

# **AGENDA**

## **CITY COUNCIL MEETING CITY OF WHEAT RIDGE, COLORADO 7500 WEST 29<sup>TH</sup> AVENUE, MUNICIPAL BUILDING**

**September 23, 2019**

**7:00 p.m.**

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

### **CALL TO ORDER**

### **PLEDGE OF ALLEGIANCE**

### **ROLL CALL OF MEMBERS**

### **PROCLAMATIONS AND CEREMONIES**

Domestic Violence Awareness Month

### **APPROVAL OF MINUTES**

### **APPROVAL OF AGENDA**

### **CITIZENS' RIGHT TO SPEAK**

- a. Citizens, who wish, may speak on any matter not on the Agenda for a maximum of 3 minutes and sign the PUBLIC COMMENT ROSTER.
- b. Citizens who wish to speak on an Agenda Item, please sign the GENERAL AGENDA ROSTER.
- c. Citizens who wish to speak on a Public Hearing item, please sign the PUBLIC HEARING ROSTER before the item is called to be heard.
- d. Citizens who wish to speak on Study Session Agenda Items for a maximum of 3 minutes and sign the STUDY SESSION AGENDA ROSTER.

#### **1. CONSENT AGENDA**

- a. Resolution No. 55-2019 A resolution approving the PIF Collecting Agent Agreement between the City of Wheat Ridge, the Longs Peak Metropolitan District and Evergreen-Clear Creek Crossing, LLC

- b. Resolution No. 54-2019 – a resolution supporting the City's application for a Non-Motorized Trails Grant from the Colorado Parks and Wildlife State Trails Program for the Planned Multiuse Trail associated with the Wheat Ridge · Ward Station area

**PUBLIC HEARINGS AND ORDINANCES ON SECOND READING**

2. Council Bill No. 13-2019 – an ordinance amending the Wheat Ridge Code of Laws concerning procedures for protests under Section 5.10 of the Home Rule Charter (Case No. ZOA-19-03)
3. Council Bill No. 15-2019 – an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area

**DECISIONS, RESOLUTIONS AND MOTIONS**

4. Resolution No. 53-2019 – a resolution in support of Jefferson County Ballot Issue 1A

**CITY MANAGER'S MATTERS**

**CITY ATTORNEY'S MATTERS**

**ELECTED OFFICIALS' MATTERS**

**ADJOURN TO SPECIAL STUDY SESSION**

**REQUEST FOR CITY COUNCIL ACTION**

**TITLE: RESOLUTION NO. 55-2019 – A RESOLUTION APPROVING THE PIF COLLECTING AGENT AGREEMENT BETWEEN THE CITY OF WHEAT RIDGE, THE LONGS PEAK METROPOLITAN DISTRICT AND EVERGREEN-CLEAR CREEK CROSSING, L.L.C.**

☐ PUBLIC HEARING  
☐ BIDS/MOTIONS  
☒ RESOLUTIONS

☐ ORDINANCES FOR 1<sup>ST</sup> READING  
☐ ORDINANCES FOR 2<sup>ND</sup> READING

QUASI-JUDICIAL:

☐ YES

☒ NO

  
City Manager**ISSUE:**

The Longs Peak Metropolitan District, Evergreen-Clear Creek Crossing, L.L.C. and the City of Wheat Ridge entered into a Public Finance Agreement (PFA) for the Clear Creek Crossing multi-use development project. The PFA provides for the use of Public Improvement Fees (PIFs) to support bonds for the construction of public improvements associated with the project. The PIF Collecting Agent Agreement appoints the City as Collecting Agent for purposes of receiving, collecting, administering, remitting and disbursing all PIF revenue pursuant to the terms of the PFA.

**BACKGROUND:**

The Clear Creek Crossing Project's public improvements are being financed in part via Public Improvement Fees ("PIFs") as set forth in the Public Finance Agreement with the City dated July 9, 2018 ("PFA"). The PIFs are fees derived from private covenants imposed on property within the District, and they operate similar to a sales tax by being charged against certain purchases made on the property. Although the PIFs originate from private covenants, PIF revenue serves a public purpose and is limited to providing public improvements for the Clear Creek Crossing Project and other approved costs consistent with the PFA and PIF covenants.

Section 5.4 of the PFA requires the engagement of a PIF Collection Agent to collect the PIF revenue in the same manner that the City of Wheat Ridge collects its taxes on purchases. The District has identified private accounting firms that are able to perform this service; however, there are advantages to having the City of Wheat Ridge provide the Collection Agent services.

First, it will eliminate the need for a duplication of efforts. The City already collects taxes on purchases within its boundaries, and having businesses remit the taxes and PIFs to the same entity provides for more efficient and seamless administration. In addition, Section 5.3 of the PFA contemplates a scenario where Credit-PIF revenue is retained by the City in lieu of tax revenue, which furthers the rationale for the City being the Collection Agent.

Second, the public accounting firms will charge a fee for the collection service. The fee for such service in the proposed agreement is 2% of the PIF revenue collected by the agent. At project buildout, the collection fee on PIF revenue is expected to exceed \$20,000 annually. The City is an ideal recipient of this charge given the public nature of the PIFs, as it keeps the funds collected in the coffers of a public entity as opposed to the use and profit of a private accounting firm.

Lastly, the City is a more reliable, permanent, and transparent agent. The City has more experience than any private firm in administering and enforcing the collection of taxes, and PIF revenue collected by the City is more transparent and less susceptible to misappropriation. Moreover, given the lengthy term that collection services are needed, the City is best suited as a long-term agent and partner in the Clear Creek Crossing Project.

**PRIOR ACTION:**

A consensus was reached by City Council at the September 9, 2019 study session to bring forward the PIF Collecting Agent Agreement for approval.

**FINANCIAL IMPACT:**

Per Section 3.7 of the Agreement, the City will receive a Collection Fee equal to 2% of the PIF Revenue, estimated to total at least \$20,000 annually.

**RECOMMENDATIONS:**

Staff recommends approving the PIF Collecting Agent Agreement.

**RECOMMENDED MOTION:**

“I move to approve Resolution No. 55-2019, a resolution approving the PIF Collecting Agent Agreement between the City of Wheat Ridge, the Longs Peak Metropolitan District and Evergreen-Clear Creek Crossing, L.L.C.”

Or,

“I move to postpone indefinitely Resolution No. 55-2019, a resolution approving the PIF Collecting Agent Agreement between the City of Wheat Ridge, the Longs Peak Metropolitan

District and Evergreen-Clear Creek Crossing, L.L.C., for the following reason(s) \_\_\_\_\_  
\_\_\_\_\_.”

**REPORT PREPARED/REVIEWED BY:**

Patrick Goff, City Manager

**ATTACHMENTS:**

1. Resolution No. 55-2019
2. PIF Collecting Agent Agreement

**CITY OF WHEAT RIDGE, COLORADO**  
**RESOLUTION NO. 55**  
**Series of 2019**

**TITLE: A RESOLUTION APPROVING THE PIF COLLECTING AGENT AGREEMENT BETWEEN THE CITY OF WHEAT RIDGE, THE LONGS PEAK METROPOLITAN DISTRICT AND EVERGREEN-CLEAR CREEK CROSSING, L.L.C.**

**WHEREAS**, pursuant to Charter Section 14.2 and C.R.S. § 29-1-203, the City of Wheat Ridge is authorized to enter into cooperative agreements with other governmental entities; and

**WHEREAS**, pursuant to C.R.S. § 31-15-101(1)(c), the City may enter into contracts with any person; and

**WHEREAS**, the City, the Longs Peak Metropolitan District ("District"), and Evergreen-Clear Creek Crossing, L.L.C. ("Evergreen") have entered into a Public Finance Agreement to finance the construction of public improvements to serve a mixed-use development known as Clear Creek Crossing (the "Project"); and

**WHEREAS**, Evergreen has recorded against the Project's property certain covenants imposing public improvement fees on retail, admissions, and lodging sales (the "PIFs"); and

**WHEREAS**, the City, District, and Evergreen have negotiated an agreement whereby District and Evergreen will engage the City as a Collecting Agent to collect revenue generated by the PIFs in a similar manner as the City collects taxes for retail, admissions, and lodging sales; and

**WHEREAS**, the City Council wishes to approve the PIF Collecting Agent Agreement, which will help facilitate the financing and development of the Project and otherwise promote the general health, safety, and welfare of the City's taxpayers, residents, and inhabitants.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheat Ridge, Colorado, that:

The PIF Collecting Agent Agreement by and between the City, the Longs Peak Metropolitan District, and Evergreen-Clear Creek Crossing, L.L.C. attached to this Resolution is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the same.

**DONE AND RESOLVED** this 23<sup>rd</sup> day of September, 2019, at Wheat Ridge, Colorado.

CITY COUNCIL OF THE CITY OF WHEAT RIDGE  
JEFFERSON COUNTY, COLORADO

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Bud Starker, Mayor

ATTEST:

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Janelle Shaver, City Clerk

## PIF COLLECTING AGENT AGREEMENT

This **PIF COLLECTING AGENT AGREEMENT** (the "**Agreement**") is effective \_\_\_\_\_, 2019, among the **LONGS PEAK METROPOLITAN DISTRICT** (the "**District**"), a quasi-municipal corporation and political subdivision of the State of Colorado ("**State**"), **EVERGREEN- CLEAR CREEK CROSSING, L.L.C.**, an Arizona limited liability company (the "**Developer**"), and the **CITY OF WHEAT RIDGE** (the "**City**"), a home rule city and political subdivision of the State.

### RECITALS

A. The District was formed to provide Public Improvements and services for development of property within and without its boundaries.

B. The District, Developer and the City entered into a Public Finance Agreement (the "**PFA**"), dated July 9, 2018, which provides for Public Improvement Fees (the "**PIFs**") to be imposed on property by means of a covenant that runs with the land and applicable to activity conducted within a project known as Clear Creek Crossing (the "**CCC Project**") to support District bonds for the construction of Public Improvements all as defined in the PFA (the "**District Bonds**").

C. The Public Infrastructure to be constructed by the District will touch and concern the land and will benefit the CCC Project and surrounding property.

D. The District will enter into one or more agreements with a trustee (the "**Trustee**") concerning receipt of funds generated under the PFA and to apply those funds to payments on District Bonds and for the benefit of the Public Improvements (the "**Bond Indenture**").

E. The Developer has recorded against the CCC Project property:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;



4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

(the "**PIF Covenants**"), pursuant to which a PIF will be imposed, and funds collected and paid (the "**PIF Revenue**").

F. The City regularly collects taxes pursuant to the Wheat Ridge Code of Laws and all regulations promulgated thereunder (the "**Tax Ordinance**") and is willing to collect the PIF Revenue on behalf of the District and the Developer to facilitate the completion of the Public Improvements, which will be beneficial to the City and its citizens.

G. The parties acknowledge that (i) the PIFs are a charge imposed pursuant to the PIF Covenants for the benefit of the CCC Project and not through the exercise of any power by the City; (ii) the PIF Revenue is not tax revenue in any form; (iii) the PIF Revenue is to be pledged and used for the payment of the principal of and interest on the District Bonds or as otherwise provided in the PFA and Bond Indentures; and (iv) the authority of the City to collect the PIFs is derived through this Agreement and the City's authority is limited by and enforceable only in accordance with the terms of this Agreement.

H. The District Bonds do not constitute obligations, indebtedness or multiple fiscal year financial obligations of the City and do not constitute or give rise to a pecuniary liability of the City, or a charge against its general credit or taxing powers. The City has no obligations of any nature to pay the principal of or interest on the District Bonds.

## **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual agreements, promises and covenants herein contained, the parties agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1. DEFINITIONS.** Any capitalized term not defined in this Agreement but defined in the PIF Covenants shall have the meaning given to such term in the PIF Covenants. If

any term is defined in both the PIF Covenants and this Agreement, the definition set forth herein shall control for all purposes of this Agreement. The following capitalized terms shall have the following meanings unless the context requires otherwise.

"**Agreement**" means this PIF Collecting Agent Agreement as amended and supplemented from time to time.

"**City**" has the meaning set forth in the introductory paragraph.

"**Collecting Agent**" means the City acting as the agent of the District.

"**Collection Fee**" means a fee equal to two percent (2%) of the PIF Revenue.

"**Information**" means any written information or guidelines prepared by the District and the Collecting Agent regarding the calculation, payment and reporting of the PIFs, as amended and supplemented from time to time.

"**PIF Sales**" means the "Admissions Sales", "Lodging Sales" and "Retail Sales" defined in the PIF Covenants.

"**Public Improvements**" has the meaning set forth in the PFA.

"**Report Recipients**" are the City, Trustee and District.

"**Waiver of Confidentiality**" means a waiver of confidentiality agreement that is substantially similar in form and substance to the form of the Public Financing Addendum for tenant Retailers which is attached hereto as Exhibit A and incorporated herein by this reference for all purposes, as amended and supplemented from time to time.

## **ARTICLE II PUBLIC IMPROVEMENT FEES**

**Section 2.1. Payment of Public Improvement Fees.** The PIFs shall be determined, calculated, adjusted and payable by Retailers in accordance with the terms and provisions of the PIF Covenants. The procedures for the collection, segregation, remittance, payment, delinquencies and reporting (but not for the calculation) of the PIFs shall be substantially similar to those procedures followed by the City for the collection of the related taxes or as otherwise supplemented or provided in the Information.

**Section 2.2. Remittance of Public Improvement Fees.** PIFs shall be paid to the City as the Collecting Agent substantially as set forth below:

a. No later than the monthly date that taxes are payable, each Retailer shall remit all PIF amounts payable pursuant to the PIF Covenants to the Collecting Agent on reporting forms provided by the Collecting Agent.

b. All adjustments, including refunds, additions or other modifications, to PIFs payable shall be processed in a manner substantially similar to the process followed by the City for an adjustment of the related City tax. If an adjustment increases the amount of the PIF or results in a refund of such PIF, the payer shall claim any credit or pay additional PIFs in the next monthly reporting period utilizing the City's standard reporting and remittance forms.

### **ARTICLE III COLLECTION OF PUBLIC IMPROVEMENT FEES**

#### **Section 3.1. Appointment of City as Collecting Agent.**

a. The District and Developer appoint the City as Collecting Agent for purposes of receiving, collecting, administering, remitting and disbursing all PIF Revenue paid pursuant to the PIF Covenants during the term of this Agreement. City accepts the responsibility of receiving the PIF Revenue and, after deduction of the Collection Fee, depositing the PIF Revenue within five (5) business days after receipt and processing as directed by the District, and upon payment in full or defeasance of the District Bonds, as directed by the Developer.

b. PIF Revenue constitutes funds collected for another government within the meaning of *Article X, Section 20*, of the *Colorado Constitution*. The City is not the agent of any person other than the District and Developer and shall have only those responsibilities expressly stated and in written correspondence from the District or Developer, as applicable, directing payment or deposit of the PIF Revenue. The obligations of the City under this Agreement shall not constitute a multiple fiscal year direct or indirect debt or other financial obligations of the City, and the payment of any costs incurred or to be incurred by the City in performing its obligations hereunder shall be subject to annual appropriation by the City Council.

c. The PIF Revenue collected pursuant to this Agreement will be utilized as provided in the PFA and the Bond Indentures, and, after deduction of the Collection Fee, shall be distributed in accordance with the terms of this Agreement.

#### **Section 3.2. Covenant of the Parties.**

a. Each party hereby represents and warrants to and for the benefit of the other party:

(1) That it has full power and legal authority to enter into this Agreement;

(2) That it has taken or performed all acts or actions that may be required by its governing documents, statute or charter to confirm its authority to execute, deliver and perform each of its obligations under this Agreement; and

(3) That neither the execution and delivery of this Agreement, nor compliance with any of the terms, covenant or conditions of this Agreement will result in a violation of or default under any other agreement or contract to which it is a party or by which it is bound.

b. From time to time but not later than the last day of each calendar month commencing with the date of execution of this Agreement, each party will, to the extent that it has actual knowledge thereof, provide to the other party a current listing of the name and address of each person or entity required to pay PIFs (the “**PIF Obligors**”) and the date of opening of the retailer’s store or operation subject to the PIF Covenants.

c. The District will file, or cause to be filed, with the Collecting Agent a Waiver of Confidentiality executed by each PIF Obligor, authorizing the Collecting Agent to share information contained in the reports, returns and other documents delivered by the PIF Obligor. The Collecting Agent shall be responsible for providing reports to the Report Recipients only for PIF Obligors for whom the District has provided a Waiver of Confidentiality, and to the extent permitted by law, the District shall indemnify and hold the City harmless from any liability that may arise from the release of such reports to the Report Recipients.

d. The parties shall cooperate with each other and shall undertake any reasonably necessary action that is required to support or assist in the collection, remittance and reporting of all PIFs.

**Section 3.3. Provision of PIF Information to PIF Obligors.** Within ten days after receipt of written notice from the District of any new PIF Obligor, the Collecting Agent shall provide the PIF Obligor: (i) all Information or policies and procedures adopted by the District regarding the calculation, payment and reporting of PIFs, and (ii) all reporting forms, procedures and other instructions concerning the collection and remittance of PIFs to the Collecting Agent, and all information required under the PIF Covenants

**Section 3.4. Collection and Reporting of PIF Revenues.**

a. The parties shall take the following specific actions in connection with the collection and reporting of PIF Revenues:

(1) The Collecting Agent shall receive PIF Revenue remitted by PIF Obligors and, after deduction of the Collection Fee, transfer, remit to and deposit it within five (5) business days after receipt and processing thereof as directed in writing by the District or Developer, as applicable.

(2) The Collecting Agent shall receive from PIF Obligors all reports, returns and other documents delivered pursuant to the PIF Covenants. If a Waiver of Confidentiality has been provided, the Collecting Agent shall, subject to the terms of Section 3.2.c, make copies of all reports, returns and other documents available to the Report Recipients.

(3) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a first delinquency notice to any PIF Obligor (i) that fails to timely remit PIF Revenue during the preceding collection month or (ii) that the Collecting Agent has reasonably determined to have paid an incorrect amount for the preceding collection month. The Collecting Agent shall send copies of all first delinquency notices to the

District, together with a report of the amount of such delinquency, and the period for which such PIF Obligor is delinquent.

(4) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a second delinquency notice to any PIF Obligor that has not paid any delinquent PIF. The Collecting Agent shall send copies of all second delinquency notices to the District, together with a report listing the name of each PIF Obligor to whom the second delinquency notice was sent, the amount of such delinquency, and the period of delinquency.

(5) The Collecting Agent is not obligated to distribute additional delinquency notices after the second delinquency notice.

(6) In accordance with terms mutually acceptable to and subsequently approved in writing, the Collecting Agent, Developer or District may initiate, pursue and enforce, or cause to be pursued and enforced, civil actions or other judicial proceedings to collect any delinquent PIFs, interest or penalties due, or to enforce any other obligation under the PIF Covenants. Otherwise, the City shall have no obligation to undertake any enforcement action of any nature.

(7) Subject to subparagraph b. of this Section 3.4, the Collecting Agent shall prepare and deliver to the District and Developer, on or as soon as practicable after the 45<sup>th</sup> day following the end of each collection month, a report (i) describing the amount of the respective PIF Sales and the amount of PIF Revenue received by the Collecting Agent from each PIF Obligor during such collection month and for the calendar year to date, (ii) describing the amount of PIF Revenue received since the last report representing delinquent PIF Revenue, including interest and penalties, and the PIF Obligors to whom such delinquent fees are attributable, and (iii) identifying each PIF Obligor who is delinquent in submitting reports, returns and other documents.

(8) The Collecting Agent shall, within 90 days after the end of each calendar year, provide the District and Developer an annual unaudited report setting forth the PIF Revenue received by the Collecting Agent for the preceding calendar year. At reasonable times during regular business hours, the District, Developer, any Trustee or their designee are authorized to audit, or cause audits to be conducted of, the Collecting Agent's books and records. The Collecting Agent shall, within 60 days after notice, pay any deficiency as directed by the District or Developer, together with interest thereon (subject to appropriation by the City Council) at a rate equal to one percent (1%) of the prime rate published in the Wall Street Journal on the date of discovery of such deficiency and notice thereof to the Collecting Agent (not to exceed eighteen percent (18%)).

b. All reports, information or data concerning PIF Sales or PIF Revenue received by the Collecting Agent shall remain confidential, unless otherwise required to be made public by law. All information shall be used only for purposes of collecting PIFs or enforcing PIF Covenants, monitoring compliances, disseminating information to prospective purchasers or

owners of the District Bonds, or as may otherwise be authorized under the PIF Covenants and shall be subject to the terms of Section 3.2.c.

**Section 3.5. Remittance of Public Improvement Fees.** All PIF Revenue shall, after deduction of the Collection Fee, be transferred and remitted as directed by the District or Developer, as applicable. The Collecting Agent shall have no responsibility or liability for the application of PIF Revenue to District Bonds or other purposes.

**Section 3.6. Bankruptcy of Retailer.** In the event either party to this Agreement receives notice of any action in the bankruptcy of any PIF Obligor, such party shall, as soon as practicable, give notice or convey copies of such notice which it received to the other party.

**Section 3.7. Collection Fee and Reimbursable Expenses.** In consideration of its performance of collection services hereunder, the Collecting Agent shall retain the Collection Fee on PIF Revenue collected.

#### **ARTICLE IV MISCELLANEOUS TERMS**

**Section 4.1. Perfection of Security Interests.** The District and the City elect to have all provisions of Section 11-57-201, et seq., C.R.S., as amended, apply to the security interest of such parties in the PIFs; provided, however, that such election shall not operate to modify or limit the rights conferred on the District by any provision of State law.

**Section 4.2. Beneficiaries of Public Improvement Fees.** Notwithstanding the appointment of the City as the Collecting Agent, the District and Developer are the primary beneficiaries of the PIFs in accordance with the terms of the PIF Covenants, the PFA and Bond Indentures.

**Section 4.3. Sovereign Powers and Immunities.** Nothing in this Agreement shall be construed as diminishing, delegating or otherwise restricting any of the sovereign powers or immunities of the City or District.

**Section 4.4. Resignation; Removal; Assignment.** The City may resign as Collecting Agent by submitting a notice of resignation to the District no less than 60 days before the resignation is intended to take effect. The resignation shall be effective on the termination date set forth in such notice. The City may be removed as Collecting Agent by the District or Developer at any time to become effective not earlier than 60 days after notice to the City. If the City has breached a term or condition of this Agreement, the District or Developer may remove the City as Collecting Agent, effective immediately. This Agreement shall not be assigned by either party other than to a successor by operation of law or with the prior written consent of the other parties.

**Section 4.5. Notice.** All notices, certificates or other communications required to be given hereunder shall be in writing and shall be deemed given when delivered in person, or by

prepaid overnight express mail or a national courier service, or mailed by certified or registered mail, postage prepaid, addressed as follows:

To the City:

City Manager  
City of Wheat Ridge  
7500 West 29<sup>th</sup> Avenue  
Wheat Ridge, CO 80033  
Email: pgoff@ci.wheatridge.co.us

To the District:

Seter & Vander Wall, P.C.  
7400 East Orchard Road, Suite 3300  
Greenwood Village, CO 80111  
Attn: Kim J. Seter, Esq.  
Email: kseter@svwpc.com

To the Developer:

Evergreen-Clear Creek Crossing, L.L.C.  
1873 S. Bellaire Street, Ste. 1200  
Denver, CO 80222  
Attn: Tyler Carlson  
Email: tcarlson@evgre.com

with copy to:

2390 E. Camelback Road, Ste. 410  
Phoenix, AZ 85016  
Attn: Laura Ortiz  
Email: lortiz@evgre.com

The parties may by written notice designate any additional or different address to which subsequent notices, certificates or other communications will be sent.

**Section 4.6. No Third Party Beneficiaries.** There are no intended beneficiaries of this Agreement except the City, Developer and the District. Nothing contained in this Agreement shall give or allow any claim or right of action by any person with respect to this Agreement.

**Section 4.7. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their duly authorized successors and assigns.

**Section 4.8. Amendment.** This Agreement may only be amended, changed, modified or altered by an instrument in writing duly executed by each party.

**Section 4.9. Computation of Time.** In computing a period of days, the first day shall be excluded and the last day shall be included. If the last day of any period is not a business day, the period shall be extended to include the next succeeding business day. If a number of months is to be computed by counting the months from a particular day, the period shall end on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period shall end on the last day of that month.

**Section 4.10. Payments Due on a Day Other Than a Business Day.** If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Agreement shall be a day other than a business day, such payment may be made, or such act performed, or such right may be exercised on the next succeeding business day with the same force and effect as if done on the nominal date provided in this Agreement or the PIF Covenants.

**Section 4.11. Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof which shall be enforced to implement the manifest intent hereof.

**Section 4.12. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 4.13. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

**Section 4.14. No Indemnification by City.** The City shall have no obligation to indemnify, hold harmless or defend the District, Developer, any District Bond Trustee or any other person for any purpose whatsoever. The only remedies of the parties are set forth in Section 4.15.

**Section 4.15. Default and Remedies.** If any party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the terms and provisions of this Agreement, and if such failure of performance continues for a period of 30 days following notice of default from another party (or such additional period of time as may be reasonably necessary to cure such default as long as the curative action is commenced within such 30 day period and is diligently and continuously pursued to completion), then any non-defaulting party may initiate a court action (i) to enjoin such failure of performance, (ii) to recover damages, and (iii) to seek any other remedy available at law or in equity, including an action for specific performance. The prevailing party in any court action shall be entitled to an award of costs and reasonable attorney fees. No remedy provided under this Agreement shall be required to be exercised as a prerequisite to seeking any other relief to which such party may then be entitled. All rights and remedies under this Agreement are cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any other right or remedy for any default at the same or a different time. Any delay in asserting any right or



remedy under this Agreement shall not operate as a waiver of any such right or limit such right in any manner.

**Section 4.16. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Agreement.

This PIF Collecting Agent Agreement is entered into and executed by the parties as of the date set forth above.

**LONGS PEAK METROPOLITAN DISTRICT**

By:\_\_\_\_\_

ATTEST:

By:\_\_\_\_\_

**CITY OF WHEAT RIDGE**

By:\_\_\_\_\_

Bud Starker, Mayor

ATTEST:

By:\_\_\_\_\_

Office of the City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gerald E. Dahl, City Attorney

**DEVELOPER**

**EVERGREEN-CLEAR CREEK  
CROSSING, L.L.C.,**  
an Arizona limited liability company

By: Evergreen Development Company-2016, L.L.C.,  
an Arizona limited liability company,  
its Manager

By: Evergreen Devco, Inc.,  
a California corporation,  
its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A

### PUBLIC FINANCING ADDENDUM

THIS PUBLIC FINANCING ADDENDUM (this "**Addendum**") is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, ("**Landlord**" or "**Owner**"), \_\_\_\_\_ ("**Tenant**") and \_\_\_\_\_ ("**Guarantor**") with respect to and forming a part of that certain LEASE AGREEMENT (the "**Lease**") dated \_\_\_\_\_, 20\_\_, for the premises commonly known as \_\_\_\_\_ (the "**Premises**") in the retail center commonly known as \_\_\_\_\_ located in the City of Wheat Ridge (the "**Center**").

#### Recitals

This Addendum is made with respect to the following facts:

A. Longs Peak Metropolitan District (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado (the "**State**") and has been organized under State law to facilitate the financing, acquisition and construction of public improvements needed for the development of the Center and other real property within the boundaries of the District (the "**Public Improvements**").

B. In connection with the financing for the Public Improvements, the Premises are subject to:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,
2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;
3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;
4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

(Collectively, the "**PIF Covenants**").

The PIF Covenants impose on each "Retailer" within the Center the requirement to collect and remit a "Public Improvement Fee" on all "Admissions Sales", "Lodging Sales" and "Retail Sales" (collectively, the "**PIF Sales**") for the use and benefit of the Owner and District for the purposes described in the PIF Covenants.

#### **Addendum**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Defined Terms. Each initially capitalized term used in this Addendum, unless otherwise defined in this Addendum, shall have the meaning set forth for the term in the PIF Covenants.

2. Tenant's Obligations under PIF Covenants.

2.1 Tenant acknowledges that it has received and read the PIF Covenants. Tenant is a Retailer for the purposes of the PIF Covenants and is subject to all terms, conditions, obligations and restrictions imposed on and applicable to Retailers under the PIF Covenants with respect to the Premises and PIF Sales transactions initiated, consummated, conducted or transacted or otherwise occurring from or within any portion of the Premises. Without limiting the generality of the immediately preceding sentence, Tenant shall impose and collect the Public Improvement Fee on all PIF Sales transactions and shall pay all Public Improvement Fee revenues to the Collection Agent, unless otherwise directed by the District, in accordance with the requirements of the PIF Covenants.

2.2 Tenant further acknowledges that if Tenant authorizes any other Retailer to possess or occupy any portion of the Premises, subject in any case to the terms and conditions of the Lease, Tenant will then be an Occupant for the purposes of the PIF Covenants, and will be subject to all terms, conditions, obligations and restrictions imposed on and applicable to Occupants under the PIF Covenants, with respect to such portion of the Premises.

2.3 No default by Landlord shall entitle Tenant to any offset, deduction or other defense to Tenant's payment of all Public Improvement Fees due under the PIF Covenants.

3. Waiver of Confidentiality.

3.1 Tenant specifically authorizes the Collection Agent, Owner, District, any Bond Trustee and any Person designated by the District and the Collection Agent to:

(a) audit Tenant's books and records with respect to the Premises to determine compliance with Tenant's obligations to collect and remit Public Improvement Fees in accordance with the PIF Covenants; and

(b) release Tenant's Confidential Information to Landlord, the Collection Agent, the District, any Bond Trustee and owners and prospective purchasers of the Bonds for the purposes described in the PIF Covenants. Tenant acknowledges that Landlord shall maintain the confidentiality of Tenant's Confidential Information delivered to Landlord, to the extent permitted or required by law, and the District shall cause Tenant's Confidential Information delivered to the District, the Collection Agent, and any Bond Trustee or prospective purchasers of the Bonds to be maintained as confidential in accordance with the PIF Covenants and to the extent permitted or required by law.

3.2 All Reports made or provided by Tenant shall be maintained by Tenant for at least three years from the date of submission thereof to the Collection Agent, the City, the County and/or the State.

3.3 Tenant's authorization of the Collection Agent, the Owner, the District and any Bond Trustee under Section 3.1 shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, and such authorization shall terminate on the third anniversary of the earlier to occur of the date of termination of any such lease or the PIF Termination Date.

4. Remedies.

4.1 Tenant acknowledges that Landlord, the District, the Collection Agent and any Bond Trustee, or any Person designated by any of them, shall have a direct right of action and full right and authority to enforce Tenant's obligations under the PIF Covenants, including the right to all remedies provided under the PIF Covenants, for any default by Tenant under the terms and conditions of the PIF Covenants.

4.2 Tenant's default under the terms and conditions of the PIF Covenants shall be an event of default under the Lease, and, in addition to the remedies provided in the PIF Covenants, Landlord shall have all remedies available under the Lease for any default by Tenant under the PIF Covenants.

5. General Acknowledgements.

5.1 Tenant acknowledges that the provisions of the PIF Covenants pertaining to Retailers have been or will be agreed to by Declarant, the District and any Bond Trustee, and that Declarant, the District and, if required by the Bond Indentures, any Bond Trustee are or will be relying upon the PIF Covenants in taking certain actions with respect to the Public

Improvement Fee, the Bond Financing, the undertaking of the acquisition, construction and completion of the Public Improvements, and the incurrence of the Public Improvements Costs with the express understanding and condition that the provisions of the PIF Covenants pertaining to Retailers will not be amended, modified or waived without the prior written consent of Declarant, the District and any Bond Trustee. Accordingly, Tenant agrees that no amendment or modification will be made to, nor any waiver made or accepted by Tenant with respect to, the provisions of the PIF Covenants that pertain to Retailers, and that any such purported amendment, modification or waiver will be void and of no force and effect, unless made with the prior written consent of Declarant, the District and any Bond Trustee.

5.2 Tenant acknowledges that the Public Improvement Fee is not a tax in any form and that the authority of the Collection Agent and others to receive the Public Improvement Fee is derived through the PIF Covenants and the Bond Indentures.

Landlord and Tenant have executed this Addendum as of the date set forth in the introductory paragraph of this Addendum.

LANDLORD:

\_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**REQUEST FOR CITY COUNCIL ACTION**

**TITLE: RESOLUTION NO. 54-2019 – A RESOLUTION SUPPORTING THE CITY’S APPLICATION FOR A NON-MOTORIZED TRAILS GRANT FROM THE COLORADO PARKS AND WILDLIFE STATE TRAILS PROGRAM FOR THE PLANNED MULTIUSE TRAIL ASSOCIATED WITH THE WHEAT RIDGE • WARD STATION AREA**

☐ PUBLIC HEARING  
☐ BIDS/MOTIONS  
☒ RESOLUTIONS

☐ ORDINANCES FOR 1<sup>ST</sup> READING  
☐ ORDINANCES FOR 2<sup>ND</sup> READING

QUASI-JUDICIAL: ☐ YES

☒ NO

  
**Community Development Director**

  
**City Manager**

**ISSUE:**

A pedestrian bridge over the railroad tracks and an associated multiuse trail to connect to the I-70 Frontage Road is currently in preliminary design. These public infrastructure investments have been identified in the City’s long range planning documents and the projects were specifically listed in the ballot language for the 2016 2E sales tax bond measure, which provides \$12,000,000 in infrastructure funding for the Wheat Ridge • Ward Station area.

An opportunity has been identified to apply for a State of Colorado Non-Motorized Trail Grant, which could assist in funding the trail component of this project. The grant application requires a resolution of support from City Council.

**PRIOR ACTION:**

In 2016, City Council placed a measure on the ballot for a temporary sales tax increase that through bonding would fund \$33,000,000 in various public infrastructure investments. The voters approved that measure and the bond debt was issued in May 2017.

The ballot language relative to the Wheat Ridge · Ward Station included specific language regarding a pedestrian bridge linking the station platform on the north side of the railroad tracks to job centers south of the tracks. The multiuse trail that is proposed to be partially funded with this grant provides that linkage to the bridge and then station platform.

Since approval of the ballot question, staff has been providing periodic City Council updates on the status of designing, bidding and constructing infrastructure projects.

**FINANCIAL IMPACT:**

The approved ballot measure identified \$12,000,000 of funding for infrastructure investments in the Wheat Ridge · Ward Station area. The projects are being funded through bond debt that was issued in May 2017 and that is being paid off with ongoing sales tax revenues. The pedestrian bridge is currently estimated to cost approximately \$3,000,000 and the multiuse trail is estimated at close to \$700,000. The grant, if awarded at \$250,000, would offset over 1/3 of the trail costs.

**BACKGROUND:**

The Northwest Subarea Plan was most recently updated and adopted by City Council in 2013. The future land use map depicts a “potential future pedestrian bridge” to connect the station platform to the properties south of the railroad tracks. The bridge and associated multiuse trail were also integral components of the Council endorsed 2017 Vision Plan for the area, which emphasized connecting the station to the development opportunities in and around the two I-70 adjacent pond properties. A trail connection has proven to be feasible at a conceptual level and the City is under contract with SEH to complete preliminary and final design documents. That design process is just recently underway and initial 30% design documents are anticipated to be delivered in mid-October 2019.

**RECOMMENDATIONS:**

Projects have been identified to spend virtually 100% of the \$12,000,000 in 2E bond funds allocated for the Wheat Ridge · Ward Station area. The grant, if awarded, would provide a small amount of additional “cushion” to get all of the identified projects completed and funded within that budget. A City Council Resolution of Support is required as part of the grant application process. The grant application is due to be submitted on October 1, 2019. Staff recommends City Council approved the attached Resolution of Support.

**RECOMMENDED MOTION:**

“I move to approve Resolution No. 54-2019, a resolution supporting the City’s application for a Non-Motorized Trails Grant from the Colorado Parks and Wildlife State Trails Program for the planned multi use trail associated with the Wheat Ridge · Ward Station area.

Or,

“I move to postpone indefinitely Resolution No. 54-2019, a resolution supporting the City’s application for a Non-Motorized Trails Grant from the Colorado Parks and Wildlife State Trails



Program for the planned multiuse trail associated with the Wheat Ridge · Ward Station area for the following reason(s) \_\_\_\_\_.”

**REPORT PREPARED/REVIEWED BY:**

Lauren Mikulak, Planning Manager

Mark Westberg, Engineering Projects Supervisor

Kenneth Johnstone, Community Development Director

Patrick Goff, City Manager

**ATTACHMENTS:**

1. Resolution No. 54-2019

**CITY OF WHEAT RIDGE, COLORADO**  
**RESOLUTION NO. 54**  
**Series of 2019**

**TITLE: A RESOLUTION SUPPORTING THE CITY'S APPLICATION FOR A NON-MOTORIZED TRAILS GRANT FROM THE COLORADO PARKS AND WILDLIFE STATE TRAILS PROGRAM FOR THE PLANNED MULTIUSE TRAIL ASSOCIATED WITH THE WHEAT RIDGE • WARD STATION AREA**

**WHEREAS**, the City of Wheat Ridge is a municipal political subdivision of the State of Colorado, and therefore an eligible applicant for the Non-Motorized Trails Grant program administered by the Colorado Parks and Wildlife Division State Trail Program; and

**WHEREAS**, the new Wheat Ridge • Ward Station and surrounding development has created a need for multimodal connectivity for residents and visitors to access recreational opportunities in the area; and

**WHEREAS**, the City of Wheat Ridge has completed 15% design plans for a multiuse trail connecting the new Wheat Ridge • Ward Station to existing and planned green infrastructure throughout the community. The north-south trail would extend from West 49<sup>th</sup> Place to the I-70 Frontage Road, providing a critical multimodal connection within the community; and

**WHEREAS**, at the southern terminus of the trail at the I-70 Frontage Road, the City of Wheat Ridge is planning for a public pocket park and public access to two privately owned lake properties; and

**WHEREAS**, at the northern terminus of the trail at 49<sup>th</sup> Place, the City of Wheat Ridge is building a bike/pedestrian bridge that will cross the RR tracks and land at the Wheat Ridge • Ward Station platform, the end of line station on RTD's G-Line commuter rail; and

**WHEREAS**, further to the north from the station, the trail will provide connection to a pedestrian "paseo" and publicly accessible pocket park within The Ridge at Ward Station townhome development, currently under construction; and

**WHEREAS**, the City of Wheat Ridge has a consultant under contract to obtain necessary easements and/or right of way for the trail from the private land owners in the area; and

**WHEREAS**, the City of Wheat Ridge has a consultant under contract to complete preliminary and final design for both the pedestrian bridge and linear park/trail with 30% design documents expected in October, 2019; and

**ATTACHMENT 1**

**WHEREAS**, the City of Wheat Ridge now submits an application for the Non-Motorized Trails construction program, requesting a total award of up to \$250,000 and providing a local match of at least \$400,000; and

**WHEREAS**, the grant would further leverage an anticipated \$3,000,000 the City will be investing in the aforementioned bike/pedestrian bridge;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheat Ridge, Colorado, as follows:

1. The City of Wheat Ridge supports the Non-Motorized Trails Grant application.
2. If awarded, the City of Wheat Ridge strongly supports the completion of the construction of the proposed trail for the benefit of all residents and visitors.
3. The City of Wheat Ridge authorizes the expenditure of funds necessary to meet the terms and obligations of a grant awarded pursuant to a grant agreement with the Colorado Parks and Wildlife State Trails Program.
4. The project will be owned or controlled by the City of Wheat Ridge for at least 25 years. The City of Wheat Ridge will ensure the project is well-maintained.
5. If the grant is awarded, the City of Wheat Ridge hereby authorizes the Mayor to sign a Grant Agreement with the Colorado Parks and Wildlife Division.

**DONE AND RESOLVED** this 23<sup>rd</sup> day of September 2019.

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Bud Starker, Mayor

ATTEST:

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Janelle Shaver, City Clerk

**REQUEST FOR CITY COUNCIL ACTION**

**TITLE: COUNCIL BILL NO. 13-2019 – AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS CONCERNING PROCEDURES FOR PROTESTS UNDER SECTION 5.10 OF THE HOME RULE CHARTER (CASE NO. ZOA-19-03)**

☒ PUBLIC HEARING  
☐ BIDS/MOTIONS  
☐ RESOLUTIONS

☐ ORDINANCES FOR 1<sup>ST</sup> READING (08/26/2019)  
☒ ORDINANCES FOR 2<sup>ND</sup> READING (09/23/2019)  
(continued from 09/09/2019)

QUASI-JUDICIAL:

☐ YES☒ NO

City Attorney



City Manager

**ISSUE:**

The City Charter includes a provision allowing for a protest to be filed against a zone change request. If a protest is received, the rezoning ordinance must be approved by a  $\frac{3}{4}$  vote of the entire Council (6 votes). The purpose of this code amendment is to clarify the protest procedure for rezoning decisions and to enact a delay in the public hearing in the event a protest is received.

**PRIOR ACTION:**

On July 1, 2019, City Council discussed the issue at a study session and directed staff to draft an ordinance that would amend the code to clarify the procedural mandate of the City Charter. At a public hearing on August 15, 2019 before the Planning Commission, a motion for approval failed by a vote of 1 to 6. The Commission acknowledged that the code amendment does not affect their review, but found public comment in opposition to be compelling. There was no public comment in support of the ordinance. Draft meeting minutes from the public hearing are enclosed.

On September 9, 2019, City Council opened the public hearing to review the ordinance. As a result of testimony and discussion, Council approved two separate motions to amend the

proposed ordinance. Those amendments specify 1) that a protest must be submitted prior to commencement of a hearing, 2) that the area diagonally across the street shall be included in the protest area, and 3) that staff shall provide written guidelines to the public regarding protest procedures. These three amendments are reflected in the attached ordinance and are shown in red. A draft informational handout will be provided at the September 23 meeting.

**FINANCIAL IMPACT:**

The proposed ordinance is not expected to have a financial impact on the City.

**BACKGROUND:**

The City's zoning code outlines the procedures for three types of zone change actions: a private rezoning request (Section 26-112), a City-initiated zone change request (Section 26-113), and a zone change request to a planned development through approval of an outline development plan (Section 26-303). Each of these rezoning requests is required to be approved by ordinance subsequent to a public hearing, and per Charter all ordinances require five positive votes from Council for approval (Charter Section 5.9).

The Charter goes on to provide in Section 5.10 that a protest may be filed against a zone change request by property owners in the area. The property area requirements are:

- 20% or more of property owners included within the property subject to a zone change; or
- 20% or more of property owners immediately adjacent to the rear or any side of the subject property extending 100 feet; or
- 20% or more of property owners directly opposite the street extending 100 feet from the street frontage opposite the subject property.

In the event a protest is received that meets one of these three area requirements, the rezoning ordinance must receive a  $\frac{3}{4}$  vote of the entire Council (6 votes) for passage. The Charter requires the written protest to be submitted to the City Council "no later than the hearing on the proposed amendment."

In recent years, protests have often been received on the day of a hearing or at the start of the hearing. The revised ordinance proposes to clarify the charter language by requiring that a protest be submitted no later than "prior to the commencement of the hearing."

*Proposed Code Amendment*

While Council may not change in any way the right to file a protest, the area requirements, or the deadline for receiving a protest; Council can and has adopted code amendments to clarify Charter provisions.

In this case, the proposed code amendment does the following:

- Specifies staff's obligation to confirm the protest meets the ownership and area requirements of the charter,
- Clarifies the timing upon which a protest must be duly filed,

- Clarifies and graphically illustrates the area requirements of the charter,
- Obligates Council to continue the public hearing to a future meeting if a protest is validated, and
- Clarifies the process by which a protest may be rescinded.

**RECOMMENDATIONS:**

Staff recommends approval of the ordinance.

**RECOMMENDED MOTION:**

“I move to approve Council Bill No. 13-2019, an ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions, with amendments, on second reading, order it published, and that it take effect 15 days after final publication.”

Or,

“I move to postpone indefinitely the ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions.”

**REPORT PREPARED BY:**

Lauren Mikulak, Planning Manager

Kenneth Johnstone, Community Development Director

Jerry Dahl, City Attorney

Patrick Goff, City Manager

**ATTACHMENTS:**

1. Council Bill No. 13-2019, amended
2. Draft Planning Commission Meeting Minutes – August 15, 2019

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER HOPPE**  
**Council Bill No. 13**  
**Ordinance No. 1673**  
**Series 2019**

**TITLE: AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS CONCERNING PROCEDURES FOR PROTESTS UNDER SECTION 5.10 OF THE HOME RULE CHARTER**

**WHEREAS**, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

**WHEREAS**, the City Council has exercised these powers by the adoption of Chapter 26 of the Wheat Ridge Code of Laws (the "Code") concerning zoning and development; and

**WHEREAS**, Section 5.10 of the Home Rule Charter provides for the filing of protests by adjacent property owners concerning amendments to the restrictions and boundaries of zone districts; and

**WHEREAS**, The Council wishes to provide for procedures to implement Charter Section 5.10,

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

**Section 1.** Section 26-112.C.7 of the Code of Laws is amended to read:

7. In the event of a legal protest against such change of zone, under the procedure set forth in section 5-10 of the home rule charter, a zone change shall not be approved except by the favorable vote of three-fourths ( $\frac{3}{4}$ ) of the entire city council. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning ordinance. **THE PROCEDURE SHALL BE AS FOLLOWS:**
  - a. **ALL PROTESTS MUST BE SUBMITTED PRIOR TO THE COMMENCEMENT OF THE PUBLIC HEARING.**
  - b. **THE COMMUNITY DEVELOPMENT STAFF SHALL REVIEW THE PROTEST TO CONFIRM THE SIGNERS THEREOF AS OWNERS OF THE REQUIRED PROPERTY AND ITS COMPLIANCE WITH THE PROPERTY AREA REQUIREMENTS OF CHARTER 5.10.**
  - c. **IF NECESSARY, THE MAYOR SHALL DECLARE A RECESS OR ASK THAT THE HEARING BE CONTINUED TO ENABLE THE COMMUNITY DEVELOPMENT STAFF TO PERFORM THEIR REVIEW.**

- d. IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST DOES NOT MEET THE OWNER OR AREA REQUIREMENTS OF CHARTER 5.10, NO FURTHER ACTION SHALL BE TAKEN, THE HEARING MAY BE CONDUCTED AND CLOSED, AND THE COUNCIL MAY ACT WITHOUT THE  $\frac{3}{4}$  MAJORITY VOTING REQUIREMENT.**
- e. IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST MEETS THE OWNER AND AREA REQUIREMENTS OF CHARTER 5.10, THE COUNCIL SHALL ACT TO CONTINUE THE HEARING TO THE NEXT REGULAR OR SPECIAL MEETING OF THE COUNCIL, AT WHICH ANY ADDITIONAL TESTIMONY MAY BE TAKEN. UPON THE CLOSE OF THE HEARING, THE COUNCIL MAY ACT, SUBJECT TO THE  $\frac{3}{4}$  MAJORITY REQUIREMENT OF CHARTER 5.10.**
- f. THE PROTEST AREA AND OWNER REQUIREMENTS OF CHARTER 5.10, WHICH PROVIDE, IN PERTINENT PART:**

***IN THE EVENT OF A PROTEST AGAINST SUCH CHANGES SIGNED BY THE OWNERS OF TWENTY (20) PERCENT OR MORE OF THE AREA:***

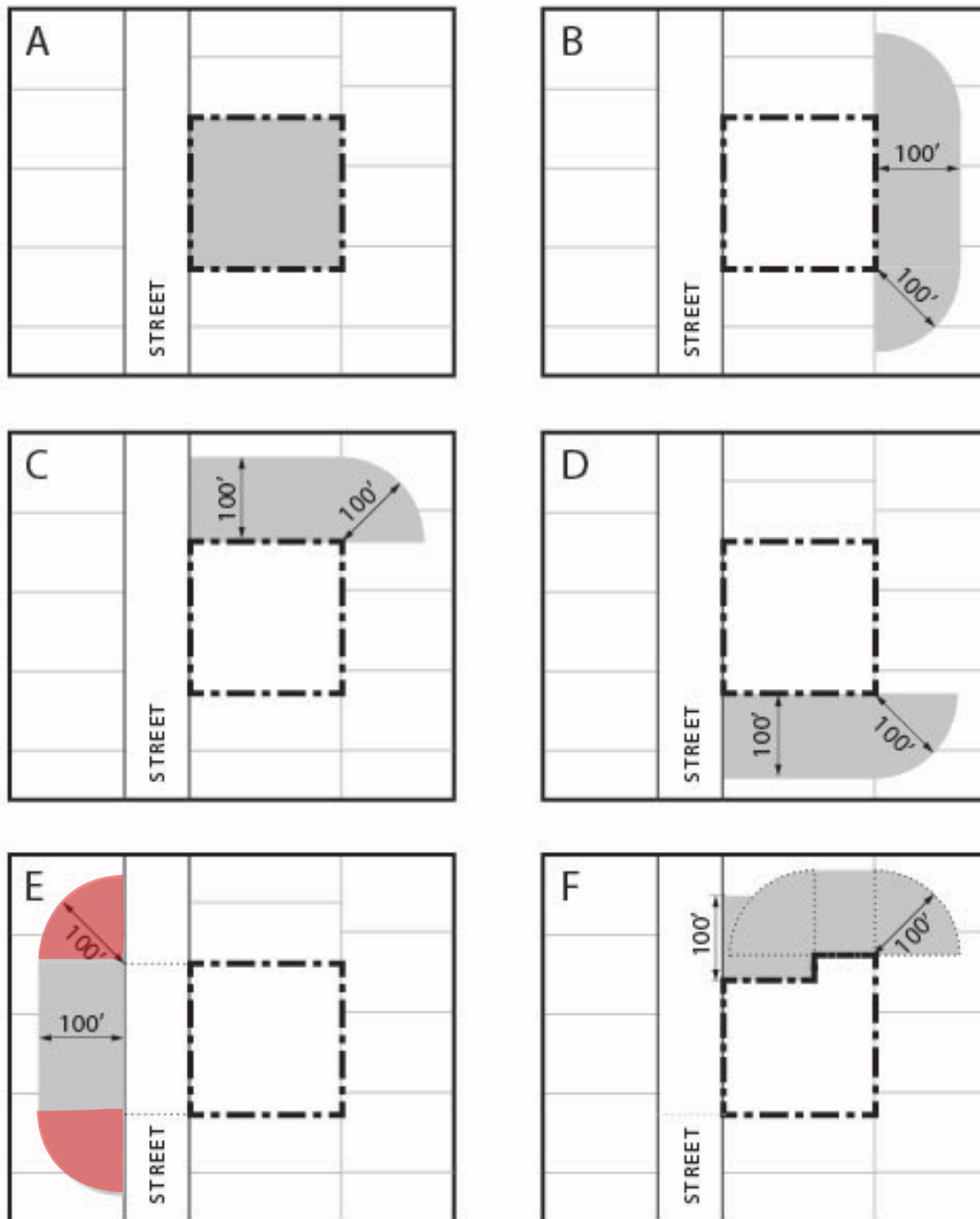
- (1) OF THE PROPERTY INCLUDED WITHIN THE PROPOSED CHANGE;  
OR,***
- (2) OF THOSE IMMEDIATELY ADJACENT TO THE REAR OR ANY SIDE OF THE PROPERTY, EXTENDING ONE HUNDRED (100) FEET FROM THE PROPERTY; OR,***
- (3) OF THOSE DIRECTLY OPPOSITE ACROSS THE STREET FROM THE PROPERTY, EXTENDING ONE HUNDRED (100) FEET FROM THE STREET FRONTAGE OF SUCH OPPOSITE PROPERTY,***

**SHALL EXTEND TO THOSE PROPERTY OWNERS WITHIN 100 FEET OF THE SUBJECT PROPERTY, INCLUDING THOSE LOCATED DIAGONALLY ADJACENT TO THE CORNERS OF THE SUBJECT PROPERTY, AS ILLUSTRATED IN FIGURE 26-112.1.**

- g. A PROTEST, ONCE FILED AND DETERMINED BY THE COMMUNITY DEVELOPMENT STAFF TO COMPLY WITH THE OWNER AND AREA REQUIREMENTS OF CHARTER 5.10, MAY BE RESCINDED ONLY IN A WRITTEN INSTRUMENT, SIGNED BY THE SAME PERSON(S) AS THE PROTEST, AND PRESENTED TO THE CITY CLERK PRIOR TO FINAL COUNCIL ACTION ON THE MATTER.**
- h. THE COMMUNITY DEVELOPMENT DEPARTMENT SHALL PROVIDE WRITTEN GUIDELINES TO THE PUBLIC ON PROCEDURES FOR PROTEST.**



**FIGURE 26-112.1**



**FIGURE 26-112.1 – PROTEST AREA. IMAGES A-F ILLUSTRATE THE PROPERTY AREA REQUIREMENTS OF CHARTER 5.10 AND SECTION 26-112.C.7: A) PROPERTY INCLUDED WITHIN THE PROPOSED CHANGE; B) PROPERTY WITHIN 100 FEET EXTENDING FROM THE REAR OF THE SUBJECT SITE; C AND D) PROPERTY WITHIN 100 FEET EXTENDING FROM ANY SIDE OF THE SUBJECT SITE; E) PROPERTY DIRECTLY OPPOSITE ACROSS THE STREET FROM THE PROPERTY EXTENDING 100 FEET FROM THE STREET FRONTAGE OPPOSITE THE SUBJECT SITE. IMAGE F ILLUSTRATES THE PROPERTY AREA REQUIREMENT AS APPLIED TO AN IRREGULAR SIDE LOT LINE.**

**Section 2.** Section 26-106 of the Code of Laws is amended to revise footnote 2 to read:

Right of Protest applies: See section 5-10 of the Home Rule Charter **AND CODE SECTION 26-112.C.7.**

**Section 3.** Section 26-113.B.3 of the Code of Laws is amended to read:

3. *City council action.* Upon receipt of the planning commission's recommendation, the city council shall hold a public hearing on the proposal. The hearing conducted on second reading of the proposed rezoning ordinance shall satisfy this requirement. Notice of the hearing shall be the same as for the planning commission hearing; however, publication of the ordinance on first reading, together with any required map, shall meet the newspaper publication requirement. The city council, in addition to consideration of the planning commission record, shall hear additional evidence and testimony presented and either approve, approve with modifications, or reject the ordinance. The city council shall base its decision upon all evidence presented, with due consideration of the criteria for review set forth under subsection 26-112.D.

~~In the event of a protest against such change of zone, signed by the owners of twenty (20) percent or more of the area:~~

- ~~1. Of the property included within the proposed change; or~~
- ~~2. Of those immediately adjacent to the rear or any side of the property, extending one hundred (100) feet from the property; or~~
- ~~3. Of those directly opposite across the street from the property, extending one hundred (100) feet from the street frontage of such opposite property, such change shall not become effective except by the favorable vote of three-fourths (¾) of the entire city council. Where land within the area proposed for change, or adjacent or opposite land, as defined above, is owned by the City of Wheat Ridge, such property shall be excluded in computing the required twenty (20) percent, and owners of non-city land within the one hundred foot limit, as defined above, shall be considered adjacent or opposite despite such intervening city land. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning.~~

**IN THE EVENT OF A LEGAL PROTEST AGAINST SUCH CHANGE OF ZONE, UNDER THE PROCEDURE SET FORTH IN SECTION 5-10 OF THE HOME RULE CHARTER, A ZONE CHANGE SHALL NOT BE APPROVED EXCEPT BY THE FAVORABLE VOTE OF THREE-FOURTHS (¾) OF THE ENTIRE CITY COUNCIL. THE WRITTEN PROTEST TO SUCH CHANGE SHALL BE SUBMITTED TO THE CITY COUNCIL NO LATER THAN THE HEARING ON THE PROPOSED REZONING ORDINANCE. THE PROCEDURE AT CODE 26-112.C.7 SHALL BE FOLLOWED.**

**Section 4.** Section 26-303.A.7 of the Code of Laws is amended to read:

7. In the event of a legal protest against the rezoning component of the planned development approval, under the procedure set forth in section 5-10 of the home rule charter, a zone change shall not be approved except by the favorable vote of three-fourths ( $\frac{3}{4}$ ) of the entire city council. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning ordinance. **THE PROCEDURE AT CODE 26-112.C.7 SHALL BE FOLLOWED.**

**Section 5. Severability Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 6. Effective Date.** This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of 7 to 1 on this 26<sup>th</sup> day of August, 2019, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for September 23, 2019 at 7:00 p.m. (continued from September 9, 2019), in the Council Chambers, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of \_\_\_\_ to \_\_\_\_, this 23<sup>rd</sup> day of September 2019.

SIGNED by the Mayor on this 23<sup>rd</sup> day of September 2019.

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Bud Starker, Mayor

ATTEST:

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Janelle Shaver, City Clerk

Approved as to Form:

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Gerald E. Dahl, City Attorney

First Publication: August 29, 2019

Second Publication: September 12, 2019 and September 26, 2019

Wheat Ridge Transcript

Effective Date: October 11, 2019



## **PLANNING COMMISSION**

### **Minutes of Meeting**

**August 15, 2019**

#### **1. CALL THE MEETING TO ORDER**

The meeting was called to order by Chair OHM at 7:02 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

#### **2. ROLL CALL OF MEMBERS**

Commission Members Present: Melissa Antol  
Will Kerns  
Daniel Larson  
Scott Ohm  
Richard Peterson  
Jahi Simbai

Commission Members Absent: Janet Leo  
Vivian Vos

Staff Members Present: Lauren Mikulak, Planning Manager  
Stephanie Stevens, Senior Planner  
Scott Cutler, Planner II  
Mark Westberg, Engineering Projects Supervisor  
Tammy Odean, Recording Secretary

#### **3. PLEDGE OF ALLEGIANCE**

#### **4. APPROVE ORDER OF THE AGENDA**

**It was moved by Commissioner SIMBAI and seconded by Commissioner LARSON to approve the order of the agenda. Motion carried 6-0.**

#### **5. APPROVAL OF MINUTES – July 18, 2019**

**It was moved by Commissioner SIMBAI and seconded by Commissioner KERNS to approve the minutes of July 18, 2019, as written. Motion carried 5-0-1 with Commissioner PETERSON abstaining.**

6. **PUBLIC FORUM** (This is the time for any person to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

7. **PUBLIC HEARING**

[...]

D. **Case No. ZOA-19-03**: an ordinance amending Chapter 26 of the Code of Laws concerning the right of protest procedure for rezoning decisions.

Ms. Mikulak gave a short presentation regarding the ordinance.

Commissioner PETERSON wanted clarification on why there is no radius included on diagram E.

Ms. Mikulak explained that the language for a property across the street is worded differently and was interpreted not to need a radius because it states directly across the street. It could be changed.

Commissioner SIMBAI asked how a protest is verified if it happens during the hearing.

Ms. Mikulak said that if a protest is submitted during the hearing, staff reviews it. If the property is irregular in shape or multiple protests are submitted then it can be time consuming and it varies on whether there needs to be a recess or not.

Commissioner LARSON wanted to know why the Ordinance for legal protest is needing to be amended.

Ms. Mikulak explained that earlier this year there was a property owner that submitted a protest then rescinded it and currently there is no clarification on whether a property owner can do so. Also, it gives clarity as to the geographic requirements of the protest.

Commissioner OHM feels that this ordinance could be an issue for the developer because the hearing can be recessed or continued for a long time. Also, he feels that reopening the citizen's forum can further delay the hearing and a prolonged process does a disservice to the developer. He also mentioned he would like to see one graphic instead of six.

Ms. Mikulak reminded the Commissioner's that the Planning Division is a neutral party and this ordinance was drafted by the City Attorney on a request by City Council. The purpose is to let the public know this is serious and to attend the hearing and creates more engagement.

Commissioner PETERSON mentioned it is not appropriate to say this is an advantage for the developer.

Ms. Mikulak explained that this Ordinance will take away the element of surprise, which is beneficial to all parties.

Mr. LARSON asked if staff can figure out if a protest is valid quickly if the Mayor calls for a recess.

Ms. Mikulak said yes it is possible.

Commissioner OHM asked about the process for a legal protest.

Ms. Mikulak explained that a protest can come in anytime during the 2 weeks before a public hearing or during the hearing. She added the code amendment doesn't change the right to protest and this ordinance clarifies what we do when we get the protest. The hearing could then be continued if the protest is valid. This ordinance will not affect Planning Commission hearings, but it will affect City Council hearings.

**Megan Schleicher, resident**  
**10035 W 33<sup>rd</sup> Avenue**

Ms. Schleicher said that the proposed ordinance can take time away from the citizens which can be very stressful if they need to attend a meeting twice. She also feels that if a legal protest is not valid than the citizen's rights are being taken away. She would like to see the maps in advance.

**Syrma Quinones, resident**  
**10270 W 33<sup>rd</sup> Avenue**

Ms. Quinones feels time is taken away from the citizen's and feels it is a detriment to keep extending the hearings.

**Ihor Figlus, resident**  
**9775 West 36<sup>th</sup> Avenue**

Mr. Figlus said this is a troubling ordinance and the changes are unnecessary. He feels it would be more appropriate for staff to prepare a list of addresses that could trigger the legal protests before the hearing. He also feels a delay in the hearing creates potential for undue influence on the protestor.

**Elizabeth Grant, resident**  
**3881 Estes Street**

Ms. Grant does not feel 100 feet is enough for a legal protest and wants to see the geographic requirement extended.

**Annette Bryce, resident**  
**10250 W 33rd Avenue**

Ms. Bryce would like to see the list of residents who live within 100 feet of a property before the public hearing.

**Dan Bryce, resident**  
**10250 W 33rd Avenue**

Mr. Bryce does not like the graphics and does not feel the citizen's rights should be narrowed and the distance should be more than 100 feet.

Citizen's forum was closed by Commissioner OHM.

Commissioner OHM asked how the 100 feet was set for this ordinance and asked Ms. Mikulak to respond to the public comment.

Ms. Mikulak explained it was set by the Charter and the only way the Charter can be changed is by the vote of the people. She added that Planning Commission can include a condition in the recommendation to City Council for the radius in diagram E in the graphics. She then explained this code is coming from the direction of City Council. Ms. Mikulak also mentioned that the County's online maps includes parcel and property ownership information as well as measurement tools. The City has directed people to those resources, but does not produce a list of properties within 100 feet for the public.

Commissioner OHM asked if the proposed ordinance is mandating continuances.

Ms. Mikulak explained that the request in this ordinance will improve transparency and level the playing field. Staff is empathetic to the citizens that a Public Hearing on a Monday night that runs late or is continued is inconvenient. She mentioned there could soon be an online element for citizens to speak their voice.

Commissioners OHM, LARSON, PETERSON and JAHl said they do not plan on supporting this ordinance because it will be less efficient with too many continuances and found some of the public testimony to be compelling regarding inconvenience and potential influencing of a protester.

**It was moved by Commissioner LARSON and seconded by Commissioner ANTOL to recommend APPROVAL of the proposed ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions.**

**Motion failed 1-5 with Commissioners KERNS, LARSON, OHM, PETERSON and SIMBAI voting against.**

**8. OLD BUSINESS**

**9. NEW BUSINESS**

Ms. Mikulak said that the next Planning Commission meeting will be held on September 5<sup>th</sup>; the meeting on September 19<sup>th</sup> has been cancelled and training for the Commissioners will be held during the October 3<sup>rd</sup> meeting.

She also mentioned that City Hall will be implementing new security measures starting August 19<sup>th</sup>. Anyone visiting City Hall will be required to check-in at the front desk by showing ID and will then receive a badge to visit different departments in the building. These new security measures are for the safety of staff and the citizens.

Ms. Mikulak also mentioned that today is the City of Wheat Ridge's 50<sup>th</sup> Birthday.

**10. ADJOURNMENT**

**It was moved by Commissioner KERNS and seconded by Commissioner PETERSON to adjourn the meeting at 9:56 p.m. Motion carried 6-0.**

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**Scott Ohm, Chair**

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**Tammy Odean, Recording Secretary**



**REQUEST FOR CITY COUNCIL ACTION**

**TITLE: COUNCIL BILL NO. 15-2019 - AN ORDINANCE AMENDING CHAPTER 26 ARTICLE VIII, OF THE WHEAT RIDGE CODE OF LAWS TO ADD FLOODPLAINS IN THE SLOAN'S LAKE WATERSHED TO THE CITY'S FLOODPLAIN MAPS AS A LOCAL FLOOD HAZARD AREA**

☒ PUBLIC HEARING  
☐ BIDS/MOTIONS  
☐ RESOLUTIONS

☐ ORDINANCES FOR 1<sup>ST</sup> READING (09/09/2019)  
☒ ORDINANCES FOR 2<sup>ND</sup> READING (09/23/2019)

QUASI-JUDICIAL:

☐ YES☒ NO  
**Engineering Manager**  
**City Manager****ISSUE:**

The Sloan's Lake Flood Hazard Area Delineation (FHAD) has been adopted by both the Colorado Water Conservation Board (CWCB) and the Mile High Flood District (MHFD). The FHAD is now ready to be adopted as a Local Flood Hazard Area (LFHA). This requires an amendment to Chapter 26, Article VIII, of the Wheat Ridge Code of Laws pertaining to floodplain control.

**PRIOR ACTION:**

The adoption of the LFHA was reviewed by the Council at the November 19, 2018 Study Session with three options being presented. At that meeting, Council directed staff to proceed with option 2, adopting the FHAD as a LFHA. At the August 5, 2019 Study Session, Council reaffirmed the direction to proceed with option 2.

The proposed ordinance to adopt the LFHA WAS presented to Planning Commission on July 16, 2015. After some discussion, Planning Commission unanimously recommended approval of adopting the Sloan's Lake FHAD as a LFHA.

**FINANCIAL IMPACT:**

None

**BACKGROUND:**

The Sloan's Lake Basin is the watershed extending upstream and downstream from Sloan's Lake, see Attachment 1. The southeast corner of Wheat Ridge, approximately 500 acres is included in the watershed (shown in purple on Attachment 2). Along two tributaries in the City, low-lying areas and structures are prone to potential flooding during storm events.

In 2018, MHFD, along with the Cities of Wheat Ridge, Lakewood, and Edgewater and the City and County of Denver, completed updates to the FHAD and master plan, which were originally done in 1977. Many changes within the watershed and in floodplain modeling have occurred since 1977, so the previous FHAD and master plan did not accurately reflect current conditions. Having an updated FHAD and master plan provide better guidance to minimize damage from flooding. This is done by properly planning potential improvements, both public and private, and effectively regulating identified flood prone areas.

The first step in the update process was to remodel the hydrology, which determines the peak flows at various locations in the watershed. The hydrology update incorporated the modeling changes as well as the land use changes within the watershed. The next step was to update the hydraulics based on the many stormwater improvements that had been implemented by all of the jurisdictions from the 1977 master plan. This information, as well as more accurate and updated topography were then used to update the FHAD.

The study then evaluated several possible improvements that could be done within the watershed to further minimize damage due to flooding. Consideration was given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, and right-of-way needs.

The resulting master plan can be utilized to plan future improvements, including the locations, alignments, and sizing of storm sewers, channels, and detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater management for the watershed.

No new projects were identified in the updated master plan within the City of Wheat Ridge. This is largely due to the fact that all of the storm sewer projects that were recommended in the 1977 master plan had been completed by the City. In addition, the 29<sup>th</sup> Avenue storm sewer project that was completed a few years ago largely mitigated the known minor flooding issues in the southeast portion of the City. That project utilized an abandoned water main in 29<sup>th</sup> Avenue and the new detention pond at the Richards-Hart Estate to reduce the flooding that was occurring south of 29<sup>th</sup> Avenue east of Fenton Street.

**Sloan's Lake FHAD Adoption Options**

Even though a FHAD has existed for the Sloan's Lake Basin since 1977, the City has not regulated the flood prone areas because they were not included as a federally regulated Special Flood Hazard Area (SFHA), like the floodplains along Clear Creek and Lena Gulch. Cities can choose to regulate flood hazard areas outside of the SFHA and many local jurisdictions do.

During recent evaluations of the City's floodplain program, staff explored the option of regulating the flood hazard areas identified in the 1977 FHAD, but realized that those areas did not accurately reflect the current state of development. With an updated FHAD that more accurately represents the flood hazards, the City can now choose to regulate those areas as a LFHA, see Attachment 3 for the limits of the proposed LFHA and the affected buildings.

At the November 19, 2018 Council study session, the following three options were presented to Council:

1. No Action – The City could continue to regulate the identified flood hazard areas the same as other non-federally regulated SFHA, so no flood related regulation.
2. Adopt FHAD as a LFHA – The City could choose to regulate the identified flood hazard areas the same as the flood hazard areas on the SFHA, but without the insurance requirements of a SFHA.
3. Adopt FHAD as a SFHA – The City could choose to have the identified flood hazard areas added to the SFHA, including the mandatory insurance requirements.

After discussion of the three options, Council directed staff to proceed with option 2, adopting the FHAD as a LFHA. At the August 5, 2019 Study Session, Council reaffirmed the direction to proceed with option 2. The implications of this option are described below:

#### *Flood Hazard Notification*

Notification of the potential for flooding is an important component of a well-managed floodplain program. Properties on a FHAD and SFHA receive an annual mailing from MHFD that warns them that they are within an area of potential flooding. As a part of its public outreach, the City also does an annual mailing to all properties in a SFHA. With the FHAD adopted as a LFHA, the City mailing will be expanded to include the areas identified in the LFHA.

In addition, the State and City will require that sellers notify buyers during real estate transactions of the flood risk. However, with the FHAD not being in the SFHA, federal notification of flood risk would not occur.

#### *Flood Insurance Requirement*

Properties in a SFHA are required to purchase flood insurance if they have a federally backed loan. For all other properties, the flood insurance is voluntary and much less expensive. While often seen as a burden and an unwanted expense, flood insurance provides important coverage for damage that is caused by flooding. With the FHAD adopted as a LFHA, property owners and tenants would be advised of the risk and could then purchase voluntary flood insurance.

#### *Flood Insurance Rates*

Flood insurance rates for properties that are not in a SFHA are typically around \$500 annually since the properties are seen as low risk of flooding and receive a preferred risk rate. This would be the case if the FHAD is adopted as an LFHA.

*Floodplain Regulations*

The purpose of the City’s floodplain regulations is to decrease the risk of flood damage to or caused by improvements that are proposed by property owners. Properties that are included in a LFHA would receive the additional protections resulting from being subject to the City’s floodplain regulations. This would include requirements like raising the lowest floor at least one foot above the base flood elevation (BFE), using flood resistant materials, and anchoring.

**Public Outreach**

A neighborhood meeting was held on July 31, 2019 to notify the residents of the changes that will occur with the potential adoption of the FHAD as a LFHA. During the neighborhood meeting, the residents were notified of the adoption process, including the public hearings. Postcards were mailed to all owners and tenants with properties that will be added to the floodplain. The meeting was attended by around 10% of the notified properties. Most of the attendees were receptive to the adoption of the LFHA.

**RECOMMENDATIONS:**

Staff recommends adopting the Sloan’s Lake LFHA.

**RECOMMENDED MOTION:**

“I move to approve Council Bill No. 15-2019, an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws, to add floodplains in the Sloan’s Lake watershed to the City’s Floodplain maps as a Local Flood Hazard Area on second reading and that it take effect 15 days after final publication.”

Or,

“I move to postpone indefinitely Council Bill No. 15-2019, an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws, to add floodplains in the Sloan’s Lake watershed to the City’s Floodplain maps as a Local Flood Hazard Area for the following reason(s) \_\_\_\_\_.”

**REPORT PREPARED BY:**

Mark Westberg, Project Supervisor  
Steve Nguyen, Engineering Manager  
Patrick Goff, City Manager

**ATTACHMENTS:**

1. Council Bill No. 15-2019
2. Planning Commission meeting minutes excerpt – August 15, 2019
3. Sloan’s Lake Watershed Map
4. Wheat Ridge Insurable Structures in the Floodplain

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER KUETER**  
**Council Bill No. 15**  
**Ordinance No. 1674**  
**Series of 2019**

**TITLE: AN ORDINANCE AMENDING CHAPTER 26 ARTICLE VIII OF THE CODE OF LAWS TO ADD FLOODPLAINS IN THE SLOAN'S LAKE WATERSHED TO THE CITY'S FLOODPLAIN MAPS AS A LOCAL FLOOD HAZARD AREA**

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

**WHEREAS**, pursuant to its home rule authority and C.R.S. § 31-23-301(1), the City, acting through its City Council (the "Council"), is authorized to adopt rules and regulations concerning the location, construction, occupancy and use of buildings and structures on and along any storm or floodwater runoff channel or basin; and

**WHEREAS**, under such authority, the Council previously adopted floodplain regulations, codified as Article VIII of Chapter 26 of the Wheat Ridge Code of Laws ("Code"); and

**WHEREAS**, On March 5, 2019, the Colorado Water Conservation Board (CWCB) adopted the Sloan's Lake Flood Hazard Area Delineation (FHAD) as a State floodplain map; and

**WHEREAS**, the Council desires to amend a section of said Article VIII to adopt the flood hazard areas shown on the Sloan's Lake FHAD as a Local Flood Hazard Area (LFHA).

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

**Section 1.** Paragraph G of Subsection 26-803 of the Code, concerning official maps and engineering reports, is hereby amended by the addition of a new subparagraph, to read in its entirety as follows:

The location and boundaries of the LFHA shall be as shown in the following engineering reports and accompanying maps:

2. Sloan's Lake FHAD dated July 2018 for portions of the City of Wheat Ridge.

**Section 2. Safety Clause.** The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further

determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

**Section 3. Severability; Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 4. Effective Date.** This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of 7 to 0 on this 9<sup>th</sup> day of September 2019, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for September 23, 2019, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of \_\_\_\_\_ to \_\_\_\_\_, this 23<sup>rd</sup> day of September, 2019.

SIGNED by the Mayor on this 23<sup>rd</sup> day of September, 2019.

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Bud Starker, Mayor

ATTEST:

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Janelle Shaver, City Clerk

Approved As To Form

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Gerald E. Dahl, City Attorney

First Publication: September 12, 2019  
Second Publication: September 26, 2019  
Wheat Ridge Transcript  
Effective Date: October 11, 2019



## **PLANNING COMMISSION**

### **Minutes of Meeting**

**August 15, 2019**

#### **1. CALL THE MEETING TO ORDER**

The meeting was called to order by Chair OHM at 7:02 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

#### **2. ROLL CALL OF MEMBERS**

Commission Members Present: Melissa Antol  
Will Kerns  
Daniel Larson  
Scott Ohm  
Richard Peterson  
Jahi Simbai

Commission Members Absent: Janet Leo  
Vivian Vos

Staff Members Present: Lauren Mikulak, Planning Manager  
Stephanie Stevens, Senior Planner  
Scott Cutler, Planner II  
Mark Westberg, Engineering Projects Supervisor  
Tammy Odean, Recording Secretary

#### **3. PLEDGE OF ALLEGIANCE**

#### **4. APPROVE ORDER OF THE AGENDA**

**It was moved by Commissioner SIMBAI and seconded by Commissioner LARSON to approve the order of the agenda. Motion carried 6-0.**

#### **5. APPROVAL OF MINUTES – July 18, 2019**

**It was moved by Commissioner SIMBAI and seconded by Commissioner KERNS to approve the minutes of July 18, 2019, as written. Motion carried 5-0-1 with Commissioner PETERSON abstaining.**

6. **PUBLIC FORUM** (This is the time for any person to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

7. **PUBLIC HEARING**

[...]

C. **Case No. ZOA-19-02:** an ordinance amending Chapter 26 of the Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area.

Mr. Westberg gave a short presentation regarding the ordinance and floodplain background.

Commissioner SIMBAI asked if this Ordinance is not approved will it be disclosed to potential buyers that they are in a floodplain and how this will be enforced.

Mr. Westberg said there would be no disclosure and that he wants people to know they are at risk and in a floodplain and then discussed the three options that were presented to Council that led to the decision to adopt this as a Local Flood Hazard Area.

Commissioner SIMBAI also wanted to know of the 62 homes how many are backed by Federal Mortgage because they have to have flood insurance.

Mr. Westberg said they don't have to have flood insurance if it is a Local Flood Hazard Area.

Commissioner LARSON asked if the Planning Commission's decision tonight is a recommendation to City Council.

Mr. Westberg confirmed yes whether it is a recommendation of denial or approval, City Council makes the final decision on the ordinance.

Commissioner OHM mention that Colorado has a lot of expansive soils and if the soil gets dry, how does that affect the insurance.

Mr. Westberg said that is not affected by flood insurance, it would then be part of the regular insurance if the foundation of a house cracked.

**Elizabeth Grant, resident**  
**3881 Estes Street**



Ms. Grant wondered if anyone could get flood insurance if you are out of the floodplain area.

Mr. Westberg said this will be the 1<sup>st</sup> Local Flood Hazard Area in the City and if you are out of the flood hazard area you can buy flood insurance.

Commissioner OHM closed the citizen's forum.

**It was moved by Commissioner KERNS and seconded by Commissioner PETERSON to recommend APPROVAL of the proposed ordinance amending Article VIII of Chapter 26 concerning Floodplain Control to adopt the flood hazard areas shown on the Sloan's Lake FHAD as a Local Flood Hazard Area.**

**Motion carried 6-0.**

[...]

#### **10. ADJOURNMENT**

**It was moved by Commissioner KERNS and seconded by Commissioner PETERSON to adjourn the meeting at 9:56 p.m. Motion carried 6-0.**

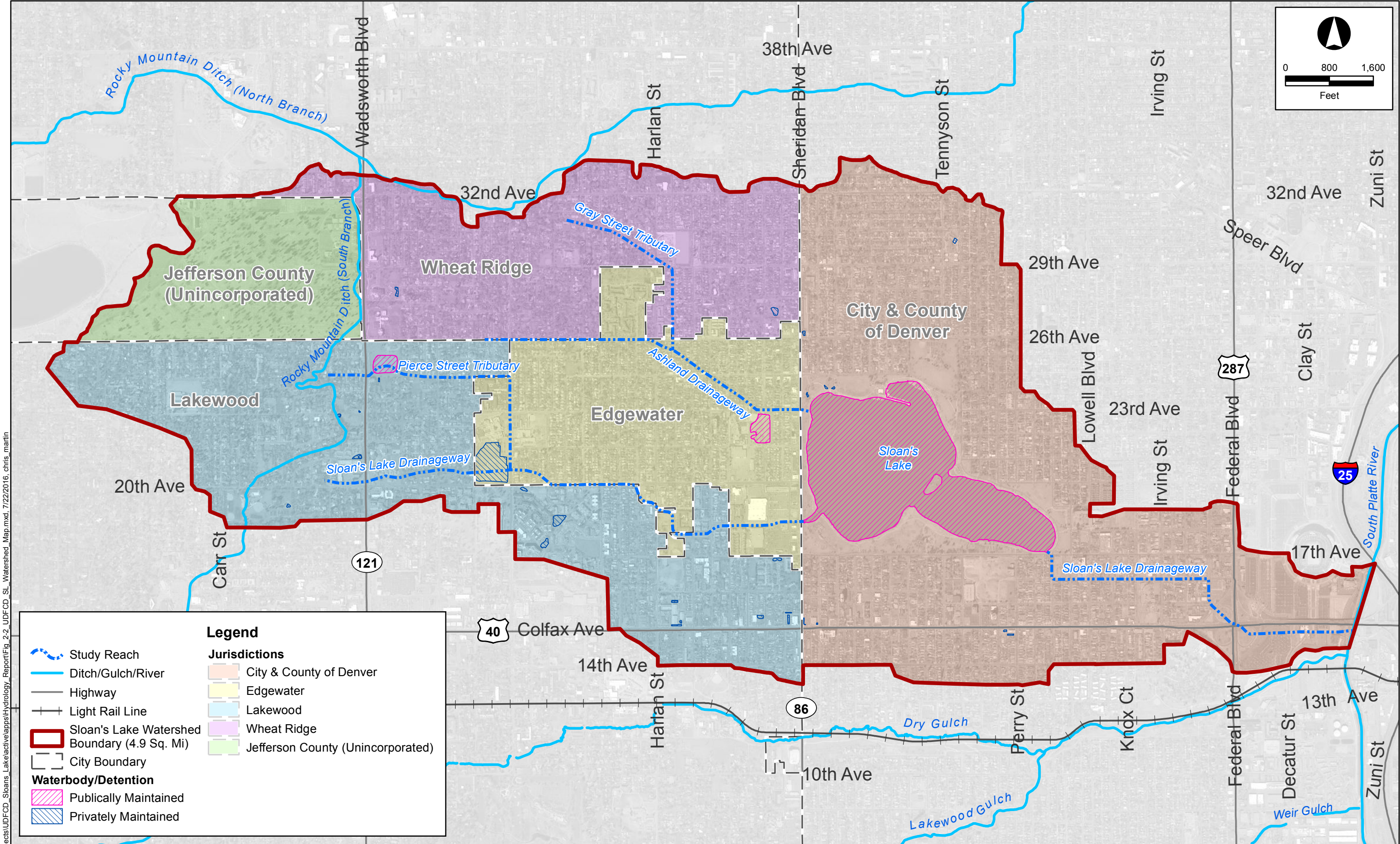
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**Scott Ohm, Chair**

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**Tammy Odean, Recording Secretary**





FILE: G:\gis projects\UDFCD Sloan's Lake\active\apps\Hydrology\_Report\Fig 2-2\_UDFCD SL Watershed Map.mxd, 7/22/2016, chris\_martin

No.	DATE	DESCRIPTION	APPR.



designed by: \_\_\_\_\_  
drawn by: CM  
checked by: RK  
project no.: 16.155.026  
date: 07/22/2016



URBAN DRAINAGE AND FLOOD  
CONTROL DISTRICT,  
CITY AND COUNTY OF DENVER

MAJOR DRAINAGEWAY PLAN  
SLOAN'S LAKE DRAINAGEWAY  
AND TRIBUTARIES

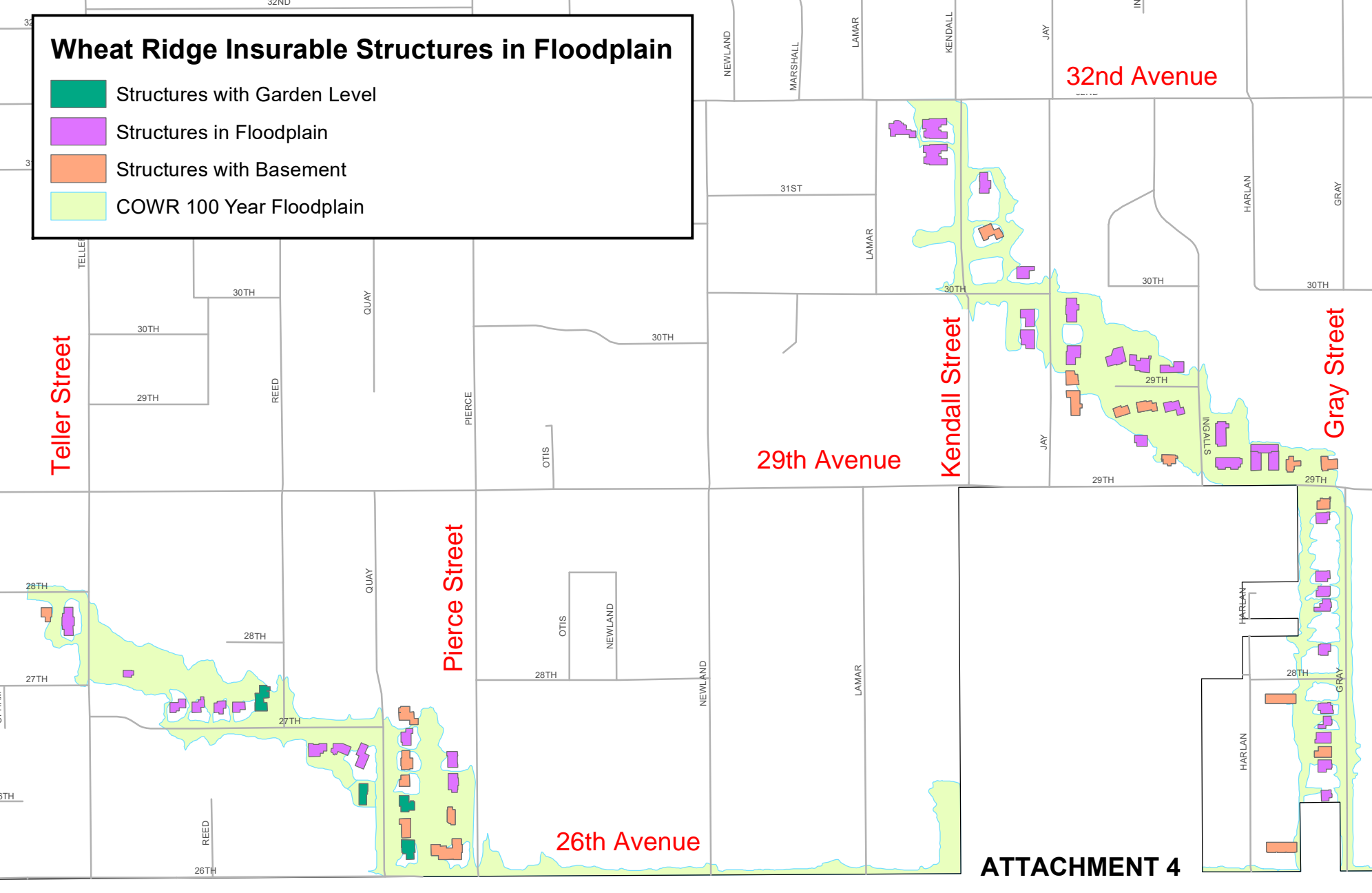
WATERSHED MAP

FIGURE  
2-2



# Wheat Ridge Insurable Structures in Floodplain

- Structures with Garden Level
- Structures in Floodplain
- Structures with Basement
- COWR 100 Year Floodplain



**REQUEST FOR CITY COUNCIL ACTION****TITLE: RESOLUTION NO. 53-2019 – A RESOLUTION IN SUPPORT  
OF JEFFERSON COUNTY BALLOT ISSUE 1A**

- |   |   |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING         | <input type="checkbox"/> ORDINANCES FOR 1 <sup>ST</sup> READING |
| <input type="checkbox"/> BIDS/MOTIONS           | <input type="checkbox"/> ORDINANCES FOR 2 <sup>ND</sup> READING |
| <input checked="" type="checkbox"/> RESOLUTIONS |   |

QUASI-JUDICIAL: ☐ YES ☒ NO  
City Manager**ISSUE:**

Jefferson County is asking voters for a seven-year exemption from all TABOR revenue and spending limitations to avoid potential budget cuts in 2020 and subsequent years. Approving this ballot issue would not create or increase any taxes. However, it would allow for the County to retain and spend or reserve all revenues received between 2020 and 2026.

**BACKGROUND:**

TABOR requires that any excess revenue received by the County above the TABOR spending limit must be refunded to the taxpayers. In 2019, Jefferson County's property tax revenues are estimated to grow by 5.7%; however, the revenue increase that can be retained by the County is limited by TABOR to 3.831%. Due to these limitations, the County cannot retain all of the increased property taxes that are collected and the County's General Fund budget will see \$16.1 million in budget reductions, limiting the services it is able to provide to its residents.

The County would like to temporarily retain these dollars, in order to reinvest in services and programs for the people of Jefferson County as reviewed and approved by the Board of County Commissioners. The temporary TABOR relief would allow the County to:

- Invest more in the repair, maintenance and safety of county roads, as the Road & Bridge budget has remained the same for the past seven years despite an increase in the cost of materials and services

- Allow the Sheriff to maintain the number of jail beds currently available and keep the deputy academy program
- Maintain the integrity of local and national elections and provide timely election results
- Attract and retain quality county employees, including deputies and investigators
- Update aging technology systems and hardware
- Ensure continuation of natural resource management

Without this temporary TABOR relief, the County will need to make cuts to programs and services to ensure a balanced budget.

**PRIOR ACTION:**

A consensus was reached by City Council at the September 9, 2019 council meeting to bring forward a resolution of support for City Council consideration.

**FINANCIAL IMPACT:**

There is no direct fiscal impact to the City of Wheat Ridge in supporting Jefferson County Ballot Issue 1A. If approved, the impact in 2020 for the average homeowner would be about \$4.50 per month or \$54 per year. The cost to businesses is estimated to be \$9 per month per \$100,000 of business property value.

**RECOMMENDATIONS:**

Staff recommends approval Resolution No. 53-2019 to support Jefferson County Ballot Issue 1A.

**RECOMMENDED MOTION:**

“I move to approve Resolution No. 53-2019, a resolution of City Council in support of Jefferson County Ballot Issue 1A.”

Or,

“I move to postpone indefinitely Resolution No. 53-2019, a resolution of City Council in support of Jefferson County Ballot Issue 1A, for the following reason(s) \_\_\_\_\_.”

**REPORT PREPARED/REVIEWED BY:**

Marianne Schilling, Assistant to the City Manager  
Patrick Goff, City Manager

**ATTACHMENTS:**

1. Resolution No. 53-2019
2. Jefferson County Ballot Issue 1A

**CITY OF WHEAT RIDGE, COLORADO**  
**RESOLUTION NO. 53**  
**Series of 2019**

**TITLE: A RESOLUTION OF CITY COUNCIL IN SUPPORT OF  
JEFFERSON COUNTY BALLOT ISSUE 1A**

**WHEREAS**, the Taxpayer's Bill of Rights, codified in Section 20 of Article X of the Colorado Constitution, also known as TABOR, and other state statutes, including C.R.S. §29-1-301, impose certain revenue and spending limitations on county government; and

**WHEREAS**, C.R.S. §29-1-302 permits a county to submit to its voters the question of whether the mill levy may exceed the limits of C.R.S. §29-1-301; and

**WHEREAS**, revenue limitations imposed by TABOR have created budget challenges for Jefferson County, Colorado and have impacted the County's ability to provide quality services to the residents of Jefferson County; and

**WHEREAS**, without relief from TABOR limitations in 2020, based on current estimates, the County anticipates a budget shortfall of approximately \$16.1 million dollars to fund the same level of service in 2020 as provided in the 2019 budget; and

**WHEREAS**, the ballot initiative allows the County to retain excess revenue as needed through 2026 to support public safety, protect the health and well-being of Jefferson County residents and preserve important countywide services; and

**WHEREAS**, we believe this initiative will help to provide for the safety of Jefferson County residents and businesses; maintaining roads, bridges and other new transportation improvements; preserving public facilities and infrastructure including building security and maintenance; providing critical public services; and

**WHEREAS**, these benefits to Jefferson County will positively impact Wheat Ridge residents.

**NOW, THEREFORE, BE IT RESOLVED** by the City of Wheat Ridge City Council, that:

We do hereby support and endorse Jefferson County Ballot Issue 1A.

**DONE AND RESOLVED** this 23<sup>rd</sup> day of September, 2019.

ATTEST:

\_\_\_\_\_  
Bud Starker, Mayor

\_\_\_\_\_  
Janelle Shaver, City Clerk

## Jefferson County Ballot Issue 1A

Without creating any new tax or increasing the current authorized maximum county mill levy of 21.478 without further voter approval, shall Jefferson County be permitted to retain and spend or reserve all revenues received during 2020 and expiring after 2026 (7 years), notwithstanding limitations on spending and revenue contained in the Taxpayer's Bill of Rights, Article X, Section 20 of the Colorado Constitution (TABOR) and applicable state statutes, provided that, the maximum amount which the county may retain and spend or reserve above such limits in 2020 may not exceed \$16.1 million (voters should be aware that due to existing spending and revenue limits in TABOR in 2019, a single-family home valued at \$400,000 received a reduction in property taxes of approximately \$9 a month/\$105 year); and shall the county be permitted to retain and spend or reserve beginning in 2027 and thereafter an amount of county revenue that exceeds current spending and revenue limitations but is no greater than the excess local revenues cap, which continues to limit future growth as provided in resolution no. CC19-270, provided that any non-property tax revenue received in 2027 or thereafter may be retained and spent or reserved, notwithstanding limitations on spending and revenue contained in the Taxpayer's Bill of Rights and applicable state statutes; and shall such revenue be used to fund the cost of county government for:

- Providing for the safety of the public including maintaining adequate jail beds, staffing the District Attorney's Office, adequate patrol personnel, and wildfire mitigation;
- Maintaining roads, bridges and other new transportation improvements;
- Preserving public facilities and infrastructure including building security and maintenance; and
- Providing services traditionally offered by Jefferson County and other Colorado county governments and statutorily required services,

With such spending to be reviewed and decided upon by the duly elected Board of County Commissioners as part of the annual budget process?

# **SPECIAL STUDY SESSION AGENDA**

## **CITY COUNCIL CITY OF WHEAT RIDGE, COLORADO**

7500 W. 29th Ave.  
Wheat Ridge CO

September 23, 2019

Upon Recess from Regular Council Meeting

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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.

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### Citizen Comment on Agenda Item

1. Noise Ordinance
2. 52<sup>nd</sup> Avenue Annexation

### RECONVENE RECESSED COUNCIL MEETING

Executive session for a conference with the City Attorney, City Manager and appropriate staff under Charter Section 5.7(b)(1) and CRS 24-6-402(4)(b), to receive legal advice concerning litigation: McLeod

ADJOURN COUNCIL MEETING following close of executive session





# Memorandum

**TO:** Mayor and City Council

**FROM:** Patrick Goff, City Manager

**DATE:** September 19, 2019 (for September 23, 2019 Special Study Session)

**SUBJECT:** Noise Ordinance

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**ISSUE:**

Councilmembers Mathews and Dozeman requested that a discussion item be added to a study session agenda concerning the City's noise ordinance.

**BACKGROUND:**

The Acoustical Society of America has noted that "Cities try different tactics to regulate noise: Survey of noise ordinances in nearly 500 of the largest communities in the U.S. shows there's no set standard to preserving peace and quiet." This database of noise ordinances include decibel-based standards, plainly audible standards, nuisance standards, quiet zones and restrictions based on zoning, setbacks, time-of-day regulations, and outright bans on some noise sources. Many communities rely on a combination of these regulatory approaches. However, noise ordinances across the country are typically characterized as "qualitative" or "quantitative".

Qualitative noise ordinances are based upon vague standards that proscribe noise characterized by one or more adjectives, such as "unusual", "unnecessary", or "unreasonable". This type of ordinance may also define certain sound related activities or specific noise sources to be annoying or disturbing and thus a violation of the ordinance. The qualitative ordinance is generally subjective in nature, and is more likely to pose constitutional issues such as vagueness and is also more likely to be subject to enforcement at the discretion of local police and to non-uniform application.

Quantitative ordinances, on the other hand, proscribe noise-producing conduct by decibel levels, applying scientific standards of sound intensity and frequency. The quantitative ordinance is capable of providing non-discretionary, objective and predictable standards. Quantitative standards are more amendable to tailoring in order to meet the specific, unique needs of a local community.

The current Wheat Ridge Code of Laws concerning unreasonable noise is qualitative in nature and is limited in scope and difficult to prove in court because it does not set an objective level by which to measure noise. However, while decibel levels may be a more scientific measure of noise, they're also difficult to enforce. Police Officers must be trained in the use of noise meters and they have to have their calibrated equipment with them to measure sound levels.

**Wheat Ridge Code of Laws**

Sec. 16-103. - Unreasonable noise; disturbing the peace.

(a) It is unlawful for any person to make, continue or cause to be made or to permit or assist another to make, continue or cause to be made, any unreasonable noise which, under all of the circumstances presented, would annoy, injure or endanger the comfort, repose or peace of a person of ordinary sensitivities. The following noises and circumstances shall be deemed as prima facie unreasonable:

(1) Any noise or sound which is audible twenty-five (25) or more feet from a mobile noise or sound source.

(2) Any noise or sound which is audible within a private residence that the person responsible for the sound has no right to occupy, specifically including but not limited to apartments, common interest communities and other multiunit dwelling structures.

(3) Any noise, sound source or any person or group of persons engaged in loud and continuing activities which are audible twenty-five (25) or more feet from the noise source or at the property line of the property upon which the noise source is located or upon which such activities are taking place, continuing for a minimum of fifteen (15) minutes.

(4) Any person performing or permitting the performance of trash pickup with a truck which has a compactor or the capacity to raise and dump dumpsters in any area zoned for residential uses between the hours of 11:00 p.m. and 7:00 a.m. For purposes of this paragraph, testimony that the name of a business which holds itself out as being in the business of trash hauling was written on the trash truck shall be prima facie evidence that the trash truck was owned by and under the control of the employer so identified.

(b) Any member of the police department who personally observes a violation of this section may serve as the complaining party in the prosecution of such violation, regardless of whether the officer's observation was initiated by the complaint of another party.

(c) Any activity or noise source conducted or caused by an activity conducted, sponsored or approved by the city shall be exempt from the requirements of this section.

(Code 1977, § 14-44.2; Ord. No. 1346, § 1, 6-13-05)

Attached are examples of both qualitative and quantitative noise ordinances from the state, county and neighboring cities. Staff is requesting direction from City Council on how to proceed.

#### **ATTACHMENTS:**

1. State of Colorado Noise Statute
2. Jefferson County Noise Abatement
3. City of Lakewood Noise Ordinance
4. City of Arvada Noise Ordinance
5. City of Golden Noise Ordinance

# Colorado Noise Statute

## 25-12-103 - Maximum permissible noise levels.

(1) Every activity to which this article is applicable shall be conducted in a manner so that any **noise** produced is not objectionable due to intermittence, beat frequency, or shrillness. Sound levels of **noise** radiating from a property line at a distance of twenty-five feet or more therefrom in excess of the db(A) established for the following time periods and zones shall constitute prima facie evidence that such **noise** is a public nuisance:

Zone	7:00 a.m. to	7:00 p.m. to
	next 7:00 p.m.	next 7:00 a.m.
Residential	55 db(A)	50 db(A)
Commercial	60 db(A)	55 db(A)
Light industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)

(2) In the hours between 7:00 a.m. and the next 7:00 p.m., the **noise** levels permitted in subsection (1) of this section may be increased by ten db(A) for a period of not to exceed fifteen minutes in any one-hour period.

(3) Periodic, impulsive, or shrill **noises** shall be considered a public nuisance when such **noises** are at a sound level of five db(A) less than those listed in subsection (1) of this section.

(4) This article is not intended to apply to the operation of aircraft or to other activities which are subject to federal law with respect to **noise** control.

(5) Construction projects shall be subject to the maximum permissible **noise** levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority or, if no time limitation is imposed, for a reasonable period of time for completion of project.

(6) All railroad rights-of-way shall be considered as industrial zones for the purposes of this article, and the operation of trains shall be subject to the maximum permissible **noise** levels specified for such zone.

(7) This article is not applicable to the use of property for purposes of conducting speed or endurance events involving motor or other vehicles, but such exception is effective only during the

specific period of time within which such use of the property is authorized by the political subdivision or governmental agency having lawful jurisdiction to authorize such use.

(8) For the purposes of this article, measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five miles per hour.

(9) In all sound level measurements, consideration shall be given to the effect of the ambient **noise** level created by the encompassing **noise** of the environment from all sources at the time and place of such sound level measurement.

(10) This article is not applicable to the use of property for the purpose of manufacturing, maintaining, or grooming machine-made snow. This subsection (10) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate **noise** abatement.

(11) This article is not applicable to the use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays. This subsection (11) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate **noise** abatement. **Source:** **L. 71:** p. 648, § 1. **C.R.S. 1963:** § [66-35-3](#). **L. 82:** (10) added, p. 424, § 1, effective March 11. **L. 87:** (11) added, p. 1154, § 1, effective May 20.

**Am. Jur.2d.** See 61A Am. Jur.2d, Pollution Control, § 267.

**Residential development of property is not precluded** when **noise** emanating onto property exceeds limits set forth in this section. *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979).

**Trier of fact to determine mode to use in measuring noise.** *Davis v. Izaak Walton League of America*, 717 P.2d 984 (Colo. App. 1985).

**Applied** in *City of Lakewood v. DeRoos*, 631 P.2d 1140 (Colo. App. 1981).

<b>Title:</b> Regulatory Policy Noise Abatement	<b>Policy No.</b> Part 3, Regulations Chapter 1, Noise Section 1
	<b>Effective Date</b> April 24, 2007
<b>Policy Custodian</b> Sheriff's Office	<b>Adoption/Revision Date</b> April 24, 2007

**Adopting Resolution(s):** CC07-202

**References (Statutes/Resos/Policies):** BCC MINUTES 4/20/93; Jefferson County Zoning Resolution; §25-12-101, §16-2-201 C.R.S.; CC88-553, CC92-692, CC05-399

**Purpose:** To protect the peace, health, safety and welfare of Jefferson County citizens from excessive, unnecessary and unreasonable noise.

**Policy:** Noise Abatement

A. Definitions. As used in this Regulation, the following words shall mean:

1. "Residential Zone" means an area of single or multi-family dwellings where businesses may or may not be conducted in such dwellings. The zone includes areas where multiple unit dwellings, high-rise apartment districts, and redevelopment districts are located. A residential zone may include areas containing limited accommodations for transients such as motels and hotels and residential areas with limited office development, but it may not include retail shopping facilities. "Residential zone" includes educational facilities, hospitals, nursing homes, and similar institutions, and parks and open space. Undeveloped areas adjacent to residential zones shall be deemed to be residential zones for purposes of this Regulation, notwithstanding the zone district classification of the Jefferson County Zoning Resolution.
2. "Commercial Business Zone" means an area where offices, clinics and the facilities needed to serve them are located; an area with local shopping and service establishments located within walking distances of the residents served; a tourist-oriented area where hotels, motels and gasoline stations are located; a large integrated regional shopping center; a business strip along a main street containing offices, retail businesses, and commercial enterprises; a central business district; or a commercially dominated area with limited multiple unit dwellings.
3. "Industrial and Manufacturing Zone" means an area where manufacturing, processing or fabrication of any commodity, storage and warehousing, wholesale sales of equipment, supplies and materials, repair, rental and servicing of commodities, research laboratories, motor vehicle repair and servicing, and similar activities are conducted.
4. "Vehicle" means any device which is capable of moving itself, or being moved, from place to place upon wheels or endless tracks; but such term shall not include any farm tractor or any implement of husbandry designed primarily or exclusively for use and used in agricultural operations or any device moved by muscular power, or moved exclusively over stationary rails or tracks or designed to move primarily through the air.
5. "Motorcycle" means every vehicle designed to travel on not more than three wheels in contact with the ground, but not including trail bikes, dirt bikes, minibikes, go-carts, golf carts, and similar vehicles which are not designed or approved for use on public roads and highways.
6. "Muffler" means a device consisting of a series of chamber or baffle plates or other mechanical design for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing noise.
7. "dB(A)" means sound levels in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication S1.4-1971.

8. "Ambient noise level" means the lowest sound level repeating itself during a six-minute period as measured with a sound level meter. The minimum sound level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source at issue.

#### B. Excessive Sound Levels Prohibited

1. No person shall operate any type of vehicle, machine, or device, or carry on any activity, or promote or facilitate the carrying on of any activity which makes sound in excess of the level specified in the Permissive Noise Levels Section.
2. Exceptions apply to:
  - a. The use of property for purposes of conducting speed or endurance events involving motor or other vehicles, but such exception is effective only during the specific period of time within which such use of the property is authorized by the political subdivision or governmental agency having lawful jurisdiction to authorize such use.
  - b. The use of property for the purpose of manufacturing, maintaining, or grooming machine-made snow.
  - c. The use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays.
  - d. Property used for manufacturing, industrial, or commercial business purposes.
  - e. Public utilities regulated pursuant to title 40, C.R.S.
  - f. Oil and gas production subject to the provisions of article 60 of title 34, C.R.S.
  - g. Any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency.
  - h. The sound made within the terms of a fireworks display permit.
  - i. The sound made by animals.
  - j. The sound made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law.
3. This Regulation shall not be construed to conflict with the right of any person to maintain a private action in equity to abate a noise nuisance under the laws of the state.

#### C. Measurement of Sound Levels

1. Sound from a vehicle operating on a public road or highway shall be measured at a distance of fifty feet from the center of the lane of travel.
2. Sound from a vehicle operating on private property or public property which is not a road or highway shall be measured twenty-five feet from the dwelling unit nearest the sound source at issue.
3. Sound from a non-vehicular source shall be measured twenty-five feet from a property line.
4. The noise shall be measured on the "A" weighing scale on sound level meter of standard design and quality and having characteristics established by the American National Standards Institute, Publication S1.4- 1971.

5. For purposes of this Regulation, measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five miles per hour, or twenty-five (25) miles per hour with a wind screen.
6. In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

#### D. Permissive Noise Levels

1. Sound from a vehicle being operated on a public road or highway with the following speed limits shall not exceed the following as measured on the "A" weighting scale dBA:

Type of vehicle	Speed limit of 35 mph or less	Speed limit of more than 35 mph
Motorcycle manufactured before January 1, 1973	82 dBA	86 dBA
Motorcycle manufactured on or after Jan. 1, 1973	80 dBA	84 dBA
Vehicle with a manufacturer's gross vehicle rating of ten thousand lbs. or more, and any combination of vehicle towed by such vehicle	86 dBA	88 dBA
All other vehicles	80 dBA	84 dBA

2. Sound from a vehicle being operated on private property or public property which is not a road or highway shall not exceed the following as measured on the "A" weighting scale dBA:

All vehicles	78 dBA
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3. Sound from a non-vehicular source located in a residential zone, shall not exceed the following limits:

7:00 A.M. until 7:00 P.M.	55 dB(A)
7:00 P.M. until 7:00 A.M. of the same day of the following day	50 dB(A)

4. Periodic, impulsive, or shrill noises are hereby declared unlawful when such noises are at or above a sound level of five dB(A) less than those listed in this Section.
5. Construction projects in residential zones shall be subject to the following permissible noise levels for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority, or if no time limitation is imposed, then for a reasonable period of time for completion of project.

7:00 A.M. until 7:00 P.M.	80 dB(A)
7:00 P.M. until 7:00 A.M. of the same day of the following day	75 dB(A)

#### E. Vehicle Muffler Required

1. No person shall operate any where in unincorporated Jefferson County any vehicle that is not equipped with a muffler in constant operation.
2. No person shall operate any vehicle on which a muffler is not properly maintained to prevent any noise in excess of the noise emitted when the muffler was originally installed by the manufacturer of the vehicle.

3. Muffler modification prohibited.

No person shall operate any where in unincorporated Jefferson County any vehicle having a muffler that has been equipped or modified with a cutoff, bypass, or any similar device or modification.

F. Violations, Penalty.

1. Any person who violates any of the provisions of this Regulation commits a Class 2 Petty Offense.

2. All charges and proceeding relating to any violation of this Regulation may be cited for compliance with the penalty assessment procedures pursuant to Section 16-2-201, C.R.S., and as set forth herein. All persons who acknowledge guilt or are found guilty shall be punishable by a fine of \$30.00 for each separate offense, plus customary court costs when applicable. A graduated fine schedule is to apply: a \$30.00 increase for each recurring offense, beginning at \$30.00 to a maximum of \$300.00.



## Chapter 9.52

### NOISE\*

#### Sections:

#### I. Short Title, Policy and General Definitions

- 9.52.010 Short title.
- 9.52.020 Declaration of policy.
- 9.52.030 Definitions.

#### II. Prohibited Noise-General Prohibition

- 9.52.040 Unlawful to make.
- 9.52.050 Unlawful noises generally.
- 9.52.060 Bells and chimes.
- 9.52.070 Radios, television sets, phonographs and similar devices-Use restricted.
- 9.52.080 Animals or birds.
- 9.52.090 Exhausts-Mufflers.
- 9.52.100 Defect in vehicle or load.
- 9.52.110 Quiet zone.
- 9.52.120 Dynamic braking devices.
- 9.52.130 Truck loading.

#### III. Prohibited Noise-Sound Level Standards

- 9.52.140 Construction activities.
- 9.52.150 Power equipment.
- 9.52.155 Temporary exemption from ordinance.

#### IV. Amplified Sound

- 9.52.160 Amplified sound.
- 9.52.170 Application for permit to use sound-amplifying equipment in a motor vehicle.
- 9.52.190 Permit issuance.

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\* Prior ordinance history: Ords. O-85-13.

## **I. Short Title, Policy and General Definitions**

### **9.52.010 Short title.**

This chapter shall be known as the Lakewood noise control ordinance. (Ord. O-86-42 § 1 (part), 1986).

### **9.52.020 Declaration of policy.**

It is declared that at certain levels, noise is detrimental to public health, comfort, convenience, safety and welfare of the citizens of the city. This chapter is enacted to protect, preserve and promote the health, welfare, peace and quiet of the citizens of Lakewood through the reduction, prohibition and regulation of noise. It is the intent of this chapter to establish and provide for sound levels that will eliminate unreasonable and excessive noise, reduce community noise, promote a comfortable enjoyment of life, property and conduct of business, and prevent sound levels which are physically harmful and detrimental to individuals and the community. (Ord. O-86-42 § 1 (part), 1986).

### **9.52.030 Definitions.**

The following definitions shall apply in the interpretation and enforcement of this chapter.

“Commercial district” means the following: (A) an area where offices, clinics and the facilities needed to serve them are located; (B) an area with local shopping and service establishments; (C) a tourist-oriented area where hotels, motels and gasoline stations are located; (D) a business strip along a main street containing offices, retail businesses and commercial enterprises; (E) other commercial enterprises and activities which do not involve the manufacturing, processing or fabrication of any commodity. “Commercial district” includes, but is not limited to, any parcel of land zoned as a convenience commercial district, a neighborhood commercial district, a community commercial district, a commercial district, a large lot commercial district or an office district, under the zoning ordinance of the city.

“Commercial purpose” means and includes the use, operation or maintenance of any sound or amplifying equipment, for the purpose of advertising any business, any goods or any services, or for the purpose of attracting the attention of the public to or advertising for or soliciting the patronage of customers to or for any performance, show, entertainment, exhibition or event, or for the purpose of demonstrating any such sound equipment.

“Construction activities” means any and all activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereto, including land clearing, grading, excavating and filling.

“Continuous noise” means a steady, fluctuating or impulsive noise which exists, essentially without interruption, for a period of ten minutes or more, with an accumulation of an hour or more during a period of eight hours.

“Device” means any mechanism which is intended to produce or which actually produces sound when operated or handled.

“Dynamic braking device” means a device used primarily on trucks for the conversion of the motor from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

“Emergency work” is work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger or potential danger.

“Industrial district” means an area in which enterprises and activities which involve the manufacturing, processing or fabrication of any commodity are located. “Industrial district” includes, but is not limited to, any parcel of land zoned as an industrial district or a planned development district with uses permitted in an industrial district under the zoning ordinance of the city.

“Motor vehicle” means any vehicle, such as, but not limited to, a passenger vehicle, truck, truck-trailer, trailer or semi-trailer, propelled or drawn by mechanical power, and includes motorcycles, snowmobiles, minibikes, go-carts and any other vehicle which is self-propelled.

“Muffler” means any apparatus consisting of a series of chambers or baffle plates designed for the purpose of transmitting gases while reducing sound emanating from such apparatus.

“Noncommercial purpose” means the use, operation or maintenance of any sound-amplifying equipment for other than a commercial purpose. “Noncommercial purpose” means and includes, but is not limited to, philanthropic, political, patriotic and charitable purposes.

“Residential district” means an area of single or multiple-family dwellings and includes areas where multiple-unit dwellings, high-rise apartments and high-density residential districts are located. “Residential district” also includes, but is not limited to, hospitals, nursing homes, homes for the aged, schools, courts and similar institutional facilities. “Residential district” includes, but is not limited to, land zoned as a large lot residential district, a small lot residential district, a duplex residential district, a high-density residential district, a medium-density residential district, or a mobile home residential district under the zoning ordinance of the city.

“Sound-amplifying equipment” means any machine or device for the amplification of a human voice, music or any other sound, or by which the human voice, music or any other sound is amplified.

“Unreasonable noise” means any excessive or unusually loud sound, or any sound which disturbs the peace and quiet of any neighborhood or causes damage to any property or business. (Ord. O-94-33 § 32 & 33, 1994; Ord. O-86-42 § 1 (part), 1986).

## II. Prohibited Noise-General Prohibition

### 9.52.040 Unlawful to make.

No person shall knowingly make or continue, or cause to be made or continued, any unreasonable noise within the city. (Ord. O-86-42 § 1 (part), 1986).

### 9.52.050 Unlawful noises generally.

The following acts, enumerated in Sections 9.52.060 through 9.52.160, are declared to cause unreasonable noises in violation of this chapter; provided, however, that the following enumeration is not in limitation of Section 9.52.040, and is not exclusive. (Ord. O-86-42 § 1 (part), 1986).

### 9.52.060 Bells and chimes.

No person shall use, operate, cause or permit to be sounded any bell or chime, or any device for the production or reproduction of the sounds of bells or chimes, from any church, clock or school, between the hours of ten p.m. of one day and seven a.m. of the following day. (Ord. O-86-42 § 1 (part), 1986).

### 9.52.070 Radios, television sets, phonographs and similar devices-Use restricted.

It is unlawful for any person to use, operate or permit to be played any radio receiving set, musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound in such a manner as to cause any unreasonable noise. (Ord. O-94-33 § 34, 1994; Ord. O-86-42 § 1 (part), 1986).

### 9.52.080 Animals or birds.

No person shall keep or maintain or permit the keeping of, on any premises owned, occupied or controlled by such person, any animal or bird otherwise permitted to be kept, which by frequent or habitual howling, barking, meowing, squawking or other noise unreasonably disturbs the peace and quiet of any neighborhood or causes discomfort or annoyance to any person. (Ord. O-86-42 § 1 (part), 1986).

### 9.52.090 Exhausts-Mufflers.

No person shall discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, air compressor equipment, motorboat, motor vehicle or other power device, which is not equipped with an adequate muffler in constant operation and properly maintained to prevent any unreasonable noise, and no such muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device. (Ord. O-86-42 § 1 (part), 1986).

### 9.52.100 Defect in vehicle or load.

It is unlawful for any person to operate, or cause or permit to be operated or used, any automobile, truck, motorcycle or other motor vehicle so out of repair, so loaded or in such a manner as to cause any unreasonable noise. (Ord. O-94-33 § 35, 1994; Ord. O-86-42 § 1 (part), 1986).

**9.52.110 Quiet zone.**

The creation of any unreasonable noise is prohibited within the vicinity of any school, institution of learning, church or court while the same is in use or session, which unreasonably interferes with the workings of such institution, or within the vicinity of any hospital, nursing home or home for the aged, or which disturbs or unduly annoys patients in the hospital or residents in the nursing home or home for the aged, provided conspicuous signs are displayed in adjacent, surrounding or contiguous streets indicating that the same is a school, hospital, nursing home, home for the aged, church or court. (Ord. O-86-42 § 1 (part), 1986).

**9.52.120 Dynamic braking devices.**

No person shall operate any motor vehicle with a dynamic braking device engaged which is not properly muffled. (Ord. O-86-42 § 1 (part), 1986).

**9.52.130 Truck loading.**

No person shall load any garbage, trash or compactor truck, or any other truck, whereby the loading, unloading or handling of boxes, crates, equipment or other objects is conducted within a residential district or within three hundred feet of any hotel, motel, or residential district between the hours of ten p.m. of one day and seven a.m. of the following day.  
(Ord. O-2001-34 § 5; Ord. O-86-42 § 1 (part), 1986).

### **III. Prohibited Noise-Sound Level Standards**

#### **9.52.140 Construction activities.**

Except as otherwise provided in this chapter, no person shall engage in, cause or permit any person to be engaged in construction activities in any residential or commercial district between the hours of nine p.m. of one day and six a.m. of the following day. Construction activities directly connected with the abatement of an emergency are excluded from the provisions of this section. (Ord. O-86-42 § 1 (part), 1986).

#### **9.52.150 Power equipment.**

No person shall operate or permit to be operated on any private property, or on the public way within any residential or commercial district(s), any power equipment used for home or building repair or grounds maintenance, or any construction equipment used for construction activities, between the hours of ten p.m. of one day and seven a.m. of the next day. Such power equipment shall include, but not be limited to, lawn mowers, garden tools, snow removal equipment, electric or chain saws, pavement breakers, log chippers, riding tractors, or powered hand tools. (Ord. O-86-42 § 1 (part), 1986).

#### **9.52.155 Temporary exemption from ordinance.**

A. Applications for a temporary exemption from the provisions of Sections 9.52.140 and 9.52.150 shall be made to the City Manager or his designee.

B. In approving or denying a temporary exemption, consideration shall be given to effective dates, hours of operation, type of noise, location, loudness, equipment noise characteristics and public health, safety and welfare.

C. Any temporary exemption approved hereunder may provide for, without limitation, a public information program prior to construction, restrictions on effective dates, hours of operation, type of noise, location, loudness, and equipment type relating to that particular activity giving rise to the relief requested.

D. The City Manager shall promptly notify the City Council of each temporary exemption approved. (Ord. O-92-4 § 1, 1992).

#### IV. Amplified Sound

##### **9.52.160 Amplified sound.**

A. No person shall use or operate any loudspeaker, public address system, or other sound-amplifying equipment for the purpose of giving instructions, directions, talks, addresses or lectures, or for transmitting music or sound to any persons or assemblages of persons, between the hours of ten p.m. of one day and seven a.m. of the following day, in such a manner as to be plainly audible at the property line. The intensity and loudness of any amplified sound, which is transmitted between the hours of seven a.m. and ten p.m. of one day, shall not be unreasonable.

B. No person shall use or operate any loudspeaker, public address system, or other sound-amplifying equipment in a motor vehicle in such a manner as to be plainly audible at twenty-five feet from the motor vehicle, unless a permit has been issued by the City Clerk pursuant to Section 9.52.190 which allows such amplification. If such a permit has been issued, the intensity and loudness of any amplified sound, which is transmitted between the hours of seven a.m. and ten p.m. of one day, shall not be unreasonable.

C. The provisions of this section shall not apply to any bell or chime or any device for the production or reproduction of the sound of bells or chimes from any church, clock or school.

D. The provisions of this section shall not apply to sound made on property owned by, controlled by, or leased to the city, the federal government, or to any branch, subdivision, institution or agency of the government of this state or any political subdivision within it, and when such sound is made by an activity of the governmental body or sponsored by it or by others pursuant to the terms of a contract, lease, or permit granted by such governmental body. (Ord. O-2002-16 § 1, 2002; Ord. O-86-42 § 1 (part), 1986).

##### **9.52.170 Application for permit to use sound-amplifying equipment in a motor vehicle.**

Any person, partnership, association, or corporation desiring to use or operate any loudspeaker, public address system, or other sound-amplifying equipment in or from a motor vehicle for either commercial or noncommercial purposes must first obtain a permit from the City Clerk. The permit may authorize the use or operation of such sound-amplifying equipment between the hours of seven a.m. and ten p.m. of one day. The application for the permit shall be filed with the City Clerk and shall provide the following information:

A. The name, address and telephone number of both the owner and the user of the sound-amplifying equipment;

B. The license number of the motor vehicle which is to be used;

C. The general description of the sound-amplifying equipment which is to be used;

D. Whether the sound-amplifying equipment will be used for commercial or noncommercial purposes; and

E. The dates upon which and the streets over which the equipment is proposed to be operated. (Ord. O-86-42 § 1 (part), 1986).

**9.52.190 Permit issuance.**

Permits required by Sections 9.52.170 may be issued by the City Clerk if the City Clerk finds that the conditions of motor vehicle movement or pedestrian movement are such that the use of the equipment will not constitute an unreasonable interference with traffic safety, that the applicant will not violate the hour restrictions of the permit, and that the use of the sound-amplifying equipment will not disturb the peace and quiet of any neighborhood. An applicant may appeal the denial of a permit by the City Clerk to the City Manager if such appeal is filed in writing with the City Manager within seven days of the denial of said permit by the City Clerk. The City Manager or his designee shall conduct any hearing and/or review of the denial of the permit request, and his decision shall be final. The City Manager may promulgate rules and regulations or procedures to govern any such hearing and/or review. (Ord. O-2002-16 § 3, 2002; Ord. O-86-42 § 1 (part), 1986).



## DIVISION 2. - NOISES REGULATED

### Sec. 38-61. - Prohibitions—General.

It shall be unlawful for any person to make, continue, or cause to be made or continued any excessive or unusually loud noise, or to create a noise disturbance within the limits of the city.

(Code 1981, § 19-11; Ord. No. 2208, § 1, 9-16-1985)

### Sec. 38-62. - Same—Specific.

The following acts, among others, are declared to be in violation of this chapter and unlawful, but this enumeration shall not be deemed to be exclusive:

- (1) *Alarms and bells.* Sounding, operating, or permitting the sounding or operation for more than five minutes, or between the hours of 9:00 p.m. and 7:00 a.m., of any electronically amplified signal from any bell or chime from any clock, school, church, or governmental building.
- (2) *Construction activities.* Between the hours of 9:00 p.m. and 7:00 a.m., no person shall operate, or cause to be used or operated, any equipment used in construction activities within any residential or business district. Construction projects shall be subject to the maximum permissible noise level specified for light industrial districts for the period within which construction is to be completed pursuant to any applicable building permit.
- (3) *Fireworks or explosives.* The using of explosives, fireworks, or other devices which create impulsive noise between the hours of 9:00 p.m. and 7:00 a.m. or in such manner as to cause a noise disturbance.
- (4) *Horns and signaling devices.*
  - a. Sounding of any horn or signaling device on any truck, automobile, motorcycle, emergency vehicle or other vehicle on any street or public place of the city except as a danger warning signal or as provided in "The Model Traffic Code."
  - b. The provisions of this chapter shall not apply to the sounding of horns in the customary practice of celebrating weddings or in celebrating the victory of an Arvada sports event, such as a football game, so long as such sounding of horns is within two hours of the completion of any such event.
- (5) *Loading operations.* Loading, unloading, opening, or otherwise handling boxes, crates, containers, garbage containers, or other objects in such a manner as to create a noise disturbance between the hours of 9:00 p.m. and 7:00 a.m.
- (6) *Loudspeakers, exterior.*
  - a. Using or operating a loudspeaker or sound amplifying equipment in a fixed or movable position or mounted upon any motor vehicle upon any street, alley, sidewalk, park, place, public or private property without first obtaining a permit.
  - b. The provisions of this subsection shall not apply to emergency vehicles when such emergency vehicles are responding to an emergency call or when in pursuit of an actual suspected violator of the law, or when responding to but not returning from a fire alarm.
  - c. The provisions of this subsection shall not apply to any bell or chime or any device for the production of the sound of bells or chimes from any church, clock, or school so long as such sounds comply with sections 38-62(1) and 38-91.
- (7) *Peddlers and hawkers.* Selling anything by outcry within any area of the city zoned primarily for residential uses. The provisions of this subsection shall not be construed as prohibiting the

selling by outcry of merchandise, food, and beverages at licensed sporting events, parades, fairs, circuses, and other similar licensed public entertainment events.

(8) *Radios, television sets, and similar devices.*

- a. It shall be unlawful for any person to use, operate, or permit to be played, any radio receiving set, musical instrument, television, phonograph, drum, or other machine or device that produces or reproduces sound in such a manner as to be plainly audible at either the property boundary of the source of sound or through a party wall, ceiling, or floor within a building or plainly audible at 25 feet from such device when operated within a moving or parked vehicle.
- b. Organized practices and performances of senior high school groups shall be exempt from this section 38-62(8).
- c. Special events for which a special event permit is obtained from the city in accordance with the provisions of section 5.17 of article 5 of the Arvada Zoning Ordinance shall be exempt from this section 38-62(8).

(9) *Recreational activities, nonvehicular.* The flying of model aircraft powered by internal combustion engines, whether tethered or not; or the firing or operation of model rockets or other similar noise producing devices between the hours of 9:00 p.m. and 7:00 a.m., or in such a manner as to cause a noise disturbance.

(10) *Vehicles, repairs or testing.* Repairing, rebuilding, modifying or testing any truck, automobile, motorcycle, or other motor vehicle in such a manner as to cause a noise disturbance or violate the provisions of section 38-62(11).

(11) *Vehicles, standing.* Operating, or permitting the operation of any motor vehicle in excess of 10,000 pounds, manufacturers gross vehicle weight, or any attached auxiliary equipment, for a consecutive period longer than ten minutes while such a vehicle is standing on a public right-of-way in a residential district or is on private property in a residential zone and is not within a completely enclosed structure.

(12) *Motorcycles.* No person shall, nor shall the owner allow any person to operate a motorcycle manufactured after December 31, 1982, that is not equipped with an exhaust muffler bearing the federal Environmental Protection Agency required labeling applicable to the motorcycle's model year, as set out in the Code of Federal Regulations, Title 40, Volume 24, Part 205, Subpart D and Subpart E, as may be from time to time amended. Said label shall be affixed to the exhaust muffler in such a manner as to be readily visible.

- a. For purposes of enforcement of subsection (12), police officers may establish or determine reasonable suspicion to stop a motorcycle based on any relevant facts and circumstances concerning the unusually loud or excessive nature of the noise created or emitted by the motorcycle. This determination may be based upon, but need not be limited to, a consideration of the following factors:
  - (i) The time of day;
  - (ii) The proximity of the motorcycle creating or emitting the noise to any residential area, assisted living facility, nursing or care home, hospital, or public or private school;
  - (iii) Any unusual quality associated with the noise such as, but not limited to, a loud grating, grinding, rattling, or whining sound; or
  - (iv) Any other factors tending to show the magnitude or disruptive effect of the noise.
- b. Notwithstanding the language of subsection (12)a., a peace officer may enforce subsection (12) when an accident involving a motorcycle occurs, following any lawful traffic stop or contact, or during any traffic investigation.
- c. Testimony of the failure by any owner or operator of a motorcycle to immediately demonstrate the presence of an EPA noise label as required in subsection (12), when

requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (12), that the owner or operator of the motorcycle violated subsection (12).

(Code 1981, § 19-12; Ord. No. 2208, § 1, 9-16-1985; Ord. No. 3171, § 1, 3-20-1995; Ord. No. 3282, § 1, 11-25-1996; Ord. No. 3729, § 1, 12-3-2001; [Ord. No. 4164, 4-20-2009](#) )

#### Sec. 38-63. - Emergencies.

Noise caused in the performance of emergency work for the immediate safety, health, or welfare of the community or individuals of the community, or to restore property to a safe condition following a public calamity shall not be subject to the provisions of this chapter. Nothing in this section shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.

(Code 1981, § 19-13; Ord. No. 2208, § 1, 9-16-1985)

#### Sec. 38-64. - Public events.

- (a) An application for a permit to hold a public event which may violate the provisions of this chapter and which does not constitute a special event, as that term is defined by the provisions of the Arvada Zoning Ordinance, shall be made to the city manager or his duly authorized representative. Such permit shall be valid only at the specific times, dates, and conditions noted in the permit. An application for a permit to hold a public event which may violate the provisions of this chapter and which constitutes a special event shall be made in accordance with the provisions of section 5.17 of article 5 of the Arvada Zoning Ordinance.
- (b) A permit shall be deemed granted in the case of the Arvada Harvest Festival Parade and no further application will be necessary.

(Code 1981, § 19-14; Ord. No. 2208, § 1, 9-16-1985; Ord. No. 3282, § 2, 11-25-1996)

#### Sec. 38-65. - Exceptions.

Noise caused in the maintenance, construction, repair, or improvement of any public road or public facility by public employees, by any person acting pursuant to a public works contract, or by any person acting under the direction or control of an employee of any public agency, shall be exempt from the provisions of this chapter.

(Code 1981, § 19-15; Ord. No. 3171, § 3, 3-20-1995)

#### Secs. 38-66—38-90. - Reserved.

### DIVISION 3. - COMMUNITY NOISE LEVELS

#### Sec. 38-91. - Maximum permissible continuous sound pressure levels—General.

It shall be unlawful for any person to operate or cause or permit to be operated any stationary source of noise which creates a sound pressure level that exceeds the limits set forth in Table I for more than 90 percent of any measurement period. This measurement shall not be less than ten minutes when measured at the property boundary or at any point within the property affected by the noise.

TABLE I. SOUND PRESSURE LEVEL LIMIT dB(A)

	Day	Night
Use District	7:00 a.m.—9:00 p.m.	9:00 p.m.—7:00 a.m.
Residential	55	50
Commercial	60	55
Light industrial	70	65
Heavy industrial	75	75

Noise levels for any PUD shall conform with this table, and shall be determined by the predominant land use as set forth in the PUD plan. This section shall not apply to property zoned PUD-CC.

(Code 1981, § 19-20; Ord. No. 2208, § 1, 9-16-1985; Ord. No. 3017, § 3, 11-15-1993)

Sec. 38-92. - Same—PUD-CC.

For property zoned PUD-CC, it shall be unlawful for any person to operate or cause or permit to be operated any stationary source of noise which creates a sound pressure level that exceeds the limits set forth in table II for more than 90 percent of any measurement period. This measurement shall not be less than ten minutes when measured at the property boundary or at any point within the property affected by the noise.

TABLE II. PUD-CC SOUND PRESSURE LEVEL LIMIT dB(A)

	Day	Night
PUD-CC Subdistrict	7:00 a.m.— 9:00 p.m.	9:00 p.m.— 7:00 a.m.
A	75	75
B	55	50
C	60	55
D	55	50

E	60	55
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(Code 1981, § 19-20.1; Ord. No. 3017, § 3, 11-15-1993)

Sec. 38-93. - District boundaries.

When a noise source can be identified and its noise is measured in more than one use district, the sound pressure level limits of the most restrictive use district shall apply at that district boundary.

(Code 1981, § 19-21; Ord. No. 2208, § 1, 9-16-1985)

Sec. 38-94. - Duration correction.

It shall be unlawful for any person to operate or permit to be operated any stationary source of noise within any land use category which creates a fluctuating noise or is intermittent and creates a tenth percentile noise level which is more than 15 dB(A) greater than the ambient noise level, measured when the source is quiet, but in no case shall the tenth percentile level exceed 70 dB(A) in residential land use categories.

(Code 1981, § 19-22; Ord. No. 2208, § 1, 9-16-1985)

Sec. 38-95. - Correction for character of sound.

It shall be unlawful for any person to operate or cause or permit to be operated any stationary source of noise which emits a pure tone, cyclically varying noise or repetitively impulsive noise which exceeds five dB(A) less than the limits set in section 38-91.

(Code 1981, § 19-23; Ord. No. 2208, § 1, 9-16-1985)

Sec. 38-96. - Exemption for school bands.

The performance of any senior high school or junior high school band shall be exempt from the sound pressure level standards of this chapter.

(Code 1981, § 19-24; Ord. No. 2208, § 1, 9-16-1985)

Secs. 38-97—38-120. - Reserved.

**5.15.020 - Noise prohibited.**

- (1) It is unlawful for any person to make, cause to be made, or to permit any unreasonable noise upon any premises or within any vehicle owned, possessed or operated or controlled by such person.
- (2) Law enforcement personnel, including code enforcement officers, may, in the determination of whether a noise is unreasonable, consider factors that include, but, are not limited to:
  - (a) The time of day;
  - (b) The size of any gathering of persons creating or contributing to the noise;
  - (c) The presence or absence of noise amplification equipment; and
  - (d) Any other factors tending to show the magnitude and/or disruptive effect of the noise.
- (3) With regard to vehicles, the determination of unreasonable noise, in addition to the previously stated factors shall include, but not be limited to:
  - (a) The continuous or repeated sounding of any horn, alarm or signal device of a vehicle, except where an actual emergency or danger exists. For the purposes of this subsection, "continuous" shall mean continuing for an unnecessary or unreasonable period of time.
  - (b) The operation of any vehicle in a manner which causes unreasonable noise as a result of unnecessary rapid acceleration, deceleration, revving the engine or tire squeal.

(Ord. 1727, § 41, 2005; Ord. 1143, 1992)

**5.15.025 - Restrictions amplified outdoor music.**

It shall be unlawful for any person to make, cause to be made or to permit amplified outdoor music upon any premises possessed or controlled by such person where such music occurs:

- (a) Between the hours of 9:30 p.m., through 10:00 a.m., of the next day except that on Friday and Saturday nights music is permitted until 10:30 p.m; or
- (b) Where any amplified outdoor music exceeds 82 dBA as measured at the premises property line(s) or any public rights-of-way immediately adjacent to the property from which the amplified outdoor music originates.

(Ord. 1903, § 1, 2011)

**5.15.040 - Exceptions.**

The prohibitions set forth in subsection 5.15.020(1) shall not apply to sound from:

- (a) Any bell or chime from any building clock, school or church;
- (b) Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm system used in case of fire, collision, civil defense, police activity or other imminent danger; provided however, that burglar alarms not terminated within 20 minutes after being activated shall not be excepted;

- (c) Aircraft which are operated in accordance with federal laws or regulations;
- (d) City authorized or sponsored events including, but not limited to, parades and fireworks displays;
- (e) Any domestic power equipment, except as provided within this subsection, operated upon any residential, commercial, industrial or public place between 7:00 a.m. and 9:00 p.m.;
- (f) Any temporary construction, maintenance, or repair activities between 7:00 a.m. and 9:00 p.m.;
- (g) Activities directly connected with the abatement of an emergency;
- (h) Noise from snow blowers, snow throwers and snow plows when operated with a muffler for the purpose of snow removal;
- (i) Noise generated from golf course maintenance equipment.

(Ord. 1727, §§ 43, 44, 2005; Ord. 1143, 1992)

#### 5.15.050 - Exhaust, mufflers.

No person shall discharge the exhaust of any steam engine, internal combustion engine, air compressor equipment, motor boat, or other power device which is not equipped with a properly maintained exhaust system with a muffler or a spark arrestor. It is unlawful for any person to operate a muffler or exhaust using a cutout, bypass or other similar device.

(Ord. 1727, § 45, 2005; Ord. 1143, 1992)

#### 5.15.060 - Use of sirens and red lights restricted.

It is unlawful for any person to carry or use upon any vehicle other than police, fire department or emergency vehicles, any gong, siren, whistle or red light similar to that used on police, fire department or emergency vehicles.

(Ord. 1143, 1992)



# Memorandum

**TO:** Mayor and City Council

**THROUGH:** Ken Johnstone, Community Development Director  
Patrick Goff, City Manager

**FROM:** Mark Westberg, Project Supervisor

**DATE:** September 13, 2019 (for the September 23 Special Study Session)

**SUBJECT:** 52<sup>nd</sup> Avenue Annexation

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## **ISSUE:**

The Wheat Ridge · Ward Station planning area is one of four projects in the City's *Investing 4 the Future* bond program which is benefitting from \$12 million from the voter-approved, temporary ½-cent sales and use tax rate increase. Improvements to 52<sup>nd</sup> Avenue have been identified and prioritized as an infrastructure project for the Wheat Ridge · Ward Station area and were specifically listed in the ballot language for the 2016 2E sales tax bond measure.

Due to ongoing Jefferson County (JeffCo) budget issues, it has become necessary for the City to annex the JeffCo portions of 52<sup>nd</sup> Avenue right-of-way (ROW) in order to complete improvements to 52<sup>nd</sup> Avenue in a timely manner.

## **DISCUSSION:**

Extensive visioning and planning has been done on the Wheat Ridge · Ward Station planning area. Numerous Council updates and actions have occurred at various stages in this process. Council was most recently updated on April 1, 2019 on the status of the projects in the planning area. At that time design documents for the street improvements were about 60% complete and they are now nearing 100% completion.

### **Multi-jurisdictional Coordination**

Partnership with neighboring jurisdictions has been critical for these street improvements. In early 2018, the City Managers of Arvada and Wheat Ridge along with the County Manager of JeffCo signed a memorandum of understanding (MOU) agreeing to coordinate and cooperate on designing and funding mutually beneficial road improvements in the area surrounding the Wheat Ridge · Ward station area. Discussions between the staffs of the three jurisdictions continued through 2018 on an IGA that outlined the cost-sharing and other arrangements for the shared infrastructure improvements.

During the negotiations for the IGA, it was decided to split the costs of 52<sup>nd</sup> Avenue in a proportional way based on the source of the traffic on the street instead of the amount of ROW that each jurisdiction had. For initial negotiating purposes, a split of 40% Wheat Ridge, 40% Arvada, and 20% JeffCo was used. A traffic analysis affirmed this cost share.



On January 15, JeffCo notified both cities that they would no longer be participating in funding the 52<sup>nd</sup> Avenue project. As Council might imagine, a small section of roadway, located only partially in JeffCo ROW does not land high on the list of the County's transportation funding priorities.

After JeffCo's withdrawal of funding, Arvada staff expressed interest in continuing to participate in the 52<sup>nd</sup> Avenue project with a cost share of 50% for each city and on January 28, Arvada and Wheat Ridge executed an IGA agreeing to share the costs of improvements to 52<sup>nd</sup> Avenue and Ridge Road. The split for 52<sup>nd</sup> Avenue is 50/50. The Ridge Road split was to be based on the amount of traffic from each jurisdiction as determined by the regional traffic study. That study was recently completed and shows a traffic split for Ridge Road of around 2/3 Wheat Ridge and 1/3 Arvada.

More recently, JeffCo staff has indicated that due to JeffCo's ongoing budget issues, it would be difficult to even fund the necessary maintenance of the proposed improvements. This is largely due to the addition of storm sewer, curb/gutter, sidewalk, and buffer zone to the existing asphalt street. Therefore, JeffCo has requested that Wheat Ridge annex the ROW along 52<sup>nd</sup> Avenue that is currently in JeffCo's jurisdiction (see attached map of proposed annexation areas).

### **52<sup>nd</sup> Avenue Significance**

Improving 52<sup>nd</sup> Avenue is critical to the support of the Wheat Ridge · Ward Station planning area by providing critical infrastructure for the following reasons:

- 2E Ballot – As noted previously, 52<sup>nd</sup> Avenue was included as one of the specific infrastructure projects in the 2E ballot language that shall be funded by the \$12,000,000 in voter approved bond funds.
- Funding Timing – Keeping the street improvement projects moving forward in a timely manner helps to meet the requirement to spend 85% of the total \$33 million of bond funds by May 2020.
- Station Area Gateway – The 52<sup>nd</sup> Avenue/Ward Road and 52<sup>nd</sup> Avenue/Tabor Street intersections are identified as gateways to the Station area in the adopted 2017 Vision Plan.
- Vehicular Traffic – Improving the street from a narrow 2-lane country road to a 3-lane collector street provides the necessary capacity to serve the Wheat Ridge · Ward Station and the current and future redevelopment of the Station area.
- Pedestrian/Bicycle Traffic – Facilities for non-vehicular traffic are virtually non-existent currently. Adding a 6' wide buffered sidewalk on the north side and an 8' wide detached sidewalk, with streetscape, on the south side of 52<sup>nd</sup> Avenue provides the necessary facilities to accommodate the current and future residents of the Station area and to provide safe travel to the neighborhood middle school.
- Aesthetic Improvements – Improving the 2-lane country road to a 3-lane collector with streetscape provides a more cohesive streetscape in the area.
- Long-term Maintenance – While the proposed street improvements will be fully funded by Wheat Ridge and Arvada, JeffCo's inability to adequately fund maintenance of the improvements will eventually lead to disrepair and poor long-term performance of the improvements.

### **Alternatives**

Staff has examined the possibility of constructing only the south half of W. 52<sup>nd</sup> Avenue, which is entirely within Wheat Ridge's jurisdiction; however that is not only infeasible from an engineering standpoint, it also fails to meet the goals of both Wheat Ridge and Arvada for a complete, multi-modal street.

Wheat Ridge and Arvada staff have also briefly discussed a larger scale annexation around the 52<sup>nd</sup> Avenue/Ward Road intersection. Arvada could possibly annex JeffCo areas north of 52<sup>nd</sup> Avenue and Wheat Ridge could annex areas south of 52<sup>nd</sup> Avenue. However, due to the involvement of private property in that potential annexation, a larger scale annexation solution cannot be pursued at this time due to the need to expedite the annexation of 52<sup>nd</sup> Avenue to keep the street improvement project moving forward.

### **NEXT STEPS:**

A schedule to accomplish the annexation of 52<sup>nd</sup> Avenue has been developed that will slightly delay the construction start date, only by six weeks. The following next steps are proposed to keep the street improvement projects moving forward:

### **Tasks Completed or Started**

- 1<sup>st</sup> week of Sept – The construction plans for 52<sup>nd</sup> Avenue were completed
- Sept 16 – Notices of required neighborhood meeting were mailed
- Sept 17 – JeffCo's Board of County Commissioners briefed about the potential annexation

### **Proposed Schedule**

- Sept 24 – JeffCo's Board of County Commissioners authorizes staff to apply for annexation
- Sept 26 – Pre-application meeting with JeffCo staff to coordinate efforts
- Oct 2 – Neighborhood meeting – 600' notification radius
- By Oct 4 – JeffCo staff submits notification
- Oct 28 – Council accepts annexation
- Nov 4 – Street improvements projects advertised for bids
- Nov 18 – Council Study Session to brief new members on annexation
- Nov 21 – Planning Commission hearing concerning zoning the annexation areas
- Nov 27 thru Dec 19 – Publication in Transcript of public hearing on Jan 6, 2020
- Dec 9 – 1<sup>st</sup> reading at Council for annexation and zoning
- Dec 10 – Street projects bid opening
- By Dec 11 – Notice of annexation submitted to other agencies
- Jan 13, 2020 – 2<sup>nd</sup> reading at Council for annexation and zoning and award of construction contract

### **ATTACHMENTS:**

1. Vicinity Map

Vicinity Map



Street segment proposed to be annexed

New streets by developers