



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: November 9, 2021**

**AGENDA TITLE**

Third reading and consideration of a motion to adopt Ordinance 8510, which proposes to amend Title 9, "Land Use Code," to allow restaurants as limited uses in regional parks within the public (P) zoning district and setting forth related details.

**REQUESTING DEPARTMENT / PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Jacob Lindsey, Director  
Charles Ferro, Development Review Manager  
Karl Guiler, Senior Planner / Code Amendment Specialist

**OBJECTIVE**

Define the steps for Planning Board consideration of this request:

1. Hear Staff presentation.
2. Hold public hearing.
3. Planning Board discussion.
4. Planning Board recommendation to City Council.

**EXECUTIVE SUMMARY**

On Oct. 26, 2021, the council considered Ordinance 8510, which proposes to make restaurants a principal use in the city's regional parks. At the public hearing, council heard the staff presentation, a synopsis from a Planning Board member on the board recommendation, and public testimony on the proposed change. In response to concerns raised by members of the public and the Planning Board, a council member suggested an edit to the proposed limited use standard, which was discussed and refined by council.

Council voted seven to one (7-1, M. Nagle opposed) to revise the language to include a finding that “*the use is reasonably compatible with and has minimal negative impacts that are material in nature on surrounding uses, natural areas and wildlife.*” This finding would have to be made by PRAB and/or City Council as part of a public process, which requires review of a management plan that demonstrates that the requirement would be met. These changes, which require approval at a third reading, are reflected in Ordinance 8510 found in **Attachment A**.

City Council also directed staff to prepare a separate ordinance that would give City Council review authority over all leases for restaurants within regional parks rather than leases that are greater than three years, which is the current code requirement. The PRAB supported this change. An ordinance to implement this change will be brought to City Council on a later date.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language:**

*Motion to adopt Ordinance 8510 amending Title 9, “Land Use Code,” B.R.C. 1981, to allow restaurants as limited uses in regional parks within the public (P) zoning district.*

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic – Restaurants in the city’s regional parks will support local businesses, provide unique offerings and foster meaningful connections to Boulder among its residents, workforce and visitors.
- Environmental – None identified.
- Social - Restaurants in the city’s regional parks will facilitate people’s ability to gather, eat and celebrate in the public parks, with agreements designed to maximize these community benefits and others.

## **OTHER IMPACTS**

- Fiscal – No impacts.
- Staff time – The code amendment has been processed within normal staff work plans.

## **BOARD AND COMMISSION FEEDBACK**

### Planning Board

Planning Board reviewed the proposed ordinance on October 7, 2021 and unanimously recommended that City Council not adopt the ordinance. The board cited concerns that restaurants in public parks should be considered through a Use Review rather than as by-right uses and that application of the same standard to the three regional parks may not be appropriate. The board found that the regional parks have different characteristics and their differences may merit different approaches. While some board members expressed support for restaurants in parks and an interest in increasing the community benefit provided by such partnerships, some also felt that perhaps restaurants should not be established as principal uses in all of the regional

parks. The board was concerned about how a restaurant at the reservoir, either as currently permitted or expanded in the future, may present impacts to wildlife and nearby residential properties with respect to noise, light and traffic. The board felt that an alternative ordinance should be developed and brought back to the board for consideration. The Planning Board motion is below:

On a motion by **L. Smith** seconded by **J. Gerstle** the Planning Board voted 7-0 to recommend that City Council reject the Ordinance 8510, which proposes to amend Title 9, "Land Use Code," to allow restaurants as limited uses in regional parks within the public (P) zoning district, as written due to the following concerns:

- Desire for individual Use Review;
- That the three parks are sufficiently different to merit different approaches; and
- While Planning Board agrees with staff and the community that restaurants may be appropriate in regional parks, further exploration of "accessory" vs. "principal" use is warranted.

#### Parks and Recreation Advisory Board

Staff shared an overview of the proposed ordinance at the September 27, 2021 Parks and Recreation Advisory Board (PRAB) meeting. While the PRAB did not take action on this item, members generally expressed support for the zoning update. PRAB also expressed support for any ordinance that would give City Council discretion over all leases for restaurants within regional parks.

#### **PUBLIC FEEDBACK**

Notice of the proposed change has been sent out in the Planning and Development Services newsletter, Parks and Recreation department newsletter, and shared directly with Reservoir neighbors in a Parks and Recreation communication. Neighbors of the Boulder Reservoir have sent communications to Planning Board and City Council opposing the change reflected in the ordinance based on concerns about the impact of the reservoir restaurant on wildlife, increase in traffic, late hours with alcohol service and noise. Communications received to date are found in **Attachment C**. At the Planning Board public hearing, eleven people spoke out against the proposal. At the Oct. 26 City Council public hearing there were public comments for and against the proposal.

#### **BACKGROUND**

For background in the proposed ordinance see this [link](#) to the Oct. 26, 2021 staff memorandum.

#### **ANALYSIS**

For a comprehensive description of the proposed code change within Ordinance 8510 see this [link](#) to the Oct. 26, 2021 staff memorandum. The latest revised ordinance is found in **Attachment A**.

On Oct. 26, 2021, the council heard the staff presentation on Ordinance 8510, a synopsis from a Planning Board member on the board recommendation, and public testimony on the proposed change. In response to concerns raised by members of the public and the Planning Board, a council member suggested an edit to the proposed limited (i.e., L<sup>18</sup>)

standard. Following a questioning period and commentary, the council discussed the merits of the revised language and further refined the language. The edits related to the necessary review process that would be required for any restaurant within one of the three regional parks by the Parks and Recreation Advisory Board (PRAB) (PRAB reviews leases for less than 3 years) and in some cases also City Council (council reviews leases for more than three years). On a one to seven vote, the council decided upon the following language:

*Allowed by right if located in a regional park where the use and any associated outdoor seating is no closer than 500 feet to a residential zoning district provided that the approval authority for the lease by the public agency owning the regional park finds that the lease and management plan ensure that the use is reasonably compatible with and has minimal negative impacts that are material in nature on surrounding uses, natural areas and wildlife. Allowed by use review if located in a regional park and the use and any associated seating is located closer than 500 feet to a residential zoning district. Otherwise prohibited.*

The proposed language would make restaurants a principal use in the regional parks and subject to a finding that “*the use is reasonably compatible with and has minimal negative impacts that are material in nature on surrounding uses, natural areas and wildlife.*” This finding would have to be made by PRAB, and, if the lease requires City Council approval, by City Council as part of a public process. This would involve review of a management plan that demonstrates that the requirement would be met. As with the previous iteration of the draft ordinance, any restaurant closer than 500 feet from a residential zone would require a Use Review where Planning Board would have call up authority. These changes, which require approval at third reading, are reflected in Ordinance 8510 found in **Attachment A**.

City Council also directed staff to prepare a separate ordinance that would give City Council review authority over all leases for restaurants within regional parks rather than leases that are greater than three years, which is the current code requirement. PRAB supported this change. An ordinance to implement this change will be brought to City Council on a later date.

## **ATTACHMENTS**

Attachment A - Draft Ordinance 8510

## ORDINANCE 8510

AN ORDINANCE AMENDING, TITLE 9, "LAND USE CODE," B.R.C. 1981, TO ALLOW RESTAURANTS AS LIMITED USES IN REGIONAL PARKS WITHIN THE PUBLIC (P) ZONING DISTRICT AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, is amended as follows:

**9-6-1. Schedule of Permitted Land Uses.**

The schedule shows the uses which are permitted, permitted with limitations, conditionally permitted, prohibited, or which may be permitted through use review pursuant to Section 9-2-15, "Use Review," B.R.C. 1981.

(a) Explanation of Table Abbreviations: The abbreviations used in Table 6-1 of this section have the following meanings:

- (1) Allowed Uses: An "A" in a cell indicates that the use type is permitted by right in the respective zoning district. Permitted uses are subject to all other applicable regulations of this title.
- (2) Limited Uses: A "L" in a cell indicates that the use type is permitted by right in the respective zoning district provided that the limitations set forth in Table 6-3, "Use Limitations," are met. The applicable limitations of Table 6-3 are identified by superscript numbers following the applicable "L" in Table 6-1. If a use limitation in Table 6-3 is not met or if otherwise specifically required in Table 6-3, the use may be approved in accordance with the procedures and standards authorized in Table 6-3.

...

(d) Use Table:

**TABLE 6-1: USE TABLE**

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**DINING AND ENTERTAINMENT USES:**

Zoning District	RR-1, RR-2, RR-3, RE, RL-1	RL-1, RL-2, RL-3	RM-1, RM-2, RM-3	RMX-1	RMX-2	RH-1, RH-2, RH-3, RH-4, RH-5	RH-3, RH-7	RH-6	MH	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BMS	BC-1, BC-2	BBS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2, DT-3	IS-1, IS-2	IG	IM	IMS	P	A	
Use Modules	R1	R2	R3	R4	R5	R6	R7	R8	MH	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A	Additional References
Form-Based Code Areas Uses	Appendix M																											
DINING AND ENTERTAINMENT USES :																												
Art or craft studio space	*	U	U	U	U	U	U	U	*	L6	L6	L6	A	A	A	A	A	A	A	A	A	A	A	*	A	U	*	
Breweries	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	L8	L7	L7	L9	*	*	9-6-6(b)

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1	Restaurants, brewpubs, and taverns over 1,000 square feet in floor area, or which close after 11 p.m., or with an outdoor seating area of 300 square feet or more	*	*	*	*	*	U	*	*	*	U	A	U	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	*
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18	Restaurants, brewpubs, and taverns outside of the University Hill general improve	*	*	*	*	*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	U	U	U	A	A	A	A	A	U	n/a	n/a	n/a	n/a	n/a	*	
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	men t distri- ct that are: over 1,500 square feet in floor area or which close after 11 p.m.																									*	
	Restaurants, brewpubs, and taverns in the University Hill general improvement district	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	C	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	*	9-6(b)(2)
	Restaurants, brewpubs, and taverns with an outdoor seating area	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	U	U	U	U	U	U	U	U	n/a	n/a	n/a	n/a	n/a	*	

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**L:** Limited use. See Section 9-6-2, B.R.C. 1981, for review procedures.

**U:** Use review. See Section 9-2-15, B.R.C. 1981, for use review procedures.

**n/a:** Not applicable; more specific use applications apply.

...

Section 2. Section 9-6-2, "Limited Use Standard - General," B.R.C. 1981, is amended as follows:

**9-6-2. Limited Use Standard – General.**

- (a) Purpose and Scope: The purpose of this section is to set forth limitations for specified uses of land. The limitations are intended to ensure that the use is compatible with the surrounding area. Limited uses are those uses which are allowed by-right in a given zoning district if the use complies with the limitations contained in Table 6-3, "Use Limitations." If a use limitation in Table 6-3, "Use Limitations," is not met or if otherwise specifically required in Table 6-3, the use may be approved in accordance with the procedures and standards authorized in Table 6-3.
- (b) Requirements: Limited uses shall comply with the limitations set forth in this section, all other requirements of this code, and any other ordinance of the city.
- (c) Use Limitations: The use limitations in Table 6-3, "Use Limitations," apply to any use specified as a limited use (L<sup>x</sup>) in Section 9-6-1, "Schedule or Permitted Uses" and Table 6-1, "Use Table," B.R.C 1981.
- (d) Expiration: Any limited use which is not established within one year of its approval, discontinued for at least one year, or replaced by another use of land shall expire.

**TABLE 6-3 USE LIMITATIONS**

Use Limitations, per Table 6-1, "Use Table"	
L <sup>1</sup>	Allowed by right if the use is not located on the ground floor facing a street, with the exception of minimum necessary ground level access, otherwise by use review only.
L <sup>2</sup>	Allowed by right if at least 50% of the floor area of the building is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise by use review only.
L <sup>3</sup>	Allowed by right if at least 50% of the floor area of the building is for nonresidential use, otherwise by use review only.
L <sup>4</sup>	Allowed by right for 2,000 square feet or less of floor area of the building. Allowed by-right for greater than 2,000 square feet of floor area, provided the cumulative nonresidential uses' floor area is less than 7,000 square feet of the building, and at least 50% of the building's floor area is for residential uses. Otherwise by use review only.
L <sup>5</sup>	Allowed by right if the combined total amount of any office, computer design and development facility, data processing facility, telecommunication, medical or dental clinic or office, or addiction recovery facility uses does not exceed 50% of the total floor area of the building. Otherwise prohibited.
L <sup>6</sup>	Allowed by right for 2,000 square feet or less of floor area per lot or parcel, otherwise by use review only.
L <sup>7</sup>	Allowed by right for 15,000 square feet or less of floor area per use and without a restaurant. If the use exceeds 15,000 square feet in floor area, the use may be approved pursuant to a conditional use review if it meets the criteria of Paragraph 9-6-6(b)(4), B.R.C. 1981.
L <sup>8</sup>	Allowed by right for 15,000 square feet or less of floor area per use and without a restaurant. If the use is less than or equal to 15,000 square feet in floor area and has a restaurant, the use may be approved pursuant to a conditional use review if it meets the criteria of Paragraph 9-6-6(b)(4), B.R.C. 1981. If the use exceeds 15,000 square feet in floor area, it requires use review.

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L <sup>9</sup>	Allowed by right for 15,000 square feet or less of floor area per use and without a restaurant. If the use is less than or equal to 15,000 square feet in floor area and has a restaurant, the use may be approved pursuant to a conditional use review if it meets the criteria of Paragraph 9-6-6(b)(4), B.R.C. 1981. The use is prohibited to exceed 15,000 square feet.
L <sup>10</sup>	Allowed by right for 20,000 square feet or less of floor area per lot or parcel, otherwise prohibited.
L <sup>11</sup>	Allowed by right for less than 20,000 square feet of floor area per use, otherwise by use review only.
L <sup>12</sup>	Allowed by right for less than 10,000 square feet per lot or parcel, otherwise by use review only.
L <sup>13</sup>	Allowed by right for 15,000 square feet or less of floor area per lot or parcel, otherwise by use review only.
L <sup>14</sup>	Allowed by right for 15,000 square feet or less of floor area per lot or parcel, otherwise prohibited.
L <sup>15</sup>	Allowed by right if the detached dwelling unit existed on the lot or parcel on August 6, 2019, or where more than one dwelling unit is on the lot or parcel, otherwise by use review only. For purposes of this limitation, "existed on" means a detached dwelling unit that is constructed on or before said date or for which a complete building permit application was submitted on or before said date provided the applicant pursues all requirements and deadlines set by the city manager and this code for the construction of the unit.
L <sup>16</sup>	Allowed by right if the units on the lot or parcel meet the requirements for permanently affordable units set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, or if the use is not located on the ground floor along a major street, as defined by Appendix A, "Major Streets," B.R.C. 1981, with the exception of minimum necessary ground level access. The limitation on ground floor use along a major street applies to a depth of 30 feet measured from the building's major street facing façade. Otherwise by use review only.
L <sup>17</sup>	Allowed by right if located within the University Hill general improvement district, or if the combined total amount of any office, computer design and development facility, medical or dental clinic or office, addiction recovery facility, and medical and dental laboratory uses does not exceed 20,000 square feet on the lot or parcel. If the combined total amount of floor area of these uses exceeds 20,000 square feet on the lot or parcel, the use may be approved pursuant the criteria in Paragraph 9-6-8(a)(2), B.R.C. 1981.
L <sup>18</sup>	<u>Allowed by right if located in a regional park where the use and any associated outdoor seating is no closer than 500 feet to a residential zoning district provided that the approval authority for the lease by the public agency owning the regional park finds that the lease and management plan ensure that the use is reasonably compatible with and has minimal negative impacts that are material in nature on surrounding uses, natural areas and wildlife. Allowed by use review if located in a regional park and the use and any associated seating is located closer than 500 feet to a residential zoning district. Otherwise prohibited.</u>

Section 3. Section 9-9-6, "Parking Standards," B.R.C. 1981, is amended as follows:

#### **9-9-6. Parking Standards.**

- (a) Rationale: The intent of this section is to provide adequate off-street parking for all uses, to prevent undue congestion and interference with the traffic carrying capacity of city streets, and to minimize the visual and environmental impacts of excessive parking lot paving.
- (b) Off-Street Parking Requirements: The number of required off-street motor vehicle parking spaces shall be provided in Tables 9-1, 9-2, 9-3, and 9-4 of this section; the number of required off-street bicycle parking spaces shall be provided in Table 9-8 of this section:

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## (4) Use Specific Motor Vehicle Parking Requirements for Nonresidential Uses:

**TABLE 9-4: USE SPECIFIC MOTOR VEHICLE PARKING REQUIREMENTS  
FOR NONRESIDENTIAL USES IN ALL ZONES**

<i><b>Use</b></i>	<i><b>Parking Requirement</b></i>
Large daycare (less than 50 children)	Determined through review; parking needs of the use must be adequately served through on-street or off-street parking.
Nonresidential uses in General Improvement Parking Districts	No parking required
Restaurant, brewpub, or tavern - outside of retail centers greater than 50,000 square feet	Indoor Seats: 1 space per 3 seats.
	Outdoor Seats:
	1. If outdoor seats do not exceed 20% of the indoor seats, no additional parking is required.
	2. For the portion of the outdoor seats exceeding 20% of indoor seats: 1 space per 3 seats.
	3. Notwithstanding the requirements of (1) and (2) above, the following applies to uses that are nonconforming as to parking for indoor seats and the sole principal use of the site: No additional parking is required if the number of outdoor seats does not exceed 60% of the existing number of parking spaces on the site.
Retail centers over 50,000 square feet of floor area that: i) Are under common ownership, or	Less than 30 percent of the total floor area is occupied by restaurants, taverns, or brewpubs: 1 space per 250 square feet of floor area for retail, commercial, and office uses and restaurants, brewpubs, and taverns.
ii) management, or	

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iii) Are approved through a common site review approval, and	30 percent or more and less than 60 percent of the total floor area is occupied by restaurants, taverns, or brewpubs: 1 space per 175 square feet of floor area for retail, commercial, and office uses and restaurants, brewpubs, and taverns.
iv) Contain a mix of some or all of the following uses: retail, commercial, office, restaurants, brewpubs, and taverns, which	
v) together comprise more than 50 percent of the total floor area, and	60 percent or more of the total floor area is occupied by restaurants, taverns, or brewpubs: 1 space per 100 square feet of floor area for retail, commercial, and office uses and restaurants, brewpubs, and taverns.
vi) Where written consent of all property owners within the retail center are included with the application.	This use-specific parking standard shall not apply to other uses for which a use-specific parking standard is created in this Table 9-4 or to uses other than retail, commercial, and office uses, restaurants, brewpubs, and taverns. For those uses, parking shall be provided as required for each such use under this Section 9-9-6, B.R.C. 1981, and in addition to the requirement above.
<u>Restaurants in a regional park</u>	<u>Determined through review; parking needs of the use must be adequately served through on-street or off-street parking.</u>
Motels, hotels, and bed and breakfasts	1 space per guest room or unit, plus required spaces for nonresidential uses at 1 space per 300 square feet of floor area
Theater	Greater of 1 parking space per 3 seats, or the parking ratio for the zone district
Fuel service station	General ratio for the use zone plus storage of 2 vehicles per service bay
Religious assembly:	(See Paragraph (f)(8) of this section for permitted parking reductions)
a. Religious assemblies created prior to 9/2/1993	1:300

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b. Religious assemblies created after 9/2/1993	1 space per 4 seats, or 1 per 50 square feet of assembly area if there are no fixed seats - assembly area includes the largest room plus any adjacent rooms that could be used as part of the assembly area
c. Uses accessory to a religious assembly and created after 9/2/1993	Uses accessory to the religious assembly shall meet the standards applicable to the use as if the use is a principal use
d. Total parking of a religious assembly and accessory uses created after 9/2/1993	Parking for the religious assembly use and any accessory use shall be for the use which has the greatest parking requirement
Small recycling collection facility	1 space for attendant if needed
Large recycling collection facility	General parking ratio for the zone plus 1 space for each commercial vehicle operated by the facility
Recycling processing facility	Sufficient parking spaces for a minimum of 10 customers, or the peak load, whichever is greater, plus 1 space for each commercial vehicle operated by the facility
Warehouse or distribution facility or uses in industrial zones with accessory warehouse spaces	1 space per 1,000 square feet of floor area used for warehousing or storage of goods, merchandise, or equipment. Parking for floor area used for associated office space or production areas and not for warehousing or storage as outlined above shall be provided consistent with Table 9-3.
Self-service storage facility	3 spaces for visitor parking, plus parking for any floor area used as office space or otherwise not used for self-service storage shall be provided consistent with Table 9-3.
Airport and aircraft hangers	1 space per outside airplane or glider tie down space;
	1 space per 1,000 square feet of floor area of private airplane hangar space (with or without external or internal walls);

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1		1 space per 2,000 square feet of floor area of commercial or executive airplane hangar space; and
2		
3		Parking for floor area used as office space or otherwise not used for airport hanger shall be provided consistent with the requirements of Table 9-3.
4		
5		

6 ...

7 Section 4. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended as follows:

8 **9-16-1. General Definitions.**

9 ...

10 (c) The following terms as used in this title have the following meanings unless the context clearly indicates otherwise:

11 ...

12 *Recycling processing facility* means a building or enclosed space used for the collection of recyclable material, used motor oil and batteries in accordance with applicable health and safety regulations, and scrap metal but not including motor vehicles, and its processing for efficient shipment or to an end-user's specifications by baling, briquetting, compacting, composting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, or remanufacturing.

15 *Regional park* means a park or recreation area owned by a public agency and 100 acres or greater in size, serving the entire city and surrounding region with specialized recreational assets that draw regional users such as ball fields, swimming facilities, boating, golf courses, and natural lands for passive recreation. Regional parks are of a scale and design to allow hosting of large and small events, such as concerts and festivals, and are often destination points for visitors.

18 *Regulated activity* means those activities requiring a stream, wetland, or water body permit pursuant to Subsection 9-3-9(d), B.R.C. 1981. (Wetlands)

19 ...

20 Section 5. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

23 Section 6. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

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1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 5<sup>th</sup> day of October 2021.

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4  
5 Attest: Sam Weaver, Mayor

6  
7 Elesha Johnson, City Clerk

8  
9 READ ON SECOND READING, AMENDED AND PASSED this 26<sup>th</sup> day of October  
10 2021.

11  
12  
13 Attest: Sam Weaver, Mayor

14  
15  
16 Elesha Johnson, City Clerk

17 READ ON THIRD READING AND ADOPTED this 9<sup>th</sup> day of November 2021.

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20 Attest: Sam Weaver, Mayor

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23 Elesha Johnson, City Clerk

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