

**STUDY SESSION AGENDA**  
CITY COUNCIL  
CITY OF WHEAT RIDGE, COLORADO  
7500 W. 29th Ave. Wheat Ridge CO

June 6, 2022

6:30 p.m.

**This meeting will be conducted as a virtual meeting, and in person, at 7500 West 29<sup>th</sup> Avenue, Municipal Building, if allowed to meet on that date per COVID-19 restrictions.**

**Some City Council members or City staff members will be physically present at the Municipal building for this meeting. The public may participate in these ways:**

1. Attend the meeting in person at City Hall. Use the appropriate roster to sign up to speak upon arrival
2. Provide comment in advance at [www.wheatridgespeaks.org](http://www.wheatridgespeaks.org) (comment by noon on June 6, 2022)
3. Virtually attend and participate in the meeting through a device or phone:
  - [Click here to join and provide public comment](#)
  - Or call +1-669-900-6833 with **Access Code: 820 1438 5761**
  - **Passcode: 313645**
4. View the meeting live or later at [www.wheatridgespeaks.org](http://www.wheatridgespeaks.org), Channel 8, or YouTube Live at <https://www.ci.wheatridge.co.us/view>

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*Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Contact the Public Information Officer at 303-235-2877 or [wrpio@ci.wheatridge.co.us](mailto:wrpio@ci.wheatridge.co.us) with as much notice as possible if you are interested in participating in a meeting and need inclusion assistance.*

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Public Comment on Agenda Items

1. 38<sup>th</sup> West Street Improvements (Kipling Street to Youngfield Street)
2. Campaign Finance Code: Fairness, Transparency, Impartiality
3. Strategic Plan Update
4. Staff Report(s)
5. Elected Officials' Report(s)

# Memorandum

**TO:** Mayor and City Council

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

**FROM:** Steve Nguyen, Engineering Manager  
Mark Westberg, Project Supervisor

**DATE:** May 27, 2022 (for June 6<sup>th</sup> study session)

**SUBJECT:** 38<sup>th</sup> West Street Improvements (Kipling Street to Youngfield Street)

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**ISSUE:**

“Re-examine and Advance Sidewalks on 38<sup>th</sup> Avenue” was identified as one of Council’s priorities in the 2021-2022 Strategic Plan. This priority has been divided into two separate geographic areas: 1) 38<sup>th</sup> West (Kipling Street to Youngfield Street); and 2) 38<sup>th</sup> East (Wadsworth Boulevard to Harlan Street).

The purpose of this memo is to provide City Council with an update on the proposed planning process for 38<sup>th</sup> West. This memo summarizes the scope of work, see Attachment 1, that staff has prepared to direct the consultant in developing a plan to reconstruct 38<sup>th</sup> West with a focus on adding adequate bicycle and pedestrian (bike/ped) improvements while still accommodating the future traffic.

**PRIOR ACTION:**

In 2008, City Council approved an ordinance to submit a ballot question to the voters in November 2008 for several capital projects including the reconstruction of 38<sup>th</sup> West (to include but not limited to turn lanes, sidewalks, stormwater drainage, street lighting, pedestrian trails, streetscape, and undergrounding utilities). The issue failed by a vote of 62% against and 38% for the project.

On December 6, 2021, staff met with Council to discuss moving this priority project forward. Consensus was received from Council to prepare a scope of work to hire a consultant to conduct a planning effort to identify what the public wants are for 38<sup>th</sup> West, what the public needs are for 38<sup>th</sup> West, and using that information, develop a recommended alternative(s) to modernize 38<sup>th</sup> West into a complete street that serves automobiles, bicycles, and pedestrians.

**BACKGROUND:**

38<sup>th</sup> West is 1.75 miles in length and is designated as a minor arterial on the City’s Street Master Plan. Pedestrian facilities on 38<sup>th</sup> West have been improved at a few scattered locations over the course of many years by private development projects along the corridor and a few small City funded projects.

In 2017, Local Works obtained an “Active Living Neighborhood Grant,” from Kaiser Permanente with support from the City. The purpose of that effort was to increase active transportation, transit, and accessible routes along 38<sup>th</sup> West. Starting in 2017 and continuing through early 2018, a coalition of residents, businesses, schools, organizations, and city officials worked together to:

1. Gather community input through outreach, forums, events, walk, bike, and roll audits, data collection, and mapping to inform an Active Transportation Assessment.
2. Plan a demonstration project addressing key stakeholder concerns and host a community event to engage the community and solicit input on Active Living Plan recommendations.
3. Work with a coalition to develop an Active Living Plan identifying priority short- and long-term improvements in the project area to increase active transportation, transit, and wheelchair rolling.

From this planning effort, speed zones and rapid rectangular flashing beacons were installed at key pedestrian crossings to improve pedestrian safety. The selected locations were determined and guided by the feedback solicited from the stakeholders and community as a whole.

However, the current facilities along most of the street are still inadequate from a walking, rolling, and biking standpoint. The existing bike/ped facilities are inconsistent throughout the corridor with walkers and bikers being forced to use the shoulders to walk, roll, and ride. Improved street facilities would provide better and safer bike/ped connections from the nearby residential subdivisions to Kullerstrand Elementary School, Prospect Valley Elementary School, Everitt Middle School, and to the Applewood and Kipling Ridge shopping centers at either end of the corridor.

In addition, the middle 70% of 38<sup>th</sup> West does not have adequate drainage facilities to handle even minor rain events. The existing roadside ditches do not have adequate capacity resulting in water often ponding on the side of the road and flooding the roadway shoulder further degrading the use of that area to walk and bike. In addition, the sidewalks will likely be built in the location of the roadside ditches, so a storm sewer system will be required to convey the runoff.

### **RECOMMENDATIONS:**

Due to the widely varying conditions along 38<sup>th</sup> West, a planning study is proposed as the first step, similar to what was done for both 38<sup>th</sup> East and the Improve Wadsworth project. As discussed during the December 6, 2021 Study Session, the goal of this study will be to identify what the public wants are for 38<sup>th</sup> West and what the public needs are for 38<sup>th</sup> West, both now and in the future.

Since the public’s wants and needs are not always in alignment, a large part of the effort in preparing the study will be public engagement, not just to learn what the public wants, but to help the public understand what the needs are now and will be in the future.

To assist in determining what the needs are, the initial design effort will include a traffic analysis of both the current and future conditions. The analysis will evaluate the safety and capacity of the existing street to convey both current and future traffic. The results of the analysis will result in a recommended alternative(s) that will then guide the remaining design, which will include

recommended construction phasing. That information will be used to prepare 30% conceptual design plans including a street section(s) and conceptual cost estimates.

Professional consulting services will be needed to prepare the study with public engagement being a critical part of that effort. Engineering staff will manage the overall project and the City’s outreach specialists will be an integral part of the public engagement efforts. Depending on the results of the study and the extent of the proposed improvements, it is likely that construction will be phased over a period of years to reduce potential construction impacts on all users of the corridor, including school traffic during the school year.

The initial design will also include a drainage outfall system plan (OSP). The OSP will identify the required storm sewer improvements that will be needed with the potential elimination of the roadside ditches due to the construction of the sidewalks. The OSP will be developed to Mile High Flood District (MHFD) standards and reviewed by them to utilize their expertise in storm sewer design and also enable potential funding from them for the construction of the storm sewer facilities.

Finally, the 30% conceptual plans will be used to determine right-of-way (ROW) needs. The width of the ROW along the corridor generally ranges from 50 to 60 feet. Acquisition may be necessary in some of areas with inadequate ROW depending on the final selected street cross-section(s). The final street width and number of lanes may vary along the corridor depending on the results of a traffic analysis. The addition of left turn lanes or a continuous center turn lane at key locations is anticipated.

The proposed conceptual schedule shown below summarizes the potential project phases:

38th Avenue Bike and Pedestrian (Sidewalk) Improvement													
Task	Task Description	Year 1				Year 2				Year 3			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>Corridor 30% Plan Development</b>	Preliminary Plan Design												
	<b>OSP Planning</b> Storm Outfall Study/Design												
<b>Phase I Final Design/ROW</b>													
<b>Phase I Utility Relocation</b>													
<b>Phase I Construction</b>													
<b>Phase II Final Design/ROW</b>													
<b>Phase II Utility Relocation</b>													
<b>Phase II Construction</b>													

Design  
 Construction

**FISCAL IMPACT;**

Funding is not currently budgeted for any phase of this project. Conceptual cost estimates are as follows:

- Planning Study - \$700,000 to \$1 million
- Design - \$2 million

- Construction - \$15,000,000

**REQUESTED ACTION:**

Staff is seeking feedback and direction on whether to begin the consultant selection process with the proposed scope of work for the planning study following the details outlined above. After a consultant is selected and scope and fee have been finalized, a budget supplemental appropriation and request to award the planning study contract will be presented to Council for approval.

**ATTACHMENTS:**

1. 38<sup>th</sup> West Scope of Work

## **38<sup>th</sup> AVENUE WEST STREET RECONFIGURATION PLANNING/ENGINEERING SERVICES CONSULTANT**

### **A. Project Overview:**

The City of Wheat Ridge Community Development Department seeks a qualified firm to provide professional services for the preparation of street concepts for 38<sup>th</sup> Avenue between Youngfield and Kipling Streets. Scope of Work shall include development of alternate designs, presentations to City Council, stakeholders, and the public, and preparation of estimated costs for the various alternatives. **The primary focus of this planning process is to obtain community consensus on a preferred alternative for 38<sup>th</sup> Avenue between Youngfield and Kipling Streets.** Budget for these services is estimated between \$500,000 and \$750,000. The duration of the work described is expected to be 12 to 18 months.

### **B. Background**

The City has received comments from residents for several years asking to better accommodate non-vehicular traffic on 38<sup>th</sup> Avenue between Youngfield and Kipling Streets. Sidewalks on 38<sup>th</sup> Avenue are a priority in City Council's adopted Strategic Plan. Recent community outreach via the City's Let's Talk neighborhood engagement program resulted in considerable feedback on the need for adequate multi-modal facilities for this corridor. The street is a primary east-west corridor through western Wheat Ridge and is classified as a Minor Arterial. It also provides local access to the City's primary regional commercial districts: Applewood Village at 38<sup>th</sup> and Youngfield and Clear Creek Crossing on the west side of I-70 between 32<sup>nd</sup> and the Clear Creek.

Previous efforts to obtain funding to improve this corridor via a ballot initiative in the mid-2000s failed. Limited outreach was conducted and a conceptual design was not developed to help the public understand the very large construction costs that were estimated at that time.

### **C. Objectives**

The purpose of this RFP is to contract with a qualified firm, with experience in designing complete streets and expertise in transportation planning and streetscape design. The primary focus of this planning and conceptual design process is to obtain community consensus on a preferred alternative for this corridor.

It is anticipated that this process will include extensive public outreach efforts that will likely include public meetings, smaller block-by-block meetings that target particular segments of the corridor, online surveys, and meetings with City Council.

The scope of work will include recommendations for improvements to provide adequate future capacity and multi-modal facilities, while ensuring adequate local access. The selected consultant team shall evaluate the existing and future operating conditions and features of the street. The Consultant shall produce a report with the goal of identifying existing conditions, anticipated problem areas, and developing a range of multi-modal improvements to improve the safety for all users of the street while still providing adequate capacity for vehicular traffic.

The design effort needs to give adequate consideration to the numerous underground and overhead utilities in the corridor as well as the presence of irrigation ditches and significant stormwater challenges. It should also be noted that RTD bus facilities need to be accommodated.

The Consultant will provide consulting and professional services through its own forces or sub-consultants to produce the Report. The Consultant will, under the general direction of the Project Supervisor or his designated representative, furnish experienced, professional, planning and engineering personnel who shall be responsible for all aspects design and community outreach. That said, Staff will be actively involved in all public meetings, community engagement and City Council presentations.

### **D. Scope of Work**

Following is a general framework of the City's needs for the Consultant's guidance and consideration:

1. Develop a comprehensive strategy to engage all stakeholders in a public process that is collaborative and transparent.
2. The goals of this project are to provide a comprehensive range of conceptual alternatives that:
  - a. Keep the proposed improvements within existing right-of-way (ROW), if possible.
  - b. Provide pedestrian and bicycle facilities.
  - c. Analyze the street geometry to accommodate traffic without degrading the pedestrian/bicycle environment.
  - d. Identify necessary ROW and/or easements to accommodate the proposed alternative(s).

- e. Acknowledge and accommodate existing and planned underground and overhead utilities, stormwater facilities and RTD bus stops.
3. Phase 1 of this planning process should identify possible street and streetscape elements. At a minimum, the possible elements should include the following:
    - a. Number of travel lanes for vehicle traffic. This includes the proposed widths and the impact of those widths on traffic speed, etc.
    - b. Continuous center turn lanes or left turn lanes if warranted.
    - c. On-street bicycle lanes. This includes the proposed widths and the impact of those widths on bicycle safety and rider comfort.
    - d. Amenity zones. This includes the proposed widths and the impact of those widths on the pedestrian environment.
    - e. Sidewalks and/or Multi-use Paths. This includes the proposed widths and the impact of those widths on the pedestrian environment.
    - f. Traffic analysis will be necessary in order to evaluate the proposed lane configurations.

For all of the above elements, the inclusion and design of those elements could vary depending upon the location in the corridor. The design and impacts of the elements or combination of elements should be evaluated as a part of this phase.

4. All of the various elements would then be presented at a public meeting to obtain public input on which elements should be included in the conceptual alternatives. The need for block-by-block meetings, online surveys, etc. should be evaluated.
5. Phase 2 of this planning process would include:
  - a. Assembly of the various elements into several conceptual alternatives in plan view to evaluate the impact of the alternatives on the corridor. At a minimum, these alternatives should include the existing street layout as a no-action alternative, a layout that doesn't require any additional ROW, and a layout that meets all the needs identified in Phase 1 that may require ROW, either in small segments or corridor-wide.
  - b. Conceptual costs including ROW should be included for each alternative.
  - c. Updates to the traffic analysis will likely be necessary in order to evaluate the proposed lane configurations.
6. The proposed alternatives would then be presented at another public meeting to obtain public input on which alternative is preferred. Again, the need for block-by-block meetings, online surveys, etc. should be evaluated.
7. The final phase of this planning process would be to prepare conceptual (30%) plans based on the preferred alternative.
8. The conceptual plans of the preferred alternative would be presented at a final public meeting. The conceptual plans would be revised to incorporate public comment after that meeting for acceptance by City Council as a corridor plan.
9. Develop an implementation schedule and estimated costs for the preferred alternative to be constructed as a full corridor project or in phases including possible early action items. The implementation should consider utility relocation, ROW acquisition, and traffic impact.
10. Prepare a drainage study that meets the requirements of an Outfall System Plan for the Mile High Flood District. The implementation of multi-modal facilities is expected to include the inclusion of curb/gutter to separate the multi-modal facilities from the vehicular traffic. This will require that a storm sewer system(s) be constructed to convey the captured runoff to existing outfall points at Tabor Court and Lena Gulch.

It is expected that the consultant retains a competent staff of transportation, drainage, and planning professionals with significant similar experience to lead the project and develop alternatives. In addition, traffic engineering analysis will be necessary as part of the services in order to evaluate the alternatives during Phase 2. Historical traffic data is available.

Although the project limits are between Youngfield and Kipling Streets, it may be appropriate to identify subareas within the project limits. The design of the preferred alternative may vary between those subareas.

# Memorandum

**TO:** Mayor and Council

**FROM:** Steve Kirkpatrick, City Clerk

**DATE:** May 25, 2022 (for June 6<sup>th</sup> study session)

**SUBJECT:** Campaign Finance Code: Fairness, Transparency, Impartiality

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**ISSUE:**

A formal election complaint was received during the 2021 local election. During an investigation of this complaint and a review of campaign finance law, several loopholes in the campaign finance code were identified that the City Clerk is recommending that Council close with new ordinances.

The two attachments to this memo, from the City Attorney's Office, provide:

1. A detailed analysis of Council's options with respect to campaign finance ordinances that will not impinge upon anyone's First Amendment rights while leveling the playing field in terms of who is campaigning or petitioning and who is financing their efforts.
2. A legal analysis about three changes the City Clerk is proposing to the City Code that would require the following actions.
  - a. When two or more electors (registered voters) ask the Office of the Clerk to approve either an initiative or referendum petition form, they will also be required to file simultaneously as an appropriate type of Political Committee as defined in current law before they begin circulating their petition.
  - b. When two or more persons engage in public acts, again as defined in current law, that either support or oppose a candidate or support or oppose a ballot initiative, then those persons shall file as an appropriate type of Political Committee as defined in and required by current law.
  - c. When two or more persons register a Political Committee per either a or b above, those two (or three or...) *persons are individually, severally, and personally liable for timely filings of campaign finance reports and for paying any fines levied by the Office of the City Clerk (\$50 per day per current law) for late filing or refusal to file campaign finance reports per current law.*

Writing potential ordinances will require some time and effort to craft language that will withstand judicial review. Ample time exists for the City Attorneys to draft these three ordinances and bring them forward for Council's consideration prior to the 2023 election (or sooner if events create more urgency).

Finally, this discussion is not about collecting fines; the Clerk is empowered to waive fines in all or in part when proper filings are submitted late. *This discussion is about empowering the Clerk to enforce transparency, impartiality, and accountability in elections.*



**ATTACHMENTS:**

1. Memo from City Attorney's Office, dated April 19, 2022
2. Memo from City Attorney's Office, dated May 20, 2022



To: Steve Kirkpatrick, City Clerk  
Patrick Goff, City Manager

From: Carmen Beery  
Nicholas Klein

Date: April 19, 2022

Re: Local Campaign Finance Ordinance: Review of Proposed Concepts

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By memorandum of March 20, 2022, we provided you a legal analysis of local campaign finance law options. Subsequently, you asked for our review and comment on three (3) distinct local campaign finance ordinances you wish to propose to the City Council. This memorandum provides our comments on those three (3) proposed ordinances:

*“1. Require that any group that seeks approval of a form petition (referendum or initiative) to register as a committee as defined in the campaign finance law, just like candidates have to register. A maximum of 5 individuals may register as Agents of the group.”*

As-is, we consider this proposal to be high-risk and susceptible to legal challenge for not being sufficiently narrowly tailored to a legitimate governmental interest. As expressed in our March 20 memorandum, local campaign finance laws likely require an element of financial activity to pass legal muster.

To mitigate this risk and more narrowly tailor an ordinance to the legitimate purpose of campaign finance transparency, we recommend setting a threshold aggregate dollar amount at which a committee must register. The concept would be that only upon reaching \$X of contributions or expenditures would a group of people be required to identify themselves and register. This would ensure that individuals remain free to engage in pure political speech (versus *financial* advocacy) without restriction.

Keep in mind, courts have held that the restriction must also be proportionate to the burden on those registering. Requiring a group of people that have collected or spent \$50 thus far to register could be seen as unduly burdensome. The lower the dollar threshold, the more susceptible the ordinance is to challenge. For comparison, the Aurora Municipal Code requires issue committees to register upon raising or spending \$1,000 during an election cycle; political committees (those affiliated with specific candidates) must register in Aurora upon raising or spending \$400 per election cycle.

*“2. Any group of two or more people who take public action to advocate for or against any candidate or issue must register with the Office of the City Clerk within 5 calendar days after their first public act(s). A maximum of 5 individuals may register as Agents of the group.”*

As with the above, we recommend that any registration requirement be triggered by some minimum threshold dollar amount of contributions or expenditures. Further, we recommend that “public action” be clearly defined. One way to do this is to borrow from existing law, *e.g.* the definition of candidate in the Colorado Constitution: a “person is a candidate for election if the person has publicly announced an intention to seek election to public office or retention of a judicial office and thereafter has received a contribution or made an expenditure in support of the candidacy.” Colo. Const. art. XXVIII, § 2. Note, this Constitutional provision follows our general theme of advice – registration requirements should be triggered by two (2) types of activity *both* of which should be present: (1) speech; and (2) financial activity.

*“3. Under both 1 and 2 above, the persons who register as Agents of the group/committee are held responsible and accountable for filing periodic campaign finance reports that disclose all donations, donors and expenditures, just like candidate for office must file. Those registered Agents are then personally, individually and severally liable for fines levied by the Clerk for failure to properly and timely file campaign finance reports. We will also obviously need a mechanism to enforce that accountability.”*

We believe this enforcement concept is defensible. We recommend defining the term “agent” in the ordinance to prevent low level volunteers being characterized as agents and held liable for the group’s activities. Some sort of actual authority in the committee should be a prerequisite for such liability. An additional recommendation is to advise “agents” at the time of registration of the liability they are thereby assuming for the actions of the committee/group.

As for the periodic campaign finance reports, this concept is consistent with what other municipalities do. We recommend that the reporting requirements for non-election years be less burdensome and less frequent as those in election years. As articulated in our March 20 memorandum, it is harder to defend a regulation as “narrowly tailored” when the regulation is as demanding in an election year as it is in a non-election year.

Finally, as for enforcement mechanisms, we recommend that this portion of the Code (Sec. 7-5) be holistically reviewed and updated. We recommend relying on guidance from the Secretary of State’s office on this topic. Local enforcement mechanisms are certainly viable and can function efficiently.

If the City Council expresses interest in adopting any of the above concepts, our understanding is that your next projected step is to present a memo to the Council in August or September seeking their input on a number of specific policy choices. Because the City recently conducted a regular municipal election, we believe your perspective is that there is no urgency; that there is adequate time to allow Council to consider these issues over the next few months. Please let us know how we can assist in preparing any future items for Council.



To: Steve Kirkpatrick, City Clerk  
Patrick Goff, City Manager  
From: Carmen Beery  
Through: Nicholas Klein, Law Clerk  
Date: March 20, 2022  
Re: Local Campaign Finance Laws: Legal Limitations

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## Summary

City Clerk Kirkpatrick requested research into the feasibility of establishing more restrictive campaign finance laws in Wheat Ridge (the “City”) than that of the state. We conclude that the City is able to enact its own local campaign finance laws, so long as these laws comport with constitutional limits on the government’s ability to regulate free speech and political activity. Our analysis revealed that there is no bright-line rule for exactly *how* restrictive local campaign restrictions can be. As one might expect, the more restrictive the ordinance, the more susceptible it will be to legal challenge.

This memo begins with a discussion of the controlling statutory authority, followed by an overview of relevant campaign finance case law, and concludes with a brief discussion of local campaign finance ordinances in effect in other Colorado home rule municipalities.

## Statutory Authority

Three primary sources provide campaign finance law in Colorado. Article XXVIII of the Colorado Constitution; Secretary of State campaign finance rules; and the Fair Campaign Practices Act (“FCPA”), CRS, Article 45, Title 1.

Article XXVIII of the Colorado Constitution does not explicitly state that municipalities may enact local ordinances that stray from its provisions. However, an Attorney General advisory opinion states Article XX of the Colorado Constitution vests home rule cities and towns with the authority to regulate local elections, including “rules regarding contribution limits, reporting requirements and the like.” No. AG Alpha No. ST EL AGBAS, 2003 WL 21770951, at \*5 (Colo. A.G. Jan. 13, 2003). The opinion observed the “campaign finance choices made in the charters and ordinances of home rule entities survive separate from the rules contained in Article XXVIII.” Id. at \*8. Notably, local ordinances need not be more stringent, in fact, the ordinance “of a home rule entity that address campaign financing and reporting for candidates for office at the county or municipal level control within that home rule entity whether or not they are more stringent than constitutional or statutory rules.” Id. at \*1.

In accordance with this advisory opinion, the Colorado Administrative Code adopted Rule 14.1 governing home rules. 8 Colo. Code Regs. § 1505-6:14. This rule states that:

The requirements of Colo. Const. Article XXVIII and of Article 45 of Title 1, C.R.S., do not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Colo. Const. Article XXVIII or Article 45 of Title 1. Nothing precludes a home rule municipality from adopting or using Colo. Const. Article XXVIII and of Article 45 of Title 1, C.R.S., for their compliance and enforcement.

Finally, the FCPA expressly permits home rule municipalities to adopt their own campaign finance laws, stating in relevant part:

Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112(2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article. *C.R.S. § 1-45-116*

These three sources clearly establish the City's legal authority to adopt its own ordinance governing campaign finance, regardless of whether such an ordinance is more or less restrictive than the provisions found in Article XXVIII or the FCPA.

### **Case Law Regulating Campaign Finance**

While the City has clear authority to adopt campaign finance rules that are more restrictive than the State's, there remain limits on how much more restrictive those rules can be – arising principally from First Amendment protections. The following is a summary of Colorado case that has ruled on the constitutionality of certain campaign finance law requirements.

A campaign finance ordinance may not prohibit an entire class of voters from making contributions to candidates. *Dallman v. Ritter*, 225 P.3d 610 (Colo. 2010) (holding that the prohibition of single-source contract holders from making contributions to candidates for office violated the first amendment). A court will apply the following three factor test when examining the proportionality of a contribution restriction to the government's interest:

- (1) whether the limitation prevented candidates from amassing resources necessary to mount an effective campaign;

- (2) whether the ordinance is unconstitutionally overbroad in that it unreasonably stifled protected speech; and
- (3) whether the limits provide significant advantages for an incumbent.

Id. at 624.

Contribution<sup>1</sup> limits and expenditure<sup>2</sup> limits are viewed through different lenses, with contribution limits being less of an infringement on the right to free speech than expenditure limits. Id. at 622. Local contribution limits are therefore afforded slightly more latitude by reviewing courts than expenditure limits. Even so, if the City were to implement a scheme with too low of a threshold for contribution reporting or limits, thus hampering the ability of the average citizen to donate, the ordinance would be vulnerable to a First amendment challenge. A court will apply the above three factor test to determine whether the particular restriction is permissible.

Expenditure limits are subject to the highest level of judicial scrutiny: they must be narrowly tailored to achieve a compelling governmental interest. Few laws survive strict judicial scrutiny. Accordingly, we recommend leaving local expenditure limits the same as the FCPA.

Campaign disclosure requirements, as well as most campaign finance regulations, must “be substantially related to a sufficiently important government interest” as well as “narrowly tailored to the government’s interest.” Lakewood Citizens Watchdog Grp. v. City of Lakewood, No. 21-CV-01488-PAB, 2021 WL 4060630, at \*3 (D. Colo. Sept. 7, 2021). A recent Lakewood campaign finance ordinance requiring the disclosure of the full name, address, and phone number of anyone that had donated more than \$250 to an electioneering communication was found to be overbroad and an unconstitutional violation of the First amendment. Id. at \*5-\*13.

In Sampson, the court held unconstitutional a requirement for a Parker, CO issue-committee to report contributions totaling \$2,239.55 because the financial burden of regulation approached, or exceeded, the value of the financial contribution in the political effort. Sampson v. Buescher, 625 F.3d 1247, 1261 (10th Cir. 2010). The Sampson holding was relied upon in holding disclosure requirements for a committee that raised \$3,500, and disclosure requirements for all donors of more than \$20, were an unconstitutional substantial burden on speech. Coal. For Secular Gov’t v. Williams, 815 F.3d 1267 (10th Cir. 2016). Both holdings took issue with the FCPA as a whole, not an ordinance from a local government, yet they still offer some insight into how a court will examine the burden of campaign regulation on free speech.

Finally, case law provides a cautionary tale on private enforcement mechanisms, such as existing Wheat Ridge City Code Section 7-5 (authorizing campaign finance law violation enforcement procedures for private citizens). The Federal District Court has found such private citizen enforcement procedures to be unconstitutional. Holland v. Williams, 457 F.Supp.3d 979

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<sup>1</sup> Money given to a candidate or a committee.

<sup>2</sup> Money directly spent on some form of political speech or advocacy.

(D. Colo., 2018). However, the constitutionality of the procedures is still in flux, as the Colorado Supreme Court has declined to address the constitutionality of the FCPA enforcement procedures and is not bound by the decision reached by the United States District Court. Alliance for a Safe and Independent Woodmen Hills v. Campaign Integrity Watchdog, LLC, 450 P.3d 282, 287 n. 3 (Colo., 2019). The Colorado Court of Appeals has had similar sentiments, stating “we could disagree with or ignore Holland, treat section 9(2)(a) as constitutional and still enforceable, and analyze whether we have jurisdiction under its provisions.” Day v. Chase for Colorado, 479 P.3d 1, 3 (Colo. App., 2020). The City, in enacting a campaign finance ordinance, should be aware of these conflicting rulings and determine whether an update to the current enforcement procedures is desirable, given the definitive opinion of the Federal District Court that such a procedure is unconstitutional and the reluctance of Colorado courts to weigh in on the issue.

### Examples of Municipal Campaign Finance Law

For your comparison, we have supplied some local Campaign finance ordinances from varying Colorado home rules. The links contained in this list will lead you to the code sections containing these ordinances, and provide you the opportunity to compare the varying numerical values concerning contribution limits, expenditure limits, contribution disclosure requirements, electioneering communication disclosure requirements, etc.

- Lakewood
  - [https://library.municode.com/co/lakewood/codes/municipal\\_code?nodeId=TIT2A\\_DPE\\_CH2.54CAPOFIMUEL](https://library.municode.com/co/lakewood/codes/municipal_code?nodeId=TIT2A_DPE_CH2.54CAPOFIMUEL)
- Aurora
  - [https://aurora.municipal.codes/Code/54\\_ArtIV](https://aurora.municipal.codes/Code/54_ArtIV)
- Golden
  - [https://library.municode.com/co/golden/codes/municipal\\_code?nodeId=TIT1GEP\\_R\\_CH1.05LOCAFIEPRE](https://library.municode.com/co/golden/codes/municipal_code?nodeId=TIT1GEP_R_CH1.05LOCAFIEPRE)
- Colorado Springs
  - [https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings\\_co/0-0-0-6457](https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings_co/0-0-0-6457)

We would also like to bring to your attention Golden Code Section 1.05.030 (Registration of committees) which states:

All candidate committees and political committees shall register with the city clerk before accepting or making **any** contributions (emphasis added). Registration shall include a statement listing:

- (a) The committee's full name, spelling out any acronyms used therein;
- (b) A natural person authorized to act as a registered agent;
- (c) A street address and telephone number for the principal place of operations;

- (d) All affiliated candidates and committees;
- (e) The purpose or nature of interest of the committee.

While a code section like this addresses some of Clerk Kirkpatrick's concerns, we are skeptical that this ordinance would survive a constitutional challenge due to the Sampson holding. Ultimately, it will be up to a court to rule on whether such a provision is "closely drawn" enough to serve a governmental interest without being too overbroad in its reach. As of the date of this memo, we are unaware of any court ruling on this ordinance. Adopting an ordinance this restrictive in Wheat Ridge would accordingly carry risk.

### **Conclusion**

The City may enact campaign finance laws which are more strict than those currently in the FCPA and Article XXVIII. So long as the ordinance comports with existing case law and is narrowly tailored to serve the City's interests, the ordinance could withstand a constitutional challenge. We unfortunately have no case that sets a bright-line dollar threshold of when reporting, disclosing and spending limits are too low to be regulated. We have clues under the case law discussed above. Those clues reveal that the stricter the ordinance, the more susceptible it will be to legal challenge.

We are happy to further discuss this memorandum with you as well as next steps.



# Memorandum

**TO:** Mayor and City Council

**FROM:** Patrick Goff, City Manager

**DATE:** June 1, 2022 (for June 6<sup>th</sup> study session)

**SUBJECT:** Strategic Plan Update

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**ISSUE:**

City Council met on February 20, 2021, to hold a strategic planning retreat. Eight priorities were established to be implemented over a two-year period. A series of study sessions have been held where staff presented information, work plans, ideas and sought clarification on some of the items from the City Council. This memorandum provides a short description of the priority and status of the eight priorities.

**BACKGROUND:**

**1. New Efforts of Engagement in Government; Understanding City Processes**

- a) A reorganization of the communications division has occurred to prioritize citywide strategic communications. With the former public information officer's departure and the repurposing of an existing FTE to a full-time Police Department PIO, the citywide position has been retooled to focus on engagement, storytelling and driving the city's key messages. A recruitment is underway for the communications and engagement manager who will implement an integrated and effective citywide approach to meaningful communication, collaborating internally and externally to drive civic engagement through transparent, clear and proactive communication. The part-time social media specialist, approved in the 2022 budget, joined the City in January and is providing dedicated focus to social media platforms. Staff will continue to monitor and evaluate resources to determine if the need for additional staffing is necessary to meet council's goals once the new communications and engagement manager is on board.
  
- b) The first in the "demystifying Wheat Ridge government" video series, named "Wonders of Wheat Ridge" is in final production and will roll out in the coming weeks. The first video focuses on ways to stay informed and get involved. Additional topics in the coming months include the local legislative process, the rezoning process, how to start a business, how to request traffic calming measures, how to report a crime and more.
  
- c) A website refresh project is underway, focusing on the look and feel of the home page with an update to the main navigation based on usage data.

- d) A full-page graphic dedicated to promoting the many ways to contact, learn about and get engaged with the City of Wheat Ridge appeared in the March and May editions of Connections.
- e) City Council approved an ordinance expanding notification requirements for public hearings for land use applications: expanding the geographic scope for notice and including occupants, in addition to owners.
- f) The City has hired the new GIS technician, which was approved in the 2022 budget. The new team member will join the City in mid-June. An internal team is working on preliminary items related to the creation of the interactive construction and development map. Work on the map itself will begin in earnest once the new technician is on board.
- g) Still to come is an onboarding toolkit for councilors, board and commission and committee members so that involved members of the community are best armed to educate and inform neighbors about the ways to get involved in their local government. Staff are focused first on refining the boards and commissions recruitment and appointment process and will begin work on the toolkit later this year.

## **2. Implement Bulk Plane in all Residential Zone Districts**

Bulk Plane regulations are a common tool that cities can use to control the mass and bulk of single-family homes beyond just the typical setback and building height standards. City Council adopted residential bulk plane standards in 2016 and initially chose to apply them to single-unit homes in the Residential-One C and Residential-Three zone districts. At the May 3, 2021, study session, staff provided an overview of the topic and outlined a process that could adopt such standards more broadly in other residential zone districts throughout the City. It was City Council's consensus at that meeting to have an additional study session discussion at a later time with more detailed examples of what the implications would be of adopting these regulations more broadly across the City. A City Council study session was held on May 16, 2022, with City Council providing direction for staff to present an ordinance for 1<sup>st</sup> and 2<sup>nd</sup> reading. The public hearing (2<sup>nd</sup> reading) is tentatively scheduled for August 8, 2022.

## **3. Re-examine, advance sidewalks on 38<sup>th</sup> Ave**

The desire for greater walkability along 38<sup>th</sup> Avenue has come up frequently as a topic over many years. 38<sup>th</sup> Avenue between Sheridan and Wadsworth has been identified as the City's "Main Street" in various policy documents and through various community outreach processes, including recently through the *Let's Talk East Wheat Ridge* engagement process. Better sidewalks and streetscape amenities would be one clear way to improve that "Main Street" character the community desires. Better and safer walking and biking facilities also

come up frequently when thinking about the west end of 38<sup>th</sup> Avenue, between Kipling and Youngfield. Making such improvements to either section of this vital corridor would require relatively significant capital construction dollars and further design work.

City Council gave direction in December 2021 to move forward a conceptual design process for improvements to 38<sup>th</sup> Avenue between Kipling and Youngfield, focused on building a complete street and providing improved bike and pedestrian improvements. Staff is finalizing a consulting services scope of work for a conceptual design process which would include significant public involvement. Staff will present that scope of work and a design cost estimate to City Council at the June 6<sup>th</sup> study session before going out to a bid process.

Staff anticipates bringing back a discussion to City Council concerning 38<sup>th</sup> Avenue on the east side of town, between Wadsworth and Harlan, in first quarter of 2023..

#### **4. Review the Vision, Mission, and Funding of Localworks**

This priority is complete; however, with the resignation of Kate Cooke as Executive Director, staff has been having discussions with Localworks concerning their role in providing certain programming and services in the future. It has been mutually agreed that in order to serve the community in the most efficient and economical manner, a shift in responsibilities between the City and Localworks may be warranted. Staff will bring forward a proposal to City Council at a study session on July 18, 2022.

#### **5. Streamlining Permit Processes**

- a) In June, 2021, Megan Schmitz joined the City's finance team as the licensing technician. Megan has provided exceptional customer service to businesses with a particular focus on short-term rental, tobacco retailing and hotel customers for the past year, and was the 2021 ACTION Award winner for her exceptional work. The City is now entering the second year of the STR program with approximately 165 license holders. The first round of inspections of tobacco retailers resulted in nine business in violation of the ordinance, and staff are working collaboratively with the police department to educate businesses and enforce the ordinance for the health and safety of the community. Again, with members of the police department, Ms. Schmitz and her team are working to educate hotels about all aspects of the hotel ordinance while developing procedures for enforcement
- b) Council adopted changes to chapter 22 of the municipal code and approved an agreement joining the state's sales and use tax system in August 2021. The City officially joined the state's program, which makes it much easier for businesses who are active in multiple jurisdictions to remit sales taxes in Wheat Ridge.
- c) Work to improve business processes and analyze the City's enterprise resource planning

needs (ERP) is underway. Work with the project consultant, BerryDunn, began in earnest in January 2022 with intense "fact finding" work involving approximately 100 employees taking place in February 2022. A request for information of prospective vendors was completed in April and several meetings were held in April and May to finalize the requirements for the request for proposal. The project is on track to select an ERP system(s) by the end of the year, with implementation in 2023-2024. A major driver of this work is improved customer service through public-facing portals and improved business processes. Throughout the analysis so far, it has become apparent that the deficiencies with the current system result in siloed information because different functions such as licensing, building permits and planning are unable to see each other's information related to a case. Modernizing our systems is a big step toward streamlining the permitting processes.

Once the ERP systems are selected, staff will enter a change management phase with the help of the consultant. The change management associated with implementing the chosen systems will further refine the processes which can then be properly documented and developed into a comprehensive educational campaign.

- d) The economic development manager has been active in providing "concierge" services to businesses by helping them navigate City processes and increased collaboration internally has helped improve customer service. The bi-annual "business walk" is scheduled for June 14 where staff and volunteers will check in with approximately 125 businesses, providing educational materials about doing businesses in Wheat Ridge.

## **6. Commercial Corridor Code Review**

City Council recognizes the crucial role that commercial corridors play in building healthy and vibrant communities. They are not just places where residents shop and gather but places where people build wealth through small businesses, find jobs, and share, celebrate and preserve community culture. Staff will review with City Council City Codes to determine what additional tools and resources should be considered to help the city's commercial corridors improve, thrive, and grow. Due to current workload, this item will likely be scheduled for a future study session in the fourth quarter of 2022.

## **7. Policy on non-conforming accessory dwelling units**

Non-conforming accessory dwelling units (ADUs) exist throughout the City. The circumstances leading to the creation of such units over the years vary widely. Because of that, several years ago, City Planning Staff developed a detailed policy to assist in evaluating the legality and safety of such units when they come to our attention. Staff and City Council had a productive study session discussion on October 18, 2021. City Council gave staff direction to begin work on an ordinance allowing new ADUs within the City and to look into ways for existing non-conforming dwelling units to be legalized. Staff returned to City

Council on April 18, 2022, to propose a regulatory framework to address new ADUs and existing units. Council gave direction to staff to prepare a final ordinance for review and approval at public hearings before Planning Commission and City Council in mid-2022. The City Council public hearing is tentatively scheduled for July 11, 2022.

## **8. Develop Solutions and Work with Partners to Address Homelessness**

The City continues to work diligently on the issues surrounding persons experiencing homelessness. To date, the Homeless Navigator has completed an intake with over 120 clients in Wheat Ridge, Golden and Edgewater. At this time, 23 of those clients have secured permanent housing and 14 of the clients have exited to transitional housing. The Homeless Navigator currently has a caseload of 53. Consensus was just reached by City Council on April 4<sup>th</sup> to add a Housing Navigator to staff to partner with the existing Homeless Navigator to connect the City's unhoused population to resources and housing. In addition, consensus was reached by City Council at that same meeting to allocate over \$1 million over the next five years for this homeless and housing navigation program.

On April 4<sup>th</sup> consensus was reached by City Council to fund and partner with Family Tree in the amount of \$500,000 to provide housing navigation and case management for persons experiencing homelessness. This effort will supplement what the City is already doing in-house. Council also directed staff to provide \$146,000 in funding to Community Table to assist individuals and families at threat of homelessness by helping them with security deposits or rental payments to keep them housed.

Jefferson County recently contracted with a developer for professional services for two Housing Navigation Centers in Jefferson County. The Centers will provide housing navigation and day resource centers to accommodate an approximate daily flow of 200 persons seeking resources; emergency short-term overnight beds to house up to 100 persons per night; and 80 units of permanent, affordable workforce housing and 70 units of permanent supportive housing for individuals who formerly experienced homelessness. An initial site has been identified for one navigation center in Arvada. A search for a second site is ongoing. City Council gave consensus on April 4<sup>th</sup> to allocate \$730,000 to this navigation center as the City's share towards this regional initiative.

In February, Jefferson County launched their Built for Zero cases conferencing. This movement is made up of more than 90 cities and counties that have committed to measurably ending homelessness, one population at a time. The goal is to achieve a milestone known as [functional zero](#) — an ongoing state where homelessness is continuously rare and brief. Built for Zero is an effort of the entire Denver area, broken up by counties. The Veteran population is often the first population that this movement focuses on. Since starting case conferencing, six Jefferson County veterans have secured housing.