



AGENDA

TUESDAY, OCTOBER 11, 2016
SPECIAL MEETING & STUDY SESSION, 5:30 P.M.
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

Notice of Non-Discrimination

It is the policy of the City of Loveland to provide equal services, programs and activities without regard to race, color, national origin, creed, religion, sex, sexual orientation, disability, or age and without regard to the exercise of rights guaranteed by state or federal law. It is the policy of the City of Loveland to provide language access services at no charge to populations of persons with limited English proficiency (LEP) and persons with a disability who are served by the City.

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Title VI and ADA Grievance Policy and Procedures can be located on the City of Loveland website at: cityofloveland.org/

(5:30
p.m.)

1. SPECIAL MEETING INTRODUCTION

1.1. CALL TO ORDER

1.2. ROLL CALL

1.3. HUMAN RESOURCES (presenter: Julia Holland) **EXECUTIVE SESSION FOR ACTING CITY ATTORNEY INTERVIEWS**

On October 4, 2016, Council approved a motion for a Special Meeting, to include Executive Sessions. The Special meeting will begin at 5:30 pm in the City Manager's

Conference room prior to the Study Session on October 11, 2016. The purpose of this Special meeting is to conduct interviews with two candidates for the Acting City Attorney appointment. Council may direct staff or make a motion on the record with regard to the appointment of an acting city attorney.

[HR Acting City Attorney Interview Coversheet](#)

2. ADJOURN TO STUDY SESSION

STUDY SESSION AGENDA

(60
minutes)

2.1. ECONOMIC DEVELOPMENT

(presenter: Mike Scholl)

PULLIAM BUILDING REVIEW BUSINESS PLAN AND DEMAND ANALYSIS

On January 21, 2016, the City Council directed staff to begin the process of developing a long-term business plan for the future of the Pulliam Community Building. Following the meeting, staff collaborated with the Loveland Downtown Partnership (LDP) to hire BBC Consulting to complete a "Financial Feasibility Study," on the Pulliam Building. The consultants worked with a group of stakeholders including the LDP to determine the best use of the building, conducted interviews with comparable institutions, reviewed management options and developed operational scenarios for the building. Representatives from BBC will be present to discuss the findings with Council.

[ED Pulliam Building Coversheet](#)

[ED Att 1 Pulliam Feasibility Study PDF](#)

[ED Att 2 Pulliam Building Budget Memorandum](#)

[ED Att 3 October 3 Grant Letter](#)

(60
minutes)

2.2. FINANCE

(presenter: Jim Wedding &
Vincent Junglas)

CML UNIFORM STANDARD DEFINITION SALES TAX PROJECT

In 2014, the Colorado State Legislature passed SJR 14-038, directing Colorado Home Rule Cities to work with CML to develop and adopt uniform definitions to simplify sales tax collections for the business community. A Uniform Definitions Steering Committee with the help of CML has created proposed Uniform Definitions for adoption by all self-collected sales tax jurisdictions. If the project fails, the Legislature may force the States definitions, including any future changes, on all municipalities. Additionally, the City's sales tax code lacks transparency, is outdated, inefficient and in need of an update.

[2.2 FIN CML Uniform Tax Definitions Project Coversheet](#)

[FIN Att 1 Sales and Use Tax Power Point](#)

[FIN Att 2 Sales and Use Tax Definitions and Exemptions](#)

(60
minutes)

2.3. HUMAN RESOURCES

(presenter: Julia Holland, John
Spreitzer, Moses Garcia & Chief
Ticer)

POLICE RETIREMENT PROGRAM

The current Police Retirement Plan is a mandatory 401 (a) Money Purchase Plan, which is a defined contribution plan not a defined benefit program. Participant contributions are mandatory and pre-tax at 7% of an employee's base pay. The City contribution is 11% of base pay per participant. The City does not provide Social

Security contributions for public safety positions, but does contribute to Medicare for participants of the Plan (if hired after 1986). At the January 12, 2016, Study Session the Retirement Board brought a proposal to Council for a revised Police Retirement Plan. The proposed changes require an increase to the mandatory contribution from the participants (3% increase), reduction of the base contribution from the City (1% reduction) and an option for voluntary employee contributions up to a maximum of 5% that would be matched by the City. If employees participated in the match option, the maximum City contribution would be 4% higher than the current contribution. The Police Retirement Board is bringing the proposal back to City Council for consideration per Council direction at the study session to gather additional information, wait for the new Police Chief and align the proposal with an annual budget cycle.

[2.3 HR Police Retirement Plan Proposal Coversheet](#)

[HR Att 1 Sworn Retirement Plan Proposal Powerpoint](#)

[HR Att 2 Police Compensation Survey Memo](#)

[HR Att 3 Current Police Retirement Plan programs summary](#)

[HR Att 4 Police Citizen's Advisory Board Letter of Support](#)

3. ADJOURN

AGENDA ITEM: 1.3
MEETING DATE: 10/11/2016
TO: City Council
FROM: Human Resources
PRESENTER: Julia Holland, Director of Human Resources

**TITLE:**

Special Meeting to conduct executive session for Acting City Attorney interviews and possible motion on the record with regard to the appointment of an acting city attorney.

RECOMMENDED CITY COUNCIL ACTION:

Motion for Executive Session for interviews for Acting City Attorney.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.

SUMMARY:

On October 4, 2016, Council approved a motion for a Special Meeting, to include Executive Sessions. The Special meeting will begin at 5:30 pm in the City Manager's Conference room prior to the Study Session on October 11, 2016. The purpose of this Special meeting is to conduct interviews with two candidates for the Acting City Attorney appointment. Council may direct staff or make a motion on the record with regard to the appointment of an acting city attorney.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:

There will be a vacancy in the position of City Attorney effective 12:01 a.m. October 27, 2016. Loveland City Charter authorizes the City Council to appoint a City Attorney to serve at the pleasure of Council. Council directed staff to coordinate an interview process for October 11, 2016, prior to the regularly scheduled Study Session to interview two potential candidates for the Acting City Attorney position until the vacant City Attorney position is filled. Council may direct staff or make a motion on the record with regard to the appointment of an acting city attorney.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

None

AGENDA ITEM: 2.1
MEETING DATE: 10/11/2016
TO: City Council
FROM: Mike Scholl, Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager



TITLE:
Pulliam Community Building Financial Feasibility Study

SUMMARY:

On January 21, 2016, the City Council directed staff to begin the process of developing a long-term business plan for the future of the Pulliam Community Building. Following the meeting, staff collaborated with the Loveland Downtown Partnership (LDP) to hire BBC Consulting to complete a "Financial Feasibility Study," on the Pulliam Building. The consultants worked with a group of stakeholders including the LDP to determine the best use of the building, conducted interviews with comparable institutions, reviewed management options and developed operational scenarios for the building. Representatives from BBC will be present to discuss the findings with Council.

BACKGROUND:

On October 6, 1936, the City of Loveland entered into a written agreement with D.T. Pulliam and L.B. Pulliam for the construction of the Pulliam Community building at 545 N. Cleveland Avenue to be used for "community purposes." The building has been owned and operated by the City for eighty years.

In the past few decades, the building has slowly become functionally obsolete. The restrictive seating in the main auditorium and the lack of modern amenities, such as air conditioning, as well as outdated electrical and other mechanical systems, has limited the use of the building. Currently, the smaller basement level meeting room is used more regularly and the main auditorium is used on average about once or twice a year.

At the September 15, 2015 regular City Council meeting, Council approved a modification to the title to allow for a broader interpretation of the "community purpose" provision and to allow for the removal of the fixed seating in the main auditorium. This was the culmination of 18 months of negotiation and discussion with the heirs to the Pulliam family. The modifications allow for the sale of the property to a "public authority, charitable trust, and/or foundation, non-profit corporation or similar entity" subject to the limitation agreed upon otherwise the building will remain in the hands of the City. The City is also permitted to lease the building so long as the use is consistent with the "community purpose" standards defined in the agreement.

At the January 21, 2016 Council meeting, staff was directed to move forward with a business plan. Staff and the LDP brought in BBC Consulting based on their past experience with similar projects including the repurposing of the McNichols Civic Center in Denver. The study began with the following goals:

- Reduce the public subsidy for the facility;
- Increase current usage levels; and
- Encourage more downtown visitors.

Staff brought together a group of community stakeholders to work with BBC including Norm Rehme from the Pulliam Community Building Foundation, owners of the businesses adjacent to

the Pulliam and a representative from the Historic Preservation Commission. The community stakeholders indicated that the facility should be renovated to a level that would make the auditorium more appealing as a rental for special events and/or ticketed events including concerts. The estimated cost for renovation in the study is approximately \$1.8 to \$2 million.

BBC completed a community scan of competing venues, interviewed potential users of the building, and talked with similar venues including the 1st Bank Center in Broomfield. They developed a set of recommendations for consideration by the City, which include:

1. Use third party management for auditorium bookings while the city retains management of the basement and room 1 and 2.
2. Consider additional staffing to provide booking, marketing, maintenance (including set-up and clean-up), a sound and lighting technician, a day of needs specialist, and ticketing and security services. BBC estimates that under Scenario D, the Pulliam would need approximately 3 full-time equivalent staff, and will probably need volunteers.
3. For sound and lighting costs (as well as technical staff), the city should consider pursuing a vendor partnership whereby, in exchange for some exclusivity in booking, the vendor would share a portion of the costs of upgrades.
4. In order to attract more visitors, the Pulliam will need to consider additional amenities such as alcohol sales, Wi-Fi network access, a speaker podium, and tables with linens. Additional staffing amenities, such as table service or security would also be desirable depending on the event.
5. Consider revising the rental agreement to encourage ease of use and additional set-up time. The city should consider an all-inclusive fee structure instead of the current hourly fee structure.
6. Consider renovations to address restroom capacity, access, and location to facilitate greater building use.

BBC also developed four scenarios for consideration by the City.

<u>Scenario</u>	<u>Estimate Operating Subsidy</u>	<u>Annual Visitors</u>
a) Close the Building	\$40,574	0
b) Maintain the building "as is"	\$55,706	5,000
c) City managed with \$2 million investment into auditorium	\$137,554	14,560
d) Third party managed auditorium with \$2 million investment in auditorium	\$76,794	26,160

Staff is also seeking direction on the offer from the Pulliam Community Building Foundation to provide \$100,000 toward the renovation of the building. Included in the Council packet is a separate staff memorandum that addresses funding options for the proposed renovation including the opportunities to access grant funding through the State Historic Fund and discussion on the potential for the Downtown Development Authority to share the costs.

REVIEWED BY CITY MANAGER:
SCA

LIST OF ATTACHMENTS:

1. BBC Report – Pulliam Community Building Financial Feasibility Report
2. Staff Memorandum – Funding Options for Renovation of the Pulliam Building
3. Pulliam Building Community Foundation – Grant Letter (10/3/16)



Pulliam Community Building Financial Feasibility Study

City of Loveland

FINAL REPORT

Final Report

August 10, 2016

Pulliam Community Building Financial Feasibility Study

Prepared for

City of Loveland
500 E. Third Street
Loveland, CO 80537

Prepared by

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Executive Summary and Recommendations

The Pulliam Community Building, located on the Northern side of downtown Loveland, is underutilized and in need of several updates. The building currently hosts about 125 events in the basement and no events in the auditorium. BBC estimates that the Pulliam draws a total visitor amount of 5,000 guests annually.

The City of Loveland would like to:

- Reduce the public subsidy for the facility;
- Increase current usage levels; and
- Encourage more downtown visitors.

Project Overview

The city retained BBC Research & Consulting to document the current use limitations, research operational scenarios, provide some financial modeling and provide insight regarding what might be required to make the building competitive with regional events centers and performance venues. BBC worked with city staff and community stakeholders to document the current condition of the building, conducted interviews with potential users of the facility, and interviewed representatives from similar facilities in the Front Range. Based on the information from the research and the interviews, BBC developed a series of pro-forma financial models for operating the building.

Community stakeholders envisioned a renovation that would turn the auditorium into a more appealing venue available for rental and/or a concert or event hall with ticketed sales. BBC conducted interviews with relevant professionals and similar venues for insights on market opportunities and limitations, management operations, and how the suggested uses would increase the number of downtown visitors.

Fiscal Model

BBC worked with city staff on assumptions for current and future revenue and operational costs. BBC created four operational scenarios, with Scenario C and D predicting increased use of the auditorium and also received the highest estimated cost recovery:

- Scenario A: Close building;
- Scenario B: Maintain the building as is;
- Scenario C: City managed with investment into auditorium facilities; and
- Scenario D: Third party managed auditorium with city investment in the auditorium facilities.

Based on BBC's estimates, all four scenarios projected that the Pulliam Community Building's expenditures exceed possible revenue. Under Scenario A, a closed building will cost approximately \$40,574 to maintain and will bring in zero dollars of revenue. In Scenario B, based on current usage levels, the building has an estimated net loss of \$55,706 (a 24% cost recovery). Under Scenario C, an investment into the auditorium, with city management, would yield an estimated net loss of \$137,544 (or a 51% cost recovery). Under Scenario D, an investment into the auditorium and use of third party management would yield an estimated net loss of \$76,794 (a 78% cost recovery) but with higher overall usage and impact to the surrounding area compared to Scenario C.

Third party management (Scenario D) would likely bring in an estimated 26,160 visitors annually whereas city managed (Scenario C) would attract only 14,560 visitors annually. An estimated 5,000 visitors are currently visiting the Pulliam (Scenario B).

BBC also provided some possible external funding sources to defray the cost of operations.

Interview Insights Feedback

BBC conducted interviews about the potential uses for the Pulliam Community Building, compared to existing venues and marketing opportunities.

Interviewees shared the following insights for an event venue available for rental:

- Loveland currently does not have a larger sized publically-owned venue space. Community groups would be attracted to this;
- There are several event venues in the surrounding area and the Pulliam would need to improve amenities in order to compete in the market;
- The city could create an all-inclusive fee and provide a number of services in order to attract possible renters;
- The city needs to better integrate its downtown so that the Pulliam can attract both local and non-local visitors.

Interviewees shared the following insights for a concert or music venue:

- Fort Collins is more well-known for music-related activities but Loveland has a more established visual arts scene;
- There is an available supply of musicians within a 250-mile radius that might be interested in using the auditorium;
- Traditional ownership models are based on private-interest or the use of promoters. Promoters only use venues that meet the promoter's desired profitability margins. The Pulliam would need to demonstrate audience size in order to attract a promoter.
- To compete as a concert venue, the City of Loveland needs to develop a niche market for the type of performances or music genres it hopes to acquire;
- The city will need to contend with competition between concert venues and improve the Pulliam's amenities. The city could rely on vendor relations to defray costs;

- A concert venue would attract a large number of visitors.

Recommendations

As either an event venue or concert hall, the Pulliam will face competition with other venues. For the Pulliam to succeed, it needs a strong business and marketing plan. In addition, BBC recommends the following building management strategies:

1. Use third party management for auditorium bookings while the city retains management of the basement and room 1 and 2.
2. Consider additional staffing to provide booking, marketing, maintenance (including set-up and clean-up), a sound and lighting technician, a day of needs specialist, and ticketing and security services. BBC estimates that under Scenario D, the Pulliam would need approximately 3 full-time equivalent staff, and will probably need volunteers.
3. For sound and lighting costs (as well as technical staff), the city should consider pursuing a vendor partnership whereby, in exchange for some exclusivity in booking, the vendor would share a portion of the costs of upgrades.
4. In order to attract more visitors, the Pulliam will need to consider additional amenities such as alcohol sales, wi-fi network access, a speaker podium, and tables with linens. Additional staffing amenities, such as table service or security would also be desirable depending on the event.
5. Consider revising the rental agreement to encourage ease of use and additional set-up time. The city should consider an all-inclusive fee structure instead of the current hourly fee structure.
6. Consider renovations to address restroom capacity, access, and location to facilitate greater building use.

SECTION 1.

Introduction and Methodology

In the last few decades, the main auditorium space in the Pulliam Community Building has not been used and will require substantial investment to restore to a usable space. The City of Loveland is currently considering a large renovation of the building in order to restore the building to its intended “community” purpose and to help activate the downtown.

The city retained BBC Research & Consulting to document the current use limitations, research potential operational scenarios, provide financial modeling and to provide insight regarding what might be required to make the building competitive with regional events centers and performance venues. BBC worked with city staff and stakeholders to document the current condition of the building and conducted interviews about potential building uses. BBC also developed a series of pro-forma financial models for operating the building. This report provides a detailed discussion of the research and recommendations for the building.

Study Approach

The analysis for this report centered on three key objectives identified by the city for the Pulliam Community Building:

- Use the Pulliam in a manner that fulfills the community purpose provisions of the building title;
- Draw visitors to downtown and increase the amount of foot traffic to local businesses; and
- Reduce the current operating subsidy and identify opportunities to increase revenue through expanded operations of the facility.;

In order to determine the programming and management scenario that would best accomplish these objectives, BBC conducted a site visit, analyzed plans for the downtown development and the Phase I renovations, interviewed key stakeholders and developed financial models for four plausible scenarios.

Report Organization

This report contains four sections and an executive summary. Section 1 details background information about the building including the history, current status, redevelopment plans and key opportunities and limitations. Section 2 documents interview insights and market considerations based on stakeholder visions. Section 3 discusses potential building operations and management models. Finally, section 4 provides analysis of potential operating scenarios for the building.

Critical Area for Downtown Development

The city's plans for downtown development include the possible revitalization of the Pulliam Community Building. The traditional downtown core has been centered on and around 4th Street but as the revitalization effort begins to take hold, opportunities to expand the core are beginning to take root. When the Pulliam was originally built in 1936, the downtown served the needs of a population of 10,000. In its current state, the downtown is no longer appropriately scaled to Loveland's growing population which now exceeds 70,000 residents.

With the proposed South Catalyst project that will include new residential, a theater, office and retail slated for the southern side of the downtown area, the Pulliam would function as an anchor for the north side of the downtown core. This plan would create a larger number of destinations downtown and allow more residents and non-local visitors to enjoy Loveland. In addition, the city and the wider business community are in the planning stages for the following updates:

- To aid in the transformation of the wider downtown area, the city is exploring the idea of infrastructure improvements on Cleveland Avenue. The investments may include a street narrowing to calm the traffic and make the area more pedestrian-friendly.
- Other local property owners are also planning to revitalize some of their buildings, including Doug Erion, at First National Bank building, and Clay Caldwell, at Mo'Betta Gumbo.
- The retail business across the street from the Pulliam Building are anxious for more activity at the facility to stimulate business.

Revitalizing the Pulliam would help achieve these goals and help increase foot traffic along Cleveland Avenue and the side streets surrounding the Pulliam Building. Loveland is currently known for its visual arts, including the sculpture gardens, bronze foundries, public-private-philanthropic partnerships for art space (such as the construction of the Rialto bridge), and the new Artspace "live and work" building. By adding to the City's performance spaces, the Pulliam Building could help grow the City's reputation as a creative community.

Economic Benefits of Historical Buildings

Loveland has an active historic preservation commission that has made preservation a priority in the area. Though Loveland does not have a large number of historically designated buildings, there are wider economic benefits to historic preservation. Whether the city plans to pursue historic designation for the Pulliam Community Building or not, BBC included information from the following studies:

In a 2011 study prepared for the Colorado Historical Foundation, several economic benefits were reported in relation to historic preservation activities.¹ These included:

- “Every \$1 million spent on the preservation of buildings in Colorado generates approximately 32 new jobs” with job defined as one year of full time employment for one person.
- Based on surveys on tourism, with historical tourism defined as travelers who visit several historical sites, visitors in Colorado were more likely than other visitors at alternative destinations to have an interest in historic places, cultural activities, and attractions. About half of overnight leisure trips to Colorado in 2008 involved heritage tourism activities.
- Heritage tourists spend approximately \$450, whereas other overnight guests spend approximately \$330 per trip.

A 2015 study on historic preservation in Texas found that for each dollar invested in local communities through federal and state preservation incentive programs, an addition \$4 to \$5 of private-sector investment was triggered.² There is also an added jobs benefit in historical preservation:

- Heritage tourism created more than 54,000 jobs in Texas.
- Preservation activities created more than 79,000 jobs.

In 2007, the Arkansas Historic Preservation Program found that historic preservation contributed to:³

- Heritage tourism supports 21,522 jobs in Arkansas.
- Heritage tourism is 16% of all Arkansas tourists.
- Heritage tourists spend about 30% more than average tourist.

Building History

In 1936, the Pulliam Community Building was built by the City of Loveland after D.T. and L.B. Pulliam gifted the property and provided \$20,000 for construction. With the assistance of the Works Progress Administration program, the Pulliam’s vision for a community building was

¹ “The Economic Power of Heritage and Place: How Historic Preservation is Building a Sustainable Future in Colorado.” Clarion Associates of Colorado, 2011. http://www.historycolorado.org/sites/default/files/files/OAHP/crforms_edumat/pdfs/1620_EconomicBenefitsReport.pdf

² “Economic Impact of Historic Preservation in Texas.” University of Texas at Austin Center for Sustainable Development and Rutgers Center for Urban Policy Research, 2015. <http://www.thc.texas.gov/public/upload/publications/economic-impact-historic-preservation.pdf>

³ “Economic Benefits of Historic Preservation.” Center for Urban Policy Research at the Edward J. Bloustein School of Planning and Public Policy at Rutgers, 2007. <http://www.arkansaspreservation.com/About-Us/economic-benefits-of-historic-preservation>

realized. An agreement was laid out specifying conditions on use and future architectural modifications, including a request to retain the auditorium seating.

As a condition of the gift and specified in the title, the building was designated for use related to community events. Through the 1960s, the building functioned as a community center and hosted several events, dinners, and dances. During BBC's visits to Loveland and during interviews, several people shared their own personal connection to the building.

In recent decades, the building has fallen out of service and will require extensive renovation to resolve issues with outdated electrical and mechanical systems, fire safety, air conditioning, and restrictive seating in the auditorium. In 2014, the city filed a quiet title compliant requesting the court to grant the title without conditions. Title issues were resolved in September 2015 with some restrictions removed, including the ability to remove the auditorium seating.

Summary of Building Opportunities and Limitations

The Pulliam Community Building is on Cleveland Avenue between 5th and 6th Streets. As part of the city's larger plan to develop the downtown, the Pulliam is ideally situated to extend the revitalization effort and provide another anchor to downtown activities. The Phase I redevelopment will address some of the major issues in the building including improving the fire protection system, modernizing several mechanical elements, and removing the auditorium seating.

Current building status and long-term plans. The building does not meet current building code standards and lacks amenities to make it attractive to potential users. As a result, the City of Loveland is considering an investment in the facility in order to encourage use of the Pulliam and to help attract more residents and visitors to downtown Loveland.

In July 2015, the Pulliam Community Foundations offered to invest \$100,000 with a matching \$200,000 from the city. The offer was made with the intent of restoring the building with community support and making improvements to the main auditorium.

The City of Loveland outlined possible redevelopment plans during a City Council Study Session in January 2016. The city is open to possible future redevelopment projects to further enhance the building's potential uses; however, for the immediate future, the city is most interested in the main auditorium. With a promised \$100,000 grant from the Pulliam Community Foundation, the city established two possible Phase I redevelopment plans to address some of the major issues in the building. Aesthetically, the building will retain its historical character amidst some modernizations.

Basic building facilities. The Pulliam Community Building primarily consists of a main floor (auditorium), a second floor (with access to the auditorium balcony), and a basement. A kitchen, an office, and two rooms are also available for rent, with the office and kitchen currently in a tenant lease. The first floor is accessible through exterior steps or a ramp, and there are additional steps inside the main entry. Restrooms are available in the basement or on the second floor, and can only be accessed through a step leading down into the restroom. The building is also currently limited by stair access to the second floor or basement. ADA accessibility improvements will be needed for Phase I and subsequent renovations.

If the city decides to complete full improvement for the main auditorium, improvements will be required to the HVAC, electrical (including sound and lighting systems), along with the installation of an ADA accessible elevator. The total cost to the city and planned upgrades are listed in figure 1-1.

Figure 1-1.
Proposed Phase I

Partial Improvement to Main Auditorium	Full Improvement to Main Auditorium
<ol style="list-style-type: none"> 1. Removal of auditorium seating, floor repair 2. Repaint auditorium 3. Purchase of tables and chairs 4. Install fire protection system <p>City cost: \$340,375</p>	<ol style="list-style-type: none"> 1. Basic improvements (fire, chairs, paint) 2. Electrical service 3. Elevator installation 4. HVAC 5. Sound system 6. Lighting <p>City cost: \$1,787,500</p>

Note: The city cost was calculated based on a promised \$100,000 matching contribution from the Pulliam Community Foundations.

Source: City Council Study Session presentation given January 26, 2016.

Transportation and access. The Pulliam Community Building does not have a designated parking lot downtown; however, there are several downtown parking options in close proximity to the building. There are 75 parking spaces available directly adjacent to the building (Larimer County lot), which will be available for evening and weekend events. An additional 115 street parking spaces are also available within the downtown radius. The availability of parking could be a challenge if several unrelated downtown events occur around the same time.

The Pulliam Community Building's main entrance is on N. Cleveland Avenue, where there are three lanes of traffic heading south. Although there are traffic lights and pedestrian crosswalks, there are no handicapped spaces directly in front of the building, or loading zone for equipment transfer. Although this is not a direct limitation of use, it could affect access to the facility. Similarly, a lack of handicapped parking directly near the building could also deter limited mobility visitors from accessing the facility.

SECTION 2.

Interview Insights from Comparable Institutions

BBC Research & Consulting conducted interviews with potential user groups, and similar venues in the Front Range to help the City of Loveland determine market characteristics and opportunities for uses of the Pulliam Community Building. This section offers a discussion of the key themes that emerged in the interviews. Loveland stakeholders discussed the type of uses they would like to see for the building and interviews with regional event and promotions professionals focused on market considerations, limitations, and balancing community-focused activities with more profitable events.

The city currently plans to continue the tradition of the Pulliam Building meeting the community purpose provisions of the Pulliam family as specified in the title. Stakeholders largely agreed with this focus and identified two potential uses for the auditorium that would serve that purpose but still allow for cost recovery in operating the building:

- A concert or event hall with ticketed sales; and
- An event venue available for rental.

The city of Loveland is also interested in the building as a catalyst for activity on the northern side of the downtown area by hosting events and encouraging more people to spend time in the downtown area. The city also would like activity at the Pulliam to support as much of the operating costs as possible, with the goal of reducing the current city subsidy.

Based on these use suggestions, BBC worked with city of Loveland staff and key stakeholders to develop an interview list that included:

- Promoters/ music venue owners in surrounding area;
- Other event venues (not necessarily music related);
- Historical building comparisons;
- Operational staffing, including nonprofit/city partnerships; and
- Technical experts in sound and lighting.

Interview guide. BBC developed an interview guide, which was subsequently approved by city staff. Interviews began in June 2016. The interviews covered the following topics:

- **Organizational structure of the venue** including whether it was owned by a city, a nonprofit, or a private party;

- **Market characteristics** including the type of visitor it draws, how the community or the city has responded to the venue, and whether the market could bear another venue (Pulliam) for the proposed uses;
- **Promoter and other venue competition** including how the facility has responded to other venues or management companies in a competitive market (for concert venues) or against other event rental venues;
- **Market opportunities and best practices in the current market;**
- **Past experiences with the Pulliam Community Building** including building challenges that what would deter users;
- **Thoughts about Loveland;** and
- **Loveland's position** in the wider Fort Collins, Front Range event and concert market.

Interview Insights

BBC examined opportunities for the potential uses stakeholders identified. Applicable insights are organized thematically below and include a discussion of whether the use meets the city goal and how the limitations of the building impact each type of suggested use.

A concert or event hall with ticketed sales. BBC conducted interviews with two concert venues: 1st Bank Center (Broomfield) and The Aggie Theatre (Fort Collins). In addition, BBC conducted interviews with two grassroots music consultants who regularly work with musicians and bands as they help develop their musical performance opportunities.

The interviews revealed that while the Denver and Boulder market has a lot of performance activity, there is very little growth in terms of number of venues or ownership changes in venues. In particular, Live Nation and AEG, two large national promoting companies, have a strong foothold in the market. In contrast, Fort Collins has seen a substantial increase in activity related to performance and venues. These efforts have strongly contributed to the economic development vision of Fort Collins, including the fact that the city is now known for “*beer, bikes, and bands.*”

An example of the activity in Fort Collins is the Bohemian Foundation’s efforts to create a new music district at South College Avenue, near Laurel Street (the district will open September 2016). The district will have five buildings devoted to concert performances and community activities. With a range of programming opportunities, the Bohemian Foundation already draws very diverse crowds. For example, every August, New West Fest (approaching its 10th year as a festival) features over 70 Colorado bands and draws a crowd of over 150,000 people. In addition, during the summer, 10 weekly concerts are held in a free summer concert series. The Armory, a recently renovated historic building, hosts ticketed performances drawing national and local artists for performances. In 2017, the Bohemian Foundation will open a music-centric gathering space to help musicians cultivate their talent, grow professionally in their fields, and engage in mentoring and networking opportunities.

Fort Collins and the surrounding area have also experienced a growth in grassroots efforts to support local musicians through an incubator model. The incubator model is perpetuated in small nonprofits or associations that are working to develop local talent. The emphasis is on

coaching, helping artists to secure venues, and guiding them on their process long before the band is well-situated to be part of a label or recording company.

More traditional venues, such as the Aggie Theatre, are privately-owned with a business model favoring promoters and the management's ability to influence a larger portion of the market. Aggie Theatre operates as one of two independent promoters in the greater Denver area (the second is Soda Jerk Presents which is located more exclusively in Denver and Colorado Springs). The Aggie's current owners also partner with other promoters to bring different shows into the theatre, or as the owner stated, "We're friendly with everyone." In the promotions market, there is intense competition to sell as many tickets per performance as possible and a \$5,000 show can quickly turn into a \$25,000 show depending on the booking.

The promotions market is also driven by bookings. For example, radius clauses, which prohibit a show from being held within a similar location to the venue at which it is currently booked (and usually specify a length of time in which the clause is active), are used to protect the investments promoters have made for a specific show. In addition, when a venue is known for a certain music genre or level of performer, booking above or below that level could disrupt how the venue is seen within the landscape. Venues deemed less successful, or unable to sell at a specific profit margin, are generally not pursued by promoters.

An over-arching theme amongst interviewees was the idea that Loveland would need to have a strong idea of what type of performances (or music genre) match the Pulliam's intended purpose. This purpose will identify what opportunities the venue should pursue and help to create a market forecast. An illustrative example comes from the Broomfield Events Center (before the name was changed to 1st Bank Center). Built through the Urban Renewal Authority, the center was managed by a company that was not as familiar with the market. Ultimately, the company was not able to generate enough revenues from sporting events to cover their costs and asked to be released from their contract. When management changed to Peak Entertainment (AEG and Kroenke Sports), the venue was re-imaged as a concert hall and profitability increased. The City of Broomfield retains some profit sharing within Peak Entertainment and has renewed the contract for the past five years.

Market availability and competition. The City of Loveland would be poised to draw musicians from Fort Collins and Greeley for performances. According to one interviewee's estimate, "Fort Collins has more emerging artists per capita than Denver." The high availability of musicians can be attributed to the college town atmosphere and the high level of music school programming in high schools.

There is a steady supply of available musicians in the immediate local area. According to GigMasters, an online database that is used as a booking platform between performing artists and event planners, Fort Collins has 443 registered rock bands within a 250 mile radius.¹ Musicians who advertise through GigMasters look for both public and private bookings. These musicians may also be looking to perform for larger crowds, without the need to sell a high

¹ Other genre searches are available on GigMasters include decade, folk, dance, jazz, country, and tribute bands, among others. Website search available at <https://www.gigmasters.com/liveband>.

number of tickets. As one interviewee explained, musicians tend to be interested in performing in historic areas because the venue is perceived as carrying more authenticity and it photographs well. Musicians also favor a city-owned facility because they know that the owner will not try to avoid payment.

Loveland has market potential because it is already known as an artistic community. Though it is known more for its visual culture than its performance culture, many interviewees were familiar with the changes Loveland has undergone in recent years. Loveland has transitioned from an older, quieter, affordably-priced area into an area with breweries, more art amenities, and still retains its affordable price (compared to Fort Collins) for younger and artistically-inclined individuals to live. Downtown lofts Artspace (located near the Feed and Grain), and current city plans for a South Catalyst project which includes some residential areas, suggests that Loveland is developing a strong downtown residential area. Fort Collins, in contrast, is struggling to balance the cost of living with the fact that artists and performers generally cannot pay for a higher cost of living. Fort Collins interviewees all cited that cost of living is a challenge in their market and is forcing some artists out of the city.

The downside of market availability is that interest in the concert venue market has been increasing and there are competitive pulls between venues. Population growth in the greater Denver area, Fort Collins, and Loveland can attract ticket purchases, though there will be intense competition over which venue will draw repeated activity.

Adherence to city goal. The proposed use as a concert or event hall with ticketed sales conforms to the city's goals for the building. In particular, larger events will have a sizable impact on downtown traffic and help support local businesses in the immediate area. Ticketed sales volume, however, may vary between a non-local in-demand performer and a community-oriented show, with the community-oriented show falling on the less expensive side of ticket pricings.

With existing grassroots activity thriving in Fort Collins, the Pulliam Community Building could also act as a community area in which artists can develop their craft. The wider community also seems interested in performances and local acts.

Use limitations. Bringing in potentially larger audiences through ticketed performances might be a challenge given some of the building's limitations. The following improvements would need to be addressed in a renovation in order to attract artists and audiences:

- Addition of an HVAC system;
- Updates to the electrical, lighting, and sound system (city could defray this cost with a possible vendor relationship. Either a preferred or exclusive relationship would grant certain conditions in which the city can partner with a vendor for services or cost reductions);
- Increase restroom capacity in its existing locations, or add restrooms on the first floor;
- Elevator installation for assistance with loading and unloading equipment as well as audience accessibility to the building; and

- Designated parking, or direction on available parking for visitors. Weekend events may create some parking challenges.

The City may wish to give some consideration to the limitations presented by the flat floor. , Interviewees pointed out that a venue in which visitors are only able to stand will affect the type of individuals interested in attending the performance. Without some seating, the area is an open expanse for general admission. Graded flooring, for example, would allow all audience members to see the performance regardless of location in the room. Additionally, in other venues, small bar tables allow a visitors to place a drink or handbag in a safe location.

Additional comments. Interviewees also shared the following pieces of advice, based on their experience in the market and how they felt about the Pulliam Community Building.

Musicians want more venues [and they] love performing. Bands will work to promote themselves – they can fundraise successfully... It's always nice to feel like you're partnered with a venue. Instead of selling all the tickets yourself, you need marketing to help with posters, social media, having a plan, or a template that you can send out to the band to let them know what [the venue] is doing

A lot of prominent musicians are from this area. They take pride in promoting their local cities. They want to see it succeed.

[Performers] want basic hospitality. Have someone meet them as a host or hostess when they arrive. They need a contact person instead of a clueless staff... Bands notice it right away when they are being taken care of. It speaks volumes... If you do it right, everyone will know about it and will be dying to play there.

I could see the Pulliam as a concert hall... Not really rock, but more electronic. Those musicians tour more extensively. [Pulliam] could do really well with that.

It's a good idea to invite all types of performers – indie, rock, punk, and chamber.

Some interviewees understood that the Pulliam's success will largely be tied to other downtown development. As one interviewee stated, performers want a venue close to other bars or restaurants – not vacant buildings. It is likely that types of businesses will emerge nearby in order to provide services for audiences leaving performances.

An event venue available for rental. BBC conducted interviews with three event venues: Rialto Theatre (Loveland), Sacramento Memorial Auditorium (Sacramento, CA), and the Lincoln Center (Fort Collins). In addition, BBC conducted interviews with three professionals familiar with event spaces: a community events coordinator, a production provider specialist, and a local entrepreneur who owns several facilities.

The interviews revealed that in order to have a successful event venue available for rental, the city would need to determine the appropriate niche within the competitive venue landscape. In particular, since the Pulliam Community Building lacks amenities, other venues may seem more

appealing. Interviewees frequently cited that in order to overcome these challenges, the city would need to have a strong management and marketing plan.

Sacramento Memorial Auditorium. BBC conducted an interview with another historical auditorium in the Sacramento market. Although the population density is different in Loveland, this city-owned community-oriented auditorium is illustrative as a “four walls” rental that can transform into whatever the user desires. After renovations in the mid-1990s, the Sacramento Memorial Auditorium is now used almost entirely for high school graduations, weddings, some concerts or comedy shows, and a small amount of church services. In order to draw renters, the City of Sacramento offers the space below market value. Lower market value is intentional as the City of Sacramento prefers to encourage a higher number of events through offering rental deals as well as offering a number of services so that visitors have a positive experience. The City of Sacramento does not pay for artist fees, as it is cautious about taking on any risk related to public funds. The auditorium is more heavily marketed in recent years (compared to previous years), which has encouraged more people to use the facility. Visitors also appreciate that the rental agreement is an easy “one stop shop.” The rental agreement includes set-up services, cleanup, lighting, and an exclusive caterer. For concerts, the rental agreement includes ticket takers. The only outside cost a renter must bear is extra union labor (a specific agreement in California in the event that a renter needs to bring in extra stage equipment or security).

Lincoln Center. BBC also conducted an interview with the city-owned Lincoln Center in Fort Collins. Though the Lincoln Center has more rental spaces (ballrooms, theatres, conference room, and outdoor space) and had over 800 events in 2015, their operations model relies on several different events: promoters, nonprofit groups needing weekly or monthly meeting spaces, private family functions, weddings, and local community groups. Since the facility is partially subsidized by the City of Fort Collins (a 75% recovery rate), the programming is scheduled with attention to any losses being offset by other, more popular performances. This allows the venue to showcase more esoteric performances in favor of the facility’s artistic vision. Moreover, the Lincoln Center’s co-presenting partnership with Colorado State University allows them to work with performers that may be better suited to a CSU facility.

In the Loveland market, interviewees cited the need for a larger sized publically-owned venue space. Although there are several private facilities, they do not have a community purpose as a public facility. Privately-owned facilities tend to be outside the price point for several community groups. The size of the Rialto’s Devereaux/ Hach Room caters to a smaller audience, at approximately 120 for a luncheon. The Rialto’s event rental rooms are currently offered under market value and are used most frequently for business meetings, family special events, and sometimes city-related activities. With the close proximity of the Pulliam, a few interviewees also expressed desire in seeing these two facilities work as a partnership. While the intention is to avoid transferring the type of performances from the Rialto to the Pulliam Community Building, there are local groups who cannot afford the Rialto’s theatre rate and might be interested in performing at the Pulliam Community Building. Moreover, local artists find that the Rialto has limited scheduling availability.

Market availability and competition. Some interviewees disagreed on the level of market saturation for existing venue spaces. One interviewee claimed that with the growth of theatres and the incubator model coming out of Fort Collins, there is room for niche services and flexible

spaces where community groups can transform the space into whatever they desire. Another interviewee claimed that for a 500-1000 audience size, there are already several public and private venues in the surrounding market. The competition among venues is important to consider because, as one interviewee commented,

There are [event] venues everywhere, and it is just a glut. It is something to be wary of because... the average wage has not kept up with cost of living. Simultaneously, as that dollar is stretched, we're seeing more competition in the ever smaller dollar... We're not just competing with Loveland [venues], we're competing with minor league baseball and movie theaters.

The City of Loveland would likely need to establish a specific niche related to Pulliam as well as develop a strategy for how it would operate within the wider Loveland/ Fort Collins market. For example, an interview commented,

I feel like Loveland and Fort Collins are basically growing together and that at this point, Fort Collins, with the larger population density, and more [possibilities for] nightlife, has the greater gravity... Loveland [needs more] activities.

Interviewees also cited that the Pulliam Community Building would need more amenities in order to compete with other, more appealing venues. A discussion of amenities is available in section 3.

Adherence to city goal. The proposed use as an event venue available for rental meets several of the city's goals for the building. In particular, the opportunity for diverse groups to rent the space supports the historical adherence to a community area. Furthermore, all interviewees cited an improvement in downtown foot traffic and an economic benefit for local businesses as a result of their venue's operations. However, smaller private events may not result in an immediate boost to the downtown economy. This is important to consider because the Pulliam already boasts about 125 events per year and local businesses across the street have not seen drastic increases in sales as a result. If the city retains a local management staff, or nonprofit board, operations of the building could keep local money circulating within the community.

Use limitations. Creating an all-purpose event venue might be a challenge given some of the building's limitations. The following improvements would need to be addressed in a renovation in order to attract possible renters:

- Addition of an HVAC system;
- Increase restroom capacity in its existing locations, or add restrooms on the first floor;
- Allow kitchen access for caterers, or facilitate an agreement to the existing lease that the kitchen can be used by outside catering companies.
- Elevator installation for assistance in visitor accessibility within the building;
- Some updates to electrical, lighting, and sound system as part of the amenities package; and
- Designated parking, or direction on available parking, during larger events.

Additional comments. Stakeholders and a few interviewees expressed caution in using the Pulliam Community Building as a wedding venue. As one interviewee stated,

The wedding market is slowing down.... People are choosing parks, other countries [for destination weddings], mountain areas, or something else with excitement... Hardly anyone uses a small venue [because] outdoor space is cheaper.

Several interviewees offered additional suggestions for the city as it considers the role of the Pulliam Community Building as an event venue:

The location [of the Pulliam] is not bad, just depends on what you put there and how to link it together. If you do one piece at a time, it's hard to make it fit into a plan... Loveland's downtown is too disconnected and it needs [integration].

The city could entice more non-local visitors by creating a boutique hotel next door and attracting small conventions. There are 500-1500 sized groups that look for locations to go and a lot of time they end up going to Estes Park or a small hotel in Fort Collins.

Loveland needs more activities in the winter and the summer... It should be a tourist destination all year round... Loveland should not only center events around holidays.

The Rialto could not compete against the Lincoln Center, or the Bud Center. Pulliam can be for community groups. There are many passionate people who have regular day jobs and want to express [their artistic side] within the community.

The Pulliam should attract downtown residents. Maybe offer some senior activities.

The Pulliam could work well for a dance hall.

Common concerns. Interviewees understandably had additional perspectives on the building. Those concerns were largely centered on how the facility would be run, how much the city would invest in day to day operations, and whether private industry would be negatively affected with reduced market competition. For example:

Why should the city support a small project? Private industry can do a much better job... I think the Pulliam will not make enough money.

City council will have to bite the bullet on the investment. What I fear is that it will become a rabbit hole and the city will need to keep paying [for the operating expenses].

If the Pulliam is renovated, it's going to take some time. To be self-sustaining will be a challenge.

Section 3 addresses varying building management operations so that the city can optimize its budget.

SECTION 3.

Building Management Options

BBC Research & Consulting considered different building management and ownership options that would be possible given potential uses of the Pulliam Community Building. The different management options each present unique opportunities, limitations, and constraints. Section 3 provides a general discussion of staffing, facility use, amenities, and vendor relationships for each of the building management options.

Ownership Comparison

BBC reviewed studies that provided comparisons of the various types of ownership and operation models often considered for event venues. Below are brief descriptions of a few potential ownership models along with an overview of some of the benefits and drawbacks of each option.

Publically owned and operated. This is the current operational model for the Pulliam Community Building. This model ensures public control and accountability and gives the community the most input on the type of events hosted at the Pulliam Community Building. For the majority of event centers, this option results in an ongoing public subsidy. Depending on the priorities set by the local agency, this option may also result in less emphasis on sales and profitability.

Under this model, city employees would be responsible for booking and managing the building as well as providing security and maintenance. This option would require the equivalent of approximately two full-time employees. Though city employees may be aware of the potential public and civic uses for the building, it is not clear if city staff currently have experience booking facilities for one-off events, such as trade shows. They also may face some difficulty trying to book high demand non-local performers due to the type of relationships that need to be built in order to entice those performers.

If the city decides to allow groups who book the Pulliam to use caterers or other vendors, the city can create an approved list of vendors to ensure that the vendors are prepared for and familiar with the limitations of the building. For alcohol sales, the city could partner with third parties for events and receive a percentage of the revenue generated. BBC estimates that the city could ask for approximately 10% of vendor profit generated at the building.

Should the city decide to book music concerts, the city will likely need to enter into an agreement between the city and a promoter. Typically, these agreements specify the expected number of events the promoter should book annually and the bonus structure for the promoter. The promoter would be responsible for booking an artist to perform and would handle all of the requirements for ticketing. The city would determine the appropriate rental fee for the facility, as well as a proportion of the ticket revenue that would be returned to the city. The city would retain responsibility for security and maintenance.

In order for the city to attract a promoter, the city would need to develop the venue in three ways:

- Establish a specific direction on the type of bookings, genre of music, and audience preference for programming;
- Demonstrate that the venue can attract a stable audience size for events (used to estimate the profitability of ticketed draws); and
- Clarify potential terms for a rental agreement including a rental fee that does not undercut profitability of ticketed sales for the promoter and an established set of rental amenities (e.g., light and sound equipment, ability to sell alcohol on premise, and cleaning per event fee). A promoter or management company may share the costs of certain equipment upgrades, though cost-sharing is more likely to happen in a long-term, exclusive relationship.

Publically owned and nonprofit operated. This model typically requires a multi-year agreement between the local agency and a nonprofit organization. This option provides a buffer for the local agency from absorbing losses, while maintaining some level of public control of the facility. Operating under this model may constrain the types of events that are hosted by the facility and may require ongoing fundraising.

Under this model, the nonprofit would be responsible for booking and managing the building as well as providing security. The nonprofit would determine its appropriate staffing levels as well as how it will handle catering or alcohol sales. The city would be responsible for building maintenance, though it could arrange with the nonprofit on decisions to split the cost of capital expenditures.

Nonprofit owner and operator. This model eliminates local agency oversight and provides accountability to a nonprofit board. The nonprofit board may not directly represent the public interest and will either require fundraising to subsidize less profitable events or eliminate those events.

Privately owned and operated. This model eliminates any public costs associated with the facility, but also excludes public input regarding the operation of the facility. Private ownership of an event facility is not likely unless the facility is able to cover operation costs and any debt incurred in the construction or purchase of the facility.

A private entity would still be subject to the same community purpose provisions in the title, which may limit the pool of interested investors/ operators. The City may seek to work with the adjacent property owner (565 N. Cleveland) on a public/ private partnership that would allow for greater use of the building.

Potential Staffing Needs

BBC completed interviews with other venue and concert areas to ascertain possible staffing needs and determined that the current level of staffing for the Pulliam Community Building would be insufficient for increased usage and higher demand for the venue. Currently, the Pulliam relies on a part-time staffing model to complete facility bookings and minor

maintenance. Visitors are expected to leave the building in the state in which it was found thereby eliminating the need for the city to make set-up or cleaning arrangements. According to city calculations, current staff costs are approximately \$1.50 per square foot, totaling \$34,778 for the 23,185 square feet of the building.

Comparable venues in Loveland and Fort Collins have a higher staffing requirement for venue operation. Based on BBC calculations, at minimum, the building would need three basic roles:

- Marketing (part-time);
- Event booking/ talent buying for increased programming (full-time); and
- Maintenance, set-up, and clean-up (part-time).

Marketing activities would be concentrated in graphic design, social media, and executing a campaign to differentiate the Pulliam Community Building from other Loveland facilities. Event booking, or talent buying activities, in contrast, center on how to increase the level of programming available at the facility. Building on the marketing campaign, the talent buyer's role would focus on building relationships with organizations that could use the facility, or finding ways to draw local and non-local acts for performances.

Additional staffing recommendations are needed if the city chooses to use the space for concerts, or other large audience-drawing events. Those roles include:

- Sound and lighting technicians (part-time staffer, or have an agreement with a vendor);
- A "cruise director" to handle all day of needs activities (part-time); and
- Ticketing and security (part-time).

The Pulliam Community Building could also benefit from volunteer positions for services such as ticket taking, set-up, marketing, and day of needs activities.

Facility Use and Amenities

The current rental contract for the Pulliam Community Building details the conditions in which the building should be used and cleaned.¹ These documents specify that a facilities staff member will unlock the building 15 minutes prior to the scheduled start time and will arrive at the scheduled end time to lock the building. During the event, a facilities or operations person is not on-site. With this arrangement, the city does not incur additional personnel costs; however, the renting user is responsible for set-up and clean-up. Caterers or rental equipment companies are also expected to leave the building by the scheduled ending time. For a small gathering of people, this type of an arrangement is not excessively prohibitive for rentals. For a larger gathering, the expectation may deter users due to the logistical challenge.

¹ See the "City of Loveland Facilities Rental Application and Agreement," "Facilities Rental Contract Form," and "Rules and Regulations for Use of the Facility."

In order to increase the numbers of events at the Pulliam and to attract larger events, the Pulliam Community Building would likely need additional amenities. Other venues in the area already provide set-up and tear-down services, though some may request a rental fee for the use of the tables and chairs. For additional costs, venues also provide these amenities:

- Wi-fi network access;
- Video projection;
- Sound system;
- Speaker podium;
- Linens;
- Dance floor;
- Table service/ servers;
- Food service cleaning;
- Bar service; and
- Security.

Buildings of equivalent size to the Pulliam typically need enough capacity and amenities to draw a convention, or other tourist-related travel. Hotels and convention centers may decide that an “all-inclusive” package rental makes a rental agreement more amenable to increased use. Instead of a-la-carte rental amenities, which are more likely to be used by a small venue rental or wedding/ reception party, all-inclusive amenities provide a simpler solution that can accommodate the needs of a larger number of visitors.

In addition to these amenities, organizations that have previously rented space in the Pulliam often cited that it was difficult to bring equipment in and out of the building. Elevator installation, as well as revising the city’s rental agreement on time limits, would address extending set-up time and make it easier to use the facility.

BBC also recommends that the city address the restrooms to provide more capacity and solve ADA accessibility issues. If the city chooses to use the building for a larger number of visitors, the current restroom limitations would act as a deterrent

Figure 3-1.
Amenities Comparison

	Video projection	Sound system	Speaker podium	Linens	Dance floor	Table service/ servers	Food service cleaning	Bar service	Security
Pulliam auditorium					X				
Pulliam basement	X								
Rialto (Devereaux/Hach Room)	X		X	X					
Club Tico		X							
Lincoln Center (Canyon West Ballroom)	X	X	X	X	X	X	X		
Fort Collins Senior Center	X	X		X		X	X		X
Fort Collins Museum of Discovery (Lobby & Griffin Piano Lounge)	X	X					X		X
Fort Collins Museum of Discovery (Main Exhibition Gallery)	X	X					X		X
Garden Room	X	X		X	X		X	X	

Note: List of amenities found in respective venue's website, or rental agreement form.

Source: Compiled by BBC Research & Consulting.

Vendor Agreements

The city, or a nonprofit managing the building, may choose to enter into agreements with vendors in order to increase the amount of amenities offered with the building. For example, the city may choose to add sound and lighting to the facility, which could be available for use to organizations wishing to rent the facility. In an interview with a local Loveland production provider, the following types of agreements were discussed:

City investment. The city purchases production materials for its own in house use. The city would operate and maintain the equipment. The city could also arrange to work with local company for AV technicians (at an hourly rate).

Preferred vendor. The city can enter into an agreement (or several agreements, if it so chooses) to work with a vendor on a non-exclusive basis. The vendor would staff the facility and would bring in equipment for use. The fee would be determined by the vending company. In this option, the city would not need to invest in the cost of the equipment.

Exclusive vendor. The city can enter into an agreement to work with a vendor on an exclusive basis. Under this model, the city would enter into a cost-sharing percentage agreement for the rental of equipment. The vendor would provide staffing and equipment. Hotels and convention centers choose this agreement often due to the regular service, quality, and safety of the vendor regardless of which organization rents the facility.

Vendor agreements would also help solve the logistical challenge of bringing equipment in and out of the facility.

SECTION 4.

Operational Scenarios

BBC Research & Consulting created a fiscal model for the City of Loveland to help evaluate potential scenarios for the Pulliam Community Building. Section 4 outlines the operational scenarios included in the model including the:

- Financial model for the operating scenario;
- Fulfillment of civic objectives achieved by each scenario; and
- Tradeoffs presented by each scenario.

The four operational scenarios modeled were as follows:

- Scenario A: Close building;
- Scenario B: Maintain the building as is;
- Scenario C: City managed with investment into auditorium facilities; and
- Scenario D: Third party managed auditorium with city investment in the auditorium facilities.

This section also provides a brief overview of possible funding sources to assist with the renovations.

Model Assumptions

Below we provide a brief description of the assumptions used to develop the fiscal model. For some of the model assumptions, BBC used existing data from current Pulliam building operations or other information related to City of Loveland building expenses. In other cases, BBC used information gathered from interviews with event venues to provide realistic, but conservative estimates of revenue and attendance projections.

Revenue. In order to model revenue under each scenario, BBC assumed that revenue from the Pulliam Community Building operations would be derived from either events or tenants. These revenues are modeled with the assumption that the operations have reached a steady state; in other words, these values will likely differ substantially during the startup period for expanded operations at the Pulliam Community Building.

Event revenue. BBC assumed that the number of events booked into the Pulliam Community Building would vary by whether the city or a third-party manager scheduled events and by the rental rates the city received. For example, BBC assumed in Scenario D that a third party booking company would have an incentive to schedule as many events in the auditorium as possible to maximize profit (in Scenario D, 110 events per year, or approximately 2 or more events per week). In addition, for Scenario D, BBC estimated that average city rental revenue per event

would reach \$1,600 (estimate made based on an 8 hour rental at approximately \$200 per hour). In Scenario C, BBC assumed the city managed auditorium would result in approximately 52 events per year, or at least one event per week. BBC estimated that the average city rental revenue per event would reach \$1,200 (estimate made based on an 8 hour rental at about \$150 per hour).

For the basement, BBC assumed that there may be a small drop in the number of events in the basement in Scenarios C and D because some groups may favor the auditorium following the renovation. In Scenarios C and D, calculations are made based on 104 events in the basement (approximately 2 events per week). BBC assumed that average city rental revenue per event would reach \$450 (estimate made based on a 3 hour rental at approximately \$150 per hour).

BBC also assumed that the city would maximize further revenue sources through events with ticketed sales. In this estimation, the city would likely yield 10% of total ticket sales. BBC calculated that in Scenario C, approximately 26 events (or half of the auditorium events estimated in Scenario C) might include tickets whereas in Scenario D, the number would increase to 55 events. In both scenarios, the city would receive approximately \$1.50 per ticket, assuming each performance is only \$15 – a very low rate.

BBC calculated additional revenue sources through the sale of alcohol for a small proportion of events. A very conservative estimate was created with the assumption that only 25% of total auditorium events would allow alcohol, and only half of the attendees in a 500 person event would consume one alcoholic beverage. In Scenario C, this totals 13 events, with the city receiving 10% of gross revenue (or \$0.80 per \$8.00 beverage), totaling \$2600. In Scenario D, revenue could be generated from about 27 events, totaling \$5400.

Figure 4-1 shows calculations of additional revenue through alcohol and ticketed sales.

Figure 4-1.
City proportion of ticket or alcohol sales

Alcohol	
Attendees	500
Cost per alcoholic drink	\$8
Half of the attendees purchase a drink	250
Average city receipt per purchase	\$0.80
Gross revenue per event	\$2,000
City keeps 10% of sales	
Sales revenue that city keeps per event	\$200
Scenario C - total revenue for 13 events	\$2,600
Scenario D - total revenue for 27 events	\$5,400
Tickets	
Attendees	500
Cost per ticket	\$15
Average city receipt per ticket purchase	\$1.50
Gross revenue per event	\$7,500
City keeps 10% of sales	
Sales revenue that city keeps	\$750
Scenario C - total revenue for 26 events	\$19,500
Scenario D - total revenue for 55 events	\$41,250

Note: Estimated totals are on an annual basis.

Source: BBC Research & Consulting.

Tenant revenue. BBC also assumed that the existing tenants would continue to generate revenue after the building is updated. City staff expect that with building updates, the current tenant lease agreements would be renegotiated to better reflect current market conditions. Based on this information, BBC assumed that the office lease would increase by 10% (reaching a total of \$5,214 per year) and the kitchen lease would increase by 20% (reaching a total of \$5,292 per year).

Expenditures. The study team assumed that city expenditures for operation of the Pulliam Community Building would go to building expenditures, janitorial expenditures for events, and city staff full time equivalent (FTE) expenditures.

Building expenditures. City of Loveland staff provided the current building expenditure for the Pulliam at \$38,825 (a three year average of building expenditures between 2013 and 2015). City staff also disclosed that the city, on average, spends approximately \$6.25 per square foot on building maintenance. The Pulliam Community Building has approximately 23,000 square feet. BBC estimated building expenditures of \$143,750 annually following renovation. These expenditures include ongoing facility maintenance, utilities, and capital reserves aggregated across all properties. BBC's estimate also accounts for additional expenditures for increased venue rentals, due to a need for more maintenance, lighting, heating and cooling.

Janitorial expenditures. The study team weighed the likelihood of additional janitorial work for special events. Excluding scenario B, where the city asks visitors to leave the rooms as they were found, BBC assumed that \$300 in additional janitorial expenditure would be required for some events. BBC calculated janitorial expenditures based on all auditorium events. The actual number of events needing janitorial services may be lower than this estimate depending on what type of events take place in the auditorium and how the city would specify cleaning arrangements in event rental agreements.

FTE expenditures. Compared to the current staffing levels associated with the Pulliam Community Building, BBC assumed that additional city staff time would be required to expand operations. Staff time includes time required to book the event spaces, marketing, set-up, building security, and general facility management. BBC assumed that expenditure per FTE would be \$60,000 annually, and the level of FTE required ranged from 0.5 to 3.00, depending on the level of city involvement required to manage and program the building.

Scenario Descriptions

BBC created the following scenarios based on project stakeholder feedback:

- Scenario A: Close building;
- Scenario B: Maintain the building as is;
- Scenario C: City managed with \$2 million investment into auditorium; and
- Scenario D: Third party managed auditorium with \$2 million investment.

Figure 4-2, on the next page, provides a comparison of all four scenarios. Given the conditions of the building and financial assumptions detailed above, BBC forecasts that all four scenarios would result in a net loss for the city ranging from \$40,000 to \$138,000 annually. Under two scenarios (A and B), losses are below \$60,000 annually.

Of these possibilities, Scenario D appears to best meet city goals to bring additional people downtown and fulfil the civic purpose of the building. Scenario D also provides the greatest opportunity for auditorium events, civic use, and maximizes the net operating costs. The use of third party booking staff for the auditorium, city managed rooms for the basement and rooms 1 and 2, and tenants in the office and kitchen best meets the stakeholder's vision for the building. This operating approach also minimizes the city's need to determine event opportunities for the auditorium and provides a more diverse revenue stream than in Scenario C.

The following (Figure 4-2) presents more detailed descriptions of Scenarios A through D.

Figure 4-2.
Scenarios A – D Comparison

Assumptions	Scenario description			
	(a) Close building	(b) Maintain the building as is	(c) City managed with \$2 million investment into auditorium	(d) Third party managed auditorium with \$2 million investment
<u>Event rental assumptions</u>				
Number of auditorium events per year	0	0	52	110
Number of basement events per year	0	125	104	104
City rental revenue (per event) - auditorium	-	-	\$1,200	\$1,600
City rental revenue (per event) - basement	-	\$70	\$450	\$450
Net City event revenue	-	\$8,747	\$109,200	\$222,800
<u>Additional revenue source assumptions</u>				
Proportion of ticketed sales	-	-	\$19,500	\$41,250
Alcohol sales	-	-	\$2,600	\$5,400
Total additional revenue	-	-	\$22,100	\$46,650
<u>Other tenant assumptions</u>				
Office lease	-	\$4,740	\$5,214	\$5,214
Kitchen lease	-	\$4,410	\$5,292	\$5,292
Total tenant revenue	-	\$9,150	\$10,506	\$10,506
Total City revenue	-	\$17,897	\$141,806	\$279,956
<u>Expenditure assumptions</u>				
Base building expenditures (23,000 sq ft)	\$40,574	\$38,825	\$143,750	\$143,750
Total janitorial expenditure (\$300 per event)	-	-	\$15,600	\$33,000
City FTE requirement (booking, security, marketing)	0.00	0.50	2.00	3.00
Expenditure per FTE	-	\$34,778	\$60,000	\$60,000
Total City expenditure	\$40,574	\$73,603	\$279,350	\$356,750
Revenue minus expenditures	(\$40,574)	(\$55,706)	(\$137,544)	(\$76,794)
Cost ratio (operational)	0%	24%	51%	78%
Cost savings (compared to current \$55,706 subsidy)	\$15,132	-	(\$81,838)	(\$21,088)
Approximate number of visitors downtown	0	5,000	14,560	26,160

Note: Estimated totals are on an annual basis.

Source: BBC Research & Consulting.

Scenario A: Close Building

BBC included an estimation of what it would cost the city to maintain a vacant building. Although stakeholders did not express a desire to close the building, this cost can be used as a baseline and provides a comparison for all other scenarios.

To maintain an empty Pulliam, thereby receiving no visitors and no revenue, the city would spend approximately \$40,574 (see Figure 4-3).¹ Compared to the current costs to maintain the

¹ Cost estimates to close the building were documented in the January 2016 city council study session. Scenario A is based on these estimates.

building (modeled In Scenario B), the city would save \$15,132. Total cost savings would not be equivalent to increased downtown spending if the building were to be used.

Figure 4-3.
Scenario A: Close building

Assumptions	Scenario Description (a) Close building
<u>Event rental assumptions</u>	
Number of auditorium events per year	0
Number of basement events per year	0
City rental revenue (per event) - auditorium	-
City rental revenue (per event) - basement	-
Net City event revenue	-
<u>Additional revenue source assumptions</u>	
Proportion of ticketed sales	-
Alcohol sales	-
Total additional revenue	-
<u>Other tenant assumptions</u>	
Office lease	-
Kitchen lease	-
Total tenant revenue	-
Total City revenue	-
<u>Expenditure assumptions</u>	
Base building expenditures (23,000 sq ft)	\$40,574
Total janitorial expenditure (\$300 per event)	-
City FTE requirement (booking, security, marketing)	0.00
Expenditure per FTE	-
Total City expenditure	\$40,574
Revenue minus expenditures	(\$40,574)
Cost ratio (operational)	0%
Cost savings (compared to current \$55,706 subsidy)	\$15,132
Approximate number of visitors downtown	0

Note: Estimated totals are on an annual basis.

Source: BBC Research & Consulting.

Scenario B: Maintain the Building As Is

The Pulliam Community Building is currently used for about 125 events per year. Though city staff did not have an exact figure, or records for who had used the building, city staff claimed that the basement was rented twice a week for private parties, in addition to having three regular users once a month. The auditorium is not currently in use, though it has been used once or twice in the past few years.

At present, the Pulliam Community Building is not fulfilling its historical purpose as a community-oriented facility. Current building rentals tend to be more suited for private uses than large community events.

A decision to continue using the Pulliam as is would not require a large renovation cost. With building use already below capacity, it is unlikely that the city would recoup part of the subsidy for the building. Furthermore, without modern amenities, it is likely that more visitors will find reasons to avoid using the building and choose other venue rentals for their needs. As more visitors, overtime, stop using the building, the facility will likely need a renovation or the city would decide to close the building for lack of continued use.

Since the building is not reaching its capacity, there are fewer people coming downtown than what BBC estimated in other use scenarios. Based on an estimation of 40 people attending each basement event, only 5,000 visitors are currently drawn downtown to visit the Pulliam. Figure 4-4 illustrates current cost estimations.

Figure 4-4.
Scenario B: Maintain the building as is

Assumptions	Scenario description
	(b) Maintain the building as is
<u>Event rental assumptions</u>	
Number of auditorium events per year	0
Number of basement events per year	125
City rental revenue (per event) - auditorium	-
City rental revenue (per event) - basement	\$70
Net City event revenue	\$8,747
<u>Additional revenue source assumptions</u>	
Proportion of ticketed sales	-
Alcohol sales	-
Total additional revenue	-
<u>Other tenant assumptions</u>	
Office lease	\$4,740
Kitchen lease	\$4,410
Total tenant revenue	\$9,150
Total City revenue	\$17,897
<u>Expenditure assumptions</u>	
Base building expenditures (23,000 sq ft)	\$38,825
Total janitorial expenditure (\$300 per event)	-
City FTE requirement (booking, security, marketing)	0.50
Expenditure per FTE	\$34,778
Total City expenditure	\$73,603
Revenue minus expenditures	(\$55,706)
Cost ratio (operational)	24%
Cost savings (compared to current \$55,706 subsidy)	-
Approximate number of visitors downtown	5,000

Note: Estimated totals are on an annual basis.

Source: BBC Research & Consulting.

Scenario C: City Managed with \$2 million Investment

In Scenario C, BBC estimated that under city management of the building, use would increase. With combined basement and auditorium rentals, the estimated total number of visitors would reach 14,560 annually.

Scenario C assumes that the city will make a \$2 million investment into some necessary mechanical updates. As stakeholder visions are more likely to be realized with updates to the building's fire safety, electrical, HVAC, and ADA-accessibility, the investment would provide the best opportunities for visitor and rental capacity. Subsequent updates (for example, restroom location, accessibility, or capacity) can be made at a future time.

Interviewees mentioned additional amenities that would make the Pulliam more attractive to renters, such as rental services that increase operating costs (i.e., table and bar service) and availability of businesses in the surrounding area (such as restaurants and bars nearby). It is unlikely that a \$2 million dollar investment in the structural elements of the facility will address these additional amenities. Therefore, a larger plan to integrate the downtown area would be most likely to address these needs.

City management is well-suited to community-oriented activities; however, this scenario is the worst scenario as far as net losses to the city. Expected revenues only generated \$141,806 whereas expected expenditures totaled \$279,350. The city would likely need to subsidize \$137,544. Figure 4-5 illustrates these estimations.

Figure 4-5.
Scenario C: City managed with \$2 million investment

Assumptions	Scenario Description
	(c) City managed with \$2 million investment into auditorium
<u>Event rental assumptions</u>	
Number of auditorium events per year	52
Number of basement events per year	104
City rental revenue (per event) - auditorium	\$1,200
City rental revenue (per event) - basement	\$450
Net City event revenue	\$109,200
<u>Additional revenue source assumptions</u>	
Proportion of ticketed sales	\$19,500
Alcohol sales	\$2,600
Total additional revenue	\$22,100
<u>Other tenant assumptions</u>	
Office lease	\$5,214
Kitchen lease	\$5,292
Total tenant revenue	\$10,506
Total City revenue	\$141,806
<u>Expenditure assumptions</u>	
Base building expenditures (23,000 sq ft)	\$143,750
Total janitorial expenditure (\$300 per event)	\$15,600
City FTE requirement (booking, security, marketing)	2.00
Expenditure per FTE	\$60,000
Total City expenditure	\$279,350
Revenue minus expenditures	(\$137,544)
Cost ratio (operational)	51%
Cost savings (compared to current \$55,706 subsidy)	(\$81,838)
Approximate number of visitors downtown	14,560

Note: Estimated totals are on an annual basis.

Source: BBC Research & Consulting.

BBC compared other event venue prices to determine a possible rental price for the basement and auditorium (see Figure 4-6). Though the Pulliam will lack some of the amenities provided by other events centers in the region, BBC estimated that rentals below market value will still attract visitors at a general rental rate of \$150 per hour for the auditorium and basement. Nonprofit rental prices would range from \$80 for the basement to \$125 for the auditorium.

Figure 4-6.
Comparison rates for other venues

Venue	Capacity	Commercial Rate	Nonprofit Rate
Pulliam Basement	150	150/hr	80/hr
Pulliam Auditorium (4500 sq ft main floor, plus 1500 sq ft balcony).	300-500	130/ 2 hrs, or 240/day	80/ 2 hrs, or 190/day
Pulliam Auditorium (projected rental fee)	300-500	150/hr	125/hr
Rialto (Devereaux/Hach Room)	50-120	250/hr (first 8 hrs) + 50/hr (additional)	100/hr (first 8 hrs) + 50/hr (additional)
Club Tico	299	65/hr	40/hr
Lincoln Center [Canyon West Ballroom (5000 sq ft)]	200-250	155/hr	n/a
Fort Collins Senior Center (3 available sections)	300	180/hr	120/hr
Fort Collins Museum of Discovery (Lobby & Griffin Piano Lounge)	unknown	250/hr	237.50/hr
Fort Collins Museum of Discovery (Main Exhibition Gallery)	unknown	750/hr	712.50/hr
Garden Room (6500 sq ft)	250	1375 - 2100 (up to 10 hrs) - depends on weekday or weekend - a la carte; 1925 - 3150 - all inclusive	n/a

Notes: Pulliam Community Building rates were intentionally calculated at below market rate compared to other existing venues. BBC estimated that the current basement is priced at an appropriate market level. The auditorium rate above reflects scenario C rental cost (\$150/hr) instead of the higher estimated cost in Scenario D (\$200/hr).

Source: Compiled by BBC Research & Consulting.

Scenario D: Third Party Managed Auditorium with \$2 million Investment

In Scenario D, BBC estimated that if the auditorium were managed by a third party, the total number of auditorium events would increase, compared to scenario C. Under this arrangement, third party auditorium management may be able to attract a regional promoter for a small number of events. The city would retain management of the basement and rooms 1 and 2 (with one of those rooms potentially being used for restroom expansion at a later date). With combined basement and auditorium rentals, the total number of estimated visitors would reach 26,160 annually.

This scenario is best suited for minimizing net loss to the city. Expected revenues generated \$279,956 whereas expected expenditures totaled \$ 356,750 – with a cost ratio of 78%. The city would likely need to subsidize \$76,794.

Scenario D assumes that the city will make a \$2 million investment into some necessary mechanical updates. A renovation of this size will be necessary in order to attract third party management to the building. Subsequent renovations may be needed sooner than estimated (compared to Scenario C) if building demand increases and restroom capacity or sound and lighting prevent performances or visitors from frequenting the facility. With third party management, it is possible that cost-sharing with vendors might defray some of these costs.

Figure 4-7.
Scenario D: Third party managed auditorium with \$2 million investment

Assumptions	Scenario description
	(d) Third party managed auditorium with \$2 million investment
<u>Event rental assumptions</u>	
Number of auditorium events per year	110
Number of basement events per year	104
City rental revenue (per event) - auditorium	\$1,600
City rental revenue (per event) - basement	\$450
Net City event revenue	\$222,800
<u>Additional revenue source assumptions</u>	
Proportion of ticketed sales	\$41,250
Alcohol sales	\$5,400
Total additional revenue	\$46,650
<u>Other tenant assumptions</u>	
Office lease	\$5,214
Kitchen lease	\$5,292
Total tenant revenue	\$10,506
Total City revenue	\$279,956
<u>Expenditure assumptions</u>	
Base building expenditures (23,000 sq ft)	\$143,750
Total janitorial expenditure (\$300 per event)	\$33,000
City FTE requirement (booking, security, marketing)	3.00
Expenditure per FTE	\$60,000
Total City expenditure	\$356,750
Revenue minus expenditures	(\$76,794)
Cost ratio (operational)	78%
Cost savings (compared to current \$55,706 subsidy)	(\$21,088)
Approximate number of visitors downtown	26,160

Note: Estimated totals are on an annual basis.

Source: BBC Research & Consulting.

Cost Recovery

BBC determined cost recovery percentages for each of the scenarios. In Scenario A, since the building would be closed, the building recovers zero percent of its expenses. In Scenarios B, C, and D, BBC estimated that the building would recover a portion of its costs; however, no scenario predicted a full cost recovery model. Scenario D generates the highest cost recovery at 78%. Figure 4-8 depicts the varying cost recovery percentages in each scenario.

Figure 4-8.
Cost ratio

Note:
Estimated on an annual basis.
Source:
BBC Research & Consulting.

(a)	(b)	(c)	(d)
Close building	Maintain the building as is	City managed with \$2 million investment into auditorium	Third party managed auditorium with \$2 million investment
0%	24%	51%	78%

Many facilities use different cost recovery goals for different types of events. For example, a study conducted for the City of Walnut Creek, California suggested that events and services could be categorized as follows:

- **Core services** – services that benefit the majority of the community or are open to the general public. An example of this might be the Pulliam Community Building hosting a public meeting on a City topic or anchoring a community festival.
- **Important services** – services that are available to a portion of the community but also include benefits for individuals. An example of this type of activity might be a rental by a community group.
- **Value added services** – services that provide less community benefit and serve niche groups. An example of this type of activity would be a family reunion hosted at the Pulliam Community Building.

The Pulliam Community Building might consider adopting cost recovery goals for different types of events, although this would require additional data collection and analysis that would likely take staff time away from other tasks.

Stepwise Building Investments

In the January 2016 city council study session, two estimates were made regarding possible renovation expenditures. In the smaller renovation, \$440,375 would be spent on basic improvements, such as fire systems, flooring, tables and chairs, and painting the auditorium. Based on the information BBC received in interviews, this renovation would not be enough to substantially increase use of the building. Use limitations as a concert or event venue included HVAC, elevator, and electrical, sound, and lighting. As these amenities would still be needed, another unknown renovation date would likely mean the facility would continue to need a large subsidy without the increase in downtown visitors.

The \$1.8 million dollar investment, projected to provide basic and mechanical improvements to the space, would result in more options for building management as well as type of events.

Following the larger investment, the Pulliam will still need incremental renovations. For example, restroom capacity or location will need to be addressed in order for the building to attract a larger number of visitors. If the city were to acquire a downtown three day convention in the auditorium, 500 people would need to have access to the restroom every day. Moreover, ADA accessibility for the restrooms will need to be addressed.

Later renovations may be desired to improve interior functionality (for example, modifying the balcony to allow guests) as well as interior and exterior aesthetics of the building, including the potential to revive some historical appearance of the building.

Possible Funding Solutions

The Pulliam Community Building's historic significance as well as largely unmodified structure would be well-suited for historical preservation grants. Historical preservation would require the city to register the property or join a downtown program.

- National Trust Preservation Fund – available for public agencies or nonprofit organizations. Matching grants from \$2,500-\$5,000 are available for preservation planning and educational efforts. Eligible applicants must also be a member of the Forum or Main Street program. There are three annual deadlines: February 1st, June 1st, and October 1st. More information can be found at: https://savingplaces.org/stories/find-funding-how-to-apply-for-grants-from-the-national-trust-preservation-fund#.V4_mNPmANHw
- History Colorado State Historical Fund – derived from a portion of gaming tax revenues that are reserved for historical preservation. Applications must demonstrate strong public benefit and community support. Awards are given following a competitive process and can be made up to \$200,000. The next deadline is October 3rd. More information can be found at: <http://www.historycolorado.org/oahp/state-historical-fund>
- Tax Incentives – a 20% tax credit is available for historic, income-producing buildings that adhere to a certain set of rehabilitation standards. Though a 10% tax credit is available for non-historic buildings placed in service before 1936, the later construction date of the

Pulliam would make the building ineligible. More information can be found through the National Park Service at: <https://www.nps.gov/tps/tax-incentives.htm>

Other grant-lending agencies who are interested in nonprofits or art and community activities could also provide funding solutions for the Pulliam.

- Boettcher Foundation – nonprofit grants are made for the purchase, construction, or major renovation of buildings owned by a Colorado nonprofit organization. A community enrichment capital grant may be best suited for the Pulliam. Total project costs must reach a minimum of \$150,000 (though grants awarded range from \$20,000 to \$75,000). Nonprofits must complete a prequalification form by April 1st. If deemed eligible, the foundation will send an invitation to submit a proposal. More information is available at: <http://boettcherfoundation.org/capital-grants-guidelines/>
- Colorado Creative Industries – the Colorado Creates grant program provides financial support for nonprofit cultural organization or communities to provide art and cultural activities. Grants are awarded annually; however, grant cycles are prepared every other year depending on the institution. More information is available at: <http://www.coloradocreativeindustries.org/nonprofits/colorado-creates-grant-0>
- JP Morgan & Chase Co – unsolicited grant applications demonstrating effective organizational and financially managed programs are awarded to nonprofit entities. Financially audited financial statements are required. JP Morgan provides funding for both community development and arts/ cultural activities. The Colorado contact is Seth Mones (located in Phoenix, AZ). More information is available at: <https://www.jpmorganchase.com/corporate/Corporate-Responsibility/grant-programs-us.htm>

More local tax based solutions are also available to the Pulliam Community Building. For example, the current initiative across Larimer County to create a Scientific and Cultural Facilities District tax would provide nonprofits headquartered in the district with sustainability funds or innovation funds. The Pulliam would need to engage in public programming in order to receive sustainability funds that offset operating costs. Innovation funds would be awarded in a grant application and award process. This initiative is expected to generate \$6.6 million county-wide and is expected to appear on the ballot in November 2016.

- Tax Increment Financing – Municipalities, in partnership with Downtown Development Authority or Urban Renewal Authority, may allocate use of funds from a new development to provide public amenities. After a plan is adopted, the tax base for the area is frozen at the last certified valuation.

Local foundations, corporations, civic organizations, or individuals can also raise capital for the building. The Pulliam Community Foundation, for example, could be called upon for capital campaigns.



CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

Memorandum

To: City Council
From: Mike Scholl, Economic Development Manager
Date: September 16, 2016
RE: Funding Options for the Pulliam Community Building

The following memorandum is intended to provide a discussion of options for funding the proposed \$2 million renovation of Pulliam Community Building. While the building is owned by the City and will likely be owned by the City into perpetuity, future public investments can and should be leveraged to encourage additional public and private sources of investment.

Proposed Renovation:

In 2014, through a grant from the State Historic Fund, the City completed a Historic Structure Assessment and Preservation Plan the Pulliam Community Building. The assessment and plan is a comprehensive review of the physical conditions of the building that includes recommendations on critical building improvements. The plan was provided to the City's Facilities Management Division for further review and the following list of building priorities and estimated cost was developed. The estimates and the renovation plan were discussed extensively at the January 2016 Study Session.

Item	Estimated Cost
Basic Improvements (fire, chairs, paint)	360,000
Electrical Service	450,000
Elevator Installation	115,000
HVAC	425,000
Sound Systems	80,000
Lighting	80,000
Contingency (25%)	377,500
Total	1,887,500

The list of items would bring the auditorium to a level of service that would make it rentable for public use and ticketed events such as concerts. Given the age and condition of the building, there would be a need for additional non-critical improvements to improve the aesthetics and functionality of the building. The first phase would need to include improvements to the fire safety items and the removal of the fixed seating. Other items, such as the HVAC system and

elevator can come later, however they would limit the opportunity to use the building in the interim.

Funding Options:

1. *The City could enter into a strategic partnership with the Pulliam Community Building Foundation to raise additional private funds for the building.*

The Foundation has already offered to invest \$100,000 in the renovation of the building if the City invests \$200,000. In addition the Foundation has indicated a willingness to raise additional funds in support of the Pulliam Building if the City would provide an ongoing match.

2. *Apply for a grant through the State Historic Fund.*

Grants are available for up to \$200,000. The grants are competitive and would require the building to be listed on the local historic register. Staff have reached out to the fund and preliminary discussion indicate that the Pulliam would be a strong candidate for grant funding.

3. *Identify other partnerships and vendor relationships.*

According to the BBC report, there may be opportunities to enter into contractual relationships with promoters who will make some investments in the building in exchange for exclusive rights to promote ticketed events at the facilities.

4. *Work with the Downtown Development Authority.*

Provided the DDA election passes in November 2016, the Pulliam Community Building is listed as a project in the Plan of Development. The challenge with the Pulliam as a non-taxpaying entity is that it would not generate property tax or sales tax increment.

Timing of Improvements:

For 2017, the City has \$2,101,780 in Council Special Projects fund.

The improvements could be completed in phases and stretched over multiple budget years. For instance, in 2017, the City could partner with the Pulliam Community Foundation and apply for a grant to the State Historic Fund to complete the improvements to the fire safety systems, the removal of the chairs and the restoration of the floor in the main auditorium. The cost would be roughly \$400,000.

The improvements to the HVAC system, electrical, elevator and other mechanical systems could be funded in future years under a partnership with the Foundation and depending demand for use of the auditorium for the public and for ticketed events. Any additional phases would be subject to Council approval.

PULLIAM COMMUNITY BUILDING FOUNDATION

October 3, 2016

Mike Scholl
Economic Development Director
City of Loveland
500 E 3rd St.
Loveland, CO 80537

RE: Pulliam Matching Grant Increase

Dear Mike,

As you know, last year the Pulliam Community Building Foundation offered the city a \$100,000 grant towards renovations of the auditorium in the Pulliam Community Building. In the most recent Financial Feasibility Study conducted by BBC Research & Consulting and in earlier public meetings, the city would add \$300,000 to that for a \$400,000 first phase budget.

I am pleased to announce that through a generous matching gift from the Pulliam Family Charitable Trust, we are able to increase our offer to \$400,000. It similarly is a matching gift that is available if the city matches it with \$1.2 Million for a total budget of \$1.6 Million. We also need a working agreement and to get started early in 2017.

Therefore, we will contribute ¼ of the capital budget up to \$1.6 Million.

This is a big step for us and one that we hope the city will anxiously accept.

Sincerely,



Norman L. Rehme, President

1127 GARFIELD AVE., LOVELAND, CO 80537

AGENDA ITEM: 2.2
MEETING DATE: 10/11/2016
TO: City Council
FROM: Jim Wedding, Revenue Manager
PRESENTERS: Jim Wedding and Vincent Junglas, Assistant City Attorney



TITLE:
Discussion of CML's Uniform Tax Definitions Project and Draft Ordinance

SUMMARY:

In 2014, the Colorado State Legislature passed SJR 14-038, directing Colorado Home Rule Cities to work with CML to develop and adopt uniform definitions to simplify sales tax collections for the business community. A Uniform Definitions Steering Committee with the help of CML has created proposed Uniform Definitions for adoption by all self-collected sales tax jurisdictions. If the project fails, the Legislature may force the States definitions, including any future changes, on all municipalities. Additionally, the City's sales tax code lacks transparency, is outdated, inefficient and in need of an update.

BACKGROUND:

What is the Uniform Definitions Project?

The Uniform Definitions Project is a major collaborative sales tax simplification initiative by CML and Colorado's home rule municipalities that self-collect their sales tax in an effort to simplify sales tax collections while maintaining revenue neutrality. The objective of the project is to have all self-collecting municipalities use uniform definitions and use uniform tax guidance to construe those definitions. Before the Sales Tax Simplification Committee gave their final stamp of approval on this project, they sought after input from the business community, private tax attorneys and a focus group of city attorneys. All three groups responded enthusiastically to the project.

What does this mean for the City?

For the City to adopt the Uniform Definitions agreed to by the Sales Tax Simplification Committee at CML, Council must adopt an ordinance change to the Loveland Municipal Code (LMC) §3.16 removing the current wording referencing the sales tax definitions in the Colorado Revised Statutes and replace it with the Uniform Definitions. This change will ensure the City complies with SJR 14-038, and protects the City's tax base from unintended consequences of future changes made by the State Legislature.

Additionally, the proposed changes to some definitions and a desire to improve transparency, necessitates that the Council codify the sales tax exemptions adopted in 1998 for the City. In order to achieve revenue neutrality, tax simplification and further protect the City's tax base, three additional exemptions are included in the proposed ordinance; 1) an exemption for prescription drugs, food and prosthetic devices for animals, 2) an exemption for community organizations and, 3) an exemption on medical oxygen delivery equipment. The uniform definition of software could lead to an immaterial increase in sales tax revenue that will be offset by the proposed exemptions, ensuring that revenue neutrality will be achieved.

Why update City's Sales Tax Code?

The City's sales tax code was adopted in 1998; while a few amendments have been made to ensure compliance with State law, the code remains much the same as it was 18 years ago.

Staff proposes several enhancements to LMC §3.16, to simplify, clarify, add consistency to the language, improve readability and strengthen the imposition of the City's sales tax code.

The proposed ordinance will; 1) remove obsolete Pre-"De-Brucing" language, 2) make various numbering and capitalization changes, 3) add language that Tolls the three-year limitation once an audit has begun, 4) clarify the types of records subject to inspection, 5) clarify that failure to provide documents, permits estimating tax liability, 6) clarify that failure to renew a sales tax license results in revocation of the license, 7) require the name of a human person on sales tax license applications, 8) expand the discretion to deny a sales tax license application when the applicant owes sales tax from a previous business, 9) clarify the burden to prove an item is not taxable is on the taxpayer at all times, 10) clarify that special mobile machinery is covered the same as other tangible personal property that requires registration, 11) add discretion on how sales tax is displayed (on receipt vs. signage), 12) add language to allow the publication of delinquent sales tax, 13) add discretion pertaining to the decision to hold a local hearing on a protested assessment, and 14) clarify the permitted audit methodologies allowable for sales and use tax audits.

Impact

The proposed changes will provided transparency by placing our definitions and exemptions in one place that is well organized and easy to read. The clarifying language will add simplicity to understanding what the code says and addresses commonly misinterpreted language, making compliance easier for all taxpayers. The additional language streamlines and adds more clarity to how the City administers LMC §3.16, improving efficiencies for City staff and reducing confusion for our taxpayers.

Some taxpayers may experience tax savings on medical treatments for their pets or the use of oxygen delivery equipment. Additionally, community organizations like the Boys and Girls Scouts will benefit from the same exemptions that 501(c)(3)'s currently receive. With the exception of the taxability of downloaded software, our taxpayers will not realize any negative impact from the proposed changes.

Staff feels it would be prudent for simultaneous adoption of Standard Definitions, Exemptions, clarifications and updates by Council and therefore seeks direction from council on how to proceed.

Time is of the essence on this matter, as it is customary for changes related to sales tax to take effect on January1 of a given year. Staff is preparing a notification plan to communicate these changes to our approximately 3700 licensed taxpayers and CML as required by LMC §3.16 in anticipation that Council may give direction to proceed with our recommendations.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. PowerPoint
2. Draft Ordinance

CML UNIFORM DEFINITIONS PROJECT

FINANCE DIVISION
CITY ATTORNEY'S OFFICE

COUNCIL DIRECTION AND RISK

- IS COUNCIL IN FAVOR OF MOVING FORWARD WITH THIS PROJECT?
 - WHAT ADJUSTMENTS SHOULD STAFF MAKE?
- IS THE STATUS QUO ACCEPTABLE TO COUNCIL?
- DO THE BENEFITS ASSOCIATED WITH TAX SIMPLIFICATION AS PROPOSED OUTWEIGH THE RISKS? THE PRIMARY FACTORS TO WEIGH –
 - THE RISK OF INACTION – STATE DOMINANCE, LOSS OF LOCAL COLLECTION, LOSS OF REVENUE, ADDITIONAL EROSION OF HOME RULE AUTHORITY, OR PERPETUATION OF AN INDEFENSIBLY COMPLEX SYSTEM OF SALES TAX.
 - THE RISK OF ACTION – TABOR SUIT.

THE UNIFORM DEFINITIONS PROJECT

- WHAT IS IT?
 - A MAJOR COLLABORATIVE SALES TAX SIMPLIFICATION INITIATIVE.
- WHAT IS THE OBJECTIVE?
 - UNIFORM DEFINITIONS OVER TIME. LIFE EASIER FOR EVERYONE.

WHY IS THIS IMPORTANT?

- UNARGUABLY MORE COMPLICATED CURRENTLY.
- A DIFFERENT MEANING IN DIFFERENT CITIES IS NOT DEFENSIBLE.
- SIMPLIFY OUR TAX SYSTEM WITHOUT SACRIFICING REVENUE.
- REVENUE NEUTRAL TAX SIMPLIFICATION.

WHY IS THIS IMPORTANT?

- THE COMPLEXITY OF THE CURRENT SYSTEM LACKS TRANSPARENCY.
- IN SJR14-038 THE GENERAL ASSEMBLY ASKED CML TO REVIVE THE TAX SIMPLIFICATION PROJECT FROM THE 1990'S TO ADDRESS OUR CURRENT PROBLEM.
- ALTERNATIVES ARE FRAUGHT WITH MAJOR RISKS FOR MUNICIPALITIES.
- LOCAL CONTROL OF SALES TAX COLLECTION IS IMPORTANT.
- THE STATE'S FIELD AUDIT CAPABILITY IS SEVERELY LIMITED.
- IN SHORT, IT'S THE RIGHT THING TO DO, AND IF WE DON'T DO IT, WE MAY WELL HAVE IT DONE FOR US (OR TO US, IF YOU WILL).

WHAT IS THE PROCESS FOR DEVELOPING UNIFORM DEFINITIONS & GUIDANCE

- A 23 MEMBER STEERING COMMITTEE AND SUBCOMMITTEES ADDRESSED SOME DEFINITIONS.
- AT LEAST 8 MEETINGS AT ABOUT FIVE HOURS PER MEETING SINCE DECEMBER OF 2014.
- STATE, LOCAL, AND STREAMLINED SALES TAX PROJECT (SSTP) DEFINITIONS COMPARED.
- FULL COMMITTEE ADOPTION.
- LEGAL COMMITTEE REVIEW.
- BUSINESS COMMUNITY REVIEW.

WHAT STANDARDS ARE BEING APPLIED TO THE UNIFORM DEFINITIONS PROJECT

- LOCAL BUSINESSES PERCEIVE NO CHANGE IN TAX TREATMENT.
- NO SIGNIFICANT LOSS OR GAIN IN LOCAL GOVERNMENT REVENUE
- A STRONG ARGUMENT THAT NO TABOR ELECTION IS REQUIRED
 - MESA COUNTY V. STATE, 203 P.3D 519 (COLO. 2009) – ANY REVENUE INCREASE WOULD BE *DE MINIMIS* AND PERMISSIBLE UNDER TABOR.
 - NO “NEW TAX” OR “CHANGE IN TAX POLICY” UNDER A RECENT COLORADO COURT OF APPEALS DECISION TABOR FOUNDATION V. RTD, 15CA0582 (COLO. APP. 2016) (UNPUBLISHED).
 - TABOR ELECTION COST ESTIMATION OF \$200,000.
 - 1969 ORDINANCE NO. 1035 – SPECIAL ELECTION – TANGIBLE PERSONAL PROPERTY IS TAXED.

DOES USE OF UNIFORM DEFINITIONS PAVE THE WAY FOR FURTHER TAX SIMPLIFICATION?

- YES, AND ACCORDING TO CML, THE BUSINESS COMMUNITY ENTHUSIASTICALLY SUPPORTS IT.
- “HOLY GRAIL” OF TAX SIMPLIFICATION IN COLORADO.

SUMMARY OF CHANGES

- THE CITY WOULD CODIFY IT'S OWN STANDARD DEFINITIONS AND SEVER WITH THE STATE.
- THE CITY WOULD NO LONGER CREATE OR POSSESS EXEMPTIONS THROUGH DEFINITIONS.
- EXEMPTIONS FROM 1998 WILL BE CODIFIED WITH ADJUSTMENTS.
- PRESCRIPTION DRUGS, FOOD, AND PROSTHETIC DEVICES FOR ANIMALS ADDED AS AN EXEMPTION.
- COMMUNITY ORGANIZATIONS TREATED IDENTICAL TO CHARITABLE ORGANIZATIONS.
- OXYGEN DELIVERY EQUIPMENT WOULD BE A NEW EXEMPTION.
- DOWNLOADED, NON-CUSTOM SOFTWARE BECOMES TAXABLE.

SUMMARY OF SIGNIFICANT CHANGES

- TANGIBLE PERSONAL PROPERTY – THE STATE DEFINITION IS “CORPOREAL PERSONAL PROPERTY” AND THE CML STANDARD DEFINITION IS “PERSONAL PROPERTY THAT IS PERCEPTIBLE TO THE SENSES.”
- THE TWO DEFINITIONS ARE EFFECTIVELY COTERMINOUS WITH ONE ANOTHER.
- FOR EXAMPLE, THE COLORADO DEPARTMENT OF REVENUE, IN IT’S INFORMATIONAL LETTERS HAS CITED TO A NEBRASKA SUPREME COURT RULING “THE MERE FACT THAT SIGNALS MAY BE RECEIVED AND STORED SHOWS THAT A TANGIBLE THING IS IN ISSUE. THE CONCEPT OF PHYSICALLY STORING AN INTANGIBLE THING IS BEYOND COMPREHENSION.” MAY BROADCASTING CO. V. BOEHM, 241 NEB. 660, 666 (1992).
- ELECTRICITY HAS BEEN HELD TO BE TANGIBLE PERSONAL PROPERTY.

SUMMARY OF SIGNIFICANT CHANGES

- COMMUNITY ORGANIZATIONS – A NEW DEFINITION TO CAPTURE THOSE ORGANIZATIONS WHO MAY NOT BE A 501 (3) (C), BUT WHO ARE NON-PROFIT ORGANIZATIONS WHO EXCLUSIVELY OPERATE FOR THE PROMOTION OF THE SOCIAL WELFARE.
- COMMUNITY ORGANIZATIONS WILL BE TREATED IDENTICALLY TO CHARITABLE ORGANIZATIONS.
- A REDUCTION IN THE CITY'S TAX BASE.
- OXYGEN DELIVERY EQUIPMENT— A NEW EXEMPTION FOR ITEMS THAT WERE TAXABLE IN 1998. THE RIGHT THING TO DO BASED ON MEDICAL NECESSITY. ALSO REDUCTION IN THE CITY'S TAX BASE.

SUMMARY OF SIGNIFICANT CHANGES

- PRESCRIPTION DRUGS, FOOD, AND PROSTHETIC DEVICES FOR ANIMALS.
 - ITEMS WERE TAXABLE IN 1998.
 - COUNCIL DIRECTION – MIRRORS THE EFFECT OF STATE TAX TREATMENT.
 - EXEMPTION ADDED.
 - A REDUCTION IN CITY'S TAX BASE.

SUMMARY OF SIGNIFICANT CHANGES

- SOFTWARE – UNLESS THE SOFTWARE IS CUSTOM (TAILORED TO AN INDIVIDUAL CONSUMER) OR ACCESSED THROUGH AN “APPLICATION SERVICE PROVIDER” IT IS TAXED AS TANGIBLE PERSONAL PROPERTY.
- THE STATE “EXEMPTS”, THROUGH THE DEFINITION OF TANGIBLE PERSONAL PROPERTY, SOFTWARE THAT IS DELIVERED ELECTRONICALLY. THE CITY WOULD TAX “DOWNLOADED SOFTWARE” SO LONG AS THE RETAILER IS ENGAGED IN BUSINESS IN THE CITY (NEXUS).
- AN INCREASE IN THE CITY’S REVENUE WOULD ARISE IN THIS CIRCUMSTANCE. HOWEVER, IT IS ARGUABLY OFFSET UNDER MESA COUNTY V. STATE, 203 P.3D 519 (COLO. 2009) THROUGH COMMUNITY ORGANIZATIONS, OXYGEN DELIVERY EQUIPMENT, AND PRESCRIPTIONS FOR ANIMALS.

SUMMARY OF MINOR CHANGES

- ORGANIZATION – BETTER READABILITY. LOGICAL FLOW.
- LMC 3.16.040, MISSING THE WORD “VEHICLES.”
- CHANGE IN TERM FROM “CONSTRUCTION AND BUILDING MATERIALS” TO “CONSTRUCTION MATERIALS AND CONSTRUCTION EQUIPMENT.”
- FAILURE TO RENEW SALES TAX LICENSE RESULTS IN REVOCATION OF THE LICENSE.
- NAME OF THE HUMAN PERSON RESPONSIBLE FOR REMITTING TAXES INCLUDED ON APPLICATION.

SUMMARY OF MINOR CHANGES

- BUSINESS WITHIN A BUSINESS CLARIFICATION, BOTH MUST BE LICENSED.
- CASTING A WIDER NET OF DISCRETION TO DENY A SALES TAX APPLICATION WHEN THE BUSINESS, OWNER OF SAID BUSINESS, OR SUCCESSOR BUSINESS PREVIOUSLY FAILED TO PAY TAXES DUE UNDER CHAPTER 3.16.
- CLARIFYING THAT SPECIAL MOBILE MACHINERY IS TREATED THE SAME AS OTHER ARTICLES OF TANGIBLE PERSONAL PROPERTY THAT REQUIRE REGISTRATION.
- CLARIFYING THAT THE BURDEN, AT ALL TIMES, IS ON THE TAXPAYER TO PROVE THAT AN ITEM IS NOT TAXABLE OR OTHERWISE EXEMPT.
- LIMITED DELINQUENT TAXPAYER INFORMATION MAY BE POSTED ONLINE OR OTHERWISE.

SUMMARY OF MINOR CHANGES

- CLARIFYING THAT FOUNDATIONAL BUSINESS DOCUMENTS ARE SUBJECT TO INSPECTION WHEN AN AUDIT IS COMMENCED.
- CLARIFYING THAT THE FAILURE TO PRODUCE NECESSARY BUSINESS RECORDS PERMITS THE CITY TO ESTIMATE TAX LIABILITY.
- THE COMMENCEMENT OF AN AUDIT WILL NOW TOLL THE THREE YEAR LIMITATION ON COLLECTING PREVIOUSLY DUE SALES TAXES.
- OBSOLETE PRE-"DE-BRUCING" LANGUAGE HAS BEEN OMITTED.
- ALL GENERALLY ACCEPTED AUDITING TECHNIQUES ARE EXPRESSLY PERMITTED.
- VARIOUS NUMBERING AND CAPITALIZATION CHANGES TO BE CONSISTENT.

COUNCIL DIRECTION AND RISK

- IS COUNCIL IN FAVOR OF MOVING FORWARD WITH THIS PROJECT?
 - WHAT ADJUSTMENTS SHOULD STAFF MAKE?
- IS THE STATUS QUO ACCEPTABLE TO COUNCIL?
- DO THE BENEFITS ASSOCIATED WITH TAX SIMPLIFICATION AS PROPOSED OUTWEIGH THE RISKS? THE PRIMARY FACTORS TO WEIGH –
 - THE RISK OF INACTION – STATE DOMINANCE, LOSS OF LOCAL COLLECTION, LOSS OF REVENUE, ADDITIONAL EROSION OF HOME RULE AUTHORITY, OR PERPETUATION OF AN INDEFENSIBLY COMPLEX SYSTEM OF SALES TAX.
 - THE RISK OF ACTION – TABOR SUIT.

QUESTIONS?

First Reading: _____

Second Reading: _____

ORDINANCE NO: _____

AN ORDINANCE AMENDING CHAPTER 3.16 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO SALES AND USE TAX DEFINITIONS AND EXEMPTIONS

WHEREAS, in SJR14-038 the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990's to address current systemic problems associated with local tax collection; and

WHEREAS, the Loveland Municipal Code Section 3.16.280 calls for the City to cooperate with and participate in tax simplification efforts convened by the Colorado Municipal League; and

WHEREAS, Council has determined that the uniform tax definitions project is a major collaborative sales tax simplification initiative by the Colorado Municipal League and Colorado's home rule municipalities that locally collect their sales tax; and

WHEREAS, Council has determined that the City will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use uniform definitions in their sales and use tax codes; and

WHEREAS, Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City; and

WHEREAS, Council has determined that the larger business community desires better uniformity and simplicity when doing business in the City; and

WHEREAS, Council has determined that sales tax revenue is directly tied to how well the City's retail business community is faring, Council and staff have generally supported the idea that the City should simplify the tax code, without sacrificing revenue; and

WHEREAS, Council has determined that revenue neutral tax simplification is generally construed as good for business and good for the community as a whole; and

WHEREAS, Council has determined that modification of the City's sales and use tax exemptions is required in an effort to comply with the Taxpayer Bill of Rights by staying revenue neutral.

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

Section 1. That Chapter 3.16 of the Loveland Municipal Code is hereby amended as follows:

3.16.010 Sales and use tax definitions.

For the purposes of this Chapter 3.16, the words contained herein shall have the following meanings: ~~set forth in Section 39-26-102, Colorado Revised Statutes, as it currently exists or may hereafter be amended, and the definitions are incorporated in this chapter by this specific reference. (Ord. 4263 § 1, 1997; Ord. 3094 § 1 (part), 1984)~~

1. **“Agricultural Producer”** means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.
2. **“Aircraft”** means a device that is used or intended to be used for flight in the air.
3. **“Aircraft Part”** means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.
4. **“Aircraft Simulator”** means a Flight Simulator Training Device (FSTD) as defined in Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.
5. **“Aircraft Simulator Part”** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.
6. **“Airline Company”** means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. Airline company shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and who do not engage in scheduled service or mail carriage service.
7. **“Auction”** means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.
8. **“Automotive Vehicle”** means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.
9. **“Business”** means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.
10. **“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

11. **“Carrier Access Services”** means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.
12. **“Charitable Organization”** means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.
13. **“City” or “Town”** means the municipality of the City of Loveland.
14. **“Coins”** means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.
15. **“Collection Costs”** shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.
16. **“Commercial Packaging Materials”** means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.
17. **“Commercial Shipping Materials”** means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.
18. **“Community Organization”** means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.
19. **“Construction Equipment”** means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.
20. **“Construction Materials”** means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco,

tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of completed structure or project are not construction materials.

21. **“Consumer”** means any individual person or person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.
22. **“Contract Auditor”** means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.
23. **“Contractor”** means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, “contractor” also includes subcontractor.
24. **“Cover Charge”** means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.
25. **“Data Processing Equipment”** means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information including, but not limited to, computers, software program, hardware or firmware.
26. **“Digital Product”** means a modern version of a traditional product including, but not limited to: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” or “drawings.” (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books”.
27. **“Distribution”** means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.
28. **“Dual Residency”** means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.

29. **“Dwelling unit”** means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.
30. **“Engaged in Business in the City”** means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. Engaged in business in the city includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period.
31. **“Fabricating”** means an operation which changes the form or state of tangible personal property.
32. **“Factory Built Housing”** means a manufactured home, sectional or modular home.
33. **“Farm Closeout Sale”** means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.
34. **“Farm Equipment”** means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars (\$1,000.00). Farm equipment also includes, regardless of purchase price, attachments and baling wire, binders twine and surface wrap used primarily and directly in any farm operation. Farm equipment also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this Paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, farm equipment does not include: (1) Vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used; (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation; (3) Maintenance and janitorial equipment and supplies; and (4) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.
35. **“Farm Operation”** means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products: Agricultural, viticultural, fruit, and vegetable products; (2) Livestock; (3) Milk; (4) Honey; and (5) Poultry and eggs.
36. **“Finance Director”** means the Finance Director of the City of Loveland or such other person designated by the municipality; "Finance Director" shall also include such person's designee.

37. **“Food For Home Consumption”** means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k), as amended, for purposes of the federal food stamp program, or any successor program, as defined in 7 U.S.C. sec. 2012 (l), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.
38. **“Garage Sales”** means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.
39. **“Gross Sales”** means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.
40. **“Internet Access Services”** means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.
41. **“Internet Subscription Service”** means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.
42. **“License”** means a City of Loveland sales and/or use tax license.
43. **“Linen Services”** means services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.
44. **“Lodging Services”** means the provision or facilitation of provision of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration including barter, trade or timesharing uses, possesses or has the right to use or possess any room or other accommodation, including but not limited to a hotel, inn, bed and breakfast, apartment, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, for a period of less than thirty consecutive days under any rental agreement, sharing or trade agreement, concession, permit, right of access, license to use, or other agreement.
45. **“Machinery”** means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.
46. **“Manufactured Home”** means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

47. **“Manufacturing”** means the operation or performance as a business of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.
48. **“Medical Marijuana”** means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid “registry identification card” issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.
49. **“Mobile Machinery and Self-Propelled Construction Equipment”** means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.
50. **“Modular Home”** means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.
51. **“Motor Fuel”** means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.
52. **“Newspaper”** means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.
53. **“Online Garage Sales”** means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller’s household.
54. **“Person”** means any individual, firm, partnership, joint venture, corporation, limited liability corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

55. **“Photovoltaic System”** means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling and other electrical accessories to set up a working system.

56. **“Prepress Preparation Material”** means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

57. **“Preprinted Newspaper Supplements”** shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

58. **“Prescription Drugs for Animals”** means drugs dispensed in accordance with any order by a licensed veterinarian, not including drugs available over the counter, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

59. **“Prescription Drugs for Humans”** means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, and to state at a minimum the symbol “Rx Only,” and is dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, not including drugs available over the counter, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

60. **“Price” or “Purchase Price”:**

a. Means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

i. Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not

limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

b. "Price" or "Purchase Price" includes:

- i. The amount of money received or due in cash and credits.
- ii. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- iii. Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- iv. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
- v. Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- vi. Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- vii. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- viii. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

c. "Price" or "Purchase Price" shall not include:

- i. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- ii. The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-in's are an allowable adjustment to the purchase price.
- iii. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

61. "Private Communications Services" means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

62. "Prosthetic Devices" means any artificial limb, part, device or appliance for human or animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

63. "Purchase" or "Sale":

- a. means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, used stored, distributed, or consumed. These terms include capital leases, installment and credit sales, and property and services acquired by:
 - i. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
 - ii. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services; The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property.
 - iii. Performance of taxable services; or
 - iv. Barter or exchange for other tangible personal property, other taxable products, or services.
- b. The terms "purchase" and "sale" do not include:
 - i. A division of partnership assets among the partners according to their interests in the partnership.
 - ii. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets.
 - iii. The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
 - iv. A transfer of a partnership interest.
 - v. The transfer of assets to a commencing or existing partnership, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets.
 - vi. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.
 - vii. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation.
 - viii. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.

- ix. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. For the purposes of this paragraph (11) , a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.
64. **“Rail Carrier”** means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.
65. **“Rail Carrier Part”** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of a locomotive or rail car used by a rail carrier.
66. **“Recreation Services”** means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships
67. **“Renewable Energy”** means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.
68. **“Resident”** means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.
69. **“Retail Sales”** means all sales except wholesale sales.
70. **“Retailer”** means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) Auctioneer; (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-contractor, when acting in the capacity of a retailer.
71. **“Retailer-Contractor”** means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures,

- or fabricates such property for resale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.
72. **“Return”** means any form prescribed by the city/town administration for computing and reporting a total tax liability.
73. **“Sales Tax”** means the tax that is or should be collected and remitted by a retailer on sales taxed under this Code.
74. **“School”** means an educational organization which maintains a faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are routinely conducted.
75. **“Security System Services”** means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.
76. **“Soft Drink”** means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
77. **“Software Program”** means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones). Software program includes: (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer; (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf (“COTS”),” “mass produced” or “standardized;” (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and (4) The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing software programs.
78. **“Software License Fee”** means a fee charged for the right to use, or maintain a copy of, software, regardless of the form of the software.
79. **“Software Maintenance Agreement”** means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support.
80. **“Solar Thermal Systems”** means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.
81. **“Sound System Services”** means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.
82. **“Special Fuel”** means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

83. **“Special Sales Event”** means any sales event which includes more than three (3) Vendors taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.
84. **“Storage”** means any keeping or retention of, or exercise or dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.
85. **“Tangible Personal Property”** means personal property that can be one or more of the following: seen, weighed, measured, felt or touched, stored, transported, or exchanged, or that is in any other manner perceptible to the senses.
86. **“Tax”** means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.
87. **“Tax Deficiency” or “Deficiency”** means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.
88. **“Taxable Sales”** means gross sales less any exemptions and deductions specified in this Code.
89. **“Taxable Services”** means services subject to tax pursuant to this Code.
90. **“Taxpayer”** means any person obligated to collect and/or pay tax under the terms of this Code.
91. **“Telecommunications Service”** means the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), internet access, remote access to computers and electronic storage equipment, or any combinations of such media, including any form of mobile two-way communication.
92. **“Television & Entertainment Services”** means audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.
93. **“Therapeutic Device”** means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.
94. **“Toll Free Telecommunications Service”** means a “telecommunications service” that allows a caller to dial a number without incurring a charge for the call.
95. **“Total Tax Liability”** means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.
96. **“Transient / Temporary Sale”** means a sale by any person who engages in a temporary business of selling and delivering goods within the city for a period of no more than seven consecutive days.
97. **“Transient / Temporary Vendor”** means any person who engages in the business of transient / temporary sales.
98. **“Use”** means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer, or withdrawn from inventory for consumption.

99. **“Use Tax”** means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.
100. **“Wholesale Sales”** means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; the latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this chapter. Sales by wholesalers to non-licensed retailers are not wholesale sales.
101. **“Wholesaler”** means any person doing an organized wholesale or jobbing business and selling to licensed retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

3.16.020 General provisions Legislative Intent.

A. It is the intent of the City Council, in exercising the home rule powers provided by the Colorado Constitution under Article XX, Section 6, that through this legislation and in the manner described herein, every person who stores or puts to any use, any tangible personal property or taxable services is exercising a taxable privilege. All sales, leases, and purchases of tangible personal property and taxable services defined in this Chapter 3.16 are taxable unless specifically exempted in this Chapter 3.16. The sales tax imposed upon tangible personal property by this Article applies to each transfer of ownership, possession, and control of such property and may occur more than once during the life of the property. ~~There is imposed on the sale of tangible personal property at retail or the furnishing of services as provided in § 29-2-105(1)(d), Colorado Revised Statutes, a sales tax equal to three percent of the gross receipts (the "sales tax"). The tangible personal property and services taxable under this chapter shall be the same as the tangible personal property and services taxable pursuant to § 39-26-104, Colorado Revised Statutes, and subject to the same exemptions as those specified in § 39-26-114, Colorado Revised Statutes; provided that the exemption for the sales of food pursuant to § 39-26-114(1)(a)(XX), Colorado Revised Statutes, exemption for sales of electricity, coal, wood, gas, fuel oil or coke sold to occupants of residences pursuant to § 39-26-114(1)(a)(XXI), Colorado Revised Statutes, and the exemption for sales of machinery or machine tools pursuant to § 39-26-114(11), Colorado Revised Statutes, shall not apply to the sales tax, and the sale of such items is expressly made taxable under this chapter. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the city manager.~~

B. The sales tax is a transaction tax levied upon all sales, purchases and leases of tangible personal property and taxable services sold or leased by persons engaged in business in the City and is collected by the retailer or lessor and remitted to the City. ~~For the purpose of the sales tax, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the city or to a common carrier for delivery to a destination outside the limits of the city and except that for transactions consummated on or after January 1, 1986,~~

C. The sales tax shall not apply to the sale of construction and building materials and construction equipment if such materials or equipment are picked up by the purchaser and if the purchaser of such materials or equipment presents to the retailer a building permit or other documentation acceptable to the city evidencing that a local use tax has been paid or is required to be paid. ~~The Gross receipts sales from such sales shall include delivery charges, when such~~

~~charges are subject to the state sales and use tax imposed by Article 26 of Title 39, Colorado Revised Statutes, regardless of the place to which delivery is made. If a retailer has no permanent place of business in the city, or has more than one place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, Colorado Revised Statutes, and by rules and regulations promulgated by the Department of Revenue.~~

~~DE.~~ The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, Colorado Revised Statutes.

~~E.~~ The city manager shall adopt rules and regulations for the administration, interpretation, and enforcement of this Chapter.

~~D.~~ All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

- ~~1. The purchaser is a nonresident of, or has his principal place of business outside the limits of the city; and~~
- ~~2. Such personal property is registered or required to be registered outside the limits of the city under the laws of the state. (Ord. 4263 § 3, 1997; Ord. 3222 §§ 1, 2, 3, 1985; Ord. 3094 § 1 (part), 1984)~~

3.16.030 ~~Use tax definitions~~Imposition of sales tax.

~~For the purposes of Sections 3.16.040, 3.16.050, 3.16.150 and 3.16.160 of this chapter 3.16, the words therein contained shall have the meanings set forth in Section 39-26-201, Colorado Revised Statutes, as it currently exists or may hereafter be amended, and the definitions are incorporated in this chapter by this specific reference. Ord. 4263 § 4, 1997; Ord. 3094 § 1 (part), 1984(A) Levy. There is levied and there shall be collected and paid a sales tax of three percent on the gross sales paid or charged for tangible personal property and taxable services sold at retail or leased by every person exercising a taxable privilege in the City by the sale or lease of such property and services. The sales tax is levied on all sales and leases of tangible personal property or taxable services except those specifically exempted, and is collected by the retailer or lessor and remitted to the City.~~

~~(B) Taxable transactions and items. The sales tax shall apply as follows:~~

- ~~(1) On the purchase price paid or charged for all sales and purchases of tangible personal property at retail.~~
- ~~(2) For items delivered by the retailer, a retail sale is made at the location where the item sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the retailer. When no delivery location is specified, the retail sale is sourced to the customer's address that is either known to the retailer or, if not known, obtained by the retailer during the consummation of the transaction, including the address of the customer's payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the retail sale is sourced to the address of the retailer from which the retail sale was made.~~
- ~~(3) On the total amount due under a lease or contract when the right to possession or use of tangible personal property is granted therein and such transfer of possession would be taxable under this Chapter 3.16 if an outright sale were made. A lease constitutes a monthly sale.~~
- ~~(4) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange; excluding however, from the consideration or purchase price, the~~

fair market value of the exchanged property, provided that such exchanged property is to be sold in the usual course of the retailer's business.

(5) Upon telecommunication service, access services and upon telephone and telegraph services, whether furnished by public or private corporations or enterprises, for all intrastate telephone and telegraph services.

(6) All sales of food, machinery, electricity, coal, wood, gas, fuel oil, coke, and all digital products, including, but not limited to, digital products that may be streamed, on demand, are hereby made expressly taxable.

(7) Upon the amount paid for all meals, and beverages and cover charges, if any, furnished in any restaurant, hotel, club, hospital, nursing home or other place at which meals, food or beverages are regularly sold.

(8) Upon the purchase price of tangible personal property acquired with the purchase of a business for use in the operation of such business as such purchase price is documented in the bill or contract of sale, but in no event shall the tax be based upon a valuation of property less than its fair market value. If the purchase price of the property is not itemized in the bill or contract of sale, the tax shall be based upon the book value that the purchaser uses for income tax depreciation or upon the fair market value of the property if no book value has been established. Regardless of the method used to value the property, no deduction shall be made on because of any outstanding liabilities acquired by the purchaser of the business and property.

(C) Exemptions. There shall be exempt from taxation under the provisions of this Chapter, the following:

(1) All sales to the United States government and to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(2) All sales made to charitable organizations and community organizations, in the conduct of their regular functions and activities;

(3) All sales, which the state of Colorado and its political subdivisions are prohibited from taxing under the Colorado Constitution, or laws of the United States;

(4) All sales of cigarettes;

(5) All sales of prescription drugs for humans and prosthetic devices for humans dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, not including drugs available over the counter, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label; all sales of urine and blood testing kits and materials; all sales of insulin measuring and injecting devices, including hypodermic syringes and needles for insulin related treatment; all sales of wheelchairs and hospital beds; all sales of corrective eyeglasses, contact lenses, and hearing aids; all sales of oxygen delivery equipment and disposable medical supplies related to oxygen delivery dispensed pursuant to a prescription.

(6) All sales of prescription drugs for animals, prescription food for animals, and prosthetic devices for animals that are dispensed and prescribed by a licensed veterinarian, specifying the animal for which the item is offered and directions, if any, to be placed on the label.

(7) All sales and purchases of commodities and services from a lodging service provider to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year;

(8) All sales made to schools, other than schools held or conducted for private or corporate profit;

(9) Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this city if such vehicle is purchased from the manufacturer for use exclusively outside this city or in interstate commerce and is delivered by the manufacturer to the purchaser within this city, if the purchaser drives or moves such vehicle to any point outside this city within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this city and will be removed from this city within thirty days after the date of delivery;

(10) Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this city or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this city, if the purchaser drives or moves such vehicle to any point outside this city within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this city and will be removed from this city within thirty days after the date of delivery;

(11) All sales of construction materials and construction equipment to a common carrier by a rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction materials and construction equipment shall, at the time of such actual use, be subject to the city's use tax pursuant to Section 3.16.040;

(12) Any right to the continuous possession or use for three years or less of any article of tangible personal property under a lease or contract, if the lessor has paid to the city a sales or use tax on such tangible personal property upon its acquisition. The city manager may permit a lessor of tangible personal property leased for a period of three years or less to acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.

(13) The transfer of tangible personal property without consideration (other than the purchase, sale, or promotion of the transferor's product) to an out-of-city vendee for use outside of this city in selling products normally sold at wholesale by the transferor;

(14) The sale of tangible personal property for testing, modification, inspection, or similar types of activities in this city if the ultimate use of such property in manufacturing or similar types of activities occurs outside of this city and if the test, modification, or inspection period does not exceed ninety days;

(15) The sale of special fuel used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

(16) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale;

(17) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale;

(18) All sales of construction materials and construction equipment to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(A) The United States government, the state of Colorado, its departments and institutions, and the political subdivision thereof in their governmental capacities only;

(B) Charitable organizations in the conduct of their regular charitable functions and activities; or

(C) Schools, other than schools held or conducted for private or corporate profit;

(19) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline;

(20) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft;

(21) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock;

(22) All sales of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company;

(23) All sales and purchases of livestock; all sales and purchases of live fish for stocking purposes; and all farm close-out sales.

(24) (A) All sales and purchases of feed for livestock; all sales and purchases of seeds; and all sales and purchases of orchard trees.

(B) All sales of agricultural compounds and spray adjuvants to be consumed by, administered to, or otherwise used in caring for livestock and all sales of semen for agricultural or ranching purposes. For purposes of this paragraph (A), "agricultural compounds" means: (A) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones; For purposes of this paragraph (A), "spray adjuvants" means products that are used to increase the effectiveness of a pesticide.

(C) All sales of pesticides that are registered by the state commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.

(D) All sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case thereof. As used in paragraph (C) of this subsection (24) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when: (I) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or (II) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(25) All sales and purchases of straw and other bedding for use in the care of livestock or poultry.

(26) Forty-eight percent of the purchase price of factory-built housing shall be exempt from taxation; except that the entire purchase price in any subsequent sale of factory-built housing, after factory-built housing has been once subject to the payment of the City's sales tax shall be exempt from taxation.

(27) In any case in which a sales tax has been imposed on lubricating oil used other than in motor vehicles, the purchaser thereof shall be entitled to a refund equal to the amount of the City sales tax paid on that portion of the sale price thereof which is attributable to the federal excise tax imposed on the sale of such lubricating oil. The refund allowed under this subsection (27) shall be paid by the City Manager upon receiving evidence that the purchaser has received under section 6424 of the federal "internal Revenue Code of 1986", as from time to time amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon such forms as shall be prescribed and furnished by the City Manager.

(28) All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores.

(29) All sales of food purchased with food stamps, an Electronic Benefit Transfer ("EBT") card, or any successor program as defined in 7 U.S.C. sec. 2012 (l), as amended from time to time, shall be exempt from taxation.

(30) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. section 1786, as amended from time to time, shall be exempt from taxation.

(31) (A) All occasional sales by a charitable organization or a community organization shall be exempt from taxation.

(B) "Occasional sales" means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

(I) The sale of tangible personal property or concessions by the charitable organization or a community organization takes place no more than twelve days, whether consecutive or not, during any one calendar year.

(II) The funds raised by the charitable organization or community organization through these sales are retained by the organization to be used in the course of the organization's services; and

(III) The funds raised by the charitable organization or community organization through these sales do not exceed twenty-five thousand dollars during any one calendar year.

(32) All sales and purchases of tangible personal property by a manufacturer that uses such property as a component part of goods that it manufactures, including but not limited to, high technology goods, and that donates such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501(c)(3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars shall be exempt from taxation.

(33) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

(A) The purchaser is a nonresident of, or has his principal place of business outside the limits of the city; and

(B) Such personal property is registered or required to be registered outside the limits of the city under the laws of the state.

(34) All sales of newspaper.

(35) All sales of custom software or software utilized through an "Application Service Provider", which for purposes of this section, Application Service Provider shall mean an entity that retains custody over or hosts computer software for use by third parties. Users of the computer software hosted by an Application Service Provider typically will access the computer software via the internet. The Application Service Provider may or may not own or license the computer software, but generally will own and maintain hardware and networking equipment required for the user to access the computer software. Where the Application Service Provider owns the computer software, the Application Service Provider may charge the user a license fee for the computer software or a fee for maintaining the computer software or hardware used by its customer.

3.16.040 Use tax imposed.

There is imposed and there shall be paid and collected a use tax upon the privilege of storing, using or consuming within the city any construction ~~and building~~ materials and motor vehicles and other vehicles on which registration is required, purchased at retail, such use tax to be in the amount of three percent of the retail cost thereof (the "use tax"). The use tax shall be collected in accordance with the schedules set forth in the rules and regulations promulgated by the city manager. (Ord. 4263 § 5, 1997; Ord. 3094 § 1 (part), 1984)

3.16.050 Use tax exemptions.

In no event shall the use tax apply:

- A. To the storage, use or consumption of any tangible property the sale of which is subject to a retail sales tax imposed by the city;
- B. To the storage, use or consumption of any tangible personal property purchased for resale in the city, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;
- C. To the storage, use or consumption of tangible personal property brought into the city by a nonresident thereof for his own storage, use or consumption while temporarily within the city; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the state by a nonresident to be used in the conduct of a business in this state;
- D. To the storage, use or consumption of tangible personal property by the United States government or the state, or its institutions or political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their religious or charitable functions;
- E. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof;
- F. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales and use tax of another town, city or county equal to or in excess of the use tax. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the city of tangible personal property purchased by him elsewhere. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of another town, city or county on his purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax;
- G. To the storage, use or consumption of tangible personal property and household effects acquired outside of the city and brought into it by a nonresident acquiring residency;
- H. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the city and he purchased the vehicle outside of the city for use outside of the city and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled and licensed the motor vehicle outside of the city;
- ~~I. To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of the use tax;~~

J. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of the use tax;

K. To the storage of construction ~~and building materials~~ ~~after January 1, 1986~~;

L. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of the rate provided in this chapter, ~~after January 1, 1986~~. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the city of tangible personal property purchased by him in a previous statutory or home rule municipality. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed the rate provided in this chapter. (Ord. 4263 § 6, 1997; Ord. 3222 § 4, 1985; Ord. 3094 § 1 (part), 1984)

3.16.060 Licenses; fees; revocation.

A. A sales tax license shall be required for any person to engage in the business of selling at retail in the City tangible personal property or services that are taxable hereunder which are purchased in the City and are subject to sales tax pursuant to this chapter. Such sales tax licenses shall be granted and issued by the City manager and shall be in force and effect until the earlier of: (i) revocation of such license; or (ii) sale or termination of the business, or (iii) the failure of a person to submit an annual license renewal fee to the City, if any, relating to such license.

B. Such license shall be granted only upon approval of an application stating the name and address of the person desiring such license, the name of the human person responsible for remitting taxes, the name of such business, if any, and the location, including the street number of such business, if any, and such other facts as the City manager requires. No license issued pursuant to this section shall be transferable.

C. For each sales tax license application submitted, a fee, as established by resolution of the City Council, shall accompany such application, which fee is nonrefundable.

D. In case business is transacted at two (2) or more separate places by one (1) person, a separate license for each place of business shall be required. In addition, where two (2) or more separate business entities occupy the same physical space or street address under a lease or sale agreement, a separate license for each business doing business within the same physical space or street address shall be required.

E. Each license shall be numbered and shall show the name of the licensee and the place of business of the licensee and shall be posted in a conspicuous place at the place of business for which it is issued. If the licensee does not have a place of business, then the license shall show the mailing address of such licensee.

F. If an application for a license is submitted by an individual, ~~or~~ a business, successor business, or shareholder which previously held a license or was associated with a previously held license, the City manager may require that any taxes, penalties and interest due under the previous license be paid and a bond posted in an amount set by the City manager to ensure payment of taxes under the new license prior to issuance of such new license.

G. The City manager, after reasonable notice and a full hearing, may revoke the license of any person found by the City manager to have violated any provision of this chapter.

H. Any finding and order of the City manager revoking the license of any person shall be subject to review by the Larimer County District Court upon application of the aggrieved party. The

procedure for review shall be in accordance with Rule 106 of the Colorado Rules of Civil Procedure. (Ord. 4263 § 8 (part), 1997)

3.16.070 Collection of sales tax.

A. Every retailer, also in this chapter called "vendor," shall be liable and responsible for the payment of an amount equal to three percent (3%) of all gross sales made by the retailer of commodities or services ~~as specified in Section 3.16.020~~ and shall, before the twentieth (20th) day of each month, make a return to the City manager for the preceding calendar month and remit an amount equal to said three percent (3%) on such gross sales to said City manager.

B. The vendor shall be entitled to withhold an amount equal to the lesser of two percent (2%) of the amount of the tax to be remitted by him or her under this chapter, or one hundred fifty dollars (\$150), to cover the vendor's expense in the collection and remittance of said tax. If any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the City manager, the vendor shall not be allowed to retain any amount to cover his expense in collecting and remitting said tax, and an amount equal to the full three percent (3%) shall be remitted to the City manager by any such delinquent vendor. (Ord. 5529 § 1, 2010)

BC. If the accounting methods regularly employed by the vendor in the transaction of his business or other conditions are such that returns of sales made on a calendar month basis shall impose unnecessary hardship, the City manager, upon written request of the vendor, may accept returns at such intervals as shall, in his opinion, better suit the convenience of the taxpayer and shall not jeopardize the collection of the tax. The City manager may permit taxpayers whose monthly collected tax is less than three hundred dollars (\$300) to make returns and pay taxes at intervals not greater than every three (3) months.

CD. The City manager may extend the date for making a return and paying the taxes due under such reasonable rules and regulations as may be prescribed therefore, but no such extension shall be for a greater period than three months.

DE. The burden of proving that any retailer is exempt from collecting the tax on any goods or services sold and paying the same to the City manager or from making such returns, shall be on the retailer or vendor.

EF. The City's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the sales tax required to be paid pursuant to Section 3.16.020. A credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the amount of the sales tax required to be paid pursuant to Section 3.16.020. (Ord. 4263 § 8 (part), 1997)

3.16.090 Retailer; multiple locations.

~~A retailer doing business in two or more places or locations may file a single return covering all such business activities engaged within the City. (Ord. 4263 § 8 (part), 1997) Repealed.~~

3.16.100 Designation of tax on receipt.

A. Except as provided in paragraph B. below, retailers shall add the tax imposed to the sale price or charge, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The tax shall

be paid by the purchaser to the retailer as trustee for and on account of the City, and the retailer shall be liable for the collection thereof for and on account of the City.

B. Any retailer selling malt, vinous or spirituous liquors by the drink, any retailer who owns or leases real property who also sells concessions at a theaters and/or a sporting events, or any mobile food truck vendor who is licensed by the City under Chapter 12.30 of this Code may include in the sales price the tax levied under this chapter, except that no retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the sales price to the consumer. The tax schedules designated in Section 3.16.0320(A) shall be used by such retailer in determining amounts to be included in such sales price. The use of the schedules referred to in Section 3.16.020(A)030 shall not relieve such retailer from liability for payment of the full amount of the tax imposed pursuant to this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.150 Motor and other vehicle use tax.

If the owner of an automotive vehicle or special mobile machinery for which registration, licensing or titling is required by the state pursuant to ~~Section 42-6-137(2), Title 42,~~ Colorado Revised Statutes, is required to register, license or obtain a certificate of title for such automotive vehicle at an address located within the City, then the use tax imposed pursuant to Section 3.16.040 shall be collected by the authorized agent of the Department of Revenue in the County pursuant to an agreement or agreements entered into between the City and the authorized agent of the Department of Revenue in the County. The proceeds of such use tax shall be paid to the City periodically in accordance with such agreement or agreements. If the authorized agent of the Department of Revenue in the County fails to collect any use tax imposed pursuant to Section 3.16.040, then the City manager shall collect such use tax in the manner set forth in Section 3.16.310. (Ord. 4263 § 8 (part), 1997).

3.16.160 Collection of use tax on building-construction materials and construction equipment.

A. For construction ~~and building~~-materials and equipment, the use tax imposed pursuant to Section 3.16.040 shall be collected by the City manager as hereinafter provided in this section and shall be collected in the amount of three percent (3%) of the sale value of the construction and building materials and construction equipment. For purposes of this subsection, fifty percent (50%) of the estimated general contract costs and/or fifty percent (50%) of the estimated mechanical contract costs shall be deemed to be the estimated sale value of such construction ~~and building~~-materials and construction equipment.

~~B. Any person who shall build, construct or improve any building, dwelling or other structure or improvements to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary lumber, fixtures, materials or any other supplies needed therefore from any source inside or outside the corporate limits of the City shall keep and preserve all invoices and statements from both the general and subcontractors along with a summary sheet showing such purchases and shall on or before the tenth (10th) day of each succeeding month following the start of such construction file a return with the City manager to which he shall attach such statements and invoices from both the general and subcontractors along with a summary sheet for the lumber, fixtures, materials and other supplies purchased the previous month and shall thereupon pay to the City manager the full amount of the use tax due thereon for the preceding month or months. Any failure to preserve such statements and invoices and to make such return and payment of such use tax shall be deemed a violation of this chapter;~~

~~and any offending persons shall be subject to the penalties and punishment provided in this chapter. It shall be the duty of the City's building inspector and the contractors and subcontractors who are hired to construct any such improvements to furnish the City manager with such information as the City manager may require as to any purchase of lumber, fixtures, materials and supplies for such improvements which were obtained from sources inside and outside the City. The full amount of any use tax due and not paid for lumber, fixtures, materials and supplies purchased from such inside or outside sources, together with penalties and interest thereon as herein provided, shall be and constitute a lien upon the real property benefited by such improvements, and the City manager is hereby authorized to file a notice of such lien with the County Clerk and Recorder.~~

B€. Any person who shall build, construct or improve any building, dwelling or other structure or improvement to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary ~~lumber, fixtures, construction~~ materials and construction equipment or any other supplies needed therefore from any source either within or without the corporate limits of the City, ~~may at such person's election shall~~ remit a deposit to the City prior to the issuance of any building permit, such deposit to insure and indemnify the City for the amount of use tax due within three (3) years from the date of issuance of the certificate of occupancy for the project or the date of the final inspection of the project by the City. The amount of the deposit shall be based upon an estimate of the use tax to be payable on the ~~lumber, fixtures, materials and supplies~~ construction materials and construction equipment needed therefore at the time that the respective building permit is obtained. The estimate of the cost of such ~~lumber, fixtures, materials and supplies~~ construction materials and construction equipment for a particular project structure shall be determined by the City building official, and this estimate shall be subject to adjustment if the actual cost of such ~~lumber, fixtures, materials or supplies~~ construction materials and construction equipment needed for the project is either less than or greater than such estimate. ~~If the taxpayer elects this basis for estimating the use tax and providing a deposit to insure the use tax payment when due, then the provisions of paragraph B. of this subsection which provide for the filing of a tax return supported by related invoices shall be waived.~~ Upon payment of such deposit to the City manager, which is computed on the basis of three percent of fifty percent of the estimated general contract costs and/or the estimated mechanical contract costs, the taxpayer shall be issued a receipt identifying the property that is the subject of this deposit and the building permit number. Within three (3) years from the date of issuance of the certificate of occupancy for the project or the date of the final inspection by the City of the project, if it is determined by the City that the actual cost of the ~~lumber, fixtures, construction~~ materials and construction equipment ~~and supplies~~ needed for the project is greater than the estimate therefore and that the amount of the use tax deposit is not sufficient to provide for full payment of the use tax, then the additional use tax due must be received by the City manager within thirty (30) days of such determination. If it is determined by the city that the deposit is sufficient to pay for the use tax due, then the deposit shall be used to pay the amount of the use tax due, and any excess amount of the deposit shall be returned by mail to the person who made the deposit within thirty (30) days of such determination. If the taxpayer purchases such ~~lumber, fixtures, construction~~ materials and construction equipment ~~or supplies~~ from City vendors possessing a valid City retail sales tax license, then he may submit invoices or statements reflecting the purchase therefore and make application to the City manager within sixty (60) days directly following the determination by the City of the use tax due, which determination shall be made within three (3) years from the date of issuance of the certificate of occupancy for the project or date of the final inspection by the City of the project, for credit or refund of any

amount paid as sales taxes to the City, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing the payment of the tax. If the City manager is satisfied that there has been such payment, then he shall either credit the account of the taxpayer if the use tax has not been levied or refund the amount if the use tax levy has been paid through such deposit within sixty (60) days after such application shall have been received by the City manager. The amount of any use tax due and not paid constitutes a lien upon the real property benefited by the use of such lumber, fixtures, materials or supplies. (Ord. 4263 § 8 (part), 1997).

3.16.190 Procedure for refund of disputed tax.

A refund shall be made or credit allowed for the tax paid under dispute by any person who claims that the transaction or item was not taxable or claims an exemption as provided in this chapter. Such refund shall be made by the City manager after compliance with the following:

A. Application. An application for a refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption under Section 3.16.020 or 3.16.050 shall be made within sixty (60) days after the date of purchase, storage, use or consumption of the goods or services upon which an exemption is claimed.

B. An application for refund of taxes paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed. Such applications must be accompanied by the original paid invoice or sales receipt and must be made upon such forms as shall be prescribed and furnished by the City manager.

BC. Burden of proof. ~~At all times, t~~The burden of proving that any transaction or item is not taxable or is exempt from the tax shall be upon the person asserting such claim under such reasonable requirements of proof as the City manager may prescribe.

CD. Decisions. Upon receipt of an application, the City manager shall examine the same with all due speed and shall give written notice to the applicant of his or her decision thereon.

DE. Hearing. An applicant whose application for a refund has been denied may, within ~~twenty~~ thirty (3020) days after such decision is mailed, petition the City manager for a hearing on the claim. The City manager shall notify the applicant in writing of the time and place of the hearing. After such hearing, the City manager shall make such order in the matter as he or she deems just and proper and shall furnish a copy of such final order to the applicant. The time period set forth in this section may, in the absolute discretion of the City manager, be waived for good cause on written application of the applicant.

3.16.230 Confidential nature of returns.

A. Except in accordance with judicial order or as otherwise provided by law, the City manager shall not divulge or make known in any way any financial information obtained from any investigation conducted by the City manager or the Administrative Services Department or disclosed in any document, report or return filed under the provisions of this chapter 3.16.

B. The persons charged with the custody of such documents, report, investigation and returns filed pursuant to this chapter shall not be required to produce any of them or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the City manager in any action or proceeding under the provisions of this chapter to which the City manager or the City is a party, or on behalf of any party to an action or proceeding under the provisions of this chapter when the report of facts shown thereby is directly involved in such action or proceeding, or pursuant to any judicial order in which event the court may require the

production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

C. No provision of this section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof a copy of any application, report, return or any other document kept, filed or maintained in connection with such person's tax liability. Copies of such documents may be certified by the City manager and when so certified shall be evidence equal with the originals and may be received as evidence of their contents.

D. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the contents thereof, nor to prohibit the inspection of any documents by the city attorney or any other legal representatives of the City.

E. Nothing in this section shall be construed to prohibit the publication of limited delinquent taxpayer information. The City may, at the discretion of the city manager, publicize only the name of a delinquent taxpayer and the total amount owed if the delinquent taxpayer has remained delinquent for a period of six (6) months or more. This section shall not apply when the taxpayer has properly appealed an assessment made by the City and the appeal is awaiting disposition.

~~F.~~ Notwithstanding the provisions of this section, the City manager may furnish to the taxing officials of the state or its political subdivisions, any other state or its political subdivisions or the United States any information contained in any application, report, return or any other document if the recipient jurisdiction agrees with the City manager to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax related purposes.

3.16.240 Duty to keep records.

It is the duty of every person engaged in business in this city for the transaction of which a license is required by this chapter to keep and preserve suitable records of all sales, purchases and leases made by such person, and such other books or accounts as may be necessary to determine the amount of tax for the collection of which such person is liable under this chapter. It is the duty of every such person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased. All such books, invoices, and other records shall be open for examination and audit at any time by the City manager or his duly authorized agent. The taxpayer shall also permit the City to inspect any corporate charter, operating agreement, or other document which serves as the foundation for the subject business entity. The taxpayer shall produce all such records, if required by the City manager, at the City of Loveland, 500 East Third Street, Loveland, Colorado 80537, or reimburse the City for reasonable expenses, including travel to obtain all such records.- The failure of any person engaged in business in the City to supply sufficient records to the City, during the course of an audit, shall permit the City to estimate tax liability pursuant to LMC 3.16.310.

3.16.250 Examination of returns; recomputation, credits, deficiencies.

As soon as practicable after a return is filed, the City manager shall examine it. If it appears that the correct amount of tax to be remitted may be greater or less than that shown in the return, the tax shall be recomputed by the City manager. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the taxpayer. If the amount paid is less than the amount due and any part of the deficiency is due to negligence or intentional disregard of the provisions of this chapter or of authorized rules and regulations of the city with knowledge thereof but without intent to defraud, the amount of the deficiency, together

with a penalty of ten (10) percent, or \$15.00, of the amount of the deficiency, whichever is greater, plus interest on both the deficiency and the penalty at the rate imposed under Section 3.16.340 from the date the return and the tax was due, shall be due and payable by the taxpayer within ~~twenty-three~~ (320) days after written notice and demand is mailed to the taxpayer by the City manager. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added a penalty of one hundred (100) percent of the deficiency and in such case, the amount of the deficiency, the penalty and interest calculated as stated above shall be due and payable by the taxpayer within ~~twenty-three~~ (320) days after written notice and demand is mailed to the taxpayer by the City manager and an additional amount of three (3) percent per month on such amount shall be added from the date the return and tax was due until paid.

3.16.260 Receipts; disposition.

The revenues received by the City from the tax imposed and collected pursuant to this chapter shall be deposited in the general fund of the City; ~~provided, however, that in no event shall less than five hundred thousand dollars of the revenues of the sales and use tax collected each year be set aside and devoted to street purposes.~~

3.16.290 Coordinated audit.

Taxpayers licensed with the City under this chapter, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided for herein.

A. Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the City manager, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon the city's right to recover tax owed by the vendor for the audit period.

B. Except as provided in paragraph F., any taxpayer that submits a complete request for a coordinated audit ~~and promptly signs a waiver of thirty-six (36) months~~ may be audited by the city during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

C. If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph B., the City manager shall so notify the Financial Officer of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The City manager shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

D. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City manager shall facilitate arrangements between the City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The City

manager shall cooperate with other participating municipalities to minimize, whenever practicable, the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

E. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City manager shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The City manager shall also propose a schedule for the coordinated audit.

F. The coordinated audit procedure set forth in this section shall not apply:

1. When the proposed audit is a jeopardy audit;

~~2. When a taxpayer refuses to promptly sign a waiver of thirty-six (36) months.~~

3.16.310 Failure to make return; estimate of taxes; interest and penalty.

A. If any person fails, neglects or refuses to collect tax or to file a return and pay the tax as required by this chapter, the City manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars (\$15) for such failure or ten percent (10%) thereof, whichever is greater, and interest on such delinquent taxes at the rate imposed under Section 3.16.340 plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the aggregate. The failure of any person engaged in business in the City to supply sufficient records to the City, during the course of an audit, shall permit the City to estimate tax liability.

B. The City manager shall serve upon the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice shall be personally delivered or sent by first class mail directed to the last address of such person on file with the City. Such notice shall constitute a notice of determination, assessment and demand for payment and shall be due and payable within ~~twenty-three (23)~~ (320) days from the date the notice is mailed.

3.16.320 Taxpayer protest of notice of determination.

A. A protest of a notice of determination, assessment and demand for payment issued to a taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the City manager within thirty (30) days from the date the notice of assessment is mailed. Any such protest shall identify the amount of tax disputed and the basis for the protest. Such protest may include a request for a hearing and shall be given under oath of the taxpayer. The protest shall constitute a petition of the taxpayer.

B. The City manager may conduct an audit of the books and records of the taxpayer to determine the ~~exact~~ amount of tax due and charge the taxpayer for any amount found to be due.

C. In response to the written petition, if a hearing was requested, the City manager shall notify the petitioner in writing of the time and place of the hearing, if any. After ~~such any~~ hearing, or after a consideration of the facts and figures contained in the petition if no hearing is requested, the City manager ~~shall may~~ make such order in the matter as he or she deems just and proper and shall furnish a copy of such order to the petitioner. Any hearing requested ~~shall may~~ be held and a decision issued by the City Manager ~~within ninety (90) as soon as practicable days~~ after the

City's receipt of the taxpayer's written protest, or such additional time as may be permitted under C.R.S. §29-2-106.1, as amended. The City may decline to hold a hearing and issue an exhaustion of local remedies if the facts and circumstances of the taxpayer petition do not warrant a local hearing as permitted under C.R.S. §29-2-106.1(2)(c) or C.R.S. §29-2-106.1(2)(d) as amended from time to time.

D. The City manager may, at any time within three (3) years of the date the tax was due, conduct an audit of the books and records of the taxpayer to determine the exact amount of tax due and charge the taxpayer for any amount found to be due in excess of the amount previously paid, whether such amount was paid pursuant to a return filed by the taxpayer or a notice of determination, assessment and demand for payment.

3.16.460 Investigations, audits and hearings.

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, whether licensed under this chapter or not, the City manager may hold investigations, including audits, and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge of transactions involved and may take testimony and proof of the information. The City manager shall have the power to administer oaths to such persons. Any audit conducted by the City to determine the amount of tax due under this Chapter 3.16 may be conducted by any regularly accepted audit methodology or technique including, but not limited to, sample auditing. ~~The City manager shall have the power to administer oaths to such persons.~~

3.16.580 Limitations on actions to collect.

A. Except as otherwise provided in this section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this chapter shall not be assessed, nor shall any notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. In addition, no lien shall continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of such period in which case the lien shall continue for only one (1) year after the filing of notice thereof.

B. In the case of a false or fraudulent return filed with intent to evade the tax and in the case of failure to file a return, the tax, together with interest and penalties, may be assessed or proceedings for the collection of such taxes may be begun at any time.

C. Before the expiration of such period of limitation, the taxpayer and the City manager may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon time.

D. The commencement of collection proceedings or the mailing of a notice of audit, shall toll the running of limitation to collect of three (3) years as described above in subsection A of this section. In the case of mailing of a notice of audit, any such audit shall be diligently pursued by the City. For purposes of this section, "toll" is defined as an interruption of the running or continuation of the limitation to collect of three (3) years as proscribed in paragraph (A) of this section.

ED. Nothing in this section shall be construed to limit any right accrued or to revive any liability barred by any statute in effect on the effective date of the ordinance from which this chapter was derived.

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

ADOPTED this ____ day of _____, 2015.

Cecil A. Gutierrez, Mayor

ATTEST: _____
City Clerk

AGENDA ITEM: 2.3
MEETING DATE: 10/11/2016
TO: City Council
FROM: Human Resources
PRESENTER: Julia Holland, Director of Human Resources
 John Spreitzer, Police Retirement Board Chair
 Moses Garcia, Assistant City Attorney
 Chief Bob Ticer, Police Chief



TITLE:
Police Retirement Plan Proposal

SUMMARY:

The current Police Retirement Plan is a mandatory 401 (a) Money Purchase Plan, which is a defined contribution plan not a defined benefit program. Participant contributions are mandatory and pre-tax at 7% of an employee's base pay. The City contribution is 11% of base pay per participant. The City does not provide Social Security contributions for public safety positions, but does contribute to Medicare for participants of the Plan (if hired after 1986). At the January 12, 2016, Study Session the Retirement Board brought a proposal to Council for a revised Police Retirement Plan. The proposed changes require an increase to the mandatory contribution from the participants (3% increase), reduction of the base contribution from the City (1% reduction) and an option for voluntary employee contributions up to a maximum of 5% that would be matched by the City. If employees participated in the match option, the maximum City contribution would be 4% higher than the current contribution. The Police Retirement Board is bringing the proposal back to City Council for consideration per Council direction at the study session to gather additional information, wait for the new Police Chief and align the proposal with an annual budget cycle.

BACKGROUND:

The Police Retirement Board used an independent consulting firm to conduct a study analyzing the feasibility of the Police Retirement Plan to provide adequate funds through retirement. The study analyzed the current design compared to two other contribution structures. The analysis was conducted to determine the best solution for a retirement plan that would provide a sufficient income replacement at and through retirement for our police public safety employees.

The current retirement plan programs available to our Sworn Police Officers include the mandatory Money Purchase Plan with voluntary after tax contribution option, a voluntary 457 Plan (pre-tax or Roth after tax options) with no City contribution and a voluntary 457 Plan through the Fire and Police Pension Association (FPPA) with no City contribution.

The analysis of the current plan has led the Board to propose a plan change for its participants and City Council. The participants of the Police Plan have voted and over 90% of the participants of the Plan support the proposed changes to require an increase to the mandatory contribution from the participants (3% increase), reduction of the base contribution from the City (1% reduction) and an option for voluntary employee contributions up to a maximum of 5% that would be matched by the City. If employees participated in the match option, the maximum City contribution would be 4% higher than the current contribution. The Board is recommending the matching approach and mandatory increase to the participants because they understand retirement readiness requires commitment and accountability of the employee as well as employer. The proposed changes are intended to provide a fiscally responsible and balanced approach to ensure adequate financial security through retirement for our Sworn Officers.

The proposed Plan change may affect the City's net expense depending on employee participation in the match option. If 100% of employees participate in the full 5% match option the total increase of City expenses is estimated to be \$331,061.00 annually. If no employees participate in the match option the total reduction of City expenses is estimated to be (\$82,765.28) annually. The total fiscal impact scenarios are identified in the chart below:

	Total Employer Cost	Employer Cost/(savings)	Employee Cost	Employee Cost/(savings)	Total Annual Contribution
Current Sworn Police Plan	\$910,418.08	N/a	\$579,356.96	N/a	\$1,489,775.04
General City Employee Plan Model	\$1,041,716.21	\$131,298.13	\$248,295.84	(\$331,061.12)	\$1,290,012.05
Proposed Plan - 100% participation in full 5% match	\$1,241,479.20	\$331,061.12	\$1,241,479.20	\$662,122.24	\$2,482,958.40
Proposed Plan - 50% participation in full 5% match	\$1,036,574.87	\$126,156.79	\$1,036,574.87	\$457,217.91	\$2,073,149.73
Proposed Plan - 0% participation in full match	\$827,652.80	(\$82,765.28)	\$827,652.80	\$248,295.84	\$1,075,948.64

REVIEWED BY CITY MANAGER:
SCA

LIST OF ATTACHMENTS:

1. Sworn Police Retirement Plan Proposal Presentation
2. Police Total Compensation Study (Memo from previous Study Session)
3. Current Police Retirement Plan programs
4. Letter of Support from Police Citizen's Advisory Board

City Sworn Police Retirement Plan

October 11, 2016

Objectives

- Police Retirement Plan History
- Review retirement study and Retirement Board proposal
- Address questions from previous Study Session (January 2016)
- Determine City Council support

Police Retirement Plan History

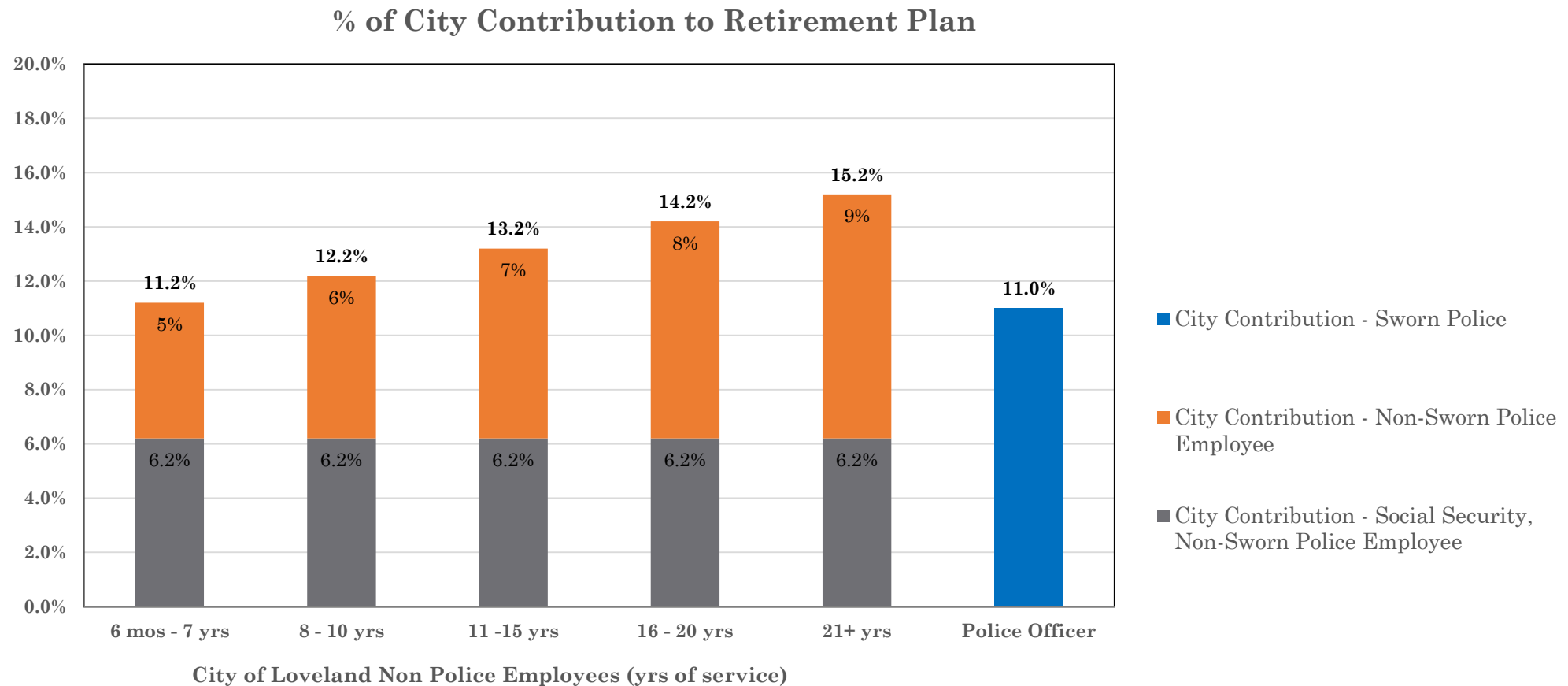
- Pension to Defined Contribution
- Basis and history of Retirement Board direction and proposal
- Support from Plan Participants

Sworn Police Plan Proposal

- Proposed Plan - Match Structure
 - Employee contribution of 10% base pay
 - Employer contribution of 10% base pay
 - City match of voluntary contribution at rate of 100% of the first 5% contributed by the participant
- Current Sworn Police Plan
 - Employee contribution of 7% base pay
 - City contribution of 11% base pay
- General City Employee Plan

Years of Service	Employer Contribution
0-7	11.2% (5% + SS replacement of 6.2%)
8-10	12.2% (6% + SS replacement of 6.2%)
11-15	13.2% (7% + SS replacement of 6.2%)
16-20	14.2% (8% + SS replacement of 6.2%)
21+	15.2% (9% + SS replacement of 6.2%)

City of Loveland Retirement Plan Comparison

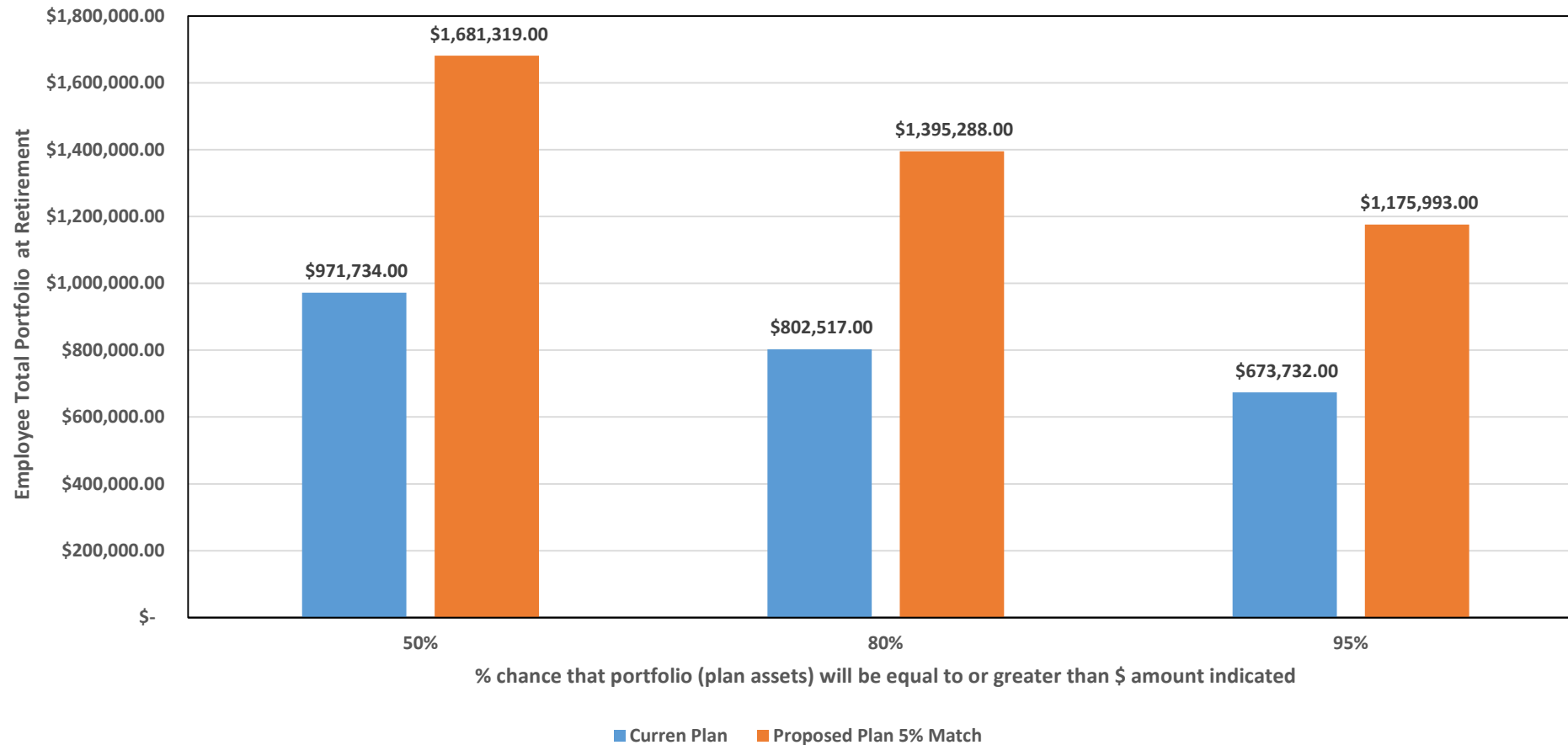


Market Comparison – Sworn Officers

	Retirement Contributions Percent of Base Salary				Social Security Contributions					
	Employer	Employee	Other Employer Plan Contributions	Total Retirement Plan Contributions	SS Employer	SS Employee	Total Social Security	Total Employer	Total Employee	Total ALL
Arvada	10.00%	10.00%		20.00%				10.00%	10.00%	20.00%
Aurora	10.50%	10.50%		21.00%				10.50%	10.50%	21.00%
Boulder	13.80%	6.20%		20.00%				13.80%	6.20%	20.00%
Broomfield	10.00%	10.00%		20.00%				10.00%	10.00%	20.00%
Ft. Collins	8.00%	8.00%	Match up to 3%	19%				11.00%	8.00%	19.00%
Greeley	10.50%	9.50%		20.00%				10.50%	9.50%	20.00%
Lakewood	10.00%	8.00%		18.00%				10.00%	8.00%	18.00%
Larimer County Sheriff	8.00%	8.00%		16.00%	6.20%	6.20%	12.40%	14.20%	14.20%	28.40%
Longmont	10.00%	10.00%		20.00%				10.00%	10.00%	20.00%
Loveland	11.00%	7.00%		18.00%				11.00%	7.00%	18.00%
Thornton	9.00%	9.00%	Match up to 2%	20.00%				11.00%	9.00%	20.00%
Westminster	10.25%	10.00%		20.25%				10.25%	10.00%	20.25%
Boulder County Sheriff	13.70%	8.00%		21.70%	6.20%	6.20%	12.40%	19.90%	14.20%	34.10%
Average	10%	9%		19.53%				11.70%	9.74%	21.44%

Retirement Study Income Replacement

Age 55 with 25 Years of Service



Fiscal Impact

	Total Employer Annual Cost	Employer Cost/(savings)	Employee Annual Cost	Employee Cost/(savings)	Total Annual Contribution
Current Sworn Police Plan	\$910,418.08	n/a	\$579,356.96	n/a	\$1,489,775.04
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Proposed Plan 0% participation in match	\$827,652.80	(\$82,765.28)	\$827,652.80	\$248,295.84	\$1,075,948.64

Questions and Direction

- Review of questions from previous Study Session
 - Social Security
 - Current participation in voluntary contributions
 - Recruitment and Retention
 - Max annual IRS limits
- Budget impact and Budget Office recommendation
- City Council support and recommendation



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

TO: Bill Cahill, City Manager
FROM: John Hartman, Senior Policy Analyst
DATE: August 25, 2015
RE: Police Compensation Survey

Survey Overview

Per Councilor Krenning's request a survey was conducted of police agencies for nine cities with a population of roughly 50,000 to 150,000, ranging from the north metro-Denver area to northern Colorado and three Sheriff Agencies, Larimer, Weld and Boulder Counties. The cities include Arvada, Boulder, Broomfield, Fort Collins, Greeley, Longmont, Loveland, and Westminster. One city (Thornton) and one County Sheriff (Weld) did not respond. The survey is to provide a comparison of total compensation for police officers below the command ranks, Police Officer, Sergeant and Lieutenant. Specific areas examined were salary ranges, retirement and health benefits, leaves, allowances, and the take-home car program. While there are variations in each agency, in general Loveland is competitive in most areas.

Salary Ranges

The salary ranges for the three officer ranks, along with the average for the responding agencies and how Loveland compares to the average are shown in Figure 1. The Lieutenant rank comparison is not a perfect match. In

Loveland the
Lieutenant rank is
not a part of the
Police pay step plan,
but is included in the
city pay plan for
Exempt employees
in Salary Grade 6.
This salary grade
includes a broad
spectrum of division
directors and upper
middle management
positions. Cities in

Salary Range Comparison Chart

	Officer Beginning	Officer Top	Sgt. Beginning	Sgt. Top	LT Beginning	LT Top
Arvada	57,077	78,300	83,000	97,714	104,601	116,419
Boulder	53,346	79,053	75,681	100,057	95,900	146,200
Broomfield	45,365	75,878	75,878	94,474	94,474	114,899
Ft. Collins	57,607	78,401	85,737	97,513	105,488	114,503
Greeley	50,980	76,696	85,133	93,646	101,138	108,217
Larimer County Sheriff	49,348	71,426	83,498	94,390	97,862	110,626
Longmont	55,080	72,408	91,092	95,904	96,576	118,032
Loveland	57,900	75,200	78,200	95,600	74,500	119,100
Westminster	50,812	75,166	81,687	94,732	93,950	117,438
Boulder County Sheriff	52,476	75,576	83,124	95,784	105,360	111,048
Average	52,999	75,810	82,303	95,981	96,985	117,648
Amount Loveland above/below	4,901	(610)	(4,103)	(381)	(22,485)	1,452
Percent	9.2%	-0.8%	-5.0%	-0.4%	-23.2%	1.2%

the north metro area and the Boulder County agencies use a Commander rank, rather than a Lieutenant. While similar, the two have slightly different responsibilities in the organization.

Figure 1

Organizationally this rank is between the City of Loveland's Lieutenant and Captain rank. It has more supervision and authority than Lieutenant, but not as much as the Captain.

The Police Officer rank beginning salary ranges from a high of \$57,900 in Loveland to a low of \$45,365 in Broomfield. The average beginning salary is \$52,999. The City of Loveland's beginning salary of is 9.2% above the average. However the top of the salary range is nearly on the average. The top of the range for this rank has a high of \$79,053 in Boulder and a low of \$71,426 at the Larimer Sheriff's Office. The average is \$75,810 and Loveland is \$610 or 0.8% below the average. Loveland' hiring practice has been to recruit officers that have experience in another department. This is due to not having or being affiliated with a Police Academy. Officers are offered a salary within the step- plan that gives credit for the years served with another agency(s). As a result it is rare for a new officer to start at the beginning step of the plan and are often started at the third step or higher in the Police Pay Plan.

For the Sergeant rank the beginning salary ranges from a high of \$91,092 in Longmont to a low of \$75,681 in Boulder. The average is \$82,303 and Loveland is \$4,103 or 5.0% below the average. If Longmont is excluded from the average since it is an outlier in the data, the average would be \$81,326 and Loveland would be \$3,126 or 3.8% below the average. The top of the range varies between a high of \$100,057 in Boulder to a low of \$93,646 in Greeley. The average is \$95,981 and Loveland is \$381 or 0.4% below the average.

For the Lieutenant/Commander rank the beginning salaries range from a high of \$105,488 in Fort Collins to a low of \$74,500 in Loveland. The average is \$96,985 and Loveland is \$22,485 or 23.2% below the average. This is due to the rank being included in a broad band in the Loveland pay plan (Salary Grade E06) that includes a variety of middle management positions. In hiring for the position the agency is allowed to offer a beginning salary within the range, so most hires in this rank are likely to start at a significantly higher salary the bottom of the range, especially if the new hire is a promotion from the Sergeant rank. The top of the pay range is between a high of \$146,200 in Boulder and a low of \$108,217 in Greeley. The average is \$117,648 and Loveland at \$119,100 is \$1,452 or 1.2% above the average. If Boulder that is a significant outlier in the data, is omitted the average is \$114,476 and Loveland is \$4,624 or 3.9% above the average. Loveland being above the average is again a function of the broadband range. The wide disparity between the high and the low of the agencies surveyed is partially due to the difference in the rank used. In most cases the Commander rank is paid at a higher level due to the additional duties in the organization.

Retirement

Nearly all of the agencies surveyed offer a retirement plan sponsored by the local government entity and are defined contribution plans. Boulder County is the exception being a member of the Colorado Employee's Retirement Association (PERA) which is defined benefit plan. Government contributions

Retirement Contributions - Percent of Salary	City/County	Employee	Total Contribution to Retirement Plan	Other City Contribution Retirement/Deferred Compensation Plans	Total all Retirement/Deferred Compensation Plans	Social Security Employer Payroll Tax	Social Security Employee Payroll Tax	Total Social Security	Total City County All Plans	Total Employee All Plans	Total Contributions All Plans
Arvada	10.00	10.00	20.00	-	20.00	-	-	-	10.00	10.00	20.00
Boulder	13.80	6.20	20.00	-	20.00	-	-	-	13.80	6.20	20.00
Broomfield	10.00	10.00	20.00	-	20.00	-	-	-	10.00	10.00	20.00
Ft. Collins	8.00	8.00	16.00	3.00	19.00	-	-	-	11.00	8.00	19.00
Greeley	10.50	9.50	20.00	-	20.00	-	-	-	10.50	9.50	20.00
Larimer County Sheriff	8.00	8.00	16.00	-	16.00	6.20	6.20	12.40	14.20	14.20	28.40
Longmont	10.00	10.00	20.00	-	20.00	-	-	-	10.00	10.00	20.00
Loveland	11.00	7.00	18.00	-	18.00	-	-	-	11.00	7.00	18.00
Westminster	10.25	10.00	20.25	-	20.25	-	-	-	10.25	10.00	20.25
Boulder County Sheriff	13.70	8.00	21.70	-	21.70	6.20	6.20	12.40	19.90	14.20	34.10
Average	10.53	8.67	19.20		19.50				12.07	9.91	21.98
Amount Loveland above/below	0.48	(1.67)	(1.20)		(1.50)				(1.07)	(2.91)	(3.98)
Percent	4.5%	-19.3%	-6.2%		-7.7%				-8.8%	-29.4%	-18.1%

Note 1: Larimer County has a three step plan with five year breaks, that begins at 5% and has a maximum of 8% based on longevity.

Note 2: The Boulder County retirement plan is through the Colorado Public Employee's Retirement Association (PERA).

Note 3: Fort Collins offers a voluntary 457 plan that the City will match up to 3%. Many of the other cities surveyed offered voluntary plans employees could contribute to, however there is no city match. The employee contribution is not shown because there is no required amount. The contribution is voluntary and at the employees discretion as to the amount.

Note 4: In both Counties, employees are still in the Social Security System. In the municipalities, employees have been exempted out of the Social Security system when the Police Retirement Plan was established.

Figure 2

range from 8% to 13.8%. Employee contributions range from 6.2% to 10%. The average for the government contribution is 10.53% and is 8.67% for the employee contribution. Loveland at 11% is 4.5% higher than the average for the government contribution and the employee contribution of 7% is over 19% below the average.

Most of the agencies surveyed, including Loveland, offer additional retirement plans that employees can voluntarily contribute to such as the Section 457(b) retirement plan, but there is no city match, with the exception of Ft. Collins. Fort Collins offers a voluntary 457 Plan that the City will match up 3% of salary; the only City in the survey to offer this plan with a City match. Larimer County is also an exception in that it offers a supplemental plan that the County will provide a matching contribution. However, the County's matching contribution is limited to a maximum of 8% for the two plans combined. Larimer County's primary retirement plan has a stepped County contribution beginning at 5% and ending at 8% in five year steps. As a result the County match for the alternative plan is only available to officers who have worked for ten or fewer years. Officers employed for the first five years could receive up to a 3% County match, and those in the 5-10 year step could receive a 1% match in the alternative plan.

Vesting periods for all agencies except Westminster range from 5 years to 10 years. Six agencies have the five year vesting period, two have seven year vesting period, and one has a ten year vesting period.

Westminster has no vesting period. Westminster instead of a vesting period does not begin the City contribution to the retirement plan until an employee has reached 22 months of employment.

The two Counties also are an exception in that their employees remain in the Social Security system, requiring the Counties to pay the 6.2% Social Security Payroll tax. County Sheriff employees will have the ability to collect from both the Social Security System and pension plan at the time of retirement. Municipal employees were exempted for the Social Security System at the time their separate retirement plans were formed.

Regular City Employees - Retirement Contributions - Percent of Salary	City	Employee	Total Contribution to Retirement Plan	Social Security Employer Payroll Tax	Social Security Employee Payroll Tax	Total City Contribution to Retirement	Total Employee Contribution to Retirement	Total Contribution to Retirement
1-7 years of service	5.00	3.00	8.00	6.20	6.20	11.20	9.20	20.40
8-10 years of service	6.00	3.00	9.00	6.20	6.20	12.20	9.20	21.40
11-15 years of service	7.00	3.00	10.00	6.20	6.20	13.20	9.20	22.40
16-20 years of service	8.00	3.00	11.00	6.20	6.20	14.20	9.20	23.40
21 years or more of service	9.00	3.00	12.00	6.20	6.20	15.20	9.20	24.40

Figure 3

Another comparison is to regular City of Loveland employees. Regular employees are in a 401K defined contribution plan in which both the City and employees contribute. The amount of the City

contribution begins at 5% and grows to a maximum 9% based on length of service with the City. Employees are required to contribute 3% of the salary to the plan.

Medical and Dental Insurance

There is variation between the agencies surveyed on the amount the local government pays towards the medical premium. Many have stepped plans with the government entity covering a lower percentage of premium for additional plan members other than the employee and many offer more than one health plan that has differing premiums and contribution rates.

Figure three shows the comparison for single employee rates only. In cases where there is differences within an entity due to offering more than one medical plan, the average for all plans is shown.

The City of Loveland is no exception. Rates differ depending on the number of members insured. With all premiums for the different classes, on average, Loveland pays 80% of the premium and employees pay 20% of the premium.

Medical Insurance Contributions - Percent of Premium -Single Employee only

	City/County
Arvada	80.00
Boulder	80.00
Broomfield	85.00
Ft. Collins	91.00
Greeley	80.00
Larimer County Sheriff	90.50
Longmont	100.00
Loveland	90.00
Westminster	90.80
Boulder County Sheriff	89.25
Average	87.66
Amount Loveland above/below Percent	2.35 2.7%

Figure 4

For dental insurance there is a similar variation depending on the plans offered. The contributions vary between 100% for the single employee to the 60% for a single employee paid in Loveland.

Vacation and Sick Leave

There is significant variation in the method of accruing annual vacation leave and in the amounts of the

Vacation -Annual Accrual in hours	Beginning Rate	Highest Rate
Arvada	112	176
Boulder	178	290
Broomfield	152	240
Ft. Collins	120	192
Greeley	80	168
Larimer County Sheriff	96	168
Longmont	176	248
Loveland	80	168
Westminster*	40	80
Boulder County Sheriff	96	192
Average	113.00	192.20
Amount Loveland above/below	(33.00)	(24.20)
Percent	-29.2%	-12.6%

Figure 5

accrual. Nearly half of the agencies increase the accrual rate on a five year employment basis. Some use a three year step and some a two year step. There is also significant variation in the amount of hours attached to the steps. About half top out the accrual rate at fifteen years, three top out at twenty years and two top out at twenty five years. Leave accrual rates can be influenced by the hours per shift an agency uses. See Appendix 1 for a shift schedule summary.

Sick leave ranges from a low of 80 hours per year in Loveland to a high of 142 hours in Westminster. Nearly half of the cities surveyed allow 96 hours of sick leave.

**Westminster has vacation steps within the longevity steps. For example, for less than five years, an officer's minimum amount of leave that could be earned is 40 hours, but can earn up to a maximum of 126 hours. For officers with more than 20 years of service the minimum leave is 80 hours and the maximum is 222 hours.*

Holidays

There is also significant variation in the number of observed holidays or compensation for holiday duty.

For most the range is between nine and 12 days. In Figure five the number shown includes actual holidays and "floating" holidays combined. Boulder is the major exception where there no holidays for Police Officers or Sergeants. However, these positions receive 0.5 hours of extra pay for each hour worked on Thanksgiving Day, Christmas Day and New Year's Day. The Boulder County Sheriff also has a significant variation in that Christmas and New Year's Day are half days beginning a noon if the holiday falls on Monday through Thursday in any given year.

Arvada	12
Boulder	0
Broomfield	11
Ft. Collins	9
Greeley	10
Larimer County Sheriff	12
Longmont	10
Loveland	11
Westminster	9
Boulder County Sheriff	12
Average	9.60
Amount Loveland above/below	1.40
Percent	14.6%

Figure 6

Allowances

All of the entities but Boulder have tuition programs, not an annual allowance, but a tuition

Uniform Allowance	Officers	Detectives	
Arvada	Provide & Replace	300	reimbursement program. There is some variation on annual amounts and lifetime benefits. Annual amounts are between \$1,000 and \$2,000, and nearly all lifetime maximums are \$15,000.
Boulder	Provide & Replace	Provide & Replace	
Broomfield	Provide & Replace	400	For uniform allowances there is significant variations on policy. Arvada, Boulder, Ft. Collins and Westminster both provide and replace uniforms for officers. Ft. Collins and Westminster do have an \$80.00 annual allowance for boots. Arvada, Broomfield and Ft. Collins provide an allowance for detectives, primarily plains clothes detectives, ranging from \$300 to \$425. Greeley, Longmont and Loveland provide an annual allowance for all sworn officers that ranges from \$400 in Longmont to \$800 in Greeley. Loveland is midrange at \$550 per year. The Longmont allowance is for care and maintenance only, the City will replace uniforms as needed.
Ft. Collins	\$80 boots only	425	
Greeley	800	800	
Larimer County Sheriff	None	None	
Longmont	\$400 care and maintenance, City replaces	\$400 care and maintenance, City replaces	
Loveland	550	550	
Westminster	Provide & Replace, \$60 for boots	Provide & Replace, \$60 for boots	
Boulder County Sheriff	None	None	

Figure 7

Take- Home Car Program

Only three entities have a full take-home program for all sworn officers, all three in Larimer County; the Sheriff's Office, Ft. Collins and Loveland. In Ft. Collins officers must live within fifteen miles of the intersection of College Avenue and Mulberry Street and within the City's Growth Management Area (GMA). Officers that live within the fifteen mile limit but are outside the GMA must pay a nominal fee to have the take-home car. At the Larimer County Sheriff's Office, residence within the County is preferred. Officers living outside the County can only take a vehicle home with prior written permission from the Sheriff. Loveland sworn officers and the Communications Manager must live within a twelve mile radius of the intersection of West Eisenhower Boulevard and Colorado Avenue.

All other entities surveyed have a limited take-home program. Only vehicles for on-call and/or personnel with special functions can take a vehicle home. For those with the on-call program, it is a rotating assignment with a residence requirement within a certain time response limit. The special function program has a variety of definitions. Most all of these include command vehicles. Some include K9 vehicles and under-cover detective vehicles. Longmont also includes the SWAT Sergeant, SEU personnel, evidence and crime scene technicians in its definition.

In a separate survey to get a state-wide view of the use of the program, the Police Chief posed the question to the Colorado Association of Chiefs of Police. Twenty one agencies responded that they had some form of a take-home program. The entire list is in Appendix 2. In general the agencies with a full

take-home car program (with the exception of Larimer County agencies) can be categorized as smaller agencies and primarily on the Western slope of the state.

Conclusion

In nearly all of the categories, Loveland is in a competitive position. It is not the highest or the lowest, residing close to the middle of the range offered by other entities. It is at the top in the amount the City provides as a retirement match and the take-home car program, and while competitive within Larimer County is outside the rest of the entities surveyed.

Appendix 1

Shift Summary	Shifts per Week	Hours per shift
Arvada	4	10
Boulder	4	10
Broomfield		
Ft. Collins	4	Mix of 10 hr. and 12 hr. shifts
Greeley	4	10
Larimer County Sheriff	4	10
Longmont		
Loveland	4	10
Westminster*	4	10
Boulder County Sheriff	4	12

Appendix 2

Take Home Car Survey from the Colorado Association of Police Chiefs - Those Who Responded They have a Program

- 1 Fort Collins
- 2 Larimer County Sheriff
- 3 Estes Park
- 4 Colorado State Patrol
- 5 Littleton – Administration and detectives
Thornton – Administration, on-call
- 6 employees, detectives, and some specialized
assignments
- 7 Colorado Springs – Administration and
detectives
- 8 Carbondale
- 9 Frederick
- 10 Firestone
- 11 Canyon City
- 12 Town of Craig
- 13 Brush – For officers that live in the city and
field training officers
- 14 Gunnison
- 15 Telluride
- 16 Aspen – Administration, detectives, school
resource officer, and on call sergeants
- 17 Simla
- 18 Edgewater – Administration and detectives
- 19 Parachute
- 20 Florence
- 21 Johnstown

City of Loveland Retirement Plan For Police Officers

401(a) Money Purchase Plan



Contributions:

All contributions are mandatory and are taken pre-tax (taken from the employees paycheck prior to calculating taxes, and will be taxed at time of distribution)

Beginning on the first day of employment, Police Officers will contribute 7% of their base salary to the 401(a) Money Purchase Plan held by Principal Financial. The City will contribute 11%.

Voluntary After Tax 401 Contributions:

Sworn police officers can elect to contribute voluntary after-tax contributions to their 401 account up to the IRS limitations.

Vesting:

After five years of employment, the employee will be 100% vested in the City's contributions. The employee is always 100% vested in their own contributions or rollover funds.

Retirement Board:

The Police Retirement Board consists of the following:

Two Employee Elected Members:

John Spreitzer

Bruce Boroski

One Police Advisory Elected Member: John Tindall

Executive Fiscal Advisor: Alan Krcmarik

Human Resources Director: Julia Holland

Staff Liaison/Support: Rita Chandler

City Attorney Staff Liaison: Moses Garcia

Board Meetings are held the third Tuesday of February, May, August and November.

The Board meets in the Investigations Conference Room from 2 to 4 pm unless otherwise noted.

Distributions:

Distributions are not allowed unless there is a separation of service or the employee has met retirement age. This plan does NOT have a loan option. At the time of separation the employee is NOT required to withdraw their funds however if funds remain in the plan participants will be charged an additional annual fee. Distributions may be allowed on the after-tax contributions without leaving employment.

All distributions are subject to IRS regulations and may include a 10% penalty if distributed prior to retirement guidelines.

Principal Financial

For plan assistance, please contact: Principal Financial: 1-800-547-7754
Roger Shea 970-224-2500; www.principal.com

Fire and Police State Death And Disability Plan

All Police Officers are required to participate in the Fire and Police Pension Association Death and Disability Insurance plan. This plan is designated to provide accidental death and disability insurance through the State of Colorado to officers and firefighters who may become injured or killed in the line of duty.

FPPA

For plan assistance, please contact:
1-800-332-3772 or visit web site at <http://www/fppaco.org>

Additional Plan Option – 457 with FPPA via Fidelity:

All Police Officers and Fire Personnel are eligible to participate in the 457 plan administered by Fidelity through the Fire and Police Pension Association (FPPA). Employees can utilize the pre-tax option up to the IRS maximums. Forms are available through the Fidelity website at <http://plan.fidelity.com/fppa/get-started>

Additional Plan Option – 457with Great-West:

All employees are eligible to contribute to the 457 plan administered by Great-West Financial. Employees who participate in this 457 can utilize the pre-tax or Roth after-tax option up to the IRS maximums. Forms are available through Human Resources to enroll or change your contributions.

Great-West Financial

For plan assistance, please contact: Chuck King at: 303-550-9727
Email: Charles.King@gwrs.com website: www.gwrs.com

Police Citizen's Advisory Board
 810 East 10th Street
 Loveland, CO 80538

October 3, 2016

To Loveland City Council:

We all hold our Police Officers to a *higher standard* than other city employees. That makes sense since they are required to carry guns and are charged with keeping us safe while enforcing the law. Providing them with pension contributions comparable to all other city employees is an important step in supporting them.

You will be holding them to a *higher standard* for contributions to their retirement plan when you approve their current pension proposal. All non public safety city employees must contribute 6.2% for Social Security and 3% for their 401.a retirement plan for a total of 9.2%. They receive from 11.2% to 15.2% (6.2 for Social Security and up to 9% for a 401.a plan) from the city based on years of employment with NO need to match these increases.

Police Officers will contribute a minimum of 10% (up from 7% today) (10% matched by the city, down 1% from today) and then be required to increase their contribution by up to 5% to get a match from the city. These numbers show that the Officers will still be required to *give more* and *receive less* from the city than all other city employees. Seems like a really good deal for the city if your goal is to save as much money as possible on your most important employees.

Police Officers: Contribute 10% to get 10% & Contribute 5% to get 5% = 15% + 15% = 30%
 All other staff: Contribute 9.2% to get 11.2% & Contribute 00 to get 4% = 9.4% + 15% = 24.4%

The *difference* between the 24.4% and 30% *all comes out of the officer's pocket.*

The City would only contribute 10% if the officer doesn't participate in the matching contribution which is *less* than the City is contributing today while the Officers are paying at least 3% more.

Both as a City Council appointed Board and as residents of Loveland, we believe this is a plan that will benefit both the residents of Loveland and our Police Officers. It will allow Officers who plan ahead and contribute more, the ability to retire at age 55 if they want to. That is not possible with the outdated current plan.

This will allow the city to hire younger officers who will be paid less than the retired officers to offset the city's overall payroll costs. Younger officers should experience fewer injuries and have shorter recovery time than older officers (they are just like all of us) which should decrease the loss of duty time. This would decrease the need for overtime pay which *will save the city even more money*.

Thank you again for your support and leadership in continuing to provide for the best possible Police Department for Loveland's residents and visitors to our Sweetheart City.

We appreciate your continued emphasis on our public safety as every survey of our Citizen's has indicated it is our number one priority as well.

Respectfully Submitted,
Pat Kistler, Chairperson