

STUDY SESSION AGENDA

CITY COUNCIL CITY OF WHEAT RIDGE, COLORADO

7500 W. 29th Ave.
Wheat Ridge CO

March 20, 2017

6:30 p.m.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer at 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

Agenda Approval

1. Staff Report(s)
 - a. Code Enforcement Strategies
2. Tax Code Update
3. Wadsworth Widening Project Update
4. Mayor's Environmental Sustainability Task Force
5. Founders Park Sculpture Deaccessioning
6. Elected Officials' Report(s)

ADJOURNMENT

Memorandum

TO: Mayor Jay and City Council

THROUGH: Patrick Goff, City Manager
Daniel Brennan, Chief of Police
Jim Lorentz, Division Chief

FROM: Jamie Watson, Sergeant
Community Services Team

DATE: March 20, 2017

SUBJECT: Staff Report: Code Enforcement 2016 Update and 2017 Recommendations

ISSUE:

City Council identified code enforcement as an action agenda item during the 2014 City Council retreat. Council was in agreement that code enforcement is important to the City and that it should be strengthened and applied equally throughout the City. Staff was directed to report on code enforcement efforts on an annual basis, as well as make recommendations to City Council on priorities and resource needs.

The Community Services Team has the primary responsibility for nuisance code enforcement, animal control and parks enforcement. Historically, nuisance code and animal control calls for service are the primary functions performed by the team, followed by parks enforcement. Calls for service increase significantly from late spring through the fall in all three of these function areas.

This report focuses on the team's nuisance code efforts in 2016 to update city council on the current TLC program and code enforcement activities. Based on city council direction at the council retreat, staff will be researching other alternatives to code enforcement and bring recommendations to you at another time.

Staff has attached the "*Administrative Enforcement Process for Nuisance and Code Violations*" article written by Division Chief Jim Lorentz. This article provides an overview of the administrative model process and contains nine years of statistical information that is helpful in understanding nuisance code enforcement in the City.

BACKGROUND:

The Community Services Team utilizes a community policing philosophy and problem-solving approach in addressing nuisance code complaints. The team networks with Community Development and Public Works in monthly meetings to discuss nuisance code, planning, and public works' issues in an effort to share information, experience and resources.

In addition to responding to calls for service and service requests, the team initiated a program in 2014 called the Wheat Ridge TLC Neighborhoods. TLC stands for *Traffic safety, Life quality,*

and Crime reduction. The concept of the program utilizes a problem-solving approach in identifying neighborhoods and commercial areas in the City to be included in the TLC Program. Once identified the department begins a multi-phased process involving an assessment of the issues, awareness and education, providing resources to the identified area, focused patrols, and then enforcement efforts begin.

Areas are identified as either neighborhoods or commercial areas. The team selects neighborhoods and commercial corridors to address annually. When an area is identified, volunteers and Police Explorers are utilized to walk these areas and leave flyers for property owners containing a meeting notice. A community meeting is conducted that includes representatives from the Police Department, Community Development, Public Works and Localworks. The meeting is moderated by a member of the department.

At the meeting, staff will present the issues identified through a previous assessment of the neighborhood/commercial area. Property owners are asked to provide information on the problems they see in their neighborhoods. Allowing citizens to describe the issues they see, allows the department to direct resources to address the issues that are important to them as well. Throughout the program, the department increases bicycle patrols in these areas with patrol officers or CSOs, to increase interactions with neighbors.

The City through Localworks provides dumpsters for a neighborhood clean-up day. Afterwards, CSOs will check the area again issuing warning notices and/or citations. If a property remains in violation, abatements can be sought.

Beginning in 2015, the Police Department initiated community policing strategies to address quality of life, crime and traffic concerns in the following neighborhoods through the TLC program:

East Wheat Ridge
Applewood Village

Clear Creek Station
Fruitdale East

Clearvale
Fruitdale West

Commercial Corridors initiated as TLC Projects include:

- West 44th Avenue East (Fenton to Wadsworth)
- West 44th Avenue Central (Wadsworth to Kipling)
- West 44th Avenue West (Kipling to Xenon)
- Kipling Street (W. 32nd Avenue to W. 51st Place)

2016 UPDATE

In 2016, the Community Services Team suffered a significant loss of personnel due to three CSOs accepting different positions in other municipalities and the supervisor transferring to a different position in the City. This left only two full-time CSOs to handle calls for service for a period of time. To address the challenges of supervision, the department assigned Sergeant Jamie Watson to temporarily supervise the team. Three new CSOs have been hired and trained thus far, and the department hopes to be fully staffed and have staff trained by the end of June. Despite these staffing issues, the team was able to maintain a high level of service, as well as complete the 2016 TLC Neighborhoods and Commercial Corridor program.

In 2016, staff completed an assessment of the Community Services Team. Staff evaluated the

functions of the team, staffing, the administrative model process and whether a different code enforcement approach was needed. Additionally, staff reexamined the workload and span of control issues inherent with a team of five FTE's and seven part-time/intermittent employees.

As a result of staff discussions and analysis, the department determined it was best to leave the functions of the team as they are today, with some modifications. To address staffing and span of control issues the department submitted a request to reduce the number of part-time/intermittent employees from seven to two, and requested two additional FTEs. Staff determined that the administrative model process was working and that the compliance rates demonstrated the value of this approach.

City Council approved the request to realign the team by adding two FTEs as part of the 2017 Budget process and reducing the number of part-time employees. The current authorized strength of the team is as follows:

- One Community Services Supervisor (hiring in progress)
- One Lead CSO position
- Six full time CSO positions (two positions currently open)
- Two part-time Park Ranger positions (May through October)

2016 TLC Projects

Meetings were held in May with the identified neighborhoods. Community members were given the opportunity to discuss quality of life, crime and traffic issues, as well as ask questions of representatives of the Police, Public Works, Community Development, and Parks and Recreation Departments. "Dumpster Days" were established to provide trash dumpsters within each neighborhood to assist and encourage residents to participate in the program.

Using a problem-solving model, the team conducted a scan of neighborhoods in Wheat Ridge that would fit the criteria for a TLC area. Based on that scan, the department identified the Applewood Villages Neighborhood, the Fruitdale East Neighborhood, the Fruitdale West Neighborhood, the West 44th Avenue and Kipling corridors.

As mentioned, staff distributed educational information and met with interested property owners in these areas. Staff also presented resource information to interested citizens. Staff then began the process of issuing warnings for violations, which is broken down below for each area:

Applewood Villages Neighborhood: 234 residential properties were contacted.

- 28 warning notices were issued for nuisance code violations.
- 26 properties complied following the warning notice.
- 2 properties complied following the first administrative citation.
- All properties are in compliance.

Fruitdale East Neighborhood: 259 residential properties were contacted.

- 50 warning notices were issued for nuisance code violations.
- 49 properties complied following the warning notice.
- 1 properties complied following the second administrative citation
- All properties are in compliance

Fruitdale West Neighborhood: 217 residential properties were contacted.

- 29 warning notices were issued for nuisance code violations.
- 29 properties complied following the warning notice.
- All properties are in compliance.

West 44th Avenue Corridor from West 44th Avenue from Wadsworth Boulevard to Xenon Street, 152 Parcels:

- 29 warning notices were issued for nuisance code violations
- 29 properties complied following the warning notice.
- 29 commercial properties are now in compliance.

Kipling Street Corridor from West 32nd Avenue to West 51st, 72 Parcels:

- 19 warning notices were issued for nuisance code violations
- 19 properties complied following the warning notice.
- All commercial properties are now in compliance.

In addition to these proactive projects, the Community Services Team continued to address citizen calls for service and service requests in all areas. The attachment contains helpful information on calls for service specific to nuisance code enforcement and animal control.

2017 RECOMMENDATIONS:

For 2017, two new neighborhoods and one commercial corridor have been identified by staff for the TLC program. These neighborhoods and commercial areas were selected:

Neighborhoods

The District II project is a residential neighborhood with boundaries of Quay Street west to Wadsworth Boulevard, and West 44th Avenue north to I-70. This area is called the Apel Neighborhood, in recognition of the original subdivision name. This neighborhood consists of 420 residential parcels.

The District IV project is a residential neighborhood with boundaries of Garrison Street west to Kipling Street, and West 42nd Avenue north to I-70. This area is called Sun Valley Neighborhood, in recognition of the original subdivision name. This neighborhood consists of 448 residential parcels.

Commercial Projects

The commercial corridor chosen was Wadsworth Boulevard, from West 32nd Avenue north to West 48th Ave. Wadsworth Boulevard serves as a major thoroughfare in the City and the area is experiencing revitalization. Wadsworth connects the Apel Neighborhood with the prior TLC project in the Clearvale Neighborhood. Including this commercial corridor makes sense from a problem-solving and resource approach. Attention to code enforcement details could have a positive impact in the character of this area. This project is branded as the Wadsworth Boulevard Corridor Project and includes 82 parcels.

The CSO team is aware of the future construction that will occur on Wadsworth Blvd. and will work closely with Public Works and Community Development on addressing significant nuisance code issues that will be addressed through this development.

RECOMMENDATION

Staff believes that TLC projects have been, and continue to be, very positive for the community. The community policing approach through TLC has proven to be the most successful method to provide proactive code enforcement to neighborhoods and commercial corridors. Staff recommends the continuation of TLC program through 2017. Council input is welcome, for both the currently identified areas and for other neighborhood or commercial areas that could be addressed in 2017.

These projects are resource intensive, so the majority of proactive enforcement will occur in these designated areas. The Community Services Team will continue to respond to calls for service and complaints regarding any property in Wheat Ridge.

Community Services is scheduling four “Dumpster Days” this year. There will be one day scheduled for June, July, August, and September. CSOs will be partnering with the faith-based community to place dumpsters at locations in each of the four City Council districts. Reaching out to the faith-based community will help alleviate any burdens placed on homeowners in the neighborhood through the placement of dumpsters and gives the department additional volunteers to assist with the projects.

ATTACHMENT:

1. Administrative Enforcement Process for Nuisance and Code Violations



Wheat Ridge, Colorado Administrative Enforcement Process for Nuisance and Code Violations

“A Fresh Way to Deal with a Messy Problem”

Revised and Updated March 10, 2017

This article was originally published by the Colorado Municipal League and has been updated to include current statistics and information.

Lorentz, J. (2010, October), Administrative enforcement: a fresh way to deal with a messy problem, *Colorado Municipalities Magazine*

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Attachment 1

Wheat Ridge, CO Admin Enforcement Process for Nuisance and Code Violations

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Introduction

The Wheat Ridge Community Services Team is a unique section of the police department that is responsible for the enforcement of Animal Control, Parks, and Code ordinances within the City of Wheat Ridge. While the duties of the non-sworn Community Services Officers are diverse, they work closely within the community to protect public health, safety and welfare, and enforcing City codes related to nuisance and land use violations. These officers' mission is to enhance and safeguard the quality of life of our community through education, guidance, and enforcement of City codes. In terms of the enforcement of Code ordinances, the goal is to preserve and enhance existing commercial and residential areas as quality areas to live and shop, and to provide a quality living environment for the citizens of Wheat Ridge by ensuring the regulation of nuisance Codes and Zoning Ordinances. Code Enforcement responds to and resolves enforcement issues, provides customer service, and pro-actively removes illegal signage from the city right of way.

Program Description

The Wheat Ridge Administrative Enforcement Process for Nuisance and Code Violations is an innovative and proactive effort to deal with the local enforcement of nuisance violations of City Code, such as tall weeds, inoperable vehicles, outside storage of junk, graffiti, and illegal dumping. The Administrative Enforcement Process shifts from the criminal procedures and violations model handled through the Municipal Court system, to a more efficient and effective civil administrative citation process. The program is intended to benefit the community by making neighborhoods safe and attractive, as well as increasing citizen interest and ownership in neighborhood identity. Compliance can reduce vandalism, deter crime, maintain property value, and prevent deterioration of neighborhoods.

History

Historically, as in most communities in Colorado, the City of Wheat Ridge did not consider the enforcement of code ordinances as a high priority in the day-to-day operations of municipal government. The roots of Wheat Ridge go back to 1859 and its development as a rural farming community that supported miners with fresh fruits and vegetables. As time passed, Wheat Ridge, with a population of about 33,000, tried to maintain that small town rural identity, yet found itself surrounded by the expansion of the Denver Metro Area. The City of Wheat Ridge shares its borders with Denver on the east, Lakewood on the south, and Arvada on the north. Several major thoroughfares link Wheat Ridge with the Metro Area, as well as Interstate 70, which bisects the City from east to west. Over the years, some parts of the City began to show signs of neglect that required the municipality to address health and safety, as well as quality of life issues. In addition, City officials identified some concerns based on the "Broken Windows" theory, developed by social scientists James Q. Wilson and George L. Kelling. This theory supports the idea that well maintained properties and the prevention of nuisances can help to thwart vandalism and the escalation of serious crime in the community. Areas that are not maintained and are left to neglect give the impression that people don't care about the neighborhood. Broken windows that are left unrepaired lead to more windows being broken. Graffiti that is not removed leads to

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more graffiti, illegal dumping and the deterioration of neighborhoods leads to minor crimes, which tends to breed more serious crimes.

Today, quality of life issues are considered higher priorities for communities. Residents often call municipal government with complaints of traffic on neighborhood streets or unsightly weeds and junk on neighbors' properties.



In the 1990's, as the City of Wheat Ridge began to deal more with the enforcement of code ordinances by community request, it found the process to be difficult and inconsistent, often with conflicting direction being given to the staff tasked with this function. In 2000, The Wheat Ridge City Council moved the code enforcement duties from the Community Development Department to the Police Department's Animal and Parks Enforcement Unit. The Unit was renamed the Community Services Team to more accurately reflect the commitment to neighborhoods and community quality of life issues. No additional personnel were assigned to this five-person, non-sworn team. The Team continued to handle animal control and city parks violation calls. The additional code enforcement duties immediately increased the number of calls for service for this team by 40%.

From 2000 through 2006, the Community Services Team was faced with the challenge of enforcing nuisance violations of City Code including tall weeds, inoperable vehicles, outside storage of junk, graffiti, and illegal dumping through the Municipal Court system. Two major problems were identified: First, citizens often expressed that they felt like criminals in this process. Second, the process took a very long time. Once issued a summons, the wait for a Court date was six to eight weeks. Coupled with continuances and other legal proceedings, by the time a violation such as overgrown weeds was addressed, the weeds had continued to multiply to ridiculous levels. The original citizen who had complained about a violation grew more and more frustrated by the lack of visual results to their cry for help.

A Solution Emerges

In the 2006 City Citizen Survey, 72% of respondents indicated that they believed that code enforcement services are very important, essential services. In an effort to find a better system to address citizen concerns and a more effective and efficient process, the Police Department, under the command of Chief Daniel Brennan, began exploring alternatives to develop a code enforcement course of action and focused on an administrative citation process, rather than criminal procedures through the Municipal Court. Additionally, staff worked with the City Attorney's Office, the City Municipal

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Courts, the Information Technology Division and the Finance Division on developing an administrative enforcement model that would work for the Wheat Ridge community.

The Administrative Enforcement Process for code ordinance violations moved the process from the former criminal, due process model, to an administrative model. The administrative model operates more efficiently by establishing appropriate and specific timelines for a property owner to come into compliance. It establishes specific and significant penalties for first, second and third offenses and allows for a timely hearing process before an Administrative Hearing Officer. It includes a property abatement process, if necessary, and finally, this process still allows for a criminal code enforcement process, if required. The process of changing to an administrative enforcement model enabled the City to be more responsive to community concerns regarding code enforcement issues; and minimized the time and effort spent by City employees in achieving compliance from property owners.

How it Works

Conceptually, the Administrative Enforcement Process is structured as follows:

- A violation is reported from a citizen complainant or is officer initiated;
- A Warning Notice is issued by a Community Services Officer (CSO) to the property owner/renter giving them ten (10) days to bring the property into compliance;
- After ten (10) days, the CSO rechecks the property. If it is not in compliance, an Administrative Citation is issued to the violator, which has a fine attached;
- The violator has ten (10) days to come into compliance;
- After ten days, the CSO rechecks the property for compliance. If the violations have not been corrected, a second Citation is issued, followed by a third Citation if the property is not brought into compliance after another ten days;
- Photographs of the violations are taken by the CSO;
- The property can be abated at anytime, if needed, using the existing process;
- The responsible party is sent a bill, which includes the cost of the abatement, cost of time involved for the City employees, and the fine;
- The responsible party has thirty (30) days to pay the bill, or the property has a property tax lien placed against it;
- Fines are preset: \$150 for the first Citation, \$250 for the second Citation, and \$500 for the third Citation. After three Citations, the owner can be charged criminally;
- The violator may contest the charge and request a hearing within five (5) days after the issuance of the Citation; and
- An Administrative Hearing is held before an Administrative Hearing Officer no later than fourteen (14) days after requesting the hearing.

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Efficiency and Effectiveness

Of course, not everyone is happy with the enforcement of nuisance violations. Some people feel that there is too much enforcement, while others feel that there is not enough; but considering the effectiveness and efficiency of the program, the statistical analysis speaks for itself. In the past nine years (2008 – 2016), Community Services Officers have investigated over 13,000 calls for service. Of those calls, 70% of the responsible parties were



issued written Warnings advising them of specific violations of the City Code. After the properties were re-checked in ten days, 87% of those properties that were warned had come into compliance and no further action was necessary. That means that no fines or fees were assessed. This success rate of compliancy far exceeded the expectations of City officials, and supports the concept that the program is not meant to be overly punitive. After the first Citation was issued, 97% of the original cases came into compliance. In less than 2% of the cases was it necessary for Community Services Officers to request Property Abatement Hearings or Administrative Hearings, and over 99% of the cases had been resolved by the time a third Citation was issued. No cases to-date have gone on to be charged criminally through the Municipal Court process.

If there are any unpaid fines or fees, the City files a Property Tax Lien with the County Recorder's Office at the end of the calendar year. These fines and fees are then collected by the first quarter of the preceding year, when the property owner pays their property tax. The fines collected pay for .5 full-time employees in both the Finance Department and Municipal Court to cover the additional workload necessary to administer the program.

While maintaining a firm commitment to the enforcement of nuisance violations, Community Services Officers retain the use of discretion in dealing with code enforcement cases. "It is important for our officers to work with our citizens," said Chief of Police Dan Brennan. "Our goal is to gain compliance and clean up the community. We understand that some people have some properties that require special needs. As long as citizens are making documented progress on a scheduled plan, we can often avoid fines and fees."

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Code Enforcement	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL
Calls for Service	1,083	1,165	1,057	1,157	1,297	2,008	1,855	1,755	1,796	13,173
Warnings Issued	872	812	836	711	849	1,524	1,346	1,194	1,132	9276
1st Citation/Compliance	140 / 84%	137/83%	144 / 83%	123 / 83%	106 / 87%	173 / 89%	174 /87%	117 / 90%	71 / 94%	1185 / 87%
2nd Citation/Compliance	32 / 96%	40 / 95%	48 / 94%	54 / 93%	37 / 96%	41 / 97%	36 / 97%	32 / 97%	15 / 99%	335 / 97%
3rd Citation/Compliance	5 / 99.99%	14 / 99.98%	15/99.97%	22 / 99.97%	19 / 98%	16 / 99%	16 / 99%	16 / 98%	4 / 99%	127 / 99%
Admin Hearings	24 / 3%	21 / 2.5%	10 / 1%	7 / 1%	14 / 3%	20 / 1%	11 / 1%	2 / <1%	2 / <1%	112 / 1%
Abatements	16 / 2%	24 / 3%	21 / 2.5%	14 / 2%	18 / 2%	17 / 1%	11 / 1%	6 / <1%	2 / <1%	139 / 1%
Criminal Charges	0	0	0	0	0	0	0	0	0	0
Fines Assessed	\$45,460	\$49,706	\$53,840	\$53,910	\$47,120	\$71,355	\$55,515	\$41,191	\$23,020	\$376,906
Abatement Fees Assessed	\$9,522	\$10,240	\$21,067	\$9,229	\$17,476	\$15,099	\$7,375	\$9,261	\$2,038	\$90,008

- The 2013 increase in Calls for Service and Warnings Issued is due to the increase in proactive enforcement activity resulting from the TLC Neighborhood Projects.

Wheat Ridge Launches TLC Neighborhood Project

The City of Wheat Ridge, Wheat Ridge Police Department, and Wheat Ridge City Council recognize the important role that proactive code enforcement plays in achieving the goals of the City. Council has asked that the City's code enforcement strategies be strengthened and applied equally throughout the City.

Beginning in 2014, neighborhoods and commercial corridors were selected to participate in a new project identified as *Wheat Ridge TLC Neighborhoods*. "TLC" stands for *Traffic safety, Life quality, and Crime reduction*. Studies have shown that neighborhoods that engage in proactive code enforcement strategies can help to eliminate nuisances, increase property values, and develop a greater sense of community and pride. In addition, neighborhoods can increase *Traffic safety* on their streets, increase the perception of neighborhood *Life quality*, as well as experience *Crime reduction* and reduce the fear of crime in our neighborhoods. The areas identified for this new project are:

Since 2014, the City has recognized the following neighborhoods in the TLC program:

East Wheat Ridge	Clear Creek Station	Clearvale
Applewood Villages	Fruitdale East	Fruitdale West
Apel (proposed 2017)	Sun Valley (proposed 2017)	

Commercial Corridors recognized as TLC Projects include:

- West 44th Avenue East (Fenton to Wadsworth)
- West 44th Avenue Central (Wadsworth to Kipling)
- West 44th Avenue West (Kipling to Xenon)
- Kipling Street (W. 32nd Avenue to W. 51st Place)
- Wadsworth Boulevard (W. 32nd Avenue to W. 48th Avenue) (proposed 2017)

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All of the previous neighborhood and commercial projects were evaluated for code violations and all properties within the area were able to come into compliance. Staff believes that TLC projects have been, and continue to be, very positive for the community, and have proven to be the most successful method to provide proactive code enforcement since their inception.

In addition, the Community Services Team schedules neighborhood clean-up, "Dumpster Days." This program provides dumpsters places at convenient locations in each of the four districts for the public to use free of charge to encourage neighborhood clean-up efforts.

Education and Marketing

One challenge presented to the Police Department was to develop a way to educate citizens regarding the new Administrative Enforcement Process. If the educational process was done effectively, the City believed there could be less enforcement, more compliance, and the entire process would seem less punitive. Community Services Officers began participating in community meetings and worked with police officers in the Neighborhood Watch Program to help show citizens the value of maintaining neighborhoods, by emphasizing the benefits to quality of life, reduction of crime, and the increase of property values. It was also clear that the production of informational brochures and educational videos helped to spread the message regarding the program.

Staff from the Police Department and the City Manager's Office teamed up and worked collaboratively on the development of a marketing strategy. Early in the brainstorming process, staff agreed that the development of a marketing character would help put a new face to code enforcement in Wheat Ridge to achieve compliance in a positive and educational way. What marketing character would the City use? The Police Department held an internal design contest for staff soliciting concepts of what the marketing character might look like. "Cody the Code Ranger" was the winning entry!



Cody is a cartoon, wheat-stalk character that is used in all marketing aspects of code enforcement. With the help of a graphic designer, Cody the Code Ranger came to life in a variety of different poses. Cody appears on brochures, door hangers, the City website, local newspapers, newsletters, local television channel WRTV8 public service announcements – all to help send the message of the new Administrative Enforcement Process. Although working on a very limited budget, staff was able to animate Cody's mouth to present more of a cartoon-like feel to our WRTV8 public service announcements. We were also able to find a local volunteer to provide a "John Wayne" style voice over to help give Cody some energy and personality to the topic of code enforcement. The City of Wheat Ridge was honored with the 2009 3CMA (City-County Communications & Marketing

Cody the Code Ranger

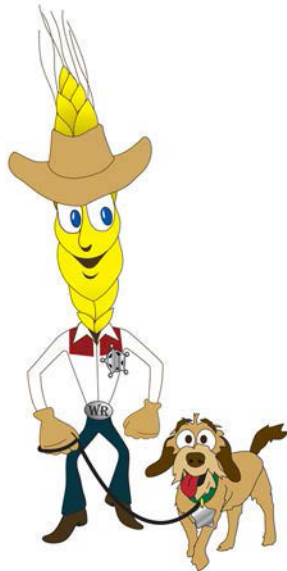
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Association) Silver Circle Savvy Award for education and marketing in the category of TV and Videos for Promotional Videos for the “Cody the Code Ranger” Program.

In 2009, Community Services Officers decided to expand Cody's repertoire by having him adopt a dog named Tag. Cody and Tag help to promote the adoption of pets from local animal shelters and the Jefferson County mandatory dog licensing program. Tag prominently wears a large dog license tag on his collar and always appears on-leash. Cody has also joined forces with the Parks and Recreation Department and promotes bicycle safety, wearing a bicycle helmet when riding throughout City parks and greenbelts. Each of the new marketing roles of Cody helps promote and raise awareness about City ordinances designed to keep citizens safe. Cody appears as a great resource for education programs for neighborhood schools. Staff receives letters and e-mails addressed to Cody with proactive code complaints, indicating that citizens know who Cody is, and follow his tips and code updates in the quarterly Connections Newsletter.



Cody the Code Ranger is an innovative and family-friendly face to code enforcement in Wheat Ridge. While there is no evidence to suggest that serious violators have cleaned up their property as a result of Cody, he has served as a fresh new look to code enforcement and has helped the City market a not so popular topic to citizens.

Additional Duties of the Community Services Team

In addition to being responsible for Code Enforcement within the City of Wheat Ridge, the Community Services Team is also responsible for providing animal control services and city parks enforcement. This obviously, keeps the Team of one supervisor, seven full time officers and two part-time, intermittent (May – October) Park Rangers, quite busy in their efforts to provide timely response to calls for service and proactive enforcement.

Animal Control	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL
Calls for Service			1,195	1,730	2,240	2,141	2,305	1,685	1,704	13000
Warnings Issued			442	284	373	364	331	374	336	2504
Summons Issued			100	88	115	124	127	136	102	792
Parks Enforcement	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL
Calls for Service			189	94	165	158	165	245	372	1388
Warnings Issued			42	10	21	17	21	75	81	267
Summons Issued			0	5	5	2	5	2	1	20

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Summary

Over the past nine years, the entire Administrative Enforcement Process has proven to be a successful program for the City of Wheat Ridge. Gone are the days when city code enforcement officers didn't make a move until they received neighborhood complaints of high grass or front-yard junk piles. In addition, Community Service Officers are using problem oriented policing to help resolve issues and often refer property owners to community organizations that may be able to help.

"This process is a very customer-friendly way to let residents know that we are serious and proactive about keeping Wheat Ridge beautiful," said City Manager Patrick Goff. "The vast majority of citizens do their part by voluntarily complying with notices, before any fines or fees are assessed. Without the cooperation of the community, Police Department, Community Development, City Attorney's Office, City Municipal Court, Information Technology Division and the Finance Division, we certainly could not have accomplished this effort. The City has indeed pulled together to save time and money in accomplishing our goal."



Memorandum

TO: Mayor and City Council

THROUGH: Jerry DiTullio, City Treasurer
Patrick Goff, City Manager
Heather Geyer, Administrative Services Director

FROM: Kathy Franklin, Sales Tax Supervisor

DATE: March 10, 2017 (for March 20th study session)

SUBJECT: Proposed Tax Updates

This memorandum introduces and discusses two separate proposed updates to amend the City's current tax laws in Code Section 22:

1. Adoption of Standardized Definitions
2. Miscellaneous Updates for Efficiency, Clarity, Consistency, etc.

Part One – Adoption of Standardized Definitions

Part one of the proposed tax code updates is the result of a standardized definitions effort developed by municipal tax professionals in collaboration with the business community and the Colorado General Assembly. In 2014, the General Assembly passed SJR14-038 asking the Colorado Municipal League (CML) to facilitate the Standard Definitions Project with home-rule municipalities that locally collect their sales tax. This project was in response to comments from the business community expressing frustration with various home-rule municipalities giving the same term in the code a different meaning that resulted in confusion and increased complexity for an entity doing business in multiple jurisdictions. The objective of this effort was to determine whether to develop standard definitions to be adopted by home-rule jurisdictions in order to simplify the level of complexity. This effort was similar to a standardization project that was done in 1992.

Several important points to note:

- Colorado municipalities are heavily dependent on the sales tax, deriving on average 73% of their general purpose tax revenues from this source.
- Virtually unique among the states, Colorado home rule municipalities may require local businesses to remit directly to a municipality (known as "local collection"), decide their own tax base, and audit local businesses directly. Wheat Ridge is a self-collecting, home-rule entity.
- Colorado's 69 locally collecting municipalities collect over 90% of the municipal sales tax paid in our state.

The project consisted of a 23-member steering committee and subcommittees. Sales tax supervisor Kathy Franklin served on a steering committee and two subcommittees. The project included intensive drafting and review, comparison with earlier standard definition efforts, legal review, business community review, and final review and comments by 69 self-collecting municipalities. Overall, the simplification process was a 15-month effort as part of the Sales Tax Committee of the Colorado Municipal League. Leaders of the Colorado Association of Commerce and Industry (CACI), the Colorado Retail Council (CRC) and city attorneys also provided input. Attachment 2 is a joint letter of support from all partners involved in this effort recommending adoption of the Standardized Definitions.

Analysis

Staff reviewed the 2016 Sales Tax Simplification Model ordinance. The City does not need to adopt all of the Standardized Definitions, only those relating to the City's tax base.

The City's current tax code contains 89 definitions. Of those, 22 are recommended for change to the standard definitions, and five more are recommended for minor style changes to make them consistent with the standard definitions. Additionally, staff recommends adopting another six of the standard definitions for added clarity in the tax code and consistency with other cities.

For ease of reference, Attachment 3 includes a legend by which to reference the following:

- A. **Yellow:** definitions highlighted in yellow do not exist in the current Code and staff does not recommend adoption. There are 48 definitions highlighted.
- B. **Green:** definitions highlighted in green do not currently exist in the Code, staff recommends adding the seven highlighted definitions.
- C. **Blue:** definitions highlighted in blue currently exist in the Code and are the same as the proposed Standardized Definitions. There are seven definitions highlighted.
- D. **Un-highlighted:** definitions currently exist in the Code and require minor grammar or style changes. Staff recommends adoption. There are 44 un-highlighted definitions.

None of the proposed tax code definition changes would trigger a TABOR election. The updated definitions reflect current tax practices. No new tax is levied and no increase in tax revenue is expected as a result of the simplification of definitions.

In the near future, the CML Sales Tax Committee will work out the details of a process to maintain standardization and consensus in interpreting the definitions over time.

Part Two – Miscellaneous Updates for Efficiency, Clarity, Consistency, etc.

Part Two of the proposed tax code updates is a combination of updates for efficiency, clarity and consistency. From time to time updates to tax and licensing code provisions become necessary because of changes in technology, business practices, and statutory requirements. The last major

update of the City tax and licensing Code occurred in 2006. Minor updates were completed in 2009. The proposed changes will enhance the clarity of Code sections making definitions and processes business-friendly for the taxpayer.

Attachment 1 is a draft ordinance that includes the following additional changes:

1. **Ordinance, section 15 – code section 11-68** – the Code now prohibits pro-rating the annual liquor license occupation tax for a newly acquired liquor establishment or one that has changed hands. This results in duplicate payment of a portion of the tax when either event occurs.
2. **Ordinance, sections 3 and 11 – code sections 22-46(n)(1) and 22-36(a)(1)** – under the current code provisions a tax refund may be sought only within 60 days of a tax over-payment. This provision is inconsistent with the three-year refund period allowed by the state. It is also inconsistent with the City’s three-year period that is used for under-paid taxes in an audit.
3. **Ordinance, section 6 – code section 22-39(b)** – the tax code permits including sales tax in pricing in the fast transaction environment of liquor sales by the drink but does not address other fast transaction business activities such as farmers’ markets, produce stands, special events and craft markets.
4. **Ordinance, section 8 – code section 22-42(e)** – frequently businesses retain records at locations outside the City and the metropolitan area. Some are unwilling or prohibited by their internal policies to use safe digital transfer methods to produce them for audit purposes at the City office and instead require travel by audit staff to locations outside the metropolitan area or the state.
5. **Ordinance, remaining sections** – these portions of the existing tax code are obsolete, redundant or inconsistent with other sections of the tax code or are inconsistent with statutory requirements.

Analysis

The following section provides additional information about the proposed ordinance updates by section:

Ordinance, section 15 – liquor occupation tax: Operators of licensed alcohol establishments are required by the Code to pay an annual occupation tax based on the category of the premise’s liquor license. New operators must pay the tax when they acquire a license or a licensed premise. Proration for a partial year under an operator is specifically prohibited by section 11-68 of the code. The result is that an entire year’s tax is collected for a partial year’s operation of a new location. It is collected twice when ownership of an existing location changes.

The amount of the tax ranges from \$600 to \$2,200 (average \$1,400) and is due at the beginning

of each year from incumbent operators. In 2013, a busy year for new and exchanged liquor licenses; a total of 13 liquor licenses that were issued or changed hands. The estimated revenue impact if pro-ration had been permitted would have been a decrease of \$11,800. In 2016, the City budgeted \$58,000 in liquor occupation tax revenue and brought in \$30,599.50.

Of the four Colorado cities that have a liquor occupation tax, currently two of them pro-rate the tax. Both new and discontinuing operators have commented negatively about the City not offering pro-ration of the tax. Staff recommends pro-ration of the liquor occupation tax as being consistent with providing business-friendly services.

Ordinance, sections 3 and 11 – refunds: When tax records were kept on paper it was difficult to reasonably verify that a tax overpayment had occurred in order to issue a refund, so limiting the time in which a taxpayer could seek one to 60 days was reasonable. Electronic recordkeeping and document imaging simplifies the process enough to enable consistency with the State’s permitted three-year refund period and with the City’s three-year liability period.

Ordinance, section 6 – tax-inclusive pricing: Farmers’ markets, craft markets, special events, and produce stands rely on rapid transactions to invigorate sales to a highly mobile audience; the operators are often not equipped to efficiently transact sales by a price-plus-tax method. Staff recommends specifically allowing tax-included pricing for these temporary activities as a business-friendly policy.

Ordinance, section 8 – travel audits: For an auditor to undertake a four-day fieldwork assignment outside the metropolitan area, the cost currently ranges from \$900 in-state to \$1,700 out-of-state including lodging, meals and transportation. In the past, the Tax Division has successfully billed expenses to businesses that require out of area travel. Staff recommends that the practice be supported by a requirement for payment in the Code for transparency and easier justification for payment by businesses’ audit managers.

Remaining ordinance –obsolete, redundant and inconsistent code language: Staff recommends these changes to clean up outdated code language or which exists elsewhere in the code or conflicts with state statutes.

Again, staff requests consensus on the proposed tax code changes. The first reading of the proposed Tax Code changes is scheduled for March 27th and the second reading/public hearing is scheduled for April 10th.

/kf

ATTACHMENTS:

1. Draft Ordinance with proposed Tax Code changes
2. 2016 Sales Tax Simplification Model Ordinance
3. Letter of support for adoption of the Standardized Definitions

PART 2 OF TAX CODE UPDATE: DRAFT ORDINANCE

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
Council Bill No. ____
Ordinance No. _____
Series of 2017

TITLE: AN ORDINANCE AMENDING VARIOUS PROVISIONS OF ARTICLE I OF CHAPTER 22 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING CITY SALES AND USE TAX, AND SECTION 11-68 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING PRORATION OF THE ANNUAL LIQUOR LICENSE OCCUPATION TAX

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, C.R.S. § 29-2-101, *et seq.*, and C.R.S. § 31-15-501(1)(c), the City, acting through its City Council (the "Council"), is authorized to administer and enforce local sales, use and occupation taxes; and

WHEREAS, pursuant to this authority, the Council previously adopted Article I of Chapter 22 of the Wheat Ridge Code of Laws ("Code"), which governs City sales and use tax, and Division 2 of Article III of Chapter 11 of the Code, concerning an annual liquor license occupation tax; and

WHEREAS, City Staff has recommended certain changes to various provisions of Article I of Chapter 22, to clarify language, delete obsolete provisions, increase internal consistency, comply with state law and render said Chapter easier to understand and administer; and

WHEREAS, Staff has further recommended amending Section 11-68 of the Code to authorize the proration of the annual liquor license occupation tax in the interests of fairness; and

WHEREAS, the Council finds and determines that none of the Code amendments contained herein constitute a tax policy change that would directly cause a net tax revenue gain to the City; and

WHEREAS, the Council therefore finds that the Code amendments contained herein may be accomplished by ordinance, without prior voter-approval, pursuant to Section 20 of Article X of the Colorado Constitution ("TABOR"); and

WHEREAS, the Council further finds that amending various provisions of the Code concerning taxation to clarify language, delete obsolete provisions, increase internal consistency, comply with state law, promote fairness and facilitate administration of the Code would promote the welfare of all City residents and businesses; and

WHEREAS, the Council therefore wishes to amend various provisions of Article I of Chapter 22 of the Code and Code Section 11-68, as set forth herein.

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

Section 1. Section 22-22 of the Code, concerning legislative intent, is hereby amended as follows:

Sec. 22-22. Legislative intent.

It is the intent of the city that all sales, transfers or consumption of tangible personal property AND SERVICES within the city shall be subject to the sales and/or use tax imposed hereby, unless the same is specifically exempted from taxation under the provisions of sections 22-58 or 22-67 hereof. The city council hereby reaffirms its authority as a home rule city, pursuant to the provisions of Article XX of the Constitution of the State of Colorado, and the Home Rule Charter of the City of Wheat Ridge, to "assess, levy and collect" local sales and use taxes as deemed appropriate by the city council in the exercise of its lawful legislative discretion.

Section 2. Subsection 22-33(b) of the Code, concerning the administrative authority of the City Treasurer to promulgate rules, regulations and forms, is hereby amended as follows:

- (b) The rules and regulations AND FORMS as ~~prescribed~~ ISSUED by the treasurer and, as from time to time are amended by the treasurer, pursuant to ~~THE his or her authority specified in paragraph (a)~~ shall be published ON THE CITY'S WEB SITE AND MADE AVAILABLE FOR PUBLIC INSPECTION DURING REGULAR BUSINESS HOURS IN THE OFFICE OF THE TREASURER and ~~appear as appendix A to this chapter. The forms developed pursuant to paragraph (a) for making returns and reporting taxes assessed under this chapter shall be published and appear as appendix B to this chapter.~~ WHEN ANY SUCH RULE, REGULATION OR FORM IS ISSUED OR AMENDED, THE TREASURER SHALL PREPARE A NOTICE, SETTING FORTH THE GENERAL NATURE OF THE NEW RULE, REGULATION OR FORM, OR AMENDMENT THERETO, AS APPLICABLE, AND THAT THE SAME MAY BE INSPECTED ON THE CITY'S WEB SITE AND IN THE OFFICE OF THE TREASURER DURING REGULAR BUSINESS HOURS. THE TREASURER SHALL CAUSE THE NOTICE TO BE POSTED AT THE WHEAT RIDGE MUNICIPAL BUILDING AND PUBLISHED ON THE CITY'S WEB SITE.

Section 3. Paragraph 22-36(a)(1) of the Code, concerning the process under which a purchaser may request a refund of a tax paid at purchase, is hereby amended as follows:

- (1) The purchaser may apply for a refund by submitting to the treasurer in writing the amount and reason for such refund within ~~sixty (60) days~~ THREE (3) YEARS of the date of purchase for the unintentional payment of tax on exempt purchases or an overpayment of taxes reported and paid by any taxpayer to the treasurer.

Section 4. Subsection 22-38(a) of the Code, concerning the filing of a final return upon the closure or sale of a business, is hereby amended as follows:

- (a) Any ~~retailer~~ VENDOR who ~~shall sell out his ITS business or stock of goods or shall quit~~ OTHERWISE TERMINATES business OPERATIONS shall be required to file a final return as provided in this chapter ~~within ten (10) days of the date of the sale of his business or stock of goods or of quitting business~~ BY THE TWENTIETH (20TH) DAY OF THE CALENDAR MONTH FOLLOWING SUCH SALE OR TERMINATION.

Section 5. Section 22-39 of the Code, concerning the liability of retailer or vendor for tax collection, is hereby amended by the deletion of subsection (c) thereunder and by renumbering existing subsection (d) as “(c)”.

Section 6. Subsection 22-39(b) of the Code, concerning the inclusion of sales tax in pricing, is hereby amended as follows:

- (b) Except as provided in subsections (1) and (2) of this paragraph (b), it shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the city sales tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold, or if added, that it or any part thereof shall be refunded, or the sales tax is not considered an element in the sales price to the consumer. Any person violating any provisions of this section shall be subject to the penalties provided in this chapter.
- (1) Nothing contained in this section shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from including in ~~his~~ THE sales price any city sales tax.
- (2) Nothing contained in this section shall be deemed to prohibit any owner or operator of vending machines or coin-operated devices from including in ~~his~~ THE sales price any city sales tax.
- (3) NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO PROHIBIT ANY OWNER OR OPERATOR OF A PRODUCE STAND, A BOOTH CONDUCTING RETAIL SALES AT A CITY-LICENSED EVENT, OR FARMERS' MARKET BOOTH FROM INCLUDING IN THE SALES PRICE ANY CITY SALES TAX.

Section 7. The title of Section 22-42 of the Code, concerning business records, burden of proof and audits, is hereby amended as follows:

Sec. 22-42. Business records; burden of proof; AUDIT.

Section 8. Subsection 22-42(e) of the Code, concerning the place of audit, is hereby amended as follows:

- (e) Place of audit. The city has adopted the policy of auditing a taxpayer's records only at the taxpayer's business location where such business records are routinely kept AT A LOCATION IN WHEAT RIDGE OR AT SOME OTHER LOCATION DESIGNATED BY THE TREASURER OR HIS OR HER DESIGNEE, OR AT CITY OFFICES BY ELECTRONIC MEANS. Notwithstanding this policy, the treasurer may, under exceptional circumstances, permit limited scope auditing of a taxpayer's records by mail. Such a determination is solely within the discretion

of the treasurer and is not an appealable issue. Any person under audit WHO REQUESTS AN AUDIT LOCATION OTHER THAN A LOCATION DESIGNATED BY THE TREASURER OR HIS OR HER DESIGNEE SHALL PAY THE DIRECT COSTS AND EXPENSES INCURRED BY THE CITY TO PERFORM THE AUDIT IN THE REQUESTED LOCATION.

Section 9. Paragraph 22-42(i)(7) of the Code, concerning when a coordinated audit is not available, is hereby amended as follows:

- (7) The coordinated audit procedure set forth in this section shall not apply:
 - a. When the proposed audit is a jeopardy audit; OR
 - b. ~~To audits for which a notice of audit was given prior to Dec. 9, 2002;~~
 - c. ~~When a taxpayer refuses to promptly sign a waiver of the time limits established in sections 22-42(d) and 22-44(a) of this Code of Laws; or~~
 - d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in such paragraph (2) of this subsection 22-42(i).

Section 10. Paragraph 22-43(b)(2) of the Code, concerning a taxpayer demand for a hearing on estimated taxes due, is hereby amended as follows:

- (2) Unless the taxpayer files a written demand for administrative hearing and determination of tax liability, as provided in section 22-45 hereof, within ~~twenty (20)~~ THIRTY (30) days from the date of mailing or posting, whichever is later, of such notice, THE TAXPAYER ~~he~~ shall conclusively be deemed to have accepted the estimate as a fair and accurate determination of his tax obligation and shall thereby waive the right to contest that determination. In the event that such a hearing is held, the determination of the hearing officer shall be reviewable as provided in section 22-45 hereof.

Section 11. Paragraph 22-46(n)(1), concerning the statute of limitations for refunds, is hereby amended as follows:

- (1) *Refunds.* Any claim for refunds ~~for disputed tax~~ shall be submitted to the treasurer on or before ~~sixty (60) days~~ THREE (3) YEARS from the date of ~~such purchase IF FILED BY THE PURCHASER AND THREE (3) YEARS FROM THE DATE OF PAYMENT IF FILED BY THE VENDOR.~~
- a. ~~Any claim for refund resulting from a notice of overpayment shall be submitted to the city on or before thirty (30) days after the date of such notice of overpayment.~~
- b. ~~Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the city.~~

Section 12. Section 22-48 of the Code, concerning notice of tax ordinance amendment, is hereby amended as follows:

Sec. 22-48. Notice of sales and use tax ordinance amendment.

- (a) ~~In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the treasurer shall file with the Colorado Municipal League prior to Dec. 9, 2002.~~
- (b) — In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the treasurer of the city shall file with the Colorado Municipal League, prior to the effective date of any amendment, a copy of each sales and use tax ordinance amendment enacted by the city.
- (c B) Failure of the city to file such ordinance or ordinance amendment pursuant to this section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

Section 13. Section 22-49 of the Code, concerning Treasurer participation in Colorado Municipal League tax committee meetings, is hereby deleted and designated as “Reserved.”

Section 14. Subsection 22-57(15) of the Code, concerning sales tax on the price of admission to amusement and entertainment events, is hereby deleted and designated as “Reserved.”

Section 15. Section 11-68 of the Code, concerning proration of the annual liquor license occupation tax, is hereby amended as follows:

Sec. 11-68. ~~No p~~Proration for portion of year.

COMMENCING WITH THE LICENSING YEAR 2018, the tax levied by this division is assessed for the PORTION OF THE calendar year DURING WHICH A LIQUOR ESTABLISHMENT OPERATED UNDER A GIVEN BUSINESS LICENSE, ~~or any portion thereof, and no p~~Proration shall be made BASED ON THE NUMBER OF FULL MONTHS REMAINING IN THE YEAR WHEN A LIQUOR ESTABLISHMENT'S BUSINESS LICENSE IS ISSUED OR PERMANENTLY TERMINATES ~~where the business is used for only a portion of a year; and no refund shall be made to any person who discontinues such business during the year.~~

Section 16. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 17. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 18. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of _____ to _____ on this ____ day of _____, 2017, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for _____, 2017, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2017.

SIGNED by the Mayor on this _____ day of _____, 2017.

Joyce Jay, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

First Publication:

Second Publication:

Wheat Ridge Transcript

Effective Date:

Definitions highlighted in yellow do not exist in current Code and are not currently recommended for adoption.

Definitions highlighted in green do not currently exist in Code; Staff recommends adding.

Definitions highlighted in blue currently exist in the Code and require minor grammar or style changes. Staff recommends adoption.

Un-highlighted definitions currently exist in the Code; Staff recommends adopting.

2016 SALES TAX SIMPLIFICATION MODEL ORDINANCE

I. Standardized Definitions

SECTION _____. **WORDS AND PHRASES DEFINED:** The following words and phrases as used in this chapter shall have the following meaning:

- (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 (name of municipality).
- (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) **“Coin Operated Device”** means any device operated by coins or currency or any substitute therefor.
- (16) **“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.
- (17) **“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.

- (18) **“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.
- (19) **“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.
- (20) **“Construction Equipment”** means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.
- (21) **“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 and inseparable part of completed structure or project are not construction materials.
- (22) **“Consumer”** means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.
- (23) **“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.
- (24) **“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.

- (25) **“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.
- (26) **“Data Processing Equipment”** means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.
- (27) **“Digital Product”** means an electronic 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”.
- (28) **“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.
- (29) **“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.
- (30) **“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.
- (31) **“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 by any means other than a common carrier.

- (32) **“Factory Built Housing”** means a manufactured home 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 bailing 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: (1) 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 (name of municipality) 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) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), 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 (name of municipality) 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) **“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.
- (45) **“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.
- (46) **“Manufacturing”** means the operation or performance 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.

- (47) **“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.
- (48) **“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.
- (49) **“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.
- (50) **“Motor Fuel”** means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other 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.
- (51) **“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.
- (52) **“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.

- (53) **“Parent”** means a parent of a student.
- (54) **“Person”** means any individual, firm, partnership, joint venture, corporation, limited liability company, 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, metering systems and other electrical accessories to set up a working system.
- (56) **“Precious Metal Bullion”** means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.
- (57) **“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.
- (58) **“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.
- (59) **“Prescription Drugs for Animals”** 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, 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 veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.
- (60) **“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, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner

of the healing arts, or given orally by a practitioner 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.

(61) “Price” or “Purchase Price” 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: (1) 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.

Price or Purchase Price includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) 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.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. 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 at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) 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.

Price or Purchase Price shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.

- (2) 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-ins are an allowable adjustment to the purchase price.
 - (3) 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.
- (62) **“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.
- (63) **“Prosthetic Devices for Animals”** means any artificial limb, part, device or appliance for 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 veterinarian. 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.
- (64) **“Prosthetic Devices for Humans”** means any artificial limb, part, device or appliance for human 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.
- (65) **“Purchase” or “Sale”** means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:
- * (Drafter's Note: for jurisdictions that have separate sales and use tax articles, for this definition in the sales tax article, would strike “used, stored, distributed, or consumed, and include it back in for the use tax article, but for jurisdictions with only sales tax or that combine sales and use tax in one article then include “used, stored, distributed, or consumed.)
- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
 - (2) 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;
 - (2a) OPTION: insert after "services," and before the semi-colon, "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."

* (Drafter's Note: 2a reflects the desire of several municipalities to state clearly in their codes that use of devices such as laundromat equipment is a taxable rental.)

- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms Purchase and Sale do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) 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;
- (3) 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;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies 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 company 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 company. 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 company owns stock possessing or membership interest 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.

(65) OPTION: Same as above, except do not include subparagraphs (7), (8) and (9)

* (Drafter's Note: (65) 1 reflects a preference by a minority of municipalities to consider the transactions described in subparagraphs (7) , (8) and (9) as “purchases” or “sales”; (65) is the State's language and that utilized by most municipalities.)

- (66) **“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.
- (67) **“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.
- (68) **“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.
- (69) **“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.
- (70) **“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.
- (71) **“Retail Sales”** means all sales except wholesale sales.
- (72) **“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 seller of building supplies, construction materials, and other tangible personal property.
- (73) **“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 sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

- (74) **“Return”** means any form prescribed by the city/town administration for computing and reporting a total tax liability.
- (75) **“Sale that Benefits a Colorado School”** means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.
- (76) **“Sales Tax”** means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.
- (77) **“School”** means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.
- (78) **“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.
- (79) **“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.
- (80) **“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) regardless of the means by which it is accessed or the medium of conveyance. 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.
- (81) **“Software as a Service”** means software that is rented, leased or subscribed to from a provider and used at the consumer’s location, including but not limited to applications, systems or programs.
- (82) **“Software License Fee”** means a fee charged for the right to use, access, or maintain software programs.

- (83) **“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
- (84) **“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.
- (85) **“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.
- (86) **“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.
- (87) **“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.
- (88) **“Storage”** means any keeping or retention of, or exercise 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.
- (89) **“Student”** means any person enrolled in a school.
- (90) **“Tangible Personal Property”** means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.
- (91) **“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.
- (92) **“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.
- (93) **“Taxable Sales”** means gross sales less any exemptions and deductions specified in this Code.

- (94) **“Taxable Services”** means services subject to tax pursuant to this Code.
- (95) **“Taxpayer”** means any person obligated to collect and/or pay tax under the terms of this Code.
- (96) **“Telecommunications Service”** means the service of which the object is 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), or any combinations of such media, including any form of mobile two-way communication.
- ** Drafter’s Note: Municipalities may consider adding, “Telecommunications service” does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted’ to their exemption language.
- (97) **“Television & Entertainment Services”** means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.
- (98) **“Therapeutic Device”** means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.
- (99) **“Toll Free Telecommunications Service”** means a Telecommunications Service that allows a caller to dial a number without incurring an additional charge for the call.
- (100) **“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.
- (101) **“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.
- (102) **“Transient / Temporary Vendor”** means any person who engages in the business of Transient / Temporary Sales.
- (103) **“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. Use also includes the withdrawal of items from inventory for consumption.
- (104) **“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.

- (105) **“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; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter.
- (106) **“Wholesaler”** means any person doing an organized wholesale or jobbing business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.



Jan. 31, 2017

The Standardized Sales Tax Project is a simplification effort undertaken by locally collecting home rule cities and towns in conjunction with the business community and the Colorado General Assembly. This project is built on the strong partnership between municipal governments and the business community to work together to make locally collected taxes easier to file, report, and remit.

The General Assembly adopted Senate Joint Resolution (SJR) 14-038, asking the Colorado Municipal League (CML) to work with its members to develop a package of standardized definitions, reprising a successful effort led by CML in 1992. CML supported SJR14-038. The goals in developing these definitions were to add clarity about current tax practices without a fiscal impact. No new tax is levied and no increase in tax revenue is expected, because the updated definitions were drafted to reflect current tax practices.

Government and business recognize that the use of different definitions by locally collecting municipalities for the same sales tax term is a source of complexity for businesses that operate in multiple municipalities. Using standardized definitions minimizes this complexity.

CML's membership has been strongly supportive of simplification efforts originating at the local level – and the CML Executive Board has recommended adoption of these definitions to its membership. Likewise, we urge you to consider the benefits of standardized sales tax definitions to your locally collecting city or town, as well as your resident businesses and multi-jurisdictional businesses that work hard to collect your sales tax.

The following statewide associations, in addition to CML, support the adoption standardized sales tax definitions by all 69 locally collecting home rule municipalities: Colorado Association of Commerce & Industry, Colorado Retail Council, Colorado Automobile Dealers Association, and Simplify Colorado Sales Tax.

Sincerely,

Sam Mamet
Colorado Municipal League
Executive Director

Loren Furman
Colorado Association of Commerce &
Industry Senior Vice President of State and
Federal Relations

Christopher Howes
Colorado Retail Council President

Tim Jackson
Colorado Automobile Dealers Association
President

Tony Gagliardi
National Federation of Independent
Business Colorado State Director and
Coalition to Simplify Colorado Sales Tax
President

Memorandum

TO: Mayor and City Council

THROUGH: Patrick Goff, City Manager
Ken Johnstone, Community Development Director
Scott Brink, Public Works Director

FROM: Mark Westberg, Projects Supervisor
Lauren Mikulak, Senior Planner

DATE: March 10, 2017 (for March 20 Study Session)

SUBJECT: Wadsworth Widening Update

ISSUE:

A formal update on the Wadsworth Widening project was provided to Council almost a year ago on March 28, 2016, when Council approved the contract with HDR for environmental and engineering services to complete the survey, the conceptual (30%) design and plans, and to prepare an environmental assessment (EA). Some informal updates have been provided during the 2E process and also during the public meetings that were held last year.

The purpose of this memo is to update Council on what has been completed to this point, discuss the changes that have occurred and the resulting delays and increased costs.

BACKGROUND:

In October 2014, the City applied to DRCOG for federal transportation funds available for fiscal years 2016 through 2021 to help fund a widening and improvement project on Wadsworth Boulevard from 35th Avenue to 48th Avenue. DRCOG awarded the Transportation Improvement Program (TIP) grant in October 2014.

The improvement of this segment of Wadsworth Boulevard has been a high priority for both CDOT and the City of Wheat Ridge for more than 20 years. Lack of available funding has been the primary reason for postponing improvements. With an earlier grant, a Planning and Environmental Linkage Study (PEL) was completed and adopted by Council on October 12, 2015. That study identified traffic congestion and safety issues, developed multi-modal solutions, and identified related environmental issues and mitigation measures that needed further assessment. The Final Recommended Alternative (FRA) from the PEL study identified the improvements needed to widen Wadsworth Boulevard between 35th and 48th Avenues to six travel lanes (including the major intersections at 38th and 44th Avenues), to provide additional turn lanes at key congested intersections, and install medians to better manage access. Bicycle and pedestrian facilities were also included to show service for additional modes of transportation.

On March 28, 2016, Council approved a contract with HDR to complete the survey, conceptual (30%) design and plans, and prepare the EA. Since that time, the consultant team, City staff and CDOT have been working to investigate and resolve the issues that were identified in the PEL - in particular, the need to improve the traffic capacity at the major intersections of 38th Avenue and 44th Avenues.

Most of the elements from the FRA are still intact and are moving forward; however, a couple of major items have changed or been added. The design of the major intersections has changed and a pedestrian connection has been added to the Clear Creek Trail. In addition, a couple of environmental issues have arisen that require additional time and effort to resolve.

City staff is administering the project, with reimbursement of 80% of the cost from the DRCOG TIP grant. Funding for this phase of the project was originally budgeted at \$1,500,000 in the 2016 Capital Improvement Program (CIP) and with CDOT. The original HDR contract that was approved by Council last March was for \$1,200,164 with a \$120,000 contingency. Due to delays in starting the project, only \$901,452 was spent in 2016. The City was reimbursed \$750,977. This is somewhat higher than 80% of the costs because the City was also reimbursed for its staff time spent in 2016. Because of the additional work to incorporate the FRA changes mentioned above, City staff recently authorized a scope and fee change that would use the entire contingency. Around half of this budget has been used for the EA portion of the work, with the remainder being used for the survey, design, and plans.

Design Updates

Major Intersections

In the FRA, the major intersections at 38th Avenue and 44th Avenue had a traditional design with double left turn lanes on all four legs of the intersection to improve capacity. After additional evaluation of those intersections, a design known as a continuous flow intersection (CFI) was determined to be the best solution to increase capacity and have the least impact to adjacent parcels. The CFI design was presented at a public meeting on August 10, 2016, with mostly positive feedback being received. This design is currently in the process of being confirmed by CDOT as the preferred alternative for review in the EA.

Clear Creek Trail Connection

A design modification that includes an Americans with Disabilities Act (ADA) compliant pedestrian and bicycle ramp connection to the Clear Creek trail on the east side of Wadsworth Boulevard has been included. The connection will replace the existing stairs that connect from the sidewalk adjacent to the east side of Wadsworth Boulevard to the Clear Creek Trail.

Environmental Issues

With additional work being done to evaluate potential environmental impacts, a couple of issues have arisen that have budget and schedule impacts.

Noise Walls

A couple of locations have been identified where it would be feasible to have high noise walls installed to reduce the impact on the adjacent multi-family properties. The next step in the process would be to determine if the walls are reasonable and constructible, and to ask the property owners if they want them.

Historical Properties Re-visitation

A recent determination by CDOT's historian (related to potentially historic properties along the corridor) will affect the scope and schedule of this project. Several properties must be re-visited, which will add an estimated five months to the project schedule due to the need to review the designations and evaluate if additional properties will also be identified as historic. If they are, there could be a substantial impact on the project's conceptual design and environmental analysis. Staff hopes to have a preliminary answer on the need for re-visitations by June.

Public Outreach to Date

Even though we have not given a formal update to Council since last March, staff has been actively engaging the public and various stakeholders over the last year.

Public Meetings

As required in the EA process a public scoping meeting was held on May 25, 2016, with an online public meeting, to re-introduce the project to the public and kick-off the EA portion of the work. Because of the change to CFIs at the major intersections, a special public meeting was held on August 10, 2016, also with an online public meeting, to introduce the concept of the CFI design.

Block-by-Block Meetings

Prior to the CFI public meeting, a round of block-by-block meetings were conducted on July 15, 2016. Four meetings were held with groups of property and business owners located along the corridor to preview the CFI design, share project updates, and address questions.

Property Owner Impact Meetings

On January 20 and 24, 2017, meetings were held with selected property owners along the corridor, who were expected to have substantial parking impacts based on the conceptual design. The designs were reviewed with the property owners and potential solutions to mitigate the impacts to their parking were discussed.

Ongoing Public Outreach

Three articles have been submitted for the Wheat Ridge Connections newsletter for publication. Two of the articles ran in last year's newsletters and the third will be included in the spring edition that was recently mailed. In addition, regular project updates have been added to the project website.

Funding

The DRCOG TIP grant totals \$31,600,000 with a federal share of \$25,380,000. The City's required match for that grant is \$6,320,000. Recently, the City was awarded a Highway Safety

Improvement Program (HSIP) grant for \$2,600,000 to construct the medians with a federal share of \$2,340,000. CDOT is covering the local match of \$260,000 because Wadsworth Boulevard is a state highway. This brings the total available non-City funding to \$27,880,000. In 2016, the City provided \$180,000 for the local match, with around \$30,000 being reimbursed for staff time. With the City's additional \$7,000,000 in 2E funding, this brings the total identified funding to \$35,060,000.

During the PEL, the total estimated budget was between \$40 and \$45 million. Updated cost estimates are currently being finalized based on the revised design. Draft estimates should be available in time to be presented to Council at this meeting. It appears that the ROW costs may be up to 50% higher and construction costs may be up to 25% higher than estimated in the PEL.

The City is responsible for providing the additional funding needed to complete the project. The City hopes to obtain funding for the remaining costs from a combination of sources, including the City, CDOT, and other sources yet to be determined.

Schedule

Due to the delays caused incorporating the CFIs and the additional environmental work, the original schedule has been delayed by several months. This year, we expect to complete the conceptual plans and the EA documentation. We hope to receive a decision document by mid-2018. The final design and right-of-way acquisition phases will start in early 2018 and should be completed by early 2019. The construction phase would start soon after, in the middle of 2019, with an expected completion date in mid-2021.

Next Steps

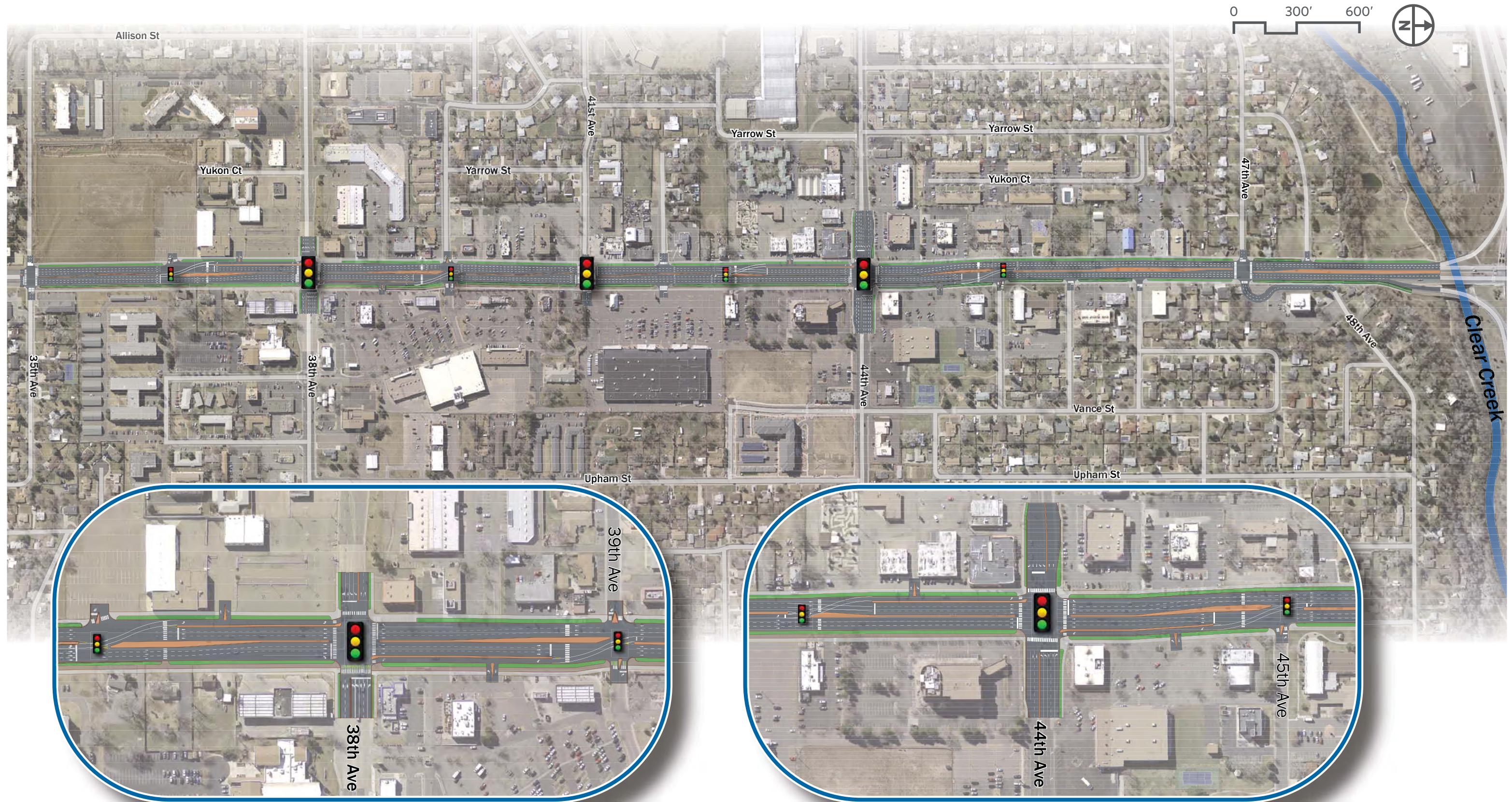
While the delay and additional work caused by changing the major intersections to CFIs was covered by the previously approved contingency, the delay and additional work caused by the historical re-visitation requires that a contract amendment be done. The scope and fee is currently being finalized with the consultant. It appears that the additional fee will be around \$180,000. This brings the total amount of this phase of the project up to the original estimated amount of \$1,500,000. If we can finalize the scope and fee in time, then we will bring the contract amendment to Council at their regular meeting on March 27, 2017.

ATTACHMENTS:

1. Wadsworth Blvd. Conceptual Design
2. Wadsworth PEL Fact Sheet
3. FAQ's and Project Overview

Wadsworth Blvd Conceptual Design

as of November 2016



*Traffic signals at 35th and 47th Avenues are still under consideration. Pedestrian crossing signals at 36th, 39th, 43rd and 45th Avenues are also still under consideration.

Attachment 1

Wadsworth PEL Fact Sheet

Background:

- The Wadsworth Planning and Environmental Linkages (PEL) study kicked off in February 2014 to study the area from 34th Avenue to Interstate-70 along Wadsworth.
- The study will help identify traffic congestion and safety issues, develop long-term roadway and multimodal improvements, and identify how future land use and redevelopment opportunities may affect future roadway improvements.
- Although Wadsworth is a state highway, the City has taken the lead on the project to ensure that the recommended designs are consistent with the City's overall vision for the corridor and City Center.

Project Purpose & Need (P&N):

- The purpose of this project is to transform Wadsworth from 34th Avenue to Interstate-70 into a multimodal facility that enhances regional mobility, provides local accessibility, and supports the vision of a livable, walkable mixed-use corridor.
- The needs or issues identified with this corridor are:
 1. Lack of adequate capacity
 2. Lack of access management
 3. Lack of multimodal access and accommodations
 4. Safety concerns

Screening Process:

- The project team developed a screening process which was built on input from resource agencies, stakeholders, and the public.
- The screening process consisted of three levels which narrowed 55 options into 10 alternatives, that were then analyzed quantitatively to develop the Final Recommended Alternative.

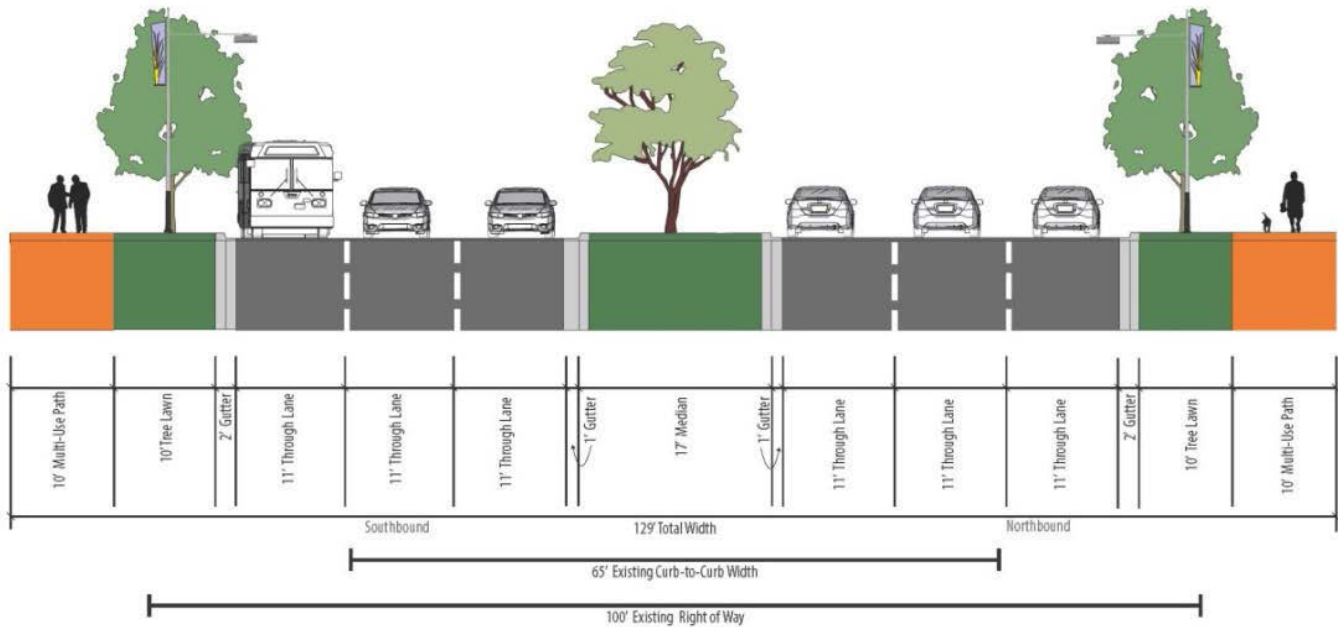
Final Recommended Alternative:

- Key elements of the final recommended alternative include three lanes of vehicle travel in each direction, landscaped medians, detached sidewalks with tree lawn buffers, cycle track, revised bus stop locations, double left turn lanes at 38th and 44th, and relocated traffic signals (see dimensions on back).
- These improvements will allow additional capacity that meet 2040 forecasts, provide safe access to all existing businesses, improve multimodal features (for transit users, bicyclists and pedestrians), and improve circulation and increase safety for all users.

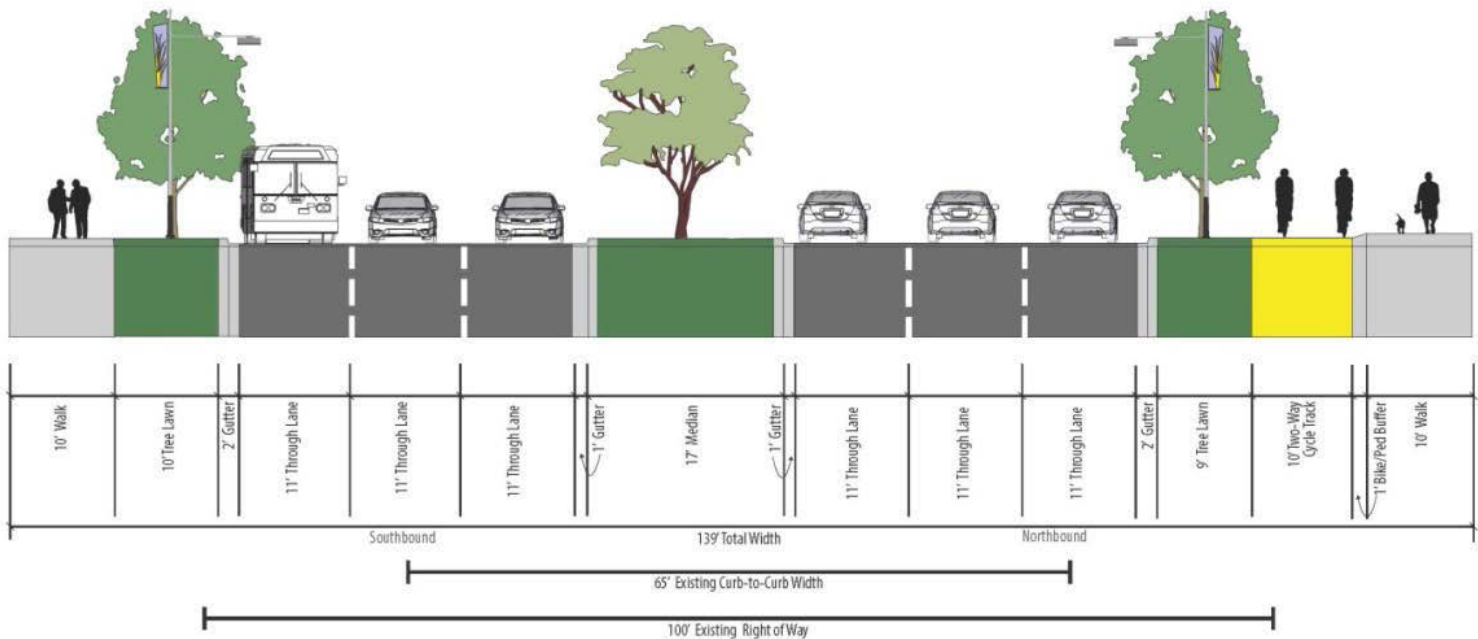


Final Recommended Cross Sections

Final Recommended Alternative North of 44th



Final Recommended Alternative South of 44th



Additional Information:

For more information about this project, or to provide a comment, visit the City's website at:

<http://www.ci.wheatridge.co.us/>

then click **Wadsworth PEL** in the Quick Links section.

Contact Information:

Mark Westberg, PE, CFM

City of Wheat Ridge

Projects Supervisor

303-235-2863

mwestberg@ci.wheatridge.co.us

FREQUENTLY ASKED QUESTIONS

Project Overview

The City of Wheat Ridge is studying the environmental impacts and preparing conceptual design plans for transportation improvements on Wadsworth Boulevard between 35th Avenue and I-70 (www.ci.wheatridge.co.us/wadsworth). Construction is projected to begin in 2019.

This project provides a special chance for Wheat Ridge to improve traffic operations, provide critical pedestrian and bicycle facilities and help improve the look and feel of this important gateway into the City. In 2015, the City secured a \$25 million TIP grant for this project offering a unique chance for Wheat Ridge to capitalize on a significant amount of federal funding to transform Wadsworth Boulevard into an effective state highway and a vibrant city center. But this money has strings – it was granted for use on the Wadsworth Widening project and cannot be put towards other City projects.

If the City cannot provide matching funds, or has to significantly alter the design on which the grant was based, the \$25 million dollars of funding will be forfeited back to other regional projects. If that occurs, any upgrades on Wadsworth would be left to Colorado Department of Transportation (CDOT). Currently CDOT's plans for Wadsworth are to overlay new asphalt in 2020 and to eventually upgrade the traffic signals. Neither of these would improve the congestion that plagues the roadway today. If CDOT does eventually widen Wadsworth, they will almost certainly include a center median but may not provide for the other local priorities such as bicycle and pedestrian facilities or the enhanced streetscape.

Project Benefit

WHAT BENEFITS WILL COME FROM THIS PROJECT?

The Wadsworth Boulevard Widening benefits include:

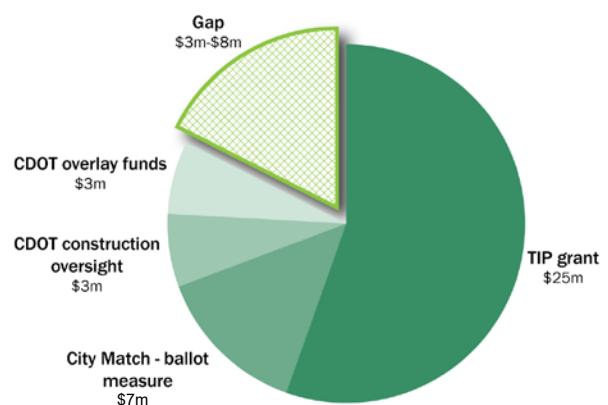
- Capacity improvements allowing a 52% increase in traffic throughput
- Average rush hour travel speeds that improve from 10 mph to 20 mph
- Two-way cycle track with bike-friendly connections to Clear Creek bikeway
- Continuous sidewalks along both sides of Wadsworth from 35th to Clear Creek Tail
- Improved transit facilities to complement RTD's increased frequency of bus route 76
- Enhanced streetscape with 10-feet of landscaped tree lawn

Project Funding

HOW HAS THIS PROJECT BEEN FUNDED?

The City of Wheat Ridge secured a Transportation Improvement Program (TIP) grant in 2015 which is dedicated for funding the improvements on Wadsworth Boulevard. These improvements have been developed with public input through a Planning and Environmental Linkages Study and the ongoing Environmental Assessment. This generous grant covers 55% of the anticipated costs of the project, as currently designed. The grant requires that Wheat Ridge provide matching funds of about \$7M, which may be funded through the ballot initiative 2E. Additionally, the Colorado Department of Transportation has agreed to provide funds for construction oversight for the project valued at about \$3 million dollars, and another potential \$3 million that would have otherwise been dedicated to a future pavement overlay on Wadsworth.

In total, this funding covers about 82% of the anticipated project costs, leaving a \$3-8 million dollar gap that the city is working to fill through additional funding and by identifying money-saving opportunities on the project design where possible.



Access

WILL BUSINESSES ON WADSWORTH LOSE CONVENIENT ACCESS?

Local businesses are important to the City, and the Wadsworth Widening project will be providing access to all existing businesses.

Most business accesses will change to right-in/right-out access due to the addition of a raised median on Wadsworth Boulevard but there will be at least five (5) breaks in the median between 35th Avenue and Interstate 70 where we expect to allow left turns and U-turns.

We are looking at the possibility of consolidating several access points to improve the operation of the roadway and to improve safety for bikes and pedestrians. Where that occurs we will also plan on developing cross-access agreements with those businesses to enhance vehicle circulation.

WILL CARS IN THE CONTINUOUS FLOW INTERSECTIONS (CFI) LEFT TURN LANE BE ABLE TO TURN INTO A BUSINESS ALONGSIDE?

We are still working with the Colorado Department of Transportation (CDOT) to determine if business access can be provided from the CFI left turn lanes.

Right-of-Way Impacts

COULD A SMALLER RECONSTRUCTION PROJECT ACHIEVE THE GOALS FOR WADSWORTH AS SET BY CDOT AND WHEAT RIDGE?

Through the entire planning process the City has sought the smallest possible roadway footprint. CDOT has agreed to 11-foot lanes in place of their standard 12 feet. The CFI design has allowed for a single left-turn lane instead of a double left turn lane. The current design with the CFIs at 38th and 44th provide the best traffic capacity with the least right-of-way width, while still meeting the other goals of the project.

The tree lawns, sidewalk, and bike path dimensions are based on the City streetscape guidelines and national standards.

WHAT ARE THE TYPICAL RIGHT OF WAY (ROW) ACQUISITION DIMENSIONS?

Based on the current design, which is still undergoing revisions:

Typical current ROW width	➤	100 feet
Typical proposed ROW width	➤	140 feet
Widest Part of ROW	➤	158 feet across
Average ROW needed on east side	➤	18 feet
Average ROW needed on west side	➤	25 feet

Where right-of-way is needed for the project, property owners are given just compensation for any land, building, improvements, or damages. State and federal guidelines dictate the process for right-of-way acquisition, the rights of property owners, and the definition of just compensation.

HOW MANY BUSINESSES WILL BE ACQUIRED DUE TO RIGHT OF WAY ACQUISITION?

In the PEL, the estimated total number of acquisitions was 10 properties. With additional design, the City has been able to decrease that to 3-4 businesses and 3-4 residential properties that will need to be acquired and relocated.

WILL BUSINESSES LOSE PARKING SPACES?

With the new sidewalk and tree lawns proposed in the project, many businesses will have their parking areas impacted. As part of the Environmental Assessment process the City is required to reasonably mitigate for any changes to their parking. We have invited property owners on the corridor to attend block-by-block meetings to discuss impacts to their properties and parking needs. Thus far, these conversations have been very productive and the City is confident it can find parking solutions for all the impacted property owners.

WILL BUSINESSES LOSE LANDSCAPING OR SIGNAGE ?

A goal of the project is to provide consistent street trees and tree lawn along the entire corridor which is lacking today. Anywhere that existing landscaping or signage needs to be removed, it will be replaced and/or property owners will be compensated.

Memorandum

TO: Mayor and City Council

FROM: Patrick Goff, City Manager

DATE: March 16 (for Study Session of March 20)

SUBJECT: Environmental Sustainability Committee

This item is being brought before the Council at the request of Mayor Joyce Jay and Councilmember George Pond. The general purpose of forming the Wheat Ridge Environmental Sustainability Committee (WESC) is to seek community involvement and input regarding effective programs and policies concerning environmental sustainability in the City of Wheat Ridge. The committee would serve as a forum to relay that feedback and provide recommendations to the City Council.

Wheat Ridge Environmental Sustainability Committee (WESC)

Purpose

The purpose of the Community Environmental Sustainability Committee (WESC) is to involve the community in recommending and prioritizing environmental sustainability goals for the City of Wheat Ridge municipal operations and other community-wide sustainability efforts. The committee will provide recommendations on effective environmental programs and policies to the City Council and will serve as a forum for the community to offer input concerning environmental sustainability within the following six topic areas:

- Green Building
- Education & Communication
- Energy Efficiency & Renewable Energy
- Solid Waste & Recycling
- Transportation
- Water

Mission

- Evaluating current City of Wheat Ridge sustainability practices and policies and creating metrics to track progress
- Providing advice, support, and guidance to the Mayor and City Council regarding sustainability, climate change, and environmental management issues
- Involve the community through engagement, outreach, and advocacy; supporting education, awareness, and stewardship
- Assisting the City and the community to identify, adopt, develop and implement plans, programs, policies, strategies, and action

Committee Membership

The WESC is comprised of nine members appointed by the Mayor and ratified by a vote of the City Council. Each Councilmember will be encouraged to nominate between three and five applicants for the Mayor's consideration. Primary consideration will be given to those applicants with environmental knowledge and/or interest with the aim of achieving a combination of experts and non-experts, reflecting the diversity of the community. The Mayor will give preference, where possible, to persons who are actively engaged with environmental sustainability issues. The Committee will serve for an initial, limited 6-month period.

Direction from City Council Requested

Confirm the desire to move forward with this commission; provide consensus on intent and mission, duration, and participation.

Memorandum

TO: Mayor and City Council

THROUGH: Patrick Goff, City Manager

FROM: Joyce Manwaring, Parks and Recreation Director

DATE: March 20, 2017

SUBJECT: Founders' Park Sculpture Deaccessioning Recommendation

ISSUE:

The Parks and Recreation Department has recently received requests to replace the public art sculpture located at Founders' Park with some type of playground equipment.

The original intent of the artwork was to provide a piece that was interactive or "playable". For a variety of reasons, the main one being liability and safety, this "playable" concept was not successful. The area has been signed "The Sculpture in the Park is not a play structure".

BACKGROUND:

The original intent of the artwork was to provide a piece that was interactive or "playable". The intent of deaccessioning was to provide:

- Expanded opportunities for use of this park such as an alternative installation that provides a more appealing and functional play experience for the community
- A play experience that meets playground safety codes

A deaccessioning committee was formed. The Committee met February 28, 2017 to discuss the issue. The Committee voted in favor of deaccessioning 5-1 (summary meeting notes attached).

The item then went to the Cultural Committee meeting for approval. The Cultural Committee did not approve the recommendation and voted not to deaccession the work (vote was 5-2). The letter from Cultural Commission Chair is attached.

STAFF RECOMMENDATION:

No further action is required at this time. The sculpture will stay in place unless further action is requested by City Council.

ATTACHMENTS:

- 1) Letter from Cultural Committee Chair
- 2) Summary Meeting Notes Deaccessioning Committee

March 20, 2017

Mayor and City Council,

The Public Art Management Plan has a procedure to lead us through the process of reviewing public art for possible deaccession. The process is for a Deaccessioning Review Committee to make a recommendation to the Cultural Commission which is then to confirm that the deaccessioning process was followed and to review the recommendation from the committee. The Cultural Commission then makes a recommendation to the City Council.

The Founders' Park Deaccessioning Review Committee met on February 28, 2017 and made the recommendation to deaccess the public art piece titled *What Has Stood Shall Always Be*. During the regular meeting of the Cultural Commission on March 8th Joyce Manwaring presented the results from the Deaccessioning Review Committee and the reasons for DE accessing were summarized by the following points:

1. The City's desire to provide expanded opportunities for use of this park such as an alternative installation that provides a more appealing and functional play experience for the community. This need has been identified through annual review of park amenities.
2. The artwork was originally intended to be a play sculpture. Due to design the sculpture did not meet this requirement. This was confirmed by insurance evaluation and compliance with Certified Playground Safety Standards. Therefore it did not and is not fulfilling expectations. The rocks are a safety hazard to climb on and the area is signed "The sculpture in the park is not a play structure".

During the Cultural Commission meeting there was a lengthy, lively discussion including members of the Commission and input from a private citizen from District 1 that utilizes this park on a regular basis. The Cultural Commission voted to not deaccession this sculpture.

1. This park has always been intended to be a passive park and a playground is not consistent with this passivity. Parks play many different roles in a community and it is okay for every park to not have playground equipment.
2. Yes, the artwork was originally intended to be a climbable sculpture, and yes, safety has to always be a priority. The city, through the Public Art Management Plan, originally approved this design. A few minor changes were made (rocks being moved closer together) and this public art sculpture has been in place for 10 years. In these 10 years there have been no safety incidents reported. Because the sculpture does not meet the Certified Playground Safety Standards a sign has been placed to warn people not to climb this sculpture. This passive park has enjoyed a public art sculpture for the past 10 years and it should continue to be a piece of public art that enhances this passivity.

It is the Cultural Commission recommendation to not deaccess this public art sculpture.

Regards,

Diane Robb, Chair, Wheat Ridge Cultural Commission

SUMMARY
Founders' Park Deaccessioning Review Committee
Meeting
Wheat Ridge Recreation Center
February 28, 2017

In attendance: David Feiertag (Parks and Recreation Commission member and District I resident), Joyce Manwaring* (Parks and Recreation Director), Deana Miller (Professional Arts Administrator), Rick Murray* (Parks, Forestry and Open Space Manager), Susie Seeds* (neighbor), Jill Shannon (Wheat Ridge Cultural Commission member), Susanne Teale (Landscape Architect)

*Members of the original Art Selection Committee for this project

Guest: Joshua Wiener, Artist

Facilitator: Barbara Neal (Public Art Consultant)

Note: Founders' Park, completed in 2003, was designed to focus on natural beauty and be a contemplative setting for passive recreation. It had been a brownfields site and the footprint occupied by the sculpture, entitled *What has stood shall always be*, has been remediated and is designated as safe for play. This sculpture by Joshua Wiener was commissioned for Founders' Park by the Wheat Ridge Cultural Commission in 2004 with Open Space funding in the amount of \$35,000. It was installed in 2005.

After a welcome and introductions, Joyce reminded the committee that they had previously received briefing materials including the Call for Entry for this public art project, the Deaccessioning section of the Public Art Management Plan and the Memorandum to City Council announcing that a deaccessioning process is being started. Joyce reviewed the protocol and process for discussion in accordance with the Public Art Management Plan procedures for deaccessioning a piece of public art.

Barbara expressed appreciation for the participation of the committee members. She noted that this deaccession process is seldom initiated and is a serious undertaking. It is designed to ensure that if public artwork is considered for removal, it's not done in a careless or arbitrary way. The Conflict of Interest Policy guides this meeting as does the practice of confidentiality.

Joyce presented the statement of the issue with a PowerPoint detailing the reasons for deaccessioning. The issues noted with this sculpture are:

- The City's desire to provide expanded opportunities for use of this park such as an alternative installation that provides a more appealing and functional play experience for the community. This need has been identified through annual review of park amenities.
- The artwork was originally intended to be a play sculpture. Due to design the sculpture did not meet this requirement. This was confirmed by insurance evaluation and compliance with Certified Playground Safety Standards. Therefore it did not and is not fulfilling expectations. The rocks are a safety hazard to climb on and the area is signed "The sculpture in the park is not a play structure."

There have been a few unspecified safety concerns and requests from the public to remove the sculpture.

Discussion of the issues followed and the comments included:

- The sculpture should stay. If people are concerned about safety they can take their children or grandchildren to another nearby park to play. Safety is a personal responsibility.
- Whether there are other playgrounds available is not the issue. This sculpture does not meet playground safety requirements. This hazard has been a challenge for a number of years.
- It's not easily interactive; could the artwork be modified to make it safer?
- The condition of the sculpture makes it not playable.
- It's not an issue of maintenance; liability is the big issue.
- The artwork doesn't serve the intent of either the artist or the public.
- Although there does not seem to be large number of complaints about the sculpture from the public, the fact that there have been annual evaluations from parks and safety professionals questioning the safety is a strong case for deaccessioning. This situation fits the criteria for deaccessioning.
- It is art and we're reluctant to lose it.
- Deaccession is no longer a bad word; in many situations circumstances arise that necessitate deaccessioning artwork. It must be done thoughtfully and with respect for the artist and the artwork.

Joyce stated that the City has designated \$100,000 for the removal and installation of an alternative play option that is consistent with the contemplative character of this park. While this was not a topic to be considered by this committee, she noted there would be opportunities for public input in determining what the replacement should be.

Barbara briefed the committee on the next steps. If the committee votes to retain the sculpture, the deaccessioning process stops immediately. If the committee votes to deaccession the sculpture, the process going forward would be to send the committee's recommendation to the Wheat Ridge Cultural Commission on March 8th. Their role is (1) to confirm that the deaccessioning process was followed properly and (2) to review the recommendation from the committee. After review, the Commission would forward that recommendation to City Council for action.

After listening to the discussion, Josh made a brief comment acknowledging the committee's deliberations. He then left the room.

Each member of the committee was asked to make final comments and/or questions. Following this, a vote was taken on recommendation to deaccession. There were five votes in favor of deaccessioning and one vote opposed. This recommendation will be sent to the Wheat Ridge Cultural Commission.

Barbara gave great thanks to the committee for their thoughtful, considerate deliberations on the difficult issue of deaccessioning.

Barbara Neal
Public Art Consultant
February 28, 2017