



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: January 15, 2019**

**AGENDA TITLE**

Introduction and consideration of a motion to order published by title only and adopt by emergency Ordinance 8312 amending Ordinance 8308 that temporarily suspends accepting building permit, site review, and other development applications that will result in adding floor area or dwelling units to land within the Census Tract 122.03 Opportunity Zone, generally bounded on the west by 28th Street, on the south by Arapahoe Avenue, on the east by 55th Street/Airport Road and on the north by Highway 119/Independence Road until June 22, 2020; and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Thomas A. Carr, City Attorney  
David Gehr, Chief Deputy City Attorney  
Yvette Bowden, Director Parks and Recreation and Community Vitality  
Chris Meschuk, Interim Director, Planning/Assistant City Manager  
Jennifer Pinsonneault, Business Liaison, Community Vitality  
Charles Ferro, Development Review Manager, Planning

**EXECUTIVE SUMMARY**

The purpose of this agenda item is to have the council consider amendments and clarifications to the opportunity zone moratorium ordinance that was adopted on December 18, 2018.

The proposed ordinance includes amendments to remove language that is not necessary because of other amendments, editorial clarifications, clarifications related to the

demolition and replacement of multi-family dwelling units and the addition of projects that have submitted technical document review applications prior to December 18, 2018 as applications that may move forward as part of the transition rules.

Also included is a proposed amendment that is not in the ordinance that would exempt projects that are not eligible for Opportunity Zone investment. It was an issue raised at the December 18, 2018 meeting. Staff indicated that it was not an amendment that could be drafted at the meeting. If the council is interested in pursuing the idea, language is provided for its consideration.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to order published by title only and adopt by emergency Ordinance 8312 amending Ordinance 8308 that temporarily suspends accepting building permit, site review, and other development applications that will result in adding floor area or dwelling units to land within the Census Tract 122.03 Opportunity Zone, generally bounded on the west by 28th Street, on the south by Arapahoe Avenue, on the east by 55th Street/Airport Road and on the north by Highway 119/Independence Road until June 22, 2020; and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic – The ordinance will suspend the acceptance of development applications for a variety of development types within the Opportunity Zone.
- Environmental – The purpose of the ordinance is to ensure that the city has appropriate development plans and laws in place in anticipation of additional development that may occur because of the access of Opportunity Fund investment in addition to other revenue sources.
- Social – The purpose of the ordinance is to ensure that the city has appropriate development plans and laws in place to ensure that any new development activities do not result in unacceptable impacts to residents, visitors, or businesses within the Opportunity Zone.
- Monitoring Community Impacts – Tracking community impacts, both intended positive or unintended negative, is recommended. To ensure effectiveness in this regard, staff might annually track a set of metrics related to Census Tract 122.03. Reported information might include:
  - Housing units and mix (affordable, market, etc.) including housing units created or lost/year.
  - Number of development projects/year.

- Business retention (by size and/or sector).
- Retail square footage creation and mix/year – metric to be further defined by findings arising out of Citywide Retail Study.

## **OTHER IMPACTS**

- Fiscal – Any reduction in development activity may result in a decrease in construction sales and use tax collections.
- Staff time – Staff will work on reprioritizing the workplan based on council direction at the upcoming retreat.
- 2019 Work Plans – Staff has identified 2019 work plan projects which will inform community land use, environmental initiatives, housing, infrastructure, quality of life and financial sustainability efforts of the city. These projects are included in the 2019 Council Action Guide. Among others, 2019 initiatives include the following projects and efforts tentatively scheduled for discussion by or updates to council during the year:
  - Comprehensive Housing Strategy Implementation;
  - The Citywide Retail Study;
  - Redesign of the Flexible Rebate Incentive Program;
  - Subcommunity Planning;
  - Community Benefit/Height; and
  - Use Table revisions.

## **BOARD AND COMMISSION FEEDBACK**

- None.

## **BACKGROUND**

An Opportunity Zone is a community nominated by the state and certified by the Treasury Department as qualifying for this program. Census Tract 122.03 has been designated as an Opportunity Zone under this program. Opportunity Zones are eligible for investment by Opportunity Funds.

Since its designation, concerns have been expressed that the city needs to evaluate its plans and laws to ensure that it has the proper tools in place to take advantage of this funding sources so that outcomes are consistent with community values.

The council adopted Ordinance 8308, temporarily suspending the acceptance of specified new development applications so that the city can examine its plans and development rules in anticipation of new investment in this area.

## **ANALYSIS**

### **Proposed Amendments**

The council adopted Ordinance 8308 at its December 18, 2018 meeting. Council made amendments at the meeting. There have been several suggestions and concerns raised about the ordinance since its passage. In order to clarify matters and insure that it is as clear as possible, staff proposes that the council consider the following amendments:

- Section 1.n. This section includes all of the legislative findings. The council amended the ordinance and removed the exemption for Diagonal Plaza at 28<sup>th</sup> and Iris. The legislative finding for Diagonal Plaza is no longer need. It is removed, and the remaining subsections are renumbered.
- Sections 2 & 3. In the first paragraphs, there are a number of changes that are editorial in nature and are intended to improve readability.
- Section 3.a. A sentence was added, “Provided, however, that the creation of such dwelling units does not require a demolition permit for another multi-family dwelling unit.” This amendment is intended to address concerns made related to the potential that the ordinance could be read to exempt the practice of demolishing existing multi-family dwelling units to replace them with new dwelling units. The example given at the meeting is the redevelopment of the East Point apartment community located on Arapahoe Ave and Eisenhower. This change would make it clear that this type of development activity would be prohibited during the duration of the ordinance.
- Section 3.d. A definition is provided for a community serving Colorado non-profit corporation or similar organization. It is a clarification. The language is based on the public and civic use definitions in the recently adopted Capital Facilities Impact Fee ordinance amendments adopted by council in 2018.
- Section 4. Technical document review applications were added to the transition rules as an application type that may proceed based on an application made at the time of the original ordinance adoption dated of December 18, 2018. Staff has been made aware of at least one project that is a “by-right” project that has submitted technical documents, but not yet proceeded to the building permit process.

### **Additional Potential Amendment**

At the December 18, 2018 meeting, council members discussed an amendment that would allow activities that were not eligible to use Opportunity Funds. Staff indicated that it would not be able to draft this amendment during the meeting. The idea discussed was to exempt businesses that are not eligible to receive investments from Opportunity Funds. The proposed rules that have been published in the Federal Register provide that Opportunity Funds may not be invested in the following types of trades or businesses: any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

If the council is interested in removing these businesses from the moratorium, staff suggest that the council would add the following exemption to Section 3 of the proposed ordinance.

Section 3. Notwithstanding any provision standard in this Ordinance to the contrary, the following are expressly permitted during the term of this Ordinance:

. . .

(e) Any development that will permit the creation of a trade or business that is not eligible for Opportunity Fund investment as described in the proposed rules of the Department of Treasury, Internal Revenue Service, CFR Part 1, § 1.1400Z2(d)-1, “Investing in Qualified Opportunity Funds,” 83 FR 54279-01, and as that proposed rule may be amended and adopted.

## **ATTACHMENTS**

A – Proposed Emergency Ordinance 8312

ORDINANCE 8312

AN EMERGENCY ORDINANCE AMENDING ORDINANCE 8308 THAT TEMPORARILY SUSPENDS ACCEPTING BUILDING PERMITS, SITE REVIEW APPLICATIONS, AND OTHER DEVELOPMENT APPLICATIONS THAT WILL RESULT IN ADDING FLOOR AREA TO LAND WITHIN THE CENSUS TRACT 122.03 OPPORTUNITY ZONE, GENERALLY BOUNDED ON THE WEST BY 28TH STREET, ON THE SOUTH BY ARAPAHOE AVENUE, ON THE EAST BY 55TH STREET/AIRPORT ROAD AND ON THE NORTH BY HIGHWAY 119/INDEPENDENCE ROAD UNTIL JUNE 22, 2020; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The City Council finds and recites the following facts leading to the temporary suspension of accepting building permits, site review and use review applications for any new nonresidential floor area described in Table 6-1 “Use Table,” in Section 9-6-1, “Schedule of Permitted Uses of Land,” B.R.C., 1981, any demolition that results in the removal of any multi-family residential dwelling or any nonresidential floor area or the creation of any new dwelling units in the Planning Area in the Opportunity Zone located in federal Census Tract 122.03:

- a. This Ordinance applies to approximately 2.5 square miles of land that is generally bounded on the west by 28<sup>th</sup> Street, on the south by Arapahoe Avenue, on the east by 55<sup>th</sup> Street/Airport Road and on the north by Highway 119/Independence Road and more particularly described on the map attached to this Ordinance as **Exhibit A** (the “Planning Area”).
- b. The Planning Area is federal Census Tract 122.03. The state of Colorado, with input from the city, nominated the Planning Area for Opportunity Zone designation on March 23, 2018. Thereafter, the Planning Area was certified by the federal government as an Opportunity Zone.

- c. Investors in Opportunity Zones, through Opportunity Funds, will receive favorable tax relief as an incentive to invest in business and real estate within Opportunity Zones.
- d. It is anticipated that the Opportunity Fund designation may lead to accelerated investment in the Planning Area.
- e. A focus of the 2015 Boulder Valley Comprehensive Plan (BVCP) update was to develop land use related policy changes to reduce future imbalances by recommending additional housing in commercial and industrial areas (and corresponding regulatory changes) and reductions of nonresidential land use potential in the Boulder Valley Regional Center. (2015 BVCP, p. 17)
- f. The BVCP provides that the city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving appropriate levels of service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion. (2015 BVCP, Policy 1.10)
- g. The BVCP describes, among other things, the need for a review of the Boulder Valley Regional Center and 28<sup>th</sup> Street to ensure that this area establishes a proper mix of uses, including increasing housing capacity, reducing the current non-residential capacity, while maintaining retail potential. (2015 BVCP, Policy 2.18)
- h. The BVCP describes, among other things, the need for a review of its efforts to pursue regulatory changes to better allow for housing and retail infill in its light industrial areas. Planning efforts include finding appropriate places for housing infill in areas zoned Industrial – General. (2015 BVCP, Policy 2.21)
- i. The Planning Area includes land that is in the following zoning districts: Business Regional-1, Business Commercial-1 & 2, Business Main Street, Business Transitional-1 & 2, Mixed Use-4, Industrial General, Industrial Manufacturing, Industrial Main Street, Industrial Service-1 & 2, Agricultural, Enclave, Public, Residential High-3, 4, & 6, Residential Medium-1 and Mobile Home.
- j. The city has started a project to examine the permitted uses of lands in its zoning districts. The goals include aligning the permitted uses with the BVCP, identifying community-desired land uses and better enable such uses in identified residential, commercial, and industrial districts, simplifying the use tables, and creating more predictability and certainty in the city's use standards.

- 1 k. Large portions of the Planning Area are within the Crossroads Subcommunity and the  
2 East Boulder Subcommunity. Most of the Planning Area does not have a  
3 subcommunity plan, area plans or subarea plans.
- 4 l. In order to be prepared for the potential of additional investment in the Planning  
5 Area, the city needs to complete a review of planning and zoning regulations to  
6 ensure that investment in the Planning Area will be consistent with the community  
7 values, including without limitation, the BVCP.
- 8 m. The council intends to lift requirements of this Ordinance after each zoning district in  
9 the Planning Area has been reviewed under the Use Table Review project or other  
10 zoning or land use analysis or has had adequate planning and zoning developed  
11 through subcommunity or area planning. (2015 BVCP, Chapter V)
- 12 ~~The Diagonal Plaza is a neighborhood center that has been identified in previous  
13 planning efforts as an area that needs revitalization. The BVCP provides that the city  
14 will use a variety of tools and strategies in area planning and in the creation of  
15 public/private partnerships that lead to successful redevelopment and minimize  
16 displacement and loss of service and retail uses. (2015 BVCP, Policy 2.19 and 5.01)  
17 The city does not wish to prevent any efforts to revitalize Diagonal Plaza.~~
- 18 n. The Transit Village Area Plan (TVAP) was adopted in 2007 and presently guides  
19 development in that area. The plan includes a two-phase implementation approach.  
20 Presently, the area is actively being developed in the first phase. The city does not  
21 wish to prevent any efforts to develop in the Phase 1 area. (2007 TVAP, p. 7)
- 22 o. Given the anticipated additional investment in the Planning Area, the City Council  
23 concludes that it is necessary to review its existing planning and zoning districts to  
24 ensure that any development or redevelopment is done in a manner that is consistent  
25 with the BVCP and the goals and policies of the city.
- 26 p. The council finds that it is in the best interest of the public health, safety, and welfare  
27 to consider whether existing zoning standards will result in development consistent  
28 with the goals and policies of the BVCP.

23 Section 2. The following provisions of the Boulder Revised Code, 1981, are hereby  
24 suspended as to applications on December 18, 2018 after 5:00 p.m. until June 22, 2020 at 8:00  
25 a.m. Any complete application submitted before 5:00 p.m. on December 18, 2018 shall be  
26 deemed to have been accepted. The city manager shall not accept any applications in the  
27 Planning Area that will result in: the creation of any new nonresidential floor area in Section 9-6-



1, "Schedule of Permitted Uses of Land," B.R.C., 1981; any demolition that results in the removal of any multi-family residential dwelling or any nonresidential floor area; or the creation of any new dwelling units ~~in the Planning Area~~:

- a. Building permits under Title 10, "Structures," B.R.C., 1981;
- b. Site review requests under the provisions of Section 9-2-14, B.R.C., 1981; and
- c. Use review requests under the provisions of Section 9-2-15, B.R.C., 1981.

Section 3. Notwithstanding any ~~provision~~standard in this Ordinance to the contrary, the following ~~provisions of the Boulder Revised Code, 1981~~, are expressly permitted during the term of this Ordinance:

- a. The creation of any new dwelling units on a site that is four acres or more which includes all inclusionary housing units on the development site that meet the requirements of Chapter 9-13, "Inclusionary Housing," and C.R.S. § 31-12-301, *et seq.* The creation of any dwelling units on a site that is less than four acres. Provided, however, that the creation of such dwelling units does not require a demolition permit for any multi-family dwelling unit.
- b. Any development for which a valid application for site review, use review, or building permit application has been approved or an application made prior to December 18, 2018 at 5:00 p.m. Site review and use review applications that also refer to similar approvals, by previous names described in Section 9-1-3, B.R.C., 1981.
- c. Development within the 2007 TVAP area described as Phase 1, an area generally bounded on the west by 30<sup>th</sup> Street, on the south by Pearl Parkway, on the east by the Burlington Northern Rail Road Tracks and on the north by Valmont Avenue. (2007 TVAP, p. 7)
- d. The construction of any building or conversion of floor area owned by a community serving Colorado non-profit corporation. A community serving Colorado non-profit corporation means any Colorado non-profit corporation or similar organization that qualifies as an exempt person under the provisions of Section 3-2-7, "Exempt Person," B.R.C. 1981, and holds and maintains an exempt institution license, under Section 3-17-4, "Exempt Institution License," B.R.C. 1981, and has a mission that will predominately and directly serve the needs of Boulder County residents, employees, or visitors.

Section 4. Complete site review, ~~and~~ use review, and technical document review applications that have been submitted to the city prior to December 18, 2018 will be permitted to continue through the process under the regulations in place at the time such application is made.

1 Technical document review applications are administrative in nature and the application date  
2 shall be the date that the fee required by Section 4-20-43, B.R.C. 1981, has been paid. Such  
3 applicants shall be required to pursue such development approvals and meet all requirements and  
4 deadlines set by the city manager and the Boulder Revised Code. Pending developments may  
5 apply for and receive building permits that are necessary to construct the approved development.  
6

7 Section 5. This Ordinance is temporary in duration and intended to be replaced by  
8 subsequent legislative enactment regulating the items listed in this Ordinance, by June 22, 2020.  
9 To the extent that the provisions of Section 9-1-5 “Amendments and Effect of Pending  
10 Amendments,” B.R.C., 1981, apply to the adoption of this Ordinance, such provisions are  
11 temporarily suspended.  
12

13 Section 6. The immediate passage of this Ordinance is necessary for the preservation of  
14 the public peace, health, or property. The council declares this to be an emergency measure due  
15 to the need to prevent community benefit incompatible development, to pause to consider next  
16 steps, and to consider development of zoning regulations that implement the BVCP and other  
17 policies of the city within the Planning Area. Therefore, this Ordinance is hereby declared to be  
18 an emergency measure, and as such shall be in full force and effect upon its passage.  
19

20 Section 7. If any section, paragraph, clause, or provision of this Ordinance shall for any  
21 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
22 provisions of this Ordinance.  
23

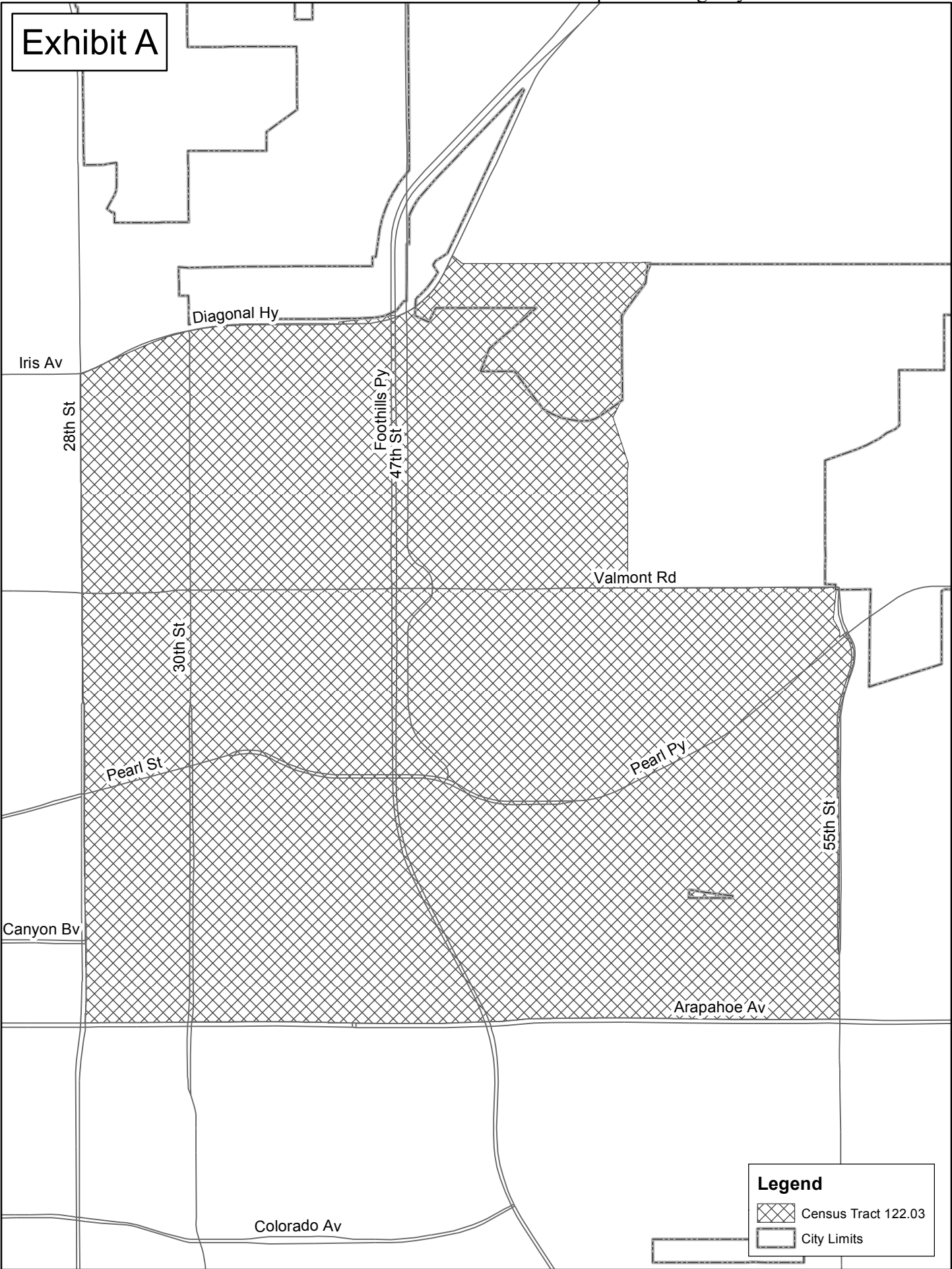
24 Section 8. This Ordinance is necessary to protect the public health, safety, and welfare of  
25 the residents of the city, and covers matters of local concern.  
26  
27  
28

READ ON THE FIRST READING, PASSED, ADOPTED AS AN EMERGENCY  
MEASURE BY TWO-THIRDS COUNCIL MEMBERS PRESENT, AND ORDERED  
PUBLISHED BY TITLE ONLY this 15th day of January 2019.



Attest:

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Exhibit A



**Legend**

-  Census Tract 122.03
-  City Limits