

2. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)
WEED CONTROL AMENDMENT
A motion to approve and order published on second reading an Ordinance on Repealing and Re-Enacting Chapter 7.18 of the Loveland Municipal Code Regarding Weed Control
 This is a legislative action to adopt an ordinance on second reading that modifies the weed control provisions of the Loveland Municipal Code, aligning the provisions with State and County weed control regulations, clarifying requirements and allowances for native and ornamental grasses, and providing compliance with the State Constitution and state agricultural policies relating to the growth of marijuana and industrial hemp. This ordinance was approved unanimously on first reading by City Council at the November 19, 2013 regular meeting.
3. **POLICE** (presenter: Luke Hecker)
THEFT CODE AMENDMENT
A motion to approve and order published on second reading an Ordinance Amending Chapter 9.34 of the City of Loveland Municipal Code to Combine in One Section the Offenses of Theft and Theft of Rental Property and to Combine With Them the New Offense of Theft by Receiving
 This is a legislative action. This ordinance on second reading combines the two different types of theft currently set forth as separate Code sections and adds a third type of theft (Theft by Receiving) into one Code section. A similar state law took effect on June 5, 2013. The Police Department would like to adopt this ordinance to be consistent with State law and to allow summonses to be issued into Municipal Court for persons committing Theft by Receiving, as well as, the two other types of theft. This ordinance was approved unanimously on first reading by City Council at the November 19, 2013 regular meeting.
4. **POLICE** (presenter: Luke Hecker)
PUBLIC HEARING
TRAFFIC CODE AMENDMENT
A motion to approve and order published on first reading an Ordinance Amending Section 10.04.020 to Amend the City's Model Traffic Code Concerning Recent State Law Changes Relating to Gross Weight of Vehicles and Compulsory Motor Vehicle Insurance
 This is a legislative action. This ordinance on first reading amends the City's adopted 2003 Model Traffic code to reflect recent changes in the state law allowing drivers who are contacted by law enforcement for a traffic violation, to present proof of insurance. The proof of insurance may be in paper or electronic format, such as a cell phone or tablet, and creates a new provision which makes it unlawful for a driver to present false evidence of motor vehicle insurance. There is also a change to the gross vehicle weight (GVW) provision, primarily in the rewording of the formulas used for determining when a vehicle is in violation of the GVW limits. The Police Department would like to adopt this ordinance to be consistent with state law.
5. **POLICE** (presenter: Luke Hecker)
PUBLIC HEARING
MAXIMUM FINE AMENDMENT
A motion to approve and order published on first reading an Ordinance Amending Chapter 1.12 and Other Code Sections of the Municipal Code to Increase the

Maximum Fine for City Charter and Most City Code Violations by Adults and Juveniles

This is a legislative action. This ordinance on first reading increases the maximum fine amount for municipal code and Charter violations committed by adults from \$1000 to \$2,650 and allows the amount to be adjusted for inflation beginning January 1, 2015, and each year thereafter, on January 1st. A similar state law was enacted and became effective April 18, 2013. The Ordinance also increases the maximum fine amount for juvenile violators from \$500 (established in 1992) to \$1000. With the maximum fine increase, there are also specific penalty provisions within certain Code chapters that need to be amended to be consistent with the amended general penalty provisions in Chapter 1.12.

6. **DEVELOPMENT SERVICES** (presenter: Noreen Smyth)
PUBLIC HEARING
MILLENNIUM SW 7TH SUBDIVISION VACATION OF ACCESS EASEMENTS
A motion to approve and order published on first reading an Ordinance Vacating Access Easements within Outlots 1 and 2 of the Millennium SW Seventh Subdivision, City Of Loveland, Colorado
 This item is a legislative action to consider adoption of an ordinance on first reading vacating four access easements within the Millennium SW Seventh Subdivision. The access easements are within a 20 acre property located northwest of the intersection of Corvus Drive and Sculptor Drive. The owner of the property is Vertex at Stone Creek, LLC.
7. **DEVELOPMENT SERVICES** (presenter: Karl Barton)
PUBLIC HEARING
THREE MILE PLAN
A motion to approve Resolution R#-103-2013 Adopting a Three Mile Plan for the City of Loveland, Colorado
 This item is a legislative action to formally adopt a Three Mile Plan for 2013. The Three Mile Plan would consist of the City's comprehensive plan, other adopted plans covering infrastructure, services and surrounding areas, and procedures.
8. **CITY MANAGER** (presenter: Rod Wensing)
PUBLIC HEARING
COMCAST FRANCHISE TEMPORARY EXTENSION
A motion to approve and order published on first and only reading an Emergency Ordinance Amending the Existing Cable Television Franchise Agreement Between the City of Loveland, Colorado and Comcast of Colorado II, LLC, to Extend the Term of the Existing Franchise
 This is an administrative action. This second amendment to the cable franchise agreement ordinance moves the expiration of the current cable franchise from December 31, 2013 to June 30, 2014. The Emergency Ordinance on first and only reading, requires an affirmative vote of 2/3 of the entire Council (6 votes) under Charter Section 4-10.
9. **CITY ATTORNEY** (presenter: John Duval)
PUBLIC HEARING
CODE AMENDMENT FOR MEDICAL MARIJUANA AND PRIMARY CAREGIVERS
A motion to approve and order published on first reading an Ordinance Amending Loveland Municipal Code Section 7.60.030 To Remove Obsolete Language In

Section 7.60.030 And To Clarify That All Patients And Primary Caregivers In The City Cultivating, Selling Or Storing Medical Marijuana Must Comply With All Applicable State And Local Laws, Rules And Regulations

This is a legislative action to adopt an ordinance on first reading relating to medical marijuana to remove obsolete language in Section 7.60.030 and to clarify that the storage of medical marijuana, as well as its cultivation and sale, may only be done within the City by lawfully registered patients and primary caregivers that do so in full conformity with the Colorado Medical Marijuana Code, C.R.S. § 25-1.5-106, the City's ordinances and all other applicable rules and regulations promulgated under state law.

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.*
Boards & Commission Liaison Appointments
- 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

10. **CITY CLERK** (presenter: Terry Andrews)
APPROVAL OF MINUTES
A motion to approve the City Council minutes from the November 12, 2013 Special Meeting & Study Session.
This is an administrative action to approve the November 12, 2013 Special Meeting & Study Session Minutes. Councilor Fogle was absent.
11. **CITY ATTORNEY** (presenter: John Duval)
PUBLIC HEARING
CODE AMENDMENTS RELATING TO PERSONAL POSSESSION AND USE OF MARIJUANA
A motion to approve and order published on first reading an Ordinance of the City Council of the City of Loveland Amending the Loveland Municipal Code to Eliminate Conflicts Between the Code and Amendment 64 Relating to the Regulation of the Personal Possession and Use of Marijuana and Marijuana Accessories
This is a legislative action to adopt an ordinance on first reading that would eliminate conflicts and discrepancies that exist now between Amendment 64 and City Code

Chapters 7.40 and 9.41 relating to the regulation of the personal possession and use of marijuana and marijuana accessories.

12. **DEVELOPMENT SERVICES** (presenter: Greg George)
PUBLIC HEARING
OIL & GAS CODE AMENDMENTS
A motion to approve and order published on first reading an Ordinance Amending City Code Chapter 18.77 Concerning the Regulation of Oil and Gas Operations and Code Chapter 18.78 Concerning Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities
 This item is a legislative action to consider adoption of an ordinance on first reading amending certain provisions in the oil and gas ordinance (City Code Chapters 18.77 and 18.78) adopted by City Council on March 19, 2013. Chapter 18.77 establishes regulations on new oil and gas facilities within Loveland city limits, while Chapter 18.78 establishes regulations on new development in the vicinity of existing oil and gas facilities.
13. **WATER & POWER** (presenter: Jim Lees)
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION FOR IDYLWILDE DAM REMOVAL
A motion to approve and order published on first and only reading an Emergency Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Removal of the Idylwilde Dam, Sediment Material, Penstock and the Hydro Power House
 This is an administrative action. This Emergency Ordinance appropriates \$6,000,000 from revenues and fund balance in the Power Fund. The ordinance is necessary to provide funding for the emergency removal of Idylwilde Dam, sediment material behind the dam, penstock and the hydro power house at Viestenz-Smith Park. These projects all came as a result of the Flood of 2013. The Emergency Ordinance on first and only reading requires an affirmative vote of 2/3 of the entire Council (6 votes) under Charter Section 4-10.
14. **FINANCE** (presenter: Brent Worthington)
October 2013 Financial Report
 This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending October 30, 2013.
15. **CITY MANAGER** (presenter: Alan Krcmarik)
Investment Report for October 2013
 This is an information only item. The budget estimate for investment earnings for 2013 is \$2,760,420. Through October, the net amount posted to the investment accounts is \$1,009,457, including realized gains. Actual year-to-date earnings are much lower than the budget projection. Earlier this year, several very high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank remained the same at 1.09% at the end of October. The yield is below the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels. Current reinvestment rates are now higher than the budget projection target.

ADJOURN



PROCLAMATION

- WHEREAS** seventy-two years ago this week, on December 7, 1941, the surprise attack of the Imperial Japanese Naval Forces against the United States 7th Fleet at Pearl Harbor, Hawaii, occurred, marking the entry of America into World War II, altering the course of history forever and
- WHEREAS** the Congress of the United States has designated December 7 as National Pearl Harbor Remembrance Day (36 U.S. C. §129) to honor all who perished at Pearl Harbor; and
- WHEREAS** twenty three of Colorado's sons, including Loveland's own Harold Dwayne Webster, United States Navy Seaman Second Class, were killed in Action on December 7, 1941 while serving on the battleship USS Arizona at Pearl Harbor, Territory of Hawaii, and
- WHEREAS** Americans owe a debt of gratitude to all who died while courageously defending Pearl Harbor as well as to all who survived and fought with valor and spirited determination so that freedom would not fall to tyranny, ultimately achieving victory,

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim the week of December 1 through December 8, 2013 as

LOVELAND REMEMBERS PEARL HARBOR WEEK

in Loveland, Colorado, and in so doing, urge all citizens to join together in remembering and honoring all who perished at Pearl Harbor that fateful day as well as all our World War II Veterans.

Signed this 3rd day of December, 2013

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: 1
MEETING DATE: 12/3/2013
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

Appointment of Members to the Disabilities Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

A motion to reappoint Vern Richardson, John Teumer and Zach Wood to the Disabilities Advisory Board, each for a term effective until June 30, 2016.

A motion to appoint B. J. Michels to the Disabilities Advisory Board for a partial term effective until June 30, 2015.

OPTIONS:

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

SUMMARY:

This is an administrative action recommending the appointment of members to the Disabilities Advisory Board.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The Disabilities Advisory Board has had ongoing vacancies. Three incumbents applied for reappointment. Interviews were held and all three are recommended for reappointment to full terms effective until June 30, 2016. These incumbents are Vern Richardson, John Teumer, and Zach Wood. B. J. Michels was interviewed and is recommended for appointment to a partial term effective until June 30, 2015. Three vacancies remain and recruiting continues.

REVIEWED BY CITY MANAGER:

William D. Cahill

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: 2
MEETING DATE: 12/3/2013
TO: City Council
FROM: Greg George, Director of Development Services
PRESENTER: Bob Paulsen, Current Planning Manager

TITLE:

An Ordinance on Second Reading Repealing and Re-Enacting Chapter 7.18 of the Loveland Municipal Code Regarding Weed Control

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second 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

SUMMARY:

This is a legislative action to adopt an ordinance on second reading that modifies the weed control provisions of the Loveland Municipal Code, aligning the provisions with State and County weed control regulations, clarifying requirements and allowances for native and ornamental grasses, and providing compliance with the State Constitution and state agricultural policies relating to the growth of marijuana and industrial hemp. This ordinance was approved unanimously on first reading by City Council at the November 19, 2013 regular meeting.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

This is a staff-initiated update to the City's weed control provisions. Staff members from Current Planning, Open Lands, Code Enforcement, and the City Attorney's office have participated in the process. The purpose of the ordinance is to align the weed control requirements with the

State Noxious Weed Act and with the Larimer County Weed District regulations regarding noxious weeds. This update also clarifies weed control requirements for native and ornamental grasses. Specifically, the update allows these grasses to exceed the standard eight (8) inch height limitation when included in an approved landscape plan or located in a designated public or private natural area. This change provides the City, private property owners, and homeowner associations greater clarity in the establishment and maintenance of natural areas. Finally, the ordinance provides modifications pertaining to the growing of industrial hemp and marijuana. Industrial hemp can only be grown by persons properly registered with the State Department of Agriculture; the outdoor growth of marijuana is prohibited.

At a noticed public hearing on September 23, 2013, the Planning Commission recommended, as an item on their Consent Agenda, that City Council adopt the ordinance. There are no accompanying minutes provided from the Planning Commission hearing.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Complete first reading packet from November 19, 2013 can be accessed at:
<http://www.cityofloveland.org/index.aspx?page=20&recordid=49811>

FIRST READING November 19, 2013

SECOND READING December 3, 2013

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 7.18 OF THE LOVELAND MUNICIPAL CODE REGARDING WEED CONTROL

WHEREAS, Chapter 7.18 of the Loveland Municipal Code governs weed control; and

WHEREAS, the provisions of Chapter 7.18 require updating to align with the Colorado Noxious Weed Act (C.R.S. §35-5.5-101 et seq.) and the Larimer County Weed District regulations regarding noxious weeds and to include provisions regarding growth of marijuana to the extent permitted by Amendment 64 to the Colorado Constitution; and

WHEREAS, the provisions of Chapter 7.18 also require modification to clarify the provisions applicable to native and ornamental grasses, particularly as they are included in landscape plans for public or private natural areas, including common areas maintained by homeowners’ associations in residential neighborhoods.

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

Section 1. That Chapter 7.18 of the Loveland Municipal Code is hereby repealed and is reenacted to read in full as follows:

Chapter 7.18

WEED CONTROL

Sections:

- 7.18.010 Intent.**
- 7.18.020 Definitions.**
- 7.18.030 Weeds, grasses, and marijuana; cutting and removal.**
- 7.18.040 Notice and order of abatement.**
- 7.18.42 City removal and assessment.**
- 7.18.050 Administrative review of assessment.**
- 7.18.060 Owners have ultimate responsibility for violations.**

- 7.18.010 Intent.**

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

7.18.020 Definitions.

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. “Approved plan” shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. “Grasses” shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. “Industrial hemp” shall mean a plant of the genus *cannabis* and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis.
4. “Marijuana” shall mean all those plants of the genus *cannabis* including, without limitation, *cannabis sativa*, *cannabis indica*, and *cannabis ruderalis*, but shall not include industrial hemp.
5. “Native grasses” shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtipendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium-syn. andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides – syn. oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii – syn. agropyron smithii*).
6. “Ornamental grasses” shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides -syn. oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea- festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prarie dropseed (*sporobolus heterolepis*).
7. “Natural area” shall mean any areas, whether public or private, that are designated:
 - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or

- b) by the director of development services as a natural area; or
 - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
8. “Noxious weed” shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the “weed act”) from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvensis*); puncture vine (*tribulus terrestris*).
 9. “Owner” shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the property.
 10. “Property” shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
 11. “Turf grasses” shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
 12. “Weed” shall mean an aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (*leontodora tavaxacum*), silverleaf povertyweed (*franseria descolor*), mouse-ear poverty weed (*iva axillaris*), fanweed (*thlaspi arvensis*), mustards (*brassiea*), purpose-flowered groundcherry (*quinquela lobata*), Russian thistle (*salsola pestifer*), fireweed (*kochia scoparia*), redroot pigweed (*amaranthus retroflexus*), sandbur (*cenchrus tribuloides*), hairy stickweed (*lappula occidentalis*), Buffaloburs (*Solanum rostratum*), common ragweed (*ambrosia elatior*), and cockleburs (*xanthium commurie*). This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance and a detriment to the public health and safety. “Weeds” shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops, corn crops, small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses, native grasses, industrial hemp or marijuana.
 13. “Weed district” shall mean the Larimer County Weed District.

7.18.030 Weeds, grasses, industrial hemp, and marijuana; prohibition, cutting and removal.

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit the growth of thereon:

1. noxious weeds which are required to be eradicated under the weed act, regardless of height; or

2. noxious weeds which are not required to be eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. weeds other than noxious weeds or grasses to a height of more than eight inches (8”), except as permitted in subsections B and C below; or
4. industrial hemp unless the person growing the industrial hemp is registered with the Colorado Department of Agriculture pursuant to the Industrial Hemp Regulatory Program (Title 35, Article 61 of the Colorado Revised Statutes); or
5. marijuana.

B. The eight inch (8”) height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or
3. growing in a private or public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any conflict between the eight inch (8”) height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, grasses or marijuana shall be disposed of so that the property is clean and orderly, and the spread of weeds and marijuana is prevented.

E. It shall be an affirmative defense to a violation of this section that the property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the property upon which the vegetation is growing is dedicated public or private natural area as determined by the City's Director of Development Services Division.

7.18.040 Notice and Order of Abatement.

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not

occupied by the owner, requiring the weeds, grasses, or marijuana to be cut, removed, or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

7.18.042 City removal and assessment.

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds, grasses, industrial hemp or marijuana are not cut, removed, or otherwise abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds, grasses, industrial hemp or marijuana to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the owner or agent fails to pay the charges associated with abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

7.18.050 Administrative review of assessment.

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

7.18.060 Owners have ultimate responsibility for violations.

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the property and even though the owner has by agreement imposed on the occupant the duty of maintaining the property.

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 ten days after its final publication, as provided in City Charter Section 4-8(b).

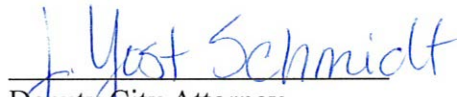
ADOPTED this 3rd day of December, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



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: 3
MEETING DATE: 12/3/2013
TO: City Council
FROM: Teresa "Tree" Ablao
PRESENTER: Luke Hecker, Chief of Police

TITLE:

An Ordinance on Second Reading Amending Chapter 9.34 of the City of Loveland Municipal Code to Combine in One Section the Offenses of Theft and Theft of Rental Property and to Combine With Them the New Offense of Theft by Receiving

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second 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

SUMMARY:

This is a legislative action. This ordinance on second reading combines the two different types of theft currently set forth as separate Code sections and adds a third type of theft (Theft by Receiving) into one Code section. A similar state law took effect on June 5, 2013. The Police Department would like to adopt this ordinance to be consistent with State law and to allow summonses to be issued into Municipal Court for persons committing Theft by Receiving, as well as, the two other types of theft. This ordinance was approved unanimously on first reading by City Council at the November 19, 2013 regular meeting.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

Currently, our Municipal Code contains two theft provisions: Theft and Theft of Rental Property which make the taking or retaining of a thing valued less than \$1000 unlawful. State law provides for a third type of theft that the Loveland Code does not provide, Theft by Receiving. Theft by Receiving is a criminal offense if a person receives, pawns, or buys property knowing or believing that the property was stolen.

In 2013, legislation passed to combine the various types of theft under state law. These state law provisions took effect on June 5, 2013.

REVIEWED BY CITY MANAGER:

William D. Cavill

LIST OF ATTACHMENTS:

1. Ordinance

First Reading: November 19, 2013

Second Reading: December 3, 2013

ORDINANCE _____

AN ORDINANCE AMENDING CHAPTER 9.34 OF THE CITY OF LOVELAND MUNICIPAL CODE TO COMBINE IN ONE SECTION THE OFFENSES OF THEFT AND THEFT OF RENTAL PROPERTY AND TO COMBINE WITH THEM THE NEW OFFENSE OF THEFT BY RECEIVING

WHEREAS, in 2013, the Colorado General Assembly adopted and the Governor signed into law House Bill 13-1160, which combined the offenses of theft, theft of rental property and theft by receiving into one statutory section; and

WHEREAS, the City, as a home rule municipality, may on its own authority as provided in Article XX, Section 6 of the Colorado Constitution enact, adopt and enforce municipal ordinances governing misdemeanor criminal violations within the City; and

WHEREAS, City Council, pursuant to its home rule authority, desires to protect the public’s health, safety and welfare by amending Code Section 9.34.010 to include the new offense of theft by receiving and the City’s existing offense of theft of rental property into one section with the City’s existing offense of theft to be consistent with theft-related petty and misdemeanor offenses under state law.

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

Section 1. That Code Section 9.34.010 is hereby amended to read in full as follows:

Section 9.34.010. Theft, Theft by Receiving and Theft of Rental Property.

A. It is unlawful for any person to knowingly obtain, retain, or exercise control over anything of a value less than one thousand dollars (\$1,000.00) of another without authorization, or by threat or deception; or receive, loan money by pawn or pledge on, or dispose of anything of value or belonging to another that he or she knows or believes to have been stolen, and:

1. intend to deprive the other person permanently of the use or benefit of the thing of value;

- 2. knowingly use, conceal, or abandon the thing of value in such manner as to deprive the other person permanently of its use or benefit;
- 3. use, conceal, or abandon the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use or benefit;
- 4. demand any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person; or
- 5. knowingly fail to reveal the whereabouts of or retain the thing of value more than seventy-two (72) hours after the agreed-upon time of return in any lease or hire agreement.

- B. For the purposes of this section, a thing of value is that of “another” if anyone other than the defendant has a possessory or proprietary interest therein.
- C. The date or time specified in any rental or hire agreement signed by the person charged with the violation of this section shall be prima facie evidence of the time or date on which the property should have been returned.
- D. This section shall not be applicable to the theft of a thing of value when such theft would constitute a felony under the laws of the state in effect at the time of such theft.

Section 2. That Code Section 9.34.040 is hereby repealed in its entirety.

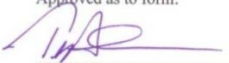
Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED this _____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:


Teresa Ablao
Assistant City Attorney



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: 4
MEETING DATE: 12/3/2013
TO: City Council
FROM: Teresa Ablao, Assistant City Attorney
PRESENTER: Luke Hecker, Chief of Police

TITLE:

An Ordinance on First Reading Amending Section 10.04.020 to Amend the City's Model Traffic Code Concerning Recent State Law Changes Relating to Gross Weight of Vehicles and Compulsory Motor Vehicle Insurance

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

SUMMARY:

This is a legislative action. This ordinance on first reading amends the City's adopted 2003 Model Traffic code to reflect recent changes in the state law allowing drivers who are contacted by law enforcement for a traffic violation, to present proof of insurance. The proof of insurance may be in paper or electronic format, such as a cell phone or tablet, and creates a new provision which makes it unlawful for a driver to present false evidence of motor vehicle insurance. There is also a change to the gross vehicle weight (GVW) provision, primarily in the rewording of the formulas used for determining when a vehicle is in violation of the GVW limits. The Police Department would like to adopt this ordinance to be consistent with state law.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The Model Traffic Code as adopted and amended by the City contained provisions regarding gross vehicle weight and motor vehicle insurance that were identical to state law language with respect to these subjects. The provisions for calculating gross vehicle weight and limits, prior to the 2013 legislative changes were worded in such a manner that they were cumbersome and confusing to use. In 2013, the state law was reworded to clarify the formulas used to calculate gross vehicle weight and limits.

Prior to the 2013 Legislative Session, a motorist could only show proof of valid insurance by presenting a paper insurance card. The state legislature recognized that many citizens receive and store motor vehicle insurance verification on electronic devices and passed legislation that allows proof of insurance to be presented in electronic, as well as, paper form.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Ordinance
2. Ordinance-Redlined

First Reading December 3, 2013

Second Reading _____

ORDINANCE _____

AN ORDINANCE AMENDING SECTION 10.04.020 TO AMEND THE CITY’S MODEL TRAFFIC CODE CONCERNING RECENT STATE LAW CHANGES RELATING TO GROSS WEIGHT OF VEHICLES AND COMPULSORY MOTOR VEHICLE INSURANCE

WHEREAS, in 2013 the Colorado General Assembly adopted and the Governor signed into law numerous House Bills that relate to certain provisions of the City’s adopted 2003 Model Traffic Code, as modified in City Code Section 10.04.020, specifically HB 13-1132 relating to gross vehicle weights and House Bills 13-1159 and 13-1022 relating to compulsory insurance; and

WHEREAS, the City, as a home rule municipality may on its own authority as provided in Article XX, Section 6 of the Colorado Constitution enact, adopt and enforce traffic regulations covering this same subject matter on its local City streets and also on State highways within the City under C.R.S. Section 42-4-110, so long as such regulations affecting State highways are consistent with the provisions of state law; and

WHEREAS, City Council, pursuant to its home rule authority, desires to protect the public health, safety and welfare of its citizens by amending Section 10.04.020 of the City Code to regulate on the City’s local streets and on State highways within Loveland, in a manner consistent with the newly enacted state laws relating to gross vehicle weight and compulsory insurance.

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

Section 1. That a new paragraph F.4 is hereby added to Code Section 10.04.020 to repeal and reenact in its entirety Model Traffic Code Section 508 to read in full as follows:

F.4 Section 508 of the Mode Traffic Code is amended to read as follows:

508. Gross weight of vehicles and loads.

- (1) (a) Except as provided in subsection (1.5) of this section, a person shall not move or operate a vehicle or combination of vehicles on any highway or bridge when the gross weight upon any one axle of a vehicle exceeds the limits prescribed in section 507.

(b) Subject to the limitations prescribed in section 507, the maximum gross weight of any vehicle or combination of vehicles shall not exceed that determined by the formula $W = 1,000 (L + 40)$, where W represents the gross weight in pounds and L represents the length in feet between the centers of the first and last axles of such vehicle or combination of vehicles; except that, in computation of this formula, the gross vehicle weight must not exceed eighty-five thousand pounds. For the purposes of this section, where a combination of vehicles is used, a vehicle must not carry a gross weight of less than ten percent of the overall gross weight of the combination of vehicles; except that these limitations shall not apply to specialized trailers of fixed public utilities whose axles may carry less than ten percent of the weight of the combination. The limitations provided in this section must be strictly construed and enforced.

(c) Notwithstanding any other provisions of this section, except as may be authorized under section 510, a person shall not move or operate a vehicle or combination of vehicles on any highway or bridge that is part of the national system of interstate and defense highways, also known as the interstate system, when the gross weight of such vehicle or combination of vehicles exceeds the amount determined by the formula $W = 500 [(LN/N-1) + 12N + 36]$, up to a maximum of eighty thousand pounds, where W represents the overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L represents the distance in feet between the extreme of any group of two or more consecutive axles, and N represents the number of axles in the group.

(d) For the purposes of this subsection (1), where a combination of vehicles is used, a vehicle must not carry a gross weight of less than ten percent of the overall gross weight of the combination of vehicles; except that this limitation does not apply to specialized trailers whose specific use is to haul poles and whose axles may carry less than ten percent of the weight of the combination.

(1.5) The gross weight limits provided in subsection (1) of this section are increased by one thousand pounds for any vehicle or combination of vehicles if the vehicle or combination of vehicles contains an alternative fuel system and operates on alternative fuel or both alternative and conventional fuel. The provisions of this subsection (1.5) apply only when the vehicle or combination of vehicles is operated on a highway that is not on the interstate system as defined in section 43-2-101 (2), C.R.S. For the purposes of this subsection (1.5), "alternative fuel" has the same meaning provided in section 25-7-106.8 (1) (a), C.R.S.

(2) Any person who drives a vehicle or owns a vehicle in violation of any provision of this section commits a class 2 misdemeanor traffic offense.

Section 2. That paragraph T.1 in Code Section 10.04.020 is hereby amended to read in full as follows:

T.1 Section 1409 of the Model Traffic Code is amended to read in full as follows:

1409. Compulsory insurance - penalty.

(1) No owner of a motor vehicle or low-power scooter required to be registered in this state shall operate the vehicle or permit it to be operated on the public highways of this local government when the owner has failed to have a complying policy or certificate of self-insurance in full force and effect as required by state law.

(2) No person shall operate a motor vehicle or low-power scooter on the public highways of this local government without a complying policy or certificate of self-insurance in full force and effect as required by state law.

(3) When an accident occurs, or when requested to do so following any lawful traffic contact or during any traffic investigation by a peace officer, an owner or operator of a motor vehicle or low-power scooter shall present to the requesting officer immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by state law.

(4) As used in this section, “evidence of a complying policy or certificate of self-insurance in full force and effect” includes the presentation of such policy or certificate upon a cell phone or other electronic device.

(5) Any person who violates the provisions of subsection (1), (2), or (3) of this section commits a traffic offense.

(6) Testimony of the failure of any owner or operator of a motor vehicle to present immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by state law, when requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (1) or (2) of this section, that such owner or operator of a motor vehicle violated subsection (1) or (2) of this section.

(7) No person charged with violating subsection (1), (2), or (3) of this section shall be convicted if he produces in court a bona fide complying policy or certificate of self-insurance which was in full force and effect, as required by state law, at the time of the alleged violation.

(8) If an operator of a motor vehicle or low-power scooter uses a cell phone or other electronic device to present evidence of a complying policy or certificate of self-insurance in full force and effect, as described in this section:

a. the law enforcement officer to whom the operator presents the device shall not explore the contents of the device other than to examine the operators’ policy or certificate of self-insurance; and

b. the law enforcement officer to whom the operator presents the device, and any law enforcement agency that employs the officer, are immune from any civil

damages resulting from the officer dropping or otherwise unintentionally damaging the cell phone or other electronic device.

Section 3. That a new paragraph T.2 is hereby added to Code Section 10.04.020 to read in full as follows:

T.2 The Model Traffic Code is amended by the addition of a new Section 1410 to read as follows:

1410. Providing false evidence of proof of motor vehicle insurance-penalty. It is unlawful for any person to offer, use, or attempt to offer or use any means, manner, type of paper, document, card, digital image, or any other proof of motor vehicle liability insurance required by state law to a law enforcement officer, judge, magistrate, prosecutor, or employee of a court clerk's office with the intent to mislead that official regarding the status of any motor vehicle liability insurance policy in the course of an official investigation, or for purposes of dismissing any charge under section 1409 or reducing any penalty imposed under section 1409, where such means, manner, type, or kind of proof of insurance offered or used, or that is attempted to be offered or used, is known or should be known by the person to be false, fraudulent, or incorrect in any material manner or way, or which is known or should be known by the person to be altered, forged, defaced, or changed in any material respect, unless such changes are required or authorized by law.

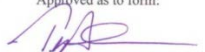
Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of _____, 2013

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:

Teresa Ablao
Assistant City Attorney

First Reading _____
Second Reading _____

ORDINANCE _____

AN ORDINANCE AMENDING SECTION 10.04.020 TO AMEND THE CITY’S MODEL TRAFFIC CODE CONCERNING RECENT STATE LAW CHANGES RELATING TO GROSS WEIGHT OF VEHICLES AND COMPULSORY MOTOR VEHICLE INSURANCE

WHEREAS, in 2013 the Colorado General Assembly adopted and the Governor signed into law numerous House Bills that relate to certain provisions of the City’s adopted 2003 Model Traffic Code, as modified in City Code Section 10.04.020, specifically HB 13-1132 relating to gross vehicle weights and House Bills 13-1159 and 13-1022 relating to compulsory insurance; and

WHEREAS, the City, as a home rule municipality may on its own authority as provided in Article XX, Section 6 of the Colorado Constitution enact, adopt and enforce traffic regulations covering this same subject matter on its local City streets and also on State highways within the City under C.R.S. Section 42-4-110, so long as such regulations affecting State highways are consistent with the provisions of state law; and

WHEREAS, City Council, pursuant to its home rule authority, desires to protect the public health, safety and welfare of its citizens by amending Section 10.04.020 of the City Code to regulate on the City’s local streets and on State highways within Loveland, in a manner consistent with the newly enacted state laws relating to gross vehicle weight and compulsory insurance.

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

Section 1. That a new paragraph F.4 is hereby added to Code Section 10.04.020 to repeal and reenact in its entirety Model Traffic Code Section 508 to read in full as follows:

F.4 Section 508 of the Mode Traffic Code is amended to read as follows:

508. Gross weight of vehicles and loads.

(1) (a) Except as provided in subsection (1.5) of this section, a person shall not move or operate a vehicle or combination of vehicles on any highway or bridge when the gross weight upon any one axle of a vehicle exceeds the limits prescribed in section 507.

(b) Subject to the limitations prescribed in section 507, the maximum gross weight of any vehicle or combination of vehicles shall not exceed that determined by the formula $W = 1,000 (L + 40)$, where W represents the gross weight in pounds and L represents the length in feet between the centers of the first and last axles of such vehicle or combination of vehicles; except that, in computation of this formula, the gross vehicle weight must not exceed eighty-five thousand pounds. For the purposes of this section, where a combination of vehicles is used, a vehicle must not carry a gross weight of less than ten percent of the overall gross weight of the combination of vehicles; except that these limitations shall not apply to specialized trailers of fixed public utilities whose axles may carry less than ten percent of the weight of the combination. The limitations provided in this section must be strictly construed and enforced.

(c) Notwithstanding any other provisions of this section, except as may be authorized under section 510, a person shall not move or operate a vehicle or combination of vehicles on any highway or bridge that is part of the national system of interstate and defense highways, also known as the interstate system, when the gross weight of such vehicle or combination of vehicles exceeds the amount determined by the formula $W = 500 [(LN/N-1) + 12N + 36]$, up to a maximum of eighty thousand pounds, where W represents the overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L represents the distance in feet between the extreme of any group of two or more consecutive axles, and N represents the number of axles in the group.

(d) For the purposes of this subsection (1), where a combination of vehicles is used, a vehicle must not carry a gross weight of less than ten percent of the overall gross weight of the combination of vehicles; except that this limitation does not apply to specialized trailers whose specific use is to haul poles and whose axles may carry less than ten percent of the weight of the combination.

(1.5) The gross weight limits provided in subsection (1) of this section are increased by one thousand pounds for any vehicle or combination of vehicles if the vehicle or combination of vehicles contains an alternative fuel system and operates on alternative fuel or both alternative and conventional fuel. The provisions of this subsection (1.5) apply only when the vehicle or combination of vehicles is operated on a highway that is not on the interstate system as defined in section 43-2-101 (2), C.R.S. For the purposes of this subsection (1.5), "alternative fuel" has the same meaning provided in section 25-7-106.8 (1) (a), C.R.S.

(2) Any person who drives a vehicle or owns a vehicle in violation of any provision of this section commits a class 2 misdemeanor traffic offense.

Section 2. That paragraph T.1 in Code ~~s~~Section 10.04.020 is hereby amended to read in full as follows:

T.1 Section 1409 of the Model Traffic Code is amended to read in full as follows:

1409. Compulsory insurance - penalty.

(1) No owner of a motor vehicle or low-power scooter required to be registered in this state shall operate the vehicle or permit it to be operated on the public highways of this local government when the owner has failed to have a complying policy or certificate of self-insurance in full force and effect as required by ~~sections 10-4-619 and 10-4-620, C.R.S. state law.~~

(2) No person shall operate a motor vehicle or low-power scooter on the public highways of this local government without a complying policy or certificate of self-insurance in full force and effect as required by sections ~~10-4-619 and 10-4-620, C.R.S. state law.~~

(3) When an accident occurs, or when requested to do so following any lawful traffic contact or during any traffic investigation by a peace officer, ~~no an~~ owner or operator of a motor vehicle or low-power scooter shall ~~fail to~~ present to the requesting officer immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by ~~sections 10-4-619 and 10-4-620, C.R.S. state law.~~

(4) As used in this section, “evidence of a complying policy or certificate of self-insurance in full force and effect” includes the presentation of such policy or certificate upon a cell phone or other electronic device.

(54) Any person who violates the provisions of subsection (1), (2), or (3) of this section commits a traffic offense.

(56) Testimony of the failure of any owner or operator of a motor vehicle to present immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by ~~sections 10-4-619 and 10-4-620, C.R.S. state law,~~ when requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (1) or (2) of this section, that such owner or operator of a motor vehicle violated subsection (1) or (2) of this section.

(67) No person charged with violating subsection (1), (2), or (3) of this section shall be convicted if he produces in court a bona fide complying policy or certificate of self-insurance which was in full force and effect, as required by ~~sections 10-4-619 and 10-4-620, C.R.S. state law,~~ at the time of the alleged violation.

(8) If an operator of a motor vehicle or low-power scooter uses a cell phone or other electronic device to present evidence of a complying policy or certificate of self-insurance in full force and effect, as described in this section:

a. the law enforcement officer to whom the operator presents the device shall not explore the contents of the device other than to examine the operators’ policy or certificate of self-insurance; and

b. the law enforcement officer to whom the operator presents the device, and any law enforcement agency that employs the officer, are immune from any civil damages resulting from the officer dropping or otherwise unintentionally damaging the cell phone or other electronic device.

Section 3. That a new paragraph T.2 is hereby added to Code Section 10.04.020 to read in full as follows:

T.2 The Model Traffic Code is amended by the addition of a new Section 1410 to read as follows:

1410. Providing false evidence of proof of motor vehicle insurance-penalty. It is unlawful for any person to offer, use, or attempt to offer or use any means, manner, type of paper, document, card, digital image, or any other proof of motor vehicle liability insurance required by state law to a law enforcement officer, judge, magistrate, prosecutor, or employee of a court clerk's office with the intent to mislead that official regarding the status of any motor vehicle liability insurance policy in the course of an official investigation, or for purposes of dismissing any charge under section 1409 or reducing any penalty imposed under section 1409, where such means, manner, type, or kind of proof of insurance offered or used, or that is attempted to be offered or used, is known or should be known by the person to be false, fraudulent, or incorrect in any material manner or way, or which is known or should be known by the person to be altered, forged, defaced, or changed in any material respect, unless such changes are required or authorized by law.

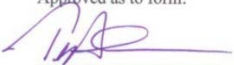
Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of _____, 2013

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:


Teresa Ablao
Assistant City Attorney



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: 5
MEETING DATE: 12/3/2013
TO: City Council
FROM: Teresa "Tree" Ablao, Assistant City Attorney
PRESENTER: Luke Hecker, Chief of Police

TITLE:

An Ordinance on First Reading Amending Chapter 1.12 and Other Code Sections of the Municipal Code to Increase the Maximum Fine for City Charter and Most City Code Violations by Adults and Juveniles

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

SUMMARY:

This is a legislative action. This ordinance increases the maximum fine amount for municipal code and Charter violations committed by adults from \$1000 to \$2,650 and allows the amount to be adjusted for inflation beginning January 1, 2015, and each year thereafter, on January 1st. A similar state law was enacted and became effective April 18, 2013. The Ordinance also increases the maximum fine amount for juvenile violators from \$500 (established in 1992) to \$1000. With the maximum fine increase, there are also specific penalty provisions within certain Code chapters that need to be amended to be consistent with the amended general penalty provisions in Chapter 1.12.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The City, as a home rule municipality, may establish penalties for violation of its municipal ordinances on its own authority, subject to any restrictions in the City's Charter. City Charter Section 4-14 provides that the penalties imposed for the violation of City ordinances shall be established by ordinance, but that no fine or sentence for an ordinance violation shall exceed the maximums established by state statute for municipal ordinance violations. The current fine for juvenile offenders is \$500 and for adult offenders is \$1000. This past legislative session, the Colorado General Assembly raised the maximum fine that may be imposed by a municipal court of record to \$2650 and allows that maximum to be automatically adjusted for inflation on January 1st of each subsequent year.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Ordinance - Redlined

First Reading: December 3, 2013

Second Reading: _____

ORDINANCE _____**AN ORDINANCE AMENDING CHAPTER 1.12 AND OTHER CODE SECTIONS OF THE MUNICIPAL CODE TO INCREASE THE MAXIMUM FINE FOR CITY CHARTER AND MOST CITY CODE VIOLATIONS BY ADULTS AND JUVENILES**

WHEREAS, in 2013, the Colorado General Assembly adopted and the Governor signed into law House Bill 13-1060 which increased to \$2,650 the maximum fine that municipalities with courts of record may establish and impose for ordinance violations, which amount is to be adjusted for inflation on January 1 of each year commencing January 1, 2014; and

WHEREAS, the City's Municipal Court is a qualified court of record pursuant to City Code Section 1.28.015; and

WHEREAS, the City, as a home rule municipality, may establish penalties for violation of its municipal ordinances on its own authority as provided in Article XX, Section 6.h. of the Colorado Constitution, subject to any restrictions in the City's Charter; and

WHEREAS, City Charter Section 4-14 provides that the penalties imposed for the violation of City ordinances shall be established by ordinance, but that no fine or sentence for an ordinance violation shall exceed the maximums established by state statute for municipal ordinance violations; and

WHEREAS, Charter Section 15-7 provides that violations of the Charter may be punished by not more than the maximum fine and maximum term of imprisonment, or both, as established by ordinance in accordance with Charter Section 4-14; and

WHEREAS, the City's current maximum fine amount as established in Code Chapter 1.12 for Charter and most ordinance violations committed by adults is \$1000 and has not been adjusted since it was set in 1997; and

WHEREAS, the City's current maximum fine amount as established in Code Chapter 1.12 for Charter and most ordinance violations committed by juveniles is \$500 and has likewise remained unchanged since it was set in 1992; and

WHEREAS, City Council, pursuant to its home rule authority and as authorized in Charter Section 4-14, desires to amend Code Chapter 1.12 to increase the maximum fine amount

for most violations of the City Code and all violations of the City Charter that may be imposed on adults by the Loveland Municipal Court from \$1000 to \$2,650, to be adjusted each year for inflation to be consistent with the maximum authorized by state law, and to increase the maximum fine amount that may be imposed on juveniles from \$500 to \$1000, but without this maximum fine amount being increased annually for inflation; and

WHEREAS, there are also specific penalty provisions within certain Code chapters that need to be amended to be consistent with the amended general penalty provisions in Chapter 1.12.

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

Section 1. That paragraph A. of Code Section 1.12.010 is hereby amended to read in full as follows:

- A. It is unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this code, the Charter or any provision of any code or other regulation adopted by reference by this code. Except as to traffic infractions described in paragraph B. of this section and violations committed by juveniles as described in paragraph D. of this section, the violation of any provision of this code shall be punished by a fine not exceeding two thousand six hundred and fifty dollars (\$2,650.00), which initially shall be adjusted for inflation on January 1, 2015, for the one-year period beginning January 1, 2014, and on January 1 of each year thereafter, or imprisonment for a term not exceeding one year, or by both such fine and imprisonment, in addition to any costs which may be assessed, except where a specific penalty is provided for the violation of any provision of the code, which specific penalty shall have been validly adopted by the city council. As used in this paragraph, "inflation" means the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index. It is the intent of this chapter that the general penalties set forth in this section shall apply wherever no specific penalty for a violation is set forth in the code, or where no specific penalty has been validly adopted. Each person who violates any provision of this code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall be punished accordingly. In addition to the penalties set forth above, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be abated by the city through any means permitted by law, and each such day that such condition continues shall be regarded as a new and separate offense.

Section 2. That paragraph B. of Code Section 1.12.010 is hereby amended to read in full as follows:

- B. A violation of any provision of Title 10 of this code shall be deemed to be a traffic infraction if, at the time of the commission of the violation, its counterpart violation under the provisions of Article 4 in Title 42 of the Colorado Revised Statutes, if any, is designated by state law as being a traffic infraction. If no counterpart violation exists under state law, the violation shall be deemed to be a traffic infraction. All other violations under Title 10 of this code shall be considered misdemeanors punishable as described in paragraph (A) of this section. Any person against whom judgment is entered for a traffic infraction under this code shall be subject to the penalty of a fine not exceeding two thousand six hundred and fifty dollars (\$2,650.00), which initially shall be adjusted for inflation on January 1, 2015, for the one-year period beginning January 1, 2014, and on January 1 of each year thereafter, and shall not be subject to imprisonment on account of such judgment. As used in this paragraph, "inflation" shall have the same meaning as set forth in paragraph A. of this section.

Section 3. That Code Section 1.12.010 is hereby amended to add a new paragraph D. to read in full as follows:

- D. The violation by any person not having attained the age of eighteen years at the time of the commission of the violation with the exception of violations of the Model Traffic Code, as amended and adopted by the city, shall be punished only by a fine not exceeding one thousand dollars (\$1,000.00), except where a specific lesser fine is provided in the code for the violation of a particular provision of the code. A person who has not yet reached the age of eighteen at the time of the commission of a violation of this code, except for violations of the Model Traffic Code, shall not be punished by imprisonment.

Section 4. That Code Section 1.12.020 is hereby repealed in its entirety.

Section 5. That Code Section 7.60.050 relating to the prohibition of medical marijuana establishments is amended to read in full as follows:

7.60.050 Penalties.

A violation of any provision of this Chapter 7.60 shall constitute a misdemeanor offense subject to the penalties set forth in Chapter 1.12 of this code. A person committing any such offense shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 6. That Code Section 7.65.030 relating to the prohibition of marijuana establishments is amended to read in full as follows:

7.65.030 Penalties.

A violation of any provision of this chapter 7.65 shall constitute a misdemeanor offense subject to the penalties set forth in chapter 1.12 of this code. A person committing any such offense shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 7. That Code Section 9.28.070 relating to penalties for unlawful presence on school grounds is repealed in its entirety.

Section 8. That Code Section 9.44.060 is amended to read in full as follows:

9.44.060 Unlawful Use of City Fire Hydrants

It shall be unlawful for any person to use a city fire hydrant so as to allow water to flow from that fire hydrant without authorization from the city’s water and power department or its fire and rescue department. Any person convicted of violating this section shall be subject to the penalties set forth in City Code Section 1.12.010, except that a minimum fine of one thousand dollars (\$1,000) shall be imposed for each such violation.

Section 9. That paragraph D. of section 13.04.235 regarding outdoor use of potable water during an emergency ban is amended to read in full as follows:

D. The city manager and his or her designees are authorized as peace officers to enforce this section by the issuance of summonses and complaints in accordance with the Colorado Municipal Court Rules of Procedure. A written warning shall be issued for a first violation of any provision of this section. Second and subsequent violations of any provision of this section shall be punished by a minimum fine of fifty dollars (\$50) up to the maximum fine provided for in chapter 1.12 of this code. Each day during which a violation of any provision of this section occurs or continues shall constitute a separate misdemeanor offense.

Section 10. 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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

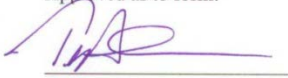
ADOPTED this _____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:

A handwritten signature in blue ink, appearing to be 'T. Ablao', written over a horizontal line.

Teresa Ablao
Assistant City Attorney

First Reading: _____
Second Reading: _____

ORDINANCE _____

AN ORDINANCE AMENDING CHAPTER 1.12 AND OTHER CODE SECTIONS OF THE MUNICIPAL CODE TO INCREASE THE MAXIMUM FINE FOR CITY CHARTER AND MOST CITY CODE VIOLATIONS BY ADULTS AND JUVENILES

WHEREAS, in 2013, the Colorado General Assembly adopted and the Governor signed into law House Bill 13-1060 which increased to \$2,650 the maximum fine that municipalities with courts of record may establish and impose for ordinance violations, which amount is to be adjusted for inflation on January 1 of each year commencing January 1, 2014; and

WHEREAS, the City’s Municipal Court is a qualified court of record pursuant to City Code Section 1.28.015; and

WHEREAS, the City, as a home rule municipality, may establish penalties for violation of its municipal ordinances on its own authority as provided in Article XX, Section 6.h. of the Colorado Constitution, subject to any restrictions in the City’s Charter; and

WHEREAS, City Charter Section 4-14 provides that the penalties imposed for the violation of City ordinances shall be established by ordinance, but that no fine or sentence for an ordinance violation shall exceed the maximums established by state statute for municipal ordinance violations; and

WHEREAS, Charter Section 15-7 provides that violations of the Charter may be punished by not more than the maximum fine and maximum term of imprisonment, or both, as established by ordinance in accordance with Charter Section 4-14; and

WHEREAS, the City’s current maximum fine amount as established in Code Chapter 1.12 for Charter and most ordinance violations committed by adults is \$1000 and has not been adjusted since it was set in 1997; and

WHEREAS, the City’s current maximum fine amount as established in Code Chapter 1.12 for Charter and most ordinance violations committed by juveniles is \$500 and has likewise remained unchanged since it was set in 1992; and

WHEREAS, City Council, pursuant to its home rule authority and as authorized in Charter Section 4-14, desires to amend Code Chapter 1.12 to increase the maximum fine amount

for most violations of the City Code and all violations of the City Charter that may be imposed on adults by the Loveland Municipal Court from \$1000 to \$2,650, to be adjusted each year for inflation to be consistent with the maximum authorized by state law, and to increase the maximum fine amount that may be imposed on juveniles from \$500 to \$1000, but without this maximum fine amount being increased annually for inflation; and

WHEREAS, there are also specific penalty provisions within certain Code chapters that need to be amended to be consistent with the amended general penalty provisions in Chapter 1.12.

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

Section 1. That paragraph A. of Code Section 1.12.010 is hereby amended to read in full as follows:

- A. It is unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this code, the Charter or any provision of any code or other regulation adopted by reference by this code. Except as to traffic infractions described in paragraph B. of this section below and violations committed by juveniles as described in paragraph D. of this section, the violation of any provision of this code shall be punished by a fine not exceeding ~~one thousand dollars~~ two thousand six hundred and fifty dollars (\$2,650.00), which initially shall be adjusted for inflation on January 1, 2015, for the one-year period beginning January 1, 2014, and on January 1 of each year thereafter, or imprisonment for a term not exceeding ~~;~~ one year, or by both such fine and imprisonment, in addition to any costs which may be assessed, except where a specific penalty is provided for the violation of any provision of the code, which specific penalty shall have been validly adopted by the city council. As used in this paragraph, "inflation" means the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index. It is the intent of this chapter that the general penalties set forth in this section shall apply wherever no specific penalty for a violation is set forth in the code, or where no specific penalty has been validly adopted. Each person who violates any provision of this code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall be punished accordingly. In addition to the penalties set forth above, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be abated by the city through any means permitted by law, and each such day that such condition continues shall be regarded as a new and separate offense.

Section 2. That paragraph B. of Code Section 1.12.010 is hereby amended to read in full as follows:

B. A violation of any provision of Title 10 of this code shall be deemed to be a traffic infraction if, at the time of the commission of the violation, its counterpart violation under the provisions of Article 4 in Title 42 of the Colorado Revised Statutes, if any, is designated by state law as being a traffic infraction. If no counterpart violation exists under state law, the violation shall be deemed to be a traffic infraction. All other violations under Title 10 of this code shall be considered misdemeanors punishable as described in paragraph (A) of this section. Any person against whom judgment is entered for a traffic infraction under this code shall be subject to the penalty of a fine not exceeding ~~one thousand dollars~~ two thousand six hundred and fifty dollars (\$2,650.00), which initially shall be adjusted for inflation on January 1, 2015, for the one-year period beginning January 1, 2014, and on January 1 of each year thereafter, and shall not be subject to imprisonment on account of such judgment. As used in this paragraph, "inflation" shall have the same meaning as set forth in paragraph A. of this section.

Section 3. That Code Section 1.12.010 is hereby amended to add a new paragraph D. to read in full as follows:

D. The violation by any person not having attained the age of eighteen years at the time of the commission of the violation with the exception of violations of the Model Traffic Code, as amended and adopted by the city, shall be punished only by a fine not exceeding one thousand dollars (\$1,000.00), except where a specific lesser fine is provided in the code for the violation of a particular provision of the code. A person who has not yet reached the age of eighteen at the time of the commission of a violation of this code, except for violations of the Model Traffic Code, shall not be punished by imprisonment.

Section 4. That Code Section 1.12.020 is hereby by repealed in its entirety.

1.12.020—Juveniles.

~~Notwithstanding any provision in Section 1.12.010, the violation by any person not having attained the age of eighteen years at the time of the commission of the violation with the exception of violations of the Model Traffic Code, as amended and adopted by the city, shall be punished only by a fine not exceeding five hundred dollars, except where a specific lesser fine is provided in the code for the violation of a particular provision of the code. A person who has not yet reached the age of eighteen at the time of the commission of a violation of this code, except for violations of the Model Traffic Code, shall not be punished by imprisonment.~~

Section 5. That Code Section 7.60.050 relating to the prohibition of medical marijuana establishments is amended to read in full as follows:

7.60.050 Penalties.

A violation of any provision of this Chapter 7.60 shall constitute a misdemeanor offense ~~punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment~~ subject to the penalties set forth in Chapter 1.12 of this code. A person committing any such offense

shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 6. That Code Section 7.65.030 relating to the prohibition of marijuana establishments is amended to read in full as follows:

7.65.030 Penalties.

A violation of any provision of this chapter 7.65 shall constitute a misdemeanor offense ~~punishable subject to the penalties set forth in chapter 1.12 of this code by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment.~~ A person committing any such offense shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 7. That Code Section 9.28.070 relating to penalties for unlawful presence on school grounds is repealed in its entirety.

~~9.28.070 Penalties for Sections 9.28.040 through 9.28.050.~~

~~Any person found guilty of violating Sections 9.28.040 through 9.28.050 shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for a term not to exceed ten days, or by both such fine and imprisonment.~~

Section 8. That Code Section 9.44.060 is amended to read in full as follows:

9.44.060 Unlawful Use of City Fire Hydrants

It shall be unlawful for any person to use a city fire hydrant so as to allow water to flow from that fire hydrant without authorization from the city's water and power department or its fire and rescue department. Any person convicted of violating this section shall be subject to the penalties set forth in City Code Section 1.12.010, except that a minimum fine of one thousand dollars (\$1,000) shall be imposed for each such violation.

Section 9. That paragraph D. of section 13.04.235 regarding outdoor use of potable water during an emergency ban is amended to read in full as follows:

- D. The city manager and his or her designees are authorized as peace officers to enforce this section by the issuance of summonses and complaints in accordance with the Colorado Municipal Court Rules of Procedure. A written warning shall be issued for a first violation of any provision of this section. Second and subsequent violations of any provision of this section shall be punished by a minimum fine of fifty dollars (\$50) up to thea maximum fine ~~of one thousand dollars (\$1,000) provided for in chapter 1.12 of this code.~~ Each day during which a violation of any provision of this section occurs or continues shall constitute a separate misdemeanor offense.

Section 10. 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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

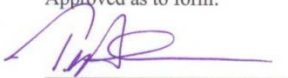
ADOPTED this _____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:



Teresa Ablao
Assistant City Attorney



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: 6
MEETING DATE: 12/3/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Noreen Smyth, Current Planning

TITLE:

An Ordinance on First Reading Vacating Access Easements within Outlots 1 and 2 of the Millennium SW Seventh Subdivision, City Of Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and adopt 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. Adoption a motion continuing the item to a future Council meeting

SUMMARY:

This item is a legislative action to consider adoption of an ordinance on first reading vacating four access easements within the Millennium SW Seventh Subdivision. The access easements are within a 20 acre property located northwest of the intersection of Corvus Drive and Sculptor Drive. The owner of the property is Vertex at Stone Creek, LLC.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The access easements to be vacated consist of one emergency access easement, one public access easement, and two temporary turnaround easements. The easements were established within outlots in anticipation that a new subdivision application for the outlots was forthcoming. However, that development proposal never materialized and the outlots have been purchased by the current applicant for a proposed 96-lot single family residential subdivision to be known

as Millennium SW 8th/Stone Creek II. The existing access easements are not in locations aligning with the street layout proposed by the current applicant. As access easements must be vacated by City Council, the applicant is seeking approval of the vacations in advance of the recordation of the plat for Millennium SW 8th/Stone Creek II. The Millennium SW 8th subdivision plat is currently undergoing staff review and is anticipated to be approved by staff before the end of the year.

The Planning Commission unanimously approved the vacation as part of the consent agenda on November 25, 2013. Staff is recommending approval of the requested vacations because all necessary access easements will be established in suitable locations with the eventual recordation of the Millennium SW 8th plat.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Memorandum

FIRST READING: December 3, 2013

SECOND READING: _____

ORDINANCE NO.____

AN ORDINANCE VACATING FOUR ACCESS EASEMENTS LOCATED IN OUTLOT 1 OF THE MILLENNIUM SOUTHWEST SEVENTH SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of the four access easements described below, located in Outlot 1 of the Millennium Southwest Seventh Subdivision, City of Loveland, Larimer County, Colorado; and

WHEREAS, the City Council finds and determines that no land adjoining any of the easements 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 the easements to be vacated are no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application for vacation of the easements was signed by the owners of more than 50% of property abutting the easements 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, the following described easements shall be and the same are hereby vacated:

See Exhibit A attached hereto and incorporated herein by reference, setting forth the legal description for the following easements hereby vacated:

- A. Temporary Turnaround Easement No.1**
- B. Temporary Turnaround Easement No.2**
- C. Emergency Access Easement; and**
- D. 20' Public Access Easement;**

See **Exhibit B** attached hereto and incorporated herein by reference for a depiction of the foregoing easements.

Section 3. 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 4. 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.

ADOPTED this _ day of _____, 2013.

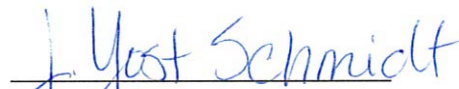
CITY OF LOVELAND, COLORADO
a home rule municipality

By: _____
Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT "A"**LEGAL DESCRIPTION FOR TEMPORARY TURNAROUND EASEMENT NO. 1 TO BE VACATED**

A TRACT OF LAND PREVIOUSLY DESCRIBED AS "TEMPORARY TURNAROUND EASEMENT NO. 1" AT RECEPTION NO. 20040091719 AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO; BEING A PORTION OF OUTLOT 1 OF MILLENNIUM SW SEVENTH SUBDIVISION, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER SOUTH SIXTEENTH CORNER OF SAID SECTION 17, SAID POINT BEING MARKED BY A 2 ½" CAP STAMPED PLS 31169, AND CONSIDERING THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 17 TO HAVE AN ASSUMED BEARING OF S00°31'02"W (NORTH END OF SAID LINE BEING MARKED BY A 2 ½" ALUMINUM CAP STAMPED PLS 33636) WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE N38°36'22"W, 969.26 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N33°43'01"W, 31.68 FEET;

THENCE 42.81 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 51.17 FEET, A CENTRAL ANGLE OF 47°55'59", AND A CHORD WHICH BEARS N32°19'00"E, 41.57 FEET;

THENCE 235.11 FEET ALONG A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 48.83 FEET, A CENTRAL ANGLE OF 275°51'57", AND A CHORD WHICH BEARS S33°43'02"E, 65.43 FEET;

THENCE 42.81 FEET ALONG A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 51.17 FEET, A CENTRAL ANGLE OF 47°55'59", AND A CHORD WHICH BEARS S80°14'57"W, 41.57 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINS 0.20 ACRES, (8,523 SQUARE FEET) MORE OR LESS.

LEGAL DESCRIPTION FOR TEMPORARY TURNAROUND EASEMENT NO. 2 TO BE VACATED

A TRACT OF LAND PREVIOUSLY DESCRIBED AS "TEMPORARY TURNAROUND EASEMENT NO. 2" AT RECEPTION NO. 20040091720 AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO; BEING A PORTION OF OUTLOT 1 OF MILLENNIUM SW SEVENTH SUBDIVISION, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER SOUTH SIXTEENTH CORNER OF SAID SECTION 17, SAID POINT BEING MARKED BY A 2 ½" CAP STAMPED PLS 31169, AND CONSIDERING THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 17 TO HAVE AN ASSUMED BEARING OF S00°31'02"W (NORTH END OF SAID LINE BEING MARKED BY A 2 ½" ALUMINUM CAP STAMPED PLS 33636) WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE N30°20'29"W, 761.78 FEET TO THE TRUE POINT OF BEGINNING;

THENCE S56°16'59"W, 14.00 FEET;

THENCE S32°14'28"W, 63.54 FEET;

THENCE S56°16'59"W, 74.95 FEET;

THENCE N33°43'01"W, 116.27 FEET;

THENCE 208.12 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 119°14'45", AND A CHORD WHICH BEARS N87°52'18"E, 172.54 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINS 0.35 ACRES, (15,377 SQUARE FEET) MORE OR LESS

LEGAL DESCRIPTION FOR EMERGENCY ACCESS EASEMENT TO BE VACATED

A TRACT OF LAND LABELED AS "EMERGENCY ACCESS ESMT" SHOWN AND DESCRIBED IN OUTLOT 1 OF MILLENNIUM SW SEVENTH SUBDIVISION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT 1; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID OUTLOT 1 AND ALONG A CURVE CONCAVE TO THE WEST (SAID CURVE HAVING A RADIUS OF 5950.00 FEET, A DELTA ANGLE OF 01°47'45", A CHORD BEARING S00°53'52"E, 186.47 FEET), AN ARC LENGTH OF 186.48 FEET; THENCE S00°00'00"W ALONG SAID EAST LINE, A DISTANCE OF 32.93 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING S00°00'00"W ALONG SAID EAST LINE, A DISTANCE OF 20.00 FEET;
 THENCE N90°00'00"W, A DISTANCE OF 130.65 FEET;
 THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHEAST (SAID CURVE HAVING A RADIUS OF 300.00 FEET, A DELTA ANGLE OF 33°43'01", A CHORD BEARING S73°08'30"W, 174.00 FEET), AN ARC LENGTH OF 176.54 FEET;
 THENCE S56°16'59"W, A DISTANCE OF 30.22 FEET;
 THENCE SOUTHERLY ALONG A CURVE CONCAVE TO THE EAST (SAID CURVE HAVING A RADIUS OF 25.00 FEET, A DELTA ANGLE OF 90°00'00", A CHORD BEARING S11°16'59"W, 35.36 FEET), AN ARC LENGTH OF 39.27 FEET;
 THENCE S33°43'01"E, A DISTANCE OF 249.06 FEET;
 THENCE S56°16'59"W, A DISTANCE OF 579.11 FEET;
 THENCE NORTHWESTERLY ALONG A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST (SAID CURVE HAVING A RADIUS OF 48.83 FEET, A DELTA ANGLE OF 23°48'55", A CHORD BEARING N40°43'45"W, 20.15 FEET, AN ARC LENGTH OF 20.30 FEET);
 THENCE N56°16'59"E, A DISTANCE OF 536.57 FEET;
 THENCE NORTHERLY ALONG A CURVE CONCAVE TO THE WEST (SAID CURVE HAVING A RADIUS OF 25.00 FEET; A DELTA ANGLE OF 90°00'00", A CHORD BEARING N11°16'59"E, 35.36 FEET), AN ARC LENGTH OF 39.27 FEET;
 THENCE N33°43'01"W, A DISTANCE OF 249.06 FEET;
 THENCE N56°16'59"E, A DISTANCE OF 75.22 FEET;
 THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHEAST (SAID CURVE HAVING A RADIUS OF 320.00 FEET; A DELTA ANGLE OF 33°43'01", A CHORD BEARING N73°08'30"E, 185.60 FEET), AN ARC LENGTH OF 188.31 FEET;
 THENCE N90°00'00"E, A DISTANCE OF 130.65 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINS 24,708 SQUARE FEET OR 0.567 ACRES, MORE OR LESS.

LEGAL DESCRIPTION FOR 20' PUBLIC ACCESS EASEMENT TO BE VACATED

A TRACT OF LAND LABELED AS "20' PUBLIC ACCESS ESMT" SHOWN AND DESCRIBED IN OUTLOT 1 OF MILLENNIUM SW SEVENTH SUBDIVISION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 3, BLOCK 1, SAID MILLENNIUM SW SEVENTH SUBDIVISION; THENCE S33°43'01"E ALONG THE NORTHEASTERLY LINE OF SAID LOT 3 AND ALONG THE NORTHEASTERLY LINE OF LOT 2, BLOCK 2, SAID MILLENNIUM SW SEVENTH SUBDIVISION, A DISTANCE OF 263.46 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 2;
THENCE N56°16'59"E, A DISTANCE OF 20.00 FEET;
THENCE N33°43'01"W, A DISTANCE OF 263.46 FEET;
THENCE S56°16'59"W, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINS 5,269 SQUARE FEET OR 0.121 ACRES, MORE OR LESS.

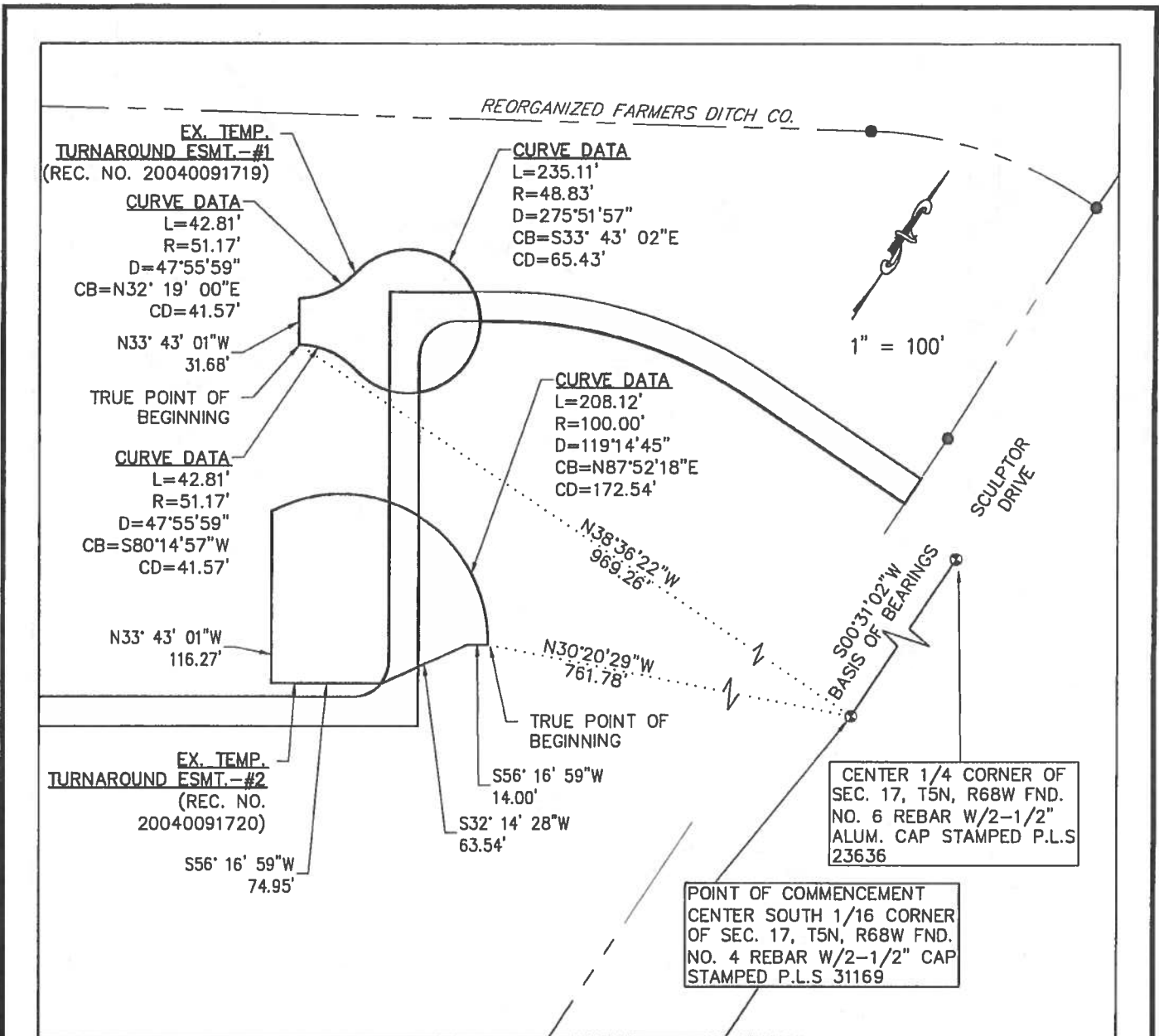
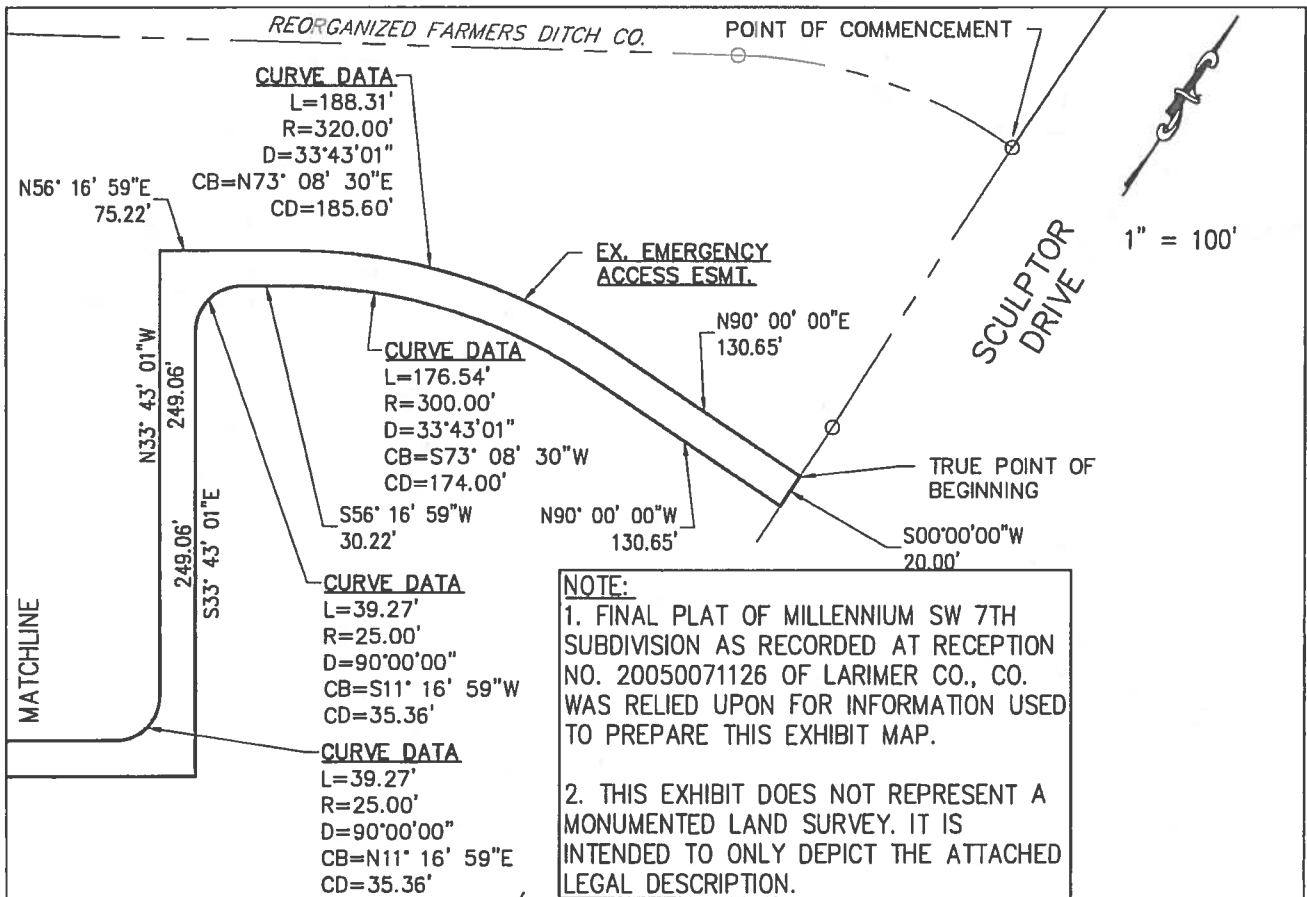
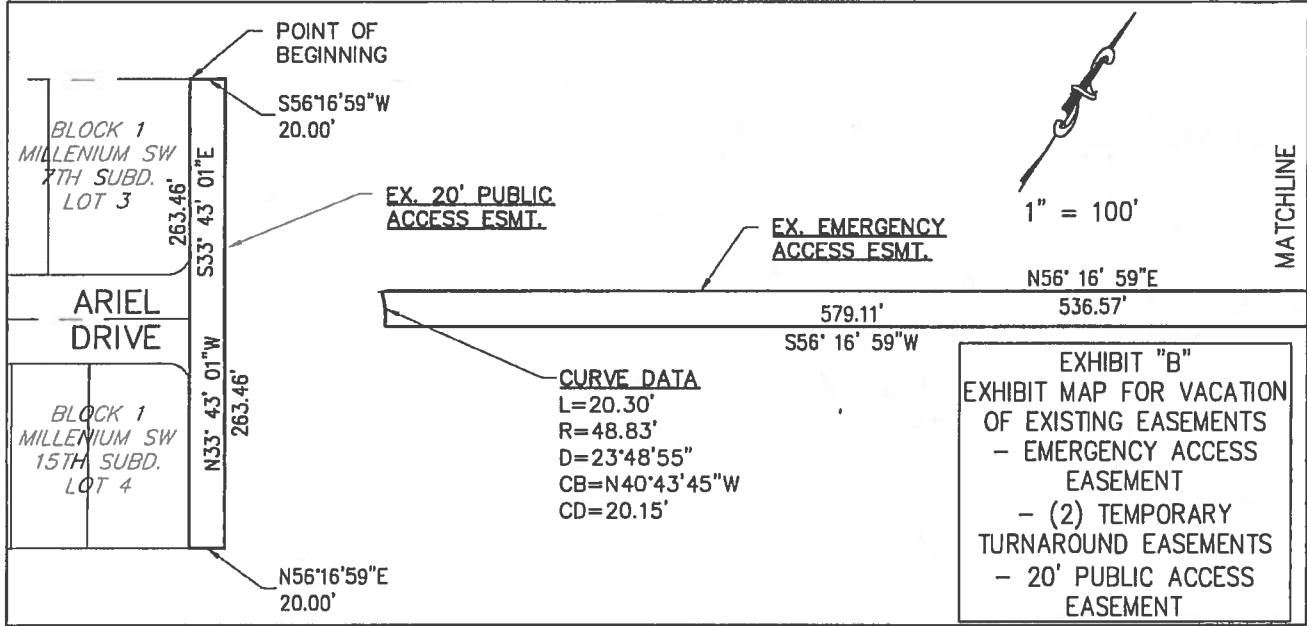


EXHIBIT "B"
EXHIBIT MAP FOR VACATION OF EXISTING EASEMENTS
- EMERGENCY ACCESS EASEMENT
- (2) TEMPORARY TURNAROUND EASEMENTS
- 20' PUBLIC ACCESS EASEMENT

NOTE:
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2. THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY. IT IS INTENDED TO ONLY DEPICT THE ATTACHED LEGAL DESCRIPTION.

13050 STONE CREEK PHASE 2		EASEMENT VACATION EXHIBIT	1 OF 2
	NOVEMBER 6, 2013		
	EXHIBIT "B"		



13050 STONE CREEK PHASE 2



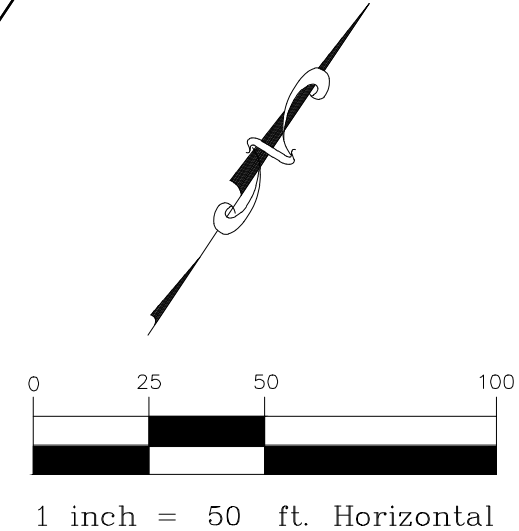
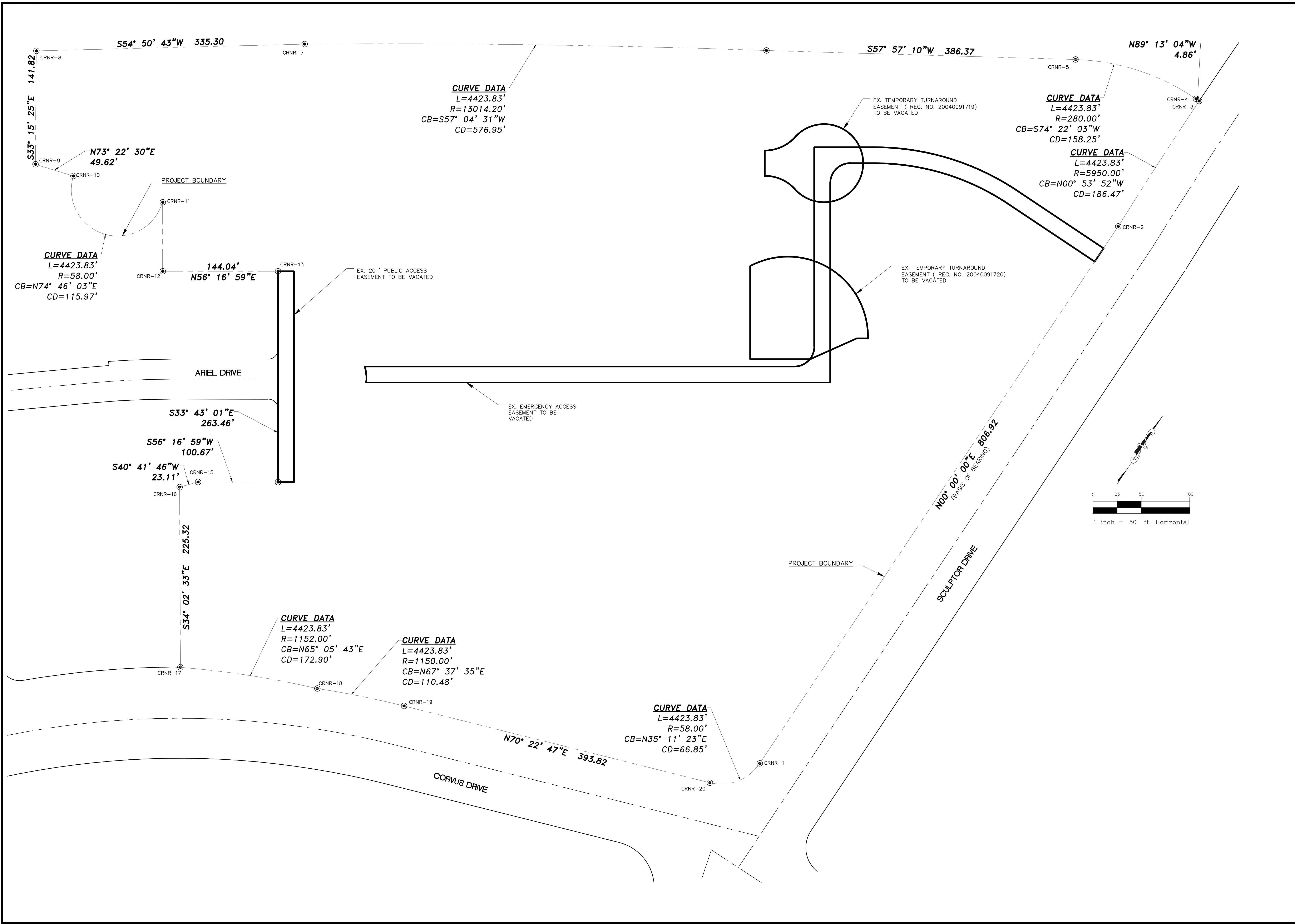
NOVEMBER 6, 2013

EXHIBIT "B"

EASEMENT VACATION EXHIBIT

2 OF 2

Drawing name: S:\Entitlement Engineering\13050 - Stone Creek\CAD\SHFEET'S VACATION REQUEST.dwg ARCH: D (24x36) Nov 08, 2013 9:48am by: FFeero



NOT FOR CONSTRUCTION	NOT FOR BID
SCALE: AS SHOWN	DESIGNED BY: MCS
	DRAWN BY: MCS/JP
	CHECKED BY: LEP
MILLENNIUM SW 8TH + 17TH SUBDIVISIONS STONE CREEK PHASE 2 LOVELAND, COLORADO	
EASEMENT VACATION EXHIBIT	
DATE	06/10/2013
PROJECT NO.	13050
SHEET NUMBER	1 of 1

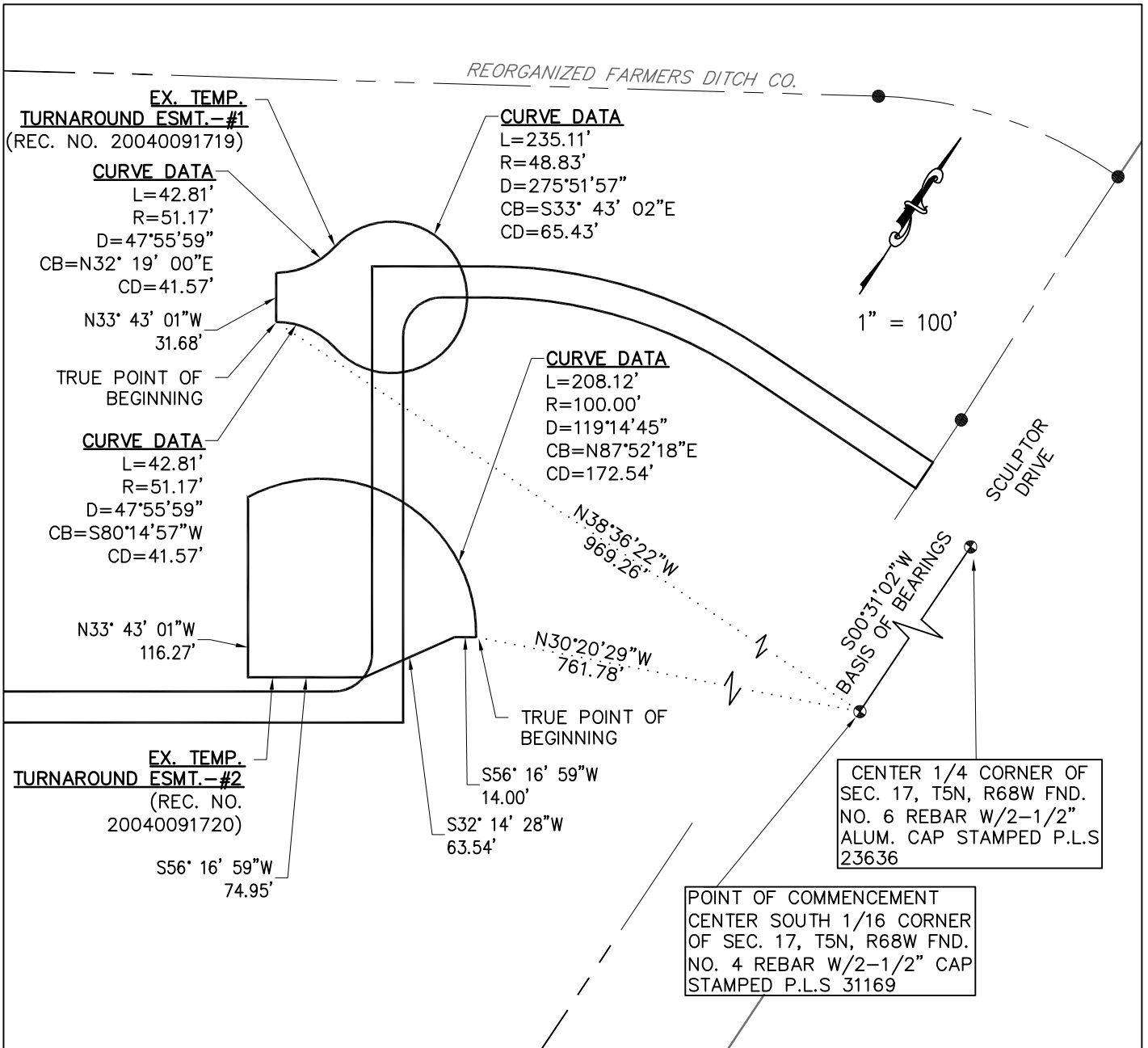
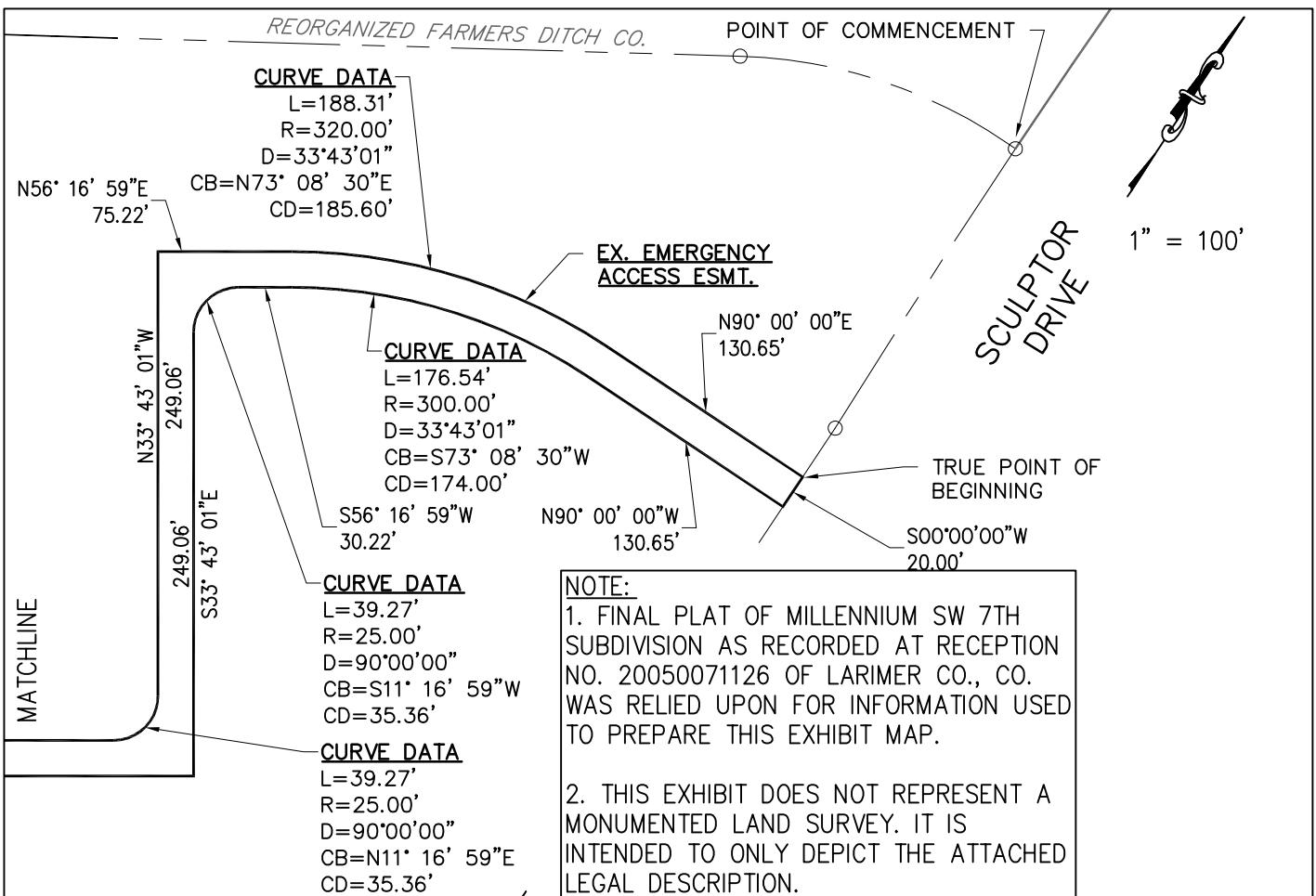
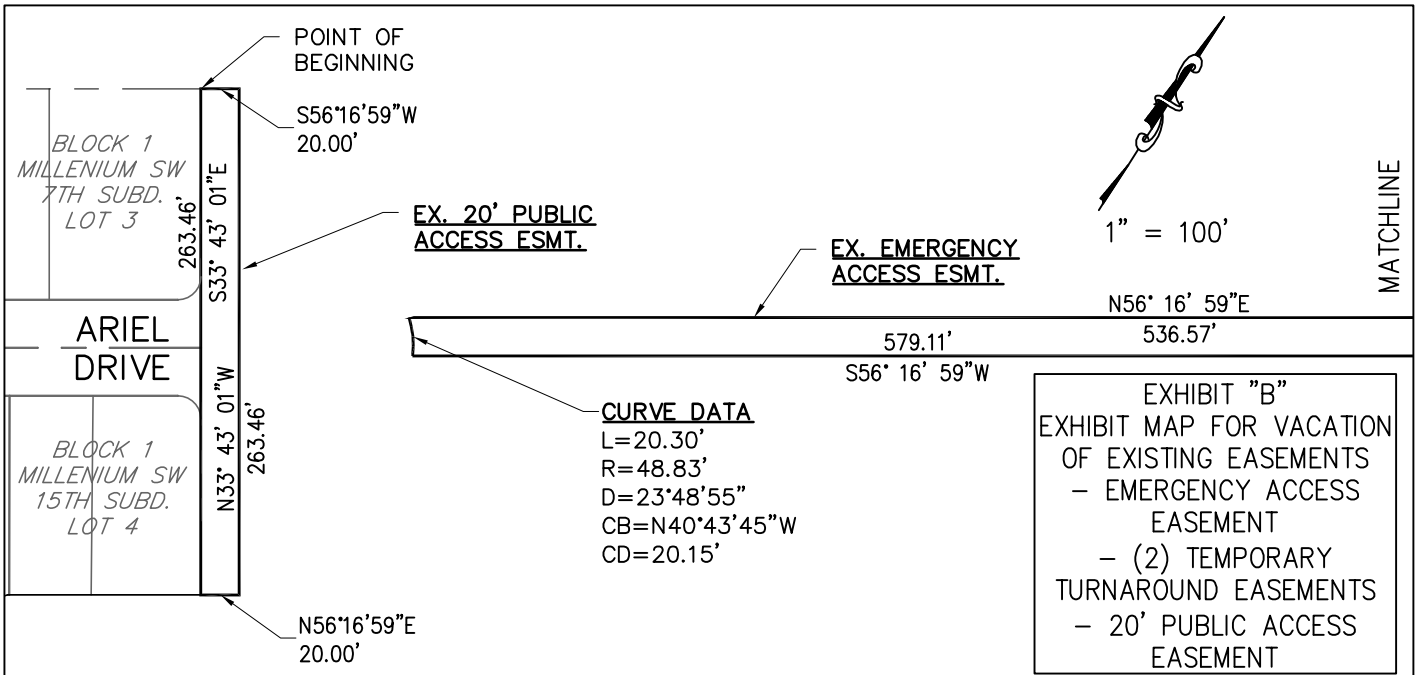


EXHIBIT "B"
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NOTE:
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13050 STONE CREEK PHASE 2

**EASEMENT VACATION
EXHIBIT**

2 OF 2



NOVEMBER 6, 2013

EXHIBIT "B"



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

MEMORANDUM

TO: City Council

FROM: Noreen Smyth, Senior Planner, Current Planning Division

DATE: November 18, 2013

SUBJECT: Access Easement Vacations associated with Millennium SW 8th Subdivision

I. EXHIBITS

- A. Planning Commission packet
- B. Slide presentation

II. KEY ISSUES

Staff believes that all key issues regarding the vacation have been resolved through the staff review process. The Planning Commission unanimously recommends approval of the vacation as proposed. The item has been placed on the Council's consent agenda.

III. BACKGROUND

The attached ordinance concerns a request to vacate four access easements that are in an area proposed for a new residential subdivision called Millennium SW 8th, also known as "Stone Creek II". The access easements, consisting of one emergency access easement, one public access easement, and two temporary turnaround easements, were established with the Millennium SW 7th Subdivision at that plat's recordation in 2005. The easements are located within outlots in the Millennium SW 7th Subdivision. The developer of that subdivision had intended to submit another plat application to further subdivide the outlots soon after the Millennium SW 7th plat was recorded, and had a specific layout intended for the subdivision of the outlots. Easements were established at locations suitable for the subdivision layout intended by that developer, but that plan for the outlots never proceeded to a formal application.

The outlots have since been purchased by the current applicant for the proposed 96-lot single family residential Millennium SW 8th subdivision. The subdivision layout proposed for the land by the current applicant includes public street rights-of-way that provide all needed public and emergency access, and thus access easements are not needed in the locations established by the previous plat. As access easements must be vacated by a City Council-adopted ordinance, the applicant is seeking approval of the vacations in advance of the recordation of the plat for Millennium SW 8th/Stone Creek II. While certain utility easements established with the Millennium SW 7th plat are also not in locations suitable for the current Millennium SW 8th subdivision plat, per the Municipal Code, those easements can be vacated with the recordation of the new plat.

As all necessary access easements and rights-of-way for this area will be established with the recordation of the Millennium SW 8th plat, which is anticipated to complete the staff review process later this year, the easements to be vacated are not necessary for public or emergency use.

IV. STAFF REVIEW

City staff is supportive of vacating the emergency access easement, the public access easement, and the two temporary turnaround easements in the subject property. Because all necessary access will be established with the upcoming recordation of the Millennium SW 8th plat, neither public nor emergency access will be compromised as a result of the vacation.

The Millennium SW 8th plat is currently undergoing staff review, which is anticipated to be completed later this year. As the proposed Millennium SW 8th/Stone Creek II is within the Millennium PUD, per the review process established in the PUD, it will not undergo public hearings and instead is recorded once the administrative (staff) review procedure is completed.

V. PLANNING COMMISSION REVIEW

Per Section 16.36 of the Municipal Code, the vacation of access easements requires adoption of an ordinance by City Council along with review by the Planning Commission prior to City Council review. The requested vacations were reviewed by the Planning Commission at a public hearing on November 25, 2013. The Planning Commission unanimously approved the request as part of the consent agenda at that hearing. Because the Planning Commission approved the requested vacation as part of their consent agenda, there are no Planning Commission minutes provided.

RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinance on first reading.



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 November 25, 2013

Agenda #: Consent Agenda - 1
Title: Millennium SW 8th Vacation
Applicant: Vertex at Stone Creek, LLC
Request: Easement Vacations
Location: Northwest of the intersection of
 Corvus Drive and Sculptor Drive
Zoning: P-59, Millennium Addition PUD
Staff Planner: Noreen Smyth

Staff Recommendation:

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Motion:

"Move to make the findings listed in Section IX of this report dated November 25, 2013; and, based on those findings, recommend approval of the easement vacations to City Council, as depicted in Attachments #1 of this staff report."

Summary of Analysis

This is a public hearing to consider a request to vacate four access easements located on land that is a part of the Millennium SW 8th subdivision application. The easements, consisting of one emergency access easement, one public access easement, and two temporary turnaround easements, were established within outlots in the Millennium SW 7th subdivision plat. The outlots have been purchased by the current applicant for a proposed 96-lot single family residential subdivision. The access easements are in locations where such easements are not needed due to the subdivision and street layout proposed by the current applicant. The Millennium SW 8th subdivision plat, which is currently undergoing staff review, will include all needed easements and rights-of-way in appropriate locations. It is anticipated to be approved before the end of the year and recorded shortly thereafter.

Development Review staff is supportive of the vacations because all necessary public and emergency access will be established in suitable locations with the eventual recordation of the Millennium SW 8th plat, and the existing access easements serve no public benefit.

I. ATTACHMENTS:

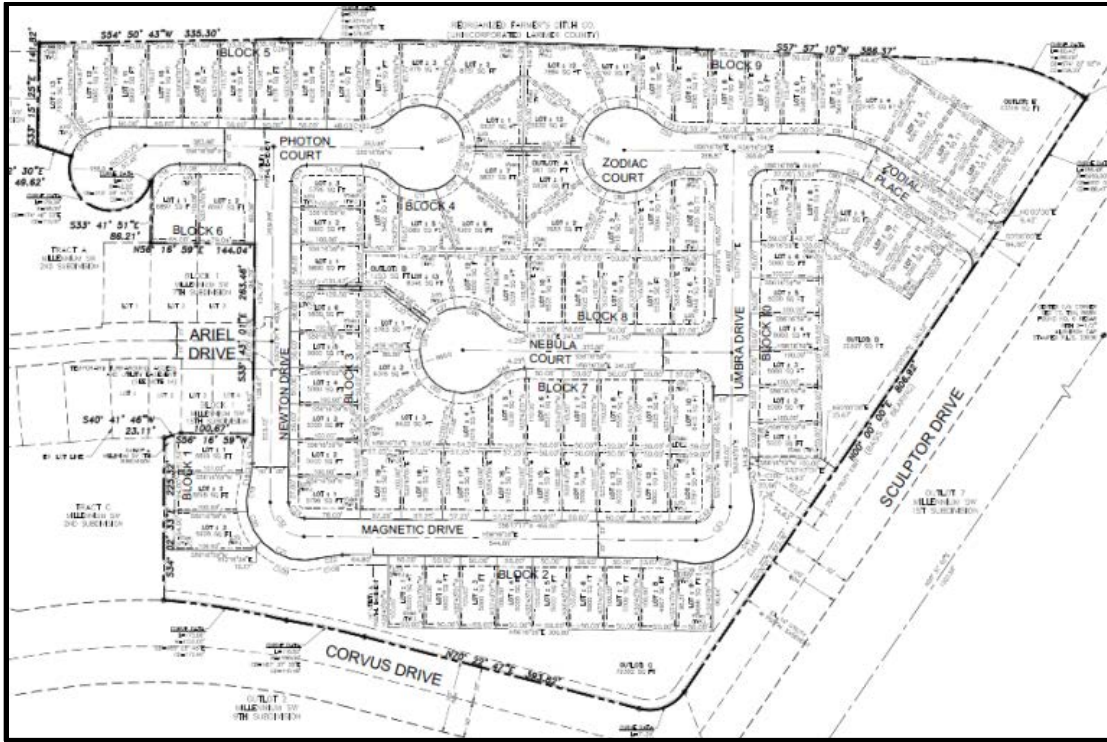
1. Vacation exhibit
2. Millennium SW 8th “Stone Creek II” proposed subdivision plat

II. VICINITY MAP:



Exhibit A

III. PROPOSED MILLENNIUM SW 8TH PLAT:



IV. VACATION EXHIBIT:

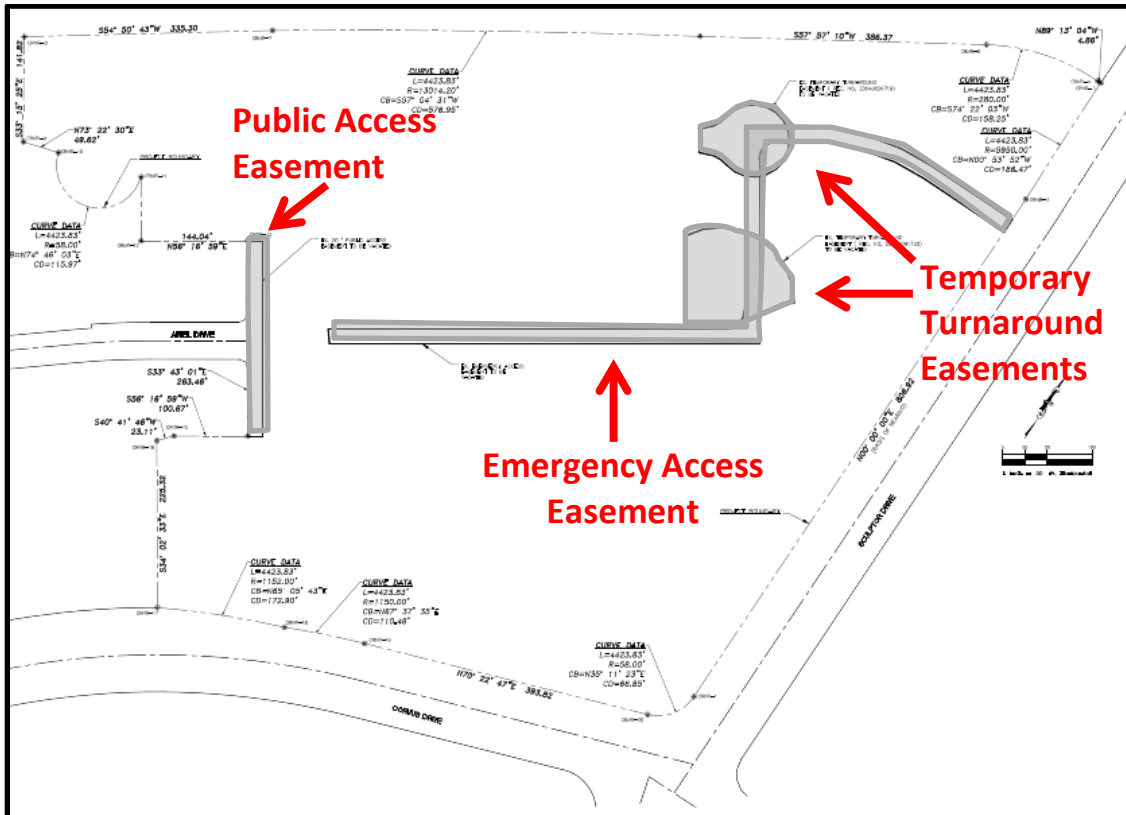


Exhibit A

Larger versions of the plat and vacation exhibit are attached to this report. (See **Attachment #1 & #2**).

V. PUBLIC HEARING:

This application proposes to vacate four access easements that are in an area proposed for a new residential subdivision called Millenniums SW 8th. The vacations are being sought because the access easements, consisting of one emergency access easement, one public access easement, and two temporary turnaround easements, are not needed because of the road layout proposed with a subdivision plat that is anticipated to be approved in the near future for the subject property. Per Section 16.36 of the Municipal Code, vacations of access easements require review by the Planning Commission at a public hearing prior to adoption of an ordinance by City Council. The Planning Commission's recommendation will be forwarded to the City Council, to be considered as part of their subsequent public hearing, which is currently scheduled for December 3, 2013.

VI. PUBLIC NOTICE:

An affidavit was received from the applicant certifying that notice of the hearing for the vacation was mailed to all surface owners and owners of the easement to be vacated and that notices were posted in prominent locations on the perimeter of the project site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on November 9, 2013. Staff has not received any comments or inquiries on the application.

VII. 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 vacations, and have determined that the easements serve no usefulness or greater public good. Staff believes that all key issues have been resolved through the review process.

VIII. SUMMARY:

This application concerns the vacation of four access easements located within outlots in the Millennium SW 7th Subdivision. The easements, consisting of one emergency access easement, one public access easement, and two temporary turnaround easements, were established in 2005 by the recording of that plat. That applicant had platted the easements for emergency access to the Stone Creek I development and also in anticipation of submitting a new subdivision application for the outlots soon after the recordation of the Millennium SW 7th plat. However, that proposal for the outlots did not proceed at that time.

The outlots have since been purchased by the current applicant for a proposed 96-lot single family residential subdivision, City of Loveland Application #13-99, Millennium SW 8th/Stone Creek II. The access easements, which were established in locations suitable for the subdivision layout intended by the previous applicant, are in locations where such access easements are not necessary due to the street layout proposed by the current applicant. As access easements must be vacated by a City Council-adopted ordinance, the applicant is seeking approval of the vacations in advance of the recordation of the new plat. The Millennium SW 8th subdivision plat is currently undergoing staff review, and is anticipated to be approved by staff before the end of the year. As a Millennium PUD plat, it will not undergo public hearings and instead is reviewed administratively.

City staff is supportive of vacating the emergency access easement, the public access easement, and the two temporary turnaround easements on the subject property. Because all necessary access will be established with the upcoming recordation of the Millennium SW 8th plat, neither public nor emergency access will be compromised as a result of the vacation.

IX. FINDINGS AND ANALYSIS

The following two findings must be met in order to vacate the access easements. These findings are included in section 16.36.010.B of the Loveland Municipal Code.

***Finding 1.** That no land adjoining any 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.*

Transportation: Staff believes that this finding can be met. The proposed easement vacations will not create a negative impact upon the City's Public Streets. Once the final plat for Millennium SW 8th is approved and recorded the necessary street right-of-ways will be in place to provide adequate transportation facilities for the property.

***Finding 2.** That the easement to be vacated is no longer necessary for the public use and convenience.*

Transportation: Staff believes that this finding can be met. The easements proposed to be vacated are located in areas no longer necessary for public use and convenience. The Transportation Division has no objection to the vacation.

Fire: Staff believes that this finding can be met, due to the following:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 6).
- The proposed development will not negatively impact fire protection for the subject development or surrounding properties.

Exhibit A

Water/Wastewater: The subject area is the City's current service area for both water and wastewater. Staff believes that this finding can be met, due to the following:

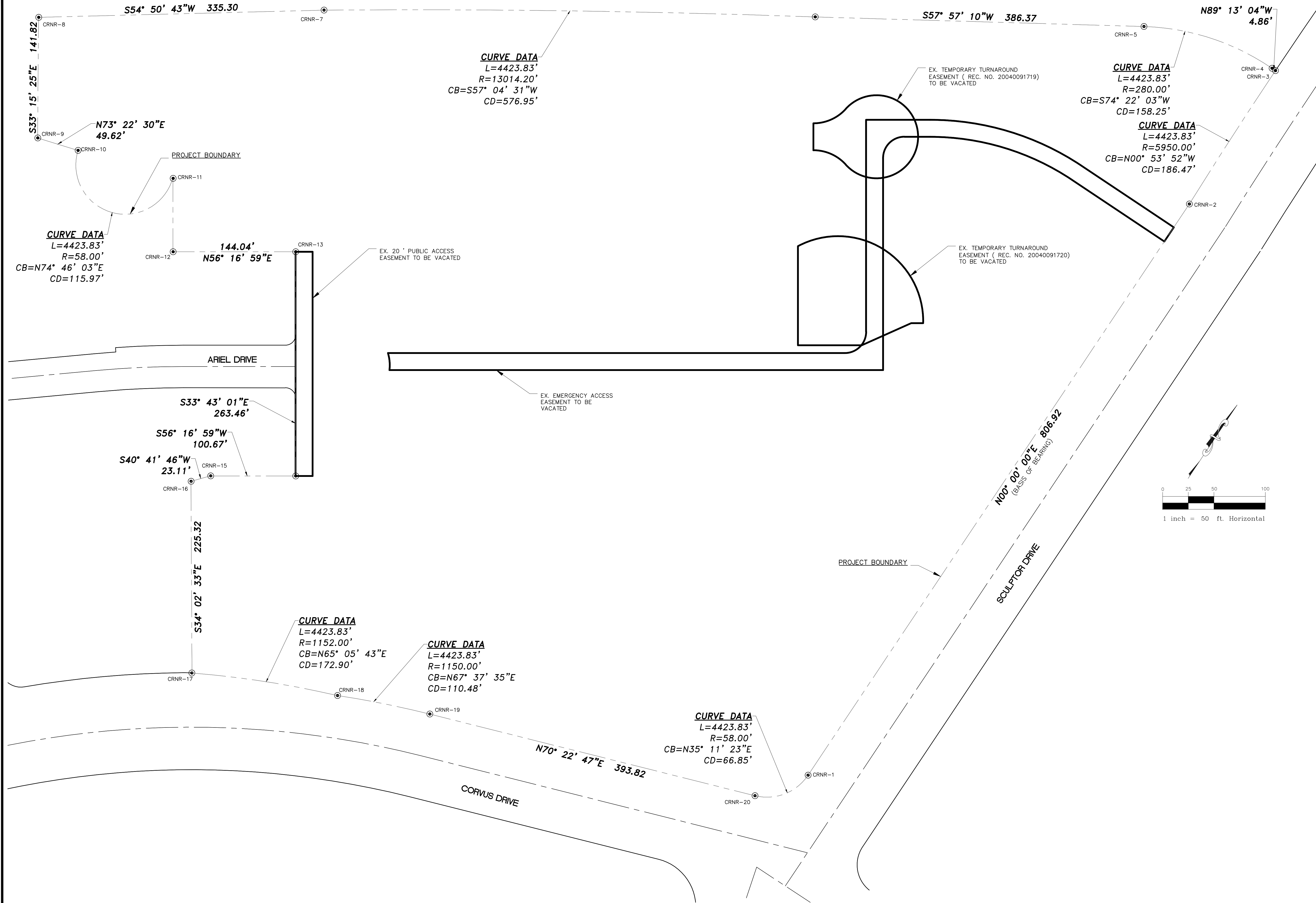
- The existing access easements to be vacated do not impact the existing water and wastewater utility configuration within and adjacent to this development.

Stormwater: Staff believes that this finding can be met. The existing access easement is not used to convey Stormwater and thus is not necessary for the public use and conveyance of Stormwater.

X. RECOMMENDED CONDITIONS

No City departments or other review agencies have submitted any recommended conditions for this application.

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NO.	REVISIONS	DATE	BY

PHELPS ENGINEERING
 7200 E. Hampden Ave., Suite 300 Denver, CO 80231 303-298-9844

NOT FOR CONSTRUCTION
 NOT FOR BID

SCALE: AS SHOWN	MCS	LEP
DESIGNED BY:	MCS/AP	
DRAWN BY:	MCS/AP	
CHECKED BY:		

MILLENNIUM SW 8TH + 17TH SUBDIVISIONS
 STONE CREEK PHASE 2
 LOVELAND, COLORADO

EASEMENT
 VACATION EXHIBIT

DATE	06/10/2013
PROJECT NO.	13050
SHEET NUMBER	

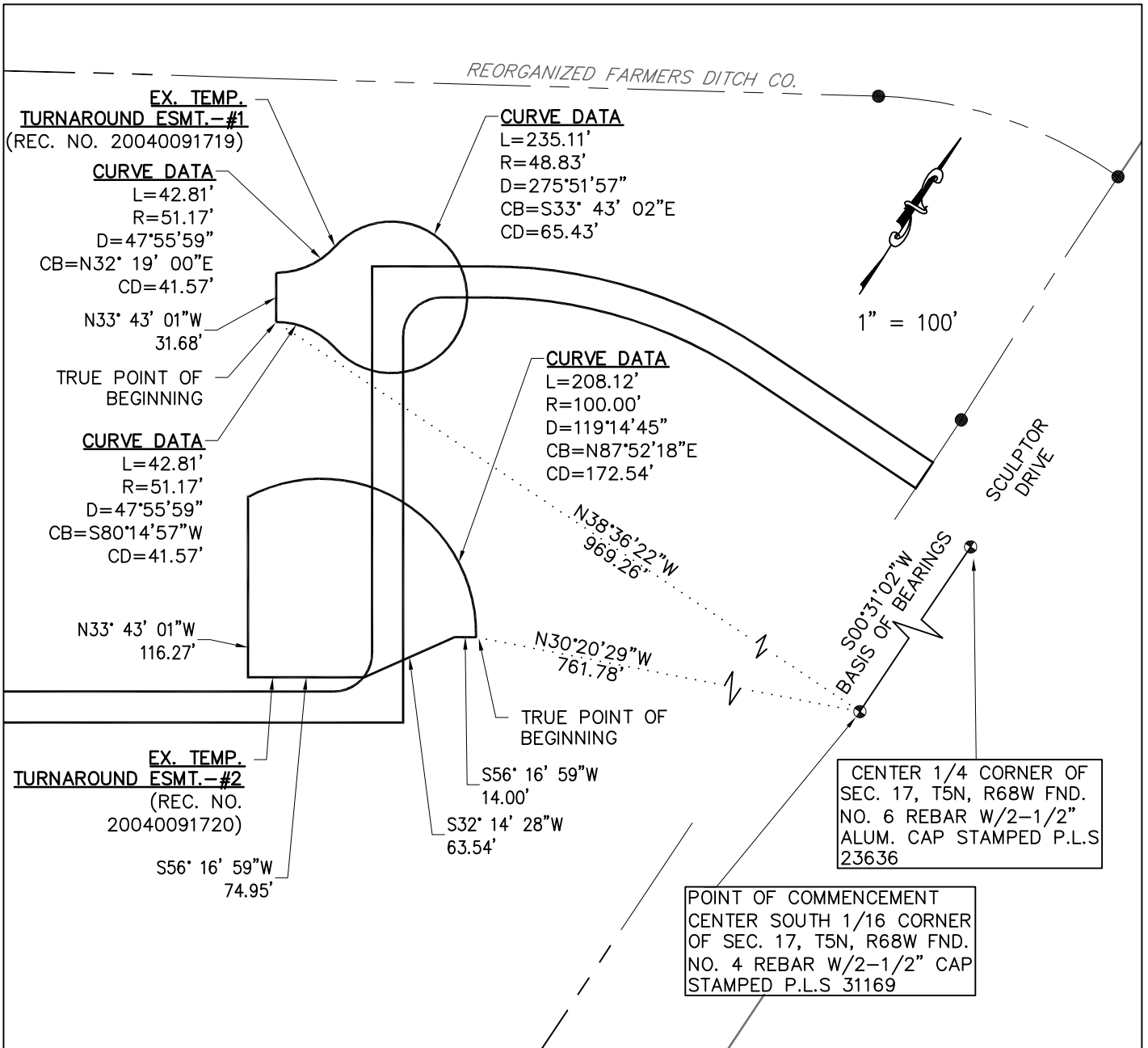
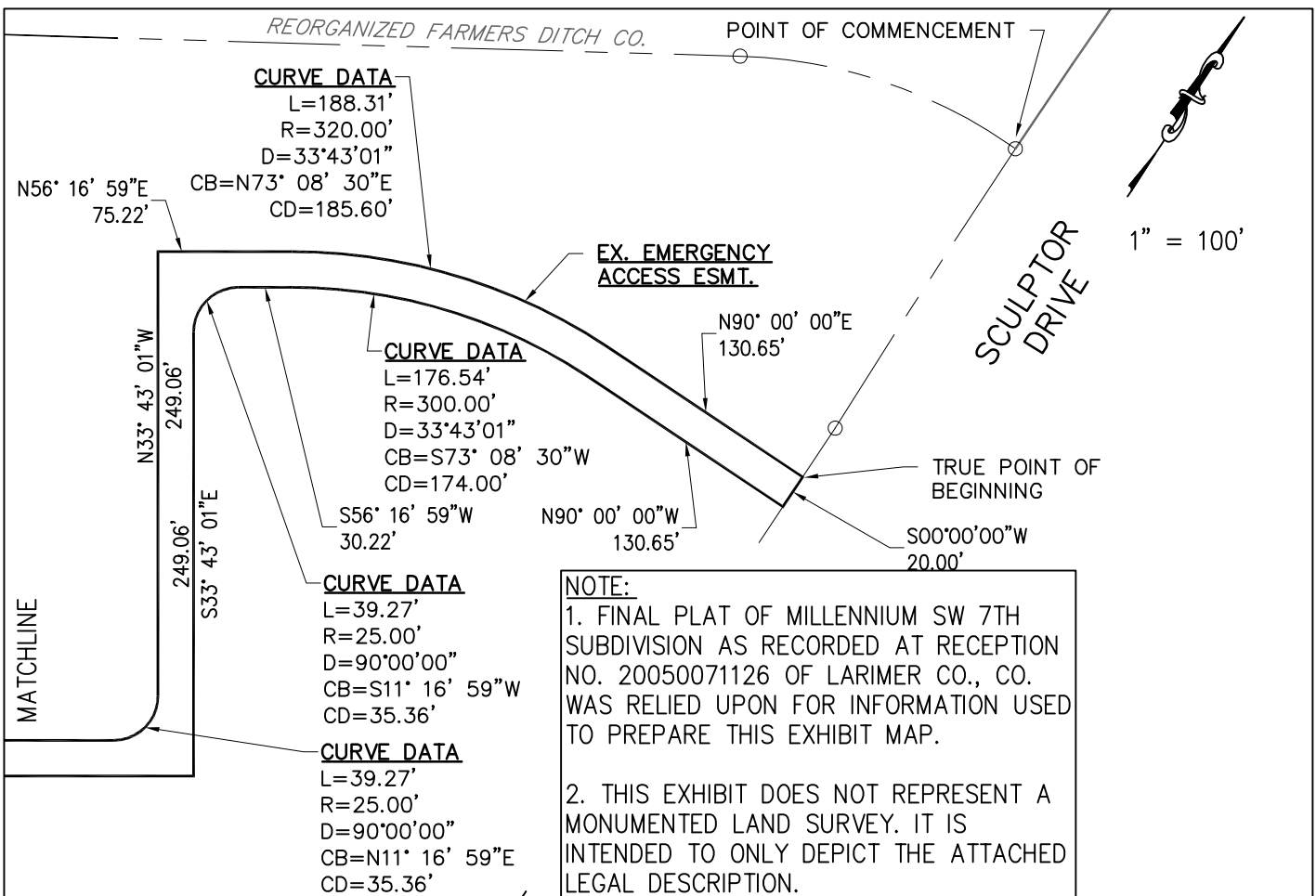
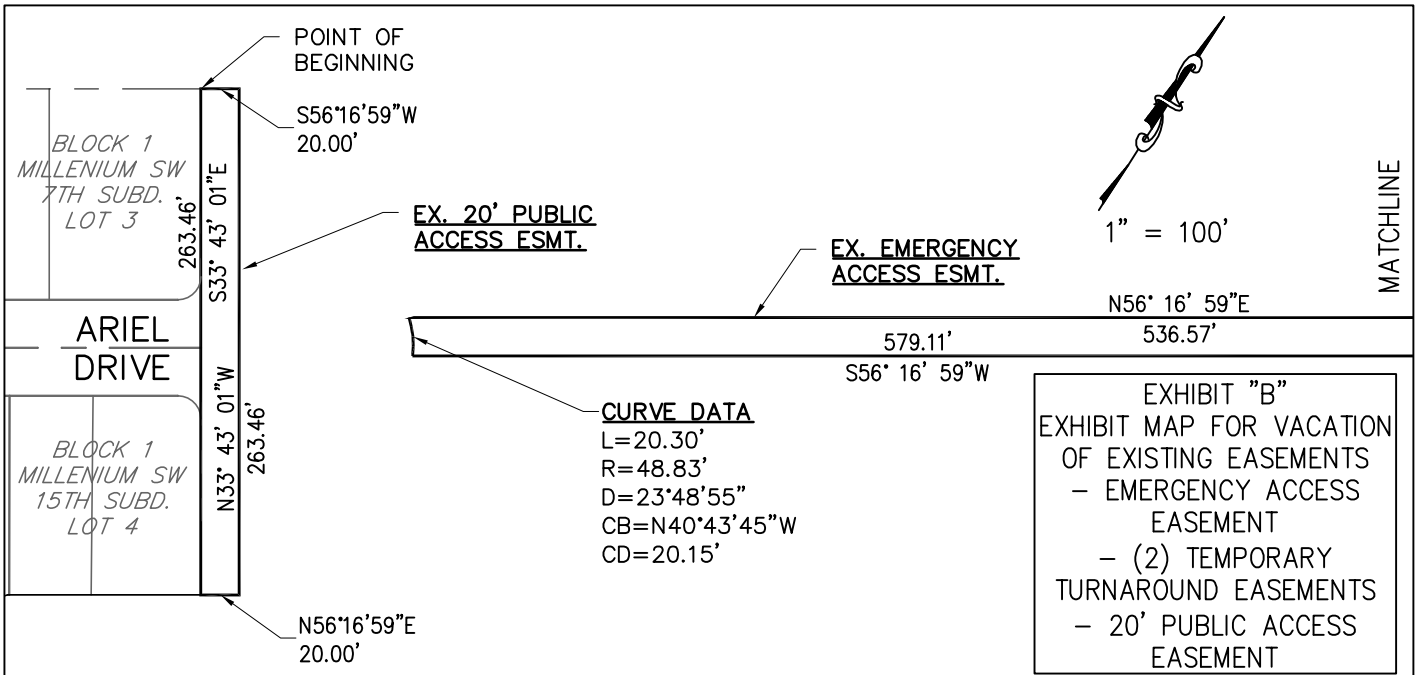


EXHIBIT "B"
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13050 STONE CREEK PHASE 2

EASEMENT VACATION
EXHIBIT

2 OF 2



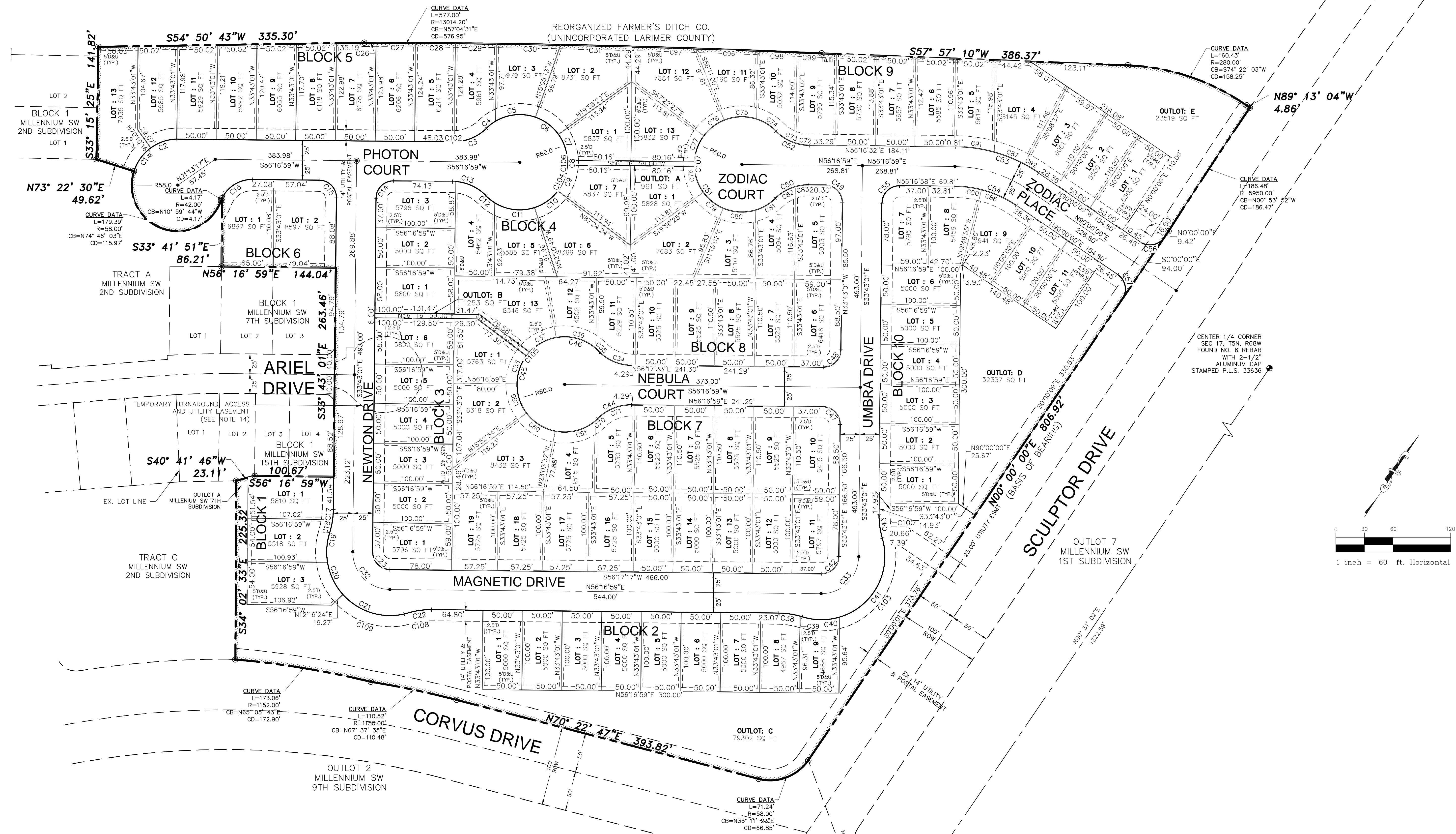
NOVEMBER 6, 2013

EXHIBIT "B"

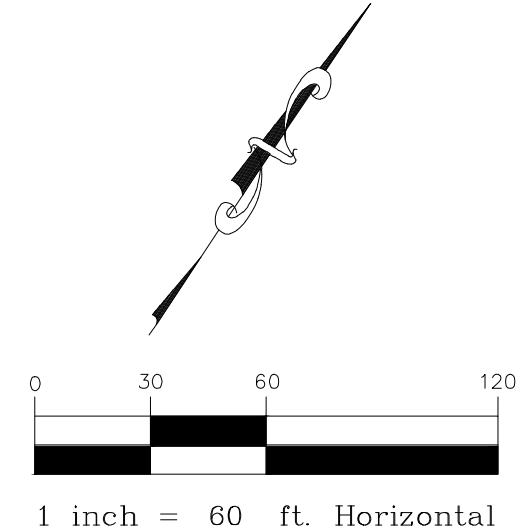
MILLENNIUM SW EIGHTH SUBDIVISION

BEING A SUBDIVISION OF TRACT A, OUTLOT 1 AND OUTLOT 2 OF THE MILLENNIUM SW 7TH SUBDIVISION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 68 WEST, OF THE 6TH PRINCIPAL MERIDIAN; CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

REORGANIZED FARMER'S DITCH CO. (UNINCORPORATED LARIMER COUNTY)



- LEGEND**
- FOUND #4 REBAR
 - ⊙ FOUND MONUMENT AS DESCRIBED
 - #4 REBAR TO BE SET UPON COMPLETION OF STREET CONSTRUCTION
 - 2.5" D 2.5" DRAINAGE EASEMENT ALONG SIDE LOT LINES
 - 5"D&U 5.0" DRAINAGE AND UTILITY EASEMENT ALONG REAR LOT LINE



BASIS OF BEARINGS

CONSIDERING THE EAST LINE OF THE OUTLOT 1 MILLENNIUM SW SECOND SUBDIVISION, AS SHOWN ON THE PLAT THEREOF RECORDED SEPTEMBER 13, 2002 AT RECEPTION NO. 2002097281 IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER TO HAVE A BEARING OF S00°00'00"W, WITH ALL OTHER BEARINGS RELATED THERETO.

CENTER SOUTH 1/16 CORNER OF SEC. 17, T5N, R68W FOUND NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED L.S. 31169

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NO.	REVISIONS	DATE	BY
2	PER CITY COMMENTS	10/31/13	ER
1		8/16/13	ER



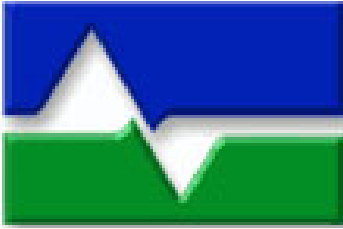
NOT FOR CONSTRUCTION NOT FOR BID

SCALE: AS SHOWN
 DESIGNED BY: MCS
 DRAWN BY: MCS/JP
 CHECKED BY: LEP

MILLENNIUM SW 8TH SUBDIVISION
STONE CREEK PHASE 2
LOVELAND, COLORADO

FINAL PLAT

DATE: 08/07/2013
 PROJECT NO.: 13050
 SHEET NUMBER:



CITY OF LOVELAND

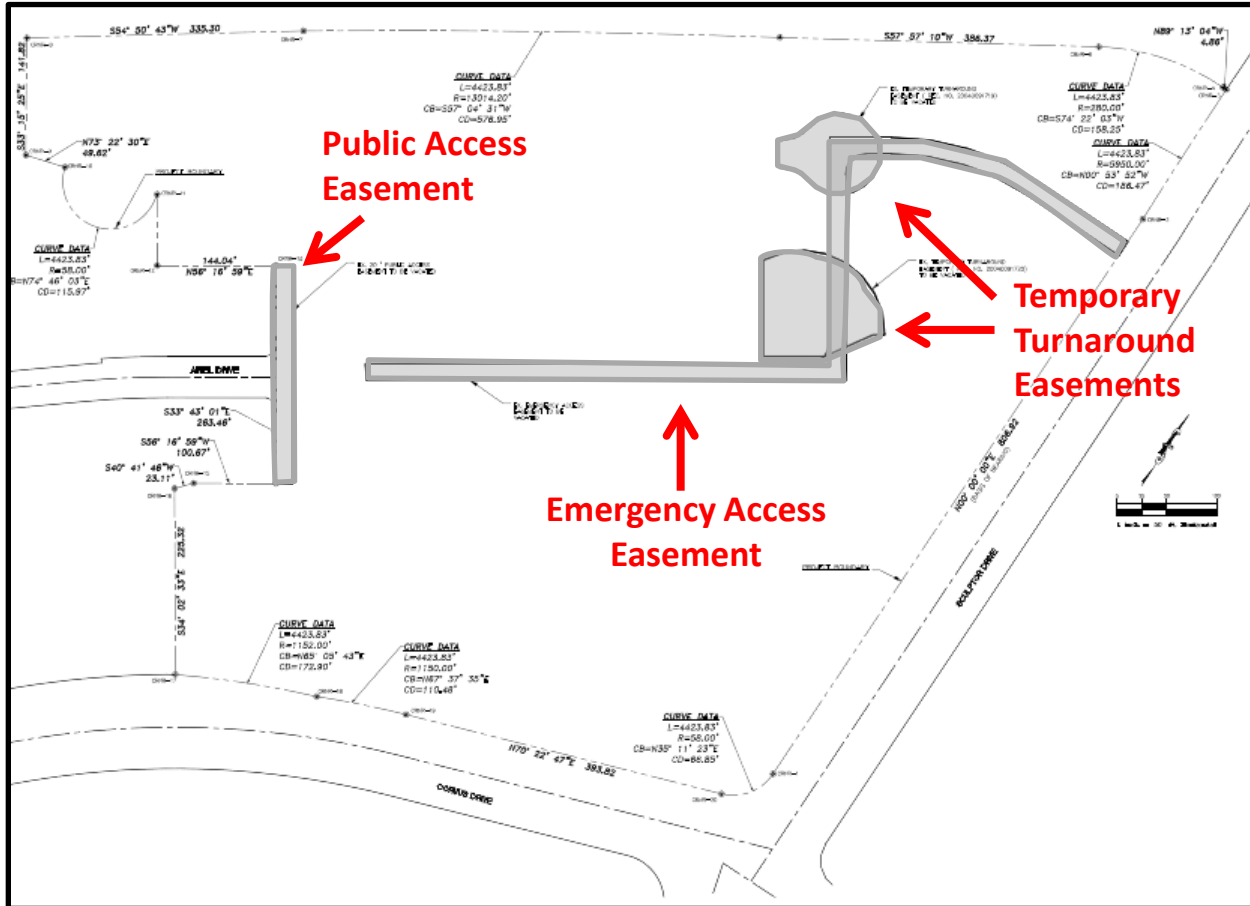
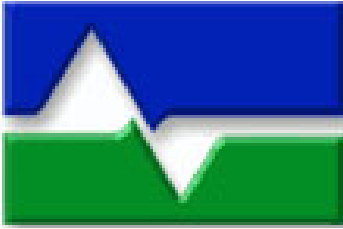


Exhibit B



CITY OF LOVELAND

MILLENNIUM SW EIGHTH SUBDIVISION

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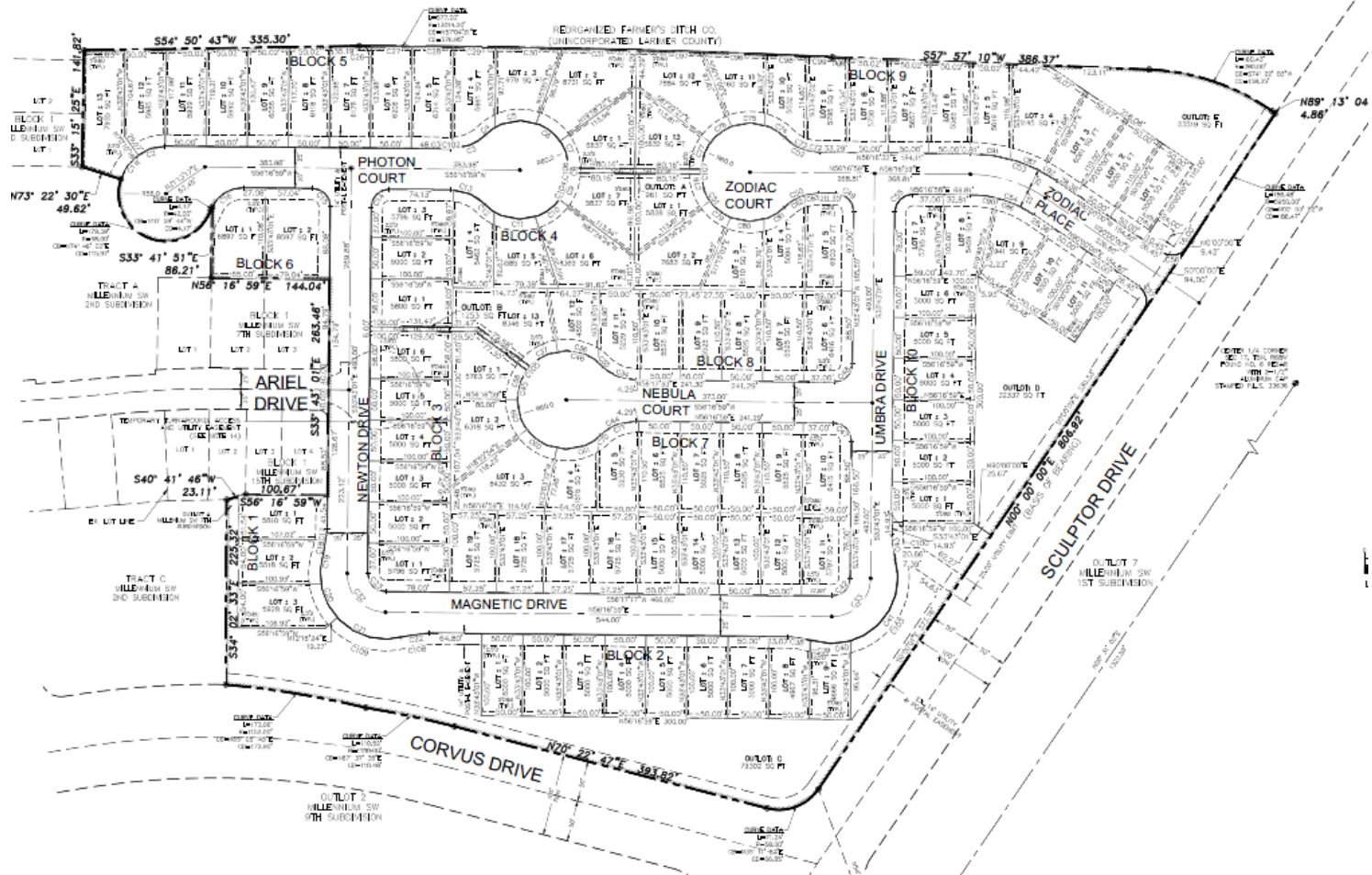


Exhibit B



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: 7
MEETING DATE: 12/3/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Karl Barton, Development Services

TITLE:

A Resolution Adopting a Three Mile Plan for the City of Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the resolution.

OPTIONS:

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

SUMMARY:

This item is a legislative action to formally adopt a Three Mile Plan for 2013. The Three Mile Plan would consist of the City's comprehensive plan, other adopted plans covering infrastructure, services and surrounding areas, and procedures.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

Section 31-12-105(1)(e), Colorado Revised Statutes, requires the City to have a plan in place which generally describes the location, character, and extent of various public facilities in an area extending three miles beyond the municipal boundaries (prior to completing any annexations of land located within the three mile area). Historically, the City's Three Mile Plan has consisted of a compilation of the comprehensive plan (including the land use plan), functional plans, and procedures that are adopted and utilized by the City. This appears to be the practice of most municipalities in Colorado. The proposed resolution would formally designate the compilation of land use plans and related plans as the "Three Mile Plan" for Loveland.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution

RESOLUTION #R-103-2013

**A RESOLUTION ADOPTING A THREE MILE PLAN FOR THE CITY OF
LOVELAND, COLORADO**

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(1), as amended, prior to the completion of any annexation within a three mile area outside of the municipal boundaries of a municipality ("Three Mile Area"), a municipality is required to have in place a plan ("Three Mile Plan") which generally describes the proposed location, character and extent of certain public facilities to be provided within and the proposed land uses for the Three Mile Area; and

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(1), as amended, the Three Mile Plan must be updated at least once annually; and

WHEREAS, the Three Mile Plan was last updated and approved by City Council Resolution #R-2-2013 adopted on January 15, 2013; and

WHEREAS, the City of Loveland has enacted, adopted and approved the various plans, documents, ordinances and resolutions (collectively "Plans") listed on **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, the City Council has determined that the Plans, when considered together as a whole, adequately comply with the requirements of state law and shall constitute the annual updated Three Mile Plan for the City of Loveland as of the date of this Resolution; and

WHEREAS, to ensure that future annexations by the City of Loveland are completed in compliance with the provisions of state law, the City Council, by this Resolution, desires to formalize its understanding and intention that the Plans serve as the annual update of the Three Mile Plan for the City of Loveland.

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

Section 1. The Plans, as described in **Exhibit A**, when considered together as a whole, shall constitute the three Mile Plan for the City of Loveland required pursuant to C.R.S. §31-12-105(1)(e)(1), as amended.

Section 2. The Three Mile Plan shall be reviewed and revised as may be necessary at least annually, and additional Plans may be added from time to time, as they are developed and adopted.

Section 3. This Resolution shall be effective as of the date and time of its adoption.

Adopted this 19th day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

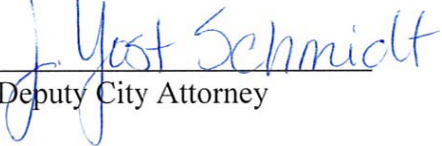

Deputy City Attorney

EXHIBIT A**Three Mile Area and Functional Plan Elements
(November 19, 2013)**Documents as may be amended:

Loveland, Colorado 2005 Comprehensive Plan, adopted 2005

2005 Comprehensive Plan - 2011 Implementation Plan, adopted 2011

Water and Wastewater, Functional Master Plans, Loveland, CO, adopted 1997

2035 Transportation Plan, adopted 2012

Bicycle & Pedestrian Master Plan, adopted 2012

City of Loveland Water and Wastewater Development Standards, adopted August 2007

Contractor (Construction Standards, Department of Water and Power, adopted 2006)

Larimer County Urban Area Street Standards, adopted April 2007

City of Loveland Master Drainage Plan and associated sub-basin plans, adopted 1986

Fire Protection Master Plan, adopted December 1995

Update of Capital Expansion Fees, adopted November 20, 2012 and December 18, 2012

Parks and Recreation Master Plan, adopted October 2001

City of Loveland Open Lands Plan, adopted March 2003 A

Plan for the Region between Fort Collins and Loveland, adopted July 1995

Northern Colorado Regional Planning Study, adopted October 1995

Site Development Standards and Guidelines for 1-25 Corridor, adopted 2007

Airport Master Plan Update, Fort Collins-Loveland Municipal Airport, Loveland, CO, adopted 2008

City of Loveland Natural Areas Sites, adopted July 2008

Requirements for Electric Service, adopted August 2010

Wastewater Utility Plan, adopted 2010

Water Distribution Master Plan Update, adopted 2007

Water and Power Department Summary of Functional Mater Plans, adopted June 1997

Site Development Performance Standards and Guidelines, adopted October 1989

Raw Water Master Plan, adopted 2012

Economic Development Strategic Plan, adopted 2012



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: 8
MEETING DATE: 12/3/2013
TO: Mayor and City Council
FROM: Rod Wensing, Assistant City Manager
 Sharon Citino, Assistant City Attorney
PRESENTER: Rod Wensing

TITLE:

An Emergency Ordinance Amending the Existing Cable Television Franchise Agreement Between the City of Loveland, Colorado and Comcast of Colorado II, LLC, to Extend the Term of the Existing Franchise

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the Emergency Ordinance on first and only reading, which requires an affirmative vote of 2/3 of the entire Council (6 votes) under Charter Section 4-10.

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

SUMMARY:

This is an administrative action. This second amendment to the cable franchise agreement ordinance moves the expiration of the current cable franchise from December 31, 2013 to June 30, 2014.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

On November 19, 2013, the City Council considered and unanimously rejected a proposed new franchise agreement and directed City staff to bring forward a request to extend the existing

Franchise Agreement a second time in order to allow a reasonable period for additional negotiations.

REVIEWED BY CITY MANAGER:

William A. Cabell

LIST OF ATTACHMENTS:

1. Emergency Ordinance
2. Second amendment to the cable television franchise between the City of Loveland and Comcast of Colorado II, LLC. (Exhibit A)
3. Email from Comcast Cable

FIRST AND ONLY READING December 3, 2013

EMERGENCY ORDINANCE NO. ____

AN EMERGENCY ORDINANCE AMENDING THE CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND COMCAST OF COLORADO II, LLC TO EXTEND THE TERM OF THE FRANCHISE AGREEMENT

WHEREAS, on April 3, 2007, the Loveland City Council adopted Ordinance No. 5178 approving the grant of a nonexclusive franchise to Comcast of Colorado II, LLC (“Comcast”) for its construction and operation of a cable television system within the City; and

WHEREAS, pursuant to Ordinance No. 5178, the City and Comcast entered into a Cable Franchise Agreement (“Franchise Agreement”) effective May 1, 2007 through April 30, 2013; and

WHEREAS, Comcast desires to renew the franchise and preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the franchise pursuant to the provisions of the Cable Communications Policy Act of 1984; and

WHEREAS, pursuant to Ordinance No. 5746, the City and Comcast entered into a First Amendment to the Cable Franchise Agreement dated March 25, 2013 to extend the term of the Franchise Agreement to December 31, 2013 in order to allow time for negotiations; and

WHEREAS, on November 19, 2013, the City Council considered and rejected a proposed new franchise agreement and directed City staff to bring forward a request to extend the Franchise Agreement a second time in order to allow time for additional negotiations; and

WHEREAS, the City Council hereby finds and determines that an emergency exists requiring immediate passage of this Ordinance in order to timely extend the Franchise Agreement to allow time for additional negotiations.

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

Section 1. That the “Second Amendment to the Cable Franchise Agreement,” attached hereto as Exhibit A and incorporated herein by reference (“Second Amendment”), is hereby approved.

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

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

Section 4. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council. The City Clerk shall publish this Ordinance in full after its adoption.

ADOPTED this 3rd day of December, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sharon L. Eltes
Assistant City Attorney

Exhibit A

**SECOND AMENDMENT
TO THE CABLE FRANCHISE AGREEMENT**

This Second Amendment to the Cable Franchise Agreement (“Second Amendment”) is made and entered into as of this _____ day of December, 2013, by and between the **City of Loveland**, a Colorado municipal corporation (“**City**”), and **Comcast of Colorado II, LLC** (“**Comcast**”).

Whereas, on April 3, 2007, the Loveland City Council adopted Ordinance No. 5178 approving the grant of a nonexclusive franchise to Comcast for its construction and operation of a cable television system within the City; and

Whereas, pursuant to Ordinance No. 5178, the City and Comcast entered into a Cable Franchise Agreement (“**Franchise Agreement**”) effective May 1, 2007 through April 30, 2013; and

Whereas, Comcast desires to renew the franchise and preserved its right of renewal by timely filing a request with the City to activate the formal process for renewing the franchise pursuant to the provisions of the Cable Communications Policy Act of 1984; and

Whereas, pursuant to Ordinance No. 5746, the City and Comcast entered into a First Amendment to the Cable Franchise Agreement dated March 25, 2013 to extend the term of the Franchise Agreement to December 31, 2013 in order to allow time for negotiations; and

Whereas, on November 19, 2013, the City Council considered and rejected a proposed new franchise agreement and directed City staff to bring forward a request to extend the Franchise Agreement a second time in order to allow time for additional negotiations; and

Whereas, the City and Comcast desire to extend the Franchise Agreement to June 30, 2014.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. The term of the Franchise Agreement shall be extended to June 30, 2014.
2. Except as specifically modified hereby, the Franchise Agreement shall remain in full force and effect.
3. Neither party waives any right it may have under law by execution of this Second Amendment, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

In Witness Whereof, the parties have executed this Second Amendment as of the day and year first written above.

City of Loveland

By: _____
Cecil Gutierrez, Mayor

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

Comcast of Colorado II, LLC

By: _____

Title: _____



CITY OF LOVELAND
CITY ATTORNEY'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 12/3/2013
TO: City Council
FROM: John Duval, City Attorney
PRESENTER: John Duval

TITLE:

An Ordinance on First Reading Amending Loveland Municipal Code Section 7.60.030 To Remove Obsolete Language In Section 7.60.030 And To Clarify That All Patients And Primary Caregivers In The City Cultivating, Selling Or Storing Medical Marijuana Must Comply With All Applicable State And Local Laws, Rules And Regulations

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and adopt 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

SUMMARY:

This is a legislative action to adopt an ordinance relating to medical marijuana to remove obsolete language in Section 7.60.030 and to clarify that the storage of medical marijuana, as well as, its cultivation and sale, may only be done within the City by lawfully registered patients and primary caregivers that do so in full conformity with the Colorado Medical Marijuana Code, C.R.S. § 25-1.5-106, the City's ordinances and all other applicable rules and regulations promulgated under state law.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The use, cultivation and storage of medical marijuana by patients and primary caregivers are authorized by Amendment 20 of the Colorado Constitution. In August 2010, the City Council adopted Ordinance No. 5517 which, among other things, enacted a new City Code Chapter

7.60 to regulate medical marijuana, which included a new Section 7.60.030 prohibiting within the City the cultivation and sale of medical marijuana except by a patient or primary caregiver. Section 7.60.030 contains contingency language that it would not go into effect until March 1, 2011, and only if, the City's voters approved the ballot question submitted to the voters at the City's November 2, 2010 Special Election. At that special election a majority of the voters approved the ballot question. The contingency language in Section 7.60.030 is, therefore, now obsolete and can be removed from this Section.

In addition, Section 7.60.030 does not expressly prohibit the storage of medical marijuana. Section 7.60.030 also does not currently reference all of the applicable state law provisions with which a person acting as a patient or primary caregiver must comply in order to lawfully cultivate, store or sell medical marijuana within the City. The proposed ordinance corrects these omissions.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Ordinance redlined

First Reading: December 3, 2013

Second Reading: _____

ORDINANCE _____

AN ORDINANCE AMENDING LOVELAND MUNICIPAL CODE SECTION 7.60.030 TO REMOVE OBSOLETE LANGUAGE IN SECTION 7.60.030 AND TO CLARIFY THAT ALL PATIENTS AND PRIMARY CAREGIVERS IN THE CITY CULTIVATING, SELLING OR STORING MEDICAL MARIJUANA MUST COMPLY WITH ALL APPLICABLE STATE AND LOCAL LAWS, RULES AND REGULATIONS

WHEREAS, the use, cultivation and storage of medical marijuana by patients and primary caregivers are authorized by Amendment 20 of the Colorado Constitution; and

WHEREAS, in August 2010 the City Council adopted Ordinance No. 5517 which, among other things, enacted a new City Code Chapter 7.60 to regulate medical marijuana, which included a new Section 7.60.030 prohibiting within the City the cultivation and sale of medical marijuana except by a patient or primary caregiver; and

WHEREAS, Section 7.60.030 contains contingency language that it would not go into effect until March 1, 2011, and only if the City's voters approved the ballot question submitted to the voters at the City's November 2, 2010, special election; and

WHEREAS, at that special election a majority of the voters approved the ballot question; and

WHEREAS, the contingency language in Section 7.60.030 is, therefore, now obsolete and can be removed from this Section; and

WHEREAS, Section 7.60.030 does not expressly address the storage of medical marijuana; and

WHEREAS, Section 7.60.030 also does not currently reference all of the applicable state law provisions with which a person acting as a patient or primary caregiver must comply in order to lawfully cultivate, store or sell medical marijuana within the City; and

WHEREAS, the City Council desires to remove the obsolete language no longer needed in Section 7.60.030 and to clarify that the storage of medical marijuana, as well as the cultivation and sale of it, may only be done within the City by lawfully registered patients and primary caregivers that do so in full conformity with the Colorado Medical Marijuana Code, C.R.S. § 25-1.5-106, the City's ordinances and all other applicable rules and regulations promulgated under state law; and

WHEREAS, the City Council finds that the adoption of this Ordinance is necessary for the public's health, safety and welfare.

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

Section 1. That Section 7.60.030 of the Loveland Municipal Code is amended to read in full as follows:

7.60.030 Cultivation, Storage and Sale of Medical Marijuana Prohibited

No person shall cultivate, store or sell medical marijuana within the City's boundaries unless such person does so as a lawfully registered patient or primary caregiver and does so in accordance with all applicable provisions, as amended, of Amendment 20, the Colorado Medical Marijuana Code, C.R.S. §25-1.5-106, the City's ordinances and any applicable rules and regulations promulgated under state law.

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 ten (10) days after its final publication as provided in the City Charter Section 4-8(b).


ADOPTED this ____ day of December, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

First Reading: December 3, 2013

Second Reading: _____

ORDINANCE _____

AN ORDINANCE AMENDING LOVELAND MUNICIPAL CODE SECTION 7.60.030 TO REMOVE OBSOLETE LANGUAGE IN SECTION 7.60.030 AND TO CLARIFY THAT ALL PATIENTS AND PRIMARY CAREGIVERS IN THE CITY CULTIVATING, SELLING OR STORING MEDICAL MARIJUANA MUST COMPLY WITH ALL APPLICABLE STATE AND LOCAL LAWS, RULES AND REGULATIONS

WHEREAS, the use, cultivation and storage of medical marijuana by patients and primary caregivers are authorized by Amendment 20 of the Colorado Constitution; and

WHEREAS, in August 2010 the City Council adopted Ordinance No. 5517 which, among other things, enacted a new City Code Chapter 7.60 to regulate medical marijuana, which included a new Section 7.60.030 prohibiting within the City the cultivation and sale of medical marijuana except by a patient or primary caregiver; and

WHEREAS, Section 7.60.030 contains contingency language that it would not go into effect until March 1, 2011, and only if the City's voters approved the ballot question submitted to the voters at the City's November 2, 2010, special election; and

WHEREAS, at that special election a majority of the voters approved the ballot question; and

WHEREAS, the contingency language in Section 7.60.030 is, therefore, now obsolete and can be removed from this Section; and

WHEREAS, Section 7.60.030 does not expressly address the storage of medical marijuana; and

WHEREAS, Section 7.60.030 also does not currently reference all of the applicable state law provisions with which a person acting as a patient or primary caregiver must comply in order to lawfully cultivate, store or sell medical marijuana within the City; and

WHEREAS, the City Council desires to remove the obsolete language no longer needed in Section 7.60.030 and to clarify that the storage of medical marijuana, as well as the cultivation and sale of it, may only be done within the City by lawfully registered patients and primary caregivers that do so in full conformity with the Colorado Medical Marijuana Code, C.R.S. § 25-1.5-106, the City's ordinances and all other applicable rules and regulations promulgated under state law; and

WHEREAS, the City Council finds that the adoption of this Ordinance is necessary for the public's health, safety and welfare.

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

Section 1. That Section 7.60.030 of the Loveland Municipal Code is amended to read in full as follows:

7.60.030 Cultivation, Storage and Sale of Medical Marijuana Prohibited

As authorized in C.R.S. § 12-43.3-103(2)(a), n No person shall cultivate, store or sell medical marijuana within the City's boundaries unless such person does so as a lawfully registered patient or primary caregiver and does so registered in accordance with all applicable provisions, as amended, of Amendment 20, the Colorado Medical Marijuana Code, C.R.S. §25-1.5-106, the City's ordinances and any applicable rules and regulations promulgated under state law. This Section shall not go into effect until March 1, 2011, and only if a majority of the City's registered electors vote not to approve at the City's November 2, 2010, special election the ballot question submitted to the electors in City Council's Ordinance No. 5519.

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 ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED this ____ day of December, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

[Handwritten signature]
City Attorney

MINUTES
LOVELAND CITY COUNCIL
SPECIAL MEETING & STUDY SESSION
TUESDAY, NOVEMBER 12, 2013
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

5:00 P.M. APPRECIATION RECEPTION - MUNICIPAL BUILDING LOBBY
6:30 P.M. SPECIAL MEETING - CITY COUNCIL CHAMBERS
SPECIAL MEETING AGENDA

CALL TO ORDER

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

ROLL CALL

Councilors present: Gutierrez, Trenary, Farley, Taylor, Klassen, Clark, and Shaffer.

1. CITY CLERK (presenter: Terry Andrews)
Approval of Minutes

A motion to approve the City Council Minutes from the November 5, 2013 Regular Meeting.

This is an administrative action to approve the November 5, 2013 Regular Meeting Minutes. **Councilor Klassen moved to approve the November 5, 2013 Regular Meeting minutes. Councilor Shaffer seconded the motion which carried with all councilors present voting in favor thereof.**

SWEARING IN CEREMONY

Judge Bill Starks administered the Oath of Office for: Ward 1 Councilor, Troy Krenning; Ward 2 Councilor, Joan Shaffer; Ward 4 Councilor, Dave Clark; and Mayor, Cecil Gutierrez. Mayor Gutierrez presented Daryle Klassen with a plaque of appreciation for serving as Ward 1 Councilor from 2006 to 2013. Mr. Klassen expressed his thanks to the Council and to all the citizens of Loveland.

ROLL CALL

Councilors present: Gutierrez, Trenary, Farley, Taylor, Krenning, Clark, and Shaffer.

ADJOURN

Council adjourned the Special Meeting at 6:45 p.m.

STUDY SESSION - CITY COUNCIL CHAMBERS
STUDY SESSION AGENDA

1. FINANCE (presenters: Rod Wensing, Brent Worthington)
2013 Flood Update

Assistant City Manager, Rod Wensing introduced this item to Council as a discussion on the City's financial position relative to flood recovery costs and the status of flood recovery efforts. Mr. Wensing stated that the City is operating under a Recovery Management structure, which is based on the Incident Command Structure, used for emergency response and consists of three functional groups: 1) Community Recovery; 2) Community Infrastructure; and 3) Finance and Administration. Recovery and repair projects were listed and it's anticipated that almost all of the projects will be eligible for reimbursement

either through our insurance carrier or through the Federal Emergency Management Agency (FEMA) and the State, or other Federal Agencies. Finance Director, Brent Worthington covered the City's financial position with flood costs. Estimates are between \$19.0 million to \$30.5 million and a large portion of these costs will be recovered by reimbursements from FEMA and the State and may take as long as 18 months to receive payments. Future reporting will be done in the monthly Snapshot for continual monitoring of expenses and reimbursements or compensation received. Council thanked staff for the update.

Councilor Shafer recused herself from the following item's discussion and left the meeting.

2. **CITY MANAGER** (presenter: Ken Fellman)
Study Session Regarding the Granting of a New Cable Franchise Agreement to Comcast of Colorado II, LLC

Assistant City Manager, Rod Wensing introduced this item to Council. The Council first met in Executive Session regarding this topic on June 25, 2013, and again on August 13, 2013, to receive legal advice and instruct City negotiators. This is a follow-up Study Session in order for the City Council to obtain updated information from the City Attorney, our outside legal negotiator, Ken Fellman of Kissinger & Fellman, PC, and Comcast representatives regarding the negotiations, draft franchise agreement and amended customer service standards. Mr. Fellman reviewed and clarified concerns addressed during negotiations with City staff. Comcast Director of Government Affairs, Jon Lehman also came forward to address Council and answer questions. Council directed staff to return to the November 19, 2013 Regular meeting for formal consideration of the agreement.

ADJOURNMENT

Having no further business to come before Council, the November 12, 2013 Special Meeting & Study Session was adjourned at 8:55 p.m.

Respectfully Submitted,

 Jeannie M. Weaver, Deputy City Clerk

 Cecil A. Gutierrez, Mayor



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: 11
MEETING DATE: 12/3/2013
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:

An Ordinance on First Reading Amending City Code Chapter 18.77 Concerning the Regulation of Oil and Gas Operations and Code Chapter 18.78 Concerning Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities

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

SUMMARY:

This item is a legislative action to consider adoption of an ordinance (Exhibit 1) on first reading amending certain provisions in the oil and gas ordinance (City Code Chapters 18.77 and 18.78) adopted by City Council on March 19, 2013. Chapter 18.77 establishes regulations on new oil and gas facilities within Loveland city limits, while Chapter 18.78 establishes regulations on new development in the vicinity of existing oil and gas facilities. The proposed amendments are shown in highlighted font in Exhibit 2.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The proposed substantive amendments to City Code Chapter 18.77 would: (1) clarify existing and add new definitions; (2) revise the notice requirements and clarify appeal rights regarding the Director's decision on a permit issued under the administrative review process; (3) require that the Colorado Oil and Gas Conservation Commission be notified of the setbacks approved

under the administrative review process; (4) establish provisions for permit expiration: and (5) make the penalties for violations of the provisions in Chapter 18.77 consistent with the general penalty provisions in City Code Chapter 1.12.

The proposed substantive amendments to City Code Chapter 18.78 would: (1) create three overlay zoning districts to allow certain land uses, generally of a heavy industrial nature and with certain limitations, within 1,000 feet of an existing oil and gas facility; (2) establish that such a use approved through the special review process would be allowed, even if not permitted pursuant to the underlying zoning district; and (3) clarify that any request for a variance would be processed in accordance with the general procedures for a variance in City Code Chapter 18.60 (see Exhibit 7), but establish a separate process for variances requested based on a claim of a vested right or of a regulatory taking.

The Planning Commission considered the proposed amendments at two separate public hearings. At the conclusion of the first public hearing on July 22, 2013, the Planning Commission voted 7-1 to recommend that City Council adopt the proposed amendments as presented at that meeting. At the conclusion of the second public hearing on October 28, 2013, the Planning Commission voted 8-0 to recommend that the City adopt the proposed amendments as presented at that meeting.

The amendments recommended by the Planning Commission are shown in highlighted font in the ordinance included as Exhibit 2. The amendments highlighted in yellow are additional technical amendments that have not been considered by the Planning Commission, but recommended by City staff.

For more detail on the proposed amendments please review the Planning Commission Staff Reports for July 22, 2013 (Exhibit 3) and October 28, 2013 (Exhibit 5) or, for a combined explanation, refer to the slide presentation (Exhibit 8). The two separate ordinances showing the amendments considered by the Planning Commission at their two public hearings are not included with the attached Planning Commission Staff Reports (Exhibits 3 and 5), since all the amendments considered and recommended by the Planning Commission are shown collectively in Exhibit 2.

REVIEWED BY CITY MANAGER:

William A. Cavill

LIST OF EXHIBITS:

1. Ordinance
 2. Oil and Gas Ordinance adopted by City Council on March 19, 2013 showing the proposed amendments in highlighted font.
 3. July 22, 2103 Planning Commission Staff Report
 4. July 22, 2013 Planning Commission Meeting Minutes
 5. October 28, 2013 Planning Commission Staff Report
-

6. October 28, 2013 Planning Commission Meeting Minutes
7. Chapter 18.60 – Variances
8. Slide Presentation

FIRST READING: December 3, 2013

SECOND READING: _____

ORDINANCE #

AN ORDINANCE AMENDING CITY CODE CHAPTER 18.77 CONCERNING THE REGULATION OF OIL AND GAS OPERATIONS AND CODE CHAPTER 18.78 CONCERNING OVERLAY ZONING DISTRICTS FOR DEVELOPMENT SETBACKS FROM EXISTING OIL AND GAS FACILITES

WHEREAS, on March 19, 2013, the City Council adopted Ordinance No. _____ to add Chapters 18.77 and 18.78 to the City Code; and

WHEREAS, Chapter 18.77 establishes a comprehensive set of regulations for the permitting and operation of oil and gas facilities within Loveland; and

WHEREAS, Chapter 18.78 establishes within the City strict setbacks for future developments from existing oil and gas facilities; and

WHEREAS, the City has not yet received an application for an oil and gas permit under Chapter 18.77 or an application for development that would be affected by Chapter 18.78; and

WHEREAS, City staff has proposed that Chapter 18.77 be amended in several respects, to include: (1) clarifying existing and adding new definitions; (2) revising the notice requirements and clarifying appeal rights regarding the Director’s decision on a permit issued under the administrative review process; (3) requiring that the Colorado Oil and Gas Conservation Commission be notified of the setbacks approved under the administrative review process; (4) establishing provisions for permit expiration; and (5) making the penalties for violations of the provisions in Chapter 18.77 consistent with the general penalty provisions in City Code Chapter 1.12; and

WHEREAS, City staff has also proposed that Chapter 18.78 be repealed in its entirety and reenacted to establish overlay zoning districts which would do the following: (1) create three overlay districts to allow certain land uses, generally of a heavy industrial nature and with certain limitations, within 1,000 feet of an existing oil and gas facility; (2) establish that such a use approved through the special review process would be allowed even if not permitted pursuant to the underlying zoning district; and (3) clarify that any request for a variance would be processed in accordance with the general procedures for a variance in City Code Chapter 18.60, but establish a separate process for variances requested based on a claim of a vested right or of a regulatory taking; and

WHEREAS, the Council finds that this Ordinance is a proper and necessary exercise of the City’s general police power and of its home rule authority to regulate zoning and land use, in order to regulate oil and gas operations and facilities and adjacent development within the City to

the full extent permitted by law; and

WHEREAS, the oil and gas regulations and the overlay zoning districts from existing oil and gas facilities as set out in this Ordinance are necessary to protect the City's environment and wildlife resources, and to protect and promote the public's health, safety and welfare.

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

Section 1. That Code Section 18.77.010 is hereby amended to read in full as follows:

18.77.010 Authority.

This chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. It is the intent of this chapter that these powers and authority be exercised in a manner that will not create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict could arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. The provisions of this chapter are therefore to be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid an operational conflict.

Section 2. That Code Section 18.77.025 is hereby amended to read in full as follows:

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations or in chapter 18.04 of this code, and where there is more than one definition, the controlling definition shall be the one that is most consistent with the city's authority described in section 18.77.010 and with the city's purposes for enacting this chapter as described in section 18.77.015. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. “Abandonment” shall mean the plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

D. “Act” or “OGC Act” shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

E. “Adverse effect” or “adverse impact” shall mean the impact of an action that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

F. “Administrative review process” shall mean the expedited and enhanced review process set out in section 18.77.050.

G. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

H. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

I. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

J. “Best management practices” shall mean the best proven and commercially practicable techniques, technologies and practices that are designed to prevent or minimize adverse impacts caused by oil and gas operations to the public health, safety or welfare, including the environment and wildlife resources.

K. “Building” shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

L. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

M. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

N. “COG permit” shall mean a permit issued by the commission to drill, deepen, re-enter or recomplete and conduct any other oil and gas operation as allowed under the COG regulations.

O. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. 400; et seq.

P. "Commission" shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. "Completion" shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

R. "Completion combustion device" shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

S. "Current planning" shall mean the city's current planning division.

T. "Day" shall mean a calendar day.

U. "Designated agent" shall mean the designated representative of any operator.

V. "Development review team" or "DRT" shall mean the city's development review team.

W. "Director" shall mean the director of the city's development services department or his or her designee.

X. "Enhanced standards" shall mean those review standards and best management practices set out in section 18.77.065.

Y. "Gas" shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Z. "High occupancy building" shall mean any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more.

AA. "Hydraulic fracturing" shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.

BB. "Inspector" shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

CC. “Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid significant adverse impacts to wildlife resources, the environment, or to the public’s health, safety or welfare from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

DD. “Natural area” shall mean those areas described or identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

EE. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

FF. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas, which shall include, without limitation, any and all storage, separation, treating, dehydration, artificial lift, compression, pumping, metering, monitoring, aboveground flowlines, and other equipment directly associated with oil wells, gas wells, or injection wells. However, “oil and gas facility” shall not include aboveground or underground power supply, underground flow lines, or underground water lines.

GG. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, re-entering, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering lines; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

HH. “Operator” shall mean a person who has the legal right under a permit issued under this chapter 18.77 and under a COG permit issued by the commission to conduct oil and gas operations on the surface within the city’s boundaries by drilling into and producing from a pool and to appropriate the oil or gas produced therefrom either for the operator or for the operator and an owner.

II. “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate and is capable of being reasonably occupied by 50 or more natural persons at any one time.

JJ. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

KK. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

LL. "Person" shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

MM. "Pit" shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils. This shall include, without limitation and as applicable, "production pits," "special purpose pits," "reserve pits," "multi-well pits" and "drilling pits," as these are defined in the COG regulations.

NN. "Planning commission" shall mean the city's planning commission as established in code section 2.60.210.

OO. "Planning commission review process" shall mean the review process set out in section 18.77.045.

PP. "Seismic operations" shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

QQ. "Significant degradation" shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

RR. "State" shall mean the State of Colorado.

SS. "Surface water body" shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

TT. "Surface owner" shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

UU. "VOCs" shall mean volatile organic compounds.

VV. "Well" shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WW. "Well blowdown" shall mean the maintenance activity designed to remove fluids from mature wells during which time gas is often vented to the atmosphere.

XX. "Well completion" shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and hydraulic fracturing, allows for the flowback of oil or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

YY. “Wellhead” shall mean the equipment attached to the casinghead of an oil, gas or injection well above the surface of the ground.

ZZ. “Wetlands” shall have the same meaning as this word is defined in code section 18.41.110.

Section 3. That Code Section 18.77.040 is hereby amended to read in full as follows:

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city’s development review team. Current planning shall schedule such meeting within fifteen (15) days after a written request for the meeting has been received. At least fifteen (15) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy set of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain a COG permit for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city’s development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city’s application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited and enhanced administrative review process rather than the planning commission review process. Within fifteen (15) days after the meeting, current planning shall provide the prospective applicant with the development review team’s written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have ninety (90) days thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT’s written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within ninety (90) days thereafter.

Section 4. That paragraphs G. and H. of Section 18.77.050 are hereby amended to read in full as follows:

G. *Director’s Decision.* Within fifteen (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant’s requested oil and gas permit. The director’s written decision shall be mailed to the applicant and to all persons required in paragraph D. of this section to be mailed written notice of the neighborhood meeting. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant’s supplementals to the application, the DRT report

and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application’s compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director’s Decision.* The director’s decision as set out in his or her written findings and conclusions shall constitute the director’s final decision. The director’s final decision is not appealable to the planning commission or the city council. The director’s final decision may only be appealed to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by anyone required in paragraph D. of this section to be mailed written notice of the neighborhood meeting, and by any other person or persons considered a “party in interest,” under section 18.80.020. The record to be considered in the appeal shall consist of the director’s written findings and conclusion, the application, the applicant’s supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

Section 5. That paragraphs A., C. and F. of Section 18.77.065 are hereby amended to read in full as follows:

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060. The operator shall designate these standards and requirements, to the extent applicable, as agreed upon best management practices on any application the operator files with the commission.

A. *Setbacks.* All oil and gas facilities shall comply with the setback distances set forth in Table A below or such greater distances as may be required by the commission. Setback distances shall be measured from the closest edge of any equipment included in the definition of oil and gas facility in section 18.77.025.FF to the nearest part of the nearest feature associated with the sensitive area as described in Column C in Table A. For the purpose of measuring the setback from any sensitive area that does not have a defined property or boundary line, the director shall establish the boundary line for measurement purposes.

Table A – Setbacks for oil and gas facilities

Column A	Column B	Column C
Sensitive Area	Setback Distance (ft.)	Setback to be measured to the following nearest feature of sensitive area:
Building	500	Wall or corner of the building
Public road, major above-ground utility facility, or railroad tracks	200	Right-of-way or easement property line

Column A	Column B	Column C
Property on which the oil and gas facility is located	200	Property line
Lease area on which the oil and gas facility is located	200	Property line
Natural area or wetland	500	Property line
Property managed by the City's Parks and Recreation Department, any City park, or property subject to a conservation easement managed by a public or non-profit entity	500	Property line of property or easement
Surface water body	500	Operating high-water line
FEMA floodway zoning district	500	Boundary line as shown by the Flood Insurance Rate Map (FIRM) revised to reflect a Letter of Map Revision effective May 24, 2010, published by the FEMA
Domestic or commercial water well	500	Center of wellhead
Outdoor assembly area	1,000	Property line
High occupancy building	1,000	Wall or corner of the building

Once the setbacks for a well permitted under the administrative review process have been approved and established, the director shall submit to the commission a site plan showing the exact location of those setbacks for the permitted well.

C. *Bufferyards.* The bufferyards set forth in Table B below, shall be established once the well is in production around the entire perimeter of the oil and gas production site, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. Bufferyards shall not be required during drilling and well completion operations. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided, maintained and operated for xeriscape plant types for a period of two years from planting.

Table B - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	

4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

F. *Sound Limitations.* All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete, meaning while the well is in production. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chapter. If necessary to comply with said chapter, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

Section 6. That a new Code Section 18.77.082 is hereby added to Code Chapter 18.77 to read in full as follows:

18.77.082 Expiration of Permits.

An oil and gas permit issued under this chapter shall expire and be null and void if drilling operations on the permitted well are not commenced within two (2) years after the date the permit is issued, unless before the expiration date the applicant requests in writing and the director approves an extension of such permit not to exceed one (1) year. To approve any such extension, the director must find that the applicant has an existing and valid permit from the commission for the subject oil and gas operations and that the proposed oil and gas operations approved under the city’s permit continue to be in substantial compliance with the city’s permit and the applicable provisions of this chapter.

Section 7. That paragraph D. of Code Section 18.77.125 is hereby amended to read in full as follows:

D. *Penalties.* A violation of any enforceable provision of this chapter shall constitute a misdemeanor offense punishable as provided in code section 1.12.010. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 8. That Code Chapter 18.78 is hereby repealed in its entirety and reenacted to read in full as follows:

Chapter 18.78

Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities

Sections:

- 18.78.010 Purpose**
- 18.78.020 Definitions**
- 18.78.030 Establishment of zoning overlay districts**

18.78.040	Applicability
18.78.050	Zoning overlay district boundaries
18.78.060	Land use restrictions within zoning overlay districts
18.78.080	Variances

18.78.010 Purpose.

The purpose of this chapter is to establish zoning overlay districts in the vicinity of existing oil and gas facilities in order to allow certain land uses within these zoning overlay districts that are compatible with the industrial nature of oil and gas facilities, but yet are protective of the public's health, safety and welfare. Nothing in this chapter is intended to regulate the location of an oil and gas facility, but only to regulate the use of land proposed to be developed for other uses and purposes.

18.78.020 Definitions.

The following words, terms and phrases shall have the meanings set forth below, unless the context requires otherwise:

A. "Critical zone" shall mean all land and water surface area less than two hundred (200) feet from an oil and gas facility, as measured in accordance with section 18.78.050.

B. "High occupancy building zone" shall mean all land and water surface area five hundred (500) feet or greater but one thousand (1,000) feet or less from an oil and gas facility, as measured in accordance with Section 18.78.050.

C. "Oil and gas facility" shall have the meaning given to this term in section 18.77.025.FF and shall include, without limitation, operating, shut-in and abandoned wells. However, it shall not include an abandoned well that has been demonstrated, to the satisfaction of the Development Services Director, will not, as a matter of law, be reopened or reentered in the future for any type of oil and gas operation without the city's prior written consent.

D. "Restricted zone" shall mean all land and water surface area two hundred (200) feet or greater but less than five hundred (500) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

18.78.030 Establishment of zoning overlay districts.

There are hereby created and established in the city as zoning overlay districts the critical zone, the restricted zone, and the high occupancy building zone.

18.78.040 Applicability.

Notwithstanding the land uses allowed by the underlying zoning districts established in this title for any land located in the critical zone, restricted zone, or high occupancy building zone, development of such land shall be subject to and shall comply with the applicable zoning restrictions set forth in this chapter.

18.78.050 Zoning overlay district boundaries.

The boundaries of the zoning overlay districts established in section 18.78.030 shall be measured from the closest edge of any oil and gas facility.

18.78.060 Land use restrictions within zoning overlay districts.

A. In the critical zone land uses shall be limited to any of the following:

1. Essential underground public utility facilities; and
2. Undeveloped and restricted open space designed and operated to discourage access and use by natural persons, but this shall not include “recreational open space” as defined in chapter 18.04 and any of the uses allowed in the public park zoning district under chapter 18.32, unless it is an open lands/natural area that is undeveloped and designed and operated to discourage access and use by natural persons.

B. In the restricted zone land uses shall be limited to any of the following, provided no outdoor assembly area (as defined in section 18.77.025.II), building, or parking lot is located within the restricted zone and the use is approved in accordance with the provisions in chapter 18.40 for uses permitted by special review.

1. Airports and heliports;
2. Attended recycling collection facility;
3. Commercial mineral deposit;
4. Composting facility;
5. Contractor’s storage yard;
6. Essential public utility uses, facilities, services and structures;

7. Heavy industrial uses;
8. Landfill area;
9. Landscaping;
10. Personal wireless service facilities;
11. Plant nursery;
12. Public service facility;
13. Recyclable materials processing;
14. Resource extraction, process and sales;
15. Self-service storage facility;
16. Street;
17. Truck terminal;
18. Unattended recycling collection facility;
19. Vehicle rentals of heavy equipment, large trucks and trailers;
20. Vehicle rentals of cars, light trucks and light equipment;
21. Vehicle sales and leasing of cars and light trucks; and
22. Vehicle sales and leasing of farm equipment, mobile homes, recreational vehicles, large trucks and boats with outdoor storage;

These land uses shall be permitted if approved as a special review under this paragraph B. notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.

C. In the high occupancy building zone all land uses authorized for the affected land by the land's underlying zoning district as provided in this title shall be allowed subject to the requirements of that zoning district, except that high occupancy buildings and outdoor assembly areas shall not be allowed within this zoning overlay district.

18.78.070 Variances.

A. An owner of any real property subject to the requirements and limitations of this chapter may request a variance from those requirements and limitations using the variance procedures set out in chapter 18.60. The grounds for such variance shall be those set out in chapter 18.60 to the extent applicable. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property.

B. An owner may also request a variance from any of the requirements of this chapter on the basis of the existence of a vested right under chapter 18.72 or Colorado law or on the grounds that application of chapter 18.78 would constitute a regulatory taking under Article II, Section 3 of the Colorado Constitution. A variance request under this paragraph shall be made to the city council by filing with the city’s current planning division a written variance request stating all the facts and law the owner is relying on for the variance. A quasi-judicial hearing before the city council to consider the variance request shall be scheduled and held not less than thirty (30) days but not more than sixty (60) days after filing of the owner’s written variance request. Notice of the hearing shall be provided in accordance with all applicable requirements of chapter 18.05. At the conclusion of the hearing, the city council may grant, grant with conditions, or deny the variance request. In so doing, the city council shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property. The city council’s decision may be appealed to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by any person receiving mailed notice of the hearing, or by any other person considered a “party in interest” under section 18.80.020.

Section 9. 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).


ADOPTED this ____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

FIRST READING: _____

SECOND READING: _____

ORDINANCE #

AN ORDINANCE ADDING TO THE LOVELAND MUNICIPAL CODE CHAPTER 18.77 FOR THE REGULATION OF OIL AND GAS OPERATIONS AND CHAPTER 18.78 FOR SETBACKS FOR DEVELOPMENT FROM OIL AND GAS OPERATIONS WITHIN THE CITY OF LOVELAND

WHEREAS, on May 15, 2012, the City Council adopted Ordinance No. 5685 as an emergency ordinance; and

WHEREAS, Ordinance No. 5685 imposed a nine (9) month moratorium on the City’s acceptance, processing and approval of all applications for City licenses, permits and any other approvals needed to conduct oil and gas operations within the City; and

WHEREAS, this moratorium began on May 16, 2012, and was set to expire on February 16, 2013; and

WHEREAS, on December 18, 2012, the City Council adopted Ordinance No. 5735 to extend the moratorium from February 16, 2013, to the earlier of April 15, 2013, or on the date that an ordinance adopted by City Council to enact local oil and gas regulations becomes law; and

WHEREAS, the primary purpose of the moratorium has been to give City staff and this Council a reasonable opportunity to investigate the extent of the City’s legal authority to regulate oil and gas operations occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the environment, wildlife resources and the public’s health, safety and welfare; and

WHEREAS, in that process it was determined that under Colorado law the regulation of oil and gas operations by home rule municipalities, such as Loveland, is a matter of mixed statewide and local concern and, as such, the City has the legal authority to enact its own oil and gas regulations so long as those regulations are not in “operational conflict” with state law, including the oil and gas regulations which have been adopted by the Colorado Oil and Gas Conservation Commission (“Commission”); and

WHEREAS, in the exercise of that legal authority, the Council finds that it is important for the City to have a role in minimizing the adverse impacts that oil and gas development within the City will likely have on the City’s environment and on its residents’ health, safety and welfare; and

WHEREAS, the Council therefore finds that this Ordinance is a proper and necessary exercise of the City’s general police power and of its home rule authority to regulate zoning and

land use, in order to regulate oil and gas operations and facilities within the City to the full extent permitted by law; and

WHEREAS, the development of oil and gas resources presents unique public health, safety and welfare issues that are inadequately addressed in the City’s current zoning and land use regulations; and

WHEREAS, City staff has completed a review of applicable state law and of the Commission’s regulations concerning oil and gas operations, a review of the oil and gas regulations adopted by other local governments throughout Colorado, and has received and considered input from the public, including from the Anadarko Petroleum Corporation, currently the only oil and gas operator known to have plans to begin new oil and gas operations within the City; and

WHEREAS, as a result of that process, the oil and gas regulations and the building setbacks from oil and gas activities as set out in this Ordinance are necessary to protect the City’s environment and wildlife resources, and the public’s health, safety and welfare.

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

Section 1. That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.77

Oil and Gas Regulations

Sections:

- 18.77.010 Authority.**
- 18.77.015 Purpose.**
- 18.77.020 Applicability.**
- 18.77.025 Rules of Construction and Definitions.**
- 18.77.030 Zoning.**
- 18.77.035 Alternative Permit Processes.**
- 18.77.040 Conceptual Review.**
- 18.77.045 Planning Commission Review Process.**
- 18.77.050 Administrative Review Process.**
- 18.77.055 Baseline Standards for Planning Commission Review Process.**
- 18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.**
- 18.77.065 Enhanced Standards for Administrative Review Process.**
- 18.77.070 Application Requirements.**
- 18.77.075 Variances.**
- 18.77.080 Transfer of Permits.**
- 18.77.082 Expiration of Permits.**
- 18.77.085 Other Applicable Code Provisions.**
- 18.77.090 Emergency Response Costs.**

- 18.77.095** **Application and Inspection Fees.**
- 18.77.100** **Capital Expansion Fees.**
- 18.77.105** **Reimbursement for Consultant Costs.**
- 18.77.110** **Adequate Transportation Facilities**
- 18.77.115** **Insurance and Performance Security.**
- 18.77.120** **Inspections, Right to Enter and Enforcement.**
- 18.77.125** **Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.130** **Conflicting Provisions.**

18.77.010 **Authority.**

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. It is the intent of this chapter that these powers and authority be exercised in a manner that will not create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict could arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. The provisions of this chapter are therefore to be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid an operational conflict.

18.77.015 **Purpose.**

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that may negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

18.77.020 **Applicability.**

Except as otherwise provided in this section, the provisions of this chapter shall apply to all surface oil and gas operations occurring within the city's boundaries, which shall include, without limitation, any oil and gas operation requiring the commission's issuance or reissuance of a drilling permit or any other permit under the COG regulations. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil

and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those surface oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 2, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 2, 2013. It shall also not apply to any surface oil and gas operations occurring on real property annexed into the city on or after April 2, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other surface oil and gas operations occurring within the city's boundaries after April 2, 2013.

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations or in chapter 18.04 of this code, and where there is more than one definition, the controlling definition shall be the one that is most consistent with the city's authority described in Section 18.77.010 and with the city's purposes for enacting this chapter as described in Section 18.77.015. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

D. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

E. "Adverse effect" or "adverse impact" shall mean the impact of an action that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

F. "Administrative review process" shall mean the expedited and enhanced review process set out in section 18.77.050.

G. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

H. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

I. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

J. “Best management practices” shall mean the best proven and commercially practicable techniques, technologies and practices that are designed to prevent or minimize adverse impacts caused by oil and gas operations to the public health, safety or welfare, including the environment and wildlife resources.

K. “Building” shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

L. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

M. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

N. “COG permit” shall mean a permit issued by the commission to drill, deepen, re-enter or recomplete and conduct any other oil and gas operation as allowed under the COG regulations.

O. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. 400; et seq.

P. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

R. “Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

S. “Current planning” shall mean the city’s current planning division.

T. “Day” shall mean a calendar day.

U. “Designated agent” shall mean the designated representative of any operator.

V. “Development review team” or “DRT” shall mean the city’s development review team.

W. “Director” shall mean the director of the city’s development services department or his or her designee.

X. “Enhanced standards” shall mean those review standards and best management practices set out in section 18.77.065.

Y. “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Z. “High occupancy building” shall mean any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more.

AAZ. “Hydraulic fracturing” shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.

BBAA. “Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

CCBB. “Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid significant adverse impacts to wildlife resources, the environment, or to the public’s health, safety or welfare from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

DDEE. “Natural area” shall mean those areas described or identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

EEDD. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

FFFE. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas, which shall include, without limitation, any and all storage, separation, treating, dehydration, artificial lift, compression, pumping, metering, monitoring, aboveground flowlines, and other equipment directly associated with oil wells, gas wells, or injection wells. However, “oil and gas facility” shall not include aboveground or underground power supply, underground flow lines, or underground water lines.

GGFF. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, re-entering, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering lines; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

HHGG. “Operator” shall mean a person who has the legal right under a permit issued under this chapter 18.77 and under a COG permit issued by the commission to conduct oil and gas operations on the surface within the city’s boundaries by drilling into and producing from a pool and to appropriate the oil or gas produced therefrom either for the operator or for the operator and an owner.

IHHH. “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate and is capable of being reasonably occupied by 50 or more natural persons at any one time. ~~but shall not include the backyards of residential buildings.~~

JJH. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

KKJ. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

LLKK. “Person” shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

MMLL. “Pit” shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils. This shall include, without limitation and as applicable, “production pits,” “special purpose pits,” “reserve pits,” “multi-well pits” and “drilling pits,” as these are defined in the COG regulations.

~~NNMM.~~ “Planning commission” shall mean the city’s planning commission as established in code section 2.60.210.

~~OQNN.~~ “Planning commission review process” shall mean the review process set out in section 18.77.045.

~~PPOO.~~ “Seismic operations” shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

~~PP.~~ ~~“Setback” shall mean the distance on the surface estate between the following, as applicable: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.~~

QQ. “Significant degradation” shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

RR. “State” shall mean the State of Colorado.

SS. “Surface water body” shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

TT. “Surface owner” shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

UU. “VOCs” shall mean volatile organic compounds.

VV. “Well” shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WW. “Well blowdown” shall mean the maintenance activity designed to remove fluids from mature wells during which time gas is often vented to the atmosphere.

XX. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and hydraulic fracturing, allows for the flowback of oil or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

YY. “Wellhead” shall mean the equipment attached to the casinghead of an oil, gas or injection well above the surface of the ground.

ZZ. “Wetlands” shall have the same meaning as this word is defined in code section 18.41.110.

18.77.030 Zoning.

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city's zoning districts, planned unit developments, general development plans, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and a COG permit has been issued by the commission for those oil and gas operations.

18.77.035 Alternative Permit Processes.

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited and enhanced administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city's development review team. Current planning shall schedule such meeting within fifteen (15) days after a written request for the meeting has been received. At least fifteen (15) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy set of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain a COG permit for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited and enhanced administrative review process rather than the planning commission review process. Within ~~ten (10)~~fifteen (15) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have ~~three (3) months~~ninety (90) days thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within ~~three (3) months~~ninety (90) days thereafter.

18.77.045 Planning Commission Review Process.

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fifteen (15) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fifteen (15) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within forty-five (45) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations under the application and how the operations will be regulated under this chapter and the COG regulations. Notwithstanding the foregoing, the director may waive the provisions of this paragraph C. if the director determines that the City's required notices and neighborhood

meeting under this paragraph will be duplicative of the notice and neighborhood meeting requirements under the COG regulations for the applicant's COG permit. To be considered duplicative, the commission's neighborhood meeting must be held within the city.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within forty-five (45) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of chapter 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit, unless the condition is expressly required by this chapter 18.77. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. *Appeal of Planning Commission Decision.* The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and any "party in interest" as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission's final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council's decision in the appeal hearing to grant, grant with conditions or deny the applicant's request for an oil and gas permit shall, like the planning commission's decision, be based on the

applicable provisions of this chapter and any other applicable provisions of this code. The council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council's appeal hearing. An applicant's refusal to agree to any such condition shall not be used by the city council to deny the permit unless the condition is expressly required by this chapter 18.77.

18.77.050 Administrative Review Process.

A. *Applicant's Election to Use Administrative Review Process.* As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited and enhanced administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant's application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards might be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that to the extent the enhanced or negotiated standards imposed through this administrative review process are not already included as conditions in the applicant's COG permit, the applicant will request the commission to add such enhanced standards as additional conditions to the applicant's COG permit; and (3) that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. *Application Completeness Review.* An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted or waived in the same manner as under the planning commission review process set out in section 18.77.045.C., but with one addition. The notices mailed under section 18.77.045.C. shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until

fifteen (15) days after the neighborhood meeting is held or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within fifteen (15) days after the neighborhood meeting is held or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C., any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within fifteen (15) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director shall negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit, unless the condition is expressly required by this chapter 18.77.

G. *Director's Decision.* Within fifteen (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The director's written decision shall be mailed to the applicant and to all persons required in paragraph D. of this section to be mailed written notice of the neighborhood meeting. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This

record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, ~~or by anyone required in paragraph D. of this section to be mailed written notice of the neighborhood meeting, and by any other person or persons considered~~ a "party in interest," ~~as defined in under~~ section 18.80.020, ~~to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.~~ The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

18.77.055 Baseline Standards for Planning Commission Review Process.

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with the setback and mitigation requirements set forth in COG rule 604, as amended, in addition to the standards and requirements in code section 18.77.060.

18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado Division of Parks and Wildlife is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for well abandonment.*

1. All oil and gas facilities shall comply with the requirement for well abandonment set forth in COG rule 319, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment to the director within thirty (30) days from receiving such approval.
2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.
3. The operator shall notify the Loveland Fire Rescue Authority not less than two (2) hours prior to commencing plugging operations.

F. *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.

G. *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.

H. *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.

I. *COG regulations for hydraulic fracturing chemical disclosure.* All operators shall comply with COG rule 205.A, as amended. Each operator shall also provide to the Loveland Fire Rescue Authority in hard copy or electronic format the operator's chemical disclosure form that the operator has filed with the chemical disclosure registry under COG rule 205.A. Such form shall be filed with the director within five (5) days after the form is filed in the chemical disclosure registry.

J. *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.

K. *Cultural and historic resources standards.* The installation and operation of any oil and gas facility shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.

L. *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.

M. *Electric equipment.* The use of electric-powered equipment during production operations shall be required if a provider of electric power agrees at the provider's customary rates, fees and charges to provide electric service to an oil and gas facility and the cost to make the electrical connection is economically practicable. If available, electric service to the oil and gas facility shall be acquired by the operator within the shortest time period reasonably practicable. Temporary use of natural gas or diesel generators may be used until electric service

is provided. Electric equipment shall not be required during drilling and well completion operations.

N. *Emergency response standards.*

1. In General. Operators agree to take all reasonable measures to assure that oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to provide to the City its emergency preparedness plan for operations within the City, which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis. The emergency preparedness plan shall contain at least all of the following information:

(a) The designation of the operator's office group or individual(s) responsible for emergency field operations. An office group or individual(s) designated to handle first response situations, emergency field operations or on-scene incident commands will meet this requirement. A phone number and address of such office group or individual(s) operation shall be required.

(b) A map identifying the location of pipelines, isolation valves and/or a plot plan, sufficient in detail to enable the Loveland Fire Rescue Authority to respond to potential emergencies. The information concerning pipelines and isolation valves shall be kept confidential by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency or as otherwise required by law.

(c) A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state and that is required to be reported to the commission or the commission's director shall be immediately reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and to the director promptly thereafter.

(d) Access or evacuation routes and health care facilities anticipated to be used in the case of an emergency.

(e) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

(f) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency caused by oil and gas operations and not promptly handled by the operator or its agents.

(g) Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

O. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.

2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:

(a) Nature and proximity of adjacent development;

(b) Prevailing weather patterns, including wind direction:

(c) Vegetative cover on or adjacent to the site; and

(d) Topography.

3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. To the extent feasible and not inconsistent with its operations, operator may be required to use one (1) or more of the following additional noise mitigation measures to mitigate noise impacts:

(a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;

(b) Vegetative screens consisting of trees and shrubs;

(c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;

(d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and

(e) Lowering the level of pumps or tank batteries.

P. *Fencing.* After the drilling, well completion and interim reclamation operations are completed, the operator shall install permanent perimeter fencing six (6) feet in height around the entire perimeter of the production operations site, including gates at all access points. Such gates

shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety or interferes with emergency or operations access to the production site.

Q. *Flammable material.* All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

R. *Land disturbance standards.* The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.
 2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
 3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.
 4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
 5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.
 6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operations. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.
- S. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and

the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

T. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and

2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

U. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

V. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

W. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

X. *Recordation of flowlines.* The legal description of all flowlines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flowlines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Y. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

Z. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

AA. *Signs.* A sign permit shall be obtained for all signs at the oil and gas facility or otherwise associated with the oil and gas operations in accordance with code chapter 18.50 except such permit shall not be required for those signs required by the COG regulations or this chapter.

BB. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including, without limitation, the COG regulations, the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall comply with existing COG regulations concerning reporting and notification of spills, and the spill or release shall also be reported to the director within twenty-four (24) hours of the operator becoming aware of the spill or release.

CC. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

DD. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

EE. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

FF. *Water supply.* The operator shall identify on the site plan its primary source(s) for water used in both the drilling and well completion phases of operation. In addition, if requested by the city's Water and Power Department director, the applicant's source(s) and amounts of water used in the city shall be documented and a record of it shall be provided to the city. The disposal of water used on site shall also be reported to the Water and Power Department director if requested to include the operator's anticipated haul routes and the approximate number of vehicles needed to supply and dispose of the water. When operationally feasible, the operator shall minimize adverse impacts caused by the delivery of water to the operation site by truck. If available and commercially viable, the operator shall make a service line connection to a domestic water supplier who is willing to provide such water at the same rates, fees and charges and provided that the amount of the water that can be supplied by that provider can be done so without delay or negative impact to the operator's drilling and well completion operations. When operationally feasible, the operator may alternatively purchase non-potable water from any other sources and transfer that water through ditches or other waterways and/or through above or below ground lines.

GG. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until

abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

HH. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

II. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

JJ. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

KK. *Floodplains.* All surface oil and gas operations within the city's floodway and flood fringe districts, as these districts are defined and established in code chapter 18.45, shall be conducted, to the extent allowed under COG regulations, in accordance with all applicable COG regulations, including, without limitation, COG rules 603.k. and 1204. In addition, if the operator's oil and gas operations will involve any development or structures regulated under the city's Floodplain Building Code in code chapter 15.14, the operator shall also obtain a floodplain development permit before beginning such regulated operations.

LL. *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

MM. *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

NN. *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

OO. *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

PP. *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:
 - (a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;
 - (b) Located to avoid crossing hills or ridges;
 - (c) Located to avoid the removal of trees; and
 - (d) Located at the base of slopes to provide a background of topography and/or natural cover.
2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.
3. One (1) or more of the landscaping practices may be required on a site specific bases:
 - (a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;
 - (b) Shaping cuts and fills to appear as natural forms;
 - (c) Cutting rock areas to create irregular forms; and
 - (d) Designing the facility to utilize natural screens.

QQ. *COG regulations for odor.* All oil and gas operations shall comply with COG rule 805.

RR. *COG regulations for abandonment of pipelines.* Any pipelines abandoned in place shall comply with COG rule 1103 and the operator's notice to the commission of such abandonment shall be promptly filed thereafter by the applicant with the director.

SS. *Temporary Housing.* Temporary housing shall be prohibited on any oil and gas operations site, including, without limitation, trailers, modular homes and recreational vehicles, except for the temporary housing customarily provided and required during twenty-four hour drilling, well completion and flowback operations.

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060. The operator shall designate these standards and requirements, to the extent applicable, as agreed upon best management practices on any application the operator files with the commission.

A. Setbacks. All oil and gas facilities shall comply with the setback distances set forth in Table A below or such greater distances as may be required by the commission. Setback distances shall be measured from the closest edge of any equipment included in the definition of oil and gas facility in section 18.77.025.FF to the nearest part of the nearest feature associated with the sensitive area as described in Column C in Table A. For the purpose of measuring the setback from any sensitive area that does not have a defined property or boundary line, the director shall establish the boundary line for measurement purposes.

Table A – Setbacks for oil and gas facilities

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
<u>Sensitive Area</u>	<u>Setback Distance (ft.)</u>	<u>Setback to be measured to the following nearest feature of sensitive area:</u>
<u>Building</u>	<u>500</u>	<u>Wall or corner of the building</u>
<u>Public road, major above-ground utility facility, or railroad tracks</u>	<u>200</u>	<u>Right-of-way or easement property line</u>
<u>Property on which the oil and gas facility is located</u>	<u>200</u>	<u>Property line</u>
<u>Lease area on which the oil and gas facility is located</u>	<u>200</u>	<u>Property line</u>
<u>Natural area or wetland</u>	<u>500</u>	<u>Property line</u>
<u>Property managed by the City’s Parks and Recreation Department, any City park, or property subject to a conservation easement managed by a public or non-profit entity</u>	<u>500</u>	<u>Property line of property or easement</u>
<u>Surface water body</u>	<u>500</u>	<u>Operating high-water line</u>
<u>FEMA floodway zoning district</u>	<u>500</u>	<u>Boundary line as shown by the Flood Insurance Rate Map (FIRM) revised to reflect a Letter of Map Revision effective May 24, 2010, published by the FEMA</u>
<u>Domestic or commercial water well</u>	<u>500</u>	<u>Center of wellhead</u>

Column A	Column B	Column C
<u>Outdoor assembly area</u>	<u>1,000</u>	<u>Property line</u>
<u>High occupancy building</u>	<u>1,000</u>	<u>Wall or corner of the building</u>

Once the setbacks for a well permitted under the administrative review process have been approved and established, the director shall submit to the commission a site plan showing the exact location of those setbacks for the permitted well.

~~A. — *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building;~~

~~1. Except as required under subparagraph 5, below, all oil and gas facilities shall be located at least five hundred (500) feet from any building, or such greater distance as may be required by the commission.~~

~~2. All oil and gas facilities shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.~~

~~3. All oil and gas facilities shall be located at least five hundred (500) feet from: (i) the boundary of any natural area or wetland; (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body; (iv) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and (v) the property line of any property subject to a conservation easement managed by a public or non profit entity, or such greater distance as required by the commission.~~

~~4. All oil and gas facilities shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.~~

~~5. All oil and gas facilities shall be located at least one thousand (1,000) from any building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or more, or such greater distance as required by the commission.~~

B. *Commission mitigation regulations.* All oil and gas operations shall comply with the mitigation measures required under commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table B1 below, shall be established once the well is in production around the entire perimeter of the oil and gas production site, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. Bufferyards shall not be required during drilling and well completion operations. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation

system shall be provided, maintained and operated for xeriscape plant types for a period of two years from planting.

Table B1 - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer’s data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer’s recommendations, instruction and operating manuals.
2. *Combustion devices.* All flares shall be designed and operated as follows:
 - (a) The combustion devices shall be designed and operated in a manner that will ensure it complies with 40 Code of Federal Regulations (“CFR”) §60.18 (General control device and work practice requirements);
 - (b) The combustion device, during production operations, shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and
 - (c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.
3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.

4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.
5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:
 - (a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;
 - (b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;
 - (c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and
 - (d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency's Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.
6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.
7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.
8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.
9. *Monitoring compliance and reporting.* Operators shall submit to the director an annual report providing the following information concerning the operator's oil and gas operations as related to air emissions:

- (a) Dates when the operator or its agent inspected its oil and gas facilities under its leak detection and repair plan;
- (b) A record of the expected and actual air emissions measured at the facilities;
- (c) The operator's emissions data collected during well completion activities;
- (d) Dates and duration when operator conducted well maintenance activities to minimize air emissions;
- (e) If venting occurred at any time during the reporting period, an explanation as to why best management practices could not have been used to prevent such venting; and
- (f) Dates when reciprocating compressor rod-packing is replaced.

E. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

1. Flowlines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential or non-residential building or the high water mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;
2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;
3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and
4. Operators shall use boring technology when crossing streams, rivers, irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

F. *Sound Limitations.* All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete, meaning while the well is in production. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chapter. If necessary to comply with said chapter, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

18.77.070 Application Requirements.

All applications submitted to current planning shall contain the information required for a COG permit and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 Variances.

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section may be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.
2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.
3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.
4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.
5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

18.77.080 Transfer of Permits.

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter. The existing operator shall assign the permit to the new operator on a form provided

by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

18.77.082 Expiration of Permits.

An oil and gas permit issued under this chapter shall expire and be null and void if drilling operations on the permitted well are not commenced within two (2) years after the date the permit is issued, unless before the expiration date the applicant requests in writing and the director approves an extension of such permit not to exceed one (1) year. To approve any such extension, the director must find that the applicant has an existing and valid permit from the commission for the subject oil and gas operations and that the proposed oil and gas operations approved under the city's permit continue to be in substantial compliance with the city's permit and the applicable provisions of this chapter.

18.77.085 Other Applicable Code Provisions.

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code, 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

18.77.090 Emergency Response Costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

18.77.095 Application and Inspection Fees.

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter. Fees established for inspections shall be nondiscriminatory to only cover the city's reasonable costs to inspect and monitor for road damage and for compliance with the city's fire code, building codes and the conditions of any permit issued under this chapter. However, such inspection fees shall not be based on any costs the city might incur to conduct inspections or monitoring of oil and gas operations with regard to

matters that are subject to rule, regulation, order or permit condition administered by the commission.

18.77.100 Capital Expansion Fees.

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution. Any such fees adopted, shall be paid by the operator to the city at the time of issuance of an oil and gas permit under this chapter.

18.77.105 Reimbursement for Consultant Costs.

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

18.77.110 Adequate Transportation Facilities.

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

18.77.115 Insurance and Performance Security.

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars (\$1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars (\$10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursement, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the operator and the city and shall provide that although the city is named as additional insured, the

city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security for Road Damage.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a twenty-five thousand dollar (\$25,000) performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director to cover the city's costs to repair any damages to the city's public rights-of-way caused by the operator's use of said rights-of-way. In the event this security is insufficient to cover the city's costs to repair any such damages, the operator shall be liable to the city for those additional costs and the city may pursue a civil action against the operator to recover those costs as provided in section 18.77.125.C. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.120 Inspections, Right to Enter and Enforcement.

A. *Inspections.* All oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code. However, the city's inspections shall be limited to the inspection of those matters directly enforceable by the city under this chapter 18.77 as provided in paragraph C. of this section. In the event an inspection is desired by the city relating to a matter not directly enforceable by the city under this chapter, the city shall contact the commission to request that it conduct the inspection and take appropriate enforcement action.

B. *Right to Enter.* Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Enforcement.* The city's enforcement of the provisions of this chapter 18.77 and of the conditions included in permits issued under this chapter shall be limited to those provisions and conditions that are not in operational conflict with state law or COG regulations and that are enforced by the commission, except when the provision or condition is an enhanced standard imposed and agreed to by the applicant through the administrative review process or agreed to by the applicant in the planning commission review process.

D. *Designated Agent.* The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four (24) hours a day, seven (7) days a week for the purpose of being notified of any proposed city inspection under this section or in case of an emergency. The applicant shall notify the city in writing of any change in the primary or back-up designated agent or their contact information.

18.77.125 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.

A. *Violations.* It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any enforceable condition of a permit; or
3. Violate any applicable and enforceable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe than an operator is in violation of any enforceable provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty five (25) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy

available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any enforceable provision of this chapter shall constitute a misdemeanor offense punishable ~~as provided in code section 1.12.010.A. by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment.~~ A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

18.77.130 Conflicting Provisions.

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

Section 2. That ~~a new Code~~ Chapter 18.78 is hereby ~~added~~ repealed and reenacted to ~~the Loveland Municipal Code~~ to read in full as follows:

~~Chapter 18.78~~

~~Building Setbacks from Oil and Gas Facilities~~

~~Sections:~~

~~18.78.010 — Purpose~~

~~18.78.020 — Building Setbacks from Oil and Gas Facilities~~

~~18.78.030 — Variances.~~

~~18.78.010 — Purpose.~~

~~The purpose of this chapter is to generally protect the public's health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.~~

~~18.78.020 — Building Setbacks from Oil and Gas Facilities.~~

~~All "buildings," as defined in code section 18.77.025, except such buildings with an occupaney rating for fifty (50) persons or more, shall be setback a minimum distance of five hundred (500) feet from an existing or abandoned oil and gas facility. All such buildings with an occupaney rating for fifty (50) persons or more and "outdoor assembly areas," as this term is defined in code section 18.77.025, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas well," as this term is defined in code section 18.77.025. Land included in such setback areas shall be restricted to use only as open space and recreational uses within that open space, such as play fields, parks and playgrounds, shall not be permitted.~~

18.78.030 — Variances.

~~The owner of any real property subject to the setback requirements of section 18.78.020 may request a variance from those setbacks in accordance with the provisions of section 18.77.075 using the planning review process set out in Chapter 18.77.~~

Chapter 18.78

Overlay Zoning Districts for Oil and Gas Facility Development Setbacks from Existing Oil and Gas Facilities

Sections:

18.78.010 Purpose

18.78.020 Definitions

18.78.030 Establishment of zoning overlay districts

18.78.040 Applicability

18.78.050 Zoning overlay district boundaries

18.78.060 Land use restrictions within zoning overlay districts

18.78.080 Variances

18.78.010 Purpose.

The purpose of this chapter is to establish zoning overlay districts in the vicinity of existing oil and gas facilities in order to allow certain land uses within these zoning overlay districts that are compatible with the industrial nature of oil and gas facilities, but yet are protective of the public’s health, safety and welfare. Nothing in this chapter is intended to regulate the location of an oil and gas facility, but only to regulate the use of land proposed to be developed for other uses and purposes.

18.78.020 Definitions.

The following words, terms and phrases shall have the meanings set forth below, unless the context requires otherwise:

A. “Critical zone” shall mean all land and water surface area less than two hundred (200) feet from an oil and gas facility, as measured in accordance with section 18.78.050.

B. “High occupancy building zone” shall mean all land and water surface area five hundred (500) feet or greater but one thousand (1,000) feet or less from an oil and gas facility, as measured in accordance with Section 18.78.050.

C. “Oil and gas facility” shall have the meaning given to this term in section 18.77.025.FF and shall include, without limitation, operating, shut-in and abandoned wells. However, it shall not include an abandoned well that has been demonstrated, to the satisfaction of the Development Services Director, will not, as a matter of law, be reopened or reentered in the future for any type of oil and gas operation without the city’s prior written consent.

D. “Restricted zone” shall mean all land and water surface area two hundred (200) feet or greater but less than five hundred (500) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

18.78.030 Establishment of zoning overlay districts.

There are hereby created and established in the city as zoning overlay districts the critical zone, the restricted zone, and the high occupancy building zone.

18.78.040 Applicability.

Notwithstanding the land uses allowed by the underlying zoning districts established in this title for any land located in the critical zone, restricted zone, or high occupancy building zone, development of such land shall be subject to and shall comply with the applicable zoning restrictions set forth in this chapter.

18.78.050 Zoning overlay district boundaries.

The boundaries of the zoning overlay districts established in section 18.78.030 shall be measured from the closest edge of any oil and gas facility.

18.78.060 Land use restrictions within zoning overlay districts.

A. In the critical zone land uses shall be limited to any of the following:

1. Essential underground public utility facilities; and
2. Undeveloped and restricted open space designed and operated to discourage access and use by natural persons, but this shall not include “recreational open space” as defined in chapter 18.04 and any of the uses allowed in the public park zoning district under chapter 18.32, unless it is an open lands/natural area that is undeveloped and designed and operated to discourage access and use by natural persons.

B. In the restricted zone land uses shall be limited to any of the following, provided no outdoor assembly area (as defined in section 18.77.025.II), building, or parking lot is located

within the restricted zone and the use is approved in accordance with the provisions in chapter 18.40 for uses permitted by special review.

1. Airports and heliports;
2. Attended recycling collection facility;
3. Commercial mineral deposit;
4. Composting facility;
5. Contractor's storage yard;
6. Essential public utility uses, facilities, services and structures;
7. Heavy industrial uses;
8. Landfill area;
9. Landscaping;
10. Personal wireless service facilities;
11. Plant nursery;
12. Public service facility;
13. Recyclable materials processing;
14. Resource extraction, process and sales;
15. Self-service storage facility;
16. Street;
17. Truck terminal;
18. Unattended recycling collection facility;
19. Vehicle rentals of heavy equipment, large trucks and trailers;

20. Vehicle rentals of cars, light trucks and light equipment;

21. Vehicle sales and leasing of cars and light trucks; and

22. Vehicle sales and leasing of farm equipment, mobile homes, recreational vehicles, large trucks and boats with outdoor storage;

These land uses shall be permitted if approved as a special review under this paragraph B. notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.

C. In the high occupancy building zone all land uses authorized for the affected land by the land's underlying zoning district as provided in this title shall be allowed subject to the requirements of that zoning district, except that high occupancy buildings and outdoor assembly areas shall not be allowed within this zoning overlay district.

18.78.0780 Variances.

A. An owner of any real property subject to the requirements and limitations of this chapter may request a variance from those requirements and limitations using the variance procedures set out in chapter 18.60. The grounds for such variance shall be those set out in chapter 18.60 to the extent applicable. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property.

B. An owner may also request a variance from any of the requirements of this chapter on the basis of the existence of a vested right under chapter 18.72 or Colorado law or on the grounds that application of chapter 18.78 would constitute a regulatory taking under Article II, Section 3 of the Colorado Constitution. A variance request under this paragraph shall be made to the city council by filing with the city's current planning division a written variance request stating all the facts and law the owner is relying on for the variance. A quasi-judicial hearing before the city council to consider the variance request shall be scheduled and held not less than thirty (30) days but not more than sixty (60) days after filing of the owner's written variance request. Notice of the hearing shall be provided in accordance with all applicable requirements of chapter 18.05. At the conclusion of the hearing, the city council may grant, grant with conditions, or deny the variance request. In so doing, the city council shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property. The city council's decision may be appealed to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by any person receiving mailed notice of the hearing, or by any other person considered a "party in interest" under section 18.80.020.

Section 3. That Ordinance No. 5685 and Ordinance No. 5735 are hereby repealed.

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).


ADOPTED this ____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney



Development Services Department

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Planning Commission Staff Report

July 22, 2013

Agenda #1: Regular Agenda – PUBLIC HEARING

Title: Amendments to Chapter 18.77 and Chapter 18.78 regulating oil and gas development

Applicant: City of Loveland

Request: Consider proposed amendments and make recommendation to City Council.

Location: Oil and gas regulations apply to all oil and gas development within the incorporated limits of the City of Loveland.

City staff:

Greg George, Development Services Director
 John Duval, City Attorney

Staff Recommendation: Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Move to recommend that City Council adopt the proposed amendments to Chapters 18.77 and 18.78 of the Loveland Municipal Code.

I. ATTACHMENTS

- A. An ordinance amending Chapter 18.77 and Chapter 18.78 (redline version)

II. EXECUTIVE SUMMARY

A public hearing to consider amendments to Chapter 18.77 and Chapter 18.78.

A. Chapter 18.77

Several technical amendments are being recommended to clarify existing provisions. This includes two procedural revisions the City Attorney is recommending. The first procedural revision (**Section 18.77.050.G.**) adds a provision to the administrative review process to require that the Development Services Director's written decision granting or denying the permit in the administrative review process be mailed to the applicant and to the persons who are required to be given written notice of the neighborhood meeting. Without this mailing requirement, interested parties are not going to necessarily know when the Director's decision is made and when the appeal period has started. Related to this, the second revision (**Section 18.77.050.H.**) adds a provision to make it clear that the persons who are required to be given written notice of the neighborhood meeting also have legal standing to appeal the Director's decision in the administrative review process to the district court.

A table has been inserted into **Section 18.77.065.A.** to better explain the setback distances for oil and gas facilities from existing sensitive areas under the enhanced standards, and how those setbacks are to be measured. The actual setbacks have not been changed.

B. Chapter 18.78

1. **Setbacks:** When the oil and gas regulations were adopted in March 2013, setbacks from oil and gas facilities for new development were established in Chapter 18.78. Setbacks were established as follows:
 - a. 500 feet for a “building” defined as any residential or non-residential structure designed and permitted to be occupied by natural persons; and
 - b. 1,000 feet for a “high occupancy building” defined as any building with an occupancy rating of 50 persons or more and for “outdoor assembly areas” defined as an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate. At time of adoption, the definition of “outdoor activity area” contained a technical error by not including that the area must be reasonably capable of being occupied by 50 or more natural persons. Correcting this error is included in these amendments.
2. **“No building zone”:** Section 18.78.020 required that land included in such setback areas be restricted to uses only as open space, and that recreational uses such as play fields, parks and playgrounds not be permitted. These restrictions on use would effectively create, what was referred to during the public hearing process as, ‘no building zones” within the City. A setback with a radius of 500 feet would create an eighteen (18) acre “no building zone” around the oil and gas facility, while a setback with a 1,000 foot radius would create a seventy-two (72) acre “no building zone”.
3. **Uses compatible with oil and gas facilities:** City staff has reevaluated the current setback requirements to determine if there are any land uses that could be compatible with the industrial nature of oil and gas facilities and yet not adversely affect the public’s health, safety and welfare if special conditions are placed on such uses through the special review process. City staff is recommending the following zoning overlay zones to allow such land uses within these setbacks from oil and gas facilities.
 - a. **Critical zone – less than 200 feet from an oil and gas facility (Section 18.78.060.A):** It is recommended that in this area’s restrictions on land uses remain as currently set forth in the ordinance in recognition of the possibility that an existing well is reentered, including new horizontal drilling and hydraulic fracturing, after new development has been constructed in the vicinity. Except for the allowance of underground public utility facilities, the recommendation is that the area be managed as restricted open space.
 - b. **Restricted zone – less than 500 feet from an oil and gas facility (Section 18.78.060.B):** It is recommended that in this area certain uses of a heavy or light industrial nature be allow as special review uses, provided no building, parking lot or outdoor assembly area is allowed closer than 500 feet to the oil and gas facility. The special review process is being recommended to require a neighborhood meeting and to allow special conditions to be placed on the new development to mitigate possible site specific impacts and to ensure land use compatibility.
 - c. **High occupancy building zone – less than 1,000 feet from an oil and gas facility (Section 18.78.060.C):** It is recommended that in this area the only use restriction be for high occupancy buildings, which are defined as any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more. This restriction is consistent with the requirement that new oil and gas facilities be setback a minimum of 1,000 feet from any existing high occupancy building as defined.
4. **Variances:** Section 18.78.080 has been revised so requests for variances to the use limitations set forth in the zoning overlay districts are processed under the existing procedures in Chapter 18.60 for variances to the zoning standards established in Title 18. This revision was necessary since Chapter 18.78 now establishes actual zoning overlay districts and not just simply setbacks for new development.

III. STAFF RECOMMENDATION

City staff recommends the following motion for Planning Commission action:

Move to recommend that City Council adopted the proposed amendments to Chapter 18.77 and Chapter 18.78 as presented in Attachment A to this staff report.

July 22, 2013 Planning Commission Meeting Minutes – Item #1 - Oil and Gas Ordinance Amendments

3. **Oil and Gas Development Code Amendment**

This is a public hearing to consider an ordinance amending Chapter 18.77 and 18.78 of the city of Loveland Municipal Code.

Commissioner Massaro addressed his fellow Commissioners and stated that his wife has been involved with “Protect our Loveland” group, and asked if anyone felt this created a conflict of interest with him participating in the discussion. **Chair Meyers** responded that given the nature of the amendment, he felt there was not a conflict of interest. **Judy Schmidt, Deputy City Attorney**, concurred and explained that this amendment does not represent a personal interest and would not create a conflict of interest.

Greg George, Director of Development Services, addressed the Commission and stated that he had taken the proposed amendments to the Title 18 Committee and explained there was some confusion as to the difference between Chapters 18.77 and 18.78. He wanted to clarify that Chapter 18.77 does one thing; it regulates oil and gas development as it occurs within the city limits. Setbacks have been established, and a two-step process has been created in order for developers to get a permit from the city. Chapter 18.77 establishes regulations on new oil and gas development. By contrast, Chapter 18.78 establishes regulation on new land development, including new residential subdivisions and industrial commercial development, when that development is within close proximity to an existing oil and gas facility. The purpose of the two chapters is entirely different as they regulate two different issues.

Mr. George went on to explain the amendments addressed technical, procedural amendments to Chapter 18.77, regulating the location and mitigation measures required for new oil and gas facilities. He asked the Commissioners to refer to the copy of the proposed ordinance amendments and explained he would share on which pages the various changes were made. Starting on page 6, **Mr. George** explained that a definition of a high occupancy building was included. The definition was moved from section 18.77.065 to the definition section of the code, as it was a more appropriate placement; however, the definition itself was unchanged.

Turning to page 7, **Mr. George** shared that the definition of an oil and gas facility in the existing code did not provide easy means of measuring or determining the edge of an oil and gas facility. For purposes of measuring a setback, a well-defined starting point must be identified. The expanded definition is consistent with the oil and gas commission definition. This allowed for a starting point to measure from. Depending on the configuration of where the equipment is located, the shape of the oil and gas facility may change; however, it does provide a mechanism for measurement. It differs on how the oil and gas commission measures the location of an oil and gas facility; the oil and gas commission measures from the center of the facility, or the center of the wellhead itself. **Mr. George** stated he believes the new definition improves upon the oil and gas commission definition.

Mr. George added that also on page 7, there is a provision in the setback in the overlay zoning part of the ordinance, which does not allow outdoor assembly areas within the restricted zone. It initially indicated that backyards of residential buildings would not be included, but was later removed because it was considered to be a redundant statement. Outdoor assembly areas are not allowed in the restricted areas. Any portion of a residential lot would not be allowed in a restricted zone. The definition of a setback, located on page 8, was removed because the definition of a setback is used for enhanced standards. It is located in a different section of the code for the baseline standards of a setback. It states that the operator only needs to comply with setbacks established by the oil and gas commission, which is how the baseline standards were preempted. The current definition can be found in 18.77.065 of the proposed amendment.

Mr. George continued, addressing pages 13 and 14. He explained that in the section addressing the Appeal of Director's Decision, procedural clarifications were made by **John Duval, City Attorney**, who wanted to make clear who has standing to appeal the decision of the director. Any appeal to the director's decision would need to be made through Larimer County District Court. He also clarified who would get notice of any decision made by the director.

Mr. George went on to address setback requirements for oil and gas development in sensitive areas, found on page 23, indicating that the proposed definition of setbacks includes methods for measuring both the beginning point as part of the oil and gas facility itself and which portion of a sensitive area that is measured to. **Mr. George** explained he felt it was easier to clarify the setback requirements by using a table rather than the narrative description located in the current ordinance. The setbacks for the enhanced standards have not changed but do contain better definitions for measurement requirements.

Mr. George then moved onto Chapter 18.78. He referred the Commission to a diagram which illustrated the overlay zones and how they work. The diagram showed an example of an oil and gas facility. It was communicated that if an oil and gas company goes through the baseline standards, it requires a Planning Commission hearing process. The setback is measured to the nearest property line as 200 feet to the closest well head. Under city's enhanced standards; it is measured from the edge of the oil and gas facility, 200 feet to what is referred to as the critical zone.

Mr. George explained the overlay zones, indicating that there are three zones represented in the diagram; the critical zone, the restricted zone, and the high occupancy building zone. The goal of 18.78 is to create overlay zones that change the uses allowed by property owners. As it stands today, all three of the proposed overlay zones are absolutely restricted as open space areas, also referred to as "no build areas", and a 1000 foot radius around the oil and gas facility would create a 72 acre no build zone. As **Mr. George** explained, this area makes it very difficult to work within an urban setting during efforts to develop urban uses. To remedy the restriction, **Development Services** determined appropriate uses for these zones could include heavy industrial and certain types of industrial uses, which would be compatible with an oil and gas facility site, particularly after it's under production. It should

be noted, **Mr. George** indicated that a permit can be issued by the oil and gas commission as well as the city, allowing permission to reenter the oil and gas facility; it could create additional heavy industrial activity. In Chapter 18.78, there are listed uses that would be allowed in the restricted zone that could be compatible to an oil and gas facility, but would require a Special Review. Special Review is the process used to determine if the use is compatible with the oil and gas facility and other uses in the vicinity. City reserves the right to deny the application if it is determined the use is not compatible at a site. Additional limitations for the uses listed in the proposed amendment states that no building or parking lot would be permitted within the restricted zone. High occupancy buildings, such as a hospital or library, would still be required to be outside of the 1000 foot radius.

Mr. Duval addressed the commission and explained that city staff discovered two changes that needed to be made on page 34 to the definitions. It needed to be clarified that “critical zone” shall mean all land and water surface area less than 200 feet from an oil and gas facility, and “high occupancy building zone” shall mean all land and water surface area less than 1000 feet from an oil and gas facility. “Restricted zone” shall mean all land and water surface 500 feet or less from an oil and gas facility.

Commissioner Krenning questioned **Mr. Duval** as to why city staff did not use the “Rule of Seven” approved by the Supreme Court, meant for use in ease of calendaring. He asked if any consideration was given to the use this metric. **Mr. Duval** responded that it was not considered and felt that reasonable timelines were included which would work well internally for the City of Loveland.

Commissioner Massaro asked for clarification about the “restricted zone”. He stated that the proposed amendment would allow for uses such as an airport or helicopter port in the restricted zone, however he questioned how that could happen if a building or parking lot are not permitted. **Mr. George** responded that it could be used as a runway with open space, but stressed such a use would require Special Review approval. The goal, as **Mr. George** explained, is to allow as many buildings as appropriate to establish reasonable uses in the overlay zones. **Mr. Massaro** restated his concern about the wording in the ordinance in relation to the restricted zone. He asked if there was an existing building within the ‘restricted zone’, could an oil and gas well be placed within the proposed overlay zone. **Mr. George** clarified that existing setback requirements as they apply today would be enforced for existing developments and open space areas.

Commissioner Dowding stated she had concerns regarding the 18.77.060 section of the proposed amendment. She questioned if 18.78 complied with COG regulations. **Mr. George** stated that 18.78 does not regulate oil and gas development and, therefore, does not interfere with COG regulations.

Commissioner Dowding pointed out that on page one; under the sixth “Whereas”, it states that the city will not enact anything that is in “operational conflict” with state law. **Mr. Duval** explained that the “Whereas” clause regarding operational conflict is a legal clause the court has used when a city regulation is in conflict with a state regulation in terms of the location and permitting of oil and gas facilities. However, Chapter 18.78 is not a regulation imposed on the oil and gas operators; rather, Chapter 18.78 is a regulation that is imposed on developers that outlines the standard that will need to be met when they submit plans for

subdivision or PUD's, for example. **Commissioner Dowding** suggested that putting the word "existing" in the title would help clarify its intent. **Mr. Duval** agreed to the suggestion and said he would take it under consideration. **Commissioner Dowding** asked why city staff went to great trouble in 18.77 to create the beautiful table which made it very clear to understand, but in 18.78 it is all verbiage but no table. **Mr. Duval** agreed to take that recommendation under consideration as well. **Ms. Schmidt** suggested that using the phrase "permitted oil and gas facilities" for better clarification.

Commissioner Crescibene asked about 18.77, specifically page 20 of the proposed amendment, referring to chemical spills, water supplies, and hauling. He said that nowhere in 18.77 does it refer to the disclosure of what the chemicals being used by oil and gas operators are, nor does it refer to water testing requirements. **Mr. George** pointed out that on page 15, under paragraph I, COG requires that all operators shall provide the Loveland Fire Rescue Authority, in hard copy or electronic format, the operator's chemical disclosure form. It was also pointed out that there is a provision for COG to test water baseline in accordance with oil and gas regulations. **Mr. George** made it clear that if the City of Loveland attempted to strengthen these provisions they would be preempted. He also stated that it was unlikely that city would create its own water sampling criteria or revisit how the COG regulations are working. The goal was to create an ordinance that would allow reasonable land uses on property in the vicinity of an existing oil and gas facility.

Mr. Crescibene indicated that he believes that the baseline standards should be addressed and explained, and that is one of the more pressing issues surrounding oil and gas development. He would like full disclosure of what chemicals are being used in the process of hydraulic fracturing. **Mr. Duval** explained that when creating the enhanced standards, they avoided including strict requirements because city staff felt it increased the likelihood of oil and gas developers participating in the process. Otherwise they might elect using the baseline standards and landowners would be left without options to develop property with existing oil and gas wells. **Mr. Crescibene** added that if he owned a well within 1000 feet of a fracking distribution point, he would have the water tested very frequently. **Mr. Duval** reiterated that city staff has not gotten direction from City Council to pursue those concerns.

Commissioner Middleton stated that he felt the topic of discussion related to oil and gas development has been a mess, and has been since day one. He commended city staff for their efforts on the proposed amendments, but echoed concerns regarding oil and gas development. He questioned why a disinterested third party could not do air and water quality testing at fracking sites, at the expense of oil and gas developers. **Mr. George** responded that city staff has been given a statement of direction from City Council regarding the oil and gas ordinance, but if in the future city staff was directed by City Council to further explore air and water quality standards, they would be happy to do so.

Mr. Krenning interjected that he felt the purpose of the meeting was to discuss the minor adjustments to the existing ordinance. The policy debate that is ongoing surrounding oil and gas development should be left to the City Council. **Mr. Middleton** disagreed and stated that the Commission is being asked to approve an ordinance. **Chair Meyers** pointed out that the ordinance is already approved and the Commission is only being asked to make redline

changes.

Commissioner Molloy asked what the permit requirements were for capped wells in the vicinity of housing developments. **Mr. George** explained that a permit could be granted by the oil and gas commission, however, if the oil developer goes through the city's enhanced standards and the proposed location of the well does not comply with the enhanced standards for setbacks, they would not get the permit because certain setbacks are absolute. The operator would have to go through the Planning Commission review process where the COGCC setback rules apply.

Mr. Molloy stated he had concerns about the variances and Director's decisions. He used Greeley as an example, and explained that they recently made the decision to allow oil and gas developments in neighborhoods and felt that decision was a travesty. He wanted to make a suggestion that when it came to a Director's decision, written notification should be not only sent within the notification area, but also to individuals who attend neighborhood meetings and provide in writing their desire to be notified. **Mr. Krenning** expressed doubt that participation in a neighborhood meeting would grant a non-city resident standing in any Director decision appeal, and felt it would be a burden to city staff to do so. **Mr. Molloy** clarified the burden would fall to the applicant and not city staff. **Mr. Duval** responded that as the ordinance is written today, only people within the written notification area, which is currently any resident within 2200 feet, would be notified of decisions. **Chair Meyers** commented he felt such a requirement would create a process nightmare. **Mr. Duval** clarified that "parties of interest" who wish to appeal a director decision are only those who are included in the written notification area. He pointed out that Council Members and Planning Commissioners are also able to appeal decisions.

Mr. George stated his desire for the Commission to recommend approval of the proposed ordinance amendment to City Council. He stated that the Commission had the option, if it felt inclined to do so, to pass a motion with majority approval, to make comments to the Council about difficulties with the existing ordinance.

Chair Meyers opened up the meeting to Public Hearing and invited members of the audience to make comments. He asked that comments be kept to the issue at hand, which is recommendation of approval of the proposed ordinances.

Ms. Kim Orr, PO Box 2045, Loveland CO, addressed the commission and asked if it would be possible that in the ordinances for the developers, a requirement could be included for them to test water and air quality for contamination in existing well sites prior to further development.

Ms. Sue Mullins, 4785 Hahn's Peak Dr. #203, Loveland, CO wanted to share with the Commission what she considered to be their charge. After listening to the discussion, she said she appreciated **Mr. Molloy's** comments. She feels anyone who lives in the City of Loveland should have standing in this issue. She believes the Commission takes its charge seriously. She believes the Commission is responsible for the health and welfare of city citizens. She commented that having only appeal powers to the Larimer County District

Court was a very high burden to place on concerned citizens. She wanted to share that she has listened to concerned citizens of Loveland and wanted to pass that concern on to the Commission. She asked the Commission to remember who they represent.

Ms. Carla Massaro, 4250 Tarryall Ct, Loveland, CO, stated she wanted to reiterate her appreciation for all the Commissioners hard work and concern that they have displayed for the citizens of Loveland. She doesn't feel that the City Council has the same concern. She would like to believe experience in the field should carry more weight than just opinion.

Chair Meyers asked if **Ms. Massaro** could please redirect the discussion to focus on the two amendments to the current ordinance. **Ms. Massaro** stressed the importance of listening to professional opinions and applauded the Commission for their concern regarding air and water quality at fracking sites and thanked them for their hard work.

Chair Meyers closed the Public Hearing.

Mr. George addressed concerns raised by citizens and explained that the purpose of the proposed amendments was to lessen the burden of property owners within the vicinity of oil and gas facilities by increasing available opportunities for development. He stated the city did not feel it was reasonable to require land developers to conduct air and water quality test prior to development activities.

In response to concerns regarding citizen appeal rights only at the Larimer County District Court, **Mr. Duval** responded that this is a process that's been in place for a long time and also applies to any quasi-judicial City Council decisions.

Chair Meyers continued the discussion regarding who should have standing in neighborhood meetings. **Mr. Krenning** replied that he didn't support the concept of granting citizens standing who aren't directly impacted by oil and gas development. He continued that he felt that it was important to keep the focus of the meeting on the proposed amendments. He stated that he has provided close attention on the issue of fracking because it is controversial, serious, and a hot topic item. **Mr. Krenning** noted that he recently read an article published in the Denver Post regarding a study done by the Department of Energy along with a group of private scientists. **Mr. Krenning** stated that the study concluded that there has been zero ground water contamination due to oil well drilling and fracking. He stated that he is open to any scientific data that would prove otherwise, but to date he has not seen any information that supports fracking contaminates ground water. He reiterated the importance of focusing on the proposed amendments and did not want the Commission to be bogged down in another discussion regarding the controversy surrounding fracking. He made a motion to recommend that City Council adopt the proposed amendments to Chapter 18.77 and 18.78 of the Loveland municipal code. Upon a second by **Ms. Dowding** the discussion continued.

Mr. Molloy stated that he felt the Planning Commissions has a responsibility to ensure that projects being developed within the city not have any negative consequences to the city or its citizens. He reiterated his suggestion to expand the requirement to notify citizens of a Director's decision not only within the current notification area, but also to individuals who attend neighborhood meetings. He pointed out that heavily industrialized projects could

impact more than just the citizens in the written notification area.

Mr. Massaro commented that he disagreed with the statements made suggesting ground water has not been contaminated by fracking. He stated that on the COGCC website that there are over 200 incidents in Weld County alone of documented ground water contamination from the oil and gas industry. He pointed out that contaminated ground water is very difficult to clean-up. **Mr. Massaro** continued that in the entire State of Colorado there is a spill per day, and 43% of those spills contaminate ground water. In regards to expanding the mailing list, he agreed that the notification area be as wide as possible, however, he felt it would create a burden by allowing out of area citizens to be notified and wanted to take more time to consider the issue.

Commissioner Prior agreed with **Mr. Molloy** regarding citizen notification but felt that Director decisions should be limited to citizens within city limits, but only in cases when the impact would be city wide. He stated that he has a background in water engineering, and agreed that there is no proven evidence of water contamination from fracking. He explained that the data provided by the COGCC does not point to evidence of contaminated ground water and felt the confusion regarding the data should be resolved at a later time.

Ms. Dowding commented that the Commission originally addressed the issue of notification by doubling the mail notice area to 2,200 feet at a prior meeting. She concluded that the issue has been sufficiently addressed. She suggested that if the issue needed further discussion it should be hashed out at a Title 18 Committee meeting.

Commission Middleton asked for a vote on the motion before the Commission. The motion passed 7-1 with **Commissioner Middleton** voting nay.



Development Services Department

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Planning Commission Staff Report

October 28, 2013

Agenda #2: Regular Agenda – PUBLIC HEARING

Title: Amendments to Chapter 18.77 and Chapter 18.78 relating to oil and gas development

Applicant: City of Loveland

Request: Consider proposed amendments and make recommendation to City Council

Location: Oil and gas regulations apply to all oil and gas development within the incorporated limits of the City of Loveland.

City staff:

Greg George, Development Services Director
 John Duval, City Attorney

Staff Recommendation: City staff recommends the following motion:

Move to recommend that City Council adopt the proposed amendments to Chapters 18.77 and 18.78 of the Loveland Municipal Code.

I. ATTACHMENTS

1. Ordinance amending Code Chapter 18.77 and Chapter 18.78 of the Loveland Municipal Code (**not included**)
2. Zoning Overlay Districts

3. EXECUTIVE SUMMARY

Since the Planning Commission's last reviewed on July 22, 2013 of proposed changes to Code Chapters 18.77 and 18.78, a number of additional grammatical, minor editing, and substantive amendments are proposed to these Chapters, all of which are shown in blue font in **Attachment I**. The substantive changes are the following:

A. Chapter 18.77

1. **Page 7 of 36: Section 18.77.025.FF** – Amending the definition of “oil and gas facility” to exclude aboveground and underground power supply, underground flowlines and underground water lines. Setbacks for new development from an existing oil and gas facility (see Section 18.78.050) are measured from the closest edge of an existing oil and gas facility as defined in this Section 18.77.025.FF. The purpose for the setbacks for new development from existing oil and gas facilities is to keep new development a safe distance from the improvements and equipment of such a facility that pose a hazard to public health and safety. Aboveground and underground power lines, underground flowlines and underground waterlines associated with oil and gas facilities do not pose a greater hazard to public health and safety than when these same facilities are associated with other types of development.
2. **Page 9 of 36: Section 18.77.040** –

- a. Increasing the time period after a CRT meeting from 10 days to 15 days in which the Current Planning Division must provide a CRT applicant with the Development Review Team's written comments. Given the complexity and multi-jurisdictional nature of oil and gas applications, the additional time is necessary to allow City staff to meet to review all comments from the Development Review Team (DRT) for consistency, clarity and accuracy, development comprehensive recommendations and coordinate, as necessary, with the Colorado Oil and Gas Conservation Commission (COGCC).
 - b. Clarifying that the time period after the CRT meeting in which the applicant must file an application to obtain a permit to operate an oil and gas facility is 90 days, not 3 months.
 - c. Clarifying that, when the DRT written comments are not provided to the CRT applicant in a timely manner, the additional time period to submit an application for permit is 90 days, not 3 months.
3. **Page 24 of 36: Section 18.77.065.A** – Provision added to require the director to send a site plan to the COGCC showing the exact setback as determined in accordance with Table A in this section.

B. Chapter 18.78

1. **Page 33 of 36: Title** – Clarifying that this chapter establishes overlay zoning districts for development setbacks from existing oil and gas facilities.
2. **Page 33 of 36: Section 18.78.010** – Again, clarifying that the setbacks established in this chapter are for new development from existing oil and gas facilities.
3. **Page 33 of 36: Section 18.78.020. B** – Correcting the definition of “high occupancy building zone” to be consistent with the graphic depiction (see *Attachment 2*).
4. **Page 33 of 36: Section 18.78.020. C** – Clarifying the conditions under which it has been demonstrated to the director that a well has been legally abandoned.
5. **Page 33 of 36: Section 18.78.020. D** – Correcting the definition of “restricted zone” to be consistent with the graphic depiction (see *Attachment 2*).
6. **Page 35 of 36: Section 18.78.060.B** – Clarifying that if the land uses listed in this section are approved through the special review process, then such land uses shall be permitted even if not permitted in the underlying zoning district as either a use-by-right or special review use.
7. **Page 35 of 36: Section 18.78.070.A** – Revised to take out the reference to this section applying to a variance requested on the grounds of the existence of a vested right. Section 18.78.070.B has been added to address the case when a variance is requested on the grounds of the existence of a vested right.
8. **Page 35 of 36: Section 18.78.070.B** – This section has been added to describe the procedures for requesting and obtaining a variance on the grounds of the existence of a vested right or a regulatory taking. All such variances would go directly to City Council for a decision. Pursuant to Section 18.78.070.A, all other variance requests would follow the current Zoning Board of Adjustments procedures in Code Chapter 18.60.

4. STAFF RECOMMENDATION

City staff recommends the following motion for Planning Commission action:

Move to recommend that City Council adopted the proposed amendments to Chapter 18.77 and Chapter 18.78 as presented in Attachment A to this staff report.

July 22, 2013 Planning Commission Meeting Minutes – Item #1 - Oil and Gas Ordinance Amendments

1. Amendments to Chapter 18.77 and Chapter 18.78 relating to oil and gas development
This is a legislative matter for consideration of proposed minor amendments to provisions of the Municipal Code addressing oil and gas development. The Planning Commission’s task is to forward a recommendation to City Council for final action.

Greg George, Development Services Director, addressed the Commission and explained he would be presenting proposed amendment changes to two chapters of Chapter 18 of the Municipal Code: Chapter 18.77 which deals with regulations on oil and gas development, and Chapter 18.78 which establishes overlay zoning districts for new development from existing oil and gas facilities.

He asked the Commission to turn to page 7 of the 18.77 ordinance, and stated the revisions were noted in blue font. The first change is to revise the definition of oil and gas facilities to remove some improvements that might typically be found in a development that do not have impacts that normal developments see within city limits. The associated improvements include above ground and underground power lines, flow lines and water lines. It’s important to make the modification to the definition because the measurements for the overlay zoning district in cases of new development are measured from the equipment of the oil and gas facility. Given that the lines go in many directions from the surface pad site, it would create difficulty when measuring setbacks.

On page 9 of 18.77, changes relate to Concept Review timeframes for meetings held for oil and gas facilities. The modification specifies an extension of the timeframe from ten (10) days to fifteen (15) days. That is the timeframe in which the Current Planning Division has to notify the applicant of a Conceptual Review meeting with comments and recommendations issued by the Development Review Team. The request for the extension is due to the fact that oil and gas applications are complex, and also require additional coordination with the COGCC. Other changes on page 9 simply standardizes terminology; for example, stating ninety (90) days instead of three (3) months.

Turning to page 24 of 18.77, Mr. George explained the next change was made at the request of the legal department of the oil and gas commission. Specifically it states that, “Once the setbacks for a well permitted under the administrative review process have been approved and established, the Director shall submit to the commission a site plan showing the exact location of those setbacks for the permitted well.”

On page 33 of 18.77, it was necessary to clarify the differences between 18.77 and 18.78. Chapter 18.77 establishes standards that apply to new oil and gas facilities developed within city limits. Chapter 18.78 develops standards for zoning restrictions on new development when that development is within close proximity to existing oil and gas facilities. Mr. George explained that in the purpose section on page 33, a definition was added that clarified, “Nothing in this chapter is intended to regulate the location of an

oil and gas facility, but only to regulate the use of land proposed to be developed for other uses and purposes.” Changes to the definitions section contain corrections in order to be consistent with the diagram that establishes the zoning overlay districts.

Mr. George stated that changes to item c in 18.78.020 addressed concerns about abandoned wells. Abandoned wells needed to be defined as a matter of law, requiring some sort of a legal document in order to establish that an existing well was truly abandoned and could never be reopened. The language was purposely made to be general because of the different types of wells and procedures for abandoning wells.

On page 35 of 18.77, changes were made to make clear that if someone is developing land adjacent to, or in close proximity to, an existing oil and gas facility, and the overlay zoning is applied, “These land uses shall be permitted if approved as a special review under this paragraph B, notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.”

Mr. George explained that changes to 18.78, on page 35, have been reworked to define two different kinds of variances. First, in paragraph A, was kept mainly the same as it was, and refers back to chapter 18.60 of the zoning code which outlines the zoning board of adjustment hearing process. One small change removes any reference to a variance that might be requested based on the existence of a vested right. In paragraph B, the language establishes that when there is a request for a variance based on a claim of vested right, it outlines a process that states such requests would go before City Council for approval.

Mr. Molloy asked about the abandoned well definition and shared his belief that it needed to be documented as abandoned. He questioned if a well has been capped and is not currently in use, but hasn't been documented as abandoned, can a property owner research city code to determine if the well can be listed as abandoned. Mr. George responded that there is no provision in the city code that deals with how an abandoned well is classified. He explained that the process is defined at the state level. He clarified that there will need to be a legal document that guarantees the city that the well will never be reopened.

Mr. Ray stated that having a legal document defining an abandoned well will be extremely important because if an owner of a well fills it with concrete or grout, and is abandoned without a legal document, the owner of the well can go back into the well and over drill it, regardless of its location. He expressed concern that a permit would only be required to reopen the well had it been properly documented as abandoned. Simply capping and not using a well does not legally document it as “abandoned”.

Mr. Middleton thanked Mr. George and Mr. Duval for their work on the oil and gas amendments. He questioned if the change on page 35 stating that if a quasi-judicial hearing should go before the City Council to consider a variance request with vested rights, would that do away with the special review requirement. He also asked if the provision would essentially leave the Planning Commission out of the

process. Mr. Duval explained that all future requests for variance's claiming vested rights would go before the City Council in place of the Planning Commission. He stated the reason for the decision was based on the fact that variance requests of vested rights are very technical, legal requests which involve potential monetary risks to the city. He felt the City Council was the best entity to determine if the city should take such risks.

Mr. Krenning referred to pages 35 and 36 and asked if the last sentence which stated, "The City Council's decision may be appealed to the district court for Larimer County under rule 106(a)(4)" and said that although the rules of procedure do not change often, he questioned if it would be better to simply say, "may be appealed to the Larimer County district court under the applicable rules of civil procedure". Mr. Duval responded that the same verbiage is similar in all of the city code in so many different places, and felt it was appropriate to be specific. He explained that if the rule of procedure did change, it would be changed in all of the code.

Ms. Dowding asked for a correction on page 36, under definitions, item c, after the Development Services Director, and stated that another comma is required in the sentence.

Mr. Crescibene questioned the definitions of a setback which states "setbacks shall be measured from a wall or a corner", and asked if it should include the phrase, "whichever is closest". Mr. George replied that on page 23 of the ordinance the table states, "setbacks to be measured to the following nearest feature of sensitive area". Mr. Crescibene thanked him for the clarification.

Mr. Meyers asked Ms. Kreutzer, Planning Commission Secretary, to note for the record that Commissioner Prior asked to be excused from the remainder of the meeting during the break to attend a work matter. He was given permission to leave for the evening.

Chair Meyers opened the public hearing. Given there were no comments, the public hearing was closed.

Mr. Ray commented that several weeks ago there was a flood in the City of Loveland. He continued that oil and gas wells are currently allowed in the floodway. He questioned why oil and gas development was permitted in the floodway when no other development is allowed anywhere in a floodway. Mr. George explained that if an applicant gets a permit from the state and then goes through the city's baseline standards, then oil and gas development is allowed in the flood plain. He further explained that if the city prohibited oil and gas development in the baseline standards, they would have been preempted by the state. Mr. Ray re-iterated that nothing, besides oil and gas drilling, is allowed to be developed in the flood plain within city limits and feels that the decision to allow it to continue is disappointing. He went on to say that the city has had very little opportunity to try and regulate oil and gas development because of the oil and gas commission laws and legislation, and stated he feels that is inappropriate. Mr. Ray acknowledged that city staff has worked very hard to bring as much opportunity to the city as possible, and voiced his appreciation for that effort.

Mr. Middleton made a motion to move to recommend that City Council adopt the proposed amendments to Chapters 18.77 and 18.78 of the Loveland Municipal Code. Upon a 2nd from Ms. Dowding the motion was approved 8-0, with Mr. Prior being absent from the vote.

18.60 ZONING BOARD OF ADJUSTMENT***Sections:**

- 18.60.010 Board of adjustment established.**
- 18.60.020 Powers and duties.**
- 18.60.030 General Variance Review Criteria.**
- 18.60.040 Sign Variance Review Criteria.**
- 18.60.050 Applications.**
- 18.60.060 Procedure.**
- 18.60.070 Notice.**

*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.

18.60.010 Board of adjustment established.

The planning commission shall serve as the board of adjustment for the city.

18.60.020 Powers and duties.

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- A. Standards for lot area, lot dimensions, and setback requirements;
- B. Square footage of accessory structures;
- C. Percentage of open space; and
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny the application.

18.60.030 General Variance Review Criteria

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;
- B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;

- C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;
- D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;
- E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;
- F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and
- G. The variance would not waive or modify the requirements of any use approved by special review.

18.60.040 Sign Variance Review Criteria

- A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.
 - 1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;
 - 2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and
 - 3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.
- B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

18.60.050 Applications.

Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, shall make an application on forms provided by the current planning division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, any required filing fee as established by resolution of the city council.

18.60.060 Procedure.

The board of adjustment may designate one or more hearing officers from within the board to conduct public hearings on matters coming before the board. The designated hearing officer shall have the discretion to forward any matter onto the full board of adjustment for the initial public hearing.

Within ten (10) days after the conclusion of any hearing conducted by the hearing officer, the hearing officer shall submit proposed findings and order to the board, to the applicant, and to all parties participating in the hearing, which findings and order shall constitute the hearing officer's final decision. The hearing officer's final decision may be appealed to the full board of adjustment by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B, within ten (10) days of the decision of the hearing officer. If an appeal is filed, the hearing officer shall forward to the board of adjustment the record of the hearing. The board shall consider any such appeal on the first available date for which proper notice can be provided pursuant to Chapter 18.05. The appeal shall be conducted as a de novo hearing as defined in Chapter 18.80, and shall follow the procedures set forth in Section 18.80.090. Whether as a result of an initial public hearing by the board or an appeal of the hearing officer's final decision, the board shall submit its findings and order to the applicant and all parties participating in the hearing within thirty (30) days following the conclusion of the hearing. The findings and order of the board representing the board's final decision, may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B within ten (10) days of the mailing of the findings and order. City council shall consider any such appeal at a public hearing noticed in accordance with Section 18.80.050.C. and conducted in accordance with Section 18.80.090. Unless otherwise stated in the findings and order, or in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the current planning manager shall consider the following criteria:

- A. Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. Has the ownership of any adjacent property changed?
- E. Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

18.60.070 Notice.

Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05. (Ord. 5581 § 34, 2011)

City Council Meeting

December 3, 2013

Amendments to:

- **Chapter 18.77 – Regulations on Oil and Gas Development**
- **Chapter 18.78 - Overlay Zoning Districts for Development from Existing Oil and Gas facilities**

Section 18.77.025.Z. – Rules of Construction – page 4 of 38

Z. “High occupancy building” shall mean any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more.

- Definition was in Section 18.77.065.A.5. Moved to definitions section for consistency.

Section 18.77.025.FF. – Rules of Construction – page 7 of 38

~~FFEE~~. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas, which shall include, without limitation, any and all storage, separation, treating, dehydration, artificial lift, compression, pumping, metering, monitoring, aboveground flowlines, and other equipment directly associated with oil wells, gas wells, or injection wells. However, “oil and gas facility” shall not include aboveground or underground power supply, underground flow lines, or underground water lines.

- Setbacks for new development from an existing oil and gas facility (see Section 18.78.050) are measured from the closest edge of an existing oil and gas facility as defined in this Section 18.77.025.FF. The purpose for the setbacks for new development from existing oil and gas facilities is to keep new development a safe distance from the improvements and equipment of such a facility that pose a hazard to public health and safety. Aboveground and underground power lines, underground flow lines and underground waterlines associated with oil and gas facilities do not pose a greater hazard to public health and safety than when these same facilities are associated with other types of development.

Section 18.77.025.II. – Rules of Construction – page 7 of 38

~~IIHH.~~ “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate and is capable of being reasonably occupied by 50 or more natural persons at any one time. ~~but shall not include the backyards of residential buildings.~~

- Added language to establish general size of outdoor activity area to distinguish from a typical residential back yard

Section 18.77.025.II. – Rules of Construction – page 8 of 38

~~PP.~~ “Setback” ~~shall mean the distance on the surface estate between the following, as applicable: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.~~

- Expanded and moved definition of “setback” to Section 18.77.065.A.

Section 18.77.040. – Conceptual Review – page 9 of 38

Within ~~ten (10)~~fifteen (15) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have ~~three (3) months~~ninety (90) days thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within ~~three (3) months~~ninety (90) days thereafter.

- Increasing the time period after a CRT meeting from 10 days to 15 days in which the Current Planning Division must provide a CRT applicant with the Development Review Team's written comments. Given the complexity and multi-jurisdictional nature of oil and gas applications, the additional time is necessary to allow City staff to meet to review all comments from the Development Review Team (DRT) for consistency, clarity and accuracy, development comprehensive recommendations and coordinate, as necessary, with the Colorado Oil and Gas Conservation Commission (COGCC).
- Clarifying that the time period after the CRT meeting in which the applicant must file an application to obtain a permit to operate an oil and gas facility is 90 days, not 3 months.
- Clarifying that, when the DRT written comments are not provided to the CRT applicant in a timely manner, the additional time period to submit an application for permit is 90 days, not 3 months.

Section 18.77.050.G. – Administrative Review Process – page 13 of 38

G. *Director's Decision.* Within fifteen (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The director's written decision shall be mailed to the applicant and to all persons required in paragraph D. of this section to be mailed written notice of the neighborhood meeting. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

- Requires written notice of the director's decision on a permit approved through the administrative review process to be mailed to the applicant and to all persons required to receive written notice of the neighborhood meeting.

Section 18.77.050.H. – Administrative Review Process – page 14 of 38

H. *Appeal of Director's Decision.* The director's final decision may only be appealed to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, ~~or by anyone required in paragraph D. of this section to be mailed written notice of the neighborhood meeting, and by any other person or persons considered~~ a "party in interest," ~~as defined in under~~ section 18.80.020, ~~to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.~~

- Expanding the right to appeal the Director's decision on a permit issued through the administrative review process to anyone required to receive a notice of the neighborhood meeting and to any other person considered a "party of interest, which includes persons required to receive written notice of the Director's decision, two or more Planning Commission members or two or more City council members.

Section 18.77.065. – Enhanced Standards for Administrative Review – page 23 of 38

- A. Setbacks. All oil and gas facilities shall comply with the setback distances set forth in Table A below or such greater distances as may be required by the commission. Setback distances shall be measured from the closest edge of any equipment included in the definition of oil and gas facility in section 18.77.025.FF to the nearest part of the nearest feature associated with the sensitive area as described in Column C in Table A. For the purpose of measuring the setback from any sensitive area that does not have a defined property or boundary line, the director shall establish the boundary line for measurement purposes.
- Includes definition moved from Section 18.77.025.PP., plus provisions describing how setbacks are measured.

Section 18.77.065. Table A – Setbacks for oil and gas facilities – page 23 of 38

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
<u>Sensitive Area</u>	<u>Setback Distance (ft.)</u>	<u>Setback to be measured to the following nearest feature of sensitive area:</u>
<u>Building</u>	<u>500</u>	<u>Wall or corner of the building</u>
<u>Public road, major above-ground utility facility, or railroad tracks</u>	<u>200</u>	<u>Right-of-way or easement property line</u>
<u>Property on which the oil and gas facility is located</u>	<u>200</u>	<u>Property line</u>
<u>Lease area on which the oil and gas facility is located</u>	<u>200</u>	<u>Property line</u>
<u>Natural area or wetland</u>	<u>500</u>	<u>Property line</u>
<u>Property managed by the City's Parks and Recreation Department, any City park, or property subject to a conservation easement managed by a public or non-profit entity</u>	<u>500</u>	<u>Property line of property or easement</u>
<u>Surface water body</u>	<u>500</u>	<u>Operating high-water line</u>
<u>FEMA floodway zoning district</u>	<u>500</u>	<u>Boundary line as shown by the Flood Insurance Rate Map (FIRM) revised to reflect a Letter of Map Revision effective May 24, 2010, published by the FEMA</u>
<u>Domestic or commercial water well</u>	<u>500</u>	<u>Center of wellhead</u>
<u>Outdoor assembly area</u>	<u>1,000</u>	<u>Property line</u>
<u>High occupancy building</u>	<u>1,000</u>	<u>Wall or corner of the building</u>

- Table A replaces the narrative description of setbacks, but no changes to setbacks have been made.

Section 18.77.065. Table A – Setbacks for oil and gas facilities – page 24 of 38

Once the setbacks for a well permitted under the administrative review process have been approved and established, the director shall submit to the commission a site plan showing the exact location of those setbacks for the permitted well.

- Requires the Director to notify the Colorado Oil and Gas Conservation Commission (COGCC) of the setbacks approved for permits issued under the administrative review process so that the COGCC permit can be modified to be consistent with the setbacks voluntarily agreed to by the applicant.
- ~~A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building;~~
- ~~1. Except as required under subparagraph 5, below, all oil and gas facilities shall be located at least five hundred (500) feet from any building, or such greater distance as may be required by the commission.~~
 - ~~2. All oil and gas facilities shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.~~
 - ~~3. All oil and gas facilities shall be located at least five hundred (500) feet from: (i) the boundary of any natural area or wetland; (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body; (iv) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity, or such greater distance as required by the commission.~~
 - ~~4. All oil and gas facilities shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.~~
 - ~~5. All oil and gas facilities shall be located at least one thousand (1,000) from any building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or more, or such greater distance as required by the commission.~~
- Narrative language replaced by Table A.

Section 18.77.082. Expiration of Permits – page 29 of 38

An oil and gas permit issued under this chapter shall expire and be null and void if drilling operations on the permitted well are not commenced within two (2) years after the date the permit is issued, unless before the expiration date the applicant requests and the director approves an extension of such permit not to exceed one (1) year. To approve any such extension the Director must find that the commission permit is still valid and that the oil and gas operations approved under the city's permit are in substantial compliance with the regulations set forth in this chapter.

- Establishes an expiration date for permits issued by the City, but allows the Director to grant up to 1 year extension if the COGCC permit is still valid and the permit still complies with the regulations in Chapter 18.77.

Section 18.77.125.D. Violation, Suspension and Revocation of Permits, Civil Actions and Penalties – page 33 of 38

D. Penalties. A violation of any enforceable provision of this chapter shall constitute a misdemeanor offense punishable ~~as provided in code section 1.12.010.A by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment.~~ A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

- Clarifies that violations of provision of Chapter 18.77 are punishable in accordance with the general provisions in Chapter 1.12 for all violations of the Municipal Code.

Chapter 18.78 Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities – pages 34 -37 of 38 (all new)

18.78.010 Purpose.

The purpose of this chapter is to establish zoning overlay districts in the vicinity of existing oil and gas facilities in order to allow certain land uses within these zoning overlay districts that are compatible with the industrial nature of oil and gas facilities, but yet are protective of the public's health, safety and welfare. Nothing in this chapter is intended to regulate the location of an oil and gas facility, but only to regulate the use of land proposed to be developed for other uses and purposes.

18.78.020 Definitions.

The following words, terms and phases shall have the meanings set forth below, unless the context requires otherwise:

A. "Critical zone" shall mean all land and water surface area less than two hundred (200) feet from an oil and gas facility, as measured in accordance with section 18.78.050.

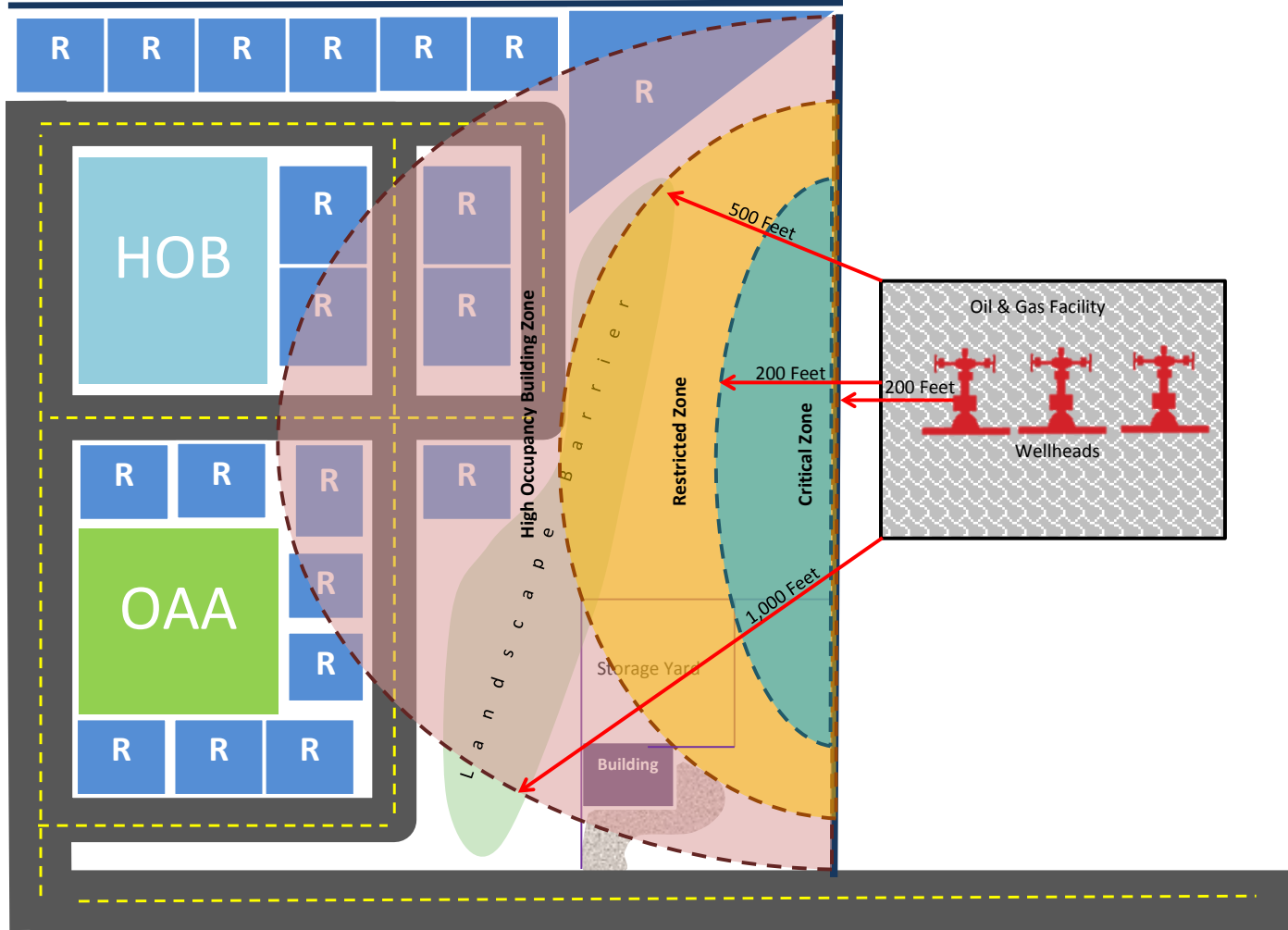
B. "High occupancy building zone" shall mean all land and water surface area **five hundred (500) feet or greater but** one thousand (1,000) feet or less from an oil and gas facility, as measured in accordance with Section 18.78.050.

C. "Oil and gas facility" shall have the meaning given to this term in section 18.77.025.FF and shall include, without limitation, operating, shut-in and abandoned wells. However, it shall not include an abandoned well that has been demonstrated, to the satisfaction of the Development Services Director, will not, as a matter of law, be reopened or reentered **in the future for any type of oil and gas operation** without the city's prior written consent.

D. "Restricted zone" shall mean all land and water surface area **two hundred (200) feet or greater but less than** five hundred (500) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

- Technical correction to make descriptions consistent with illustration on next slide

Overlay zoning districts for new development



18.78.030 Establishment of zoning overlay districts.

There are hereby created and established in the city as zoning overlay districts the critical zone, the restricted zone, and the high occupancy building zone.

18.78.040 Applicability.

Notwithstanding the land uses allowed by the underlying zoning districts established in this title for any land located in the critical zone, restricted zone, or high occupancy building zone, development of such land shall be subject to and shall comply with the applicable zoning restrictions set forth in this chapter.

18.78.050 Zoning overlay district boundaries.

The boundaries of the zoning overlay districts established in section 18.78.030 shall be measured from the closest edge of any oil and gas facility.

18.78.060 Land use restrictions within zoning overlay districts.

Critical Zone – within 200 feet from an existing oil and gas facility

A. In the critical zone land uses shall be limited to any of the following:

1. Essential underground public utility facilities; and
2. Undeveloped and restricted open space designed and operated to discourage access and use by natural persons, but this shall not include “recreational open space” as defined in chapter 18.04 and any of the uses allowed in the public park zoning district under chapter 18.32, unless it is an open lands/natural area that is undeveloped and designed and operated to discourage access and use by natural persons.

- Remains as a no build zone with uses limited to restricted open space not intended for access or use by people.

Restricted Zone – Within 500 feet to 200 feet from an existing oil and gas facility

B. In the restricted zone land uses shall be limited to any of the following, provided no outdoor assembly area (as defined in section 18.77.025.II), building, or parking lot is located within the restricted zone and the use is approved in accordance with the provisions in chapter 18.40 for uses permitted by special review.

- | | |
|--|--|
| <ol style="list-style-type: none"> <u>1. Airports and heliports;</u> <u>2. Attended recycling collection facility;</u> <u>3. Commercial mineral deposit;</u> <u>4. Composting facility;</u> <u>5. Contractor's storage yard</u> <u>6. Essential public utility uses, facilities,</u> <u>7. Heavy industrial uses;</u> <u>8. Landfill area;</u> <u>9. Landscaping;</u> <u>10. Personal wireless service facilities;</u> <u>11. Plant nursery</u> <u>12. Public service facility</u> <u>13. Recyclable materials processing</u> | <ol style="list-style-type: none"> <u>14. Resource extraction, process and sales;</u> <u>15. Self-service storage facility;</u> <u>16. Street;</u> <u>17. Truck terminal;</u> <u>18. Unattended recycling collection facility;</u> <u>19. Vehicle rentals of heavy equipment,</u>
<u>large trucks and trailers;</u> <u>20. Vehicle rentals of cars, light trucks and</u>
<u>light equipment;</u> <u>21. Vehicle sales and leasing of cars and</u>
<u>light trucks; and</u> <u>22. Vehicle sales and leasing of farm</u>
<u>equipment, mobile homes, recreational</u>
<u>vehicles, large trucks and boats with</u>
<u>outdoor storage.</u> |
|--|--|

- Intent to allow certain heavy and light industrial uses approved through the special review process to ensure compatibility with adjacent existing oil and gas facility, with special limitation that no building, parking, or outdoor assembly area is closer than 500 feet from the existing oil and gas facility. COGCC rules don't allow new oil and gas facilities within 500 feet of a building.

Restricted Zone – Within 500 feet to 200 feet from an existing oil and gas facility

These land uses shall be permitted if approved as a special review under this paragraph B, notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.

- After conducting a neighborhood meeting, if the Current Planning Manager determines that the proposed land use is compatible with the adjacent oil and gas facility and other uses in the vicinity and that approving such a use will not create a threat to public health and general welfare, the use can be administrative approved. The Current Planning Manger’s decision can be appealed to the Planning Commission and to City Council.

High Occupancy Building Zone – Within 1,000 feet to 500 feet from an existing oil and gas facility

C. In the high occupancy building zone all land uses authorized for the affected land by the land’s underlying zoning district as provided in this title shall be allowed subject to the requirements of that zoning district, except that high occupancy buildings and outdoor assembly areas shall not be allowed within this zoning overlay district.

- Only “high occupancy buildings” and “outdoor assembly areas” are disallowed to minimize risk to large numbers of people. Consistent with COGCC rules for oil and gas facility setbacks from existing high occupancy buildings and outdoor assembly areas.

Chapter 18.78.070 Variances – pages 37 of 38

18.78.0780 Variances.

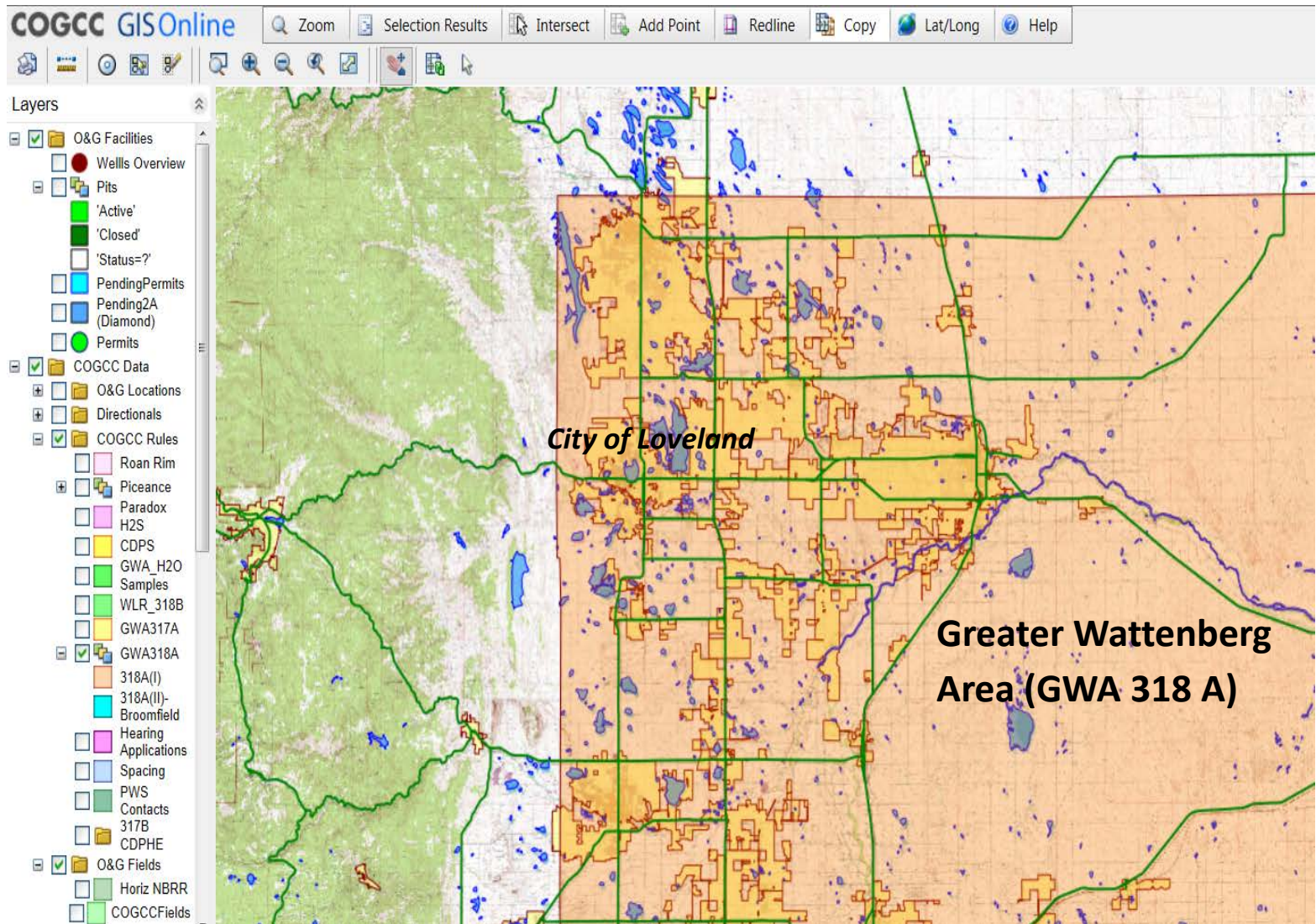
Standard variance requests process in same manner as other requests for variances to zoning regulations

A. An owner of any real property subject to the requirements and limitations of this chapter may request a variance from those requirements and limitations using the variance procedures set out in chapter 18.60. The grounds for such variance shall be those set out in chapter 18.60 to the extent applicable. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property.


Variance request based on claim of vested rights made directly to City Council with 30-60 day requirement for hearing to be held.

B. An owner may also request a variance from any of the requirements of this chapter on the basis of the existence of a vested right under chapter 18.72 or Colorado law or on the grounds that application of chapter 18.78 would constitute a regulatory taking under Article II, Section 3 of the Colorado Constitution. A variance request under this paragraph shall be made to the city council by filing with the city's current planning division a written variance request stating all the facts and law the owner is relying on for the variance. A quasi-judicial hearing before the city council to consider the variance request shall be scheduled and held not less than thirty (30) days but not more than sixty (60) days after filing of the owner's written variance request. Notice of the hearing shall be provided in accordance with all applicable requirements of chapter 18.05. At the conclusion of the hearing, the city council may grant, grant with conditions, or deny the variance request. In so doing, the city council shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property. The city council's decision may be appealed to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by any person receiving mailed notice of the hearing, or by any other person considered a "party in interest" under section 18.80.020.

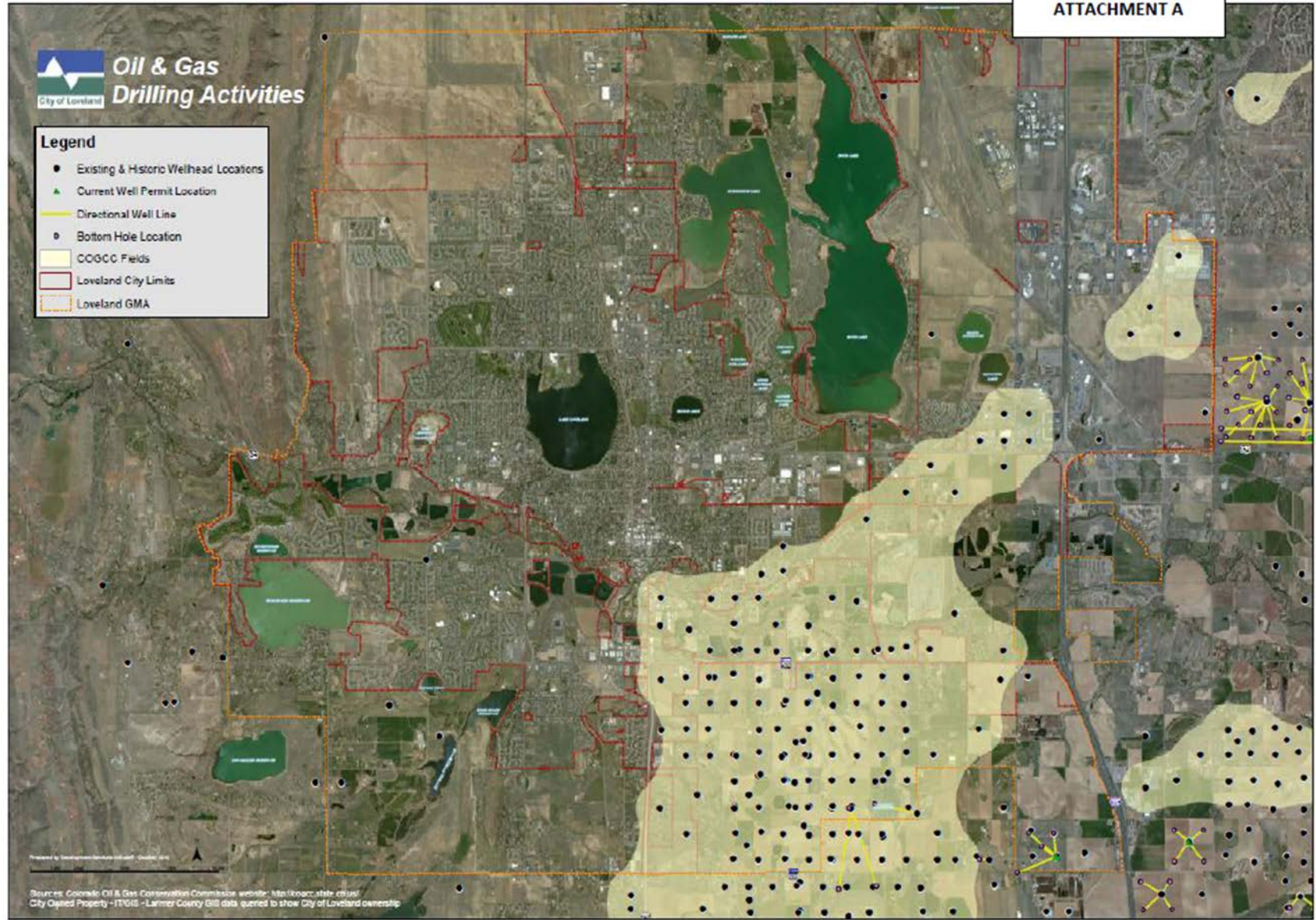
Greater Wattenberg Area



ATTACHMENT A

 **Oil & Gas Drilling Activities**

- Legend**
- Existing & Historic Wellhead Locations
 - ▲ Current Well Permit Location
 - Directional Well Line
 - Bottom Hole Location
 - COGCC Fields
 - ▭ Loveland City Limits
 - ▭ Loveland GMA

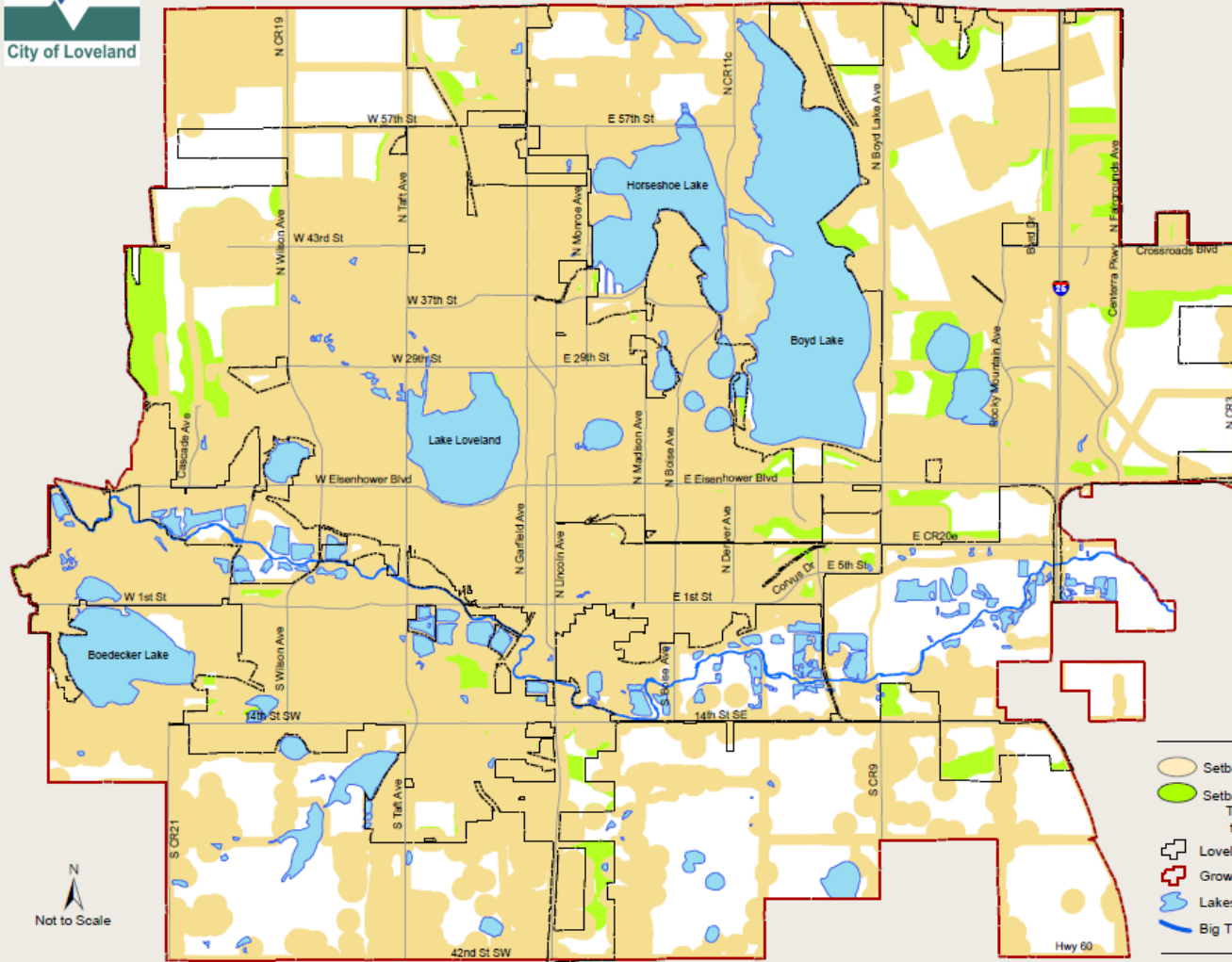


Prepared by www.lovelandcolorado.gov - 11/2014

Sources: Colorado Oil & Gas Conservation Commission website; MapInfo; aerial photo; City Owned Property -ITIGIS -Larimer County GIS data queried to show City of Loveland ownership



Setback Areas as defined by New COGC Regulations and Proposed Loveland Enhanced Standards



This map represents general application of the Colorado Oil and Gas Conservation (COGC) newly adopted regulations under Section 603, effective August 1, 2013. In addition, this map shows general application of the proposed City of Loveland Enhanced Standards for setbacks. These setbacks apply to new wellheads or facilities.

This map is based on the best available information/GIS data and is considered a generalized analysis of both the COGC and City regulations and does not account for possible variation of how the setback rules are applied. Actual wellhead/facilities locations will be evaluated on a detailed site-specific analysis. This map is subject to change.

Please note: The new COGC regulations are applied to areas within the Loveland Growth Management Area (GMA). The proposed City Enhanced Standards are applied only within the city limits shown in the black dashed line.

Legend

- Setback Areas as defined by New COGC Regulations
- Setback Areas as defined by Proposed City Enhanced Standards
This map layer only shows where the standards are greater than the COG regulations within City Limits
- Loveland City Limits
- Growth Management Area (GMA)
- Lakes and Ponds
- Big Thompson River

Not to Scale

Date Saved: 2/19/2013
Prepared by City of Loveland, Development Services Department



CITY OF LOVELAND
CITY ATTORNEY'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 12
MEETING DATE: 12/3/2013
TO: City Council
FROM: John Duval, City Attorney
PRESENTER: John Duval

TITLE:

An Ordinance on First Reading of the City Council of the City of Loveland Amending the Loveland Municipal Code to Eliminate Conflicts Between the Code and Amendment 64 Relating to the Regulation of the Personal Possession and Use of Marijuana and Marijuana Accessories

RECOMMENDED CITY COUNCIL ACTION:

Conduct the public hearing and adopt 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

SUMMARY:

This is a legislative action to adopt an ordinance on first reading that would eliminate conflicts and discrepancies that exist now between Amendment 64 and City Code Chapters 7.40 and 9.41 relating to the regulation of the personal possession and use of marijuana and marijuana accessories.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

Under certain circumstances, Amendment 64 legalizes under Colorado law the personal cultivation, use and possession of marijuana and marijuana products by persons twenty-one (21) years of age or older and the sale of marijuana accessories to and the possession of marijuana accessories by persons twenty-one (21) years of age or older.

City Code Section 9.41.020.A. currently makes it unlawful for any person, regardless of age, to possess two (2) ounces or less of marijuana.

Amendment 64 now makes it legal under Colorado law for persons twenty-one (21) years of age or older to: (A) possess, use, display, purchase and transport one (1) ounce or less of marijuana; (B) possess, grow, process and transport no more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants; and (C) possess the marijuana produced from those plants on the premises where grown so long as the growing takes place in an enclosed, locked space, and not conducted openly or publicly and not made available for sale.

Code Section 9.41.030.A. makes it unlawful for any person, regardless of age, to sell or offer to sell marijuana accessories. Code Section 9.41.030.B. makes it unlawful for any person, regardless of age, to possess marijuana accessories.

Amendment 64 now makes it legal, statewide, for marijuana accessories to be sold and offered for sale to persons twenty-one (21) years of age or older and for those persons to possess marijuana accessories.


However, Amendment 64 does not in any way legalize the personal cultivation, possession, or use of marijuana by persons under twenty-one (21) years of age or legalize the sale of marijuana accessories to such underage persons or make it lawful for them to possess marijuana accessories. Amendment 64 also does not make it lawful for any person, regardless of age, to consume marijuana openly and publicly or in a manner that endangers others. The proposed Ordinance would continue to make all of these activities unlawful in Loveland. A new Code Section 9.41.025 has also been added to prohibit open containers of marijuana in motor vehicles, similar to the current law prohibiting open containers of alcohol in motor vehicles. The state has also recently enacted a statute prohibiting open containers of marijuana in motor vehicles.

With respect to the Ordinance prohibiting marijuana from being “openly and publicly” consumed, staff will be asking Council for direction as to how broadly this prohibition should be applied. Attached is a PowerPoint presentation that raises and provides background for this question for Council’s consideration and for any direction to staff for changes to the Ordinance between first and second reading concerning this prohibition.

In addition to creating conflicts with Code Chapter 9.41, Amendment 64’s provisions affect City Code Chapter 7.40, the Code provisions regulating tobacco smoking in public places, thereby requiring that Chapter 7.40 be amended to clarify that the tobacco smoking prohibitions in Chapter 7.40 similarly apply to the smoking of marijuana.

This Ordinance is therefore necessary to resolve these conflicts and discrepancies between Amendment 64 and Code Chapters 7.40 and 9.41.

REVIEWED BY CITY MANAGER:

 , Acting CM

LIST OF ATTACHMENTS:

1. Ordinance
2. Ordinance redlined
3. PowerPoint Presentation concerning the prohibition against "openly and publicly" consuming marijuana

FIRST READING: December 3, 2013

SECOND READING: _____

ORDINANCE # _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND AMENDING THE LOVELAND MUNICIPAL CODE TO ELIMINATE CONFLICTS BETWEEN THE CODE AND AMENDMENT 64 RELATING TO THE REGULATION OF THE PERSONAL POSSESSION AND USE OF MARIJUANA AND MARIJUANA ACCESSORIES.

WHEREAS, on November 6, 2012, Colorado voters approved adoption of “Amendment 64” to add Article XVIII, Section 16 to the Colorado Constitution (“Amendment 64”); and

WHEREAS, under certain circumstances, Amendment 64 legalizes under Colorado law the personal cultivation, use and possession of marijuana and marijuana products by persons twenty-one (21) years of age or older and the sale of marijuana accessories to and the possession of marijuana accessories by persons twenty-one (21) years of age or older; and

WHEREAS, City Code Section 9.41.020.A. currently makes it unlawful for any person, regardless of age, to possess two (2) ounces or less of marijuana; and

WHEREAS, Amendment 64 now makes it legal under Colorado law for persons twenty-one (21) years of age or older to: (A) possess, use, display, purchase and transport one (1) ounce or less of marijuana; (B) possess, grow, process and transport no more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants; and (C) possess the marijuana produced from those plants on the premises where grown so long as the growing takes place in an enclosed, locked space, and not conducted openly or publicly and not made available for sale; and

WHEREAS, Code Section 9.41.030.A. makes it unlawful for any person, regardless of age, to sell or offer to sell marijuana accessories; and

WHEREAS, Code Section 9.41.030.B. makes it unlawful for any person, regardless of age, to possess marijuana accessories; and

WHEREAS, Amendment 64 now makes it legal, statewide, for marijuana accessories to be sold and offered for sale to persons twenty-one (21) years of age or older and for those persons to possess marijuana accessories; and

WHEREAS, Amendment 64 does not in any way legalize the personal cultivation, possession, or use of marijuana by persons under twenty-one (21) years of age, legalize the sale of marijuana accessories to such underage persons, or make it lawful for them to possess

marijuana accessories and it does not make it lawful for any person, regardless of age, to consume marijuana openly and publicly or in a manner that endangers others and this Ordinance is intended to continue to make all of these activities unlawful in Loveland; and

WHEREAS, this Ordinance also adds a new Section 9.41.025 to Code Chapter 9.41 to prohibit open containers of marijuana in motor vehicles similar to the current law prohibiting open containers of alcohol in motor vehicles; and

WHEREAS, in addition to creating conflicts with Code Chapter 9.41, Amendment 64's provisions affect City Code Chapter 7.40, the Code provisions regulating tobacco smoking in public places, thereby requiring that Chapter 7.40 be amended to clarify that the tobacco smoking prohibitions in Chapter 7.40 also apply to the smoking of marijuana; and

WHEREAS, this Ordinance is therefore necessary to resolve these conflicts and discrepancies between Amendment 64 and Code Chapters 7.40 and 9.41; and

WHEREAS, the City Council hereby finds that this Ordinance is necessary for the protection of the public's health, safety and welfare.

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

Section 1. That the recitals of this Ordinance are hereby adopted by the City Council as findings and the Council further finds, determines and declares that this Ordinance is enacted under the City's constitutional home rule and general police powers and is intended to be interpreted consistent and in accordance with the requirements and limitations of Amendment 64.

Section 2. That Code Section 7.40.020 is hereby amended to read in full as follows:

7.40.020 Definitions.

As used in this chapter, the following words and terms shall be defined as follows, unless the context requires otherwise:

- A. "Airport smoking concession" means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.
- B. "Auditorium" means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.
- C. "Bar" means any indoor area that is operated and licensed under article 47 of title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.
- D. "Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005,

generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar” and shall not thereafter be included in the definition regardless of sales figures.

- E. 1. “Employees” means any person who:
 - a. performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
 - b. provides uncompensated work or services to a business or nonprofit entity.
- 2. “Employee” includes every person described in paragraph (1) of this subsection E, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.
- F. “Employer” means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. “Employer” includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.
- G. “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under Section 7.40.040. “Entryway” also includes the area of public or private property within a fifteen (15) foot radius outside of the doorway.
- H. “Environmental tobacco smoke,” “ETS,” or “secondhand smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as “sidestream smoke,” and smoke exhaled by the smoker.
- I. “Food service establishment” means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.
- J. “Indoor area” means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.
- K. “Marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.
- L. “Person” means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.
- M. “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.
- N. “Public building” means any building owned or operated by:

1. the state, including the legislative, executive, and judicial branches of state government;
 2. any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or
 3. any other separate corporate instrumentality or unit of state or local government.
- O. "Public meeting" means any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of this state.
- P. "Smoke-free work area" means an indoor area in a place of employment where smoking is prohibited under this chapter.
- Q. "Smoking" means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco including, without limitation, marijuana.
- R. "Tobacco" means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. "Tobacco" also includes cloves, marijuana, and any other plant matter or product that is packaged for smoking.
- S. "Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.
- T. "Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

Section 3. That Code Section 7.40.040 is hereby amended to read in full as follows:

7.40.040 Exceptions to Smoking Restrictions.

- A. Except as is provided in section 7.40.045, this chapter shall not apply to:
1. Private homes, private residences, and private automobiles; except that this chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
 2. Limousines under private hire;
 3. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;
 4. Any retail tobacco business;
 5. A cigar-tobacco bar;
 6. An airport smoking concession;
 7. The outdoor area of any business;
 8. A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;
 9. A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-

- 102, that has annual gross income of less than five hundred dollars; or
 10. The retail floor plan, as defined in C.R.S. § 12-47.1-509, or a licensed casino.

Section 4. That a new Code Section 7.40.045 is hereby added to Code Chapter 7.40 to read in full as follows:

7.40.045 Marijuana Smoking Restrictions

A. In addition to the smoking restrictions of section 7.40.030 and notwithstanding the exceptions to smoking restrictions provided in section 7.40.040, it shall be unlawful for any person to openly and publicly smoke marijuana within any enclosed area.

B. As used in this section, the following words and terms shall have the following meanings:

1. "Enclosed area" shall mean a permanent or semi-permanent area covered and surrounded on all sides and the temporary opening of windows or the temporary removal of wall or ceiling panels shall not convert that area into an unenclosed area or space.
2. "Openly" shall mean occurring or existing in a manner that is unconcealed, undisguised, or obvious.
3. "Publicly" shall mean occurring or existing in a public place or occurring or existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.
4. "Public place" shall mean a place to which the public or a substantial number of the public have access and shall include, without limitation: public sidewalks, trails, streets and highways; public transportation facilities and vehicles; schools; places of amusement; parks, playgrounds and other outdoor recreational areas; and the common areas of public and private buildings and facilities.

Section 5. That paragraph C. of Code Section 7.40.060 is hereby amended to read in full as follows:

C. Any person violating any provision of this chapter, except section 7.40.045, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

Section 6. That a new paragraph D. is hereby added to Code Section 7.40.060 to read in full as follows:

D. Any person violating section 7.40.045 shall be guilty of a misdemeanor offense and subject to the penalties authorized in code section 1.12.010. Each day of a continuing violation shall be deemed a separate violation.

Section 7. That Code Section 9.41.010 is hereby amended to read in full as follows:

9.41.010 Definitions. As used in this chapter, the following definitions shall apply:

- A. “Amendment 20” means Article XVIII, Section 14 of the Colorado Constitution added to the Constitution by a statewide voter initiative adopted on November 7, 2000, as amended.
- B. “Amendment 64” means Article XVIII, Section 16 of the Colorado Constitution added to the Colorado Constitution by a statewide voter initiative adopted on November 6, 2012, as amended.
- C. “Controlled substance” shall have the same meaning as set forth in C.R.S. §18-18-102(5), as amended.
- D. “Debilitating medical condition” shall have the same meaning as set forth in Section (1)(a) of Amendment 20.
- E. “Item” or “item of drug paraphernalia” means all equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing to the human body a controlled substance in violation of Colorado or federal law, but shall not include marijuana accessories that are possessed or used by persons twenty-one (21) years of age or older.
- F. “Marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin and shall include, without limitation, concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
- G. “Marijuana accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing into the human body.
- H. “Medical use” shall have the same meaning as set forth in Section (1)(b) of Amendment 20.
- I. “Motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways but does not include a vehicle operated exclusively on a rail or rails.
- J. “Open marijuana container” means a receptacle or marijuana accessory that contains any amount of marijuana and that is open or has a broken seal, the contents of which are partially removed, or there is evidence that marijuana has been consumed within the motor vehicle.
- K. “Openly” means occurring or existing in a manner that is unconcealed, undisguised, or obvious.
- L. “Passenger area” means the area designed to seat the driver and passengers, including

seating behind the driver, while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position including, but not limited to, the glove compartment.

- M. "Patient" shall have the same meaning as set forth in Section (1)(d) of Amendment 20.
- N. "Physician" shall have the same meaning as set forth in Section (1)(e) of Amendment 20.
- O. "Primary care-giver" shall have the same meaning as set forth in Section (1)(f) of Amendment 20.
- P. "Publicly" means occurring or existing in a public place or occurring or existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.
- Q. "Public place" means a place to which the public or a substantial number of the public have access and shall include, without limitation: public sidewalks, trails, streets and highways; public transportation facilities and vehicles; schools; places of amusement; parks, playgrounds and other outdoor recreational areas; and the common areas of public and private buildings and facilities.
- R. "Registry identification card" shall have the same meaning as set forth in Section (1)(g) of Amendment 20.

Section 8. That Code Section 9.41.020 is hereby amended to read in full as follows:

9.41.020 Marijuana Possession Unlawful.

- A. It is unlawful for any person to possess more than one (1) ounce but no more than two (2) ounces of marijuana, except as authorized in Amendment 64.
- B. It is unlawful for any person under twenty-one (21) years of age to possess, consume, display, purchase, transfer or use two (2) ounces or less of marijuana.
- C. It is unlawful for any person to transfer or provide any amount of marijuana to any person under twenty-one (21) years of age.
- D. It is unlawful for any person to openly and publicly consume or use any amount of marijuana.
- E. It is unlawful for any person to openly and publicly display more than one (1) ounce of marijuana.
- F. It is unlawful for any person to consume any amount of marijuana in a manner that endangers the health, safety or welfare of another person.
- G. It is unlawful for any person to consume, use, display, or grow marijuana on or in any city-owned or city-controlled real property, building, facility or vehicle.
- H. For enforcement purposes, consumption or use of marijuana shall be deemed possession thereof.
- I. Transferring or dispensing two (2) ounces or less of marijuana from one person to another for no consideration shall be deemed possession and not dispensing or sale thereof.
- J. The provisions of this section shall not apply to any person who possesses, uses, prescribes, dispenses or administers any drug classified under Group C guidelines of the National Cancer Institute, as amended, approved by the Federal Food and Drug Administration.
- K. The provisions of this section shall not apply to any person who possesses, uses,

prescribes, dispenses or administers dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product, pursuant to the “Colorado Licensing of Controlled Substances Act,” Part 3 of Article 22 of Title 12, C.R.S.

Section 9. That a new Code Section 9.41.025 is hereby added to Code Chapter 9.41 to read in full as follows:

9.41.025 Open Container of Marijuana Prohibited in Motor Vehicles.

- A. Except as permitted in paragraph B. of this section, it is unlawful for any person while in the passenger area of a motor vehicle that is on a public highway, street, road or any other public right-of-way to knowingly use or consume marijuana or have in his or her possession an open marijuana container.
- B. The provisions of paragraph A. of this section shall not apply to:
 1. Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;
 2. The possession by a passenger, other than the driver or a front seat passenger, of an open marijuana container in the living quarters of a “motor home” or “trailer coach,” as these terms are defined in the city’s Model Traffic Code as adopted in section 10.04.010 and as modified in section 10.04.020;
 3. The possession of an open marijuana container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or
 4. The possession of an open marijuana container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

Section 10. That paragraph A. of Code Section 9.41.030 is hereby amended to read in full as follows:

9.41.030 Sale or Possession of Drug Paraphernalia Unlawful.

- A. It is unlawful for any person to knowingly sell, offer for sale, or transfer any item of drug paraphernalia to any other person and shall include, without limitation, the sale, offer for sale or transfer of any marijuana accessory to a person under the age of twenty-one (21).

Section 11. That as provided in City Charter Section 4-9(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 this Ordinance shall be published in full or the amendment shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication, as provided in City Charter Section 4-8(b).


Dated this ____ day of December, 2013.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

FIRST READING: December 3, 2013

SECOND READING: _____

ORDINANCE # _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND AMENDING THE LOVELAND MUNICIPAL CODE TO ELIMINATE CONFLICTS BETWEEN THE CODE AND AMENDMENT 64 RELATING TO THE REGULATION OF THE PERSONAL POSSESSION AND USE OF MARIJUANA AND MARIJUANA ACCESSORIES.

WHEREAS, on November 6, 2012, Colorado voters approved adoption of “Amendment 64” to add Article XVIII, Section 16 to the Colorado Constitution (“Amendment 64”); and

WHEREAS, under certain circumstances, Amendment 64 legalizes under Colorado law the personal cultivation, use and possession of marijuana and marijuana products by persons twenty-one (21) years of age or older and the sale of marijuana accessories to and the possession of marijuana accessories by persons twenty-one (21) years of age or older; and

WHEREAS, City Code Section 9.41.020.A. currently makes it unlawful for any person, regardless of age, to possess two (2) ounces or less of marijuana; and

WHEREAS, Amendment 64 now makes it legal under Colorado law for persons twenty-one (21) years of age or older to: (A) possess, use, display, purchase and transport one (1) ounce or less of marijuana; (B) possess, grow, process and transport no more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants; and (C) possess the marijuana produced from those plants on the premises where grown so long as the growing takes place in an enclosed, locked space, and not conducted openly or publicly and not made available for sale; and

WHEREAS, Code Section 9.41.030.A. makes it unlawful for any person, regardless of age, to sell or offer to sell marijuana accessories; and

WHEREAS, Code Section 9.41.030.B. makes it unlawful for any person, regardless of age, to possess marijuana accessories; and

WHEREAS, Amendment 64 now makes it legal, statewide, for marijuana accessories to be sold and offered for sale to persons twenty-one (21) years of age or older and for those persons to possess marijuana accessories; and

WHEREAS, Amendment 64 does not in any way legalize the personal cultivation, possession, or use of marijuana by persons under twenty-one (21) years of age, legalize the sale of marijuana accessories to such underage persons, or make it lawful for them to possess

marijuana accessories and it does not make it lawful for any person, regardless of age, to consume marijuana openly and publicly or in a manner that endangers others and this Ordinance is intended to continue to make all of these activities unlawful in Loveland; and

WHEREAS, this Ordinance also adds a new Section 9.41.025 to Code Chapter 9.41 to prohibit open containers of marijuana in motor vehicles similar to the current law prohibiting open containers of alcohol in motor vehicles; and

WHEREAS, in addition to creating conflicts with Code Chapter 9.41, Amendment 64's provisions affect City Code Chapter 7.40, the Code provisions regulating tobacco smoking in public places, thereby requiring that Chapter 7.40 be amended to clarify that the tobacco smoking prohibitions in Chapter 7.40 also apply to the smoking of marijuana; and

WHEREAS, this Ordinance is therefore necessary to resolve these conflicts and discrepancies between Amendment 64 and Code Chapters 7.40 and 9.41; and

WHEREAS, the City Council hereby finds that this Ordinance is necessary for the protection of the public's health, safety and welfare.

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

Section 1. That the recitals of this Ordinance are hereby adopted by the City Council as findings and the Council further finds, determines and declares that this Ordinance is enacted under the City's constitutional home rule and general police powers and is intended to be interpreted consistent and in accordance with the requirements and limitations of Amendment 64.

Section 2. That Code Section 7.40.020 is hereby amended to read in full as follows:

7.40.020 Definitions.

As used in this chapter, the following words and terms shall be defined as follows, unless the context requires otherwise:

- A. "Airport smoking concession" means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.
- B. "Auditorium" means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.
- C. "Bar" means any indoor area that is operated and licensed under article 47 of title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.
- D. "Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005,

generated at least five percent or more if its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar” and shall not thereafter be included in the definition regardless of sales figures.

- E. 1. “Employees” means any person who:
- a. performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
 - b. provides uncompensated work or services to a business or nonprofit entity.
2. “Employee” includes every person described in paragraph (1) of this subsection E, regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.
- F. “Employer” means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. “Employer” includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.
- G. “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from this chapter under Section 7.40.040. “Entryway” also includes the area of public or private property within a fifteen (15) foot radius outside of the doorway.
- H. “Environmental tobacco smoke,” “ETS,” or “secondhand smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as “sidestream smoke,” and smoke exhaled by the smoker.
- I. “Food service establishment” means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.
- J. “Indoor area” means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.
- K. “Marijuana” means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.
- ~~L~~L. “Person” means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.
- ~~M~~M. “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.
- ~~N~~N. “Public building” means any building owned or operated by:

1. the state, including the legislative, executive, and judicial branches of state government;
2. any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or
3. any other separate corporate instrumentality or unit of state or local government.

NO. “Public meeting” means any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of this state.

OP. “Smoke-free work area” means an indoor area in a place of employment where smoking is prohibited under this chapter.

PQ. “Smoking” means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco including, without limitation, marijuana.

QR. “Tobacco” means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. “Tobacco” also includes cloves, marijuana, and any other plant matter or product that is packaged for smoking.

RS. “Tobacco business” means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

ST. “Work area” means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

Section 3. That Code Section 7.40.040 is hereby amended to read in full as follows:

7.40.040 Exceptions to Smoking Restrictions.

A. Except as is provided in section 7.40.045, ~~T~~his chapter shall not apply to:

1. Private homes, private residences, and private automobiles; except that this chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
2. Limousines under private hire;
3. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;
4. Any retail tobacco business;
5. A cigar-tobacco bar;
6. An airport smoking concession;
7. The outdoor area of any business;
8. A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;
9. A private, nonresidential building on a farm or ranch, as defined in C.R.S. § 39-1-

102, that has annual gross income of less than five hundred dollars; or
10. The retail floor plan, as defined in C.R.S. § 12-47.1-509, or a licensed casino.

Section 4. That a new Code Section 7.40.045 is hereby added to Code Chapter 7.40 to read in full as follows:

7.40.045 Marijuana Smoking Restrictions

A. In addition to the smoking restrictions of section 7.40.030 and notwithstanding the exceptions to smoking restrictions provided in section 7.40.040, it shall be unlawful for any person to openly and publicly smoke marijuana within any enclosed area.

B. As used in this section, the following words and terms shall have the following meanings:

1. "Enclosed area" shall mean a permanent or semi-permanent area covered and surrounded on all sides and the temporary opening of windows or the temporary removal of wall or ceiling panels shall not convert that area into an unenclosed area or space.
2. "Openly" shall mean occurring or existing in a manner that is unconcealed, undisguised, or obvious.
3. "Publicly" shall mean occurring or existing in a public place or occurring or existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.
4. "Public place" shall mean a place to which the public or a substantial number of the public have access and shall include, without limitation: public sidewalks, trails, streets and highways; public transportation facilities and vehicles; schools; places of amusement; parks, playgrounds and other outdoor recreational areas; and the common areas of public and private buildings and facilities.

Section 5. That paragraph C. of Code Section 7.40.060 is hereby amended to read in full as follows:

C. Any person violating any provision of this chapter, except section 7.40.045, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

Section 6. That a new paragraph D. is hereby added to Code Section 7.40.060 to read in full as follows:

D. Any person violating -section 7.40.045 shall be guilty of a misdemeanor offense and subject to the penalties authorized in code section 1.12.010. Each day of a continuing violation shall be deemed a separate violation.

Section 7. That Code Section 9.41.010 is hereby amended to read in full as follows:

9.41.010 Definitions. As used in this Chapter, the following definitions shall apply:

- A. “Amendment 20” ~~shall mean~~ Article XVIII, Section 14 of the Colorado Constitution added to the Constitution by a state-wide voter initiative adopted on November 7, 2000,
as amended.
- B. “Amendment 64” means Article XVIII, Section 16 of the Colorado Constitution added to the Colorado Constitution by a statewide voter initiative adopted on November 6, 2012, as amended.
- ~~BC.~~ “Controlled substance” shall have the same meaning as set forth in C.R.S. §18-18-102(5), as amended.
- ~~CD.~~ “Debilitating medical condition” shall have the same meaning as set forth in Section (1)(a) of Amendment 20.
- ~~DE.~~ “Item” or “item of drug paraphernalia” means all equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing to the human body a controlled substance in violation of ~~the Colorado or federal laws of this state of the United States,~~ but shall not include marijuana accessories that are possessed or used by persons twenty-one (21) years of age or older.
- ~~EF.~~ “Marijuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin and shall include, without limitation, concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures. shall have the same meaning as set forth in C.R.S. § 18-18-102(18), as amended.
- G. “Marijuana accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing into the human body.
- ~~FH.~~ “Medical use” shall have the same meaning as set forth in Section (1)(b) of Amendment 20.
- I. “Motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways but does not include a vehicle operated exclusively on a rail or rails.
- J. “Open marijuana container” means a receptacle or marijuana accessory that contains any amount of marijuana and that is open or has a broken seal, the contents of which are partially removed, or there is evidence that marijuana has been consumed within the motor vehicle.
- K. “Openly” means occurring or existing in a manner that is unconcealed, undisguised, or obvious.

- L. “Passenger area” means the area designed to seat the driver and passengers, including seating behind the driver, while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position including, but not limited to, the glove compartment.
- GM. “Patient” shall have the same meaning as set forth in Section (1)(d) of Amendment 20.
- HN. “Physician” shall have the same meaning as set forth in Section (1)(e) of Amendment 20.
- IO. “Primary care-giver” shall have the same meaning as set forth in Section (1)(f) of Amendment 20.
- P. “Publicly” means occurring or existing in a public place or occurring or existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.
- JQ. “Public place” means a place to which the public or a substantial number of the public have access and shall include, without limitation: public sidewalks, trails, streets and highways; public transportation facilities and vehicles; schools; places of amusement; parks, playgrounds and other outdoor recreational areas; and the common areas of public and private buildings and facilities.
- R. “Registry identification card” shall have the same meaning as set forth in Section (1)(g) of Amendment 20.

Section 8. That Code Section 9.41.020 is hereby amended to read in full as follows:

9.41.020 Marijuana Possession Unlawful.

- A. It is unlawful for any person to possess more than one (1) ounce but no more than two (2) ounces ~~or less~~ of marijuana, except as authorized in Amendment 64.
- B. It is unlawful for any person under twenty-one (21) years of age to possess, consume, display, purchase, transfer or use two (2) ounces or less of marijuana.
- C. It is unlawful for any person to transfer or provide any amount of marijuana to any person under twenty-one (21) years of age.
- BD. It is unlawful for any person to openly and publicly ~~display,~~ consume or use ~~two (2) ounces or less of any amount of~~ marijuana.
- CE. It is unlawful for any person to openly and publicly display more than one (1) ounce of marijuana.
- F. It is unlawful for any person to consume any amount of marijuana in a manner that endangers the health, safety or welfare of another person.
- G. It is unlawful for any person to consume, use, display, or grow marijuana on or in any city-owned or city-controlled real property, building, facility or vehicle.
- H. For enforcement purposes, consumption or use of marijuana shall be deemed possession thereof.
- ID. Transferring or dispensing two (2) ounces or less of marijuana from one person to another for no consideration shall be deemed possession and not dispensing or sale thereof.
- JE. The provisions of this ~~S~~section shall not apply to any person who possesses, uses, prescribes, dispenses or administers any drug classified under Group C guidelines of the

National Cancer Institute, as amended, approved by the Federal Food and Drug Administration.

~~KF.~~ The provisions of this ~~S~~section shall not apply to any person who possesses, uses, prescribes, dispenses or administers dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product, pursuant to the “Colorado Licensing of Controlled Substances Act,” Part 3 of Article 22 of Title 12, C.R.S.

Section 9. That a new Code Section 9.41.025 is hereby added to Code Chapter 9.41 to read in full as follows:

9.41.025 Open Container of Marijuana Prohibited in Motor Vehicles.

A. Except as permitted in paragraph B. of this section, it is unlawful for any person while in the passenger area of a motor vehicle that is on a public highway, street, road or any other public right-of-way to knowingly use or consume marijuana or have in his or her possession an open marijuana container.

B. The provisions of paragraph A. of this section shall not apply to:

1. Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;
2. The possession by a passenger, other than the driver or a front seat passenger, of an open marijuana container in the living quarters of a “motor home” or “trailer coach,” as these terms are defined in the city’s Model Traffic Code as adopted in section 10.04.010 and as modified in section 10.04.020;
3. The possession of an open marijuana container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or
4. The possession of an open marijuana container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

Section 10. That paragraph A. of Code Section 9.41.030 is hereby amended to read in full as follows:

9.41.030 Sale or Possession of Drug Paraphernalia Unlawful.

A. It is unlawful for any person to knowingly sell, ~~or~~ offer for sale, or transfer any item of drug paraphernalia to any other person and shall include, without limitation, the sale, offer for sale or transfer of any marijuana accessory to a person under the age of twenty-one (21).

Section 110. That as provided in City Charter Section 4-9(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 this Ordinance shall be published in full or

the amendment shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication, as provided in City Charter Section 4-8(b).

Dated this _____ day of December, 2013.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“OPENLY AND PUBLICLY”
CONSUMING MARIJUANA IN
A “PUBLIC PLACE”:

WHAT DOES CITY COUNCIL
WANT THIS TO MEAN?

Amendment 64 – Article XVIII, Section 16(3)(d) of the Colorado Constitution

- ▶ “...nothing in this section shall permit consumption [of marijuana] that is conducted openly and publicly....”
- ▶ The words “openly” and “publicly” are not defined in Amendment 64 or by State statute.

Proposed City Code Section 9.41.020.D.

- ▶ “It is unlawful for any person to *openly and publicly* consume or use any amount of marijuana.”
- ▶ “Openly” is defined to mean occurring or existing in a manner that is unconcealed, undisguised, or obvious.
- ▶ “Publicly” is defined to mean occurring or existing in a *public place* or occurring or *existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.*
- ▶ “Public place” is defined to mean a place to which the public or a substantial number of the public have access and shall include, without limitation: public *sidewalks*, trails, streets and highways; public transportation facilities and vehicles; schools; places of amusement; parks, playgrounds and other outdoor recreational areas; and the common areas of public and private buildings and facilities.
- ▶ These same definitions are used in the proposed Code Section 7.40.045 which prohibits openly and publicly smoking marijuana in an enclosed area, similar to the City’s current prohibitions related to smoking tobacco.

Denver Ordinance

- ▶ City's definitions for *openly*, *publicly* and *public place* are based on those in an ordinance Denver is considering adopting.
- ▶ Denver's ordinance also includes consideration of an exception if the "consumption of marijuana is occurring on private residential property and the person consuming the marijuana is: (1) an owner of the property; (2) a person who has a leasehold interest in the property; or (3) any person who has been granted express or implied permission to consume marijuana on the property by the owner or lessee of the property.

Enforcement of Section 9.41.020.D.

- ▶ City's Ordinance as proposed does not have this exception.
- ▶ Therefore, a person smoking marijuana on his or her front porch who can be seen from a public sidewalk would be in violation of the City's Ordinance.
- ▶ If this exception is included in the City's Ordinance, in most cases this would not be a violation of the Ordinance.
- ▶ Does City Council want a similar exception in the City's Ordinance?

Questions, Discussion and Direction



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: 13
MEETING DATE: 12/3/2013
TO: City Council
FROM: Steve Adams, Water & Power Department
PRESENTER: Jim Lees

TITLE:

An Emergency Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Removal of the Idylwilde Dam, Sediment Material, Penstock and the Hydro Power House

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the Emergency Ordinance on first and only reading, which requires an affirmative vote of 2/3 of the entire Council (6 votes) under Charter Section 4-10.

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

SUMMARY:

This is an administrative action. This emergency ordinance appropriates \$6,000,000 from revenues and fund balance in the Power Fund. The ordinance is necessary to provide funding for the emergency removal of Idylwilde Dam, sediment material behind the dam, penstock and the hydro power house at Viestenz-Smith Park. These projects all came as a result of the Flood of 2013.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The appropriation is funded with reserves reducing the flexibility to fund other projects.

BACKGROUND:

The September 2013 Flood damaged the equipment in the power house, the pipeline, and the Idylwilde Dam, therefore rendering the facilities "non-operational". The Flood also caused an accumulation of sediment including silt, sand, cobbles and boulders to build up behind the dam structure. Preliminary site assessments of the dam led staff to believe that sections of the structure were unsafe and potentially unstable. On October 8, 2013, the City authorized Kiewit Construction (the contractor rebuilding Highway 34) to remove the sediment behind the dam and the dam itself, and to use both the sediment and the dam materials for reconstruction of Highway 34. An emergency declaration was signed by the City Manager on November 8, 2013, to finish the removal of the Idylwilde Dam and remove the penstock sections that ended up in the river, causing a health and public safety risk.

The contract by Kiewit Construction for dam and penstock removal amounts to \$1,300,000. A survey prior to the flood estimated the quantity of sediment at approximately 102,000 cubic yards. Discussions with CDOT and Kiewit Construction estimate that so far about 120,000 cubic yards have been removed for use on the Highway 34 reconstruction. As much as 250,000 additional cubic yards may have been deposited post-flood and will need to be removed. Material will be stockpiled on site where feasible and hauled off site when necessary. Sediment removal and hauling is estimated at \$2,500,000.

The penstock from the Idylwilde Dam to the Palisades area lies along the river and has been destroyed in multiple locations, totaling approximately 3,600 feet. In this area, the City has requested Kiewit Construction, under direction from the U.S. Forest Service, to now remove the partially buried and exposed penstock pipe sections at an estimated cost of \$800,000. The penstock is covered by an asbestos wrap which will require an additional expense for abatement and disposal not covered in the initial proposal.

The hydro power house located at Viestenz-Smith park filled with water and silt causing damage to the turbines, transformers and structure. The City is working with contractors to remove the power house structure due to the damage it sustained and the inability to use it without the components of the dam and penstock being operational. Removal of the power house is estimated at \$500,000.

Contingency is included in the budget to account for circumstances that may happen but cannot be predicted with certainty. These circumstances include environmental mitigation, asbestos abatement, disposal of the pipe and inclement weather hindering construction. The contingency is estimated at \$900,000.

The items mentioned above generate a total budget appropriation request of \$6,000,000.

This has been deemed an emergency due to the dynamic nature of these projects. Some components of this work are already underway and other contractual obligations may need to be undertaken prior to when a normal second reading process would be completed.

REVIEWED BY CITY MANAGER:

William D. Cabill

LIST OF ATTACHMENTS:

1. Emergency Ordinance

FIRST AND ONLY READING: December 3, 2013

EMERGENCY ORDINANCE NO. _____

AN EMERGENCY ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR REMOVAL OF THE IDYLWILDE DAM, SEDIMENT MATERIAL, PENSTOCK AND THE HYDRO POWER HOUSE

WHEREAS, on September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster” under C.R.S. § 24-33.5-709, which was extended by Resolution of the City Council on September 17, 2013 (the “Declaration”); and

WHEREAS, as stated in the Declaration, the City of Loveland, and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage to and destruction of private and public property (the “2013 Flood”); and

WHEREAS, the 2013 Flood caused extensive damage and destruction of the City’s Idylwilde Dam on the Big Thompson River and to related improvements including the associated Hydro Power House; and

WHEREAS, the City had the immediate opportunity and need to have the remains of Idylwilde Dam, sediment material, penstock and Hydro Power House removed by the road contractor rebuilding U.S. Highway 34; and

WHEREAS, the City has or reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; 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 2013, 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 \$6,000,000 from fund balance in the Power Enterprise Fund 330 are available for appropriation. Revenues in the total amount of \$6,000,000 are hereby appropriated for emergency removal of the Idylwilde dam, sediment material,

penstock and the hydro power house. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Power Enterprise Fund 330**

Revenues	
Fund Balance	6,000,000
Total Revenue	6,000,000
Appropriations	
330-46-319-2905-49399-FLD913 Other Capital	6,000,000
Total Appropriations	6,000,000

Section 2. That this Ordinance is adopted as an emergency ordinance pursuant to City Charter Section 4-10 on the basis that there is an immediate need to fund the cost of removing the remains of the Idylwilde Dam, sediment material, penstock and Hydro Power House by the road contractor rebuilding U.S. Highway 34 as a part of the 2013 Flood. Accordingly, the City Council hereby finds and determines that an emergency exists requiring the immediate passage of this Ordinance for the preservation of the public health, safety and welfare of the citizens of the City of Loveland. Therefore, as provided in City Charter Section 4-10(b), this Ordinance shall take effect upon the date of its adoption and the City Clerk shall publish this Ordinance in full after its adoption.

ADOPTED this 3rd day of December, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney



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: 14
MEETING DATE: 12/3/2013
TO: City Council
FROM: Brent Worthington, Finance
PRESENTER: Brent Worthington

TITLE:

October 2013 Financial Report

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No action is required.

SUMMARY:

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending October 30, 2013.

BUDGET IMPACT:

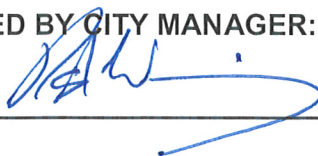
- Positive
 Negative
 Neutral or negligible

BACKGROUND:

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 and health claims as of October 30, 2013. Citywide Revenue (excluding internal transfers) of \$193,468,357 is 100.4% of year to date (YTD) budget or \$825,834 over the budget. Sales Tax collections are 103.6% of the YTD budget or \$1,055,171 over budget. Building Material Use Tax is 131.5% of YTD budget, or \$338,786 over budget. Sales and Use Tax collections combined were 106.0% of YTD budget or \$1,938,218 over budget. When the combined sales and use tax for the current year are compared to 2012 for the same period last year, they are higher by 7.2% or \$2,302,845.

Citywide total expenditures of \$179,103,404 (excluding internal transfers) are 78.4% of the YTD budget or \$49,228,584 under the budget.

REVIEWED BY CITY MANAGER:

, Acting CM

LIST OF ATTACHMENTS:

1. October Snapshot Presentation
2. Snapshot Report for October 2013



Snapshot

October 2013

Brent Worthington
Finance Director

Presented
December 3, 2013

October 2013 Snapshot

- Citywide Revenue
 - \$193.5 million, excluding transfers
 - 0.4% above budget projections

- Citywide Expenditures
 - \$179.1 million, excluding transfers
 - 21.6% below budget projections

- Citywide revenues exceed expenditures by \$14.4 million.

October 2013 Snapshot

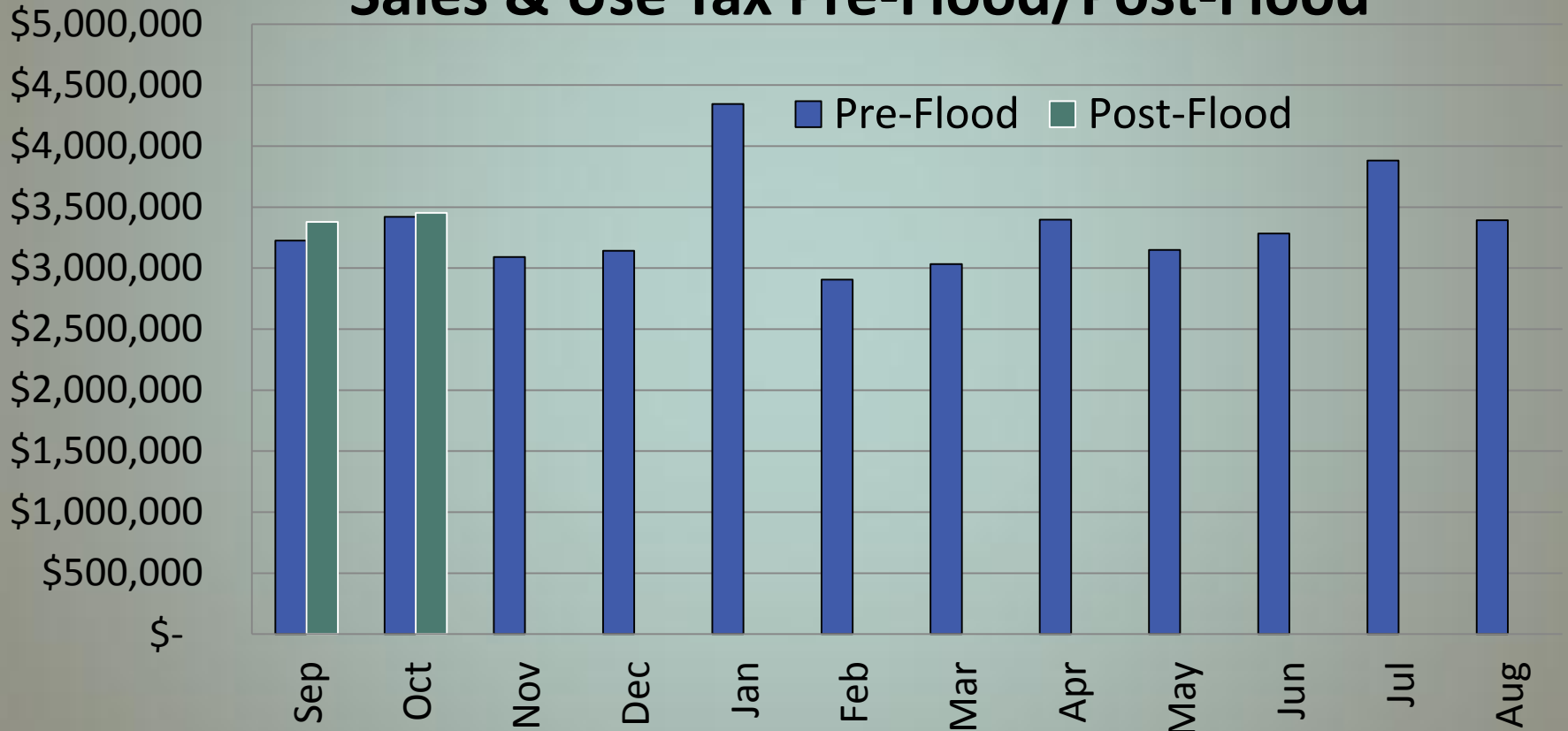
- General Fund Revenue
 - \$63.1 million YTD, excluding transfers
 - 6.3% above YTD Budget
 - 6.8% above same period last year

- Sales and Use Tax Revenue
 - \$34.2 million YTD
 - 6.0% above budget projections
 - 7.2% above same period as last year

- Sales Tax only
 - \$30.6 million YTD
 - 3.6% above budget projections
 - 7.0% above same period last year

October 2013 Snapshot

Sales & Use Tax Pre-Flood/Post-Flood



October 2013 Snapshot

- General Fund Expenditures
 - \$47.1 million YTD, excluding transfers
 - 9.4% below budget projections

- General Fund Revenues Exceed Expenditures by \$13.1 million

- Health Claims
 - October Claims \$708,283
 - 2013 YTD increased from \$5.5 mil to \$6.8 mil from same time as last year (24.0%)

October 2013 Snapshot

➤ October “All Other Areas” on Geo Map

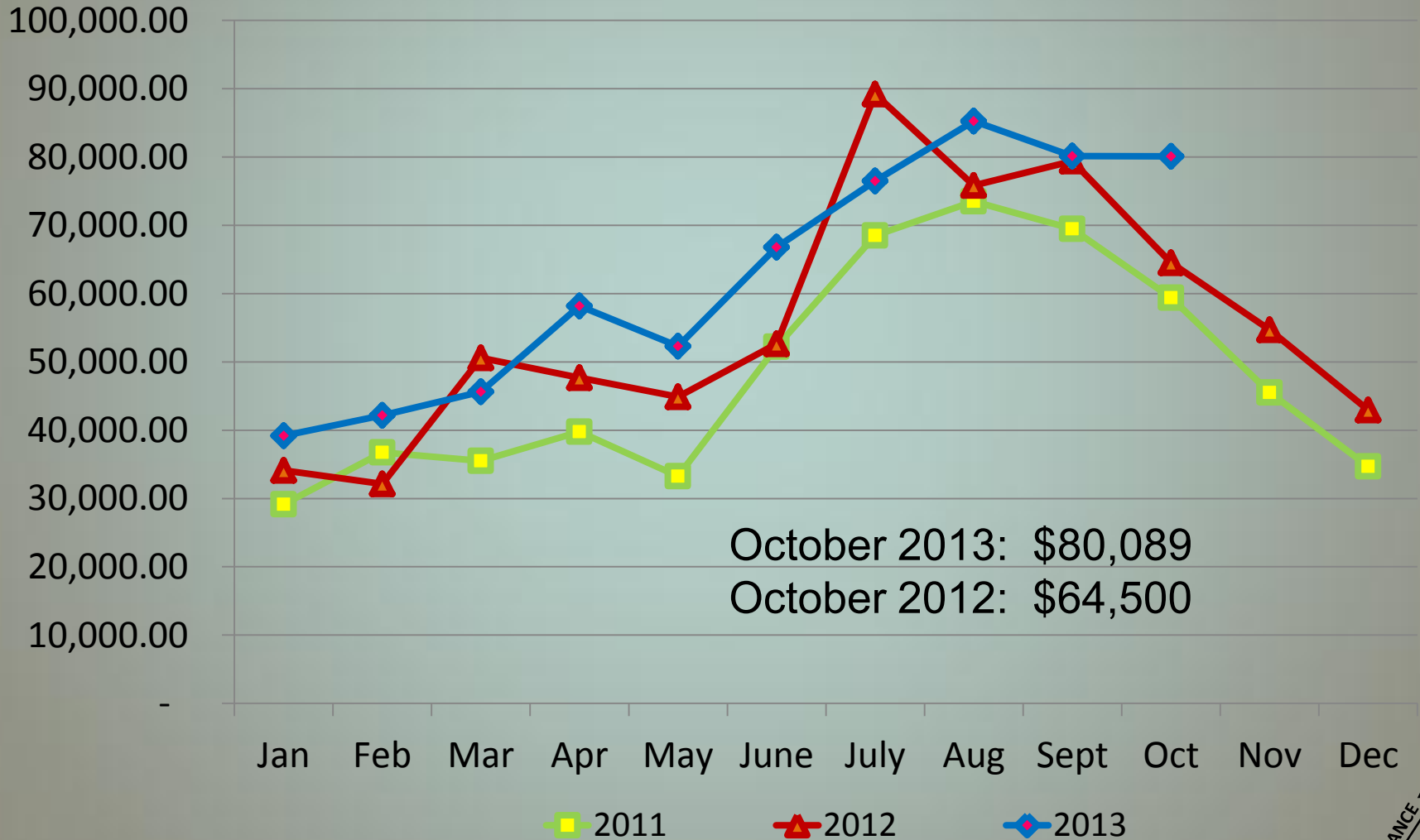
OCO Total	\$ 227,343.40	Out of Colorado
CNL Total	200,924.33	Colorado Not Loveland
OCL Total	10,665.95	Out of City limits
INT Total	7,895.39	Internet
INN Total	288.69	Innoprise Conversion
PEN Total	1,447.09	Pending (Application filed on-line for new account)
Grand Total	\$ 448,564.85	

➤ Other highlights

- Lodging tax YTD is \$626,169 (24.2% higher than 2012 YTD).

Lodging Tax Comparison

Lodging Tax



October 2013: \$80,089
October 2012: \$64,500

Flood Report

Cost Estimates		
Operational	\$2,780,000	
Business Assistance	1,200,000	
Capital	26,530,000	
Total	\$30,510,000	

Actual Expenditures		
	October	To Date
Total	\$2,124,418	\$2,269,899

Reimbursements Applied For		
	October	To Date
FEMA	\$503,062	\$503,062
CIRSA		
Other		
Total	\$503,062	\$503,062

Reimbursements Received		
	October	To Date
FEMA	\$ -	\$ -
CIRSA	-	-
Other	-	-
Total	\$ -	\$ -



October 2013 Snapshot



Questions?

Brent Worthington
Finance Director

Presented
December 3, 2013

Snapshot

Monthly Financial Report

October 2013

A Snapshot In Time

- ◇ Citywide Revenue, excluding transfers between funds, \$193.5 million (0.4% above budget projections)
- ◇ Sales & Use Tax Collection, \$34.2 million (6.0% above budget projections)
- ◇ Citywide Expenditures, excluding transfers between funds, \$179.1 million (21.6% below budget projections)
- ◇ Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$14.4 million
- ◇ General Fund Revenue, excluding transfers between funds, \$63.1 million (6.3% above budget projections)
- ◇ General Fund Expenditures, excluding transfers between funds, \$47.1 million, (9.4% below budget projections)
- ◇ General Fund Revenues exceed Expenditures by \$13.1 million

Citywide Revenues & Expenditures	2-3
General Fund Revenues & Expenditures	4-5
Capital Projects	5
Tax Totals & Comparison	6-9
Geo Codes & Sales Tax SIC	10-12
Health Care Claims	13
Activity Measures	14

The Sales / Use Tax Basics

October 2013	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2013	\$ 29,530,870	\$ 1,679,950	\$ 1,075,680	\$ 32,286,500
Actual 2013	30,586,042	2,224,211	1,414,465	34,224,718
% of Budget	103.6%	132.4%	131.5%	106.0%
Actual 2012	\$ 28,587,986	\$ 2,042,016	\$ 1,291,871	\$ 31,921,874
Change from prior year	7.0%	8.9%	9.5%	7.2%

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 ongoing processes designed to ensure that the City retains a healthy financial outlook

Although sales and use tax revenue is greater in 2013 than in 2007 year-to-date, inflation adjustment of the revenue shows that collections in 2013 have not significantly grown above 2007 levels when inflation is taken into account, emphasizing the importance of continuing the strategy implementation.



Citywide Revenues & Expenditures

Combined Statement of Revenues and Expenditures				
October 2013				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
General Governmental				
1	General Fund	5,246,580	63,058,491	59,315,996 106.3%
2	Special Revenue	1,041,713	6,699,793	8,517,874 78.7% ¹
3	Other Entities	1,135,924	22,600,633	25,854,847 87.4% ²
4	Internal Service	1,448,433	14,191,168	13,804,630 102.8%
5	<i>Subtotal General Govt Operations</i>	<i>8,872,650</i>	<i>106,550,084</i>	<i>107,493,348 99.1%</i>
6	Capital Projects	505,477	7,913,620	5,443,670 145.4%
Enterprise Fund				
7	Water & Power	5,909,330	67,088,619	67,344,640 99.6%
8	Stormwater	357,774	3,627,130	3,613,233 100.4%
9	Golf	138,149	3,213,340	3,478,130 92.4% ³
10	Solid Waste	545,768	5,075,563	5,269,502 96.3% ⁴
11	<i>Subtotal Enterprise</i>	<i>6,951,021</i>	<i>79,004,653</i>	<i>79,705,505 99.1%</i>
12	Total Revenue	16,329,148	193,468,357	192,642,523 100.4%
	<i>Prior Year External Revenue</i>		<i>168,724,281</i>	
	<i>Increase From Prior Year</i>		<i>14.7%</i>	
13	Internal Transfers	34,041	3,611,727	32,764,470 11.0%
14	Grand Total Revenues	16,363,189	197,080,084	225,406,993 87.4%
EXPENDITURES				
General Governmental				
15	General Fund	6,320,627	46,359,471	50,899,240 91.1%
16	Special Revenue	1,035,442	10,092,089	7,609,417 132.6%
17	Other Entities	1,210,407	20,187,708	21,305,995 94.8%
18	Internal Services	1,423,155	12,913,936	14,341,964 90.0%
19	<i>Subtotal General Gov't Operations</i>	<i>9,989,631</i>	<i>89,553,204</i>	<i>94,156,616 95.1%</i>
20	Capital	6,181,125	28,071,408	66,743,423 42.1%
Enterprise Fund				
21	Water & Power	4,904,602	52,937,706	58,797,210 90.0%
22	Stormwater	318,817	2,197,844	1,876,167 117.1% ⁵
23	Golf	337,702	2,406,441	2,549,135 94.4%
24	Solid Waste	513,503	3,936,801	4,209,438 93.5%
25	<i>Subtotal Enterprise</i>	<i>6,074,624</i>	<i>61,478,792</i>	<i>67,431,950 91.2%</i>
26	Total Expenditures	22,245,380	179,103,404	228,331,989 78.4%
	<i>Prior Year External Expenditures</i>		<i>162,979,848</i>	
	<i>Increase (-Decrease) From Prior Year</i>		<i>9.9%</i>	
27	Internal Transfers	44,281	3,621,967	32,764,470 11.1%
28	Grand Total Expenditures	22,289,661	182,725,371	261,096,459 70.0%

¹ Lower than anticipated Transportation intergovernmental revenue due to the timing of grant drawdowns, lower than anticipated State Revenue Sharing from HUTF and motor vehicle fees, and Transportation Utility Fees coming in lower than anticipated.

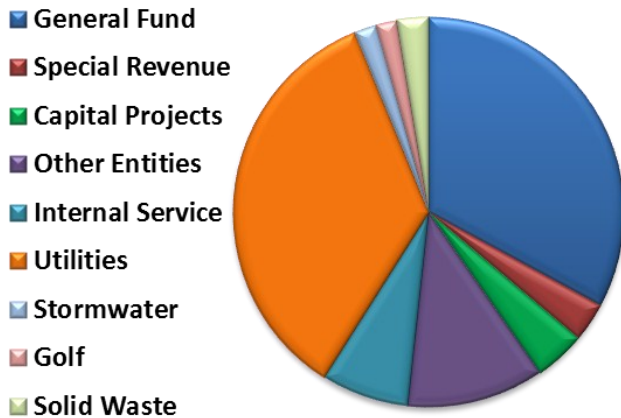
² Timing of the drawdown of Federal grants to the Airport related to capital projects.

³ Lower than anticipated revenue resulting from inclement weather and flooding.

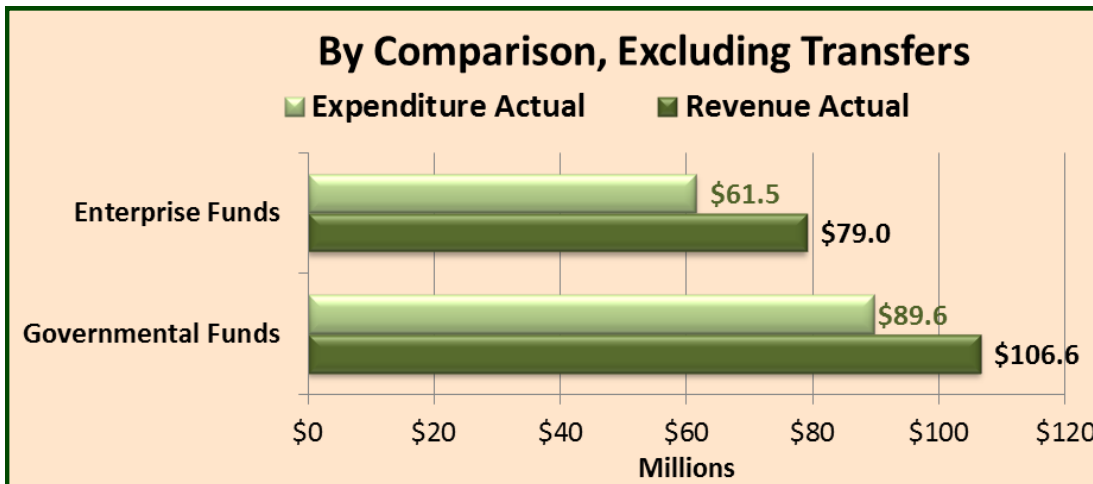
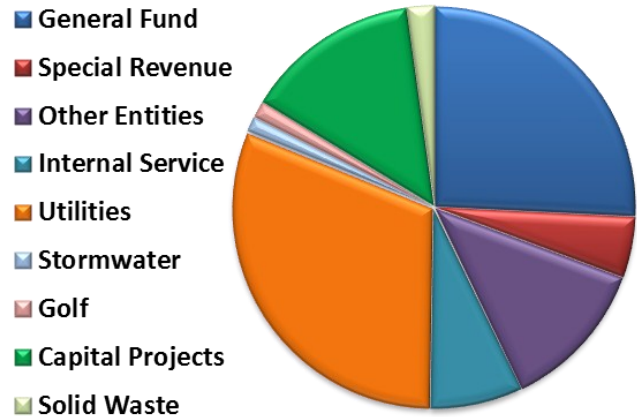
⁴ Repairs and Maintenance budgeted for as capital construction; offset by savings in capital accounts in line 20.

⁵ Budgeted Stormwater repair and maintenance work was able to begin sooner than originally planned.

YTD Operating Revenues of \$193.5 Million



YTD Operating Expenditures of \$179.1 Million



- ◆ General Fund Revenue, excluding transfers between funds, \$63.1 million (6.3% above budget projections)
 - * 6.8% above 2012 YTD
- ◆ General Fund Expenditures, excluding capital and transfers between funds, \$47.1 million (9.4% below budget projections)
 - * 3.9% below 2012 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$67.1 million (0.4% below budget projections)
 - * 5.4% above 2012 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$52.9 million (10.0% below budget projections)
 - * 14.5% above 2012 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$22.6 million (12.6% below budget projections)
 - * 7.1% above 2012 YTD
- ◆ Other Entities Expenditures, excluding capital and transfers between funds, \$20.2 million (5.2% below budget projections)
 - * 1.1% above 2012 YTD

General Fund Revenues & Expenditures

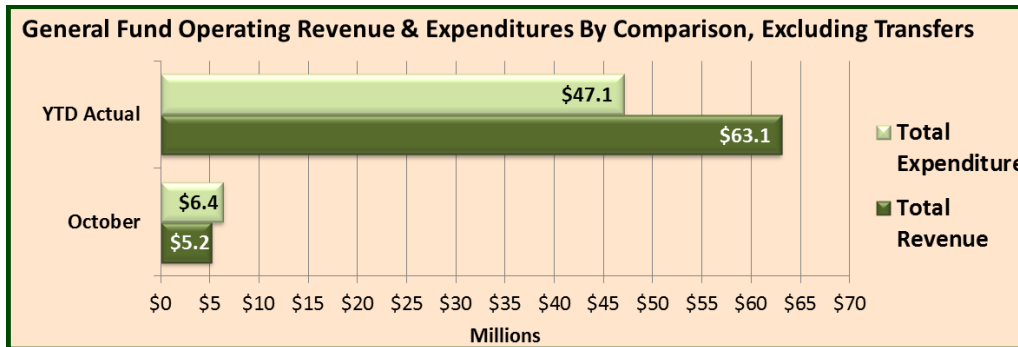
General Fund Revenue & Expenditures October 2013				
REVENUES	Current Month	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	33,097	7,414,563	7,224,260	102.6%
3 Sales tax	3,125,566	30,586,041	29,530,870	103.6%
4 Building use tax	102,584	1,414,466	1,075,680	131.5%
5 Auto use tax	223,902	2,224,211	1,679,950	132.4%
6 Other taxes	139,626	2,412,389	2,084,290	115.7%
7 Intergovernmental	71,024	485,562	345,160	140.7%
8 License & permits				
9 Building permits	66,595	1,313,147	1,102,090	119.2%
10 Other permits	(1,943)	150,654	190,684	79.0% ¹
11 Charges for services	912,360	10,104,601	9,640,044	104.8%
12 Fines & forfeitures	85,376	751,403	890,710	84.4% ²
13 Interest income	18,600	185,334	283,460	65.4% ³
14 Miscellaneous	469,794	6,016,120	5,268,798	114.2%
15 Subtotal	5,246,580	63,058,491	59,315,996	106.3%
16 Interfund transfers	6,570	115,670	115,670	100.0%
17 Total Revenue	\$ 5,253,150	\$ 63,174,161	\$ 59,431,666	106.3%
EXPENDITURES				
Operating Expenditures				
18 Legislative	11,031	94,437	116,580	81.0%
19 Executive & Legal	239,822	1,942,678	2,142,828	90.7%
20 Economic Development	388,618	1,244,585	2,102,100	59.2%
21 Cultural Services	152,136	1,351,277	1,474,022	91.7%
22 Development Services	337,264	2,334,928	2,789,108	83.7%
23 Finance	405,285	3,162,864	3,513,271	90.0%
24 Fire & Rescue	3,603	14,496	12,350	0.0%
25 Human Resources	107,380	769,986	854,960	90.1%
26 Information Technology	441,541	2,780,453	3,258,030	85.3%
27 Library	283,949	2,221,500	2,294,872	96.8%
28 Parks & Recreation	943,048	7,207,518	8,287,000	87.0%
29 Police	1,762,704	13,721,786	14,131,355	97.1%
30 Public Works	484,451	3,911,015	3,975,164	98.4%
31 Non-Departmental	817,786	6,295,571	6,964,630	90.4%
32 Subtotal Operating	6,378,618	47,053,095	51,916,270	90.6%
33 Internal Transfers	33,476	3,054,397	8,791,430	34.7%
34 Total Expenditures	\$ 6,412,094	\$ 50,107,492	\$ 60,707,700	82.5%

¹ Lower than projected revenue from special events.

² Lower than projected revenue from traffic fines, parking fines, and fines for municipal ordinance violations.

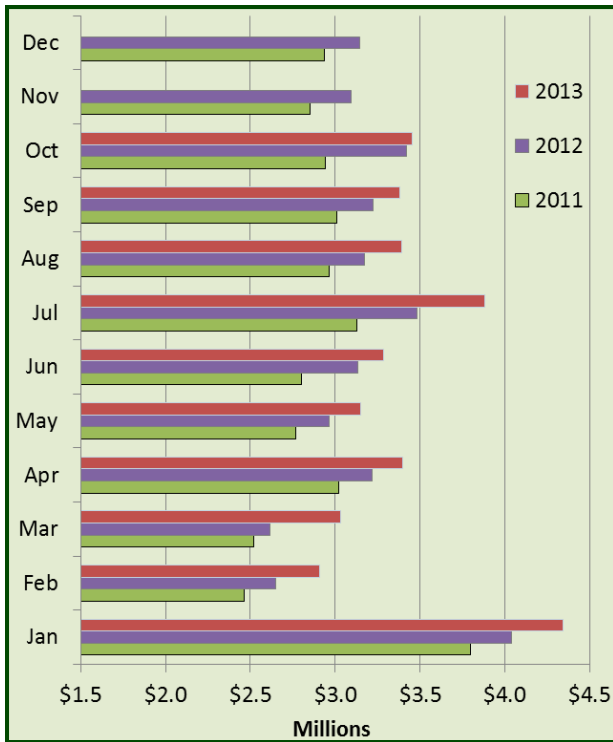
³ Lower than projected revenue from interest income due to lower than projected rates.

Monthly Financial Report



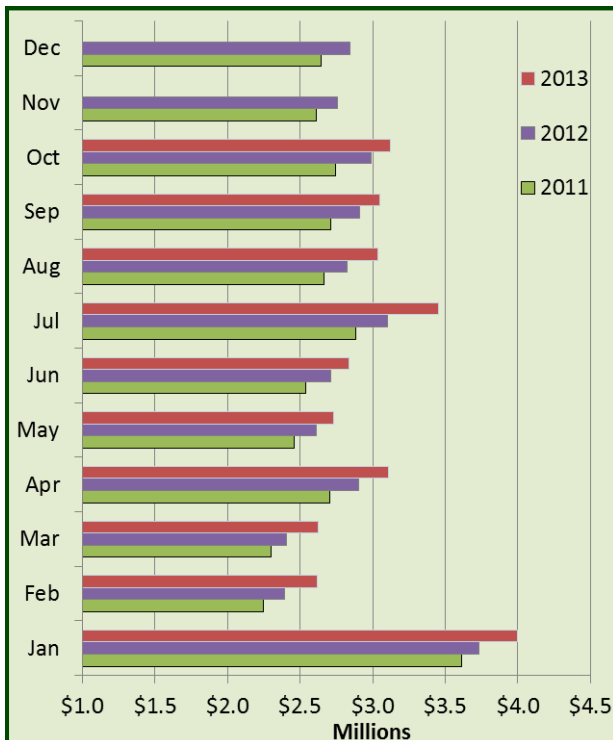
Capital Projects \$500,000+

Project Title	2013 Budget	2013 Expenditures	Remaining 2013 Budget	% of 2013 Budget (Exp/Bud)
Water Capital				
Water Treatment Plant Phase II Expansion (38 MGD)	\$ 2,143,200	\$ 921,381	\$ 1,221,819	42.99%
Filter Plant No. 2 Pipe Gallery Improvements	943,110	941,553	1,557	99.83%
W 29th St. & W 1st St. Water Line Replacement	725,910	38,100	687,810	5.25%
Morning Drive Alternate Waterline 30"	989,100	959,671	29,429	97.02%
2013 Small Diameter Waterline Replacement	1,030,320	21,698	1,008,622	2.11%
Raw Water Capital				
Windy Gap Firming Project	1,218,000	-	1,218,000	0.00%
Purchase of Colorado-Big Thompson Project (CBT)	820,090	-	820,090	0.00%
Wastewater Utility Capital				
Digester Mixing System	1,200,000	-	1,200,000	0.00%
Digester Building Code Compliance	900,000	-	900,000	0.00%
South Horseshoe Lift Station Submersible	1,361,690	510,924	850,766	37.52%
Power Capital				
East Sub to Crossroads Sub on Railroad	1,379,732	1,161,689	218,043	84.20%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,299	26,969	1,311,330	2.02%
Airport Sub North to Crossroads and South to Kendall Pkwy	683,260	542,447	140,813	79.39%
Callisto (vault 2716) East along 5th, North on Boyd Lake to railroad xing	570,000	2,157	567,843	0.38%
SW219 on old railroad North on VanBuren, East on 22nd to SW126	670,250	15,503	654,747	2.31%
Crossroads Substation - purchase new transformer	600,000	-	600,000	0.00%
Crossroads Substation - new switgear & transformer install	512,900	-	512,900	0.00%
Stormwater Capital				
29th and Monroe Outfall (Dry Creek)	1,000,000	-	1,000,000	0.00%
MeHaffey Park Regional Detention Pond	569,451	67,341	502,110	11.83%
Streets Transportation Program				
2013 Street Rehabilitation	4,441,840	3,644,380	797,460	82.05%
Fiber Optic Network to Signals and Other Facilities	1,071,130	39,055	1,032,075	3.65%
Boise & 37th Intersection Improvements	540,060	62,425	477,635	11.56%
All Other				
Facilities Maintenance Capital Projects	500,000	340,955	159,045	68.19%
Open Lands Acquisition	1,923,160	946,562	976,598	49.22%
Fire Station 2 Relocation	3,596,300	799,180	2,797,120	22.22%
Service Center Phase III	13,312,060	1,238,918	12,073,142	9.31%
Vehicle Wash	1,600,000	-	1,600,000	0.00%
Mehaffey Park	8,110,560	1,055,483	7,055,077	13.01%
River's Edge Natural Area	\$1,808,840	\$1,547,084	\$ 261,756	85.53%



Sales & Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,799,760	\$ 4,039,678	\$ 4,345,836	\$ 4,136,490	5.1%
Feb	2,465,447	2,649,229	2,906,780	2,528,010	15.0%
Mar	2,517,162	2,618,052	3,033,347	3,028,120	0.2%
Apr	3,022,770	3,215,437	3,397,074	3,286,040	3.4%
May	2,769,526	2,966,032	3,150,201	2,991,970	5.3%
Jun	2,800,184	3,136,014	3,284,808	3,127,370	5.0%
Jul	3,129,254	3,480,123	3,882,561	3,495,310	11.1%
Aug	2,961,686	3,171,055	3,392,757	3,154,400	7.6%
Sep	3,008,637	3,225,155	3,379,303	3,211,640	5.2%
Oct	2,944,433	3,421,098	3,452,052	3,327,150	3.8%
Nov	2,853,360	3,092,095		3,091,770	
Dec	2,933,671	3,142,793		3,141,380	
	\$35,205,889	\$38,156,762	\$34,224,718	\$38,519,650	
YTD	\$29,418,859	\$31,921,874	\$34,224,718	\$32,286,500	6.0%

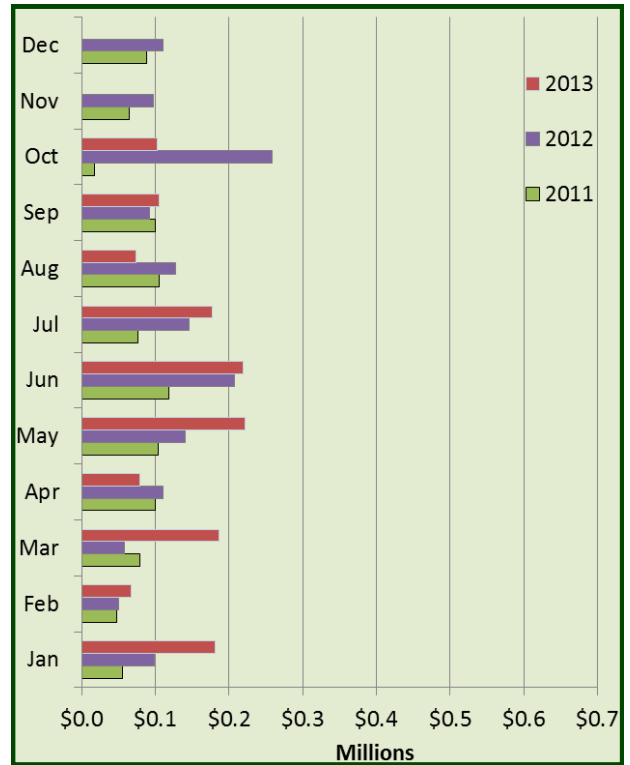


Retail Sales Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,613,881	\$ 3,733,309	3,995,194	\$ 3,909,960	2.2%
Feb	2,249,749	2,390,409	2,619,453	2,285,380	14.6%
Mar	2,299,237	2,403,380	2,622,808	2,715,660	-3.4%
Apr	2,702,024	2,905,558	3,109,701	3,008,620	3.4%
May	2,462,213	2,614,500	2,733,983	2,710,640	0.9%
Jun	2,536,541	2,711,906	2,835,171	2,878,350	-1.5%
Jul	2,882,075	3,105,564	3,453,149	3,210,310	7.6%
Aug	2,667,674	2,823,319	3,039,219	2,866,890	6.0%
Sep	2,710,738	2,909,008	3,051,797	2,909,990	4.9%
Oct	2,746,866	2,991,033	3,125,566	3,035,070	3.0%
Nov	2,610,980	2,757,932		2,824,870	
Dec	2,647,162	2,841,959		2,863,910	
	\$32,129,139	\$34,187,877	\$30,586,041	\$35,219,650	
YTD	\$26,870,998	\$28,587,986	\$30,586,041	\$29,530,870	3.6%

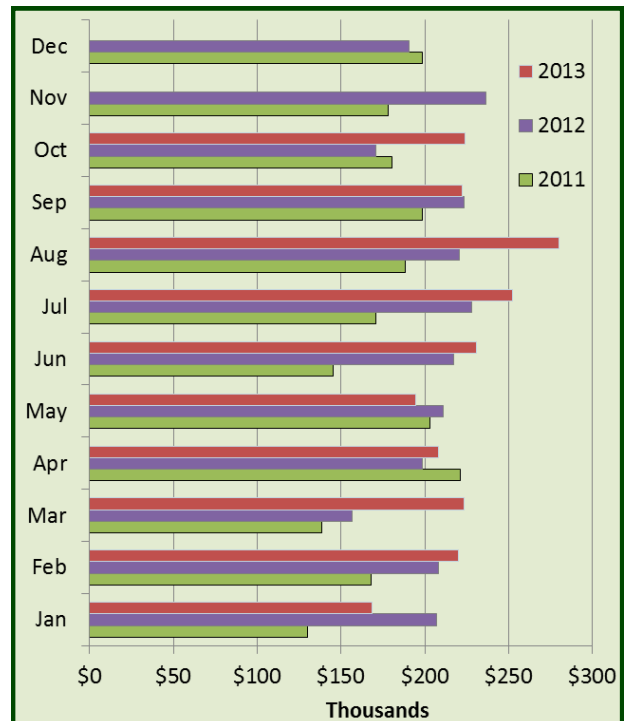
Building Materials Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 55,542	\$ 99,108	\$ 181,907	\$ 85,270	113.3%
Feb	47,621	50,703	67,440	83,620	-19.3%
Mar	79,590	57,845	187,222	164,570	13.8%
Apr	99,569	111,197	79,229	110,120	-28.1%
May	104,373	140,470	221,834	104,700	111.9%
Jun	118,318	207,024	218,722	100,770	117.1%
Jul	76,488	146,570	176,829	108,080	63.6%
Aug	105,871	127,261	73,524	104,580	-29.7%
Sep	99,544	92,415	105,174	117,480	-10.5%
Oct	17,021	259,279	102,584	96,490	6.3%
Nov	64,211	97,778		100,250	
Dec	88,033	110,414		124,070	
	\$956,181	\$1,500,063	\$1,414,466	\$1,300,000	
YTD	\$803,937	\$1,291,871	\$1,414,466	\$1,075,680	31.5%

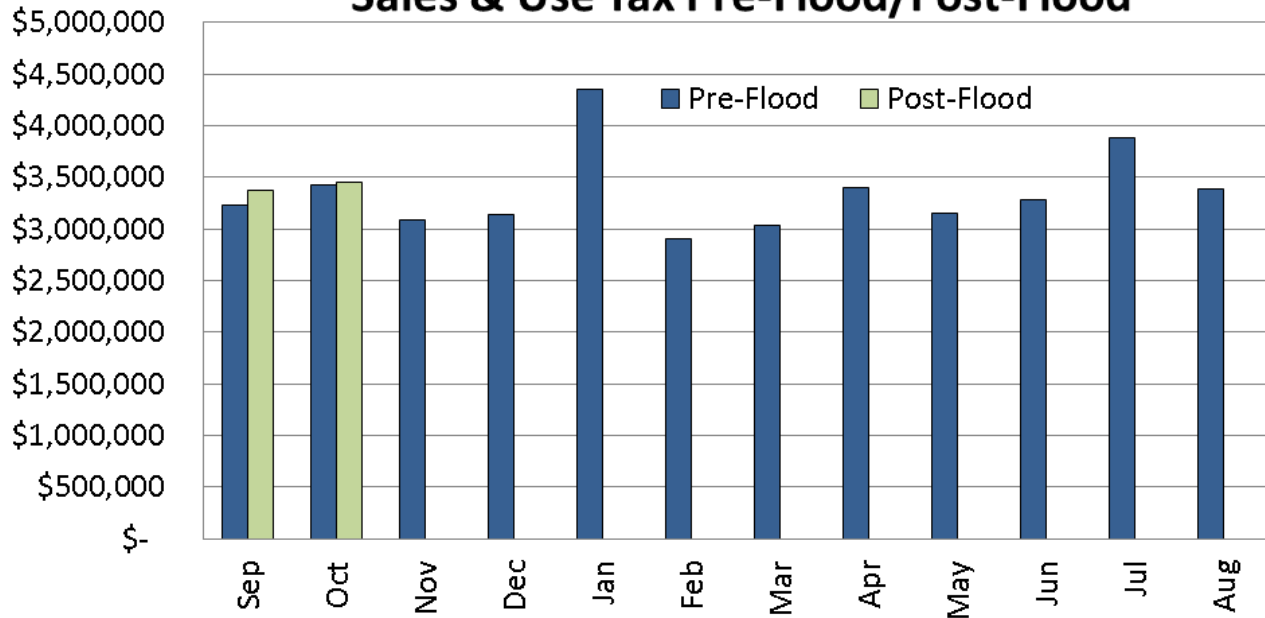


Motor Vehicle Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 130,337	\$ 207,261	\$ 168,734	\$ 141,260	19.4%
Feb	168,077	208,117	219,886	159,010	38.3%
Mar	138,335	156,828	223,317	147,890	51.0%
Apr	221,177	198,682	208,144	167,300	24.4%
May	202,940	211,062	194,384	176,630	10.1%
Jun	145,325	217,084	230,915	148,250	55.8%
Jul	170,691	227,989	252,583	176,920	42.8%
Aug	188,141	220,475	280,014	182,930	53.1%
Sep	198,355	223,732	222,332	184,170	20.7%
Oct	180,546	170,786	223,902	195,590	14.5%
Nov	178,169	236,385		166,650	
Dec	198,476	190,420		153,400	
	\$2,120,569	\$2,468,822	\$2,224,211	\$2,000,000	
YTD	\$1,743,924	\$2,042,016	\$2,224,211	\$1,679,950	32.4%



Sales & Use Tax Pre-Flood/Post-Flood



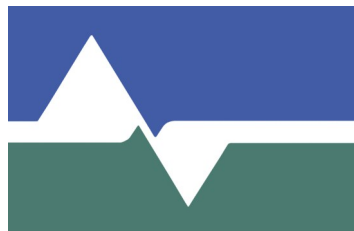
	Pre-Flood	Post-Flood
Sep	\$ 3,225,155	\$ 3,379,303
Oct	3,421,098	3,452,052
Nov	3,092,095	
Dec	3,142,793	
Jan	4,345,836	
Feb	2,906,780	
Mar	3,033,347	
Apr	3,397,074	
May	3,150,201	
Jun	3,284,808	
Jul	3,882,561	
Aug	3,392,757	
	\$ 3,225,155	\$ 6,831,355

Cost Estimates		
Operational	\$2,780,000	
Business Assistance	1,200,000	
Capital	26,530,000	
Total	\$30,510,000	

Actual Expenditures		
	October	To Date
Total	\$2,124,418	\$2,269,899

Reimbursements Applied For		
	October	To Date
FEMA	\$503,062	\$503,062
CIRSA		
Other		
Total	\$503,062	\$503,062

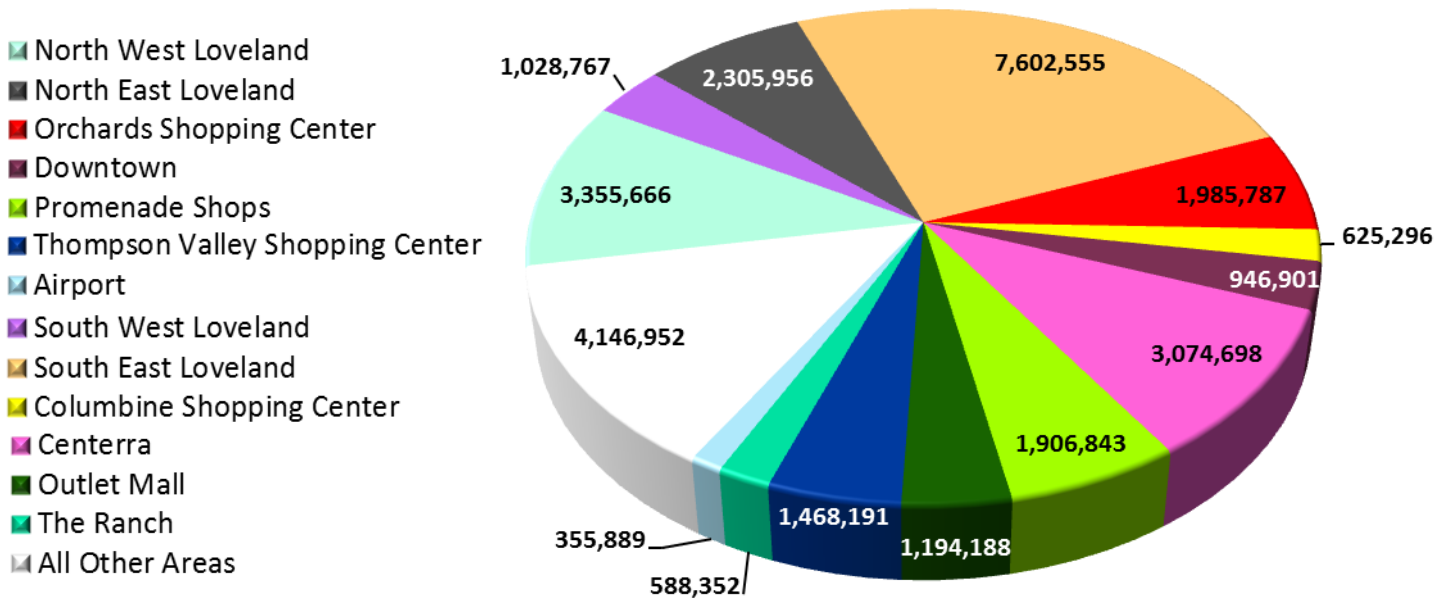
Reimbursements Received		
	October	To Date
FEMA	\$ -	\$ -
CIRSA	-	-
Other	-	-
Total	\$ -	\$ -



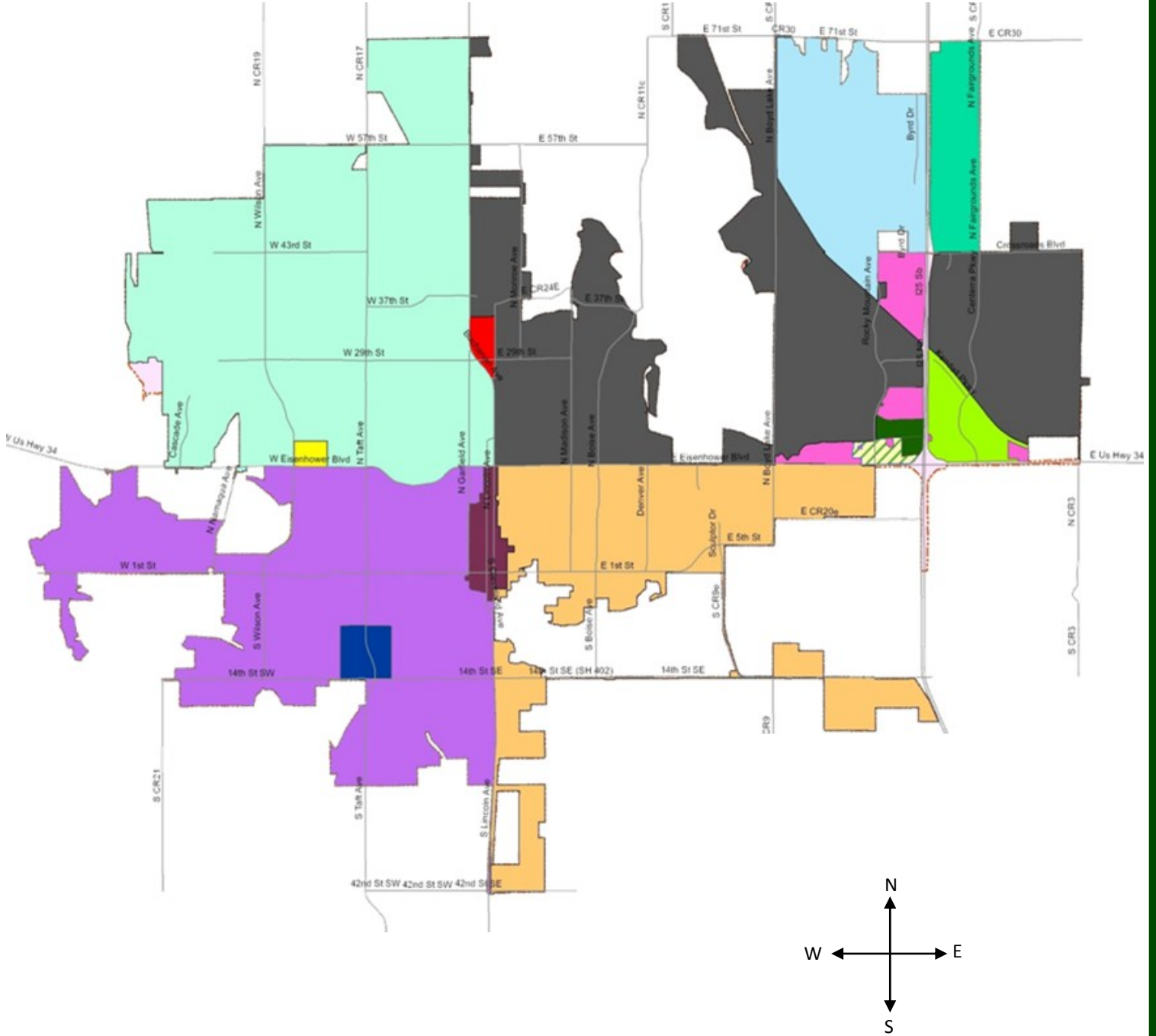
Geographical Area	YTD 2013	YTD 2012	Change
South East Loveland	\$ 7,602,555	\$ 7,126,368	6.7%
North West Loveland	3,355,666	3,276,777	2.4%
Centerra	3,074,698	2,759,281	11.4%
North East Loveland	2,305,956	2,131,222	8.2%
Orchards Shopping Center	1,985,787	1,761,207	12.8%
Promenade Shops	1,906,843	1,899,857	0.4%
Thompson Valley Shopping Center	1,468,191	1,373,726	6.9%
Outlet Mall	1,194,188	1,155,244	3.4%
South West Loveland	1,028,767	966,437	6.4%
Downtown (1)	946,901	864,895	9.5%
Columbine Shopping Center	625,296	594,979	5.1%
The Ranch	588,352	552,109	6.6%
Airport	355,889	340,516	4.5%
All Other Areas (2)	4,146,952	3,785,368	9.6%
Total	\$30,586,041	\$28,587,987	7.0%

(1) There has been an increase in tax licenses issued in the Downtown area, and established retailers' sales are trending up.

(2) Refers to sales tax remitted by vendors who are located outside of the City but make sales to customers within Loveland.



Map →

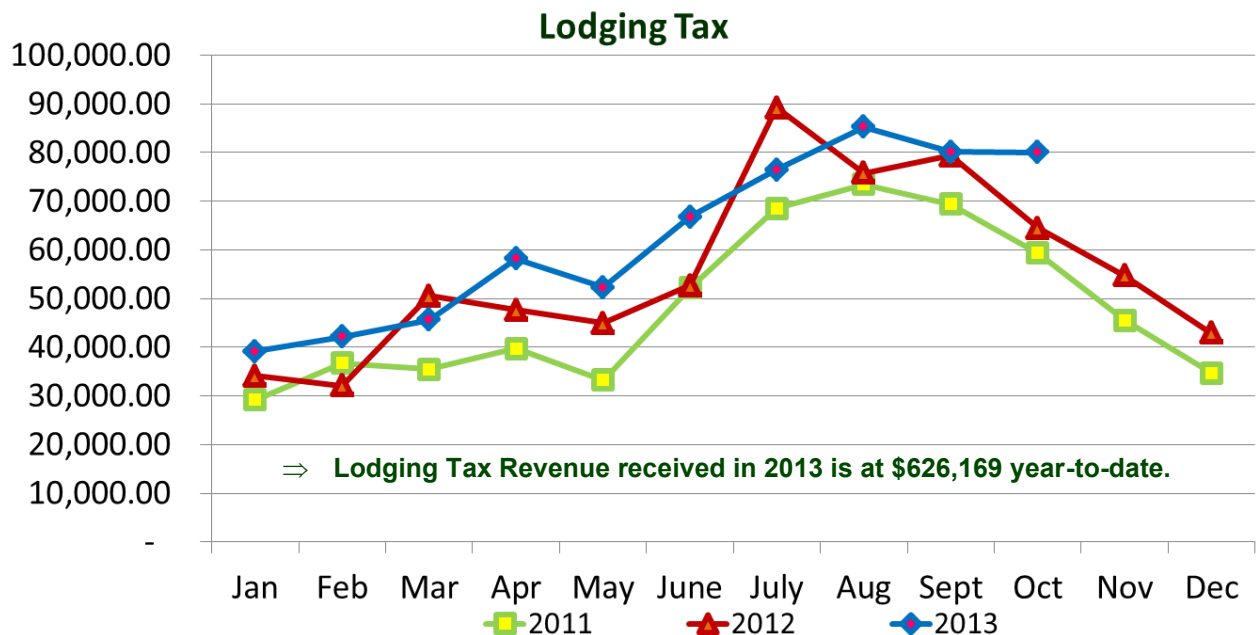


Sales Tax Collections

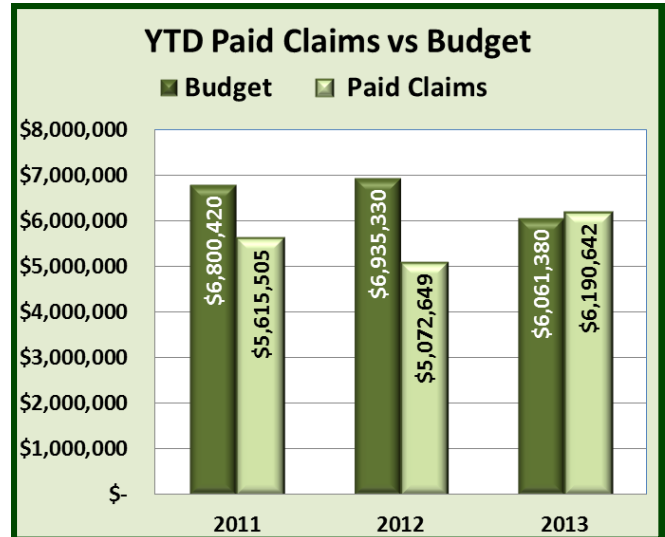
Description	YTD 2013	YTD 2012	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	6,575,995	6,413,211	\$ 162,784	2.5%	21.5%	21.7%
Restaurants & Bars	3,939,599	3,634,041	305,558	8.4%	12.9%	34.6%
Grocery Stores & Specialty Foods	3,067,022	2,848,907	218,115	7.7%	10.0%	44.5%
Clothing & Clothing Accessories Stores	2,212,756	2,106,010	106,746	5.1%	7.2%	51.8%
Motor Vehicle Dealers, Auto Parts & Leasing	2,150,798	1,893,092	257,706	13.6%	7.0%	58.8%
Building Material & Lawn & Garden Supplies	2,141,272	1,935,459	205,813	10.6%	7.0%	65.8%
Sporting Goods, Hobby, Book & Music Stores	1,632,002	1,403,449	228,553	16.3%	5.3%	71.2%
Utilities	1,558,956	1,467,671	91,285	6.2%	5.1%	76.4%
Broadcasting & Telecommunications (1)	1,105,213	1,118,228	(13,015)	-1.2%	3.6%	80.0%
Used Merchandise Stores	940,061	881,070	58,991	6.7%	3.1%	83.0%
Beer, Wine & Liquor Stores	736,619	685,767	50,852	7.4%	2.4%	85.4%
Hotels, Motels & Other Accommodations	701,301	652,984	48,317	7.4%	2.3%	87.6%
Consumer Goods & Commercial Equipment Rental	622,522	500,315	122,207	24.4%	2.0%	89.6%
Health & Personal Care Stores	510,146	478,910	31,236	6.5%	1.7%	91.3%
Furniture & Home Furnishing Stores	399,321	368,517	30,804	8.4%	1.3%	92.6%
Electronic Shopping & Mail-Order Houses	389,657	381,244	8,413	2.2%	1.3%	93.9%
Electronics & Appliance Stores (2)	348,940	403,522	(54,582)	-13.5%	1.1%	95.0%
Office Supplies, Stationery & Gift Stores	280,392	266,578	13,814	5.2%	0.9%	95.9%
Gasoline Stations with Convenience Stores	259,348	228,058	31,290	13.7%	0.8%	96.7%
All Other Categories	1,014,121	920,954	93,167	10.1%	3.3%	100.0%
Total	\$ 30,586,041	\$ 28,587,987	\$ 1,998,054	7.0%	100.0%	

(1) Appears to be driven by the major wireless carriers, showing a decline through October.

(2) This sector shows a significant decline through October; staff will continue to monitor this trend.

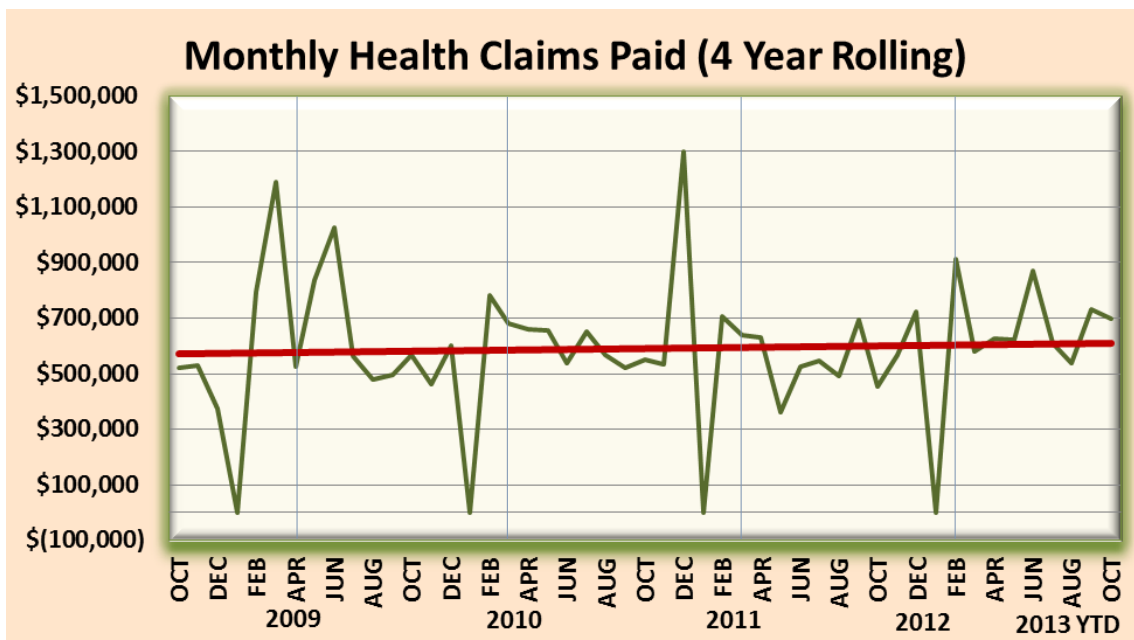


Claims Incurred				
		OAP	HRA	Total
2013	Oct	503,441	204,842	708,283
	YTD	5,341,140	1,508,690	6,849,830
2012	Oct	434,093	102,593	536,686
	YTD	4,288,354	1,233,521	5,521,875
Change	Oct	69,348	102,249	171,597
	% Oct	16.0%	99.7%	32.0%
	YTD	1,052,786	275,169	1,327,955
	% YTD	24.5%	22.3%	24.0%



⇒ HRA—Health Reimbursement Arrangement
 ⇒ OAP—Open Access Plan

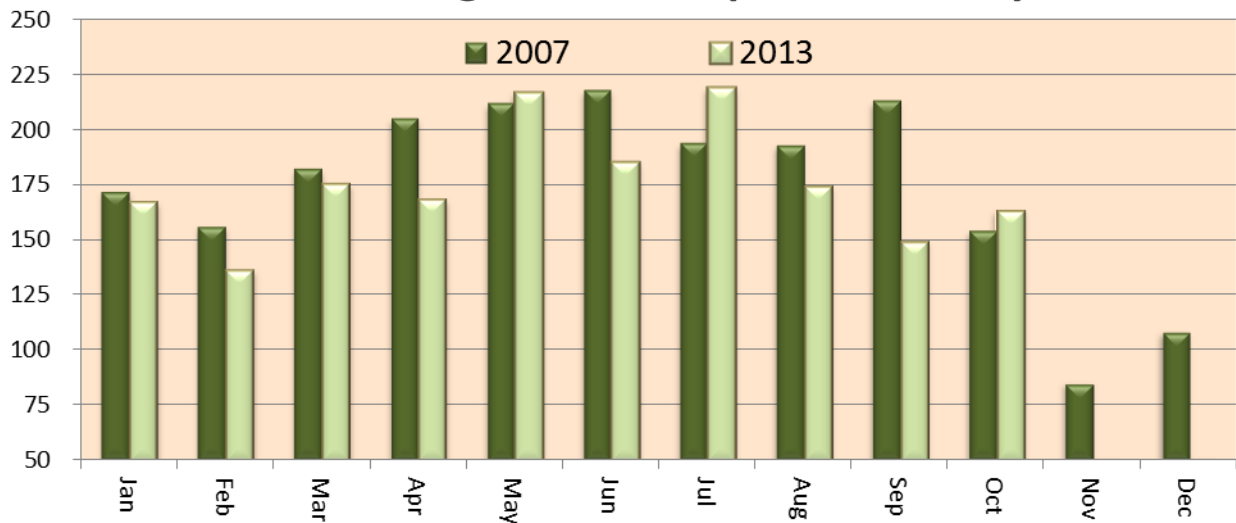
Incurred claims are total expenses the City is obligated to pay for claims, including claims paid and unpaid. Paid claims are those claims that have been paid and reconciled through the bank to-date, which may not reflect Stop Loss reimbursements or other refunds.



Comparison of YTD Claims Over \$25k				
October	2010	2011	2012	2013
# of claims	38	48	45	55
YTD Cost of high claims	\$3,106,875	\$2,534,961	\$2,382,977	\$3,221,321

⇒ 2013 # of StopLoss claims: 4
 (claims over \$150k paid by StopLoss Carrier)

Building Permit Comparison History



Measures	Oct 2011	Oct 2012	Oct 2013	2011 YTD	2012 YTD	2013 YTD
# of Building Permits	164	223	163	1,547	1,894	1,753
Building Permit Valuations	\$ 5,007,516	\$19,431,204	\$ 7,127,831	\$ 73,632,679	\$119,538,481	\$ 126,916,542
# of Certified Occupancies	18	28	27	204	282	296
Net # of Sales Tax Licenses	47	25	(16)	178	(77)	(319)
New Residential Electric Meter Sets	24	48	20	313	220	233
# of Utility Bills Sent	35,891	36,266	36,282	355,655	360,972	365,327
Rounds of Golf	9,004	8,335	8,766	113,631	116,897	102,614
\$ Average Health Claim Costs/Emp.	\$ 848.55	\$ 835.96	1,085	\$ 970.40	\$ 865.88	\$ 1,049.71
KWH Demand (kH)	97,952	81,110	87,202	1,084,014	1,096,176	1,126,110
KWH Purchased (kwh)	57,914,080	58,122,017	59,585,301	609,125,809	623,359,764	629,674,584
Gallons of Water Sold	431,994,863	394,084,368	225,149,606	3,328,343,040	3,867,308,592	3,114,933,197
# of Workers' Comp Claims 2013	9	8	14	102	88	97
\$ of Workers' Comp Claims Paid 2013	\$ 20,664.00	\$ 20,089.91	57,567	\$ 146,507.00	\$ 364,294.05	\$ 397,741.95
# of Total Open Claims	25	11	17	<i>Not Cumulative</i>		
\$ of Total Open Claims	222,484	290,002	319,204	<i>Not Cumulative</i>		
\$ of Lodging Tax Collected	\$ 59,373.91	\$ 64,499.62	\$ 80,089.23	\$ 497,485.70	\$ 570,946.42	\$ 626,168.70

For more information regarding this report contact:

Brent Worthington, Finance Director

970.962.2300 or

brent.worthington@cityofloveland.org

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The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at bettie.greenberg@cityofloveland.org or 970-962-3319





CITY OF LOVELAND
CITY MANAGER'S OFFICE

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(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 15
MEETING DATE: 12/3/2013
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE:
Investment Report for October 2013

**RECOMMENDED CITY
COUNCIL ACTION:**

This is an information only item. No council action is required.

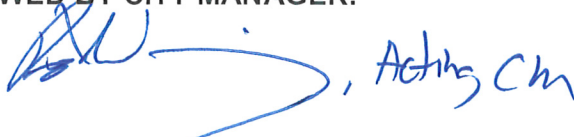
SUMMARY:

The budget estimate for investment earnings for 2013 is \$2,760,420. Through October, the net amount posted to the investment accounts is \$1,009,457, including realized gains. Actual year-to-date earnings are much lower than the budget projection. Earlier this year, several very high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank remained the same at 1.09% at the end of October. The yield is below the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels. Current reinvestment rates are now higher than the budget projection target.

BACKGROUND:

At the end of October, the City's portfolio had an estimated market value of \$220.6 million, about \$3. million less than a month ago. The market value is attributable to revenue collections and the interest rate shifts in treasury rates. Of this amount, US Bank held (including accrued interest) \$185.7 in trust accounts; other funds are held in local government investment pools, in operating accounts at First National Bank and Wells Fargo Bank, and a few miscellaneous accounts. Interest rates trended significantly lower in 2012, and despite an upward move in the last few months, they are still projected to remain relatively low for years. Investments are in US Treasury Notes, high-rated US Agency Bonds, high-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 one percent of earnings on the portfolio equates to about \$2.2 million annually.

REVIEWED BY CITY MANAGER:

 Acting CM

LIST OF ATTACHMENTS:

1. Investment Focus October 2013



Investment Focus

Monthly Investment Report

October 2013

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

- * **2013 targets for the City's portfolio: 1) the interest rate target is 1.2%; 2) the earnings goal = \$2,760,420.**
- * **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- * **Revenue posted to accounts=\$1,009,457: 44% of the ytd target. So far this year, the portfolio has \$50,650 in realized gains.**
- * **Each 1% of the market value amounts to nearly \$2.2 million.**
- * **The month end market value shows the unrealized loss was lower, estimated to be \$1,928,271 at the end of October.**

Job Gap Widens In Uneven Recovery

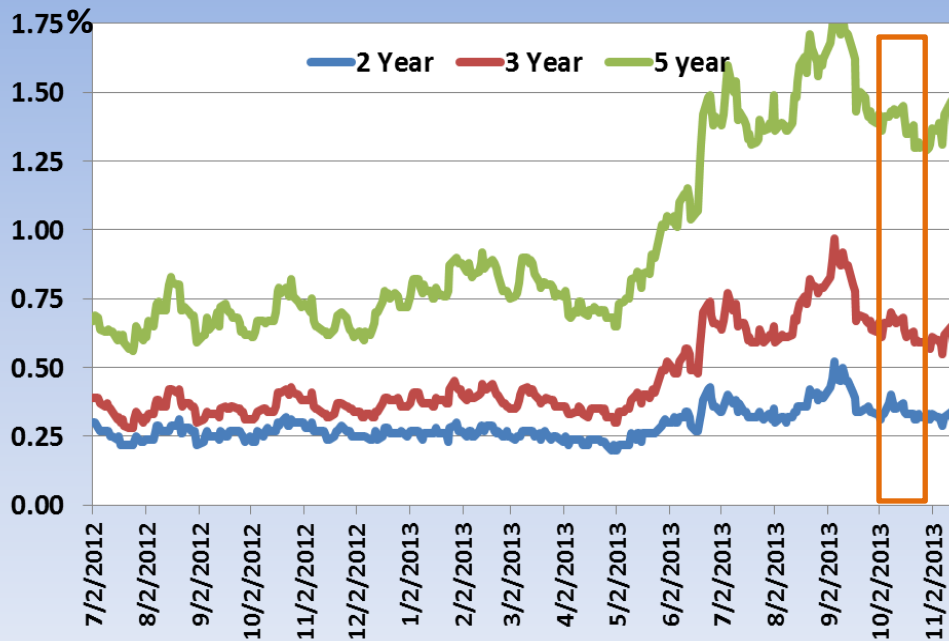
"Despite three years of steady job gains, and four years of economic growth, many Americans have yet to experience much that could be described as a recovery. That pattern isn't unusual in the aftermath of a recession, but it usually eases as growth picks up steam...But many others – the young, the less educated and particularly the unemployed are experiencing hardly any recovery at all. See chart on page 2.

(Source: THE WALL STREET JOURNAL, Ben Casselman, November 14, 2013.)

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 10,310,038	\$ 10,310,038	--
Investment Pools	24,500,764	24,500,764	--
Money Markets	<u>4,287,623</u>	<u>4,287,623</u>	--
Subtotal	\$ 39,098,425	\$ 39,098,425	--
Notes and Bonds	<u>183,439,978</u>	<u>181,511,707</u>	<u>\$ (1,928,271)</u>
Total Portfolio	\$ 222,538,403	\$ 220,610,132	\$ (1,928,271)
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

Treasury rate trends / Job gap widens



Interest rates on U.S. Treasuries continued to fall during October. The 2, 3, and 5-year treasury notes fell by 2, 6, and 8 basis points respectively. This shift increased the value of securities in the portfolio and lowered the unrealized loss.

“The share of the adult population that is out of the labor market—neither working nor looking for work—hit a 35-year high in October, the Labor Department said Friday. Employers added a relatively healthy 204,000 jobs, but more than a third of them were in the generally low-paying restaurant and retail sectors. Wage growth, which usually accelerates after recessions, has barely outpaced inflation, rising 2.2% in October from a year earlier.

Economists aren't sure what is behind the trend, or how long it will continue. Low-wage sectors are often the first to hire during a weak recovery, and less desirable workers—whether because of their age, education or other factors—are the last people hired in almost any scenario.

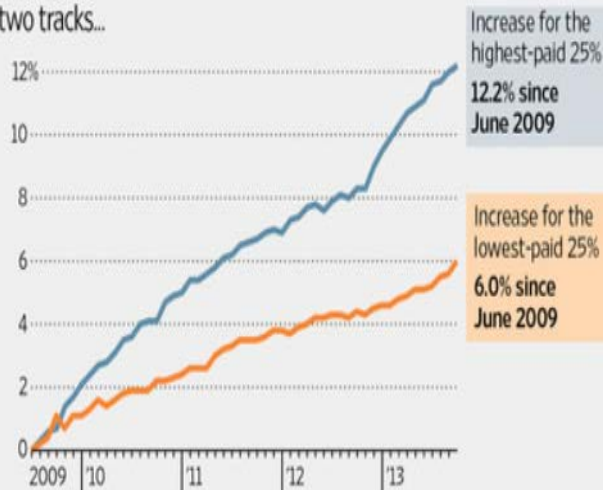
It's not just harder to get a job—it's harder to get a good job," said Harry Holzer, a professor of public policy at Georgetown University who has studied low-wage jobs. "Companies are more willing to create jobs right now if they're low-wage jobs and they don't have to pay much in benefits or make a major commitment to their employees." Heidi Shierholz, an economist at the Economic Policy Institute said the best remedy for the uneven job market is simply a stronger recovery."

U.S. Recovery Leaves Some Behind

Wage growth has been on two tracks...

Change since the recession's end in the average hourly wage by industry of workers in production and nonsupervisory positions*

*Weighted by monthly share of private jobs in each industry; September 2013 (latest) hourly wages are used as to divide industries into quartiles



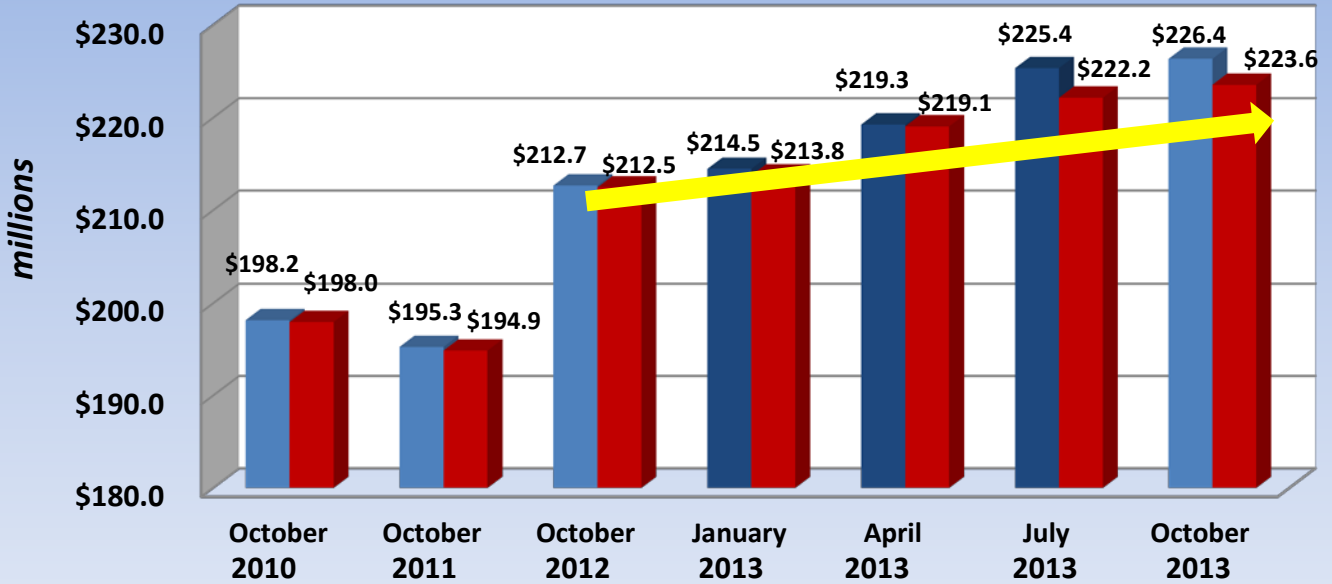
Cash Position Summary

Cash & Reserves (unaudited)

	2013 Beginning	YTD Activity	Month End Total
Restricted Reserves	Due to rounding, column and row totals may not add exactly.		
1 Capital Expansion Fees	\$ 35,226,830	\$ 2,838,338	\$ 38,065,168
2 Water System Impact Fees	8,945,821	(99,504)	8,846,317
3 Raw Water Revenue – Windy Gap	20,940,043	1,856,382	22,796,425
4 Wastewater System Imp. Fees	5,131,782	679,517	5,811,298
5 Storm Drain System Imp. Fees	1,469,674	172,785	1,624,459
6 Power Plant Investment Fees	8,211,002	1,169,449	9,380,452
7 Cemetery Perpetual Care	2,629,094	70,696	2,699,790
8 Other Restricted	30,489,353	(3,409,264)	27,080,089
9 Total Restricted	\$ 113,043,599	\$ 3,278,399	\$ 116,321,999
Committed/ Assigned			
10 General Fund	\$ 11,224,908	\$ 1,252	\$ 11,226,160
11 Enterprise Funds	4,998,736	(380,945)	4,617,792
12 Internal Service Funds	19,553,388	655,137	20,208,525
13 Total Reserves	\$ 35,777,032	\$ 275,444	\$ 36,052,476
14 Total Restricted and Reserved	\$ 148,820,632	\$ 3,553,843	\$ 152,374,475
Unassigned Balance			
15 General Fund	\$ 23,685,948	\$ 10,931,885	\$ 34,617,833
16 Airport	1,384,130	(2,199,429)	(815,299)
17 Internal Service – Vehicle Maint	245,629	(141,294)	104,335
18 Enterprise Funds	37,097,373	(1,100,419)	35,996,954
19 Total Unrestricted	\$ 62,413,080	\$ 7,490,743	\$ 69,903,824
20 TOTAL CASH	\$ 211,233,712	\$ 11,044,587	\$ 222,278,299

Portfolio Growth Trend / Types of Investments

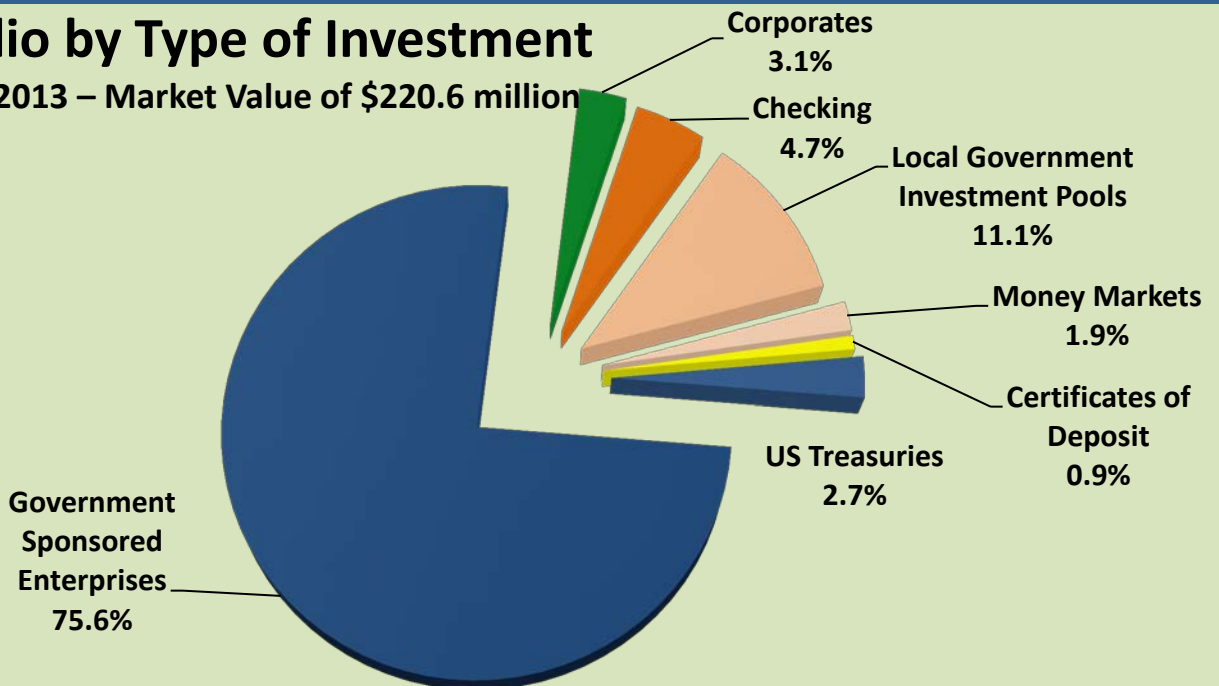
Portfolio Size since October 2010



Blue bars show Purchase value; red and green bars show Market value (red = loss and green = gain).

Portfolio by Type of Investment

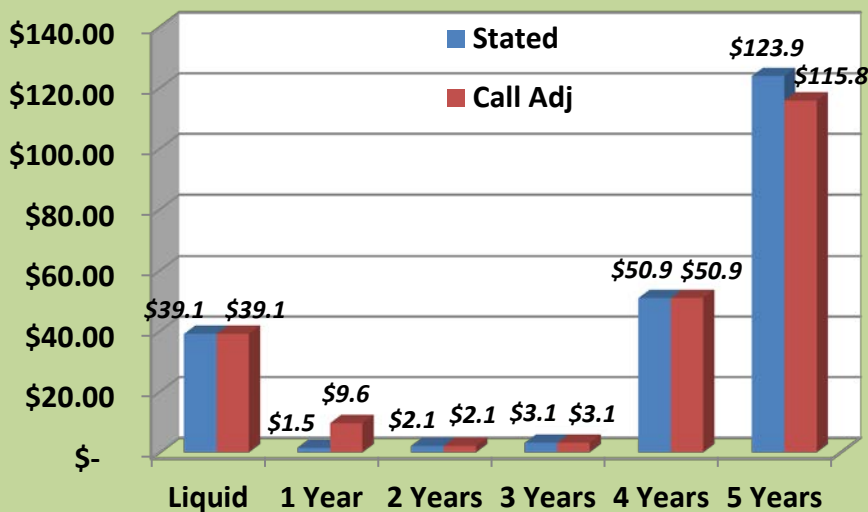
October 2013 – Market Value of \$220.6 million



Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<u>Purchases</u>				
none this month				
<u>Matured</u>				
none this month				
<u>Called</u>			<u>Call Value \$</u>	
none this month				
<u>Sales</u>			<u>Gain \$</u>	
none this month				

Portfolio by Estimated Maturity Term
(in millions - Total = \$220.6 at the end of October)



The target rate for 2013 is 1.2%. Rates are now up a little from the near record lows. For the year-to-date, the portfolio proceeds are below the earnings target level for 2013.

To support earnings, or to reposition the portfolio, bonds may be sold. So far this year, gains of \$50,650 have been realized through sales.

The blue bars show the stated term; red bars show the calls. Just one of the five year bonds may be called early.



Future Scan: Still no Quantitative Easing taper, jobs lower

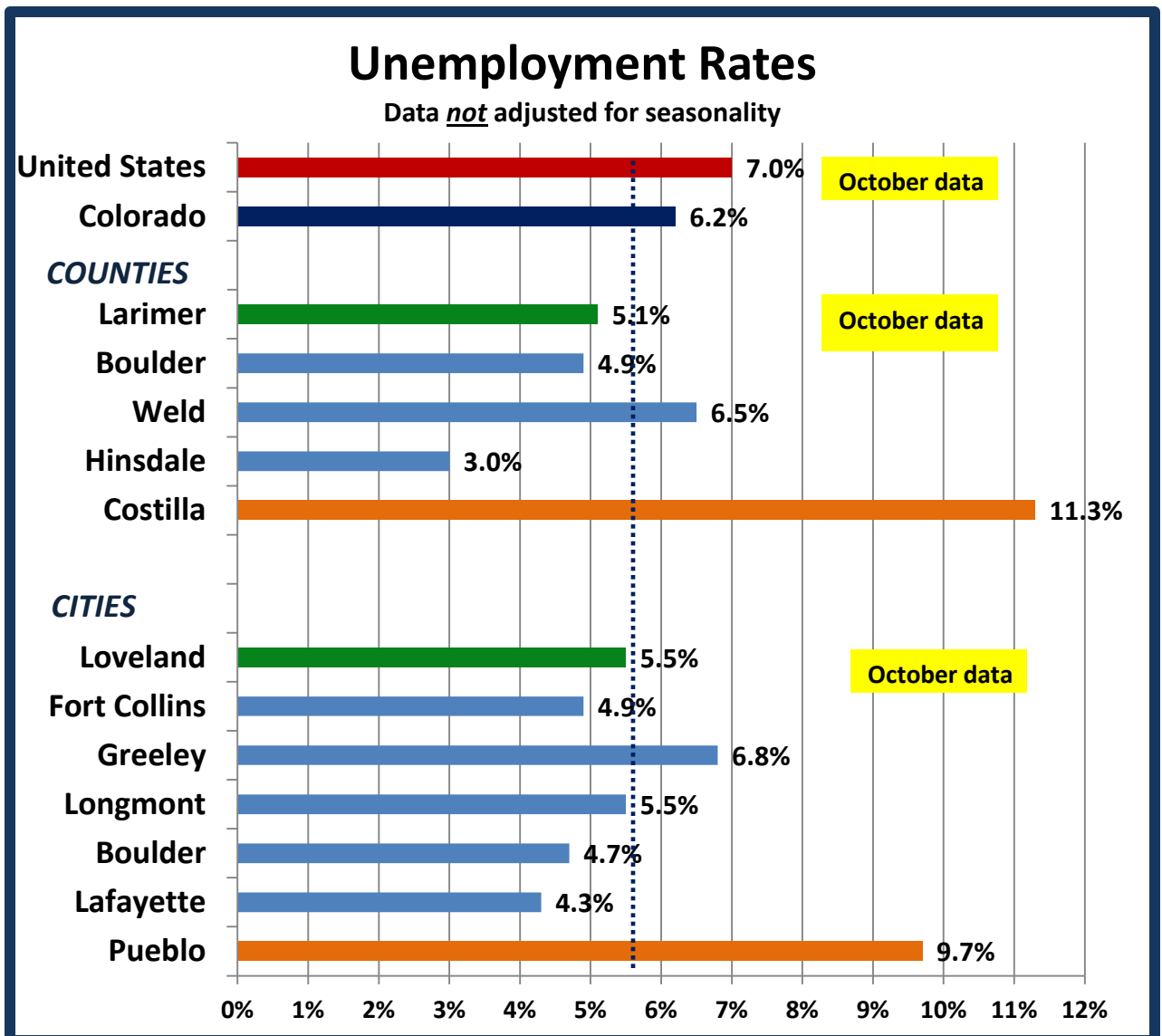
- ❖ **On October 30, the Federal Open Market Committee decided to keep Quantitative Easing going at full force.** The minutes reveal intense discussion about how to taper the program without spooking the market.
 - “The nation’s top economic policymakers are still trying to figure out how to cut back on the monetary easing without causing a dramatic tightening of financial conditions. The decision not to taper in September led to ‘declines in longer-term interest rates and increased equity values.’”
 - “This poses a major policy challenge, as the Fed looks to wind down QE in order to avoid massive asset bubbles, yet keep interest rates at record lows in order to support what has been a tepid economic recovery. The ultra low rates have supported vehicle sales and the housing market.”
 - “With the market seemingly addicted to the Fed’s monetary stimulus, it remains a major challenge to figure out how to taper. A FOMC member noted that if they are cutting back on the monetary ‘cool aid’ due to fears over financial stability, or asset bubbles, ‘it would need to communicate effectively about those other criteria.’”
 - “They looked at several potential mechanisms for communicating the taper effectively. Using a “simple mechanical room” tied to the unemployment rate, a timetable or total size of remaining purchases, a calendar-based step-down, and different distributions of cutting down from the Treasury and residential mortgage-backed security side. At the end, they chose to give themselves a little more time to see how the economy plays itself out going forward.”
(Source: *Fed Has No Clue How To Taper Without Tanking The Markets*, Augustino Fontevicchia, in **Forbes** online, November 20, 2013)
- ❖ **Morgan Stanley Fixed Income Strategy – the shutdown weakened GDP and a rebound is expected.**
 - “Upcoming economic data may have a soft tone due to the shutdown/debt ceiling debate, but we expect the negative effects to be relatively short-lived.”
 - “The post no-taper rally allows investors a second chance to lessen duration. In-line with the Global Investment Committee, new investable funds should be limited to short-duration instruments.”
 - “While the recent FOMC meeting offered no meaningful surprises, it would appear as if tapering is still an active consideration for the policymakers. We see the Fed in a wait-and-see mode and look for a tapering by the March.”
 - Although it’s a bit of a ‘crowded trade,’ we look for a modest rally in credit through year end, as we believe the current yield environment offers few alternatives.
(Source: Morgan Stanley **Basis Points** Fixed Income Strategy, Kevin Flanagan & Jon Mackay, November 5, 2013.)
- ❖ **The October Colorado Employment Situation** was released on November 22, 2013. Using non-seasonally adjusted data, Colorado’s unemployment rate for October was estimated to be 6.2% compared to the national unemployment rate of 7.0%. During the month, Colorado lost jobs, but even more people left the labor market according to the most recent data. City and county data show lower unemployment and are displayed in the attached table. Loveland’s unemployment rate decreased to 5.5% from 5.7% in September. (Source: Colorado Department of Labor and Employment **Colorado Employment Situation October 2013**, dated November 22, 2013.)
- ❖ **Recession Outlook:** Four indicators, Industrial Production, Nonfarm Employment, Real Personal Income, and Real Retail Sales are the basis for determining a recession. In October, a decrease in Industrial Production has been offset by an increase in Retail Sales. “The overall picture of the US economy remains one of a ploddingly slow recovery from the Great Recession.” The rate of post-trough growth has been slower since February of 2012.” (Source: **Advisor Perspectives**, Doug Short, November 20, 2013.)

[For more information regarding this report, please contact:](#)

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Updated Colorado Labor Data

- ❑ Loveland's employed workforce **contracted** in **October**, **down** 258 jobs from September.
- ❑ Compared to October of 2012, there are now 315 **fewer** jobs reported in Loveland.



In a complex economy, conventional measures of unemployment sometimes fall short.

In today's labor market, the unemployment rate drastically understates the weakness of job opportunities. This is due to the existence of a large pool of "*missing workers*"—potential workers who, because of weak job opportunities, are neither employed nor actively seeking a job. In other words, these are people who would be either working or looking for work if job opportunities were significantly stronger. Because jobless workers are only counted as unemployed if they are actively seeking work, these "*missing workers*" are not reflected in the unemployment rate.

As part of its ongoing effort to create the metrics needed to assess how well the economy is working for America's broad middle class, the Economic Policy Institute is introducing its "*missing worker*" estimates, which will be updated on this page on the first Friday of every month immediately after the Bureau of Labor Statistics releases its jobs numbers. The "*missing worker*" estimates provide policymakers with a key gauge of the health of the labor market.

Current "*missing worker*" estimates at a glance

Updated November 8, 2013, based on most current data available

Total missing workers, October 2013: 6,070,000	Unemployment rate if missing workers were looking for work: 10.2%	Official unemployment rate: 7.3%
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