve Council minutes from the August 21, 2012 regular meeting.**

2. **CITY MANAGER**
APPOINTMENTS TO BOARDS & COMMISSIONS
Consideration of a motion to appoint a member to the Construction Advisory Board
 This is an administrative action recommending the appointment of Andrew Ross to the Construction Advisory Board for a full term effective until June 30, 2015.

3. **DEVELOPMENT SERVICES**
PUBLIC HEARING
HISTORIC DESIGNATION FOR MARIANO MEDINA FAMILY CEMETERY
Consideration on first reading of an ordinance designating as a historic landmark the Mariano Medina Family Cemetery located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado
 A public hearing to consider a legislative action to adopt an ordinance on first reading designating as a Historic Landmark the "Mariano Medina Family Cemetery" at Namaqua Avenue and Namaqua Elementary, per Chapter 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff reviewed the benefits and obligations of historic designation with the property owner.

4. **WATER & POWER**
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION FOR WATER UTILITY FUNDS
Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for water filter plant improvements and emergency waterline repairs
 This is an administrative action. The department is requesting the movement of water utility funds (\$670,000) which will fund critical water infrastructure projects in 2012. The appropriation is funded by reserves in the Water Enterprise Fund. On August 15, 2012, the Loveland Utilities Commission voted unanimously to recommend that City Council adopt this ordinance.

5. **WATER & POWER**
PUBLIC HEARING
MUNICIPAL CODE CHANGES TO WASTEWATER SYSTEM CHAPTER 13.10
Consideration on first reading of an ordinance amending the Loveland Municipal Code at Chapter 13.10 concerning pretreatment
 This is a legislative action to adopt an ordinance amending Chapter 13.10 of the Loveland Municipal Code concerning the City's Wastewater Pretreatment Program. The amendments are being proposed to meet a requirement of the compliance schedule issued by the Colorado Department of Public Health and Environment (CDPHE) in the City's Wastewater Treatment Plant (WWTP) discharge permit and to address recommendations from the U.S. Environmental Protection Agency (EPA) following its audit of the Pretreatment Program in August 2011. In addition, the revisions bring Chapter 13.10 more in line with EPA's model ordinance which should be helpful in a future audit.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*
- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*
- c. **City Manager Report**
- d. **City Attorney Report**

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA**CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA****6. CITY CLERK****APPROVAL OF COUNCIL MINUTES****Consideration of a motion approving Council minutes**

This is an administrative action to approve Council minutes from the August 14, 2012 study session. Not all Councilors were present at the meeting.

7. POLICE**LARIMER HUMANE SOCIETY UPDATE**

This is an information item providing a brief update on the first six months' performance of the Humane Society under the reduced rate contract for 2012.

8. DEVELOPMENT SERVICES**RIGHT-OF-WAY EASEMENT VACATION – HARLOW ADDITION (FIRST BANK BUILDING)****Consideration on second reading of an ordinance vacating a portion of a public right-of-way adjacent to Lot 1, Harlow Addition, City of Loveland, Larimer County, Colorado**

This is a legislative action to vacate a portion of a public alley right-of-way in the Harlow Addition to the City of Loveland. The applicant is First Bank. First Bank will dedicate a new public access, emergency access and utility easement to replace the vacated portion of the alley right-of-way. This will assure that all owners of property abutting this alley, as well as all utility providers and emergency services, will continue to have the same access rights. City Council unanimously approved the ordinance on first reading on August 21, 2012. Since then the ordinance was amended to grant the replacement easement by means of the plat rather than by a separate document. All other provisions of the ordinance remain the same as for first reading.

9. **FINANCE**
JULY 2012 FINANCIAL REPORT

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the seven months ending July 31, 2012.

10. **CITY MANAGER**
INVESTMENT REPORT FOR JULY 2012

The budget estimate for investment earnings for 2012 is \$2,729,560. Through July 2012, the amount posted to the investment account is \$1,658,581 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$49,715. Based on the July monthly statement, the estimated annualized yield on the U.S. agencies and corporates remained at 1.31%, under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

ADJOURN



CITY COUNCIL

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 (970) 962-2303 • Fax (970) 962-2900 • TDD (970) 962-2620
www.cityofloveland.org

PROCLAMATION

- WHEREAS** the Loveland Benevolent Protective Order of Elks Lodge #1051 has been actively supporting the needs of our Loveland community since October 31, 1906; and
- WHEREAS** the Loveland Elks membership has come from a diverse background of prominent business men and women, the leaders in the community, scientists, inventors, artists, actors, athletes, doctors, writers, active military, veterans, educators, students, public servants, and primarily are people who have a heart to help others, people who influence and create positive impact on those around us, and carry out the motto of our Order, which is Elks Care Elks Share; and
- WHEREAS** the contributions of the Loveland Elks have been silently surrounding us. They have not sought recognition or repayment for what they have done, only that they hope that the people whose lives have been touched continue to be blessed, and when possible, to forward a blessing on to others;
- WHEREAS** the Loveland Elks 911 Community Blood Drive is an effort to bring the community together once again, to join forces with our neighboring businesses and residents, to support our local hospitals and blood banks and ultimately save the lives of those in critical need around us; and
- WHEREAS** it is the express desire of the Loveland Elks to continue to help those in need among us, to care for those experiencing sickness and distress, to be a place where neighbors come together, families share meals, where children grow up learning to give back to their community. It is the desire of the Loveland Elks to continue to invest in the community through programs that help children grow up healthy and drug-free, by undertaking projects that address unmet needs, and by honoring the service and sacrifice of our active military and our veterans.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim the 11th day of September, 2012 as

911 COMMUNITY BLOOD DRIVE DAY

in Loveland, Colorado, and in so doing, urge all citizens to recognize and join in the community- wide effort to raise awareness about the importance of serving our local community, paying it forward and collaborating together to enrich and enhance the quality of life in our daily lives, and most importantly to honor the priceless gift of blood donations that are critical to saving the lives of those around us.

Signed this 4th day of September, 2012

Cecil A. Gutierrez, Mayor



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CALL TO ORDER

Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

PLEDGE OF ALLEGIANCE**ROLL CALL**

Roll was called and the following responded: Gutierrez, Farley, Klassen, Trenary, Fogle, McKean, Shaffer and Taylor.

PRESENTATION

Facilities Manager Ken Cooper presented the Leadership in Energy and environmental Design (LEED) Gold Certification Award to City Council and the City of Loveland. Library Director Marcia Lewis and Stephanie Barr from Colorado State University were also present.

PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor Shaffer moved to approve the Consent Agenda. The motion was seconded by Councilor Farley and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY CLERK

Approval of Council Minutes
Motion

Administrative Action: The minutes from the July 24, 2012 study session were approved.

2. CITY MANAGER

Appointments to the Boards & Commissions

Motion

Administrative Action:

A motion appointing Dave Adams to the Fire and Rescue Advisory Commission for a term effective until June 30, 2015 was approved.

A motion appointing Janelle Armentrout to the Historic Preservation Commission, for a partial term effective until June 30, 2014 was approved.

A motion appointing Angie Sawtelle for a partial term effective until December 31, 2012 and Richard Hedland for a partial term effective until December 31, 2013 to the Senior Advisory Board was approved.

A motion appointing Greg Hoff to the Visual Arts Commission for a partial term effective until December 31, 2012 was approved.

3. DEVELOPMENT SERVICES

Drainage and Utility Easement Vacation – Alford Lakes First Subdivision

Ordinance #5699

Legislative Action: "AN ORDINANCE VACATING A PORTION OF A DRAINAGE AND UTILITY EASEMENT ON LOT 39, BLOCK 1, ALFORD LAKES FIRST SUBDIVISION, CITY OF LOVELAND" was approved and ordered published on second reading.

4. DEVELOPMENT SERVICES

Right-of-Way Easement Vacation – Harlow Addition (First Bank Building)

1st Rdg Ord & P.H.

Legislative Action: A public hearing was held and "AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT-OF-WAY ADJACENT TO LOT 1, HARLOW ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on first reading.

5. DEVELOPMENT SERVICES

Annual Action Plan for Community Development Block Grant

Resolution #R-54-2012

Administrative Action: Resolution #R-54-2012 of the City Council of the City of Loveland, Colorado approving a Community Development Block Grant Annual Action Plan and Grant application for 2012-2013 was approved.

RESOLUTION #R-54-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN AND GRANT APPLICATION FOR 2012 – 2013

WHEREAS, the City of Loveland, Colorado receives federal Community Development Block Grant ("CDBG") dollars from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, HUD requires the City to submit an annual action plan and grant application providing detailed information regarding the City's plan to spend the federal funding; and

WHEREAS, the City has developed a Community Development Block Grant Annual Action Plan and Grant Application for 2012 – 2013, a copy of which is on file with the City Clerk ("Annual Action Plan"); and

WHEREAS, the Annual Action Plan includes information regarding the allocation of 2012 – 2013 CDBG funds that was approved by the City Council on June 5, 2012 through the adoption of Resolution #R-45-2012; and

WHEREAS, the City Council desires to approve the Annual Action Plan.

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

Section 1. That the Community Development Block Grant Annual Action Plan and Grant Application for 2012 – 2013, a copy of which is on file with the City Clerk, is hereby approved.

Section 2. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

6. CITY CLERK

Agreement for Coordinated Election in November 2012

Resolution #R-55-2012

Administrative Action: Resolution #R-55-2012 approving and authorizing the execution of an Intergovernmental Agreement between the City of Loveland and the Larimer County Clerk and Recorder concerning the coordinated general election to be held on November 6, 2012 was approved.

RESOLUTION #R-55-2012

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LARIMER COUNTY CLERK AND RECORDER CONCERNING THE COORDINATED GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2012

WHEREAS, on July 17, 2012, the Loveland City Council adopted Resolution #R-52-2012 authorizing the Loveland City Clerk ("City Clerk") to notify the Larimer County Clerk and Recorder ("County Clerk") of the City of Loveland's intention to participate in the November 6, 2012, election and to coordinate the City's participation in that election with the County Clerk; and

WHEREAS, in Resolution #R-52-2012 the City Council also authorized that the City's November 6, 2012, special municipal election be governed by the Colorado Uniform Election Code of 1992 to the extent necessary in order to conduct the election as a coordinated election with the County Clerk held on November 6, 2012; and

WHEREAS, C.R.S. §1-7-116(2) of the Uniform Election Code provides that when the County Clerk is conducting a coordinated election with a municipality, the County Clerk is required to enter into an agreement with that municipality concerning the conduct of that election; and

WHEREAS, the County Clerk has presented to the City an "Intergovernmental Agreement For Coordinated Election," with an effective date of July 27, 2012, a copy of which is attached hereto as Exhibit "A" and incorporated by reference ("the Election Agreement"); and

WHEREAS, in order for the City to participate in the coordinated election with the County Clerk, it is therefore necessary for the City to enter into the Election Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, that:

Section 1. The Election Agreement is hereby approved and the Mayor is authorized to enter into it on behalf of the City.

Section 2. The City Clerk shall comply with the provisions of the Election Agreement and shall act as the City's designated local election official in all matters related to the November 6, 2012, special municipal election. The City Clerk shall also comply with the applicable provisions of the City Charter, of the Municipal Election Code of 1965 and, to the extent required by Resolution #R-52-2012, with the applicable provisions of the Uniform Election Code of 1992 in conducting the November 6, 2012, special municipal election as a coordinated general election with the County Clerk.

Section 3. This Resolution shall go into effect as of the date of its adoption.

SIGNED this 21st day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

7. PUBLIC WORKS

Amend Lease of City Property (Good Times)

Resolution #R-56-2012

Administrative Action: Resolution #R-56-2012 approving an assignment and amendment of a lease for real property owned by the City of Loveland and located at 1355 N. Lincoln Avenue in Loveland, Colorado was approved.

RESOLUTION #R-56-2012

A RESOLUTION APPROVING AN ASSIGNMENT AND AMENDMENT OF A LEASE FOR REAL PROPERTY OWNED BY THE CITY OF LOVELAND AND LOCATED AT 1355 N. LINCOLN AVENUE IN LOVELAND, COLORADO

WHEREAS, on February 26, 1998, the City of Loveland, as landlord, and The Bailey Company, LLLP, as tenant, entered into a written lease for approximately 21,000 square feet of real property located at 1355 N. Lincoln Avenue in Loveland, Colorado ("Lease"); and

WHEREAS, the Lease provides for an effective term of ten years, with an option to extend the Lease for up to four additional periods of five years each; and

WHEREAS, by letter to the City dated November 15, 2007, The Bailey Company, LLLP exercised its option to extend the Lease through March 29, 2013; and

WHEREAS, The Bailey Company, LLLP now desires to assign the Lease to Good Times Drive Thru Inc.; and

WHEREAS, Good Times Drive Thru Inc. desires to accept assignment of the Lease, subject to certain amendments regarding the term of the Lease and options to extend the term; and

WHEREAS, the City, The Bailey Company, LLLP, and Good Times Drive Thru Inc. desire to enter into a written agreement to effectuate the assignment and amendment.

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

Section 1. That the "Assignment and Amendment of Lease," attached hereto as Exhibit A and incorporated herein by reference ("Amendment"), is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Amendment in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Amendment on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

8. PUBLIC WORKS / PARKS & RECREATION

Agreement for New Bridge and Recreation Trail Underpass (Madison Avenue)

Resolution #R-57-2012

Administrative Action: Resolution #R-57-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, acting by and through the Department of Transportation, for design and construction of a new bridge and recreation trail underpass at the intersection of Madison Avenue and the Chubbuck Ditch was approved.

RESOLUTION #R-57-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION, FOR DESIGN AND CONSTRUCTION OF A NEW BRIDGE AND RECREATION TRAIL UNDERPASS AT THE INTERSECTION OF MADISON AVENUE AND THE CHUBBUCK DITCH

WHEREAS, the City of Loveland desires to design and construct a new bridge and recreation trail underpass at the intersection of Madison Avenue and the Chubbuck Ditch (the "Project"); and

WHEREAS, the Project is to be funded, in part, by federal-aid funds administered and made available through the State of Colorado, acting by and through the Department of Transportation ("CDOT"), in the amount of \$848,000; and

WHEREAS, the Project is to be funded, in part, by City dollars in the amount of \$212,000 ("Local Match"), to be committed at project inception upon signature of an agreement between CDOT and the City, and an amount not to exceed \$315,000 ("Local Overmatch"), to be committed at a later date by amendment to the agreement; and

WHEREAS, both the Local Match and the Local Overmatch have been appropriated and budgeted for the Project; and

WHEREAS, the City and CDOT desire to enter into an agreement to define the division of responsibilities with regard to the Project; and

WHEREAS, as governmental entities in Colorado, the City and CDOT are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the "State of Colorado Department of Transportation Agreement with City of Loveland" for Project No. BRO M830-55 (17906), attached hereto as Exhibit A and incorporated herein by reference ("Agreement"), is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City.

Section 4. That the City Manager and the City Clerk are hereby authorized and directed, following consultation with the City Attorney, to execute at a later date, on behalf of the City, an amendment to the Agreement or an Option Letter, the form of which is set forth in Exhibit D to the Agreement, to add the Local Overmatch to the Agreement in an amount not to exceed \$315,000.

Section 5. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

9. ECONOMIC DEVELOPMENT

Grant Awards for Remediation & Demolition at 301 & 319 N. Lincoln

Resolution #R-58-2012

Administrative Action: Resolution #R-58-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Colorado Brownfields Revolving Loan Fund, acting by and through the Colorado Housing and Finance Authority, for a grant to partially fund the removal of environmental hazards located at 301 and 310 N. Lincoln was approved.

RESOLUTION #R-58-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE COLORADO BROWNFIELDS REVOLVING LOAN FUND, ACTING BY AND THROUGH THE COLORADO HOUSING AND FINANCE AUTHORITY, FOR A GRANT TO PARTIALLY FUND THE REMOVAL OF ENVIRONMENTAL HAZARDS LOCATED AT 301 AND 319 N. LINCOLN

WHEREAS, the State of Colorado ("State") received a grant ("Grant") from the United States Environmental Protection Agency ("EPA") under and pursuant to the "Brownfields Initiative" under the Comprehensive Environmental Response, Compensation and Responsibilities Act of 1980, as amended ("CERCLA"), a portion of the funds for which originate from the American Recovery and Reinvestment Act of 2009 ("ARRA"), and a portion of the funds for which originate from other sources; and;

WHEREAS, the State, acting through the Colorado Department of Public Health and Environment ("CDPHE"), as the "Lead Agency" under the Grant, the City and County of Denver and the cities of Englewood, Lakewood, Loveland, Commerce City and Westminster, the County of El Paso and the Colorado Housing and Finance Authority ("Authority"), have entered into a Memorandum of Agreement creating the Colorado Brownfields Revolving Loan Fund ("Fund"); and

WHEREAS, the State has contracted with the Authority to act as the State's fiscal agent to receive and administer the proceeds of the Grant on behalf of the Fund; and

WHEREAS, the City is the owner of certain real property located at 301 N. Lincoln Avenue (formerly operated as Leslie the Cleaner), and 319 N. Lincoln Avenue (together, the "Property"); and

WHEREAS, the City has agreed to undertake and complete the removal of environmental hazards located on the Property ("Project"); and

WHEREAS, the City desires to receive, and the State has agreed to provide, the Grant to finance a portion of the Project; and

WHEREAS, as governmental entities in Colorado, the City and the State are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the "Colorado Brownfields Revolving Loan Fund Subgrant Agreement" (ARRA Funds), attached hereto as Exhibit A and incorporated herein by reference ("ARRA Grant Agreement"), is hereby approved.

Section 1. That the "Colorado Brownfields Revolving Loan Fund Subgrant Agreement" (Non-ARRA Funds), attached hereto as Exhibit B and incorporated herein by reference ("Non-ARRA Grant Agreement"), is hereby approved. Together, the ARRA Grant Agreement and Non-ARRA Grant Agreement are referred to herein as the "Grant Agreements."

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Grant Agreements in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Grant Agreements on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of August, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A and B are available in the City Clerk's Office

10. LEGAL

Agreement with PRPA for Exchange of Legal Services

Resolution #R-59-2012

Administrative Action: Resolution #R-59-2012 approving an Intergovernmental Agreement between the City of Loveland and Platte River Power Authority for the exchange of legal services was approved.

RESOLUTION # R-59-2012

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND PLATTE RIVER POWER AUTHORITY FOR THE EXCHANGE OF LEGAL SERVICES

WHEREAS, the City of Loveland ("City") and Platte River Power Authority ("PRPA"), collectively referred to herein as the "Parties" are political subdivisions of the State of Colorado duly organized and existing in accordance with Colorado law; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes authorizes intergovernmental agreements between and among political subdivisions of the State of Colorado to cooperate or contract with one another to provide functions, services or facilities lawfully authorized to each; and

WHEREAS, the City Attorney's Office and PRPA legal counsel on occasion have conflicts that prevent them from representing their respective governmental bodies in certain legal matters; and

WHEREAS, the Parties may employ outside counsel to represent them in cases of conflict; and

WHEREAS, the Parties believe that sharing of legal services between each other when such conflicts arise will be efficient and cost effective for both Parties; and

WHEREAS, the City Council finds that it is in the best interest of its citizens to enter into and participate in the Intergovernmental Agreement for Exchange of Legal Services attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement").

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. That the Agreement among the Parties attached hereto and incorporated herein as Exhibit A, is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to enter into the Agreement, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED 21st day of August, 2012.
 Cecil A. Gutierrez, Mayor
 Attest: Teresa G. Andrews, City Clerk
 Exhibit A is available in the City Clerk's Office

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports None

b) Business from Council

Farley Councilor Farley attended an event to promote the US Pro Cycling coming to the Northern Region of Colorado in 2013. He congratulated all involved in the success of last week's sculpture and art shows. The opening of the new exhibit "Birds in Art" is Friday, August 24th at the Loveland Museum and Gallery.

Shaffer Councilor Shaffer mentioned the search is continuing for a new executive director for the North Front Range Metropolitan Planning Organization. The Loveland Downtown Team and members of the Economic Development staff are hosting a downtown strategy workshop on Wednesday, August 22 at the Rialto. She thanked staff from the Water & Power Department for a wonderful tour of the Wastewater Treatment Plant. Councilor Shaffer announced Northern Colorado Economic Development Corporation is hosting an event on Friday, August 24th to honor Madwire Media for receiving a "Colorado Companies to Watch" Award. The 26th annual Tuna Fish and Peanut Butter Concert benefiting local food banks is Sunday, August 26th at 2:00 pm at the Hammond Amphitheater.

Trenary Councilor Trenary also attended the tour of the Wastewater Treatment Plant and found it to be eye-opening to see the science and procedures at the plant. He commented on a Development Services map showing commercial construction projects and business space. There are currently 25 construction projects in Loveland. He talked about a possible future pro-cycling event that would involve Loveland.

Farley Councilor Farley about this weekend's Corn Roast Festival and the Rotary Duck Race. He thanked Fire Marshal Merlin Green, Fire Chief Randy Mirowski, Police Chief Luke Hecker, City Manager Bill Cahill and Mayor Cecil Gutierrez for their help with the Barnes & Noble Book Fair.

Gutierrez Mayor Gutierrez talked about the Loveland Police Department national accreditation process. Public comment will be solicited by the accreditation agency both in a meeting format and through telephone 962-2207.

Council Temporary Assignment to Boards & Commissions

Councilor Shaffer made a motion to temporarily appoint Joan Shaffer as liaison to the Community Marketing Commission; Ralph Trenary as liaison to the Cultural Services Board and Phil Farley as liaison to the Youth Advisory Commission until the new Ward IV Councilor takes office. Councilor Trenary seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

c) City Manager Report City Manager Bill Cahill reminded Council of the upcoming Chimney Hollow Site tour.

d) City Attorney Report None

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

11. CITY CLERK

Approval of Council Minutes

Motion

Administrative Action: City Clerk Terry Andrews introduced this item to Council. Not all Councilors were present at the August 7, 2012 meeting. Councilor Trenaty move to approve the minutes from the August 7, 2012 Council meeting. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

12. DEVELOPMENT SERVICES

Statement of Direction for Oil & Gas Exploration Regulations

Motion

Administration Action: Development Services Director Greg George introduced this item to Council. City staff is seeking directions from City Council on how to proceed with the development of regulations on oil and gas development in the City. City staff has prepared a "Statement of Direction" for Council's consideration. The Statement of Direction presents the results of the Council questionnaire and a general approach for developing new regulations on oil and gas development. Discussion ensued. Council consensus was to hold a study session on this topic, conduct a public comment session and then bring back an ordinance for Council's consideration. City Manager Cahill summary of Council's direction included their approval of instituting new regulations but don't go so far as to invite litigation from the state. Councilor Shaffer moved to approve the Statement of Direction incorporating the additional direction provided by Council at this meeting for the development of regulations on oil and gas development in the City of Loveland. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

13. ECONOMIC DEVELOPMENT

Loveland Center for Business Development (LCBD)

Information Only

City Planner Mike Scholl introduced this item to Council. Robin Shukle, LCBD Director also presented to Council. The City of Loveland has provided financial support for small business development and entrepreneurship training since the early 1990's. The City has received a budget request from the Loveland Center for Business Development (LCBD) for an increase of \$80,000.00 in 2013. The City's current contribution is \$130,200.00. This discussion is intended to provide Council with information and give staff direction on support of this request and other next steps. Consensus of Council was this service should continue to be provided to local businesses. The current allocated amount for this service of \$130,000 should remain in the 2013 budget and a revised LCBD contract for 2013 will be brought back to Council for consideration.

City Council Regular Meeting
August 21, 2012
Page 9 of 9

ADJOURNMENT

Having no further business to come before Council, the August 21, 2012 Regular Meeting was adjourned at 11:26 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

**CITY OF LOVELAND**
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 2
MEETING DATE: 9/4/2012
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

Appointment to Construction Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

Motion to appoint Andrew Ross to the Construction Advisory Board for a full term effective until June 30, 2015.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action

DESCRIPTION:

This is an administrative item recommending the appointment of a member to the Construction Advisory Board.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:

Andrew Ross submitted an application for Construction Advisory Board ("CAB") during the Spring recruiting cycle. Mr. Ross has been interviewed, and the committee recommends appointing Andrew Ross to Construction Advisory Board for a full term effective until June 30, 2015. Two vacancies remain on CAB. Recruiting continues for those vacancies.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None

**CITY OF LOVELAND****DEVELOPMENT SERVICES DEPARTMENT**

Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 3
MEETING DATE: September 4, 2012
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Greg George

TITLE: An ordinance designating as a historic landmark the Mariano Medina Family Cemetery located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and move to adopt the ordinance on first reading. The Historic Preservation Commission (HPC) recommends approval.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance on first reading designating as a Historic Landmark the "Mariano Medina Family Cemetery" at Namaqua Avenue and Namaqua Elementary, per Chapter 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff reviewed the benefits and obligations of historic designation with the property owner.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The Historic Preservation Commission on August 20, 2012, found the Mariano Medina Family Cemetery to be eligible for designation as detailed in the attached staff report, and is forwarding this recommendation to City Council.

The Mariano Medina Family Cemetery is historically and culturally significant for its association with Mariano Medina, credited with establishing the first permanent settlement (Namaqua aka "Miraville") in 1858. The 1850 branch of the Cherokee Trail passed near the western edge of the cemetery and close to the Overland Trail. There are nine burials in the plot, seven are Medina relatives, one is a friend buried in 1864 and one is an unknown baby buried in the 1940s.

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.100. The Mariano Medina Family Cemetery meets the age requirement and additional criteria required for designation. Specific criteria for nomination are contained in the staff report.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- A. Ordinance including Exhibits A & B (map)
- B. Staff Report
- C. HPC Statement of Recommendation
- D. Application Materials

FIRST READING: September 4, 2012

SECOND READING: _____

ORDINANCE NO. ____

AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE MARIANO MEDINA FAMILY CEMETERY LOCATED ADJACENT TO NAMAQUA AVENUE TO THE WEST AND NAMAQUA ELEMENTARY SCHOOL TO THE SOUTH IN LOVELAND, COLORADO

WHEREAS, Chapter 15.56 of the Loveland Municipal Code (“Code”) provides that the City Council may designate as a historic landmark an individual structure, site, or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and

WHEREAS, Code Section 15.56.100 further provides that landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance; and

WHEREAS, the owner of that real property described on **Exhibit A** attached hereto and incorporated herein by reference (“Property”) and depicted on **Exhibit B**, located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado, filed an application for and/or consented to designation of the site and structures located thereon as historic landmarks under Code Chapter 15.56; and

WHEREAS, upon designation of the site and the structures on the Property as historic landmarks, the Property shall be subject to the provisions of Chapter 15.56 of the Loveland Municipal Code, as it may be amended from time to time by action of the City Council, which currently include, among other provisions, requirements for maintenance, requirements for prior approval of alteration, relocation, or demolition, and remedies for violation which are binding upon the owner and subsequent purchasers of the Property; and

WHEREAS, the site and structures to be designated hereunder include a pioneer cemetery and historic burial sites of the family of Mariano Medina, an early credited with establishing the first business, school, church, and consecrated cemetery in the Big Thompson Valley, which site and structures are known historically, and are hereafter collectively referred to, as the “Mariano Medina Family Cemetery”; and

WHEREAS, on August 20, 2012, the Historic Preservation Commission (“Commission”) held a duly noticed public hearing (“Commission Hearing”) at which it evaluated the application for designation of the site and structures on the Property as a historic landmark, considered the criteria for designation required in Code Section 15.56.100, and received and duly considered any public comments and testimony; and

WHEREAS, at the conclusion of the Commission Hearing, the Commission recommended to the City Council approval of the designation of the site and the structures located on the Property as a historic landmark; and

WHEREAS, as required by Code Section 15.56.030.D, the Commission has forwarded its written recommendation to City Council that the site and the structures on the Property be designated as a historic landmark; and

WHEREAS, City Council held a duly noticed public hearing on the designation application on September 4, 2012, at which it reviewed the application for conformance with the criteria for designation in and with the purposes of Code Chapter 15.56, and considered the written views of owners of affected property, if any.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO THAT:

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the City Council finds that the site and structures located on that real property more specifically described on **Exhibit A** attached hereto and incorporated herein, also known as the Mariano Medina Family Cemetery and located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado (as depicted on **Exhibit B** attached hereto and incorporated herein), satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

- a.) Social/Cultural
 - 1. Exemplifies the cultural, political, economic or social heritage of the community.
- b.) Geographic/Environmental
 - 1. Enhances sense of identity of the community.
- c.) Physical Integrity
 - 1. Shows character, interest, or value as a part of the development, heritage or cultural characteristics of the community, region, state or nation.
 - 2. Retains its original location.

Section 3. The site and structures located on that real property more specifically described on **Exhibit A** attached hereto and incorporated herein, also known as the Mariano Medina Family Cemetery and located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado (as depicted on **Exhibit B** attached hereto and incorporated herein), are hereby designated as a historic landmark to the Loveland Historic Register.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 5. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.


Signed this ____ day of _____, 2012

Cecil A. Gutierrez, Mayor

Attest:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

Exhibit A

Insert legal description

Exhibit B

Insert map showing location

EXHIBIT A

A PARCEL OF LAND BEING PART OF TRACT "A" MARIANA BUTTE P.U.D. FIRST SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 8th PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH $\frac{1}{4}$ CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 8th P.M. AND CONSIDERING THE SOUTH LINE OF SAID QUARTER SECTION TO BEAR NORTH $89^{\circ}46'06''$ WEST TO THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST WITH ALL BEARING CONTAINED HEREIN BEING RELATIVE THERE TO:

THENCE NORTH $04^{\circ}22'54''$ EAST, A DISTANCE OF 269.87 FEET; THENCE NORTH $89^{\circ}48'57''$ WEST, A DISTANCE OF 50.40 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THENCE ALONG THE MEDINA FAMILY CEMETERY BOUNDARY THE FOLLOWING FOUR COURSES AND DISTANCES, NORTH $89^{\circ}48'57''$ WEST, A DISTANCE OF 117.15 FEET;

THENCE NORTH $00^{\circ}00'34''$ EAST, A DISTANCE OF 253.53 FEET, TO A POINT ON TRACT "W" MARIANA BUTTE P.U.D. FIRST SUBDIVISION, NAMAQUA ELEMENTARY SCHOOL;

THENCE ALONG SAID LINE, SOUTH $89^{\circ}53'77''$ EAST, A DISTANCE OF 136.78 FEET;

THENCE LEAVING SAID LINE, SOUTH $04^{\circ}26'26''$ WEST A DISTANCE OF 254.41 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 0.739 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY RIGHTS-OF-WAY OR OTHER EASEMENTS AS GRANTED OR RESERVED BY INSTRUMENTS OF RECORD OR AS NOW EXISTING ON SAID PARCEL OF LAND.

LEGAL DESCRIPTION PREPARED BY:

Grant M. Waldo

GRANT M. WALDO
KBN ENGINEERS LLC.
R20 8TH STREET
GRFLEY, COLORADO 80631

MARCH 7, 2017



Loveland City Limits



0 100 200 400 Feet

Exhibit B



COMMUNITY & STRATEGIC PLANNING

Civic Center • 500 East Third Street • Loveland, Colorado 80537
 (970) 962-2577 FAX (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

To: Loveland City Council
 From: Community and Strategic Planning
 Meeting Date: September 4, 2012
 Re: Application for Historic Landmark Property Designation, Mariano Medina Family Cemetery

SITE DATA

Address: Property at Namaqua Ave and Namaqua Elementary
 Loveland, CO 80537

Request: Application for Historic Landmark Property Designation

Historic Name: Mariano Medina Family Cemetery

Historic Use: Burials

Land Size 0.739 acres *(Source: Larimer Co. Assessor Property Information)*

Date Established: 1864

Legal Description: A PARCEL OF LAND BEING PART OF TRACT "A" MARINA BUTTE P.U.D. FIRST SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH , RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

Owner(s): Loveland Historical Society

Applicant(s): Mike Perry and Bill Meirath

Application Summary:

In March 2012 staff received a nomination application for the landmark designation of the Mariano Medina Family Cemetery property at Namaqua Ave and Namaqua Elementary in Loveland. The property was then owned by Jess Rodriguez, who was in the process of deeding the land to the Loveland Historical Society (LHS) because the historic Medina burial plots were located there. The designation process was placed on hold until August 2012 when the deed was legally transferred to the LHS.

At the August 20, 2012 Historic Preservation Commission meeting, staff presented the nomination application for this property. The Commission made the official recommendation to City Council to designate the property as a historic landmark.

History:

Born in Taos, New Mexico in 1812, Mariano Medina was a trapper and guide. His friends included Kit Carson, Louis Vasquez, the Bent brothers along with other legendary mountain men like Jim Bridger and Tom Toblin. Mariano Medina's surname has been spelled a variety of ways; Medina, Modena and Medena are the more common found. In 1858, Medina established the first permanent settlement on the Big Thompson Creek (River) (the unorganized western district of the Territory of Nebraska) near present day Loveland.

Medina started a business on the Big Thompson with a raft to ferry teams across the river and charged fifty dollars in gold for the service. Soon after, he built a toll bridge high enough to avoid the high spring run-off with its construction and eventually built a fort and trading post called "Marianne's Crossing." Soon the business became the favorite stopping place for the travelers involved in the western movement and Medina's now famous mountain friends.

Medina's homestead consisted of a traditional Spanish-style plaza surrounded on three sides by his log home, trading store, saloon, corrals and a post office. The settlement was originally called Miraville, then Mariano's Crossing, Big Thompson Crossing, and by today's name, Namaqua. Overland Mail in 1862 selected Medina's settlement as a home station. Medina is credited with establishing the first business, first school, first church, and first cemetery in the valley.

Mariano Medina had a very rich family life including two wives, two sons, three (?) daughters and a step son. Most of his family was buried in the Catholic Cemetery now known as the Medina Family Cemetery.

Description of Burial Plots in Cemetery:

There are nine bodies in the cemetery, eight are associated with Mariano Medina:

1. Mexican friend of Mariano, buried prior to 1864
2. Martin Medina, died in 1864 at age 12-15. Martin was the son of Mariano and his first wife, Marie/John/Tacanecy.
3. Rosita Medina, died in 1864 at the age of 2. Daughter of Mariano and first wife.
4. Daughter of Louis Papa (Mariano's step-son). Who died shortly after her birth in 1866.
5. Marcellina ("Lens") Medina, died in 1872 at the age of 15 and was the daughter of Mariano and first wife.
6. Marie/John/Tacanecy Medina, Mariano's first wife, died in 1874.
7. Mariano Medina, who died in 1878
8. Rafaelito Medina, who died in 1880 at the age of 6 or 7. He was Mariano's son by his second wife Susan Carter Howard.
9. An infant wrapped in a 1940's newspaper who body was discovered in January 1960.

Historic and Cultural Significance:

- Mariano Medina is credited with establishing the first business, first school, first church and first consecrated cemetery in the Big Thompson Valley.
- A pioneer cemetery established in 1864
- The 1850 branch of the Cherokee Trail passed near the western edge of the cemetery and close to the Overland Trail.
- Except for the cemetery, no trace of Namaqua (first permanent settlement on the south bank of the river and established in 1858) remains today.
- Nine people (8 associated with the Medina family) are buried on the site. Burials began in 1864 and ended in the 1940s. Contributed to the history of Loveland.
- Enhances the Hispanic Heritage of Larimer County.
- Mariano Medina was probably 1st permanent practicing Catholic in the Big Thompson Valley.

Staff Report Mariano Medina Family Cemetery

Future Plans:

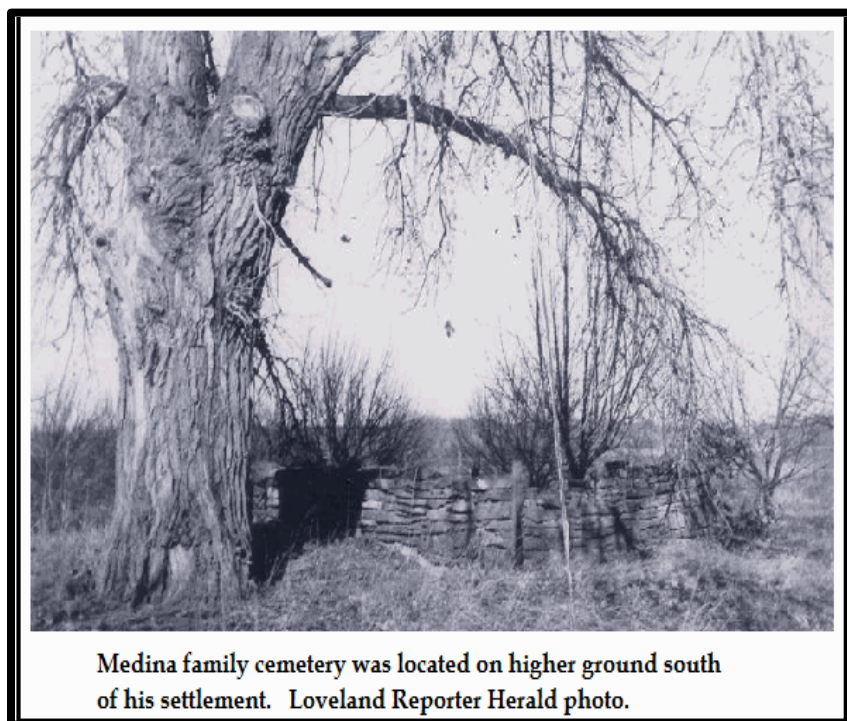
The Loveland Historical Society plans, through grants and fundraising activities, to create a Historical and Educational Park for local history and outdoor classrooms.

Staff Recommendation

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.090. The Mariano Medina Family Cemetery satisfies the age requirement and meets the following criteria for designation as a Loveland Historic Register landmark of property:

- a.) Social/Cultural
 - 1. Exemplifies the cultural, political, economic or social heritage of the community.
- b.) Geographic/Environmental
 - 1. Enhances sense of identity of the community.
- c.) Physical Integrity
 - 1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
 - 2. Retains its original location.

Given available information for the Mariano Medina Family Cemetery, staff and the Historic Preservation Commission has determined that the property exhibits the adequate *significance* to support its eligibility for designation as a Loveland historic landmark. This determination is based on the Colorado Historical Society's recommended framework for determining landmark eligibility. Staff and the Historic Preservation Commission recommends approval of this request for designation of the Mariano Medina Family Cemetery property, located at Namaqua and Namaqua Elementary as a Loveland Historic Register landmark property.





Motion by the Loveland Historic Preservation Commission to recommend Historic Landmark Designation of the Mariano Medina Cemetery

Motion made by Commissioner, Stacey Kersley, to recommend to City Council approval of Loveland Historic Landmark Designation of the Mariano Medina Cemetery located at Namaqua and Namaqua Elementary. The motion was seconded by Commissioner, Trudi Manuel, and passed with a unanimous vote during the August 20, 2012 Historic Preservation Commission meeting.

Paul M. Kersley

~~Stacey Kersley~~

Matthew D. Kersley

Paul J. Kersley

Trudi Manuel



City of Loveland

Page 1- Applicant and General Property Information

FORM A**Application for Designation of a Historic Landmark**

Please Type or Print Legibly

*One property only per Application Form.**If more than one Applicant, please attach additional sheet.*

APPLICANT(S) INFORMATION	
Owner of Proposed Landmark Property:	LOVELAND HISTORICAL SOCIETY
Applicant:	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> City Council (attach meeting minutes initiating action) <input type="checkbox"/> Commission Designees (pursuant to 15.56.169) <input type="checkbox"/> Historic Preservation Commission (attach meeting minutes initiating action) <i>Please check one.</i>
Address:	Loveland Historical Society 503 N. Lincoln Loveland, CO, 80537
Telephone:	Mike Perry 970-744-0453/Bill Meirath 970-669-8049

PROPOSED LANDMARK INFORMATION	
Property Name:	Mariano Medina Family Cemetery
Address:	Namaqua Avenue and Namaqua Elementary
Historic Use:	Burials
Current and Proposed Use	Open Field Preservation and History Park
Legal Description	<i>Please attach copy of officially recorded document containing a legal description.</i>
Brief Description of Historical Qualities relating to Property	<i>Please attach additional sheets if necessary.</i> 1864 Catholic Cemetery



City of Loveland

Page 2- Historic Property Inventory

FORM A**Application for Designation of a Historic Landmark**

DETAILED PROPERTY INFORMATION	
Historic Property Name:	Mariano Medina Family Cemetery
Current Property Name:	Mariano Medina Family Cemetery
Address:	Namaqua Avenue and Namaqua Elementary
Legal Description	<i>Please attach copy of officially recorded document containing a legal description.</i>
Owner Name & Address:	Loveland Historical Society 503 N. Lincoln Loveland, CO, 80537
Style:	N/A
Building Materials:	Stone
Additions to main structure(s), and year(s) built.	1864
Is the structure(s) on its original site?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, Date Moved _____
What is the historic use of the property?	Burials
What is the present use of the property?	Open Field
What is the date of construction?	Estimated: _____ Actual: 1864_ Original: _____

**FORM A****Application for Designation of a Historic Landmark**

<p align="center">DETAILED PROPERTY INFORMATION continued</p>	
<p>Describe the condition of the property.</p>	<p>Open Field</p>
<p>Who was the original architect?</p>	<p>See attached</p>
<p>Who was the original Builder/Contractor?</p>	<p>See attached</p>
<p>Who was the original Owner(s)?</p>	<p>See attached</p>
<p>Are there structures associated with the subject property not under the ownership of this applicant? Please describe.</p>	<p>No</p>
<p>Detailed description of the architectural characteristics of the property.</p>	<p><i>Please attach additional sheets if necessary.</i></p> <p>See attached</p>



City of Loveland

Page 4 – Historical Significance

FORM A**Application for Designation of a Historic Landmark**

The Historic Preservation Commission and City Council will consider the following criteria when reviewing nominations of properties for designation.

Landmarks must be at least fifty (50) years old and meet one (1) or more of the following criteria for architectural, social/cultural, or geographic/environmental significance. A landmark may be less than fifty (50) years old if it is found to be exceptionally important in other criteria.

Age of Site is: _____ 148 Years

1. Proposed Historic Landmarks. Please check all that apply:

For prehistoric or historic archaeological sites, please go to Form A Section 2, pg. 5.

A) Architectural:

- ☐ 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, state-wide, or locally.
- ☐ 3) Demonstrates superior craftsmanship, or high artistic value.
- ☐ 4) Represents innovation in construction, materials, or design.
- ☐ 5) Represents a built environment of a group of people in an era of
- ☐ 6) Exhibits a pattern or grouping of elements representing at least one of the above
- ☐ 7) Is a significant historic remodel.

B) Social/Cultural

- ☒ 1) Is a site of an historic event that had an effect upon society.
- ☐ 2) Exemplifies the cultural, political, economic, or social heritage of the community.
- ☒ 3) Is associated with a notable person(s) or the work of notable person(s).

C) Geographical/Environmental

- ☒ 1) Enhances sense of identity of the community.
- ☐ 2) Is an established and familiar natural setting or visual feature of the community.



City of Loveland

Page 5 – Historical Significance (cont.)

FORM A**Application for Designation of a Historic Landmark****2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following. Please check all that apply.**

***Complete this section only if the subject property is a prehistoric or historic archaeological site.*

A) Architectural

☐ 1) Exhibits distinctive characteristics of a type, period, or manner of construction.

☐ 2) Is a unique example of a structure.

B) Social/Cultural

☒ 1) Has the potential to make an important contribution to the knowledge of the area's history or

☐ 2) Is associated with an important event in the area's development.

☒ 3) Is associated with a notable person(s) or the work of notable person(s).

☐ 4) Is a typical example/association with a particular ethnic or other community group.

☐ 5) Is a unique example of an event in local history.

C) Geographical/Environmental

☒ 1) Is geographically or regionally important.

3. Each property or site will also be evaluated based on physical integrity using the following criteria (a property need not meet all the following criteria):

a) Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;

b) Retains original location or same historic context if it has been removed; or

c) Has been accurately reconstructed or restored based on documentation.

**FORM A****Application for Designation of a Historic Landmark**

<p align="center">Statement of Significance</p> <p>Please provide a brief statement summarizing the applicable criteria checked on previous pages.</p>	<p><i>Please attach additional sheets if necessary.</i></p> <p>MARIANO MEDINA’S FAMILY CEMETERY FIRST SETTLED THOMPSON VALLEY 1858-59</p>
<p align="center">Photographs of property as it appears today</p>	<p><i>Include photos from all angles: front, rear, and side elevations.</i></p>
<p>Please identify all references used during the research of the property. Include titles, author, publisher, publication date, ISBN# (when applicable), and location of source such as public library, etc.</p>	<p><i>Please attach additional sheets if necessary.</i></p> <p>OVER HILL AND VALE VOL.1,2,3 1956-1962-1971 AUTHOR: HAROLD DUNNING</p> <p>MARIANO MEDINA COLORADO MOUNTAIN MAN 1981 AUTHOR: ZETHYL GATES</p>

QUITCLAIM DEED

THIS DEED, made this 13th day of June, 2012, between Thomas L. Hartley, of the County of Jefferson, State of Colorado, Grantor, and Loveland Historical Society, 503 N. Lincoln, Loveland, CO 80537, of the County of Larimer, State of Colorado, Grantee:

WITNESS, that the grantor, for and in consideration of a charitable contribution, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, sell, and QUITCLAIM unto the Grantee and the Grantee's successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with any improvements thereon, located in the County of Larimer, State of Colorado, described as follows:

SEE ATTACHED EXHIBIT A

also known by street and number as: Vacant Land
assessor's schedule or parcel number: None Assigned

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, and the Grantee's successors and assigns forever.

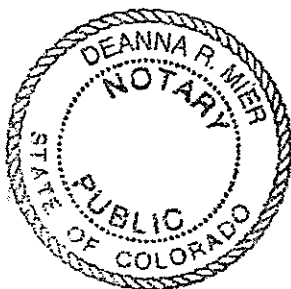
IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.


Thomas L. Hartley

STATE OF COLORADO,
COUNTY OF Jefferson, SS.

The foregoing instrument was acknowledged before me this 13th day of June, 2012, by Thomas L. Hartley

My commission expires: 5/27/2014



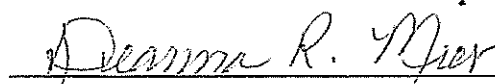

Notary Public

EXHIBIT A

A PARCEL OF LAND BEING PART OF TRACT "A" MARIANA BUTTE P.U.D. FIRST SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 8th PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH $\frac{1}{4}$ CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 8th P.M. AND CONSIDERING THE SOUTH LINE OF SAID QUARTER SECTION TO BEAR NORTH $89^{\circ}46'06''$ WEST TO THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST WITH ALL BEARING CONTAINED HEREIN BEING RELATIVE THERE TO:

THENCE NORTH $04^{\circ}22'54''$ EAST, A DISTANCE OF 269.87 FEET; THENCE NORTH $89^{\circ}48'57''$ WEST, A DISTANCE OF 50.40 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THENCE ALONG THE MEDINA FAMILY CEMETERY BOUNDARY THE FOLLOWING FOUR COURSES AND DISTANCES, NORTH $89^{\circ}48'57''$ WEST, A DISTANCE OF 117.15 FEET;

THENCE NORTH $00^{\circ}00'34''$ EAST, A DISTANCE OF 253.53 FEET, TO A POINT ON TRACT "W" MARIANA BUTTE P.U.D. FIRST SUBDIVISION, NAMAQUA ELEMENTARY SCHOOL;

THENCE ALONG SAID LINE, SOUTH $89^{\circ}53'77''$ EAST, A DISTANCE OF 136.78 FEET;

THENCE LEAVING SAID LINE, SOUTH $04^{\circ}26'26''$ WEST A DISTANCE OF 254.41 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 0.739 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY RIGHTS-OF-WAY OR OTHER EASEMENTS AS GRANTED OR RESERVED BY INSTRUMENTS OF RECORD OR AS NOW EXISTING ON SAID PARCEL OF LAND.

LEGAL DESCRIPTION PREPARED BY:

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MARCH 7, 2017

Statement of Significance

Mariano Medina Family Cemetery

1. A Pioneer Cemetery. 1864
2. Hispanic Heritage of Larimer County.
3. Mariano Medina was probably 1st permanent practicing Catholic in the Big Thompson Valley.
4. Pioneer Cemetery located near the Cherokee/Overland Trail.
5. Will become a Historical and Educational Park for Local History and a outdoor classroom.
6. A source of Civic Pride
7. A destination for the bike and hiking trail along The Big Thompson River.
8. A show of respect for our first Pioneer.

Medina Family Cemetery

Spelling of Mariano Medina's Names

The last name of Mariano Medina and of the members of his family has been spelled numerous ways in historical records, partially because Mariano himself could not read and write, although he spoke a number of languages. On pages 1 and 2 of her book *Mariano Medina* (Source No. 25 below), Zethyl Gates explains why she has concluded that "Medina" is the correct spelling and that "Modena"—the most frequent alternative spelling—is, instead, "an Anglicization of *Medina*."

Even his first name was spelled variously as "Mariano," "Mary Ann," Marianne," "Marianna," and "Mariana" in historical accounts. Indeed, the butte west of Mariano's home in Namaqua appears on maps, including the U.S. Geologic Survey's Masonville Quad Map, as "Mariana Butte."

After her extensive research, Zethyl Gates concluded that the correct spelling of his name is "Mariano Medina." Consequently, we have used those spellings in this book except when directly quoting documents that use another spelling.

For another detailed discussion of the various spellings of Mariano's first and last names in historical documents, see pages 11 and 12 of Source No. 24 below, which report, contrary to other sources, that Mariano "himself claimed to be able to read and write."

Location and Description of Original Medina Family Cemetery

Latitude 40° 23' 38" N, Longitude 105° 07' 32" W, Sixth Principal Meridian

The original Medina Family Cemetery is located in Loveland south of the Big Thompson River on the southwest corner of North Namaqua Avenue and a private road named Namaqua Elementary and is just southeast of the Namaqua Elementary School itself.

Sometime after 1864 (page 433 of Source No. 19 below) and probably after the first three individuals (a "Friend," Martin Medina, and Rosita Medina in the list under Photo C below) were buried there, Mariano Medina had a stacked sandstone wall erected around the cemetery, with the wall surrounding an approximately 10 X 25 foot area. Except Mariano and his son Rafaelito, who died after the original walled-in area was full, all of the individuals buried in the cemetery for whom we have historical records were buried inside that wall. However, the possibility remains that other early Namaqua residents outside of the Medina family may have been buried either inside or outside the walls of the Medina Family Cemetery even though no records of their burials have been found (Source No. 5 below).

Following his death in 1878, Mariano was buried outside of the original walled-in area at the southwest corner of the cemetery's south wall (Source Nos. 6, 10, 11, and 16 and pages 24 and 31 of Source No. 15 below). At least one source suggests that Mariano's youngest child, his son Rafaelito by his second wife Susan Carter Howard, was also buried south of the south wall near his father. (See Child No. 5 under "Children of Mariano Medina" below.)

Before the 18 May 1942 "unveiling" of the sandstone grave marker that Harold Dunning had made for Mariano Medina's grave, with the help of the his son Harold Bell, Dunning took down the old south wall of the cemetery, extended the east and west walls past Mariano's grave, and erected a new south wall (page 31 of Source No. 15 and Source Nos. 16, 17, and 18 below).

By 20 May 1946 (Source No. 17 below) Harold Dunning also created and installed sandstone grave markers for four other graves in the cemetery: for Mariano Medina's wife Marie/John/Tacanecy Medina, his daughter Marcellina/ "Lena" Medina, a "Friend," and an infant who died in childbirth, with the last two grave markers being unveiled to the public on 20 May 1946. (This infant was most likely the daughter of Louie Papa and his first wife. See Child No. 1 under "Children of Louie Papa and His First Wife" below.)

Unfortunately, on 17 and 18 January 1960, five of the graves in the original Medina Family Cemetery were removed to Namaqua Park. (See "Location and Description of Graves at Medina Memorial Wall at Namaqua Park" and "Destruction of the Cemetery in January 1960" below.) Immediately before the bodies in those five graves were moved, the sandstone walls around the cemetery were dismantled. Whether the five grave markers made by Harold Dunning were still marking the graves at the time the cemetery was dismantled is not known.

When Harold Dunning took Photo A below in about 1925, the original stacked sandstone wall around the Medina Family Cemetery was still in place (Source No. 10 and page 24 of Source No. 15 below). [Bill Meirath, who gave us a copy of Photo A to use in this chapter, arrived at the 1925 date for the photo because the first use of Dunning's photo he was able to find was in *Namaqua*, a book by Pierce Egan published in 1925 (Source No. 9 below). (For more information on all of the help that Bill gave us with our grave search efforts, see the "Acknowledgments" section.)



Photo A: Original Medina Family Cemetery as Photographed by Harold Dunning Before 1925. Photo Was Taken Looking North Northeast. The Black Arrow Points to Mariano Medina's Original Wooden Grave Marker Outside the Original South Wall of the Cemetery, With Mariano's Body Buried Southwest of the Marker

As of February 2012, the Medina Family Cemetery Committee (Bill Meirath, Chairman) of the Loveland Historical Society was actively working to both preserve the original Medina Family Cemetery and to restore it, as much as possible, to its original state. (See "Efforts to Preserve and Restore the Original Cemetery" below for details on this laudable preservation and restoration effort.)



Photo B: Original Medina Family Cemetery as Photographed in May 2011 Showing a Portion of the Field Southeast of Namaqua Elementary School With Orange Flags Marking the Graves in the Original Cemetery (Courtesy Bill Meirath)

The orange flags in Photo B mark the 10 possible burial locations that William Schneider found using dowser rods at the original cemetery location in October 1996 (Source No. 26 below). When we dowsed the same area on 23 February 2008, we found three possible body burials near some bushes that were then growing in the area of the original cemetery. However, as the number of flags in Photo B indicates, Bill Schneider found seven additional possible burials. Given the low temperature on the day of our February 2008 visit, we certainly did not search the entire cemetery site. In addition, Bill may have been able to detect areas where the earth had been disturbed as well as where bodies still remained while we were only able to detect the bodies that remained in the original cemetery. Another possibility is that when bodies were moved in January 1960, some of the bones were accidentally left in the original graves. (See "Individuals Still Buried in the Original Medina Family Cemetery" below.)

In preparation for visits to the site of the original Medina Family Cemetery during the Loveland Historical Society's 20 June 2011 Historic Home Tour, Bill Meirath and other members of the Medina Family Cemetery Committee created nine wooden grave markers for the cemetery and labeled and placed them by matching the grave locations found by William Schneider in 1996 and the diagrams of the original cemetery created by Harold Dunning and Pierce Egan (Source No. 10 and pages 24 and 31 of Source No. 15 below). Photo C below shows the cemetery with these wooden markers in place.



*Photo C: Wooden Grave Markers Temporarily Placed in the Original Medina Family Cemetery for the Loveland Historical Society's Historic Home Tour on 20 June 2011
(Courtesy Mike Perry)*

The following inscriptions on these nine temporary grave markers include only the names or descriptions of the deceased persons and their known or assumed dates of death and are listed from right (north) to left (south) as they appear in Photo C: Marie (John)/Tacanecy, 1874; Marcellina Medina, 1872; Martin, 1864; Rosita, 1865; Louis Papa's Daughter, 1866; Baby, 1942; Friend, 186?; Mariano Medina, 1878; and Rafaelito/Son, 188?.

For genealogical information on all of these individuals except a "Friend 196?" and "Baby 1942," see "Genealogy Information on the Mariano Medina Family" below. For

information on the burial of a friend of Mariano Medina in the cemetery in about 1864, see Source Nos. 10 and 11, pages 24 and 31 of Source No. 15, Source Nos. 17 and 18, and pages 433-434 of Source No. 19. For information on "Baby 1942," see "Destruction of the Cemetery in January 1960" below.

In his 21 October 2011 email to us (Source No. 33 below), Bill Meirath points out that, with the exception of "Baby 1942," after the first burial of "Friend 186?," it is possible that each deceased person was buried to the north of the last burial until the original 10 X 25 foot walled-in area was full. Then, as noted above, Mariano and his son Rafaelito were buried south of the original south wall of the walled-in area.

Location and Description of Graves at Medina Memorial Wall at Namaqua Park

Latitude 40° 23' 58" N, Longitude 105° 07' 24" W, Sixth Principal Meridian

Namaqua Park is on the east side of North Namaqua Avenue south of the Big Thompson River and about a half mile south of U.S. 34. It is 0.4 of a mile northeast of the original Medina Family Cemetery.

As discussed in detail in "Destruction of the Cemetery in January 1960" below, on 17 and 18 January 1960, under order from the County Court of Larimer County, three morticians removed six bodies from the location of the original Medina Family Cemetery. (Note that these three gentlemen were *not* trained pathologists.) Five of the bodies were assumed to be historic burials from the original Medina Family Cemetery and were moved to Namaqua Park, where they were reburied. The sixth body was that of a "modern" infant wrapped in a 1940s newspaper. The official report of the bodies' removal says that this child's body was reinterred but does not say where.

The location in Namaqua Park where the five bodies from the original Medina Family Cemetery were reinterred has since been marked by a stone wall below which have been placed five bronze grave markers. The stone wall runs from north to south, with the grave markers flat on the ground below the wall's east side. Photo D below shows the wall's east side.

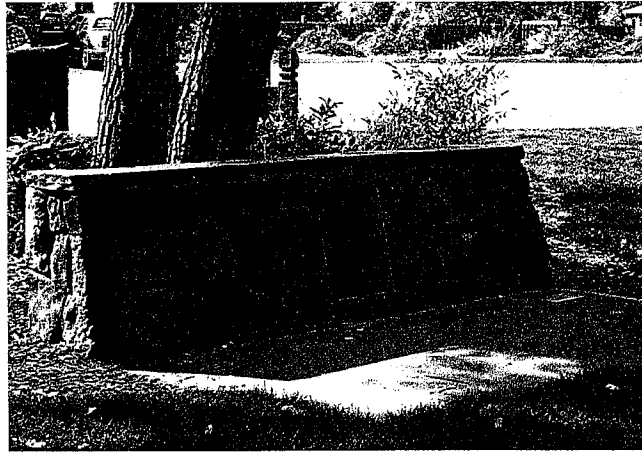


Photo D: East Side of the Medina Memorial Wall in Namaqua Park in Loveland

The bronze plaque on the face of the wall reads as follows:

**Dedicated to the memory of
C. C. Buckingham
1846-1940
Whose estate fulfilled his desire
to provide this resting place for the
MODENA FAMILY
First Settlers of Namaqua

Erected by the Namaqua Chapter
Daughters of the American Revolution**

The transcriptions of the inscriptions on the five bronze grave markers below the Medina Memorial Wall follow, in order from south to north:

**Baby Boy
1864**

**Mariano Modena
1812-1878**

**Lena Modena
1856-1872**

**Marie "John" Modena
Died 1874**

A Friend

Source Nos. 10 and 11, and page 31 of Source No. 15 below reports that the “friend” was of Mexican descent, with Source No. 11 saying that he died “about 1864.”

Note that the markers above all spell the family’s last name as “Modena” rather than “Medina,” which Zethyl Gates’s research showed was the most likely actual spelling (pages 1 and 2 of Source No. 25 below). See “Spelling of Mariano Medina’s Names” above.

Our use of dowser rods over the above grave markers confirmed burials in all five locations. However, we cannot confirm that the individuals buried below the markers match the names on the markers. See “So Whose Remains Were Moved to Namaqua Park and Whose Remains Are Still in the Original Medina Family Cemetery?” below for a discussion of significant questions concerning which bodies were removed from the original Medina Family Cemetery and which bodies may still be buried there. Hence, the effort to preserve and restore the original Medina Family Cemetery.

Finding the Medina Family Cemetery

We first learned about the “Modena Cemetery” because it is listed in the Larimer County section of the 1985 edition of the Colorado Council of Genealogical Societies’ *Colorado Cemetery Directory*, which provides the following location information for the cemetery: “In area called Namaqua, about ½ mile southwest of Loveland (Sec. 16, T5N, R69W, 6th P.M.).”

When we first made an effort to visit the cemetery, we found the Graves at Medina Memorial Wall at Namaqua Park, not the original Medina Family Cemetery. We have visited the Medina Memorial Wall graves several times, the first visit being on 11 August 2000. At that visit, as noted above, we transcribed the plaques cited above and used dowser rods to confirm that five individuals are indeed buried in front of the wall. We have repeated our dowsing efforts at the Namaqua Park graves several times and have always found five burials there.

We did not even know about the existence of the original Medina Family Cemetery until May 2007 when Bill Meirath sent us a copy of the notebook (Source No. 28 below) he had prepared in an effort to create an interest in preventing the development of the property containing the original cemetery and in preserving and restoring the cemetery itself—primarily because a number of members of Mariano Medina’s family and, possibly, even Mariano himself, are most likely still buried there.

Following Bill’s instructions, we visited the original cemetery on 23 February 2008 where, as noted above, our use of dowser rods indicated that at least three individuals are still buried. As also noted above, the cold February weather that day kept us from doing as complete of a grave search as we normally would have done.

Indeed, as discussed briefly above, in October 1996 (Source No. 26 below), William Schneider (“a former engineer and corporate consultant and an earnest historian”) dowsed the area of the original Medina Family Cemetery and found 10 possible graves. Bill was accompanied on his visit by Zethyl Gates. Interestingly, she had told Bill that the original cemetery was somewhere in the field, but she did not tell him its suspected location or how many graves her research had indicated that the cemetery might have originally contained. Concerning his discovery, Bill told the *Loveland Reporter-Herald* reporter, “It’s something we can’t forget is our past. Otherwise we’re bound to create problems for the future.”

Sources of Information on Mariano Medina, His Family, and the Medina Family Cemetery

Bill Meirath kindly provided us with copies of the following sources listed below: 2-6, 8-18, 20-21, and 26-28. Bill had found these sources during his extensive research on the Medina family and its cemetery.

1. Record Book A1, Sacred Heart of Jesus Catholic Church, Boulder, Colorado as cited in Source No. 25 below. The records in this book covering Catholic sacraments at Marianne’s Crossing/Namaqua began on 9 January 1861 when Reverend Joseph Projectus Machebeuf conducted the first Catholic mass at “Marianne’s Crossing,” the name of the town that was later renamed “Namaqua.”
2. “Death of Mariano Modena,” *Denver Daily Times*, Vol. 7, No. 152, 29 June 1878, page 1, column 5.
3. Brief Obituary of Mariano Medina, *Boulder County Courier*, 6 July 1878.
4. “Obituary—Mariano Modena,” *Fort Collins Courier*, 18 July 1878.
5. Mention of death of child of Mr. and Mrs. Krosky in Namaqua, *Fort Collins Courier*, 26 February 1891. There is no record that this child was buried in the Loveland Burial Park, Lakeside Cemetery, Grandview Cemetery, or Bingham Hill Cemetery, creating the possibility that the child could have been buried either on its parents’ land or in the Medina Family Cemetery.
6. “The First White Man: Mariano Modeno,” *Loveland Reporter*, 24 April 1902. This article contains the earliest mention of Mariano Medina being buried outside of the original walls of the Medina Family Cemetery.
7. *The History of Larimer County, Colorado*, written by Ansel Watrous and published in 1911. (See “Bibliography” for complete citation.)

Pages 87 and 88 contain information on Mariano Medina (spelled "Mariana Modena" in his book) and his "Old Lady Hawkens" rifle (spelled "Old Lady Hawkins" in his book).

Pages 167 and 168 contain information on Mariano Medina, his family, his exploits, and the cemetery that he established at Namaqua.

8. "Interesting Early Events on the Big Thompson River," written by Mrs. P. H. (Edith) Boothroyd, *Fort Collins Express*, 20 May 1923, pages 1 and 7. Article details Mrs. Boothroyd's visit with "Marianna Medina" on "one very warm day late in September of 1872" and discusses her impressions of Mariano, his sadness over the death of his daughter Lena, and his family's cemetery, which she describes as being "remarkably neat and well kept" when compared with other grave yards that she had seen in the West. (For more information on the Edith Margaret Latimer Boothroyd and her family, see the chapters on the Boothroyd-Hutchinson Cemetery and the Boothroyd Baby Girl Grave.)
9. *Namaqua*, written by Pierce Egan and published in 1925 by the Bookfellows at The Torch Press, Cedar Rapids, Iowa. Egan was originally a reporter for the *Loveland Reporter*. *Namaqua* is a romantic novel based on the life and legends of Marcellina Medina, one of Mariano Medina's two daughters, and is set in the foothills west of Loveland. This book contains Photo A above.
10. Page 295 from one of Harold Dunning's Scrapbooks/Photo Albums in the Denver Public Library. The page shows Photo A above and a map of the Medina Family Cemetery with the entrance on the east side; with Mariano Medina's wife "John" or Marie, daughter Lena, "a boy older than Lena," and a "Mexican" buried within the walls of the cemetery; and with Mariano Medina buried outside the cemetery's southwest corner. We used 1925 as the date of this page since a clipping referring to Source No. 9 above is attached to the page.
11. *Hitting the Trail to the Land of Olden Times; Historical and Natural Points of Interest Around the City of Loveland, Colorado*, pamphlet published in 1926 by the Loveland Chamber of Commerce. This pamphlet includes two paragraphs on the Medinas' "burial ground" and a map of the Namaqua area drawn by Harold Dunning that incorporates the Medinas' walled-in burial ground with Mariano Medina's grave shown as being outside the southwest corner of the cemetery.
12. "Early History of the Big Thompson Valley Graphically Told," written by Jefferson McAnnelly, *Fort Collins Express-Courier*, copy of undated article from a 1930s issue. Article reports that "Marianna Modena," his wife "John," their daughter Lena, and his son (Rafaelito or Ralph) by his second legal wife Susan Carter Howard, whom Mariano called "Maze," were all buried "in the little cemetery on the homestead." It also discusses how Mariano traded "a span of ponies, wagon, and harness" to Susan's husband for her.

13. "Pioneer Cattlemen," *Denver Post*, written by Astrid Berg, 15 April 1930. Article is accompanied by a photo of Louie Papa with Colorado Governor Adams and gives a brief account of Louie Papa's life, including naming Rose Davidson as one of Louie's wives and as the mother of a daughter who didn't live long and a son named Modena Papa. Article reports that Mariano traded "a span of horses" for his Indian wife Marie/"John" in the San Luis Valley in 1858 and that the two of them and Mariano's step-son Louie Papa came to the Big Thompson from the San Luis Valley about 1858.
14. "Tree Is Louis Papa's Record of Marriage 65 Years Ago," *Loveland Reporter-Herald*, 16 October 1931. Article mentions that Louie's daughter, whom he "loved above all things, died when she was small." It gives 1866 as the year that Louie married his first wife and repeats much of the same information as Source No. 13, except it gives "Mary" Davidson rather than "Rose" Davidson as the name of Louie's first wife and mentions that Louie's and Mary's son Modena Papa was living west of Pueblo with his mother in October 1931 and that Modena would have been about 64 and his mother "past 80" by that date.
15. Pages 24, 26, 29, and 31 from one of Harold Dunning's Notebooks in the Denver Public Library dated 1941 but obviously updated some after that date (See Pages 24 and 31 immediately below.)

Page 24 includes a photo that Dunning took of the Medina Family Cemetery prior to 1925 and a map of the Medina Family Cemetery that includes "5/18/42" as the date Dunning erected a headstone on Mariano Medina's grave. The photo was also used in Source Nos. 9 and 10 above and is Photo A in this chapter.)

Page 26 contains a quote "from the writings of Pierce Egan" that Dunning later used on page 441 of Volume I of *Over Hill and Vale* (Source No. 19) in his plea that the Medina Family Cemetery be restored and made into a "show place."

Page 29 contains quotes and information on Mariano Medina, his family, and cemetery from Lucas Brandt's 1926 diary. This page includes the information that after Mariano's first wife "John" died, he "traded for a white woman but she did not live with Mariano very long."

Page 31 shows a map of the Medina Family Cemetery with the entrance on the east side; with Mariano Medina's wife "John" or Marie, daughter Lena, "a boy," and and a "Mexican" buried within the original walls of the cemetery; and with Mariano Medina buried inside the extended south wall of the cemetery. The page is dated 1941 but contains a handwritten note saying that the cemetery's south wall was extended to include Mariano's grave in 1942.

16. "Monument Unveiled in Honor of Mariano Medina, First Settler," *Loveland Reporter-Herald*, Tuesday, 19 May 1942, page 1. Article reports that the sandstone headstone that Harold Dunning had made for Mariano Medina's grave in the Medina Family Cemetery was unveiled on Monday, 18 May 1942 and that the cemetery's walls had been extended to include Mariano's grave prior to that date.
17. "Pioneer Graves Marked Today in Namaqua Cemetery," *Loveland Reporter-Herald*, Monday, 20 May 1946, pages 1 and 6. Article reviews some of the 10 pioneer graves in Larimer County that Harold Dunning had marked and indicates that on 20 May 1946 Dunning showed off the markers he had made for the graves in the Medina Family Cemetery. The last two graves marked in the cemetery, which were shown to the public for the first time on 20 May 1946, were those of a friend of the Modena family, who was the first person buried in the cemetery, and the first member of the Modena family who was buried there: "an infant who died in child-birth," who Bill Meirath concludes was the daughter of Louie Papa who died in 1866. (See Child No. 1 under "Children of Louie Papa and His First Wife" below.)
18. "Over Hill and Vale," Harold Dunning's column in the *Loveland Roundup*, 1 January 1948, page 3. In spite of its much later publication date, this article basically repeats the *same* information as Source No. 17.
19. Volume I of *Over Hill and Vale*, written by Harold Marion Dunning and published in 1956. (See "Bibliography" for complete citation.)

Page 38 lists Mariano Medina (spelled as "Modena" in this book), his wife Marie/"John," and his step-son Louie Papa as the first permanent settlers in the Big Thompson Valley.

Page 51 mentions that "Mariano Modena took great pride in his little cemetery where five of the family are now buried."

Pages 423-425 contain information on the "fiction and fact" concerning Mariano Medina, including quotes from Jean Milne Bower's little booklet titled *Beads of Namaqua*.

Pages 425-427 contains information on Mariano Medina that Dunning repeats from Francis Whittemore Cragin's "Far West Notebook" about Cragin's 1903 "trip up thru this region." Dunning's source was copied from Cargin's "originals in the Pioneer Museum at Colorado Springs by Lorene Englert." Note that Cragin did spell Mariano's last name as "Medina."

Pages 427-434 contain a section titled "More About Mariano Modena" that provides a wide-ranging collection of information and stories about Mariano and his family.

Pages 439-441 contain Dunning's plea that the Mariano's "little graveyard" be made into a show place to which Loveland's residents could point to with pride.

20. Petition No. 14815 by the Board of Commissioners of the County of Larimer to the County Court in and for the County of Larimer dated 20 October 1959. The petition asked the County Court to order the "removal and reinterment of the said 'Modena Graves'" because the "burial ground has been abandoned and through neglect and nonuse has become in danger of damage, destruction, desecration, and obliteration." The petition goes on to say that its text would be published in the 23 October, 30 October, and 6 November 1959 issues of the *Fort Collins Coloradoan* and that a hearing on the petition would be held at 10 a.m. on 7 December 1959.
21. Court Order No. 14815 by the County Court in and for the County of Larimer issued 7 December 1959. The Court Order ruled that since no one objected to Petition No. 14815 (Source No. 20 above) following its publication in the *Fort Collins Coloradoan*, the five "Modena Graves" [listed in the Court Order as Mariano Modena, Unknown Friend, Baby Boy Modena, Lena Modena, and Marie (John) Modena] should be removed from the "Modena Graves' burial ground" and reinterred in the Northwest Quarter of the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th Prime Meridian (which is the location of what is now known as Namaqua Park).
22. Volume II of *Over Hill and Vale*, written by Harold Marion Dunning and published in 1962. (See "Bibliography" for complete citation.)

Pages 226-227 discuss in detail the 17 and 18 January 1960 move of six graves (one being a "modern" infant) from the original Medina Family Cemetery to Namaqua Park and quote in its entirety Carl Kibbey's "report of the events."

Page 226 also reports that one of the two infants buried in the cemetery was "the daughter of Louie Papa."

Pages 254-255 discuss where the "famous Overland Trail" existed in the Loveland area and the establishment of a stage station at "Mariano Medina's place."

23. Volume III of *Over Hill and Vale*, written by Harold Marion Dunning and published in 1971. (See "Bibliography" for complete citation.)

Page 129 provides a list of the about 20 people who lived in the Big Thompson Valley in October 1860, that list including Mariano Medina and his family.

Page 223 contains a photo taken about 1920 showing Louie Papa and Lucas Brandt sitting in front of Mariano Medina's log home in Namaqua.

24. *Loveland-Big Thompson Valley, 1877-1977 Centennial*, edited by Clara Ball and published and distributed by the Loveland-Big Thompson Valley Centennial Commission, Inc., 1975. Pages 10-12 contain information on "Mariana Modena" that includes a fairly lengthy discussion of how his first and last names were spelled in early accounts of his life.
25. *Mariano Medina: Colorado Mountain Man*, written and copyrighted by Zethyl Gates, originally published in 1981. (See "Bibliography" for complete citation.) This extremely well-written biography does an excellent job of weaving the wealth of information on Mariano, his family, Miraville/Marianne's Crossing/Namaqua, and his family cemetery into a coherent story that does a convincing job of separating the truth about Mariano Medina and his family from the extensive legends/stories. The Loveland Museum and Gallery sells reprints of this well-researched book.
26. "Rods help historian uncover Loveland's past," written by Philip Tardani, *Loveland Weekend Reporter-Herald*, 26 and 27 October 1996, pages A-1 and A-5. Article reports on William Schneider's dowsing the original Medina Family Cemetery several days before the article was published.
27. "Dowsing has backing from some scientists," written by Philip Tardani, *Loveland Weekend Reporter-Herald*, 26 and 27 October 1996, page A-6. In this article, Tardani cites a scientific experiment discussed in a 1995 issue of *Science News* that concludes that some, but not all, dowsers "can find objects when the likelihood of their doing so by luck alone is astronomically high."
28. *Medina Family Plot*, notebook prepared by Bill Meirath and distributed in May 2007 in an effort to prevent the development of the property containing the original Medina Family Cemetery and to encourage the preservation and restoration of the cemetery. As discussed in "Efforts to Preserve and Restore the Original Cemetery" below, it is through Bill's considerable efforts that the Loveland community became aware of the abandoned and destroyed Medina Family Cemetery and determined to preserve it. It was this notebook that first brought the original Medina Family Cemetery to our attention.

A copy of Bill's notebook will be in our files on the Medina Family Cemetery in the Local History Archive of the Fort Collins Museum, which has agreed to take our research files for this book.

29. "Preservation of the Mariano Medina Family Cemetery," written by Sharon Danhauer, *The Folsom Point*, the newsletter of the Northern Colorado Chapter of the Colorado Archaeological Society, Vol. 23, Issue 08, November 2008, pages 4 and 5. Article provides a brief biography of Mariano Medina and a brief history of

the Medina Family Cemetery and reports on the beginning of the efforts to preserve the original cemetery.

30. "Mariano Medina, the first permanent settler in the Big Thompson Valley," on pages 49-53 of the *Convention Booklet of the Oregon-California Trails Association 27th Annual Convention*, August 18-22, 2009, Loveland, Colorado. Article also provides a brief biography of Mariano Medina; photos of Namaqua, the town that Mariano established; and a brief history of the Medina Family Cemetery, including its destruction in 1960 and efforts to preserve and restore it.
31. "Land saved, history preserved," transcription and video available at <http://www.9news.com> of story on the original Medina Family Cemetery that first appeared on 9NEWS in Denver on 19 September 2009 . Video includes interviews with both Bill Meirath, the Chairman of the Medina Family Cemetery Committee of the Loveland Historical Society, and Jess Rodriguez, who bought the land containing the cemetery and who had agreed to donate the 0.96 acre containing the cemetery to the Loveland Historical Society. The story was one of several that 9NEWS produced in September 2009 in recognition of National Hispanic Awareness Month.
32. "Old Lady Hawken's, Mariano Medina's Famous Gun, Is Safe and Sound," written by Sharon Danhauer, *The Fifty-Niner*, the quarterly newsletter of the Colorado-Cherokee Trail Chapter of the Oregon-California Trails Association, July 2011, pages 6-8. Article tells of Sharon Danhauer's and Bill Meirath's trip to a private museum in northern New Mexico to see Mariano Medina's gun and accompanying artifacts.
33. Emails received from Bill Meirath between 6 and 30 October 2011 in which he provides digital copies of most of the photographs used in this chapter and answered the numerous questions we had during the chapter's preparation.
34. Emails received from Bill Meirath between 19 November and 4 December 2011 in which he provides changes to and additional information for the second draft of this chapter.
35. "Mariano Medina's family plot in west Loveland will be donated to historical society; Developer saves pioneer cemetery," *Loveland Reporter-Herald*, written by Craig Young, 9 January 2012. Article discusses the Loveland Planning Commission's approval on 9 January 2012 of the subdivision that includes the Medina Family Cemetery and the fact that the developer Jess Rodriguez will donate the cemetery site portion of the subdivision to the Loveland Historical Society. The article also includes information about Bill Meirath's efforts (now successful) to get the Loveland community to preserve the Medina Family Cemetery.

36. Emails received from Bill Meirath between 22 January and XX XXXXXX 2012 in which he provides changes to and additional information for the third draft of this chapter.

In the following two sections, we have italicized information about any individual's death and burial if records show that the person was buried in the Medina Family Cemetery and have bolded and italicized information concerning the order of each person's burial.

Brief Biography of Mariano Medina

Jesus Garcia Mariano Medina (page 9 of Source No. 25) was born in 1812 in what is now Taos, New Mexico (page 3 of Source No. 25) when New Mexico was still part of Spain. According to page 3 of Source No. 1, his parents were **Antonio Medina** from Spain and **Marie Hurtado (Urtado)** from New Mexico. Zethyl Gates (page 3 of Source No. 25) points out that the 1870 Colorado Census provides the contradictory information that Mariano was born in Mexico and that he was 50 in 1870, which would yield a birth year of about 1820 rather than 1812.

Since Zethyl Gates's biography of Mariano (Source No. 25) provides a very complete history of his life and exploits, we will provide only a brief biography of Mariano Medina here. For details about Mariano's two wives, step-son, and five children, see "Genealogy of the Mariano Medina Family" below.

Mariano was know to be a natty dresser, with positive comments on his appearance and clothing having been left behind by a number of his contemporaries (Source No. 8 and pages 43-44 of Source No. 25). Pages 51-53 of the same source contain photos of Mariano. Although he was wearing different "outfits" in each of the three photos, in all of them he had the same pipe hanging out of the left side of his mouth and may be wearing the same black hat.

However, during his life, Mariano "wore quite a few hats," for he is know to have worked as a "trapper, trader, bounty hunter, interpreter, guide" and mountain man" (Source No. 29). While his reputation is not as established as those of such well-known mountain men as Jim Bridger, John Colter, Kit Carson, and Jedediah Smith, Zethyl Gates points of that Mariano was nonetheless "a legend in his own time" (page 1 of Source No. 25).

Probably Mariano's best know exploits occurred in the 1840s when he worked as a "runner" and interpreter for Captain John C. Fremont during Fremont's Rocky Mountain expeditions (page 9 of Source No. 25) and in 1857 during the "Mormon war." During that war, Mariano and a member of John Robertson's family left Fort Bridger to warn Russells, Majors, and Waddell's freight wagons and cattle at Ham's Fort on the Green River that "the Mormons were preparing to steal the stock the next day" (page 18 of Source No. 25). Later in 1857 he and Miguel Alona saved Captain Randolph Marcy,

who was an officer in the Utah Expedition, and Marcy's troops from starving to death in the Rocky Mountains where they had gotten lost while trying to reach New Mexico to get supplies for the Expedition (page 20-25 of Source No. 25).

When the Mormon War was over in July 1858 (page 26 of Source No. 25), Mariano moved his wife Marie/John/Tacanecy, step-son Louie Papa, sons Antonio and Martin, and daughter Marcellina first to gold fields at Cherry Creek and then joined a group that moved from there to the banks of the Big Thompson where Nicholas and Antoine Janis had already set up a trappers' camp. Two early sources that Zethyl Gates may not have seen report that Mariano and his family had also been in the San Luis Valley before coming to the Big Thompson (Source Nos. 13 and 14).

(For details on Mariano's family, see "Genealogy of the Mariano Medina Family" below. For more information on the Janis brothers, see the chapter on the Antoine Janis Memorial. The Janis brothers later moved to Laporte, which is where the Antoine Janis Memorial is located.)

The Big Thompson settlers chose the specific location on the river's banks because of the ready availability of "water, good forage for stock, wild game for food, timber for cabins." Zethyl Gates reports, "It is accepted that Mariano was on the Thompson in the middle of 1858, for pioneers who arrived soon after that said that Mariano was here before them" (page 30 of Source No. 25).

The town that grew up on that part of the Big Thompson was first called "Miraville" for José de Mirabal, who was born in 1812 in Mexico and who, like Mariano, "had spent his life in the Rocky Mountain West." The 1860 Census reports that 45 families were living in the 22 houses in "Miraville City" but does not list Mariano and his family. While some of the old trappers and mountain men who had originally settled in Miraville City moved on, Mariano and his family stayed, perhaps because Mariano "sensed the coming era of expansion as traffic increased along the Cherokee Trail which followed the foothills north of the Arkansas River" (page 34 of Source No. 25).

It wasn't long until the name of the little settlement morphed from "Miraville" into "Marianne's Crossing," possibly because of the toll bridge that Mariano built over the Big Thompson close to the point where, first, the Cherokee Trail and, later, the Overland Trail crossed the Big Thompson. Mariano charged from \$0.25 to \$1.00 for travelers to cross his bridge and "fenced his land so that travelers must use his toll bridge in times of high water" (page 51 of Source No. 30, which contains an old photo of Mariano's bridge; page 168 of Source No. 7; and pages 431-432 of Source No. 19).

(For more information on the Cherokee and Overland Trails in Larimer County, see the "Brief History of the Overland Trail in Larimer County" in the chapter on the Cherokee Stage Station Graves, the "Brief History of the Little Thompson Crossing and the Little

Thompson Stage Station on the Cherokee-Overland Trail” in the chapter on the Little Thompson Crossing Grave, and the “History of the Virginia Dale Stage Station” in the chapter on the Virginia Dale Stage Station Cemetery.)

We know that Mariano and his family were living on the Big Thompson by early January 1861 because of the records left by a Catholic priest, Reverend Joseph Projectus Machebeuf (Source No. 1). Father Machebeuf reached Marianne’s Crossing from Denver, where he had been sent by the Catholic bishop in Santa Fe, New Mexico. Father Machebeuf headed from Denver to Marianne’s Crossing because he had heard that there were some Catholic families there. On the morning of 9 January Father Machebeuf set up a little altar, put on the appropriate vestments, celebrated mass, and then baptized seven children, including Marcellina Medina, the daughter of “Marian” Medina and “Mary Kansey” (Source No. 1 and pages 35-36 of Source No. 25). (For more information on Marcellina, see Child No. 3 under “Children of Mariano Medina” below.)

Mariano built a number of buildings at Marianne’s Crossing, probably the best know of them being a “fort,” which Mariano built on the north side of the Big Thompson River. The fort measured approximately 15 X 25 feet and was made from sandstone gathered nearby. Its walls were between 18 and 20 inches thick and contained gun ports. Its primary purpose was to provide locals with a place to fall back to when Indians attacked, which happened primarily when the Indians wanted the settlement’s horses. Page 57 of Zethyl Gates’s book (Source No. 25) contains photos of the exterior and interior of Mariano’s “fort” taken by Mildred Beatty. In the exterior photo, the fort has a pitched roof made of wooden shingles, but the original roof was “covered with a foot of earth” (page 40 of Source No. 25).

The Indians’ stealing horses would have been especially upsetting to Mariano since he was a renowned horseman, horse breeder, and trader (Source No. 8 and page 46 of Source No. 25). On page 432 of Source No. 19, Harold Dunning repeats Edwin D. Clark’s 9 December 1903 story of the Utes stealing 73 head of Mariano’s horses and Mariano getting all of them *plus one* back. (For more information on Edwin Clark and his family, see the chapter on the Clark Family Cemetery.)

Mariano built his family’s 18 X 20 foot log cabin on the on the south side of the Big Thompson, with some of the logs from that cabin eventually being used to reconstruct a portion of Mariano’s cabin in the Loveland Museum and Gallery (page 40 of Source 25 and page 50 of Source 30). Above his home, Mariano flew a white flag to indicate that he was “at peace with all nations” (page 50 of Source No. 25). Harold Dunning’s photo of Mariano’s family’s cabin on page 56 on Source No. 25 and page 50 of Source No. 30 shows both Mariano’s cabin and his white flag.

Other buildings on the south side of the river were Mariano’s combination store-saloon, a stable with a corral, and lodging for travelers. Since Mariano kept all of his buildings

whitewashed, they stood out from the “brown log homes” of the others settlers along the Big Thompson. See the inside back cover of Zethyl Gates’s biography of Mariano for a diagram of the locations of his buildings.

According to pages 60-63 of Source No. 25, when Ben Holladay began running his Overland Stage Line coaches from Denver to Salt Lake City in August 1862, he put that section of the line under the supervision of Major John Kerr. (See the “History of Little Thompson Crossing and Stage Station” in the chapter on the Little Thompson Crossing Grave for information on John Kerr, his stint with the Overland Stage, and a photo of his stone home near Berthoud, Colorado.) The portion of the route that followed the old Cherokee Trail north from Denver crossed the Big Thompson near Mariano’s place. Since Kerr and Mariano knew each other from the “days of the Utah War,” Kerr lived not far away in Berthoud, and the Cherokee Trail crossed the Big Thompson right at Mariano’s place, it wasn’t a surprise that Mariano’s place became a stage stop on Kerr’s section of the Overland Stage Line. In fact, Mariano’s place was the first place travelers on the Overland Stage could eat north of Denver.

In 1866, Holladay sold out to the Wells Fargo Express Company. In 1867, Wells Fargo built a huge livery barn on the north side of the Big Thompson. (See page 51 of Source No. 30 for Harold Dunning’s photo of this livery barn.) Mariano’s place continued as a stage station between Denver and Cheyenne “until the trains came through in 1877” (page 63 of Source No. 25).

This stage station was called the “Big Thompson Station” until a federal post office was established on the north side of the Big Thompson on 28 January 1868. The post office’s first post master Hiram Tadder suggested “Namaqua” as the name for the post office. For speculations on what “Namaqua” meant, see page 64 of Source No. 25. The most likely source of the name was “Namequa, the beautiful daughter of Chief Black Hawk, a Sauk Indian from Illinois for whom the mining town of Blackhawk, Colorado was named.

In addition for his appearance, hospitality, horsemanship, and businesses on the Big Thompson, Mariano was also know for “Old Lady Hawken,” his .50 caliber muzzleloader, a rifle handmade for him by Samuel and Jacob Hawken in St. Louis. This rifle was both lightweight and accurate and could easily be carried on horseback. Mariano’s Hawken was “decorated with five small silver-colored stars and had an elaborate silver-colored patch box” and was accompanied by deerskin *parfleche* or bullet pouch (pages 45 and 46 of Source No. 25). See pages 54 and 55 of the same source for photographs of the rifle and its accompanying bullet pouch, powder horn, and tools taken when they were on loan to the Colorado History Museum.

Bill Meirath became so enamored with “Old Lady Hawken’s” during his years of research on Mariano Medina that he had a duplicate of the rifle made for himself.

According to Source No. 32, before Mariano died in 1878, he left “Old Lady Hawken’s” and its accompanying items to his friend A. H. Jones of Denver City. In 1940 the Jones family loaned the rifle and accouterment to the Colorado History Museum. However, in the 1990s the Museum asked the family to either donate the items to them or pick them up. Jim Gordon, a well-respected professional gun collector, helped the family value the items and offered to organize a fund-raising drive to collect enough money for the Museum to purchase them. The family refused his offer and put the items up for sale. Jim then felt compelled to purchase them himself for his already extensive private collection.

In early 2011, Bill Meirath, his friend Lee Billmire, and Sharon Danhauer (one of the original members of the Medina Family Cemetery Committee) were invited to Glorieta, New Mexico to visit Jim Gordon’s extensive gun collection and “Old Lady Hawken’s.” (For more information on Sharon Danhauer and the help she provided us during our grave-search efforts in the Loveland area, see the “Acknowledgments” section.) Photo E below shows Bill with the “Lady” during that visit.



*Photo E: Bill Meirath Holding Mariano Medina’s “Old Lady Hawken’s” Rifle
(Courtesy Sharon Danhauer)*

According to page 1 of the 29 June 1878 issue the *Denver Daily Times* (Source No. 2), *Mariano Medina died on 28 June 1878* “at his old home on the Big Thompson” “after a long and painful illness superinduced by wounds received during his eventful life in the Indian country.” His obituary in the *Boulder County Courier* (Source No. 3) reports that he died “last week,” which was the week before 6 July 1878, and his obituary in the *Fort Collins Courier* (Source No. 4) reports that he died on 25 July 1878.

As discussed above, Mariano was buried outside of the original walled-in area of the Medina Family Cemetery at the southwest corner outside the cemetery’s original south wall because, by 1878, the 10 X 25 foot area inside the original walls was full (Source Nos. 6, 10, and 11 and page 31 of Source No. 15).

Specifically, Source No. 6 states:

“Mariano buried the members of his family side by side, an adobe wall around the graves, while on the gateway was placed the emblem of his Catholic faith. Just outside this wall at the southwest corner lies all that is moral of Mariano himself.”

As far as we can determine, Mariano was the seventh person buried in the Medina Family Cemetery.

Genealogy of the Mariano Medina Family

Tacanecy/Marie/“John” Papin (“Papa”), Mariano’s first wife. According to pages 10-11 of Source No. 25, about 1844 when Mariano was working as a free trapper along the Snake River in the Utah Territory, he met Louis Elbert Papin (“Papa”) and Louis’s Flathead or Shoshoni “wife” named “Tacanecy” or “Kansey.” When Louis decided to return to “the States,” Tacanecy, who was pregnant with Louis’s child, refused to go with him because she didn’t want to leave her own people behind. Not wanting to completely abandon Tacanecy, Louis offered to trade her to Mariano for some horses and a blanket.

Two early sources (Source Nos. 13 and 14), which Zethyl Gates may not have seen, report instead that Mariano traded a “span of horses” for Louie Papa’s mother in the San Luis Valley in 1858. However, since three of Mariano and Tacanecy’s children (Children Nos. 1, 2, and 3 under “Children of Mariano Medina” below) were born *before* 1858, these two sources must surely be in error.

In addition to keeping house for Mariano and their children with all that involved in those days, Tacanecy was well-known for the beautiful buckskin moccasins and pants that she made and sold in Mariano’s combination store-saloon (page 41 of Source No. 25). As her name above indicates, she was also known as “Marie” and “John” in addition to “Tacanecy.”

Ansel Watrous (page 168 of Source No. 7) reports that Tacanecy and Mariano were eventually married by a Catholic priest, which would probably have been either immediately before or after their daughter Marcellina’s 9 January 1861 baptism.

Using page 3 of the 15 July 1874 issue of the *Fort Collins Standard* as her source, Zethyl Gates (pages 73-74 of Source No. 25) reports that *Tacanecy died on 12 June 1874* and that she was 67 at the time of her death, which means that she was born about 1807 and that she was either 5 or 12 years older than Mariano, depending upon whether he was born in 1812 or 1820.

Concerning Tacanecy's burial, Zethyl Gates reports that her body was "placed in a plain wooden box and hauled in a lumber wagon pulled by a team of horses . . . to the burial spot. Once more the warm, red earth of the little cemetery on the hill [the original Medina Family Cemetery] folded into its bosom the earthly remains of one of Mariano's family." ***As far as we can determine, Tacanecy was the sixth person buried in the Medina Family Cemetery.***

Louis ("Louie") Papin ("Papa"), Mariano's step-son. Louie was the child with which Tacanecy was pregnant when Mariano took her as his wife when Louis Papin left the Utah Territory for "the States." Louie Papa's headstone in the Lakeside Cemetery in Loveland reports that he was born in 1844 and died in 1935. The records of the Loveland cemeteries report that Louie died on 18 September 1935. His burial place in Lakeside was provided by his long-time friend and employer Frank Bartholf, who donated space in his family's burial plot in Lakeside Cemetery (pages 54 and 55 of Source No. 30). On page 80 of Source No. 25, Zethyl Gates reports that Louie died from eating lye, which he had mistakenly thought was lard.

Since Louie was about 14 years old when Mariano brought his family to the Big Thompson, Louie never learned to read or write, for he was just too old to be sent to Denver for the formal schooling provided his half-brother Antonio and half-sister Marcellina (Children Nos. 1 and 3 under "Children of Mariano Medina" below). Instead Louie herded Mariano's valuable horses and took care of his stock, "a vocation he followed all of his life" (page 77 of Source No. 25).

The sources available to us provided contradictory information about Louie's wives and children.

Louie's first wife. Louie apparently married twice; however, we found three different names for his first wife. According to Zethyl Gates (page 78 of Source No. 25), who cites as her source the marriage records of Denver's Cathedral of the Immaculate Conception, his **first wife was Maria Eleanor Williams**, to whom he was married in Denver on 30 August 1866 by the same priest who had baptized his half-sister Marcellina in Marianne's Crossing in 1861. The couple moved to Namaqua to live, where Louis planted a cottonwood tree in honor of their wedding.

However, Source Nos. 13 and 14, respectively, report that Louie's **first wife was Rose Davidson or Mary Davidson**. Both sources agree that this lady's father ran the dance hall across from the Old Elephant corral in Denver. Source No. 14 repeats the story also told by Zethyl Gates of Louie having planted a cottonwood tree in 1866 in honor of his marriage to this lady. Consequently, these three women were surely the *same person*. Given that Zethyl's source was Catholic Church records, we accept Maria Eleanor Williams as the correct name of Louie's first wife. In addition, Louie was 87 when he gave the interviews on which Source Nos. 13 and 14 were based and, thus, may have been a little forgetful.

Louie and his first wife divorced in about 1872, although she evidently left Louie shortly after the birth of their second son.

Children of Louie Papa and His First Wife

1. **Louie Papa's Unnamed Daughter.** Harold Dunning reports (page 226 of Source No. 22) that one of the infants buried in the Medina Family Cemetery was a daughter of Louie Papa. Source No. 13, which is based on a 1931 interview of Louie, says that he had two children, one of whom was a little girl, whom Louie describes as "his little white flower who didn't live long." Source No. 14, which also appears to be based on a 1931 interview of Louie, indicates Louie loved this daughter "above all things" and that she died "when she was small." In an email to us dated 29 November 2011 (Source No. 34), Bill Meirath tells us about an unpublished book titled *The Real Pioneers of Colorado* by Maria Davies McGrath dated 1934 which states that Louie and Maria's daughter was their first-born child. Given Zethyl Gates's report (page 78 of Source No. 25) that Louie and his first wife had a son on 10 August 1867, more about whom below, Bill has used 1866 has the birth and death date for their daughter.

Based on the above information, we are assuming that *Louie had a daughter who died shortly after her birth in 1866 and who was buried in the Medina Family Cemetery. As far as we can determine, this little girl must have been the fourth person buried in the Medina Family Cemetery.*

2. **Mariano Antonio Papa, Louie Papa's eldest son.** As noted above, Zethyl Gates (page 78 of Source No. 25) gives his birth date as 10 August 1867 and provides the name used here. However, Source Nos. 13 and 14, which as noted above appear to be based on a 1931 interview of Louie, give this son's name as **Modena Papa**. For more information on this son, see these three sources.
3. **José Adolfo Papa, Louie's youngest son.** Zethyl indicates that this boy was born about a year after his older brother. Perhaps Louie does not mention this son in Source Nos. 13 and 14 because the boy did not live to adulthood. On the other hand, Source No. 14 indicates that Mariano or Modena Papa was still alive in 1931 and was living in Pueblo with his mother.

Annie Johnson, Louie's second wife. Louie married Annie Johnson of Namaqua on 25 March 1875, but 1 month later she left both Louie and the country. Louie didn't divorce Annie until about 1891 and never remarried (page 79 of Source No. 25).

Children of Mariano Medina

Details on the four children that Mariano Medina had with Tacanecy follow.

1. **Antonio ("Antoine") Medina.** Antonio was born 2 or 3 years after Mariano took Tacanecy as his wife (page 11 of Source No. 25). If Louie Papa was born in 1844, this would mean that Antonio was probably born some time between 1845 and 1847. The boy was named "Antonio" according to the Spanish custom of naming the first-born son for the father's father. At the time of Antonio's birth, his parents were living at Fort Lewis at the head of the Missouri River in Montana.

Once the family moved to Namaqua, when Mariano was away, he would sometime leave Antonio in charge of his store and saloon. On one of those days, Antonio had a run in with the notorious Jack Slade, John Kerr's predecessor as the division chief of the Overland Stage Line, during one of Slade's frequent drunken rages. Antonio threatened to shoot Slade with Mariano's spare Hawken's rifle until his mother intervened by taking the rifle away from him (pages 67-68 of Source No. 25).

(For information on another of Slade's drunken episodes at the Big Thompson Station, see the "History of the Little Thompson Crossing and Stage Station" in the chapter on the Little Thompson Crossing Grave. For more general information on Jack Slade, see the "History of the Virginia Dale Stage Station" in the chapter on the Virginia Dale Stage Station Cemetery.)

As per pages 68 and 69 of Source No. 25, Namaqua settlers report that Mariano sent Antonio to the Catholic School for Boys in Denver (near the school attended by his sister Marcellina), so the boy did receive a fairly good education for the time.

Antonio's fiery temperature led to his having the dubious distinction of being involved in the first criminal court action in Larimer County: on 5 July 1868 he was charged with the armed assault of Adam Blackhurst on 4 July. After Mariano posted a \$1,000 bond, no further actions were taken. Antonio shows up again during the probate hearing for Mariano's will on 29 August 1878. In 1881, he and Louie Papa applied (unsuccessfully) to a court in Pueblo County for part of their father's estate.

According to page 168 of Watrous's history (Source No. 7):

"Antonio grew to be handsome, but a wild and reckless man. At last his conduct became so bad that he was compelled to leave home, and it is reported that he was killed in a drunken row in New Mexico in 1888."

On the other hand, Zethyl Gates reports (page 69 of Source No. 25) that Professor Francis Whittemore Cragin's *Early Far West Notebooks* (original in the Pioneer Museum in Colorado Springs) state the Antonio died in Pueblo, Colorado. Harold Dunning agrees that Antonio died in Pueblo (page 430 of Source No. 19). Since

Antonio lived to adulthood, Zethyl wondered if Antonio could have had children and descendants somewhere who are “unaware of their proud heritage.”

2. **Martin Medina.** According to Zethyl Gates’s research (page 67 of Source No. 25), the Catholic records for the Namaqua area do not provide any evidence of Martin’s birth or death.

However, Harold Dunning does indeed mention Martin several times in his three *Over Hill and Vale* volumes:

- On page 430 of Volume I (Source No. 19), Dunning reports that Mariano had two boys and two girls and that one of those boys was Martin, who died when he was about 15 years old.
- On page 432 of Volume I, Dunning reports that on 9 December 1903, Edwin D. Clark told him that Martin had died before Edwin and his family settled west of Namaqua in the fall of 1864. (For more about the Clark family, see the chapter on the Clark Family Cemetery.)
- On page 129 of Volume III (Source No. 23), Dunning reports that Mariano, his wife “John,” and three children (Lena, Antoine, and Martin), and step-son Louie Papa were among the 20 people living in the Big Thompson Valley in October 1860.

In its 1926 pamphlet (Source No. 11), the Loveland Chamber of Commerce lists the order of the graves in the original Medina Family Cemetery from north to south, more about which below in “History of the Medina Family Cemetery.” Of importance here is that the pamphlet reports that one of those buried in the cemetery is “a brother older than Lena, who died in 1864.” In addition, page 31 of Source No. 15 also mentions that “buried next to Lena” (Child No. 3 below) in the Medina Family Cemetery was “a boy older than Lena who died in 1864.”

Consequently, if we accept that *Martin died in 1864 and was buried in the Medina Family Cemetery* and that he was 15 years old when he died, he would have been born in 1849, after Antonio and before Lena.

Concerning the cause of Martin’s death, Zethyl Gates (page 47 of Source No. 25) repeats the story that Daisy Baber told on page 23 of *Injun Summer* (published in 1952). According to that story, Martin was afraid of horses. His father, who, as we have seen, was a skilled horseman, insisted that the boy must learn to ride and “reportedly tied the boy to the back of a wild bronco and sent the horse and its unwilling rider bucking and twisting out across the prairie. A week later the horse wandered back into the corral with Martin still roped to its back, but the boy was dead.”

As far as we can determine, Martin and his parents' good Mexican friend who died about 1864 were the first two individuals buried in what became the Medina Family Cemetery.

3. **Marcellina ("Leni" or "Lena") Medina:** According to Source No. 1, Lena was born in the Utah Territory on 12 April 1857. Recall that on 9 January 1861 she was the first person baptized at Marianne's Crossing. On page 69 of her biography of Lena's father (Source No. 25), Zethyl Gates agrees with Lena's birth date above but says that she was born in the Wyoming Territory.

When the Catholic church in Denver opened St. Mary's a girls' "finishing school," on 1 August 1864, Lena was among the first 20 students. However, she could not endure the separation from her family and "escaped" from the Sisters and returned home (Source No. 8 and page 70 of Source No. 25).

Lena was an excellent horsewoman, which led to her expected participation in the lady equestrienne events at Denver's early June 1868 16th Annual Horse Fair. It was reported that she would wear an Indian costume costing \$2,000 at the event. However, the crowds at the fair, Lena, and her father were all "keenly disappointed" when she fell ill and was unable to participate. However, everyone's expectations were not completely dashed, for the 23 July 1868 issue of the *Colorado Tribune* reports that:

"The daughter of Marianna Modena, who was announced to participate in the lady equestrienne event . . . but failed to put in an appearance on account of sickness, arrived in town a day or two since and last evening rode through town gorgeously attired in the paraphernalia made for the late fair."

Zethyl Gates reports (page 72 of Source No. 25) that Namaqua's citizens said that "Marcellina was very intelligent, even managing her father's business transactions."

Ansel Watrous provides additional praise for Lena when he tells us (page 168 of Source No. 7) that Lena "grew into a maiden of symmetrical figure, handsome regular features, large, lustrous eyes and the Spanish type of litheness"; that she was "the apple of her father's eye"; and that she "could ride with all the ease and grace of a princess."

Sadly, as reported in 14 July 1872 issue of the *Rocky Mountain News*, *Lena died at Namaqua on 10 July 1872. Zethyl Gates refers to Lena's "death and (supposed) burial in the family cemetery [Medina Family Cemetery] so well tended by her father."* Zethyl refers to Lena's "supposed burial" because:

- As discussed in detail below under “Destruction of the Cemetery in January 1960,” when the bodies from five of the graves in the original Medina Family Cemetery were moved to Namaqua Park in 1960, only one adult female body was found, with that female being assumed to be Lena’s mother Tacanecy. However, when grave markers were made for the reinterments of those five bodies at the Medina Memorial Wall at Namaqua Park, markers were provided for BOTH Tacanecy (Marie “John” Modena) and Lena (as discussed above under “Location and Description of Graves at Medina Memorial Wall at Namaqua Park”).
- In an oral interview that Zethyl did of Al Stevens on 12 January 1973 (recording available at the Loveland Public Library), Al repeated for Zethyl a story frequently told to Al by a friend of Al’s father. As Al retold the story (page 74 of Source No. 25), the man, who lived across the road from Mariano’s cabin, said that on the evening of Lena’s death, he saw Tacanecy put Lena’s body, which was wrapped in a blanket, on the back of a horse with her and “ride off toward the mountains.”

(Al Stevens was actually Allen Harrison Stevens. His father was Spencer Stevens. They moved to Larimer County in about 1876 and lived in the Chimney Hollow area of Pinewood. For more information on that family, see the chapter on the Charlie P. Stevens Grave. Charlie was Al’s brother.)

- Zethyl points out that “toward the mountains” from Namaqua would have been “along Dry Creek (which joins the Thompson River west of Marianna Butte) and in the general direction of the Indian burial which was discovered on the rocky ridge.” This “Indian burial” is discussed in detail in a small booklet written and published by Harold Dunning in 1942 (pages 73-74 of Source No. 25). In this booklet, Dunning reports that “in the Museum you will see the skeleton of one of the Arapahoe Indian Chieftains or high-up Indian Squaws found a few miles west of Loveland.” He goes on to say that “a large cache of beads and ornaments as well as teeth and several copper bracelets” were found with the burial. Unfortunately, the person who found the body and gave it to the Museum took it back. Dunning reports that when six different doctors examined the body while it was still at the Museum, three thought it was a male and three thought that it was a female. (If the body were available for examination today, current forensic anthropologists could certainly resolve this issue.)

Note that it does not seem to have occurred to Harold Dunning that Lena Medina might be this “Indian burial.” In fact, he actually provides evidence that Lena was indeed buried in the Medina Family Cemetery rather than spirited away into the mountains by her mother: On page from page 433 of Source No. 19, Dunning reports that Mrs. Clark told him that “John” had Mrs. Clark “place a large brass crucifix, enameled with black, on Lena’s breast when the body was buried” and

that "Mariano insisted on Lena being buried in a purple dress she had worn in the convent [Catholic girls' school in Denver]." (For more information on Julia Clark, her husband Edwin D. Clark, and their family, see the chapter on the Clark Family Cemetery.) In addition, all three of the maps of the cemetery provided in Source No. 10 and pages 24 and 31 of Source No. 15 indicate that Lena is buried in one of the graves.

On page 168 of this *History of Larimer County* (Source No. 7), Ansel Watrous provides additional evidence that Lena was actually buried in the Medina Family Cemetery when he tells us that Lena "died in 1872 and was buried near her father's cabin beside the two children who died in their infancy, in a graveyard enclosed by an adobe wall, with a Catholic emblem surmounting the gate."

Harold Dunning's transcriptions from Lucas Brandt's diary (page 29 of Source No. 15) report that Lena's casket was made by Archie Litle (name also reported as John Lytle) of Old St. Louis, that a priest came from Fort Collins to officiate at Lena's funeral, and that "while Lena was a corpse he [Mariano] kept the candles [around her casket] burning day and night before her funeral."

Thus, while there is at least one piece of evidence that Lena may not have been buried with other members of her family in the original Medina Family Cemetery, we have even more evidence that she actually was. However, if she was originally buried in the Medina Family Cemetery when she died in July 1872, we don't know if her remains are still there or if they were actually moved to the Medina Memorial Wall at Namaqua Park in January 1960. ***In any case, assuming that Lena was actually buried in the Medina Family Cemetery, she was most likely the fifth person buried there.***

4. **Rosita/Rosetta/Alice Medina.** According to Zethyl's research, Catholic records show that Rosita was born to Mariano and Tacanecy in Namaqua on 12 January 1862 (Source No. 1 and page 61 of Source No. 25). When Harold Dunning interviewed Mrs. Frank Bartholf on 5 December 1903, she told him that the Medinas' daughters were named Lena and Alice and that they both died before their mother (page 429 of Source No. 19). On page 430 of Source No. 19, Dunning reports that the two girls and their mother all died at home.

The same Mrs. Clark referred to above told Dunning (page 433 of Source No. 19) that the youngest of Mariano and Tacanecy's daughters was named "Rosetta" and that Mrs. Clark was at the Medinas' home when Rosita died "in late 1854," that she was sick only a few weeks before her death, and that she did not die of consumption. 1854 surely must supposed to be 1864 or some other typographical error was made because, as we saw above, Rosita was born in 1862. In addition, the Edwin D. and Julia Clark and their family did not move to Larimer County until the fall of 1864 (page 432 of Source No. 19).

*Thus, we can probably be fairly safe in assuming that Rosita died either in late 1864 or shortly thereafter. The report (probably by Mrs. Edwin D. Clark) that the stone wall wasn't put around the Medina Family Cemetery until after 1864 (page 433 of Source No. 19) makes one wonder if it was erected following the deaths of a "family friend," Martin Medina, and Rosita Medina, **making these three individuals the first three people buried in the Medina Family Cemetery.***

Susan Carter ("Maze") Howard, Mariano's second wife. Zethyl Gates reports that Susan was the ex-wife of Henry Howard, with whom she had two children, James and Millie, and that, after Henry deserted Susan and her children in August 1875, she divorced him and, before long, moved in with the widowed Mariano Medina (page 75 of Source No. 25). On the other hand, in Source No. 12, which may not have been available to Zethyl, Jefferson McAnnelly reports that after Tacanecy's death:

"...a man named Howard lived in one of Modena's houses and was married and had three children, and Modena, not satisfied to live the balance of his years as a widower, proposed to Howard that he would trade him a span of ponies, wagon and harness for his, Howard's, wife, which offer was accepted and Howard took his children and departed for parts unknown."

McAnnelly goes on to report that Mariano called Susan "Maze" and that the two of them had a son (Rafaelito, as discussed below), "a bright little boy," who "died at the age of 12." Mariano and Susan's marriage was not legalized until 21 July 1877, after complaints from the scandalized local residents resulted in Mariano and Susan being indicted for adultery in September 1876. According to Source No. 12, after Mariano died, Maze "married several times" and, as of the 1930s, "still lives in Larimer county and is quite aged."

5. **Rafaelito Medina, Mariano's fifth child.** According to Zethyl's research for her biography of Mariano, Rafaelito was born on 26 July 1876 and baptized by Father Vincent Reitmeyer on 4 November 1876 (Source No. 1). As Zethyl explains (page 75 of Source No. 25), Rafaelito was "the black-eyed, dimpled, darling of Namaqua" and "a great solace to the aging Mariano."

Following Mariano's death in June 1878, the 1880 U.S. Census for the Big Thompson area of Larimer County (page 91 of Source No.25) tells us that Rafaelito's mother Susan married Henry Moss and that living with them was Susan's (but not Henry Moss's) son Ralph, age 4 (yielding a birth year of 1876). As Zethyl points out, this is surely Mariano's son Rafaelito. Zethyl tells us that other records report that Susan was appointed Ralph's guardian until April 1882. Since Rafaelito/Ralph would have been only 6 years old in 1882, one could assume that the reason Susan's guardianship ended in April 1882 was that *Rafaelito died in April 1882.*

During her research, Zethyl Gates could not find any formal record of Rafaelito's death and burial and evidently did not come across Source No. 12. But she noted that the undertakers' report from the January 1960 destruction of the original Medina Family Cemetery list a child's grave "south 2 feet and at the foot, or east end, of [what they assumed was] the Modena grave" and label it "Baby Boy Modena." Confronted with that information, in Zethyl's column in the 7 March 1983 issue of the *Loveland Reporter-Herald*, she wonders if "*perhaps that boy was Rafaelito Medina, son of Susan and Mariano Medina.*" ***Except for the baby wrapped in a 1940s newspaper, whether he died in 1882 or 1888 Rafaelito was the last, or eighth, person buried in the Medina Family Cemetery.***

History of Medina Family Cemetery

Establishment of the Original Cemetery

Chronological Order of Nine Burials in the Original Medina Family Cemetery:

- First three burials, about 1864: As has been discussed above, the original Medina Family Cemetery began in or about 1864 with the burials of 1) a Mexican friend of Mariano Medina, 2) his and Tacanecy's son Martin, and 3) their daughter Rosita. It was evidently shortly after those three individuals were buried that Mariano had a stacked sandstone wall built around the cemetery enclosing an area of approximately 10 X 25 feet, with the 10-foot walls on the north and south sides and the 25-foot walls on the east and west sides.

During the next 10 years, three additional individuals were buried in the walled-in area of the cemetery:

- Fourth burial, in 1866: Louie Papa's infant daughter with his first wife.
- Fifth burial, in 1872: Marcellina Medina, who was Mariano and Tacancey's daughter.
- Sixth burial, in 1874: Tacanecy/Marie/John Medina, who was Mariano's first wife.

At this point, the original walled-in area of the cemetery was full (Source No. 6). Thus, the next two burials took place outside the original south wall of the cemetery:

- Seventh burial, in 1878: As discussed above, Mariano Medina was buried outside the original walled-in area at the southwest corner of the cemetery's south wall. Specifically, Source No. 11 states that "his head is on a line with the west wall and his body lies parallel with the south wall." Not surprisingly, a drawing done by Harold Dunning for the Loveland Chamber of Commerce for Source No. 11 also shows Mariano's grave in exactly the same location. (See page 6 of Source No. 28 for a reproduction of this map.) In addition, the three maps of the cemetery in Source No. 10 and pages 24 and 31 of Source No. 15 all show Mariano buried outside and south of the original walls of the cemetery.
- Eighth burial, in 1882 or 1888: Rafaelito Medina, Mariano's son with his second wife Susan Carter Howard. As discussed above, some sources, including Zethyl Gates, suggest that the child's grave discovered near the foot of Mariano's grave during the January 1960 destruction of the original Medina Family Cemetery was Rafaelito's grave. In addition, in Source No. 12 Jefferson McAnnelly specifically states that Mariano's son with "Maze" was "buried in the little cemetery on the homestead."

Finally, during the 1960 destruction of the original cemetery, the body of a "modern" baby, the ninth burial in the cemetery, was found wrapped in a newspaper that talked about one of Harry Truman's speeches. Since this body was found "to the south and slightly east" of the third burial discovered in 1960, it was evidently found within the original walled-in area.

Geographical Location of the Nine Burials in the Original Medina Family

Cemetery: As mentioned above, Bill Meirath pointed out in his 21 October 2011 email to us (Source No. 33) that, with the exception of the grave of the baby wrapped in a "modern" newspaper, his research indicates that the geographical layout of the graves inside the original walled-in area of the Medina Family Cemetery pretty much matches the order of the individuals' deaths and burials going north from the grave of the family friend who died about 1864. See Photo C above and the accompanying transcriptions of the inscriptions of the temporary wooden grave markers placed on the assumed original locations of the nine graves for the Loveland Historical Society's Historic Home Tour on 20 June 2011.

The most complete list of the order of the graves in the original cemetery we could find in historical documents is from the Loveland Chamber of Commerce's 1926 pamphlet (Source No. 11):

"Inside the walls are the graves of: First, on the north, Marie, or John, wife of Modena; next on the south, Lena . . .; a brother older than Lena, who died in 1864; a Mexican, and great friend of the family, who also died about 1864; Mariana is buried outside the wall at the southwest corner. His head is on a line with the west wall and his body lies parallel with the south wall."

Historical Descriptions of the Original Medina Family Cemetery: A number of descriptions of the original cemetery can be found in historical sources and help explain the feelings of the original Namaqua residents toward the cemetery:

From page 42 of Zethyl Gates's biography of Mariano Medina (Source No. 25):

"Mariano's family cemetery was viewed with curiosity mixed with respect by the settlers, who expressed surprise at finding it so well kept in such an uncivilized land. It was located on a gentle slope south of the river in full view of the crossing. Rosene Meeker, daughter of Arvilla and Nathan Meeker of the Meeker Massacre episode, described the cemetery as a 'Spanish burial ground . . . surrounded by four walls and a gate in front, and a blue cross on top, looking singular in so lovely a place.' Others describe it as having a wall of adobe or flagstone, three or four feet high, with a small white gate at the entrance on which had been placed a blue cross, a symbol of Mariano's religion."

Pages 51 and 287 of Volume I of Harold Dunning's *Over Hill and Vale* (Source No. 19) have the following to say about the Medina Family Cemetery:

"Mariano Modena took great pride in his little cemetery, where five of the family are now buried."

"Mariano, as he was popularly known, died in 1878. One of his daughters died in 1872, and the Catholic emblem on her grave is the earliest available record of a Catholic burial in his area." [More evidence that Marcellina actually was buried in the cemetery.]

Mrs. P. H. (Edith) Boothroyd (Source No. 8) describes Mariano's family cemetery as "a small enclosure bounded by a fence of rough stone neatly made, a small white gate and cross at the entrance, all roughly done, but in comparison to any of the grave yards I had yet seen in the west, remarkably near and well kept."

Historical maps of the little cemetery (Source No. 10 and pages 24 and 31 of Source No. 15) provide the following, sometimes contradictory, information:

- Source Nos. 10 and page 31 of Source No. 15 show the entrance to the cemetery in the middle of the east wall of the original 10 X 25 foot walls
- All three maps agree that John/Marie was buried in the north-most grave, that Marcellina/Lena was buried just south of John/Marie, and that a Mexican/Friend was buried in south-most grave inside the original 10 X 25 foot walls.

- However, the maps and the text accompanying the maps disagree as to who was buried between Marcellina/Lena and the Mexican/Friend. Source No. 10's map indicates that this was the burial of a "boy older than Lena," which would be Martin (Child No. 2 above), with the accompanying text indicating that her oldest brother Antonio (Child No. 1 above) "died in New Mexico in 1888?". The map on page 31 of Source No. 15 puts a "Boy" in this position, with the accompanying text indicating that "a boy older than Lena died in 1864" and was "buried next to Lena." However, page 24 of Source No. 15 places an "Infant 1865?" (most likely Rosita) in that position.
- Source No. 10 shows the cemetery before Dunning extended the south wall to include Mariano's grave. Thus, it shows his grave outside the southwest corner of the original 10 X 25 foot wall. The accompanying text indicates that the location of Mariano's grave was pointed out to Dunning by his step-son Louie Papa and Lucas Brandt. (See also Source No. 6.) Pages 24 and 31 of Source No. 15 both show the south wall after it was extended in 1942 to enclose Mariano's grave, with a note to the left of Mariano's grave on page 24 indicating that Dunning installed the headstone on Mariano's grave on 18 May 1942. (See also Source No. 16.)

Destruction of the Cemetery in January 1960

Until his death in 1935, Louie Papa (Mariano Medina's step-son) kept both Mariano's buildings in Namaqua and the cemetery walls neat and whitewashed (page 4 of Source No. 29).

Unfortunately, however, by the time the sixth decade of the 20th century came around, no one was any longer taking care of the Medina Family Cemetery. Consequently, possibly because the then-current owner of the property wished to develop the land and the cemetery was in the way, a meeting of the Larimer County Commissioners was held on 20 October 1959 and issued Petition No. 14815 (Source No. 20) that requested the County Court to order the "removal and reinterment of the said 'Modena Graves'" because "the burial ground has been abandoned and through neglect and non-use has become in danger of damage, destruction, desecration, and obliteration."

Following this meeting, as required by law, notice of the upcoming destruction of the Medina Family Cemetery was placed in issues of a local paper. However, the notice was placed in the 23 October, 30 October, and 6 November issues of the *Fort Collins Coloradoan*, where it was less likely that it would be seen by any Loveland-area residents who might object. Thus, when a hearing on the issue was held in the County Courthouse on 7 December 1959, no one was present to object. The resulting Court Order No. 14815 (Source No. 21) states that the names of the persons known to be buried in the "Modena Graves" were Mariano Modena, Unknown Friend, Baby Boy,

Lena Modena, and Marie (John) Modena. (Notice that this is the same list found on the map provided on page 31 of Source No. 15.) The Court Order also states that “the names of the next of kin . . . of the persons buried in the ‘Modena Graves’ burial ground are unknown.”

Then on 17 and 18 January 1960 when the temperatures in Loveland were only in the teens (pages 7-13 of Source No. 28), six bodies from the original Medina Family Cemetery were removed to Namaqua Park, where they were reburied. In his notebook on the Medina Family Cemetery (page 7 of Source No. 28), Bill Meirath reasonably asks, “Why and what was the hurry that they had to be moving graves in such cold weather?” On page 2 of his notebook, Bill provides the complete text of the official report of the three funeral directors who carried out the disinterment and reinterment of the six bodies, which we repeat here:

“Upon an order from and by the County Court of Larimer County, State of Colorado, dated the 7th of December 1959 and signed by Judge Robert Miller, we were directed by Robert H. Watts, Chairman of the Board of County Commissioners, and Ralph B. Harden, Attorney for Larimer County, to proceed with the removal of the ‘Modena Burials’ on the 17th and 18th of January 1960. Said removals were effected by Carl W. Kibbey, Harold D. Young, and Ted Fishburn, all licensed funeral directors and embalmers of the State of Colorado, and with Undersheriff William Conlon acting as guard to assure privacy. The stone wall surrounding the cemetery was first removed, then the graves were opened from north to south; the first body disinterred was that of a male found some 2 feet south of the north wall of the enclosure. Some 3 feet farther south the remains of a female were found, presumably that of ‘John,’ the wife of Modena [*sic*], and with the body were many beads and the skeleton of either a cat or dog which been buried with her. Immediately to the south of her grave was that of an adult male. Some 10 feet farther south was the body of another male, presumably that of Modena, in a black broadcloth covered coffin, adorned with ornaments and a crucifix. To the south 2 feet and at the foot, or east end, of the Modena grave was that of a child. All bodies were buried with the heads to the west and approximately 6 feet deep. All of the remains were removed and placed in suitable containers and taken to the newly located burial space in the state park to the north and east from the original location. The remains were there interred in a reverent and dignified manner in our presence and the presence of Kenneth Schaffer and Albert Griesse who operated the grave digging equipment.

“Further, as a matter of public record, it should be stated that the body of an infant was found to the south and slightly to the east of

the 3rd disinterment that was wrapped in a comparatively recent newspaper, date unobtainable but with references made to a speech by Harry Truman. This body was removed with the others and reinterred.

"Subscribed and sworn to me this 19th day of January 1960 by Carl W. Kibbey, Harold Young and Ted Fishburn."

Important points from this official report are repeated below:

- The stone wall around the cemetery was removed before the search for remains began. Note that the stone wall removed in January 1960 would have been the one that Harold Dunning extended in 1942 to include Mariano Medina's grave.
- The graves *that they were able to identify* were opened starting on the north end of the cemetery and then moving south.
- First body, which the funeral directors identified as a male, was found 2 feet south of the north wall.
- The second body, identified as a female, was found 3 feet south of the first body. They assumed that this was the body of Tacanecy/Marie/John Medina, Mariano's wife.
- The third body, identified as an adult male, was found immediately south of the second body.
- The fourth body, identified as another adult male, was found 10 feet south of the third body. They assumed that these were the remains of Mariano Medina.
- The fifth body, identified as a child, was 2 feet to the south and to the east of the fourth body.
- The sixth body, identified as a "modern" infant wrapped in a newspaper that referred to a speech by Harry Truman, was found to the south and slightly to the east of the third body. Since Truman was President between 1945 and 1953, this infant probably died during that period.
- Bodies 1-5, and probably the body of the "modern" infant as well, were reinterred in Namaqua Park.

Thus, as Bill Meirath points out on page 2 of his notebook (Source No. 28), not counting the "modern" infant, the funeral directors who disinterred the bodies in the original

Medina Family Cemetery state in the above report that, from north to south, they found the following five individuals in that cemetery: a male, female, male, male, and child (three males, one female, and one child).

However, when the bodies were reinterred below the Medina Memorial Wall at Namaqua Park, the grave markers, also from north to south, indicate the burials of the following individuals below the wall: male, female, female, male, and a baby boy (two males, two females, and a baby boy). For the transcriptions of the inscriptions of the grave markers below the Medina Memorial Wall, see "Location and Description of Graves at Medina Memorial Wall at Namaqua Park" above.

Note that the inscriptions on the five grave markers below the wall match the list of the five individuals "known to be buried in the 'Modena graves'" included in Court Order No. 14815 issued on 7 December 1959 (Source No. 21): A Friend, Marie (John) Modena, Lena Modena, and Mariano Medina, and Baby Boy. Also note that the sexes of the individuals disinterred from the original cemetery *do not* match sexes of the individuals reinterred below the wall in Namaqua Park!

In his 4 December 2011 email to us (Source No. 32), Bill Meirath points out that he thinks that the difference between the two lists came about because Harold Dunning read the funeral directors' original report (quoted in its entirety above) and told them that the sexes of the five bodies as given in the report could not be correct. Hence, the change to the sexes and identifications of the bodies now seen below the Medina Memorial Wall in Namaqua Park.

So Whose Remains Were Moved to Namaqua Park and Whose Remains Are Still in the Original Medina Family Cemetery?

Individuals Originally Buried in the Medina Family Cemetery: If we accept the list of burials below Photo C above as being an accurate list of the individuals originally buried in the original Medina Family Cemetery, those names, from north to south, would be:

Inside the area enclosed by the original 10 X 25 foot wall.

Adult Female: Tacanecy Medina, buried 1874

[Dunning made and erected a grave marker for her grave by 20 May 1946 (Source No. 17). See photo on page 27 of Source No. 28.]

15-year-old Female: Marcellina Medina, buried 1872

[Dunning made and erected a grave marker for her grave by 20 May 1946 (Source No. 17).]

Infant Female: Louie Papa's Daughter, buried in 1866

[Dunning made and erected a grave marker for her grave on 20 May 1946 (Source No. 17).]

15-year-old Male: Martin Medina, buried about 1864 "Modern" Infant here?

[Bill: I assume that Dunning never marked this grave. Please confirm.]

2- to 3-year old Female: Rosita Medina, buried about 1864

[Bill: I assume that Dunning never marked this grave. Please confirm.]

Adult Male: Mexican Friend of Medina Family, buried about 1864

[Dunning made and erected a grave marker for his grave on 20 May 1946 (Source No. 17).]

South of the area enclosed by the original 10 X 25 foot wall.

Adult Male: Mariano Medina, buried 1878

[Dunning made and erected a marker for his grave on 18 May 1942 (Source No. 16). See photo on page 27 of Source No. 28.]

6-year-old Male: Rafaelito Medina, buried in 1882 or 1888

[Bill: I assume that Dunning never marked this grave. Please confirm.]

Individuals Moved to Namaqua Park in January 1960: In the list below, after in-depth consultation with Bill Meirath (Source No. 34), we have bolded the names of the individuals the funeral directors found in the original Medina Family Cemetery who we think are indeed buried below the Medina Memorial Wall at Namaqua Park.

The first body was found was 2 feet south of the north wall. According to historical records, this should have been Tacanecy. However, the funeral directors' report identifies it as an adult male. In his 21 November and 4 December 2011 (Source No. 34) emails to us, Bill provides several reasons why he is convinced that this body was actually **Tacanecy/John/Marie Medina's**.

1. Tacanecy is reported as having been "a large woman" (page 45 of Source No. 25). Thus, the funeral directors could have mistaken her body for that of a man.
2. We have already seen that six doctors in the Loveland area could not agree on the sex of the skeleton of the supposed "Indian princess" who some thought might have been Macellina Medina. (See Child No. 3 under "Children of Mariano Medina" above.) Consequently, it is not hard to imagine that three funeral directors, who were not medical doctors, might not be able to make the distinction.

3. The funeral directors couldn't determine if the animal skeleton accompanying the second body was a dog or a cat. Again, not being medical doctors they most likely never would have had comparative anatomy classes.
4. If Dunning's headstones were still in the cemetery when the bodies were disinterred in January 1960, the north-most headstone would have said "John." Since the funeral directors were not familiar with the history of the Medina family and their cemetery, they may have just assumed that "John" was a male. Snow/ice on the headstone that cold January day could have kept them from reading the "Marie" at all or it could have been too faint to read. However, as Bill points out, no records can be found of when the headstones that Dunning made for five of the graves in original Medina Family Cemetery disappeared.

The second body, an adult female, was found 3 feet south of the first body and, assuming that each grave was at least 2.5 feet wide, 7.5 feet ($2\text{ ft} + 3\text{ ft} + 2.5\text{ ft} = 7.5\text{ ft}$) south of the north wall. The funeral directors concluded that this was Tacanecy Medina. However, all written descriptions of the cemetery and the three cemetery maps discussed above (Source No. 10 and pages 24 and 31 of Source No. 15) indicate that **Marcellina/Lena Medina** was buried in this grave. The funeral directors' description of the items found in this grave (many beads and body of a dog or cat) seem more appropriate for a young lady's grave. However, the funeral directors do not mention the "bass crucifix enameled with black" that Mrs. Edwin Clark reports helping Tacanecy place on Lena's breast before she was buried. It may have been an artifact too tempting to rebury in Namaqua Park.

The third body, identified by the funeral directors as an second adult male, was found immediately to the south of the second body. Assuming that the second grave was at least 2.5 feet wide and that "immediately to the south" = 1 foot), this third body would have been at least 10 feet ($7.5\text{ ft} + 2.5\text{ ft} + 1\text{ ft} = 10\text{ ft}$) south of the north wall. This may well have been the grave of **Martin Medina**, since he may have been large enough when he died at 15 years old to have been considered to be an adult by the funeral directors. Recall that two of the cemetery maps and their accompanying text (Source Nos. 10 and page 31 of Source No. 15) indicate that this was a "boy older than Lena who died in 1864. (See Child No. 2 under "Children of Mariano Medina" above.)

The fourth body, identified by the funeral directors' as an adult male, was "some 10 feet south" of the third body. Using 9 feet for "some 10 feet" would make this body 21.5 feet ($10\text{ ft} + 9\text{ ft} + 2.5\text{ ft} = 21.5\text{ ft}$) south of the north wall. Recall that the east and west walls of the original walled-in area of the cemetery are assumed to have been 25 feet long, making the south wall 25 feet south of the north wall. Since this male body was thus found inside of the original south wall, it must have been the **Mexican Friend**, who all written records and cemetery maps indicated was buried in this position. In his 4 December 2011 email to us (Source No. 34), Bill Meirath pointed out that the crucifix found on the coffin associated with this body makes it even more likely that this was the body of Mariano Medina's Mexican friend who shared Mariano's Catholic religion.

The fifth body, identified by the funeral directors as a child of undetermined sex, was 2 feet south of the fourth body and at the foot (just east) of that grave. Assuming that the fourth grave was at least 2.5 feet wide, this body would be 26 feet (21.5 ft + 2 ft + 2.5 ft = 26 ft) south of the north wall, which appears to place this body to the south of the original south wall of the cemetery. Since Mariano Medina's body was buried just south of the southwest corner of the original 10 X 25 foot cemetery wall, we accept Zethyl Gates's suggestion that this could very well be the grave of **Rafaelito Medina** (Child No. 5 under "Children of Mariano Medina" above). Note that when this body was reinterred below the wall at Namaqua Park, it was labeled "Baby Boy 1864," which would have made it Martin Medina, who died in 1864 and who is instead the third body discussed above. Recall that Jefferson McAnnelly reported (Source No. 12) that the son of Mariano and his second wife "Maze" Howard was buried in the Medina Family Cemetery. This son was Rafaelito.

Individuals Still Buried in the Original Medina Family Cemetery: Not counting the "modern" baby, a comparison between the above list of the eight "Individuals Originally Buried in the Medina Family Cemetery" with list of the five bodies of "Individuals Moved to Namaqua Park in January 1960" suggests that the bodies of the following three individuals are *still buried* at the current location of the original cemetery: Mariano Medina (died 1878), Rosita Medina (died 1864), and Louie Papa's infant daughter (died 1866).

If the remains of these three individuals are still in the original Medina Family Cemetery, where are they buried? The 9 feet between the graves of Martin Medina (third body found in January 1960) and Mexican Friend (the fourth body found in January 1960) would certainly be enough space to contain the graves of both Rosita Medina and Louie Papa's daughter, both of whom were very young, and hence small, when they died. *In fact, if there were no burials between the third body and the fourth body, why were Mariano Medina and his son Rafaelito buried outside of the original walled-in area of the Medina Family Cemetery in the first place!* In addition, the two little girls' graves could have been small enough that they could be buried either east or west of or even between the first three bodies found at the original cemetery in January 1960.

Mariano Medina's remains would thus still be buried in the original Medina Family Cemetery south of the location where the three funeral directors found the remains of the Mexican Friend in 1960, for the Mexican Friend's grave was the last grave *before* the south wall and Mariano's grave was outside the southwest corner of the original walls.

In addition, as is the case with a number of other rural cemeteries in Larimer County that started out as family cemeteries (the Mosier Ranch Cemetery and the Fairkytes Cemetery, for example), Namaqua-area residents who were not members of the Medina family could have been buried inside or outside the walls of the Medina Family Cemetery. We already know that a young child was buried there in the early 1940s.

Source No. 5 reports on a child of a Mr. and Mrs. Krosky of Namaqua, who *could* have been buried at the Medina Family Cemetery following its death in February 1891.

Efforts to Preserve and Restore the Original Cemetery

Loveland-area historians Harold Dunning and Zethyl Gates were both upset that the original Medina Family Cemetery had not been preserved and/or restored.

On pages 439-441 of Volume I of his *Over Hill and Vale* series (Source No. 19), Harold Dunning ardently pleaded for the preservation of Mariano's "little graveyard" and asked that it be made into "a show place" that Loveland residents could point to "with pride when future generations want to know who was the first settler."

On the last paragraph of her biography of Mariano (page 84 of Source No. 25), Zethyl Gates said the following:

"The winds blow restlessly around Marianna Butte; the Indian Springs have almost dried up. The bridge at Mariano's Crossing has been relocated at least twice; the post office, livery barn, stone fort and even Mariano's house are gone. Mariano's 'Spanish Cemetery' has indeed been desecrated now. Only the silent, silvery Big Thompson River remains—that, and the mysteries of Mariano Medina, the Mexican mountain man."

Recall that Harold Dunning published Volume I of *Over Hill and Vale* in 1956, which was 4 years *before* five of the bodies in the original Medina Family Cemetery were moved to Namaqua Park, and that Zethyl Gates first published her biography of Mariano Medina in 1981, which was 21 years *after* the bodies were moved.

Through his friendship with Zethyl Gates prior to her 29 July 2002 death, Bill Meirath became familiar with Mariano Medina and his family's cemetery and with Zethyl's ardent wish that the cemetery be restored. While Zethyl was still with us, Bill got the *Loveland Reporter-Herald* sufficiently interested in the original Medina Family Cemetery that they published two articles related to the cemetery in their 26 and 27 October 1996 issues (Source Nos. 26 and 27).

Based on his own research, as reflected in this notebook on the Medina Family Cemetery (Source No. 28) that he first distributed in May 2007, Bill learned even more about the history of the Medinas and their cemetery and learned that Harold Dunning also wished that the cemetery be preserved. The distribution of that notebook was the beginning of Bill's efforts to preserve and restore the cemetery.

He asked Alfred Vigil and Sharon Danhauer to join his effort, with the result that the three of them gave their first presentation on the history of Mariano Medina, his family,

and their family cemetery and on the need to restore and preserve the cemetery at the Loveland Museum and Gallery during May History Month in 2008 (Source No. 29).

One of the those attending that meeting was Dr. Jason LaBelle, Assistant Professor of Archaeology at Colorado State University. Dr. LaBelle became so interested in the effort to save the cemetery that in February 2009 he had his archaeology students do a surface survey of the land around what was believed to be the site of the cemetery. Based primarily on the location of sandstone rocks that had been moved to the area to make the cemetery walls before the walls were destroyed in 1960, Jason and his students were able to identify the 0.96 acre on which the cemetery had originally been located.

Then in May 2009 Jess Rodriguez (9 October 2011 email from Bill Meirath, Source No. 33), who owned the land containing the original Medina Family Cemetery, agreed to donate the 0.96 acre on which the cemetery was located to the Loveland Historical Society. When the Oregon-California Trails Association (OCTA) held its 27th Annual Convention in Loveland on 18-22 August 2009, Rodriguez received OCTA's "Friend of the Cherokee Trail Award" for his generous donation.

On 19 September 2009, Denver's Channel 9, the NBC station in Denver, did a story as part of its nightly news during which it interviewed Bill Meirath and Jess Rodriguez about the efforts to preserve the Medina Family Cemetery (Source No. 31).

In early January 2010, Rodriguez donated \$1,000 to pay for a joint effort of the Colorado Department of Local Affairs and the Colorado State University Cooperative Extension to "explore concept designs for how to enhance and protect" the Medina Family Cemetery.

In April 2010, the Medina Cemetery Committee of the Loveland Historical Society chose a hardscape and landscape design for the cemetery that included a place for trail-related signage in the northeast corner of the preservation site, which is just west of route where the Cherokee and Overland trails passed the cemetery before entering Namaqua itself.

In May 2010, the Colorado-Cherokee Trails Chapter of OCTA decided to use the \$2,000 in "profits" from its management of the August 2009 OCTA Convention to pay for trail-related signage at the restored cemetery.

On 9 January 2012, the Loveland Planning Commission approved Jess Rodriguez's plans for the subdivision that includes the Medina Family Cemetery, paving the way for Rodriguez to go ahead and donate the cemetery to the Loveland Historical Society (Source No. 35). **[Bill: Please let me know when the legal transfer from Jess to the LHS takes place!]**



CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 4
MEETING DATE: 9/4/2012
TO: City Council
FROM: John McGee, Water & Power Department
PRESENTER: Chris Matkins, Water Utility Manager

TITLE:

Public hearing and first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for water filter plant improvements and emergency waterline repairs

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and move to approve the ordinance on first reading. The Loveland Utilities Commission (LUC) recommends approval.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is an administrative action. The department is requesting the movement of water utility funds (\$670,000) which will fund critical water infrastructure projects in 2012 as explained in the Summary below. On August 15, 2012, the Loveland Utilities Commission voted unanimously to recommend that City Council adopt this ordinance.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☐ Neutral or negligible

The appropriation is funded by reserves in the Water Enterprise Fund.

SUMMARY:

The water division has a shortage of 2012 available, uncommitted or redirected funds to meet the needs of critical projects that must begin in 2012 and should be complete in early spring

2013. In addition, the water division is faced with record on-going water line repairs that may become emergency water line replacement projects. These projects are summarized below:

WTP Filter Plant #2 Improvements Project: This is the final year of a three-year phased improvements project for Filter Plant #2 at the WTP. The work requires that a portion of the plant be taken down during non-peak production months so that the construction may be started and completed before peak production begins. The typical window of time to complete the rehabilitation work is between October and April (5 to 6 months). The water utility has \$950,000 of capital funding to complete this work, however, this funding is contingent upon the 2013 water capital budget approval by City Council and is not available until January 1, 2013. This year, the Filter Plant #2 improvements must begin mid to late September so the work can be completed before peak water production begins. The estimated 2012 cost for the rehabilitation work and purchase of long lead equipment is \$240,000. An additional \$80,000 is required for current budget expenses drawn from this project. In total, \$320,000 is requested for 2012 work.

Emergency Water Line Replacement: The Water Operations Division has had 43 water main leaks and repairs through July 31, 2012 and is on pace to exceed last year's record number of water main leaks of 99. The cost to repair the leaks last year exceeded the budgeted operation and maintenance funds for water line repairs. In a span of 6 months, the water department has had to initiate two (2) major emergency water main replacement projects totaling over \$350,000 (Logan Street and Wilson). The water utility is requesting \$350,000 to fund potential emergency water line replacement projects and repairs for the remainder of 2012. Because of the emergency nature of water line repairs and replacement, it is prudent that budgeted funds are available immediately.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance

FIRST READING September 4, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR WATER FILTER PLANT IMPROVEMENTS AND EMERGENCY WATERLINE REPAIRS

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of \$670,000 from fund balance in the Water Enterprise Fund 300 are available for appropriation. Revenues in the total amount of \$670,000 are hereby appropriated for filter plant improvements and emergency waterline repairs and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Water Entrprise Fund 300**

Revenues		
Fund Balance		670,000
Total Revenue		670,000
Appropriations		
300-46-318-0000-49360-W1011C	Construction	320,000
300-46-310-0000-49360	Construction	350,000
Total Appropriations		670,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

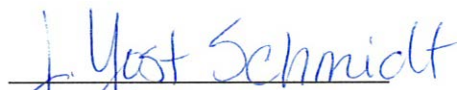
ADOPTED this ____ day of September, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
WATER & POWER DEPARTMENT
 200 North Wilson • Loveland, Colorado 80537
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 5
MEETING DATE: 9/4/2012
TO: City Council
FROM: Bill Thomas, Water & Power Department
PRESENTER: Bill Thomas, Water & Power Department

TITLE:

Public Hearing and First Reading of an Ordinance Amending the Loveland Municipal Code at Chapter 13.10 Concerning Pretreatment.

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is a legislative action to adopt an ordinance amending Chapter 13.10 of the Loveland Municipal Code concerning the City's Wastewater Pretreatment Program (Pretreatment Program). The amendments are being proposed to meet a requirement of the compliance schedule issued by the Colorado Department of Public Health and Environment (CDPHE) in the City's Wastewater Treatment Plant (WWTP) discharge permit and to address recommendations from the U.S. Environmental Protection Agency (EPA) following its audit of the Pretreatment Program in August 2011. In addition, the revisions bring Chapter 13.10 more in line with EPA's model ordinance which should be helpful in a future audit.

On August 15, 2012, the Loveland Utilities Commission reviewed the proposed ordinance, amended it to remove a recommendation for the carwash facilities (90 day pumping frequency), and unanimously recommended that the City Council adopt the ordinance as amended.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:

The Pretreatment Program is a federally-mandated program intended to protect the City's wastewater collection and treatment system, the Big Thompson River, and the health and safety of the citizens and workers of the City of Loveland.

In August 2011, the EPA conducted a routine audit of the Pretreatment Program. Following the audit, the EPA recommended that the City take specific actions to comply with Title 40 Part 403 of the Code of Federal Regulations (40 CFR Part 403). The attached ordinance addresses the audit recommendations, which were to:

- establish additional Sector Control Programs;
- update the City's local discharge limits; and
- support the City's legal authority to address non-compliant industrial users.

Sector Control Programs:

The ordinance establishes five new programs intended to address specific industrial user discharge concerns (Sector Control Programs). These five new sector programs, identified in Section 13.10.305 of the ordinance, are petroleum oil, grease, and sand (POGS), mercury, pharmaceutical, nanotechnology, and nonylphenol. Only two of the five Sector Control Programs have requirements at this time: POGS and mercury. The two businesses most affected by the requirements are carwash facilities and dental facilities. Twenty-three (23) carwash facilities and forty-five (45) dental facilities were notified by letter of the proposed ordinance and informed of the public meetings at which the item would be discussed.

For carwash facilities, the requirements are necessary due to observations made during routine maintenance of the sewer main (i.e.; excessive amounts of oily sediment downstream of carwash businesses). The requirements include installation of a properly sized petroleum, oil, grease, and sand separator, cleaning the separator at an appropriate frequency, and keeping records related to the cleaning and servicing of the separator.

For dental facilities, the requirements are necessary due to a stringent mercury discharge limit in the City's Wastewater Treatment Plant discharge permit and a compliance schedule within the permit that requires the City to "implement pretreatment solutions or appropriate management approaches to control mercury sources by December 31, 2012." In addition, there are forthcoming federal regulations for dentists.

The pretreatment solutions and appropriate management approaches for the mercury sector control program implement the American Dental Association's best management practices as well as local requirements, and include registering with the City and complying with the sector control program requirements as of July 1, 2013, installing and maintaining a properly-sized ISO 11143 certified amalgam separator, and annual certification regarding mercury use or capture.

Forty-five dentists will fall under the Sector Control Program. Twenty-two dentists indicated that they already have installed an amalgam separator. However, it's possible that some dentists may have to replace their separator if it does not meet the Sector Control Program requirements. The estimated cost of an amalgam separator is \$715 - \$1,995 with annual maintenance of about \$300. Dental facilities that do not use or capture mercury will have the option to file an annual certification with the City for an exemption.

Local Discharge Limits:

The following table shows a comparison of the current local discharge limits to the proposed local discharge limits. Only four of the thirteen pollutant concentrations are more stringent. The proposed limits are based on monitoring data collected in 2012, are technically based, and will apply uniformly to Significant Industrial Users (SIUs).

Comparison of current and proposed local discharge limits.

Pollutant	Current Uniform Local Limit (mg/l)	Proposed Uniform Local Limit (mg/l)
Arsenic	0.15	0.27
Cadmium	0.08	0.12
Chromium	1.1	1.26
Copper	1.94	3.91
Cyanide	0.65	0.46
Iron	N/A	171
Lead	0.92	1.53
Mercury	0.0002	0.0001
Molybdenum	0.49	0.88
Nickel	1.95	2.49
Selenium	0.37	0.11
Silver	0.19	1.50
Zinc	6.28	9.06

Currently, the City only has one SIU, and it was informed of the proposed ordinance and local limit changes on August 2, 2012.

City's Legal Authority:

The City is required by federal law to develop and implement an Enforcement Response Plan (ERP). The ERP describes how the City will investigate instances of noncompliance and the types of escalating enforcement responses. The EPA required the City to update the ERP to include specific federal violation criteria. The proposed ordinance incorporates the federal criteria and follows the guidelines set by the EPA in its model pretreatment ordinance.

Approval Process:

On August 1, 2012, the City submitted the proposed ordinance to the EPA for review and approval in accordance with the audit requirements and federal law. The EPA will publish a public notice of the proposed changes to the Pretreatment Program in accordance with its requirements following City Council's approval of the ordinance on first reading.

If the ordinance is approved by the City Council and the EPA, the amendments to Chapter 13.10 will take effect on January 1, 2013.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

Attachment A - Ordinance

Attachment B – Strikeout copy of ordinance illustrating the proposed changes.

Attachment C – Copy of presentation

FIRST READING September 4, 2012

SECOND READING _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT
CHAPTER 13.10 CONCERNING PRETREATMENT**

WHEREAS, Chapter 13.10 of the Loveland Municipal Code sets forth the requirements for discharges into the City of Loveland's Publicly Owned Treatment Works ("POTW") and enables the City to comply with applicable state and federal laws, including the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the General Pretreatment Regulations, 40 C.F.R. Part 403; and

WHEREAS, the United States Environmental Protection Agency ("EPA") conducted a routine audit of the City's pretreatment program and recommended that the City amend Chapter 13.10 to respond to the EPA's audit findings; and

WHEREAS, the City's Pretreatment Coordinator has proposed changes to Chapter 13.10 to respond to the EPA's audit findings, to update local discharge limitations, and to implement certain sector control programs, such as a dental mercury control program; and

WHEREAS, pursuant to the EPA's audit requirements, the proposed changes to Chapter 13.10 were submitted to the EPA on August 1, 2012 for review and approval; and

WHEREAS, on August 15, 2012, the proposed changes were reviewed by the Loveland Utilities Commission, which adopted a motion recommending that the City Council adopt an ordinance amending Chapter 13.10 to incorporate the proposed changes; and

WHEREAS, the City Council desires to amend Chapter 13.10 to incorporate the proposed changes, subject to approval by the EPA.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Chapter 13.10 of the Loveland Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

Chapter 13.10

WASTEWATER PRETREATMENT PROGRAM

I. General Provisions

- 13.10.101 Purpose and policy.
- 13.10.102 Administration.
- 13.10.103 Abbreviations.
- 13.10.104 Definitions.

II. General Sewer Use Requirements

- 13.10.201 Legal authority.
- 13.10.202 Prohibited discharge standards.
- 13.10.203 National categorical pretreatment standards.
- 13.10.204 State pretreatment standards.
- 13.10.205 Local limits.
- 13.10.206 City's right of revision.
- 13.10.207 Dilution.

III. Pretreatment of Wastewater

- 13.10.301 Pretreatment facilities.
- 13.10.302 Additional pretreatment measures.
- 13.10.303 Accidental discharge; slug discharge control plans.
- 13.10.304 Best management practices.
- 13.10.305 Sector control programs.

IV. Wastewater Discharge Permits

- 13.10.401 Wastewater analysis.
- 13.10.402 Wastewater discharge permit requirement.
- 13.10.403 Wastewater discharge permitting.
- 13.10.404 Wastewater discharge permit application contents.
- 13.10.405 Wastewater discharge permit decisions.

V. Wastewater Discharge Permit Issuance Process

- 13.10.501 Wastewater discharge permit duration.
- 13.10.502 Wastewater discharge permit contents.
- 13.10.503 Wastewater discharge permit modification.
- 13.10.504 Wastewater discharge permit transfer.
- 13.10.505 Wastewater discharge permit revocation.
- 13.10.506 Wastewater discharge permit reissuance.
- 13.10.507 Waste received from other jurisdictions.

VI. Reporting Requirements

- 13.10.601 Baseline monitoring reports.
- 13.10.602 Compliance schedule progress reports.
- 13.10.603 Reports on compliance with categorical pretreatment standard deadline.
- 13.10.604 Periodic compliance reports.
- 13.10.605 Reports of changed conditions.
- 13.10.606 Reports of potential problems.
- 13.10.607 Reports and information.
- 13.10.608 Notice of violation; repeat sampling and reporting.

- 13.10.609 Notification of the discharge of hazardous waste.
- 13.10.610 Analytical requirements.
- 13.10.611 Sample collection.
- 13.10.612 Date of reports received.
- 13.10.613 Recordkeeping.
- 13.10.614 Signature of authorized representative; certification.

VII. Compliance Monitoring

- 13.10.701 Right of entry: inspection and sampling.
- 13.10.702 Search warrants.
- 13.10.703 Tampering prohibited.

VIII. Confidential Information

- 13.10.801 Confidential information.

IX. Publication of Industrial Users in Significant Noncompliance

- 13.10.901 Publication of industrial users in significant noncompliance.

X. Administrative Enforcement Remedies

- 13.10.1001 Notification of violation.
- 13.10.1002 Consent orders.
- 13.10.1003 Show cause hearing.
- 13.10.1004 Compliance orders.
- 13.10.1005 Cease and desist orders.
- 13.10.1006 Administrative fines.
- 13.10.1007 Emergency suspensions.
- 13.10.1008 Termination of discharge.

XI. Judicial Enforcement Remedies

- 13.10.1101 Injunctive relief.
- 13.10.1102 Civil penalties.
- 13.10.1103 Criminal prosecution.
- 13.10.1104 Remedies nonexclusive.

XII. Supplemental Enforcement Action

- 13.10.1201 Performance bonds.
- 13.10.1202 Liability insurance.
- 13.10.1203 Payment of outstanding charges, fees, fines, and penalties.
- 13.10.1204 Suspension of water or wastewater service.
- 13.10.1205 Public nuisances.

XIII. Affirmative Defenses to Discharge Violations

- 13.10.1301 Upset.
- 13.10.1302 Bypass.

XIV. Wastewater Pretreatment Charges and Fees

13.10.1401 Pretreatment charges and fees.

13.10.1402 Cost recovery.

13.10.1403 Lien.

XV. Miscellaneous Provisions

13.10.1501 Leased property.

13.10.1502 Enforcement response plan.

I. General Provisions

13.10.101 Purpose and policy.

- A. This chapter sets forth uniform requirements for all users of the publicly owned treatment works for the City of Loveland and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. § 1251 et seq.) and the general pretreatment regulations (40 C.F.R. Part 403). The objectives of this chapter are:
1. To prevent the introduction of pollutants into the POTW that will interfere with its operation;
 2. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW;
 3. To prevent adverse impacts to worker health and safety;
 4. To provide for and promote the general health, safety, and welfare of Loveland's citizens;
 5. To enable the city to comply with its Colorado discharge permit system conditions, biosolids use and disposal requirements, and all other state and federal laws to which the POTW is subject; and
 6. To improve opportunities to recycle and reclaim municipal and industrial wastewater and sludges from the POTW.
- B. This chapter applies to all users of the POTW, regardless of whether those users are located inside or outside the city limits, and including those who are users by contract or agreement.
- C. This chapter authorizes the issuance of wastewater discharge permits and other control mechanisms; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires industrial user monitoring and reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

13.10.102 Administration.

Except as otherwise provided herein, the director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the director may be delegated by the director to other water and power department personnel.

13.10.103 Abbreviations.

The following abbreviations, when used in this chapter, shall have the designated meanings:

BOD	Biochemical oxygen demand
-----	---------------------------

BMP	Best management practice
C	Celsius
C.F.R.	Code of Federal Regulations
COD	Chemical oxygen demand
CDPS	Colorado discharge permit system
EPA	Environmental Protection Agency
F	Fahrenheit
gpd	Gallons per day
gpm	Gallons per minute
mg/l	Milligrams per liter
POTW	City of Loveland publicly owned treatment works
RCRA	Resource Conservation and Recovery Act
s.u.	Standard units
TRC	Technical review criteria violations
TSS	Total suspended solids
U.S.C.	United States Code

13.10.104 Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

“Amalgam” means any mixture or blending of mercury with another metal or with an alloy used in dental applications.

“Amalgam waste” means any waste containing mercury or residues from the preparation, use or removal of amalgam. This includes, but is not limited to, any waste generated or collected by chair-side traps, screens, filters, vacuum systems filters, amalgam separators, elemental mercury, and amalgam capsules.

“Approval authority” means the appropriate EPA regional administrator, or upon approval of Colorado’s pretreatment program, the chief administrator of such pretreatment program.

“Authorized representative of the industrial user” means the following:

(1) If the industrial user is a corporation: the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to ensure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to

sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the industrial user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the industrial user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

(4) The individuals described above may designate another authorized representative if the authorization is in writing, specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and is submitted to the city.

“Best management practices” means the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed at 40 C.F.R. 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

“Biochemical oxygen demand” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° C, usually expressed as a concentration (*e.g.*, mg/L).

“Categorical pretreatment standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Clean Water Act (33 U.S.C. § 1317) that apply to a specific category of industrial users and that appear at 40 C.F.R. Chapter I, Subchapter N, Parts 405 – 471.

“City” means the City of Loveland, Colorado.

“Categorical industrial user” means an industrial user subject to a categorical pretreatment standard or categorical standard.

“Chemical oxygen demand” means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

“Clean Water Act” means the Federal Water Pollution Control Act amendments of 1972, PL 92-500, and subsequent amendments, 33 U.S.C. Section 1251 et seq.

“Composite sample” means a sample formed either by continuous sampling or by mixing discrete samples. The sample may be a time proportional composite sample or a flow proportional composite sample. If composite sampling is not an appropriate technique then a composite sample shall consist of a minimum of four grab samples collected at equally spaced intervals.

“Control authority” means the entity directly administering and enforcing the pretreatment standards and requirements of this chapter. The director is the control authority for the POTW.

“Control mechanism” means those mechanisms used to control the discharges of significant industrial users and other industrial users of the POTW. Control mechanisms may include wastewater discharge permits, BMPs, written authorizations to discharge, liquid waste hauler permits, and other requirements enforceable under this chapter.

“Daily maximum limit” means the allowable discharge limit of a pollutant during a calendar day. Where the daily maximum limit is expressed in units of mass, the allowable discharge limit is the total mass discharged over the course of a calendar day. Where the daily

maximum limit is expressed in terms of a concentration, the allowable discharge limit is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

“Day” or “days” means calendar days except where otherwise noted.

“Dental facility” means any facility used for the practice of dentistry or dental hygiene that discharges wastewater containing amalgam.

“Director” means the director of the department of water and power or his or her duly authorized representative.

“Domestic wastewater” or “domestic wastestream” means liquid waste from noncommercial preparation, cooking, and handling of food, or liquid waste containing only human excrement and similar matter from sanitary conveniences (*e.g.*, toilets, showers, bathtubs) of dwellings or commercial, industrial, or institutional buildings.

“Enforcement response plan” means the written plan that sets forth the specific actions the city will take to investigate and respond to violations of this chapter.

“Environmental Protection Agency” means the U.S. Environmental Protection Agency or, where appropriate, the regional water management division director, or other duly authorized official of said agency.

“Existing source” means any source of discharge that is not a new source.

“Fats, oil, and grease” means nonpetroleum organic polar compounds derived from animal or plant sources such as fats, nonhydrocarbons, fatty acids, soaps, waxes, and oils that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established at 40 C.F.R. Part 136.

“Flow proportional sample” means a composite sample where each discrete sample is collected based upon the flow (volume) of wastewater.

“Food service establishment” means any nondomestic discharger where preparation, manufacturing, or processing of food occurs including, but not limited to, restaurants, cafes, fast food outlets, pizza outlets, delicatessens, sandwich shops, coffee shops, schools, nursing facilities, assisted living facilities, and other facilities that prepare, service, or otherwise make foodstuff available for consumption.

“Grab sample” means a sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

“Grease interceptor” means a large in-ground tank intended to remove, hold, or otherwise prevent the passage of fats, oil, and grease in the wastewater discharged to the POTW by gravity separation considering calculated retention times and volumes for each facility. Such interceptors include baffle(s) and a minimum of two (2) compartments and generally are located outside a building.

“Grease trap” means a device designed to reduce the amount of fats, oil, and grease in wastewater discharged into the POTW. Grease traps usually serve no more than four (4) fixtures and generally are located inside a building.

“Grease removal device” means a grease trap, grease interceptor, or other device (*i.e.*, hydromechanical) that is designed, constructed, and intended to remove, hold, or otherwise prevent the passage of fats, oil, and grease to the sanitary sewer.

“Hauled waste” means any waste from holding tanks, including, without limitation, chemical toilets, vacuum pump tank trucks, and septic tanks. Hauled waste does not include domestic waste from an individual’s recreational vehicle (*e.g.*, camper or trailer).

“Indirect discharge” means the introduction by, without limitation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, or dumping of pollutants into the POTW from any nondomestic source.

“Individual control mechanism” means a control mechanism (*i.e.*, permit) that only is issued to a specific industrial user.

“Industrial user” means a source of indirect discharge.

“Instantaneous limit” means the maximum concentration of a pollutant or measurement of a pollutant property allowed to be discharged at any time.

“Interference” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its biosolids processes, use, or disposal; and therefore is a cause of a violation of the city’s CDPS permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory or regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Clean Water Act; the Solid Waste Disposal Act, including Title II, commonly referred to as the Resource Conservation and Recovery Act; any state regulations contained in any state biosolids management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

“Local limit” means the specific discharge limits and BMPs developed, applied, and enforced by the city upon significant industrial users to implement the general and specific discharge prohibitions listed at 40 C.F.R. 403.5(a)(1) and (b).

“Monthly average limit” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

“Nanomaterials” means, without limitation, an engineered product developed using a microscopic particle(s) whose size is measured in nanometers.

“New source” means the following:

(1) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that Section, provided that: (a) the building, structure, facility, or installation is constructed at a site at which no other source is located; (b) or the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; (c) or the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria in (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has: (a) begun, or caused to begin, as part of a

continuous onsite construction program, (i) any placement, assembly, or installation of facilities or equipment, or (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or (b) entered into a binding contractual obligation for the purchase of facilities or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

“Oil and sand separator” means a trap, interceptor, or other device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of petroleum products, sand, sediment, sludge, grease, or similar substances in the wastewater discharged to the POTW by gravity separation considering calculated retention times and volumes for each facility. Such interceptors include baffle(s) and a minimum of two (2) compartments and generally are located outside a building.

“Pass through” means a discharge that exits the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city’s CDPS permit, including an increase in the magnitude or duration of a violation.

“Person” means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

“pH” means a measure of the acidity or alkalinity of a solution, expressed in standard units.

“Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial wastes, and certain characteristics of wastewater (*e.g.*, TSS, turbidity, color, BOD, COD, toxicity, or odor) and other substance or material (*e.g.*, nanomaterial) as determined by the director.

“Pretreatment” or “treatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

“Pretreatment requirements” means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

“Pretreatment standards” or “standards” means prohibited discharge standards, categorical pretreatment standards, and local limits. There are two different circumstances in which BMPs may be pretreatment standards. The first is when the director establishes BMPs to implement the prohibitions of Section 13.10.202 or the local limits of Section 13.10.205. The second is when the BMPs are categorical pretreatment standards established by the EPA.

“Publicly owned treatment works” means any devices, facilities, structures, equipment, or works owned or used by the city for the purpose of the transmission, storage, treatment,

recycling and reclamation of industrial and domestic wastes, or necessary to recycle or reuse water at the most economical cost over the estimated life of the system, including intercepting sewers, outfall sewers, collection lines, pumping, power and other equipment, and their appurtenances and excluding service lines; extensions, improvements, additions, alterations or any remodeling thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including the land and sites that may be acquired, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from the treatment, or reuse of treated water for irrigation, recreation or commercial purposes. It does not include the stormwater system, a separate municipal operation that is not part of POTW. The municipality, as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

“Significant industrial user” means, except as provided in (3) and (4) below:

- (1) An industrial user subject to categorical pretreatment standards; or
- (2) An industrial user that: (a) discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater); (b) contributes a process wastestream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (c) is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.

(3) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred (100) gpd of total categorical wastewater (excluding sanitary, non-contact cooling, and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met: (a) the industrial user, prior to the city’s finding, has consistently complied with all applicable categorical pretreatment standards and requirements; (b) the industrial user annually submits the certification statement required at 40 C.F.R. 403.12(q) together with any additional information necessary to support the certification statement; and (c) the industrial user never discharges any untreated concentrated wastewater.

(4) Upon a finding that the industrial user meeting the criteria in (2) above has no reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with procedures at 40 C.F.R. 403.8(f)(6), determine that such industrial user should not be considered a significant industrial user.

“Significant noncompliance” means an industrial user that violates one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limitations, for the same pollutant parameter.

(2) Technical review criteria violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter

taken during a six (6) month period equal or exceed the product of a numeric pretreatment standard or requirement including instantaneous limitations multiplied by the applicable TRC (TRC = one and four-tenths (1.4) for BOD, TSS, fats, oil, and grease, and one and two-tenths (1.2) for all other pollutants except pH).

(3) Any other violation of a pretreatment standard or requirement (daily maximum limit, long term average limit, instantaneous limit, narrative standard, or BMP) that the director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent a discharge.

(5) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide, within thirty (30) days after the due date, any required reports such as baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations, which may include a violation of BMPs, that the director determines will adversely affect the operation or implementation of the pretreatment program.

“Spill” or “slug discharge” means any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 13.10.202, or any discharge of a nonroutine, episodic nature, including, but not limited to, an accidental spill or non-customary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits, or control mechanism.

“Solids interceptor” means a device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of solid foodstuff (*e.g.*, coffee grounds) to the sanitary sewer.

“Stormwater” means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

“Time proportional composite sample” means a sample of equal-volume aliquots taken at regular intervals throughout the sampling period.

“Total suspended solids” or “suspended solids” means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

“Wastewater” means liquid and water-carried industrial, domestic, or other polluted wastes from dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, that are contributed to the POTW.

“Wastewater treatment plant” or “treatment plant” means that portion of the POTW that is designed to provide treatment of wastewater.

II. General Sewer Use Requirements

13.10.201 Legal authority.

- A. The city operates pursuant to legal authority enforceable in federal, state, or local courts that authorizes or enables the city to apply and enforce the requirements of this chapter and 40 C.F.R. Part 403. This authority allows the director to:
 - 1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants to the POTW by industrial users where:
 - a. Such contributions do not meet applicable federal, state, or local pretreatment standards and requirements;
 - b. Could cause the treatment plant to violate its CDPS permit; or
 - c. Could cause problems in the POTW.
 - 2. Control through permit, order, or similar means the wastewater contributions to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements.
 - 3. Require compliance with applicable pretreatment standards and requirements by industrial users.
 - 4. Identify, locate, and notify all possible industrial users that might be subject to the pretreatment program.

13.10.202 Prohibited discharge standards.

- A. General prohibitions. No industrial user shall introduce or cause to be introduced into the POTW any pollutant that causes pass through or interference. These general prohibitions apply to all industrial users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.
- B. Specific prohibitions. No industrial user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - 1. Pollutants that create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140° F (60° C) using the test methods specified at 40 C.F.R. 261.21.
 - 2. Wastewater having a pH less than five and one-half (5.5) or greater than eleven and one-half (11.5), or otherwise causing corrosive structural damage to the POTW.
 - 3. Solid or viscous substances in amounts that will cause obstruction to the flow in the POTW resulting in interference.
 - 4. Pollutants, including oxygen-demanding pollutants (*e.g.*, BOD), released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the POTW.
 - 5. Wastewater having a temperature greater than 104° F (40° C), or that will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
 - 6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
 - 7. Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
 - 8. Trucked or hauled pollutants, except at discharge points designated by the director in accordance with Section 13.10.304.E.

9. Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewer for maintenance or repair.
 10. Wastewater that imparts color that cannot be removed by the treatment plant process, such as, by not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent.
 11. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations, or as otherwise limited by the director.
 12. Sludges, screenings, or other residues from the pretreatment of industrial wastes.
 13. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 14. Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW or otherwise cause pass through or interference.
 15. Wastewater causing two (2) readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the lower explosive limit of the meter.
- C. Pollutants, chemicals, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

13.10.203 National categorical pretreatment standards.

Significant industrial users must comply with the categorical pretreatment standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405 through 471.

- A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with this section.
- B. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.
- C. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit in accordance with 40 C.F.R. 403.6(e).
- D. A categorical industrial user may apply for a net/gross adjustment to a categorical pretreatment standard in accordance with 40 C.F.R. 403.15.

13.10.204 State pretreatment standards.

State pretreatment standards and requirements adopted pursuant to the Colorado Water Quality Control Act shall apply in any case where they are more stringent than federal standards.

13.10.205 Local limits.

- A. The following pollutant limits are established to protect against pass through and interference. No significant industrial user shall discharge wastewater containing in excess of the following daily maximum limits (all concentrations are total):

Pollutant	Daily Maximum Limit
Arsenic	0.27 mg/l
Cadmium	0.12 mg/l
Chromium	1.26 mg/l
Copper	3.91 mg/l
Cyanide	0.46 mg/l
Iron	171 mg/l
Lead	1.53 mg/l
Mercury	0.0001 mg/l
Molybdenum	0.88 mg/l
Nickel	2.49 mg/l
Selenium	0.11 mg/l
Silver	1.50 mg/l
Zinc	9.06 mg/l

- B. The above daily maximum limits may apply at the significant industrial user's end of process or where the significant industrial user's facility wastewater is discharged to the POTW.
- C. The director may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

13.10.206 City's right of revision.

The city reserves the right to establish, by ordinance, control mechanism, or other appropriate means more stringent or additional standards or requirements for any industrial user to protect the POTW against pass through, interference, or as necessary, in the director's opinion, to protect the health and safety of POTW personnel or the general public.

13.10.207 Dilution.

No industrial user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement.

III. Pretreatment of Wastewater

13.10.301 Pretreatment facilities.

- A. All industrial users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with applicable categorical pretreatment standards, local limits, BMPs, and the prohibitions set out in Sections 13.10.202 through 13.10.205 within the time limitations specified by the EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided and properly operated and maintained at the industrial user's expense. The director may require that detailed plans describing such facilities and operating procedures be submitted for review and be acceptable to the director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the industrial user from the

responsibility of modifying such facilities as necessary to produce a discharge acceptable to the director under the provisions of this chapter.

- B. The director may require an industrial user to install sampling, monitoring, or other appropriate pretreatment equipment as necessary to ensure compliance with the pretreatment standards and requirements. The equipment shall be installed, operated, and maintained at all times in a safe and proper operating condition by the industrial user at its own expense.
- C. Industrial users shall notify the director prior to any remodeling, or equipment modification or addition, that may result in an increase in flow or pollutant loading or that otherwise requires the facility to submit plans or specifications for approval through a building or zoning department, or any other formal approval process of a city, county, or other jurisdiction.

13.10.302 Additional pretreatment measures.

- A. Whenever deemed necessary, the director may require industrial users to restrict their discharge during peak or low flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic wastestreams from nondomestic wastestreams, and impose such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements of this chapter.
- B. Backflow prevention devices shall be installed and maintained by the industrial user in accordance with Chapter 13.06.
- C. Industrial users with the potential to discharge flammable substances may be required to install and maintain proper treatment equipment or an approved combustible gas detection meter.
- D. Individual water meters, sub-meters, or flow meters shall be installed where the director has determined it is necessary to ascertain flow data. Such devices shall be installed, tested, inspected, and repaired as needed by the industrial user at its expense.

13.10.303 Accidental discharge; slug discharge control plans.

- A. Each industrial user shall provide protection from accidental discharge of substances that have a reasonable potential to violate the POTW's regulations, local limits, or CDPS permit conditions.
- B. The director shall evaluate whether a significant industrial user needs a plan or other control mechanism to control slug discharges within one (1) year of the date on which the industrial user is designated a significant industrial user.
- C. The director may require any industrial user to develop, submit for approval, and implement a slug control plan. If the director decides that a slug control plan is needed, the plan shall include, at a minimum, the following elements:
 - 1. Description of discharge practices, including nonroutine batch discharges;
 - 2. Description of stored chemicals;
 - 3. Procedures for immediately notifying the director of any accidental or slug discharge, including procedures for follow-up written notification within five (5) days as required by Section 13.10.606; and
 - 4. Procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and

- unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
- D. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.
- E. Significant industrial users are required to notify the POTW immediately of any changes at their facilities affecting potential for a slug discharge.

13.10.304 Best management practices.

- A. The director may develop BMPs, or require an industrial user to develop BMPs, to implement the prohibitions of Section 13.10.202 and the local limits of Section 13.10.205. BMPs shall be considered pretreatment standards and local limits for purposes of this chapter and Section 307(d) of the Clean Water Act. Additionally, BMPs may be categorical pretreatment standards established by the EPA.
- B. The director may develop general BMPs that are applicable to categories of industrial users, categories of activities, or geographic areas.
- C. Elements of a BMP may include, but are not limited to:
 - 1. Installation of treatment.
 - 2. Requirements for or prohibitions on certain practices or discharges.
 - 3. Requirements for the operation and maintenance of treatment equipment.
 - 4. Timeframes associated with key activities.
 - 5. Procedures for compliance certification, reporting, and records retention.
 - 6. Provisions for reopening and revoking BMPs.
- D. Any industrial user may be required to comply with BMPs. BMPs may be incorporated in categorical pretreatment standards, control mechanisms, or orders.

13.10.305 Sector control programs.

- A. General requirements.
 - 1. The director may establish specific sector control programs for industrial users to control specific pollutants as necessary to meet the objectives of this chapter. Pollutants subject to these sector control programs shall generally be controlled using BMPs.
 - 2. The director shall implement procedures as necessary to identify industrial users for inclusion into applicable sector control programs.
 - 3. Facilities undergoing any physical change, change in operations, or other change that could change the nature, properties, or volume of wastewater discharge shall notify the director and may be required to submit specific documentation to ensure that current sector control program requirements are incorporated and implemented.
 - 4. The industrial user shall inform the director prior to:
 - a. Sale or transfer of ownership of the business;
 - b. Change in the trade name under which the business is operated; or
 - c. Change in the nature of the services provided that affect the potential to discharge sector control program pollutants.
 - 5. Inspections.
 - a. The director may conduct inspections of any facility with or without notice for the purpose of determining applicability and/or compliance with sector control program requirements.

- b. If any inspection reveals non-compliance with any provision of a sector control program requirement, corrective action shall be required pursuant to the applicable sector control program.
 - c. Inspection results will be provided in writing to the facility.
- 6. Closure. The director may require closure of plumbing, treatment devices, storage components, containments, or other such physical structures that are no longer required for their intended purpose. Closure may include, for example, the removal of equipment, the filling in and/or cementing, capping, or plugging of the device or structure.
- B. Mercury best management practices.
 - 1. These BMPs establish requirements for dental facilities for reducing the amount of amalgam waste discharged into the sanitary sewer. All dental facilities shall be required to comply with subsections A. and B. of this section as of July 1, 2013.
 - 2. The city's BMPs include two general requirements:
 - a. The dental facility must submit a completed amalgam waste registration form with the city; and
 - b. The dental facility must implement the required BMPs.
 - 3. Dental facilities that have not registered shall file a registration on a form provided by the director prior to discharging any waste to the POTW generated from dental-related activities.
 - 4. Annual BMP compliance certification. Dental facilities shall provide an annual certification to the city that the industrial user has implemented all required BMPs during the calendar year. This certification shall be submitted by January 28 of each year for the previous calendar year on a form provided by the director.
 - 5. All dental facilities shall implement the following BMPs:
 - a. International Organization for Standardization 11143 certified amalgam separators shall be installed and maintained according to manufacturer's specifications. Amalgam separators shall provide a clear view of the waste collected in the device (*i.e.*, no "black box" type devices).
 - b. All amalgam separators shall be appropriately sized for the dental facility. The amalgam separator shall be installed so that all amalgam-contaminated wastewater will flow to the unit for treatment before being discharged.
 - c. All amalgam separators shall be located to provide easy access for cleaning and inspection.
 - d. Each dental facility shall inspect and maintain the amalgam separator at a frequency that would reasonably identify problems (*e.g.*, leaks, early removal of sludge).
 - e. Use precapsulated amalgam alloy and implement practices to minimize the discharge of amalgam to any drain.
 - f. Properly dispose of all amalgam waste and maintain all records that contain sufficient information to verify proper off-site disposal.
 - g. Use line cleaners designed to minimize dissolution of amalgam. Bleach, chlorine-containing, or low acidic line cleaners are specifically prohibited.
 - h. Implement the BMPs provided by the American Dental Association.
 - i. The dental facility shall maintain records of amalgam recycling on site for at least three (3) years. These records shall include the date, the name and address of the

facility to which any waste amalgam is shipped, and the amount shipped. These records may be periodically reviewed by the city.

C. Fats, oil, grease, and solids requirements.

1. The requirements established in this section shall apply to food service establishments connected to, or proposing to connect to, the POTW.
2. All food service establishments that discharge to the POTW wastewater containing fats, oil, grease, or solids in quantities sufficient to cause sanitary sewer line restriction or necessitate increased POTW maintenance shall install a properly-sized grease removal device and/or solids interceptor. The director may require food service establishments to replace or upgrade the grease removal device or solids interceptor if either, in combination with BMPs, does not cause a reduction in the quantity of fats, oil, grease, or solids, or the food service establishment changes in nature, adds fixtures or equipment, or is renovated in such a manner as to increase the likelihood of discharging to the POTW wastewater contributing fats, oil, and grease or solids in quantities sufficient to cause sanitary sewer line restriction or necessitate increased POTW maintenance. Food service establishments that are unable to comply with this section due to site or plumbing constraints that make compliance impossible or financially impracticable shall apply in writing to the director for an exemption, which may be granted by the director in his sole discretion. The written request shall include the reason(s) why the food service establishment cannot comply with this section and steps the food service establishment will take to prevent sanitary sewer line restriction and increased POTW maintenance.
3. Grease removal device requirements.
 - a. Grease interceptors shall be seven hundred fifty (750) gallon minimum capacity and provide a minimum of thirty (30) minutes retention time at total peak flow. The maximum size shall be two thousand, five hundred (2,500) gallons. A series of interceptors may be necessary for grease interceptor capacities greater than two thousand, five hundred (2,500) gallons based on cleaning and maintenance frequency.
 - b. Grease traps, when permitted, shall be fifty (50) gpm flow rated or provide one hundred (100) pound grease capacity. Grease traps require a flow restriction device.
 - c. Other grease removal devices may be allowed by the director if it is shown that an alternative pretreatment technology is equally effective in controlling the discharge of fats, oil, and grease.
 - d. Grease removal devices shall be located to provide easy access for cleaning and inspection.
 - e. Unless directed otherwise, a professional engineer registered in the State of Colorado shall properly size and provide documentation to the director to support the proposed grease removal device or solids interceptor size.
 - f. If required by the director, an engineer licensed by the State of Colorado shall file a written, signed certification with the director stating that the required grease removal device or solids interceptor has been installed and all sources of fats, oil, grease, or solids are discharging to the device before discharging wastewater to the POTW.

4. Food service establishments shall use the following BMPs to reduce the amount of wastewater containing fats, oil, grease, or solids discharged into the POTW:
 - a. Disconnect or minimize the use of garbage disposals (garbage grinders);
 - b. Install a 1/8" or 3/16" mesh screen over all kitchen sinks, mop sinks, and floor sinks;
 - c. Use "dry" clean-up methods, including scraping or soaking up fats, oil, and grease from plates and cookware before washing;
 - d. Use pre-wash sinks to clean plates and cookware;
 - e. Recycle fats, oil, and grease and beneficial food waste when possible;
 - f. Pour remaining liquid fats, oil, and grease from pots, pans, and other cookware into containers to be disposed of in the trash once congealed; and
 - g. Post BMPs and provide training to each employee on such BMPs.
 5. Grease removal devices and solids interceptors shall be inspected, cleaned, and maintained in proper working order at all times by the industrial user at its expense. Grease removal devices in active use shall be cleaned at the frequency specified in the industrial user's control mechanism.
 - a. In the event that a grease interceptor is larger than the capacity of a vacuum truck, the interceptor shall be completely evacuated within a twenty-four (24) hour period. The industrial user's documentation shall accurately reflect each pumping event.
 - b. Food service establishments shall retain a State of Colorado registered waste grease transporter to completely evacuate all contents, including floating materials, wastewater, bottom solids, and accumulated waste on the walls of the grease removal device. Waste must be disposed of in accordance with federal, state, and local laws.
 - c. Any food service establishment desiring a cleaning schedule less frequent than that required by the director shall submit a written request to the director requesting a change and the reasons for the change. A reduction in cleaning frequency may be granted by the director when it has been determined that the grease removal device has adequate capacity and detention time for fats, oil, grease, and solids removal. The cleaning frequency will depend on factors such as the location of the facility, type of facility, type of food prepared, hours of operation, capacity of the device, the anticipated amount of fats, oil, grease, and solids in the wastewater, and the type of BMPs in place.
 6. The following are strictly prohibited:
 - a. Connecting garbage grinders, garbage disposals, and dishwashers to grease traps.
 - b. Altering or tampering with a grease removal device or solids interceptor.
 - c. Discharging or permitting another to discharge any liquid, semi-solid, or solid back into a grease removal device or solids interceptor at any time during maintenance or cleaning operations.
 - d. Discharging or permitting another to discharge any grease removal device or solids interceptor wastes into any drain, public or private sewer, or other grease removal device or solids interceptor.
 - e. Using hot water or chemicals, bacteria, enzymes, or other products that will emulsify fats, oil, and grease.
- D. Petroleum oil, grease, and sand requirements.

1. Applicability. The requirements established in this section shall apply to industrial users that generate sand, sediment, grit, gravel or other aggregate, grease, petroleum oil, or other petroleum products that may discharge to the POTW. Examples of such facilities include, without limitation, vehicle service or repair facilities, small or large equipment service or repair facilities, vehicle and equipment wash facilities, machine shops, garden nurseries, warehouses, and parking garages (if connected to sewer).
 2. Oil/sand general requirements.
 - a. An oil/sand separator shall be provided for the proper handling of wastewater containing sand, sediment, sludge, grease, petroleum products, or similar substances.
 - b. An oil/sand separator shall be properly sized to provide adequate retention time to prevent the discharge of wastewater containing sand, sediment, sludge, grease, petroleum products, or similar substances to the POTW.
 - c. Oil/sand separators shall be installed, inspected, cleaned, and maintained, as needed, by the industrial user at its expense. All such devices shall be located to be easily accessible for cleaning and inspection.
 - d. Unless directed otherwise, a professional engineer registered in the State of Colorado shall properly size and provide documentation to the director to support the proposed oil/sand separator size.
 - e. If required by the director, an engineer licensed by the State of Colorado shall file a written, signed certification with the director stating that the required oil/sand separator has been installed and all sources of sand, sediment, sludge, grease, petroleum products, or similar substances are discharging to the device before discharging wastewater to the POTW.
 3. Maintenance.
 - a. Oil/sand separators shall be serviced at a frequency that will prevent the separator from discharging sand, sediment, sludge, grease, petroleum products, or similar substances to the POTW. The city recommends that servicing occur when the total volume of waste in the separator reaches twenty-five percent (25%) of the separator's capacity. The director is authorized to issue a control mechanism if a separator is not serviced at an appropriate frequency as required herein.
 - b. The industrial user must document each cleaning with an invoice, waste manifest, or other acceptable document, which must be kept on site for at least three (3) years.
 - c. The industrial user must take reasonable steps to ensure that all waste is properly disposed of at a facility in accordance with federal, state and local regulations (*i.e.*, certification by the hauler included on a waste manifest).
- E. Hauled waste requirements.
1. Any hauled waste meeting the definition of an RCRA hazardous waste as defined at 40 C.F.R. Part 261 will not be accepted and shall not be discharged to the POTW.
 2. Persons proposing to discharge non-RCRA hazardous waste shall apply for and obtain a control mechanism from the director. Control mechanisms will be issued on a case-by-case basis. No hauled waste may be discharged without prior written consent of the director. Hauled waste may only be discharged at locations designated by the director. Hauled waste is subject to all the requirements of this chapter.

3. Any violation of the terms and conditions of a control mechanism, failure to apply for a control mechanism as required, or discharging without authorization shall be deemed a violation of this chapter.
 4. The director may collect samples of each hauled waste load to ensure compliance with this chapter. The director may require the waste hauler to provide a waste analysis of any load or a waste-tracking form for every load prior to discharge.
 5. The director has the right to reject any hauled waste that may be harmful to, or cause obstruction of, the wastewater collection system, or that may cause or contribute to interference or pass through of the POTW, or that may violate any local limits adopted by the city.
- F. Pharmaceutical sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of applicable pharmaceuticals to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial users and by control mechanism for other industrial users.
- G. Nanomaterial sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of nanomaterial to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial users and by control mechanism for other industrial users.
- H. Nonylphenol sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of nonylphenol to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial user and by control mechanism for other industrial users.

IV. Wastewater Discharge Permits

13.10.401 Wastewater analysis.

When requested by the director, an industrial user must submit information on the nature and characteristics of its wastewater within the time specified by the director. The director is authorized to prepare a form for this purpose and may periodically require industrial users to update this information.

13.10.402 Wastewater discharge permit requirement.

- A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director, except that a significant industrial user that has filed a timely application pursuant to Section 13.10.404 may continue to discharge for the time period specified therein.
- B. The director may require other industrial users to obtain a wastewater discharge permit as necessary to carry out the purposes of this chapter.
- C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this section.
- D. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements, or with any other requirements of federal, state, and local law.

13.10.403 Wastewater discharge permitting.

Any industrial user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to beginning or recommencing such discharge. An application for this wastewater discharge permit, in accordance with Section 13.10.404, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

13.10.404 Wastewater discharge permit application contents.

- A. All industrial users required to obtain a wastewater discharge permit must submit an application on a form prepared by the director. The director may require industrial users to submit as part of an application any or all of the following information:
 1. Identifying information, including:
 - a. Name and address of the facility.
 - b. Name and contract information for the owner and operator.
 - c. Description of facilities, activities, and plant production processes on the premises.
 2. List of any environmental control permits held by or for the facility.
 3. Description of operations, including:
 - a. Brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
 - b. Types of wastes generated and a list of all raw materials and chemicals used or stored at the facility that are, or could accidentally or intentionally be, discharged to the POTW.
 - c. Number and type of employees, hours of operation, and proposed or actual hours of operation.
 - d. Type and amount of raw materials processed (average and maximum per day).
 - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.
 4. Time and duration of discharges.
 5. Location for monitoring all wastes covered by the permit.
 6. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in subsection 13.10.203C.
 7. Measurement of pollutants, including:
 - a. Categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.
 - b. Results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process.

- c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
- d. The sample shall be representative of daily operations and shall be analyzed in accordance with Section 13.10.610. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the director or the applicable standards to determine compliance with the standard.
- e. Sampling must be performed in accordance with Section 13.10.611.
- 8. Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application.
- B. Incomplete or inaccurate applications will be returned to the industrial user for revision.

13.10.405 Wastewater discharge permit decisions.

The director will evaluate the data furnished by the industrial user and may require additional information. Within forty-five (45) business days of receipt of a complete wastewater discharge permit application, the director will determine whether to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit.

V. Wastewater Discharge Permit Issuance Process

13.10.501 Wastewater discharge permit duration.

A wastewater discharge permit may be issued for a period no greater than five (5) years from the date of issuance. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the director. Each wastewater discharge permit shall indicate a specific date upon which it shall expire.

13.10.502 Wastewater discharge permit contents.

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Wastewater discharge permits must contain:

- 1. A statement that indicates the wastewater discharge permit issuance date, expiration date, and effective date.
- 2. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with Section 13.10.504 and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
- 3. Effluent limits, including BMPs, based on applicable pretreatment standards.
- 4. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or BMP) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.
- 5. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule

may not extend the time for compliance beyond that required by applicable federal, state, or local law.

6. Requirements to control slug discharge, if determined by the director to be necessary.
- B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:
 1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
 2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW.
 3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges.
 4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
 5. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices.
 6. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those that become effective during the term of the wastewater discharge permit.
 7. Other conditions as deemed appropriate by the director to ensure compliance with this chapter and state and federal laws, rules, and regulations.

13.10.503 Wastewater discharge permit modification.

- A. The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 1. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
 2. To address alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
 3. A change to the POTW's CDPS permit;
 4. Information indicating that the permitted discharge poses a threat to the POTW, city personnel, or the receiving waters;
 5. Violation of any terms or conditions of the individual wastewater discharge permit;
 6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
 7. Revision of or the grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. 403.13;
 8. To correct typographical or other errors in the wastewater discharge permit; or
 9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 13.10.504

13.10.504 Wastewater discharge permit transfer.

- A. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) business days advance written notice to the director, and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator that:
 - 1. States that the new owner and/or operator has no intent to change the facility's operations and processes within ninety (90) days after the transfer;
 - 2. Identifies the specific date on which the transfer is to occur; and
 - 3. Acknowledges full responsibility for complying with the existing wastewater discharge permit.
- B. Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

13.10.505 Wastewater discharge permit revocation.

- A. The director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 - 1. Failure to notify the director of changes to the wastewater prior to the changed discharge;
 - 2. Failure to provide prior notification to the director of changed conditions pursuant to Section 13.10.605;
 - 3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
 - 4. Falsifying self-monitoring reports and certification statements;
 - 5. Tampering with sampling or monitoring equipment;
 - 6. Refusing to allow the director timely access to the facility premises and records;
 - 7. Failure to meet effluent limitations;
 - 8. Failure to pay fines;
 - 9. Failure to pay wastewater charges and fees;
 - 10. Failure to meet compliance schedules;
 - 11. Failure to complete a wastewater survey or the wastewater discharge permit;
 - 12. Failure to provide advance notice of the transfer of the wastewater permit to a new owner or operator; or
 - 13. Violation of any pretreatment standard or requirement, any terms of the wastewater discharge permit, or this chapter.
- B. Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership to a new owner or operator without the director's approval in violation of Section 13.10.504. All wastewater discharge permits issued to an industrial user are void upon the issuance of a new wastewater discharge permit to that industrial user.

13.10.506 Wastewater discharge permit reissuance.

An industrial user with an expiring wastewater discharge permit shall apply for a wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 13.10.404, a minimum of sixty (60) business days prior to the expiration of the industrial user's existing wastewater discharge permit. In no case shall the reissued permit be for a period greater than five (5) years from the date of reissuance. A

wastewater discharge permit may be reissued for a period less than five (5) years, at the discretion of the director.

13.10.507 Waste received from other jurisdictions.

If another jurisdiction, or industrial user located within another jurisdiction, contributes wastewater to the POTW, the city shall enter into an intergovernmental agreement with the contributing jurisdiction. Such intergovernmental agreement shall ensure that discharges received from entities outside of the city's jurisdictional boundaries are regulated to the same extent as are discharges from within the city's jurisdictional boundaries.

VI. Reporting Requirements

13.10.601 Baseline monitoring reports.

- A. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 C.F.R. 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report that contains the information listed in subsection B. below. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report that contains the information listed in subsection B. below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- B. Industrial users described above shall submit the following information:
 1. All information as may be required by subsection 13.10.404A.1. through 6. and 8.
 2. Measurement of pollutants.
 - a. The industrial user shall provide the information required in subsection 13.10.405.A.7.a. through d.
 - b. The industrial user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this subsection.
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 C.F.R. 403.6(e) to evaluate compliance with the pretreatment standards.
 - d. Sampling and analysis shall be performed in accordance with Section 13.10.610.
 - e. The director may allow the submission of a baseline report that utilizes only historical data so long as data provides information sufficient to determine the need for industrial pretreatment measures.
 - f. The baseline report shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

3. Compliance certification. A statement, reviewed by the industrial user's authorized representative as defined in Section 13.10.104 and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance and/or additional pretreatment is required to meet the pretreatment standards and requirements.
4. Compliance schedule. If additional operation and maintenance and/or additional pretreatment is required to meet the pretreatment standards and requirements, the shortest schedule by which the industrial user will provide such additional operation and maintenance and/or pretreatment must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 13.10.602.
5. Signature and report certification. All baseline monitoring reports must be certified and signed by an authorized representative in accordance with Section 13.10.614.

13.10.602 Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by subsection 13.10.601B.4.:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (such events include, without limitation, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).
- B. No increment referred to above shall exceed nine (9) months.
- C. The industrial user shall submit a progress report to the director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the industrial user to return to the established schedule.
- D. In no event shall more than nine (9) months elapse between such progress reports to the director.

13.10.603 Reports on compliance with categorical pretreatment standard deadline.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 13.10.404A.6. and 7, and subsection 13.10.601.B.2. For industrial users subject to equivalent mass or concentration limits established in accordance with Section 13.10.203, this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate

sampling period. All compliance reports must be signed and certified in accordance with Section 13.10.614. All sampling must be done in conformance with Section 13.10.611.

13.10.604 Periodic compliance reports.

- A. All significant industrial users shall, at a frequency determined by the director but in no case less than once per six (6) months, submit a report indicating the nature and concentration of pollutants in the discharge that are limited by pretreatment standards and the measured or estimated average and/or maximum daily flow for the reporting period.
- B. All wastewater samples must be representative of the industrial user's discharge. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.
- C. If an industrial user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in Section 13.10.610, the results of this monitoring shall be included in the report.

13.10.605 Reports of changed conditions.

- A. All industrial users shall promptly notify the director in advance of any significant changes to the industrial user's operations or system that might alter the nature, quality, or volume of its wastewater. For the purposes of this section, a "significant change" shall mean a change that will be in effect for a period of ten (10) days or more and shall include, but is not limited to, the following:
 - 1. A change in number of shifts or shift hours, an additional processing operation, or the new use or discharge of any substances regulated under Section 13.10.202 or 13.10.205.
 - 2. A twenty percent (20%) increase or decrease in the wastewater flow or production volume, or any other change which may alter the average normal wastewater characteristics.
 - 3. Any other change that triggers the applicability of a categorical pretreatment standard that previously had not applied to the industrial user.
- B. The director may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 13.10.404.
- C. The director may reissue an individual wastewater discharge permit under Section 13.10.506 or modify an existing wastewater discharge permit under Section 13.10.503 in response to changed conditions or anticipated changed conditions.

13.10.606 Reports of potential problems.

- A. In the case of any discharge, including, without limitation, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug discharge, that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the director of the incident. This notification shall include, at a minimum, the location of the discharge, type of waste, concentration and volume, and corrective actions taken by the industrial user.
- B. Within five (5) days following such discharge, the industrial user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and

the measure(s) to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, penalties, or other liability that may be imposed pursuant to this chapter.

- C. Significant industrial users are required to notify the director immediately of any changes at its facility affecting the potential for a slug discharge.

13.10.607 Reports and information.

All industrial users connected to, or proposing to connect to, the POTW shall provide appropriate reports or information to the director as the director may require to meet the requirements of this chapter. It is unlawful for any person to knowingly make a false statement, representation, or certification in any record, report, or other document submitted or required to be maintained under this chapter.

13.10.608 Notice of violation; repeat sampling and reporting.

If sampling performed by an industrial user indicates a violation, the industrial user must notify the director within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation. If the city performed the sampling and analysis in lieu of the industrial user, the city shall have the authority to require the industrial user to perform the repeat sampling and analysis.

13.10.609 Notification of the discharge of hazardous waste.

- A. Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste under 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known or readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expended to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 13.10.605. The notification requirement in this section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 13.10.601, 13.10.603, and 13.10.604.

- B. Dischargers are exempt from the requirements of subsection A. above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
- C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the director, the EPA regional waste management division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- D. In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a control mechanism issued thereunder, or any applicable federal or state law.

13.10.610 Analytical requirements.

All pollutant analyses, including sampling techniques, required by the director shall be performed in accordance with the techniques prescribed at 40 C.F.R. Part 136, and any amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or approved by the EPA.

13.10.611 Sample collection.

- A. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.
- B. Except as indicated in subsections C. and D. below, an industrial user must collect wastewater samples using twenty-four (24) hour flow-proportional composite collection sampling techniques. In the event flow proportional composite collection sampling is not feasible, the director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the industrial user demonstrates that this will provide a representative sample of the discharge. Using protocols (including appropriate preservation) specified at 40 C.F.R. Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters

unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the director, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

- C. Grab samples must be used for oil and grease, temperature, pH, cyanide, total phenols, and volatile organic compounds. Temperature and pH must be an instantaneous measurement.
- D. For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in Sections 13.10.601 and 13.10.603, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For the reports required by Section 13.10.604, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

13.10.612 Date of reports received.

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not postmarked the date of receipt of the report shall govern.

13.10.613 Recordkeeping.

- A. Industrial users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the industrial user independent of such requirements, and documentation associated with BMPs.
- B. Records shall include, at a minimum, the date, exact place, method, and time of sampling, and the name of the person(s) taking the sample(s); the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses.
- C. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the industrial user, or where the industrial user has been specifically notified of a longer retention period by the director.

13.10.614 Signature of authorized representative; certification.

- A. All documents submitted to the director pursuant to this chapter shall be signed by an authorized representative of the industrial user as defined in Section 13.10.104.
- B. The following certification shall be required on all industrial user applications and reports, and may be required by the director on surveys and questionnaires:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. Compliance Monitoring

13.10.701 Right of entry: inspection and sampling.

- A. The director shall have the right to enter the premises of any industrial user to determine whether the industrial user is complying with all requirements of this chapter and any control mechanism or order issued hereunder. Industrial users shall allow the director ready access to all parts of the premises for the purposes of inspection, identifying the character or volume of pollutants, sampling, records examination and copying, photographs, noncompliance investigation, and the performance of any additional duties.
- B. Where an industrial user has security measures in force that require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the director will be permitted to enter without delay for the purposes of performing specific responsibilities.
- C. The director may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.
- E. Unreasonable delays in allowing the director access to the industrial user's premises shall be a violation of this chapter.

13.10.702 Search warrants.

If the director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample to verify compliance with this chapter or any control mechanism or order issued hereunder, or any other pretreatment standard or requirement, or to protect the overall public health, safety, and welfare of the community, the director may seek issuance of a search warrant from the court with appropriate jurisdiction.

13.10.703 Tampering prohibited.

It shall be unlawful to interfere with or remove, alter, or tamper with sampling, monitoring, or other pretreatment equipment.

VIII. Confidential Information

13.10.801 Confidential information.

Information and data on an industrial user obtained from reports, surveys, permit applications, wastewater discharge permits, monitoring programs, and inspection and sampling activities shall be available to the public without restriction, subject to the provisions of the

Colorado open records law. Wastewater constituents and characteristics and other effluent data, as defined at 40 C.F.R. 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

IX. Publication of Industrial Users in Significant Noncompliance

13.10.901 Publication of industrial users in significant noncompliance.

The director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of the industrial users that, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term “significant noncompliance” shall be applicable to all significant industrial users, and any other industrial user that violates sections (3), (4), or (8) of the definition of “significant noncompliance” set forth in Section 13.10.104.

X. Administrative Enforcement Remedies

13.10.1001 Notification of violation.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter or any control mechanism or order issued hereunder, or any other pretreatment standard or requirement, the director may serve upon the industrial user a written notice of violation. Within five (5) business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction of prevention thereof, to include specific required actions, shall be submitted by the industrial user to the director. Submission of such a plan in no way relieves the industrial 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 director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

13.10.1002 Consent orders.

The director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial 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 Section 13.10.1004 and Section 13.10.1005 and shall be judicially enforceable.

13.10.1003 Show cause hearing.

- A. The director may order an industrial user that has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the industrial user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the industrial user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally, by registered or certified mail (return receipt requested), or by

commercial carrier at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the industrial user as defined in Section 13.10.104 and required by Section 13.10.614. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

- B. The director may conduct the hearing and take the evidence, or may designate a representative to:
 - 1. Issue, in the name of the director, a notice of hearing requesting the attendance and testimony of witnesses and the production of relevant evidence;
 - 2. Take the evidence; and
 - 3. Transmit an audio recording or written transcript of any testimony, and any other evidence, to the director, together with a written recommendation for action thereon.
- C. Upon review of the evidence, the director shall make written findings of fact and conclusion upholding, modifying, or striking the proposed enforcement action.

13.10.1004 Compliance orders.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may issue an order to the industrial user responsible for the discharge directing that the industrial user come into compliance within a specific time. If the industrial user does not come into compliance within the time provided, water or wastewater service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the industrial user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

13.10.1005 Cease and desist orders.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, or that the industrial user's past violations are likely to recur, the director may issue an order to the industrial user directing it to cease and desist all such violations and directing the industrial user to: (a) immediately comply with all requirements; and (b) take such appropriate remedial or preventative 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 industrial user.

13.10.1006 Administrative fines.

- A. When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may fine such industrial user an amount not to exceed one thousand dollars (\$1,000.00) per day, per violation. In the case

of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

- B. Industrial users desiring to dispute such fines must file a written request for the director to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Such request shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and a request for a hearing.
- C. Fines assessed under this section shall be included on the industrial user's utility bill.
- D. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

13.10.1007 Emergency suspensions.

- A. The director may immediately suspend an industrial user's discharge, after written or verbal notice to the industrial user, whenever such suspension is necessary to stop an actual or threatened discharge that reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The director may also immediately suspend an industrial user's discharge, after written or verbal notice and an opportunity to respond, that threatens to interfere with the operation of the POTW, or that presents, or may present, an endangerment to the environment.
- B. Any industrial user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the water or wastewater connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The director may allow the industrial user to recommence its discharge when the industrial user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless termination proceedings in Section 13.10.1008 are initiated against the industrial user.
- C. An industrial 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 director prior to the date of any show cause hearing under Section 13.10.1003, or termination hearing under Section 13.10.1008.
- D. Nothing herein shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

13.10.1008 Termination of discharge.

- A. In addition to the provisions in Section 13.10.505 any industrial user who violates the following conditions is subject to discharge termination:
 - 1. Violation of control mechanism conditions;
 - 2. Failure to accurately report the wastewater constituents and characteristics of its discharge;
 - 3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
 - 4. Refusal of reasonable access to the industrial user's premises for the purpose of inspection, monitoring, or sampling; or

5. Violation of the pretreatment standards in this chapter.
- B. The industrial user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 13.10.1003 why the proposed action should not be taken. Exercise of this option by the director shall not be a bar to, or a prerequisite for, taking any other action against the industrial user.

XI. Judicial Enforcement Remedies

13.10.1101 Injunctive relief.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the appropriate court for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the control mechanism, order, or other requirement imposed by this chapter on activities of the industrial user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial 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 an industrial user.

13.10.1102 Civil penalties.

- A. An industrial user who has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty of one thousand dollars (\$1,000.00) 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 violation.
- B. The director 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.
- C. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, without limitation, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.

13.10.1103 Criminal prosecution.

- A. An industrial user who willfully or negligently violates any provision of this chapter, a control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) per violation, per day.
- B. An industrial user who willfully or negligently introduces any substance into the POTW that causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of up to one thousand dollars (\$1,000) per violation, per day. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

- C. An industrial 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 chapter, a control mechanism, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine not more than one thousand dollars (\$1,000.00) per violation, per day.

13.10.1104 Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant industrial user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the director may take other action against any industrial user when the circumstances warrant.

XII. Supplemental Enforcement Action

13.10.1201 Performance bonds.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to comply with any provision of this chapter, a previous control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, unless such industrial user first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

13.10.1202 Liability insurance.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to comply with any provision of this chapter, a previous control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, unless the industrial user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

13.10.1203 Payment of outstanding charges, fees, fines, and penalties.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to pay any outstanding charges, fees, fines, or penalties incurred as a result of any provision of this chapter, a previous control mechanism, or order issued hereunder.

13.10.1204 Suspension of water or wastewater service.

- A. The director may suspend water or wastewater service when such suspension is necessary, in the opinion of the director, to stop an actual or threatened discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment, causes interference to the POTW, or causes the POTW to violate any condition of its CDPS permit.
- B. Any industrial user notified of suspension of its water or wastewater service or their control mechanism shall immediately stop the discharge. In the event of a failure of the industrial user to comply voluntarily with the suspension order, or in the event notification has been attempted but not accomplished, the director may take such steps as deemed necessary, including the entry onto private property, for the purpose of

immediately severing the sewer connection or otherwise ceasing the flow, to prevent or minimize damage to the POTW or endangerment to any individual. The city and its officers, agents, and employees shall not be liable for any damages resulting from any such entry or service suspension. The director may reinstate the water or wastewater service upon proof of the cessation of the noncomplying discharges. A detailed written statement submitted by the industrial user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the director within fifteen (15) days of the date of suspension.

- C. The industrial user shall pay all costs and expenses for any such suspension and restoration of service.

13.10.1205 Public nuisances.

A violation of any provision of this chapter, a control mechanism, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person creating a public nuisance shall be subject to the provisions of the city code governing such nuisances, including reimbursing the city for any costs incurred in removing, abating, or remedying said nuisance.

XIII. Affirmative Defenses to Discharge Violations

13.10.1301 Upset.

- A. For the purposes of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection C. below are met.
- C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. An upset occurred and the industrial user can identify the cause(s) of the upset;
 - 2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
 - 3. The industrial user has submitted the following information to the director within twenty four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - i. A description of the indirect discharge and cause of noncompliance;
 - ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

- D. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have burden of proof.
- E. Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- F. Industrial users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

13.10.1302 Bypass.

- A. For the purposes of this section:
 - 1. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
 - 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. An industrial user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of subsections C. and D. below.
- C. Bypass notifications. If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten (10) days before the date of the bypass, if possible. An industrial user shall provide verbal notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- D. Bypass. Bypass is prohibited, and the director may take an enforcement action against an industrial user for a bypass, unless:
 - 1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - 2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

3. The industrial user submitted notices as required in subsection C. above.

XIV. Wastewater Pretreatment Charges and Fees

13.10.1401 Pretreatment charges and fees.

The city may adopt reasonable charges and fees for reimbursement of the costs of operating the city's pretreatment program in an amount as established by resolution of the city council adopted after two readings. These charges and fees, which shall be included on the industrial user's utility bill, may include the following:

- A. Fees for wastewater discharge permit applications, including the cost of processing such applications;
- B. Charges for monitoring, inspection, and surveillance procedures, including the cost of collection and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by industrial users;
- C. Charges for reviewing accidental spill/slug control procedures and construction;
- D. Charges for the cost of publication in the newspaper for annual significant noncompliance notifications;
- E. Fees for filing appeals; and
- F. Other charges and fees as the city may deem necessary to carry out the requirements contained herein.

13.10.1402 Cost recovery.

- A. Any industrial user that violates any of the provisions of this chapter or that discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the POTW shall be liable to the city for any expense, loss, or damage caused by such violation or discharge, including, without limitation, all costs and expenses related to suspending or terminating service and costs of labor, materials, and specified fees.
- B. The city shall charge the industrial user for the cost incurred by the city for any monitoring surveillance, cleaning, repair, or replacement work caused by the violation or discharge and for costs incurred by the city in investigating the violation or discharge and in enforcement this chapter, including reasonable attorneys' fees, court costs, and other expenses of litigation.
- C. In the event that an industrial user discharges pollutants that cause the city to violate any condition of its CDPS permit and the city is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine.

13.10.1403 Lien.

All fines, charges, fees, costs, and expenses imposed by this chapter shall constitute a lien upon the property where the wastewater is used from the time of use and shall be a perpetual charge against said property until paid, and in the event the charges are not paid when due, the city clerk may certify such delinquent charges to the treasurer of Larimer County and the charges may be collected in the same manner as though they were part of the taxes.

XV. Miscellaneous Provisions

13.10.1501 Leased property.

Where the industrial user is leasing the property subject to the control mechanism, the director shall notify the record owner of the property where the industrial user is in significant noncompliance with applicable pretreatment standards and requirements. The property owner shall be responsible for ensuring that the industrial user is in compliance with this chapter and shall be subject to enforcement under this chapter for noncompliance.

13.10.1502 Enforcement response plan.

The director is authorized to develop and maintain an enforcement response plan containing procedures indicating how the director will investigate and respond to industrial user noncompliance in conformance with this chapter and all applicable state and federal laws and regulations.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon the latter of written approval from the U.S. Environmental Protection Agency, or January 1, 2013.

ADOPTED this _____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

FIRST READING September 4, 2012

SECOND READING _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT
CHAPTER 13.10 CONCERNING PRETREATMENT**

WHEREAS, Chapter 13.10 of the Loveland Municipal Code sets forth the requirements for discharges into the City of Loveland's Publicly Owned Treatment Works ("POTW") and enables the City to comply with applicable state and federal laws, including the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the General Pretreatment Regulations, 40 C.F.R. Part 403; and

WHEREAS, the United States Environmental Protection Agency ("EPA") conducted a routine audit of the City's pretreatment program and recommended that the City amend Chapter 13.10 to respond to the EPA's audit findings; and

WHEREAS, the City's Pretreatment Coordinator has proposed changes to Chapter 13.10 to respond to the EPA's audit findings, to update local discharge limitations, and to implement certain sector control programs, such as a dental mercury control program; and

WHEREAS, pursuant to the EPA's audit requirements, the proposed changes to Chapter 13.10 were submitted to the EPA on August 1, 2012 for review and approval; and

WHEREAS, on August 15, 2012, the proposed changes were reviewed by the Loveland Utilities Commission, which adopted a motion recommending that the City Council adopt an ordinance amending Chapter 13.10 to incorporate the proposed changes; and

WHEREAS, the City Council desires to amend Chapter 13.10 to incorporate the proposed changes, subject to approval by the EPA.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Chapter 13.10 of the Loveland Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

Chapter 13.10

WASTEWATER ~~SYSTEM~~ PRETREATMENT PROGRAM

I. General Provisions

- 13.10.101 Purpose and policy.
- 13.10.102 Administration.
- 13.10.103 Abbreviations.
- 13.10.104 Definitions.

II. General Sewer Use Requirements

- 13.10.201 Legal authority.
- 13.10.202 Prohibited discharge standards.
- 13.10.203 National categorical pretreatment standards.
- 13.10.204 State pretreatment standards.
- 13.10.205 Local limits.
- 13.10.206 City's right of revision.
- 13.10.207 Dilution.

III. Pretreatment of Wastewater

- 13.10.301 Pretreatment facilities.
- 13.10.302 Additional pretreatment measures.
- 13.10.303 Accidental discharge-; slug discharge control plans.
- 13.10.304 ~~Hauled waste.~~
- ~~13.10.305 Fats, Oil, and Grease Management.~~
- Best management practices.
- 13.10.305 Sector control programs.

IV. Wastewater Discharge ~~Permit~~Permits

- 13.10.401 ~~Permit~~Wastewater analysis.
- 13.10.402 Wastewater discharge permit requirement.
- ~~13.10.402 Discharge~~403 Wastewater discharge permitting.
- ~~13.10.403 Permit~~404 Wastewater discharge permit application contents.
- ~~13.10.404 Wastewater analysis.~~
- 13.10.405 ~~Signature and certification.~~
- ~~13.10.406 Permit~~Wastewater discharge permit decisions.

V. Wastewater Discharge Permit Issuance Process

- 13.10.501 ~~Permit~~Wastewater discharge permit duration.
- 13.10.502 ~~Permit~~Wastewater discharge permit contents.
- 13.10.503 ~~Permit appeals.~~Wastewater discharge permit
- ~~13.10.504 Permit~~ modification.
- 13.10.504 Wastewater discharge permit transfer.
- ~~13.10.505 Permit transfer.~~Wastewater discharge permit revocation.
- 13.10.506 ~~Permit revocation.~~Wastewater discharge permit reissuance.
- 13.10.507 ~~Permit reissuance.~~
- ~~13.10.508 Other~~Waste received from other jurisdictions.

VI. Reporting Requirements

13.10.601	Baseline monitoring reports.
13.10.602	Compliance schedule; <u>progress reports.</u>
13.10.603	Reports on compliance; <u>with categorical pretreatment standard deadline.</u>
13.10.604	Compliance <u>Periodic compliance</u> reports.
13.10.605	Reports of changed conditions.
13.10.606	Reports of potential problems.
13.10.607	Reports and information.
13.10.608	Notice of violation; repeat sampling and reporting.
13.10.609	Discharge <u>Notification of the discharge</u> of hazardous waste.
13.10.610	Analytical requirements.
13.10.611	Sample collection.
13.10.612	Reports <u>Date of reports</u> received.
13.10.613	Record-keeping <u>Recordkeeping.</u>
<u>13.10.614</u>	<u>Signature of authorized representative; certification.</u>

VII. Compliance Monitoring

13.10.701	Right of entry: inspection and sampling.
13.10.702	Search warrants.
<u>13.10.703</u>	<u>Tampering prohibited.</u>

VIII. Confidential Information ~~Received~~

13.10.801	Confidentially.
	<u>Confidential information.</u>

IX. Publication of Industrial Users in Significant Noncompliance

13.10.901	Publication;
13.10.902	Criteria <u>of industrial users in significant noncompliance.</u>

~~XIX.~~ Administrative Enforcement Remedies

13.10.111	Penalties for violations.
<u>13.10.1001</u>	<u>Notification of violation.</u>
<u>13.10.1002</u>	<u>Consent orders.</u>
<u>13.10.1003</u>	<u>Show cause hearing.</u>
<u>13.10.1004</u>	<u>Compliance orders.</u>
<u>13.10.1005</u>	<u>Cease and desist orders.</u>
<u>13.10.1006</u>	<u>Administrative fines.</u>
<u>13.10.1007</u>	<u>Emergency suspensions.</u>
<u>13.10.1008</u>	<u>Termination of discharge.</u>

XI. Judicial Enforcement Remedies

<u>13.10.1101</u>	<u>Injunctive relief.</u>
<u>13.10.1102</u>	<u>Civil penalties.</u>
<u>13.10.1103</u>	<u>Criminal prosecution.</u>
<u>13.10.1104</u>	<u>Remedies nonexclusive.</u>

XII. Supplemental Enforcement Action

- ~~13.10.121~~ ~~Emergency suspensions.~~
1201 Performance bonds.
~~13.10.122~~ ~~Water supply severance~~ 1202 Liability insurance.
~~13.10.123~~ ~~Inspection fee.~~
~~13.10.1203~~ Payment of outstanding charges, fees, fines, and penalties.
~~13.10.1204~~ Suspension of water or wastewater service.
~~13.10.1205~~ Public nuisances.

XIII. Affirmative Defenses to Discharge Violations

- ~~13.10.131~~ 1301 Upset.
~~13.10.132~~ ~~Affirmation defense.~~
~~13.10.133~~ 1302 Bypass.

XIV. Wastewater ~~Miscellaneous Provisions~~

- ~~13.10.141~~ ~~Pretreatment charges~~ Charges and fees.
Fees
~~13.10.142~~ ~~Severability.~~ 1401 Pretreatment charges and fees.
~~13.10.143~~ ~~Fraud and false statements.~~
~~13.10.144~~ 1402 Cost recovery.
~~13.10.1403~~ Lien.

XV. Miscellaneous Provisions

- ~~13.10.145~~ 1501 Leased property.
13.10.1502 Enforcement response plan.

I. General Provisions**13.10.101 Purpose and policy.**

- A. This ~~Chapter 13.10~~ chapter sets forth uniform requirements for all users of the ~~Publicly Owned Treatment Works~~ publicly owned treatment works for the City of Loveland and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. § 1251 et seq.) and the ~~General Pretreatment Regulations~~ general pretreatment regulations (40 C.F.R. Part 403). The objectives of this chapter are:
1. To prevent the introduction of pollutants into the POTW that will interfere with its operation;
 2. To prevent the introduction of pollutants into the POTW that will pass through ~~it~~ the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW;
 3. To prevent adverse impacts to worker health and safety;
 4. To provide for and promote the general health, safety, and welfare of Loveland's citizens;
 - 3.5. To enable the city to comply with its ~~National Pollutant Discharge Elimination System~~ (NPDES) — permit Colorado discharge permit system conditions,

- ~~sludge~~~~biosolids~~ use; and disposal requirements, and all other state and federal laws to which the POTW is subject; ~~and~~
- 4.6. To ~~promote reuse~~~~improve opportunities to recycle~~ and ~~recycling of~~~~reclaim municipal~~ and industrial wastewater and ~~sludges~~~~sludges~~ from the POTW; ~~and~~.
5. ~~To protect the POTW personnel who may be affected by wastewater and sludge in the course of their employment. (Ord. 5143 § 1, 2006; Ord. 4156 § 1 (part), 1996)~~
- B. ~~This Chapter 13.10~~~~This chapter applies to all users of the POTW, regardless of whether those users are located inside or outside the city limits, and including those who are users by contract or agreement.~~
- B-C. ~~This chapter~~ authorizes the issuance of ~~a~~-wastewater discharge ~~permit~~~~permits~~ and other control mechanisms; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires industrial user monitoring and reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. ~~(Ord. 5143 § 1, 2006; Ord. 4156 § 1 (part), 1996)~~

13.10.102 Administration.

Except as otherwise provided herein, the director shall administer, implement, and enforce the provisions of this ~~Chapter 13.10~~~~chapter~~. Any powers granted to or duties imposed upon the director may be delegated by the director to other water and power department personnel. ~~(Ord. 5143 § 1, 2006; Ord. 4156 § 1 (part), 1996)~~

13.10.103 Abbreviations.

The following abbreviations, when used in this ~~Chapter 13.10~~~~chapter~~, shall have the designated meanings:

<u>BOD</u>	<u>Biochemical oxygen demand</u>
<u>BMP</u>	<u>Best management practice</u>
<u>C</u>	<u>Celsius</u>
<u>C.F.R.</u> <u>CWA</u>	<u>Clean Water Act, 33 U.S.C. § 1251 et seq.</u> <u>Code of Federal Regulations</u>
<u>COD</u>	<u>Chemical oxygen demand</u>
<u>CDPS</u>	<u>Colorado discharge permit system</u>
<u>EPA</u>	<u>Environmental Protection Agency</u>
<u>F</u>	<u>Fahrenheit</u>
gpd	Gallons per day
gpm mg #	<u>Milligrams</u> <u>Gallons</u> per <u>liter</u> <u>minute</u>
mg/l <u>N</u> <u>PDES</u>	<u>National Pollutant Discharge Elimination System</u> <u>Milligrams per liter</u>
<u>POTW</u> <u>O&M</u>	<u>Operation and maintenance</u> <u>City of Loveland</u> <u>publicly owned treatment works</u>
RCRA	Resource Conservation and Recovery Act

~~(Ord. 5143 § 1, 2006; Ord. 4156 § 1 (part), 1996)~~

<u>s.u.</u>	<u>Standard units</u>
<u>TRC</u>	<u>Technical review criteria violations</u>
<u>TSS</u>	<u>Total suspended solids</u>
<u>U.S.C.</u>	<u>United States Code</u>

13.10.104 Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ~~Chapter 13.10~~chapter, shall have the meanings hereinafter designated.

“Amalgam” means any mixture or blending of mercury with another metal or with an alloy used in dental applications.

“Amalgam waste” means any waste containing mercury or residues from the preparation, use or removal of amalgam. This includes, but is not limited to, any waste generated or collected by chair-side traps, screens, filters, vacuum systems filters, amalgam separators, elemental mercury, and amalgam capsules.

~~A.~~ “Approval authority—The” means the appropriate EPA regional administrator, or upon approval of Colorado’s pretreatment program, the chief administrator of such pretreatment program.

~~B.~~ “Authorized representative of the industrial user—” means the following:

~~1.—~~(1) If the industrial user is a corporation:

~~a.—~~The the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy_ or decision-making functions for the corporation; or

~~b.~~ The the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions ~~which~~that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to ~~assure~~ensure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~2.~~ (2) If the industrial user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the industrial user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

~~3.~~ (4) The individuals described ~~in subparagraphs B.1. and B.2.,~~ above, may designate another authorized representative if the authorization: is in writing ~~by one of the individuals described in subparagraphs B.1. or B.2.;~~ specifies the individual or position responsible for the overall operation of the facility from which the discharge originates, ~~such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility,~~ or having overall responsibility for environmental matters for the company;_ and is submitted to the city.

~~C.~~ “Best management practices—BMPs—The” means the schedules of activities, prohibitions of practices, ~~operating, or~~ maintenance procedures, and other management practices

to implement the prohibitions listed at 40 C.F.R. 403.5(a)(1) and (b). BMPs include treatment requirements necessary to meet the objectives of this Chapter 13.10 and, operating procedures, and practices to prevent control plant site runoff, spillage or leaks, sludge or waste disposal, or reduce prohibited discharges into the POTW drainage from raw materials storage.

~~D.~~ “Biochemical oxygen demand—~~or BOD. The~~” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at ~~20 (centigrade)~~ 20° C, usually expressed as a concentration (e.g., mg/L).

~~E.~~ “Categorical ~~Pretreatment Standard or Categorical Standard—Any~~pretreatment standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Clean Water Act (33 U.S.C. § 1317) ~~which that~~ apply to a specific category of industrial users and ~~which that~~ appear ~~in at~~ 40 C.F.R. Chapter I, Subchapter N, Parts 405– – 471.

~~F.~~ “City—~~The~~” means the City of Loveland, Colorado.

“Categorical industrial user” means an industrial user subject to a categorical pretreatment standard or categorical standard.

“Chemical oxygen demand” means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

“Clean Water Act” means the Federal Water Pollution Control Act amendments of 1972, PL 92-500, and subsequent amendments, 33 U.S.C. Section 1251 et seq.

~~G.~~ “Composite sample—~~A~~” means a sample formed either by continuous sampling or by mixing discrete samples. The sample may be a time proportional composite sample or a flow proportional composite sample. ~~In cases in which a~~ If composite ~~samplesampling~~ is not ~~obtainable, an appropriate technique then~~ a composite sample shall consist of a minimum of four ~~(4)~~ grab samples collected at equally spaced intervals.

“Control authority” means the entity directly administering and enforcing the pretreatment standards and requirements of this chapter. The director is the control authority for the POTW.

“Control mechanism” means those mechanisms used to control the discharges of significant industrial users and other industrial users of the POTW. Control mechanisms may include wastewater discharge permits, BMPs, written authorizations to discharge, liquid waste hauler permits, and other requirements enforceable under this chapter.

~~H.~~ “Daily maximum ~~discharge limit—The maximum—~~” means the allowable discharge limit of a pollutant during a calendar day ~~determined by the~~. Where the daily maximum limit is expressed in units of mass, the allowable discharge limit is the total mass discharged over the course of a calendar day. Where the daily maximum limit is expressed in terms of a concentration, the allowable discharge limit is the arithmetic average of all measurements—measurement of the pollutant concentration derived from all measurements taken that day.

“Day” or “days” means calendar days except where otherwise noted.

“Dental facility” means any facility used for the practice of dentistry or dental hygiene that discharges wastewater containing amalgam.

~~I.~~ “Director—~~The~~” means the director of the department of water and power or his or her duly authorized representative.

~~J.~~ “Domestic wastewater—(i) Wastewater from normal residential activities including, but not limited to, wastewater—” or “domestic wastestream” means liquid waste from kitchen, bath, and laundry facilities; (ii) wastewater noncommercial preparation, cooking, and

handling of food, or liquid waste containing only human excrement and similar matter from the personal-sanitary conveniences (e.g., toilets, showers, bathtubs, ~~fountains, noncommercial sinks, and similar structures~~) of dwellings or commercial, industrial, or institutional buildings, provided that the wastewater exhibits characteristics that are similar to those of wastewater from normal residential activities.

~~K.~~ “Enforcement Response Plan—The response plan” means the written plan that sets forth the specific actions the city will take to investigate and respond to violations of this Chapter 13.10 chapter.

~~L.~~ “Environmental Protection Agency or EPA—The” means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director regional water management division director, or other duly authorized official of said agency.

“Existing source” means any source of discharge that is not a new source.

~~M.~~ “Fats, oil, and grease or FOG—A semi solid, viscous liquid—” means nonpetroleum organic polar compound compounds derived from animal or plant sources such as fats, nonhydrocarbons, fatty acids, soaps, waxes, and oils that contains contain multiple carbon chain triglyceride molecules.- These substances are detectable and measurable using analytical test procedures established in 40 C.F.R. Part 136.

~~N. Food service establishment or FSE—A facility engaged in preparing or serving food. This term does not include single family residences.~~

“Flow proportional sample” means a composite sample where each discrete sample is collected based upon the flow (volume) of wastewater.

“Food service establishment” means any nondomestic discharger where preparation, manufacturing, or processing of food occurs including, but not limited to, restaurants, cafes, fast food outlets, pizza outlets, delicatessens, sandwich shops, coffee shops, schools, nursing facilities, assisted living facilities, and other facilities that prepare, service, or otherwise make foodstuff available for consumption.

~~O.~~ “Grab sample—A” means a sample which that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

~~P.~~ “Grease interceptor—An outside, underground, multi-compartment” means a large in-ground tank designed intended to reduce remove, hold, or otherwise prevent the amount passage of fats, oil, and grease in the wastewater discharged to the POTW:- by gravity separation considering calculated retention times and volumes for each facility. Such interceptors include baffle(s) and a minimum of two (2) compartments and generally are located outside a building.

~~Q.~~ “Grease trap—An indoor” means a device designed to reduce the amount of fats, oil, and grease in wastewater discharged into the POTW. Grease traps usually serve no more than four (4) fixtures and generally are located inside a building.

~~R.~~ “Grease removal device—A” means a grease trap, grease interceptor, or other device (i.e., hydromechanical) that is designed, constructed, and intended to remove, hold, or otherwise prevent the passage of fats, oil, and grease to the sanitary sewer.

~~S.~~ “Hauled waste—Any domestic or nondomestic” means any waste from holding tanks, including, without limitation, chemical toilets, vacuum pump tank trucks, and septic tanks. Hauled waste does not include domestic waste from an individual’s recreational vehicle (e.g., camper or trailer).

~~T.~~ “Indirect discharge—~~or discharge—The—~~” means the introduction by, without limitation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, or dumping of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Clean Water Act.

“Individual control mechanism” means a control mechanism (i.e., permit) that only is issued to a specific industrial user.

~~U.~~ “Industrial user—~~or user—~~” means a source of indirect discharge.

~~V.~~ “Instantaneous measurement—~~For monitoring requirements, limit~~” means the maximum concentration of a ~~single reading, observation, pollutant~~ or measurement independent of the industrial flow rate and the duration of the sampling event a pollutant property allowed to be discharged at any time.

~~W.~~ “Interference—~~A~~” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, ~~both:~~

- ~~1.~~ inhibits or disrupts the POTW, its treatment processes or operations, ~~or its~~ ~~sludgebiosolids~~ processes, use, ~~or disposal;~~ and
- ~~2.~~ therefore is a cause of a violation of the city’s ~~NPDESCDPS~~ permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory or regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Clean Water Act; the Solid Waste Disposal Act, including Title II, commonly referred to as the Resource Conservation and Recovery Act-; any state regulations contained in any state ~~sludgebiosolids~~ management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

~~X.~~ Local limit—~~Limit developed for a specific pollutant based on the quantity that the POTW can accept.~~

“Local limit” means the specific discharge limits and BMPs developed, applied, and enforced by the city upon significant industrial users to implement the general and specific discharge prohibitions listed at 40 C.F.R. 403.5(a)(1) and (b).

~~Y.~~ “Monthly average —~~The maximum limit~~” means the highest allowable discharge average of a pollutant “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month ~~determined divided~~ by the arithmetic mean number of all samples collected “daily discharges” measured during the calendar that month.

“Nanomaterials” means, without limitation, an engineered product developed using a microscopic particle(s) whose size is measured in nanometers.

~~Z.~~ “New source” means the following:

- ~~1.~~ (1) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act, ~~which that~~ will be applicable to such source if such standards are thereafter promulgated in accordance with that ~~section~~ Section, provided that:
 - ~~a.~~ The ~~(a) the~~ building, structure, facility, or installation is constructed at a site at which no other source is located; ~~(b) or~~
 - ~~b.~~ The ~~the~~ building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; ~~(c) or~~

e. ~~The~~the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

~~2.~~ (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria ~~of subsection Z.in (1-)(b-)~~ or ~~(c-)~~ above but otherwise alters, replaces, or adds to existing process or production equipment.

~~3.~~ (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

a. (a) begun, or caused to begin, as part of a continuous onsite construction program:

i. ~~—~~, (i) any placement, assembly, or installation of facilities or equipment; ~~or~~

ii. ~~—~~ (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities ~~which~~that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. (b) entered into a binding contractual obligation for the purchase of facilities or equipment ~~which~~that is intended to be used in its operation within a reasonable time. Options to purchase or contracts ~~which~~that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

~~AA. Nondomestic wastewater—Water carrying wastes from any process or activity of business, trade, manufacturing, industry, or service.~~

~~BB. “Oil and sand removal device—Trapseparator” means a trap, interceptor, or other city approved device designed, constructed, and intended to remove-, hold, or otherwise prevent the passage of petroleum products, sand, sediment, sludge, grease, or similar substances in the wastewater discharged to the POTW by gravity separation considering calculated retention times and volumes for each facility. Such interceptors include baffle(s) and a minimum of two (2) compartments and generally are located outside a building.~~

~~CC. “Pass through—A” means a discharge which~~that exits the POTW into waters of the United States in quantities or concentrations ~~which~~that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city’s ~~NPDESCDPS~~ permit, including an increase in the magnitude or duration of a violation.

~~DD. “Person—Any” means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.~~

~~“pH” means a measure of the acidity or alkalinity of a solution, expressed in standard units.~~

~~EE. “Pollutant—Includes, but is not limited to,” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wasteswaste, chemical wasteswaste, biological materialsmaterial, radioactive materialsmaterial,~~

heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial wastes, and certain characteristics of wastewater (e.g., ~~pH, temperature,~~ TSS, turbidity, color, BOD, COD, toxicity, or odor~~); and other substance or material (e.g., nanomaterial) as determined by the director.~~

~~FF. “Pretreatment—The” or “treatment” means the~~ reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of ~~discharging or otherwise,~~ introducing such pollutants into the POTW. ~~The~~This reduction or ~~alternational~~alteration may be obtained by physical, chemical, or biological processes, process changes, or ~~by~~ other means, except ~~as prohibited by diluting the concentration of the pollutants unless allowed~~ by Section 13.10.207. ~~Appropriate~~an applicable pretreatment ~~technology includes control equipment, such as equalization tanks or facilities for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the standard.~~POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 C.F.R. 403.6(e).

~~GG. “Pretreatment requirements—Any” means any~~ substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on ~~an~~an industrial user.

~~Pretreatment standard or standard—Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40—~~“Pretreatment standards” or “standards” means prohibited discharge standards, categorical pretreatment standards, and local limits. There are two different circumstances in which BMPs may be pretreatment standards. The first is when the director establishes BMPs to implement the prohibitions of Section 13.10.202 or the local limits of Section 13.10.205. The second is when the BMPs are categorical pretreatment standards established by the EPA.

“Publicly owned treatment works” means any devices, facilities, structures, equipment, or works owned or used by the city for the purpose of the transmission, storage, treatment, recycling and reclamation of industrial and domestic wastes, or necessary to recycle or reuse water at the most economical cost over the estimated life of the system, including intercepting sewers, outfall sewers, collection lines, pumping, power and other equipment, and their appurtenances and excluding service lines; extensions, improvements, additions, alterations or any remodeling thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including the land and sites that may be acquired, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from the treatment, or reuse of treated water for irrigation, recreation or commercial purposes. It does not include the stormwater system, a separate municipal operation that is not part of POTW. The municipality, as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

~~HH. “C.F.R. 403.5.~~

~~H. Prohibited discharge standards or prohibited discharges — Absolute prohibitions against the discharge of certain substances as set forth in Section 13.10.202.~~

~~JJ. Publicly owned treatment works or POTW— A treatment works, as defined in Section 212 of the Clean Water Act (33 U.S.C §1292) which is owned by the city. This~~

~~definition includes any devices or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature and any sewers, pipes, and other conveyances which convey wastewater to the treatment plant.~~

~~KK.~~ Significant Industrial User or SIU—industrial user” means, except as provided in (3) and (4) below:

~~1.~~ 1. AH(1) An industrial user subject to categorical pretreatment standards ~~under 40 C.F.R. 403.6 and 40 C.F.R. Chapter I, Subchapter N;~~ or

~~2. Any other~~ (2) An industrial user that:

~~a.~~ (a) discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

~~b.~~ (b) contributes a process wastestream ~~which~~that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

~~c.~~ (c) is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.

(3) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred (100) gpd of total categorical wastewater (excluding sanitary, non-contact cooling, and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met: (a) the industrial user, prior to the city’s finding, has consistently complied with all applicable categorical pretreatment standards and requirements; (b) the industrial user annually submits the certification statement required at 40 C.F.R. 403.12(q) together with any additional information necessary to support the certification statement; and (c) the industrial user never discharges any untreated concentrated wastewater.

~~3.~~ (4) Upon a finding that ~~a~~the industrial user meeting the criteria in ~~subsection AK.(2-)~~ above has no reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from ~~a~~an industrial user, and in accordance with procedures ~~in~~at 40 C.F.R. 403.8(f)(6), determine that such industrial user should not be considered a significant industrial user.

~~Slug~~ “Significant noncompliance” means an industrial user that violates one or more of the following criteria:

(1) Chronic violations of wastewater discharge —limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limitations, for the same pollutant parameter.

(2) Technical review criteria violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of a numeric pretreatment standard or requirement including instantaneous limitations multiplied by the applicable TRC (TRC = one and four-tenths (1.4) for BOD, TSS, fats, oil, and grease, and one and two-tenths (1.2) for all other pollutants except pH).

(3) Any other violation of a pretreatment standard or requirement (daily maximum limit, long term average limit, instantaneous limit, narrative standard, or BMP) that the director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent a discharge.

(5) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide, within thirty (30) days after the due date, any required reports such as baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations, which may include a violation of BMPs, that the director determines will adversely affect the operation or implementation of the pretreatment program.

~~LL.~~ "Spill" or "slug discharge" means any discharge at a flow rate or concentration which~~that~~ could cause a violation of the prohibited discharge standards in Section 13.10.202, or any discharge of a nonroutine, episodic nature, including, but not limited to, an accidental spill or ~~none~~~~customary~~non-customary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits, or ~~permit conditions~~control mechanism.

"Solids interceptor" means a device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of solid foodstuff (e.g., coffee grounds) to the sanitary sewer.

"Stormwater" means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

"Time proportional composite sample" means a sample of equal-volume aliquots taken at regular intervals throughout the sampling period.

"Total suspended solids" or "suspended solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

~~MM.~~ "Wastewater—~~Liquid~~" means liquid and water-carried industrial, domestic~~and nondomestic~~, or other polluted wastes from~~residential~~ dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, ~~whichthat~~ are contributed to the POTW.

~~NN.~~ "Wastewater treatment plant" or "treatment plant—~~That~~" means that portion of the POTW ~~whichthat~~ is designed to provide treatment (including recycling and reclamation) of ~~municipal sewage and industrial waste. (Ord. 5143 § 1, 2006; Ord. 4933 § 1 (part) 2004)~~wastewater.

II. General Sewer Use Requirements

13.10.201 Legal authority.

- A. The city operates pursuant to legal authority enforceable in federal, state, or local courts; ~~which that~~ authorizes or enables the city to apply and enforce the requirements of this ~~Chapter 13.10~~chapter and 40 C.F.R. Part 403. This authority allows the director to:
1. ~~deny~~Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants to the POTW by industrial users where:
 - a. ~~such~~Such contributions do not meet applicable federal, state, or local pretreatment standards and requirements; ~~or~~
 - b. ~~could~~Could cause the treatment plant to violate its NPDESCDPS permit; or
 - c. ~~could~~Could cause problems in the POTW.
 2. ~~control~~Control through permit, order, or similar means the wastewater contributions to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements.
 3. ~~require~~Require compliance with applicable pretreatment standards and requirements by industrial users.
 4. ~~identify and~~Identify, locate, and notify all possible industrial users ~~which that~~ might be subject to the pretreatment program. (~~Ord. 5143 § 1, 2006; Ord. 4156 § 2 (part), 1996~~)

13.10.202 Prohibited discharge standards.

- ~~1-A.~~ General prohibitions. No industrial user ~~may~~shall introduce or cause to be introduced into the POTW any pollutant(s) ~~which that~~ causes pass through or interference. These general prohibitions apply to all industrial users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.
- ~~2-B.~~ Specific prohibitions. No industrial user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
- ~~A.1.~~ Pollutants ~~which that~~ create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140° F (60° C) using the test methods specified ~~in~~at 40 C.F.R. 261.21;.
 - ~~B.2.~~ ~~Pollutants which will cause~~Wastewater having a pH less than five and one-half (5.5) or greater than eleven and one-half (11.5), or otherwise causing corrosive structural damage to the POTW, ~~but in no case discharges with a pH less than 5.0;.~~
 - ~~C.3.~~ Solid or viscous ~~pollutants~~substances in amounts ~~which that~~ will cause obstruction to the flow in the POTW resulting in interference;.
 - ~~D.4.~~ ~~Any pollutant~~Pollutants, including oxygen-demanding pollutants (*e.g.*, BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration ~~which that, either singly or by interaction with other pollutants,~~ will cause interference with the POTW;.
 - ~~E.5.~~ Wastewater having a temperature ~~which~~greater than 104° F (40° C), or that will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater ~~which that~~ causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C);.
 - ~~F.6.~~ Petroleum oil, ~~nonbiodegradable~~non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;.
 - ~~G.7.~~ Pollutants ~~which that~~ result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;.

- ~~H.8.~~ Any truckedTrucked or hauled pollutants, except at discharge points designated by the director in accordance with Section 13.10.304;~~;~~E.
- ~~I.9.~~ Noxious or malodorous liquids, gases, solids, or other wastewater ~~which~~that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewer for maintenance or repair;~~;~~
- ~~J.10.~~ Wastewater ~~which~~that imparts color ~~which~~that cannot be removed by the treatment plant process, such as, by not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment ~~plant~~plant's effluent;~~;~~
- ~~K.11.~~ Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;~~;~~ or as otherwise limited by the director.
- ~~L.12.~~ Sludges, screenings, or other residues from the pretreatment of industrial wastes;~~;~~
- ~~13.~~ Wastewater causing, alone or in conjunction with other sources, the treatment ~~plant~~plant's effluent to fail a toxicity test;~~;~~
- ~~13.14.~~ Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW or otherwise cause pass through or interference.
- ~~14.15.~~ Wastewater causing two (2) readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the lower explosive limit of the meter;~~;~~
- ~~O.~~ Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW.
- ~~3.C.~~ Users processing, storing, or handling pollutantsPollutants, chemicals, substances, or wastewater prohibited by this Section 13.10.202section shall not be processed or stored in such a manner that they could be discharged to the POTW ~~may be required to develop a slug control plan in accordance with Section 13.10.303. (Ord. 5143 § 1, 2006; Ord. 4156 § 2 (part), 1996).~~

13.10.203 National categorical pretreatment standards.

~~The~~Significant industrial users must comply with the categorical pretreatment standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405- through 471 ~~are hereby incorporated.~~

- A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 C.F.R. 403.6(e)~~this section.~~
- B. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.
- ~~B.C.~~ When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director ~~may~~shall impose an alternate limit ~~using the combined wastestream formula at in accordance with~~ 40 C.F.R. 403.6(e).
- ~~C.D.~~ A categorical industrial user may ~~obtain~~apply for a net-/gross adjustment to a categorical pretreatment standard in accordance with 40 C.F.R. 403.15. ~~(Ord. 5143 § 1, 2006; Ord. 4156 § 2 (part), 1996)~~

13.10.204 State pretreatment standards.

State pretreatment standards and requirements adopted pursuant to the Colorado Water Quality Control Act shall apply in any case where they are more stringent than federal standards. (Ord. 5143 § 1, 2006; Ord. 4156 § 2 (part), 1996)

13.10.205 Local limits.

A. The following pollutant limits are established to protect against pass through and interference. No significant industrial user shall discharge wastewater containing in excess of the following daily maximum allowable discharge limits:— (all concentrations are total):

<u>Pollutant</u>		<u>Daily Maximum Limit</u>	
Arsenic	0.00027	Mg	l
	1	e	r
	5	r	e
	m	e	g
	g/l	u	g
Cadmium	0.08	Mg	l
	12	el	l
	mg/l	ye	l
		de	l
		mu	l
Chromium	1.40	Ni	l
	26	ek	l
	mg/l	el	l
			l
			l
<u>Copper</u>		<u>3.91 mg/l</u>	
<u>Cyanide</u>		<u>0.46 mg/l</u>	
<u>Iron</u>		<u>171 mg/l</u>	
<u>Lead</u>		<u>1.53 mg/l</u>	
<u>Mercury</u>		<u>0.0001 mg/l</u>	
<u>Molybdenum</u>		<u>0.88 mg/l</u>	
<u>Nickel</u>		<u>2.49 mg/l</u>	
Chromium	0.5	Selenium	0.3711 mg/l

(VI)	9		
	m		
	g		
	l		
€	1.	Silver—	0.191.50 mg/l
o	9	_____	
p	4		
p	m		
e	g		
r	l		
€	0.	Zinc	6.289.06 mg/l
y	6		
a	5		
n	m		
i	g		
d	l		
e			
-			

Lead—	0.92 mg/l	-	-
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~~All concentrations for the pollutants listed are for total unless indicated otherwise.~~

B. The above daily maximum limits may apply at the significant industrial user's end of process or where the significant industrial user's facility wastewater is discharged to the POTW.

C. The director may impose mass limitations in addition to, or in place of, the concentration-based limitations above.~~The director may develop limits for other users, as appropriate, to protect against pass through and interference. (Ord. 5143 § 1, 2006; Ord. 4156 § 2 (part), 1996)~~

13.10.206 City's right of revision.

The city reserves the right to establish, by ordinance, ~~resolution, in a wastewater discharge permit control mechanism,~~ or other appropriate means; more stringent or additional standards or requirements for any industrial user to protect the POTW.~~(Ord. 5143 § 1, 2006)~~ against pass through, interference, or as necessary, in the director's opinion, to protect the health and safety of POTW personnel or the general public.

13.10.207 Dilution.

~~Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no~~ No industrial user shall ever increase the use of process water; or in any way attempt to dilute a discharge; as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. ~~The director may impose mass limitations on an industrial user who is using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate. (Ord. 5143 § 1, 2006)~~

III. Pretreatment of Wastewater

13.10.301 Pretreatment facilities.

- A. ~~Users~~All industrial users shall provide wastewater treatment as necessary to comply with this ~~Chapter 13.10~~chapter and shall achieve compliance with ~~all~~applicable categorical pretreatment standards, local limits, BMPs, and the prohibitions set out in Sections 13.10.202 through 13.10.205 within the time limitations specified by the EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided, ~~and properly~~ operated, and maintained at the industrial user's expense. The director may require that detailed plans describing such facilities and operating procedures be submitted for review, ~~and shall~~ be acceptable to the city director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the industrial user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city director under the provisions of this ~~Chapter 13.10~~chapter.
- B. The director may require an industrial user to install sampling, monitoring, or other appropriate pretreatment equipment as necessary to ~~assure~~ensure compliance with the pretreatment standards and requirements. The equipment shall be installed, operated, and maintained at all times in a safe and proper operating condition by the industrial user at its own expense. ~~(Ord. 5143 § 1, 2006)~~
- C. Industrial users shall notify the director prior to any remodeling, or equipment modification or addition, that may result in an increase in flow or pollutant loading or that otherwise requires the facility to submit plans or specifications for approval through a building or zoning department, or any other formal approval process of a city, county, or other jurisdiction.

13.10.302 Additional pretreatment measures.

- A. Whenever deemed necessary, the director may require industrial users to restrict their discharge during peak or low flow periods, designate that ~~a user's~~certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic wastestreams from ~~industrial~~nondomestic wastestreams, and impose such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements of this ~~Chapter 13.10~~chapter.
- ~~B. Backflow prevention devices shall be installed and maintained by the user wherever there is a possibility of the user's process or activity contaminating the city water supply. Such devices shall be tested, inspected, and repaired as needed by the user at its expense.~~
- ~~C. Oil and sand removal devices and grease removal devices.~~
 - ~~1. Oil and sand removal devices shall be provided when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of oil, sand, or similar material; except that such devices shall not be required for residential users. All such devices shall be of type and capacity approved by the city and shall be so located to be easily accessible for cleaning and inspection. Such devices shall be inspected, cleaned, and maintained, as needed, by the user at its expense.~~
- ~~2.B. Grease removal devices shall be provided industrial user~~ in accordance with Section 13.10.305.Chapter 13.06.
- ~~D.C. Users~~Industrial users with the potential to discharge flammable substances may be required to install and maintain proper treatment equipment or an approved combustible gas detection meter.

~~E.D.~~ Individual water meters, sub-meters, or flow meters shall be installed where the director has determined it is necessary to ascertain flow data. Such devices shall be installed, tested, inspected, and repaired as needed by the industrial user at its expense. (~~Ord. 5143 § 1, 2006~~)

13.10.303 Accidental discharge; slug discharge control plans.

- A. Each industrial user shall provide protection from accidental discharge of substances that have a reasonable potential to violate the POTW's regulations, local limits, or CDPS permit conditions.
- B. The director shall evaluate whether a significant industrial user needs a plan or other ~~action~~control mechanism to control slug ~~discharged~~discharges within one (1) year of ~~being the date on which the industrial user is~~ designated a significant industrial user.
- C. The director may require any industrial user to develop, submit for approval, and implement a slug control plan ~~or best management practices plan.~~ If the director decides that a slug control plan is needed, the plan shall ~~address~~include, at a minimum, the following elements:
 1. Description of discharge practices, including nonroutine batch discharges;
 2. Description of stored chemicals;
 3. Procedures for immediately notifying the POTW director of any accidental or slug discharge, including ~~any discharge that would violate a prohibition under Section 13.10.202.B. with~~ procedures for follow-up written notification within five (5) days as required by Section 13.10.606; and
 4. ~~If necessary, procedures~~Procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.
- D. ~~A notice shall be posted in a prominent place advising which employees who to call in the event of a discharge described in subsection 13.10.303.A, above.~~ Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.
- E. Significant industrial users are required to notify the POTW immediately of any changes at their facilities affecting potential for a slug discharge. (~~Ord. 5143 § 1, 2006~~)

13.10.304 ~~Hauled waste~~Best management practices.

- ~~A. Any hauled waste meeting the definition of a RCRA hazardous waste as defined in 40 C.F.R 261 will not be accepted.~~
- A. The director may ~~accept hauled wastes on a case by case basis and may develop BMPs, or require such haulers an industrial user to obtain a wastewater discharge permit. Hauled waste is subject to all the requirements of this Chapter~~develop BMPs, to implement the prohibitions of Section 13.10.-202 and the local limits of Section 13.10.205. BMPs shall be considered pretreatment standards and local limits for purposes of this chapter and Section 307(d) of the Clean Water Act. Additionally, BMPs may be categorical pretreatment standards established by the EPA.

- ~~B. Hauled waste may only be discharged at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of each hauled load to ensure compliance with develop general BMPs that are applicable standards to categories of industrial users, categories of activities, or geographic areas.~~
- C. Elements of a BMP may include, but are not limited to:
1. Installation of treatment.
 2. Requirements for or prohibitions on certain practices or discharges.
 3. Requirements for the operation and maintenance of treatment equipment.
 4. Timeframes associated with key activities.
 5. Procedures for compliance certification, reporting, and records retention.
 6. Provisions for reopening and revoking BMPs.
- D. Any industrial user may be required to comply with BMPs. BMPs may be incorporated in categorical pretreatment standards, control mechanisms, or orders.

13.10.305 Sector control programs.

- A. General requirements.
1. The director may establish specific sector control programs for industrial users to control specific pollutants as necessary to meet the objectives of this chapter. Pollutants subject to these sector control programs shall generally be controlled using BMPs.
 2. The director shall implement procedures as necessary to identify industrial users for inclusion into applicable sector control programs.
 3. Facilities undergoing any physical change, change in operations, or other change that could change the nature, properties, or volume of wastewater discharge shall notify the director and may be required to submit specific documentation to ensure that current sector control program requirements are incorporated and implemented.
 4. The industrial user shall inform the director prior to:
 - a. Sale or transfer of ownership of the business;
 - b. Change in the trade name under which the business is operated; or
 - c. Change in the nature of the services provided that affect the potential to discharge sector control program pollutants.
 5. Inspections.
 - a. The director may conduct inspections of any facility with or without notice for the purpose of determining applicability and/or compliance with sector control program requirements.
 - b. If any inspection reveals non-compliance with any provision of a sector control program requirement, corrective action shall be required pursuant to the applicable sector control program.
 - c. Inspection results will be provided in writing to the facility.
 6. Closure. The director may require the waste hauler to provide a waste analysis of any load or closure of plumbing, treatment devices, storage components, containments, or other such physical structures that are no longer required for their intended purpose. Closure may include, for example, the removal of equipment, the filling in and/or cementing, capping, or plugging of the device or structure.
- B. Mercury best management practices.
1. These BMPs establish requirements for dental facilities for reducing the amount of

- amalgam waste discharged into the sanitary sewer. All dental facilities shall be required to comply with subsections A. and B. of this section as of July 1, 2013.
2. The city's BMPs include two general requirements:
- a. ~~waste tracking.~~ The dental facility must submit a completed amalgam waste registration form for every load with the city; and
 - b. The dental facility must implement the required BMPs.
- ~~B.~~ 3. Dental facilities that have not registered shall file a registration on a form provided by the director prior to discharge. (Ord. 5143 § 1, 2006)discharging any waste to the POTW generated from dental-related activities.
- ~~13.10.3054.~~ Annual BMP compliance certification. Dental facilities shall provide an annual certification to the city that the industrial user has implemented all required BMPs during the calendar year. This certification shall be submitted by January 28 of each year for the previous calendar year on a form provided by the director.
5. All dental facilities shall implement the following BMPs:
- a. International Organization for Standardization 11143 certified amalgam separators shall be installed and maintained according to manufacturer's specifications. Amalgam separators shall provide a clear view of the waste collected in the device (i.e., no "black box" type devices).
 - b. All amalgam separators shall be appropriately sized for the dental facility. The amalgam separator shall be installed so that all amalgam-contaminated wastewater will flow to the unit for treatment before being discharged.
 - c. All amalgam separators shall be located to provide easy access for cleaning and inspection.
 - d. Each dental facility shall inspect and maintain the amalgam separator at a frequency that would reasonably identify problems (e.g., leaks, early removal of sludge).
 - e. Use precapsulated amalgam alloy and implement practices to minimize the discharge of amalgam to any drain.
 - f. Properly dispose of all amalgam waste and maintain all records that contain sufficient information to verify proper off-site disposal.
 - g. Use line cleaners designed to minimize dissolution of amalgam. Bleach, chlorine-containing, or low acidic line cleaners are specifically prohibited.
 - h. Implement the BMPs provided by the American Dental Association.
 - i. The dental facility shall maintain records of amalgam recycling on site for at least three (3) years. These records shall include the date, the name and address of the facility to which any waste amalgam is shipped, and the amount shipped. These records may be periodically reviewed by the city.
- C. Fats, oil, ~~and grease management,~~ and solids requirements.
- A. Applicability. This Section 13.10.3051. The requirements established in this section shall apply to all food service establishments connected to the POTW when, in the opinion of the director, it is necessary to prevent fats, oil, and grease in quantities sufficient to cause sanitary sewer line restriction or necessitate increased, or proposing to connect to, the POTW maintenance.

- ~~1. New~~ 2. All food service establishments. ~~All new food service establishments shall be required to install a grease removal device as set forth in Section 13.10.305.B. prior to commencing that discharge to the POTW.~~
- ~~2. Existing food service establishments.~~
 - ~~A. Unless otherwise exempted under subsection A.2.b., below, all food service establishments in existence prior to November 1, 2004 shall install a grease removal device within the timeline specified by the director after notification that such a device is required. A grease removal device shall be required if:~~
 - ~~i. the food service establishment does not have a grease removal device and is discharging to the POTW wastewater containing fats, oil, and grease, or solids in quantities sufficient to cause sanitary sewer line restriction or necessitate increased POTW maintenance;~~
 - ~~ii. the existing grease removal device shall install a properly-sized grease removal device and/or solids interceptor. The director may require food service establishments to replace or upgrade the grease removal device or solids interceptor if either, in combination with best management practices BMPs, does not cause a reduction in the quantity of fats, oil, and grease sufficient to prevent sanitary sewer line restriction, or POTW maintenance; solids, or~~
 - ~~iii. the food service establishment changes in nature, adds fixtures or equipment, or is renovated in such a manner as to increase the likelihood of discharging to the POTW wastewater contributing fats, oil, and grease or solids in quantities sufficient to cause sanitary sewer line restriction or necessitate increased POTW maintenance.~~
 - ~~b. Existing food~~ Food service establishments that are unable to comply with this ~~Section 13.10.305~~ section due to site or plumbing constraints ~~which that~~ make compliance impossible or financially impracticable shall apply in writing to the director for an exemption, which may be granted by the director in his sole discretion. ~~-~~ The written request shall include the reason(s) why the food service establishment cannot comply with this ~~Section 13.10.305~~ section and steps the food service establishment will take to prevent sanitary sewer line restriction and increased POTW maintenance.
- ~~B. 3. Grease removal device requirements.~~
 - ~~1. Grease interceptors. Unless exempted under subsection B.2, below, food service establishments shall install grease interceptors. a. Grease interceptors shall be seven hundred fifty (750) gallon minimum capacity and provide a minimum of thirty (30) minutes retention time at total peak flow and must be maintained and installed in accordance with manufacturer's instructions and all applicable laws. The maximum size shall be two thousand, five hundred (2,500) gallons; a. A series of interceptors may be necessary for grease interceptor capacities greater than two thousand, five hundred (2,500) gallons based on cleaning and maintenance frequency. Grease interceptors shall be located to provide easy access for cleaning and inspection.~~
 - ~~B. Grease traps A food service establishment may install a grease trap in satisfaction of the requirements set forth in subsection A., above, if the director determines that the food service establishment is discharging to the POTW wastewater containing fats, oil, and grease in such small amounts that a grease interceptor is not warranted or that~~

- ~~installation of a grease interceptor is not feasible. At minimum, grease traps shall be fifty (50) gpm flow rated or provide 100 pound grease retention and must be maintained and installed in accordance with manufacturer's instructions and all applicable laws. Grease traps shall be located to provide easy access for cleaning and inspection. A flow restriction device shall be placed upstream of the grease trap and must be accessible for cleaning and inspection.~~
- b. Grease traps, when permitted, shall be fifty (50) gpm flow rated or provide one hundred (100) pound grease capacity. Grease traps require a flow restriction device.
- 3.c. Other grease removal devices may be allowed by the director if it is shown that an alternative pretreatment technology is equally effective in controlling the discharge of fats, oil, and grease. ~~The director will evaluate the proposed use of other grease removal devices on a case by case basis and set appropriate maintenance and recording keeping requirements as needed.~~
- d. Grease removal devices shall be located to provide easy access for cleaning and inspection.
- 4.e. Unless directed otherwise, a professional engineer registered in the State of Colorado shall properly size and provide documentation to the citydirector to support the proposed grease removal device or solids interceptor size.
- 5.Certification. f. If required by the citydirector, an engineer licensed by the State of Colorado shall file a written, signed certification with the director stating that the required grease removal device or solids interceptor has been installed and all sources of fats, oil, ~~and grease,~~ or solids are discharging to the device before discharging wastewater to the POTW.
- ~~C. Best management practices.~~ 4. Food service establishments shall use ~~best management practices designed~~ the following BMPs to reduce the amount of wastewater containing fats, oil, ~~and grease,~~ or solids discharged into the POTW. These include:
- ~~1. implementing a comprehensive employee training program on the problems associated with fats, oil, and grease and their proper disposal;~~
 - ~~2.a. disconnecting~~ Disconnect or ~~minimizing~~ minimize the use of garbage disposals; (garbage grinders);
 - ~~3.b. installing~~ Install a 1/8" or 3/16" mesh screen over all kitchen sinks, mop sinks, and floor sinks;
 - ~~4.c. using~~ Use "dry" clean-up methods, including scraping or soaking up fats, oil, and grease from plates and cookware before washing;
 - ~~5.d. using~~ Use pre-wash sinks to clean plates and cookware;
 - ~~6.e. recycling~~ Recycle fats, oil, and grease and beneficial food waste when possible;
 - ~~7.f. pouring~~ Pour remaining liquid fats, oil, and grease from pots, pans, and other cookware into containers to be disposed of in the trash once congealed; and
 - ~~8.g. posting~~ Post BMPs ~~in the food preparation and dishwashing areas at all times~~ provide training to each employee on such BMPs.
- ~~D. Maintenance.~~
- ~~1.~~ 5. Grease removal devices and solids interceptors shall be inspected, cleaned, and maintained in proper working order at all times by the industrial user at its expense.
 - ~~2. Grease interceptor maintenance.~~

- ~~a. Grease interceptors-removal devices~~ in active use shall be cleaned at ~~least once every three (3) months or when the frequency specified in~~ the ~~total accumulation of surface fats, oil, and grease (including floating solids) and settled solids reaches twenty five percent (25%) of the grease interceptor's overall liquid depth, whichever occurs first.~~industrial user's control mechanism.
- ~~b. a.~~ In the event that a grease interceptor is larger than the capacity of a vacuum truck, the interceptor shall be completely evacuated within a twenty-four (24) hour period. The industrial user's documentation shall accurately reflect each pumping event.
- ~~3. Grease trap maintenance. Grease traps shall be serviced at least one (1) time per month or when the amount of waste captured reaches twenty five percent (25%) of the trap's capacity, whichever occurs first. Removable baffles shall be removed and cleaned during the maintenance process.~~
- ~~4. Other grease removal devices. Facilities with grease removal devices other than grease interceptors or grease traps shall follow the director's maintenance and recordkeeping requirements as directed in Section 13.10.305.B.3.~~
- ~~5. The director may require that a grease removal device be cleaned more frequently than set forth in this Section 13.10.305.D. if the cleaning frequency set forth herein is found to be inadequate. The director may change the required maintenance frequency to reflect changes in actual operating conditions.~~
- ~~6. After each cleaning, the food service establishment shall inspect the device to verify that:~~
- ~~a. the contents of the device have been fully evacuated and that no liquids, semi-solids, or solids were discharged back into the device after cleaning; and~~
- ~~b. the interior components of the device are in proper working order.~~
- ~~7. b.~~ Food service establishments shall ~~require the liquid~~retain a State of Colorado registered waste ~~hauler, grease transporter, or any other person cleaning or servicing a grease removal device~~ to completely evacuate all contents, including floating materials, wastewater, bottom solids, and accumulated waste on the walls of the grease removal device. Waste must be disposed of in accordance with federal, state, and local laws.
- ~~8. Cleaning frequency variance. c.~~ Any food service establishment desiring a cleaning schedule less frequent than that required ~~in this Section 13.10.305.D. by the director~~ shall submit a written request to the director ~~along with requesting a change and the maintenance records~~reasons for the ~~last four (4) grease interceptor cleanings, or last eight (8) grease trap cleanings, including measurements of the thickness of the floating fats, oil, and grease and bottom solids layer, and total volume removed.~~change. A reduction in cleaning frequency may be granted by the director when it has been determined that the grease ~~interceptor-removal device~~ has adequate capacity and detention time for fats, oil, ~~and grease, and solids~~ removal. The cleaning frequency will depend on ~~variables~~factors such as the location of the facility, type of facility, type of food prepared, hours of operation, capacity of the device, the anticipated amount of fats, oil, grease in the wastewater, the amount of, and solids in the wastewater, and the ~~degree~~type of adherence to BMPs in place.
- ~~E. Prohibitions. 6.~~ The following are strictly prohibited:

- ~~1-a.~~ Connecting garbage grinders, garbage disposals, and dishwashers to grease traps.
 - ~~b.~~ ~~Discharging wastewater to a grease trap in excess of 140° b. Fahrenheit.~~
 - ~~3.~~ Altering or tampering with a grease removal device or solids interceptor.
 - ~~4-c.~~ Discharging or permitting another to discharge any liquid, semi-solid, or solid back into a grease removal device or solids interceptor at any time during maintenance or cleaning operations.
 - ~~5-d.~~ Discharging or permitting another to discharge any grease removal device or solids interceptor wastes into any drain, public or private sewer, or other grease removal device or solids interceptor.
 - ~~e.~~ Using hot water or chemicals, bacteria, enzymes, or other products ~~to that will~~ emulsify fats, oil, and grease ~~prior to.~~
- D. Petroleum oil, grease, and sand requirements.
- 1. Applicability. The requirements established in this section shall apply to industrial users that generate sand, sediment, grit, gravel or other aggregate, grease, petroleum oil, or other petroleum products that may discharge to the POTW. Examples of such facilities include, without limitation, vehicle service or repair facilities, small or large equipment service or repair facilities, vehicle and equipment wash facilities, machine shops, garden nurseries, warehouses, and parking garages (if connected to sewer).
 - 2. Oil/sand general requirements.
 - a. An oil/sand separator shall be provided for the proper handling of wastewater containing sand, sediment, sludge, grease, petroleum products, or similar substances.
 - b. An oil/sand separator shall be properly sized to provide adequate retention time to prevent the discharge of wastewater containing sand, sediment, sludge, grease, petroleum products, or similar substances to the POTW.
 - c. Oil/sand separators shall be installed, inspected, cleaned, and maintained, as needed, by the industrial user at its expense. All such devices shall be located to be easily accessible for cleaning and inspection.
 - d. Unless directed otherwise, a professional engineer registered in the State of Colorado shall properly size and provide documentation to the director to support the proposed oil/sand separator size.
 - e. If required by the director, an engineer licensed by the State of Colorado shall file a written, signed certification with the director stating that the required oil/sand separator has been installed and all sources of sand, sediment, sludge, grease, petroleum products, or similar substances are discharging to the device before discharging wastewater ~~into~~ the POTW; ~~provided, however,~~
 - 3. Maintenance.
 - a. Oil/sand separators shall be serviced at a frequency that will prevent the separator from discharging sand, sediment, sludge, grease, petroleum products ~~may be added to floor drains and other kitchen fixtures, or similar substances to keep the plumbing between the kitchen and~~ POTW. The city recommends that servicing occur when the grease removal device clear if such products are used according to total volume of waste in the separator reaches twenty-five percent (25%) of the separator's capacity. The director is authorized to ~~their labels and do~~ issue a control mechanism if a separator is not ~~interfere~~ serviced at an appropriate frequency as required herein.

- 6.b. The industrial user must document each cleaning with the operation or performance of the grease removal device. Labels and other product descriptions an invoice, waste manifest, or other acceptable document, which must be kept on file with the food service establishment site for at least three (3) years. (Ord. 5143 § 1, 2006)
- c. The industrial user must take reasonable steps to ensure that all waste is properly disposed of at a facility in accordance with federal, state and local regulations (i.e., certification by the hauler included on a waste manifest).
- E. Hauled waste requirements.
1. Any hauled waste meeting the definition of an RCRA hazardous waste as defined at 40 C.F.R. Part 261 will not be accepted and shall not be discharged to the POTW.
 2. Persons proposing to discharge non-RCRA hazardous waste shall apply for and obtain a control mechanism from the director. Control mechanisms will be issued on a case-by-case basis. No hauled waste may be discharged without prior written consent of the director. Hauled waste may only be discharged at locations designated by the director. Hauled waste is subject to all the requirements of this chapter.
 3. Any violation of the terms and conditions of a control mechanism, failure to apply for a control mechanism as required, or discharging without authorization shall be deemed a violation of this chapter.
 4. The director may collect samples of each hauled waste load to ensure compliance with this chapter. The director may require the waste hauler to provide a waste analysis of any load or a waste-tracking form for every load prior to discharge.
 5. The director has the right to reject any hauled waste that may be harmful to, or cause obstruction of, the wastewater collection system, or that may cause or contribute to interference or pass through of the POTW, or that may violate any local limits adopted by the city.
- F. Pharmaceutical sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of applicable pharmaceuticals to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial users and by control mechanism for other industrial users.
- G. Nanomaterial sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of nanomaterial to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial users and by control mechanism for other industrial users.
- H. Nonylphenol sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of nonylphenol to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial user and by control mechanism for other industrial users.

IV. Wastewater Discharge Permits

13.10.401 Permit Wastewater analysis.

When requested by the director, an industrial user must submit information on the nature and characteristics of its wastewater within the time specified by the director. The director is

authorized to prepare a form for this purpose and may periodically require industrial users to update this information.

13.10.402 Wastewater discharge permit requirement.

- A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director, except that ~~an SIU~~a significant industrial user that has filed a timely application pursuant to Section 13.10.403404 may continue to discharge for the time period specified therein.
- B. The director may require other industrial users to obtain a wastewater discharge permit as necessary to carry out the purposes of this ~~Chapter 13.10~~chapter.
- C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ~~ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 13.10.111, 13.10.121, and 13.10.122~~section.
- D. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements, or with any other requirements of federal, state, and local law. ~~(Ord. 5143 § 1, 2006)~~

13.10.402 — Discharge 403 Wastewater discharge permitting.

- ~~A. Existing connections — Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to January 1, 2007 and who wishes to continue such discharges in the future, shall, within thirty (30) days after said date, apply to the director for a wastewater discharge permit in accordance with Section 13.10.403, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of January 1, 2007, except in accordance with a wastewater discharge permit issued by the director.~~
- ~~B. New connections — AnyAny industrial~~ user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to ~~the~~beginning or recommencing ~~of~~ such discharge. An application for this wastewater discharge permit, in accordance with Section 13.10.403404, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence. ~~(Ord. 5143 § 1, 2006)~~

13.10.403 — Permit 404 Wastewater discharge permit application contents.

- ~~A. All industrial~~ users required to obtain a wastewater discharge permit must submit ~~a~~permit~~an~~ application on a form prepared by the director. The director may require ~~all~~industrial users to submit as part of an application any or all of the following information:
 - ~~A. Information required under 40 C.F.R 403.12(b) of the general pretreatment regulations (e.g., owner information, pollutant and flow measurements);~~
 - A1. Identifying information, including:
 - a. Name and address of the facility.
 - b. Name and contract information for the owner and operator.
 - c. Description of facilities, activities, and plant production processes on the premises.
 - 2. List of any environmental control permits held by or for the facility.
 - 3. Description of operations, including:

- a. Brief description of ~~plant processes and~~ the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
- ~~B-b.~~ Types of wastes generated and a list of all raw materials and chemicals used or stored at the facility; ~~that are, or could accidentally or intentionally be, discharged to the POTW.~~
- ~~C-c.~~ Number ~~and type~~ of employees, hours of operation, and proposed or actual hours of operation; ~~and~~
- ~~D. Product(s) produced and service(s) provided;~~
 - d. Type and amount of raw materials processed (average and maximum per day).
 - ~~E-e.~~ Site plans, floor plans, ~~mechanical and~~ plumbing plans, and details to show all sewers, floor drains, and ~~appurtenances by size, location, and elevation, and~~ all points of discharge; ~~and~~
- ~~F. 4.~~ Time and duration of discharges; ~~and~~
- 5. Location for monitoring all wastes covered by the permit.
- 6. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in subsection 13.10.203C.
- 7. Measurement of pollutants, including:
 - a. Categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.
 - b. Results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process.
 - c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
 - d. The sample shall be representative of daily operations and shall be analyzed in accordance with Section 13.10.610. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the director or the applicable standards to determine compliance with the standard.
 - e. Sampling must be performed in accordance with Section 13.10.611.
- ~~G. 8.~~ Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application. ~~Incomplete or inaccurate applications will be returned to the user for revision. (Ord. 5143 § 1, 2006)~~

B. Incomplete or inaccurate applications will be returned to the industrial user for revision.

13.10.404405 Wastewater discharge permit decisions.

The director will evaluate the data furnished by the industrial user and may require additional information. Within forty-five (45) business days of receipt of a complete wastewater

discharge permit application, the director will determine whether to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit.

V. Wastewater Discharge Permit Issuance Process

13.10.501 Wastewater discharge permit duration.

A wastewater discharge permit may be issued for a period no greater than five (5) years from the date of issuance. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the director. Each wastewater discharge permit shall indicate a specific date upon which it shall expire.

13.10.502 Wastewater discharge permit contents.

A. A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Wastewater discharge permits must contain:

1. A statement that indicates the wastewater discharge permit issuance date, expiration date, and effective date.
2. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with Section 13.10.504 and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
3. Effluent limits, including BMPs, based on applicable pretreatment standards.
4. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or BMP) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.
5. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.
6. Requirements to control slug discharge, if determined by the director to be necessary.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW.
3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges.
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.

5. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices.
6. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those that become effective during the term of the wastewater discharge permit.
7. Other conditions as deemed appropriate by the director to ensure compliance with this chapter and state and federal laws, rules, and regulations.

13.10.503 Wastewater discharge permit modification.

- A. The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 1. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
 2. To address alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
 3. A change to the POTW's CDPS permit;
 4. Information indicating that the permitted discharge poses a threat to the POTW, city personnel, or the receiving waters;
 5. Violation of any terms or conditions of the individual wastewater discharge permit;
 6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
 7. Revision of or the grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. 403.13;
 8. To correct typographical or other errors in the wastewater discharge permit; or
 9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 13.10.504

13.10.504 Wastewater discharge permit transfer.

- A. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) business days advance written notice to the director, and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator that:
 1. States that the new owner and/or operator has no intent to change the facility's operations and processes within ninety (90) days after the transfer;
 2. Identifies the specific date on which the transfer is to occur; and
 3. Acknowledges full responsibility for complying with the existing wastewater discharge permit.
- B. Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

13.10.505 Wastewater discharge permit revocation.

- A. The director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

1. Failure to notify the director of changes to the wastewater prior to the changed discharge;
 2. Failure to provide prior notification to the director of changed conditions pursuant to Section 13.10.605;
 3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
 4. Falsifying self-monitoring reports and certification statements;
 5. Tampering with sampling or monitoring equipment;
 6. Refusing to allow the director timely access to the facility premises and records;
 7. Failure to meet effluent limitations;
 8. Failure to pay fines;
 9. Failure to pay wastewater charges and fees;
 10. Failure to meet compliance schedules;
 11. Failure to complete a wastewater survey or the wastewater discharge permit;
 12. Failure to provide advance notice of the transfer of the wastewater permit to a new owner or operator; or
 13. Violation of any pretreatment standard or requirement, any terms of the wastewater discharge permit, or this chapter.
- B. Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership to a new owner or operator without the director's approval in violation of Section 13.10.504. All wastewater discharge permits issued to an industrial user are void upon the issuance of a new wastewater discharge permit to that industrial user.

13.10.506 Wastewater discharge permit reissuance.

An industrial user with an expiring wastewater discharge permit shall apply for a wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 13.10.404, a minimum of sixty (60) business days prior to the expiration of the industrial user's existing wastewater discharge permit. In no case shall the reissued permit be for a period greater than five (5) years from the date of reissuance. A wastewater discharge permit may be reissued for a period less than five (5) years, at the discretion of the director.

13.10.507 Waste received from other jurisdictions.

A. If another jurisdiction, or industrial user located within another jurisdiction, contributes wastewater to the POTW, the city shall enter into an intergovernmental agreement with the contributing jurisdiction. Such intergovernmental agreement shall ensure that discharges received from entities outside of the city's jurisdictional boundaries are regulated to the same extent as are discharges from within the city's jurisdictional boundaries.

VI. Reporting Requirements

13.10.601 Baseline monitoring reports.

- A. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 C.F.R. 403.6(a)(4), whichever is later, existing categorical industrial users

currently discharging to or scheduled to discharge to the POTW shall submit to the director a report that contains the information listed in subsection B. below. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report that contains the information listed in subsection B. below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Industrial users described above shall submit the following information:

1. All information as may be required by subsection 13.10.404A.1. through 6. and 8.
2. Measurement of pollutants.
 - a. The industrial user shall provide the information required in subsection 13.10.405.A.7.a. through d.
 - b. The industrial user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this subsection.
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 C.F.R. 403.6(e) to evaluate compliance with the pretreatment standards.
 - d. Sampling and analysis shall be performed in accordance with Section 13.10.610.
 - When requested, the director may allow the submission of a baseline report that utilizes only historical data so long as data provides information sufficient to determine the need for industrial pretreatment measures.
 - f. The baseline report shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
3. Compliance certification. A statement, reviewed by the director, a industrial user's authorized representative as defined in Section 13.10.104 and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance and/or additional pretreatment is required to meet the pretreatment standards and requirements.
4. Compliance schedule. If additional operation and maintenance and/or additional pretreatment is required to meet the pretreatment standards and requirements, the shortest schedule by which the industrial user will provide such additional operation and maintenance and/or pretreatment must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. must A compliance schedule pursuant to this section must meet the requirements set out in Section 13.10.602.
5. Signature and report certification. All baseline monitoring reports must be certified and signed by an authorized representative in accordance with Section 13.10.614.

13.10.602 Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by subsection 13.10.601B.4.:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (such events include, without limitation, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).
- B. No increment referred to above shall exceed nine (9) months.
- C. The industrial user shall submit a progress report to the director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the industrial user to return to the established schedule.
- D. In no event shall more than nine (9) months elapse between such progress reports to the director.

13.10.603 Reports on compliance with categorical pretreatment standard deadline.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 13.10.404A.6. and 7, and subsection 13.10.601.B.2. For industrial users subject to equivalent mass or concentration limits established in accordance with Section 13.10.203, this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 13.10.614. All sampling must be done in conformance with Section 13.10.611.

13.10.604 ~~information on~~ Periodic compliance reports.

- A. All significant industrial users shall, at a frequency determined by the director but in no case less than once per six (6) months, submit a report indicating the nature and concentration of pollutants in the discharge that are limited by pretreatment standards and the measured or estimated average and/or maximum daily flow for the reporting period.
- B. All wastewater samples must be representative of the industrial user's discharge. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.
- C. If an industrial user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in Section 13.10.610, the results of this monitoring shall be included in the report.

13.10.605 Reports of changed conditions.

- A. All industrial users shall promptly notify the director in advance of any significant changes to the industrial user's operations or system that might alter the nature, quality, or volume of its wastewater. For the purposes of this section, a "significant change" shall mean a change that will be in effect for a period of ten (10) days or more and shall include, but is not limited to, the following:
 - 1. A change in number of shifts or shift hours, an additional processing operation, or the new use or discharge of any substances regulated under Section 13.10.202 or 13.10.205.
 - 2. A twenty percent (20%) increase or decrease in the wastewater flow or production volume, or any other change which may alter the average normal wastewater characteristics.
 - 3. Any other change that triggers the applicability of a categorical pretreatment standard that previously had not applied to the industrial user.
- B. The director may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 13.10.404.
- C. The director may reissue an individual wastewater discharge permit under Section 13.10.506 or modify an existing wastewater discharge permit under Section 13.10.503 in response to changed conditions or anticipated changed conditions.

13.10.606 Reports of potential problems.

- A. In the case of any discharge, including, without limitation, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug discharge, that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the director of the incident. This notification shall include, at a minimum, the location of the discharge, type of waste, concentration and volume, and corrective actions taken by the industrial user.
- B. Within five (5) days following such discharge, the industrial user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measure(s) to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, penalties, or other liability that may be imposed pursuant to this chapter.
- C. Significant industrial users are required to notify the director immediately of any changes at its facility affecting the potential for a slug discharge.

13.10.607 Reports and information.

All industrial users connected to, or proposing to connect to, the POTW shall provide appropriate reports or information to the director as the director may require to meet the requirements of this chapter. It is unlawful for any person to knowingly make a false statement, representation, or certification in any record, report, or other document submitted or required to be maintained under this chapter.

13.10.608 Notice of violation; repeat sampling and reporting.

~~of its wastewater~~ If sampling performed by an industrial user indicates a violation, the industrial user must notify the director ~~within the time~~ twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation. If the city performed the sampling and analysis in lieu of the industrial user, the city shall have the authority to require the industrial user to perform the repeat sampling and analysis.

13.10.609 Notification of the discharge of hazardous waste.

- A. Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste under 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known or readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expended to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 13.10.605. The notification requirement in this section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 13.10.601, 13.10.603, and 13.10.604.
- B. Dischargers are exempt from the requirements of subsection A. above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified by the director. ~~The director is authorized to prepare a form for this purpose and may periodically require users to update this information. (Ord. 5143 § 1, 2006)~~at 40 C.F.R. 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
- C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the director, the EPA regional waste management division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- D. In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

- E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a control mechanism issued thereunder, or any applicable federal or state law.

13.10.610 Analytical requirements.

All pollutant analyses, including sampling techniques, required by the director shall be performed in accordance with the techniques prescribed at 40 C.F.R. Part 136, and any amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or approved by the EPA.

13.10.611 Sample collection.

- A. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.
- B. Except as indicated in subsections C. and D. below, an industrial user must collect wastewater samples using twenty-four (24) hour flow-proportional composite collection sampling techniques. In the event flow proportional composite collection sampling is not feasible, the director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the industrial user demonstrates that this will provide a representative sample of the discharge. Using protocols (including appropriate preservation) specified at 40 C.F.R. Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the director, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.
- A- C. Grab samples must be used for oil and grease, temperature, pH, cyanide, total phenols, and volatile organic compounds. **Temperature and pH must be an instantaneous measurement.**
- D. For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in Sections 13.10.601 and 13.10.603, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For the reports required by Section 13.10.604, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

13.10.612 Date of reports received.

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not postmarked the date of receipt of the report shall govern.

13.10.613 Recordkeeping.

A. Industrial users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the industrial user independent of such requirements, and documentation associated with BMPs.

A.B. Records shall include, at a minimum, the date, exact place, method, and time of sampling, and the name of the person(s) taking the sample(s); the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses.

These records shall remain available for a period of at least three (3) years.

13.10.405 Signatures and certification.

C. When required, This period shall be automatically extended for the duration of any litigation concerning the industrial user, or where the industrial user has been specifically notified of a longer retention period by the director.

13.10.614 Signature of authorized representative; certification.

A. All documents submitted to the director pursuant to this chapter shall be signed by an authorized representative of the industrial user as defined in Section 13.10.104.

B. The following certification shall be required on all industrial user applications, and reports, and may be required by the director on surveys, and questionnaires, and reports must be signed by an authorized representative of the user as defined in Section 13.10.104.B. and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ~~assure~~ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. (Ord. 5143 § 1, 2006)

13.10.406 Permit decisions.

The director will evaluate the data furnished by the user and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application, the director will determine whether or not to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit. (Ord. 5143 § 1, 2006)

13.10.501 Permit duration.

A wastewater discharge permit will be issued for a period no greater than five (5) years from the date of issuance. Each wastewater discharge permit will indicate a specific date upon which it will expire. (Ord. 5143 § 1, 2006)

~~13.10.502 Permit contents.~~

~~B. A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass-through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.~~

~~C. A wastewater discharge permit shall allow the director to carry out the requirements of this Chapter 13.10 and 40 C.F.R Part 403. (Ord. 5143 § 1, 2006)~~

~~13.10.503 Permit appeals.~~

~~A. The permittee may petition the director to reconsider the terms of a wastewater discharge permit within thirty (30) calendar days of notice of its issuance.~~

~~1. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.~~

~~2. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for the objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.~~

~~B. If the director fails to act within sixty (60) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review. (Ord. 5143 § 1, 2006)~~

~~13.10.504 Permit modification.~~

~~B. The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:~~

~~2.10. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;~~

~~3. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;~~

~~4. A change to the POTW's NPDES permit; or~~

~~5. To correct typographical or other errors in the wastewater discharge permit. (Ord. 5143 § 1, 2006)~~

~~13.10.505 Permit transfer.~~

~~A. Wastewater discharge permits may be transferred to a new owner or operator only if the director approves the wastewater discharge permit transfer. The new owner or operator shall submit a written certification to the director which:~~

~~4. States that the new owner and/or operator have no intent to change the facility's operations and processes within ninety (90) days after the transfer;~~

~~5. Identifies the specific date on which the transfer is to occur; and~~

~~6. Acknowledges full responsibility for complying with the existing wastewater discharge permit.~~

~~B. Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer. (Ord. 5143 § 1, 2006)~~

~~13.10.506 Permit revocation.~~

~~Any user who violates the provisions of this Chapter 13.10 or the conditions of the permit is subject to having the permit revoked. (Ord. 5143 § 1, 2006)~~

~~13.10.507 Permit reissuance.~~

- ~~A. A user with an expiring wastewater discharge permit shall apply for a wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 13.10.403, a minimum of sixty (60) days prior to the expiration of the user's existing wastewater discharge permit. A permit may be extended beyond its expiration date, but in no case shall the permit exceed five (5) years from the date it was issued.~~
- ~~B. A wastewater discharge permit issued to a particular user is void upon the issuance of a new wastewater discharge permit to that user. (Ord. 5143 § 1, 2006)~~

~~13.10.508 Other jurisdictions.~~

- ~~B. If another jurisdiction, or user located within another jurisdiction, contributes wastewater to the POTW, the city shall enter into an intergovernmental agreement with the contributing jurisdiction.~~
- ~~C. Such intergovernmental agreement shall ensure that discharges received from entities outside of the city's jurisdictional boundaries are regulated to the same extent as are discharges from within the city's jurisdictional boundaries.~~
- ~~D. Such intergovernmental agreement shall also include approval of such contributing jurisdiction as to the territory in which service is to be rendered by the city. (Ord. 5143 § 1, 2006)~~

~~13.10.601 Baseline monitoring reports.~~

- ~~A. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 C.F.R. 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed at 40 C.F.R. 403.12(b)(1)-(7). Sampling types shall be as specified at 40 C.F.R. 403.12(g)(3) and (4).~~
- ~~B. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed 40 C.F.R. 403.12(b)(1)-(5). Sampling types shall be as specified at 40 C.F.R. 403.12(g)(3) and (4). A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged. (Ord. 5143 § 1, 2006)~~

~~13.10.602~~**VII. Compliance schedule. Monitoring**

~~If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, the user shall submit to the director the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance to meet the pretreatment standards and requirements. The completion date in this schedule shall not be later~~

~~than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Section 13.10.602 must meet the requirements contained at 40 C.F.R. 403. (Ord. 5143 § 1, 2006)~~

~~13.10.603~~ ~~Reports on compliance.~~

~~Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the director a report containing the information described in 40 C.F.R. 403.12(b)(4) - (6) using the sampling types specified at 40 C.F.R. 403.12(g)(3) and (4). All compliance reports must be signed and certified in accordance with Section 13.10.405. (Ord. 5143 § 1, 2006)~~

~~13.10.604~~ ~~Compliance reports.~~

- ~~A. All significant industrial users shall, at a frequency determined by the director but in no case less than once per six (6) months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and/or maximum daily flow for the reporting period. All periodic compliance reports must be signed and certified in accordance with Section 13.10.405.~~
- ~~B. All wastewater samples must be representative of the user's discharge. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.~~
- ~~C. If a user subject to the reporting requirement in this Section 13.10.604 monitors any pollutant more frequently than required by the director, using the procedures prescribed in Section 13.10.610, the results of this monitoring shall be included in the report. (Ord. 5143 § 1, 2006)~~

~~13.10.605~~ ~~Reports of changed conditions.~~

~~All industrial users shall promptly notify the director in advance of any planned substantial changes in the volume or character of pollutants of its discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under Section 13.10.609. (Ord. 5143 § 1, 2006)~~

~~13.10.606~~ ~~Reports of potential problems.~~

- ~~A. In the case of any discharge, including, but not limited to, a noncustomary batch discharge or a slug discharge, that may cause potential problems for the POTW, the user shall immediately telephone and notify the director of the incident. This notification shall include, at a minimum, the location of the discharge, type of waste, concentration and volume, and corrective actions taken by the user.~~
- ~~B. Within five (5) days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measure(s) to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any~~

~~finances, penalties, or other liability which may be imposed pursuant to this Chapter 13.10. (Ord. 5143 § 1, 2006)~~

~~13.10.607 — Reports and information.~~

~~All users connected to, or proposing to connect to, the POTW shall provide appropriate reports, or information to the director as the director may require in order to achieve the requirements of this Chapter 13.10. (Ord. 5143 § 1, 2006)~~

~~13.10.608 — Notice of violation; repeat sampling and reporting.~~

~~If sampling performed by a user indicates a violation, the user must notify the director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation. (Ord. 5143 § 1, 2006)~~

~~13.10.609 — Discharge of hazardous waste.~~

- ~~A. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R Part 261. Such notification must include the information specified in 40 C.F.R 403.12(p) and the pretreatment SOP.~~
- ~~B. Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 C.F.R 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.~~
- ~~C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.~~
- ~~D. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.~~
- ~~E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Chapter 13.10, a permit issued thereunder, or any applicable Federal or State law. (Ord. 5143 § 1, 2006)~~

~~13.10.610 — Analytical requirements.~~

~~All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 C.F.R Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R Part 136 does not contain sampling or analytical~~

techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA. (Ord. 5143 § 1, 2006)

~~13.10.611~~ ~~Sample collection.~~

- ~~B. Except as indicated in Section B, below, a user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.~~
- ~~C. Grab samples must be used for oil and grease, temperature, pH, cyanide, total phenols, and volatile organic compounds. Temperature and pH must be an instantaneous measurement.~~
- ~~D. Samples shall be collected using protocols (including appropriate preservation) specified in 40 C.F.R. Part 136, approved EPA methodologies, and appropriate EPA guidance. (Ord. 5143 § 1, 2006)~~

~~13.10.612~~ ~~Reports received.~~

~~Reports will be deemed to have been submitted on the date postmarked. For reports which are not postmarked the date of receipt of the report shall govern. (Ord. 5143 § 1, 2006)~~

~~13.10.613~~ ~~Record keeping.~~

- ~~B. Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements.~~
- ~~C.D. Records shall include, at a minimum, the date, exact place, method, and time of sampling, and the name of the person(s) taking the sample(s); the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses.~~
- ~~D. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director. (Ord. 5143 § 1, 2006)~~

13.10.701 Right of entry: inspection and sampling.

- A. The director shall have the right to enter the premises of any industrial user to determine whether the industrial user is complying with all requirements of this ~~Chapter 13.10~~chapter and any wastewater discharge permit control mechanism or order issued hereunder. ~~Users~~Industrial users shall allow the director ready access to all parts of the premises for the purposes of inspection, identifying the character or volume of pollutants, sampling, records examination and copying, photographs, noncompliance investigation, and the performance of any additional duties.
- B. Where an industrial user has security measures in force ~~which~~that require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security personnel so that, upon presentation of suitable

identification, the director will be permitted to enter without delay for the purposes of performing specific responsibilities.

C. The director may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.

~~C.E.~~ Unreasonable delays in allowing the director access to the industrial user's premises shall be ~~considered~~ a violation of this ~~Chapter 13.10. (Ord. 5143 § 1, 2006)~~chapter.

13.10.702 Search warrants.

If the director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ~~Chapter 13.10~~chapter, or that there is a need to inspect and/or sample to verify compliance with this ~~Chapter 13.10~~chapter or any permit/control mechanism or order issued hereunder, or any other pretreatment standard or requirement, or to protect the overall public health, safety, and welfare of the community, the director may seek issuance of a search warrant from the court with appropriate jurisdiction. ~~(Ord. 5143 § 1, 2006)~~

13.10.703 Tampering prohibited.

It shall be unlawful to interfere with or remove, alter, or tamper with sampling, monitoring, or other pretreatment equipment.

VIII. Confidential Information

13.10.801 ~~Confidentially~~Confidential information.

~~A.~~ Information and data on an industrial user obtained from reports, surveys, permit applications, wastewater discharge permits ~~and~~, monitoring programs, and ~~from~~ inspection and sampling activities, shall be available to the public without restriction, subject to the provisions of the Colorado ~~Open Records Law~~.

~~B.~~ Information open records law. Wastewater constituents and characteristics and ~~data which is~~other effluent data ~~will~~, as defined at 40 C.F.R. 2.302 shall not be recognized as confidential information and ~~will~~shall be available to the public without restriction. ~~(Ord. 5143 § 1, 2006)~~

IX. Publication of Industrial Users in Significant Noncompliance

13.10.901 Publication of industrial users in significant noncompliance.

The director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served ~~by~~by the POTW, a list of the industrial users ~~which that~~, at any time during the previous twelve (12) months, were in

significant noncompliance with applicable pretreatment standards and requirements. (~~Ord. 5143 § 1, 2006~~) The term “significant noncompliance” shall be applicable to all significant industrial users, and any other industrial user that violates sections (3), (4), or (8) of the definition of “significant noncompliance” set forth in Section 13.10.104.

X. Administrative Enforcement Remedies

13.10.902 — Criteria~~1001~~ **Notification of violation.**

An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- ~~A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of measurements taken for the same parameter during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined in Section 13.10.104.AH.;~~
- ~~B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of measurements taken for the same pollutant parameter during a six (6) month period equals or exceeds the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined in Section 13.10.104.AI, multiplied by the applicable criteria (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);~~
- ~~C. Any other discharge violation of a pretreatment standard or requirement that the director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;~~
- ~~D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the director’s authority to halt or prevent such a discharge;~~
- ~~E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;~~
- ~~F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;~~
- ~~G. Failure to accurately report noncompliance; or~~
- ~~H. Any other violation or group of violations which the director determines will adversely affect the operation or implementation of the local pretreatment program. (Ord. 5143 § 1, 2006)~~

13.10.111 — Penalties for violations.

- ~~A. The director has the authority to and, where appropriate, shall seek or assess civil or criminal penalties in the amount of \$1,000 per day for each violation by industrial users of the pretreatment standards and requirements set forth in this Chapter 13.10. In addition, the violation of this Chapter 13.10 may be punished by imprisonment for a term not exceeding six months pursuant to Chapter 1.12 of the Loveland Municipal Code.~~
- ~~B. The city has developed an Enforcement Response Plan (ERP). This plan is a separate document approved by the EPA that contains detailed procedures indicating how the~~

~~director will investigate and respond to industrial user noncompliance. The remedies provided for in the ERP are not exclusive. The director may take any, all, or any combination of those actions in the plan against a noncompliant user. The director may also take other actions against any user as the circumstances warrant. (Ord. 5143 § 1, 2006)~~

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter or any control mechanism or order issued hereunder, or any other pretreatment standard or requirement, the director may serve upon the industrial user a written notice of violation. Within five (5) business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction of prevention thereof, to include specific required actions, shall be submitted by the industrial user to the director. Submission of such a plan in no way relieves the industrial 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 director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

13.10.1002 Consent orders.

The director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial 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 Section 13.10.1004 and Section 13.10.1005 and shall be judicially enforceable.

13.10.1003 Show cause hearing.

- A. The director may order an industrial user that has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the industrial user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the industrial user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally, by registered or certified mail (return receipt requested), or by commercial carrier at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the industrial user as defined in Section 13.10.104 and required by Section 13.10.614. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the industrial user.
- B. The director may conduct the hearing and take the evidence, or may designate a representative to:
 1. Issue, in the name of the director, a notice of hearing requesting the attendance and testimony of witnesses and the production of relevant evidence;
 2. Take the evidence; and
 3. Transmit an audio recording or written transcript of any testimony, and any other evidence, to the director, together with a written recommendation for action thereon.

C. Upon review of the evidence, the director shall make written findings of fact and conclusion upholding, modifying, or striking the proposed enforcement action.

13.10.1004 Compliance orders.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may issue an order to the industrial user responsible for the discharge directing that the industrial user come into compliance within a specific time. If the industrial user does not come into compliance within the time provided, water or wastewater service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the industrial user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

13.10.1005 Cease and desist orders.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, or that the industrial user's past violations are likely to recur, the director may issue an order to the industrial user directing it to cease and desist all such violations and directing the industrial user to: (a) immediately comply with all requirements; and (b) take such appropriate remedial or preventative 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 industrial user.

13.10.1006 Administrative fines.

- A. When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may fine such industrial user an amount not to exceed one thousand dollars (\$1,000.00) per day, per violation. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Industrial users desiring to dispute such fines must file a written request for the director to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Such request shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and a request for a hearing.
- C. Fines assessed under this section shall be included on the industrial user's utility bill.
- D. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

13.10.1007 Emergency suspensions.

- A. The director may immediately suspend ~~aan industrial~~ user's discharge, after written or verbal notice to the industrial user, whenever such suspension is necessary to stop an actual or threatened discharge ~~which that~~ reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons, ~~environment, or the POTW.~~ The director may also immediately suspend an industrial user's discharge, after written or verbal notice and an opportunity to respond, that threatens to interfere with the operation of the POTW, or that presents, or may present, an endangerment to the environment.
- B. Any industrial user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of ~~aan industrial~~ user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the ~~sewerwater or wastewater~~ connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The director may allow the industrial user to recommence its discharge when the industrial user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless termination proceedings in Section 13.10.1008 are initiated against the industrial user.
- C. ~~AAn industrial~~ user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the ~~cause(s)causes~~ of the harmful contribution and the ~~measure(s)measures~~ taken to prevent any future occurrence, to the director, prior to the date of any show cause hearing under Section 13.10.1003, or termination hearing under Section 13.10.1008.
- D. Nothing ~~in this section~~herein shall be interpreted as requiring a hearing prior to any emergency suspension under this section. ~~(Ord. 5143 § 1, 2006)~~

13.10.122 — ~~Water supply severance~~1008 Termination of discharge.

- ~~Whenever~~ A. In addition to the provisions in Section 13.10.505 any industrial user who violates the following conditions is subject to discharge termination:
 - 1. Violation of control mechanism conditions;
 - 2. Failure to accurately report the wastewater constituents and characteristics of its discharge;
 - 3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
 - 4. Refusal of reasonable access to the industrial user's premises for the purpose of inspection, monitoring, or sampling; or
 - 5. Violation of the pretreatment standards in this chapter.
- B. The industrial user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 13.10.1003 why the proposed action should not be taken. Exercise of this option by the director shall not be a userbar to, or a prerequisite for, taking any other action against the industrial user.

XI. Judicial Enforcement Remedies

13.10.1101 Injunctive relief.

When the director finds that an industrial user has violated, or continues to violate, any provision of this Chapter 13.10, a wastewater discharge permitchapter, control mechanism, or

order issued hereunder, or any other pretreatment standard or requirement, ~~water service to the user~~director may ~~be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. (Ord. 5143 § 1, 2006)~~petition the appropriate court for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the control mechanism, order, or other requirement imposed by this chapter on activities of the industrial user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial 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 an industrial user.

13.10.123 — Inspection fees**1102 Civil penalties.**

- A. An industrial user may be inspected periodically who has violated, or continues to determine compliance with applicable requirements violate, any provision of this Chapter 13.10. No fee will be charged where the purpose of the first inspection is to determine compliance. However, if a user is not in compliance, a re-inspection fee chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall be charged on the user's utility bill for each inspection thereafter until compliance is achieved. Said fee shall be in an amount as established by resolution of liable to the city council adopted after two readings for a maximum civil penalty of one thousand dollars (\$1,000.00) 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 violation.
- B. The director 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.
- C. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, without limitation, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.

13.10.1103 Criminal prosecution.

- A. An industrial user who willfully or negligently violates any provision of this chapter, a control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) per violation, per day.
- B. An industrial user who willfully or negligently introduces any substance into the POTW that causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of up to one thousand dollars (\$1,000) per violation, per day. This penalty shall be in addition to any other fees and charges permitted cause of action for personal injury or property damage available under this Chapter state law.
- C. An industrial 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 chapter, a control mechanism, or order issued

hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine not more than one thousand dollars (\$1,000.00) per violation, per day.

13.10. ~~(Ord. 5143 § 1, 2006)~~1104 Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant industrial user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the director may take other action against any industrial user when the circumstances warrant.

XII. Supplemental Enforcement Action

13.10. ~~131~~1201 Performance bonds.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to comply with any provision of this chapter, a previous control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, unless such industrial user first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

13.10.1202 Liability insurance.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to comply with any provision of this chapter, a previous control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, unless the industrial user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

13.10.1203 Payment of outstanding charges, fees, fines, and penalties.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to pay any outstanding charges, fees, fines, or penalties incurred as a result of any provision of this chapter, a previous control mechanism, or order issued hereunder.

13.10.1204 Suspension of water or wastewater service.

- A. The director may suspend water or wastewater service when such suspension is necessary, in the opinion of the director, to stop an actual or threatened discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment, causes interference to the POTW, or causes the POTW to violate any condition of its CDPS permit.
- B. Any industrial user notified of suspension of its water or wastewater service or their control mechanism shall immediately stop the discharge. In the event of a failure of the industrial user to comply voluntarily with the suspension order, or in the event notification has been attempted but not accomplished, the director may take such steps as deemed necessary, including the entry onto private property, for the purpose of immediately severing the sewer connection or otherwise ceasing the flow, to prevent or minimize damage to the POTW or endangerment to any individual. The city and its officers, agents, and employees shall not be liable for any damages resulting from any

such entry or service suspension. The director may reinstate the water or wastewater service upon proof of the cessation of the noncomplying discharges. A detailed written statement submitted by the industrial user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the director within fifteen (15) days of the date of suspension.

- C. The industrial user shall pay all costs and expenses for any such suspension and restoration of service.

13.10.1205 Public nuisances.

A violation of any provision of this chapter, a control mechanism, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person creating a public nuisance shall be subject to the provisions of the city code governing such nuisances, including reimbursing the city for any costs incurred in removing, abating, or remedying said nuisance.

XIII. Affirmative Defenses to Discharge Violations

13.10.1301 Upset.

- A. For the purposes of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of ~~preventive~~preventative maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements ~~at 400 of subsection C.F.R. 403.16(e) below~~ are met.
- C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
1. An upset occurred and the industrial user can identify the cause(s) of the upset;
 2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
 3. The industrial user has submitted the following information to the director within twenty four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - i. A description of the indirect discharge and cause of noncompliance;
 - ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - iii. ~~C~~ Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have ~~the~~ burden of proof.

~~D. Users~~E. Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

F. Industrial users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of ~~its~~their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails. (Ord. 5143 § 1, 2006)

~~13.10.132~~ — Affirmative defense.

~~A. A user shall have an affirmative defense to an enforcement action brought against it alleging a violation of the general prohibitions in Section 202.A. or the specific prohibitions in Section 202.B.3. through 202.B.7. if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference; and~~

~~1. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or~~

~~2. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements. (Ord. 5143 § 1, 2006)~~

~~13.10.133~~1302 Bypass.

~~A. For the purposes of this section, bypass:~~

~~1. "Bypass" means the intentional diversion of wastestreams from any portion of a-an industrial user's treatment facility.~~

~~A2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.~~

~~B. An industrial user may allow any bypass to occur which that does not cause Pretreatment Standardspretreatment standards or Requirementsrequirements to be violated, but only if it also is for essential maintenance to assureensure efficient operation. These bypasses are not subject to the provisions of paragraphs B and subsections C of this section, and D. below.~~

~~B.-C. Bypass notifications. If a-an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the director, at least ten (10) days before the date of the bypass, if possible.~~

~~1.-A. An industrial user shall submit-oralprovide verbal notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause;~~

the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

~~ED.~~ Bypass. Bypass is prohibited, and the director may take an enforcement action against aan industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass ~~which~~that occurred during normal periods of equipment downtime or preventive maintenance; and
3. The industrial user submitted notices as required in ~~paragraph B~~subsection C, above.
(Ord. 5143 § 1, 2006)

XIV. Wastewater Pretreatment Charges and Fees

13.10.1411401 Pretreatment charges and fees.

The city may adopt reasonable charges and fees for reimbursement of the costs of operating the city's pretreatment program in an amount as established by resolution of the city council adopted after two readings. These charges and fees, which shall be included on the industrial user's utility bill, may include the following:

- A. Fees for wastewater discharge permit applications, including the cost of processing such applications;
- B. ~~Fees~~Charges for monitoring, inspection, and surveillance procedures, including the cost of collection and analyzing aan industrial user's discharge, and reviewing monitoring reports submitted by industrial users;
- C. ~~Fees~~Charges for reviewing ~~and responding to~~ accidental ~~discharges~~spill/slug control procedures and construction;

~~DD.~~ Charges for the cost of publication in the newspaper for annual significant noncompliance notifications;

E. Fees for filing appeals; and

~~EF.~~ Other charges and fees as the city may deem necessary to carry out the requirements contained herein. ~~These fees may be included on the user's utility bill, relate solely to the matters covered by this Chapter~~

13.10. ~~and are separate from all other fees, fines, and penalties chargeable by the city. (Ord. 5143 § 1, 2006)~~

13.10.142 Severability.

~~If any provision of this Chapter 13.10 is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect. (Ord. 5143 § 1, 2006)~~

13.10.143 — Fraud and false statements.

~~It is unlawful for any person to knowingly make a false statement, representation or certification in any record, report, or other document submitted or required to be maintained under this Chapter 13.10. (Ord. 5143 § 1, 2006)~~

13.10.144.1402 Cost recovery.

- ~~A. Any industrial user that violated~~violates any of the provisions of this ~~Chapter 13.10~~chapter or that discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the POTW shall be liable to the city for any expense, loss, or damage caused by such violation or discharge~~-, including, without limitation, all costs and expenses related to suspending or terminating service and costs of labor, materials, and specified fees.~~
- ~~B. The city shall charge the industrial user for the cost incurred by the city for any monitoring surveillance, cleaning, repair, or replacement work caused by the violation or discharge and for costs incurred by the city in investigating the violation or discharge and in enforcement this Chapter 13.10~~chapter, including reasonable ~~attorney~~attorneys' fees, court costs, and other expenses of litigation.~~(Ord. 5143 § 1, 2006)~~
- ~~C. In the event that an industrial user discharges pollutants that cause the city to violate any condition of its CDPS permit and the city is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine.~~

13.10.1451403 Lien.

~~All fines, charges, fees, costs, and expenses imposed by this chapter shall constitute a lien upon the property where the wastewater is used from the time of use and shall be a perpetual charge against said property until paid, and in the event the charges are not paid when due, the city clerk may certify such delinquent charges to the treasurer of Larimer County and the charges may be collected in the same manner as though they were part of the taxes.~~

XV. Miscellaneous Provisions**13.10.1501 Leased property.**

~~In situations involving leased or rented—~~ Where the industrial user is leasing the property, not resolved with subject to the tenant control mechanism, the director shall notify the record owner or authorized representative of the property where the industrial user is in significant noncompliance with applicable pretreatment standards and requirements. The property owner shall be notified of continued violations and is responsible for assuring ensuring that the industrial user is in compliance with the standards and requirements of this Chapter 13.10. (Ord. 5143 § this chapter and shall be subject to enforcement under this chapter for noncompliance.

13.10.1502 Enforcement response plan.

The director is authorized to develop and maintain an enforcement response plan containing procedures indicating how the director will investigate and respond to industrial user noncompliance in conformance with this chapter and all applicable state and federal laws and regulations.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon the latter of written approval from the U.S. Environmental Protection Agency, or January 1, 2013.

ADOPTED this ____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

CHAPTER 13.10 ORDINANCE MODIFICATION

Presented to City Council

September 4, 2012

By Bill Thomas
Pretreatment Coordinator
Department of Water & Power

AGENDA

- ▶ Topics of discussion
 - ▶ Why
 - ▶ Sector Control Programs
 - ▶ Local Limits
 - ▶ Legal Authority
 - ▶ Outcomes

ORDINANCE MODIFICATIONS

► Why?

- Colorado Department of Public Health and Environment
- Environmental Protection Agency
- Routine maintenance observations

SECTOR CONTROL PROGRAMS

- ▶ Existing
 - ▶ Fats, Oil and Grease (FOG)
- ▶ New
 - ▶ Petroleum, Oil, Grease, and Sediment (POGS)
 - ▶ Mercury (Dentists)
 - ▶ Other
 - Pharmaceutical
 - Nanotechnology
 - Nonylphenol

SECTOR CONTROL PROGRAM

POGS

- ▶ Applies to industrial users that generate
 - ▶ sand, sediment, grit, gravel or other aggregate
 - ▶ grease
 - ▶ petroleum oil or other petroleum products

- ▶ Requirements
 - ▶ Install properly sized oil/sand separator
 - Not intended to fill to capacity
 - ▶ Maintain separator
 - Recommend 25% pumping frequency
 - ▶ Recordkeeping

SECTOR CONTROL PROGRAM

MERCURY

- ▶ Applies to all dental facilities
 - ▶ 45 dentist identified
 - ▶ 22 have amalgam separators
- ▶ Requirements
 - ▶ Install properly sized ISO 11143 amalgam separator
 - ▶ Size based on # of chairs (\$715-\$1,995)
 - ▶ Provide clear view
 - ▶ July 1, 2013



SECTOR CONTROL PROGRAM

MERCURY (CONTINUED)

- ▶ **Requirements** (continued)
 - ▶ Must be accessible
(check for leaks, solids buildup, replacement)
 - ▶ Keep Records
 - ▶ Implement American Dental Association BMPs
- ▶ **Exemption**
 - ▶ Certify annually no mercury

LOCAL LIMITS DEVELOPMENT

- ▶ Identify Pollutants of Concern

Arsenic

Copper

Mercury

Selenium

Cadmium

Cyanide

Molybdenum

Silver

Chromium

Lead

Nickel

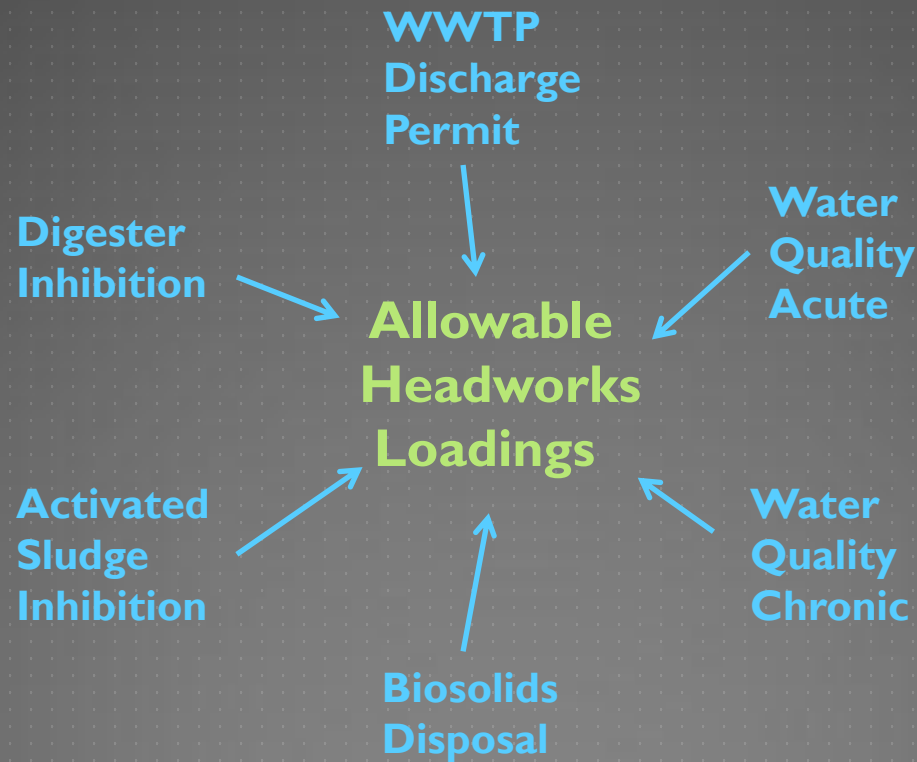
Zinc

- ▶ Data gathering

- ▶ Discharge permit, WWTP data
- ▶ Sample WWTP and Domestic
- ▶ Treatment Efficiency

LOCAL LIMITS

Calculate Allowable Headworks Loadings



LOCAL LIMITS

DETERMINE PERMISSIBLE CONTRIBUTION
FROM SIGNIFICANT INDUSTRIAL USERS

The diagram illustrates the calculation of the permissible contribution from significant industrial users. It features four colored ovals arranged horizontally, connected by mathematical symbols. From left to right: a teal oval containing 'Local limit mg/L', an equals sign, a green oval containing 'Discharge limit 1.3 lbs/day', a multiplication sign (X), a pink oval containing 'Safety Factor', a minus sign, and a gold oval containing 'Domestic contribution'. The background is dark gray with a white dotted pattern. At the bottom, there is a green and yellow gradient shape.

$$\text{Local limit mg/L} = \text{Discharge limit 1.3 lbs/day} \times \text{Safety Factor} - \text{Domestic contribution}$$

LOCAL LIMITS

COMPARISON OF CURRENT & PROPOSED LIMITS

Pollutant	Current Local Limit (mg/L)	Proposed Local Limit (mg/L)
Arsenic	0.15	0.27
Cadmium	0.08	0.12
Chromium	1.1	1.26
Copper	1.94	3.91
Cyanide	0.65	0.46*
Iron	N/A	171*
Lead	0.92	1.53
Mercury	0.0002	0.0001*
Molybdenum	0.49	0.88
Nickel	1.95	2.49
Selenium	0.37	0.11*
Silver	0.19	1.50
Zinc	6.28	9.06

LEGAL AUTHORITY

ENFORCEMENT RESPONSE PLAN (ERP)

- ▶ Required by federal regulation.
 - ▶ Describes how the City will investigate instances of noncompliance.
 - ▶ Duration, Effect, Good Faith.
 - ▶ Non-significant or Significant.
 - ▶ Describes the types of escalating enforcement responses.
 - ▶ Phone call, Notice of Violation, Fine.
 - ▶ Must include specific federal violation criteria.
- ▶ Ordinance and ERP
 - ▶ Both contain federal criteria.

OUTCOMES

▶ Sector Control Programs

▶ Carwash

- ▶ Some may require increased pumping.

▶ Dentists

- ▶ Issue BMP Control mechanism, not discharge permit.
- ▶ I I + purchase amalgam separator.
- ▶ Program exemption possible.

▶ Local Limits

- ▶ Technically based and protective.
- ▶ EPA accepted and approved local limits submittal document.

▶ Legal Authority

- ▶ Meets federal requirement.
- ▶ No impact to customer.

City Council Study Session
 August 14, 2012
 Page 1 of 1

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Farley, Fogle, Taylor, Trenary, Klassen, and McKean. Councilor Shaffer was absent. City Manager Bill Cahill was also present.

1. Water & Power

Electrical System Infrastructure and Undergrounding

Russel Jentges, Senior Electrical Engineer and Bob Miller, Power Operations Manager introduced this item to Council. The study session provided background information regarding the current state of the electrical system infrastructure and review the advantages and disadvantages of having the entire electrical system underground. The existing practice of converting overhead lines to underground is included in the current capital improvement plan. Council consensus was supportive of the basic staff recommendation of continuing the current undergrounding practice and using the available funds for capital projects that add capacity or to replace aging or failing infrastructure. This slow and steady method would continue to plan for the conversion of prioritized areas from overhead to underground with available staff and funding, which has already been incorporated into the long-term capital improvement plan. Council thanked staff for the presentation.

2. Finance

Recommended 2013-2022 Capital Program for General Fund Agencies

Budget Officer John Hartman introduced this item to Council. The Capital Program for General Fund Agencies includes all the planned capital projects for the City in the next 10-year period. Discussion items included:

- Projects funded through the General Fund or Capital Expansion Fees (CEFs) and the timing of the projects;
- Operating impacts resulting from the Capital Program

The focus of the discussion was on the Governmental Funds Capital Program, because of the impact to the General Fund. The Enterprise Funds capital project program will be presented to Council at a later date. Council discussion concerned the funding details of the projects listed. Council thanked staff for the presentation.

Mayor Gutierrez spoke about the vacant Council Liaison position on the Youth Advisory Commission, Cultural Services Board and Community Marketing Commission and urged Council to decide on who would fill the position until a new Ward IV councillor is elected. The liaison appointments will be considered at the next regular meeting.

Having no further business to come before Council, the August 14, 2012 Study Session was adjourned at 10:13 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

**CITY OF LOVELAND****POLICE DEPARTMENT**

810 East 10th Street • Loveland, Colorado 80537
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 9/4/2012
TO: City Council
FROM: Lt. Tim Brown, Loveland Police
PRESENTER: Captain Bill Porter, Larimer Humane Society and Lt. Tim Brown, LPD

TITLE: Update on Larimer Humane Society Calls for Service

RECOMMENDED CITY COUNCIL ACTION: Information Only, No Action Required

DESCRIPTION: This is an information item providing a brief update on the first six months' performance of the Humane Society under the reduced rate contract for 2012.

SUMMARY: This presentation was requested by Council as a mid-year update on performance and/or concerns in the first half of 2012. The presentation summarizes the calls for service in 2011 and 2012 comparatively and provides an overview of the fiscal impact of the budget cuts initiated in 2012.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

PowerPoint presentation materials prepared by Larimer Humane Society and LPD Lt. Brown

Larimer Humane Society

Mission: To promote and provide the responsible care and treatment of animals



LARIMERHUMANESOCIETY

Loveland 2012 contract



**20% Reduction in
Larimer Humane Society
contract - \$90,000**



LARIMERHUMANESOCIETY

Changes to 2012 contract



**5 days/week,
limited hours
No Wildlife***

* Unless it's a rabies vector species which had contact with a human or domestic animal



LARIMERHUMANESOCIETY

Licensing program



Increase in license fees helped!

\$10 increased to \$12 for altered cats & dogs

\$27 increased to \$35 for unaltered cats & dogs



LARIMERHUMANESOCIETY

Loveland 2012 to date



Shelter - January – August 15th

2011 – 1,310 domestic animals

2012 – 940 domestic animals



LARIMERHUMANESOCIETY

Loveland 2012 to date



Wildlife – January – August 15th

2011 – 483 wild animals

2012 – 391 wild animals



LARIMERHUMANESOCIETY

Loveland 2012 to date



Animal Control – Jan – Aug 15th

2011 – 3,587 requests for service

2012 – 3,024 requests for service



LARIMERHUMANESOCIETY

Loveland 2012 to date



Animal Control - Jan – Aug 15th

2011 – 195 DOA picked up

2012 – 145 DOA picked up



LARIMERHUMANESOCIETY

Loveland 2012 to date



Unable to respond to
147 Wildlife calls



LARIMERHUMANESOCIETY

Loveland 2012 to date



Unable to respond to
81 Stray in custody calls



LARIMERHUMANESOCIETY

Loveland 2012 to date



Unable to respond to 228 Stray at Large calls



LARIMERHUMANESOCIETY

Impact of changes



How does this impact...
public health and safety?

-Reactive rather than proactive



LARIMERHUMANESOCIETY



"Razzel" and "Brenton"

March 2012

Impact of changes



Frustrated Public

Loveland residents used to have one point of contact for animal related issues....



LARIMERHUMANESOCIETY

Impact of changes



Frustrated Public

Who do you call?



LARIMERHUMANE SOCIETY



2012 & Beyond - Options

Full Service

Restore to full service

7days/week, 7 am to 9 pm, plus emergency
overnight

Wildlife pick-up and rehab



LARIMERHUMANESOCIETY



2012 & Beyond

Increased Service

Increase service

7 days/week but reduced hours

No wildlife pick-up



LARIMERHUMANESOCIETY



2012 & Beyond

No change in service
Leave as is....



LARIMERHUMANESOCIETY

Direct Impact to Loveland PD

2011 Animal Calls for Service (Jan – June)

- Handled by Dispatch – 21
- Handled by CSO – 73
 - (28 Hrs, 09 Minutes)
- Handled by Officer – 147
 - (60 Hrs, 47 Minutes)
- Generated Reports – 1
- Total Animal CFS - 241

2012 Animal Calls for Service (Jan-June)

- Handled by Dispatch – 14
- Handled by CSO – 129
 - (60 Hrs, 21 Minutes)
- Handled by Officer – 211
 - (87 Hrs, 03 Minutes)
- Generated Reports – 11
- Total Animal CFS – 327*
(* Overlapping Responses)



LARIMERHUMANESOCIETY

Fiscal Snapshot

Jan – June Animal CFS 2011

- **CSO Responses**
- 73 – 28.15 hrs @ \$ 23.09
 - \$ 650.05
- **Officer Responses**
- 147 – 60.75 hrs @ \$27.38
 - \$1663.50
 - Response Cost: \$ 2313.55

Jan – June Animal CFS 2012

- **CSO Responses**
- 129 – 60.3 hrs @ \$ 23.09
 - \$1392.33
- **Officer Responses**
- 211 – 87.05 hrs @ \$ 27.38
 - \$ 2383.43
 - Response Cost: \$3775.76
 - (\$1462.21 Increase)



LARIMERHUMANESOCIETY

Please Remember

- Response Cost Comparison does not account for time contributed to handling Animal calls rather than Police CFS (or unavailability to respond to “traditional” Police CFS).
- In the first half of calendar year 2012, Larimer Humane Society was unable to respond to 362 Calls for Service (131 Wildlife, 66 Strays in Custody, and 195 Strays at large).
- (CSO and Police Officer pay ranges use “Developing” pay range for cost comparisons)



LARIMERHUMANESOCIETY

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CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 8
MEETING DATE: 9/4/2012
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Brian Burson, Current Planning Division

TITLE:

An ordinance vacating a portion of a public alley right-of-way in the Harlow Addition to the City of Loveland, Larimer County, Colorado.

RECOMMENDED CITY COUNCIL ACTION:

Move to make the findings in Section VIII. of the July 23, 2012 Planning Commission staff report, and adopt, on second reading, an ordinance vacating a portion of a public alley right-of-way in the Harlow Addition to the City of Loveland, Larimer County, Colorado.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

DESCRIPTION:

This is a legislative action to vacate a portion of a public alley right-of-way in the Harlow Addition to the City of Loveland. The applicant is First Bank. First Bank will dedicate a new public access, emergency access and utility easement to replace the vacated portion of the alley right-of-way. This will assure that all owners of property abutting this alley, as well as all utility providers and emergency services, will continue to have the same access rights.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

First Bank, located at the southeast corner of West Eisenhower Boulevard and North Taft Avenue, proposes to raze their existing building and redevelop a new bank building on the site,

with increased floor area and increased drive-up service. The proposed vacation is required to accommodate plans to provide adequate access and circulation on the redeveloped site.

On August 21, 2012, the City Council held a public hearing and first reading of the ordinance, and approved the ordinance, on first reading, as part of the Consent Agenda. The ordinance provides that the Applicant shall dedicate a new public access, emergency access and utility easement to replace the vacated alley right-of-way.

The ordinance presented to City Council for first reading provided that this new easement would be granted to the City by separate document. However, since a Lot Merger plat is also being processed with the overall project, staff and the Applicant have agreed that it will be simpler but fully adequate to grant this replacement easement by means of the plat rather than by a separate document. To make this change, Sections 3, and 4 of the ordinance have been revised and Exhibit B has been eliminated as unnecessary. These provisions will still assure that the new shared easement will be in place immediately concurrent with vacating the old alley right-of-way. All other provisions of the ordinance remain the same as for first reading. For comparison, a red-lined version of the first reading ordinance is provided as **Attachment B**.

This change does not affect any part of the staff analysis or recommendation provided in the August 21, 2012 Staff Memorandum, which is again included as **Attachment C**. A copy of the Lot Merger plat that will grant the replacement easement is included as **Attachment D**. The new public access, emergency access and utility easement shown on this plat matches the depiction of **Exhibit A** of the revised ordinance. This plat is provided for information only, and no action is required by the City Council in regard to this plat.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- A. Ordinance
- B. Red-line of first reading ordinance
- C. August 12, 2012 Staff Memorandum
- D. Lot Merger Plat for Harlow Addition/First Bank

FIRST READING: August 21, 2012

SECOND READING: September 4, 2012

ORDINANCE NO. ____

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT-OF-WAY
ADJACENT TO LOT 1, HARLOW ADDITION, CITY OF LOVELAND, LARIMER
COUNTY, COLORADO**

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation that portion of the public right-of-way described below, located adjacent to Lot 1 of the Harlow Addition, City of Loveland, Larimer County, Colorado; and

WHEREAS, the City Council finds and determines that, upon satisfaction of the condition set forth below, no land adjoining any right-of way to be vacated will be left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement; and

WHEREAS, the City Council finds and determines that, upon satisfaction of the condition set forth below, the portion of the public right-of-way to be vacated is no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application filed at the Development Center was signed by the owners of more than 50% of property abutting the public right of way to be vacated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City Council hereby adopts and makes the findings set forth above.

Section 2. That, based on the City Council's findings described above and subject to the condition precedent set forth in Section 3 below, the following described portion of public right-of-way be and the same is hereby vacated:

A PARCEL OF LAND BEING ALL OF THE ALLEY ADJACENT TO LOT 1, HARLOW ADDITION (RECEPTION NO. 736774), BEING LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY

AND THE WESTERLY LINE OF SAID LOT 1 S00°24'40"W, 123.28 FEET TO THE SOUTHWESTERLY MOST CORNER OF SAID LOT 1; THENCE LEAVING THE EASTERLY LINE OF SAID ALLEY N89°35'20"W, 20.00 FEET TO THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF LOT 10 OF SAID HARLOW ADDITION; THENCE ALONG THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF SAID LOT 10 N00°24'40"E, 123.04 FEET TO THE NORTHEASTERLY MOST CORNER OF SAID LOT 10 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 34 (WEST EISENHOWER BOULEVARD); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE N89°43'40"E, 20.00 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,463 SQUARE FEET (0.0565 ACRES), MORE OR LESS.

BASIS OF BEARINGS: ASSUMING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST, AS BEARING S00°24'40"W BEING A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983/2007, A DISTANCE OF 2635.37 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.

Section 3. That as provided in Sections 16.36.050 and 16.36.060 of the Loveland Municipal Code and in order to preserve and promote the public health, safety and welfare of the inhabitants of the city and the public generally, the vacation of a portion of the public right-of-way as set forth in Section 2 above shall not be effective until all of the following condition precedent (the "Condition") has been satisfied:

- a. The property owner has delivered to the City a dedication, in a form satisfactory to the City, of a public access, emergency access and utility easement to replace and widen the vacated alley right of way in the location depicted on **Exhibit A** attached hereto and incorporated herein (the "Easement").

Section 4. The vacation set forth in Section 2 of this Ordinance shall not be effective, nor shall any certificate of occupancy for any new building or structure on Lots 9 and 10 of the Harlow Addition be issued by the City, until the foregoing Condition has been fully satisfied. The Condition shall be deemed satisfied and the vacation of a portion of the public right-of-way set forth in Section 2 above shall be effective upon the recording of the Easement by the City and, subject to compliance with the ordinances and regulation of the City, a certificate of occupancy for the proposed new building on Lots 9 and 10, Harlow Addition to the City of Loveland, Larimer County Colorado may thereafter be issued.

Section 5. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 6. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 7. That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes, and after recording of the Easement.


ADOPTED this ____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

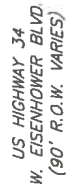
APPROVED AS TO FORM:



Deputy City Attorney

A

539921



NORTHWEST CORNER
SECTION 14, T.5N., R.69W.
FOUND 3" BRASS CAP
IN CONCRETE, ILLEGIBLE

S. 1471 AVE.
(R.O.W. VARIES)

WEST QUARTER CORNER -
SECTION 14, T.5N., R.69W
FOUND 3 1/4" ALUMINUM CAP
ON #6 REBAR, LS 20876

FIRST READING: August 21, 2012

SECOND READING: September 4, 2012

ORDINANCE NO. ____

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT-OF-WAY
ADJACENT TO LOT 1, HARLOW ADDITION, CITY OF LOVELAND, LARIMER
COUNTY, COLORADO**

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation that portion of the public right-of-way described below, located adjacent to Lot 1 of the Harlow Addition, City of Loveland, Larimer County, Colorado; and

WHEREAS, the City Council finds and determines that, upon satisfaction of the ~~conditions~~condition set forth below, no land adjoining any right-of way to be vacated will be left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement; and

WHEREAS, the City Council finds and determines that, upon satisfaction of the ~~conditions~~condition set forth below, ~~that~~the portion of the public right-of-way to be vacated is no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application filed at the Development Center was signed by the owners of more than 50% of property abutting the ~~easement~~public right of way to be vacated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City Council hereby adopts and makes the findings set forth above.

Section 2. That, based on the City Council's findings described above and subject to the ~~conditions~~condition precedent set forth in Section 3 below, the following described portion of public right-of-way be and the same is hereby vacated:

A PARCEL OF LAND BEING ALL OF THE ALLEY ADJACENT TO LOT 1, HARLOW ADDITION (RECEPTION NO. 736774), BEING LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY

ATTACHMENT B

BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY AND THE WESTERLY LINE OF SAID LOT 1 S00°24'40"W, 123.28 FEET TO THE SOUTHWESTERLY MOST CORNER OF SAID LOT 1; THENCE LEAVING THE EASTERLY LINE OF SAID ALLEY N89°35'20"W, 20.00 FEET TO THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF LOT 10 OF SAID HARLOW ADDITION; THENCE ALONG THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF SAID LOT 10 N00°24'40"E, 123.04 FEET TO THE NORTHEASTERLY MOST CORNER OF SAID LOT 10 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 34 (WEST EISENHOWER BOULEVARD); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE N89°43'40"E, 20.00 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,463 SQUARE FEET (0.0565 ACRES), MORE OR LESS.

BASIS OF BEARINGS: ASSUMING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST, AS BEARING S00°24'40"W BEING A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983/2007, A DISTANCE OF 2635.37 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.

Section 3. That as provided in Sections 16.36.050 and 16.36.060 of the Loveland Municipal Code and in order to preserve and promote the public health, safety and welfare of the inhabitants of the city and the public generally, the vacation of a portion of the public right-of-way as set forth in Section 2 above shall not be effective until all of the following ~~conditions~~condition precedent (the "~~Conditions~~") ~~have~~Condition) has been satisfied:

- a. The property owner has ~~constructed, in accordance with all of the ordinances and regulations of~~delivered to the City ~~and at its sole cost and expense, a paved~~dedication, in a form satisfactory to the City, of a public access ~~and, emergency access~~ way and utility easement to replace and widen the vacated alley right of way in the location depicted on **Exhibit A** attached hereto and incorporated herein (the "~~Public Access Way~~"; ~~and~~Easement").
- b. ~~Section 4.~~ The ~~City Engineer has determined that construction~~vacation set forth in Section 2 of the ~~Public Access Way has been satisfactorily completed in accordance with all of the ordinances and regulations of the City; and~~
- c. ~~A Grant of Easement, in the form and substance attached hereto as Exhibit B and incorporated herein (the "Easement"), for the Public Access Way granting a public access, emergency access and utility easement has been duly executed and delivered to the City Current Planning Division; and~~
- d. ~~The Current Planning division has accepted the Easement and has recorded the Easement and this Ordinance in the real property records of the Larimer County Clerk and Recorder.~~

~~No~~shall not be effective, nor shall any certificate of occupancy for any new building or structure on Lots 9 and 10 of the Harlow Addition ~~shall~~ be issued by the City, until the foregoing ~~Conditions have~~Condition has been fully satisfied.

~~Section 4.~~ That as ~~of the date and time when the Easement has been accepted and the Easement and this Ordinance have been recorded by the City, the Conditions~~ The Condition shall be deemed satisfied and the vacation of a portion of the public right-of-way set forth in Section 2 above shall be effective upon the recording of the Easement by the City and, subject to compliance with the ordinances and regulation of the City, a certificate of occupancy for the proposed new building on Lots ~~9~~ and 10, Harlow Addition to the City of Loveland, Larimer County Colorado may thereafter be issued.

~~Section 5.~~ That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 6. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 7. That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes, and after recording of the Easement.

ADOPTED this ____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk



DEVELOPMENT SERVICES
Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
 (970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

M E M O R A N D U M

TO: City Council

FROM: Brian Burson, Current Planning Division

DATE: August 21, 2012

SUBJECT: Vacation of a portion of public alley right-of-way in the Harlow Addition

I. EXHIBITS

A. July 23, 2012 Planning Commission hearing agenda

B. July 23, 2012 Planning Commission staff report including:

1. Applicant's Vacation request
2. Vacation exhibit and legal description
3. Neighborhood context map
4. Harlow Addition annexation map (for information only)
5. Draft amended plat for First Bank site, incorporating the vacated alley (for information only)
6. Draft Site Development Plan for bank redevelopment (for information only)

II. EXECUTIVE SUMMARY

A. Project Description

The City Council public hearing is to consider vacation of the northern 123 feet of the public alley right-of-way lying along the west edge of Lot 1, Block 1, of the Harlow Addition to the City of Loveland. The existing alley right-of-way is platted as 20 feet wide, connecting to the south side of West Eisenhower Boulevard and extending south approximately 460 feet. It is a dead-end alley, not connecting to any other public street or alley to the south.

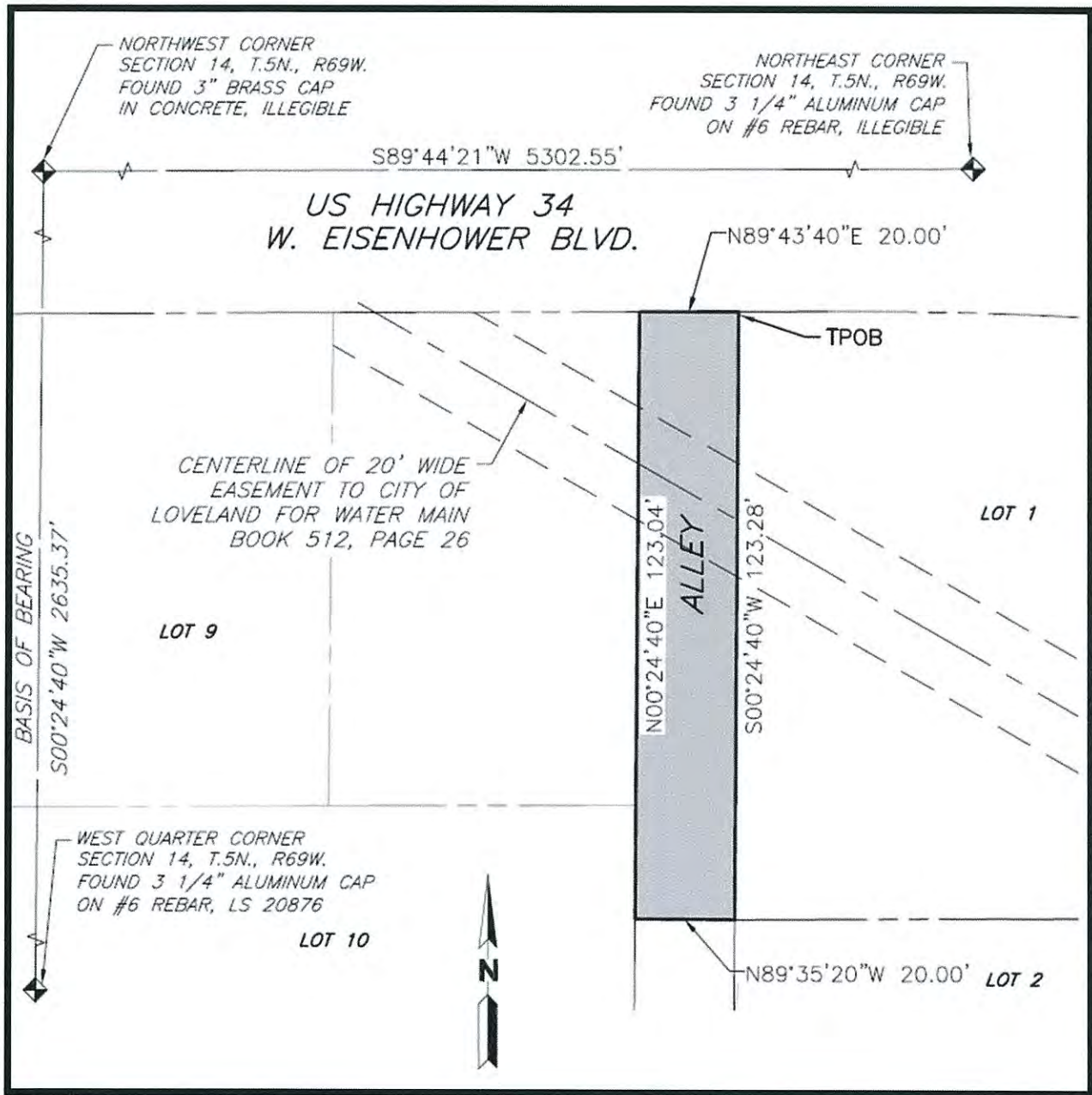
The First Bank, located at the southeast corner of West Eisenhower Boulevard and North Taft Avenue, proposes to raze their existing building, and redevelop a new bank building on the site, with increased

floor area and increased drive-up service. Associated plans and an amended plat are also undergoing City review. (See **Attachment #4 of Exhibit B.**) Adequate access and circulation for the bank requires access to West Eisenhower. The current site has a private access onto West Eisenhower, as well as the existing alley, abutting the east side of the bank property, and providing access to a portion of their private parking. As part of the redevelopment, the westernmost drive access to West Eisenhower will be closed, and all access combined onto the alley.

The Applicant proposes to vacate this portion of the public alley ROW and convert it to a shared access easement. This will be dedicated as a new access easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley. The new public access easement will rejoin the historic alley ROW and continue south as always, resulting in no noticeable change, except that the new access easement will be slightly widened and repaved. Transportation, Fire and utility staff support the application, with the recommended conditions

B. Vicinity Map



C. Alley vacation Exhibit**D. Findings**

City staff has reviewed the application and believes that all required findings can be made, with emphasis on the following:

- That no land adjoining the right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.
- That the right-of-way to be vacated is no longer necessary for the public use and convenience.

(For further analysis, please see the July 23, 2012 Planning Commission staff report included with this staff memorandum as **Exhibit B**.)

E. Key Issues

Staff has reviewed the application the basis of all applicable City codes and standards, and believes that all key issues have been resolved based on the City Comprehensive Plan, codes, and standards.

F. Planning Commission Recommendation

The Planning Commission held a public hearing for the application on July 23, 2012. The matter was included in the Consent Agenda of the Planning Commission meeting, and there was no request to remove it for discussion or questions. Planning Commission voted to recommend approval of the vacation by unanimous vote on the Consent Agenda. The July 23, 2012 Planning Commission agenda is included with this staff memorandum as **Exhibit A**.

G. Subsequent to Planning Commission

Since the Planning Commission hearing, staff has received no further information, questions or concerns from the Applicant, the neighborhood or the general public.

III. RECOMMENDED CONDITIONS

City staff and the Planning Commission recommend the following condition be made part of any approval of the vacation application. This condition has been incorporated into the vacation ordinance. By adopting the ordinance, City Council will automatically adopt this condition.

Current Planning:

1. The property owner shall dedicate to the City, at his/her sole expense, a public easement for access, emergency access and utility easement to replace and widen the vacated alley right-of-way, as shown on **Attachment #5 of Exhibit B** of this report. In addition, no Certificate of Occupancy for the new building shall be issued by the City until this public easement has been dedicated and recorded.



**LOVELAND PLANNING COMMISSION MEETING
AGENDA**

**Monday, July 23, 2012
500 E. 3rd Street – Council Chambers
Loveland, CO 80537**

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, GENDER, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMODATIONS TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2523 OR TDD 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. REPORTS:

a. Citizen Reports

This is time for citizens to address the Commission on matters not on the published agenda.

b. Staff Matters

c. Committee Reports

d. Commission Comments

Policy matters, directions to staff, etc.

IV. CONSENT AGENDA:

The consent agenda includes items for which no discussion is anticipated. However, any Commissioner, staff member or citizen may request and effect removal of an item from the consent agenda for discussion. Items removed from the consent agenda will be heard at the beginning of the regular agenda.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented.

Adoption of the items remaining on the Consent Agenda is considered as adoption by the Planning Commission and acceptance by the Applicant of the staff recommendation for those items.

V. CONSENT AGENDA:

1. Harlow Addition Alley ROW Vacation.

This is a public hearing item to consider vacation of a portion of public alley right-of-way located in the Harlow Addition. The First Bank proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service.

Associated plans and an amended plat are undergoing City review. The Applicant proposes to vacate the public alley ROW and designate it as a shared access easement. The Applicant will dedicate a new public shared access, emergency access and utility easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley.

VI. ADJOURNMENT



Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Planning Commission Staff Report

July 23, 2012

Agenda #: Consent Agenda - 1

Title: Harlow Addition Alley ROW
Vacation

Applicant: First Bank

Request: vacation of a portion of public alley
ROW

Location: along the south side of West
Eisenhower, approximately 200 feet
east of North Taft Avenue

Staff Planner: Brian Burson

Staff Recommendation:

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Motion:

1. *Move to make the findings listed in Section VIII. of this report dated July 23, 2012; and, based on those findings, recommend approval of the vacation of a portion of public alley right-of-way in the Harlow Addition, as described in Attachment #2 of this staff report, and subject to the Condition in Section IX. of this report.*

Summary of Analysis

This is a public hearing item to consider vacation of a portion of public alley right-of-way located in the Harlow Addition. The First Bank proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service. Associated plans and an amended plat are undergoing City review. Adequate access and circulation for the bank requires access to West Eisenhower. The current site has a private access onto West Eisenhower as well as the existing alley which provides access to a portion of their private parking. As part of the redevelopment, the westernmost drive access to West Eisenhower will be closed, and all access combined onto the alley.

The Applicant proposes to vacate the public alley ROW and designate it as a shared access easement. The Applicant will dedicate a new public shared access, emergency access and utility easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley. The new public access easement will rejoin the historic alley ROW and continue south as always, resulting in no noticeable change, except that the new access easement will be slightly widened and repaved. Transportation, Fire and utility staff support the application, with the recommended conditions.

July 23, 2012 Planning Commission staff report

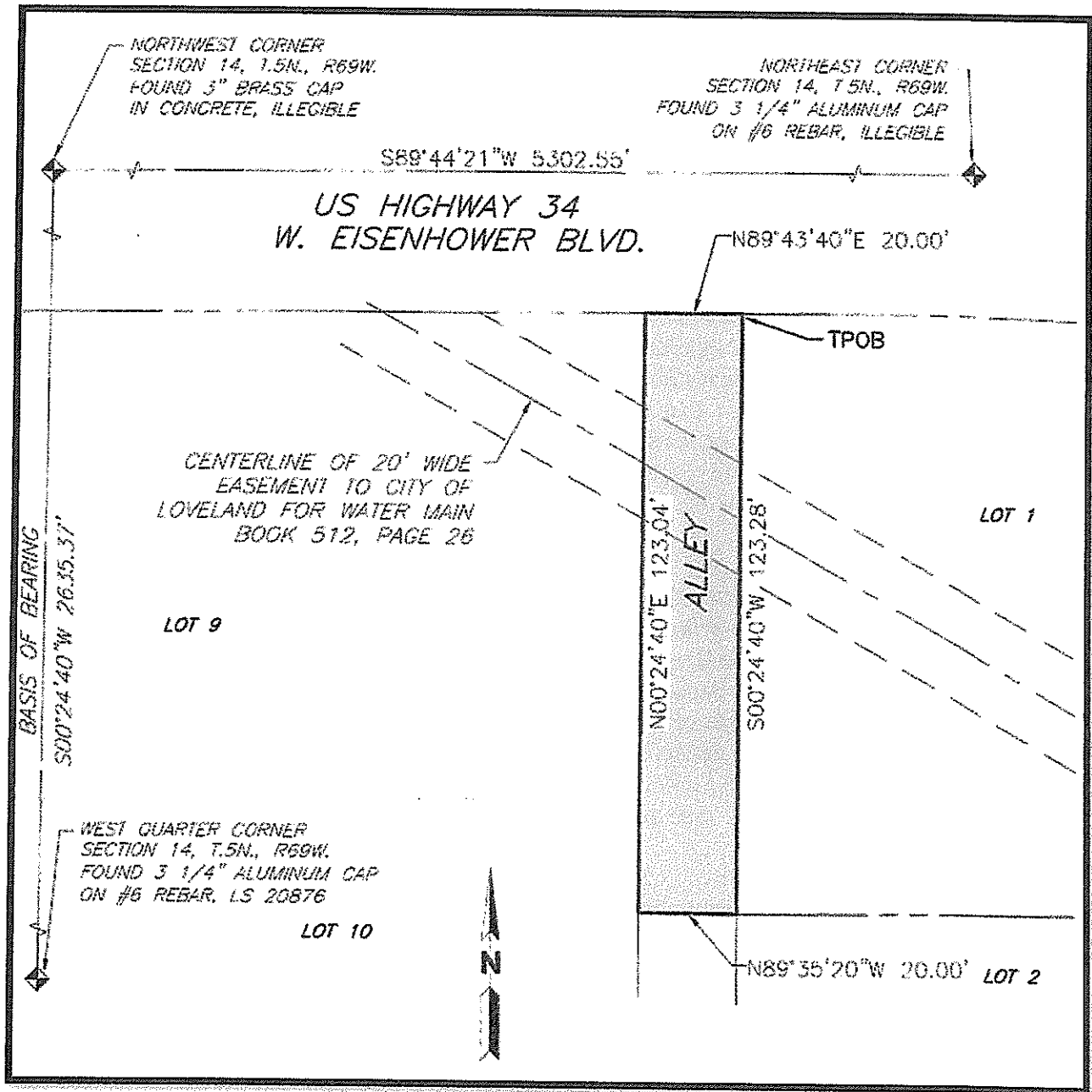
EXHIBIT B

I. ATTACHMENTS:

1. Applicant's Vacation request
2. Vacation exhibit and legal description
3. Neighborhood context map
4. Harlow Addition annexation map (for information only)
5. Draft amended plat for First Bank site, incorporating the vacated alley (for information only)
6. Draft Site Development Plan for bank redevelopment (for information only)

II. VICINITY MAP:



III. VACATION EXHIBIT:

IV. PROJECT DESCRIPTION:

Summary

The application proposes to vacate the northern 123 feet of the public alley right-of-way lying along the west edge of Lot 1, Block 1, of the Harlow Addition to the City of Loveland. The existing alley right-of-way is platted as 20 feet wide, connecting to the south side of West Eisenhower Boulevard and extending south approximately 460 feet. It is a dead-end alley, not connecting to any other public street or alley to the south.

The First Bank, located at the southeast corner of West Eisenhower Boulevard and North Taft Avenue, proposes to raze their existing building, and redevelop a new bank building on the site, with increased floor area and increased drive-up service. Associated plans and an amended plat are also undergoing City review. (See **Attachment #4**.) Adequate access and circulation for the bank requires access to West Eisenhower. The current site has a private access onto West Eisenhower, as well as the existing alley, abutting the east side of the bank property, and providing access to a portion of their private parking. As part of the redevelopment, the westernmost drive access to West Eisenhower will be closed, and all access combined onto the alley.

The Applicant proposes to vacate this portion of the public alley ROW and convert it to a shared access easement. This will be dedicated as a new access easement to replace the alley. Only that portion of the alley adjacent to the bank will be vacated and replaced. This access will continue to be used for access to the bank, and for access for emergency services, utilities, and legal access to all the properties south of the bank that have historically had the benefit and enjoyment of this alley. The new public access easement will rejoin the historic alley ROW and continue south as always, resulting in no noticeable change, except that the new access easement will be slightly widened and repaved. Transportation, Fire and utility staff support the application, with the recommended conditions

Action to be taken by the Planning Commission

Planning Commission must conduct a public hearing on the application and formulate a recommendation which will be forwarded to the City Council, to be considered as part of their subsequent public hearing, currently scheduled for August 7, 2012. Planning Commission's consideration is legislative, meaning that the Planning Commission can make any reasonable determination, without regard to any adopted City codes, standards or policies. However, if the Planning Commission determines to recommend denial of the application, it is not within the purview of the Planning Commission to grant or recommend access that is not in compliance with adopted City codes, standards policies. Action on a vacation application can include conditions of approval. Therefore Planning Commission can recommend conditions for the

application, which will be passed on to the City Council for the subsequent public hearing and final decision. Staff has recommended conditions in **Section IX.** of this staff report.

V. KEY ISSUES:

City staff have reviewed the application on the basis of all applicable City policies, codes and standards, including the findings necessary for approval of a public alley right-of-way vacation. Staff believes that all key issues have been resolved through the review process. No neighborhood meeting is required for the application, and none has been held.

VI. BACKGROUND:

December 1957 - approval of Harlow Addition

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

- A. **Notification:** An affidavit was received from Scott Paling of Martin & Martin Consulting Engineers, certifying that on July 6, 2012, written notice was mailed to all owners of property abutting the right-of-way to be vacated, as well as all other owners of other property abutting the alley southward; and a sign was posted in a prominent location on the edge of the right-of-way at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on July 7, 2012. All notices stated that the Planning Commission would hold a public hearing on July 23, 2012. This type of application does not constitute a "Development Plan", as it relates to written notice requirements to owners of mineral estates; therefore, no notice was required, and no element of mineral rights must be considered in the public hearing.
- B. **Neighborhood Response:** No neighborhood meeting is required for the application, and none has been held. Since establishing the public notices, staff has received no inquiries or concerns from the neighborhood or general public.

VIII. FINDINGS AND ANALYSIS:

In reviewing the application, the Planning Commission must determine if the findings specified in the Municipal Code can be met. These findings are listed in italicized font below, along with a summary analysis provided by City staff. If, based on the submitted application, the Planning Commission determines that the findings can be met, the Planning Commission may recommend approval of the vacation application. If the Planning Commission determines that the findings cannot be met, the Planning Commission must make different findings and recommend disapproval of the vacation application.

1. *That no land adjoining any right-of-way or easement to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

Transportation Development Review: The applicant is proposing to replace the 20-foot wide public alley with a 24-foot wide paved public access easement that is maintained by the property owner. The vacation of the alley will not negatively impact access to the City's public street network as long as the proposed development replaces the alley with a public access easement and a paved surface that is maintained by the property owner.

2. *That the right-of-way or easement to be vacated is no longer necessary for the public use and convenience.*

Transportation Development Review: The applicant is proposing to replace the 20-foot wide public alley with a 24-foot wide paved public access easement that is maintained by the property owner. With this provision, this portion of the public alley is no longer needed for the public use and convenience.

Water/Wastewater: The subject area to be vacated is the City's current service area for both water and wastewater. The Department finds that vacating the portion of the existing alley will not impact the existing water and wastewater utility configuration within and adjacent to this development, provided the vacated alley is reserved as a public utility easement. With this provision, the existing alley to be vacated is no longer necessary for public use and convenience.

Power: The existing building at 1352 W. Eisenhower Blvd. is currently served by three phase underground power from an underground vault located at the corner of W. Eisenhower Blvd. and N. Taft Ave. An underground power line runs along the north property line from this vault at the northwest corner of the existing lot to the west side of the alley. An underground/overhead power line runs the length of the east boundary of the existing lot. The existing overhead portion of the power line will need to be undergrounded at the developers expense. Additionally, the overhead electric service to the building at 1323 Harlow Ln. will need to be undergrounded at the developer's expense. The proposed 24' ingress/egress & utility easement will be adequate for the underground electric line.

Fire: The development proposes to provide an emergency access easement and roadway to replace the vacated alley that currently connects to Eisenhower. This easement will accommodate emergency vehicle access and turning movements to all properties currently accessed by the alley. Therefore, vacation of the alley will not negatively impact fire protection and is no longer needed for the use and convenience of the public.

Stormwater: The existing 20 foot wide ingress/egress & utility easement may be vacated along with redevelopment of the subject property which accommodates storm drainage conveyance.

IX. RECOMMENDED CONDITIONS:**Current Planning:**

1. The property owner shall dedicate to the City, at his/her sole expense, a public easement for access, emergency access and utility easement to replace and widen the vacated alley right-of-way, as shown on **Attachment #5** of this report. The City Council ordinance vacating the alley right-of-way shall include provisions to assure that this is accomplished, to the full satisfaction of the City, before said ordinance is recorded. In addition no Certificate of Occupancy for the new building shall be issued by the City until this shared easement has been dedicated and recorded.



April 11, 2012

City of Loveland
Current Planning Division
500 East Third Street
Loveland, CO 80537
Attn: Mr. Brian Burson

RE: Alley Vacation Request

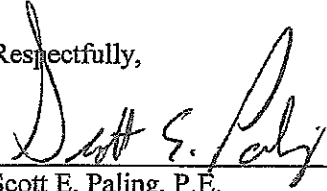
Dear Mr. Burson,

On behalf of the owner of the property located at 1352 West Eisenhower Boulevard, FIRSTBANK, Martin/Martin Inc. is requesting a vacation of 2,463 square feet of alley from the City of Loveland.

With the redevelopment of the existing First Bank, site access will be located along the existing alley. This access location will increase traffic on the alley and will cause the Alley ACF threshold to be exceeded. Once the alley is vacated, a 24' ingress/egress easement will replace the alley. A driveway cut will be constructed at the previous alley cut to continue to provide ingress/egress for the residential property owners to the south as well as the business customers

Please consider this request for the alley vacation, and call if you wish to discuss these items further. I can be reached at my direct line number; 720-544-5347.

Respectfully,



Scott E. Paling, P.E.

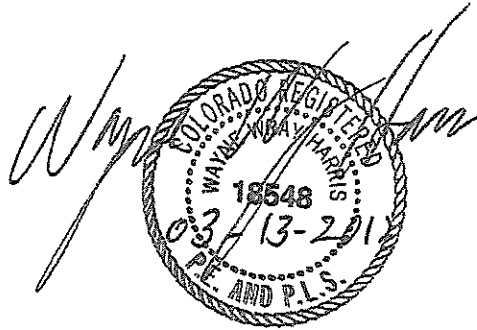
ALLEY VACATION
HARLOW ADDITION

A PARCEL OF LAND BEING ALL OF THE ALLEY ADJACENT TO LOT 1, HARLOW ADDITION (RECEPTION NO. 736774), BEING LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY MOST CORNER OF LOT 1 IN SAID HARLOW ADDITION; THENCE ALONG THE EASTERLY LINE OF SAID ALLEY AND THE WESTERLY LINE OF SAID LOT 1 S00°24'40"W, 123.28 FEET TO THE SOUTHWESTERLY MOST CORNER OF SAID LOT 1; THENCE LEAVING THE EASTERLY LINE OF SAID ALLEY N89°35'20"W, 20.00 FEET TO THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF LOT 10 OF SAID HARLOW ADDITION; THENCE ALONG THE WESTERLY LINE OF SAID ALLEY AND THE EASTERLY LINE OF SAID LOT 10 N00°24'40"E, 123.04 FEET TO THE NORTHEASTERLY MOST CORNER OF SAID LOT 10 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 34 (WEST EISENHOWER BOULEVARD); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE N89°43'40"E, 20.00 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINS 2,463 SQUARE FEET (0.0565 ACRES), MORE OR LESS.

BASIS OF BEARINGS: ASSUMING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST, AS BEARING S00°24'40"W BEING A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983/2007, A DISTANCE OF 2635.37 FEET WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.

PREPARED BY WAYNE W. HARRIS, P.E., P.L.S.
FOR AND ON BEHALF OF
MARTIN/MARTIN, INC.
12499 WEST COLFAX AVENUE
LAKEWOOD, COLORADO 80215
MARCH 13, 2012



ALLEY VACATION

PART OF ALLEY IN HARLOW ADDITION
 LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH,
 RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
 CITY OF LOVELAND, LARIMER COUNTY,
 COLORADO

NORTHWEST CORNER
 SECTION 14, T.5N., R.69W.
 FOUND 3" BRASS CAP
 IN CONCRETE, ILLEGIBLE

NORTHEAST CORNER
 SECTION 14, T.5N., R.69W.
 FOUND 3 1/4" ALUMINUM CAP
 ON #6 REBAR, ILLEGIBLE

S89°44'21"W 5302.55'

**US HIGHWAY 34
 W. EISENHOWER BLVD.**

N89°43'40"E 20.00'

TPOB

CENTERLINE OF 20' WIDE
 EASEMENT TO CITY OF
 LOVELAND FOR WATER MAIN
 BOOK 512, PAGE 26

LOT 1

LOT 9

BASIS OF BEARING
 S00°24'40"W 2635.37'

N00°24'40"E 123.04'

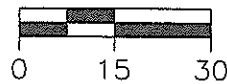
ALLEY

S00°24'40"W 123.28'

WEST QUARTER CORNER
 SECTION 14, T.5N., R.69W.
 FOUND 3 1/4" ALUMINUM CAP
 ON #6 REBAR, LS 20876

LOT 10

N89°35'20"W 20.00' LOT 2



SCALE: 1"=30'

THIS EXHIBIT DOES NOT REPRESENT A
 MONUMENTED SURVEY. IT IS INTENDED ONLY
 TO DEPICT THE ATTACHED DESCRIPTION.

PARCEL CONTAINS 0.0565 AC (2,463 SF)

REV: MAY 22, 2012
 MARCH 07, 2012



MARTIN / MARTIN
 CONSULTING ENGINEERS

12499 WEST COLFAX AVE.
 LAKEWOOD, CO 80215
 303.431.6100
 FAX 303.431.4028



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Street Number

Street Name

excluding N,S,E,W and AVE, DR, etc.

Use Auto Complete

Submit

Reset

Parks

Golf Courses

Public Facilities

Public Schools

Environmental Considerations

City of Loveland, 2009

ATTACHMENT 3

http://oisintra/illogic/illogic.html

7/10/2012

PLAT
OF
HARLOW ADDITION
TO THE CITY OF LOVELAND COLORADO.

The undersigned being the owners of the following
described property, to-wit:-

Beginning at a point on the West line of
Section 14, Township 5 North, Range 69 West
of the 6th P. M., 42 feet South of the North-
west corner of said Section 14, thence South
0°45' West along the west line of said
Section 14, 505.5 feet to the Northwestern
corner of the Loch-Mount Addition to the City
of Loveland, Colorado; thence East 400. feet
along the North line of said Loch-Mount Addition
to the center line of Harlow Lane; thence North
0°45' East 100. feet; thence East 213.0 feet
also along the North side of said Loch-Mount
Addition; thence North 0°45' East 263. feet to a
point on the South line of the State Highway
right of way; thence Northwest along
a curve to the left having a radius of 915
feet to a point 235. feet S. 89°56' East of
the point of beginning; thence North 89°56' West
235. feet to the point of beginning.

do hereby subdivide the same into lots and plat the same and dedicate
the same as HARLOW ADDITION to the City of Loveland, Colorado;
the undersigned do hereby confirm and recognize the lot lines, lot
numbers and area of lots one to eight-A both inclusive on the
within Plat as being the same identical lots as shown on Plat of
HARLOW SUBDIVISION heretofore filed and the undersigned do hereby
state that the within Plat of Harlow Addition shall supercede the
Plat of Harlow Subdivision.

The undersigned hereby dedicate to the public all streets, alleys
and easements as shown on the plat hereto attached.

IN WITNESS WHEREOF the undersigned have hereunto set their
hands and seals this 15th day of October, A.D. 1957

<u>Roy S. Harlow</u>	<u>E.M. Adkins</u>
<u>Jack L. Henning</u>	<u>Freda J. Adkins</u>
<u>Helen E. Henning</u>	<u>Clark Wiedow</u>
<u>Oliver N. Craton</u>	<u>Marjory Wiedow</u>
<u>Bertha A. Craton</u>	
<u>James H. Elija</u>	
<u>Harry Sumner</u>	
<u>Jane Sumner</u>	

CERTIFICATE

I, G.E. Dallemand, City engineer of the City of Loveland
Colo. do hereby certify that the attached Plat shows the true
location of the property described and platted as the "HARLOW
ADDITION" to the City of Loveland, Colo. with respect to the
Loch-Mount Addition, and with respect to the common corner
of Section 10-11-14-15 Twp. 5N Rng 69 W. of 6th P.M.

Date October 15, 1957

G.E. Dallemand
City Engineer.

STATE OF COLORADO } ss
COUNTY OF LARIMER }

The foregoing instrument was acknowledged before me
this 15th day of October A.D. 1957 by Roy S. Harlow, Jack L. Henning,
Helen E. Henning, Oliver N. Craton, Bertha A. Craton, James H. Elija, Harry Sumner, Jane S.
E.M. Adkins, Freda J. Adkins, Clark Wiedow, Marjory Wiedow.

Witness my hand and official seal

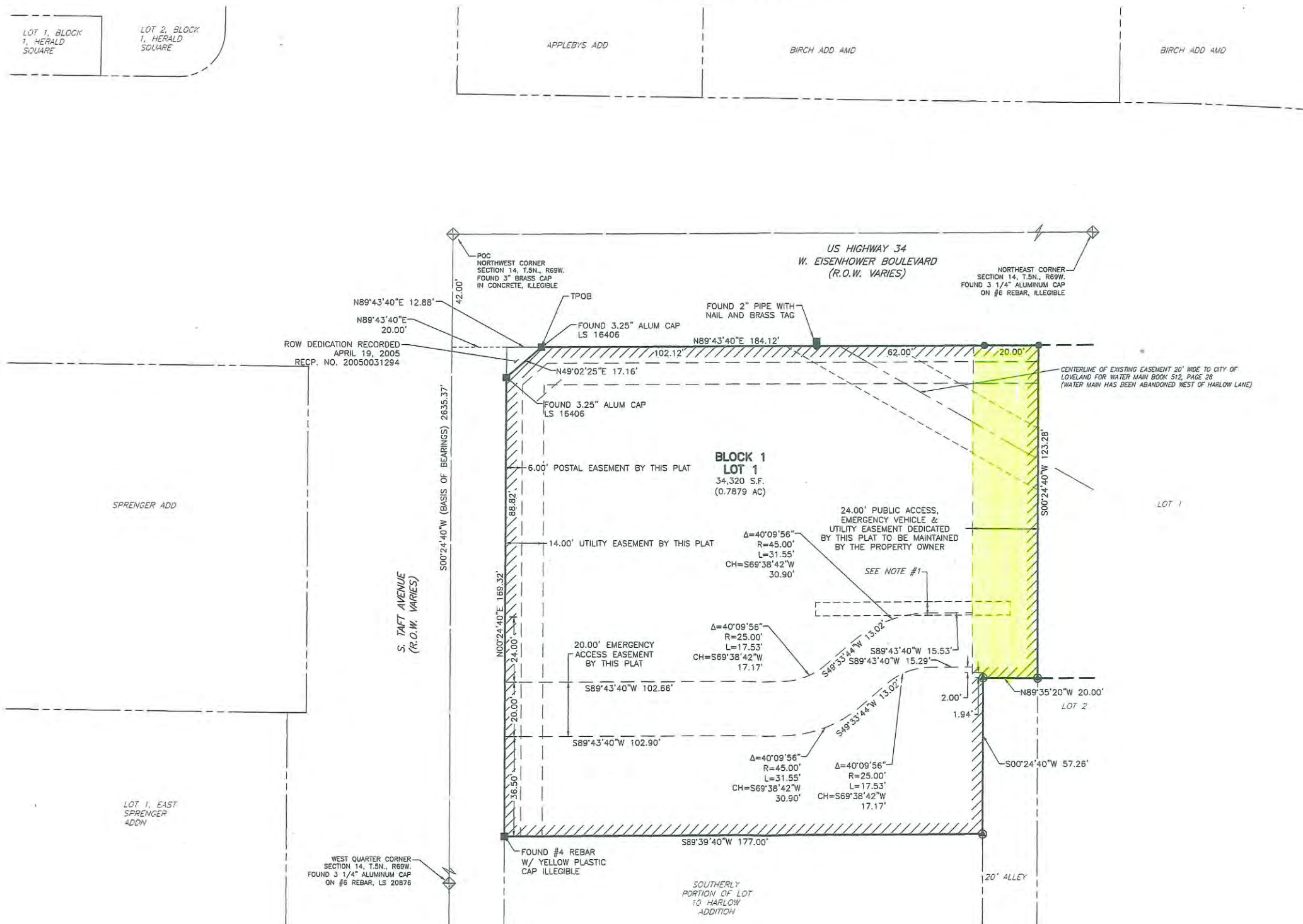
My Commission expires

April 15, 1961

Leatha George
Notary Public

HARLOW ADDITION - AMENDED PLAT #1

BEING A LOT MERGER OF LOT 9, PORTIONS OF LOT 10, AND THE ADJACENT VACATED ALLEY,
ALL IN HARLOW ADDITION TO THE CITY OF LOVELAND
LOCATED IN NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
CITY OF LOVELAND, COUNTY OF LARIMER
STATE OF COLORADO
SHEET 2 OF 2 SHEETS

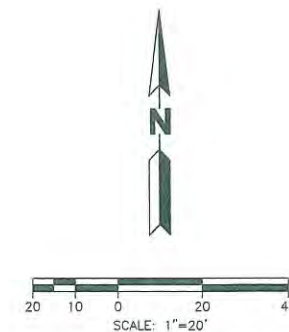


LEGEND

- FOUND MONUMENT AS DESCRIBED
- #4 REBAR WITH A ORANGE PLASTIC CAP STAMPED KSI, LS 34176
- ⊙ SET #4 REBAR WITH PLASTIC CAP STAMPED LS # 23899

NOTES:

1. THE GRANT OF EASEMENT RECORDED AT BOOK 1034, PAGE 538 IS BETWEEN A PRIVATE PERSON(S) AND A CORPORATION IS NOT A PUBLIC EASEMENT. THE EASEMENT WAS TO REMAIN APPURTENANT TO THE TRACT OF LAND WEST OF THE DESCRIBED EASEMENT. SINCE THE TWO (2) TRACTS OF LAND HAVE BEEN MERGED BY JOINT OWNERSHIP THE EASEMENT WILL CEASE TO EXIST.
2. THE EASEMENTS DESCRIBED AT BOOK 632, PAGE 119 (MARCH 1933); AND BOOK 290, PAGE 552 (APRIL 1911) ARE GRANTED TO MOUNTAIN STATES TELEPHONE AND COLORADO TELEPHONE COMPANY RESPECTIVELY. THESE EASEMENTS ARE BLANKET EASEMENTS, WHICH MAY OR MAY NOT AFFECT THE TRACT OF LAND SHOWN ON THIS PLAT.

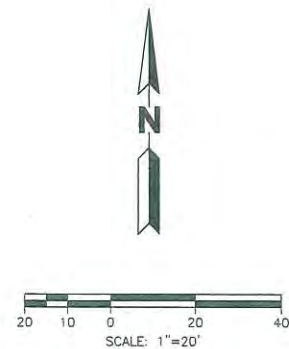
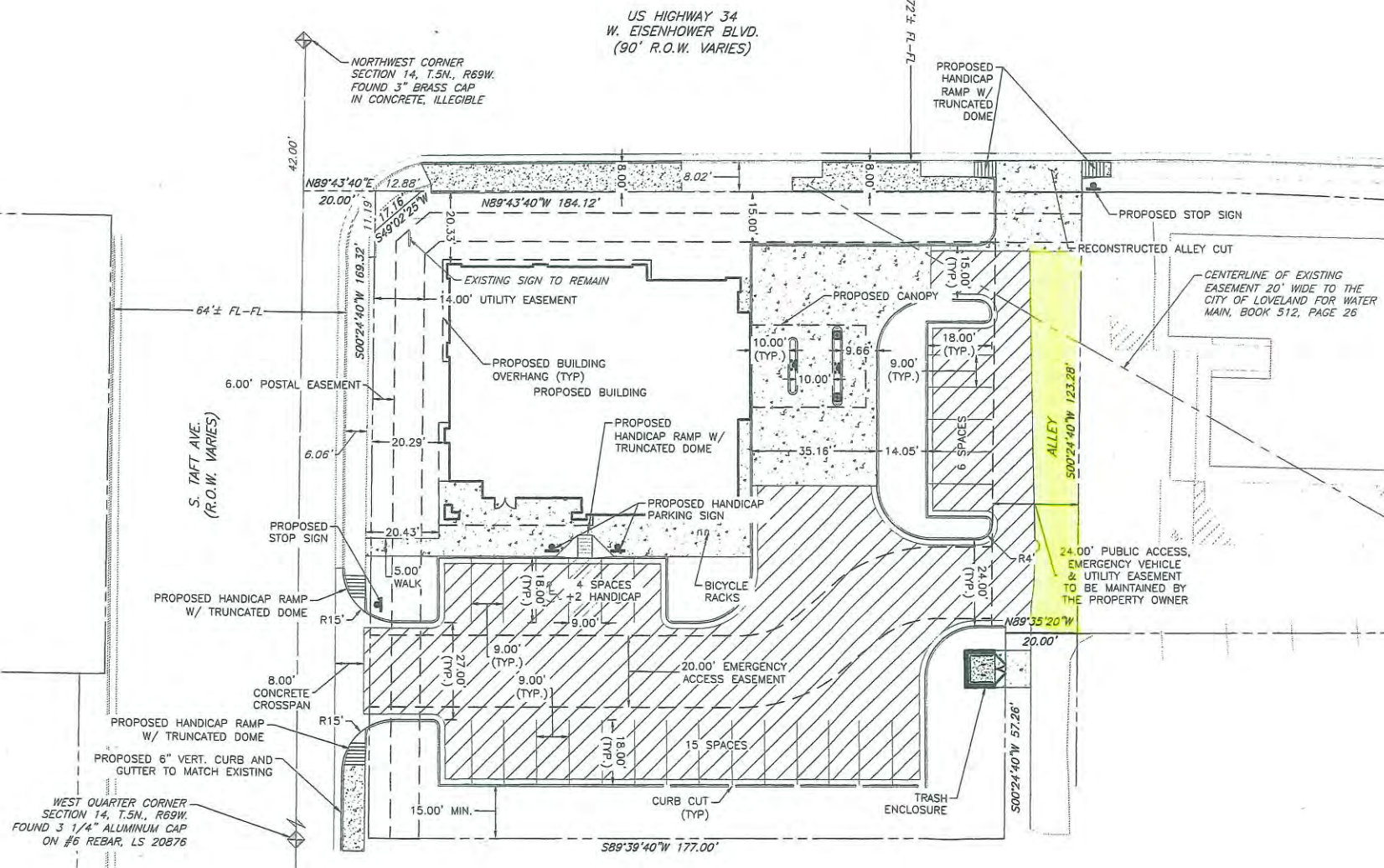


REVISED MAY 22, 2012
MARCH 9, 2012

ATTACHMENT 5

NOTES:

1. SEE LANDSCAPE PLAN FOR ALL TREE AND LANDSCAPING INFORMATION.



ATTACHMENT 6

Location: G:\HARRIS\23416 First Bank Loveland\Plans\SDP\03 - Site.dwg
 Drawn By: R. SILVAS
 Job Number: Sheet Number:

Project Manager: S. PALING
 Designed By: S. PALING

Plot Date: PLAT DATE

LOT 1, BLOCK
1, HERALD
SQUARE

APPLEBYS ADD

BIRCH ADD AND

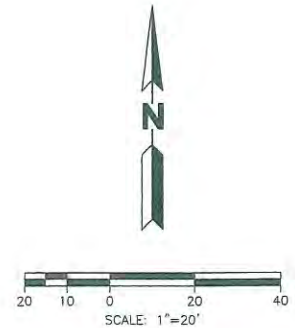
BIRCH ADD AMD

FOUND MONUMENT
AS DESCRIBED

#4 REBAR WITH A
ORANGE PLASTIC CAP STAMPED
KSI, LS 34176

SET #4 REBAR WITH PLASTIC CAP
STAMPED LS # 23899

1. THE GRANT OF EASEMENT RECORDED AT BOOK 1034, PAGE 538 IS BETWEEN A PRIVATE PERSON(S) AND A CORPORATION IS NOT A PUBLIC EASEMENT. THE EASEMENT WAS TO REMAIN APPURTENANT TO THE TRACT OF LAND WEST OF THE DESCRIBED EASEMENT. SINCE THE TWO (2) TRACTS OF LAND HAVE BEEN MERGED BY JOINT OWNERSHIP THE EASEMENT WILL CEASE TO EXIST.
2. THE EASEMENTS DESCRIBED AT BOOK 632, PAGE 119 (MARCH 1933); AND BOOK 290, PAGE 552 (APRIL 1911) ARE GRANTED TO UNITED STATES TELEPHONE AND CABLE COMPANY TWO TELEPHONE CABLES, RESPECTIVELY. THESE EASEMENTS ARE BLANKET EASEMENTS, WHICH MAY OR MAY NOT AFFECT THE TRACT OF LAND SHOWN ON THIS PLAT.



REVISED MAY 22, 2012
MARCH 9, 2012

ATTACHMENT D

**CITY OF LOVELAND****FINANCE DEPARTMENT**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 9/4/2012
TO: City Council
FROM: Brent Worthington, Finance
PRESENTER: Brent Worthington

TITLE:

July 2012 Financial Report

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No action is required.

DESCRIPTION:

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the seven months ending July 31, 2012.

BUDGET IMPACT:

- ☐ Positive
 - ☐ Negative
 - ☒ Neutral or negligible
-

SUMMARY:

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the month ending July 31, 2012. Citywide Revenue (excluding internal transfers) of \$128,442,331 is 103.5% of year to date (YTD) budget or \$4,334,578 over the budget. Citywide total expenditures of \$112,430,254 (excluding internal transfers) are 81.9% of the YTD budget or \$24,914,555 under the budget.

Citywide revenues exceed expenditures by \$16,012,077.

In the General Fund total revenue is 5.8% or \$2,443,606 above the year-to-date budget, primarily due to higher Sales and Use Tax revenue. Sales Tax collections are 102.7% of the YTD budget or \$529,105 over budget. Building Material Use Tax is 140.9% of YTD budget, or \$236,157 over budget. Sales and Use Tax collections combined were 105.1% of YTD budget or

\$1,072,585 over budget. When the combined sales and use tax for the current year are compared to 2011 for the same period last year, they are higher by 7.8% or \$1,600,462.

General Fund expenditures are 15% below the year-to date budget due to the timing of expenditures for supplies and equipment purchases, the timing of the payments for the human services grants and business incentive payments.

General Fund revenues exceed expenditures by \$10,146,540.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Snapshot report for July 2012



SnapShot

Monthly Financial Report
July 2012

A Snapshot In Time

Financial Sustainability Strategies Can Be Found At:

CityofLoveland.org

- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ Financial Sustainability Strategies

- Citywide Revenue, excluding transfers between funds, \$128.4 million (3.5% above budget projections)
- Sales & Use Tax Collection, \$22.1 million (5.1% above budget projections)
- Citywide Expenditures, excluding transfers between funds, \$112.4 million (18.1% below budget projections)
- Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$16.0 million
- General Fund Revenue, excluding transfers between funds, \$43.5 million (9.1% above budget projections)
- General Fund Expenditures, excluding transfers between funds, \$33.5 million, (9.4% below budget projections)
- General Fund Revenues exceed Expenditures by \$10.1 million
- Cash & Reserves Year-To-Date Balance, \$208.3 million, \$145.1 million or 69.7% of these funds are restricted or reserved primarily for future capital projects

Inside This Edition

Citywide Revenues & Expenditures	2
General Fund Revenues & Expenditures	4
Tax Totals & Comparison	6-9
Sales Tax SIC & Geo Codes	10-11
Health Care Claims	12
Activity Measures	13
Cash & Reserves	14
Capital Projects	15

The Sales Tax Basics

July 2012	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2012	\$ 19,335,520	\$ 1,119,700	\$ 576,760	\$ 21,031,980
Actual 2012	\$ 19,864,625	\$ 1,427,023	\$ 812,917	\$ 22,104,565
% of Budget	102.7%	127.4%	140.9%	105.1%
Actual 2011	\$ 18,745,720	\$ 1,176,882	\$ 581,501	\$ 20,504,103
Change from prior year	6.0%	21.3%	39.8%	7.8%

Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes both immediate actions reflected in the 2012 budget and ongoing processes designed to ensure that the City retains a healthy financial outlook.

Although sales and use tax revenue is greater in 2012 than in 2007, inflation adjustment of the revenue shows that collections in 2012 are still close to 2007 when inflation is taken into account. Since May, 2012 collections in real dollar terms have trended above 2007 collections, but only slightly, emphasizing the importance of continuing the strategy implementation.

Citywide Revenues & Expenditures

July 2012

Combined Statement of Revenues and Expenditures July 2012				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
General Governmental				
1 General Fund	\$ 7,540,540	\$ 43,470,542	\$ 39,829,832	109.1%
2 Special Revenue	104,978	555,198	611,932	90.7%
3 Other Entities	3,497,087	17,856,692	19,641,950	90.9%
4 Internal Service	1,398,223	9,518,246	9,484,074	100.4%
5 <i>Subtotal General Govt Operations</i>	\$ 12,540,827	\$ 71,400,678	\$ 69,567,788	102.6%
6 Capital Projects	740,518	6,269,680	6,836,396	91.7%
Enterprise Fund				
7 Water & Power	7,882,601	42,171,187	39,160,810	107.7%
8 Stormwater	349,098	2,480,124	2,582,741	96.0%
9 Golf	527,422	2,456,320	2,382,840	103.1%
10 Solid Waste	701,199	3,664,342	3,577,178	102.4%
11 <i>Subtotal Enterprise</i>	\$ 9,460,320	\$ 50,771,973	\$ 47,703,569	106.4%
12 Total Revenue	\$ 22,741,666	\$128,442,331	\$ 124,107,753	103.5%
<i>Prior Year External Revenue</i>		118,029,255		
<i>Increase From Prior Year</i>		8.8%		
13 Internal Transfers	378,559	4,594,265	11,559,420	39.7%
14 Grand Total Revenues	\$ 23,120,225	\$133,036,596	\$ 135,667,173	98.1%
EXPENDITURES				
General Governmental				
15 General Fund	\$ 4,693,225	\$ 33,074,418	\$ 36,491,371	90.6%
16 Special Revenue	118,952	365,840	555,998	65.8%
17 Other Entities	3,251,348	17,060,134	17,184,564	99.3%
18 Internal Services	1,596,153	7,573,384	9,883,577	76.6%
19 <i>Subtotal General Gov't Operations</i>	\$ 9,659,678	\$ 58,073,776	\$ 64,115,511	90.6%
20 Capital	3,178,515	16,981,064	35,568,416	47.7%
Enterprise Fund				
21 Water & Power	5,445,369	32,345,464	32,184,120	100.5%
22 Stormwater	191,068	1,060,064	1,364,710	77.7%
23 Golf	273,013	1,476,043	1,497,742	98.6%
24 Solid Waste	446,607	2,493,842	2,614,310	95.4%
25 <i>Subtotal Enterprise</i>	\$ 6,356,057	\$ 37,375,413	\$ 37,660,882	99.2%
26 Total Expenditures	\$ 19,194,250	\$112,430,254	\$ 137,344,809	81.9%
<i>Prior Year External Expenditures</i>		101,646,608		
<i>Increase (-Decrease) From Prior Year</i>		10.6%		
27 Internal Transfers	378,559	4,594,265	11,559,420	39.7%
28 Grand Total Expenditures	\$ 19,572,809	\$117,024,519	\$ 148,904,229	78.6%
** Based on seasonality of receipts and expenditures since 1995.				

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures.

General Government Capital Projects Fund: Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

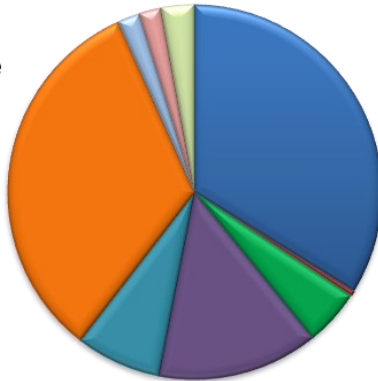
Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

July 2012

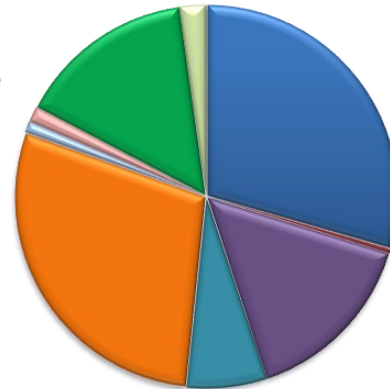
YTD Operating Revenues of \$128.4 Million

■ General Fund
 ■ Special Revenue
 ■ Capital Projects
 ■ Other Entities
 ■ Internal Service
 ■ Utilities
 ■ Stormwater
 ■ Golf
 ■ Solid Waste



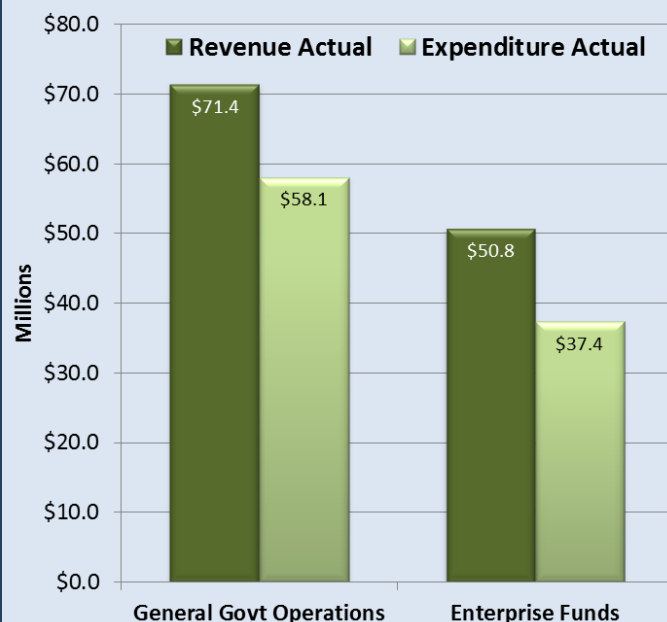
YTD Operating Expenditures of \$112.4 Million

■ General Fund
 ■ Special Revenue
 ■ Other Entities
 ■ Internal Service
 ■ Utilities
 ■ Stormwater
 ■ Golf
 ■ Capital Projects
 ■ Solid Waste



- ⇒ Revenues exceed expenditures YTD by \$16,012,077 (line 14 less line 28)
- ⇒ General Fund revenue is above budget due to higher than projected sales, auto use, and building permit revenue (line 1)
- ⇒ The Special Revenue fund is below budget due to the timing of Federal Community Development Block Grant (CDBG) expenditures (line 2)
- ⇒ Other Entities (line 3) revenue is below budget due to the timing of Federal grant expenditures at the Airport and Loveland Fire Rescue Authority
- ⇒ Capital Projects revenue is below projections due to the timing of capital projects supported by Federal grants (line 6)
- ⇒ Water & Power revenues are above budget (line 7) due to higher than expected water and commercial power sales
- ⇒ Internal transfers (line 13 & 27) are under budget due to the timing of related expenditures
- ⇒ The General Fund (line 15) is under budget due to timing of payments to Fort Collins for the Flex route, human services grantees, and for chemicals for snow/ice removal
- ⇒ Special Revenue funds (line 16) are below budget due to the timing of grant payments from the CDBG Fund
- ⇒ Internal services (line 18) is under budget due to lower than anticipated health claims and payments for workers compensation and unemployment events
- ⇒ Capital expenditures (line 20) are under budget due to the timing of capital projects throughout the City
- ⇒ Stormwater (line 22) is under budget due to lower than expected repair and maintenance costs

By Comparison, Excluding Transfers



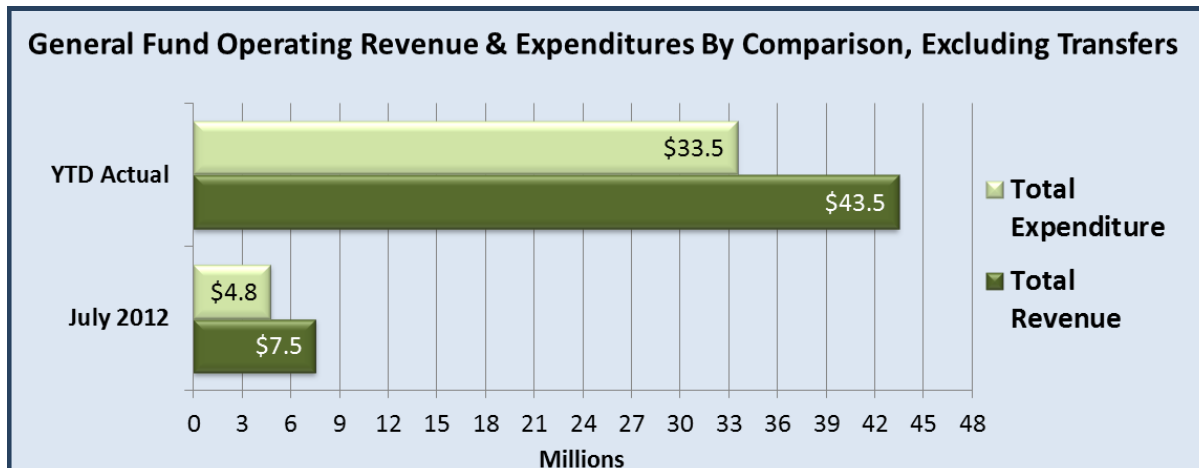
General Fund Revenues & Expenditures

July 2012

General Fund Revenue & Expenditures July 2012				
REVENUES	July 2012	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 1,689,898	\$ 7,166,619	\$ 6,954,960	103.0%
3 Sales tax	3,105,564	19,864,625	19,335,520	102.7%
4 Building use tax	146,570	812,917	576,760	140.9%
5 Auto use tax	227,989	1,427,023	1,119,700	127.4%
6 Other taxes	148,902	1,983,467	1,433,980	138.3%
7 Intergovernmental	992,922	4,049,791	3,432,930	118.0%
8 License & permits	-	-	-	
9 Building permits	127,505	907,060	462,770	196.0%
10 Other permits	29,845	223,083	163,365	136.6%
11 Charges for services	394,496	2,440,912	2,250,019	108.5%
12 Fines & forfeitures	76,636	614,657	586,411	104.8%
13 Interest income	(15,393)	258,561	236,300	109.4%
14 Miscellaneous	615,607	3,721,828	3,277,117	113.6%
15 Subtotal	\$ 7,540,540	\$ 43,470,542	\$ 39,829,832	109.1%
16 Interfund transfers	164,991	1,185,496	2,382,600	49.8%
17 Total Revenue	\$ 7,705,531	\$ 44,656,038	\$ 42,212,432	105.8%
EXPENDITURES				
Operating Expenditures				
18 Legislative	\$ 7,812	\$ 57,248	\$ 79,186	72.3%
19 Executive & Legal	156,918	1,233,332	1,424,849	86.6%
20 Economic Development	67,786	849,008	1,128,803	75.2%
21 Cultural Services	108,363	761,845	859,989	88.6%
22 Development Services	179,426	1,269,258	1,656,069	76.6%
23 Finance	332,254	1,967,731	2,292,562	85.8%
24 Fire & Rescue	52,974	602,944	524,940	0.0%
25 Human Resources	59,436	486,538	531,639	91.5%
26 Information Technology	245,486	1,946,508	2,240,682	86.9%
27 Library	171,559	1,331,406	1,381,656	96.4%
28 Parks & Recreation	662,179	4,053,724	4,300,219	94.3%
29 Police	1,192,150	8,642,958	9,347,066	92.5%
30 Public Works	941,675	6,306,946	6,896,497	91.5%
31 Non-Departmental	580,428	4,007,185	4,316,645	92.8%
32 Subtotal Operating	\$ 4,758,446	\$ 33,516,634	\$ 36,980,801	90.6%
33 Internal Transfers	201,125	992,864	3,628,080	27.4%
34 Total Expenditures	\$ 4,959,571	\$ 34,509,498	\$ 40,608,881	85.0%

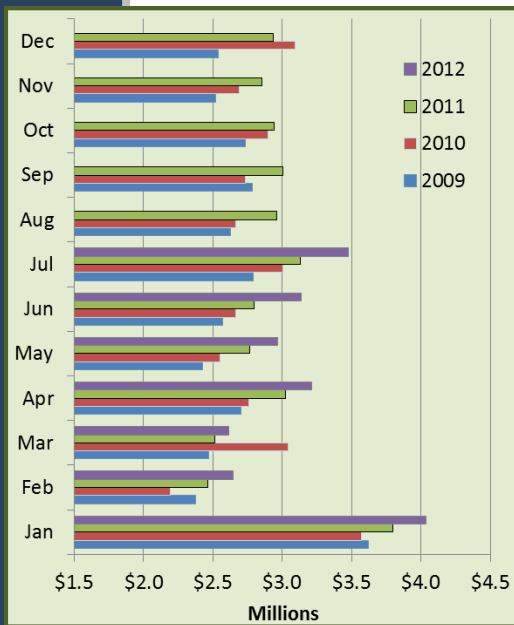
July 2012

- ⇒ Sales Tax revenue is above budgeted levels by 2.7%
- ⇒ Building use tax and permit revenue (lines 5, 9) exceed budget due to higher than expected building activity
- ⇒ Intergovernmental revenue (line 7) is above budget due to the timing of State FASTER and Federal grant receipts
- ⇒ Other permit revenue (line 10) is above budget due to the timing of revenue passed through to the school district
- ⇒ Charges for service (line 11) is above budget due to greater than planned recreation revenue and the timing of payments from the rural fire district
- ⇒ Interest Income revenues (line 13) are higher than expected due to differences between budgeted and actual 2012 beginning fund balance and higher than expected returns
- ⇒ Miscellaneous revenue is higher than expected due to donations to the library and higher than planned rental and sales tax application revenue
- ⇒ Internal transfers (lines 16 & 33) are under budget due to the timing of related expenditures
- ⇒ Council expenditures (line 18) are under budget due to lower than planned travel and meeting and food costs
- ⇒ Executive expenditures (line 19) are lower than projected due to lower printing costs with the transition to electronic Council packet delivery
- ⇒ Economic Development (line 20) is under budget due to the timing of incentive payments
- ⇒ Cultural Services (line 21) is under budget due to the timing of expenditures from a Theater Guild donation for equipment
- ⇒ Development Services expenditures (line 22) are under budget due to the timing of human services grants
- ⇒ Finance is under budget due to lower than planned bank charges and lower than planned audit charges (line 23)
- ⇒ Information Technology (line 26) is under budget due to the timing of computer and service maintenance expenses
- ⇒ Public Works (line 30) is under budget due to the timing of chemical purchases for snow and ice removal
- ⇒ Revenues exceed expenditures by \$10,146,540 (line 17 less line 34)



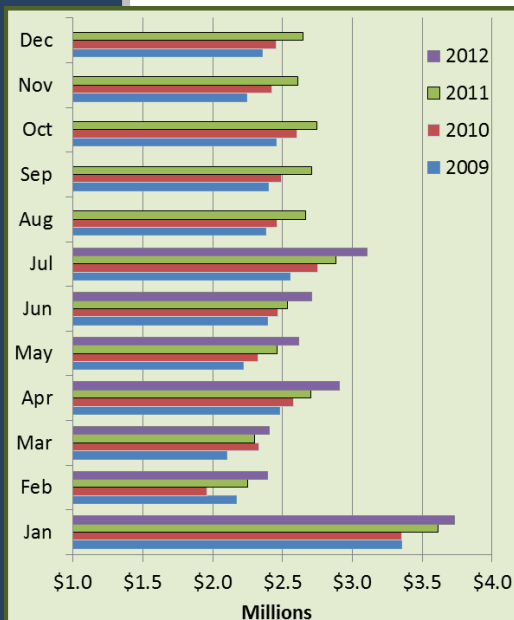
Tax Totals & Comparisons

Sales & Use Tax



	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,622,251	\$ 3,573,972	\$ 3,799,760	\$ 4,039,678	\$ 3,863,500	4.6%
Feb	2,374,608	2,191,609	2,465,447	2,649,229	2,353,490	12.6%
Mar	2,468,095	3,041,068	2,517,162	2,618,053	2,834,880	-7.6%
Apr	2,701,737	2,759,556	3,022,770	3,215,437	3,043,630	5.6%
May	2,428,860	2,550,227	2,769,526	2,966,032	2,777,110	6.8%
Jun	2,569,125	2,665,632	2,800,184	3,136,013	2,904,600	8.0%
Jul	2,794,222	3,004,324	3,129,254	3,480,123	3,254,770	6.9%
Aug	2,628,842	2,662,932	2,961,686		2,930,740	
Sep	2,782,768	2,732,087	3,008,637		2,992,510	
Oct	2,733,964	2,897,370	2,944,433		3,116,480	
Nov	2,522,092	2,690,549	2,853,507		2,881,350	
Dec	2,537,802	3,096,111	2,933,523		2,914,960	
	\$32,164,365	\$33,865,435	\$35,205,889	\$22,104,565	\$35,868,020	
YTD	\$18,958,898	\$19,786,387	\$20,504,103	\$22,104,565	\$21,031,980	5.1%

Retail Sales Tax

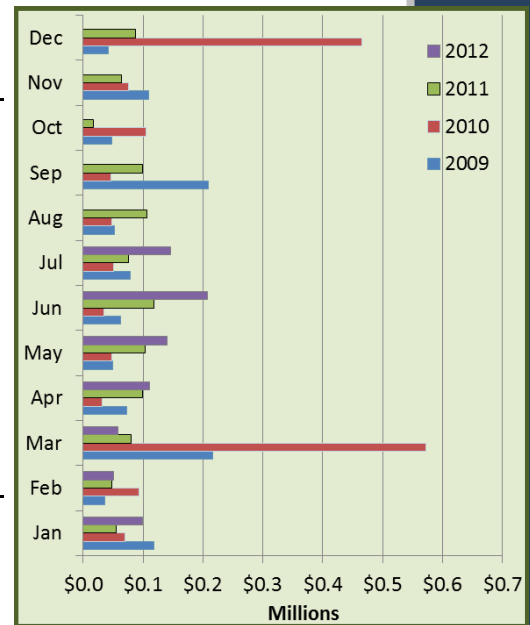


	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,354,704	\$ 3,352,821	\$ 3,613,881	\$ 3,733,309	\$ 3,648,890	2.3%
Feb	2,170,562	1,959,729	2,249,749	2,390,409	2,132,780	12.1%
Mar	2,100,216	2,328,701	2,299,237	2,403,380	2,534,340	-5.2%
Apr	2,482,752	2,579,918	2,702,024	2,905,558	2,807,740	3.5%
May	2,218,482	2,324,395	2,462,213	2,614,500	2,529,650	3.4%
Jun	2,390,535	2,468,207	2,536,541	2,711,906	2,686,160	1.0%
Jul	2,552,195	2,752,870	2,882,075	3,105,564	2,995,960	3.7%
Aug	2,383,119	2,458,382	2,667,674		2,675,470	
Sep	2,401,596	2,495,338	2,710,738		2,715,690	
Oct	2,457,158	2,602,599	2,746,866		2,832,420	
Nov	2,245,659	2,422,352	2,611,127		2,636,260	
Dec	2,358,273	2,455,821	2,647,014		2,672,660	
	\$29,115,253	\$30,201,133	\$32,129,139	\$19,864,625	\$32,868,020	
YTD	\$17,269,447	\$17,766,641	\$18,745,720	\$19,864,625	\$19,335,520	2.7%

SnapShot

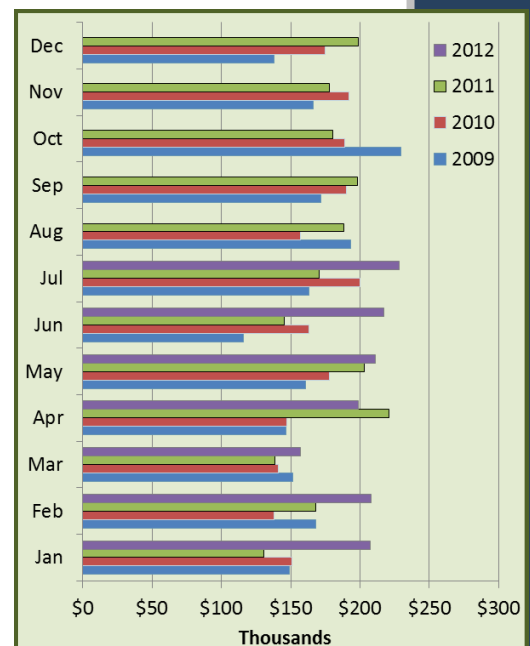
Building Materials Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 118,719	\$ 70,117	\$ 55,542	\$ 99,108	\$ 67,230	47.4%
Feb	36,254	93,928	47,621	50,703	64,310	-21.2%
Mar	216,500	571,599	79,590	57,845	144,060	-59.8%
Apr	72,251	32,260	99,569	111,197	82,360	35.0%
May	49,434	48,145	104,373	140,470	75,760	85.4%
Jun	62,723	34,349	118,318	207,024	66,460	211.5%
Jul	79,061	51,657	76,488	146,570	76,580	91.4%
Aug	52,578	47,716	105,871		70,510	
Sep	209,338	46,646	99,544		93,610	
Oct	47,437	105,818	17,021		80,030	
Nov	110,207	76,444	64,211		78,900	
Dec	41,844	465,626	88,033		100,190	
	\$1,096,346	\$1,644,305	\$956,181	\$ 812,917	\$1,000,000	
YTD	\$ 634,942	\$ 902,055	\$ 581,501	\$ 812,917	\$ 576,760	40.9%



Motor Vehicle Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 148,828	\$ 151,034	\$ 130,337	\$ 207,261	\$ 147,380	40.6%
Feb	167,793	137,951	168,077	208,117	156,400	33.1%
Mar	151,378	140,768	138,335	156,828	156,480	0.2%
Apr	146,734	147,378	221,177	198,682	153,530	29.4%
May	160,943	177,687	202,940	211,062	171,700	22.9%
Jun	115,867	163,076	145,325	217,084	151,980	42.8%
Jul	162,966	199,797	170,691	227,989	182,230	25.1%
Aug	193,144	156,834	188,141		184,760	-100.0%
Sep	171,833	190,102	198,355		183,210	-100.0%
Oct	229,369	188,953	180,546		204,030	-100.0%
Nov	166,225	191,753	178,169		166,190	-100.0%
Dec	137,685	174,664	198,476		142,110	-100.0%
	\$1,952,766	\$2,019,997	\$2,120,569	\$1,427,023	\$2,000,000	
YTD	\$1,054,509	\$1,117,691	\$1,176,882	\$1,427,023	\$1,119,700	27.4%



2007 vs 2012 Tax Comparisons

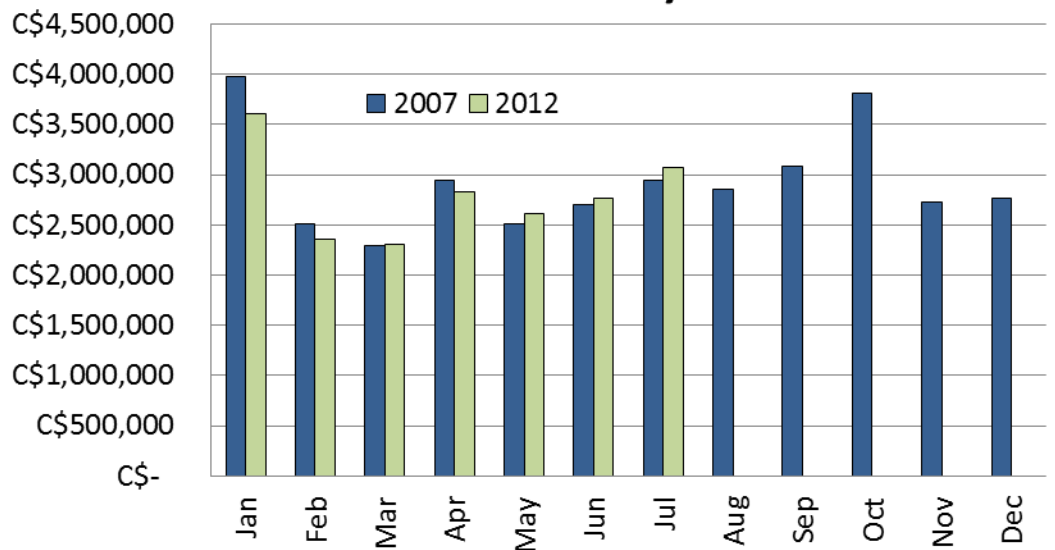
	2007	2012
Jan	\$3,972,513	\$4,039,678
Feb	2,520,486	2,649,229
Mar	2,319,579	2,618,053
Apr	3,003,780	3,215,437
May	2,581,830	2,966,032
Jun	2,781,786	3,136,014
Jul	3,022,815	3,480,123
Aug	2,931,667	
Sep	3,176,883	
Oct	3,936,330	
Nov	2,835,420	
Dec	2,869,916	
	\$35,953,006	\$22,104,566

Sales & Use Tax 2007 v. 2012

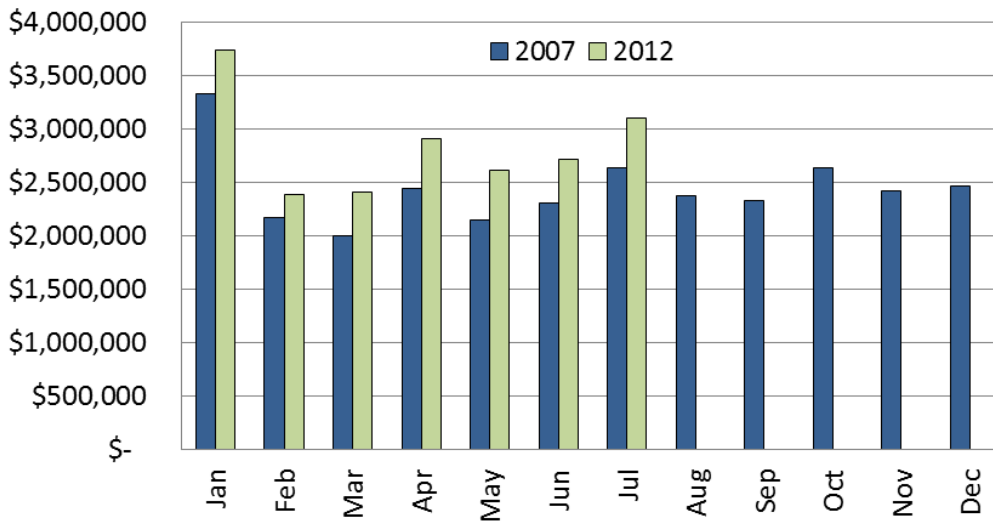


	2007	2012
Jan	\$3,972,513	\$3,607,507
Feb	2,507,072	2,355,439
Mar	2,286,415	2,310,176
Apr	2,941,724	2,828,763
May	2,513,134	2,612,416
Jun	2,702,532	2,766,189
Jul	2,937,441	3,074,729
Aug	2,854,102	
Sep	3,084,330	
Oct	3,813,494	
Nov	2,730,719	
Dec	2,765,797	
	\$35,109,275	\$19,555,217

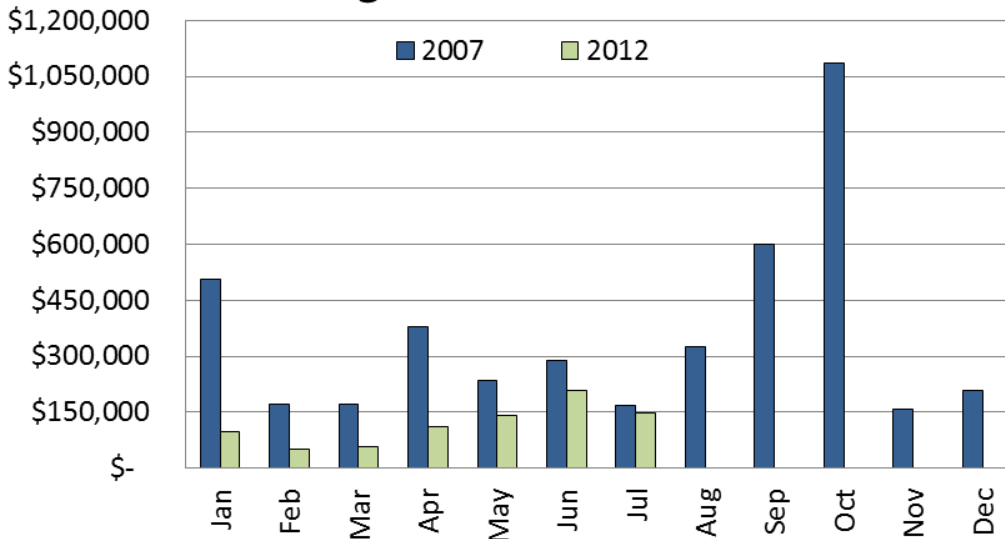
Sales & Use Tax 2007 v. 2012 in Constant January 2007 Dollars



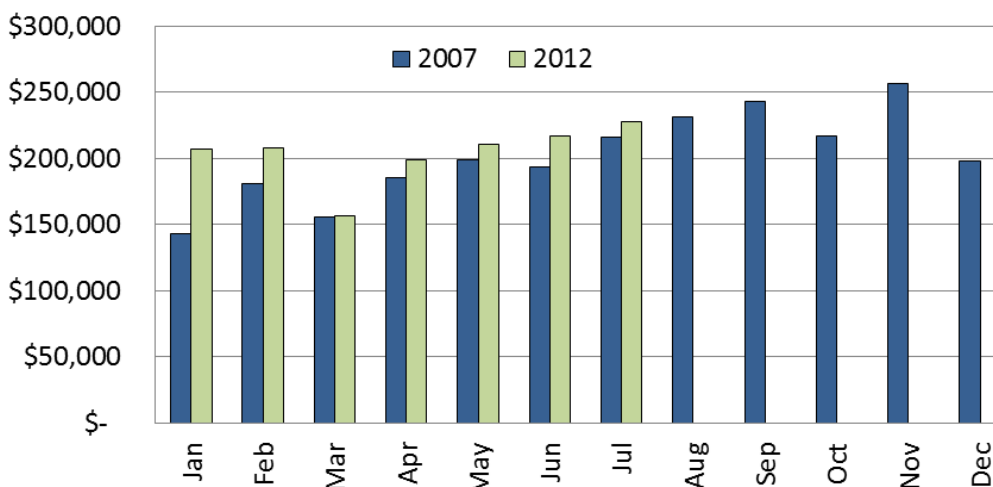
SnapShot

Retail Sales Tax 2007 v. 2012

	2007	2012
Jan	\$3,324,067	\$3,733,309
Feb	2,167,873	2,390,409
Mar	1,994,635	2,403,380
Apr	2,437,958	2,905,558
May	2,146,685	2,614,500
Jun	2,300,533	2,711,906
Jul	2,640,223	3,105,564
Aug	2,376,534	
Sep	2,332,844	
Oct	2,632,667	
Nov	2,419,051	
Dec	2,464,559	
	\$29,237,629	\$19,864,625

Building Material Use Tax 2007 v. 2012

	2007	2012
Jan	\$505,441	\$99,108
Feb	171,835	50,703
Mar	169,579	57,845
Apr	380,285	111,197
May	236,140	140,470
Jun	287,300	207,024
Jul	166,446	146,570
Aug	324,125	
Sep	600,704	
Oct	1,086,325	
Nov	159,382	
Dec	207,723	
	\$4,295,285	\$812,917

Motor Vehicle Use Tax 2007 v. 2012

	2007	2012
Jan	\$143,005	\$207,261
Feb	180,778	208,117
Mar	155,365	156,828
Apr	185,537	198,682
May	199,005	211,062
Jun	193,953	217,084
Jul	216,146	227,989
Aug	231,008	
Sep	243,336	
Oct	217,338	
Nov	256,987	
Dec	197,634	
	\$2,420,092	\$1,427,023

Sales Tax Collections

July 2012

Description	YTD 2012	YTD 2011	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 4,509,870	\$ 4,322,018	\$ 187,852	4.3%	22.7%	22.7%
Restaurants & Bars	2,483,552	2,195,836	287,716	13.1%	12.5%	35.2%
Grocery Stores & Specialty Foods	1,997,773	1,923,721	74,051	3.8%	10.1%	45.3%
Clothing & Clothing Accessories Stores	1,440,832	1,357,142	83,690	6.2%	7.3%	52.5%
Building Material & Lawn & Garden Supplies	1,331,217	1,223,961	107,257	8.8%	6.7%	59.2%
Motor Vehicle Dealers, Auto Parts & Leasing	1,252,546	1,122,312	130,234	11.6%	6.3%	65.5%
Utilities	1,060,274	1,063,921	(3,647)	-0.3%	5.3%	70.9%
Sporting Goods, Hobby, Book & Music Stores	977,744	912,693	65,051	7.1%	4.9%	75.8%
Broadcasting & Telecommunications	776,552	785,930	(9,378)	-1.2%	3.9%	79.7%
Used Merchandise Stores	619,402	524,898	94,504	18.0%	3.1%	82.8%
Beer, Wine & Liquor Stores	461,430	406,444	54,986	13.5%	2.3%	85.1%
Hotels, Motels & Other Accommodations	415,643	375,187	40,456	10.8%	2.1%	87.2%
Consumer Goods & Commercial Equipment Rental	361,112	296,971	64,141	21.6%	1.8%	89.0%
Health & Personal Care Stores	344,751	333,167	11,584	3.5%	1.7%	90.8%
Electronics & Appliance Stores	308,788	419,793	(111,005)	-26.4%	1.6%	92.3%
Electronic Shopping & Mail-Order Houses	283,930	265,367	18,563	7.0%	1.4%	93.8%
Furniture & Home Furnishing Stores	257,147	249,790	7,357	2.9%	1.3%	95.1%
Office Supplies, Stationery & Gift Stores	185,551	204,312	(18,761)	-9.2%	0.9%	96.0%
Gasoline Stations with Convenience Stores	149,292	135,302	13,991	10.3%	0.8%	96.7%
All Other Categories	647,220	626,956	20,264	3.2%	3.3%	100.0%
Total	\$19,864,625	\$18,745,720	\$1,118,905	6.0%	100.0%	

- ⇒ By business category, Consumer Goods & Commercial Equipment Rentals continue to report the highest percentage over last year at 21.6%. Used Merchandise Stores are still showing sales over 2011 at 18.0%, but have begun to show signs that the used merchandise market may be slowing down with increases getting smaller each of the past four months. Restaurants & Bars continue their consistently strong growth with a 12.7% increase and continue to lead all categories for total dollar increases from the same period last year. The "Beer, Wine & Liquor Stores" category, posted a 13.5% increase through July by posting large gains each month since April 2012.
- ⇒ 2012 sales tax revenue is 6.0% above the 2011 level year-to-date. The North East Loveland area is again showing signs of strong growth over last year with a 21.8% increase over this time last year. North East Loveland's performance through July is due to the strong performances by new and existing restaurants in the area. Three areas continue to trail their 2011 pace. In the last half of 2011, several stores closed in the Downtown area, which

Geographical Area	YTD 2012	YTD 2011	Change
North West Loveland	\$2,246,488	\$2,161,209	3.9%
South West Loveland	642,647	621,324	3.4%
North East Loveland	1,448,319	1,188,971	21.8%
South East Loveland	4,900,139	4,546,006	7.8%
Orchards Shopping Center	1,252,074	1,198,996	4.4%
Columbine Shopping Center	381,009	348,294	9.4%
Downtown	584,226	608,107	-3.9%
Centerra	1,894,151	1,728,889	9.6%
Promenade Shops	1,371,128	1,419,826	-3.4%
Outlet Mall	779,451	731,390	6.6%
Thompson Valley Shopping Center	987,910	921,067	7.3%
The Ranch	377,289	391,539	-3.6%
Airport	227,777	210,682	8.1%
All Other Areas	2,772,017	2,669,419	3.8%
Total	\$19,864,625	\$18,745,720	6.0%

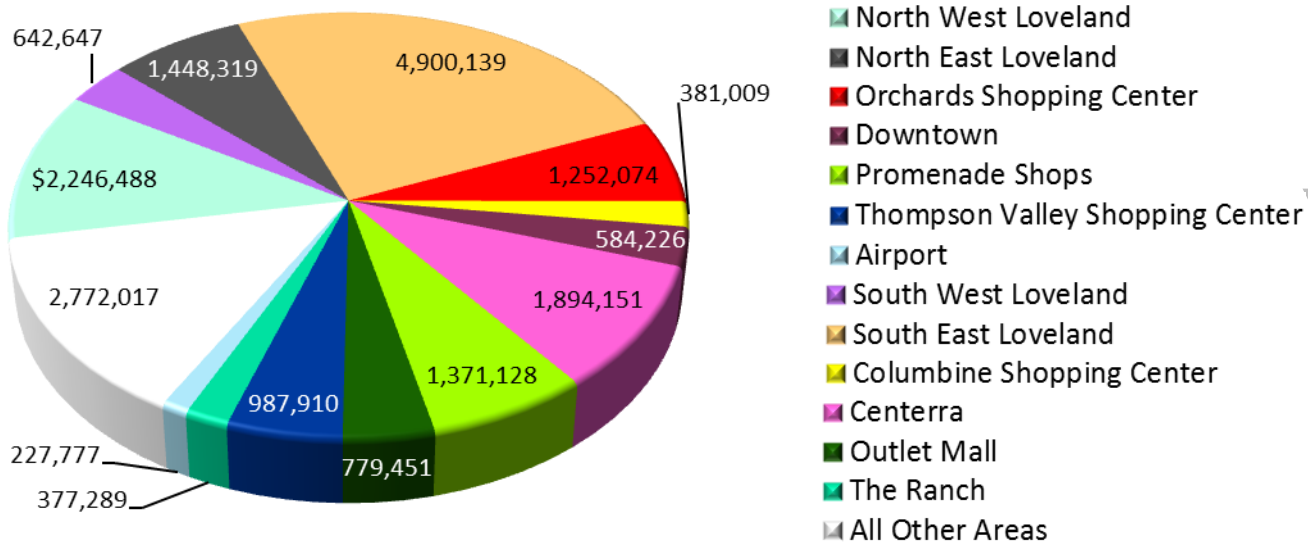
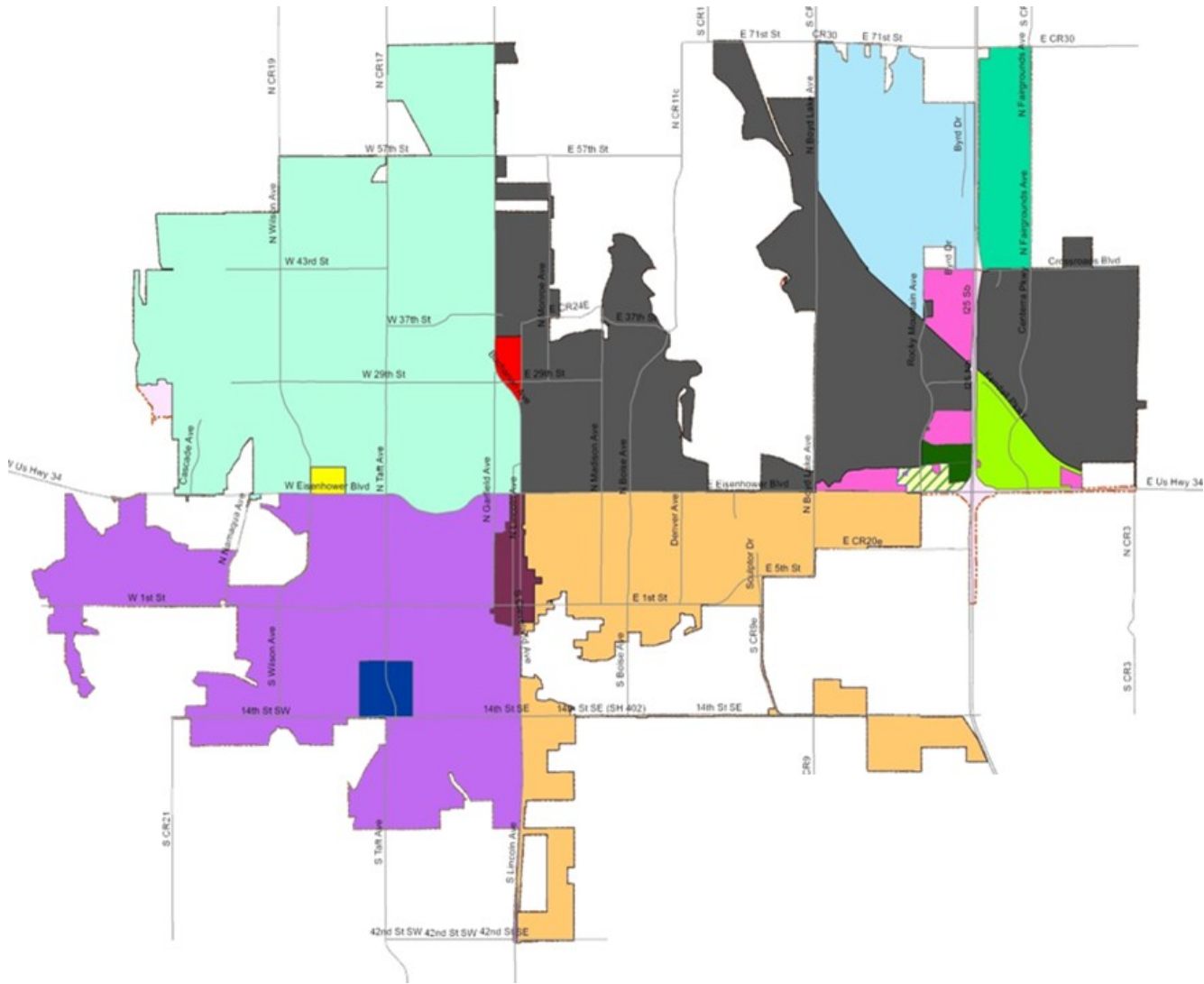
had a negative impact on Downtown sales reporting. However, 2012 has seen a number of new Downtown businesses opening their doors, so sales performance in the area are steadily improving. Through audit, it was discovered that a major retailer in the Promenade Shops had been over-reporting sales. This error has been corrected; as a result, sales show a 3.4% negative trend. However, after adjusting for this reporting issue, the remaining Promenade Shops show a 5% positive trend so far in 2012. We will continue to track the adjusted sales trend throughout the year for the Promenade Shops.

Lodging Tax Revenue received in 2012 is at \$351,261 year-to-date.

Geographical Codes

July 2012

Monthly Financial Report

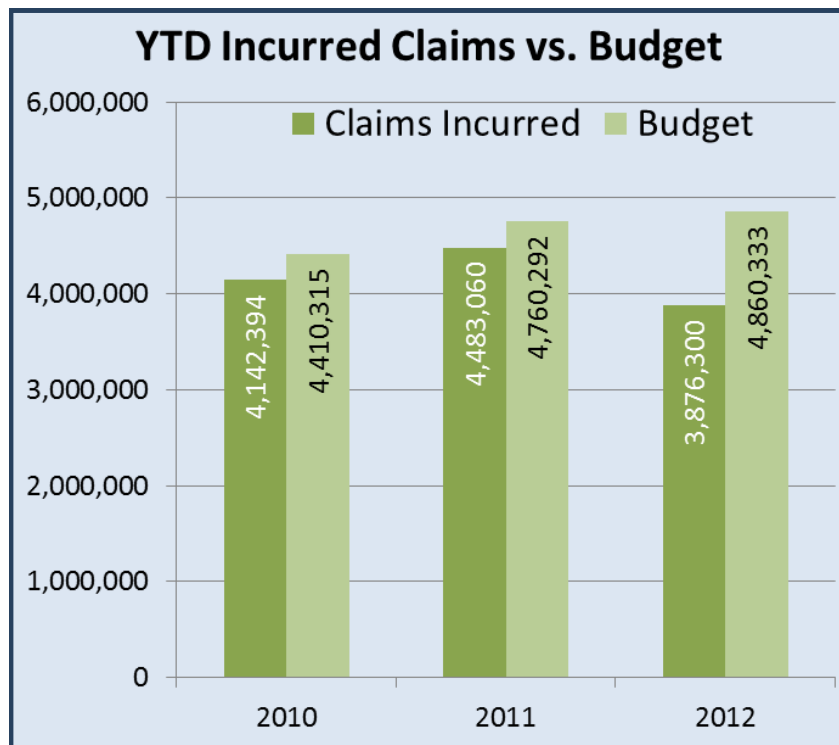


Health Care Claims

July 2012

Cash Basis of Claims Paid					\$ Over / (Under) Budget	% Over / (Under) Budget
		OAP	HRA	Total	Budget	
2012	July	323,848	159,396	483,244	694,333	(211,089) -30.4%
	YTD	3,091,566	784,734	3,876,300	4,860,333	(984,033) -20.2%
2011	July	514,631	48,020	562,651	680,042	(117,391) -17.3%
	YTD	3,775,845	707,215	4,483,060	4,760,292	(277,232) -5.8%
Change	July	(190,783)	111,376	(79,407)		
	% July	-37.1%	231.9%	-14.1%		
	YTD	(684,279)	77,519	(606,760)		
	% YTD	-18.1%	11.0%	-13.5%		

This chart represents claims paid by Cigna in the current month, but due to the timing of when Accounting receives the information, the claims do not get recorded as an expenditure until the following month. ⇒ OAP—Open Access Plan ⇒ HRA—Health Reimbursement Arrangement



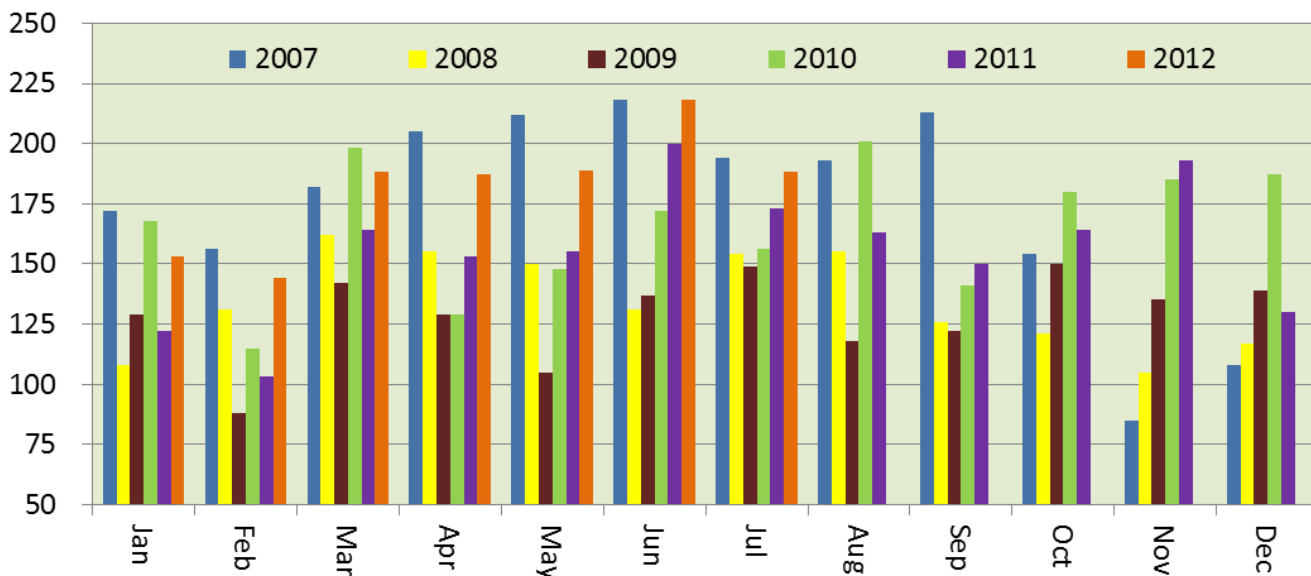
YTD Claims Over \$25k				
Comparison (2009-2012)				
	2009	2010	2011	2012
July				
# of claims	26	24	32	29
Cost of claims	\$1,456,860	\$2,339,734	\$1,720,593	\$1,456,130
2012 # of stoploss claims:	1			

Activity Measures

July 2012

Measures	July '10	July '11	July '12	2010 YTD	2011 YTD	2012 YTD
# of Building Permits	156	173	188	1,086	1,070	1,267
Building Permit Valuations	\$ 4,951,541	\$ 7,011,880	\$ 11,358,972	\$ 80,683,121	\$ 4,174,048	\$75,211,185
# of Certified Occupancies	16	32	31	110	139	179
Net # of Sales Tax Licenses	(16)	16	2	63	117	(130)
New Residential Electric Meter Sets	14	20	25	108	201	123
# of Utility Bills Sent	35,061	35,587	36,111	244,772	248,423	252,147
Rounds of Golf	20,533	19,771	20,034	68,598	72,278	74,870
Health Claim Costs/Emp.	\$ 678.88	\$ 898.80	\$ 749.22	\$ 6,718.11	\$ 7,162.13	\$ 6,105.73
# of Vacant Positions	11	14	30	62	79	233
# of Frozen Vacant Positions	14	12	9	89	93	63
# of Eliminated Positions	40	45	47	270	305	326
KWH Demand (kH)	135,155	139,890	146,543	713,121	722,859	756,016
KWH Purchased (kwh)	68,158,987	74,077,514	75,414,515	402,868,109	417,011,041	434,295,042
Gallons of Water Sold	509,206,372	512,199,991	666,335,764	1,630,840,326	1,705,806,215	2,212,346,377
# of Workers' Comp Claims	7	16	12	84	69	64
\$ of Workers' Comp Claims Paid	\$ 72,690.00	\$ 13,077.00	\$ 22,354.25	\$ 187,808.00	\$ 83,414.00	\$ 306,406.10
# of Open Claims Current Year	12	20	13	57	82	65
# of Total Open Claims	14	22	15	97	105	112
\$ of Total Open Claims	\$ 353,920.00	\$ 79,678.00	\$ 270,047.74	n/a	n/a	n/a
\$ of Lodging Tax Collected	\$ 62,162.00	\$ 68,505.00	\$ 89,201.42	\$ 228,570.56	\$ 266,014.43	\$ 351,260.25

Building Permit Comparison History



Monthly Financial Report

Cash & Reserves

Total Cash & Reserves = \$208.3 million, of which \$145.1 million is restricted or reserved, or 69.7%, leaving \$63.2 million unrestricted.

July 2012

Statement of Cash: July 2012				
	Beginning	YTD Activity	Ending	
Restricted				
1 Capital Expansion Fees	\$ 33,634,541	\$ 1,225,246	\$ 34,859,786	
2 Other Special Revenue Funds	22,151,685	728,072	22,879,756	
3 Capital Projects	2,971,970	(2,184,993)	786,977	
4 Water System Impact Fees	7,351,374	924,835	8,276,208	
5 Windy Gap	4,289,590	(44,137)	4,245,454	
6 Raw Water	18,073,160	(1,835,653)	16,237,507	
7 Wastewater System Impact Fees	4,509,816	318,574	4,828,391	
8 Stormwater System Impact Fees	1,344,721	118,109	1,462,830	
9 Power Plant Investment Fees	6,866,635	1,168,713	8,035,348	
10 Cemetery	2,531,442	64,505	2,595,947	
11 Other Entities	4,088,292	1,422,718	5,511,010	
12 Total Restricted	\$ 107,813,225	\$ 1,905,988	\$ 109,719,213	
Committed/Assigned Balance Amounts				
13 General Fund				
14 Operating/Emergency	1,908,240	-	1,908,240	
15 Council Capital Reserve	4,674,060	-	4,674,060	
16 Council Contingency Reserve	100,000	-	100,000	
17 Liability	200,000	-	200,000	
18 Fire Reserve for SAFER Grant 3rd Year	138,300	-	138,300	
19 Fire Reserve for SCBA Replacement	434,690	(330,890)	103,800	
20 Library Building Reserve	16,750	-	16,750	
21 Library Reserve	125,031	1,462	126,493	
22 Equipment Replacement	70,000	-	70,000	
23 TABOR Excess	3,955,444	(242,937)	3,712,507	
24 Water	664,824	(149,221)	515,603	
25 Wastewater	813,697	(66,468)	747,229	
26 Stormwater	327,015	95,157	422,172	
27 Power	3,044,578	114,021	3,158,599	
28 Golf	248,245	2,054	250,299	
29 Insurance Reserves	5,008,647	41,912	5,050,559	
30 Employee Benefits	6,260,863	783,749	7,044,613	
31 Fleet Replacement	6,701,071	464,992	7,166,064	
32 Total Committed/Assigned	\$ 34,691,455	\$ 713,832	\$ 35,405,287	
33 Total Restricted/Committed/Assigned	\$ 142,504,681	\$ 2,619,820	\$ 145,124,500	
Unassigned Balance Amounts				
34 Unassigned Balance Amounts				
35 General	17,142,212	8,214,790	25,357,003	
36 Airport	897,343	(43,109)	854,234	
37 Internal Service - Vehicle Maintenance	142,091	151,032	293,123	
38 Golf	1,526,727	342,762	1,869,490	
39 Water	3,767,336	(845,587)	2,921,748	
40 Wastewater	7,323,273	(598,209)	6,725,064	
41 Power	17,252,608	646,119	17,898,727	
42 Stormwater	1,853,083	539,225	2,392,308	
43 Solid Waste	4,704,941	152,781	4,857,722	
44 Total Unassigned	\$ 54,609,615	\$ 8,559,805	\$ 63,169,420	
Total Cash	\$ 197,114,296	\$ 11,179,625	\$ 208,293,921	

Statement of Cash Line Detail

(Line 15) Council Capital Reserve Identified Activities

- ⇒1,100,000 Downtown infrastructure improvements
- ⇒187,000 Leslie the Cleaner Demolition and Remediation
- ⇒237,500 ArtSpace Pre-Construction
- ⇒11,910 IHN Fee Waiver
- ⇒97,000 Intra-Fund Loan Repayment

(Line 20) The market value of the Proctor & Gamble Stock as of December 31, 2011 is \$213,472. This value represents the original value of the stock when it was first donated.

(Line 24) Projects include I-25 Variable Msg Signage, Centerra area ITS, Taft & 14th St. SW, 37th St. from Monroe to Madison 14th St. SW Slope Stability, Garfield & US 34

Capital Projects \$500,000+

Project Title	2012 Budget	2012 Expenditures	Remaining 2012 Budget	% of 2012 Budget (Exp/Bud)
Water Capital				
Morning Dr Alt Waterline 30"	\$ 1,874,700	\$ 93,266	\$ 1,781,434	4.97%
Filter Plant 2 Improvements	533,860	575,790	(41,930)	107.85%
29th St Waterline Replacement	581,370	108,914	472,456	18.73%
Raw Water Capital				
Windy Gap Firming Project	1,205,060	81,780	1,123,280	6.79%
Purchase of Colorado-Big Thompson Project (CBT) Water	2,606,600	2,118,274	488,326	81.27%
Wastewater Utility Capital				
Carlisle Phase IV from Taft to Railroad	738,320	527,514	210,806	71.45%
Waste Activated Sludge Thickening	548,920	258,730	290,190	47.13%
South Horseshoe Lift Station	1,216,210	54,654	1,161,556	4.49%
Fairgrounds/Namaqua Interceptor	733,600	646,323	87,277	88.10%
Power Capital				
East Sub to Crossroads Sub on Railroad	1,894,640	48,446	1,846,194	2.56%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,910	137	1,338,773	0.01%
Stormwater Capital				
Washington Ave Outfall Phase 4	1,541,080	60,373	1,480,707	3.92%
MeHaffey Park Regional Detention Pond	579,910	6,285	573,625	1.08%
Streets Transportation Program				
2012 Street Rehabilitation	3,644,900	1,605,731	2,046,980	43.84%
US 287 - Garfield Traffic Signal	668,420	13,796	654,624	2.06%
All Other				
Fire Station 6 Remodel and Expansion	929,970	73,192	856,778	7.87%
Rialto Theater Center	1,114,000	926,649	187,351	83.18%
Library Expansion	857,520	672,970	184,550	78.48%
Police Dispatch Console Replacement	916,000	68,928	847,072	7.52%
Facilities Maintenance Capital Projects	655,440	195,887	459,554	29.89%
Mehaffey Park Development	8,550,000	523,056	8,026,944	6.12%
Open Lands Acquisition	3,036,170	194,853	2,841,317	6.42%
Leslie the Cleaner Demolition and Remediation	\$ 500,000	\$ 25,584	\$ 474,416	5.12%

July 2012 SnapShot

Monthly Financial Report

**City Of Loveland
500 East 3rd Street
Loveland, CO 80537**

For more information regarding this report contact:

Brent Worthington, Finance Director

970.962.2300 or brent.worthington@cityofloveland.org



**CITY OF LOVELAND**
CITY MANAGER'S OFFICE

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AGENDA ITEM: 10
MEETING DATE: 9/4/2012
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE: Investment Report for July 2012

RECOMMENDED CITY COUNCIL ACTION: This is an information only item. No Council action is required.

DESCRIPTION: The budget estimate for investment earnings for 2012 is \$2,729,560. Through July 2012, the amount posted to the investment account is \$1,658,581 including realized gains. Actual year-to-date earnings are *higher* than the year-to-date projection by \$49,715. Based on the July monthly statement, the estimated annualized yield on the U.S. agencies and corporates remained at 1.31%, under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

SUMMARY: At the end of July, the City's portfolio had an estimated market value of \$208.5 million, about \$3.8 million more than a month ago. Of this amount, USBank held (including accrued interest) \$185.6 million in trust accounts; other funds are held in local government investment pools, in operating accounts at WellsFargo Bank, and a few miscellaneous accounts. Interest rates have trended significantly lower over recent months and are projected to remain low for years. Investments are in US Treasury Notes, highly-rated US Agency Bonds, highly-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to about \$2.1 million annually.

REVIEWED BY CITY MANAGER: *William D. Cabell*

LIST OF ATTACHMENTS: Investment Focus July 2012



Investment Focus

Monthly Investment Report

July 2012

What's in here?

Focal Points	1
Gain / Loss	
Rate Trends	2
Cash Statement	3
Portfolio size	4
Investment types	
Transactions /	5
Maturity	
Future Scan	6

Focal Points

- * **New 2012 targets for the City's portfolio: 1) the interest rate target is **1.7%**; 2) the earnings goal = **\$2,729,560**.**
- * **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- * **Revenue posted to accounts = **\$1,655,581** – **3.1% over target**. This includes realized gains on security sales of **\$234,306**.**
- * **Each 1% of the total portfolio amounts to about \$2.1 million.**
- * **The month end market value shows the unrealized loss decreased, down to **\$155,802** at the end of July.**

Community Bank Survey Shows Major Downshift

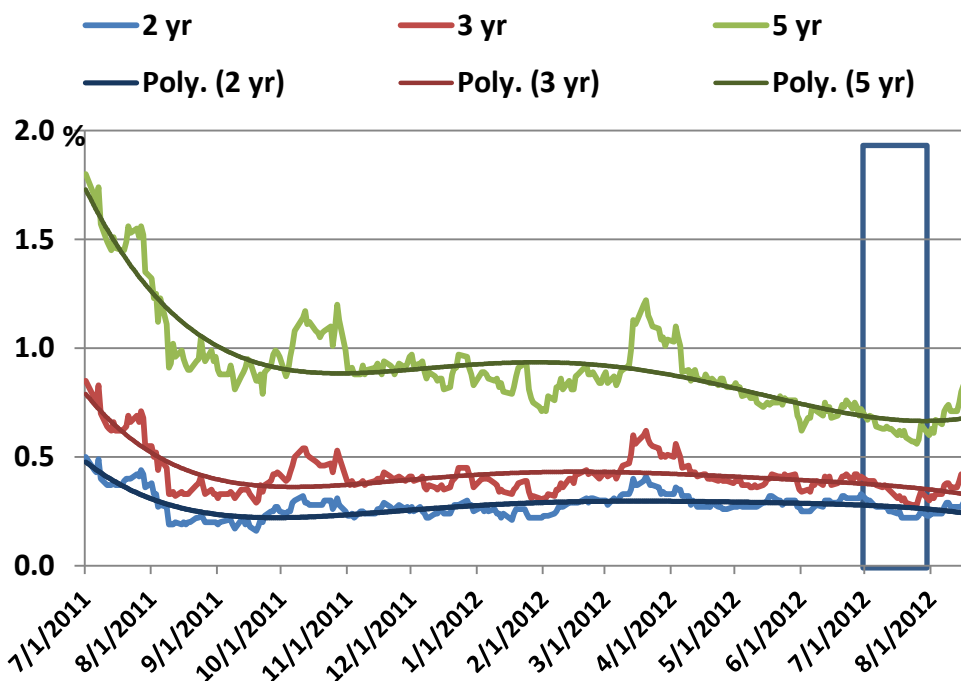
Reasons to be concerned as we enter the second half of 2012: a recent downturn in U.S. economic data, the lack of a resolution to the E.U. financial crisis, and the "fiscal cliff". GDP growth dropped from 4.1% (QoQ, annualized) in 4Q11 to 1.5% in 2Q12. After trending lower for two years, the unemployment rate appears to have leveled off at a rate above 8.0%.

(Continue on page 2.)

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 7,272,410	\$ 7,272,410	--
Investment Pools	15,602,768	15,602,768	--
Money Markets	<u>30,761,598</u>	<u>30,761,598</u>	--
Subtotal	\$ 53,636,776	\$ 53,636,776	--
Notes and Bonds	<u>155,000,993</u>	<u>154,845,190</u>	\$ (155,802)
Total Portfolio	\$ 208,637,768	\$ 208,481,966	\$ (155,802)
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

Treasury rate trends / Community bank survey



Interest rates on US treasuries finished the month of July lower, and reached record lows.

Based on the 2-year treasury, the July month-end rate was 10 basis points lower. The 3-year was also 11 basis points lower and the 5-year finished 12 basis points lower.

This shift in treasury rates slightly increased market value of most of the portfolio. Rates on new investments will be low for many months.

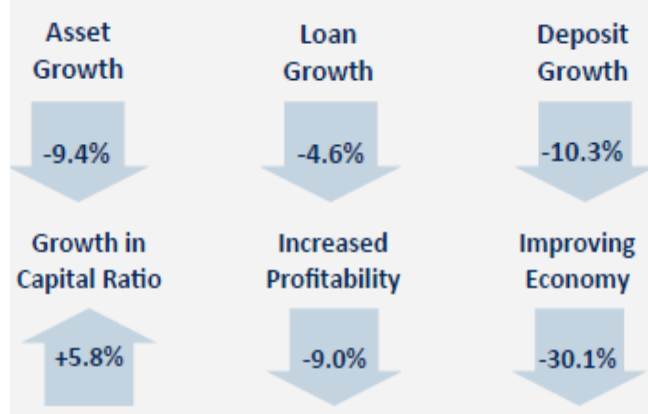
Continued from page 1.

Second quarter payroll growth of 73k (monthly average) is just half of what is needed to keep up with population growth. Bankers turned more negative on almost every metric measured in the July 2012 survey.

Summary of Results:

1. Sentiment turns down across-the-board
2. Expectations for loan growth drop, particularly among banks less than \$1 billion in assets
3. Lack of demand still cited as primary obstacle to loan growth, but less frequently than in previous surveys
4. Notable drop in expectations for profitability seen among all bank sizes
5. Regulatory environment still seen as number one obstacle to profitability
6. Economic sentiment falls 30 points
7. More and more bankers expecting to operate in this rate environment for the foreseeable future

Change in Net Response versus Previous Quarter



August 2012

July 2012 Vining Sparks Bank Survey

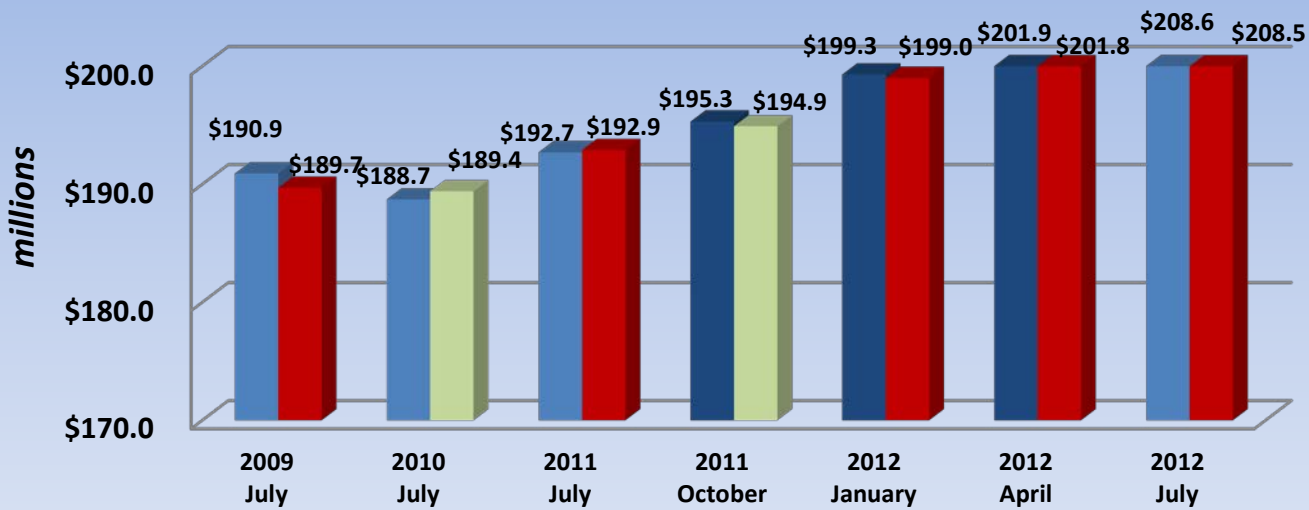
Cash Position Summary

Cash & Reserves (unaudited)

		2012 Beginning	YTD Activity	July Ending
	Restricted Reserves	Due to rounding, column and row totals may not add exactly.		
1	Capital Expansion Fees	\$ 33,634,541	\$ 1,225,246	\$ 34,859,786
2	Water System Impact Fees	7,351,374	924,835	8,276,208
3	Raw Water Revenue – Windy Gap	22,362,750	(1,879,790)	20,482,960
4	Wastewater System Imp. Fees	4,509,816	318,574	4,828,391
5	Storm Drain System Imp. Fees	1,344,721	118,109	1,462,830
6	Power Plant Investment Fees	6,866,635	1,168,713	8,035,348
7	Cemetery Perpetual Care	2,971,970	(2,184,993)	786,977
8	Other Restricted	28,771,419	2,215,294	30,986,713
9	Total Restricted	\$ 107,813,225	\$ 1,905,988	\$ 109,719,213
	Reserve Balance Amounts			
10	General Fund	\$ 11,622,515	\$ (572,364)	\$ 11,050,151
11	Enterprise Funds	5,098,358	(4,457)	5,093,901
12	Internal Service Funds	17,970,582	1,290,653	19,261,235
13	Total Reserves	\$ 34,691,455	\$ 713,832	\$ 35,405,287
14	Total Restricted and Reserved	\$ 142,504,680	\$ 2,619,820	\$ 145,124,500
	Unrestricted			
15	General Fund	\$ 17,142,212	\$ 8,214,790	\$ 25,357,003
16	Airport	897,343	(43,109)	854,234
17	Internal Service – Vehicle Maint	142,091	151,032	293,123
18	Enterprise Funds	36,427,968	237,091	36,665,060
19	Total Unrestricted	\$ 54,609,615	\$ 8,559,805	\$ 63,169,420
20	TOTAL CASH	\$ 197,114,296	\$ 11,179,625	\$ 208,293,921

Portfolio Size / Types of Investments

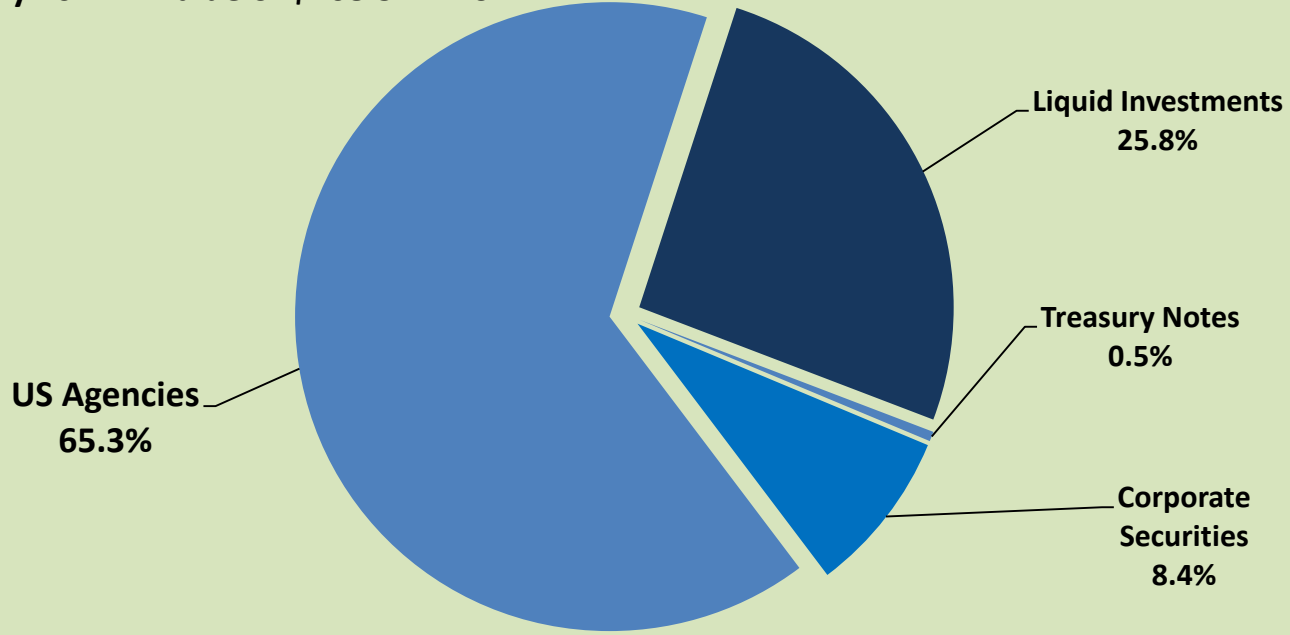
Portfolio Size since July 2009



Blue bars show Purchase value, red and green bars show market value, red = loss and green = gain

Portfolio by Type of Investment

July 2012 – Value of \$208.5 million



Transactions / Portfolio by Maturity

Maturity Date Face Value Purchase \$ Stated Rate

Purchases

Federal Farm Credit Bank	07/17/2017	\$ 5,000,000	\$ 5,000,000.00	1.000%
Federal Home Loan Bank	07/17/2017	5,000,000	5,000,000.00	1.100%
Federal Home Loan Bank	07/17/2017	5,000,000	5,000,000.00	1.100%
Federal Nat'l Mort. Assn.	07/17/2017	5,000,000	5,000,000.00	0.750%
Fed Home Loan Mort. Corp.	07/19/2017	<u>5,000,000</u>	<u>5,000,000.00</u>	1.125%
		\$ 25,000,000	\$ 25,000,000.00	

Matured

None this month

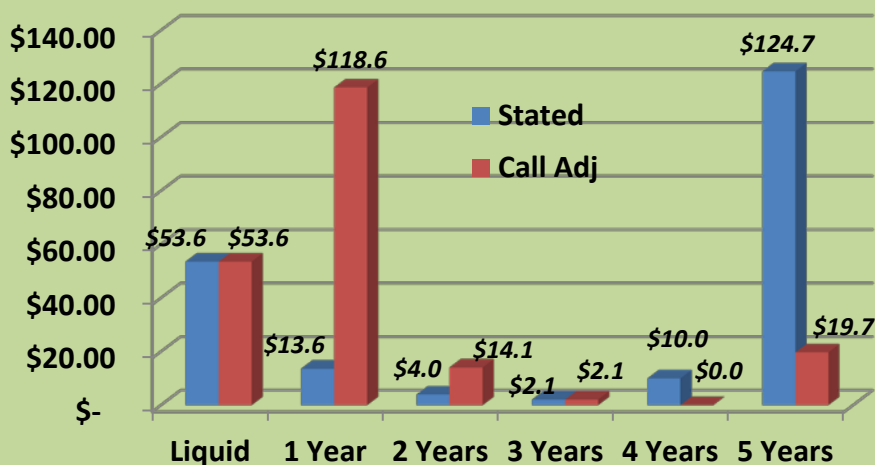
Called

			<u>Call Value \$</u>	
Federal Home Loan Bank	11/28/2016	\$ 5,000,000	\$ 5,000,000.00	1.300%
Federal Nat'l Mort. Assn.	03/27/2017	<u>5,000,000</u>	<u>5,000,000.00</u>	2.250%
		\$ 10,000,000	\$ 10,000,000.00	

Sales

			<u>Gain \$</u>	
Federal Farm Credit Bank	09/28/2017	\$5,000,000	\$ 1,483.31	1.190%

Portfolio by Estimated Maturity Term
(in millions - Total = \$208.5 at the end of July 2012)



The target rate for 2012 is 1.7%. Rates are now again at near record lows. Through July, the portfolio earnings are still above the earnings target level for 2012.

To support earnings or to reposition the portfolio, bonds may be sold. Gains on sales total \$234,306 to date.

The blue bars show the stated term. Red bars show the calls. The five year bonds will be called early.



Future Scan: Fed wary tend, poised to act

- ❖ **Morgan Stanley Smith Barney: A Reluctant Rally** “Investor faith in monetary policy is a remarkable thing.”
 - “An unusually low interest rate environment forcing investors to reach for yield combined with very strong technicals is the most obvious explanation for the resilience of the credit markets. Fund inflows and low net issuance coupled with maturities and coupon income has left many funds with excess cash to put to work.
 - Add in the fact that many investment funds are adding credit risk to achieve yield bogeys they cannot otherwise get in traditional safe-haven assets and you are left with a market that looks unusually strong given the macro risks on the horizon. In effect, monetary policy is working in that it is forcing investors to take on more risk; it is essentially a reluctant rally.
 - Risk asset rallies can be self-defeating in that they let policy makers off the hook. History suggests that policymakers will act only when market pressure forces them to act.”
 - In Europe, from which headline news will drive markets, “mandated austerity programs may actually worsen the economic outlook.”
- (Source: **Basis Points Fixed Income Strategy**, Kevin Flanagan and John Mackay, August 8, 2012.)
- ❖ **The Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) last met on July 31 & August 1. **“Wary Fed Is Poised to Act”** Finding that economic activity decelerated over the first half, growth in employment has slowed and the unemployment rate remains elevated, the Committee will closely monitor incoming data and provide additional accommodation to promote a stronger economic recovery and sustained improvement in labor market conditions. The next meeting of the Committee will be held on September 12 and 13. (Source: **The Wall Street Journal**, August 2, 2012.)
- ❖ The July 2012 Colorado Employment Situation was released on August 17, 2012. Using non-seasonally adjusted employment data, **Colorado’s unemployment rate** for July was estimated to be 8.3% compared to the national unemployment rate of 8.6%. Larimer County held at 6.7%. Boulder County was reported at 6.5% and Weld County at 9.2%. Data for cities showed some shifts. Loveland’s unemployment rate is estimated to be down to 7.7%, from 7.9% in June and down from 8.1% one year ago. Fort Collins was 6.7%, Boulder 6.3%, and Greeley 9.4%.
- ❖ **Recession Outlook:** Recession in Europe is underway and a slowdown in China is more pronounced. Yet, the debate for recession in the U.S. is sharply divided. Indicators suggesting a higher probability of recession that spiked up in June and early July diminished in late July. The most current estimate of probability of U.S. recession was down to about 10% at the end of August. (Source: RecessionAlert.com)

For more information regarding this report, please contact:

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Updated for Colorado Labor data for July

- ❑ Loveland's workforce **contracted** in July, **down** 592 jobs from June 2012.
- ❑ Compared to one year ago in July, there are 219 **more** jobs.

July Unemployment Rates

Data not adjusted for seasonality

