

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-02802-REB-MEH

JEREMY C. MYERS,

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police Department in his official and individual capacity; and
CITY OF LOVELAND, a Colorado municipality.

Defendants.

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT [DOCKET #128, FILED 03/11/2011]**

DEFENDANTS, Brian Koopman ("Koopman") and the City of Loveland, Colorado ("City") (collectively, "Defendants") by and through their attorneys, the Loveland City Attorney's Office and Wick & Trautwein, LLC, hereby respectfully reply as follows in support of Defendants' Motion to Dismiss Plaintiff's Amended Complaint and Jury Demand [#128] ("Amended Complaint") filed March 11, 2011:

I. ARGUMENT

A. Recent Supreme Court Decision and Proper Application of Other Federal Law Supports Conclusion that City Cannot be Held Liable Under a Municipal Liability Theory

According to *Connick v. Thompson*, ___ U.S. ___, ___ S.Ct. ___, 2011 WL 1119022 (U.S.) at *6, decided March 29, 2011,

[a] municipality or other local government may be liable under [§1983] if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation. But,

under §1983, local governments are responsible only for their 'own illegal acts.' They are not vicariously liable under §1983 for their employees' actions.

(citations omitted) (emphasis in original). "The statute does not provide plaintiffs or courts *cart b/anche* to micromanage local governments throughout the United States." *Id.* at *10. "[T]o recover from a municipality under 42 U.S.C. §1983, a plaintiff must satisfy a 'rigorous' standard of causation, [citing *Board of Comm'rs of Bryan City. v. Brown*, 520 U.S. 397, 405 (1997)]; he must 'demonstrate a direct causal link between the municipal action and the deprivation of federal rights.'" *Id.* at *14. Failure-to-train liability is available only in "limited circumstances," *id.* at *13, and "a pattern of constitutional violations is 'ordinarily necessary to establish municipal culpability and causation'". *Id.*

Plaintiff, in his response brief, does not argue that Koopman was inadequately trained, and, indeed, Plaintiff has abandoned in his Amended Complaint a failure to train and supervise claim for relief. Therefore, Plaintiff's insistence that the City bears municipal responsibility for Koopman's alleged actions depriving Plaintiff of his constitutional rights must be analyzed strictly under a municipal "policy" or "custom" analysis. See *Nielander v. Board of County Commissioners*, 582 F.3d 1155, 1170 (10th Cir. 2009). "A municipal policy is a 'policy statement, ordinance, regulation, or decision officially adopted and promulgated by [a municipality's] officers.'" *Novitsky v. City of Aurora*, 491 F.3d 1244, 1258 (10th Cir. 2007). A "municipal custom" is 'persistent and widespread . . . practices . . . of officials.'" *Starrett v. Wadley*, 876 F.2d 808, 818 (10th Cir. 1989).

Plaintiff concedes that "it is unlikely that municipal legislators would establish

policy relating to the investigation and prosecution of criminal offenses," Plaintiffs' Response at 2 [#135], then implies that this is generally left to the chief of police. *Id.* The City, as a home-rule municipality, is vested under Article XX, Section 6 of the Colorado Constitution with the full right of self government in local and municipal matters, which includes every power essential to the full exercise of this right. City Charter Section 2-4(b) confers on the City all powers granted to municipalities by State statute. *Exhibit A.* The City's city council, as its governing body, is granted in Charter Section 3-1(a) all powers possessed by the City that are not otherwise conferred on others by the City's Charter or by ordinance. Under Charter Section 8-4 the city manager is designated as the City's chief administrative officer and is empowered under it and City Code Section 2.24.020, *Exhibit B*, to exercise supervision and control over all City departments and department heads, including the City's chief of police. The chief of police is specifically empowered in Code Section 2.44.020, *id.*, to "direct the police work of the city and shall be responsible for maintenance of law and order," including "control of investigation[s], records, traffic, crime prevention and all subjects allied to police work." Therefore, it would be the City's chief of police, and perhaps in some circumstances the city manager, who possesses final policy-making authority with respect to the investigation and enforcement of criminal laws within the City's boundaries. See also C.R.S. §31-4-205(1); §§31-4-210, -211, -213; ¶31-4-112.

Plaintiff then argues that chiefs of police can and do delegate authority to conduct searches and seizures to "commanding officers" who are generally "on scene". Plaintiff's Response at 2. Plaintiff next makes the gargantuan leap to the conclusion that Koopman – allegedly in command of the drug bust – "was the 'decision-maker' for

the City" and as such allegedly executed unconstitutional polices or customs which deprived Plaintiff of one or more of his constitutional rights. *Id.* at 2-3. While "final decisionmaking authority may be delegated," "[s]imply going along with discretionary decisions made by one's subordinates, however, is not a delegation to them of the authority to make policy." *Ware v. Unified School Dist.*, 902 F.2d 815, 817 (10th Cir. 1990) (citations omitted).

Koopman, a detective, is neither a municipal legislator nor even a member of the police department's command staff which consists of the chief of police, captains and the professional standards lieutenant. "'[F]inal policymaking authority' is a legal issue to be determined by the court based on state and local law." *Randle v. City of Aurora*, 69 F.3d 441, 447 (10th Cir. 1995) (*citing City of St. Louis v. Praprotnik*, 485 U.S. 112, 124, 108 S.Ct. 915, 927-28 (1988)); accord, *Starrett*, 876 F.2d at 818.

Anglin v. City of Aspen, 552 F.Supp.2d 1205 (D.Colo. 2008) and *Saye v. St. Vrain Valley School Dist.*, 650 F.Supp. 716 (D. Colo. 1986), cited by Plaintiff, are distinguishable. In *Anglin*, county commissioners were said to be responsible for consequences of a sheriff's policy. In *Saye*, decisions and actions of a school principal and superintendent to whom there had been an effective delegation of power to make a final employment policy were effectively those of the school district. In both cases the persons alleged to have acted unconstitutionally were indisputedly final policymakers.

Because Koopman is not a municipal final policymaker and because Plaintiff has failed to allege a persistent and widespread practice of City officials constituting a municipal custom, the City must be ordered dismissed.

B. Because Plaintiff was Exonerated Before Trial, His Claim for Malicious Prosecution Fails to State a Claim Under the Fourteenth Amendment

Plaintiff, in his Amended Complaint, alleges that he was arrested on Friday, September 7, 2007, bonded out the following Monday, and all charges were dismissed on November 15, 2007, following a preliminary hearing held on November 5, 2007. Amended Complaint [#128] filed March 11 2011 at 11-12, ¶¶24, 26 and 28. Plaintiff then asserts a single claim for relief alleging malicious prosecution in violation of the Fourth and Fourteenth Amendments, actionable by way of 42 U.S.C. §1983. *Id.* at 12-17, ¶¶29-42. "Because [Plaintiff] was exonerated before trial, the case involve[s] only the Fourth, and not also the Fourteenth Amendment." *Pierce v. Gilchrist*, 359 F.3d 1279, 1287 n.5 (10th Cir. 2004); accord, *Mandragon v. Thompson*, 519 F.3d 1078, 1083 n.6 (10th Cir. 2008) ("In *Pierce*, we did not decide what kind of legal process caused the Fourth Amendment claim to end and the Due Process claim to begin, *id.* at 1286, though we suggested that being held for seven weeks and then 'exonerated before trial,' raised only Fourth Amendment issues, not due process issues We do not decide that issue here, either.") (citation omitted).

Because Defendants have specifically raised this issue, the Court must now decide – as predicted by the Tenth Circuit – that because Plaintiff was exonerated before trial when all charges against him were dismissed following a preliminary hearing, his §1983 malicious prosecution claim does not implicate Fourteenth Amendment substantive due process standards. See *Taylor v. Meacham*, 82 F.3d 1556, 1561 n.3 (10th Cir. 1996) (interpreting *Albright v. Oliver*, 510 U.S. 266, 114 S.Ct. 807 (1994) as "holding that a §1983 malicious prosecution claim does not implicate the

Fourteenth Amendment's substantive due process standards.").

Plaintiff's allegations in his Amended Complaint that Koopman "maliciously, recklessly, knowingly, intentionally, willfully and wantonly" inserted false statements in his search and arrest warrant affidavits does not change the analysis from a Fourth Amendment to a Fourteenth Amendment one. See *Wolford v. Lasater*, 78 F.3d 484, 489 (10th Cir. 1996) ("[I]t is a violation of the Fourth Amendment for an arrest warrant affiant to 'knowingly, or with reckless disregard for the truth,' include false statements in the affidavit . . . , or to knowingly or recklessly omit from the affidavit information which, if included, would have vitiated probable cause" [citations omitted]); cf. *Miller v. Spiers*, 339 Fed.Appx. 862, 867 (10th Cir. 2009) (testimony at grand jury proceedings implicated Fourteenth Amendment due process rights, distinguishing it from this case).

Therefore, as pled, Plaintiff's single malicious prosecution claim may invoke only the Fourth, and not also the Fourteenth, Amendment, and the immaterial reference to the Fourteenth Amendment should be ordered stricken. Fed.R.Civ.P. 12(f). See *Wolford*, 78 F.3d at 489-90 (holding that allegations of the complaint asserting that defendants violated plaintiff's substantive due process rights under the Fourteenth Amendment, giving rise to a claim of malicious prosecution actionable in constitutional law, by investigating, charging, arresting and indicting plaintiff on criminal charges "is simply not viable and was properly dismissed").

The suggestion in *Mondragon*, *supra*, that the period of time between the institution of legal process" and its favorable termination (by dismissal or otherwise) forms a second wrongful detention claim arising under the Due Process Clause of the Fourteenth Amendment, 519 F.3d at 1083, was mere *dicta*, inasmuch as the only issue

in the appeal was the "timeliness" of Mr. Mondragon's claim, not its merits, *id.* at n.5, and the Tenth Circuit expressly declined to decide what kind of legal process might have caused the Fourth Amendment claim to end and the Due Process claim to begin. *Id.* at n.6. Moreover, *Mondragon* involved a claim of "wrongful detention" under §1983, not a malicious prosecution claim, contrary to Plaintiff's assertion.¹

C. Plaintiff's Shotgun Manner of Pleading Does not Suffice to Plausibly Allege the Key Element of Malice

Plaintiff's Amended Complaint alleges a wide panoply of factual allegations, to be sure. However, when examined through the lens of the single cause of action for malicious prosecution, as the Amended Complaint must be analyzed, see *Pierce*, 359 F.3d at 1291-97, and in accordance with applicable plausibility pleading standards laid down in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqubal*, ___ U.S. ___, 129, S.Ct. 1937 (2009), and applied in *Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174 (10th Cir. 2007) and *Robbins v. Oklahoma*, 519 F.3d 1242 (10th Cir. 2008), the Amended Complaint has still failed to assert, with sufficient factual specificity, the necessary key element of malice to plausibly support a malicious prosecution claim. Even if all of Plaintiff's factual allegations in ¶37, subparagraphs a.-l. are taken as true, the most that can be said is that Koopman arguably lacked probable cause to initiate and pursue prosecution of Plaintiff. Lacking adequate factual allegations of the separate element of malice, the single claim for relief for malicious prosecution still fails to state a claim upon which relief may be granted and should be

¹ The Tenth Circuit did, however, in *Mondragon* state that after the institution of legal process, any remaining constitutional claim is "analogous" to a malicious prosecution claim. 519 F.3d at 1083.

ordered dismissed with prejudice.

D. Koopman's Absolute Immunity Argument Must be Analyzed in the Light of Plaintiff's Sole Claim for Relief for Malicious Prosecution

Plaintiff's sole claim for relief asserted against Koopman is for "Malicious Prosecution." Amended Complaint at 12 (emphasis added). Therefore, Koopman's claim to absolute immunity must be analyzed strictly within the crucible of an alleged malicious prosecution.

Because the Court must apply a "functional approach," *Burns v. Reed*, 500 U.S. 478, 486, 111 S.Ct. 1934, 1939 (1991); *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S.Ct. 2602, 2613 (1993), "which looks to 'the nature of the function performed, not the identity of the actor who performed it,'" *id.*, citing *Forrester v. White*, 484 U.S. 219, 229, 108 S.Ct. 538, 545 (1988), this Court would do well to heed Justice Ginsburg's suggestion that a claim which focuses on a police officer's role in initiating and pursuing a criminal prosecution entitles the police officer to share the prosecutor's absolute immunity from a claim of malicious prosecution. See *Albright v. Oliver*, 510 U.S. 266, 279, n.5 (1994); cf. *Briscoe v. LaHue*, 460 U.S. 325, 326, 103 S.Ct. 1108, 1110-11 (1983) (holding that §1983 does not authorize a convicted person to assert a claim for damages against a police officer for giving perjured testimony at his criminal trial). The fact that a testifying police officer at trial is entitled to absolute immunity should, at the very least, afford Koopman absolute immunity for his testimony in preliminary hearings even though alleged to have been perjured or falsified. See *Briscoe v. LaHue*, 663 F.2d 713 (7th Cir. 1981), *aff'd*, 460 U.S. 325 (1983) (in litigation brought under §1983, all witnesses — police officers as well as lay witnesses — are absolutely immune from civil

liability based on their testimony in judicial proceedings).² See also *Tripati v. United States Immigration and Naturalization Service*, 784 F.2d 345 (10th Cir. 1986), cert. denied, 484 U.S. 1028, 108 S.Ct. 755 (1988) (federal probation officer alleged to have made false statements in a pretrial bond report and presentence report held entitled to absolute immunity); *Anthony v. Baker*, 955 F.2d 1395, 1400 (10th Cir. 1992) ("In this Circuit, we extended *Briscoe* beyond the trial itself to judicial proceedings generally.") (recognizing that other circuits have relied on *Tripati* as support for granting absolute immunity to a witness testifying in a pretrial setting, including testimony at adversarial preliminary hearings). While *Anthony*, decided in 1992, concluded that a complaining witness -- as distinguished from a lay witness -- is not entitled to absolute immunity in a malicious prosecution action for testimony given at a preliminary hearing "if that testimony is relevant to the manner in which the complaining witness initiated or perpetuated the prosecution," 955 F.2d at 1401-02, the continuing validity of that aspect of the Tenth Circuit's holding is doubtful in view of Justice Ginsburg's later observations in *Albright*, *supra*, in a case such as this which focuses on the police officer's role in initiating and pursuing a criminal prosecution as a basis for a malicious prosecution constitutional deprivation claim. See *Taylor v. Meacham*, 82 F.3d 1556, 1563 n.8 (10th Cir. 1986) (acknowledging Justice Ginsburg's questioning whether police officers should be entitled to share the prosecutor's absolute immunity).

These developments in the constitutional law of absolute immunity should lead

² It should be noted, though, that the Supreme Court in *Briscoe* did not decide the question of absolute immunity for allegedly false testimony by a police officer at a probable cause hearing. 460 U.S. at 328 n.5.

this Court to not follow the *dicta* in *Novitsky v. City of Aurora*, 491 F.3d 1244, 1258 (10th Cir. 2007) that officers who conceal and misrepresent material facts to the district attorney are not insulated from a §1983 claim for malicious prosecution "simply because the prosecutor, grand jury, trial court, and appellate court all act independently to facilitate erroneous convictions." (emphasis added) (quoting *Pierce v. Gilchrist*, 359 F.3d 1279, 1292 (10th Cir. 2004)). *Novitsky* and *Pierce* concern themselves with a different issue than presented here. Koopman's current claim to absolute immunity is not based upon the assertion that the prosecutor acted independently in his decision to prosecute Plaintiff. Instead, Koopman here asserts that he is entitled to "share" absolute prosecutorial immunity regardless of the independent prosecutorial decision made by the prosecutor to prosecute. Neither *Pierce* nor *Novitsky* addressed this issue. Koopman's argument that he is entitled to absolute immunity against a §1983 claim of malicious prosecution is, therefore, an "open issue," see *Albright*, 510 U.S. at 279 n.5 (Ginsburg, J., concurring) (citing Stevens, J., dissenting, 510 U.S. at 831 n.26).

While Plaintiff argues that "Koopman never performed any prosecutorial functions, [therefore] his actions were either investigative or administrative, at best," Plaintiff's Response at 10, Plaintiff has sued Koopman only for malicious prosecution, and it is within this framework that Koopman's claim to absolute immunity must be judged.

II. CONCLUSION

For reasons set forth in Defendants' Motion to Dismiss Plaintiff's Amended Complaint and as further elaborated hereinabove, Defendants respectfully request the Court dismiss the Amended Complaint in its entirety.

DATED the 14th day of April, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2011, I electronically filed the foregoing REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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City of Loveland Charter

As Proposed by the Home Rule Charter Commission
Roger Clark, Chair, Stephanie Albrecht, Fred E. Anderson
Janet Armstrong, Richard W. Ball, Gail Birdsall
Ray Emerson, Patricia A. Farnham, Larry A. Heckel
Karen Herman, Tamra A. Keller, Gene W. Kennedy
Gilbert Sandberg, Lisa K. Shultz, Ronald E. Weakley

**Adopted by the
Citizens of Loveland, Colorado on May 21, 1996**

**and Filed with the
Colorado Secretary of State on May 23, 1996**

**and Received by the
Colorado Secretary of State on May 24, 1996**

Last Amended November 6, 2007

Charter Amendments

<u>Section No.</u>	<u>Election Date Amended</u>	<u>Election Date Added</u>
2-6(c)	11/04/97	
3-5(b)	11/03/98	
4-8(b)	11/03/98	
5-1(a)(2)	11/03/98	
6-1	11/03/98	
7-7(c)	11/04/97	
10-2(a)	11/03/98	
8-1(c)	11/07/2000	
8-4(b)	11/06/2001	
Article 17	11/06/2007	

**MUNICIPAL CHARTER
for the
CITY OF LOVELAND
STATE OF COLORADO**

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PREFATORY SYNOPSIS

ARTICLE 1. DEFINITIONS
Section 1-1. Definitions



The municipal government provided by this Charter shall be known as a Council-Manager government.

SECTION 2-4 -- POWERS OF THE CITY

(a) The City shall have all the power of local self-government and home rule and all power possible for the City under the State Constitution. All such powers shall be exercised in a manner consistent with the United States Constitution, the State Constitution, and this Charter.

(b) Except as otherwise provided in this Charter, the City shall also have all powers granted to cities, towns, and municipalities by the State statutes.

(c) The enumeration of specific powers in this Charter shall not be considered as limiting or excluding any other power under Article XX of the State Constitution. All powers shall be exercised in the manner set forth in this Charter or, if not provided for in this Charter, in such manner as shall be provided by ordinance.

SECTION 2-5 -- AMENDMENTS TO THE CHARTER

This Charter may be amended in the manner provided in the State Constitution and the State statutes pertaining to home rule charter amendments. Proceedings to amend the Charter may be initiated by the filing of a petition meeting the requirements of the State statutes, or by the adoption of an ordinance by the City Council submitting the proposed amendment to a vote of the registered electors of the City.

SECTION 2-6 -- CHARTER AMENDMENTS ONLY BY MEASURES EXPRESSING A SINGLE SUBJECT

(a) No measure proposing an amendment to this Charter shall be submitted to the registered electors of the city if the measure contains more than one subject.

(b) The City Clerk shall approve for petition circulation measures proposing Charter amendments only when such measures contain a single subject.

(c) As used in this section, the single subject requirement means that the matters in the measure submitted for voter approval are necessarily or properly connected and are not disconnected or incongruous.

(Added at the election held November 4, 1997)

ARTICLE 3

CITY COUNCIL

SECTION 3-1 -- CITY COUNCIL

(a) The City Council shall be the governing body of the City, and shall have such powers as are possessed by the City and not conferred by this Charter on others. All such powers shall be exercised in the manner prescribed in this Charter or, if not provided for herein, in such manner as shall be provided by ordinance.

(b) The City Council shall consist of eight (8) Council members nominated and elected, two (2) from each ward, and a Mayor nominated and elected from the City at large.

(c) The City Manager shall become a resident of the City or the Community Influence Area as defined in the Comprehensive Plan adopted by the City Council on May 2, 2000, as amended from time to time, within six ((6) months of appointment, and shall remain a resident of such area throughout the Manager's appointment. (Amended at the election held November 7, 2000.

(d) The City Council shall evaluate the City Manager's performance at least annually.

(e) The removal of the City Manager shall require the affirmative vote of two-thirds (2/3) of the entire Council.

SECTION 8-2 -- ACTING CITY MANAGER

The City Council shall designate a qualified City employee to serve as Acting City Manager during the Manager's absence or disability, or during times when the position is vacant.

SECTION 8-3 -- EXCLUSIVE SERVICE TO CITY

During the period of the appointment, the City Manager shall not be an employee of, or perform any services for compensation from, any person or entity other than the City, unless the Manager has first obtained the approval of the City Council.

SECTION 8-4 -- POWERS AND DUTIES OF MANAGER

The City Manager shall be the chief administrative officer of the City. The City Manager shall have the following powers and duties:

(a) Be responsible for the enforcement of the ordinances, resolutions, franchises, contracts, and other enactments of the City.

(b) Establish and implement personnel rules and regulations for City employees. Such rules and regulations shall provide for the selection, promotion, and retention of City employees on the basis of ability, training, experience, and performance. In addition, such rules and regulations shall provide that no City employee shall be discharged, except for cause, from a position of employment which the employee has held for six (6) months or longer, unless the City employee is a police officer, in which case this timer period shall be one (1 year) year or longer. . Nothing in this subsection shall preclude the establishment or application of rules and regulations for a layoff, a reduction in force, or an administrative reorganization, or the establishment of temporary or seasonal positions of employment. (Amended at the election held November 6, 2001)

(c) Cause a proposed budget to be prepared and submitted to the Council annually, and be responsible for the administration of the adopted budget.

(d) Cause to be prepared and submitted to the City Council, as of the end of the fiscal year, a complete report on finances and administrative activities of the City for that year, and make other reports as requested by the Council concerning the matters of the City in the Manager's charge.

(e) Keep the City Council advised of the financial condition and future needs of the City.

(f) Except as to the Municipal Court and the office of the City Attorney, exercise supervision and control over all City departments, and make recommendations to the City Council concerning the establishment, consolidation or abolition of such departments.

(g) Attend City Council meetings and participate in discussions with the Council in an advisory capacity.

(h) Be responsible for informing the public on City functions and activities.

(i) Perform such other duties as prescribed by this Charter, or as required by the Council and not inconsistent with this Charter.

SECTION 8-5 -- COUNCIL'S RELATIONSHIP TO EMPLOYEES

(a) Neither the Council, the Mayor, nor any Council member, shall dictate or interfere with the appointment of, or the duties of, any City employee subordinate to the City Manager or to the City Attorney, or prevent or interfere with the exercise of judgment in the performance of the employee's City responsibilities. The Council, the Mayor, and each Council member, shall deal with such employees solely through the Manager or the City Attorney, as applicable, and shall not give orders or reprimands to any such employee.

(b) The City Manager alone shall be responsible to the City Council for the proper administration of all matters placed in the Manager's charge by or pursuant to this Charter.

ARTICLE 9

LEGAL AND JUDICIARY

SECTION 9-1 - CITY ATTORNEY

(a) The City Council, by the affirmative vote of two-thirds (2/3) of the entire Council, shall appoint a City Attorney to serve at the pleasure of the Council.

(b) The Council shall establish the City Attorney's compensation.

(c) The City Attorney shall be, at all times while serving as City Attorney, an attorney at law admitted to practice in Colorado.

(d) The removal of the City Attorney shall require the affirmative vote of two-thirds (2/3) of the entire Council.

(e) The City Attorney shall serve as the chief legal advisor for the City, shall advise the Council and other City officials in matters relating to their official powers and duties, and shall perform such other duties as may be designated by the Council.

(f) Employees subordinate to the City Attorney shall be subject to the personnel rules and regulations established pursuant to Section 8-4(b), but supervision and control over such employees shall be exercised by the City Attorney.

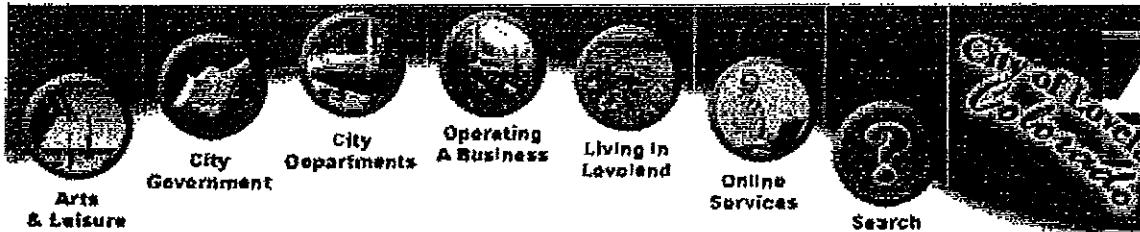
(g) The City Council shall evaluate the City Attorney's performance at least annually.

(h) The Council may employ such special counsel as may be recommended by the City Attorney, the City Manager, or the Council.

SECTION 9-2 - MUNICIPAL COURT; MUNICIPAL JUDGE

(a) There shall be a Municipal Court vested with jurisdiction over matters arising under the Charter and ordinances of the City. The Municipal Court shall be a court of record.

(b) The City Council shall appoint, by the affirmative vote of two-thirds (2/3) of the entire Council, a presiding municipal judge and such deputy municipal judges as the Council deems necessary. Each municipal judge shall be appointed for a two (2) year term.

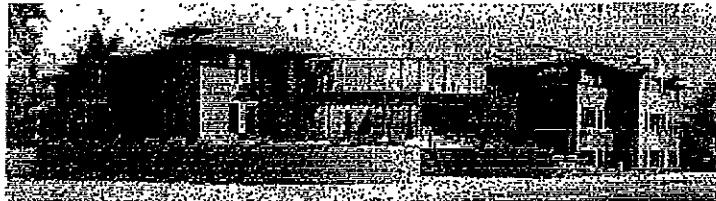


Loveland Municipal Code

Information: 970-962-2000

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Loveland Municipal Code 1974



A Codification of the General Ordinances of the City of Loveland, Colorado

The Loveland Municipal Code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. While every attempt is made to keep this on-line version current, it should be used for reference only. The most recent ordinances amending the Code may be found in the office of the City Clerk.

Complete Code

(The Complete Code is a very large PDF and may take a some time to open. If you wish to download only portions of the code, or are having difficulty opening this large document, please click the links to the left for smaller individual title PDF links. ~ Thank you.)

Last amended date: 02/01/2011

EXHIBIT

B

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Chapter 2.24

CITY MANAGER*

Sections:

2.24.010	Duties.
2.24.020	Administrative control.
2.24.030	Administrative regulations.
2.24.040	Authority.

*For statutory provisions relating to the appointment, qualifications and removal of the city manager, see CRS § 139-5-10; for other statutory provisions on the powers, etc., of the city manager, see CRS § 139-5-11 et seq.

2.24.010 Duties.

It shall be the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that the ordinances of the city and the applicable laws of the state are enforced; to make such recommendations to the council concerning the affairs of the city as may seem to him desirable; to keep the council advised of the financial condition and future needs of the city; to prepare and submit to the council the annual budget estimate; to prepare and submit to the council such reports as may be required by that body; to prepare and submit each month to the council a detailed report covering all activities of the city, including a summary statement of revenues and expenditures for the preceding month, detailed as to appropriations and funds in such a manner as to show the exact financial condition of the city and of each department and division thereof as of the last day of the previous month; and to perform such other duties as may be prescribed by the statutes of the state or required of him by ordinance or resolution of the city council. The city manager may appoint such assistants as deemed necessary and as authorized in the budget for the city, who shall serve under the direction and control of the city manager and who may be delegated or assigned such duties as the city manager may prescribe. (Ord. 3975 § 1, 1994; Ord. 877 Art. 2 (part), 1964; prior code § 4.5)

2.24.020 Administrative control.

The city manager shall be responsible to the council for the proper administration of all affairs of the city placed in his charge, and to that end, and except as otherwise provided in this code and by law, he shall have the power to appoint and remove all officers and employees in the administrative service of the city except the city attorney and municipal judge. Appointments made by the city manager shall be on the basis of executive and administrative ability and of the training and experience of such appointees in the work which they are to perform. All such appointments shall be without definite terms. (Ord. 1333 § 1 (part), 1974; Ord. 877 Art. 2 (part), 1964; prior code § 4.5-1)

2.24.030 Administrative regulations.

The manager is authorized to issue such administrative regulations and to outline general administrative procedures in the form of rules, not in conflict with the laws of the state or the ordinances of the city, in addition to those embodied in this plan, as are, or may become necessary for the adequate functioning of all departments. (Ord. 877 Art. 2 (part), 1964; prior code § 4.5-2)

Chapter 2.44

DIVISION OF PUBLIC SAFETY*

Sections:

2.44.010	Designated.
2.44.020	Police department.
2.44.040	Fire and rescue department.
2.44.050	Cooperative agreements.
2.44.060	Removal of apparatus from city.
2.44.070	Fire alarms.
2.44.120	Fee for police services at noise disturbances requiring a second response.

*For statutory provisions regarding the chief of police, see CRS § 139-4-6; policemen's pension fund, see CRS § 139-49-1. For statutory provisions authorizing cities and towns to provide fire fighting equipment to be used by fire companies, see CRS § 139-32-1(28).

2.44.010 Designated.

There is created a division of public safety which shall be directed by the city manager and shall consist of a police department and a fire and rescue department. (Ord. 4079 § 1, 1995; Ord. 3975 § 7; Ord. 1337 § 1 (part), 1974; Ord. 877 Art. 3 (part), 1964; prior code § 4.14)

2.44.020 Police department.

There is established a police department. The director of the police department shall be the chief of police. He shall direct the police work of the city and shall be responsible for the maintenance of law and order. His work shall include control of investigation, records, traffic, crime prevention and all subjects allied to police work. He shall also furnish information to the public relative to traffic regulations, city ordinances and state laws and perform such other duties as may be assigned by the city manager in the exercise of police powers. (Ord. 1337 § 1 (part), 1974; Ord. 877 Art. 3 (part), 1964; prior code § 4.14-1)

2.44.040 Fire and rescue department.

There is established a fire and rescue department which shall be under the supervision of the fire chief. The fire chief shall be responsible for the extinguishment and the prevention of fires, the protection of life and property against fires, the response to emergency medical incidents and other rescues, the control and containment of hazardous material releases, the removal of fire hazards, the maintenance and care of all property owned by the department, the training of all firefighters, and the performance of other duties assigned by the city manager. The fire chief shall also furnish information to the public relative to fire hazards, illegal practices and dangerous fire hazards and situations. (Ord. 4079 § 2, 1995; Ord. 1337 § 1 (part), 1974; Ord. 877 Art. 3 (part), 1964; prior code § 4.14-2)

2.44.050 Cooperative agreements.

The city council may enter into a cooperative agreement with the Loveland rural fire protection district for the joint use of equipment, officers and facilities, and it may pay all or a proportionate share of the necessary expenses which are occasioned by or incidental to fire protection. (Prior code § 10.2)

2.44.060 Removal of apparatus from city.

No fire equipment or emergency first aid equipment shall be taken from the city except to a fire in the Loveland rural fire protection district, and in case of an emergency, to other areas authorized by the chief of the fire department or the city manager. (Ord. 931 § 7, 1965; prior code § 10.4)