

STUDY SESSION AGENDA

CITY COUNCIL CITY OF WHEAT RIDGE, COLORADO

7500 W. 29th Ave.
Wheat Ridge CO

December 18, 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 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

Citizen Comment on Agenda Items

1. Residential Height Limitations in R1-C
2. Marijuana Research & Development Licenses
3. Sign Code Regulations
4. Freestanding Emergency Rooms
5. Staff Report(s)
6. Elected Officials' Report(s)

ADJOURNMENT

Memorandum

TO: Mayor and City Council

FROM: Kenneth Johnstone, Director of Community Development

THROUGH: Patrick Goff, City Manager

DATE: December 8, 2017 (for December 18 study session)

SUBJECT: Residential Building Height in R-1C

BACKGROUND:

City staff began researching the topic of residential bulk plane and residential building heights in early 2016. This research was initiated, in part, based on citizen responses to recent infill residential development, in particular on the City's east side. Historically, the City has regulated the development of single- and two-family homes based on setbacks from property lines, maximum lot coverage, and maximum building heights.

After a series of study sessions and public hearings from July to November 2016, another regulatory tool was introduced, and bulk plane regulations were adopted in the R-1C and R-3 zone districts. They became effective November 21, 2016.

At the October 23, 2017 City Council meeting, Council directed City Staff to create a web-based survey tool to gauge resident preferences related to the development of single- and two-family homes in Wheat Ridge. This survey was published on Survey Monkey and included questions developed by Council members as well as City staff. The survey was available for just over two weeks from Friday, November 3, 2017 to Sunday, November 19, 2017.

At a City Council study session on November 20, 2017, the results of the survey were shared with City Council, and the Council provided the following direction:

- Discuss height limitations in the R-1C zone district at a future study session,
- Update the Neighborhood Revitalization Study in 2018 to provide a vision and policy direction before any potential modification of residential development standards, and
- Include questions in the 2018 Citizen Survey related to height, bulk plane, accessory dwelling units, and short-term rentals.

The purpose of this memo is to discuss height limitations in the R-1C zone district and the possibility of reducing the maximum building height from 35 to 25 feet.

Residential-One C (R-1C) Zone District

There are eight (8) standard residential zone districts in the City, and the R-1C zone district is considered the smallest-lot single-family zone district. Permitted uses only allow for construction of single-family homes. The minimum lot standard for a single-family home in R-1C is 5,000 square feet in area and 50 feet in width.

R-1C comprises only 4% of land area City wide or about 1,096 properties. Zoning designations do not follow orderly geographic boundaries in Wheat Ridge, so R-1C zoning is present in several locations in the City as shown in Attachment 1. About 74% of all R-1C properties are located in City Council District I. R-1C is second most common zoning in District I, but several other zone districts are also present in this area (see Attachment 2). R-1C is the predominant zoning between 26th Avenue, Harlan, 38th Avenue, and Sheridan.

Residential Building Height

Since the City of Wheat Ridge incorporated in 1969, the maximum building height in all residential zone districts has been 35 feet as measured to the highest point of flat roof and the average height of a hip or gable roof. This height limit has occasionally been discussed, but no code amendment has ever been considered by City Council or Planning Commission.

The City's 35-foot residential height limitation is relatively consistent with neighboring communities, whose height limitations are summarized below:

- Arvada: 35-foot maximum for single-family and duplex homes, measured to the highest point of flat roof and average height of a hip or gable roof
- Lakewood: 35-foot maximum height for single-family and duplex homes, measured to the highest point of a flat, hip, or gable roof
- Edgewater:
 - 28-foot maximum height for single-family homes on small lots, to top of pitched roof
 - 25-foot maximum height for single-family homes on small lots, to top of flat roof
 - 35-foot maximum height for duplex homes on 7500 sf lots, to highest point
 - 35-foot maximum height for single-family homes on larger lots, to highest point
- Denver: 30 to 35-foot maximum height (for the neighborhoods adjacent to Wheat Ridge) based on lot width and measured to the highest point

Implications

Modifications to residential development standards should consider both the desired development pattern and scale and the impact to developable lot area. For the purpose of this analysis, staff has used the residential construction assumptions listed below and shown in Figure 1:

- Foundation height above grade – can vary, assumed 1 foot, but could be more
- Floor to ceiling height – often 9 to 10 feet for the 1st floor for new construction and 8-9 feet for upper floors, assumed 9 and 8 feet respectively
- Floor joist height – 10 to 14 inches, assumed 12 inches
- Roof pitch – 6/12 to 12/12 pitch, assumed 6-7/12

Based on these standards, a total height of 32 feet at the peak is common for two-story residential construction.

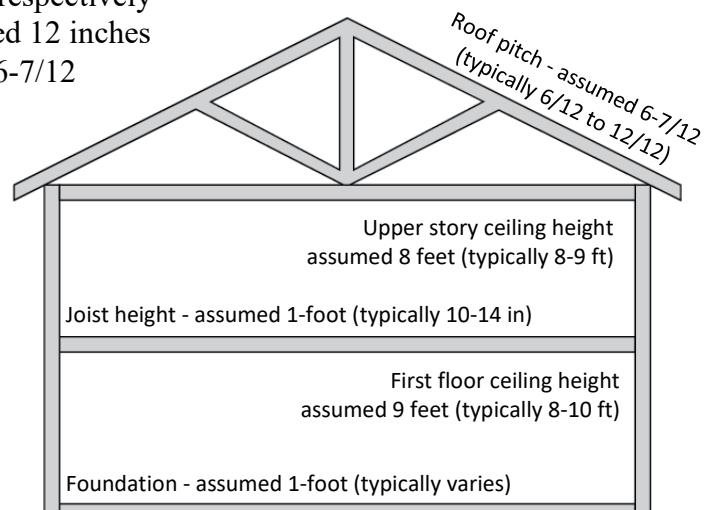
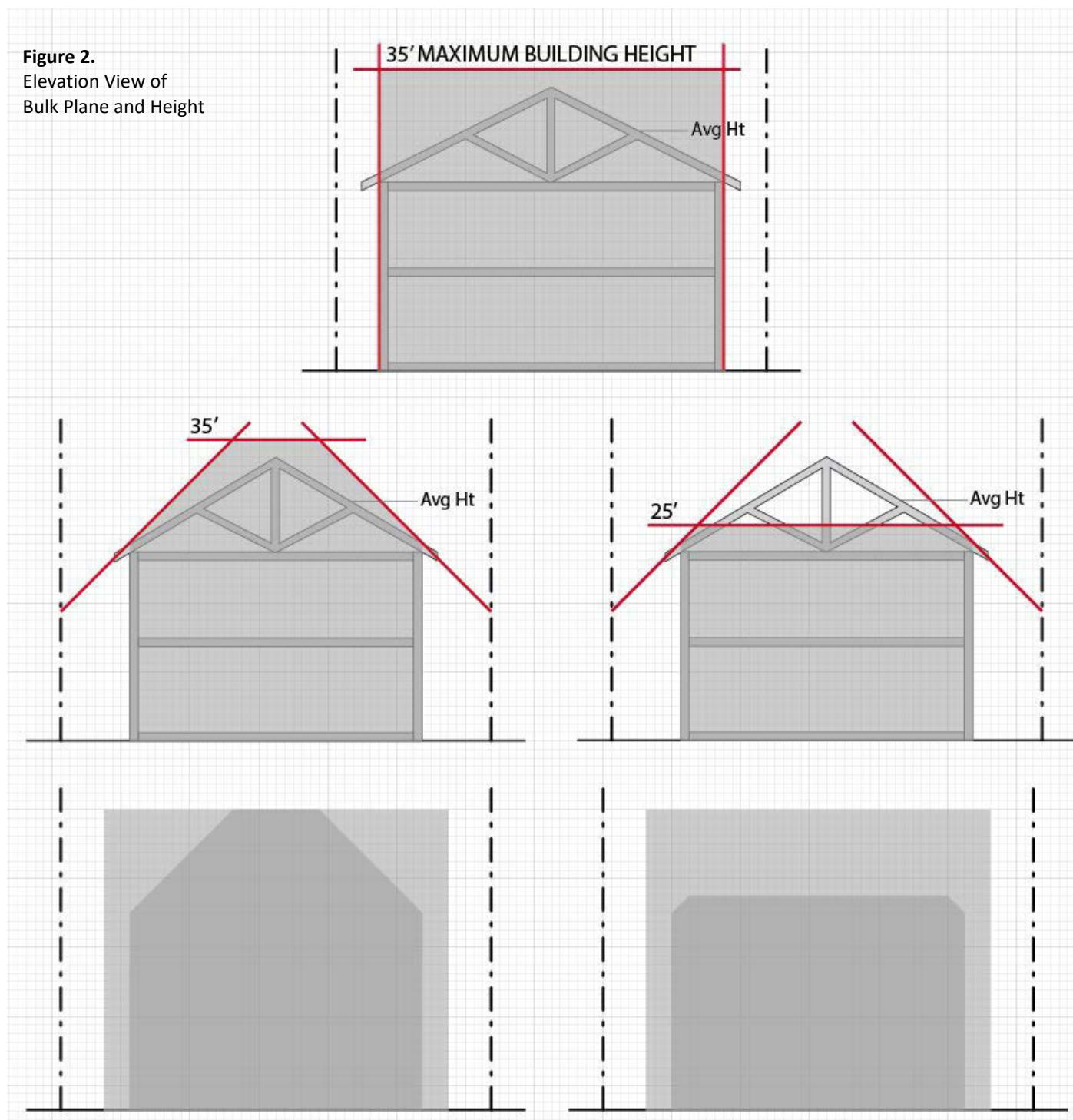


Figure 1.
Typical Residential
Construction Dimensions

The 2016 addition of the bulk plane in the R-1C and R-3 zone districts added a diagonal limit on construction. For a two-story home on a typical 50-foot wide R-1C lot, the vertical developable area was reduced by 25% with the addition of the bulk plane (see **Figure 2** below). The ability to construct a two-story home would be impacted if the maximum allowable height is lowered to 25 feet.

Figure 2.
Elevation View of
Bulk Plane and Height



The addition of the bulk plane requires that two-story homes have increased setbacks. The bulk plane reduces the developable area for two-story homes by 25% as shown by the gray shading in the bottom left.

A height limitation of 25 feet reduces the developable area by 40% as shown by the gray shading in the bottom right and impacts the ability to construct a two-story home.

As previously discussed in 2016 and early 2017 the bulk plane already impacts the horizontal developable area of a lot by requiring increased setbacks for structures taller than one-story. These are provided for reference in **Attachment 3**.

Survey Results

As noted above, the Houses in Wheat Ridge survey results were presented at the November 20 City Council study session. Several questions related specifically to residential building height and those questions and responses are provided below for all respondents and for District I. These responses would indicate there is not support for prohibiting two-story construction. There is less consensus among survey respondents regarding three-story construction and height modifications.

To what extent would you support the City lowering the maximum height limitation to make it more strict?

<i>Response</i>	<i>All Respondents</i>		<i>District I Respondents</i>	
	<i>#</i>	<i>%</i>	<i>#</i>	<i>%</i>
<i>Strongly support</i>	42	18.0	23	25.6
<i>Support</i>	36	15.5	10	11.1
<i>Neutral</i>	38	16.3	13	14.4
<i>Don't support</i>	57	24.5	22	24.4
<i>Strongly don't support</i>	59	25.3	22	24.4
<i>I don't understand</i>	1	0.4	0	0
<i>Total</i>	233	100	90	100

For single-family homes and duplexes, should the City prohibit the construction of TWO-STORY homes?

<i>Response</i>	<i>All Respondents</i>		<i>District I Respondents</i>	
	<i>#</i>	<i>%</i>	<i>#</i>	<i>%</i>
<i>Yes</i>	10	4.3	3	3.3
<i>No</i>	196	84.1	76	84.4
<i>Maybe</i>	27	11.6	11	12.2
<i>Total</i>	233	100	90	100

For single-family homes and duplexes, should the City prohibit the construction of THREE-STORY homes?

<i>Response</i>	<i>All Respondents</i>		<i>District I Respondents</i>	
	<i>#</i>	<i>%</i>	<i>#</i>	<i>%</i>
<i>Yes</i>	98	42.1	42	46.7
<i>No</i>	88	37.8	30	33.3
<i>Maybe</i>	47	20.2	18	20.0
<i>Total</i>	233	100	90	100

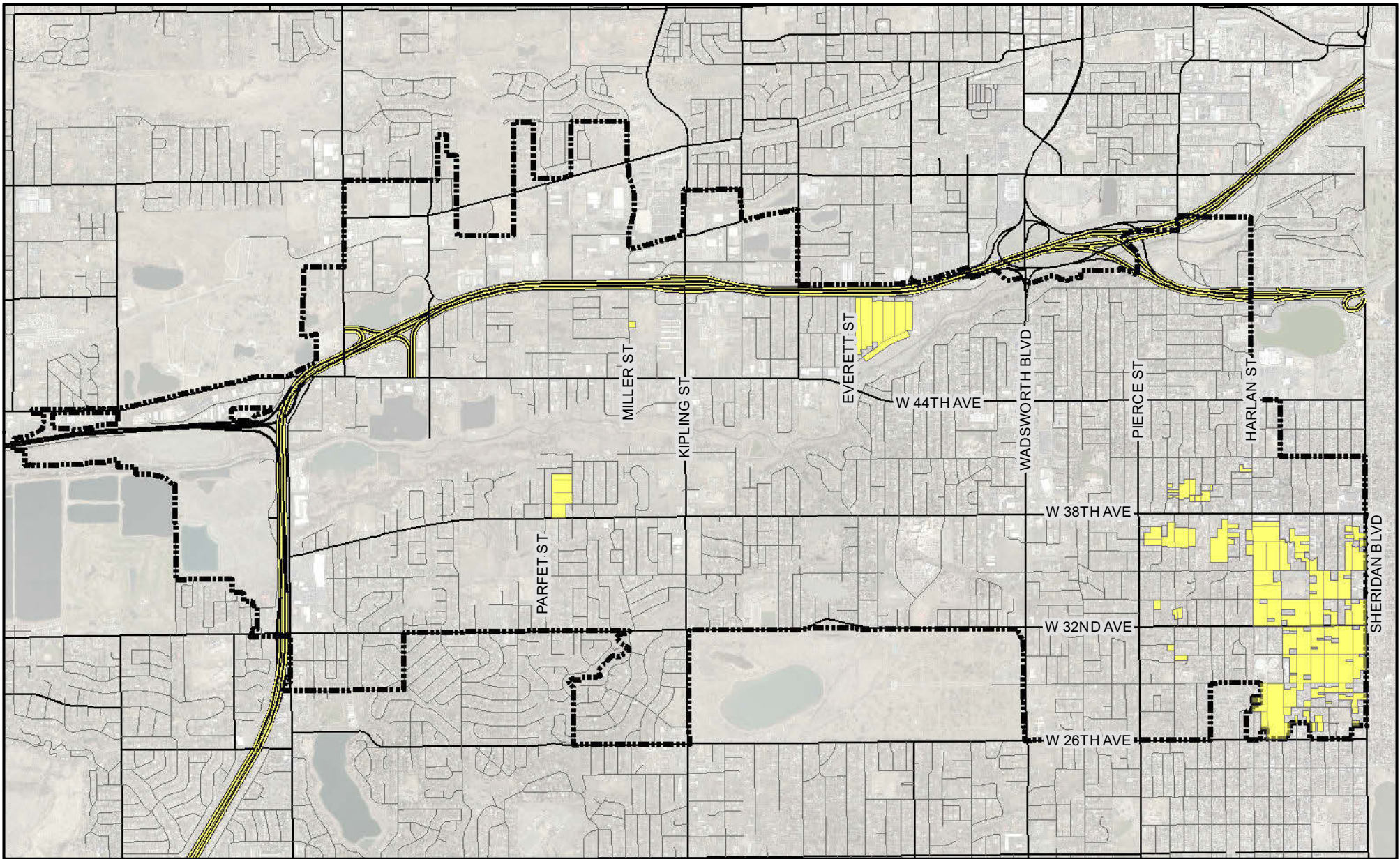
NEXT STEPS:

If there is a desire to further limit the building height in the R-1C zone district or elsewhere, there are two options:

- Amend the R-1C development standards to limit the maximum height, or
- Limit one- and two-family construction height in a specific geographic area (regardless of zoning) by establishing an overlay regulation.

ATTACHMENTS:

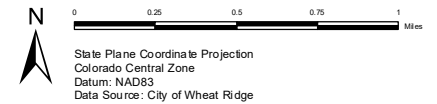
1. R-1C zoning map
2. Citywide zoning map
3. Site plan views of bulk plane impacts



City of Wheat Ridge
7500 West 29th Avenue
Wheat Ridge, CO 80033
303.234.5900

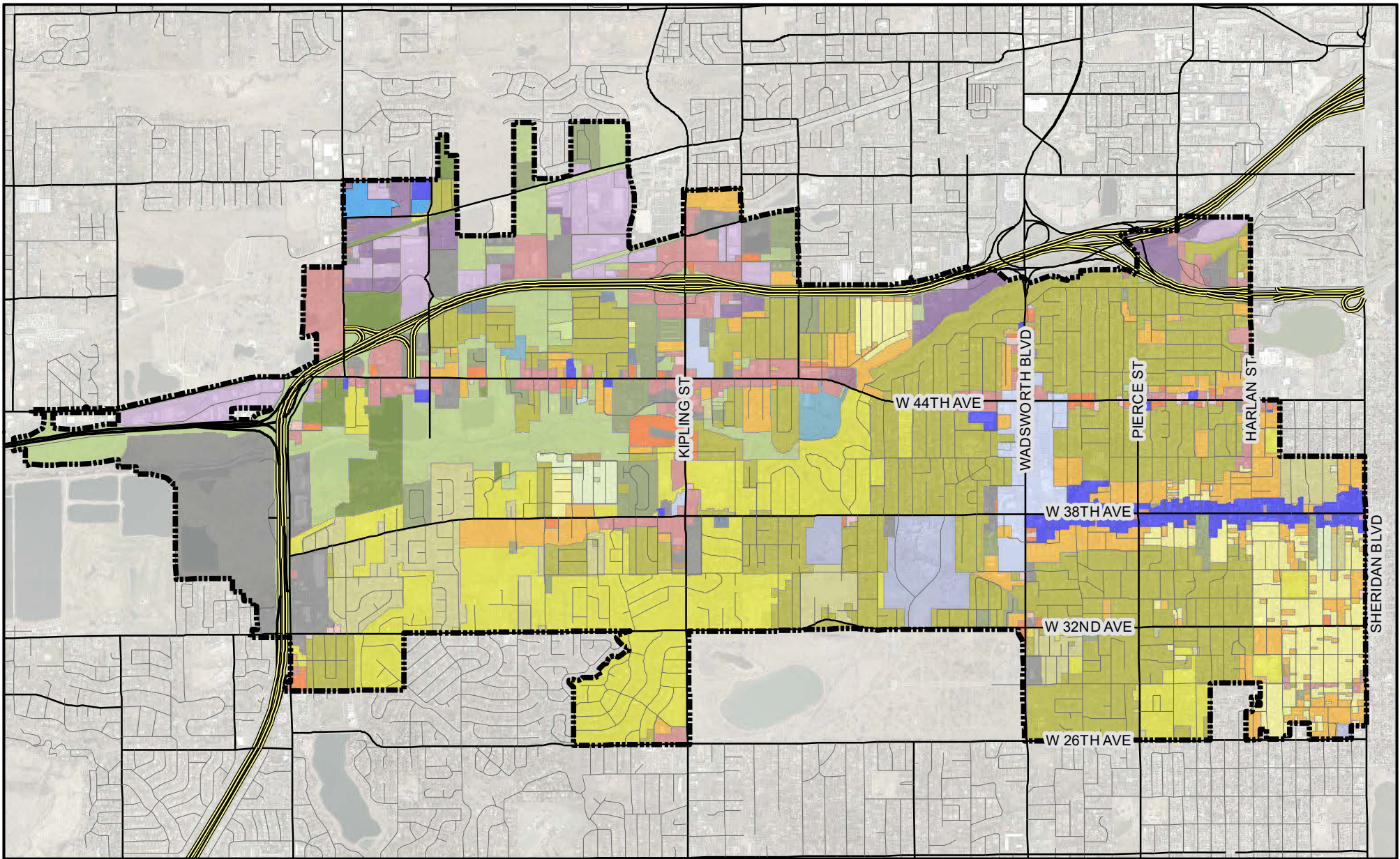


Wheat Ridge Municipal Boundary
Residential-One C (R-1C) Zoning



DISCLAIMER NOTICE:
This is a pictorial representation of geographic and demographic information. Reliance upon the accuracy, reliability and authority of this information is solely requestor's responsibility. The City of Wheat Ridge, in Jefferson County, Colorado - a political subdivision of the State of Colorado, has compiled for its use certain computerized information. This information is available to assist in identifying general areas of concern only. The computerized information provided should only be relied upon with corroboration of the methods, assumptions, and results by a qualified independent source. The user of this information shall indemnify and hold free the City of Wheat Ridge from any and all liabilities, damages, lawsuits, and causes of action that result as a consequence of his reliance on information provided herein.

ATTACHMENT 1



City of Wheat Ridge
7500 West 29th Avenue
Wheat Ridge, CO 80033
303.234.5900

ATTACHMENT 2



Wheat Ridge Municipal Boundary



0 0.25 0.5 0.75 1 Miles

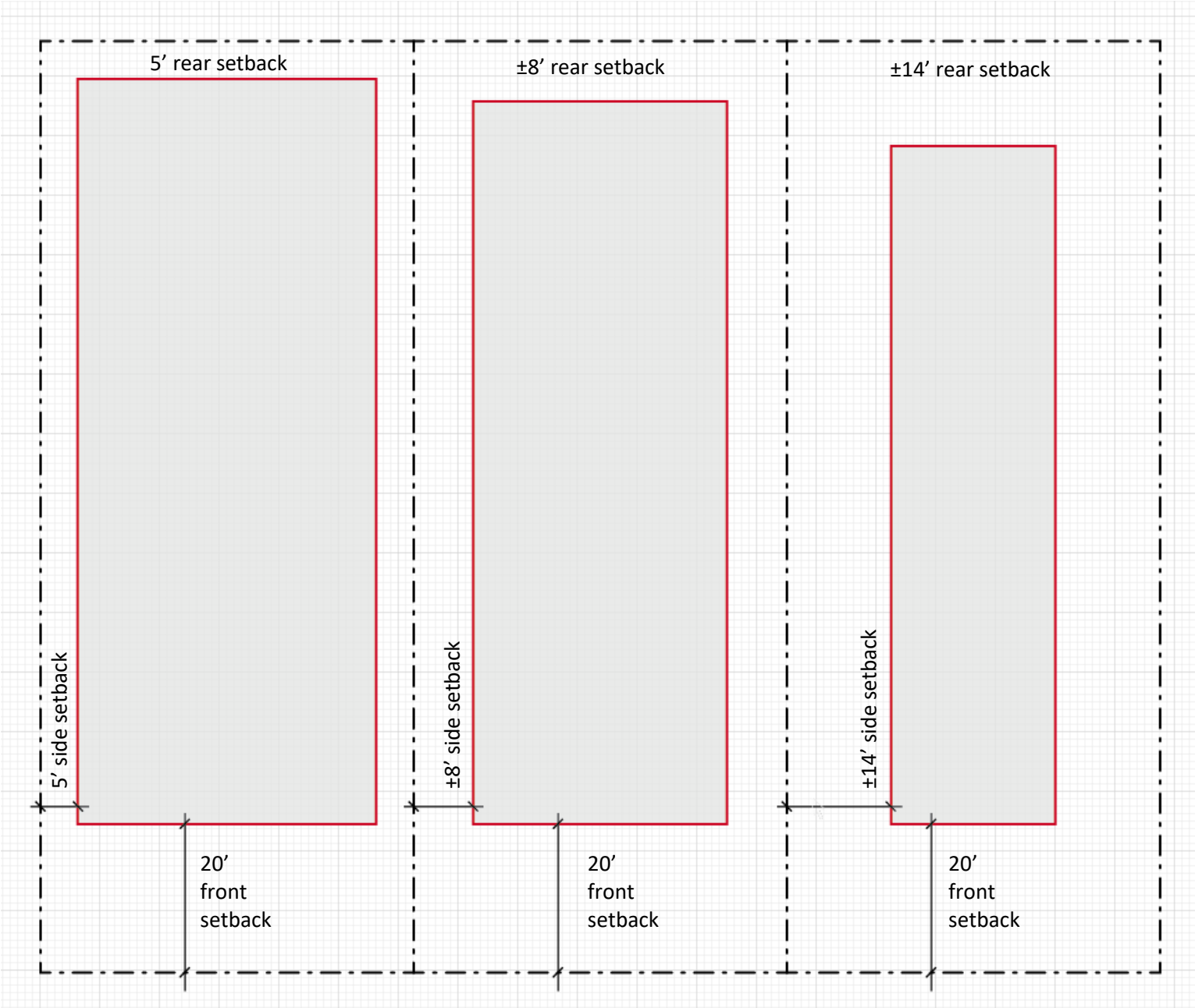
State Plane Coordinate Projection
Colorado Central Zone
Datum: NAD83
Data Source: City of Wheat Ridge

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Exhibit 3 – Site plan view of bulk plane impact

The image below shows the impact of the current bulk plane regulations on typical 50' x 125' R-1C lots. Because the bulk plane adds a diagonal limit on construction, setbacks increase as construction gets taller.



Pre-bulk plane or
One-story with bulk plane

Lot size: 50' x 125'
Lot area: 6,250 sf

Buildable lot size: 40' x 100'
Buildable area: 4,000 sf

Two-story with bulk plane

Lot size: 50' x 125'
Lot area: 6,250 sf

Buildable lot size: 34' x 97'
Buildable area: 3,298 sf

Three-story with bulk plane

Lot size: 50' x 125'
Lot area: 6,250 sf

Buildable lot size: 22' x 91'
Buildable area: 2,002 sf



ATTORNEYS AT LAW

MEMORANDUM

TO: Mayor Starker and Members of the City Council
CC: Patrick Goff, City Manager
FROM: Carmen Beery
Gerald E. Dahl
DATE: December 8, 2017
RE: Marijuana Research & Development Licenses

During the 2017 legislative session, the state legislature adopted HB 17-1367, creating and authorizing two new types of marijuana-related licenses: (1) the marijuana research and development license ("R&D License"); and (2) the marijuana research and development cultivation license ("R&D Cultivation License"). A copy of that Bill is attached for your reference.

As their names suggest, R&D Licensees are authorized to conduct clinical research and development of marijuana and marijuana-products; R&D Cultivation Licensees are authorized to grow marijuana *solely* for R&D purposes (not for retail sale or consumption).

These new license types are not currently expressly authorized and recognized by the Wheat Ridge Code of Laws ("Code"). As such, they are not currently authorized to locate and operate in the City of Wheat Ridge. Code Sec. 11-404(d).

At your December 18 study session, I will seek your direction on the threshold question: Does Council wish to consider an ordinance that allows these new license types to locate in the City? Depending on the answer to this threshold question, our office will perform additional research and drafting of legislation, as necessary. I will attend your December 18 meeting to discuss this with you further and answer additional questions that you may have at that time.

An Act

HOUSE BILL 17-1367

BY REPRESENTATIVE(S) Pabon and Arndt, Ginal, Gray, Hansen, Herod, Hooton, Jackson, Kennedy, Kraft-Tharp, Lebsock, Lontine, Melton, Michaelson Jenet, Pettersen, Rosenthal, Singer, Duran;
also SENATOR(S) Jahn and Baumgardner, Coram, Crowder, Hill, Holbert, Kefalas, Neville T., Smallwood, Sonnenberg, Grantham.

CONCERNING MARIJUANA RESEARCH AUTHORIZATION, AND, IN
CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-43.3-202, **amend** (2)(a) introductory portion, (2)(a)(XX), and (2)(a)(XXI); and **add** (2)(a)(XXII) as follows:

12-43.3-202. Powers and duties of state licensing authority - rules. (2) (a) Rules promulgated pursuant to ~~paragraph (b) of subsection~~ ~~(1)~~ **SUBSECTION (1)(b)** of this section may include, but need not be limited to, the following subjects:

(XX) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this ~~article~~, and **ARTICLE 43.3**;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(XXI) The parameters and qualifications of an indirect beneficial interest owner and a qualified limited passive investor;

(XXII) MARIJUANA RESEARCH AND DEVELOPMENT LICENSES AND MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSES, INCLUDING APPLICATION REQUIREMENTS; RENEWAL REQUIREMENTS, INCLUDING WHETHER ADDITIONAL RESEARCH PROJECTS MAY BE ADDED OR CONSIDERED; CONDITIONS FOR LICENSE REVOCATION; SECURITY MEASURES TO ENSURE MARIJUANA IS NOT DIVERTED TO PURPOSES OTHER THAN RESEARCH; THE AMOUNT OF PLANTS, USEABLE MARIJUANA, MARIJUANA CONCENTRATES, OR MARIJUANA-INFUSED PRODUCTS A LICENSEE MAY HAVE ON ITS PREMISES; LICENSEE REPORTING REQUIREMENTS; THE CONDITIONS UNDER WHICH MARIJUANA POSSESSED BY MEDICAL MARIJUANA LICENSEES MAY BE DONATED TO MARIJUANA RESEARCH AND DEVELOPMENT LICENSEES AND MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEES; PROVISIONS TO PREVENT CONTAMINATION; REQUIREMENTS FOR DESTRUCTION OF MARIJUANA AFTER THE RESEARCH IS CONCLUDED; AND ANY ADDITIONAL REQUIREMENTS.

SECTION 2. In Colorado Revised Statutes, 12-43.3-301, **amend** (1)(d); and **add** (1)(g) and (1)(h) as follows:

12-43.3-301. Local licensing authority - applications - licenses.

(1) A local licensing authority may issue only the following medical marijuana licenses upon payment of the fee and compliance with all local licensing requirements to be determined by the local licensing authority:

(d) A medical marijuana testing facility license; ~~and~~

(g) A MARIJUANA RESEARCH AND DEVELOPMENT LICENSE; AND

(h) A MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSE.

SECTION 3. In Colorado Revised Statutes, 12-43.3-401, **amend** (1) introductory portion; and **add** (1)(g) and (1)(h) as follows:

12-43.3-401. Classes of licenses. (1) For the purpose of regulating the cultivation, manufacture, distribution, and sale of medical marijuana,

the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license from any of the following classes, subject to the provisions and restrictions provided by this ~~article~~ ARTICLE 43.3:

(g) MARIJUANA RESEARCH AND DEVELOPMENT LICENSE; AND

(h) MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSE.

SECTION 4. In Colorado Revised Statutes, add 12-43.3-409 as follows:

12-43.3-409. Marijuana research and development license - marijuana research and development cultivation license - definition.

(1) (a) A MARIJUANA RESEARCH AND DEVELOPMENT LICENSE MAY BE ISSUED TO A PERSON TO POSSESS MARIJUANA FOR THE LIMITED RESEARCH PURPOSES IDENTIFIED IN SUBSECTION (2) OF THIS SECTION.

(b) A MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSE MAY BE ISSUED TO A PERSON TO GROW, CULTIVATE, POSSESS, AND TRANSFER, BY SALE OR DONATION, MARIJUANA PURSUANT TO SECTION 12-43.3-202 (2)(a)(XXII) OR SUBSECTION (4) OF THIS SECTION FOR THE LIMITED RESEARCH PURPOSES IDENTIFIED IN SUBSECTION (2) OF THIS SECTION.

(2) A LICENSE IDENTIFIED IN SUBSECTION (1) OF THIS SECTION MAY BE ISSUED FOR THE FOLLOWING LIMITED RESEARCH PURPOSES:

(a) TO TEST CHEMICAL POTENCY AND COMPOSITION LEVELS;

(b) TO CONDUCT CLINICAL INVESTIGATIONS OF MARIJUANA-DERIVED MEDICINAL PRODUCTS;

(c) TO CONDUCT RESEARCH ON THE EFFICACY AND SAFETY OF ADMINISTERING MARIJUANA AS PART OF MEDICAL TREATMENT;

(d) TO CONDUCT GENOMIC, HORTICULTURAL, OR AGRICULTURAL RESEARCH; AND

(e) TO CONDUCT RESEARCH ON MARIJUANA-AFFILIATED PRODUCTS OR SYSTEMS.

(3) (a) AS PART OF THE APPLICATION PROCESS FOR A MARIJUANA RESEARCH AND DEVELOPMENT LICENSE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSE, AN APPLICANT SHALL SUBMIT TO THE STATE LICENSING AUTHORITY A DESCRIPTION OF THE RESEARCH THAT THE APPLICANT INTENDS TO CONDUCT AND WHETHER THE RESEARCH WILL BE CONDUCTED WITH A PUBLIC INSTITUTION OR USING PUBLIC MONEY. IF THE RESEARCH WILL NOT BE CONDUCTED WITH A PUBLIC INSTITUTION OR WITH PUBLIC MONEY, THE STATE LICENSING AUTHORITY SHALL GRANT THE APPLICATION IF IT DETERMINES THAT THE APPLICATION MEETS THE CRITERIA IN SUBSECTION (2) OF THIS SECTION.

(b) IF THE RESEARCH WILL BE CONDUCTED WITH A PUBLIC INSTITUTION OR PUBLIC MONEY, THE SCIENTIFIC ADVISORY COUNCIL ESTABLISHED IN SECTION 25-1.5-106.5 (3) SHALL REVIEW AN APPLICANT'S RESEARCH PROJECT TO DETERMINE THAT IT MEETS THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION AND TO ASSESS THE FOLLOWING:

(I) THE PROJECT'S QUALITY, STUDY DESIGN, VALUE, OR IMPACT;

(II) WHETHER THE APPLICANT HAS THE APPROPRIATE PERSONNEL; EXPERTISE; FACILITIES; INFRASTRUCTURE; FUNDING; AND HUMAN, ANIMAL, OR OTHER APPROVALS IN PLACE TO SUCCESSFULLY CONDUCT THE PROJECT; AND

(III) WHETHER THE AMOUNT OF MARIJUANA TO BE GROWN BY THE APPLICANT IS CONSISTENT WITH THE PROJECT'S SCOPE AND GOALS.

(c) IF THE SCIENTIFIC ADVISORY COUNCIL DETERMINES THAT THE RESEARCH PROJECT DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION OR ASSESSES THE CRITERIA IN THIS SUBSECTION (3) TO BE INADEQUATE, THE APPLICATION MUST BE DENIED.

(4) A MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE MAY ONLY TRANSFER, BY SALE OR DONATION, MARIJUANA GROWN WITHIN ITS OPERATION TO OTHER MARIJUANA RESEARCH AND DEVELOPMENT LICENSEES OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEES. THE STATE LICENSING AUTHORITY MAY REVOKE

A MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSE FOR VIOLATIONS OF THIS SUBSECTION (4) AND ANY OTHER VIOLATION OF THIS ARTICLE 43.3.

(5) A MARIJUANA RESEARCH AND DEVELOPMENT LICENSEE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE MAY CONTRACT TO PERFORM RESEARCH IN CONJUNCTION WITH A PUBLIC HIGHER EDUCATION RESEARCH INSTITUTION OR ANOTHER MARIJUANA RESEARCH AND DEVELOPMENT LICENSEE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE.

(6) THE GROWING, CULTIVATING, POSSESSING, OR TRANSFERRING, BY SALE OR DONATION, OF MARIJUANA IN ACCORDANCE WITH THIS SECTION AND THE RULES ADOPTED PURSUANT TO IT, BY A MARIJUANA RESEARCH AND DEVELOPMENT LICENSEE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE, IS NOT A CRIMINAL OR CIVIL OFFENSE UNDER STATE LAW. A MARIJUANA RESEARCH AND DEVELOPMENT LICENSE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSE MUST BE ISSUED IN THE NAME OF THE APPLICANT AND MUST SPECIFY THE LOCATION IN COLORADO AT WHICH THE MARIJUANA RESEARCH AND DEVELOPMENT LICENSEE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE INTENDS TO OPERATE. A MARIJUANA RESEARCH AND DEVELOPMENT LICENSEE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE SHALL NOT ALLOW ANY OTHER PERSON TO EXERCISE THE PRIVILEGE OF THE LICENSE.

(7) IF THE RESEARCH CONDUCTED INCLUDES A PUBLIC INSTITUTION OR PUBLIC MONEY, THE SCIENTIFIC ADVISORY COUNCIL SHALL REVIEW ANY REPORTS MADE BY MARIJUANA RESEARCH AND DEVELOPMENT LICENSEES AND MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEES UNDER STATE LICENSING AUTHORITY RULE AND PROVIDE THE STATE LICENSING AUTHORITY WITH ITS DETERMINATION ON WHETHER THE RESEARCH PROJECT CONTINUES TO MEET RESEARCH QUALIFICATIONS PURSUANT TO THIS SECTION.

SECTION 5. In Colorado Revised Statutes, 12-43.3-405, **amend** (1) as follows:

12-43.3-405. Medical marijuana testing facility license - rules.
(1) A medical marijuana testing facility license may be issued to a person

who performs testing and research on medical marijuana for medical marijuana licensees, MEDICAL MARIJUANA AND MEDICAL MARIJUANA-INFUSED PRODUCTS FOR MARIJUANA AND RESEARCH DEVELOPMENT LICENSEES AND MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEES, AND MARIJUANA OR MARIJUANA-INFUSED PRODUCTS GROWN OR PRODUCED BY A REGISTERED PATIENT OR REGISTERED PRIMARY CAREGIVER ON BEHALF OF A REGISTERED PATIENT, UPON VERIFICATION OF REGISTRATION PURSUANT TO SECTION 25-1.5-106 (7)(e) AND VERIFICATION THAT THE PATIENT IS A PARTICIPANT IN A CLINICAL OR OBSERVATIONAL STUDY CONDUCTED BY A MARIJUANA RESEARCH AND DEVELOPMENT LICENSEE OR MARIJUANA RESEARCH AND DEVELOPMENT CULTIVATION LICENSEE. The facility may develop and test medical marijuana products.

SECTION 6. In Colorado Revised Statutes, 25-1.5-106.5, amend (5) as follows:

25-1.5-106.5. Medical marijuana health research grant program. (5) Sources of marijuana. (a) The attorney general shall seek authority from the federal government to permit Colorado institutions of higher education to contract with the national institute of drug abuse to cultivate marijuana and its component parts for use in research studies funded pursuant to this section.

(b) A PERSON WHO HOLDS AN OPTIONAL PREMISES CULTIVATION LICENSE OR MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING LICENSE ISSUED PURSUANT TO PART 4 OF ARTICLE 43.3 OF TITLE 12 OR A RETAIL MARIJUANA CULTIVATION FACILITY LICENSE OR A RETAIL MARIJUANA PRODUCTS MANUFACTURING LICENSE ISSUED PURSUANT TO PART 4 OF ARTICLE 43.4 OF TITLE 12 MAY TRANSFER MARIJUANA TO A MEDICAL RESEARCH FACILITY, INCLUDING AT AN INSTITUTION OF HIGHER EDUCATION, FOR USE IN RESEARCH STUDIES FUNDED PURSUANT TO THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MEDICAL RESEARCH FACILITY AUTHORIZED PURSUANT TO THIS SECTION TO CONDUCT MEDICAL RESEARCH REGARDING MARIJUANA IS EXEMPT FROM ALL OTHERWISE APPLICABLE RESTRICTIONS ON THE POSSESSION AND USE OF MARIJUANA; EXCEPT THAT THE FACILITY SHALL USE THE MARIJUANA ONLY FOR THE MEDICAL RESEARCH AUTHORIZED PURSUANT TO THIS SECTION, SHALL NOT POSSESS AT ANY TIME A QUANTITY OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCT IN EXCESS OF THE LIMIT

ESTABLISHED IN RULES PROMULGATED BY THE STATE LICENSING AUTHORITY, AND SHALL DESTROY ALL MARIJUANA REMAINING AFTER THE RESEARCH HAS BEEN COMPLETED. FOR THE FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 2017, THE GENERAL ASSEMBLY MAY ANNUALLY APPROPRIATE UP TO ONE PERCENT OF THE AVAILABLE MONEY IN THE MARIJUANA TAX CASH FUND CREATED IN SECTION 39-28.8-501 TO THE DEPARTMENT TO BE USED TO AWARD GRANTS PURSUANT TO THIS SECTION TO MEDICAL RESEARCH FACILITIES SO THAT A FACILITY MAY:

(I) PURCHASE MARIJUANA FROM A LICENSEE SPECIFIED IN THIS SUBSECTION (5)(b) THAT WILL BE USED IN THE RESEARCH; AND

(II) CONDUCT THE MEDICAL RESEARCH.

SECTION 7. In Colorado Revised Statutes, 12-43.3-202, **amend** (1)(h) and (2.5)(a) introductory portion; and **add** (2.5)(a)(I)(G) as follows:

12-43.3-202. Powers and duties of state licensing authority - rules. (1) The state licensing authority shall:

(h) Develop and maintain a seed-to-sale tracking system that tracks medical marijuana from either the seed or immature plant stage until the medical marijuana or medical marijuana-infused product is sold to a customer at a medical marijuana center to ensure that no medical marijuana grown or processed by a medical marijuana establishment is sold or otherwise transferred except by a medical marijuana center; EXCEPT THAT THE MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCT IS NO LONGER SUBJECT TO THE TRACKING SYSTEM ONCE THE MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCT HAS BEEN:

(I) TRANSFERRED TO A MEDICAL RESEARCH FACILITY PURSUANT TO SECTION 25-1.5-106.5 (5)(b); OR

(II) TRANSFERRED TO A PESTICIDE MANUFACTURER IN QUANTITIES THAT ARE LIMITED AS SPECIFIED IN RULES PROMULGATED BY THE STATE LICENSING AUTHORITY, IN CONSULTATION WITH THE DEPARTMENTS OF PUBLIC HEALTH AND ENVIRONMENT AND AGRICULTURE. THE RULES MUST DEFINE A PESTICIDE MANUFACTURER THAT IS AUTHORIZED TO CONDUCT RESEARCH AND MUST AUTHORIZE A PESTICIDE MANUFACTURER TO CONDUCT RESEARCH TO ESTABLISH SAFE AND EFFECTIVE PROTOCOLS FOR

THE USE OF PESTICIDES ON MEDICAL MARIJUANA. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PESTICIDE MANUFACTURER AUTHORIZED PURSUANT TO THIS SUBSECTION (1)(h)(II) TO CONDUCT PESTICIDE RESEARCH REGARDING MARIJUANA MUST BE LOCATED IN COLORADO, MUST CONDUCT THE RESEARCH IN COLORADO, AND IS EXEMPT FROM ALL OTHERWISE APPLICABLE RESTRICTIONS ON THE POSSESSION AND USE OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCT; EXCEPT THAT THE MANUFACTURER SHALL:

(A) NOT POSSESS AT ANY TIME A QUANTITY OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCT IN EXCESS OF THE LIMIT ESTABLISHED IN RULES PROMULGATED BY THE STATE LICENSING AUTHORITY;

(B) USE THE MEDICAL MARIJUANA AND MEDICAL MARIJUANA-INFUSED PRODUCT ONLY FOR THE PESTICIDE RESEARCH AUTHORIZED PURSUANT TO THIS SUBSECTION (1)(h)(II);

(C) DESTROY, IN COMPLIANCE WITH RULES PROMULGATED BY THE STATE LICENSING AUTHORITY, ALL MEDICAL MARIJUANA AND MEDICAL MARIJUANA-INFUSED PRODUCT REMAINING AFTER THE RESEARCH HAS BEEN COMPLETED; AND

(D) NOT APPLY PESTICIDES FOR RESEARCH PURPOSES ON THE LICENSED PREMISES OF A MEDICAL MARIJUANA BUSINESS.

(2.5)(a) Rules promulgated pursuant to ~~paragraph (b) of subsection (1)(b)~~ SUBSECTION (1)(b) of this section must include, but need not be limited to, the following subjects:

(I) (G) A STATE, LOCAL, OR MUNICIPAL AGENCY SHALL NOT EMPLOY OR USE THE RESULTS OF ANY TEST OF MEDICAL MARIJUANA OR MEDICAL MARIJUANA-INFUSED PRODUCTS CONDUCTED BY AN ANALYTICAL LABORATORY THAT IS NOT CERTIFIED PURSUANT TO THIS SUBSECTION (2.5)(a)(I) FOR THE PARTICULAR TESTING CATEGORY AND ACCREDITED TO THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION/INTERNATIONAL ELECTROTECHNICAL COMMISSION 17025:2005 STANDARD, OR ANY SUBSEQUENT SUPERSEDING STANDARD, IN THAT FIELD OF TESTING.

SECTION 8. In Colorado Revised Statutes, 12-43.4-202, **amend** (1) and (3)(a) introductory portion; and **add** (3)(a)(IV)(H) as follows:

12-43.4-202. Powers and duties of state licensing authority - rules. (1) TO ENSURE THAT NO MARIJUANA GROWN OR PROCESSED BY A RETAIL MARIJUANA ESTABLISHMENT IS SOLD OR OTHERWISE TRANSFERRED EXCEPT BY A RETAIL MARIJUANA STORE OR AS AUTHORIZED BY LAW, the state licensing authority shall develop and maintain a seed-to-sale tracking system that tracks retail marijuana from either seed or immature plant stage until the marijuana or retail marijuana product is sold to a customer at a retail marijuana store; ~~to ensure that no marijuana grown or processed by a retail marijuana establishment is sold or otherwise transferred except by a retail marijuana store.~~ EXCEPT THAT RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT IS NO LONGER SUBJECT TO THE TRACKING SYSTEM ONCE THE RETAIL MARIJUANA HAS BEEN:

(a) TRANSFERRED TO A MEDICAL RESEARCH FACILITY PURSUANT TO SECTION 25-1.5-106.5 (5)(b); OR

(b) TRANSFERRED TO A PESTICIDE MANUFACTURER IN QUANTITIES THAT ARE LIMITED AS SPECIFIED IN RULES PROMULGATED BY THE STATE LICENSING AUTHORITY, IN CONSULTATION WITH THE DEPARTMENTS OF PUBLIC HEALTH AND ENVIRONMENT AND AGRICULTURE. THE RULES MUST DEFINE A PESTICIDE MANUFACTURER THAT IS AUTHORIZED TO CONDUCT RESEARCH AND MUST AUTHORIZE A PESTICIDE MANUFACTURER TO CONDUCT RESEARCH TO ESTABLISH SAFE AND EFFECTIVE PROTOCOLS FOR THE USE OF PESTICIDES ON RETAIL MARIJUANA. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PESTICIDE MANUFACTURER AUTHORIZED PURSUANT TO THIS SUBSECTION (1)(b) TO CONDUCT PESTICIDE RESEARCH REGARDING RETAIL MARIJUANA MUST BE LOCATED IN COLORADO, MUST CONDUCT THE RESEARCH IN COLORADO, AND IS EXEMPT FROM ALL OTHERWISE APPLICABLE RESTRICTIONS ON THE POSSESSION AND USE OF RETAIL MARIJUANA; EXCEPT THAT THE MANUFACTURER SHALL:

(I) NOT POSSESS AT ANY TIME A QUANTITY OF RETAIL MARIJUANA IN EXCESS OF THE LIMIT ESTABLISHED IN RULES PROMULGATED BY THE STATE LICENSING AUTHORITY;

(II) USE THE RETAIL MARIJUANA ONLY FOR THE PESTICIDE RESEARCH AUTHORIZED PURSUANT TO THIS SUBSECTION (1)(b);

(III) DESTROY, IN COMPLIANCE WITH RULES PROMULGATED BY THE STATE LICENSING AUTHORITY, ALL RETAIL MARIJUANA REMAINING AFTER THE RESEARCH HAS BEEN COMPLETED; AND

(IV) NOT APPLY PESTICIDES FOR RESEARCH PURPOSES ON THE LICENSED PREMISES OF A RETAIL MARIJUANA ESTABLISHMENT.

(3) (a) Rules promulgated pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section must include, but need not be limited to, the following subjects:

(IV) (H) A STATE, LOCAL, OR MUNICIPAL AGENCY SHALL NOT EMPLOY OR USE THE RESULTS OF ANY TEST OF MARIJUANA OR MARIJUANA PRODUCTS CONDUCTED BY AN ANALYTICAL LABORATORY THAT IS NOT CERTIFIED PURSUANT TO THIS SUBSECTION (3)(a)(IV) FOR THE PARTICULAR TESTING CATEGORY AND ACCREDITED TO THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION/INTERNATIONAL ELECTROTECHNICAL COMMISSION 17025:2005 STANDARD, OR ANY SUBSEQUENT SUPERSEDING STANDARD, IN THAT FIELD OF TESTING.

SECTION 9. Appropriation. (1) For the 2017-18 state fiscal year, \$62,210 is appropriated to the department of revenue. This appropriation is from the marijuana cash fund created in section 12-43.3-501 (1)(a), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$43,200 for marijuana enforcement; and

(b) \$19,010 for the purchase of legal services.

(2) For the 2017-18 state fiscal year, \$19,010 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of revenue.

SECTION 10. Appropriation. (1) For the 2017-18 state fiscal year, \$164,461 is appropriated to the department of revenue. This

appropriation is from the marijuana cash fund created in section 12-43.3-501 (1)(a), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$78,421 for marijuana enforcement, which amount is based on an assumption that the department will require an additional 0.5 FTE;

(b) \$10,000 for tax administration IT system (GenTax) support; and

(c) \$76,040 for the purchase of legal services.

(2) For the 2017-18 state fiscal year, \$76,040 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(c) of this section and is based on an assumption that the department of law will require an additional 0.4 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of revenue.

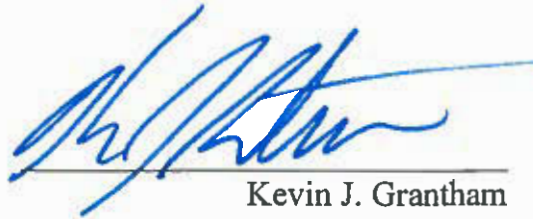
SECTION 11. Act subject to petition - effective date - applicability. (1) Sections 1 through 5, section 10, and this section 11 of this act take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against section 1, 2, 3, 4, 5, 10, or 11 of this act within such period, then the section or sections will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) (a) Sections 6 through 9 of this act take effect January 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against section 6, 7, 8, or 9 of this act within the ninety-day period after final adjournment of the general assembly, the section or sections will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on January 1, 2019, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(b) Sections 6 through 9 of this act apply to conduct occurring on or after the applicable effective date of this act.



Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Kevin J. Grantham
PRESIDENT OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003



John W. Hickenlooper
Governor

June 7, 2017

The Honorable Colorado House of Representatives
General Assembly
State Capitol
200 E. Colfax Ave.
Denver, CO 80203

Dear Members of the Colorado House of Representatives:

Today, we filed with the Secretary of State House Bill 17-1367, "Concerning Marijuana Research Authorization" (HB 17-1367). As I am neither signing nor vetoing HB 17-1367, the bill's provisions will take effect on the applicable effective dates set out in the bill. This letter sets forth my reasons for allowing HB 17-1367 to become law absent my signature.

HB 17-1367 creates a new license type for entities using marijuana for research purposes, provides the Marijuana Enforcement Division (MED) rulemaking authority, and makes changes to medical and recreational marijuana testing. We take no issue with the bill's goals. However, there is one critical matter that should be addressed. Sections 7 and 8 of HB 17-1367 both provide that:

[A] [S]tate, local, or municipal agency shall not employ or use the results of any test of marijuana or marijuana products conducted by an analytical laboratory that is not certified pursuant to this subsection (3)(a)(IV) for the particular testing category *and* accredited to the International Organization for Standardization/International Electrotechnical Commission 17025:2005 standard, or any subsequent superseding standard, in that field of testing (emphasis added).

During HB 17-1367's consideration, multiple amendments were added in the final days of session. As part of one amendment, the word "and" (emphasized above) was inserted to replace the word "or." We confirmed with the sponsors this change was unintended. However, the change has significant implications. Due to this change, no state or local agency may use or employ test results from a lab not certified by the Department of Revenue (DOR), and accredited to the International Organization for Standardization/International Electrotechnical Commission (ISO Accredited). At present, only two testing facilities in the State meet both requirements. Consequently, this provision will limit the MED's ability to rely on test results for regulatory and enforcement purposes.

During the brief period between the effective date of January 1, 2018 and the initial days of the 2018 Regular Session, when corrective action may be enacted, licensees will remain subject to all potency and contaminants testing requirements. Additionally, the State pesticide and random testing programs will

remain in operation. However, MED will be unable to initiate enforcement actions triggered by failed testing unless the law is changed. Given the processes for testing and enforcement established in MED rules, it is highly unlikely that any enforcement action will be triggered in the first month of 2018. Therefore, a correction enacted by the General Assembly in the early weeks of session is critical.

We communicated this issue to the sponsors and proponents of HB 17-1367. As a result of these conversations, the sponsors and proponents, in coordination with State agencies, will present draft legislation to the General Assembly for consideration in the initial days of the 2018 Regular Session. This will correct the language error and restore the affected components of the State's testing program. We urge the General Assembly to address this matter as soon as possible, so the State's testing program, which exists to protect marijuana consumers and employees of licensed marijuana businesses, will not be compromised. We stand ready to work with the General Assembly in this effort.

For these reasons, and with the understanding that all parties will work cooperatively and expeditiously in the 2018 Regular Session, I allowed HB 17-1367 to become law without my signature.

Sincerely,

A handwritten signature in blue ink, appearing to read "John W. Hickenlooper", with a large, stylized flourish extending to the right.

John W. Hickenlooper
Governor

Memorandum

TO: Mayor and City Council

FROM: Zack Wallace Mendez, Planner II
Kenneth Johnstone, Community Development Director
Gerald Dahl, City Attorney

THROUGH: Patrick Goff, City Manager

DATE: December 18, 2017

SUBJECT: Sign Code Regulations

ISSUE:

In June of 2015, the United States Supreme Court decided the case of *Reed v. Town of Gilbert, Arizona*. This decision, which held the Town of Gilbert's sign code unconstitutional, has a significant impact on all local government sign codes throughout the nation. Briefly, signs cannot be regulated by their content, and sign codes may only regulate signage utilizing time, place and manner regulations.

The purpose of this memorandum is to follow up on several issues now that City Council and Planning Commission have provided additional input and recommendations. This memorandum is very similar to the sign code memorandum received by City Council for the October 16 Study Session. Below each sign type, Staff has summarized the consensus motions and recommendations provided during the October 16 Study Session and November 16 Planning Commission meeting.

PRIOR ACTION:

In May 2017, Staff briefed City Council on the *Reed v Gilbert* sign code amendments, and also asked for direction on several other sign-related items. In October 2017, Staff presented Council with a sign code draft and requested further direction on several issues. Staff presented the same code draft and Council's input to the Planning Commission in November 2017. Due to the complexity of some issues and conflicting input from City Council and Planning Commission, Staff is seeking additional input from City Council on the sign code draft and on specific sign-related items before moving forward with an update to the code and public hearing.

PROPOSED UPDATES:

Attached is a draft of the amended sign code (Article VII in Chapter 26); each section begins with comments (in red) that summarize what has or has not changed. The attached draft sign code is the same version presented to City Council on October 16. It will be updated after the December 18 study session to incorporate all feedback received up to this point.

This memo is also similar to the one presented on October 16. The grey text boxes summarize the direction received to date and the outstanding questions that remain.

Reed v. Town of Gilbert Updates:

Based on required compliance with the Supreme Court's *Reed v. Gilbert* decision, the following amendments have been proposed:

- Content-based sign categories are no longer permitted and were removed, and new categories were created to reclassify sign types more broadly. More specifically, the political, informational, projecting, semipublic, and community event/sponsorship banner content-based categories were removed. Yard signs (large and small), directional, and blade signs are new classifications that have been added.
- With the reclassification, sign standards were changed from a tabular format (previously Sections Sec. 26-709 and 26-710) to a text format. This formatting change improves usability of the code. The sign standards that comprise these sections (height, size, setback, etc.) are not changed.
- Related regulations that are currently scattered throughout Article VII have been consolidated to improve organization. For example, free standing signs were listed in each of the former sign charts, and additional regulations for freestanding signs were also found in a subsection under miscellaneous provisions. These, and other, related provisions are now in one location.
- For ease of using and enforcing sign code regulations, other sign related provisions that appear elsewhere in Chapter 26 were added to the sign code, including those in Section 26-613 (Home Occupations) and in the Mixed Use Code section (Article XI).
- Projecting signs have been reclassified as blade signs which is a more common term in the industry. The only modification made is the minimum projection for blade signs was reduced from 15 inches to 12 inches to better differentiate wall signs from blade signs. Based on input from the business community, the code amendment also would allow businesses both a wall and blade sign.
- Informational signs have been reclassified as directional signs, with the same standards and definition, with content-related language deleted.

City Council and Planning Commission have indicated their support for the *Reed v Gilbert* proposed updates.

No further input on this topic is required.

Temporary signs (commercial properties)

Current sign code regulations make temporary sign enforcement difficult, as there are often no time limits or maximums in place. To enable enforcement while still allowing reasonable temporary advertisement, staff proposes the updated temporary sign code allow for only *one* temporary sign at any given time per property or business. This means owners may still choose from a variety of sign types (banners, balloons, yard signs, a-frame signs, etc), but only one may be displayed at any given time.

City Council and Planning Commission are supportive of this approach.

No further input on this topic is required.

Another item of interest, particularly from business owners and the Community Services Unit who is responsible for in-field sign code enforcement, is the regulation of persons holding and spinning commercial signs, often referred to as ‘sign spinners,’ or as Council has previously directed staff to categorize them as ‘signs carried by persons.’ Staff would like policy direction regarding this type of signage. Because the City may regulate the “time, place and manner” of such signs, and because they are commercial (rather than political) speech, this kind of activity may be regulated more closely than political speech (such as, for example, protesters with signs on a public sidewalk). Other communities have addressed this unique commercial sign category by defining it as “signs carried by persons,” and have limited the locations they may be displayed (typically in commercial districts). It is also permissible to limit the hours of display and prohibit such display from interfering with the safe movement of pedestrians.

Council reached consensus to allow sign spinners along any public right-of-way, provided they do not negatively impact vehicular, bicycle, or pedestrian safety. Council further directed they should not be allowed within the roadway.

Planning Commission requested that the prohibition on sign spinners in the roadway be drafted to specify that signs carried by persons are also prohibited from medians, islands, and pork chops within the right-of-way.

No further input on this topic is required.

Electronic Message Centers (EMCs)

At Council’s direction, Staff reviewed standards for electronic message centers (EMCs) or changeable copy LED signs, which are currently misaligned with industry standards in two ways. First, changeable copy signage is limited in our code to copy changes no less than every 15 seconds. The current industry standard is between 4 and 10 seconds. Staff recommends this time be reduced to 8 seconds, which is a common standard among surrounding communities and balances advertising and public safety needs.

Second, the City’s illumination standards are out of date and difficult to enforce. There is currently no quantitative standard for what constitutes a sign that is “too bright.” Staff suggests adding the following language that has already been adopted by numerous jurisdictions nationwide to address nighttime brightness:

The nighttime illumination of changeable copy signs shall conform with the following criteria:

- a. Illumination measurement criteria: The illuminance of a changeable copy sign shall be measured with an illuminance meter set to measure footcandles accurate to at least two (2) decimals. Illuminance shall be measured with the sign off, and again with the sign displaying a white image for a full color capable changeable copy sign, or a solid message for a single-color EMC. All measurements shall be taken as close as practical to a perpendicular plane of the sign at the distance determined by the total square footage of the sign as set forth in the table.

- b. Illumination Limits: The difference between the off and solid-message measurements using the measurement criteria shall not exceed 0.3 footcandles at night.
- c. Dimming Capabilities: All permitted changeable copy signs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to the ambient light conditions, or that can be adjusted to comply with the 0.3 footcandle measurements.

These regulations allow for LED signage that is illuminated enough for businesses to display their messages, but not so bright the glare is distracting and dangerous for drivers, bicyclists, and pedestrians. A “how to” guide is available that could be adopted as an internal policy to assist the Community Services Unit to measure sign illumination. The method requires use of an illuminance meter, which can cost between \$100 and \$1000 depending on functionality and quality, and would need to be purchased to allow enforcement.

Council reached consensus to modify the minimum duration between messages from 15 seconds to 8 seconds and to add illumination standards to this section to Code. Council also directed the amortization of existing LED signs requiring they comply with the new illumination standards within 2 years of the code adoption.

Planning Commission concurred with City Council’s consensus.

No further input on this topic is required.

3D signs

At Council’s direction, Staff researched “iconic” signage or signs that are sculptural and three-dimensional in nature. 3D signage has been rolled into existing sign types to accommodate more creative signs. Different measurement techniques apply and will be measured in cubic feet. 3D signage will be allowed for blade and freestanding sign types.

Council was supportive of this approach.

Planning Commission was also supportive of this approach, but also wanted to ensure 3D signage could not be motorized or animated.

No further input on this topic is required.

Off-premise signage

The code currently prohibits off-premise signage. The *Reed v. Gilbert* decision dictates that sign codes must now be content neutral. However, in order to know that a sign is off premise, it’s content must be read, which is no longer permissible. Staff has proposed the following requirement in lieu of the off-premise signage restriction: the owner of the sign and owner/lessee of the property must be the same person. In practice, this means that proof of ownership or lease would be provided with the building permit application, which is already common practice for land use applications.

Council provided consensus to request the property owner / lessee of the property be the same person applying for the sign.

Planning Commission was also supportive of this approach.

No further input on this topic is required.

Business district signs

Signs for specific business districts can be classified as “public” signs and located in the right-of-way. These signs might be located on a major arterial and direct travelers to a business district located some distance off the arterial roadway. Staff has determined that it is more appropriate to establish an administrative policy in coordination with the Public Works Department to establish what constitutes a qualified business district and standards for the size, color, and location(s) of district signs. Wayfinding signs to districts would be produced by the Public Works Department at some cost to the districts. The details of this program will be presented to Council in the future.

Yard signs (residential)

A new content-neutral category called “yard signs (small)” is proposed for the sign code and is intended to capture the various small signs that are currently allowed on residential property (such as political signs and signs for community events). Staff had recommended a limitation of one small yard sign, however, Staff also feels that during certain times of year residents may wish to have multiple signs on their properties, such as during election season. To that end staff had recommended three (3) small yard signs be permitted from October 1 to November 30. This type of regulation would be permitted because it is content-neutral and regulates time, place and manner.

Council reached consensus to have no limitations on the number of temporary yard signs on residential property.

Planning Commission disagreed with the Council consensus and expressed concern about the proliferation of yard signs, and the ability to circumvent other signs standards, such as the home occupation sign allowance. In the spirit of preserving neighborhood integrity and reducing visual clutter, Planning Commission requests that Council reconsider this topic and recommends that there be limits on residential yard signs, with a less restrictive allowance leading up to an election, and a more restrictive allowance during the remainder of the year. Planning Commission recommends the less restrictive allowance not be date specific, but rather be applied to a specific number of days prior to any election (November, special, primary, etc).

Q: Is Council willing to reconsider this issue and to consider the Planning Commission recommendation?

A separate content-neutral category of “yard sign (large)” accommodates real estate, leasing, and construction signs for residential properties.

Freestanding signs

The Code allows for freestanding signs to be supported by either a monument-style base or a pole. All new freestanding signs are allowed to be either monument or pole mounted. The only exception is in mixed use zone districts where regulations are more restrictive requiring all new freestanding signs to be monument signs. In an effort to improve visual impacts associated with signs and to enhance the character of the community, City Council is asked to consider whether the regulations for new signs should be augmented. New freestanding signs are permitted to be up to 15 feet in height. Highway-oriented signs (up to 50 feet within ¼-mile of I-70) are excluded from this discussion and by nature will continue to be pole signs.

Council reached consensus to require monument design for all new development; however, were less certain regarding new signs not associated with development, and were split 3-3 on this issue. Mayor Jay broke the tie in support of allowing more flexibility for new signs not otherwise associated with development, stating that monument signs could be cost prohibitive for many businesses, and pole signs should be allowed where total redevelopment or new development is not occurring.

Planning Commission reached consensus to recommend that all new signs to be of monument design.

Q: Is Council willing to reconsider the issue and to consider the Planning Commission recommendation that all new signs be monument design?

Non-conforming signs

Current code encourages the continuing existence of legally nonconforming signs by allowing sign cabinets to be completely replaced, so long as the support structure remains. This means that nonconforming signs are rarely removed. This allows for a significant investment in signage without coming into compliance with current regulations, such as sign height and setback.

Council consensus to move forward with creating a schedule for amortizing existing non-conforming pole signs.

Planning Commission agreed with City Council's direction, and proposed a 3-year amortization schedule. In addition, they recommended all existing pole signs be amortized within 10 years in an effort to improve the visual character of the community and signs.

Q: Does Council support a 3-year timeframe for the amortization of nonconforming pole signs?

Q: Does Council support a 10-year amortization of all pole signs?

Changeable Copy (EMC, LED) signage

Staff has noted an increased interest in changeable copy LED signage from businesses across the City, including many along 38th Avenue. The current sign code prohibits LED signs in the Mixed-Use Neighborhood (MU-N) zone district, which comprises the majority of 38th Avenue between Sheridan and Wadsworth, in addition to the Mixed-Use Commercial TOD (MU-C TOD) zone district. The intent of this restriction was to encourage sign designs that are more pedestrian-oriented in nature, despite the current (nonconforming) development patterns being more vehicular in nature.

Council was split on this issue (3-3), and Mayor Jay broke the tie in support of keeping the existing code language which prohibits changeable copy and LED signage in MU-N and MU-C TOD zone districts.

Planning Commission agreed that current regulations should remain in place prohibiting changeable copy and LED signage in the MU-N and MU-C TOD zone districts.

In the time between the October City Council Study Session and the November Planning Commission study session, the question was raised as to whether or not it was appropriate or desirable to allow LED/changeable copy signs for properties owned by the City, a school district, or political subdivision of the state. Planning Commission had no objection to creating a carve out for LED and changeable copy signage to be located on publically owned land.

Q: Does Council support an allowance for LED and changeable copy signs on publicly owned land?

NEXT STEPS:

The purpose of this code amendment has been primarily to comply with the Supreme Court *Reed v. Town of Gilbert* decision, and to a lesser degree to modernize several outdated provisions. To that end, Staff recognizes the importance of completing this project as efficiently as possible.

Next steps include the following:

- City Council Study Session – *December 2017*
- Planning Commission Public Hearing – *January 2018*
- City Council Public Hearing – *February/March 2018*

ATTACHMENTS:

1. Draft Sign Code

ARTICLE VII. - SIGN CODE

Contents

Sec. 26-701. - Intent and purpose.....	1
Sec. 26-702. - Definitions.....	2
Sec. 26-703. - Enforcement and penalties.....	4
Sec. 26-704. - Contractor's license required.....	5
Sec. 26-705. - Permit required.....	5
Sec. 26-706. - Non-conforming signs.	5
Sec. 26-707. - General provisions/performance standards.....	6
Sec. 26-708. - Miscellaneous provisions.....	8
Sec. 26-709. – Permitted Sign Types.	10
Sec. 26-710. – Permanent Sign Standards.	11
Sec. 26-711. – Temporary Sign Standards.....	15
Sec. 26-712. - Billboards; specifications and regulations	17

Sec. 26-701. - Intent and purpose.

Subsection F modified to be in compliance with Reed v Gilbert.

The intent and purpose of this article is:

- A. To protect the public from signs which are structurally unsafe;
- B. To promote traffic safety and the free movement of traffic, and protect the public from the hazardous conditions which result from signs that obscure or distract the vision of motorists, bicyclists and pedestrians;
- C. To facilitate easy, safe and pleasant communication between people and their surroundings;
- D. To conserve the character and economic value of buildings and neighborhoods;
- E. To provide a balance between legitimate identification and advertising needs and the visual discord which signs sometimes cause, and to provide a sense of balance or proportion between a sign and the building or property which it serves;
- F. To encourage the erection of signs which are legible in their surroundings and compatible with the visual character of the surrounding area; and
- G. To ensure that adequate and effective advertising signage opportunities exist within a regulatory framework which protects the constitutionally guaranteed right of free speech.
- H. It is not the intent of these regulations to prohibit or unreasonably regulate or to require permits for the legitimate display of traditional holiday season decorations; provided, however, that such decorations or displays are installed and maintained in a safe manner.

Sec. 26-702. - Definitions.

This section includes definitions that are specific to the sign code. Several definitions have been added, and for the ease of review they are denoted below with a single asterisk (*) and **bold** text. Modified definitions are identified with a double asterisk (**) and new language is highlighted with **bold** text. Definitions of signs that have been removed from the code in compliance with Reed v Gilbert have been deleted.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Animated sign. A sign or parts thereof, which revolve, whirl, twirl or utilize motion, implied or actual, in a horizontal or vertical plane or both. The only animated type of signs that are permitted are "barber pole" signs.

Arcade sign. Any sign projecting beneath and attached to the underside of any balcony, canopy, awning or other structural overhang or passageway.

Artistic mural or sculpture. A freestanding statue or sculpture or a graphic illustration or design, or an architectural design or relief applied directly to or incorporated within a wall of a building, which does not advertise or promote a particular business, service or "branded" product.

Awning. A movable shelter supported entirely from the exterior wall of a building and/or a type which can be retracted against the face of the supporting building.

***Balloon or inflatable sign.** Any sign consisting of material intended to be filled with air or helium, or have air blown through in order to create a visual attraction; this is inclusive of air dancers, inflatable caricatures, all types and sizes of balloons, and similar devices.

Banner. A sign or advertising display constructed of cloth, canvas, fabric or other light material that is mounted with no enclosing framework intended to be displayed for a short period of time.

***Barber shop poles.** A sign with a striped interior which may or may not rotate, which is traditionally utilized to signify the presence of an establishment within which the practice of barbering is engaged or carried out.

Billboard. Any sign in excess of fifty (50) square feet in size oriented to the interstate highway utilized to advertise a product or service that is not produced or conducted on the same property as the sign.

***Blade sign.** A sign which is affixed to any building, wall or structure and which extends beyond the building wall more than twelve (12) inches.

Building front. The exterior wall(s) of a building facing a public street or streets or other public right-of-way other than alleys, or one (1) exterior wall containing the primary entrance to the building if not directly facing upon a public street.

Canopy. A roof-like structure serving the purpose of protecting vehicles and/or pedestrians and which may be freestanding or attached to a building, is provided with supports, and is open on three (3) sides if attached and on all sides if freestanding.

Changeable copy sign. A sign, either illuminated or nonilluminated, which is designed so that the message or any part of the message may be periodically changed, either mechanically or electronically, however, where a change in message occurs no sooner than every eight (8) seconds. This includes signs that utilize computer-generated messages or some other electronic means of changing copy, including displays using incandescent lamps, LEDs, LCDs or a flipper matrix.

Development. A single lot, parcel or tract of land or portions or combinations of lots, parcels or tracts of land which are held in single or common ownership and which exist as a distinct functional entity. Multi-use and multi-tenant buildings and multiple building complexes which are held in singular or common ownership, either by individual, corporation, partnership or other legally recognized entity, shall be considered a "development" for the purpose of signage.

***Directional sign.** A freestanding or wall-type sign, not located within public street right-of-way, providing necessary directional information to motor vehicle operators or pedestrians, such as entrance, exit, parking limitations or location of onsite buildings or facilities. Directional signs shall be clearly incidental to the primary signage on a property, in both height and sign area.

Erect. To build, construct, attach, hang, place, suspend, affix, relocate or reconstruct any sign or sign-supporting structure.

Flashing sign. A sign that is illuminated with intermittent lighting, animated lighting or with varying intensities of light at intervals of fifteen (15) seconds or less, including a moving light or lights.

***Flag.** Any fabric or other flexible material attached to or designed to be flown from a flagpole or similar device.

****Freestanding sign.** A sign that is permanent and self-supporting, being nondependent on support from a building or other structure, including signs placed upon fences or nonsupporting walls. **This includes pole-mounted or monument signs.**

Illuminated sign. A sign that is illuminated with constant intensities of light of a non-varying nature. There are three (3) types of illuminated lights as follows:

- (a) *Direct.* Lighting by means of an unshielded light source which is effectively visible as a part of the sign. Neon lighting is considered direct lighting.
- (b) *Indirect.* Lighting which illuminates the front of a sign or the entire building facade upon which the sign is displayed, the source of the light being shielded from public view and from surrounding properties. Indirect illumination does not include lighting which is primarily used for purposes other than sign illumination, such as parking lot lighting.
- (c) *Internal.* Lighting by means of a light source which is within a sign having a translucent background and which silhouettes opaque letters or designs, or lighting within or behind letters or designs which are themselves made of translucent or opaque material.

Lot. A tract, building site, parcel or portion of land separated from other parcels or portions by description, as on a subdivision plat of record or survey map or by metes and bounds, for the purpose of sale, lease or use.

Major interior drive. A drive aisle located on private property which connects two (2) public streets or provides access to two (2) or more parcels of land or developments.

Nonconforming sign. A sign which does not conform with the regulations set forth in this article, but which did meet the requirements of the regulations existing at the date of its erection.

Painted sign. A sign that is painted directly onto the exterior surface of a building, wall or structure.

***Pennant, streamer, and other similar device signage.** A sign made of flexible materials intended to create a visual attraction through movement or combining similar sign types to create the impression of a line. This is inclusive of flutter flags.

****Portable sign.** Any sign which is supported by one (1) or more uprights or braces upon the ground and which is of portable design, **such as A-frame or pedestal style signs.**

Public sign. A sign that is required by federal, state or local law or ordinance necessary for public information.

Revolving sign. A sign utilizing an axis point to pivot the sign surface.

Roof sign. A sign erected, constructed and maintained above the eaves and attached to the roof of a building.

Sign. Any object or device or part thereof situated outdoors or indoors, viewed from outdoors by the general public, and which object or device or the effect produced thereby is used to advertise, announce, identify, declare, demonstrate, display, instruct, direct or attract attention by means including, but not limited to, words, letters, figures, designs, fixtures, colors, motion, illumination, sound or projecting images.

Sign permit. A building permit issued for the erection, construction, enlargement, alteration, repair, relocation, improvement, removal, conversion or demolition of any sign issued pursuant to the building code of the city or this sign code.

Sign structure. Any supports, uprights, braces or framework of a sign which does not include any portion of the sign message.

Street frontage. For the purpose of signage, frontage upon a street is obtained by ownership, easement or leasehold only if used for vehicular access to the property, or if not used for vehicular access, only if such street frontage is at least fifty (50) feet in width. Where the regulations allow "one sign per street frontage," the intent is that the sign allowed is placed upon or facing the street, unless specifically otherwise permitted.

****Surface area of sign.** The total area enclosed by the shortest line that can be drawn around the entire sign, including any architectural embellishment or background material or color forming an integral part of the display and used to differentiate the sign from its surroundings. Sign support structures which do not bear advertising material shall be excluded in computation of sign area. Signs without backing (i.e., freestanding, **blade**, A-frame or pedestal signs) are allowed the maximum square footage for each side for double-faced signs; however, signs having more than two (2) sides or faces shall not exceed the total face area allowed for a double-faced sign.

****Temporary sign.** Any sign, banner, pennant, **balloon, inflatable, portable sign, yard sign** or other outdoor advertising sign constructed of light fabric, cardboard, wallboard, plywood, sheet metal, paper or other light materials, with or without a frame, intended or designed to be displayed for a limited period of time.

***Three-dimensional (3D) signs.** Any sign, which by virtue of its shape, design, and location of copy provides advertisement in a three dimensional manner and is distinctly different from an artistic sculpture.

Traffic and regulatory signs. Signs, signals or markings placed or erected by federal, state or local authority for the purpose of regulating, warning or guiding traffic.

Unlawful sign. Any sign or outdoor advertising device erected in the absence of a permit required by this article, or in violation of any of the limitations, prohibitions or requirements of this article.

Unsafe sign. Any sign or advertising structure found unsafe or insecure or creating a hazard or menace to the public safety, health and welfare.

Wall sign. A sign constructed of durable materials or painted and which is permanently affixed to an exterior surface of any building, wall or structure and which does not extend more than fifteen (15) inches beyond the building wall, except that signage placed upon marquees, canopies or awnings shall be considered as wall signs.

***Window or door sign.** Any sign or decal affixed to, painted on, applied to, or hanging within twelve (12) inches of the interior of a window and that can be seen through the window from the exterior of the structure, but excludes merchandise included in a window display.

***Yard sign.** Temporary, ground-mounted, portable sign constructed of paper, vinyl, plastic, wood, metal or other comparable material, and designed or intended to be displayed for a limited period of time.

Sec. 26-703. - Enforcement and penalties.

There have been no changes to this section.

Enforcement and penalties shall be in accordance with those provisions set forth in article X. In addition to any remedies set forth in section 26-1004 et seq., specific authority is granted to the enforcement officer to remove, or have removed, the following signs after posting of a notice at least twenty-four (24) hours prior to removal upon the premises where such sign(s) is located:

- A. Signs which are prohibited pursuant to the residential/agriculture/public facilities and commercial/industrial/mixed use sign standard charts.
- B. Unsafe signs.

Sec. 26-704. - Contractor's license required.

There have been no changes to this section.

- A. No person shall engage in the business of installing, altering or repairing any sign within the corporate limits of the city unless he is the holder of a currently valid, city sign contractor's license, except for those signs exempt from permit.
- B. The city shall have the power to suspend or revoke the license of any holder of a sign license issued pursuant to this article, in accordance with the provisions as set forth in the building code. (See chapter 5 of this Code of Laws for related provisions.)

Sec. 26-705. - Permit required.

There have been no changes to this section.

- A. No sign or modification to an existing sign shall be erected, placed or displayed outdoors within the city limits until a permit for such sign has been issued by the city, unless such sign is exempt from a permit in accordance with this sign code.
- B. An application, accompanied by a "to scale" drawing, for each separate sign permit shall be made to the department of community development on a form supplied by the department. Such applications shall set forth the name and address of the applicant; the location where such sign is to be erected or located; the name, phone number and address of the owner of the property; the size, height, type and general description of such proposed sign, including the materials of which it is constructed, the sign contractor's name, phone number and address and such other pertinent information required or deemed necessary by the department to determine the sign's safety and conformance to this article. A "to scale" plot plan of the lot or parcel shall accompany the application and shall show the location of the proposed sign and the location, type and size of other signs which exist upon the lot. The mere application for a sign permit does not assure that a permit will be issued; therefore, it is advised that signs not be fabricated, constructed or purchased prior to issuance of a sign permit.
- C. Fees for the erection of signs are assessed as part of building permit review and issuance. Permit fees and city use tax will be waived where a nonconforming sign is removed and replaced by a sign conforming with these regulations.

Sec. 26-706. - Non-conforming signs.

Subsection A.1 has been flagged as an item for Council input, please refer to the memo for more information. Subsection A.2. has been modified for compliance with Reed v Gilbert. A small addition has been made to subsection A.3. for legibility, and is noted by **bold text**.

- A. *Nonconforming signs.* A lawful sign existing on the effective date of the ordinance from which this article is derived may be continued, although such sign does not conform to the provisions of this article, subject to the following provisions:
 - 1. Relocation, or replacement of a nonconforming sign is not permitted unless such sign is brought into conformance with this article. Enlargement or extension of a nonconforming sign is permitted so long as the nonconformity is not increased. Rebuilding or reconstructing a nonconforming sign is permitted only if the rebuilding or reconstruction is limited to installing a new sign cabinet on an existing support structure. Installing a new sign cabinet together with a new support structure shall constitute replacement of the nonconforming sign and shall require conformance with this article.
 - 2. In the event the use of a nonconforming sign is discontinued for a period of sixty (60) consecutive days, the nonconforming sign shall thereafter conform to the provisions of the zoning district in

which it is located or be removed. For the purpose of this section, the term "discontinued" shall apply to uses which customarily operate on a continuous basis versus a seasonal basis.

3. A nonconforming sign that is destroyed or damaged more than fifty (50) percent of its **replacement cost voluntarily** or due to natural causes may not be reconstructed except in accordance with the provisions of this article; however, any sign destroyed or damaged to any extent by vandalism may be rebuilt to its original state within six (6) months or otherwise it must be reconstructed in conformance with this article.
 4. Normal maintenance which does not require modification of the sign structure, supports or members shall be permitted. A face change is considered normal maintenance.
 5. In order to provide an incentive for removal of nonconforming signs, permit fees and city use tax will be waived where a nonconforming sign is removed and replaced by a sign conforming with these regulations.
- B. *Discontinued business, etc.* Whenever a use of land and/or building using an identification sign is discontinued, except for seasonal uses pursuant to subsection A.2., above, the sign shall be removed or obscured by the person owning the property within thirty (30) days after the discontinuance of such use. Any such sign which is nonconforming to these regulations and which is not used to advertise an active business within sixty (60) days of discontinuance shall be removed or otherwise brought into compliance.

Sec. 26-707. - General provisions/performance standards.

Some text has been added, and for the ease of review they are denoted below with a single asterisk (*) and **bold text**.

- A. *Sight distance triangle.*
1. No sign is allowed which would violate the sight distance triangle requirements of section 26-603B.
 2. At signalized intersections, where both streets are collectors and/or arterial, the required sight distance shall be governed by the standards set forth in the most current edition of the policy on geometric design of highways and streets, published by the American Association State Highway and Transportation Officials (AASHTO).
- B. *Location of signs.*
- *1. All signs allowed by this article, except billboards, public signs, and signs permitted under the criteria in section 26-708.F **must be owned by the same person or entity owning or leasing the property on which the sign is placed.**
- C. *Streets and rights-of-way.*
1. No sign shall be erected in such a location as to interfere with motor vehicle or pedestrian traffic.
 2. No sign is allowed in the public right-of-way, with the exception of:
 - a. Signs on bus benches and shelters pursuant to Article IV of Chapter 21;
 - *b. Public, traffic, regulatory, and **blade** signs; and
 - c. Signs permitted under the criteria in section 26-708.F.
 3. No sign is allowed which may be construed as a traffic sign or signal or which may be confusing to motorists or mistaken as a traffic signal.
 - *4. **For temporary signs**, where it is difficult to determine the public right-of-way boundary due to lack of curb, gutter and/or sidewalk, or survey markers, such boundaries shall be presumed to be ten (10) feet from the edge of pavement or back of curb. Where a sidewalk exists, such boundaries shall be presumed to be two (2) feet from outside edge of sidewalk.

5. Attachment of any sign to utility poles or other poles or structures within public right-of-way is prohibited, except as approved by city council pursuant to this article.
6. Temporary signs found by an enforcement officer to be located within city right-of-way or in violation of sight triangle requirements shall be removed by such enforcement officer with no requirement of notice.

D. *Interference.*

1. No sign is allowed which employs a lighting or control mechanism which causes radio, radar, cellular telephone or television interference.
2. No sign is allowed which, even though in general conformance with the standards and requirements of this sign code, is judged by the chief of police and public works director as a dangerous sign due to interference with a traffic control device by being in direct line between the control device and oncoming traffic or otherwise in visual competition with a traffic control device.

E. *Compliance with building codes.*

1. No sign shall be erected, constructed or maintained which obstructs or is attached to any fire escape, window, door or opening used as a means of egress or ingress or for firefighting purposes, or is placed which interferes with any opening required for light or ventilation.
2. No sign is permitted which is structurally unsafe as determined by the chief building official, based upon criteria established in the adopted building codes.
3. The design of all sign structure members and foundation shall conform to the requirements of the building code relative to allowable stresses, materials and engineering standards. Loads, both vertical and horizontal, shall not produce stresses exceeding those specified in the building code, and material construction shall be of the quality and grade required by the building code. All signs and structures shall be designed and constructed to meet the adopted building and electrical codes.

F. *Outside display.*

1. Notwithstanding the provisions of section 26-631, any merchandise displayed outside of a building in such a way as to attract attention when viewed by the general public by placement upon a pole, a fence, a platform, roof or other similar device or structure shall be considered a sign and is prohibited. This shall not, however, be construed to prohibit merchandise customarily stored outside of buildings and placed upon shelves or tables, such as automobiles, campers, boats, plant materials, produce or lumber.

G. *Illumination.*

1. All illuminated signage shall comply with section 26-503 of the zoning and development code.
2. Signs within one hundred (100) feet of a residential structure, may be lighted indirectly or internally.
3. Signs over one hundred (100) feet from a residential structure, may use any type of lighting source, except search or flashing lights, provided that they are shaded, shielded or directed so that the light shall not adversely affect surrounding premises or interfere with safe vision on public or private roadways, including highways.
4. All direct and indirect lighting sources shall be downcast to reduce glare, sky glow and light pollution.
- *5. In the MU-N district, illuminated signs are encouraged to be turned off when businesses are not in operation.**
- *6. Internally illuminated, translucent signs should have the typography lighter than the sign background. Opaque sign faces with internally-illuminated translucent typography or internally-illuminated individual channel letter with translucent faces are acceptable.**

- *7. Sign lighting should be consistent with the lighting of building elements and storefront lighting.
- *8. It is encouraged that sign faces be of darker hue with light colored text to prevent light glare emitted at night.
- *9. Signs adjacent to residential neighborhoods should be turned off after business hours.
- *10. The nighttime illumination of changeable copy signs shall conform with the following criteria:
 - a. Illumination measurement criteria: The illuminance of a changeable copy sign shall be measured with an illuminance meter set to measure footcandles accurate to at least two (2) decimals. Illuminance shall be measured with the sign off, and again with the sign displaying a white image for a full color capable changeable copy sign, or a solid message for a single-color EMC. All measurements shall be taken as close as practical to a perpendicular plane of the sign at the distance determined by the total square footage of the sign as set forth in the table.
 - b. Illumination Limits: The difference between the off and solid-message measurements using the measurement criteria shall not exceed 0.3 footcandles at night.
 - c. Dimming Capabilities: All permitted changeable copy signs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically determines the ambient illumination and programmed to automatically dim according to the ambient light conditions, or that can be adjusted to comply with the 0.3 footcandle measurements.

H. *Maintenance.*

- 1. Any sign, including temporary signs that becomes discolored, ragged, shredded, detached, etc., shall be removed or repaired.

I. *Removal or reconstruction of dangerous signs.*

- 1. All signs which are prohibited shall conform to the provisions of this article either by removal or reconstruction, whichever applies, within sixty (60) days after the owner of such sign is notified of the violation.

Sec. 26-708. - Miscellaneous provisions.

Former subsection C (Freestanding signs. Commercial, industrial, and mixed use zone districts) and D (Freestanding signs. Residential, agriculture and public facilities zone districts) have been removed from this section and placed within their respective sign standards sections that follow in Section 26-709.

A. *Building addresses.*

- 1. House or building address number signs shall be consistent with section 26-639 of the zoning and development code and **established city policy**.

B. *Signs located on bus benches and bus stop shelters.*

- 1. Signs located on bus benches shall be in conformance with Code of Laws, article IV, section 21-124.
- 2. Signs located on a bus stop shelter shall be in conformance with Code of Laws, article IV, section 21-151. Such signs shall be limited to two (2) faces per shelter with a maximum of twenty-four (24) square feet per face.

C. *Home Occupations*

- 1. Home occupations must comply with Section 26-613 of the Municipal Code.

2. Residential units with an approved home occupation business license through the City, are allowed one freestanding or wall-mounted non-illuminated sign.

D. Master sign plan.

1. The planning commission may approve a master sign plan for any existing or proposed commercial, mixed use, or industrial development of at least two (2) acres or more in size which is under unified control either by ownership, legal association or leasehold.
2. The intent and purpose is to encourage well-planned and designed signage within a large multiple building or multiple use complex which expresses unification and integration by elements of architectural style, size, color, placement and lighting. An additional purpose is to encourage the elimination of existing nonconforming signs. The planning commission may grant as a bonus for well-designed plans additional signs and/or up to a fifty (50) percent increase in maximum square footage for each sign, and/or may permit signs in locations other than normally permitted, based upon a finding that the proposed master sign plan substantially meets the intent and purpose of this subsection relating to unification and integration of signage.
3. Once approved at a public hearing by planning commission, all master sign plans shall be recorded with the Jefferson County Recorder's Office and shall constitute a covenant and must be complied with by all owners, proprietors, lessees or assigns, whether current or future. No substantial variation from the plan shall be permitted without planning commission approval. Noticing requirements for a master sign plan process shall follow the procedures outlined in section 26-109.

E. Signs in the right-of-way.

1. The community development director and public works director may jointly approve freestanding signs which are otherwise permitted to advertise a property, to be located in the public right-of-way immediately adjacent to that property, subject to all of the following criteria:
 - a. There are no viable alternative locations on the subject property;
 - b. The sign is for a property with commercial or mixed use zoning;
 - c. The sign will be within right-of-way that is immediately adjacent to the subject property;
 - d. The sign is not in the right-of-way of a state highway;
 - e. There are no immediate plans for widening the street as identified in the five-year capital investment program (CIP) or planning documents;
 - f. The sign is not for a site being completely redeveloped with new construction, in which case the proposed design should incorporate the sign on site;
 - g. No underground utilities, except for electricity, exist in the proposed location for the sign;
 - h. The sign does not obstruct the sidewalk or vehicular traffic;
 - i. The sign complies with sight distance triangle requirements per section 26-603.B;
 - j. The sign is not located in the landscape buffer or amenity zone located between the back of curb and the sidewalk;
 - k. The sign is not a pole sign; and
 - l. The sign must **be in lieu of a freestanding sign otherwise** located only on the immediately adjacent property for which sign is permitted.
2. Signs that meet the above criteria shall obtain a sign permit through the community development department and a right-of-way use permit through the department of public works.
3. Notwithstanding section 26-115, the decision of the community development director and public works director to grant or deny a permit under this subsection F. shall be the final decision of the city, appealable only to the district court.

- F. *Signs in mixed use zone districts.* Signs in any mixed use zone district must also comply with requirements in section 26-1113.
- G. *Signs for marijuana-related businesses.* No permanent or temporary sign associated with a marijuana-related business licensed pursuant to Articles XII and/or XIII of Chapter 11 may be installed or located until reviewed and approved by the city. See sections 11-296, 11-306, 11-406 and 11-417.

The former sections 26-709 (Residential, agriculture and public facilities zone districts signs standards chart), 26-710 (commercial, industrial and mixed use zone districts sign standards chart) have been entirely removed. The new sections are as follows: Section 709: Permitted sign types, Section 710: Permanent Sign Standards, Section 711: Temporary Sign Standards. The quantitative standards within each of these sections has not changed. The information has been reformatted, and specific sign types in violation of Reed v Gilbert have been removed. New sign types that do not address content have been added to address the gaps created by the deletion of several sign types. New sign types will be noted with **bold** text and an asterisk (*). The reformatting of these sections, was to make it easier to navigate for the reader, and for City Staff to enforce. We have utilized a similar premise to the zoning standards section of the Municipal Code, in which you check the permitted sign types, then move forward to either section 710 (permanent) or section 711 (temporary) to find the specific regulations for that sign type, if allowed.

Sec. 26-709. – Permitted Sign Types.

- A. A summary of sign types addressed in this article are listed in the following tables. The tables identify if signs are permitted (P), not permitted (NP), or permitted in limited (L) circumstances, based on the land use of the property upon which a sign is located.
- B. For purposes of this section only, the following definitions shall apply:
1. Low Density Residential. Land use category for determining allowable signage, both permanent and temporary, for single-family and duplex units.
 2. Multifamily Residential. Land use category for determining allowable permanent signage for residential uses with three (3) or more attached dwelling units.
 3. Multifamily (3-9 units). Land use category for determining allowable temporary signage for moderate intensity multifamily residential uses with three (3) to nine (9) dwelling units.
 4. Multifamily (10+ units). Land use category for determining allowable temporary signage for higher intensity multifamily residential uses with ten (10) or more attached dwelling units.
 5. Nonresidential. Land use category for determining allowable signage, both permanent and temporary, for all commercial, industrial, and other nonresidential uses.
- C. Permanent Signs. For signs that are permitted (P or L), additional standards are found in Section 26-710.

Table 1. Permanent Signs by Land Use			
Type of Sign	Low Density Residential Use	Multifamily Residential Use	Nonresidential Use
Address numbers	P	P	P
Animated	NP	NP	NP
Arcade	NP	NP	P
Barber shop poles	NP	NP	P
*Blade	NP	NP	P
Canopy	NP	NP	P
Changeable copy	NP	NP	P
*Directional	NP	P	P

Flag	P	P	P
Freestanding	L	P	P
Roof	NP	NP	NP
Traffic control or regulatory	P	P	P
Vehicle	P	P	P
Wall or painted	L	P	P
Window or door	P	P	P

D. Temporary Signs. For signs that are permitted (P or L), additional standards are found in Section 26-711.

Table 2. Temporary Signs by Land Use				
Type of Sign	Low Density Residential Use	Multifamily Use (3-9 units)	Multifamily Use (10+ units)	Nonresidential Use
Balloon or inflatable	NP	P	P	P
Banner	NP	P	P	P
Pennant, streamer, and similar devices	NP	P	P	P
Portable	NP	P	P	P
*Yard – Small	P	P	P	P
*Yard – Large	L	L	L	L

Sec. 26-710. – Permanent Sign Standards.

A. General.

1. Where a property is eligible for a permanent sign based on Section 26-709, the standards of this section shall apply.
2. Building permits are required for all permanent signs.
3. Residential zone districts include the entire Residential series (R-1, R-1A, R-1B, R-1C, R-2, R-2A, R-3, R-3A), Agricultural series (A-1, A-2), and Public Facilities (PF)
4. Nonresidential zone districts include the entire Commercial series (NC, RC, C-1, C-2), Mixed Use series (MU-C, MU-C TOD, MU-C Interstate, MU-N), and Industrial Employment (I-E).
5. All permanent signs required building permits.

B. Address Numbers.

1. Must be compliant with Section 26-639 of the Code.
2. Must be compliant with established city policies regarding addressing.

C. Arcade Signs.

1. Definition: Any sign projecting beneath and attached to the underside of any balcony, canopy, awning or other structural overhang or passageway.
2. Maximum number: 1 per business
3. Maximum size: 4 square feet
4. Height: Minimum height above street frontage or sidewalk level is 7 feet. See figure #.
5. Location: May not extend above the bottom of eave, balcony, canopy, awning or other structural overhang or passageway to which it is affixed. Can extend into right-of-way with an approved right-of-way permit.

D. Barber Shop Poles.

1. Definition: A sign with a striped interior which may or may not rotate, which is traditionally utilized to signify the presence an establishment within which the practice of barbering is engaged or carried out.
2. Maximum number: 1 per street frontage
3. Height: Pole height cannot exceed 5 feet in total, may not exceed height of building to which it is attached.
4. Location: Must be wall mounted. May extend into the right-of-way with an approved right-of-way permit.

E. Blade.

1. Definition: A sign which is affixed to any building, wall or structure and which extends beyond the building wall more than twelve (12) inches. Projection shall extend no more than 48 inches away from the structure to which the sign is attached.
2. Maximum number: 1 per street frontage or business
3. Maximum size:
 - a. For two-dimensional (2D) signs: 1 square foot for each 1 foot of height of the building wall to which the sign is to be attached.
 - b. For three-dimensional (3D) signs, as defined in subsection 26-702, 1.75 cubic feet for each 1 foot of height of the building wall to which the sign is to be attached.
4. Height: May not extend above the top of the wall or parapet; not to be roof mounted. Minimum height clearance 7 feet above street frontage or sidewalk.
5. Location: May extend into the right-of-way with an approved right-of-way permit.
6. Additional standards:
 - a. Blade signs are encouraged in the Traditional Overlay areas, as defined by the Architectural and Site Design Manual.
 - b. Wall signs and projecting signs are allowed on the same wall within the Traditional Overlay.
 - c. Blade signs should not be located closer than twenty-five (25) feet apart unless the signs works together to make a unified and compatible design or the sign group is integral to the building architecture, reinforcing a significant building feature such as a primary entry.
 - d. The structural support of projecting signs should be integrated into the design of the sign, either by being simple and inconspicuous, or by being creative in the use of structural elements, lighting, color and materials.

F. Canopy Signs.

1. Definition: A sign mounted to a roof-like structure serving the purpose of protecting vehicles and/or pedestrians and which may be freestanding or attached to a building, is provided with supports, and is open on three (3) sides if attached and on all sides if freestanding.
2. Maximum number: 1 per street frontage or major interior drive
3. Maximum size: Canopy signs may use up to 50% of the allowed wall sign allowance. The size of the canopy sign is to be subtracted from the allowable wall signage.

G. Changeable Copy

2. Definition: A sign, either illuminated or nonilluminated, which is designed so that the message or any part of the message may be periodically changed, either mechanically or electronically, however, where a change in message occurs no sooner than every eight (8) seconds. This includes signs that utilize computer-generated messages or some other electronic means of changing copy, including displays using incandescent lamps, electronic message centers (EMCs), LEDs, LCDs or a flipper matrix.
3. Prohibition: Changeable copy signs are not be permitted in the MU-N district or the MU-C TOD sub-district.
4. Maximum number: 1 per street frontage, but no more than 2 per development
5. Maximum size:
 - a. In residential zone districts, a maximum of 32 square feet per sign

- b. In nonresidential zone districts, the freestanding and wall signage size regulations (Sec. 26-710.G. and 26-710.K.) apply.
6. Height:
 - a. In residential zone districts , a maximum of 7 feet
 - b. In nonresidential zone districts, freestanding and wall signage height regulations (Sec. 26-710.G. and 26-710.K.) apply
7. Location: For freestanding changeable copy signs, the minimum setback is 5 feet from any property line
8. The time lapse between the change in information shall not be less than eight (8) seconds.

H. Directional.

1. Definition: A freestanding or wall-type sign, not located within the public street right-of-way, providing necessary directional information to motor vehicle operators or pedestrians, such as entrance, exit, parking limitations or location of onsite buildings or facilities. Directional signs shall be clearly incidental to the primary signage on a property, in both height and sign area.
2. Maximum number: No limit
3. Maximum size: 4 square feet per side
4. Height: If freestanding, shall not exceed 36 inches in height if within a required sight distance triangle, or 48 inches where outside of a sight distance triangle.

I. Flag.

1. Definition: Any fabric or other flexible material attached to or designed to be flown from a flagpole or similar device.
2. Must conform to the setbacks requirements the underlying zone district.
3. Maximum flagpole height of 35 feet.

J. Freestanding.

1. Definition: A sign that is permanent and self-supporting, being nondependent on support from a building or other structure, including signs placed upon fences or nonsupporting walls. This includes pole-mounted or monument signs.
2. Owner permission required: Single tenant signs on multitenant properties must provide property owner permission with the building permit application.
3. Design:
 - a. Except within the MU-C Interstate sub-district, new pole signs shall not be allowed *OR* New pole signs shall not be allowed in any MU zone district, except the MU-C Interstate sub-district.
 - b. The base of a freestanding monument sign shall be consistent with the materials of the building with which it is associated.
 - c. The materials of new freestanding signs shall be similar or closely related to the materials of the primary structure(s).
 - d. For new development or total redevelopment, all freestanding signs shall be placed within landscaped areas.
 - e. Monument signs, rather than pole signs, are strongly encouraged for all new development.
 - f. Pole signs are strongly discouraged with new development, unless the development is located within ¼ mile of the interstate and a highway-oriented sign is proposed.
 - g. Consolidated monument signage is encouraged in multiple use developments.
4. Multiple signs: Where multiple freestanding signs are permitted pursuant to this section, the following standards shall apply:
 - a. Where two (2) freestanding signs are permitted by virtue of multiple street frontage, each permitted sign shall be allowed to have the maximum square footage allowed as noted in this subsection. In addition, the sign area allowed may be transferred from one (1) sign to another; provided, that no freestanding sign shall exceed four hundred (400) square feet in area.

- b. Where multiple signs are permitted because of multiple street frontage, the signs may be erected on the same street frontage.
 - c. For double-faced signs, each sign face can have the maximum square footage allowed.
- 5. For single family uses
 - a. Not permitted, except for as allowed by the home occupation regulations.
- 6. For multifamily uses:
 - a. Maximum number: 1 per street frontage
 - b. Maximum size: 32 square feet
 - c. Minimum setback: 5 feet from any property line
 - d. Maximum height: 7 feet
- 7. For nonresidential uses in residential zone districts:
 - a. Maximum number: 1 per street frontage
 - b. Maximum size: 32 square feet
 - c. Minimum setback: 5 feet from any property line
 - d. Maximum height: 7 feet
- 8. For nonresidential uses in nonresidential zone districts:
 - a. Maximum size: Based upon Table 3 below.
 - b. Minimum setback: Based upon height and adjacent zoning:
 - i. 10 feet if adjacent to residentially zoned properties
 - ii. 5 feet from ROW if under 7 feet tall
 - iii. 10 feet from ROW if 7-15 feet in height
 - iv. 30 feet for signs over 15 feet in height
 - c. Maximum height: Based upon zoning and location:
 - i. 7 feet in all mixed use zone districts
 - ii. 50 feet for retail and service businesses within ¼ mile of an interstate highway measured from the property line
 - iii. 15 feet for all other freestanding signs

Table 3. Maximum sign area for freestanding signs for nonresidential uses in nonresidential zone districts		
Floor Area of Building*	Single Tenant Sign	Multiple Tenant Sign
0—1,500 s.f.	35 s.f.	60 s.f.
1,501—5,000 s.f.	35 s.f. plus 1 s.f. per each additional 50 s.f. of floor area over 1,501.	60 s.f. plus 1 s.f. per each additional 40 s.f. of floor area over 1,501.
5,001—50,000 s.f.	100 s.f. plus 1 s.f. per each additional 500 s.f. of floor area over 5,001.	150 s.f. plus 1 s.f. per each 300 s.f. of floor area over 5,001.
Over 50,001 s.f.	190 s.f. plus 1 s.f. per each additional 1,000 s.f. of floor area over 50,001 up to a maximum size of 300 s.f.	300 s.f. plus 1 s.f. per each additional 1,000 s.f. of floor area over 50,001 up to a maximum size of 400 s.f.
*In computing allowable sign size, only the footprint of the structure can be used. The floor area of gas station canopies and drive-thru canopies cannot be applied toward the freestanding sign allowance.		

- 9. Home Occupations
 - a. Must be in compliance with Section 26-613 of the Municipal Code.
 - b. Must have an approved business license through the City.
 - c. Permitted to have one non-illuminated sign up to 2 square feet in size.
- 10. 3D signs: Three-dimensional (3D) signs, as defined in subsection 26-702, are permitted the sign allowances listed in this subsection multiplied by 1.75, as measured in cubic feet.

K. Traffic control or regulatory.

1. Definition: Signs, signals or markings placed or erected by federal, state or local authority of the purpose of regulating, warning or guiding traffic
2. Location: May be placed by the federal, state or local authority within the public right-of-way.

L. Wall or painted.

1. Definition: A sign constructed of durable materials which is permanently affixed to an exterior surface of any building, wall or structure or painted directly on the exterior surface of a building, wall or structure which does not extend more than 15 inches beyond the building wall, except that signage placed upon marquees, canopies or awnings shall be considered wall signs.
2. Maximum number:
 - a. 1 per street frontage or major interior drive per activity
 - b. For uses which have a rear entry or delivery door, 1 nonilluminated wall sign per use is also permitted.
3. Maximum size: No larger than 1 square foot for every linear foot of the side of the building to which it is affixed.
4. Location:
 - a. Signs may only be affixed to walls which are parallel with public streets or major interior drives, as determined by the community development director
 - b. For buildings with flat roofs, wall signs shall not extend above the top of the parapet or mansard, and if placed upon a parapet or mansard shall not extend more than 3 feet above the deck line.
5. Other: Signs affixed to canopies shall be considered wall signs and shall be calculated based upon the length of the wall to which they are attached or adjacent.
6. Home Occupations
 - a. Must be in compliance with Section 26-613 of the Municipal Code.
 - b. Must have an approved business license through the City.
 - c. Permitted to have one non-illuminated sign up to 2 square feet in size.
7. Additional standards
 - a. Signs attached to a structure should be human-scaled and well-designed to contribute to the character of a street.
 - b. Building wall signs shall complement the building's architecture and fit within the architectural features of the façade so they do not overlap windows or columns.
 - c. Innovative and unique sign graphics are encouraged.

M. Window or door.

1. Definition: Any signs or decal affixed to, painted on, applied to, or hanging within twelve (12) inches of the interior of a window and that can be seen through the window from the exterior of the structure, but excludes merchandise included in a window display.
2. Maximum size: Sign shall not obstruct more than 25 percent of the door or window area
3. Other: The material, installation and/or size of window or door signs shall not negatively affect compliance with the transparency standards established in Article XI. Mixed Use Zone Districts and in the Architectural and Site Design Manual.

Sec. 26-711. – Temporary Sign Standards.

A. General.

1. Where a property is eligible for a temporary sign based on Section 26-709, the standards of this section shall apply.
2. Maximum number: Where a property is eligible for a temporary sign based on Section 26-7##, only one (1) temporary sign per business or dwelling unit may be placed on eligible property at any given time, with the exception of seasonal signs as described in subsection F below.
3. Illumination of temporary signs is prohibited.
4. Temporary signs do not require building permits.

B. Balloon or inflatable.

1. Definition: Any sign consisting of material intended to be filled with air or helium, or have air blown through in order to create a visual attraction; this is inclusive of air dancers, inflatables caricatures, all types and sizes of balloons, and similar devices.
2. Height: Cannot exceed the maximum permitted building height for the zone district in which they are located measured from existing grade.
3. Location: May not be located within the public right-of-way.
4. Other: Shall be securely anchored or attached so as to prevent dislocation, entanglement or encroachment onto adjacent properties or public streets, or undue hazard to motorists or pedestrians. Roof mounting is permitted.

C. Banner.

1. Definition: A sign or advertising display constructed of cloth, canvas, fabric or other light material that is mounted with no enclosing framework intended to be displayed for a short period of time.
2. Maximum size: Total size for any single or combined banners affixed to a wall based on one half (1/2) the allowance for wall signs.
3. Location: May be placed upon a building wall but shall not be attached to fencing, landscaping, freestanding posts or utility poles. Banners may be placed only on walls facing a public street or major interior drive.
4. Other: Shall be securely anchored or attached so as to prevent dislocation, entanglement or encroachment onto adjacent properties or public streets, or undue hazard to motorists or pedestrians.

E. Pennant, streamer, and other similar device.

1. Definition: A sign made of flexible materials intended to create a visual attraction through movement or combining similar sign types to create the impression of a line. This is inclusive of flutter flags.
2. Location: Shall be securely anchored or attached so as to prevent dislocation, entanglement or encroachment onto adjacent properties or public streets, or undue hazard to motorists or pedestrians.

F. Portable.

1. Definition: Any sign which is supported by one (1) or more uprights or braces upon the ground and which is of portable design, such as A-frame or pedestal style signs.
2. Maximum size: 6 square feet per side per sign
3. Setback:
 - a. 5 feet from any street right-of-way line if taller than 36 inches
 - b. 2 feet from any street right-of-way line if 36 inches or less in height
4. Location:
 - a. May be located on a sidewalk within private property, provided that adequate clearance exists to meet ADA requirements.
 - b. Must be anchored to the ground or weighted sufficiently to prevent movement by wind
 - c. May not be located outside when business is closed.

G. Yard – small.

1. Definition: A temporary, ground-mounted, portable sign constructed of paper, vinyl, plastic, wood, metal or other comparable material, and designed or intended to be displayed for a limited period of time
2. Seasonal allowance:
3. Maximum size: Shall not exceed four (4) square feet in size per sign
4. Location: Shall not be placed within city right-of-way or municipally owned property.

H. Yard – large.

1. Definition: A temporary, ground-mounted, portable sign constructed of paper, vinyl, plastic, wood, metal or other comparable material, and designed or intended to be displayed for a limited period of time
2. Maximum size:
 - a. For low density residential uses and multifamily (3-9 units), 9 square feet
 - b. For multifamily (10+ units), 32 square feet
 - c. For nonresidential uses, 32 square feet
3. Minimum setback: 5 feet
4. Maximum height: Shall not exceed 7 feet in height
5. Location: Allowed only on properties with active listings for sale or for rent, or on properties with active building permits

Sec. 26-712. - Billboards; specifications and regulations.

There have been no changes to this section, other than the section number has changed from 711 to 712.

Memorandum

TO: Mayor and City Council

FROM: Kenneth Johnstone, Community Development Director

THROUGH: Patrick Goff, City Manager

DATE: December 8, 2017 (for December 18th study session)

SUBJECT: Freestanding Emergency Rooms

BACKGROUND:

On April 11, 2016, City Council adopted Ordinance 1595 placing a 365-day temporary moratorium on the submission, acceptance, processing and approval of applications for “freestanding emergency rooms.” As defined in Section 3 of the ordinance, such facilities were defined as follows: “a medical facility that is not physically attached to a hospital facility that has the capacity of providing medical care and services to patients with emergency medical conditions in a manner similar to emergency rooms located within hospitals. Features of a freestanding emergency room facility may include, but are not limited to: expanded hours of operation, drive-lanes or vehicle bays to accommodate ambulance arrivals and departures, board certified emergency physicians, board-certified emergency nurses, on-site lab and imaging capabilities and similar equipment, services and treatments not commonly available in urgent care facilities.” The ordinance was effective on April 28, 2016 and was set to expire on April 27, 2017.

Prior to the moratorium’s expiration, at a March 6, 2017 study session, staff updated City Council on the status of state level discussion of possible regulation of this industry. Subsequently, Council adopted Ordinance 1616 extending the temporary moratorium for an additional year through April 27, 2018. To date, the state has not adopted any regulations, but those discussions continue. There was in fact legislation drafted and introduced in 2017, but it did not advance out of committee. Staff has heard from industry insiders that state level legislation may be gaining some headway for the 2018 legislative session. As has been discussed with City Council in the past, state level regulation may preempt the need for local regulations or may alter the manner in which local regulations would be crafted.

If the City Council wishes to consider adopting local regulations for freestanding emergency departments prior to the April 27, 2018 expiration of the current moratorium that process would need to start very soon. Staff anticipates a need for one or more study sessions with City Council and the Planning Commission to get preliminary direction on regulations. We would also need to

consider whether additional outreach to the community and the industry would be desired. If those initial meetings were held in January/February, that would allow just enough time to conduct a first reading and Planning Commission and City Council public hearings on an ordinance in March and the first half of April. With that in mind, staff is requesting direction from City Council whether they would like to consider a short extension of the moratorium (possibly 90 days) to be able to be aligned with whatever action the state may take during the 2018 legislative session, which begins in January and ends in early May.

The following text is repeated from previous memorandums and is included as additional background for reference and context on this topic.

Existing Regulations

The concept of freestanding emergency rooms is relatively new and has only emerged in the state of Colorado in the past few years. The business model has existed in some other states for somewhat longer. Because it is a new land use concept, the municipal code is silent to this specific use. The City's zoning code defines hospitals and allows them in certain zoning districts. The City's zoning code also defines medical offices and allows those in certain zone districts. These freestanding emergency rooms have characteristics of both of these uses and likely fall somewhere between the two in terms of the intensity of the use and associated impacts.

With the code being silent to this specific use, the Community Development Director has determined that the use is most similar to a hospital emergency room and therefore allowed to be located in the same manner. Hospitals are not permitted in any of the City's "straight" zoning districts, based on those use charts being silent to hospitals as a use group. However, hospitals are allowed in the City's Planned Hospital Districts (PHD) upon approval of a rezoning of a property to that district. Currently only the Exempla Lutheran hospital campus is zoned PHD. In the City's Mixed Use Districts, hospitals are included in those use charts and are allowed in all of the Mixed Use Commercial (MU-C) Districts and not allowed in the Mixed Use Neighborhood District.

Potential Code Amendments

Local regulations could include:

- Modifications to Chapter 26 (Zoning and Development Code) defining freestanding emergency rooms and allowing them to be located in specific zoning districts. Some of the zoning approaches that might be considered would include:
 - Limiting the number of zoning districts within which they would be allowed
 - Requiring a special use permit or conditional use permit to authorize these uses
 - Limiting the total number of such facilities within the City
 - Establishing certain spacing requirements between such uses and/or between such uses and other existing emergency room facilities
 - Establishing other operational requirements such as hours of operation

- Modifications to Chapter 11 (Licensing) creating unique licensing and permitting requirements for freestanding emergency rooms. Certain operational requirements could also be located in this chapter, including the possibility of allowing such licenses only upon a demonstration of “need,” relative to the location and spacing of other similar medical facilities.

NEXT STEPS:

Staff seeks direction from City Council on how to proceed regarding freestanding emergency departments.

Option 1: Do nothing. The moratorium would expire on April 27, 2018 and these businesses would be regulated under existing codes, as discussed above.

Option 2: Begin the process of adopting regulations for freestanding emergency rooms, beginning with a study session with City Council in early 2018, where direction would be sought on some of the policy options discussed above. It would be important to receive input from Council on how much, if any, additional public input you would desire beyond the standard public hearing processes for adopting an ordinance.

Option 3: Consider adoption of an ordinance extending the existing moratorium, possibly for an additional 90 days.