

Mayor
Sam Weaver

Council Members

Aaron Brockett
Rachel Friend
Junie Joseph
Mirabai Nagle
Adam Swetlik
Mark Wallach
Bob Yates
Mary Young



Council Chambers
1777 Broadway
Boulder, CO 80302
September 1, 2020
6:00 PM

City Manager
Jane Brautigam

City Attorney
Thomas A. Carr

Acting City Clerk
Pam Davis

AGENDA FOR THE REGULAR MEETING OF THE BOULDER CITY COUNCIL

1. Call to Order and Roll Call

- A. Public Health Briefing/CU Update on Safety, Training and Protection of Staff** **45 min**
- B. Item 1B - NARF Declaration presented by Council Member Young** **5 min**
- C. Item 1C - Pollinator Appreciation Month Declaration and Video presented by Council Member Swetlik** **5 min**
- D. PUBLIC HEARING - Second reading and consideration of a motion to adopt Ordinance 8383 revising Chapter 12, "Mobile Homes," by amending Sections 10-12-1 "Legislative Intent," 10-12-4, "Enforcement," 10-12-24, "Appeal and Variances," and 10-12-30, "Mediation Of Disputes," and by the addition of Sections 10-12-31 through 10-12-35, B.R.C. 1981; and setting forth related details** **60 min**

2. Open Comment

3. Consent Agenda

- A. Consideration of a motion to approve the July 7, 2020 Regular Meeting Minutes**
- B. Consideration of a motion to approve the July 21, 2020 Regular Meeting Minutes**
- C. Consideration of a motion to approve the July 28, 2020 Special Meeting Minutes**
- D. Consideration of a motion to approve the August 4, 2020 Regular Meeting Minutes**
- E. Consideration of a motion to approve the August 11, 2020 Special Meeting Minutes**

- F. Consideration of a motion to approve the August 18, 2020 Regular Meeting Minutes**
- G. Consideration of a motion to approve the August 20, 2020 Special Meeting Minutes**
- H. Consideration of a motion authorizing the city manager to enter into a settlement agreement relating to a claim filed by Emily Bossert.**
- I. Consideration of a motion to authorize the city manager to enter into a Settlement Agreement between Public Service Company of Colorado, known as Xcel Energy, and the City of Boulder in substantially the same form as attached in this agenda packet.**
- J. 1) Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8422 prohibiting the manager from issuing a business license to any business to engage in offering shared, standing electric scooters and to allow shared, seated electric scooters excluding use on open space land by amending sections 3-17-3, "Sales and Use Tax or Business License Required," Title 4, "Licenses and Permits," adding a new chapter 34, "Shared Electric Scooters," 7-1-1, "Definitions," B.R.C. 1981; and setting forth related details**

OR

2) Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8423 regulating shared electric scooters but excluding use on open space land by amending sections 3-17-3,"Sales and Use Tax or Business License Required," Title 4,"Licenses and Permits," adding a new chapter 34,"Shared Electric Scooters," 7-1-1, "Definitions," B.R.C. 1981, and setting forth related details

OR

3) Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8424 prohibiting the manager from issuing a business license to a company offering shared electric scooters by amending sections 3-17-3, "Sales and Use Tax or Business License Required," 7-1-1, "Definitions," B.R.C 1981; and setting forth related details

- K. Second reading and consideration of a motion to adopt Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot**

and other election procedures; and setting forth related details.

- L. Third reading and consideration of a motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.**
- M. Third reading and consideration of a motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenant's legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.**
- N. Third reading and consideration of a motion to adopt Ordinance 8417 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2025 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged**

members of the community, improve system reliability and modernization, and support clean energy- related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

4. Call-Up Check-In

- A. LAC Consideration of a proposal to demolish a non-contributing house and accessory building and to construct a new 3,295 sq. ft. house and 400 sq. ft. two-car detached garage at 406 Pearl Street in the West Pearl Historic District**

5. Public Hearings

- A. Continuation of the August 11 consideration of a motion regarding *75 min* the management of Open Space and Mountain Parks irrigated agricultural lands occupied by prairie dogs – No New Public Testimony**

6. Matters from the City Manager

7. Matters from the City Attorney

8. Matters from the Mayor and Members of Council

- A. Consideration of a motion to approve the order of the City of Boulder ballot measures in the 2020 Coordinated Election *10 min***
- B. City Manager Search Subcommittee Update *10 min***
- C. Eviction Prevention Letter Discussion *5 min***
- D. Appoint PD Master Plan Process Subcommittee Members *5 min***

9. Discussion Items

10. Debrief

11. Adjournment

5:15 Hours

Additional Materials

Presentations

Item Updates

Information Items

A. Information Item: Update on the Public Works and Planning and Development Services (P&DS) Design the Future Process

Boards and Commissions

Declarations

Heads Up! Email

This meeting can be viewed at www.bouldercolorado.gov/city-council. Meetings are aired live on Municipal Channel 8 and the city's website and are re-cablecast at 6 p.m. Wednesdays and 11 a.m. Fridays in the two weeks following a regular council meeting.

Boulder 8 TV (Comcast channels 8 and 880) is now providing closed captioning for all live meetings that are aired on the channels. The closed captioning service operates in the same manner as similar services offered by broadcast channels, allowing viewers to turn the closed captioning on or off with the television remote control. Closed captioning also is available on the live HD stream on BoulderChannel8.com. To activate the captioning service for the live stream, the "CC" button (which is located at the bottom of the video player) will be illuminated and available whenever the channel is providing captioning services.

The council chambers is equipped with a T-Coil assisted listening loop and portable assisted listening devices. Individuals with hearing or speech loss may contact us using Relay Colorado at 711 or 1-800-659-3656.

Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's Office at 303-441-4222, 8 a.m. - 5 p.m. Monday through Friday. Please request special packet preparation no later than 48 hours prior to the meeting.

If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three business days prior to the meeting. Si usted necesita interpretacion o cualquier otra ayuda con relacion al idioma para esta junta, por favor comuniquese al (303) 441-1905 por lo menos 3 negocios dias antes de la junta.

Send electronic presentations to email address: CityClerkStaff@bouldercolorado.gov no later than 2 p.m. the day of the meeting.



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Public Health Briefing/CU Update on Safety, Training and Protection of Staff

PRIMARY STAFF CONTACT

TBD

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

September 1, 2020

DECLARATIONS ITEM

Item 1B - NARF Declaration presented by Council Member Young

PRIMARY STAFF CONTACT

Taylor Reimann, Assistant to the City Council

ATTACHMENTS:

Description

- ▣ **Item 1B - NARF Declaration**

Native American Rights Fund 50th Anniversary

September 1, 2020

In 1970 the Native American Rights Fund (NARF) was organized as the national Indian legal defense fund to address the lack of legal counsel for Indian tribes, organizations and individuals. Today we celebrate fifty years of this nonprofit organization, its resilient staff, and their work advancing tribal sovereignty, treaty rights, natural resource protection, and Indian education.

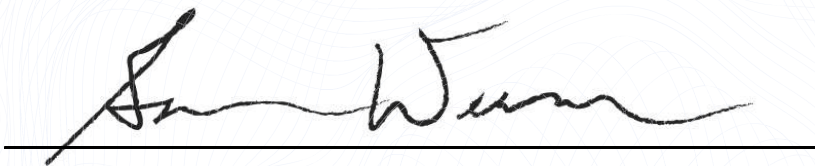
However, the need to protect Native American rights far predates 1970. Their displacement in the United States arguably began in 1492 with the arrival of Christopher Columbus. Since then Western expansion efforts have created tensions which threaten the rights and safety of hundreds of native tribes that continue to reside here.

Over centuries of legal battles “Indian Law” emerged as the complex body of law which is used to govern relations between the federal government, state governments and tribal governments. NARF’s attorneys provide legal representation on important cases to preserve tribal existence, protect tribal natural resources, promote Native American human rights, hold governments accountable to Native Americans, and to develop and educate the public on Indian law. So committed to this cause, many of their staff have experienced salary freezes and sacrificed years of vacations to ensure continued funding for case litigation.

From 1970 to today, NARF has represented more than 250 tribes and have concentrated on existing laws and treaties, taking on cases where those rights are threatened.

Boulder is proud to serve as the headquarters of this impressive organization and stands with them in the continued effort to protect the rights of Native people.

The City Council of the City of Boulder recognizes the fifty years of great achievements made by the contributors and staff of the Native American Rights Fund. We urge all community members to join us in honoring their work on behalf of tribes and native people who, despite the many challenges they have endured and continue to endure, are some of the strongest and most resilient among us.

A handwritten signature in black ink, appearing to read "Sam Weaver", is written over a horizontal line.

Sam Weaver, Mayor





COVER SHEET

MEETING DATE

September 1, 2020

DECLARATIONS ITEM

Item 1C - Pollinator Appreciation Month Declaration and Video presented by Council Member Swetlik

PRIMARY STAFF CONTACT

Taylor Reimann

ATTACHMENTS:

Description

- ▣ **Item 1C - Pollinator Appreciation Declaration**

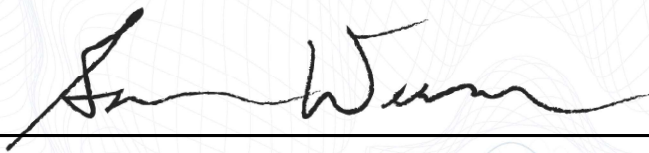
Pollinator Appreciation Month

September 2020

Boulder County's 550 native bee species, butterflies, hummingbirds, beetles, flies and other pollinators maintain the health and beauty of our grasslands, forests, meadows and other natural areas. Native pollinators and honeybees are indispensable partners in the production of our food supply. Pollinators are essential for the diverse and thriving ecosystems that support all life.

Around the world, pollinators, and the majority of insects, are declining precipitously. This is placing our food security, natural environment and human wellbeing in peril. Urgent action is required by all of us. We must respond to the biodiversity crisis. We must develop innovative and equitable solutions to transform our food system. We must provide high quality wildlife habitat in both urban and natural lands. And we must act now.

As our community enjoys the bountiful autumn harvest, and as we see the regeneration of our natural lands from the tireless work of pollinators, the City Council of the City of Boulder, Colorado declares September 2020 Pollinator Appreciation Month and commits to taking action by collaborating with Boulder's residents, businesses and organizations to join together to protect pollinators and all biodiversity for current and future generations.



Sam Weaver, Mayor





COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

PUBLIC HEARING - Second reading and consideration of a motion to adopt Ordinance 8383 revising Chapter 12, "Mobile Homes," by amending Sections 10-12-1 "Legislative Intent," 10-12-4, "Enforcement," 10-12-24, "Appeal and Variances," and 10-12-30, "Mediation Of Disputes," and by the addition of Sections 10-12-31 through 10-12-35, B.R.C. 1981; and setting forth related details

PRIMARY STAFF CONTACT

Crystal Launder, Housing Planner

REQUESTED ACTION OR MOTION LANGUAGE

Second reading and consideration of a motion to adopt Ordinance 8383 revising Chapter 12, "Mobile Homes," by amending Sections 10-12-1 "Legislative Intent," 10-12-4, "Enforcement," 10-12-24, "Appeal and Variances," and 10-12-30, "Mediation Of Disputes," and by the addition of Sections 10-12-31 through 10-12-35, B.R.C. 1981; and setting forth related details

ATTACHMENTS:

Description

- ▣ **Item 5A - 2nd Rdg Ord 8383**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance 8383 revising Chapter 12, “Mobile Homes,” by amending Sections 10-12-1 “Legislative Intent,” 10-12-4, “Enforcement,” 10-12-24, “Appeal and Variances,” and 10-12-30, “Mediation Of Disputes,” and by the addition of Sections 10-12-31 through 10-12-35, B.R.C. 1981; and setting forth related details.

PRESENTER/S

Jane S. Brautigam, City Manager
Kurt Firnhaber, Director (Housing and Human Services)
Crystal Launder, Project Manager (Housing and Human Services)
Brenda Ritenour, Neighborhood Liaison (Communications and Engagement)

EXECUTIVE SUMMARY

The purpose of this item is to advance implementation of the [Manufactured Housing Strategy](#) (“Strategy”), which was adopted to further the goals of Boulder Valley Comprehensive Plan policy 7.08. *Preservation and Development of Manufactured Housing*. City Council is requested to consider updating Chapter 10-12. Mobile Homes (B.R.C., 1981) to:

1. Update enforcement of landlord-tenant provisions; and
2. Establish new landlord-tenant provisions.

Approximately 1,300 households living in mobile and manufactured homes in Boulder benefit from this affordable market-rate, single-family detached housing option. In turn, Boulder benefits from the economic contributions and diversity of these households. For over 30 years, the city has demonstrated support for retaining mobile and manufactured homes as a housing option through a variety of policies, actions and programs. To further

Boulder Valley Comprehensive Plan (BVCP) policy 7.08. *Preservation and Development of Manufactured Housing*, the city adopted its first [Manufactured Housing Strategy](#) (“Strategy”) in 2019. This Strategy includes Guiding Principles for policymaking and a [2019 to 2021 Action Plan](#).

This ordinance (**Attachment A**) would advance the Action Plan in alignment with the adopted Guiding Principles (**Attachment B**). These changes would:

- Improve community navigation of and enforcement of landlord-tenant provisions in CH. 10-12 Mobile Homes;
- Address communication needs identified by manufactured home owners; and
- Require certain information is made available to manufactured home community (MHC) residents.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt Ordinance 8383 revising Chapter 12, “Mobile Homes,” by amending Sections 10-12-1 “Legislative Intent,” 10-12-4, “Enforcement,” 10-12-24, “Appeal and Variances,” and 10-12-30, “Mediation Of Disputes,” and by the addition of Sections 10-12-31 through 10-12-35, B.R.C. 1981; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Protecting manufactured housing advances economic diversity in Boulder.
- Environmental: Not applicable.
- Social: MHCs are an important part of Boulder’s housing mix and contribute to Boulder’s diversity across measures of race, ethnicity, age, income, and family demographics. This ordinance would introduce new protections for these community members.

OTHER IMPACTS

- Fiscal: This ordinance does not introduce any new program costs. Staff believes that the repeal of some existing provisions and addition of new ones will balance out impacts. One potential source of additional cost could be that as ease of navigation of these provisions is improved with revisions to enforcement, additional community members may choose to pursue navigation.
- Staff time: The intake and management of complaints related to landlord-tenant provisions in Chapter 10-12 will fall to staff in the Department of Housing and Human Services. This new responsibility will compete with current priorities. The language access requirement will be supported by the city’s Language Access Program.

PUBLIC FEEDBACK

Consistent with past practice, the Manufactured Housing Strategy team focused engagement on stakeholders. A bilingual (English-Spanish) [Be Heard Boulder input form](#) with a draft summary of Ordinance No. 8383 was open July 15-26. Four individuals left comments on the feedback form and two questions were asked. Additionally, two Zoom meetings – one English-first and one Spanish-first – were held for manufactured home owners. Spanish interpretation was provided at each meeting. Nine community members attended these events. Over a dozen emails and voicemails were received by staff. Between first and second reading of this ordinance, city staff received additional feedback from manufactured home owner and community owner stakeholders that resulted in changes to the ordinance as described below in the Analysis section.

Both MHC owners and residents provided feedback. While some made statements of universal opposition or support for this effort, most feedback from both stakeholder groups was detailed and specific to each concept. Feedback generally focused on redundancy with the Mobile Home Park Act, potential cost to each party of enforcement, cost-to-value, and potential unintended consequences of enforcement. Some manufactured home owners expressed concern that the repeal of local code provisions that now exist at the state level would reduce residents' protections, particularly since the state's Mobile Home Park Act Dispute Resolution and Enforcement Program is experiencing a high caseload in this start-up period. Several residents also raised the idea to strengthen [CH. 10-12-25. Limitation on the Prohibition Sales of Mobile Homes](#) and [CH. 10-12-26. Limitation of Required Upgrades to Existing Mobile Homes](#). Some stakeholders expressed concern about losing the "presumption that the party that offered to mediation shall prevail".

Based on stakeholder feedback, this ordinance:

- Includes language in the legislative intent section explaining the unique vulnerability of manufactured housing residents and need for protection.
- Adjusts the translation requirement to only require written notice in the second dominant language of the park rather than include access to translation services at MHC owner's cost for any translation need.
- Adjusts the notice requirement to focus on new tenants rather than all tenants.
- Does not repeal local provisions enforceable under the state Mobile Home Park Act at this time.
- Eliminates the requirement to identify lot dimensions.
- Clarifies the requirement to notify tenants of any substantive change to their lot dimensions.
- Adjusts the requirement to issue a receipt for rent payment to apply only when a receipt is requested.

BACKGROUND

There are around 1,300 mobile and manufactured homes in Boulder's five mobile home parks. Manufactured housing offers the most affordable market-rate, single-family detached homeownership option in Boulder. These communities are diverse and provide a lifestyle valued by residents. For over 30 years the city has encouraged retention of

mobile and manufactured homes as a housing option through a variety of policies, actions and programs. To further Boulder Valley Comprehensive Plan (BVCP) policy 7.08. *Preservation and Development of Manufactured Housing*, the city adopted its first Manufactured Housing Strategy in 2019. This Strategy includes guiding principles for policymaking and a 2019 to 2021 Action Plan.

Policy Chronology

The following is a chronology of state and local policy regulating manufactured housing in Boulder:

- 1991: State Mobile Home Park Act (MHPA) enacted (begins at C.R.S. § 38-12-200.1).
- 2010: MHPA updated.
- 2015: [Ordinance No. 8043](#) introduced into the Boulder Revised Code three local resident protections or landlord-tenant provisions not included in the MHPA, including:
 - [10-12-25. Limitation on the Prohibition Sales of Mobile Homes.](#)
 - [10-12-26. Limitation on Required Upgrades to Existing Mobile Homes.](#)
 - [10-12-27. Trees.](#)
- 2017: [Ordinance No. 8216](#) introduces additional provisions to address landlord-tenant relations.
 - [10-12-28. Right to Privacy.](#)
 - [10-12-29. Retaliation Prohibited.](#)
 - [10-12-30. Mediation of Disputes.](#)
- 2019: [House Bill 19-1309. Mobile Home Park Act Oversight](#) establishes a state [Dispute Resolution and Enforcement Program](#).
- 2020: [House Bill 20-1196. Mobile Home Park Act Updates](#). In addition to advancing a variety of Strategy action items, this update established similar regulation of Trees (C.R.S. § 38-12-212), Retaliation (C.R.S. § 38-12-212.5) and home owner Privacy (C.R.S. § 38-12-222).
- 2020: [House Bill 20-1201. Mobile Home Park Residents Opportunity to Purchase.](#)

Pad Rent Stabilization

Pad rent stabilization is the most commonly raised concern by manufactured home owners. It is not clear that regulating rents on mobile home pads is permissible given the vague language of the rent control statute. There is a risk a local ordinance regulating pad rents would be struck down.

Ordinance Objectives

In line with the Guiding Principles of the Strategy (Accountability, Affordability, Community and Vitality), this ordinance would:

- Repeal three duplicate provisions recently enacted at the state level;
- Revise enforcement of Chapter 10-12. Mobile Homes to support ease of navigation and enforcement; and
- Establish new landlord-tenant provisions informed by public input during Strategy development.

ANALYSIS

Staff recommends adoption of this ordinance to advance the Strategy Action Plan, in alignment with the adopted Guiding Principles. These changes would:

- Improve the ease of navigation and enforcement of landlord-tenant provisions in CH. 10-12 Mobile Homes (Accountability);
- Increase clarity of communication to community members (Community); and
- Require certain information be provided to community members (Community).

Changes to Chapter 10-12. Mobile Homes under this ordinance would:

1. *Add the following language to the legislative intent of the chapter:*

Mobile homes, manufactured housing, and factory-built housing are important and effective ways to meet Boulder's affordable housing needs. Moving mobile homes is costly and it is challenging to find an alternative mobile home park with vacancies willing to accept a mobile home. In some instances, a mobile home owner may not be able to move their mobile home because of the mobile home's age and condition. A mobile home owner may be forced to sell their home for an unreasonably low price due to the abbreviated timeline to move it or the inability to do so. This Chapter is intended to supplement the State of Colorado's Mobile Home Park Act which provides broader protections for owners of mobile homes.

Rationale: This explains why landlord-tenant provisions are important to the city and included in this chapter.

Guiding Principle: Accountability

2. *Update enforcement of landlord-tenant provisions from the Board of Building Appeals or the Board of Zoning Adjustments to Municipal Court.*

Rationale: Municipal Court is better positioned to hear landlord-tenant issues than these other hearing bodies, which tend to focus on issues such as zoning and building code variances.

Guiding Principle: Accountability

3. *Retain three landlord-tenant provision enforceable at the state level.*

[10-12-27. Trees](#)

[10-12-28. Right to Privacy](#)

[10-12-29. Retaliation Prohibited](#)

Rationale: House Bill 20-1196, signed into law in June, includes protections related to maintenance of trees, residents' right to privacy, and retaliation. The

state Dispute Resolution and Enforcement Program (DREP), which began accepting complaints on May 1, 2020, is funded and staff are trained to resolve complaints that fall under the Mobile Home Park Act. The Mobile Home Park Act codifies on the state level, and improves upon, much of what the city started locally with code provisions. The city's mobile home ordinances have had mixed success to date. Staff believes the city's goal to improve the quality of life in manufactured home communities will be better served by the state program. In lieu of duplicating what is being provided at a state level and creating additional confusion regarding enforcement, staff recommend local efforts focus on provisions not covered at the state level. Repealing these provisions would have reduced impacts to Housing and Human Services staff who do not have training and expertise in the Mobile Home Park Act. Around first reading, manufactured home owners expressed concern about the capacity of the DREP to process cases at this time. The DREP began accepting complaints on May 1, 2020. DREP staff confirmed that eviction prevention work and rulemaking for the MHPA Update Act and the MHP Resident Opportunity to Purchase Act compete with program staff's complaint resolution work. Staff recommends evaluating the possibility of repealing these three provisions in the future once complaints level off.

Guiding Principle: Accountability

4. *Amend 10-120-30. Mediation of Disputes (B.R.C., 1981) so that:*
 - a. *Mediation is referred at the discretion of the enforcement staff, rather than mandatory; and*
 - b. *Lack of a good-faith attempt to mediate may be considered in a future hearing when determining a penalty. Currently failure to mediate creates a presumption that the party that offered to mediate prevails.*

Rationale: Currently mediation applies to all of Chapter 10-12, not just landlord-tenant provisions. This has created some enforcement challenges for sections of the code regulating matters not related to landlord-tenant relations (e.g., safety, the built environment, use, etc.). Local data supports voluntary mediation as more successful than required mediation in resolving disputes. Finally, staff is unaware of a failure by the other party to mediate an issue addressed in Chapter 10-12 resulting in the presumption that the offering party prevailed.

Guiding Principle: Accountability

5. *Introduce a new requirement that landlords provide a translated notice with leases, rules and regulations and other notices required by the lease of available city language access services.*

Rationale: The 2019 Boulder Affordable Housing Research Initiative demographic survey of Boulder's four MHCs found that more than one quarter of surveyed households were Latino. Many Latino heads of households in MHCs do not speak and/or write English, and therefore may have difficulty understanding

their responsibilities and rights under their leases. Community owners report that many first languages beyond Spanish exist in Boulder's MHCs. This approach allows for manufactured home owners who speak languages other than English to access language supports to support their understanding of legal notices. It also reduces administrative and financial impacts on community owners that could result in rent increases for manufactured home owners.

Guiding Principle: Community

6. *Introduce a new requirement that landlords provide tenants with the following information in writing:*
 - a. *A list of the last five years of rent increases for the lot being leased;*
 - b. *The amount of any charges for late payment and dishonored checks;*
 - c. *Restrictions on pet occupancy;*
 - d. *Recreational facilities and other amenities provided to the tenant and any associated deposit or use fee; and*
 - e. *When practicable, 60-day notice of any substantive change to the location or dimensions of the leased lot.*

Rationale: These new written notice requirements are informed by stakeholder input and would support new tenants to be informed consumers. Related to lot dimensions, Boulder's mobile home parks were all established before current standards were established. As new homes move into these communities, separation requirements in Chapter [9-7-13. Mobile Home Park Form and Bulk Standards](#) dictate the placement of housing. Lot dimension and encroachment by neighbors can be a source of dispute. Introduction of new homes into MHCs often impacts the dimensions of neighboring lots. Staff considered requiring disclosure of lot dimensions; however, concerns were raised regarding the administrative and likely cost burden of this effort and the potential for such information to be interpreted as a metes and bounds requirement, establishing lots as parcels. Parcels are subject to a regulatory framework that would result in a loss of units.

Guiding Principle: Community

7. *Introduce a new requirement that receipts must be issued:*
 - a. *Upon in-person payment of rent with cash or money order;*
 - b. *Upon in-person payment of rent by a tenant who has been served with a notice of nonpayment of rent; and*
 - c. *Within seven business days, when otherwise requested.*

Rationale: Some manufactured home owners like to have receipts for their records. Some issues have also arisen where manufactured home owners have paid rent and were later informed that payment was not received. A receipt can also document a resident's efforts to cure nonpayment of rent.

Guiding Principle: Community

8. *Establish rulemaking authority within Chapter 10-12. Mobile Homes.*

Rationale: Rulemaking can clarify details of enforcement.

Guiding Principle: Accountability

9. *Include the following items, added to the ordinance since first reading, based on feedback from Council Member Young:*

- a. *Notification added in 10-12-1. Legislative Intent adds “This Chapter is intended to supplement the State of Colorado’s Mobile Home Park Act which provides broader protections for owners of mobile homes”. This addition is intended to raise mobile home owner awareness of additional protections available to them, particularly if the three local protections now enforceable at the state level are repealed in the future.*
- b. *In addition to requiring receipts be provided when request, when tenants pay rent with cash or money order, a receipt must be issued.*

Rationale: The notification of the MHPA DREP introduces notice of state-level remedy of issues, particularly repealed provisions 10-12-27 to 10-12-29. The requirement to provide receipts when rent is paid with cash or a money order was added because of past instances of such payments not being received by ownership and home owners left unable to prove payment.

Guiding Principle: Community

10. *Include the following adjustments from first to second reading, informed by feedback from manufactured home owners:*

- a. *Provisions that would have been repealed based on the first reading version of this ordinance (10-12-27. Trees, 10-12-28. Right to Privacy and 10-12-29. Retaliation Prohibited) will not be repealed through this version of the ordinance.*
- b. *10-12-31. Services to Tenants with a First Language Other than English (Limited Proficiency in the English Language) was adjusted so that now it applies not only to notices required by the lease, but also to the lease and to the rules and regulations.*
- c. *Requirement added to 10-12-35. Landlord to Issue Receipt of Payment of Rent to Tenant. When an MHC resident has received a notice of nonpayment of rent and pays their rent in person, the landlord is required to issue a receipt for the rent payment.*

Rationale: Residents expressed concern that the DREP was experiencing a backlog of complaints and therefore would not be able to efficiently support enforcement of the provisions that would have been repealed locally. Staff confirmed with the DREP staff a high initial caseload, and other time demands of the program related to eviction prevention and rulemaking for the Mobile Home

Park Act Update Act and the Mobile Home Park Resident Opportunity to Purchase Act. In these circumstances, staff supports delay of repeal of these provisions. Staff recommends that we follow the implementation and effectiveness of the DREP and review our ordinance in the future to ensure legislative coordination between the City of Boulder and the State. The change proposed by manufactured home owners to 10-12-31 expands language access support to manufactured home owners. Regarding 10-12-35, issuance of a receipt could reduce the risk of eviction when a manufactured home owner who is late on their rent payment pays.

Guiding Principle: Community

11. *Include the following adjustments from first to second reading, informed by feedback from community owners:*
 - a. *10-12-31. Services to Tenants with a First Language Other than English (Limited Proficiency in the English Language) was adjusted so that instead of requiring community owners provide all notices required by the lease translated into Spanish, manufactured home owners receive notice in various languages (e.g., Spanish, Nepali, etc.) that the city can provide language access services.*
 - b. *10-12-34. Landlord to Issue Receipt of Payment of Rent to Tenant was adjusted to mirror the language in C.R.S. § 38-12-802. Tenant payment – receipts.*

Rationale: Adjusting the language services requirement in this way will provide manufactured home owners with more diverse language needs with access to language services. Staff in the city's Language Services Program determined that they could support this approach. Adjusting the rent receipt requirement to mirror a state code provision governing rentals simplifies compliance for community owners with no loss of protection for manufactured home owners.

Guiding Principle: Community

ATTACHMENTS

Attachment A - Ordinance 8383

Attachment B - Manufactured Housing Strategy Guiding Principles

ORDINANCE 8383

AN ORDINANCE REVISING CHAPTER 12, "MOBILE HOMES," BY AMENDING SECTIONS 10-12-1 "LEGISLATIVE INTENT," 10-12-4, "ENFORCEMENT," 10-12-24, "APPEAL AND VARIANCES," AND 10-12-30, "MEDIATION OF DISPUTES," AND BY THE ADDITION OF SECTIONS 10-12-31 THROUGH 10-12-35, B.R.C. 1981; AND SETTING FORTH RELATED DETAILS.

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

Section 1. Chapter 12, "Mobile Homes," B.R.C. 1981, is amended to read as follows:

10-12-1. - Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare of the residents of the city by regulating the construction, alteration, extension, location, installation, use and maintenance of all mobile homes and mobile home parks in the city. Mobile homes, manufactured housing, and factory-built housing are important and effective ways to meet Boulder's affordable housing needs. Moving mobile homes is costly and it is challenging to find an alternative mobile home park with vacancies willing to accept a mobile home. In some instances, a mobile home owner may not be able to move their mobile home because of the mobile home's age and condition. A mobile home owner may be forced to sell their home for an unreasonably low price due to the abbreviated timeline to move it or the inability to do so. This Chapter is intended to supplement the State of Colorado's Mobile Home Park Act which provides broader protections for owners of mobile homes. Nothing in this chapter shall be construed to discriminate against mobile homes as housing.

...

10-12-4. - Enforcement.

- (a) The city manager may enter any mobile home park in the city to inspect and investigate conditions relating to the enforcement of this chapter at all reasonable times.
- (b) For alleged violations of the provisions of this chapter, other than Section 10-12-25, "Limitation on Prohibition of Sales," B.R.C. 1981 and Section 10-12-26 "Limitation on Required Upgrades to Existing Mobile Homes", whenever, after inspection of any

mobile home or mobile home park, the city manager finds any violation of this chapter, the manager shall give to the owner of the mobile home or the mobile home park a notice that specifies:

- (1) The provisions of this chapter that are alleged to be violated;
- (2) A reasonable period of time in which to correct the alleged violation; and
- (3) The right to appeal the violation notice within thirty days from the date of its issuance and specifying the appeal forum ~~to the board of zoning adjustment or board of building appeals~~ under the procedures prescribed by Section 10-12-24, "Appeals and Variances," and Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(c) The city manager shall reinspect the mobile home or the mobile home park for which a notice of violation was issued upon expiration of the period of time stated in the violation notice for correction of the alleged violation.

(d) For alleged violations of Section 10-12-25, "Limitation on Park Owner's Right to Prohibit Sales," B.R.C. 1981 and Section 10-12-26, "Limitations on Required Upgrades to Mobile Homes," B.R.C. 1981:

- (1) If the city manager finds that a violation of any provision of Section 10-12-25 or Section 10-12-26, the manager, shall issue a notice of violation and provide an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981₅.
- (2) If after hearing all of the evidence, the city manager finds a violation, the city manager may take any one or more of the following actions₅ to remedy the violation:
 - (A) Impose a civil penalty of not more than \$2,000 per violation; or
 - (B) Issue an order reasonably calculated to ensure compliance with the provisions of Section 10-12-25 or Section 10-12-26.
- (3) No person shall fail to comply with any action taken by the manager under this section.
- (4) The city attorney is authorized to bring a civil action to enforce any order issued by the city manager under this section. If the city is the prevailing party in such civil action, the defendant shall be responsible for the city's costs and attorneys' fees.
- (5) Criminal Penalties. Violations of Section 10-12-25 or Section 10-12-26 also are punishable as provided in Section 5-2-4, "General Penalties," B.R.C. 1981.
- (6) Any person injured by a violation of any provision of Section 10-12-25 or Section 10-12-26 may maintain an action for damages, declaratory relief, specific performance, injunction or any other appropriate relief in the District Court in and for the County of Boulder against the person causing the violation. If a plaintiff, who was a resident at the time of the cause of action arose, prevails, plaintiff shall be entitled to an award of attorney's fees. Upon filing

such an action, plaintiff shall send notice thereof to the city, but nothing in this title authorizes the city or its employees or agents to be named as a defendant in

such litigation.

...

10-12-24. - Appeals and Variances.

(a) Any person to whom a notice of violation has been issued under Section 10-12-4, "Enforcement," B.R.C. 1981, may appeal the notice to the municipal court ~~board of building appeals~~ on the grounds that the notice is legally or factually incorrect or both, ~~or may request that a variance be granted from the requirements of this chapter.~~ Any such appeal shall be taken in the manner set forth in this section, and any hearing held in connection therewith shall be conducted under the procedures prescribed in Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. ~~An appeal and a request for variance may be filed in the alternative. A person may appeal the issue of whether the period of time stated in the violation notice for correcting the alleged violation is reasonable.~~ A person who believes that an administrative ~~decision regarding or an interpretation of the terms of~~ this chapter is ~~factually or legally incorrect~~ may appeal such ~~decision or interpretation~~ to the board of building appeals (regarding Sections 10-12-8, "Blocking and Tie-Down Required," 10-12-9, "Anchorage," 10-12-10, "Piers and Footings," 10-12-11, "Cabanass and Awnings," 10-12-12, "Alternative Tie-Down and Blocking Methods," and 10-12-21, "Utilities and Other Public Improvements," B.R.C. 1981) ~~or the board of zoning adjustment (regarding any other provision of this chapter).~~

(1) ~~An appeal from an order of the city manager alleging violation of~~ A variance request from the requirements relating to construction of buildings or utilities or blocking and tying down of mobile homes, Sections 10-12-8, "Blocking and Tie-Down Required," 10-12-9, "Anchorage," 10-12-10, "Piers and Footings," 10-12-11, "Cabanass and Awnings," 10-12-12, "Alternative Tie-Down and Blocking Methods," and 10-12-21, "Utilities and Other Public Improvements," B.R.C. 1981, shall be made to the board of building appeals.

~~(2) An appeal from the order of the manager alleging any other violation of this chapter shall be filed with the board of zoning adjustment.~~

~~(23)~~ An appellant person shall file the appeal, request for variance or both in the alternative to the ~~board of zoning adjustment or the board of building appeals~~ applicable authority within thirty days from the date of service of the notice of alleged violation. ~~The appellant may request more time to file. If the appellant a person makes~~ such request before the end of the time period and shows good cause therefor, the manager may extend for a reasonable period the time to file ~~with either board.~~

~~(34)~~ The fee for filing an appeal variance request with the ~~board of zoning adjustment or the board of building appeals~~ is that prescribed by Subsection 4-20-47(a) or (b), B.R.C. 1981.

~~(4)~~ The fee for appeals to the municipal court is that prescribed by Subsection 4-20-55(a)(7) for administrative hearings.

- (b) Every variance request that involves a modification, enlargement, or expansion of an approved mobile home park or modification of any conditions placed upon the use at the time of initial approval of the mobile home park permit is subject to the requirements regarding uses permitted by use review in Section 9-2-15, "Use Review," B.R.C. 1981.
- (c) If an applicant requests that the board of ~~zoning adjustment~~building appeals grant a variance from the requirements of this chapter, the board shall not grant a variance unless it finds that each of the following conditions exists:
- (1) There are unique physical circumstances or conditions, such as irregularity, narrowness, or shallowness of the site, or exceptional topographical or other physical conditions peculiar to the affected property;
 - (2) Because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this chapter;
 - (3) Such circumstances or conditions have not been created by the applicant;
 - (4) If granted, the variance will not adversely affect the character of the neighborhood in which the mobile home park is proposed to be located nor substantially or permanently impair the appropriate use and development of the adjacent property; and
 - (5) If granted, the variance is the minimum variance that will afford relief and is the least modification possible of the ordinance provisions in question.
- (d) If an applicant requests that the board of building appeals grant a variance from the requirements of Sections 10-12-8, "Blocking and Tie-Down Required," 10-12-9, "Anchorage," 10-12-10, "Piers and Footings," 10-12-11, "Cabanass and Awnings," 10-12-12, "Alternative Tie-Down and Blocking Methods," and 10-12-21, "Utilities and Other Public Improvements," B.R.C. 1981, the board may grant a variance under the standards and procedures prescribed by the city building code, Chapter 10-5, "Building Code," B.R.C. 1981.
- (e) The ~~board of zoning adjustment or~~ board of building appeals may grant a variance subject to any conditions that it deems necessary or desirable to make the variance compatible with the purposes of this chapter.
- (f) Unless used by the applicant, a variance granted by the ~~board of zoning adjustment or the~~ board of building appeals automatically expires one hundred and eighty days after the date it was granted or within such time as the board may prescribe unless an extension of the variance is obtained within such period after a showing of good cause upon application for such extension made before the expiration of the variance.
- (g) The order of the city manager becomes the final agency action of the city ~~order of the board of zoning adjustment or board of building appeals~~ if:
- (1) The applicant fails to appeal the manager's notice of violation to the municipal court ~~order to the board~~ within the prescribed time limit;
 - (2) The applicant fails to ~~appeal the order of the board to a court of competent jurisdiction~~ request a variance or interpretation from the board of building appeals

within the prescribed time limit;~~or~~
 (3) ~~A court of competent jurisdiction enters a final order and judgment upon an appeal filed from the decision of the board under this chapter.~~

...

10-12-30. - Mediation of Disputes.

- (a) ~~Prior to bringing any action or complaint to city enforcement staff issuing a notice of violation for any provision of this Chapter for which probable cause exists, code enforcement may refer the matter to mediation. If referred to mediation, Park Owners and Residents should all make a good-faith attempt to participate in mediation on the dispute with by an independent third party, or to settle the dispute through industry mediation procedures. The parties shall agree to submit any dispute to mediation before any action for eviction is commenced.~~
- (b) ~~Failure of either party to participate in mediation, after a request proper notice has been served, may be considered by the municipal court when determining any resulting penalty will create a presumption that the party that offered to mediate shall prevail.~~
- (c) ~~Notice of A Request to mMediate on shall be considered served upon a Resident when it has been served personally to the Resident at his or her place of residence or by posting the notice in a conspicuous place on the home and mailed to the Resident notice by first class mail to the Resident. Notice A Request to Mediate to the Park Owner shall be considered served by delivery by or on behalf of the initiating party to any agent of the Park Owner during regular office hours at the office in the Mobile Home Park.~~
- (d) ~~If mediation is desired by the parties, enforcement staff may elect to stay any enforcement proceedings from fifteen days, or until such other date that the parties have chosen for mediation. Mediation shall commence within ten days of service of notice, unless the parties agree to an alternative start date.~~
- (e) ~~The Request to Mediate notice shall state the reasons for the mediation, including reference to the provision in this Chapter under which the dispute arises. The notice shall also include the name and contact information of the person issuing the notice.~~
- (f) ~~The request notice shall also contain the name and address of the mediation service where the mediation shall take place.~~
- (g) ~~The cost of mediation shall be borne equally by both parties.~~

10-12-31. - Services to Tenants with a First Language Other than English (Limited Proficiency in the English Language).

Landlords shall include the following provision, in languages other than English determined by the City Manager, with the lease, rules and regulations and any notice required by the lease:

To:
From:
Date:

Regarding: Language Supports Available

You have been served with an important legal notice by your Mobile Home Park landlord. If you do not speak English and need assistance reading and understanding the attached notice, the City of Boulder will provide you with assistance. Please contact the City of Boulder Language Access Program immediately for interpretation assistance.

10-12-32. - Required Information to New Tenants: A Landlord shall Provide New Tenants with the Following Information in Writing.

(a) A list of every increase in rent during the last five years for the manufactured home lot.

(b) The amount of any charges for late payment and dishonored checks.

(c) Restrictions on occupancy by pets.

(d) Any recreational facilities and other amenities provided to the tenant and any deposits or fees required for their use.

10-12-33. - Required Information to Tenants: A Landlord shall Provide Tenants with the Following Information in Writing.

(a) Notice of any substantive change to the location or dimensions of a lot. Sixty days in advance of such change when practicable.

10-12-34. - Landlord to Issue Receipt of Payment of Rent to Tenant when Requested.

Upon receiving any payment made in person by a tenant with cash or a money order, a landlord shall contemporaneously provide the tenant with a receipt indicating the amount the tenant paid and the date of payment. If the landlord receives a payment that is not delivered in person by the tenant with cash or a money order, if requested by the tenant, the landlord shall, within seven days after the request, provide the tenant with a receipt indicating the amount the tenant paid, the recipient, and the date of payment, unless there is already an existing procedure that provides a tenant with a record of the payment received that indicates the amount the tenant paid, the recipient, and the date of payment. A landlord may provide the tenant with an electronic receipt, unless the tenant requests a paper receipt, in which case the landlord shall provide the tenant with a paper receipt. For purposes of this section, a receipt may be included as part of a billing statement. The landlord shall contemporaneously issue a receipt to any tenant paying rent in person who is in receipt of a notice of nonpayment of rent.

10-12-35. - Rulemaking Authority.

The city manager may promulgate such rules as the manager considers necessary to implement and enforce this chapter. All such rules shall be adopted in accordance with the procedures set forth in Chapter 1-4, "Rulemaking," B.R.C. 1981.

1 Section 2. This ordinance is necessary to protect the public health, safety, and welfare of
2 the residents of the city, and covers matters of local concern.

3 Section 3. The city council deems it appropriate that this ordinance be published by title
4 only and orders that copies of this ordinance be made available in the office of the city clerk for
5 public inspection and acquisition.
6

7 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
8 TITLE ONLY this 18th day of August 2020.
9

10 _____
11 Sam Weaver,
Mayor

12 Attest:
13
14

15 _____
16 Pamela Davis,
17 City Clerk
18

19 READ ON SECOND READING, PASSED AND ADOPTED this 1st day of September
20 2020.
21

22 _____
23 Sam Weaver,
24 Mayor
25

Attest:

Pamela Davis,
City Clerk

Manufactured Housing Strategy Guiding Principles

These principles identify what the community hopes to achieve with manufactured housing policies and programs and will guide decision-making about how best to accomplish the community's goals.

ACCOUNTABILITY

Agreements, ordinances and requirements will have clearly defined and practical enforcement mechanisms accessible to the affected parties, especially to MHC residents.

AFFORDABILITY

Manufactured housing will continue to serve as an affordable market-rate homeownership opportunity. Programs and policies will be pursued to stabilize rent increases, reduce costs for home repairs, reduce home replacement costs, and reduce energy and water costs of and consumption by households in manufactured housing.

COMMUNITY

Manufactured housing will continue to meet the needs of diverse populations, especially vulnerable community members. Programs and resources will be employed to support the needs of MHC residents.

VIABILITY

Existing and new manufactured homes and the communities in which they are located will be safe, well-maintained and modernized, especially to become more energy efficient. Both for-profit and nonprofit communities must be able to perform well enough financially to cover current and capital expenses and provide a reasonable return on investment.



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the July 7, 2020 Regular Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3A - July 7, 2020 Regular Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL MEETING
Via Video Conferencing
Tuesday, July 7, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:04 p.m.

Council Members Friend, Joseph, Nagle, Swetlick, Wallach, Yates and Young were present; Council Member Brockett was absent.

COUNCIL MEMBER YATES MADE A MOTION TO APPROVE THE AMENDED AGENDA TO ADD ITEM 8B STUDY SESSION LEADERSHIP DISCUSSION. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 6:07 P.M. WITH COUNCIL MEMBER BROCKETT ABSENT.

A. COVID Public Health Briefing and Restaurant Reopening Update

Jeff Zayach from Boulder County Health joined the meeting to provide an update as well as data on COVID-19 within the city, county and state.

Assistant City Manager and Director of Community Vitality Yvette Bowden joined the meeting to give an update on reopening of restaurants within Boulder.

2. Open Comment

(Public comments are a summary of actual testimony. Full testimony is available on the council web page at: <https://bouldercolorado.gov/city-council> > Watch Live or Archived Meetings.)

Open Comment began at 7:08 p.m.

1. Abigail Bradshaw spoke about defunding and abolishing the Boulder Police Department.
2. Carlos Alvarez-Aranyos spoke about petitions and signature gathering.
3. Chelsea Castellano spoke about Bedrooms are For People.
4. Claudia Theim spoke about Bedrooms are For People.
5. Darren O'Connor spoke about Housing Advisory Board and Human Relations Commission joint meeting recommendations regarding homelessness.
6. David Prowell, III signed up to speak but did not.
7. Eric Budd spoke about Bedrooms are For People.
8. Evan Ravitz spoke about Housing Advisory Board and Human Relations Commission joint meeting recommendations regarding homelessness, the firing of Dr. Helmet from CU and review process for the City Manager, City Attorney and Municipal Judge.

9. Hermine Ngnomire spoke about elevating the response to the unhoused.
10. Jacquie Richardson spoke about decriminalizing homelessness in Boulder.
11. Jamie Morgan spoke about Boulder Police Department.
12. Julie Zahniser spoke about negotiations with Xcel.
13. Kurt Nordback spoke about Bedrooms are For People.
14. Michael Holtz spoke about negotiations with Xcel.
15. Patrick Murphy spoke about municipalization.
16. Paul Culnan spoke about climate change and municipalization.
17. Professor K.K. DuVivier spoke about municipalization.
18. Riley Mancuso spoke about decriminalization of arbitrary enforcements.
19. Ruy Arango spoke about No Eviction without Representation.
20. Ryan Seldon spoke about Bedrooms are For People.

Open Comment closed at 7:52 p.m.

3. Consent Agenda

- A. Consideration of a motion to approve the June 9, 2020 Special Meeting Minutes
- B. Consideration of a motion to approve the June 16, 2020 Regular Meeting Minutes
- C. Second reading, and consideration of a motion to order published by title only Ordinance 8404 authorizing the city manager to enter into an Intergovernmental Agreement between the City of Boulder and Boulder County relating to the management of stormwater requirements for construction projects in overlapping jurisdictional boundaries; and setting forth related details

COUNCIL MEMBER YATES MOVED TO APPROVE THE CONSENT AGENDA ITEMS 3A-3C. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 7:58 P.M. WITH COUNCIL MEMBER BROCKETT ABSENT.

4. Call-Up Check-In

- A. Call-Up Consideration: 3485 Stanford Ct Concept Plan Review
No action.

5. Public Hearings

- A. Second reading and motion to adopt Ordinance 8393 adding a new Section 4-20-73, "Hemp Licensing Fee," adding a new Chapter 4-33, "Hemp," amending Chapter 5-10, "Marijuana Offenses," adding a new Chapter 5-11, "Cannabis Offenses," amending Chapters 6-14, "Medical Marijuana," and 6-16, "Recreational Marijuana," B.R.C. 1981; and setting forth related details

Senior Counsel Kathy Haddock introduced the item at 8:22 p.m.

The public hearing opened at 8:47 p.m. and the following spoke about second reading and motion to adopt Ordinance 8393 adding a new Section 4-20-73, "Hemp Licensing Fee," adding a new Chapter 4-33, "Hemp," amending Chapter 5-10, "Marijuana Offenses," adding a new Chapter 5-11, "Cannabis Offenses," amending Chapters 6-14, "Medical Marijuana," and 6-16, "Recreational Marijuana," B.R.C. 1981; and setting forth related details:

1. Lynn Segal
2. Andrea Meneghel

The public hearing closed at 8:55 p.m.

COUNCIL MEMBER YATES MOVED TO ADOPT ORDINANCE 8393 INCLUDING THE ATTACHED AMENDMENTS, ADDING A NEW SECTION 4-20-73, "HEMP LICENSING FEE," ADDING A NEW CHAPTER 4-33, "HEMP," AMENDING CHAPTER 5-10, "MARIJUANA OFFENSES," ADDING A NEW CHAPTER 5-11, "CANNABIS OFFENSES," AMENDING CHAPTERS 6-14, "MEDICAL MARIJUANA," AND 6-16, "RECREATIONAL MARIJUANA," B.R.C. 1981; AND SETTING FORTH RELATED DETAILS. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION FAILED 4:4 AT 9:13 P.M. WITH COUNCIL MEMBER BROCKETT ABSENT.

COUNCIL MEMBER YOUNG MOVED TO ADOPT ORDINANCE 8393 ADDING A NEW SECTION 4-20-73, "HEMP LICENSING FEE," ADDING A NEW CHAPTER 4-33, "HEMP," AMENDING CHAPTER 5-10, "MARIJUANA OFFENSES," ADDING A NEW CHAPTER 5-11, "CANNABIS OFFENSES," AMENDING CHAPTERS 6-14, "MEDICAL MARIJUANA," AND 6-16, "RECREATIONAL MARIJUANA," B.R.C. 1981; AND SETTING FORTH RELATED DETAILS. COUNCIL MEMBER WEAVER SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 9:22 P.M. WITH COUNCIL MEMBER BROCKETT ABSENT.

COUNCIL MEMBER YOUNG ALSO MOVED THAT CITY COUNCIL REQUEST CANNABIS LICENSING AUTHORITY BOARD ANALYZE THE ORDINANCE AS PASSED AS WELL AS WHETHER THE ENERGY SURCHARGE SHOULD APPLY TO HEMP BUSINESSES PRIOR TO THE SUMMER OF 2022 SUCH THAT THEIR RECOMMENDATION COULD BE IMPLEMENTED BY THEN. COUNCIL MEMBER YATES SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 9:24 P.M. WITH COUNCIL MEMBER BROCKETT ABSENT.

- B. Second reading and consideration of a motion to adopt Ordinance 8398 Dockless Bike Share Licensing Ordinance Update and E-scooter check-in

Deputy Director of Public Works-Transportation and Mobility Bill Cowern introduced the item at 9:21 p.m.

Senior Transportation Planner DK Kemp provided the Bike Share Licensing Ordinance Update and E-scooter check in.

The public hearing opened at 10:06 p.m. and the following spoke about second reading and consideration of a motion to adopt Ordinance 8398 Dockless Bike Share Licensing Ordinance Update and E-scooter check-in:

1. Lynn Segal
2. Jud Valeski
3. Andrea Meneghel

The public hearing closed at 10:16 p.m.

COUNCIL MEMBER WEAVER MOVED TO ADOPT ORDINANCE 8398 DOCKLESS BIKE SHARE LICENSING ORDINANCE UPDATE AND E-SCOOTER CHECK-IN. COUNCIL MEMBER XXX SECONDED THE MOTION. THE MOTION PASSED 8:0 AT XXX P.M.

- C. Second reading and motion to adopt Ordinance 8402 amending Section 7-6-24, “All-Night Parking of Commercial Vehicle, Camper or Motor Home, or Trailer Prohibited,” B.R.C. 1981; and setting forth related details

City Attorney Tom Carr introduced the item at 10:31 p.m.

Deputy City Attorney Sandra Llanes provided information in relation to the proposed ordinance.

The public hearing opened at 10:37 p.m. and the following spoke about second reading and and motion to adopt Ordinance 8402 amending Section 7-6-24, “All-Night Parking of Commercial Vehicle, Camper or Motor Home, or Trailer Prohibited,” B.R.C. 1981; and setting forth related details:

1. Riley Mancuso
2. Darren O’Connor
3. Sean Collins
4. Jennifer Sundt

The public hearing closed at 10:49 p.m.

COUNCIL MEMBER YOUNG MOVED TO ADOPT ORDINANCE 8402 AMENDING SECTION 7-6-24, “ALL-NIGHT PARKING OF COMMERCIAL VEHICLE, CAMPER OR MOTOR HOME, OR TRAILER PROHIBITED,” B.R.C. 1981; AND SETTING FORTH RELATED DETAILS. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 6:2 AT 11:05 P.M. WITH COUNCIL MEMBERS FRIEND AND SWETLIK VOTING NAY AND WITH COUNCIL MEMBER BROCKETT ABSENT.

COUNCIL MEMBER YATES MOVED TO EXTEND THE MEETING. COUNCIL MEMBER XXXX SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 11:10 P.M. WITH COUNCIL MEMBER BROCKETT ABSENT.

6. Matters from the City Manager
7. Matters from the City Attorney
 - A. Update on Xcel Settlement Discussions
8. Matters from the Mayor and Members of Council
 - A. Review Process for City Manager, City Attorney and Municipal Judge
 - B. Study Session Leadership Discussion
9. Discussion Items
10. Debrief
11. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON JULY 7, 2020 AT 11:31 P.M.

Approved this 1st day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the July 21, 2020 Regular Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3B - July 21, 2020 Regular Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL MEETING
Via Video Conferencing
Tuesday, July 21, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:06 p.m.

Council Members Brockett, Friend, Joseph, Nagle, Swetlick, Wallach, Yates and Young were present virtually.

- A. Congressman Joe Neguse Addressing Council regarding recommendations from the House Select Committee on Climate Crisis

COUNCIL MEMBER YATES MOVED TO ADJUST THE ORDER OF THE AGENDA TO POSTPONE OPEN COMMENT UNTIL AFTER ITEMS 3A-3C, AND 4A-4B DUE TO TECHNICAL ISSUES WITH AUDIO AND VIDEO FEED. COUNCIL MEMBER YOUNG SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 6:20 P.M.

2. Open Comment

(Public comments are a summary of actual testimony. Full testimony is available on the council web page at: <https://bouldercolorado.gov/city-council> > Watch Live or Archived Meetings.)

Open Comment began at 6:39 p.m.

1. William Gretz spoke about several ballot initiatives.
2. Victoria Harvey spoke about Gunbarrel subcommunity plan.
3. Vadim Graboys spoke about Bedrooms are For People.
4. Trish Hyde spoke about Bedrooms are For People.
5. Thomas Wells spoke about Bedrooms are For People.
6. Theodore Koenig spoke about Bedrooms are For People.
7. Tara Ippolito spoke about Bedrooms are For People.
8. Steve Whitaker spoke about Xcel negotiations.
9. Shawn Rupp spoke about Bedrooms are For People.
10. Sharon Procopio spoke about Bedrooms are For People.
11. Sean Collins spoke about defunding the police.
12. SarahDawn Haynes spoke about Bedrooms are For People.
13. Sara Campbell spoke about Bedrooms are For People.
14. Samantha Regan spoke about Bedrooms are For People.
15. Sam Kornick spoke about Bedrooms are For People.
16. Ryan Seldon spoke about Bedrooms are For People.
17. Ruy Arango spoke about No Evictions Without Representation
18. Rose Goodman spoke about the Celestial Seasonings site.

19. Rebekah Dumouchelle spoke about Bedrooms are For People.
20. Rebecca Davies spoke about Bedrooms are For People.

Open Comment closed at 7:14 p.m.

3. Consent Agenda

- A. Consideration of a motion authorizing the city manager to enter into a settlement agreement relating to the subrogation claim brought against the city by United Services Automobile Association (USAA)
- B. Introduction, first reading, consideration of a motion to publish by title only, and adopt as an emergency ordinance no 8407, approving a loan, evidenced by the City of Boulder, Taxable Pension Obligation Refunding Notes, Series 2020, in the aggregate principal amount not to exceed \$6,050,000 (the “Note”) for the purpose of refunding the City’s Taxable Pension Obligation Bonds, Series 2010 (the “Series 2010 Bonds”) at a lower interest rate; providing for the payment and cancellation of the Series 2010 Bonds, and for the payment of the Note from the same pledge of General Fund Revenue as the City’s Series 2010 Bonds; authorizing the competitive request for lending proposals and subsequent sale of the Note to a financial institution to fund and to pay related costs of issuance of the Note
- C. Introduction, first reading, consideration of a motion to publish by title only, and adopt as an emergency ordinance no 8408, approving a loan, evidenced by the City of Boulder, Colorado Water and Sewer Revenue Refunding Notes, Series 2020, in the aggregate principal amount not to exceed \$6,400,000 (the “Note”) for the purpose of refunding the City’s Water and Sewer Bonds, Series 2010 (the “Series 2010 Bonds”) at a lower interest rate; providing for the payment and cancellation of the Series 2010 Bonds, and for the payment of the Note from the same pledge of net income derived from the City’s water system and wastewater system as the Series 2010 Bonds; authorizing the competitive request for lending proposals and subsequent sale of the Note to a financial institution to fund a reserve fund and to pay related costs of issuance of the Note

COUNCIL MEMBER YATES MOVED TO APPROVE THE CONSENT AGENDA ITEMS 3A-3C. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 6:25 P.M.

4. Call-Up Check-In

- A. Call-Up Consideration: Site Review (case no. LUR2018-00073) to redevelop the properties at 1727 and 1737 Pearl Street with a 28,222 square foot three story mixed-use building containing 9,439 square feet of commercial space on the first floor and 14 residential units on the second and third floors. Development includes one level of underground parking with 14 vehicular parking spaces

No action

- B. Call-up Consideration: Landmark Alteration Certificate for the construction of an 1,800 sq. ft. addition to the 2,100 sq. ft. contributing house at 600 Spruce St. in the Mapleton Hill Historic District -Up Consideration: 3485 Stanford Ct Concept Plan Review

No action

5. Public Hearings

- A. Second reading and consideration of a motion to adopt Ordinance 8405 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question of adding new Sections 135 and 136 to the Boulder City Charter increasing the number of members of the Boulder Arts Commission to seven and providing for appointment, terms of office and addressing vacancies; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details

City Attorney Tom Carr introduced the item at 7:15 p.m. and provided information on the need for increasing membership as well as ballot language.

Arts Commission Chairperson Kathleen McCormick joined the meeting to provide additional information about the need to increase the Arts Commission membership.

The public hearing opened at 7:23 p.m. and the following spoke about second reading and consideration of a motion to adopt Ordinance 8405 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question of adding new Sections 135 and 136 to the Boulder City Charter increasing the number of members of the Boulder Arts Commission to seven and providing for appointment, terms of office and addressing vacancies; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details:

1. Lynn Segal

The public hearing closed at 7:24 p.m.

COUNCIL MEMBER YOUNG MOVED TO ADOPT ORDINANCE 8405 SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF ADDING NEW SECTIONS 135 AND 136 TO THE BOULDER CITY CHARTER INCREASING THE NUMBER OF MEMBERS OF THE BOULDER ARTS COMMISSION TO SEVEN AND PROVIDING FOR APPOINTMENT, TERMS OF OFFICE AND ADDRESSING VACANCIES; SETTING FORTH THE BALLOT TITLE, SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS. COUNCIL MEMBER BROCKETT SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 7:27 P.M.

- B. Second Reading and Consideration of a Motion to Adopt Ordinance 8406 submitting to the registered electors of the City of Boulder at the special municipal coordinated election to be held on Tuesday, November 3, 2020 the Question of Amending Charter Section 12 to Allow the City Council Under Specified Emergency Conditions to Suspend the Operation of Certain Charter Provisions; and setting forth related details

City Attorney Tom Carr introduced the item at 7:29 p.m. and provided information about the specific proposed charter provisions as well as the ballot language.

The public hearing opened at 7:38 p.m. and the following spoke about second Reading and Consideration of a Motion to Adopt Ordinance 8406 submitting to the registered electors of the City of Boulder at the special municipal coordinated election to be held on Tuesday, November 3, 2020 the Question of Amending Charter Section 12 to Allow the City Council Under Specified Emergency Conditions to Suspend the Operation of Certain Charter Provisions; and setting forth related details:

1. Lynn Segal
2. Peter Mayer

The public hearing closed at 7:43 p.m.

CITY COUNCIL DECIDED TO CONTINUE THIS ITEM TO AUGUST 4, 2020 AND REFER THIS ITEM TO THE CHARTER COMMITTEE TO, IN THE MEANTIME, DEVELOP CHANGES TO THE LANGUAGE OF ORDINANCE 8406 TO ADDRESS ISSUES BROUGHT FORWARD BY COUNCIL MEMBERS.

6. Matters from the City Manager

A. Process for Muni Building Name Change

Deputy City Manager Tanya Ange introduced this item at 8:15 p.m.

Assistant to City Council Taylor Reimann presented the process of changing the name as well as the history of the potential namesake.

Council Member Friend suggested that other city buildings, parks & streets be reviewed to determine if current names might be offensive to some.

City Council asked that the process for the muni building name change continue as laid out in the memo and that the renaming of other city buildings, parks & streets continue as staff time permits with an update occurring at the 2021 Retreat.

7. Matters from the City Attorney

A. Discussion of Ballot Measure Issues

Senior Assistant City Attorney Luis Toro presented options for interpretation of charter provisions related to charter amendments. A majority of council agreed to interpret the charter to follow state law provisions in C.R.S. 31-2-210 to establish the number of signatures and deadline for charter amendments. A majority of council agreed that these provisions should apply to the pending charter amendments.

COUNCIL MEMBER SWETLIK MADE A MOTION TO EXTEND THE MEETING. COUNCIL MEMBER YATES SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 11:55 P.M.

B. Update on Xcel Settlement Discussions

8. Matters from the Mayor and Members of Council
9. Discussion Items
10. Debrief
11. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON JULY 21, 2020 AT 11:58 P.M.

Approved this 1ST day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the July 28, 2020 Special Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3C - July 28, 2020 Special Meeting Minutes**
- ▣ **Item 3C - July 28, 2020 Special Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL SPECIAL MEETING
Via Video Conferencing
Tuesday, July 28, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:02 p.m.

Council Members Brockett, Friend, Joseph, Nagle, Swetlick, Wallach, Yates and Young were present.

COUNCIL MEMBER SWETLIK MOVED TO AMEND THE AGENDA TO ADD ITEM 1C - REAFFIRM AND REASSURE PONDEROSA COMMUNITY OF COUNCIL'S COMMITMENT TO NO DISPLACEMENT OF RESIDENTS. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASS 9:0 AT 6:03 P.M.

- A. Declaration in honor of Congressman John Lewis to be presented by Council Member Wallach
- B. Declaration in honor of Tanya Ange to be presented by Mayor Weaver
- C. Reaffirm and Reassure Ponderosa Community of Council's Commitment to no displacement of residents

2. Consent Agenda

- A. Consideration of a motion to accept the certification by the City Clerk's Office to City Council of sufficient valid signatures on a petition to add a new program to provide legal representation to tenants

COUNCIL MEMBER BROCKETT MOVED TO APPROVE THE CONSENT AGENDA ITEM 2A. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 6:30 P.M.

3. Call-Up Check-In

4. Public Hearings

- A. Concept Plan Review (LUR2020-00003) for three vacant lots at 4775 and 4649 Spine Road totaling 9.8 acres with a new residential development with 268 residential units in ten buildings. The development is proposed to include 25 percent permanently affordable housing (68 units) on the southernmost lot.

Proposed residential units consist of studio, one-bedroom, two-bedroom, and three-bedroom apartments.

Development Review Manager for Planning Charles Ferro introduced Senior Planner Sloane Walbert who provided the narrative to the staff presentation.

Applicants Andrew Allison from Allison Holdings, Matt Schildt from SRG, Pete Webber and Bill Hall both from Coburn joined the meeting to provide the Concept Review Plan.

The public hearing opened at 7:23 p.m. and the following spoke about the Concept Plan Review for three vacant lots at 4775 and 4649 Spine Road:

1. Randall Erica Clarke
2. Rebecca Morse
3. Lisa Haney pooling time with Joe Wheless & Aileen Ma
4. Ralph Frid
5. Annmarie Jensen
6. Steven Zawaski
7. Kit Fuller pooling time with Joe Stientjes & Christopher Ryan
8. Wendy Feinstein
9. Aron Smolley
10. Lynn Segal
11. Dorothy Donohue
12. Rose Goodman
13. Susan Krause
14. Calan Anderson
15. Jan Dorsey
16. Emily Yanero
17. Marta Loachamin
18. Adam Lee
19. Chris Goodman pooling time with Jen Law & Tracy French
20. Robert Irving
21. Susan Sommers
22. David Dye
23. Alanna Irving pooling time with Brooke Cholvin & Kate Chandler
24. Debi Richards
25. Wanda Fuller
26. Sheila Cooper

27. Nancy Specian
28. Christine M Hurley
29. Cindy Seals
30. Samantha Kornreich
31. James Lewis
32. Victoria Harvey
33. Yuanfang Gao
34. Eli Akerstein
35. Julie Dye pooling with Mitchell Goodman & Rory Goodman
36. Betsy Gaums
37. Donna George pooling with Sara George and Mark George
38. Eric Olson
39. Shelley Krakovitz
40. John Fitzgibbons
41. Nora Swan-Foster
42. Ray Knudson
43. JoAn Knudson
44. Mary Smith
45. Beth Quist
46. Stephen Hitz
47. Angie Mashaw
48. Suzanne Smith
49. Laurie Branch
50. Steven Pagnotta
51. Jon Rasmussen
52. Stephen Foster
53. Mari Rapp
54. Mike Chiropolos pooling with Bruce Hull, Susan Gaydon & Douglas Seals
55. Deanna Meyer
56. Alexandra Pagnotta
57. Jan Rasmussen
58. Rhona Unsell
59. Eriko Yatabe Waldock
60. Rhea Esposito
61. Susan Lambert Davis pooling time with Yan Jin & Lilly Greer
62. Vadim Graboys

- 63. Arlene Olech
- 64. Anna Gayer
- 65. Jill Mitchell
- 66. Connie Bobka
- 67. Laura Olson
- 68. Claudia Thiem
- 69. Andrew Harris
- 70. Cortney McGuire
- 71. Michael Day
- 72. Tracey McCoy
- 73. Robert O'Dea pooling time with Jennie Burns & Stacey Elder
- 74. Coco
- 75. Carmen Baran

The public hearing closed at 10:39 p.m.

COUNCIL MEMBER YOUNG MOVED TO EXTEND THE MEETING. COUNCIL MEMBER SWETLIK SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 10:58 P.M.

- 5. Matters from the City Manager
- 6. Matters from the City Attorney
 - A. Update on Xcel Settlement Discussions

No action
- 7. Matters from the Mayor and Members of Council
 - A. City Manager Replacement Discussion
- 8. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON JULY 28, 2020 AT 12:23 P.M.

Approved this 1st day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk

CITY OF BOULDER
CITY COUNCIL SPECIAL MEETING
Via Video Conferencing
Tuesday, July 28, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:02 p.m.

Council Members Brockett, Friend, Joseph, Nagle, Swetlick, Wallach, Yates and Young were present.

COUNCIL MEMBER SWETLIK MOVED TO AMEND THE AGENDA TO ADD ITEM 1C - REAFFIRM AND REASSURE PONDEROSA COMMUNITY OF COUNCIL'S COMMITMENT TO NO DISPLACEMENT OF RESIDENTS. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASS 9:0 AT 6:03 P.M.

- A. Declaration in honor of Congressman John Lewis to be presented by Council Member Wallach
- B. Declaration in honor of Tanya Ange to be presented by Mayor Weaver
- C. Reaffirm and Reassure Ponderosa Community of Council's Commitment to no displacement of residents

2. Consent Agenda

- A. Consideration of a motion to accept the certification by the City Clerk's Office to City Council of sufficient valid signatures on a petition to add a new program to provide legal representation to tenants

COUNCIL MEMBER BROCKETT MOVED TO APPROVE THE CONSENT AGENDA ITEM 2A. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 6:30 P.M.

3. Call-Up Check-In

4. Public Hearings

- A. Concept Plan Review (LUR2020-00003) for three vacant lots at 4775 and 4649 Spine Road totaling 9.8 acres with a new residential development with 268 residential units in ten buildings. The development is proposed to include 25 percent permanently affordable housing (68 units) on the southernmost lot.

Proposed residential units consist of studio, one-bedroom, two-bedroom, and three-bedroom apartments.

Development Review Manager for Planning Charles Ferro introduced Senior Planner Sloane Walbert who provided the narrative to the staff presentation.

Applicants Andrew Allison from Allison Holdings, Matt Schildt from SRG, Pete Webber and Bill Hall both from Coburn joined the meeting to provide the Concept Review Plan.

The public hearing opened at 7:23 p.m. and the following spoke about the Concept Plan Review for three vacant lots at 4775 and 4649 Spine Road:

1. Randall Erica Clarke
2. Rebecca Morse
3. Lisa Haney pooling time with Joe Wheless & Aileen Ma
4. Ralph Frid
5. Annmarie Jensen
6. Steven Zawaski
7. Kit Fuller pooling time with Joe Stientjes & Christopher Ryan
8. Wendy Feinstein
9. Aron Smolley
10. Lynn Segal
11. Dorothy Donohue
12. Rose Goodman
13. Susan Krause
14. Calan Anderson
15. Jan Dorsey
16. Emily Yanero
17. Marta Loachamin
18. Adam Lee
19. Chris Goodman pooling time with Jen Law & Tracy French
20. Robert Irving
21. Susan Sommers
22. David Dye
23. Alanna Irving pooling time with Brooke Cholvin & Kate Chandler
24. Debi Richards
25. Wanda Fuller
26. Sheila Cooper

27. Nancy Specian
28. Christine M Hurley
29. Cindy Seals
30. Samantha Kornreich
31. James Lewis
32. Victoria Harvey
33. Yuanfang Gao
34. Eli Akerstein
35. Julie Dye pooling with Mitchell Goodman & Rory Goodman
36. Betsy Gaums
37. Donna George pooling with Sara George and Mark George
38. Eric Olson
39. Shelley Krakovitz
40. John Fitzgibbons
41. Nora Swan-Foster
42. Ray Knudson
43. JoAn Knudson
44. Mary Smith
45. Beth Quist
46. Stephen Hitz
47. Angie Mashaw
48. Suzanne Smith
49. Laurie Branch
50. Steven Pagnotta
51. Jon Rasmussen
52. Stephen Foster
53. Mari Rapp
54. Mike Chiropolos pooling with Bruce Hull, Susan Gaydon & Douglas Seals
55. Deanna Meyer
56. Alexandra Pagnotta
57. Jan Rasmussen
58. Rhona Unsell
59. Eriko Yatabe Waldock
60. Rhea Esposito
61. Susan Lambert Davis pooling time with Yan Jin & Lilly Greer
62. Vadim Graboys

- 63. Arlene Olech
- 64. Anna Gayer
- 65. Jill Mitchell
- 66. Connie Bobka
- 67. Laura Olson
- 68. Claudia Thiem
- 69. Andrew Harris
- 70. Cortney McGuire
- 71. Michael Day
- 72. Tracey McCoy
- 73. Robert O'Dea pooling time with Jennie Burns & Stacey Elder
- 74. Coco
- 75. Carmen Baran

The public hearing closed at 10:39 p.m.

COUNCIL MEMBER YOUNG MOVED TO EXTEND THE MEETING. COUNCIL MEMBER SWETLIK SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 10:58 P.M.

- 5. Matters from the City Manager
- 6. Matters from the City Attorney
 - A. Update on Xcel Settlement Discussions

No action
- 7. Matters from the Mayor and Members of Council
 - A. City Manager Replacement Discussion
- 8. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON JULY 28, 2020 AT 12:23 P.M.

Approved this 1st day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the August 4, 2020 Regular Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3D - August 4, 2020 Regular Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL MEETING
Via Video Conferencing
Tuesday, August 4, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Pro Tem Yates called the meeting to order at 6:02 p.m.

Council Members Brockett, Friend, Joseph, Nagle, Swetlick, Wallach and Young were present virtually; Mayor Weaver was absent.

COUNCIL MEMBER WALLACH MADE A MOTION TO AMEND THE AGENDA TO MOVE ITEM 6A TO CONSENT AND COMBINE WITH ITEM 3D AND TO MOVE ITEM 6B TO THE AUGUST 25, 2020 STUDY SESSION. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 6:04 P.M. WITH MAYOR WEAVER ABSENT

A. COVID-19 Public Health Briefing

Jeff Zayach, Executive Director Boulder County Health, joined the meeting remotely and provided an update on COVID-19, what Boulder County Health is working on and what to expect over the coming weeks as well as answer any related questions.

B. Update from Rob Anderson regarding BVSD Campus Reopenings

Superintendent of Boulder Valley School District Rob Anderson joined the meeting remotely to provide an update on the reopening of schools.

C. National Night Out Announcement

Police Chief Maris Herold provided information regarding the cancellation of National Night Out

D. Returning to In-Person Council Meetings Update

Director of Communications and Community Engagement Sarah Huntley provided information on three options available surrounding the issue of returning to in-person council meetings with the recommendation from staff of Option 1 which is to continue to hold meetings virtually and revisit this issue in October

Council Members agreed with staff's recommendation. Meetings will continue to held virtually with staff providing an update in October.

2. Open Comment
(Public comments are a summary of actual testimony. Full testimony is available on the council web page at: <https://bouldercolorado.gov/city-council> > Watch Live or Archived Meetings.)

Open Comment began at 7:26 p.m.

1. Sammie Lawrence spoke about police violence
2. Aisling Pigott spoke about the Bedrooms are for People initiative
3. William McGrew spoke about the No Evictions Without Representation initiative
4. Anna Segur spoke about the Bedrooms are for People initiative
5. Angie Naillon spoke about the Bedrooms are for People initiative
6. Suzanne Bhatt spoke about municipalization
7. Lucy Carlson Krakoff spoke about municipalization
8. Katie Farnan spoke about the Bedrooms are for People initiative
9. Ethan Au Green signed up to speak but didn't join the meeting
10. Kelly Stone spoke about the Bedrooms are for People initiative
11. Sara Campbell spoke about the Bedrooms are for People initiative
12. Crystal Gray spoke about municipalization
13. Diane Curlette spoke about the ballot initiative process
14. Andrew Harris spoke about the Bedrooms are for People initiative
15. Brad Segal spoke about municipalization
16. Leslie Glustrom spoke about municipalization
17. SarahDawn Haynes spoke about the Bedrooms are for People initiative
18. Cedar Barstow spoke about the Bedrooms are for People initiative
19. Kristen Eller spoke about the Bedrooms are for People initiative
20. Rebecca Davies spoke about the Bedrooms are for People initiative

Open Comment closed at 8:16 p.m.

3. Consent Agenda
- A. Consideration of a motion to accept the Study Session Summary from July 14, 2020 regarding an update on homelessness services in Boulder
 - B. Motion to authorize the City Manager to dispose of the permanently affordable housing unit at 2636 Juniper Ave, Unit 4 to an eligible buyer and sign all associated agreements
 - C. Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to

furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details

City Attorney Tom Carr provided information regarding the franchise agreement with Xcel.

Council Members recommended that Ordinance 8410 move to Second Reading.

- D. Discussion/Update on possible COVID related evictions and foreclosures, followed by Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8411 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question submitted as an initiated ordinance whether the Boulder Revised Code should be amended to require the City of Boulder to establish, run and fully fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; to provide a legal services coordinator to administer the program; and create a tenants' committee comprised of five members paid a \$1,000 per year stipend; to impose an annual fee of \$75 per dwelling unit on each non-exempt rental license in the city to be adjusted for inflation annually; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details

And

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8412 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question submitted as a council initiated ordinance whether the Boulder Revised Code should be amended to require the City of Boulder to establish, run and fully fund a program to provide legal representation and rental assistance to tenants who face the loss of housing in eviction and administrative proceedings; to provide a legal services coordinator to administer the program; and create a tenants' committee comprised of five members paid a \$1,000 per year stipend; to impose an annual fee of \$75 per dwelling unit on each non-exempt rental license in the city to be adjusted for inflation annually; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details

Director of Housing and Human Services Kurt Firnhaber joined the meeting to introduce Deputy Directory of Housing and Human Services Kristin Hyser who provided information related to evictions and foreclosures and protections that have been put in place to reduce the numbers.

Council Members recommended that both Ordinance 8411 and Ordinance 8412 move to Second Reading.

- E. Consideration of the following items related to the annexation and initial zoning of two parcels of land generally located south of 5600 Airport Boulevard, also known as 0 Airport Boulevard and 0 Valmont Drive (case no. LUR2018-00059):
1. Resolution 1280 finding the annexation petition to annex approximately 5.89 acres of land in compliance with state statutes and establishing September 15, 2020 as the date for a public hearing;
 2. Introduction, first reading and consideration of a motion to order published by title only, Ordinance 8414 annexing to the City of Boulder approximately 5.89 acres of land, with an initial zoning designations of Industrial General (“IG”) on the northern portion and Public (“P”) on the southern portion
- F. Introduction and consideration of a motion to order published by title only and adopt by emergency measure Ordinance 8415 repealing Section 4-31-11, “Expiration,” B.R.C. 1981 to remove the sunset provision for Chapter 4-31, “Dockless Bicycle Share,” B.R.C. 1981; and setting forth related details
- G. Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8416 an ordinance submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017 be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city’s racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy-related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; and setting forth related details

And

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8417 an ordinance submitting to the registered electors of the City

of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2030 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy-related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; and setting forth related details

City Attorney Tom Carr provided information regarding the Utility Occupation Tax which is dedicated to exploring municipalization (Xcel). He also provided a presentation and answered questions from Council Members.

- H. Introduction, first reading and consideration of a motion to order published by title only Ordinance 8418 designating the property at 2962 11th as an individual landmark per Section 9-11-5 of the Boulder Revised Code, 1981

COUNCIL MEMBER BROCKETT MOVED TO APPROVE THE CONSENT AGENDA ITEMS 3A-3H. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 10:41 P.M. WITH MAYOR WEAVER ABSENT

- 4. Call-Up Check-In
 - A. Call-Up Item: Site Review (case no. LUR2018-00060) for the construction of an approximately 112,000 square foot research office and laboratory building at 5600 Airport Blvd. on an existing industrial campus. The building would be 3 stories and 45-feet in height. Two hundred thirty one parking spaces to be provided in surface parking and on an elevated parking deck. This application is associated with a request to annex two parcels into the city with a Industrial General (IG) zoning designation and Public (P)
- 5. Public Hearings
- 6. Matters from the City Manager

7. Matters from the City Attorney
8. Matters from the Mayor and Members of Council
 - A. Update on Evaluations for City Attorney and Municipal Judge, City Manager Search Subcommittee Appointments and Discussion/Decision on submitting an RFP or hiring a recruiter

COUNCIL MEMBER YATES MOVED TO APPOINT COUNCIL MEMBERS BROCKETT AND YOUNG TO THE CITY MANAGER SEARCH COMMITTEE. COUNCIL MEMBER SWETLIK SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 10:42 P.M. WITH MAYOR WEAVER ABSENT

COUNCIL MEMBER YATES MOVED TO SUSPEND COUNCIL RULES REQUIRING A PUBLIC HEARING ON THE APPOINTMENTS TO CITY MANAGER SEARCH COMMITTEE. COUNCIL MEMBER SWETLIK SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 10:44 P.M. WITH MAYOR WEAVER ABSENT

Council Member Young discussed the options available for hiring a new City Manager. These options include submitting an RFP or using proven search consultant. After discussion, the decision was made to use the proven search consultant in an effort to expedite the process.

Council Agenda Committee will schedule a discussion on the appointment of an interim City Manager beginning October 31, 2020 and ending when a new City Manager is appointed.

Council Agenda Committee will also schedule a discussion on the Evaluations for City Attorney and Municipal Judge.

- B. Discussion of Council Representation to the HRC/HAB Subcommittee

Council Member Swetlik volunteered to be the council representative for the HRC/HAB subcommittee

9. Discussion Items
10. Debrief
11. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON AUGUST 4, 2020 AT 11:01 P.M.

Approved this 1st day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the August 11, 2020 Special Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3E - August 11, 2020 Special Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL SPECIAL MEETING
Via Video Conferencing
Tuesday, August 11, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:00 p.m.

Council Members Brockett, Friend, Joseph, Nagle, Swetlick, Wallach, Yates and Young were present.

COUNCIL MEMBER YATES MADE A MOTION TO AMEND THE AGENDA TO SWITCH THE ORDER OF ITEMS 4A AND 4B; THUS HAVING THE PUBLIC HEARING FOR DIRECT ELECTION OF MAYOR/RANKED CHOICE VOTING FIRST. COUNCIL MEMBER YOUNG SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 6:02 P.M.

2. Consent Agenda

- A. Consideration of a motion to call a special meeting of the Boulder City Council on Thursday, August 20, 2020

COUNCIL MEMBER BROCKETT MOVED TO APPROVE THE CONSENT AGENDA ITEM 2A. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 6:03 P.M.

3. Call-Up Check-In

4. Public Hearings

- A. Introduction, first reading and consideration of a motion to order published by title only Ordinance 8413 Amending Article II, Sections 3, 4, 5, 8, 14, 15 of the Boulder City Charter, to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting for related details

The public hearing opened at 6:10 p.m. and the following spoke about Direct Election of Mayor/Ranked Choice Voting:

1. Alli Fronzaglia
2. Jan Burton
3. Matt Benjamin
4. Celeste Landry
5. Mark Parsons

6. Mark McIntyre
7. Marcus Ogren
8. Mark Gelband
9. Lynn Segal
10. Chelsea Castellano
11. Lucy Carlson Krakoff
12. Eric Budd
13. Lila Hickey
14. SarahDawn Haynes
15. Linda Templin
16. Emma Donahue
17. Nick Grossman
18. Neal McBurnett

The public hearing closed at 6:57 p.m.

COUNCIL MEMBER YATES MOVED TO ADOPT ORDINANCE 8420 AMENDING ARTICLE II SECTIONS 3, 4, 5, 7, 8, 14 AND 15 OF THE BOULDER CITY CHARTER TO PROVIDE FOR THE DIRECT ELECTION OF THE MAYOR BY RANKED CHOICE (INSTANT RUNOFF) VOTING, SETTING FORTH THE BALLOT TITLE; SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES. COUNCIL MEMBER SWETLIK SECONDED THE MOTION. THE MOTION PASSED 7:2 AT 7:45 P.M. WITH COUNCIL MEMBERS WALLACH AND YOUNG VOTING NAY.

COUNCIL MEMBER YATES MADE A MOTION TO AMEND THE AGENDA TO MOVE ITEMS 5A AND 7A TO A FUTURE MEETING DUE TO TIME CONSTRAINTS. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 9:20 P.M.

- B. Consideration of a motion pertaining to the Open Space Board of Trustees recommended preferred alternative regarding the management of Open Space and Mountain Parks irrigated agricultural lands occupied by prairie dogs for soil health, agricultural sustainability and ecological viability in an area north of Jay Road and generally east of US Highway 36 and northwest of Colorado Highway 119

The public hearing opened at 9:23 p.m. and the following spoke about Irrigated Agricultural Lands and Prairie Dog Management:

1. Cecila Baumgartner & Lucy Krank splitting the 2 minutes
2. Marlon Reis
3. Shirley Schaller
4. Aron Smolley pooling time with Calan Anderson and Wanda Fuller
5. Deanna Meyer pooling time with James Warder and Julia Warder
6. Beth Quist
7. Randall Clarke

8. Hayden “Kit” Fuller pooling time with Joe Stientjes, Eric Anderson and Nancy Specian
9. Cody Oreck
10. Paula Shuler
11. Elizabeth Black
12. Connie Bobka
13. Raymond Bridge
14. Carse Pustmueller
15. Molly Davis
16. Sue Cass
17. Dorothy Donohue
18. Alice Starek
19. Brian Coppom
20. Kat Narvaez
21. Helen Braider
22. Eriko Yatabe Waldock
23. Chris Goodman pooling with Cindy Seals and Rhona Unsel
24. Elle Cushman
25. Frances Hartogh
26. Lucky Beckett
27. Beth Potter
28. Dan Moorer
29. Pam Wanek
30. Susan Sommers
31. Ellen Kessler
32. Suzanne Smith
33. Belinda Reed
34. Michael Browning
35. Deborah Jones
36. Nicole Huntley
37. Rose Goodman
38. Mark Gelband
39. Hunter Lovins
40. Lynn Segal
41. Jenny Bryant
42. Iayana Rael
43. Lisa Goodrich
44. Chris Brown
45. Richard Reynolds
46. Maggie Fox
47. Roland Halpern
48. Julie Dye
49. Ben Valley
50. Bob Lover
51. Robert Mass
52. Jill Bielawski

53. Richard Reading
54. Steven Zawaski
55. Emily Yanero
56. Aaron Michael Liebeskind
57. Carmen Porter
58. Jeffrey Hersch
59. Lindsey Sterling Krank pooling with David Krank and Deanna Tebockhorst
60. John Scott
61. Mike Sterling
62. Marcus McCauley
63. Jeremy Gregory
64. Anna Rivas
65. Taylor Jones
66. Jaclyn Ramaley

The public hearing closed at XXX p.m.

COUNCIL MEMBER FRIEND MADE A MOTION TO EXTEND THE MEETING. COUNCIL MEMBER BROCKETT SECONDED THE MOTION. THE MOTION PASSED 9:0 AT 11:03 P.M.

5. Matters from the City Manager
 - A. Financial and Legislative Update
6. Matters from the City Attorney
7. Matters from the Mayor and Members of Council
 - A. Charter Committee Update regarding emergency suspension of Charter Provisions
8. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON AUGUST 11, 2020 AT 12:01 P.M.

Approved this 1st day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the August 18, 2020 Regular Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3F - August 18, 2020 Regular Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL MEETING
Via Video Conferencing
Tuesday, August 18, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:00 p.m.

Council Members Brockett, Friend, Joseph, Swetlick, Wallach, Yates and Young were present virtually; Council Member Nagle absent

COUNCIL MEMBER YATES MADE A MOTION TO AMEND THE AGENDA TO MOVE THE SPECIAL PRESENTATION BY PROFESSOR GROSS FROM ITEM 2A TO ITEM 1B, TO MOVE AND SEPARATE ITEM 8A INTO ITEM 8B UPDATE ON EVALUATIONS FOR CITY ATTORNEY AND MUNICIPAL JUDGE AND ITEM 8C APPOINTMENT OF INTERIM CITY MANAGER AND TO ADD ITEM 8A CHARTER COMMITTEE UPDATE REGARDING EMERGENCY SUSPENSION OF CHARTER PROVISIONS. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 6:02 P.M.; COUNCIL MEMBER NAGLE ABSENT.

- A. Declaration Acknowledging the 100th Anniversary of the Passage of the 19th Amendment presented by Council Member Joseph
- B. Special Presentation by Professor Gross regarding the Comprehensive Annual Financial Report (CAFR)

2. Open Comment

(Public comments are a summary of actual testimony. Full testimony is available on the council web page at: <https://bouldercolorado.gov/city-council> > Watch Live or Archived Meetings.)

Open Comment began at 6:18 p.m.

- 1. Chris Hoffman spoke about Xcel Franchise Agreement
- 2. Emily Reynolds spoke about Bedrooms are for People
- 3. AllyCatherine Wild spoke about Boulder Housing Partners and safe housing
- 4. Maureen Eldredge spoke about 2150 Folsom development
- 5. Claudia Thiem spoke about Bedrooms are for People and homelessness
- 6. Michael Schreiner spoke about Bedrooms are for People
- 7. Blake Stone spoke about Bedrooms are for People
- 8. Jim Tyrrell, owner of 2150 Folsom, spoke about misconceptions with the project
- 9. Eric Budd spoke about Bedrooms are for People
- 10. Alana Wilson spoke about Bedrooms are for People
- 11. Linda Sparn spoke about Bedrooms are for People

12. Clare Gallagher spoke about Bedrooms are for People.
13. David Raduziner signed up to speak but did not.
14. Joel Maguire spoke about 2150 Folsom project.
15. Lisa Nelson spoke about Bedrooms are for People and affordable housing.
16. Krista Nordback spoke about Bedrooms are for People.
17. Paul Culnan spoke about Xcel Franchise Agreement.
18. Kathryn Lehr spoke about illegal camping in Boulder.
19. Corey Donahue spoke about Bedrooms are for People.

Open Comment closed at 7:00 p.m.

3. Consent Agenda

- A. Consideration of a motion to adopt Resolution 1265 accepting the City of Boulder's 2019 Comprehensive Annual Financial Report and Independent Auditor's Report
- B. Consideration of a Motion to Adopt Resolution 1279 approving the assignment to the Housing Authority of the City of Boulder, D/B/A Boulder Housing Partners, of \$5,652,173 of the City of Boulder, Colorado's 2020 Private Activity Bond volume cap allocation from the state ceiling for Private Activity Bonds; and authorizing the execution and delivery of an assignment and other documents in connection therewith
- C. Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8383 revising Chapter 12, "Mobile Homes," by amending Sections 10-12-1 "Legislative Intent," 10-12-4, "Enforcement," 10-12-24, "Appeal and Variances," and 10-12-30, "Mediation Of Disputes," repealing Sections 10-12-27, "Trees," 10-12-28, "Right To Privacy," and 10-12-29, "Retaliation Prohibited," and by the addition of Sections 10-12-31 through 10-12-35, B.R.C. 1981; and setting forth related details

COUNCIL MEMBER YATES MOVED TO APPROVE THE CONSENT AGENDA ITEMS 3A-3C. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 7:04 P.M.; COUNCIL MEMBER NAGLE ABSENT.

4. Call-Up Check-In

- A. Call-Up Consideration: 2150 Folsom Final Plat

No action
- B. Call-up consideration of a Site Review application (case no. LUR2019 00058) for the redevelopment of the properties at 1750 15th St. and 1680 Canyon Blvd. with a 148,820 square foot three-story mixed-use building containing 14,048 square feet of commercial space on the first floor and 147 residential units on the garden, first, second, and third levels. Development includes one level of underground parking with 102 vehicular and 27 moped/motorcycle parking spaces (Liquor Mart)

Senior Planner Sloane Walbert provided a brief presentation on this project and answered questions from council.

No action

5. Public Hearings

- A. Second reading and consideration of a motion to order published by title only Ordinance 8418 designating the property at 2962 11th as an individual landmark per Section 9-11-5 of the Boulder Revised Code, 1981.2692 11th Street Individual Landmark Designation Hearing

Historic Preservation-Planner II Marcy Cameron provided a presentation and history on the property.

The public hearing opened at 7:30 p.m. and the following spoke about second reading and consideration of a motion to order published by title only Ordinance 8418 designating the property at 2962 11th as an individual landmark per Section 9-11-5 of the Boulder Revised Code, 1981.2692 11th Street Individual Landmark Designation Hearing:

1. Lynn Segal

The public hearing closed at 7:31 p.m.

COUNCIL MEMBER YOUNG MADE A MOTION TO ADOPT ORDINANCE 8418 DESIGNATING THE PROPERTY AT 2962 11TH ST., TO BE KNOWN AS THE AUSTIN-ESTEY HOUSE, AS AN INDIVIDUAL LANDMARK UNDER THE CITY OF BOULDER HISTORIC PRESERVATION. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 7:32 P.M.; COUNCIL MEMBER NAGLE ABSENT.

- B. Second reading and consideration of a motion to adopt Ordinance 8411 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question submitted as an initiated ordinance whether the Boulder Revised Code should be amended to require the City of Boulder to establish, run and fully fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; to provide a legal services coordinator to administer the program; and create a tenants' committee comprised of five members paid a \$1,000 per year stipend; to impose an annual fee of \$75 per dwelling unit on each non-exempt rental license in the city to be adjusted for inflation annually; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details (aka No Evictions without Representation)

and

Second reading and consideration of a motion to order published by title only, and to adopt Ordinance 8412 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question submitted as a council initiated ordinance whether the Boulder Revised Code should be amended to require the City of Boulder to establish, run and fully fund a program to provide legal representation and rental assistance to tenants who face the loss of housing in eviction and administrative proceedings; to provide a legal services coordinator to administer the program; and create a tenants' committee comprised of five members paid a \$1,000 per year stipend; to impose an annual fee of \$75 per dwelling unit on each non-exempt rental license in the city to be adjusted for inflation annually; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details (aka No Evictions without Representation Alternative)

City Attorney Tom Carr provided a presentation for both ordinances highlighting their differences.

The public hearing opened at 7:54 p.m. and the following spoke about Ordinance 8411 No Evictions with Representation (NEWR) and Ordinance 8412 No Evictions with Representation Alternative:

1. Nick Grossman
2. SarahDawn Haynes
3. Mark Gelband
4. Andrew Harris
5. Jacquie Richardson
6. Amanda Mercado
7. Cameron Netherland
8. Lynn Segal
9. Ruy Arango
10. Shelly Bobbins
11. Charlotte Pitts
12. William McGrew
13. Laura Maguire
14. Eric Budd
15. Theodore Koenig
16. Jake Brady
17. Claudia Thiem
18. Felicia Hamilton
19. Mike Stengel
20. Bruce Mock
21. Liz Marasco
22. Vadim Graboys
23. Chelsea Castellano
24. Eric Johnson
25. Ryan Seldon

26. Misha Toor
27. Meagan Arango
28. Todd Ulrich
29. Mark Grueskin
30. Austin Bennett
31. Krista Nordback
32. Dylan Satterfield

The public hearing closed at 9:00 p.m.

COUNCIL MEMBER BROCKETT MADE A MOTION TO CONTINUE SECOND READING OF ORDINANCE 8411 AND TO AMEND ORDINANCE 8412 ON SECOND READING BY SUBSTITUTING THE VERSION POSTED ON HOTLINE AND AMENDING BY REPLACING THE WORD “VENERABLE” IN THE ORDINANCE TITLE WITH THE WORD “VULNERABLE” AND BY SETTING THE AMOUNT TO BE COLLECTED IN THE FIRST YEAR TO NOT EXCEED \$1.9 MILLION. COUNCIL MEMBER SWETLIK SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 9:23 P.M.; WITH COUNCIL MEMBER NAGLE ABSENT.

6. Matters from the City Manager

A. Financial and Legislative Update

Chief Financial Officer Cheryl Pattelli provided a quarterly financial update.

Chief Policy Advisor Carl Castillo provided updates regarding the CARES Act, prospects for new federal funding, existing funding and allocation of those funds.

7. Matters from the City Attorney

A. Discussion of Ballot Measure Issues

8. Matters from the Mayor and Members of Council

A. Charter Committee Update regarding emergency suspension of Charter Provisions

B. Update on Evaluations for City Attorney and Municipal Judge

C. Appointment of Interim City Manager

9. Discussion Items

10. Debrief

11. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON AUGUST 18, 2020 AT 10:15 P.M.

Approved this 1st day of September 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the August 20, 2020 Special Meeting Minutes

PRIMARY STAFF CONTACT

Debbie Stamp; Acting Deputy City Clerk

ITEM UPDATES

ATTACHMENTS:

Description

- ▣ **Item 3G - August 20, 2020 Special Meeting Minutes**

CITY OF BOULDER
CITY COUNCIL SPECIAL MEETING
Via Video Conferencing
Tuesday, August 20, 2020

MINUTES

1. Call to Order and Roll Call

Mayor Weaver called the meeting to order at 6:02 p.m.

Council Members Brockett, Friend, Joseph, Swetlick, Wallach, Yates and Young were present virtually; Council Member Nagle absent

2. Consent Agenda

3. Call-Up Check-In

4. Public Hearings

- A. Second reading and consideration of a motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

AND

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8419 approving and granting a franchise between the City of Boulder, Colorado to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary; and setting forth related details

- B. Second reading and consideration of a motion to adopt Ordinance 8416 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017 be used to repay costs associated with the municipal utility effort and further to be used to fund projects,

pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy-related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service

Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; and setting forth related details.

Or

Second reading and consideration of a motion to adopt Ordinance 8417 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2030 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; and setting forth related details.

The public hearing opened at 8:34 p.m. and the following spoke about the Xcel Franchise Agreement and the Utility Occupation Tax:

1. Will Toor
2. Howard Geller
3. Ramesh Bhatt
4. Jack Walker
5. Suzanne Bhatt
6. Susan Peterson
7. Mary Pettigrew
8. Conor May
9. Lynn Segal
10. Marion Thurnauer
11. Tom Wilke
12. John Scholz
13. Patrick Murphy
14. Kelly Reyes
15. Evan Ravitz
16. Paul Culnan
17. Neil Kolwey
18. Michael Holtz
19. Steve Whitaker
20. AJ Chamberlin
21. Julie Zahniser
22. Regina Cowles
23. Evan Freirich
24. Steve Pomerance
25. Brad Segal pooling time with Tom Cannon and Nancy Cifelli
26. Tim Schoechle
27. Cate Lawrence
28. David Takahashi
29. Peter Mayer
30. Susan Secord
31. Alan Bernstein
32. John Russell
33. Randall Erica Clarke
34. Joe Breddan
35. Karey Christ-Janer
36. John Tayer pooling time with Lori Call and Andrea Meneghel
37. Robert Westby
38. Dan Powers
39. KK DuVivier
40. Crystal Gray
41. Andrew Barton
42. Duncan Gilchrist

43. Jim Morris
44. Micah Parkin
45. Scott Hatfield
46. Shirley Jin
47. Devyn Simeoni
48. Kristen Marshall
49. Emma Marion
50. Rick Healy
51. Sandra Laursen
52. Jan Burton
53. Chris Nichols
54. John Putnam
55. Bob Hopper
56. Elizabeth Hartman
57. Marti Hopper
58. Robi Robichaud
59. Michele Smith
60. Rachel Tseng
61. Josh Dinar
62. Rebecca Dickson
63. Eric Stoutenburg
64. Brian OBrien
65. Stephen Lawrence
66. Leslie Glustrom
67. Alison Burchell
68. Macon Cowles
69. Marguerite Behringer
70. Karen Conduff

The public hearing closed at 10:50 p.m.

COUNCIL MEMBER YATES MOVED TO EXTEND THE MEETING PAST 11:00 P.M. COUNCIL MEMBER FRIEND SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 11:17 P.M.; WITH COUNCIL MEMBER NAGLE ABSENT.

COUNCIL MEMBER YATES MADE A MOTION TO PASS ON SECOND READING ORDINANCE 8410 AS AMENDED IN THE PACKET AND WITH AMENDMENTS TO SECTION 2.4 AND SECTION 2.5. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 6:2 AT 12:29 P.M. WITH COUNCIL MEMBERS JOSEPH AND SWETLIK VOTING NAY; COUNCIL MEMBER NAGLE ABSENT

COUNCIL MEMBER YATES MADE A MOTION TO PASS ON FIRST READING ORDINANCE 8419. COUNCIL MEMBER WALLACH SECONDED THE MOTION. THE MOTION PASSED 6:2 AT 12:30 P.M. WITH COUNCIL MEMBERS JOSEPH AND SWETLIK VOTING NAY; COUNCIL MEMBER NAGLE ABSENT

COUNCIL MEMBER WALLACH MADE A MOTION TO PASS ON SECOND READING ORDINANCE 8417 AS AMENDED AND WITH A FURTHER AMENDMENT TO EXTEND THE EXPIRATION DATE TO 2025. COUNCIL MEMBER YATES SECONDED THE MOTION. THE MOTION PASSED 5:3 AT 12:44 P.M. WITH COUNCIL MEMBERS BROCKETT, FRIEND AND SWETLIK VOTING NAY; COUNCIL MEMBER NAGLE ABSENT

5. Matters from the City Manager
6. Matters from the City Attorney
7. Matters from the Mayor and Members of Council
8. Adjournment

THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON AUGUST 20, 2020 AT 12:44 P.M.

Approved this 1st day of September of 2020.

APPROVED BY:

Sam Weaver, Mayor

ATTEST:

Debbie Stamp, Acting Deputy City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion authorizing the city manager to enter into a settlement agreement relating to a claim filed by Emily Bossert.

PRIMARY STAFF CONTACT

Luis Toro, Senior Assistant City Attorney, 303.441.3020

REQUESTED ACTION OR MOTION LANGUAGE

Motion to authorize the city manager to enter into an agreement to settle a claim by Emily Bossert with a payment from the city in the amount of \$10,254.34.

ATTACHMENTS:

Description

- ▣ **Item 3H - Settlement Emily Bossert**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Consideration of a motion ratifying a settlement agreement in the personal injury claim asserted against the city by Emily Bossert.

PRESENTERS

Jane Brautigam, City Manager
Chris Meschuk, Deputy City Manager
Luis Toro, Senior Assistant City Attorney

EXECUTIVE SUMMARY

This matter arises out of an auto accident involving a City vehicle. The City's claims adjuster approved a settlement of Emily Bossert's claim for damages to her vehicle in the amount of \$10,254.34.

Because the amount of the settlement exceeds \$10,000, City Council ratification of the proposed settlement is necessary pursuant to section 2-2-14(c) B.R.C., 1981 to make the settlement legally binding.

The city manager and city attorney recommend ratification of the settlement.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to ratify the City's settlement agreement for property damage claims asserted by Emily Bossert against the City in the amount of \$10,254.34.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – N/A
- Environmental – N/A
- Social – The resolution of disputes is generally of social benefit and the resolution of this dispute will free up city attorney time to work on other projects.

OTHER IMPACTS

- Fiscal – Payment for the proposed settlement will be made from the city's Property and Casualty Fund which was established and funded for the purpose of paying claims and settling cases. This settlement is within the city's anticipated loss planning parameters.
- Staff time – The City Attorney's office represents the City in this matter.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

None.

BACKGROUND

In her claim, Emily Bossert sought damages for the cost of repairing her car after it was struck by a City vehicle on 14th Street between Spruce and Walnut in Boulder. The Boulder Police Department cited the City driver for Improper Backing. The City's claims adjuster erroneously entered into a settlement agreement in an amount greater than \$10,000. The settlement agreement should have been submitted to City Council for approval before payment was made.

ANALYSIS

It is not possible to predict the outcome of a trial. Given the projected costs of litigation, the city attorney believes that it is unlikely that the city will be in a significantly better

economic position by litigating the case as compared to ratifying the settlement agreement.

The city manager supports the proposed settlement.

Council has the option of approving or rejecting the proposed settlement. If Council rejects the settlement, the matter will proceed to litigation.

ATTACHMENT

Attachment A – Bossert Property Damage Release Agreement

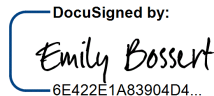
PROPERTY DAMAGE RELEASE AGREEMENT

1. This PROPERTY DAMAGE RELEASE AGREEMENT ("Agreement") resolves all property damage claims stemming from or related to: An incident which occurred on or about **February 12, 2020, at or about 14th Street/Pearl Street at or near Boulder, CO.**
2. For the total consideration of **\$10,254.34**, I release:
 - a. The City of Boulder,
 - b. The City of Boulder's affiliates, corporations, entities, successors, administrators, attorneys, employees, agents, servants, and insurers from all liability resulting from or related to the incident.
3. The acceptance of the above-mentioned sum is in full accord and satisfaction of a disputed property damage claim. Payment of that sum is not an admission of liability on the part of the City of Boulder or of any other persons or parties released by this Agreement.
4. This Agreement releases the City of Boulder and others noted above from all:
 - a. Claims, demands, damages, costs, liabilities, losses of services, economic losses, expenses, compensations, reimbursements, actions, rights, and causes of action for property damage resulting from or related to the incident;
 - b. Known, unknown, foreseen and unforeseen property damages resulting from or related to the incident;
 - c. Expenses, costs, losses, liabilities, and damages related to damage of property, whether already incurred or incurred in the future resulting from or related to the incident; and
 - d. Property damage claims related to the incident and to the consequences of the incident, whether or not those claims were previously made against the City of Boulder and others released by this Agreement.
5. I agree to indemnify, defend and hold harmless the City of Boulder, and others released by this Agreement, against claims by any person, firm, or corporation made pursuant to a theory of assignment, lien interest, subrogation right, or other right of substitution to my claims related to the incident. This provision shall have application to:
 - a. Claims, costs, expenses, damages, recoveries and deficiencies, including interest or penalties, that the City of Boulder and others released under this Agreement may incur as a result of such claims based upon actions, claims, or demands by lien holders or by holders of subrogated interests;
 - b. Claims by governmental entities or agencies, or claims by other persons or third-party insurance carriers claiming a subrogation or other interest in the funds paid to me pursuant to this Agreement; and
 - c. Claims, actions, or liability for attorneys' fees or costs incurred on my behalf in connection with the incident or its aftermath, including any fees or costs with regard to which reimbursement may be permitted under Federal or State law.

If any other provision of this Agreement is deemed unenforceable or invalid for any reason, I understand that my obligation to indemnify, defend and hold harmless under this Agreement shall continue in full force and effect. This element of the Agreement is a separately bargained for benefit and is independently enforceable.

6. All of the understandings between the parties are included in this Agreement.
7. My signature on this Agreement shall be binding and no rescission, modification, or release from the terms of this Property Damage Release will be made for any mistakes.
8. I am legally competent to execute this Agreement. I assume the risk of any mistake of fact and law as to any property damages, whether disclosed or undisclosed, that I may have sustained as a result of the above-mentioned incident and as a result of all matters related to the incident.
9. I have read this Agreement, I know what it means and I have signed it voluntarily.

Dated:

DocuSigned by:

6E422E1A83904D4...

Signature

Printed name: **Emily Bossert**

FRAUD WARNING: Any person who, knowingly and with intent to injure, defraud, or deceive any employer, insurance company, third party administrator, self-insured program, or any other third party, files an insurance claim containing any false or misleading information, which violates an applicable state statute, is guilty of a crime and subject to prosecution.



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to authorize the city manager to enter into a Settlement Agreement between Public Service Company of Colorado, known as Xcel Energy, and the City of Boulder in substantially the same form as attached in this agenda packet.

PRIMARY STAFF CONTACT

Tom Carr, City Attorney, 303-441-3020

REQUESTED ACTION OR MOTION LANGUAGE

Motion to authorize the city manager to enter into a Settlement Agreement between Public Service Company of Colorado, known as Xcel Energy, and the City of Boulder in substantially the same form as attached in this agenda packet.

ATTACHMENTS:

Description

- ▣ **Item 3I - Settlement Agreement Xcel & COB**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Consideration of a motion to authorize the city manager to enter into a Settlement Agreement between Public Service Company of Colorado, known as Xcel Energy, and the City of Boulder in substantially the same form as attached in this agenda packet.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
David Gehr, Chief Deputy City Attorney
Kathy Haddock, Senior Counsel
Deb Kalish, Senior Counsel
Steve Catanach, Director of Climate Initiatives
Jonathan Koehn, Chief Resilience and Sustainability Officer
Matthew Lehrman, Energy Strategy Advisor
Lex Telischak, Electrical Engineer

EXECUTIVE SUMMARY

The purpose of this agenda item is for council to consider a motion authorizing the city manager to sign a Settlement Agreement with Public Service Company of Colorado (“Xcel Energy”). The Settlement Agreement is the overarching agreement in a comprehensive agreement with Xcel Energy that would suspend the city’s municipalization effort in return for assurance that Xcel Energy would meet its goal of 80 percent reduction in carbon emissions by 2030 and a partnership to help the city meet its goal of 100 percent renewable electricity by 2030. The agreement is structured to provide accountability and enforceability through the realistic possibility that the city could create a municipal electric utility if Xcel Energy does not meet specified carbon

emission targets in specific years on its way to an 80 percent gross emissions reduction from 2005 levels by 2030. On August 6, 2020, staff released drafts of three associated agreements and three attachments. The documents released are as follows:

Settlement Agreement
Energy Partnership Agreement with three attachments
Load Interconnection Agreement

On August 20, 2020, council reviewed and approved certain amendments to the Settlement Agreement. The Settlement Agreement would be executed upon final approval of Ordinance 8410, because it includes provisions that govern the relationship between the parties between now and the vote on the Franchise Agreement. The substantive provisions in the agreement are contingent on voter approval of the Franchise Agreement.

STAFF RECOMMENDATION

Suggested Motion Language

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

Motion to authorize the city manager to enter into a Settlement Agreement between Public Service Company of Colorado, known as Xcel Energy, and the City of Boulder in substantially the same form as attached in this agenda packet.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The opportunity exists for Boulder to transition to a new sustainable, low-carbon emission society, and it is coming much faster than anyone had anticipated just a few years ago. The growing differential between the rising costs of fossil fuels and the declining costs of renewable energy technologies is setting the stage for the emergence of a new economic paradigm in electricity delivery for the next century. Boulder is poised to help accelerate this process to tackle climate change, secure energy independence, and grow a sustainable 21st century economy all at the same time.
- Environmental – The energy discussion in Boulder is driven by concerns about the environmental impact of our current energy system. The combustion of fossil fuels is warming earth's atmosphere and changing our climate. Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C. According to the IPCC¹, global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to

¹ <https://www.ipcc.ch/sr15/>

increase at the current rate. Such an increase in global temperatures will be catastrophic. To change this course, we must achieve dramatic near-term reductions in greenhouse gas emissions by rapidly transitioning from fossil fuels to renewable energy. There is growing agreement that the most viable path to deep emission reductions in the next 10 years is the conversion of 80 percent or more of all energy use—in buildings, transportation and business processes—to electricity generated from renewable energy sources. Any agreement between the Boulder community and Xcel Energy must enable Boulder to reduce fossil fuel demand from buildings and transportation; rapidly transition to an energy system and economy that is powered 100 percent or more by renewable electricity with 50 percent or more of that produced locally.

- Social – To reach our clean energy goals, we must build across an energy system that is accessible to every person equally regardless of race or income and support solutions that include all people. Despite emerging opportunities, many are left out of the new energy economy. For example, many energy efficiency and renewable energy efforts are supported by federal and state tax credits and grants that benefit higher-income homeowners and exclude tenants and lower-income households, who are more likely to be people of color. The partnership activities identified with Xcel Energy are intended to address the multiple challenges facing communities.

OTHER IMPACTS

- Fiscal – None anticipated.
- Staff time – Implementing the proposed partnership will require significant staff work and financial resources will be necessary to support this work.

PUBLIC FEEDBACK

A public hearing was held on August 20, 2020.

ANALYSIS

A detailed analysis was included in the Memorandum for second reading of Ordinance 8410. After the analysis was prepared Xcel Energy agreed to add the prohibition against participation in the Municipal election or any election on the city's decision on whether to exercise its discretionary option to cancel the franchise after the fifth anniversary. This language appears in section M.1 of the Settlement Agreement.

Included with the Settlement Agreement are the Energy Partnership Agreement and the Load Interconnection Agreement. The Energy Partnership Agreement is contingent upon voter approval of the Franchise Agreement. The Energy Partnership Agreement will be executed only upon voter approval. The Load Interconnection Agreement will only be operative if the city decides to cancel the franchise and recommence the municipalization process.

ATTACHMENTS

A – Settlement Agreement

B – Energy Partnership Agreement with three attachments

C – Load Interconnection Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) is by and between, PUBLIC SERVICE COMPANY, a Colorado corporation (“PSCo”) and, the CITY OF BOULDER, a Colorado home rule city (“Boulder”). PSCo and Boulder shall be referred to collectively as the “Parties” and each individually as a “Party.” This Settlement is entered into on this ____ day of August 2020 to be effective as provided herein.

RECITALS

A. On August 10, 2010, the Boulder City Council decided not to place a proposed PSCo franchise on the November 2010 ballot and to instead pursue municipalization for a municipal electric utility pursuant to Art XX, section 6 of the Colorado State Constitution. One of the primary motives for Boulder’s decision was to reduce Boulder’s carbon footprint in response to climate change. On December 31, 2010 the 1990 franchise issued to PSCo expired (“1990 Franchise”).

B. Since authorization by the voters of Boulder in November, 2011, Boulder has pursued municipalization which has resulted in litigation with PSCo before the Boulder District Court, the Court of Appeals, the Colorado Supreme Court, the Federal Energy Regulatory Commission (“FERC”), and the Colorado Public Utilities Commission (“PUC”), some of which remain pending.

C. In December 2016, Boulder City Council adopted the Climate Commitment and its associated goals of an 80 percent reduction in community greenhouse gas emissions below 2005 levels by 2050; 100 percent renewable electricity by 2030; and 80 percent reduction in organization greenhouse gas emissions below 2008 levels by 2030.

D. In December 2018, PSCo announced a goal of reaching zero-carbon electrical production by 2050 and a reduction of and to reduce carbon emissions 80 percent from 2005 levels by 2030.

E. In light of the importance of addressing climate change and the efforts both Parties are making and plan to make, Boulder and PSCo agreed to enter into a settlement of the pending disputes and to address Boulder’s other goals related to emission reductions and 100 percent renewable energy without municipalization.

F. The Parties desire to settle the current litigation in accordance with the provisions and upon the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual promises and releases contained herein, the adequacy and sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

FRANCHISE, SETTLEMENT AGREEMENT, AND ENERGY PARTNERSHIP AGREEMENT

- A. Franchise Agreement.** Except as provided otherwise in paragraph L. and M. below, all rights, obligations and conditions in this Agreement are expressly conditioned upon the passage by the Boulder electorate at the November 3, 2020 election of a ballot measure approving the Franchise Agreement in substantially the form attached as **Exhibit A** to this agreement, and approval of the Franchise Agreement by the PUC. (“2020 Franchise”).
- B. Settlement Agreement.** This Agreement specifies the terms and conditions on which Boulder agrees to place the Franchise Agreement on the ballot for consideration by the voters. Two additional agreements (“Associated Agreements”) are attached hereto as **Exhibits B** and **Exhibit C** and incorporated herein.
1. The Energy Partnership Agreement is **Exhibit B** hereto. This agreement specifies how the Parties will coordinate the implementation of programs and projects in addition to those provided in the Franchise Agreement and consistent with the Purpose, Vision, and Guiding Principles stated therein. The Energy Partnership Agreement is to be effective and implemented during the time of the franchise.
 2. The Load Interconnection Agreement includes the terms for interconnection of the electric load from the Boulder System to the transmission at the six substations which will serve the Boulder System if Boulder opts out of the franchise and pursues municipalization. While **Exhibit C** is the final form of the Interconnection Agreement, it will not be executed and filed with FERC for approval unless Boulder exercises an opt-out as described in the Franchise Agreement and pursues municipalization. Upon the occurrence of those two decisions in the sole discretion of Boulder, the Load Interconnection Agreement would become effective as described therein.
- C. Existing Conditions.** The following conditions exist at the time of this Agreement:
1. The Colorado Public Utilities Commission issued Decision C17-0750 on September 24, 2017 and Decision C19-0874 on October 28, 2019 in Proceeding No. 15A-0589E approving Boulder’s application for transfer of assets outside substations subject to future PUC proceedings and final approvals as contemplated in those and other PUC decisions.
 2. The PUC decisions generally establish a process for Boulder’s creation of a municipal electric utility through the transfer of service responsibilities from PSCo to Boulder (“Cut-Over Date”).
 3. The PUC decisions anticipate a vote by the Boulder electorate to make a final decision regarding the creation of a municipal electric utility (“Go/No Go Decision”).
 4. PSCo’s 2018 GIS system model provides the basis for separation of the systems.

5. The PUC decisions approved a designated list of assets for transfer outside of the substations.
6. PSCo and Boulder have developed detailed distribution engineering plans sufficient for separation of a Boulder municipal system from PSCo's system. The distribution engineering plans include sufficient detail to provide the basis for construction bids.
7. PSCo has prepared and provided to Boulder, at Boulder's expense, System Impact and Facilities Studies for six substations to provide distribution service to electric customers in Boulder.
8. Boulder has posted and PSCo holds Letters of Credit in the amount of \$1.7 million for distribution engineering and \$2.6 million for engineering design.
9. To satisfy a condition imposed in Decision C17-1750, Boulder and PSCo entered into an Agreement for Payment of Costs dated October 24, 2018 ("Cost Agreement"). The PUC approved the Cost Agreement.
10. Boulder has paid PSCo over \$3.6 million under the Cost Agreement for PSCo's costs to date. Boulder has also paid PSCo approximately \$300,000 for work related to substations, including system impact studies, facilities studies and design. There are additional amounts for which Boulder has not yet been billed. Boulder has paid every invoice in a timely manner.
11. The Cost Agreement provides a procedure for resolution of payment disputes at the time that a Boulder municipal utility begins providing electrical service to customers on the Cut-Over Date.
12. On June 28, 2019, Boulder filed a petition in condemnation in the Boulder District Court.
13. On September 4, 2019, the Boulder District Court issued an order dismissing Boulder's petition in condemnation. On October 31, 2019, PSCo filed a motion for attorneys' fees. Boulder opposed the motion. The motion is fully briefed but has been stayed by the trial court pending outcome of Boulder's appeal.
14. On October 23, 2019, Boulder appealed the decision dismissing the petition in condemnation. The appeal is fully briefed. Oral argument has not been scheduled.
15. On November 20, 2019, Boulder sent PSCo a Notice of Intent and Final Offer to purchase certain assets necessary for the operation of a municipal electric utility.
16. On December 20, 2019, Boulder filed another petition in condemnation in the Boulder District court.
17. On April 14, 2020, the Boulder District Court issued an order staying Boulder's December 20, 2019 petition in condemnation pending resolution of the appeal for the previous condemnation.
18. On February 6, 2020, Boulder filed an Application for an Order Directing Interconnection of Facilities on Reasonable Terms and Conditions Pursuant to Sections 210 and 212 of the Federal Power Act ("210 Application") and PSCo has moved to intervene and filed responses.
19. On March 17, 2020, Boulder filed an Offer of Settlement for Interconnection and PSCo has moved to intervene and filed objections.

D. Cost Agreement. The Cost Agreement will be held in abeyance during the term of the franchise, and re-effective on the date of filing a condemnation petition if Boulder decides to opt-out of the franchise as provided in the Franchise Agreement, with the following agreements related to incurrence of costs under the Cost Agreement:

1. Except as otherwise provided below or otherwise agreed by the Parties, PSCo will perform no services or other work related to Boulder's municipalization while the Cost Agreement is held in abeyance.
2. Boulder will not be required to pay for any work performed by PSCo during the abeyance period, except as otherwise provided below or unless mutually agreed upon by the Parties or ordered by the PUC or court of competent jurisdiction.
3. The Parties will work in good faith to resolve any dispute under the Cost Agreement and return any overpayment prior to the effective date of the Franchise Agreement pursuant to the dispute resolution provisions of the Cost Agreement.

E. Facilities Study and Detailed Engineering Design Agreement. The Facilities Study and Detailed Engineering Design Agreement between the Parties dated May 6, 2019, ("Facilities Agreement") will be held in abeyance during the term of the franchise.

1. The detailed engineering designs for the Leggett, NCAR, Sunshine, and Wastewater Treatment Plant (WWTP) substations will be completed by October 31, 2020, as provided in the Facility Study and Detailed Design Agreement dated May 6, 2019, between the Parties.
2. Boulder shall pay for the costs of the designs for the Leggett, NCAR, Sunshine and WWTP substations as provided in the Facilities Agreement.

F. Litigation. Upon certification of election results showing voter approval of the 2020 Franchise:

1. The pending condemnation case in Boulder District Court Case 19CV31226 will be dismissed by the parties thereto without prejudice.
2. The appeal of Boulder District Court Case No. 19-CV-30637 currently pending before the Colorado Court of Appeals will be dismissed.
3. Boulder will withdraw the 210 Application and associated Offer of Settlement pending before FERC.
4. PSCo's pending award of attorneys' fees shall be dismissed without any payment by Boulder.
5. Neither PSCo or Boulder shall seek or receive any award of costs or attorneys' fees arising from any of the pending litigation.

G. Letters of Credit.

1. PSCo holds two Letters of Credit as security for Boulder's requirement to make payments under the Cost Agreement. Upon final passage of the ordinance placing the 2020 Franchise on the ballot, PSCo shall release the \$2.6 million Letter of Credit posted by Boulder for substation detailed design engineering, to the extent that all costs for work related to the distribution detailed design engineering have been billed by PSCo and indefeasibly paid in full by Boulder and all disputes have been fully resolved. At such time, PSCo shall also release the \$1.7 million Letter of Credit posted by Boulder for distribution detailed design engineering, to the extent that all costs for work related to the distribution detailed design engineering have been billed by PSCo and indefeasibly paid in full by Boulder and all disputes have been fully resolved.
2. Nothing in this Agreement shall alter any requirement that PSCo release a letter of credit at an earlier time as required by the terms of the Cost Agreement.

H. Undergrounding.

1. The 1990 Franchise required PSCo to fund projects for the undergrounding of overhead electrical lines in an amount equal to one percent of annual gross electrical revenues generated by service to customers in Boulder. PSCo has not provided any new funding for undergrounding since the expiration of 1990 Franchise. As a one-time settlement accommodation and without setting any precedent PSCo shall provide funding for undergrounding in an amount equal to one percent of gross electrical revenues received by PSCo from customers in Boulder for the period between the date of expiration of the 1990 Franchise and the effective date of the 2020 Franchise.
2. The funds described in subparagraph 1. above shall be in addition to the funds to be provided pursuant to paragraph 11.2 of the 2020 Franchise.
3. All funds identified in subparagraph 2. above shall be available for undergrounding projects to be completed during the first three years following the effective date of the proposed franchise. Provided, however, any unspent funds shall be available for undergrounding projects in subsequent years. Failure to complete a project in the three-year time period shall not affect the availability of funding.
4. The prioritization and selection of the overhead facilities to be undergrounded shall be governed by the mutual agreement of the Parties pursuant to the Distribution Partnership Agreement and the 2020 Franchise.

I. Data Sharing. PSCo shall keep Boulder apprised of significant changes to the electric distribution system during the term of the 2020 Franchise, by providing data as provided in the Energy Partnership Agreement, **Exhibit B**, and as provided below:

1. An annual updated model of the electric distribution system in the Boulder Division from the 2018 GIS model in the same format as the 2018 GIS Model provided by PSCo in the PUC proceedings or an equivalent satisfactory to Boulder.

2. PSCo will charge Boulder no more than the actual costs, plus labor, of providing data.

J. Boulder Option to Opt Out of Franchise. Pursuant to sections 2.4 and 2.5 of the 2020 Franchise, Boulder has the option as provided therein to opt out of the 2020 Franchise at its sole discretion under the terms and conditions provided in paragraphs 2.4 and 2.5 of the 2020 Franchise. If Boulder exercises its option to opt out of the 2020 Franchise, the following conditions shall apply:

1. PUC decisions C17-0750 and C19-0874 remain in full force and effect and no further approval is necessary for the transfer of assets outside of substations or the separation of those assets, except as set forth below. The Parties will follow the process, insofar as they are described, in those decisions for separation of the distribution system through Cut-Over Date. Boulder may add assets which affect system engineering that are added to the system by PSCo after separation engineering work that has been completed to date, subject to approval from the PUC as provided in subsection 2. below.
2. PUC Decision C19-0874 requires a joint application after the Go/No Go Decision and prior to the Cut-Over Date seeking final PUC approval of transfer of assets.
3. No further PUC action is currently anticipated regarding Boulder's acquisition of the assets or separation until PSCo and Boulder jointly file C.R.S. § 40-5-105 request after separation construction and before Cut-Over Date. The following are additional matters identified in the May 1, 2020 Cost Estimates that may require PUC approval:
 - a. PSCo request for approval for modifications of the Advanced Grid Integration (AGIS) program per section II.K.4(c)(2) of the Cost Agreement;
 - b. Joint application for transfer approval for the agreed upon assets in conjunction with the Load Interconnection Agreement, **Exhibit C**, Gunbarrel and NCAR substations; and
 - c. Application by PSCo for determination as to whether construction in PSCo retained substations is in the ordinary course or requires a CPCN.
4. PSCo and Boulder will stipulate to a case management order substantially similar to the case management procedure stipulated to by the parties and approved by the Court in its February 27, 2020 Order: Joint Status Report in case number 2019CV31226 providing for discovery and a Phase I hearing to consider legal challenges. Any such stipulation shall not preclude the Parties from also pursuing any other pleadings or motions that they deem appropriate in the new condemnation action.
5. The lists of assets in PUC Decision C19-0874 may be used by the city as the lists of assets for the distribution system outside substations in any new condemnation action, including the following specific provisions:
 - a. Any future condemnation petition may be filed with the same list of assets as in the current pending condemnation petition with additions or deletions of any assets necessary to reflect the changes in the distribution system and separation plan between the current and future condemnation cases as determined by the city from the information provided by PSCo under this Agreement.
 - b. PSCo asserts that it may request in condemnation to include assets that are different than the list of assets outside substations in the future condemnation petition, and that it can object to the taking of any asset not approved by the PUC, and/or to file a

cross-petition claiming additional property interests are being taken or damaged by Boulder for which just compensation is owed. Boulder disputes that PSCo has any right to identify any assets to be included or excluded in the condemnation. PSCo disputes that Boulder has any right to unilaterally identify what assets can be included or excluded in condemnation.

6. PSCo reserves all claims to object to any asset not on the list of assets approved by the PUC in Decision C19-0874 except as otherwise provided herein.
7. Prior to filing a petition in condemnation Boulder will offer to pay PSCo for the assets to be acquired for at least the amount of a recent bone fide appraisal conducted by a mutually agreed-upon appraiser with MAI and utility valuation credentials using a mutually agreed-upon appraisal methodology that includes the assets the Parties agree should be added or removed from the 2019 PUC list of assets outside substations. The Parties agree to search for a mutually agreeable appraiser for up to 60 days. If the Parties cannot agree upon an appraiser and appraisal methodology within 60 days, subsection 9. below shall not apply, and Boulder may select an appraiser of its choice but shall comply with subsection 8. below before proceeding to condemnation.
8. After Boulder makes an offer, whether based on a new appraisal contemplated in subparagraph 7. above or otherwise, Boulder and PSCo will negotiate for a purchase price for no less than three months after Boulder's offer before the filing of a petition in condemnation.
9. If Boulder makes an offer pursuant to the terms and conditions of subparagraph 7. above, PSCo agrees not to seek attorneys' fees pursuant to C.R.S. § 38-1-122 unless the valuation award is in excess of 150 percent of Boulder's offer made pursuant to the terms and conditions of subparagraph 8. above.
10. If Boulder makes an offer for the assets based on a completed appraisal by a MAI appraiser identifying the property to be acquired, and provides the appraisal report to PSCo, PSCo will not object to a subsequent condemnation action based on the requirement that Boulder has negotiated a good faith offer to acquire the assets.
11. For any capital or system improvements to the electric distribution system not necessary for reliability or safety in excess of \$5 million made by PSCo after the 2020 Franchise effective date that are not on the 2019 PUC list of assets outside substations, Boulder may opt out of such improvements. This section shall not apply to any improvements that have been approved by the PUC prior to the franchise effective date. Boulder may not opt out of such improvements except to the extent provided in section II.K.4(c)(2) of the Cost Agreement.
12. Boulder shall not be required to post security for distribution detailed engineering design as provided in section IV.A.1 of the Cost Agreement unless Boulder fails to make a payment within 30 days of receipt of an invoice or the estimated total for all work exceeds \$5 million. If Boulder fails to make a payment PSCo can stop work in accordance with the terms of the Cost Agreement.
13. PSCo, at Boulder's cost, will work with Boulder to complete revisions to the Separation Plan and existing distribution detailed design drawings for separation of the distribution system necessary for changes made during the abeyance period. Completion of such

revisions shall occur within six months of Boulder's decision to exercise its right to recommence creation of a municipal electric utility if the city requests the design work be done by PSCo personnel pursuant to a cost estimate from PSCo and nine months if the city wants PSCo to competitively bid the design work.

14. The maximum purchase price for the PSCo facilities and property interests necessary for the Boulder System including interconnection at six substations as provided herein is \$200 million ("Maximum Purchase Price"). Commencing January 1, 2024, the Maximum Purchase Price shall be recomputed by raising or lowering it in an amount equal to the percentage of change for the preceding year in the consumer price index (all items) of the U.S. Department of Labor, Bureau of Labor and Statistics for the statistical area which includes Boulder. The actual purchase amount may be less than the Maximum Purchase Price if the Parties agree on a lower amount or a condemnation proceeding determines that the just compensation owed is less. The Maximum Purchase Price shall include acquisition costs for the list of assets outside substations approved by the PUC, going concern (if determined to be compensable) damages to the remainder, if any, and any agreed upon purchase price of the NCAR and Gunbarrel substations as described below. PSCo contends that Boulder does not have the right to condemn substation assets and Boulder reserves the right to assert that substation assets are subject to condemnation. The Maximum Purchase Price does not include any other substation assets, expert fees, attorneys' fees, interest or other litigation costs that may be awarded. Boulder reserves the right to contest any such award and both PSCo and Boulder reserve the right to appeal any condemnation court award or interlocutory rulings related to such proceedings. The Maximum Purchase Price does not include, nor does anything else in this Settlement Agreement include, any cap or restriction on any claim or award for stranded assets pursuant to Federal Energy Regulatory Commission Order No. 888. Boulder reserves the right to contest any claim for compensation for stranded assets and both PSCo and Boulder reserve the right to appeal any FERC rulings.
15. If requested by Boulder, PSCo will work in good faith to negotiate a partial or full requirement contract for wholesale energy and capacity with Boulder.
16. Upon the execution of this Settlement Agreement, Boulder and PSCo will file a joint motion to stay the FERC 210 Application proceeding pending the outcome of a city vote in November 2020.
17. Connection of the Boulder load to the PSCo transmission system shall be pursuant to the Load Interconnection Agreement, **Exhibit C**. The Load Interconnection Agreement (LIA) provides for interconnection at the Leggett, NCAR, Sunshine, WWTP, Boulder Terminal, and Gunbarrel substations. The existing System Impact Study and Facility Study under PSCo's OATT will need to be updated to reflect any changes on the PSCo or Boulder Systems. PSCo shall be solely responsible for all costs associated with the restudy and for any costs associated with updating the existing detailed design drawings to reflect changes identified by the restudy. The terms of the restudy and any associated redesign work will be substantially similar to those in the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019.

18. Boulder and PSCo agree to amend the LIA as necessary to reflect any changes in the System Impact Studies, Facilities Studies or detailed engineering design.
19. The execution date of the LIA will be contingent on, among other things, (a) the completion of the restudy work discussed in subparagraph 17.; and (b) the completion of the distribution interconnection study for Boulder Terminal discussed in subparagraph 24.
20. Boulder will construct a new, Boulder-owned Leggett Substation on land adjacent to PSCo's existing Leggett Substation currently owned by PSCo. PSCo will make modifications to the existing Leggett Substation to facilitate the interconnection of Boulder's substation to PSCo's. Each Party will own its respective substation facilities. Boulder shall acquire the land for the facilities to be constructed by Boulder.
21. Boulder shall purchase and PSCo shall sell the electric distribution facilities, common facilities, and land at the NCAR substation. PSCo shall retain the transmission facilities associated with the NCAR substation. Boulder shall grant an access easement for PSCo transmission facilities. The total purchase price shall be three million, two hundred and forty thousand dollars (\$3,240,000). The purchase price would be increased as provided for in subparagraph 27.
22. Boulder will construct a new, Boulder-owned Sunshine substation on city-owned land adjacent to PSCo's existing Sunshine substation. Each Party will own its respective substation facilities. PSCo shall grant an access easement in the existing PSCo substation. Boulder will acquire land adjacent to PSCo's substation from PSCo for the city's new substation.
23. Boulder will construct a new, Boulder-owned WWTP substation on Boulder-owned land. PSCo will construct a new, PSCo-owned WWTP substation adjacent to Boulder's substation. Each Party will own its respective substation facilities. PSCo shall acquire an equipment and access easement for PSCo transmission facilities.
24. PSCo will provide distribution wheeling service across the distribution facilities in Boulder Terminal substation to the Boulder distribution system. The wheeling rate is subject to approval by FERC. Distribution wheeling is typically metered on the high side of the distribution transformers; however, a distribution interconnection study will need to be performed prior to finalizing the metering point. PSCo and Boulder will amend the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019 to include this study work and the work to develop detailed design drawings for Boulder Terminal by PSCo at Boulder's expense. PSCo will provide distribution wheeling service at a facility-specific rate for wheeling across the three distribution transformers and switchgears in the Boulder Terminal Substation. The facility-specific rate is calculated by dividing the Revenue Requirement by the Monthly Demand. Based on 2020 data, the above formula yields a current distribution wheeling rate of \$17,370.33 per month. Boulder shall have the option of selecting a variable demand rate. The rate will be recalculated based on current data at the time a Distribution Wheeling Agreement (DWA) is executed and will not change for a period of five years from the effective date of the DWA. The terms of the DWA shall be substantially similar to those in other DWAs previously negotiated with the city and filed

with FERC. The Point of Change of Ownership will be the point of attachment in the switchgear feeder breaker cubicles so that PSCo retains full ownership of all substation facilities up to the feeder attachment and Boulder would own the feeder cables and conduits from the point of attachment and exiting the Boulder Terminal substation. To the extent Boulder plans to perform construction or maintenance work on the feeder cables or conduits within the Boulder Terminal substation, Boulder will utilize PSCo personnel/contractors for the work at Boulder's expense. Boulder personnel will not have access inside the Boulder Terminal substation, except for work on the city's RTU, as discussed below. The city will have the ability to remotely trip/close the switchgear feeder breakers. The city will install an RTU in Boulder Terminal substation, at a location acceptable to PSCo, for visibility and control of the switchgear feeder breakers. If the city's personnel need to physically access the RTU, access will require a PSCo escort. PSCo will have the ability to (a) disable the city's control of the switchgear feeder breakers; and/or (b) trip the switchgear feeder breakers in accordance with good utility practice. Situations when PSCo may take such action include, but are not limited to: (c) load shedding as required by NERC reliability standards; (d) providing a safe work environment for PSCo personnel/contractors working within the substation; and/or (e) emergency situations for either utility. When practical, PSCo will provide the city with advance notice before disabling the city's operation of the switchgear feeder breakers, but such advance notice is not always practicable. The city will provide advance notice to PSCo's operations center prior to opening or closing any feeder breaker if such advance notice is practicable and will operate all feeder breakers consistent with good utility practice. The city understands that if the distribution bus or transformer relaying trips, the switchgear feeder breakers may be locked out open. Prior to Cut-Over, Boulder and PSCo will develop a written operating procedure detailing how the city will operate the switchgear feeder breakers and how PSCo and the city will work together to address any operational issues. The city and PSCo will work in good faith to develop procedures that minimize undo wear and tear on PSCo's equipment. The terms and conditions for the interconnection facilities at Boulder Terminal are included in the LIA.

25. Boulder shall purchase and PSCo shall sell the electric distribution facilities at Gunbarrel as shown in the Facility Study Report dated August 16, 2019 for seven million, seven hundred and twenty thousand dollars (\$7,720,000), contingent on Boulder developing an outage plan for the separation to occur at the substation. The purchase price would be updated as provided for in subparagraph 27. PSCo shall retain its transmission facilities and easements associated with the Gunbarrel substation. The city will acquire easement rights for the distribution facilities to be acquired. Tri-State Generation and Transmission Association, Inc. and Poudre Valley REA, Inc. will each retain their facilities. Design drawings for Gunbarrel, consistent with the results and conclusions of the Facility Study Report dated August 16, 2019, and consistent with the results of the updated System Impact Studies and Facilities Studies referenced in subparagraph 17. will be completed by PSCo at Boulder's expense. PSCo and Boulder will amend the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019 to include the detailed engineering design work for Gunbarrel.

26. The purchase prices in subparagraphs 21. and 25. above and the manner in which they are calculated are non-precedential and non-binding in any future legal proceeding except for enforcement of the agreements associated with the 2020 Franchise.
27. In the event PSCo replaces any distribution facilities at the NCAR or Gunbarrel substations, the purchase price in subparagraph 21. or 25. will be increased to include the depreciated actual costs incurred by PSCo to purchase and install such facilities. However, PSCo will not add to the purchase price of the new facilities any additional amount to reflect the return on investment for such additional facilities.
28. PSCo and Boulder retain all rights, including any right to raise any defense, objection, legal challenge, or contest any claim of the other in any future condemnation action, except as specifically stated otherwise in this Settlement Agreement, and nothing herein shall be construed as either Party conceding the validity of a claim of the other.

K. Streetlights. Boulder may, at its option, purchase the streetlights from PSCo within the City of Boulder limits, by agreement from both Parties and with PUC approval or condemnation, whether or not it exercises an opt-out of the franchise or municipalizes.

L. Broadband. Boulder shall be permitted to use PSCo's Electric Distribution poles for the attachment of fiber necessary to build out a municipal broadband service. Such attachment shall be subject to the same terms and conditions as set forth in Paragraph 10.1 of the Franchise Agreement, provided, however, Boulder shall be responsible for any payment or other condition imposed by state or federal law or regulation. This provision shall be subject to additional terms and conditions as mutually agreed by PSCo and Boulder.

M. Additional Terms. Upon signature of this Settlement Agreement:

1. PSCo shall not make any reportable campaign contributions to support or oppose any measure on the November 3, 2020 ballot in Boulder or any vote on whether to exercise the city's right to terminate the Franchise Agreement pursuant to paragraph 2.5 of the Franchise Agreement triggered by a failure to meet the 2022 target or (3) any vote on whether to exercise the city's right to terminate the Franchise Agreement on the fifth anniversary of the Effective Date of the Franchise pursuant to paragraph 2.4 of the Franchise Agreement. Notwithstanding the foregoing, nothing herein shall restrict any individuals from written or oral advocacy of their views with respect to the Franchise Agreement, this Settlement Agreement or any associated agreement, provided that such advocacy does not constitute a reportable contribution.
2. Boulder and PSCo will work together with respect and transparency towards their shared goals and interests. This includes establishing open and effective channels of communication regarding policy positions relating to electricity generation, transmission, or distribution in Colorado taken at the local, state, and federal levels. To the extent practical, both Parties agree to provide notice to the other of those public meetings where the specific policy positions relating to electricity generation, transmission, or distribution in Colorado before the Colorado General Assembly will be discussed. When possible, the Parties, through either staff, elected officials, or committee meetings, will include an

opportunity to educate each other on the implications and impacts of positions taken by either Party. This Agreement does not apply nor extend to the efforts of either Party as members of trade organizations or advocacy coalitions. The Parties acknowledge that the legislative process is often swift and not conducive for the notice and consultations anticipated by this Agreement. The failure to meet any requirement described in this paragraph does not constitute a breach or default under this Agreement.

3. To the extent requested by Boulder, PSCo will participate in Boulder's community engagement process between the date of signature and September 4, 2020 which may alter or modify the terms of the final agreements and franchise related to the distribution partnership and grid planning and modernization.

N. General Provisions.

1. Representations and Warranties. Each Party warrants and represents to the other Party that:
 - a. Such Party has taken all necessary corporate, municipal, and legal actions, to the extent required, to duly approve the making and performance of this Agreement and the Associated Agreements;
 - b. Such Party has authority to enter into this Agreement and the Associated Agreements;
 - c. This Agreement has been validly executed and delivered by such Party and constitutes that Party's valid and binding obligation, enforceable against it in accordance with the terms hereof; and
 - d. Such Party has read this Agreement and fully understands all of its terms, covenants, conditions, provisions and obligations and such Party believes that this Agreement is a fair, just, and reasonable resolution of the disputes between the Parties.
 - e. Boulder additionally represents and warrants that execution of this Agreement complies with Boulder Municipal Code Section 2-2-14 (Initiation and Settlement of Claims and Suits).
2. No Admissions. This Agreement is being entered into solely for purposes of compromise and settlement. Each of the Parties expressly denies any wrongdoing or liability whatsoever. By entering into this Agreement, no Party is admitting any liability or wrongdoing, and nothing in this Agreement shall in any way be deemed or construed to constitute an admission of wrongdoing or liability by any Party or the waiver of any defense.
3. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their employees, predecessors, successors, directors, officers, administrators, assigns, agents, principals, subsidiaries, parent and affiliate companies, trustees, representatives, insurers, attorneys, and elected officials.
4. Execution in Counterparts. The Parties agree that this Agreement may be executed in counterparts and that when so executed by all Parties shall constitute one agreement binding on all Parties hereto. The facsimile or other electronically transmitted copy of this Agreement shall be deemed as binding and as valid as the original signatures to this Agreement, in which case the Party so executing this Agreement shall promptly

thereafter deliver its originally executed signature page (but the failure to deliver an original shall not affect the binding nature of such person's signature).

5. Governing Law. The validity, construction, interpretation and administration of this Agreement shall be governed by the substantive laws of the State of Colorado.
6. Amendment. This Agreement shall not be modified or amended except by an instrument in writing signed by the Parties.
7. Attorneys' Fees and Costs. The Parties agree that, upon certification of election results showing voter approval of the 2020 Franchise, the obligations set forth in this Agreement include, and are in complete satisfaction of, any right that each Party, or any attorney employed by that Party, may have, or claim to have, to recover attorneys' or consultant/expert fees against any other Party in connection with any matter covered by this Agreement. Each Party shall bear its own costs and shall waive and not make any claims against the other for any costs, expenses, fees or any other expenditure of monies incurred in any matter related to this Agreement.
8. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the Parties with regard to the subject hereof and supersedes any prior negotiations, representations or agreements, written or oral, with respect to such subject matter (none of which prior matters shall be binding upon the Parties).
9. Party Communications. Communications made in the negotiation or implementation of this Agreement are not intended as and will not be construed as waivers by any Party of any applicable privilege, protection, or immunity. All negotiations leading to this Agreement and all communications related thereto will be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Colorado Rules of Evidence.
10. Savings Clause. If any term or provision of this Agreement is held to be invalid, illegal, or contrary to public policy, such term or provision shall be modified to the extent necessary to be valid and enforceable and shall be enforced as modified; provided, however, that if no modification is possible such provision shall be deemed stricken from this Agreement. In any case, the remaining provisions of this Agreement shall not be affected thereby.
11. Waiver of Rights. Any waiver of either Party's rights under this Agreement is only effective if in writing signed by the Party or its duly authorized representative, and any such waiver shall only be effective for the specific matter waived and shall not be deemed to apply to any other conduct, provision or other matter.
12. Advice of Counsel. The undersigned have carefully read this Agreement, fully understand it, and, upon advice of counsel, sign this Agreement as the free and voluntary acts of the undersigned. Boulder City Council has been fully advised of the terms of this Agreement and the condition that this Agreement is not effective unless the council places the Franchise Agreement on the November 3, 2020 ballot and the Boulder electorate approves the Franchise Agreement. Notwithstanding the foregoing, section M 1. of this Agreement shall be binding upon PSCo for and in advance of the November 3, 2020, election in Boulder.

13. Arm's Length. This Agreement was jointly drafted and was negotiated between the Parties at arm's length. Each Party had the opportunity to consult with independent legal counsel. Neither Party will be entitled to have any language contained in this Agreement construed against the other because of the identity of the drafter.
14. No Third-Party Beneficiary. This Agreement is not intended to and shall not be construed to give any third party any interest or rights with respect to this Agreement or any of the provisions contained herein, except as otherwise expressly set forth in this Agreement.

[Signature Page Follows]

PUBLIC SERVICE COMPANY OF COLORADO, A COLORADO CORPORATION

Alice K. Jackson, President

Dated: _____

**CITY OF BOULDER,
a Colorado home rule city**

Jane S. Brautigam,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

APPROVED AS TO COMPLIANCE WITH
B.M.C. § 2-2-14:

Thomas A. Carr,
City Attorney

ENERGY PARTNERSHIP AGREEMENT

This Energy Partnership Agreement (this “Agreement”) is by and between PUBLIC SERVICE COMPANY, a Colorado corporation (“PSCo”) and, the CITY OF BOULDER, a Colorado home rule city (“Boulder”). PSCo and Boulder shall be referred to collectively as the “Parties” and each individually as a “Party.” This Energy Partnership is entered into on this ____ day of August 2020 to be effective if the voters approve a Franchise Agreement between the Parties at the November 3, 2020 election. This Energy Partnership Agreement and the Settlement Agreement will be additional documents supported by the overall settlement between PSCo and the City of Boulder to be effective if the voters approve the Franchise Agreement.

SECTION I PURPOSE, INTENT

A. Purpose. The purposes of this Agreement are to:

1. provide a framework for collaborative distribution-level planning for local projects and initiatives that support a shared vision towards energy-related emissions reductions by increasing accessibility to local renewable energy, improving resilience and reliability and designing solutions that are accessible and equitable; and
2. memorialize the framework and process (the “Partnership”) by which Boulder and PSCo will work together to execute local programs, projects and initiatives and track progress towards specific energy and greenhouse gas emissions targets; and
3. identify specific Partnership options that address the gap between PSCo’s 80 percent carbon emissions reduction by 2030 and Boulder’s 2030 goal of 100 percent renewable electricity serving Boulder; and
4. outline the process of engaging representatives from the Boulder community and PSCo in ongoing and regular dialogue.

B. Vision.

1. Boulder has long understood the importance of local climate action and has committed to rapidly transitioning to a clean energy economy and lifestyle through innovative strategies that dramatically reduce greenhouse gas emissions, enhance our community’s resilience and support a vital and equitable economy. Boulder seeks to achieve its energy and climate related goals by reducing fossil fuel demand from buildings and transportation, rapidly transitioning to an energy system and economy that is powered 100 percent by renewable clean electricity with 50 percent or more of that produced locally, and prioritizing progress towards a resilient energy system that prioritizes the most vulnerable members of the community.
2. PSCo will be the preferred and trusted provider of the energy its customers need. As such, PSCo wants to partner with Boulder to support the City of Boulder’s and the community’s energy vision, goals and objectives.
3. Boulder and PSCo will work to support and achieve each other’s vision, for the benefit of the overall Boulder community which includes residents and businesses.

Boulder and PSCo will separately and collaboratively pursue innovations in technology that accelerate achievement of the visions described above.

4. PSCo's ability to implement innovations rapidly may be constrained by regulatory requirements. Both Parties will work toward identifying and minimizing and overcoming both external and internal barriers to the rapid implementation of agreed-upon projects.

C. Guiding Principles.

1. The goals of this Agreement are to prioritize reducing greenhouse gas emissions associated with gas and electric consumption, electrification, resilience and equity within Boulder.
2. Such prioritization will necessitate working together to help Boulder add renewables in order to achieve its 100 percent renewables goal by 2030 to reach zero electricity sector emissions.
3. Boulder and PSCo will work collaboratively to advance the vision and goals of both Parties by sharing information, pushing innovation, and adhering to the governance structure set forth by this Partnership.
4. This Partnership will strive to identify projects that meet Boulder's goals and could be scaled and replicated where appropriate in other Colorado communities served by PSCo Energy - Colorado in the future.
5. Pursuit and execution of this Partnership will avoid shifting costs to other PSCo Energy - Colorado customers outside of city limits, except to the extent approved, and deemed reasonable, by the PUC.
6. The Parties further wish to utilize the Partnership, where appropriate, to test and promote innovative technologies and strategies through partnerships with public and private-sector entities such as the University of Colorado and federal labs.
7. Both Parties agree to support efforts and collaborate when appropriate on federal and private grants and other funding models as available that help to achieve the goals and objectives set forth within this Agreement.
8. Boulder recognizes that PSCo is subject to a state regulatory framework when it works to advance the goals set within this Agreement. Both Parties also recognize that PSCo's efforts must continue to support a healthy utility company. Boulder plans to support to the extent appropriate for its goals and PSCo's efforts for regulatory change to advance the projects.

D. Goals. The Parties have established qualitative and quantitative goals that will guide the actions of the Partnership. The Parties will work together collaboratively to achieve the goals of this Agreement and as those goals change over time. Goals of the Partnership include, but are not limited to:

1. Boulder having set forth a goal to achieve 100 percent renewable electricity by 2030;
2. PSCo having set forth a goal to achieve 80 percent carbon reduction on the electric grid by 2030 and 100 percent carbon emission reduction on the electric grid by 2050; both from 2005 levels;

3. projects agreed to and pursued by both Parties will be specific and measurable in achieving Boulder's climate and energy related targets and goals;
4. Boulder and PSCo working together to ensure that the normal distribution system planning work planned by PSCo includes engagement with the community and other stakeholders;
5. the Parties identifying local projects that support Boulder's and PSCo's goals related to carbon emissions, renewable energy, resilience, reliability, and equity;
6. projects, programs and or initiatives that seek to alleviate inequities among Boulder community members and create opportunities for those who are or have been underrepresented provided opportunities to participate, be heard and benefit from selected projects and programs;
7. safe, resilient, and reliable electricity being provided to Boulder customers at fair and reasonable costs;
8. the Parties working in collaboration to create and implement programs, services, and products that meet the needs and expectations of its diverse community, including demand-side management, transportation electrification, distributed generation, storage and resilience projects; and
9. projects that may be funded through a variety of sources, including, but not limited to private and public grants, industry partnerships and innovative financing mechanisms or payment.

SECTION II GOVERNANCE

A. Executive Team. The Executive Team is responsible for oversight of this Agreement. This includes communication and collaboration to achieve the programs, projects, initiatives and goals set forth in this Agreement. The Executive Team's guide is to ensure that Boulder's goals are met and how best to remedy challenges either through adjustments or through execution of the opt-out provision of the Franchise Agreement. The Executive Team will meet quarterly for the first two years, then semiannually at a minimum.

1. The Executive Team will consist of:
 - a. The City of Boulder:
 - i. City manager; and
 - ii. Executive leadership responsible for climate and city infrastructure.
 - b. PSCo:
 - i. President of PSCo; and
 - ii. Executive leadership that oversees Community Relations and Customer Accounts.

B. Project Oversight Team. The oversight of the Distribution System Planning Projects ("DSP Projects"), Community Grid Planning Projects ("CGP Projects"), Innovative Grid Planning Projects ("IGP Projects") and Community Programs ("CPs") will be provided by the Project Oversight Team. This team shall consist of a core and consistent team of representatives from PSCo and Boulder that have the expertise to evaluate the feasibility, value, and requirements of programs and projects. This oversight team will lead the

process of appointing teams for projects on **Attachments A** and moving projects from **Attachment B** to **Attachment A**. The Project Oversight Team shall appoint a Project Management Team for each program and project. The Project Management Teams will review and provide guidance towards the successful implementation of initiatives and to review and prioritize new projects and programs.

1. Additionally, members of the Project Oversight Team should have the organizational authority to authorize the implementation of programs and projects along with the ability to assign staff members. Implementation includes but is not limited to identifying the subject matter experts to support the project or program, evaluate the funding needed to implement the project or program, and authorize the project plan. This team will meet monthly unless the Parties agree that less frequent meetings meet the purposes of this Agreement.

At the core the Project Oversight Team includes:

- a. City of Boulder:
 - i. Director of Climate Initiatives;
 - ii. Chief Sustainability and Resilience Officer;
 - iii. Electrical Engineer;
 - iv. Energy Strategy Advisor;
 - v. Others as determined by the City; and
 - vi. The city manager may select alternates to any of the above that have equivalent positions or knowledge.
- b. PSCo:
 - i. Manager of Local Government Affairs;
 - ii. Manager of Key Accounts;
 - iii. Distribution Project Manager; and
 - iv. Others as determined by PSCo.
- c. At the direction of the Project Oversight Team, specific project management teams will be formed and made up of Subject Matter Experts (“SMEs”) and support staff from each organization involved in the project. The team will designate a lead project manager that will be responsible for the management of the project and reporting to the Project Oversight Team and the Executive Team on the status of the project. Staff members of both Parties may assign an additional SMEs to assist with a particular approved project(s).

- C. **Advisory Panel.** For purposes of ensuring that the activities being undertaken as part of this Agreement and supporting the vision, guiding principles, and goals of this Agreement, the Parties shall agree and establish an advisory panel, which shall include consistent designated representatives of both PSCo and Boulder staff (the “Advisory Panel”) and the Boulder community, both business and residential. The makeup of the Advisory Panel shall consist of 6-15 representatives determined by Boulder and PSCo that represent the business community, the residential community and the University of Colorado. The Advisory Panel shall determine a Charter for the panel. The Advisory Panel shall meet quarterly at a minimum for the term of the Franchise Agreement. The Advisory Panel shall regularly review and discuss energy-related issues of shared

importance to PSCo and Boulder, including but not limited to decarbonization of Boulder's electricity supply and use energy efficiency and demand-side management programs for customers, and overall local and state-wide initiatives that are related to the goals set forth within this Agreement.

SECTION III PROJECT AND PROGRAM PLANNING AND EVALUATION PROCESS

A. The Comprehensive Community Grid Planning and Programs Process.

1. In order to implement the projects and programs to meet the goals and grid modernization portion of the settlement, the Parties have established a Comprehensive Community Grid Planning and Programs process ("CCGPP") for each of three components: (i) Distribution System Planning, (ii) Community Grid Planning, and (iii) Innovative Grid Planning. A fourth area, Community Programs, is established to encompass more general distribution programs that are focused on helping Boulder achieve its goals.
2. The development and adoption of each portion of the CCGPP is intended to be accomplished by a partnership between appropriate staff of both PSCo and Boulder.
3. The CCGPP is to be implemented with (i) projects defined herein, (ii) projects to be developed during the term of this Agreement, (iii) programs, (iv) PSCo's existing capital improvement program, (v) PSCo's existing energy resource planning process, (vi) Boulder's existing Capital Improvement Program, and (vii) Boulder's budget process.
4. PSCo will work with Boulder to make the appropriate filings with the PUC when necessary to implement new products and services
5. The projects approved and implemented from the CCGPP are to:
 - a. result in use of energy resources to bridge the gap between PSCo's 2030 goal of an 80 percent reduction in carbon emissions from 2005 levels, and Boulder's 2030 goal of 100 percent renewable electricity within the City of Boulder; and
 - b. support the principles, priorities and goals as outlined above.
6. Programs are to recognize that the path to Boulder's goals require the beneficial electrification of transportation and buildings. The CCGPP projects can and should include projects and programs that support that transition. Beneficial electrification projects, particularly when paired with renewable generation, can assist in closing the 2030 emissions gap and in meeting Boulder's building- and transportation-sector emissions reduction goals.
7. Each project approved and implemented is to be specific, measurable, and achievable.

B. Goals, Metrics, and Criteria for Projects and Programs.

1. The Parties agree that they will work off two documents, **Attachment A** and **B**, and, through the Project Oversight Team, will evaluate, identify, and move projects from **Attachment B** to **Attachment A**. The two documents can change, evolve, and adjust. Goals and criteria on how the listed projects should be prioritized include:
 - a. Prioritized Project List – **Attachment A** projects:

Attachment A is a list of projects that Boulder and PSCo have identified that could be implemented within the first five years of the Partnership and will, go into 2021 planning rotations. This Prioritized Project List shall be populated from the evaluation of **Attachment B** (“Potential Project List”) projects to determine which projects meet Boulder’s goals and agreed by both Parties are realistic and reasonable.
 - b. Potential Project List – **Attachment B** projects:

Attachment B, the Potential Project List, shall be populated from community and staff ideas and screened to include only projects for which measured progress can be made and financially and technically reasonably feasible.
2. The following metrics shall be estimated in the evaluation of each project, as applicable, and will help close the gap between PSCo’s goal of 80 percent emissions reduction by 2030 and Boulder’s goal of 100 percent renewables by 2030. Unless the Parties agree on different metrics, projects shall be evaluated at least annually during implementation for:
 - a. change to building and transportation sector emission through beneficial electrification;
 - b. increase in installed capacity of local renewable generation;
 - c. impact on overall system and site reliability resilience; and
 - d. financial impact on Boulder residents and businesses.
3. The Parties are to identify certain individual Party activities that clearly advance the goals and purposes of this Agreement. Specific projects shall be selected as part of the Partnership. These projects shall increase emissions reductions and renewables beyond that deployed as part of:
 - a. existing or proposed voluntary community projects;
 - b. renewable projects to be proposed in future PSCo Electric Resource Plans;
 - c. Boulder’s existing funding by its CAP tax or part of CMAP; and
 - d. planned undergrounding - undergrounding fee settlement cannot be used for infrastructure that is required to be underground (e.g. new construction) that serves out of city customers or is part of PSCo’s capital improvement plan.

4. The projects approved must meet the following core criteria:
 - a. Projects that would not happen in the absence of this Partnership.
 - b. Be available to all the relevant customers in Boulder or that are in a project's target area without excluding members.
 - c. Align with the Boulder's commitment to racial equity and will include pathways for community members who typically do not have the opportunity to access programs or projects.
 - d. Be designed and structured to have the broadest impact to the most residences and/or businesses possible.
 - e. Include targets and metrics of this Agreement and others agreed upon by the Parties.
5. Metrics for success. In order to clearly define the successes of a project ahead of time, a project Charter with specific metrics will be refined or developed on a per-project basis and agreed upon by both Parties prior to approval of the project.
6. Specific to renewable energy goals, unbundled Renewable Energy Credits will not be used to meet Boulder's goals.

SECTION IV DATA SHARING

The Parties have agreed that data sharing by PSCo is necessary to implement the terms of this Agreement and the Settlement Agreement.

Except as is prohibited through regulation, PSCo will provide complete and accurate data as outlined in **Attachment C** attached hereto and incorporated herein. If Boulder finds any deficiencies or errors in the data provided, it shall notify PSCo in writing. PSCo will remedy any errors and provide Boulder corrected and any omitted information within 15 business days. PSCo may request additional time if reasonably necessary to make corrections or locate information.

PSCo and Boulder will collaborate to address data privacy barriers that prevent complete and accurate data sharing so long as the privacy of individual customers is protected from public disclosure, which may include working with state regulators to provide interpretation and/or alteration to existing regulation.

SECTION V FUNDING

The Parties will work together to identify and utilize both existing and new funding sources that may be available for each project. To the extent Boulder financially funds 100 percent of a project or pilot program which are then offered by PSCo Energy, within the 10 years of project or pilot launch, to other Colorado PSCo Energy customers, PSCo shall reimburse Boulder as necessary. Such reimbursements may be subject to PUC approval. Examples of

funding opportunities to be explored include but are not limited to DSMCA, RESA, CAP Tax, Participant Investment, Tariff-based Financing, Third-party Grant Funds, PSCo funded projects-

**SECTION VI
GENERAL PROVISIONS**

- A.** The Parties may change the agreement upon the written agreement of the Parties. The Parties shall evaluate any necessary revisions annually.
- B.** This Agreement shall be effective if the voters of Boulder approve a franchise agreement at an election on November 3, 2020.

IN WITNESS WHEREOF, the parties have caused this Energy Partnership to be executed as of the day and year first above written to be effective of the voters approve the Franchise Agreement at the November 3, 2020 election.

**CITY OF BOULDER,
a Colorado home rule city**

City Manager,
Jane Brautigam

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney' Office

Date: _____

Attachment A

Category	Project Title	Project Objectives / Key Outcomes
Local Generation and Resilient Infrastructure	Demonstrate technical viability, customer and business benefits of eliminating or increasing the 120% or Rule limit.	100% Renewables, Local Generation, Emissions Reduction, Legislative, Regulatory
Local Generation and Resilient Infrastructure	Chautauqua Energy Plan	Improve Resilience and Reliability for Chatauqua
Microgrid demonstration and Resilience	Neighborhood Microgrid and Virtual Power Plant Pilot	Distribution System Planning, Resilience, Emissions Reduction, Innovative Customer Programs, Regulatory
Transportation	Transit / School Bus Electrification Tariff	Transportation Electrification, Emissions Reduction, Regulatory
Local Generation, Resilient Infrastructure	Hydrogen Electrolysis Pilot	100% Renewables, Innovative Customer Programs
Clean Energy Goals, RE integration, Resiliency	Residential Demand Response Battery Pilot	Build upon lessons learned from Stapleton and Panasonic pilots to expand energy storage technology integration and develop a process and plan to leverage this technology for benefit for customers, the city, and the utility.
Reliability, Aesthetics	Undergrounding	Utilize new backlog and new undergrounding funding from Xcel to improve reliability and aesthetics.

Attachment A

Transportation	Transportation	Identify potential fleet electrification opportunities. Identify barriers and how city and Xcel can remove barriers
Transportation	Transportation	Increase EV penetration and create system to handle increasing EV penetration
Wildfire Mitigation/ Resiliency	Wildfire Mitigation Plans	Projects to reduce risks to the area associated with wildfire
Clean energy goals, RE Integration, Resiliency	Increase customer participation in Xcel Energy RE and DSM programs	Utilize current and future data from new metering data to develop design and implement new renewable and DSM programs.
Clean energy goals, energy efficiency, aesthetics	Streetlighting Pilot	Explore streetlighting solutions that would satisfy the City's lighting goals and objectives.
Planning Process	Distribution and Construction Planning Coordination	Coordinate Distribution Planning & to minimize impacts to the community from City and Xcel projects.
Process	Joint Trench Standard	Minimize impacts to the community from City, Xcel, and other utilities' projects.

Attachment A

Potential Partners	Funding Options
Neighboring Utilities, OEMs, COSSA, Utilities Comission, legislator(s)	No direct funding. No material need.
Chautauqua	Xcel Energy Wildfire Mitigation Filing, 1% Underground Fund Other Funding needs to be explored
OEMs, Research	Innovative Clean Tech Tariff at PUC to be explored
RTD, Via Mobility	TEP Innovation Portion of Xcel Energy's Filing needs to be explored. Possible off-set by Boulder
Transportation Partners	Innovative Clean Tech Tariff at PUC to be explored
	1% Undergrounding Fund

Attachment A

	TEP Innovation Portion of Xcel Energy's Filing needs to be explored. Possible off-set by Boulder
	TEP Innovation Portion of Xcel Energy's Filing needs to be explored. Possible off-set by Boulder

Attachment B

Category	Project Title	Project Objectives / Key Outcomes
Accelerate carbon footprint reduction, reliability	Electric Vehicles	
Distribution System Planning	Non-wires alternative project	
Clean Energy Goals	High PV Integration/ Accelerated Solar Adoption	
Futuristic Ideas	Broad set of goals, need to prioritize.	
Grid Modernization	Distribution System Planning Coordination and Prioritization	Distribution System Planning, Performance, Reliability & Aesthetics What is the definition of aesthetics or what are the expectations around this?
Grid Modernization		Improve aesthetics to neighborhood, improve system resilience
Meeting Customer Needs	Flexible Service Offerings	
Reliability Equity	Identify and improve reliability and resilience equity	
Reliability Improvements	FLISR + targeted undergrounding	
Research and Demonstration	Alpine Balsam	
Research and Demonstration	Second-life battery storage	
Research and Demonstration	Solar Technology Acceleration Center (SolarTAC)	
Research and Demonstration	US DOE Funding Request	
Research and Demonstration	US DOE Funding Request	
Resiliency, Asset Health	Transmission Projects	
Resilient Infrastructure	Identify key customers requiring a more resilient infrastructure	Create a more resilient system for key customers to benefit community in times of system strain

Data Sharing - Attachment C

Line No.	Data Name	To be provided by PSCo (Some data may be excluded from specific reporting items due to the application of customer data privacy rules)	Method of Reporting	Frequency	Notes:
1	System GIS Model	Static system model that includes all current distribution feeders and facilities served from Boulder Terminal, Leggett, NCAR, Niwot, and Sunshine Substations. Models shall include, but not be limited to: •Distribution feeder normal configurations •Protective devices (circuit breakers, reclosers, fuses) •Conductor sizes, types and section lengths •Conduit sizes and types •Pole-mount and pad-mount transformers •Secondary connections from distribution transformers to customer meters, including conductor size and length (for in-city customers only) •Peak annual demand data or energy (kWh) data. This data may be aggregated at the distribution transformers or by location.	Data set delivered to the COB designated engineer	Annually and in the event of an Opt-Out	
2	System Power Flow Model (Synergi or current software)	Copies of any updated power flow models for all substation feeders that serve load within the City of Boulder	Data set delivered to the COB designated engineer	Limited; only as updated by PSCo	
3	Substation Loading/Peak Annual Demand Data	8760 MVA and MW data per feeder to the extent that doing so does not violate individual customer confidentiality requirements. This data will show loading on an hourly basis (kW, kVAR, current, and voltage) for each phase of each feeder. PSCo will also provide the date of PSCo Transmission system peak for each year.	Data set delivered to the COB designated engineer	Annually and in the event of an Opt-Out	
4	Solar, Renewable, and DER Resources	Detailed information on solar or other energy generation and storage on the distribution system, including “behind-the-meter” customer installations and separate, larger scale installations. Information shall include: •Installed capacity at the feeder/distribution transformer connection •Monthly peak generation and annual peak generation at the feeder/distribution connection •Dedicated Electric Vehicle charging station infrastructure installations	As outlined in relevant Project Charter(s)	As outlined in relevant Project Charter(s)	Specific data sharing will be defined as part of the project charters
5	Operations and Maintenance - Vegetation and Pole Testing	Routine reporting on vegetation management and pole testing.	Coordination meeting updates	Routine	
6	Operations and Maintenance Activity - Substations and Distribution System	Detailed cost and test reports for major system upgrades to the the Boulder Terminal, Gunbarrel, Leggett, NCAR, Niwot and Sunshine Substations and associated distribution feeders.	Stand-alone report	Annually and in the event of an Opt-Out	
7	Planning Documents for Upcoming Two Years	Distribution, transmission and substation planning documents showing specific plans and budgets for new facilities, upgrades, replacements and retirements for the next two years.	Stand-alone report	Bi-annually	Format to follow that specified by the PUC for distribution system planning
8	Undergrounding Planning and Prioritization	Detailed information on the locations and costs for undergrounding facilities specifically using the undergrounding portion of franchise fees. •Projects performed in the prior year, including schedule and budget performance versus planning •Projects to be performed in the next year, including schedule and budget	Stand-alone report	Annually and in the event of an Opt-Out	

Data Sharing - Attachment C

9	Reliability Data	Detailed reliability performance will be reported annually. The information to be provided will include performance data community-wide, as well as by substation (Boulder Terminal, Gunbarrel, Leggett, NCAR, Niwot and Sunshine) and by feeder, both with and without extraordinary events. The performance indices to be provided will include SAIDI and SAIFI as well as other industry standard metrics for the overall community, as well as by substation and feeder. The information provided will also include heat maps showing the geographic location of outages.	As outlined in relevant Project Charter(s)	As outlined in relevant Project Charter(s); Not less than annually	Specific data sharing will be defined as part of the project charters
10	Boulder Usage Data	Electric and gas usage data for all rate schedules. Usage data includes customer counts, kWh/kW, dth and associated revenues.	Community Energy Report	Annually	To be presented in the same or comparable form as the usage data by rate class presented in PUC docket 14A-0102E
11	Boulder Resident Utility Program Participation	<p>Customer participation in utility-based programs including EV Charging, battery storage, solar installations (solar-rewards/non-solar rewards), renewable connect and demand-side management. At a minimum, this will include:</p> <p>Community Solar Gardens: - Participant count and total subscribed capacity by major customer class</p> <p>On-Site Solar - Solar*Rewards and Net-Metering Only -Participant count and total installed capacity by rate schedule -Total customer incentives by rate schedule (Solar*Rewards only) -Annual kWh production where production meter or AMI meter is installed -Estimated kWh production where production meter is unavailable</p> <p>Renewable*Connect: -Participant count and subscribed capacity and energy by contract term and major customer class</p> <p>Demand-Side Management Programs: -Customer participation (number of customers), kWh and kW saved and incentives paid by DSM product.</p> <p>Transportation Electrification Plan: -Customer participation by product</p>	Community Energy Report	Annually	<p>EV Program participation will begin following product implementation as outlined in the Transportation Electrification Plan</p> <p>Solar generation kWh estimates will be developed using PVWatts and assuming a 0.5% annual degradation rate and 20-year lifetime.</p>

12	Certified Renewable Percentage (CRP) Report	Community Certified Renewable Percentage	See Notes	Annually	<p>CRP will be reported through a number of channels. Below is the list of places Xcel Energy has indicated the CRP will be reported. 2019 RES Report (link below – see pages 23-24, and Attachment B).</p> <p>The Company is currently determining the best set of reporting forums that would achieve these objectives. The information would be reported through some combination of the following forums:</p> <ul style="list-style-type: none"> • The annual Community Energy Reports; • The Company's annual Carbon and Energy Mix reporting; • The Company's annual Corporate Responsibility Report; • The annual Renewable Electricity Standard Compliance Report required by Rule 3662; or • A webpage on the Company's broader website that would explain the CRP. <p>https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/2019%20RES%20Compliance%20Report.pdf</p>
13	Carbon Emissions from Electric	Annual carbon emissions associated with electric service by major customer class	Community Energy Report	Annually	
14	Carbon Emissions from Gas	Annual carbon emissions associated with gas service by major customer class	Community Energy Report	Annually	
15	Summary of Operations	Annual investment and estimated earnings for the Boulder Division	Stand-alone report	Annually and in the event of an Opt-Out	Includes investments benefiting customers outside of the city boundaries

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BOULDER TERMINAL, GUNBARREL, LEGGETT, NCAR, SUNSHINE, AND WASTEWATER TREATMENT PLANT SUBSTATIONS

LOAD INTERCONNECTION AGREEMENT

BETWEEN

PUBLIC SERVICE COMPANY OF COLORADO

AND

CITY OF BOULDER, COLORADO

Dated: _____, _____

Version 0.0.0

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PREAMBLE

This Load Interconnection Agreement Providing for Load Interconnection between Public Service Company of Colorado and the City of Boulder ("Interconnection Agreement") is made and entered into this ____ day of _____, _____, by and between CITY OF BOULDER, a Colorado home rule city, hereinafter referred to as "City" or "Boulder," its successors and assigns, and PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, hereinafter referred to as "Public Service," "PSCo" or "Transmission Provider." Boulder and Public Service may be referred to individually as a "Party" or collectively as the "Parties".

EXPLANATORY RECITALS

WHEREAS, Boulder is a home rule city that plans to operate its own municipal electric distribution utility serving customers within the City and will be engaged in generating, purchasing, distributing and selling retail electric power, energy and electric service within the State of Colorado; and

WHEREAS, Public Service is engaged in, among other things, the business of generating, purchasing, transmitting, distributing, and selling at retail and wholesale, electric power, energy and electric service within the State of Colorado; and

WHEREAS, Boulder and Public Service have entered into various agreements which provide, upon occurrence of certain circumstances, that the existing distribution system serving customers in Boulder will be divided into two separate operating systems; one serving PSCo customers and the other serving Boulder customers ("Separation"); and

WHEREAS, Public Service and Boulder have entered into a Facilities Study and Detailed Design Agreement dated May 6, 2019, PSCo Service Agreement No. 522-PSCO ("F&DED Agreement"); and

WHEREAS, the studies performed under the F&DED Agreement did not evaluate the distribution wheeling interconnection at Boulder Terminal Substation; and

WHEREAS, Boulder has served PSCo with formal written notice that its Go/No Go Decision is to proceed with Municipalization (i.e. the Proceed Date has occurred); and

WHEREAS, the the terms and conditions for interconnection of Boulder's facilities with Public Service's electrical system and to define the continuing rights, responsibilities, and obligations of the Parties with respect to the use of certain of their own and the other Party's property, assets and facilities; and

WHEREAS, the Parties desire to provide for several points of delivery and for the design, engineering, procurement, construction, ownership, operation, and maintenance of the facilities at these points of delivery; and

WHEREAS, this Interconnection Agreement shall be the valid, binding obligation of each Party upon acceptance of the Federal Energy Regulatory Commission ("FERC"), subject to the

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satisfaction of the conditions precedent set forth in Section 3.1 of this Interconnection Agreement.

AGREEMENT

NOW, THEREFORE, the Parties incorporate the above Recitals into this Interconnection Agreement, and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1** "Affiliate" shall have the meaning set forth in Section 1.1 of the Tariff.
- 1.2** "Applicable Law" shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over a Party or the Parties, as applicable, their respective facilities and/or the respective services they provide.
- 1.3** "Boulder System" shall mean the electric distribution system to be created, including existing facilities and new construction, which will serve Boulder customers within the Boulder city limits separate from the PSCo Distribution System Public Service will use to serve its customers after the Cut-Over Date.
- 1.4** "Business Day" shall mean Monday through Friday, excluding U.S. federal holidays that fall on those days.
- 1.5** "Cut-Over Date" shall mean the date when the separation of the Boulder System from the PSCo Distribution System is complete, so that (1) PSCo's Distribution System has equivalent or better safety, reliability and effectiveness as it did prior to the commencement of Separation activities, (2) the PSCo Distribution System and the Boulder System can each be operated separately from the other, and (3) Boulder is willing and able to begin serving all of its customers.
- 1.6** "EEE" shall mean the Electrical Equipment Enclosure on the substation property.
- 1.7** "Effective Date" shall have the meaning set forth in Section 3.1.
- 1.8** "Emergency" shall mean a condition or situation that in the reasonably good faith determination by the Party affected by such Emergency and based on Good Utility Practice, contributes to an existing or imminent physical threat of danger to life or a significant threat to health, property or the environment.
- 1.9** "FERC" or "Commission" shall mean the Federal Energy Regulatory Commission or its successor.
- 1.10** "Financing Party" shall have the meaning set forth in Section 18.1(c).
- 1.11** "Force Majeure" shall have the meaning set forth in Section 1.1 and Article 16 of the Tariff.
- 1.12** "Forced Outage" shall mean taking Boulder's System, PSCo's Distribution System or the transmission system, in whole or in part, out of service by reason of an Emergency or Network Security condition, unanticipated failure or other cause beyond the reasonable control of either Party, when such removal from service was not scheduled in accordance with Section 8.2.
- 1.13** "Go/No Go Decision" shall mean the pre-Separation decision by the City to move

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forward with Municipalization, and after the City otherwise has sufficient information, in its sole discretion, including cost information, to decide whether to move forward with Municipalization; and, if the City decides Municipalization should move forward, the term "Go/No Go Decision" also includes all necessary decisions by Boulder voters.

1.14 "Good Utility Practice" shall have the meaning set forth in Section 1.1 of the Tariff.

1.15 "Governmental Authority" shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services that they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Provider or any Affiliate of Boulder or PSCo.

1.16 "Hazardous Materials" shall have the meaning set forth in Section 1.1 of the Tariff.

1.17 "Indemnified Party" shall have the meaning set forth in Section 17.2.

1.18 "Indemnifying Party" shall have the meaning set forth in Section 17.2.

1.19 "Interconnection Guidelines" shall mean Xcel Energy's Interconnection Guidelines For Transmission Interconnected Customer Loads, as they may be revised from time to time by Transmission Provider and posted on Transmission Provider's website (www.xcelenergy.com).

1.20 "Interconnection Service" shall mean the service Transmission Provider will provide to Boulder to interconnect Boulder's facilities to PSCo's electric system (such facilities being described more fully in attachments) and the ongoing operations and maintenance of such facilities.

1.21 "Municipalization" shall mean all activities required for Boulder to own and operate the Boulder System separately from the PSCo Distribution System.

1.22 "NERC" shall mean the North American Electric Reliability Corporation or its successor organization.

1.23 "Planned Outage" shall mean action by (1) Boulder to take its equipment, facilities or systems out of service, partially or completely, to perform work on specific components that is scheduled in advance and has a predetermined start date and duration pursuant to the procedures set forth in Section 8.2, or (2) Transmission Provider to take its equipment, facilities and systems out of service, partially or completely, to perform work on specific components that is scheduled in advance and has a predetermined start date and duration pursuant to the procedures set forth in Section 8.2.

1.24 "Point of Change of Ownership" shall mean the physical point or points at which Boulder's facilities interconnect with PSCo's facilities, as depicted in Attachments A-1, B-1, C-1, D-1, E-1 and F-1.

1.25 "Proceed Date" shall mean the date the City provides notice to PSCo that the City's Go/No-Go Decision is to proceed with Municipalization.

1.26 "Protection System" shall mean (1) for purposes of Reliability Standard Compliance Responsibility: (a) protective relays which respond to electrical quantities, (b) communications systems necessary for correct operation of protective functions, (c) voltage and current sensing devices providing inputs to protective relays, (d) station dc supply associated with protective functions (including station batteries, battery chargers, and non-battery-based dc supply), and (e) control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices, and (2) for purposes other than Reliability Standard Compliance Responsibility: (a) protective relays which respond to electrical quantities, and (b) communications systems necessary for correct operation of protective functions, where the term

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“Reliability Standard Compliance Responsibility” means the column titled “Reliability Standard Compliance Responsibility” set forth in the Ownership, Construction, Operating, and Cost Responsibility Table for each substation attached hereto as Attachments A-3, B-3, C-3, D-3, E-3 and F-3.

1.27 “PSCo Distribution System” shall mean the electric distribution system to be created, including existing facilities and new construction, that will serve PSCo customers, separate from the Boulder System.

1.28 “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under the Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

1.29 “Reliability Standards” shall mean mandatory reliability standards adopted by NERC or WECC and approved by FERC, as amended from time to time, applicable to the facilities owned, and/or operated by Boulder and Transmission Provider, respectively.

1.30 “SCADA” shall have the meaning set forth in Section 7.7.

1.31 “Separation” shall mean the creation of the Boulder System and the PSCo Distribution System.

1.32 “Settlement Agreement” shall mean the Settlement Agreement between the Parties dated _____, 2020, which became effective by the decision of the voters of Boulder on November 3, 2020.

1.33 “Tariff” or “OATT” shall mean the Xcel Energy Operating Companies Open Access Transmission Tariff on file with FERC, as amended from time to time.

1.34 “Term” shall mean the period of time during which this Interconnection Agreement shall remain in force and effect.

ARTICLE 2

SCOPE AND OBLIGATIONS OF PARTIES

2.1 This Load Interconnection Agreement sets forth the terms and conditions of Interconnection Service provided by Transmission Provider to Boulder. Although the Transmission Provider intends this Interconnection Agreement to be a service agreement under the Tariff, the establishment of Interconnection Service under this Interconnection Agreement does not in itself entitle Boulder to receive any services under the Tariff other than the Interconnection Service, as provided for herein. Any other services that Boulder may require, such as transmission service, must be separately arranged under the Tariff in accordance with the terms and conditions of such tariff, and paid for by Boulder or other user of such services. Boulder is responsible for making arrangements for the power supply of its load requirements and delivery of capacity and energy to its system. The establishment of an interconnection under this Interconnection Agreement does not in itself entitle Boulder to obtain any services from the Transmission Provider that may be subject to the jurisdiction of FERC, or the State Regulatory Commission; Boulder must arrange for any such services in accordance with the applicable provider’s tariff or service requirements.

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2.2 The Parties have established conceptual designs for the separation of facilities, new facilities, equipment, and access easement locations within the Gunbarrel, NCAR, Leggett, Sunshine and Wastewater Treatment Plant substations for the respective facilities as depicted in the conceptual General Arrangements and Single Line diagrams attached to this Agreement as Attachments A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1 and F-2 and incorporated herein by this reference. The designs were completed based on the results of the System Impact and Facilities Studies and updates to the studies may require updates to the designs. To the extent the existing designs for PSCo-owned facilities require updates due to changes to the Separation as provided in the Settlement Agreement, PSCo will cover the costs of updating the existing designs. Detailed engineering design drawings for Boulder Terminal and Gunbarrel will be developed as described in the Settlement Agreement.

2.3 The Facilities Studies and System Impact Studies completed prior to execution of this Agreement may need to be updated as described in the Settlement Agreement.

2.4 The Parties will make Reasonable Efforts to coordinate activities performed in the execution of their respective responsibilities in order to provide for efficient and timely completion of the design.

2.5 Public Service shall provide Load Interconnection Service to the City as provided herein. The Interconnection Service will commence on the Cut-Over date, provided Boulder meets the obligations provided for in this Interconnection Agreement.

2.6 Ownership, Construction, Operation and Cost Responsibilities are as detailed in Attachments A-3, B-3, C-3, D-3, E-3 and F-3 attached to this Interconnection Agreement and incorporated herein by this reference.

2.7 Each Party shall have the right to have an authorized representative inspect the facilities of the other party at any time during construction. Appropriate advance notification of any inspection activities shall be provided.

2.8 The Parties will coordinate efforts in the execution of their respective responsibilities in order to provide for efficient and timely completion of the design, construction work, and obtaining required permits detailed in this Interconnection Agreement.

2.9 No Party will begin construction on its respective facilities at, or related to its respective facilities, until (1) the conditions set forth in Section 3.1 have been satisfied, (2) all necessary federal, state, and local permits and regulatory filings/approvals required to initiate construction have been secured, and (3) the Parties have agreed to a construction schedule. Permits or regulatory filings or approval necessary for project completion shall be secured or filed before the Cut-Over Date.

2.10 This Interconnection Agreement does not authorize the City to export power or constitute an agreement to purchase or wheel the City's capacity or energy. Such purchasing or wheeling services that the City may require from PSCo, or others, are provided under separate agreements.

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2.11 This Interconnection Agreement does not constitute a request for, or the provision of, any transmission service or any local distribution delivery service. Distribution delivery service is being provided for under the terms and conditions of the DWA. Transmission service on the PSCo transmission system shall be arranged pursuant to the OATT.

2.12 Boulder Terminal Substation

(a) PSCo will design and construct modifications to the Boulder Terminal Substation to provide for the interconnection of Boulder load to PSCo's electric system, as shown in the Boulder Terminal General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments A-1 and A-2.

(b) It is anticipated that no permits will be required for the modifications; however, to the extent permits are required, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations.

(c) The Point of Change of Ownership will be as shown in Attachment A-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of any facilities at Boulder Terminal Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment A-3.

(e) There will be no change in property interests as a result of the work at Boulder Terminal Substation.

(f) Boulder and PSCo will enter into a Distribution Wheeling Agreement ("DWA") for distribution wheeling service to commence as of the Cut-Over Date, which sets forth the terms, rates, and conditions under which PSCo will make available firm point-to-point service on the Boulder Terminal distribution facilities for the purpose of providing wheeling service for energy delivered from the transmission facilities owned and operated by PSCo to the Boulder System at Boulder Terminal Substation.

2.13 Gunbarrel Substation

(a) PSCo will design and construct modifications to the Gunbarrel Substation as shown in the Gunbarrel General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments B-1 and B-2. The modifications will include a new EEE which will allow for the relocation of PSCo's protection, control and SCADA equipment from the existing EEE to the new EEE.

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(b) PSCo shall coordinate with Tri-State Generation and Transmission Association ("Tri-State") to design modifications necessary to relocate any Tri-State protection and control system connections to PSCo's new EEE.

(c) Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. All other responsibilities shall be as provided for in Attachment B-3.

(d) The Point of Change of Ownership will be as shown in Attachment B-1.

(e) The property interests shall be as shown in Attachment B-4.

2.14 Leggett Substation

(a) The City will design, construct, operate and maintain a new Boulder Leggett Substation adjacent to the existing PSCo Leggett Substation. PSCo will design, construct, operate and maintain an expansion of the existing PSCo Leggett Substation on land owned by PSCo in order to interconnect the new Boulder Leggett Substation to PSCo's electric system as shown in the Leggett General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments C-1 and C-2.

(b) For both the Boulder Leggett Substation (including the City's 13kV distribution feeders exiting the substation) and the expanded PSCo Leggett Substation, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. Responsibilities for geotech, grading, drainage and constructing of common facilities shall be as provided in Attachment C-3. Each Party will be responsible for the siting of facilities at their respective substation sites.

(c) The new Boulder Leggett Substation will be constructed by the City on real property to be acquired by the City from PSCo adjacent to PSCo's expansion of the existing PSCo Leggett Substation. A common fence will be constructed inside or on the property line of the PSCo Leggett Substation to separate the Boulder Leggett Substation from the PSCo Leggett Substation. There will be a single ground grid for both the existing and new equipment in the PSCo Leggett Substation and the Boulder Leggett Substation. The Point of Change of Ownership will be as shown in Attachment C-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the expansion of the PSCo Leggett Substation and the Boulder Leggett Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment C-3.

(e) The property interests shall be as shown in Attachment C-4.

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2.15 NCAR Substation

(a) The City will design and construct modifications to the existing NCAR Substation and operate and maintain the NCAR Substation once ownership is transferred pursuant to the Settlement Agreement. PSCo will design and construct modifications to the transmission facilities serving NCAR Substation and operate, maintain and own the transmission facilities serving NCAR Substation as shown in the NCAR General Arrangement and One-Line Diagram attached to this Interconnection Agreement as Attachments D-1 and D-2.

(b) For all the modifications to the NCAR Substation included in the scope of this Interconnection Agreement, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. For the modifications to the NCAR Substation transmission facilities, Boulder shall be responsible for all permitting only for those modifications made as part of the Separation.

(c) As part of a purchase agreement, Boulder will own the real property for the NCAR Substation. PSCo will acquire an access and equipment easement from the City for PSCo's facilities. The Point of Change of Ownership will be as shown in Attachment D-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the NCAR Substation and any modifications to the NCAR Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment D-3.

(e) The property interests shall be as shown in Attachment D-4.

2.16 Sunshine Substation

(a) The City will design, construct, operate and maintain a new Boulder Sunshine Substation adjacent to the existing PSCo Sunshine Substation. PSCo will design, construct, operate and maintain modifications to the existing PSCo Sunshine Substation in order to interconnect the new Boulder Sunshine Substation to PSCo's electric system as shown in the Sunshine General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments E-1 and E-2.

(b) For both the Boulder Sunshine Substation (including the City's 13kV distribution feeders existing the substation) and, to the extent necessary, the PSCo Sunshine Substation, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. Each Party will be responsible for the siting of facilities at their respective substation sites.

(c) The new Boulder Sunshine Substation will be constructed by the City on real property owned by the City. PSCo will continue to own the land for the existing PSCo Sunshine Substation. A portion of the existing PSCo Sunshine Substation fence will become a common fence between the two substations. PSCo will retain the existing PSCo Sunshine Substation and all facilities located therein, including the common fence. The ground grid between the two

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substations will be tied together. The two substations will be electrically tied by new bus work over the common fence. The Point of Change of Ownership will be as shown in Attachment E-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the new Boulder Sunshine Substation and any modifications to the existing PSCo Sunshine Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment E-3.

(e) The property interests shall be as shown in Attachment E-4.

2.17 Wastewater Treatment Plant ("WWTP") Substation

(a) The City will design, construct, operate and maintain a new Boulder WWTP Substation at the City's Wastewater Treatment Plant Site on real property already owned by the City. PSCo will design, construct, operate and maintain a new 230kV PSCo WWTP Substation adjacent to the Boulder WWTP Substation and intercepting the Leggett to Niwot transmission line in order to interconnect the new Boulder WWTP Substation to PSCo's electric system as shown in the WWTP General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments F-1 and F-2.

(b) For both the Boulder WWTP Substation (including the City's 13kV distribution feeders existing the substation) and PSCo WWTP Substation (including PSCo's transmission line drops), Boulder shall be responsible for all permitting and siting in compliance with all state and federal environmental laws and regulations, and the responsibilities for geotech, grading, drainage and constructing of common facilities shall be as provided for in Attachment F-3.

(c) The Boulder WWTP Substation will be physically separated from the PSCo WWTP Substation by a common fence. There will be a single ground grid for both the Boulder WWTP Substation and the PSCo WWTP Substation. The Point of Change of Ownership will be as shown in Attachment F-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the new Boulder WWTP Substation and the new PSCo WWTP Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment F-3.

(e) The property interests shall be as shown in Attachment F-4.

ARTICLE 3 EFFECTIVE DATE AND TERM

3.1 Term and Filing. The Effective Date of this Interconnection Agreement shall be the effective date granted by FERC at the time that FERC accepts or approves this Interconnection Agreement. This Interconnection Agreement will be executed and filed after (1) the Proceed Date has occurred, and (2) Boulder requests Transmission Service and signs a Network Integrated Transmission Service Agreement and a Network Operating Agreement with PSCo for

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Transmission Service to the Boulder Terminal, Gunbarrel, Leggett, NCAR, Sunshine, and WWTP Substations. PSCo will request that FERC grant an effective date 60 days after filing.

Unless terminated earlier in accordance with Section 3.2 below, this Interconnection Agreement shall remain in effect for an initial period of 10 years from the Approved Date ("Initial Period"), and from year to year thereafter, but shall be subject to termination by either Party at the end of the Initial Period or on any anniversary date thereof by such Party giving written notice of its intention to terminate not less than 12 months prior to the end of the Initial Period and/or anniversary date.

In the event either Party provides notice of termination of this Interconnection Agreement under this Section 3.1, and Boulder still requires interconnection service to serve loads on the Boulder System, the Parties shall use commercially Reasonable Efforts to negotiate a replacement interconnection agreement. If Boulder no longer requires interconnection service, upon termination of this Interconnection Agreement, Transmission Provider may, at its sole discretion and at Boulder's expense, permanently disconnect or remove the PSCo facilities, provided such expense is just and reasonable and not unduly discriminatory.

3.2 Early Termination. Notwithstanding the term specified in Section 3.1, this Interconnection Agreement may be terminated early in the following circumstances: (1) by mutual agreement among the Parties; or (2) by either Party in the event of any material breach of this Interconnection Agreement by the other Party, provided, such termination shall be subject to FERC approval as set forth in Section 18.3 of this Interconnection Agreement.

The Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising out of an early termination under this Section 3.2. In the event of a Dispute regarding the early termination fee, either Party may request dispute resolution pursuant to the procedures in Article 20.

3.3 Survival. Certain provisions of this Interconnection Agreement shall continue in effect after termination of this Interconnection Agreement to give full effect to its terms. Such provisions include, but are not necessarily limited to, those relating to early termination, Boulder's payment for installation, operation, and maintenance of PSCo's facilities, and, as applicable, to provide for disconnection of Boulder's facilities from PSCo's electric system, final billings and adjustments related to the period prior to termination, and a Party's right to terminate, indemnification, and payment of any money due and owing to either Party pursuant to this Interconnection Agreement.

ARTICLE 4 CONTROL & POSSESSION OF THE PARTIES' SYSTEMS

4.1 This Interconnection Agreement applies only to those facilities specifically described herein; each Party shall retain possession and control of its respective interconnected system and this Interconnection Agreement shall not be construed as providing any rights or controls beyond those specified and agreed to herein.

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4.2 The PSCo-owned substations covered by this Interconnection Agreement shall be operated by Public Service pursuant to its operating procedures. The Boulder-owned substations covered by this Interconnection Agreement shall be operated by Boulder pursuant to its operating procedures.

4.3 The 115kV or 230kV transmission line gang operated switches, bus and breakers will be Public Service's Network Facilities (as defined in the Tariff). Boulder's equipment will not be considered Public Service Network Facilities.

ARTICLE 5 ATTACHMENTS

5.1 The attachments referenced herein as summarized below, attached hereto and made a part hereof, represent the General Arrangements, Single Line Diagrams and Ownership, Construction, Operating and Cost Responsibility Tables from the Facilities Study that have been completed for the Gunbarrel, Leggett, NCAR, Sunshine and WWTP Substations and the Ownership, Construction, Operating and Cost Responsibility Table for Boulder Terminal. The attachments shall be in force and effect unless superseded by subsequent attachments approved by the Parties as provided herein.

A-1	Boulder Terminal Interconnection General Arrangement
A-2	Boulder Terminal Interconnection One-Line Diagram
A-3	Boulder Terminal Interconnection Responsibility Table
B-1	Gunbarrel Substation Interconnection General Arrangement
B-2	Gunbarrel Substation Interconnection One-Line Diagram
B-3	Gunbarrel Substation Interconnection Responsibility Table
B-4	Gunbarrel Substation Property Interests
C-1	Leggett Substation Interconnection General Arrangement
C-2	Leggett Substation Interconnection One-Line Diagram
C-3	Leggett Substation Interconnection Responsibility Table
C-4	Leggett Substation Property Interests
D-1	NCAR Substation Interconnection General Arrangement
D-2	NCAR Substation Interconnection One-Line Diagram
D-3	NCAR Substation Interconnection Responsibility Table
D-4	NCAR Substation Property Interests
E-1	Sunshine Substation Interconnection General Arrangement
E-2	Sunshine Substation Interconnection One-Line Diagram
E-3	Sunshine Substation Interconnection Responsibility Table
E-4	Sunshine Substation Property Interests
F-1	WWTP Substation Interconnection General Arrangement
F-2	WWTP Substation Interconnection One-Line Diagram
F-3	WWTP Substation Interconnection Responsibility Table

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F-4	WWTP Substation Property Interests
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ARTICLE 6 FUTURE AGREEMENTS

6.1 This Interconnection Agreement shall serve as the COM and Interconnection Agreement contemplated in the F&DED Agreement and shall supersede any conflicting provisions of the F&DED Agreement.

ARTICLE 7 OWNERSHIP, CONSTRUCTION, OPERATION AND MAINTENANCE

7.1 Summary Description. Attachments C-1 through C-6, which are attached hereto and made a part hereof, provide a description of Boulder's electrical facilities and PSCo's electrical facilities.

7.2 Boulder's Facilities. Boulder shall at Boulder's sole expense design, construct, operate, maintain and own in accordance with Applicable Law, rules and regulations, the Tariff, and Good Utility Practice, the Boulder facilities as described in Attachments C-1, C-2, and C-3. Furthermore, Boulder shall operate the Boulder facilities in a manner that protects PSCo's electric system and PSCo's electric facilities from transients, faults, and other operating conditions occurring at or caused by Boulder including any effects on PSCo's electric system arising from the presence of distributed energy resources on the Boulder System.

7.3 PSCo's Facilities. PSCo shall design, construct, operate, maintain, and own in accordance with Applicable Law, rules and regulations, the Tariff, Good Utility Practice and the Interconnection Guidelines, the PSCo facilities shown on Attachments C-1, C-2, and C-3, and shall operate such facilities in a manner that protects the Boulder System, including Boulder's facilities, from transients, faults, and other operating conditions occurring at or caused by PSCo including any effects on Boulder's electric system arising from the presence of distributed energy resources on the PSCo electric system.

7.4 Modifications to Facilities. Either Party may undertake modifications to its respective facilities which shall be designed, constructed and operated in accordance with this Interconnection Agreement and Good Utility Practice; provided however, if either Party proposes to make any change or modification to the configuration or operation of its facilities which may impact the facilities or system of the other, the Party proposing the change shall provide sufficient notice and information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to the commencement of any work, and the Parties shall negotiate, in good faith, an amendment to this Interconnection Agreement as may be necessary to address the proposed change.

(a) Information provided under this Interconnection Agreement may be designated by a Party to be Confidential Information hereunder, including, but not be limited to, information concerning the timing of such modification and how such modifications are expected to impact the other Party's system. Unless a shorter period of time is appropriate for a Party to respond to an Emergency, or comply with Reliability Standards or Applicable Law, the Party desiring to

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perform such work shall provide the relevant drawings, plans and specifications to the other Party at least 90 days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

(b) In the event the Parties are unable to agree to appropriate amendments or modifications to this Interconnection Agreement pursuant to Section 22.7, PSCo will unilaterally file, on a timely basis, with FERC an amendment to this Interconnection Agreement.

(c) To the extent a Party modifies its facilities that Party shall be responsible for the costs of any additions, modifications or replacements that may be necessary to maintain or upgrade its facilities consistent with Applicable Law, rules and regulations, the Tariff, Good Utility Practice, and the Interconnection Guidelines. Each Party shall own any modifications to its facilities.

7.5 Ownership of Facilities. Ownership of facilities is set forth in Attachments C-1, through C-6.

7.6 Reliability Standards. Boulder shall be responsible for compliance with all Reliability Standards applicable to the Boulder System; and PSCo shall be responsible for compliance with all Reliability Standards applicable to PSCo's electrical system. Each Party shall be responsible for the costs of compliance with such Reliability Standards for their respective facilities and systems, including (1) costs associated with modifying their respective facilities or systems to comply with changes in such Reliability Standards; and (2) any financial penalties for non-compliance. The Parties agree to share data or documentation as may be required to demonstrate compliance with Reliability Standards where an individual Party has possession of data or documentation necessary for the other Party to demonstrate compliance.

7.7 Interconnection Guidelines. The Interconnection Guidelines provide additional and more detailed standards for designing, testing, studying, constructing, operating, maintaining and interconnecting at the point of interconnection. Transmission Provider shall develop or promulgate the Interconnection Guidelines, including any updates, changes or modifications thereto, in accordance with Good Utility Practice. The Interconnection Guidelines include, among other things, power factor requirements, supervisory control and data acquisition ("SCADA") equipment requirements, and metering requirements. Boulder will comply with the Interconnection Guidelines for the interconnections at Gunbarrel, Leggett, NCAR, Sunshine and WWTP. Boulder will also comply with the Interconnection Guidelines for the interconnection at Boulder Terminal to the extent the requirements in the Interconnection Guidelines apply.

In the event of a conflict between the Interconnection Guidelines and FERC rules, the Tariff or applicable Reliability Standards, the FERC rules, Tariff or Reliability Standards control.

7.8 Access. Appropriate representatives of each Party shall at all reasonable times; including weekends and nights, and with three (3) business days prior notice, have access to the other Party's facilities, to take readings and to perform all inspections, maintenance, service, and operational reviews as may be necessary to facilitate the performance of this Interconnection Agreement. While on the other Party's premises, each Party's representatives

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shall announce their presence and observe such safety precautions as may be required and shall conduct themselves in a manner that will not interfere with the other Party's operations.

7.9 Transfer of Control or Sale of Facilities. In any sale or transfer of control of either PSCo's or Boulder's facilities, the transferring Party shall as a condition of such sale or transfer require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of the transferring Party to this Interconnection Agreement with respect to this Interconnection Agreement or to enter into an agreement with the non-transferring Party to this Interconnection Agreement imposing on the acquiring party or transferee the same obligations applicable to the transferring Party of this Interconnection Agreement pursuant to this Section 7.9.

ARTICLE 8 OUTAGES AND COORDINATION

8.1 DISCONNECTION.

(a) Except when there is an Emergency, Forced Outage, Force Majeure and/or to comply with Applicable Law, including Reliability Standards, the Parties shall reasonably consult each other prior to disconnecting facilities.

(b) If at any time, either Party observes any Protection System facilities which appear to have been changed, or failed, that Party shall have the right, if it determines that such change or failure may have a material adverse impact on the safety or reliability of its electric system consistent with Good Utility Practice, to disconnect the other Party's System from its System, provided it first provides commercially reasonable notice to the other Party.

8.2 Outages. In accordance with Good Utility Practice, each Party may, in close cooperation with the other, remove from service its system elements that may impact the other Party's system as necessary to perform maintenance or testing or to replace installed equipment. Absent the existence of an Emergency, the Party scheduling a removal of a system element from service will use good faith efforts to schedule such removal on a date mutually acceptable to both Parties, in accordance with Good Utility Practice.

In the event of a Forced Outage of a system element of Boulder's electric system adversely affecting PSCo's facilities or electric system, Boulder will use Good Utility Practice to promptly restore that system element to service. In the event of a Forced Outage of a system element of PSCo's electric system adversely affecting the Boulder System, PSCo will use Good Utility Practice to promptly restore that system element to service.

In the event of a Planned Outage of a system element of the Boulder System adversely affecting PSCo's facilities or electric system, Boulder will act in accordance with Good Utility Practice to promptly restore that system element to service in accordance with its schedule for the work that necessitated the Planned Outage. In the event of a Planned Outage of a system element of PSCo's electric system adversely affecting Boulder's System, PSCo will act in accordance with Good Utility Practice to promptly restore that system element to service in accordance with its schedule for the work that necessitated the Planned Outage.

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8.3 Outage Reporting. The Parties shall comply with all current Transmission Provider reporting requirements, as they may be revised from time to time, and as they apply to Boulder or Transmission Provider. When a Forced Outage occurs that affects Boulder's facilities or impacts the Boulder System such that there is an adverse impact to PSCo's facilities or electric system Boulder shall notify the PSCo Control Center of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than one (1) hour after the Forced Outage occurs. Boulder shall immediately inform the PSCo Control Center of changes in the expected duration of the Forced Outage unless relieved of this obligation by the PSCo Control Center for the duration of each Forced Outage. When a Forced Outage occurs that affects PSCo's facilities or impacts PSCo's electric system such that there is an adverse impact to Boulder's facilities or the Boulder System, PSCo shall notify Boulder of the existence, nature, and expected duration of the Forced Outage as soon as practical.

8.4 Switching and Tagging Rules. The Parties shall abide by their respective switching and tagging rules for obtaining clearances for work or for switching operations on equipment. PSCo shall notify Boulder of PSCo's switching and tagging rules and provide periodic updates of such rules as they may change from time to time. Boulder shall establish switching and tagging rules for the Boulder System and shall provide such rules to PSCo.

8.5 Coordination of Operations. If a Party's facilities are subject to Public Service's functional control, the Parties will coordinate with the applicable functional directives from Public Service.

In all other circumstances:

(a) Electrical system operation shall be coordinated between Boulder and Transmission Provider, including the coordination of equipment outages, voltage levels, real and reactive power flow monitoring, and switching operations, which affect the PSCo electric system, as required by the Tariff and this Interconnection Agreement.

(b) If either Boulder or Transmission Provider operations are causing a condition on the interconnected electrical network where line loadings, equipment loadings, voltage levels or reactive flow significantly deviate from normal operating limits or can be expected to exceed emergency limits following a contingency, and reliability of the bulk power supply is threatened the Transmission Provider shall take immediate steps and make Reasonable Efforts to relieve, correct or control the condition. These steps include notifying other affected electric utility systems, as applicable, adjusting generation, changing schedules, initiating load relief measures, and taking such other reasonable action as may be required. Electrical equipment is to be operated within its normal rating established by the owning Party except for temporary conditions after a contingency has occurred.

(c) If either Boulder or Transmission Provider changes the normal operation of its system at the Point of Change in Ownership, the Parties shall consider any resulting benefits or adverse impacts to the reliability or transfer capability of the interconnected network for purposes of

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determining any applicable adjustments to the Parties' respective system usage rights and responsibilities.

(d) Each Party shall notify the other as soon as practicable whenever:

- (1) Problems with a Parties' facilities are detected that could result in mis-operation of interconnection protection or other interconnection equipment;
- (2) The interconnection is opened by protective relay action;
- (3) Interconnection equipment problems occur and result in an outage to a portion of either Party's electric system;
- (4) A Party intends to initiate switching to close the interconnection; or,
- (5) A Party intends to initiate switching to open the interconnection.

8.6 Emergency. In the event of an Emergency, the Party becoming aware of the Emergency may, in accordance with Good Utility Practice and using its reasonable judgment, take such action as is reasonable and necessary to prevent, avoid, or mitigate injury, danger, and loss.

(a) In the event Boulder has identified an Emergency involving the PSCo's facilities, Boulder shall obtain the consent of PSCo personnel prior to manually performing any switching operations unless immediate action is essential to protecting the safety of individuals or against extreme damage to property.

(b) PSCo may, consistent with Good Utility Practice, take whatever actions or inactions with regard to PSCo's facilities PSCo deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the PSCo's electric system, including PSCo's facilities; (3) limit or prevent damage; and (4) expedite restoration of service. PSCo shall use Reasonable Efforts to minimize the effect of such actions or inactions on Boulder's facilities.

(c) Boulder may, consistent with Good Utility Practice, take whatever actions or inactions with regard to Boulder's facilities Boulder deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the Boulder facilities; (3) limit or prevent damage; and (4) expedite restoration of service. Boulder shall use Reasonable Efforts to minimize the effect of such actions or inactions on PSCo's electric system.

(d) PSCo shall provide Boulder with prompt oral or electronic notification under the circumstances of an Emergency that may reasonably be expected to affect Boulder's operations, to the extent PSCo is aware of the Emergency. Boulder shall provide PSCo with prompt oral or electronic notification under the circumstances of an Emergency which may reasonably be expected to affect PSCo's electric system, to the extent Boulder is aware of the Emergency. To the extent the Party becoming aware of an Emergency is aware of the facts of the Emergency, such oral or electronic notification shall describe the Emergency, the extent of

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the damage or deficiency, its anticipated duration, and the corrective action taken and/or to be taken.

(e) To the extent a system Emergency exists on PSCo's electric system, and PSCo or Reliability Coordinator determines it is necessary for PSCo and Boulder to shed load, the Parties shall shed load in accordance with the Tariff.

ARTICLE 9 SAFETY

9.1 Safety Standards. The Parties agree that all work performed under this Interconnection Agreement shall be performed in accordance with all Applicable Law, regulations, rules, standards, practices and procedures pertaining to the safety of persons or property and in accordance with Good Utility Practice. To the extent a Party performs work on the other Party's premises, the Party performing work shall also abide by the safety, or other access rules applicable to those premises.

9.2 Each Party shall be solely responsible for the safety and supervision of its own employees, agents, representatives, and contractors.

ARTICLE 10 ENVIRONMENTAL CONSIDERATIONS

10.1 Environmental Considerations. Each Party will remain responsible for compliance with any and all environmental laws applicable to its own respective property, facilities, and operations. Each Party shall promptly notify the other Party upon discovering any release of any hazardous substance by a Party on the property or facilities of the other Party, or which may migrate to, or adversely impact the property, facilities or operations of, the other Party and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

The Party responsible for the release of any hazardous substance on the property or facilities of the other Party, or for the release of any hazardous substances which may migrate to, or adversely impact the property, facilities or operations of, the other Party shall be responsible for the reasonable cost of performing any and all remediation or abatement activity and submitting all reports or filings required by environmental laws. Advance written notification (except in Emergency situations, in which verbal, followed by written notification, shall be provided as soon as practicable) shall be provided by any Party performing any remediation or abatement activity on the property or facilities of the other Party, or which may adversely impact the property, facilities, or operations of, the other Party. Except in an Emergency, such remediation or abatement activity shall be performed only with the consent of the Party owning the affected property or facilities which consent shall not be unreasonably withheld. The Parties agree to coordinate, to the extent necessary, the preparation of site plans, reports or filings required by law or regulation.

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ARTICLE 11 FORCE MAJEURE

11.1 Effect of Declaring Force Majeure. Neither Party shall be considered to be in default or breach of this Interconnection Agreement nor liable in damages or otherwise responsible to the other Party for any delay in or failure to carry out any of its obligations under this Interconnection Agreement if, and only to the extent that, the Party is unable to perform or is prevented from performing by an event of Force Majeure. Notwithstanding the foregoing sentence, neither Party may claim Force Majeure for any delay or failure to perform or carry out any provision of this Interconnection Agreement to the extent that such Party has been negligent or engaged in intentional misconduct and such negligence or intentional misconduct substantially and directly caused that Party's delay or failure to perform or carry out its duties and obligations under this Interconnection Agreement

11.2 Procedures for Declaring Force Majeure. A Party claiming Force Majeure must:

- (a)** Give written notice to the other Party of the occurrence of a Force Majeure as soon as practicable;
- (b)** Use Reasonable Efforts to resume performance or the provision of service hereunder as soon as practicable;
- (c)** Take all commercially reasonable actions to correct or cure the Force Majeure;
- (d)** Exercise all Reasonable Efforts to mitigate or limit damages to the other Party; except that neither party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (e)** Provide written notice to the non-declaring Party, as soon as practicable, of the cessation of the adverse effect of the Force Majeure on its ability to perform its obligations under this Interconnection Agreement.

ARTICLE 12 BILLING AND PAYMENT

12.1 Estimate. Estimated costs include only the costs of new PSCo facilities or modifications to PSCo-owned facilities outlined in Article 2 above. The estimate does not include the fair market value, damages, or compensation owed for any PSCo facilities or property interests that might be transferred to Boulder as part of the separation and acquisition process. Such sums would be in addition to the estimate provided and nothing herein is a waiver or modification of PSCo's rights, remedies and protections regarding the same. All estimates are scoping level estimated. Actuals costs may be higher based on labor, equipment and material costs, etc. at

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the time construction occurs. The City is responsible for the actual costs as the time of the work. No estimates have been made for the cost of Boulder-owned facilities.

PSCo estimates the cost to perform the work for the PSCo-owned facilities under Article 2 above will be as follows:

Boulder Terminal	TBD
Gunbarrel	\$ 5,300,000
Leggett Substation	\$15,655,200
NCAR	\$ 1,644,000
Sunshine Substation	\$ 1,549,200
WWTP Substation	\$ 5,538,000
Total	\$29,686,400+TBD

The cost estimate above is based on the Facilities Study and detailed design work as of May 1, 2020.

12.2 Advance Payment and Cost Reconciliation. Within 30 calendar days after this Interconnection Agreement is accepted by FERC, Boulder will advance \$29,686,400.00+TBD to PSCo. If the amount advanced under this Section is insufficient for PSCo to complete the work described in Article 2 above, PSCo will invoice Boulder for the additional necessary funds. Within 90 days after the Project is complete and energized, PSCo will reconcile its actual Project costs for the work described in Article 2 against the aggregate amount Boulder advanced under this Section, and if PSCo's actual costs are less than the amount Boulder advanced, PSCo will refund the difference to Boulder within 30 days. If the cost reconciliation reveals that Boulder owes a balance due, PSCo shall invoice Boulder for the remaining costs.

12.3 Billing Procedure. PSCo shall bill Boulder for the actual costs incurred under this Interconnection Agreement consistent with the procedures set forth in Section 7 of the Tariff. Payment of an invoice shall not relieve the paying Party from any responsibilities or obligations it has under this Interconnection Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.

12.4 Interest on Unpaid Balances. Interest on any unpaid amounts that are past due (including amounts placed in escrow) shall be calculated in accordance with Article 12 of the Tariff.

12.5 Billing Disputes. If all or part of any bill is disputed by a Party, that Party shall promptly pay the amount that is not disputed, provide the other Party a reasonably detailed written explanation of the basis for the dispute, and request the commencement of dispute resolution pursuant to Article 20 of this Interconnection Agreement. When the amount in dispute is equal to or greater than one million dollars (\$1,000,000), the disputed amount shall be paid into an independent escrow account pending resolution of the dispute, at which time the prevailing Party shall be entitled to receive the disputed amount, as finally determined to be payable, along with interest accrued at the interest rate through the date on which payment is made, within 20 business days of such resolution. If the amount in dispute is less than one million dollars

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(\$1,000,000), the disputing Party may withhold the disputed amount or pay the disputed amount into an independent escrow account pending resolution of the dispute, at which time the prevailing Party shall be entitled to receive the disputed amount, as finally determined to be payable, along with interest accrued at the interest rate through the date on which payment is made, within 20 business days of such resolution. The Parties may elect, but are not required, to agree to alternative dispute resolution, including arbitration. Neither Party shall be responsible for the other Party's cost of collecting amounts due under this Interconnection Agreement, including attorney's fees.

ARTICLE 13 NOTICES

13.1 Notices. Any notice, demand, request, or communication required or authorized by this Interconnection Agreement shall be hand delivered or mailed by certified mail, return receipt requested, with postage prepaid, to Parties as set forth in Article 19. In addition to the obligations set forth in the preceding sentence, a Party providing notice, demand, request or communication pursuant to this Section may also provide a courtesy copy of such notice, demand, request, or communication via electronic mail, or email. Any Party may update that portion of Article 19 that pertains to such Party's address by giving written notice to the other Party of such change at any time.

ARTICLE 14 REGULATION AND MODIFICATION OF RATES

14.1 Regulation. This Interconnection Agreement is subject to the jurisdiction of the FERC.

14.2 Modification. PSCo reserves its rights under Section 205 of the Federal Power Act to unilaterally make applications to FERC for modification of the rates, terms, conditions, classification of service, rule, or regulation for any service the PSCo provides under this Interconnection Agreement and the attachments hereto over which FERC has jurisdiction. Boulder reserves its rights under Section 206 of the Federal Power Act to unilaterally make application to FERC for modification of the rates, terms, conditions, classification of service, rule, or regulation for any service provided under this Interconnection Agreement and the attachments hereto over which FERC has jurisdiction.

ARTICLE 15 ASSIGNMENT

15.1 Successors and Assigns. This Interconnection Agreement shall be binding upon the respective Parties, their successors and permitted assigns, on and after the Effective Date hereof.

15.2 Assignment Restrictions. This Interconnection Agreement may be assigned by either Party only with the written consent of the other; provided however, that either Party may assign this Interconnection Agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Interconnection Agreement; and, provided further, that Boulder shall have the right to assign this Interconnection Agreement,

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without the consent of Transmission Provider, for collateral security purposes to aid in providing financing, provided that Boulder promptly notifies Transmission Provider of any such assignment. Any financing arrangement entered into by Boulder pursuant to this Article 15 will provide that prior to or upon the exercise of the secured Party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article 15 is void and ineffective. Any assignment under this Interconnection Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where requested, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 16 INSURANCE

16.1 Applicability. If the interconnection customer is a municipality, city, county, town, public authority or other political subdivision that qualifies for statutory limitations on liability under Applicable Law, the interconnection customer shall procure and maintain, at its own expense, insurance coverages in accordance with the requirements set forth in Appendix F as applicable to Colorado. In all other circumstances, the interconnection customer shall comply with the requirements set forth in Section 16.2.

16.2 Insurance. Each Party shall, at its own expense, maintain in force until this Interconnection Agreement is terminated and until released by the other Party, the following insurance coverages, with insurers authorized to do business in the state where the Point of Change of Ownership is located:

(a) Employer's Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Change of Ownership is located.

(b) Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of one million dollars (\$1,000,000) per occurrence/one million dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

(c) Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of one million dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

(d) Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum

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combined single limit of ten million dollars (\$10,000,000) per occurrence/ten million dollars (\$10,000,000) aggregate.

(e) The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Interconnection Agreement against the Other Party Group and provide 30 calendar days advance written notice to the Other Party Group prior to the anniversary date of cancellation or any material change in coverage or condition.

(f) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies shall apply to such extent without consideration for other policies separately carried. Each Party shall be responsible for its respective deductibles or retentions.

(g) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Interconnection Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

(h) The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this Interconnection Agreement.

(i) Within 10 days following execution of this Interconnection Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within 90 days thereafter, each Party shall provide certification of all insurance required in this Interconnection Agreement, executed by each insurer or by an authorized representative of each insurer.

(j) Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of subsections (a)-(h) of this Section 16.2 to the extent the Party maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements set forth in subsections (a)-(h) of this Section 16.2. For any period of time that a Party's senior secured debt is unrated by Standard and Poor's, such Party shall comply with the insurance requirements set forth in subsections (a)-(i) of this Section 16.2. In the event that a Party is permitted to self-insure pursuant to this Article, it shall notify the other party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in this Section 16.2.

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(k) The Parties agree to report to each other in writing as soon as practicable all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Interconnection Agreement.

(l) In the event an interconnection customer is a municipality or other governmental entity, the interconnection customer will be subject to the insurance coverage obligations set forth in Appendix F as applicable in Colorado in lieu of the insurance obligations set forth in this Section 16.2.

ARTICLE 17

CONSEQUENTIAL DAMAGES, INDEMNITY AND RISK OF LOSS

17.1 Waiver of Consequential Damages. In no event shall one Party, its governing board members, officers, employees or agents be liable to the other Party under this Interconnection Agreement from any cause howsoever arising in contract, tort or otherwise for any indirect, incidental, special, punitive, exemplary, or consequential damages, including but not limited to, loss of use, loss of revenue, loss of profit, and/or cost of replacement power, interest charges, cost of capital, claims of its customers to which service is made; provided however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, punitive, exemplary or consequential damages hereunder.

17.2 Indemnity. Each Party shall at all times indemnify, defend and hold harmless the other Party, its shareholders, members, partners, Affiliates, employees, consultants, representatives, agents, successors and permitted assigns ("Indemnified Party") from any and all liability, damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's ("Indemnifying Party") negligence, or action or inactions of its obligations under this Interconnection Agreement, except in cases of negligence, gross negligence or intentional wrongdoing by the Indemnified Party. Nothing in this Section 17.2 shall relieve PSCo or Boulder of any liability to the other for any breach of this Interconnection Agreement.

(a) If an Indemnified Party is entitled to indemnification under this Section 17.2 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed, to assume the defense of such claim, the Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

(b) If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Section 17.2, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's loss net of any insurance or other recovery.

(c) Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided in this Section 17.2 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect the

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Indemnifying Party's obligation to indemnify the Indemnified Party unless such failure or delay is materially prejudicial to the Indemnifying Party.

(d) In the event Indemnifying Party is a municipality or other governmental entity, Indemnifying Party will be subject to the indemnification obligations set forth in Appendix F in lieu of the indemnification obligations set forth in this Section 17.2.

17.3 Risk of Loss. Except under situations of negligence, gross negligence, or intentional wrong-doing by the other Party, each Party shall have the full risk of loss for its own property and material, and each Party shall (subject to Article 16) obtain and maintain insurance coverage accordingly under its own insurance and risk management procedures. To the extent permitted by each Party's insurer, at no additional cost to that Party, each Party shall require its property insurer to waive the right of subrogation. Each Party shall have title and risk of loss for those materials or capital equipment purchased for its ownership by the other Party as an authorized agent under this Interconnection Agreement confirmed by written confirmation and approval of supplier, specifications, equipment warranty, delivery and installation arrangements (the principal being entitled to any sales tax exemptions). All such equipment and materials will be inspected by the purchasing agent Party upon delivery and damaged or nonconforming equipment or materials will be rejected and returned to the seller upon consultation and agreement with the Party for whom the equipment was purchased.

ARTICLE 18 DEFAULT AND TERMINATION

18.1 Default by Boulder.

(a) In the event Boulder fails, for any reason other than a billing dispute as described in Article 12, to make payment to PSCo on or before the due date as described herein, and such failure of payment is not cured within 30 calendar days after PSCo notifies Boulder of such failure, a default by Boulder shall be deemed to exist.

In the event of an uncured default by Boulder for nonpayment, except when nonpayment is the subject of a billing dispute as provided in Section 12.5, PSCo may initiate a proceeding with the FERC to terminate service but shall not terminate service until the FERC so approves any such request. In the event of a billing dispute between PSCo and Boulder, PSCo will continue to provide service under this Interconnection Agreement as long as Boulder (1) continues to make all payments not in dispute, and (2) subsection to Section 12.5, pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Boulder fails to meet these two requirements for continuation of service, then PSCo may provide notice to Boulder of its intention to suspend service in accordance with the Tariff or FERC policy.

(b) Boulder shall also be in default if it materially breaches any other provision of this Interconnection Agreement and fails to cure any such breach within 30 days after written notice by PSCo of the existence and nature of such alleged breach.

(c) If Boulder assigns its interests under this Interconnection Agreement to a bank, lender or other financial institution for purposes of obtaining financing ("Financing Party"), and Boulder

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notifies PSCo of this assignment and the information necessary for PSCo to contact Financing Party, then PSCo shall also notify Financing Party of any breach or default by Boulder under this Interconnection Agreement at the same time as it notifies Boulder of such breach or default. If Financing Party elects to cure the breach or default, by payment or otherwise, then PSCo agrees to accept such cure by Financing Party as if the same had been affected by Boulder.

18.2 Default by PSCo. PSCo shall be considered in default if it fails to make any payment due to Boulder hereunder, or fails to cure any material breach, within 30 days after written notice of nonpayment or material breach from Boulder.

18.3 Termination for Default. Should a Party fail to cure a default within the applicable cure period, and the default is not contested pursuant to the dispute resolution process provided in Article 20 or other legal processes, the non-defaulting Party shall have the right to terminate this Interconnection Agreement subject to FERC approval and other defenses by giving written notice to the Party in default, and be relieved of any further obligation hereunder, and whether or not the non-defaulting Party terminates this Interconnection Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which the non-defaulting Party is entitled subject to the limitations set forth in Article 17 of this Interconnection Agreement. The provisions of this Article 18 shall survive termination of this Interconnection Agreement.

ARTICLE 19 CONTACTS

Contacts for this Interconnection Agreement are as follows:

Public Service

Contacts to be determined after the Proceed Date.

City of Boulder

Contacts to be determined after the Proceed Date.

ARTICLE 20 DISPUTE RESOLUTION

20.1 Disputes will first be submitted to the Authorized Representatives for consideration. In the event that a dispute cannot be resolved by the Authorized Representatives, the dispute shall be submitted to the Parties' management. If the dispute cannot be resolved by the Parties' management, then the dispute may, if the Parties agree, be submitted to arbitration under Section 12.5 of this Interconnection Agreement. Alternatively, the dispute may be filed in the Denver District Court, or if that court does not have jurisdiction, such other court that does have jurisdiction.

20.2 In the event of arbitration, each Party shall select one arbitrator. The two selected arbitrators shall hear the arbitration. Arbitration must be commenced within six (6) months of

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when the disputed matter was submitted to arbitration. The arbitrators shall have discretion to establish discovery, hearing schedules, and arbitration procedures. The arbitrators may afford the Parties any or all of the discovery rights provided for in the Colorado Rules for Civil Procedure. Unless otherwise specified in this Interconnection Agreement, arbitration shall be governed under the rules and procedures of the American Arbitration Association. Arbitration shall be binding on the Parties. Arbitration shall be in Boulder or Denver, Colorado.

20.3 Disputed items that involve a claimed overpayment by Boulder which are resolved in Boulder's favor in arbitration, shall be paid back with interest at the prime rate charged by the Wells Fargo Bank West, National Association, or its successor, plus two percent (2%) applied to late payments on a daily basis, based on a 365 day year.

20.4 Costs for the arbitration procedure and payment to the arbitrators shall be divided equally by the Parties to the arbitration. Each Party shall be responsible for its own attorney costs, discovery costs, and other associated costs incurred as a result of arbitration.

ARTICLE 21 CONFIDENTIAL INFORMATION

21.1 Furnishing of Information. The Parties recognize that the successful operation of this Interconnection Agreement depends upon the cooperation by the Parties in the operation of their systems. As a part of such cooperation, subject to the limitations regarding disclosing Confidential Information provided in this Interconnection Agreement, each Party agrees that it will furnish to the other Party such data concerning its system as may be necessary to support the other Party's system reliability.

21.2 Confidential Information.

(a) "Confidential Information" means (1) any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, drawing, list, concept, customer information, policy or compilation relating to the present or planned business of a Party, which is designated as Confidential Information by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise; or (2) any Critical Energy Infrastructure Information. Confidential Information which includes, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party on a confidential basis prior to the execution of this Interconnection Agreement.

(b) Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, was under no obligation to the other Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; or (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Interconnection Agreement.

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Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as Confidential Information notifies the other Parties that such information no longer is confidential.

(c) Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document; or, if the information is conveyed orally or by inspection, the Party providing the information orally informs the receiving Party that the information is confidential. Each Party shall be responsible for clearly designating or marking information governed by FERC's Critical Energy Infrastructure Information rules and regulations.

21.3 Protection of Confidential Information.

(a) No Party shall disclose any Confidential Information of the other Party obtained pursuant to or in connection with the performance of this Interconnection Agreement to any third party without the express written consent of the providing Party; provided however, that any Party may produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a judicial body or Governmental Authority upon reasonable notice to the providing Party that (1) a protective order from such jurisdictional judicial body or court has been issued relating to the Confidential Information; and (2) a binding nondisclosure agreement is in effect with a proposed recipient of any Critical Energy Infrastructure Information.

(b) The Parties shall use at least the same standard of care to protect Confidential Information they receive as they use to protect their own Confidential Information from unauthorized disclosure, publication or dissemination.

(c) Any Party may use Confidential Information solely: (1) to fulfill its obligations to the other Party, under this Interconnection Agreement; (2) to fulfill its regulatory requirements except to the extent that such information constitutes or has been designated Critical Energy Infrastructure Information; (3) in any proceeding or in any administrative agency or court of competent jurisdiction addressing any dispute arising under this Interconnection Agreement, subject either to a written confidentiality agreement with all Parties (including, if applicable, an arbitrator(s)) or to a protective order; or (4) as required by Applicable Law. As it pertains to (3) and (4), notwithstanding the absence of a protective order or waiver, a Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. In the event that the receiving Party is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or in the opinion of its counsel, by federal or state securities or other statutes, regulations or laws) to disclose any Confidential Information, the receiving Party shall, to the extent permitted under Applicable Law, promptly notify the disclosing Party of such request or requirement prior to disclosure, so that the disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Interconnection Agreement and shall request confidential treatment of any such disclosure.

(d) The Parties agree that monetary damages by themselves may be inadequate to compensate a Party for the other Party's breach of its obligations under this Article. Each Party

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accordingly agrees that the other Parties are entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under this Article.

21.4 Survival. The confidentiality obligations of this Article shall survive termination of this Interconnection Agreement for a period of two (2) years.

ARTICLE 22 MISCELLANEOUS

22.1 Third Party Contracts. The Parties recognize that each has entered into and may in the future enter into contractual commitments with various third parties regarding benefits, use and operation of network transmission facilities it owns within the interconnected regional transmission network. Each Party hereby covenants that its respective contracts with third parties shall not interfere with its obligations to the other Party made under this Interconnection Agreement.

22.2 No Residual Value. This Interconnection Agreement shall not be construed to provide any residual value to either Party or its successors or permitted assigns or any other party, for rights to, use of, or benefits from the other Party's system following expiration of this Interconnection Agreement.

22.3 No Third-Party Beneficiary. Unless otherwise specifically provided in this Interconnection Agreement, the Parties do not intend to create rights in or to grant remedies to any third Party as a beneficiary of this Interconnection Agreement or of any duty, covenant, obligation or undertaking established hereunder.

22.4 Headings. Article headings and titles are included for the convenience of Parties and shall not be used to construe the meaning of any provision of this Interconnection Agreement.

22.5 Governing Law. This Interconnection Agreement shall be interpreted and governed by the laws of the state of Colorado, or the laws of the United States of America, as applicable.

22.6 No Joint System. The Parties each own and operate separate interconnected electric systems, and no provision of the Interconnection Agreement shall be interpreted to mean or imply the Parties have established or intend to establish a jointly owned electric system, a joint venture, trust, a partnership, or any other type of association.

22.7 Amendment. Except as provided in Section 11.2, any amendment, alteration, variation, modification or waiver of the provisions of this Interconnection Agreement, other than revisions to the attachments authorized by this Interconnection Agreement, shall be valid only after it has been reduced to writing and duly signed by both Parties, and if required, approved by the appropriate regulatory bodies.

22.8 Conflicts. In the event any term of this Interconnection Agreement conflicts with the Tariff, the terms of this Interconnection Agreement shall control.

22.9 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Interconnection Agreement, or to take

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advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.10 Counterparts. This Interconnection Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

22.11 Severability. If any governmental authority or court of competent jurisdiction holds that any provision of this Interconnection Agreement is invalid, or if, as a result of a change in any Federal or State law or constitutional provision, or any rule or regulation promulgated pursuant thereto, any provision of this Interconnection Agreement is rendered invalid or results in the impossibility of performance thereof, the remainder of this Interconnection Agreement not affected thereby shall continue in full force and effect. In such an event, the Parties shall promptly renegotiate in good faith new provisions to restore this Interconnection Agreement as nearly as possible to its original intent and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Leggett, Sunshine, and WWTP Substation Transmission to Load Interconnection Agreement to be duly executed the day and year first written above.

(Signature blocks on following page)

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CITY OF BOULDER,
a Colorado home rule city

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date _____

PUBLIC SERVICE COMPANY OF COLORADO
Ian R. Benson
Area Vice President, Transmission and Strategic Initiatives
Xcel Energy Services Inc.
As Agent for Public Service Company of Colorado

Date _____



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

1) Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8422 prohibiting the manager from issuing a business license to any business to engage in offering shared, standing electric scooters and to allow shared, seated electric scooters excluding use on open space land by amending sections 3-17-3, "Sales and Use Tax or Business License Required," Title 4, "Licenses and Permits," adding a new chapter 34, "Shared Electric Scooters," 7-1-1, "Definitions," B.R.C. 1981; and setting forth related details

OR

2) Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8423 regulating shared electric scooters but excluding use on open space land by amending sections 3-17-3, "Sales and Use Tax or Business License Required," Title 4, "Licenses and Permits," adding a new chapter 34, "Shared Electric Scooters," 7-1-1, "Definitions," B.R.C. 1981, and setting forth related details

OR

3) Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8424 prohibiting the manager from issuing a business license to a company offering shared electric scooters by amending sections 3-17-3, "Sales and Use Tax or Business License Required," 7-1-1, "Definitions," B.R.C 1981; and setting forth related details

PRIMARY STAFF CONTACT

David Kemp, Senior Transportation Planner - GO Boulder

ATTACHMENTS:

Description

- ▣ **Item 3J - 1st Rdg Shared E-scooter Ordinance Options**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

First reading and consideration of motion to order published by title only the following ordinances related to the current e-scooter moratorium:

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8422 prohibiting the manager from issuing a business license to any business to engage in offering shared, standing electric scooters and to allow shared, seated electric scooters excluding use on open space land by amending sections 3-17-3, "Sales and Use Tax or Business License Required," Title 4, "Licenses and Permits," adding a new chapter 34, "Shared Electric Scooters," 7-1-1, "Definitions," B.R.C. 1981; and setting forth related details.

OR

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8423 regulating shared electric scooters but excluding use on open space land by amending sections 3-17-3, "Sales and Use Tax or Business License Required," Title 4, "Licenses and Permits," adding a new chapter 34, "Shared Electric Scooters," 7-1-1, "Definitions," B.R.C 1981; and setting forth related details.

OR

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8424 prohibiting the manager from issuing a business license to a company offering shared electric scooters by amending sections 3-27-3, "Sales and Use Tax or Business License Required," 7-1-1, "Definitions," B.R.C 1981; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager

Thomas A. Carr, City Attorney

Janet Michels, Senior Assistant City Attorney

Bill Cowern, Interim Director of Transportation and Mobility

Natalie Stiffler, Deputy Director of Transportation and Mobility

Chris Hagelin, Interim GO Boulder Manager, Senior Transportation Planner

Dave “DK” Kemp, Senior Transportation Planner

EXECUTIVE SUMMARY

City Council provided staff direction at the January 28, 2020 City Council Study Session to not move forward with e-scooters as part of the city’s Shared Micromobility Program and requested further monitoring of the e-scooter industry and related aspects, including safety and sustainability. Council is supportive of the introduction of private sector e-bikes as part of a Shared Micromobility Program and recently approved an update to the Dockless Bike Share Licensing Program on July 7, 2020.

Since the January 28th City Council study session, staff has further investigated a new, seated style of e-scooter. These lightweight electric vehicles come equipped with a seat offering a lower center of gravity and a larger wheel diameter offering a higher ground clearance over standing e-scooters.

Staff recommends piloting seated e-scooters as part of the city’s Shared Micromobility Program. Staff stands by our recommendation to not include standing e-scooters as part of the city’s Shared Micromobility Program, primarily due to safety and environmental sustainability concerns.

Staff has prepared for council consideration three options for a shared e-scooter ordinance.

The options include:

1. Ordinance 8422 - Indefinite prohibition against licensing businesses offering shared, standing e-scooters and allow licensing businesses offering shared, seated e-scooters.
2. Ordinance 8423 - Allow licensing businesses offering all types of e-scooters (standing and seated).
3. Ordinance 8424 - Indefinite prohibition against licensing businesses offering all types of shared e-scooters (standing and seated).

Second reading of this ordinance and a public hearing is scheduled for September 15. If shared e-scooters are allowed, staff will fold the regulations for both shared dockless e-bikes and e-scooters into an overall Shared Micromobility Program and release a request for proposal (RFP) to select an operator in 4th quarter 2020. Staff anticipates launching a new Shared Micromobility Program in spring 2021.

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 Ordinance 8422 prohibiting the manager from issuing a business license to any business to engage in offering shared, standing electric scooters and to allow shared, seated electric scooters excluding use on open space land by amending sections 3-17-3, "Sales and Use Tax or Business License Required," Title 4, "Licenses and Permits," adding a new chapter 34, "Shared Electric Scooters," 7-1-1, "Definitions," B.R.C. 1981; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The proposed ordinances either allow or prohibit the entry of commercial e-scooter companies into the City of Boulder, if council authorizes such. The allowance or prohibition may have a marginal impact on the city's economy.
- Environmental – There is an on-going debate regarding whether e-scooters provide an environmental benefit or detriment. The allowance or prohibition in commercial deployment should not have a measurable environmental impact.
- Social – Continued analysis of e-scooter industry brings to light new information regarding areas of concern, including safety, mode shift, sustainability and equity.

OTHER IMPACTS

- Fiscal – The work necessary will be performed using existing budget resources.
- Staff times – The work will be completed within staff's existing work plan.

BOARD AND COMMISSION FEEDBACK

At the March 9, 2020 Transportation Advisory Board (TAB) meeting, board members were offered the opportunity to try out three sit-down e-scooter models. Although no formal action was taken, TAB supported staff's recommendation to move forward with seated e-scooters. TAB will again revisit the topic of shared e-scooters at the September 14, 2020 meeting and will discuss the three ordinance options as part of a public hearing on the matter. Staff will share the results of the September 14, 2020 TAB meeting at the September 15, 2020 city council meeting (second reading of the ordinance).

BACKGROUND AND ANALYSIS

City Council provided staff direction at the [January 28th City Council Study Session](#) to not move forward with standing e-scooters as part of the city's Shared Micromobility

Program and requested further monitoring of the e-scooter industry and related aspects, including safety and sustainability.

Since the January 28th City Council study session, staff has further investigated a new, seated style of e-scooter. These lightweight electric vehicles come equipped with a seat offering a lower center of gravity and a larger wheel diameter offering a higher ground clearance over standing e-scooters.

The introduction of Covid-19 has brought challenges in terms of data collection across the United States. Some companies offering both standing and seated e-scooters ceased operations and thus substantive data collection regarding shared e-scooter operations have been variable and inconclusive. In recent weeks, staff has reached out to contacts from member cities of the National Association of City Transportation Officials (NACTO), and given the changes in normal shared e-scooter operations and paralyzing effect of Covid-19 on local government transportation budgets, feedback from staff's inquiry has not yielded much new information.

Staff collected data pre-Covid-19; however, these lightweight electric vehicles were relatively new and depending upon the company operational in only a handful of cities. There is currently no substantive data available from municipalities regarding their safety and sustainability. The data that is available is self-reported from two of the prospective companies- [Wheels](#) and [Gotcha](#), Gotcha recently purchased the [Ojo](#) brand of seated e-scooters. Gotcha has rebranded the e-scooters as [Cruise](#).

Wheels [released a safety study](#) in March 2020 conducted by a third-party consultant that examined crash data from September 2018 to January 2020 and calculated the injury rate to people operating seated e-scooters for various exposures:

- *Injury Rate Per Million Trips: 25 injuries per 1 Million trips*
- *Injury Rate Per Million Miles Traveled: 13.4 injuries per 1 Million miles*
- *Injury Rate Per 1,000 Hours: 0.12 injuries per 1,000 hours*

According to the reference reviewed:

- *Bicycles have exhibited injury rates per million trips that are five times higher than Wheels devices; other scooters have exhibited injury rates eight to 26 times higher*
- *Bicycles have exhibited injury rates per travel hours that are two to five times higher than Wheels devices; other scooters have exhibited injury rates from nine to 19 times higher.*
- *Bicycles have exhibited injury rates per mile traveled that are nearly four times higher than Wheels devices; other e-scooters have exhibited injury rates from three to 66 times higher*

According to the data reviewed, there were study limitations which can be found on [pages 10-11 on the report](#).

Gotcha (Ojo) also provided safety data prior to the company merger in April 2020. Ojo was operating in three cities (Dallas, TX, Galveston, TX and Memphis, TN) when the following data was received in March 2020:

- *Total Number of Rides: 100,000 +*
- *Total Miles Traveled: 166,300 +*
- *Total Number of Accidents Reported: 3*
- *Accident Rate: .003% of Trips*

A third company, [Veo](#), operates a new, seated e-scooter called the Cosmo. As of August 17, Veo has not provided safety data regarding the operations of this vehicle.

To date, there have been no known fatalities related to the shared use of seated e-scooters. Since 2018, there have been 21 known fatalities related to the use of standing e-scooters in the U.S. There have been four bikeshare related fatalities since 2010.

In terms of environmental sustainability, all three companies claim their seated e-scooters have a lifespan of two years or longer. This data has not been verified by staff, although the nature of the vehicle's more durable design and use of materials is more robust over the standing e-scooter.

In early August, the City of Boulder issued a request for information (RFI) regarding shared micromobility services. Staff anticipates receiving additional safety and sustainability data which will be shared with council in the second reading memo regarding the e-scooter ordinance options.

Staff recommends experimenting with seated e-scooters as part of the city's Shared Micromobility Program. Staff stands by our previous recommendation to not include standing e-scooters as part of the city's Shared Micromobility Program, primarily due to safety and environmental sustainability concerns.

If council chooses to move forward with seated e-scooters, specific minimum specifications pertaining to seated e-scooters will be required, including the following criteria:

- A fixed or adjustable saddle (seat),
- Front and rear brakes
- Front and rear lights
- Tire diameter of 9" inches or greater
- Ground clearance of six inches or greater
- Anticipated lifespan of two years or longer
- Maximum speed of 20mph
- Initial fleet deployment of 200 vehicles with dynamic based cap









Additional operational parameters may include the following preliminary recommendations. These parameters will be further vetted with community stakeholders and will be included as part of the discussion at the October 27 study session:

- To allow seated e-scooters to operate on multi-use paths and on local streets and only on other streets with bike lanes.
- To not allow seated e-scooters on sidewalks
- Geofenced areas to prohibit seated e-scooters from operating in specific locations, i.e. areas of downtown Boulder or CU Boulder’s campus.

Staff has prepared for council consideration three options for a shared e-scooter ordinance. The options include:

1. Ordinance 8422 - Indefinite prohibition against licensing businesses offering shared, standing e-scooters and allow licensing businesses offering shared, seated e-scooters.
2. Ordinance 8423 - Allow licensing businesses offering all types of e-scooters (standing and seated).
3. Ordinance 8424 - Indefinite prohibition against licensing businesses offering all types of shared e-scooters (standing and seated).

The following table provides a visual representation of council’s ordinance options:

	 Stand-Up Scooter	 Sit-Down Scooter
Option 1 (Ordinance 8422)- Indefinite prohibition of issuing business licenses to companies offering of standing e-scooters and allow licensing to companies offering shared, seated e-scooters.		
Option 2 (Ordinance 8423)- Allow issuing of business licenses to companies offering all types of e-scooters.		
Option 3 (Ordinance 8424) – Indefinite prohibition on issuing business licenses to companies offering all types of shared e-scooters.		

NEXT STEPS

Second reading of this ordinance and a public hearing is scheduled for September 15. If shared e-scooters are allowed, staff will fold the regulations for both dockless e-bikes and e-scooters into an overall Shared Micromobility Program and release a request for proposal to select an operator in 4th quarter 2020.

Further discussions with community stakeholders including, Boulder B-Cycle, Downtown Boulder Partners, Boulder Chamber, CU Boulder and the East Boulder Subcommunity Plan Community Working Group will be needed to ensure operational details are well understood and agreed upon.

On October 13, staff will return to council as part of a study session to discuss the results of the Boulder B-Cycle strategic plan and next steps for bike share in Boulder. On October 27, staff will return to council to discuss the regulation of human and electric powered vehicles on streets, multi-use paths and sidewalks. The result of this study session will likely require a final return to city council in December regarding potential ordinance(s) changes governing the operation of these vehicles. This will conclude the city's micromobility policy work for 2020. Staff anticipates launching a new Shared Micromobility Program in spring 2021.

ATTACHMENTS

A: Ordinance 8422 - Indefinite prohibition against licensing businesses offering shared, standing e-scooters and allow licensing businesses offering shared, seated e-scooter.

B: Ordinance 8423 - Allow issuing of business licenses to companies offering all types of shared e-scooters

C: Ordinance 8424 - Indefinite prohibition on issuing business licenses to companies offering all types of shared e-scooters

ORDINANCE 8422

AN ORDINANCE PROHIBITING THE MANAGER FROM ISSUING A BUSINESS LICENSE TO ANY BUSINESS TO ENGAGE IN OFFERING SHARED, STAND-UP STYLED ELECTRIC SCOOTERS AND TO ALLOW SHARED SEATED ELECTRIC SCOOTERS, EXCLUDING USE ON OPEN SPACE LAND, BY AMENDING SECTION 3-17-3, "SALES AND USE TAX OR BUSINESS LICENSE REQUIRED," TITLE 4, "LICENSES AND PERMITS," ADDING A NEW CHAPTER 34, "SHARED ELECTRIC SCOOTERS," AMENDING SECTION 7-1-1, "DEFINITIONS", B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 3-17-3, "Sales and Use Tax or Business License Required," shall be amended as follows:

(a) The manager shall not issue a sales and use tax license to any business that is proposing to conduct business activities that are in violation of any of the provisions of the "Boulder Revised Code" 1981. The sales and use tax license may be referred to as a "business license."

(b) Except as set forth herein, businesses offering shared electric scooters are not eligible for a business license and the manager shall not issue a business license to any business to engage in offering shared electric scooters, except that the manager may issue a business license to a business to offer shared electric scooters that comply with the definition of electric scooter in section 7-1-1, "Definitions," B.R.C. 1981.

1 Such business license shall be issued pursuant to licensing standards specific to
2 micromobility adopted by city council.

3 **Section 2.** A new section 4-20-74, “Shared Electric Scooter License Fees,” is added to
4 read:

5 (a) An applicant for a license to operate a shared electric scooter business shall pay a
6 fee of \$3,300 per year for the initial license and \$1,800 annually thereafter. If the
7 applicant is also applying for a license pursuant to chapter 4-31, “Dockless Bicycle
8 Share,” B.R.C. 1981 the applicant shall pay a single fee of \$3,300 for the initial
9 license and a single fee of \$1,800 annually thereafter.

10 (b) In addition to the fees established in subsection (a) of this section, any person issued
11 a license to operate a shared electric scooter business under this Chapter shall pay
12 \$0.15 per ride each time a shared electric scooter is utilized by a user, that will be
13 used by the city to create micromobility parking hubs with electric scooter racks,
14 geofencing, striping and signing and for related administrative expenses.

15 (c) The fees herein prescribed shall not be refundable.

16 **Section 3.** A new Chapter 4-34, “Shared Electric Scooters,” B.R.C. 1981, is added to
17 read:
18

19 **Chapter 4-34 – Shared Electric Scooters.**

20 **4-34-1. – Findings and Purpose.**

21 (a) Commercial electric scooter companies distribute scooters that can be ridden after
22 payment of a fee.

23 (b) Regulation of commercial scooter companies is important to promote safe use, limit
24 conflict with other users and regulate the use of the city's right-of-way and multi-use
25 paths.

1 (c) Other communities have experienced significant impacts from the operation of
2 electric scooter companies. For example, communities have experienced costs
3 associated with collecting and storing electric scooters left in city right-of-way.

4 (d) Other communities have incurred costs for infrastructure to facilitate safe riding and
5 storage.

6 (e) The purpose of this chapter is to protect the public health, safety, and welfare to
7 prevent or mitigate against any adverse impact that shared electric scooters may
8 have to public or private property by licensing all persons who make available
9 shared electric scooters in the city.
10

11 **4-34-2. – License Required.**

12 (a) No person shall conduct or carry on the business of offering shared electric scooters
13 without first being awarded a contract pursuant to chapter 2-8, “Purchasing
14 Procedures,” B.R.C. 1981, and within 180 days of the effective date of the contract,
15 obtaining a license for such business from the city manager under this chapter.

16 (b) Because the success of the city’s shared micromobility program is impacted by the
17 number of operators in the city, the city manager may limit the quantity of licenses
18 issued under this chapter.
19

20 **4-34-3. -- License Application.**

21 (a) An applicant for a license under this chapter shall apply on forms furnished by the
22 city manager and pay the fee prescribed in Section 4-20-74, “Shared Electric Scooter
23 License Fees,” B.R.C. 1981.
24
25

1 (b) The applicant shall maintain insurance during the period of the license as required
2 by Section 4-1-8, "Insurance Required," B.R.C. 1981.

3 (c) The applicant shall provide a financial guaranty upon which the city may draw, in
4 the amount of \$50 per electric scooter, with a cap of \$5,000, to secure performance
5 of the terms of this license. The financial guaranty shall be cash, a letter of credit
6 from a surety or financial institution and in a form acceptable to the city manager,
7 payable to the city as beneficiary, or another form of financial guaranty approved
8 by the city manager. If a permitted operator increases the size of its fleet as permitted
9 by this chapter, the financial guaranty shall be adjusted appropriately before
10 deploying additional electric scooters. The financial guaranty will be used to pay
11 city expenses including without limitation the following:
12

13 (1) Public property repair and maintenance costs caused by the operator's
14 equipment,

15 (2) Any cost for removing or storing shared electric scooters improperly parked,
16 and

17 (3) Any cost to the city to remove shared electric scooters if a license issued
18 pursuant to this chapter expires or is otherwise terminated.

19 (d) An applicant for a license shall submit, along with the application, a management
20 plan that addresses accessibility of the electric scooter share system, and how the
21 applicant will prevent or mitigate against adverse impacts that shared electric
22 scooters may have to public or private property. The city manager will not approve
23 a management plan unless it adequately addresses such impacts. The management
24 plan shall include the following components:
25

1 (1) A description of how the applicant will develop and implement the
2 requirements in Subsection 4-34-7(n),

3 (2) A proposed service plan to achieve equitable distribution of shared electric
4 scooters within the city including deployment of shared electric scooters at
5 transit facilities and high demand areas of the city as identified by a city
6 manager rule authorized by this chapter,

7 (3) A description of how the applicant will respond to complaints of improperly
8 parked or abandoned shared electric scooters,

9 (4) A description of how the operator will respond when notified of safety or
10 operational concerns of a shared electric scooter in the system,

11 (5) A maintenance plan for shared electric scooters, and

12 (6) A proposed user education and outreach plan for proper electric scooter
13 parking and riding.
14

15 (e) By applying for a license under this chapter, the applicant consents to the city using
16 its own staff or a third-party consultant for evaluation of records and reports required
17 to be maintained by this chapter and the shared electric scooter license program
18 authorized by this chapter.
19

20 **4-34-4. -- Authority to Deny Issuance of License.**

21 The city manager may deny an application for a license under this chapter if the
22 applicant fails to demonstrate that it meets all of the requirements in Subsections 4-1-
23 9(a) or 4-31-4, B.R.C. 1981.

24 **4-34-5. -- Suspension or Revocation of License.**
25

1 (a) The city manager may suspend or revoke the license issued under this chapter for
2 the grounds and under the procedures prescribed by Section 4-1-10, "Revocation of
3 Licenses," B.R.C. 1981.

4 (b) In addition to any other provision of this code, the city manager may suspend or
5 revoke a license issued under this chapter if the operator does not comply with the
6 requirements of this chapter, any city manager rule adopted to implement or enforce
7 this chapter, or pay any fine, civil penalty or assessment imposed pursuant to this
8 chapter within 30 days from the date of notice thereof.

9 (c) Any operator whose license has been suspended or revoked by the city manager shall
10 reclaim and remove their entire fleet of shared electric scooters from wherever the
11 shared scooters are located, within thirty days of notice of revocation or suspension.
12

13 **4-34-6. -- Operator Responsibilities.**

14 (a) No person shall offer a shared electric scooter for use that does not meet each of the
15 standards set forth in this section.

16 (b) An operator shall provide, on its mobile application in both English and Spanish
17 language, a link for customers to notify the operator if there is a safety or
18 maintenance issue with the scooter; account, technical and operational
19 troubleshooting; information on the operator's policies, pricing and terms and
20 conditions of use; and shall conspicuously post the operator's privacy policy on the
21 application and shall comply with such policy.
22

23 (c) An operator shall include, in its mobile application in both English and Spanish
24 language, prominently displayed notification to users that:
25

1 (1) Helmet use is encouraged while riding a scooter,

2 (2) Electric scooter users shall yield to pedestrians on sidewalks,

3 (3) When riding on-street, users must comply with all traffic regulations, as
4 drivers would in a motor vehicle except as modified by this chapter or by
5 rules established by the city manager under this chapter, and

6 (4) Shared electric scooters may only be parked in designated scooter parking
7 areas or on private property with the consent of the property owner.
8

9 (d) An operator shall provide users with a twenty-four-hour customer service telephone
10 number to report safety concerns, complaints, or ask questions.

11 (e) An operator shall understand and educate users in both English and Spanish language
12 regarding the laws applicable to riding, operating and parking an electric scooter in
13 the City of Boulder.

14 (f) An operator shall provide the city manager with current contact information for the
15 operator or its staff that are capable of rebalancing shared electric scooters.

16 (g) An operator shall relocate or rebalance shared electric scooters within two hours of
17 receiving notification by the city.
18

19 (h) An operator shall remove or maintain any inoperable shared electric scooter that is
20 not safe to operate, within twenty-four hours of notice by any means to the operator
21 by any individual or entity.

22 (i) An operator shall comply with the record keeping, ridership data, and reporting
23 requirements established by the city manager under this chapter.
24
25

1 (j) No operator shall initially deploy more than two hundred shared electric scooters.

2 The city manager is authorized to modify the number of shared electric scooters
3 each operator may deploy based on the operator's ability to meet key performance
4 indicators established by the manager.

5 (k) No operator shall violate the conditions of the license or approved management plan.

6 (l) An operator shall provide written notice to the city at least 30 days before
7 discontinuing operations.

8 (m) An operator shall remove its fleet of shared electric scooters within twenty-four
9 hours of the time the operator ceases operation in the city for any reason.

10 (n) An operator shall offer users a one-year low-income plan that waives any applicable
11 vehicle deposit otherwise required by the operator and provides a cash payment
12 option and unlimited trips under thirty minutes to any user who provides proof of an
13 income level at or below the federal poverty guidelines established by the United
14 States Department of Health and Human Services, subject to annual renewal.

15 (o) An operator shall participate in city-initiated engagement and user education efforts,
16 including but not limited to special events and neighborhood outreach opportunities,
17 no less than two times per year.

18 (p) An operator shall make pricing information including low-income program and
19 discount membership available to the public, in both English and Spanish language,
20 on its online application and in print materials that are distributed at a frequency and
21 target areas pursuant to rules issued by the city manager under this chapter.

22 (q) An operator shall provide its customers on the operator's software application and via
23 written notification by electronic mail if available or mailed first-class mail, postage
24
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pre-paid, to the last known address of the customer, two weeks' advance notification of any increase in the costs or fees to provide its services. This written notification shall be in both English and Spanish language.

(r) An operator shall comply with all data security laws required by the state of Colorado and shall not collect or maintain personal data related to a user's race, creed, color, sex, sexual orientation, gender identity, gender expression, genetic characteristics, marital status, religion, religious expression, national origin, ancestry, pregnancy, parenthood, custody of a minor child, mental or physical disability, source of income, or immigration status except for survey data collected in the aggregate on an opt-in basis or for a public purpose as determined by the city manager.

4-31-7. -- Shared Electric Scooter Standards.

No person shall offer a shared electric scooter for use that does not meet each of the standards set forth in this section.

(a) The shared electric scooter shall meet the standards established by the United States Consumer Product Safety Commission, be certified as safe to operate under Standards for Safety established by Underwriters Laboratories, and comply with the Consumer Product Safety Act, Public Law 107-319, 15 U.S.C. §§ 2051 et seq.

(b) The shared electric scooter shall be equipped with technology to track ridership data required by the license, including but not limited to Global Positioning System technology capable of providing real-time location data.

(c) The shared electric scooter shall have affixed, in a prominent location in both English and Spanish language, identifying information that includes:

1 (1) The name, address, electronic mail address, and twenty-four-hour customer
2 service telephone number of the operator; and

3 (2) A unique identifier number or series of numbers for each shared scooter.

4 (d) The shared electric scooter shall be equipped with software that can respond to
5 reduced speed requirements in areas defined pursuant to rules issued by the city
6 manager under this chapter.

7 **4-31-8. -- Parking Electric Scooters.**

8
9 (a) No user of an electric scooter shall park the scooter in any location except where
10 authorized by this chapter or pursuant to rules issued by the city manager under this
11 chapter. If the scooter is a shared scooter, both the operator and user are jointly and
12 severally liable for any parking in violation of this chapter or the city manager rules
13 issued under this chapter.

14 (b) An operator shall remove any inoperable, damaged or unsafe shared electric scooter
15 from the public right-of-way within two hours of notice by any means to the operator
16 by any individual or entity, between the hours of 6:00AM through 10:00PM.

17 (c) An operator shall relocate any shared electric scooter left in an unauthorized
18 location, including but not limited to bicycles parked in violation of Section 5-3-5,
19 “Obstructing Public Streets, Places or Buildings,” B.R.C. 1981, within two hours of
20 notice by any means to the operator by any individual or entity between the hours
21 of 6:00AM through 10:00PM.
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1 (d) Violations of any of the provisions of this section are traffic infractions. Any person
2 who is convicted of, who admits liability for, or against whom a judgment is entered
3 for such a traffic infraction shall be fined not less than \$10 nor more than \$100.

4 (e) In addition to any other provision of this code, the city manager is authorized to
5 relocate any scooter left in an unauthorized location to a location authorized
6 pursuant to rules issued by the city manager, to dispose of any abandoned or
7 improperly parked scooter, and if the scooter was part of a shared scooter business
8 to collect the cost of such relocation or disposal from the operator either through
9 the financial guaranty required by this chapter or directly from the operator if the
10 financial guaranty is insufficient to cover the cost. Section 2-4-6, "Disposition of
11 Property Other Than Motor Vehicles," B.R.C. 1981, shall not apply to scooters.
12

13 **4-31-9. -- Rules and Regulations.**

14 (a) The city manager may promulgate such rules and regulations consistent with this chapter as
15 the manager considers necessary to implement and enforce this chapter. In addition, the
16 manager may adopt rules that enhance public safety or to prevent or mitigate against any
17 adverse impact that electric scooters may have to public or private property. In addition, the
18 manager may adopt rules that designate where electric scooters may be operated, except that
19 Such rule adopted by the manager shall not include paths or trails on open space land as
20 defined in the City Charter Section 170.

21 (b) No person shall fail to comply with any city manager rule adopted pursuant to this chapter.
22

23 **Section 4.** Section 7-1-1, "Definitions" is amended to add a new definition of "electric
24 scooter" to read:
25

1 Electric scooter means a device equipped with a fixed or adjustable seat, front and rear
2 independent dual actuated braking system, integrated headlight and taillight, tire diameter of nine
3 inches or greater, ground clearance of seven inches or greater, an anticipated lifespan of two
4 years or longer and that cannot exceed 20 miles per hour.

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

7 **Section 6.** The city council deems it appropriate that this ordinance be published by title
8 only and orders that copies of this ordinance be made available in the office of the city clerk for
9 public inspection and acquisition.
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1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 1st day of September 2020.

3
4
5 Attest: Sam Weaver, Mayor

6
7 Pamela Davis, Acting City Clerk

8
9 READ ON SECOND READING, PASSED AND ADOPTED this 15th day September
10 2020.

11
12
13 Attest: Sam Weaver, Mayor

14
15
16 Pamela Davis, Acting City Clerk

ORDINANCE 8423

AN ORDINANCE REGULATING SHARED ELECTRIC SCOOTERS IN THE CITY, EXCLUDING USE ON OPEN SPACE LAND, BY AMENDING SECTIONS 3-17-3, "SALES AND USE TAX OR BUSINESS LICENSE REQUIRED," TITLE 4, "LICENSES AND PERMITS," ADDING A NEW CHAPTER 34, "SHARED ELECTRIC SCOOTERS," 7-1-1, "DEFINITIONS," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 3-17-3, "Sales and Use Tax or Business License Required," shall be amended as follows:

(a) The manager shall not issue a sales and use tax license to any business that is proposing to conduct business activities that are in violation of any of the provisions of the "Boulder Revised Code" 1981. The sales and use tax license may be referred to as a "business license."

(b) The manager may issue a business license to a business to offer shared electric scooters as defined in section 7-1-1, "Definitions," B.R.C. 1981. Such business license shall be issued pursuant to licensing standards specific to micromobility adopted by city council.

Section 2. A new section 4-20-74, "Shared Electric Scooter License Fees," is added to read:

(a) An applicant for a license to operate a shared electric scooter business shall pay a fee of \$3,300 per year for the initial license and \$1,800 annually thereafter. If the

1 applicant is also applying for a license pursuant to chapter 4-31, “Dockless Bicycle
2 Share,” B.R.C. 1981 the applicant shall pay a single fee of \$3,300 for the initial
3 license and a single fee of \$1,800 annually thereafter.

4 (b) In addition to the fees established in subsection (a) of this section, any person issued
5 a license to operate a shared electric scooter business under this Chapter shall pay
6 \$0.15 per ride each time a shared electric scooter is utilized by a user, that will be
7 used by the city to create micromobility parking hubs with electric scooter racks,
8 geofencing, striping and signing and for related administrative expenses.

9 (c) The fees herein prescribed shall not be refundable.

10 **Section 3.** A new Chapter 4-34, “Shared Electric Scooters,” B.R.C. 1981, is added to
11 read:

12 **Chapter 4-34 – Shared Electric Scooters.**
13 **4-34-1. – Findings and Purpose.**

- 14 (a) Commercial electric scooter companies distribute scooters that can be ridden after
15 payment of a fee.
- 16 (b) Regulation of commercial scooter companies is important to promote safe use, limit
17 conflict with other users and regulate the use of the city's right-of-way and multi-use
18 paths.
- 19 (c) Other communities have experienced significant impacts from the operation of
20 electric scooter companies. For example, communities have experienced costs
21 associated with collecting and storing electric scooters left in city right-of-way.
- 22 (d) Other communities have incurred costs for infrastructure to facilitate safe riding and
23 storage.
- 24 storage.
- 25

- 1 (e) The purpose of this chapter is to protect the public health, safety, and welfare to
2 prevent or mitigate against any adverse impact that shared electric scooters may
3 have to public or private property by licensing all persons who make available
4 shared electric scooters in the city.

5 **4-34-2. – License Required.**

- 6 (a) No person shall conduct or carry on the business of offering shared electric scooters
7 without first being awarded a contract pursuant to chapter 2-8, “Purchasing
8 Procedures,” B.R.C. 1981, and within 180 days of the effective date of the contract,
9 obtaining a license for such business from the city manager under this chapter.
10
11 (b) Because the success of the city’s shared micromobility program is impacted by the
12 number of operators in the city, the city manager may limit the quantity of licenses
13 issued under this chapter.

14 **4-34-3. -- License Application.**

- 15 (a) An applicant for a license under this chapter shall apply on forms furnished by the
16 city manager and pay the fee prescribed in Section 4-20-74, “Shared Electric Scooter
17 License Fees,” B.R.C. 1981.
18
19 (b) The applicant shall maintain insurance during the period of the license as required
20 by Section 4-1-8, "Insurance Required," B.R.C. 1981.
21
22 (c) The applicant shall provide a financial guaranty upon which the city may draw, in
23 the amount of \$50 per electric scooter, with a cap of \$5,000, to secure performance
24 of the terms of this license. The financial guaranty shall be cash, a letter of credit
25 from a surety or financial institution and in a form acceptable to the city manager,
payable to the city as beneficiary, or another form of financial guaranty approved

1 by the city manager. If a permitted operator increases the size of its fleet as permitted
2 by this chapter, the financial guaranty shall be adjusted appropriately before
3 deploying additional electric scooters. The financial guaranty will be used to pay
4 city expenses including without limitation the following:

5 (1) Public property repair and maintenance costs caused by the operator's
6 equipment,

7 (2) Any cost for removing or storing shared electric scooters improperly parked,
8 and
9

10 (3) Any cost to the city to remove shared electric scooters if a license issued
11 pursuant to this chapter expires or is otherwise terminated.

12 (d) An applicant for a license shall submit, along with the application, a management
13 plan that addresses accessibility of the electric scooter share system, and how the
14 applicant will prevent or mitigate against adverse impacts that shared electric
15 scooters may have to public or private property. The city manager will not approve
16 a management plan unless it adequately addresses such impacts. The management
17 plan shall include the following components:

18 (1) A description of how the applicant will develop and implement the
19 requirements in Subsection 4-34-7(n),
20

21 (2) A proposed service plan to achieve equitable distribution of shared electric
22 scooters within the city including deployment of shared electric scooters at
23 transit facilities and high demand areas of the city as identified by a city
24 manager rule authorized by this chapter,
25

1 (3) A description of how the applicant will respond to complaints of improperly
2 parked or abandoned shared electric scooters,

3 (4) A description of how the operator will respond when notified of safety or
4 operational concerns of a shared electric scooter in the system,

5 (5) A maintenance plan for shared electric scooters, and

6 (6) A proposed user education and outreach plan for proper electric scooter
7 parking and riding.
8

9 (e) By applying for a license under this chapter, the applicant consents to the city using
10 its own staff or a third-party consultant for evaluation of records and reports required
11 to be maintained by this chapter and the shared electric scooter license program
12 authorized by this chapter.

13 **4-34-4. -- Authority to Deny Issuance of License.**

14 The city manager may deny an application for a license under this chapter if the
15 applicant fails to demonstrate that it meets all of the requirements in Subsections 4-1-9(a) or 4-
16 31-4, B.R.C. 1981.

17 **4-34-5. -- Suspension or Revocation of License.**

18 (a) The city manager may suspend or revoke the license issued under this chapter for
19 the grounds and under the procedures prescribed by Section 4-1-10, "Revocation of
20 Licenses," B.R.C. 1981.
21

22 (b) In addition to any other provision of this code, the city manager may suspend or
23 revoke a license issued under this chapter if the operator does not comply with the
24 requirements of this chapter, any city manager rule adopted to implement or enforce
25

1 this chapter, or pay any fine, civil penalty or assessment imposed pursuant to this
2 chapter within 30 days from the date of notice thereof.

- 3 (c) Any operator whose license has been suspended or revoked by the city manager shall
4 reclaim and remove their entire fleet of shared electric scooters from wherever the
5 shared scooters are located, within thirty days of notice of revocation or suspension.

6 **4-34-6. -- Operator Responsibilities.**

- 7 (a) No person shall offer a shared electric scooter for use that does not meet each of the
8 standards set forth in this section.

- 9
10 (b) An operator shall provide, on its mobile application in both English and Spanish
11 language, a link for customers to notify the operator if there is a safety or
12 maintenance issue with the scooter; account, technical and operational
13 troubleshooting; information on the operator's policies, pricing and terms and
14 conditions of use; and shall conspicuously post the operator's privacy policy on the
15 application and shall comply with such policy.

- 16 (c) An operator shall include, in its mobile application in both English and Spanish
17 language, prominently displayed notification to users that:

- 18 (1) Helmet use is encouraged while riding a scooter,
19
20 (2) Electric scooter users shall yield to pedestrians on sidewalks,
21
22 (3) When riding on-street, users must comply with all traffic regulations, as
23 drivers would in a motor vehicle except as modified by this chapter or by
24 rules established by the city manager under this chapter, and
25 (4) Shared electric scooters may only be parked in designated scooter parking
areas or on private property with the consent of the property owner.

- 1 (d) An operator shall provide users with a twenty-four-hour customer service telephone
2 number to report safety concerns, complaints, or ask questions.
- 3 (e) An operator shall understand and educate users in both English and Spanish language
4 regarding the laws applicable to riding, operating and parking an electric scooter in
5 the City of Boulder.
- 6 (f) An operator shall provide the city manager with current contact information for the
7 operator or its staff that are capable of rebalancing shared electric scooters.
- 8 (g) An operator shall relocate or rebalance shared electric scooters within two hours of
9 receiving notification by the city.
- 10 (h) An operator shall remove or maintain any inoperable shared electric scooter that is
11 not safe to operate, within twenty-four hours of notice by any means to the operator
12 by any individual or entity.
- 13 (i) An operator shall comply with the record keeping, ridership data, and reporting
14 requirements established by the city manager under this chapter.
- 15 (j) No operator shall initially deploy more than five hundred shared electric scooters.
16 The city manager is authorized to modify the number of shared electric scooters
17 each operator may deploy based on the operator's ability to meet key performance
18 indicators established by the manager.
- 19 (k) No operator shall violate the conditions of the license or approved management plan.
- 20 (l) An operator shall provide written notice to the city at least 30 days before
21 discontinuing operations.
- 22 (m) An operator shall remove its fleet of shared electric scooters within twenty-four
23
24
25

- 1 hours of the time the operator ceases operation in the city for any reason.
- 2 (n) An operator shall offer users a one-year low-income plan that waives any applicable
3 vehicle deposit otherwise required by the operator and provides a cash payment
4 option and unlimited trips under thirty minutes to any user who provides proof of an
5 income level at or below the federal poverty guidelines established by the United
6 States Department of Health and Human Services, subject to annual renewal.
- 7 (o) An operator shall participate in city-initiated engagement and user education efforts,
8 including but not limited to special events and neighborhood outreach opportunities,
9 no less than two times per year.
- 10 (p) An operator shall make pricing information including low-income program and
11 discount membership available to the public, in both English and Spanish language,
12 on its online application and in print materials that are distributed at a frequency and
13 target areas pursuant to rules issued by the city manager under this chapter.
- 14 (q) An operator shall provide its customers on the operator's software application and via
15 written notification by electronic mail if available or mailed first-class mail, postage
16 pre-paid, to the last known address of the customer, two weeks' advance notification
17 of any increase in the costs or fees to provide its services. This written notification
18 shall be in both English and Spanish language.
- 19 (r) An operator shall comply with all data security laws required by the state of Colorado
20 and shall not collect or maintain personal data related to a user's race, creed, color,
21 sex, sexual orientation, gender identity, gender expression, genetic characteristics,
22 marital status, religion, religious expression, national origin, ancestry, pregnancy,
23 parenthood, custody of a minor child, mental or physical disability, source of income,
24
25

1 or immigration status except for survey data collected in the aggregate on an opt-in
2 basis or for a public purpose as determined by the city manager.

3 **4-31-7. -- Shared Electric Scooter Standards.**

4 No person shall offer a shared electric scooter for use that does not meet each of the standards
5 set forth in this section.

6 (a) The shared electric scooter shall meet the standards established by the United States
7 Consumer Product Safety Commission, be certified as safe to operate under
8 Standards for Safety established by Underwriters Laboratories, and comply with the
9 Consumer Product Safety Act, Public Law 107-319, 15 U.S.C. §§ 2051 et seq.

10 (b) Each shared electric scooter shall meet the definition of electric scooter under the
11 provisions of Section 7-1-1, "Definitions," B.R.C. 1981.

12 (c) The shared electric scooter shall be equipped with technology to track ridership data
13 required by the license, including but not limited to Global Positioning System
14 technology capable of providing real-time location data.

15 (d) The shared electric scooter shall have affixed, in a prominent location in both
16 English and Spanish language, identifying information that includes:

17 (1) The name, address, electronic mail address, and twenty-four-hour customer
18 service telephone number of the operator; and

19 (2) A unique identifier number or series of numbers for each shared scooter.

20 (e) The shared electric scooter shall be equipped with software that can respond to
21 reduced speed requirements in areas defined pursuant to rules issued by the city
22 manager under this chapter.

23 **4-31-8. -- Parking Electric Scooters.**

- 1 (a) No user of an electric scooter shall park the scooter in any location except where
2 authorized by this chapter or pursuant to rules issued by the city manager under this
3 chapter. If the scooter is a shared scooter, both the operator and user are jointly and
4 severally liable for any parking in violation of this chapter or the city manager rules
5 issued under this chapter.
6
- 7 (b) An operator shall remove any inoperable, damaged or unsafe shared electric scooter
8 from the public right-of-way within two hours of notice by any means to the operator
9 by any individual or entity, between the hours of 6:00AM through 10:00PM.
- 10 (c) An operator shall relocate any shared electric scooter left in an unauthorized
11 location, including but not limited to bicycles parked in violation of Section 5-3-5,
12 “Obstructing Public Streets, Places or Buildings,” B.R.C. 1981, within two hours of
13 notice by any means to the operator by any individual or entity between the hours
14 of 6:00AM through 10:00PM.
15
- 16 (d) Violations of any of the provisions of this section are traffic infractions. Any person
17 who is convicted of, who admits liability for, or against whom a judgment is entered
18 for such a traffic infraction shall be fined not less than \$10 nor more than \$100.
- 19 (e) In addition to any other provision of this code, the city manager is authorized to
20 relocate any scooter left in an unauthorized location to a location authorized
21 pursuant to rules issued by the city manager, to dispose of any abandoned or
22 improperly parked scooter, and if the scooter was part of a shared scooter business
23 to collect the cost of such relocation or disposal from the operator either through
24 the financial guaranty required by this chapter or directly from the operator if the
25

financial guaranty is insufficient to cover the cost. Section 2-4-6, "Disposition of Property Other Than Motor Vehicles," B.R.C. 1981, shall not apply to scooters.

4-31-10. -- Rules and Regulations.

(a) The city manager may promulgate such rules and regulations consistent with this chapter as the manager considers necessary to implement and enforce this chapter. In addition, the manager may adopt rules that enhance public safety or to prevent or mitigate against any adverse impact that electric scooters may have to public or private property. In addition, the manager may adopt rules that designate where electric scooters may be operated, except that Such rule adopted by the manager shall not include paths or trails on open space land as defined in the City Charter Section 170.

(b) No person shall fail to comply with any city manager rule adopted pursuant to this chapter.

Section 4. Section 7-1-1, "Definitions" is amended to add a new definition of "electric scooter" to read:

Electric scooter means a device:

(a) Weighing less than one hundred pounds;

(b) With handlebars and an electric motor;

(c) That is powered by an electric motor; and

(d) That has a maximum speed of twenty miles per hour on a paved surface when powered solely by the electric motor.

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.

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.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 1st day of September 2020.

Attest:

Sam Weaver, Mayor

Pamela Davis, Acting City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 15th day September
2020.

Attest:

Sam Weaver, Mayor

Pamela Davis, Acting City Clerk

ORDINANCE 8424

AN ORDINANCE PROHIBITING THE MANAGER FROM ISSUING A BUSINESS LICENSE TO A COMPANY OFFERING SHARED ELECTRIC SCOOTERS BY AMENDING SECTIONS 3-17-3, "SALES AND USE TAX OR BUSINESS LICENSE REQUIRED," 7-1-1, "DEFINITIONS," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 3-17-3, "Sales and Use Tax or Business License Required," shall be amended to:

(a) The manager shall not issue a sales and use tax license to any business that is proposing to conduct business activities that are in violation of any of the provisions of the "Boulder Revised Code" 1981. The sales and use tax license may be referred to as a "business license."

(b) Businesses offering shared electric scooters are not eligible for a business license and the manager shall not issue a business license to any business to engage in offering shared electric scooters.

Section 2. Section 7-1-1, "Definitions" to add a new definition of "electric scooter" to read:

Electric scooter means a device:

(1) Weighing less than one hundred pounds exclusive of accessories and seat;

(2) With handlebars and an electric motor;

(3) That is powered by an electric motor; and

(4) That has a maximum speed of twenty miles per hour on a paved surface when powered

1 solely by the electric motor.

2 **Section 3.** This ordinance is necessary to protect the public health, safety and welfare of
3 the residents of the city, and covers matters of local concern.

4 **Section 4.** The city council deems it appropriate that this ordinance be published by title
5 only and orders that copies of this ordinance be made available in the office of the city clerk for
6 public inspection and acquisition.

7 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
8 TITLE ONLY this 1st day of September 2020.

11
12 Attest:

Sam Weaver,
Mayor

13
14 _____
Pamela Davis,
15 Acting City Clerk

16 READ ON SECOND READING, PASSED AND ADOPTED this 15th day of September
17 2020.

18
19
20
21
22 Attest:

Sam Weaver,
Mayor

23
24 _____
Pamela Davis,
25 Acting City Clerk



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Second reading and consideration of a motion to adopt Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

PRIMARY STAFF CONTACT

Luis Toro, Senior Assistant City Attorney

REQUESTED ACTION OR MOTION LANGUAGE

Motion to adopt Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

Or in the alternative

Motion to adopt by emergency Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

ATTACHMENTS:

Description

- ▣ **Item 3K - 2nd Rdg Ord 8420 - Direct Election of Mayor by Ranked Choice Ballot Initiative**

▢ **Item 3K - Supplemental Agenda Memo**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Luis Toro, Senior Assistant City Attorney
Pamela Davis, Acting City Clerk

EXECUTIVE SUMMARY

An initiative for a charter amendment to change the way the mayor is chosen to a direct election using the “ranked choice” or “instant runoff” voting method, and conducting the mayoral election in Presidential election years, was approved for circulation, and has submitted signatures to the Clerk’s office. On August 11, 2020, council passed Ordinance 8420 on First Reading. The proposed ordinance (**Attachment A**) would submit this proposed charter amendment to the voters on the November 2020 ballot, with the first mayoral election would be held as part of the general municipal election in 2023. The new proposed charter amendment would also establish a two-year term for the mayor, set term limits for the mayor, change provisions regarding the council to reflect

the direct election of the mayor, establish provisions for filling a mayoral vacancy, and clarify that the mayor would receive the same compensation as council members. The powers of the mayor would not change. Council raised a concern that under the proposed ordinance a person could run for both a member of the city council and the mayor in the same election. Staff has prepared an alternative version that would clarify that a person could run for one position or the other, but not both (**Attachment B**). If council wishes to include this amendment, council should amend the ordinance by substituting the version in **Attachment B** and passing by emergency. Staff has included proposed alternative motion language.

STAFF RECOMMENDATION

Suggested Motion Language

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

Motion to adopt Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

Or in the alternative

Motion to adopt by emergency Ordinance 8420 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of amending Article II Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter to provide for the direct election of the mayor by ranked choice (instant runoff) voting; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – None.
- Environmental – None.
- Social – The measure is intended to promote the principle of self-government by enabling Boulder citizens to vote directly for the mayor via ranked choice voting.

OTHER IMPACTS

- Fiscal – The measure may increase the cost of holding a municipal election if the Boulder County Clerk and Recorder does not agree to hold a coordinated election with the city that involves ranked choice voting.

- Staff times – There may be a slight increase in staff time needed to conduct an election using ranked choice voting.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

None.

BACKGROUND

A charter amendment petition has been circulated by the group “Our Mayor, Our Choice.” The proposed amendment would take the authority to name a mayor away from council and give it to the voters through an election conducted under the “ranked choice” or “instant runoff” system in Presidential election years. The petitioners have submitted approximately 5,800 signatures that are currently under review by the City Clerk’s Office. This would fall short of the 8,096 signatures that would be required under state law for a charter amendment. The proposed ordinance would submit to the voters a modified version of that proposed charter amendment.

ANALYSIS

The proposed ordinance would submit to the voters a modified version of the charter amendment proposed in the petition. The main difference between the charter amendment proposed by this ordinance, and the charter amendment petition currently under clerk review, is that the mayor would be elected during the regular municipal election starting with the November 2023 election, instead of during Presidential election years.

The proposed charter amendment would not give the mayor any new powers. The mayor would continue to have an equal vote with other council members and would preside over council meetings as is currently done. What would change is that every two years, beginning with the general municipal election to be held in 2023, the mayor would be elected by the voters via a system known as “ranked choice” or “instant runoff” voting. Under that system, voters rank the candidates in order of preference. If no candidate receives 50 percent of first choice votes, then the candidate with the fewest first choice votes is eliminated, and ballots cast with that candidate as the first choice are redistributed among the remaining candidates based on those voters’ second choice. The process continues until a candidate reaches 50 percent and is declared the winner. The Colorado Secretary of State has issued a Rule governing how municipalities may conduct ranked choice elections. 8 C.C.R. 1505-1, Rule 26. It is anticipated that the city will conduct ranked choice elections consistently with that Rule.

Because the mayor would be elected every two years and have the same vote as a council member, the proposed charter amendment would change the current system for electing council members. Under the new system, the top four vote-getters in a council election will get a four-year term. If a council member who is in the middle of a four-year term wins election as mayor, then the fifth-place finisher in the council election will get a two-year term.

The proposed charter amendment would also establish term limits for the mayor. No person could run for mayor if he or she had previously served eight years as mayor, or three terms on the council and four years as mayor. Vacancies in the office of mayor would be filled the same way as council vacancies, except that in the event of a mayoral vacancy the mayor pro tem would serve as mayor until a successor is elected.

The proposed charter amendment would also clarify that the mayor will receive the same compensation as council members.

The proposed emergency alternative (**Attachment B**) would add language to Section 5 of the Charter to clarify that no person may run for both mayor and council member at the same election, nor hold both offices at the same time.

ATTACHMENTS

A – Proposed Ordinance 8420

B – Proposed Ordinance 8420 Emergency Alternative

ORDINANCE 8420

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF AMENDING ARTICLE II SECTIONS 3, 4, 5, 7, 8, 14, and 15 OF THE BOULDER CITY CHARTER TO PROVIDE FOR THE DIRECT ELECTION OF THE MAYOR BY RANKED CHOICE (INSTANT RUNOFF) VOTING; SETTING FORTH THE BALLOT TITLE; SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 3, 2020.

Section 2. At that election, a question shall be submitted to the electors of the City of Boulder that will allow voters to consider the following amendment to Sections 3, 4, 5, 8, 14, and 15 of the City Charter to amend the charter to provide for the direct election of the mayor by ranked choice voting, and to set the term of office and term limits for the mayor. The material to be added to the Charter is shown by double underlining and material to be deleted is shown stricken through with solid lines.

Section 3. Article II, shall be amended to read as follows:

....

Sec. 3. - Legislative officers-the council.

The legislative officers of the city shall consist of the mayor and nine ~~eight~~ council members elected from the city at large, each having an equal vote, and collectively called the council.

Sec. 4. - Qualifications of council members and the mayor.

No person shall be eligible to office as council member or mayor unless, at the time of the election, such person is a qualified elector as defined by the laws of the State of Colorado, at least twenty-one years of age, and shall have resided in the City of Boulder for one year immediately prior thereto.

No person shall be eligible to the office of a council member if such person has previously been elected to three or more terms of office. No person shall be eligible to the office of mayor if such person has previously served eight years as mayor, or if such person has previously served three terms as a council member and four years as mayor.

Sec. 5. - Terms of office-election-recall.

The terms of office for council members shall be four years and two years as hereinafter, provided: beginning with the 2023 regular municipal election, when the mayor shall first be elected pursuant to section 14 of this charter, the four candidates receiving the highest number of votes shall be elected for four-year terms, and the candidate receiving the fifth highest number of votes shall be elected for a two-year term.

The term of office for the mayor shall be two years.

If there shall be vacancies to be filled at a general municipal election, other than those occurring due to the expiration of a regular term, the vacancy term shall be for two years, and additional council members or a mayor shall be elected until there shall be a council of ~~nine~~ eight council members and a mayor.

In the event that a council member whose term is not ending the November of the election wins election to the office of mayor in the regular municipal election, then the council candidate receiving the fifth highest number of votes in that same election shall complete that council member's term.

The terms of all council members and the mayor shall begin at 10:00 a.m. on the third Tuesday in November following their respective elections. In the event that one or more of the prevailing candidates is not determined by such time because the vote count is incomplete or inconclusive, or a recount is required, the terms for such council member(s) shall not begin until the business day following the final determination of the election results for that candidate. All council members and the mayor shall be subject to recall as provided by this charter.

....

Sec. 7. - Compensation.

Council members and the mayor shall receive as compensation \$100.00 per meeting at which a quorum of city council is present, not to exceed fifty-two meetings per calendar year, plus an annual escalation each January 1 in a percentage equivalent to any increase over the past year in the Consumer Price Index (All Items) for the statistical area which includes the city

maintained by the United States Department of Labor, Bureau of Labor Statistics; this amendment shall become effective January 1, 1990. For purposes of this section only, a “meeting” shall mean a gathering of a quorum of the council, which gathering is noticed to the public as a regular or special meeting as provided in this Charter. Council members serving on January 1, 2020 and after may elect to receive benefits under the same terms and conditions that are available to full-time city employees including without limitation participation in city health, vision, dental, and life insurance plans.

Sec. 8. - Vacancies.

A vacancy shall exist ~~in the council~~ whenever a duly elected mayor or council member fails to qualify within ten days after notice of the election, dies, resigns, removes from the city, is absent from five consecutive regular meetings of the council unless formally excused therefrom, is convicted of a felony while in office, or is judicially declared incompetent ~~a lunatic~~; or, in case of a recall, no successor is elected, or if elected, fails to qualify.

If a vacancy occurs, or two council vacancies or one council vacancy and a mayoral vacancy come to exist at the same time, other than those occurring due to the expiration of regular terms, then:

- (a) If the vacancy or vacancies occur in a calendar year before August 1, then the election shall be held in November of that calendar year. Otherwise it will be held at the November election of the next calendar year.
- (b) However, an election to fill a vacancy may be held on a date earlier than those noted above if another city election is scheduled for the earlier date and if council determines, based upon the certification of the designated election official, that it is feasible to schedule the election on that earlier date.

If three or more council and/or mayoral vacancies come to exist at the same time, other than those occurring due to the expiration of regular terms, then a special election shall be held on a Tuesday within ninety days of the date on which a total of three or more vacancies first exists, or as soon thereafter as is feasible as determined by the city manager.

If more than four council and/or mayoral vacancies exist, prior to the special election to fill those vacancies a quorum of the council shall be comprised of a majority of all of the remaining council members.

The nomination of candidates to be voted for at any election made necessary by operation of this provision, the publication of notice, and the conduct of the same shall all be in conformity with the provisions of this charter relating to elections, but the council may, in the motion calling for the election, adjust the times for checking petitions, correcting or replacing signatures, completion and filing of petitions, withdrawal from nomination, and certification of filing of the list of candidates, as may reasonably be required to accommodate the date set for the election.

If a vacancy exists in the office of mayor, the mayor pro tem shall serve as acting mayor until a new mayor is elected and takes office pursuant to this section.

....

Sec. 14. - Selection and term of office of mayor.

If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting. ~~The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election. The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.~~

Sec. 15. - Powers and duties of mayor.

The mayor shall have all the powers, rights, and privileges of a council member. The mayor shall preside at meetings of the council and perform such other duties consistent with the office as may be imposed by this charter or by the council. The mayor shall have no power of veto. The mayor shall be recognized as the official head of the city for all ceremonial purposes, by the courts for serving civil processes, and by the governor for military purposes. In time of emergency, the mayor shall, if the council so orders, take command of the police and maintain and enforce the laws, temporarily superseding the city manager in police affairs. The mayor shall be ex officio a member of all council committees. During the mayor's absence or disability, the mayor's duties shall be performed by the mayor pro tem ~~an acting mayor, appointed by the council from its own number.~~

Section 4. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the measure:

Ballot Question No. ____

Charter Amendments Related to Direct Election of the Mayor

Shall Article II, Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter be amended to provide for the direct election of the mayor by ranked choice (instant runoff) voting?

For the Measure ____

Against the Measure ____

1 Section 5. If this ballot measure is approved by the voters, the Charter shall be so amended,
2 and the City Council may adopt any necessary amendments to the Boulder Revised Code to
3 implement this change.

4 Section 6. If any section, paragraph, clause, or provision of this ordinance shall for any
5 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
6 provisions of this ordinance.

7 Section 7. The election shall be conducted under the provisions of the Colorado
8 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this
9 ordinance.

10 Section 8. The officers of the city are authorized to take all action necessary or appropriate
11 to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the
12 election for the city.

13 Section 9. This ordinance is necessary to protect the public health, safety, and welfare of
14 the residents of the city, and covers matters of local concern.

15 Section 10. The city council deems it appropriate that this ordinance be published by title
16 only and orders that copies of this ordinance be made available in the office of the city clerk for
17 public inspection and acquisition.
18
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1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY, this 11th day of August 2020.

3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk

11 READ ON SECOND READING, PASSED AND ADOPTED, this 1st day of September
12 2020.

13 _____
14 Sam Weaver,
15 Mayor

16 Attest:

17 _____
18 Pamela Davis,
19 City Clerk

ORDINANCE 8420

AN EMERGENCY ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF AMENDING ARTICLE II SECTIONS 3, 4, 5, 7, 8, 14, and 15 OF THE BOULDER CITY CHARTER TO PROVIDE FOR THE DIRECT ELECTION OF THE MAYOR BY RANKED CHOICE (INSTANT RUNOFF) VOTING; SETTING FORTH THE BALLOT TITLE; SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

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Section 2. At that election, a question shall be submitted to the electors of the City of Boulder that will allow voters to consider the following amendment to Sections 3, 4, 5, 8, 14, and 15 of the City Charter to amend the charter to provide for the direct election of the mayor by ranked choice voting, and to set the term of office and term limits for the mayor. The material to be added to the Charter is shown by double underlining and material to be deleted is shown stricken through with solid lines.

Section 3. Article II, shall be amended to read as follows:

....

Sec. 3. - Legislative officers-the council.

The legislative officers of the city shall consist of the mayor and nine ~~eight~~ council members elected from the city at large, each having an equal vote, and collectively called the council.

Sec. 4. - Qualifications of council members and the mayor.

No person shall be eligible to office as council member or mayor unless, at the time of the election, such person is a qualified elector as defined by the laws of the State of Colorado, at least twenty-one years of age, and shall have resided in the City of Boulder for one year immediately prior thereto.

No person shall be eligible to the office of a council member if such person has previously been elected to three or more terms of office. No person shall be eligible to the office of mayor if such person has previously served eight years as mayor, or if such person has previously served three terms as a council member and four years as mayor.

Sec. 5. - Terms of office-election-recall.

The terms of office for council members shall be four years and two years as hereinafter, provided: beginning with the 2023 regular municipal election, when the mayor shall first be elected pursuant to section 14 of this charter, the four candidates receiving the highest number of votes shall be elected for four-year terms, and the candidate receiving the fifth highest number of votes shall be elected for a two-year term.

The term of office for the mayor shall be two years.

If there shall be vacancies to be filled at a general municipal election, other than those occurring due to the expiration of a regular term, the vacancy term shall be for two years, and additional council members or a mayor shall be elected until there shall be a council of ~~nine~~ eight council members and a mayor.

In the event that a council member whose term is not ending the November of the election wins election to the office of mayor in the regular municipal election, then the council candidate receiving the fifth highest number of votes in that same election shall complete that council member's term.

A person may not seek to be elected to both a council position and the position of mayor in the same election, nor hold the office of mayor and that of a council member at the same time.

The terms of all council members and the mayor shall begin at 10:00 a.m. on the third Tuesday in November following their respective elections. In the event that one or more of the prevailing candidates is not determined by such time because the vote count is incomplete or inconclusive, or a recount is required, the terms for such council member(s) shall not begin until the business day following the final determination of the election results for that candidate. All council members and the mayor shall be subject to recall as provided by this charter.

....

Sec. 7. - Compensation.

Council members and the mayor shall receive as compensation \$100.00 per meeting at which a quorum of city council is present, not to exceed fifty-two meetings per calendar year, plus an annual escalation each January 1 in a percentage equivalent to any increase over the past year in the Consumer Price Index (All Items) for the statistical area which includes the city maintained by the United States Department of Labor, Bureau of Labor Statistics; this amendment shall become effective January 1, 1990. For purposes of this section only, a “meeting” shall mean a gathering of a quorum of the council, which gathering is noticed to the public as a regular or special meeting as provided in this Charter. Council members serving on January 1, 2020 and after may elect to receive benefits under the same terms and conditions that are available to full-time city employees including without limitation participation in city health, vision, dental, and life insurance plans.

Sec. 8. - Vacancies.

A vacancy shall exist ~~in the council~~ whenever a duly elected mayor or council member fails to qualify within ten days after notice of the election, dies, resigns, removes from the city, is absent from five consecutive regular meetings of the council unless formally excused therefrom, is convicted of a felony while in office, or is judicially declared incompetent ~~a lunatic~~; or, in case of a recall, no successor is elected, or if elected, fails to qualify.

If a vacancy occurs, or two council vacancies or one council vacancy and a mayoral vacancy come to exist at the same time, other than those occurring due to the expiration of regular terms, then:

- (a) If the vacancy or vacancies occur in a calendar year before August 1, then the election shall be held in November of that calendar year. Otherwise it will be held at the November election of the next calendar year.
- (b) However, an election to fill a vacancy may be held on a date earlier than those noted above if another city election is scheduled for the earlier date and if council determines, based upon the certification of the designated election official, that it is feasible to schedule the election on that earlier date.

If three or more council and/or mayoral vacancies come to exist at the same time, other than those occurring due to the expiration of regular terms, then a special election shall be held on a Tuesday within ninety days of the date on which a total of three or more vacancies first exists, or as soon thereafter as is feasible as determined by the city manager.

If more than four council and/or mayoral vacancies exist, prior to the special election to fill those vacancies a quorum of the council shall be comprised of a majority of all of the remaining council members.

The nomination of candidates to be voted for at any election made necessary by operation of this provision, the publication of notice, and the conduct of the same shall all be in conformity with the provisions of this charter relating to elections, but the council may, in the motion calling

for the election, adjust the times for checking petitions, correcting or replacing signatures, completion and filing of petitions, withdrawal from nomination, and certification of filing of the list of candidates, as may reasonably be required to accommodate the date set for the election.

If a vacancy exists in the office of mayor, the mayor pro tem shall serve as acting mayor until a new mayor is elected and takes office pursuant to this section.

....

Sec. 14. - Selection and term of office of mayor.

If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting. ~~The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election.~~ The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. ~~The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.~~

Sec. 15. - Powers and duties of mayor.

The mayor shall have all the powers, rights, and privileges of a council member. The mayor shall preside at meetings of the council and perform such other duties consistent with the office as may be imposed by this charter or by the council. The mayor shall have no power of veto. The mayor shall be recognized as the official head of the city for all ceremonial purposes, by the courts for serving civil processes, and by the governor for military purposes. In time of emergency, the mayor shall, if the council so orders, take command of the police and maintain and enforce the laws, temporarily superseding the city manager in police affairs. The mayor shall be ex officio a member of all council committees. During the mayor's absence or disability, the mayor's duties shall be performed by the mayor pro tem ~~an acting mayor, appointed by the council from its own number.~~

Section 4. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the measure:

Ballot Question No. ____

Charter Amendments Related to Direct Election of the Mayor

Shall Article II, Sections 3, 4, 5, 7, 8, 14, and 15 of the Boulder City Charter be amended to provide for the direct election of the mayor by ranked choice (instant runoff) voting?

For the Measure ____

Against the Measure ____

1 Section 5. If this ballot measure is approved by the voters, the Charter shall be so amended,
2 and the City Council may adopt any necessary amendments to the Boulder Revised Code to
3 implement this change.

4 Section 6. If any section, paragraph, clause, or provision of this ordinance shall for any
5 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
6 provisions of this ordinance.

7 Section 7. The election shall be conducted under the provisions of the Colorado
8 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this
9 ordinance.

10 Section 8. The officers of the city are authorized to take all action necessary or appropriate
11 to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the
12 election for the city.

13 Section 9. This ordinance is necessary to protect the public health, safety, and welfare of
14 the residents of the city, and covers matters of local concern.

15 Section 10. The city council deems it appropriate that this ordinance be published by title
16 only and orders that copies of this ordinance be made available in the office of the city clerk for
17 public inspection and acquisition.
18
19
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24
25

1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY, this 11th day of August 2020.

3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk

11 READ ON SECOND READING, AMENDED, PASSED AND ADOPTED AS AN
12 EMERGENCY MEASURE BY TWO-THIRDS COUNCIL MEMBERS PRESENT, AND
13 ORDERED PUBLISHED BY TITLE ONLY this 1st day of September 2020.

14
15 _____
16 Sam Weaver,
17 Mayor

18 Attest:

19 _____
20 Pamela Davis,
21 City Clerk



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE: Supplemental Memorandum Requested by Council Member Young – Item 3K – Ordinance 8420

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Luis Toro, Senior Assistant City Attorney
Pamela Davis, Acting City Clerk

EXECUTIVE SUMMARY

On Tuesday, September 1, 2020, council will consider, on consent, Ordinance 8420, which would place on the November 3, 2020 ballot a measure to amend the charter to require direct election of the mayor through ranked choice voting. On Monday, August 31, 2020, Molly Fitzpatrick, Boulder County's Clerk and Recorder, provided council with a memorandum stating that there is no guarantee that Boulder County could conduct a ranked choice voting election in 2023, the year in which the proposed charter amendment would require such elections to begin. **(A copy of the memorandum is Attachment A.)** Council member Young requested the city manager and city attorney to provide an analysis of the administrative and legal issues for council consideration at the September 1, 2020 council meeting. In the limited time available, staff has drafted this brief memorandum.

ANALYSIS

The city currently contracts with Boulder County to run coordinated elections for the city. Thus, the city does not have staff or experience in running elections. The city only recently received access to the county voter database to implement the city's online petitioning system. If the county is unable to run an election with ranked choice voting, and the charter is amended to require ranked choice voting, then the city would have to run its own elections in mayoral election years, which under the proposed ordinance would be every odd-numbered year. The ballot also contains council candidates, city of

Boulder ballot measures; county, school district and special district ballot measures; and possible statewide ballot measures in odd-numbered years. Staff would need to research further to determine how the city would coordinate with the county under these circumstances.

When the Our Mayor, Our Choice initiative was first proposed, the city clerk's office researched the potential issues associated with implementing the initiative. In January 2020, Justine Vigil-Tapia, Boulder County's Deputy Clerk-Election Coordinator, collected information regarding options and cost for the city to implement ranked choice voting. Dominion Voting Systems (Boulder County's vendor and one used by the majority of CO counties) provided options. Here is a high-level summary of vendor cost:

Service	Cost
City can contract with Dominion and they would provide equipment, training, and professional services for City of Boulder to conduct the election.	<ul style="list-style-type: none"> • Service not available in 2020 (vendor capacity constraints) • Start up costs for a city-wide license are unknown at this time. The county license cost is \$350K • Estimated annual cost for ongoing voting system support is \$70K • City would be responsible for and have additional costs for ballot printing, mailing, processing. • Vendor also noted that voter education/outreach is critical. • Software allows up to 10 rankings; ballot layout is very different and requires significant voter outreach. • Round by round results and reporting (candidates drop out after each round). Need all ballots processed before outcome can be determined. Winner is candidate who receives 50%+1 of vote. This is how the software is programmed and cannot be changed unless customer wants to pay for software development build.
Boulder County voting system upgrade	<ul style="list-style-type: none"> • Ranked Choice Voting is not included in current county license and annual support fee. Boulder County uses the state contract for terms and conditions. • Cost is \$350K for a county license, \$70K/year annual license fee • Staff time cost for training, testing (software, audit), operating procedure changes is not included in this information. No roadmap/budget plans for Ranked Choice Voting support.

Colorado counties have no experience in conducting ranked choice voting elections. Small towns such as Basalt and Telluride have used ranked choice (basically an instant run-off election after the initial election) for contests. Keep in mind, these elections were done by the towns with a hand-count and their voting population is in the 2,000 to 4,000 range. After conducting a ranked choice voting election, Telluride city staff drafted a memorandum for council summarizing the experience. **(A copy is Attachment B.)**

As noted above, the proposed amendment in Charter Sec. 14 would require election of the mayor through ranked choice voting in 2023. There is no certainty that the city would be able to meet this deadline.

Council has several options. Because the Our Mayor – Our Choice committee did not file enough signatures to qualify for the ballot, the council is free to delay consideration until 2021. Also, council is free to amend the ballot measure. One option would be to change the word “shall” to the word “may” in Sec. 14. This would allow the council in 2023 the option of using ranked choice voting or not. If council wishes to consider other options, staff has drafted the two options below:

Option 1

Sec. 14. - Selection and term of office of mayor.

If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting **only if the city council determines that ranked choice voting can be conducted without adverse budgetary impacts.** ~~The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election. The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.~~

Option 2

Sec. 14. - Selection and term of office of mayor.

If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting **only if the Boulder County Clerk and Recorder has the capacity to implement ranked choice voting as part of a coordinated election.** ~~The presiding officer of the council shall be called mayor. The mayor shall be chosen by the council from its own number, upon the convening of the new council, following each general municipal election. The mayor shall serve as mayor for a term of two years, and until a successor is duly chosen and qualified. The mayor may be removed from the office of mayor (but not from the office of council member) by a two-thirds vote of all members of the council, and thereupon, or in case of vacancy from any other cause, the council shall choose a successor for the unexpired term.~~

Attachments

Attachment A – Memorandum from Molly Fitzpatrick, Boulder County Clerk and Recorder to Boulder City Council dated August 31, 2020.

Attachment B – Town of Telluride Town Council Agenda Memorandum, Meeting Date January 26, 2016.



Office of the Clerk & Recorder

1750 33rd Street · Boulder, CO 80301 · www.BoulderCounty.org

Molly Fitzpatrick, Boulder County Clerk & Recorder

To: Boulder City Council

From: Molly Fitzpatrick, Boulder County Clerk and Recorder

Date: August 31, 2020

Re: Ranked Choice Voting

Dear Boulder City Council Members,

I am writing in regards to the recent conversations the Clerk and Recorder's office has been asked to join regarding conducting the 2023 Boulder mayoral election using the instant runoff voting method (IRV), the single-winner type of ranked choice voting method (RCV). My intention is to share information on the technical and legislative needs the Clerk & Recorder's Office requires in order to run an IRV election. Further, I want to make you aware of the City of Boulder's independent ability to contract with Dominion Voting Systems to provide the services, support, and technology necessary to use IRV for the 2023 mayoral race.

Dominion Voting Systems (Dominion) is a voting systems provider that licenses voting system hardware and software to states and counties across the country. Boulder County, like almost every other Colorado county, utilizes Dominion's Democracy Suite® voting system to conduct elections. Unlike home rule municipalities, counties may use a voting system only if it is certified and authorized for use in Colorado by the Secretary of State. Although Democracy Suite® is the only commercially available voting system I know of that offers full RCV functionality, Boulder County has not licensed, and the Secretary of State has not tested or certified for use in Colorado, those particular applications. That is because (a) counties conduct federal, state and local elections in accordance with Title 1 of the Colorado Revised Statutes; (b) Title 1 currently does not authorize the use of any voting method other than the plurality method; (c) neither the U.S. Election Assistance Commission, the Colorado General Assembly, nor the Secretary of State have published or adopted voting system standards, technical requirements or specifications for RCV elections or ballot contests; and (d) the Secretary of State's office cannot test and certify Dominion's RCV features until standards and specifications have been adopted against which to test and certify.

Santa Fe and San Francisco have conducted IRV elections with Dominion's voting system. However, they are subject to different legal requirements than Boulder County. And, although the towns of Telluride and Basalt have conducted IRV elections in recent years, the municipal clerk's hand-counted the IRV races, a drastically different solution than using a voting system to layout, tabulate and report the results of IRV ballots. While the City and County of Denver

recently launched a review committee to assess proposals and updates to the election provisions of its charter, at this time, there are no formal plans to implement RCV elections under any timeframe.

It is my understanding that article XX, section 6(d) of the Colorado constitution grants home rule municipalities like Boulder broad authority to conduct municipal elections using the voting methods or voting systems they desire. Therefore, the City may contract with Dominion directly to provide the services, support and technology necessary for Boulder to implement IRV in its 2023 municipal election.

In my opinion, the best chance for successfully implementing RCV in Colorado lies with the General Assembly, which can direct and provide necessary resources to the Secretary of State to implement RCV on a statewide or multi-county basis. The legislature may take up the topic in the next legislative session. At the present time, however, the ask is for the Clerk and Recorder's office to internally develop pre-election testing and post-election auditing protocols of the voting system that will tabulate and report results of the election. My office does not have the financial or technical resources necessary to develop and implement those protocols itself in the manner that Boulder County and City of Boulder residents deserve and expect.

I have communicated to the RCV proponents that a voting system change needs to be treated and planned for with a great deal of intention. I understand the desire to get this on the ballot and sort out the details later. However, that is something I cannot recommend as a suitable path forward. If the legislature does not pass new legislation, my office would be caught in an unfortunate position with no guarantees that the voters would extend a timeline for us to implement RCV thoughtfully, carefully and correctly. For those reasons, I cannot commit at this point to conduct RCV elections for the City of Boulder by 2023.

It is the intention of the Clerk & Recorder's Office to be the best possible partner to all of the municipalities in Boulder County. It simply feels like we are one year too soon on this and in a position of relying on something that we do not know will occur (support for Title 1 legislative changes). I am committed to keeping this conversation going and being involved in the conversations at the Legislature to help shape the work needing to get done in a strategic way.

I do believe RCV is coming and I would like for my team to help shape the implementation on a timeline that sets us up to be as successful as possible. Colorado is nationally recognized as a leader in elections, and we are committed to continuing that reputation as we forge ahead in the future.

Thank you for your time.

A handwritten signature in black ink, appearing to read "Molly Fitzpatrick", with a stylized flourish at the end.

Molly Fitzpatrick
Boulder County Clerk and Recorder

Town of Telluride Town Council Agenda Memorandum

Item No: 9a1

Meeting Date: 01/26/2016

TITLE: IRV UPDATE

SUBMITTING DEPARTMENT: Clerks

ATTACHMENTS: None

INTRODUCTION:

In 2008 the Colorado legislature enacted legislation to allow Instant Runoff Voting (IRV) to be implemented for municipal elections. At its general municipal election in 2008, by an initiative titled "A Citizen Initiated Ordinance Calling For The Use Of Instant Runoff Voting (IRV) To Be Implemented For The Office Of Mayor", the Town of Telluride electorate directed the Town Clerk (by a vote of 868-426) to implement IRV procedures for the next three Mayoral Elections.

The November 2011 election was the first mayoral election following approval of the initiated ordinance. Three mayoral candidates were certified to the ballot triggering Instant Runoff/Ranked Choice Voting, which requires a candidate receive 50% plus one of qualified votes to win. While preparations were completed for an instant runoff, the threshold for a second round of counting was not met as the winner garnered over 50% of the votes in the first round, and runoff procedures were not required.

The November 2015 election was the second mayoral election in which Instant Runoff Voting was to be implemented. The process was further complicated by the legal requirement of coordinating the election with San Miguel County due to Proposition BB, a TABOR issue, being on the ballot.

This summary of implementation is presented for Council consideration.

BACKGROUND:

Following is an overview of the 2015 Telluride IRV election process.

Challenges of IRV Elections:

- While the Colorado Secretary of State provides a few guidelines and requirements for IRV elections, no rules or procedures for governing the process have been adopted.
- The only IRV election previously conducted in the State of Colorado (using Title 31, the Colorado Municipal Election Code) was counted by computer.

Many ballots were disqualified during the count, processes were litigated, and the municipality subsequently repealed ranked choice voting.

- No National or State certified software computer program exists for counting IRV elections, which requires manual tabulation of votes.
- There exists no recognized hand counting standard for IRV elections.
- While IRV computer software programming is possible, it is cost prohibitive for municipalities, particularly small municipalities.
- The only other municipality in the state currently using ranked voting has not had to implement IRV processes as there have not been over two candidates in an election since IRV was adopted. Consequently, they have no established procedures.
- Additional judges, ballot language, and election outreach are required for and IRV election.
- Significant additional Clerk's Department and Legal Department staff time is allocated to IRV elections.

Goals of Implementation of IRV in Telluride:

- An effective ballot format to limit the number of disqualified votes.
- Accuracy of count.
- Transparency of systems and processes.
- Effective voter education of IRV process.
- Comprehensive election judge education.
- Resolution of conflicts between IRV implementation and a Title 1 coordinated election.

Challenges Unique to the 2015 Election including Title 1 Considerations:

- The inclusion of a TABOR question on the 2015 ballot triggered the requirement of a coordinated election with the county.
- The coordination of the election with San Miguel County was further complicated as the county has no processes and is not equipped to count IRV ballots.
- Monumental research and experimentation preceded the establishment of a documented Town of Telluride IRV process governed by Title 31 and adopted in 2011. As a coordinated election however, the 2015 election was governed by Title 1 and required significant changes to the processes and procedures adopted in 2011.
- Through mock counts using the 2011 procedures staff and election judges identified omissions in the processes related to the counting of subsequent round. (A second round of counting was not required in 2011.) Significant additions and changes were made to the procedures.

- Coordinated election process required the use of a separate mayoral page of the ballot adding to the expense of f ballot preparation.
- The IRV processes and procedures and the counting judges manuals were updated to include preparation of a Ballot Image Report, required under Title 1, and the addition of associated judges (2) and processes.
- Telluride Municipal Code amendments were made by Town Council to reduce conflicts in the timing for resolution of provisional ballots and IRV counting for the 2011 Title 31 election. No provisions for a coordinated Title 1 election could be made.
- The Town was dependent upon the County for determination of the number of mayoral ballots received as well as outstanding provisional, UOCAVA, and ballots with unresolved signatures which could have affected the outcome of a round. In that instance, a recess of eight days would have been necessary before proceeding to the next round of counting. (An algorithm was written by a University of Colorado professor in 2011 to determine when IRV counting must be stopped due to the potential effect of outstanding ballots in any given round.)
- In addition to the team of County election judges, a team of eight Telluride election judges was required for the manual count of mayoral ballots.
- The County and the Town rely on the same experienced pool of election judges, but with two teams required on the same day, experienced judges were split between the County and the Town.
- Experienced and new election counting judges required significant additional training on IRV processes and procedures.
- Separate ballot format and instructions were necessary for the mayoral vote only, potentially causing confusion with voters in a community that has a history of bullet voting.
- An IRV educational brochure was updated and approved by the Colorado Secretary of State's office and mailed to all registered Telluride voters and were available at Voter Services and Polling Centers.

Costs:

- ✓ Direct costs of the 2011 IRV election were \$13770 as compared to the previous Title 31 election at \$4730. Direct one-time costs totaled approximately \$3885.
- Election direct costs for 2015 totaled \$8963 and included San Miguel County Coordinated Election Charges (\$5435) and Town of Telluride direct costs (\$3528).
- Costs associated directly to the IRV process were \$4812. This included additional County staff hours for management of the IRV process and the cost of the separate IRV ballot design and production.

- The majority of additional equipment required for the 2015 IRV election was on hand from the 2011 election. Direct costs for 2015 supplies totaled about \$1055 as compared to \$3100 for the 2011 election.
- An estimated 500 hours of Town staff resources can be directly attributed to the IRV portion of the 2015 election. Staff hours include time spent from March through December 2015 by members of the Clerk's and Facilities Departments.

Additional Considerations:

- Preliminary results were that the first round winner (by only one vote) did not win the election after the ballots from the lowest vote getter in the first round were re-distributed in the second round. (After provisional and UOCAVA ballots were counted, the first round was a tie for top vote getter.)
- The IRV process in Telluride does not preclude runoff elections as the Telluride Home Rule Charter does not require runoff elections.
- In both the 2011 and 2015 elections voters expressed concern that they did not fully understand the implications of IRV.
- The last of the three mayoral elections for which the electorate directed the Town Clerk to implement the IRV process is scheduled to occur in 2019.

FINANCIAL ANALYSIS:

Regular election expense estimates are included in the annual budget.

ASSESSMENT:

Staff has summarized challenges, advantages and established processes for implementation of IRV in Telluride and will be available for any questions from the Town Council.

Prepared by: Tiffany Kavanaugh, Town Clerk
Lauren Bloemsma, Assistant Clerk

Town Manager Approval:





COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Third reading and consideration of a motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

PRIMARY STAFF CONTACT

Tom Carr, City Attorney, 303.441.3020

REQUESTED ACTION OR MOTION LANGUAGE

Motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

ATTACHMENTS:

Description

- ▣ **Item 3L - 3rd Rdg Ord 8410 - Franchise Agreement**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Third reading and consideration of a motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
David Gehr, Chief Deputy City Attorney
Kathy Haddock, Senior Counsel
Deb Kalish, Senior Counsel
Steve Catanach, Director of Climate Initiatives
Jonathan Koehn, Chief Resilience and Sustainability Officer
Matthew Lehrman, Energy Strategy Advisor
Lex Telischak, Electrical Engineer

EXECUTIVE SUMMARY

The purpose of this agenda item is for council to consider adopting on third reading a ballot measure that will propose to the voters a ballot question of whether to approve a franchise with Public Service Company of Colorado (“Xcel Energy”). Council passed Ordinance 8410 (**Attachment A**) on first reading on August 4, 2020. Council amended the ordinance and franchise after a public hearing on August 20, 2020.

STAFF RECOMMENDATION

Suggested Motion Language

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

Motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – The opportunity exists for Boulder to transition to a new sustainable, low-carbon emission society, and it is coming much faster than anyone had anticipated just a few years ago. The growing differential between the rising costs of fossil fuels and the declining costs of renewable energy technologies is setting the stage for the emergence of a new economic paradigm in electricity delivery for the next century. Boulder is poised to help accelerate this process to tackle climate change, secure energy independence, and grow a sustainable 21st century economy all at the same time.
- **Environmental** – The energy discussion in Boulder is driven by concerns about the environmental impact of our current energy system. The combustion of fossil fuels is warming earth’s atmosphere and changing our climate. Human activities are estimated to have caused approximately 1.0°C of global warming above pre-

industrial levels, with a likely range of 0.8°C to 1.2°C. According to the IPCC¹, global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate. Such an increase in global temperatures will be catastrophic. To change this course, we must achieve dramatic near-term reductions in greenhouse gas emissions by rapidly transitioning from fossil fuels to renewable energy. There is growing agreement that the most viable path to deep emission reductions in the next 10 years is the conversion of 80 percent or more of all energy use—in buildings, transportation and business processes—to electricity generated from renewable energy sources. Any agreement between the Boulder community and Xcel Energy must enable Boulder to reduce fossil fuel demand from buildings and transportation; rapidly transition to an energy system and economy that is powered 100 percent or more by renewable electricity with 50 percent or more of that produced locally.

- Social – To reach our clean energy goals, we must build across an energy system that is accessible to every person equally regardless of race or income and support solutions that include all people. Despite emerging opportunities, many are left out of the new energy economy. For example, many energy efficiency and renewable energy efforts are supported by federal and state tax credits and grants that benefit higher-income homeowners and exclude tenants and lower-income households, who are more likely to be people of color. The partnership activities identified with Xcel Energy are intended to address the multiple challenges facing communities.

OTHER IMPACTS

- Fiscal – If the franchise is adopted the Utility Occupation Tax will end. The general fund portion of the tax will be replaced by a franchise fee.
- Staff time – Implementing the proposed partnership will require significant staff work and financial resources will be necessary to support this work.

PUBLIC FEEDBACK

A public hearing was held on August 20, 2020 at which 61 people spoke.

ANALYSIS

A detailed analysis was included in the August 20, 2020 Agenda Memorandum. Council amended the version of the Franchise Agreement attached to the Memorandum. Council amended the provisions in Sections 2.4 and 2.5 regarding opt-out. The provisions as amended are included in **Attachment A** to Proposed Ordinance 8410.

ATTACHMENT

A – Proposed Ordinance 8410 (with Exhibit A – Franchise Agreement)

¹ <https://www.ipcc.ch/sr15/>

ORDINANCE 8410

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF A FRANCHISE BY THE CITY OF BOULDER, COLORADO, BEING GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN, AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS, PUBLIC EASEMENTS AND OTHER CITY PROPERTY AS HEREIN DEFINED AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF; SETTING FORTH THE BALLOT TITLE, SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THE FOLLOWING:

A. Public Service Company of Colorado has applied to the city for the grant of a franchise to furnish, sell, and distribute gas and electricity to the city, its residents, businesses, and industries and to make reasonable use of the city streets, public easements, and other city property to do so.

B. Section 108 of the Boulder home rule charter provides that no franchise may be granted by the city except upon the vote of the qualified taxpaying electors.

1 C. Section 20 of the Boulder home rule charter provides that no proposed ordinance
2 granting any proposed franchise shall be put upon its final passage within 60 days after its
3 introduction, nor until it has been published not less than once a week for two consecutive weeks
4 in one daily newspaper of the city in general circulation.

5
6 D. If the qualified taxpaying electors pass the question of granting the franchise that is
7 associated with this ballot question, then the city council intends to subsequently pass an
8 ordinance meeting the requirements of Section 20 of the Boulder home rule charter to grant the
9 franchise to Public Service Company of Colorado.

10 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
11 OF BOULDER:
12

13 Section 1. A municipal coordinated election will be held in the City of Boulder, County
14 of Boulder and State of Colorado, on Tuesday, the 3rd day of November 2020.

15
16 Section 2. At that election there shall be submitted to the electors of the City of Boulder
17 entitled by law to vote thereon the question of whether or not a franchise shall be granted by the
18 City of Boulder to Public Service Company of Colorado, its successors and assigns, for the use
19 of city streets, public easements, and other city property to furnish, sell, and distribute gas and
20 electricity within the city under the terms and conditions of the Franchise Agreement attached
21 hereto as **Exhibit A**.

22
23 Section 3. The official ballot shall contain the following ballot title, which shall also be
24 the designation and submission clause for the question:
25

Ballot Question No. _____

PUBLIC SERVICE COMPANY FRANCHISE

SHALL THE CITY OF BOULDER GRANT A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS MAY BE NECESSARY AS DESCRIBED IN ORDINANCE 8410?

For the Measure _____

Against the Measure _____

Section 4. If a majority of all the votes cast at the election on the question submitted shall be for the question, the question shall be deemed to have passed and meet the requirements for approval by the qualified registered electors in Section 108 of the Boulder home rule charter.

Section 5. After the election where the question has been deemed to have passed, city council will adopt an ordinance meeting the requirements of the Boulder home rule charter that grants the franchise to Public Service Company of Colorado.

Section 6. The city clerk of the City of Boulder shall give public notice of the election on such question as required by law.

Section 7. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance.

Section 8. If any section, paragraph, clause, or provisions of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance.

1 Section 9. This ordinance is deemed necessary for the protection of the public health,
2 safety, and welfare of the residents of the city, and covers matters of local concern.

3 Section 10. The city council deems it appropriate that this ordinance be published by title
4 only and orders that copies of the text hereof be available in the office of the city clerk for public
5 inspection and acquisition.
6

7 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
8 TITLE ONLY, this 4th day of August 2020.
9

10 _____
11 Sam Weaver,
12 Mayor

13 Attest:
14

15 _____
16 Pamela Davis,
17 City Clerk
18
19
20
21
22
23
24
25

1 READ ON SECOND READING, AMENDED, this 20th day of August 2020.

2
3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk

11 READ ON THIRD READING, PASSED AND ADOPTED, this 1st day of September
12 2020.

13
14 _____
15 Sam Weaver,
16 Mayor

17 Attest:

18 _____
19 Pamela Davis,
20 City Clerk

FRANCHISE AGREEMENT

BETWEEN

THE CITY OF BOULDER, COLORADO

AND

PUBLIC SERVICE COMPANY OF COLORADO

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PUBLIC SERVICE COMPANY OF COLORADO

AND

THE CITY OF BOULDER, COLORADO

**ARTICLE 1
DEFINITIONS**

For the purpose of this franchise agreement (“Franchise” or “Franchise Agreement”), the following words and phrases shall have the meaning given in this Article or elsewhere in this Agreement. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article or in this Franchise Agreement shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Boulder, a Colorado home rule city.
- §1.2 “Clean Energy” means energy produced from Renewable Energy Resources (as defined below), eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the Public Utilities Commission of the State of Colorado (“PUC”).
- §1.3 “Company” refers to Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.
- §1.4 “Company Facilities” refer to all facilities of the Company which are reasonably necessary or desirable to provide gas and/or electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles as well as all associated appurtenances.
- §1.5 “Council” or “City Council” refers to and is the legislative body of the City.
- §1.6 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below in this Article). Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. Electric Gross Revenues shall exclude any revenue for the sale and/or delivery of electricity to the City as a customer of the Company.
- §1.7 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.8 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.9 “Force Majeure Event” means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a party, or is beyond a party’s reasonable control after exercise of best efforts to perform. Such cause, condition or event includes but is not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event.
- §1.10 “Gross Revenues” refers to those amounts of money the Company receives from the sale of gas and/or electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, expense reimbursements or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. Gross Revenues shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.11 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the Gas Technology Institute (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).
- §1.12 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City’s real property interest in the same or hereafter owned by the City, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the City. Other City Property including Public Utility Easements. Other City Property does not include property that is defined in the Boulder City Charter as open space or park land.
- §1.13 “Private Project” refers to any project not included in the definition of Public Project.
- §1.14 “Public Project” refers to (1) any public work or improvement within the City that is wholly owned by the City; or (2) any public work or improvement within the City where at least 50 percent (50%) or more of the funding is provided by any combination of the City, the

federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

- §1.15 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.16 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the City for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.
- §1.17 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.9A. of this Franchise.
- §1.18 “Renewable Energy Resources” means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or the by-products, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of 10 megawatts or less; hydroelectricity in existence on January 1, 2005 with a nameplate rating of 30 megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; recycled energy produced by a generation unit with a nameplate capacity of not more than 15 megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same may be amended from time to time.
- §1.19 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.20 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include Other City Property.
- §1.21 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.
- §1.22 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.

§1.23 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under Tariffs approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of City Streets, Public Utility Easements (as applicable) and Other City Property:

(1) to provide Utility Service to the City and to its Residents under the Tariffs; and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the City shall be governed by Tariffs on file with the PUC.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company’s PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The Company’s right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under this Franchise is subject to and subordinate to any City usage of said Streets.

C. Prior Grants Not Revoked. This grant and Franchise is not intended to and does not revoke any prior license, grant, or right to use the Streets, Other City Property or Public Utility Easements, and such licenses, grants or rights of use are hereby affirmed.

D. Franchise Not Exclusive. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term. This Franchise shall take effect on January 1, 2021 (the “Effective Date”) and shall supersede any prior franchise grants to the Company by the City. This Franchise shall terminate on December 31, 2040, unless extended by mutual consent or as provided below.

§2.4 Opt-Out - Anniversary. The City may, in its sole, absolute, and arbitrary discretion, without any condition, prerequisite, or qualification whatsoever, terminate this Franchise Agreement effective on each the 5th, 10th, and 15th anniversaries of the Effective Date (each a “Discretionary Termination Date”). The City may effect such termination by, on or before December 15 immediately before a Discretionary Termination Date, either (i) the Boulder City Council duly adopting an ordinance by affirmative vote of no less than two-thirds of its members approving such termination, or (ii) the passage, at a special or general election, by the electorate of the City of Boulder of a ballot measure authorizing an ordinance effecting such termination..

§2.5 Opt-Out - GHG Progress.

A. The “2030 Commitment” shall mean, collectively, (i) the filing by the Company with the Colorado Public Utilities Commission on or before March 31, 2021, and to thereafter diligently seek approval of, a clean energy plan pursuant to C.R.S. §§ 25-7-105 and 40-2-125.5 to reduce greenhouse gas emissions associated with the generation of electricity sold to the Company’s Colorado electricity customers by 80 percent (from 2005 levels) by 2030 and which seeks to achieve providing its Colorado customers with energy generated from 100 percent (100%) clean energy sources by 2050; and (ii) following, approval thereof by the Colorado Public Utilities Commission, to thereafter diligently and consistently implement such clean energy plan, as approved.

B. The “Benchmarks” shall mean greenhouse gas emissions directly associated with the generation of electricity sold to the Company’s Colorado electricity customers in each of the following calendar years, as reported to The Climate Registry through its Electric Power Sector Protocol, consistent with Environmental Protection Agency Greenhouse Gas Mandatory Reporting Rule in 40 CFR Part 98, in the identified amounts for the following calendar years:

In the calendar year 2022: no more than 16.6 million short tons CO_{2e}

In the calendar year 2024: no more than 13.6 million short tons CO_{2e}

In the calendar year 2027: no more than 11.5 million short tons CO_{2e}

In the calendar year 2030: no more than 6.9 million short tons CO_{2e}

C. In the event of the failure of Company to either (i) comply with the 2030 Commitment, and to cure such non-compliance within 90 days after delivery of written notice thereof by the City to the Company; or (ii) meet any of the Benchmarks, then, in either event, the City may, at its option, terminate this Franchise Agreement. With mutual agreement between the parties, the Benchmarks may be adjusted due to extraordinary circumstances.

D. The “Trigger Date” shall mean (i) in the case of a failure to comply with the 2030 Commitment, the date which is 90 days after the delivery of notice by the City contemplated by subsection C.(i); and (ii) in the case of a failure to meet any of the Benchmarks, the date of publication of the relevant Benchmark.

E. The termination contemplated by this section 2.5 may be effected by the City on or before December 15 in the year following the occurrence of the relevant Trigger Date by either (i) the Boulder City Council duly adopting an ordinance by affirmative vote of no less than two-thirds of its members approving such termination, or (ii) the passage, at a special or general election, by the electorate of the City of Boulder of a ballot measure authorizing an ordinance effecting such termination.

§2.6 Special Circumstances. The parties agree and acknowledge that there are special circumstances that warrant these and other provisions throughout this Franchise Agreement, and the City has provided valuable consideration for such.

ARTICLE 3 CITY POLICE POWERS

§3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, Public Utility Easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets and Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, Public Utility Easements, and/or Other City Property, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the City that are consistent with Industry Standards. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the City.

ARTICLE 4 FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In consideration for this Franchise Agreement, which provides the certain terms related to the Company's use of City Streets, Public Utility Easements and Other City Property, which are valuable public properties acquired and maintained by the City at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of Gross Revenues (the "Franchise Fee"). The Company shall collect the Franchise Fee from a surcharge upon City Residents who are customers of the Company.

B. Obligation in Lieu of Franchise Fee. In the event that the Franchise Fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise Fee as partial consideration for use of the City Streets, Public Utility Easements and Other City Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents who are customers of the Company.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the Franchise Fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in making reasonable modifications of this Franchise Agreement in an effort to provide that the City receives an amount in Franchise Fees or some other form of compensation that is the same amount of Franchise fees paid to the City as of the date that such initiatives and changes adversely impact Franchise Fee revenues.

D. Utility Service Provided to the City. No Franchise Fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City in writing and in a manner consistent with Company Tariffs.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise Fees shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each calendar month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the City, either party shall provide written notice of the error to the other party, subject to the following sentence: If the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2D. of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, subject to the terms of the Tariff, if the error results in an overpayment of the Franchise Fee to the City, and said overpayment is in excess of five thousand dollars (\$5,000.00), correction of the overpayment by the City shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the City shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the City to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date

of this Franchise. All Franchise Fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

C. Audit of Franchise Fee Payments.

(1) Company Audit. At the request of the City, every three (3) years commencing at the end of the third calendar year of the term of this Franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise Fees paid to the City. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable period of time after the audit, the Company shall provide a written report to the city clerk summarizing the testing procedures followed along with any potential findings.

(2) City Audit. If the City disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to electric and gas utilities, and the Company shall cooperate by providing the City's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws.

(3) Underpayments. If the results of a City audit conducted pursuant to Subsection 4.2C.(2) concludes that the Company has underpaid the City by five percent (5%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all reasonable costs of the City's audit. The Company shall not be responsible for any errors in third party data that is used in association with audits, including without limitation, Geotax data.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2B. of this Franchise by filing a written notice to the other party within 30 days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. To the extent allowed by law, upon written request by the City, but not more frequently than once each year, the Company shall supply the City with a list of the names and addresses of registered natural gas suppliers and brokers of natural gas that utilize Company Facilities to sell or distribute natural gas in the City during the preceding 12-month period. The Company shall not be required to disclose any confidential or proprietary information.

- §4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by the Company to the City does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company's use of City Streets, Public Utility Easements or Other City Property under the terms set forth in this Franchise. Notwithstanding anything in this Section to the contrary, the City reserves the right to adopt and implement lawful taxes or fees to fund city energy related projects.

ARTICLE 5 ADMINISTRATION OF FRANCHISE

- §5.1 City Designee. The City shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise ("City Designee" or "City Designees"). The City may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the names and telephone numbers of said City Designees. The City may change these designations by providing written notice to the Company. The City's Designees shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company Facilities in City Streets, Public Utility Easements, and Other City Property.
- §5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this Franchise ("Company Designee"). The Company may change its designation by providing written notice to the City. The City shall use the Company Designee to communicate with the Company regarding Utility Service and related service needs for City facilities.
- §5.3 Coordination of Work. Company and City agree to coordinate their activities in City Streets, Public Utility Easements and Other City Property. The City and the Company will meet annually upon the written request of the City Designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, including but not limited to any planned City Streets paving projects. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all City laws, rules and regulations, as well as all applicable provisions of this Franchise, applicable building and zoning codes, and applicable City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for City

facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 Charges to the City for Service to City Facilities. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates. All charges to the City shall be in accord with the Tariffs.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a Company Designee from whom the City may obtain status information from the Company on a 24-hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system within the City, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable period of time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets and Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets and Other City Property performed or caused to be performed by the Company shall be performed:

- (1) in a high-quality manner that is in accordance with Industry Standards;
- (2) in a timely and expeditious manner;
- (3) in a manner that reasonably minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable City laws, ordinances and regulations that are consistent with Industry Standards and the Tariffs.

C. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, Public Utility Easements, and Other City Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other City Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, Public Utility Easements, or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City in accordance with applicable City laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of City Streets, Public Utility Easements, or Other City Property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection that is consistent with Industry Standards.

E. Compliance. Subject to the provisions of Section 3.3 above, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall use commercially reasonable efforts to require that its contractors working in City Streets, Public Utility Easements, and Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a final order of the PUC, or voltage increases requested by the City.

§6.6 As-Built Drawings.

A. Within 30 days after written request of the City designee, but no sooner than 14 days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets.

B. If the requested information must be limited or cannot be provided pursuant to regulatory requirements, the Company shall promptly notify the City of such restrictions. The City acknowledges that the requested information is confidential information of the

Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the City shall deny the right of inspection of the Company's confidential information as set forth in § 24-72-204(3)(a)(IV), C.R.S., as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this Franchise, the City will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third-party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the City complies with the terms of this Section, the Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

C. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.7 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the City, to the extent consistent with Industry Standards. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for the restoration of City Streets in advance of Company excavation projects in City Streets, based upon the design submitted.

§6.8 Restoration. Subject to the provisions of Section 6.5D. of this Franchise Agreement, when the Company performs any work in or affecting the City Streets, Public Utility Easement, or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such City Streets, Public Utility Easements, or Other City Property to a condition that is substantially the same as existed before the work and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, Public Utility Easements, or Other City Property, provided that such temporary restoration is not at the City's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, Public Utility Easements, or Other City Property to a better condition than existed before the Company work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards, and provided the City seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City, immediate action is required for the protection of public health, safety or welfare, the City may restore such Streets,

Public Utility Easements, or Other City Property or remove the obstruction therefrom; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets, Public Utility Easements or Other City Property under this Section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently relocate, change or alter the position of any Company Facility (collectively, “Relocate(s),” “Relocation(s)” or “Relocated”) in City Streets or Other City Property at no cost or expense to the City whenever such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement, the Company shall not be responsible for any Relocation costs. In the event of any Relocation contemplated pursuant to this Section 6.9A., the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City’s direction, if the City requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company’s expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.9F., the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

C. Relocation Performance. The Relocations set forth in Section 6.9A. of this Franchise shall be completed within a reasonable time, not to exceed 120 days from the later of the date on which the City designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a Relocation where the Company’s performance was delayed due to a Force Majeure Event or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company Facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.9 of this Franchise or as otherwise agreed with the City, and properly removes or abandons on site all unused Company Facilities, equipment, material and other impediments. “Unused” for the purposes of this Franchise shall mean that the Company is no longer using the Company Facilities in question and has no plans to use the Company Facilities in the foreseeable future.

F. Scope of Obligation. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant or interest, including without limitation an easement.

G. Underground Relocation. Underground Company Facilities shall be Relocated underground. Above ground Company Facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

(1) When requested in writing by the City Designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, Public Utility Easements, and/or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years’ advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located in the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§6.10 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this Franchise and the Company’s Tariffs.

- §6.11 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time provided the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of Franchise Fees.
- §6.12 City Not Required to Advance Funds if Permitted by Tariffs. Upon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section allowing the City to not advance funds prior to construction shall only apply to the extent permitted by the Tariffs.
- §6.13 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE 7 RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically, in accordance with Industry Standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The parties agree that a reasonable time shall not exceed 180 days from the date upon which the City Designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a Force Majeure Event. Upon request of the

Company, the City Designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the City and properly removes or abandons on site any unused Company Facilities, equipment, material and other impediments.

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other City Property, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed 30 days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate City operations in accordance with City instructions following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated Street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Facilities. If any individual or entity damages any Company Facilities, to the extent permitted by law, the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Facilities for which the City is Responsible. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9 BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment.

B. Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this Franchise and the applicable Tariffs.

C. Supporting Documents. To the extent requested by the City, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the City in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. Annual Meetings. The Company agrees to meet with the City Designee on a reasonable basis at the City's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost-effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment to City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction and subject

to the Company's right to challenge, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within 30 days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the City determination of liability, the City shall make such payments to the Company for Utility Service received by City pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10 USE OF COMPANY FACILITIES

- §10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City shall notify the Company in advance and in writing of its intent to use Company's electric distribution poles, and the nature of such use, unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City shall provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such City use must comply with the National Electric Safety Code, Industry Standards, and all other applicable laws, rules and regulations.
- §10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles in City Streets and Other City Property, subject to the Tariffs, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.
- §10.3 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.
- §10.4 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan that is consistent with Company policies. The City and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

ARTICLE 11

UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Electrical Lines in New Areas. Upon payment to the Company of the charges provided in the Tariffs or the equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders of the City. Such underground construction shall be consistent with Industry Standards.

§11.2 Underground Conversion at Expense of Company.

A. Underground Conversion Program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution facilities located in City Streets (excluding privately owned electrical equipment, Public Utility Easements, and Other City Property within the City, as may be requested by the City Designee (the "Underground Program"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the City requires Relocation of overhead electric facilities in the Streets and Other City Property and the Company determines that there is not adequate room within the Streets and Other City Property to relocate the Facilities overhead, the Company may relocate the Facilities underground and may charge the cost of undergrounding to the Underground Program.

B. Unexpended Portion and Advances. Any unexpended portion of the Underground Program available for undergrounding Facilities within the City that is unused within a calendar year shall be carried over to succeeding years within the term of the Franchise Agreement and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided at least three (3) years remain under the term of this Franchise Agreement. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated in the Underground Program under any prior Franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the City shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program not expended at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities system wide, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article and the Boulder Revised Code, 1981, the City may require any above-ground Company Facilities in Streets, Public Utility Easements, and Other City Property to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all required Supporting Documentation. The Company shall have 120 days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City Designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void 60 days after delivery of the plans and estimate to the City designee. If the plans and estimate are approved by the City, the Company shall have 120 days to complete the project, from the date of the City Designee's authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate. At the Company's sole discretion, if the good faith estimate has expired because the City designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure Event. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the City. When performing

underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The City shall make any such request in writing within 120 days of receipt of the report of actual costs, as referenced in Section 11.3E. of this Franchise Agreement. Such audits shall be limited to projects completed in the calendar year when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance.

§11.4 Audit of Underground Program. Upon written request, every three (3) years commencing at the end of the third calendar year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. The independent auditor shall provide to the City and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project, the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company

construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

- A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
- B. Public Projects anticipated by the City.

ARTICLE 12 PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such condemnation, no value shall be ascribed or given to the right to use City Streets, Public Utility Easements (unless specifically granted solely to the Company), or Other City Property granted under this Franchise in the valuation of the property thus sold. The rights and privileges set forth herein shall survive any exercise of the City's right to terminate pursuant to paragraphs 2.4 and 2.5 above.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase City-generated power made available for sale,

consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not to Limit City's or Company's Rights. Nothing in this Franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

ARTICLE 14 ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the City on or before December 1st of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design

programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management (“DSM”) programs. In doing so, the Company recognizes the importance of (a) implementing cost-effective programs, the benefits of which would otherwise be lost if not pursued in a timely fashion; and (b) developing cost-effective programs for the various classes of the Company’s customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company’s website. Further, at the City’s request, the Company’s Area Manager shall act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents’ participation in Renewable Energy Resource programs, the Company shall: notify the City regarding eligible Renewable Energy Resource programs; provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Article in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 15 TRANSFER OF FRANCHISE

- §15.1 Consent of City Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.
- §15.2 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16 CONTINUATION OF UTILITY SERVICE

- §16.1 Continuation of Utility Service. In the event this Franchise Agreement is not renewed or extended at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no obligation to remove any Company Facilities from Streets, Public Utility Easements or Other City Property or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use Streets, Other City Property and Public Utility Easements during any such period. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City's Streets, Public Utility Easements, and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 17 INDEMNIFICATION AND IMMUNITY

- §17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise or the exercise by the

Company of the related rights, but in both instances only to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers, agents or employees or to the extent that the City is acting in its capacity as a customer of record of the Company.

§17.2 Immunity. Nothing in this Section or any other provision of this Franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§ 24-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18 BREACH

§18.1 Change of Tariffs. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the "Breaching Party") to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a "Breach"), the other party (the "Non-Breaching Party") may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed 30 days in which to remedy the Breach or, if such Breach cannot be remedied in 30 days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional 30 day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

(1) specific performance of the applicable term or condition to the extent allowed by law; and

(2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (“Material Breach”), the City may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed 90 days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in 90 days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional 90 day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the City may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City Streets, Public Utility Easements, and Other City Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.

D. No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged Breach of this Franchise.

ARTICLE 19 AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the City or the Company may propose amendments to this Franchise by giving 30 days’ written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no

subsequent oral agreement shall have any validity whatsoever. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

ARTICLE 20 EQUAL OPPORTUNITY

§20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely

because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21 MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

- §21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer.
- §21.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights to third parties.
- §21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Manager
City of Boulder
P.O. Box 791
Boulder, Colorado 80306

With a copy to:

City Attorney
City of Boulder
P.O. Box 791
Boulder, Colorado 80306

To the Company:

Senior Director, State Affairs and Community Relations
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

and

Area Manager
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

- §21.5 Examination of Records. The parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations.
- §21.6 List of Utility Property. The Company shall provide the City, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the City is located. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.
- §21.7 PUC Filings. Upon written request by the City, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the PUC. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the City shall be sent to the City upon filing.
- §21.8 Information. Upon written request, the Company shall provide the city clerk or the City Designee with:
- A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;
 - B. Maps or schematics indicating the location of specific Company Facilities (subject to City executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the City, to the extent those maps or schematics are in

existence at the time of the request and related to an ongoing project within the City. The Company does not represent or warrant the accuracy of any such maps or schematics; and

C. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise ("Impositions"), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

B. City Liability. The City shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

§21.12 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this Franchise Agreement on behalf of the parties and to bind the parties to its terms. The persons executing this Franchise on behalf of each of the parties warrant that they have full authorization to execute this Franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a Certificate of Public Convenience and Necessity from the PUC in order to operate under the terms of this Franchise.

§21.13 Severability. Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

- §21.14 Force Majeure. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event, as defined herein.
- §21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.
- §21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.
- §21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Boulder County, State of Colorado.
- §21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this Franchise, limited to the incremental cost of the franchise election, publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.
- §21.19 Costs of Compliance with Franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the City.
- §21.20 Conveyance of City Streets, Public Utility Easements or Other City Property. In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a Public Utility Easement or Other City Property in which Company Facilities are located, the City shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other City Property in which such Company Facilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.9.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.
- §21.21 Audit. For any audits specifically allowed under this Franchise, such audits shall be subject to the Tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.
- §21.22 Land Use Coordination. The City shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development.

(Signature page follows)

IN WITNESS WHEREOF, the parties have caused this Franchise to be executed as of the day and year first above written.

CITY OF BOULDER,
a Colorado home rule city

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney' Office

Dated: _____

**PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation**

Hollie Horvath Velasquez
Senior Director, State Affairs and
Community Relations

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this __ day of _____, 2020 by Hollie Horvath Velasquez, Senior Director, State Affairs and Community Relations of Public Service Company of Colorado, a Colorado corporation.

Witness my hand and official seal.

Notary Public

My Commission expires: _____.

(SEAL)



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Third reading and consideration of a motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenant's legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.

PRIMARY STAFF CONTACT

Tom Carr, City Attorney, 303-441-3020

REQUESTED ACTION OR MOTION LANGUAGE

Motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenant's legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.

ATTACHMENTS:

Description

- ▣ **Item 3M - 3rd Rdg Ord 8412 NEWR**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Third reading and consideration of a motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenant's legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney

EXECUTIVE SUMMARY

The purpose of this agenda item is for council to place the No Evictions Without Representations on the ballot for the November 3, 2020 election. At the August 18, 2020 meeting, the council amended ordinance 8412, replacing what the petitioners committee circulated as a fee with a tax and allowing revenues to also be used for rental assistance to persons that may be facing eviction. After the August 18 meeting, the committee of the petitioners have withdrawn its petition in exchange for this revised version being placed on the November 3, 2020 election.

BACKGROUND

At the July 28, 2020 council meeting, council accepted the city clerk's certificate of sufficiency of a petition with the title No Eviction Without Representation or NEWR.

On August 4, 2020, the council did the first reading of ballot title and implementation Ordinance 8411 that would place that measure before the voters at the November 3, 2020 election; and if the voters approved would amend the Boulder Revised Code as provided. The ordinance uses the exact language submitted by the petition committee.

The council also passed on August 4, 2020 first reading Ordinance 8412 (**Attachment A**) as an alternative measure. This ordinance incorporated a rental assistance program. This proposed ordinance includes changes proposed by the committee to provide for such a program.

At the August 18, 2020 meeting council held a public hearing and amended the ordinance. It includes changes that were discussed and approved by the petitioners committee that convert the revenue generating portion of the program from a fee to a tax and adds that it is also purpose of the revenue to provide rental assistance to persons that may otherwise be vulnerable to evictions.

The petitioner committee submitted to the city clerk a statement of withdrawal effective on final passage of ordinance 8412. The statement can be found in **Attachment B** of this Memorandum.

STAFF RECOMMENDATION

Suggested Motion Language

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

Motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenants legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Keeping people housed should have a beneficial effect on the economy. The annual fee could be passed on to tenants which could have a negative impact.
- Environmental – None identified.
- Social – Housing is a basic human requirement. If adopted the proposed measures could help to keep people housed.

OTHER IMPACTS

- Fiscal – The proposed measure would require support and administration by departments that will receive no funding from the new fee. This will have a small, negative effect on the city budget.
- Staff time – Implementing the proposed partnership will require staff work that is not part of any workplan.

ANALYSIS

Charter sections 37 through 40 provide for amending the Boulder Revised Code by initiated ordinances. Section 38 requires that a petition signed by a number of individuals equal to ten percent of the average number of registered electors who voted in the last two municipal elections. Based on the participation in the 2017 and 2019 municipal elections for this election a petition required 3,336 signatures. On July 6, 2020, Acting City Clerk Pam Davis certified that the NEWR committee had submitted 3,589 valid signatures. Council accepted this certification at the July 28, 2020 meeting.

Charter section 40 provides that when a petition is certified, unless the committee withdraws the petition, the council shall take final action setting the ballot title and placing the measure on the ballot. The charter does not provide council or the committee with any authority to change a measure that has met the signature requirement and been certified. Council, however, has the authority to place a measure directly on the ballot.

The committee has withdrawn its petition in favor of the council putting proposed ordinance 8412 on the ballot. A copy of the communication withdrawing the petition is included in this Memorandum (**Attachment B**).

Ordinance 8412 is now a tax measure that meets the requirements of the taxpayer bill of rights in the state constitution. This will ensure that the revenue generated by this program will meet the revenue requirements for taxation in the state constitution. The revenue is dedicated to paying for the costs of the program and for rental assistances to persons that may be facing an eviction.

ATTACHMENTS

A – Proposed Ordinance 8412 – No Eviction Without Representation

B – Certificate of the committee withdrawing its petition

ORDINANCE 8412

AN ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF RAISING TAXES IN THE CITY OF BOULDER BY THE ADOPTION OF A RENTAL LICENSING EXCISE TAX TO FUND A PROGRAM TO PROVIDE LEGAL REPRESENTATION TO TENANTS WHO FACE THE LOSS OF HOUSING IN EVICTION AND ADMINISTRATIVE PROCEEDINGS; PROVIDE TENANT'S LEGAL SERVICES AND ASSISTANCE COORDINATOR TO ADMINISTER THE PROGRAM; CREATE A TENANTS' COMMITTEE COMPRISED OF FIVE MEMBERS PAID A \$1,000 PER YEAR STIPEND; AND USE FUNDING FOR RENTAL ASSISTANCE FOR PERSONS THAT ARE VULNERABLE TO EVICTION; AND IN THE EVENT THAT THE BALLOT QUESTION PASSES, A COUNCIL ADOPTED ORDINANCE TO IMPLEMENT THE PROGRAM AND TAX; SETTING FORTH THE BALLOT TITLE, AND SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

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

Section 1. On June 5, 2020, a petition committee presented a petition with sufficient signatures of registered electors to initiate a vote on proposed amendments to the Boulder Revised Code pursuant to section 39 of the Boulder Home Rule Charter. Under Charter section 40, the City Council is required to set the ballot title for the proposed amendment.

Section 2. A general municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 3, 2020.

Section 3. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of making the amendment to the Boulder Revised Code proposed by the petition committee with the following ballot title, which shall also be the designation and submission clause for the issue:

BALLOT ISSUE _____

No Eviction Without Representation

SHALL THE CITY OF BOULDER'S TAXES BE INCREASED ANNUALLY BY ONE MILLION, NINE HUNDRED THOUSAND (\$1,900,000.00) (FIRST FULL FISCAL YEAR INCREASE) COMMENCING ON JANUARY 1, 2021, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER FROM AN EXCISE TAX TO BE PAID BY LANDLORDS ON DWELLING UNITS WITH RENTAL LICENSES IN THE AMOUNT OF \$75 PER YEAR, WITH THE TAX RATE INCREASING EVERY YEAR THEREAFTER AT A RATE THAT DOES NOT EXCEED THE COLORADO CONSUMER PRICE INDEX ON EACH RENTAL LICENSE FOR A DWELLING UNIT THAT IS ISSUED BY THE CITY;

AND IN CONNECTION THEREWITH, SHALL ALL OF THE REVENUES COLLECTED BE USED TO FUND:

- THE ADMINISTRATIVE COST OF THE TAX, AND THEREAFTER TO
- ESTABLISH, RUN AND FULLY FUND A PROGRAM TO PROVIDE LEGAL REPRESENTATION TO TENANTS WHO FACE THE LOSS OF HOUSING IN EVICTION AND ADMINISTRATIVE PROCEEDINGS;
- PROVIDE A TENANT'S LEGAL SERVICES AND ASSISTANCE COORDINATOR TO ADMINISTER THE PROGRAM;
- CREATE A TENANTS' COMMITTEE COMPRISED OF FIVE MEMBERS PAID A \$1,000 PER YEAR STIPEND; AND
- PROVIDE RENTAL ASSISTANCE FOR PERSONS THAT ARE VULNERABLE TO EVICTION; AND

SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH RATES AND ANY EARNINGS THEREON BE COLLECTED, RETAINED, AND SPENT, AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION, AND WITHOUT LIMITING THE COLLECTION, RETENTION, OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES/FOR ____

NO/AGAINST ____

Section 4. If a majority of all the votes cast at the election on the measure submitted are for the measure, the measure shall be deemed to have passed and the city council further amends the Boulder Revised Code as follows:

Amending Chapter 2 as follows:

Chapter 2 - Landlord - Tenant Relations, No Evictions Without Representation.

12-2-1. - Legislative Intent.

The purpose of this chapter is to supplement the provisions of state law governing the rights and duties of landlords and tenants of residential property in the City, including the provision of legal representation *and rental assistance* to tenants in legal and administrative proceedings where such housing is imperiled.

Whereas, in the landmark case Gideon v. Wainwright, the United States Supreme Court declared that reason, reflection, and the fair administration of justice require that persons facing the loss of their liberty in criminal proceedings shall have the right to legal counsel;

Whereas, this protection does not extend to legal proceedings where tenants face the serious hardship of being forced out of their homes;

Whereas in the City of Boulder, tenants do not have a right to counsel in such proceedings and most tenants face such proceedings without legal representation;

Whereas, in August of 2017 the City of New York enacted local legislation to provide tenants in that City with legal representation in eviction proceedings;

Whereas, in 2018-2019 the cities of San Francisco, Newark, Cleveland, and Philadelphia also enacted legislation to provide tenants in those cities with legal representation in eviction proceedings; and

1 **Whereas, in some instances the provision of rental assistance to tenants is an**
2 **efficacious tool to increasing housing security.**

3 Therefore the people of the City of Boulder declare that it is in the policy of the City of
4 Boulder that Boulder tenants shall have a right to legal representation in eviction and
5 administrative proceedings where they face the loss of housing and the City shall provide such
6 representation to tenants to assist in the fair administration of justice **and the City shall also**
7 **administer a rental assistance program to tenants faced with such proceedings.**

8 **12-2-2. - Definitions.**

9 The following terms used in this chapter have the following meanings unless the context
10 clearly indicates otherwise:

11 Bank means a bank, credit union or similar institution that accepts deposits of money and
12 insures such funds through the Federal Deposit Insurance Corporation, the National Credit Union
13 Association or similar institution.

14 Covered proceeding means legal proceedings to evict a tenant from their place of
15 residence pursuant to C.R.S. 13-40-101 *et. seq.*, counterclaims related thereto, the termination of
16 Section 8 housing assistance, and appeals arising from any of the foregoing.

17 Interest means simple interest on the full amount of the security deposit on deposit.

18 Legal representation means full scope representation provided by a licensed attorney to a
19 tenant in a covered proceeding. This includes, but is not limited to, filing responsive pleadings,
20 appearing on behalf of the tenant in court, administrative proceedings, or alternative dispute
21 resolution, and providing legal advice, advocacy, and assistance associated with such matters,
22 and necessary fees and costs related thereto.

23 Security deposit means any advance or deposit of money, regardless of its denomination,
24 the primary function of which is to secure the performance of a rental agreement for residential
25 premises or any part thereof.

Tenant means any occupant of residential property, including but not limited to, any
building, structure, vacant land, or part thereof offered for lease or rent for residential purposes,
who is a respondent or defendant, or who has legal standing to be a respondent or defendant, in a
covered proceeding.

12-2-4. - Written Disclosures Required.

(a) No operator shall allow any person to occupy a rental property as a tenant or lessee
or otherwise for valuable consideration unless and until that operator has satisfied
each of the following conditions:

(1) The operator has executed and provided to the tenant a copy of a written lease,
rental agreement, set of site rules or other written instrument containing the
following information:

- 1 (A) The maximum occupancy levels permitted in the rental unit;
2 (B) Notice of the provisions contained in Sections 5-3-11, “Nuisance Party
3 Prohibited,” 5-6- 6, “Fireworks,” 5-4-12, “Depositing Trash on Property in
4 Violation of Sign,” and 5-4-16, “Outdoor Furniture Restrictions,” and
5 Chapter 5-9, “Noise,” B.R.C. 1981;
6 (C) Notice of the provisions contained in Sections 6-2-3, “Growth or
7 Accumulation of Weeds Prohibited,” 6-3-3, “Trash Accumulation
8 Prohibited,” 6-3-12, “Bear-Resistant Containers Required,” and 8-2-13,
9 “Duty to Keep Sidewalks Clear of Snow,” B.R.C. 1981; Section 6-3-3(b),
10 relating to the responsibility of every owner, manager or operator of rental
11 property to maintain a valid contract with a commercial trash hauler
12 providing for the removal of accumulated trash from the property, and
13 Paragraph 7-6-13(a)(1), B.R.C. 1981, concerning parking prohibited on
14 sidewalks;
15 (D) The names of those individuals permitted, pursuant to the tenancy
16 agreement, to occupy the rental unit;
17 (E) Notification to tenants that violation of the city's noise regulation
18 requirements or residency within the rental unit of persons other than those
19 lawfully occupying the unit pursuant to the tenancy agreement is cause for
20 the termination of the tenancy;
21 (F) Notification that interest must be paid to tenants upon any security deposit
22 collected pursuant to the provisions of Sections 12-2-2, “Definitions,” and
23 12-2-7, “Interest Rate On Security Deposits,” B.R.C. 1981;
24 (G) Notification to tenants of the date and nature of any violations of law during
25 the preceding twenty-four months for which the owner, manager or operator
has received written notice of violation pursuant to Section 10-2.5-6,
“Required Procedures Prior to Commencement of Public Nuisance Action,”
B.R.C. 1981; ~~and~~
(H) Notification of the provisions contained in Sections 5-10-6, “Marijuana
Odor Emissions,” and Paragraphs 6-14-13(a)(6) and 6-16-13(a)(4), B.R.C.
1981, prohibiting possession of more than six marijuana plants without a
license; ~~and~~
(I) Notification to tenants of their right to legal representation and the
availability of rental assistance provided in B.R.C. 12-2-9(a), including a
complete copy of the text of that Section, with the use of the language in the
form created, this section being mandatory.

Adding a new Section 12-2-9 as follows:

12-2-9. - No Evictions Without Representation.

- (a) Provision of Legal Representation and Rental Assistance. The City of Boulder shall establish, run, and fully fund a program to provide legal representation and/or rental assistance for all tenants within the city who face a covered proceeding. This legal representation shall be available to a tenant immediately after the tenant is served with a notice to quit or demand for possession pursuant to C.R.S. 13-40-101.

et. seq., or a notice of termination of Section 8 housing assistance, and shall last at least until such time as the notice to quit, demand for possession, or unlawful detainer complaint is withdrawn, the case is dismissed, a final judgment in the matter is entered, or the Section 8 housing assistance termination proceedings are concluded. Written notification of this right to legal representation and how to access it must be provided by the landlord to a tenant at the time the right to legal representation attaches as described under this Section. The notice must be in the same form as required by B.R.C. 12-2-4(a)(1)(I).

(b) Implementation. The city manager shall promptly take all necessary steps to fully implement the provisions of this Section as soon as practicable, but not more than 12 months after the effective date of this ordinance. The city shall have no obligation to provide legal services under this Section where a state or federal program provides full scope legal representation to a tenant facing eviction proceedings as a matter of right.

(c) Tenants' Committee. A Tenants' Committee is created to ensure that the legislative intent of this Section is fulfilled. Specifically, the Tenants' Committee shall oversee the **Tenants' Legal Services and Assistance Coordinator** and the legal service providers engaged to provide the services and **administer the rental assistance program provided for** herein, and shall advise the City Manager on its opinion of the merit and fitness of the **Tenants' Legal Services and Assistance Coordinator** for the purpose of informing and guiding the city manager in appointing and retaining the **Tenants' Legal Services and Assistance Coordinator**. The Tenants' Committee shall consist of five members who are tenants in the city of Boulder and do not own real property. The City shall endeavor to ensure that the Committee membership is reflective of the racial, gender, and sexual orientation of the City's tenants. Committee members shall be disqualified and replaced as soon as practicable in the event that they cease to be qualified to serve on the committee. Committee members are to be paid a stipend of \$1,000 per year to be adjusted annually for inflation. The City Manager's office and City Attorney's office shall provide staff support to the Committee and **Tenants' Legal Services and Assistance Coordinator**.

(d) **Tenants' Legal Services and Assistance Coordinator.** The **Tenants' Legal Services and Assistance Coordinator** shall serve at the pleasure of the City Manager and can be selected from the City of Boulder's internal staff. The **Tenants' Legal Services and Assistance Coordinator** shall be responsible for contracting with and supervising legal service providers, including but not limited to non-profits, private law firms, and private attorneys, to ensure the provision of the legal representation provided for herein and the day-to-day responsibilities related thereto. **The Tenants' Legal Services and Assistance Coordinator shall also be responsible for administering a rental assistance program for tenants involved in a covered proceeding. The Tenants' Legal Services and Assistance Coordinator may partner with non-profit organizations to facilitate the rental assistance program as well if it serves the purpose of maximizing the efficacy and reach of the rental assistance program. The Tenants' Legal Services and Assistance Coordinator shall make its best efforts to allocate and facilitate the provision of legal representation and/or rental assistance to tenants in covered proceedings to maximize the housing security of said tenants.** The **Tenants' Legal Services and**

- 1 **Assistance** Coordinator shall keep the Tenants' Committee informed as to its
2 fulfilment of its responsibilities and shall be responsive to requests for information
3 and inquiries from the Tenants' Committee.
- 4 (e) Reporting. No later than September 1, 2021 and annually by each September 1
5 thereafter, the **Tenants' Legal Service and Assistance** Coordinator shall submit to
6 the Mayor, and city manager, and post online, a review of the program established
7 pursuant to this Section and information regarding its implementation, to the extent
8 such information is available, including, but not limited to:
- 9 (1) The estimated number of individuals who experienced a covered proceeding;
10 (2) The number of individuals who received legal representation **and/or rental**
11 **assistance** disaggregated by the following characteristics of such individuals:
12 (A) Postal code of residence;
13 (B) Age of head of household;
14 (C) Household size;
15 (D) Estimated length of tenancy;
16 (E) Approximate household income;
17 (F) Receipt of ongoing public assistance at the time such legal services were
18 initiated;
19 (G) Tenancy in rent-regulated housing; and
20 (H) Tenancy in housing operated by the Boulder city housing authority.
- 21 (3) Outcomes immediately following the provision of full legal representation, as
22 applicable and available, including, but not limited to, the number of:
23 (A) Case dispositions where a case was dismissed or was otherwise decided
24 substantially in favor of the tenant;
25 (B) Case dispositions where judgment for possession in favor of landlord was
entered;
(C) Case dispositions where a stipulation agreement, or other similar
agreement, was made preventing the entry of judgment for possession;
(D) Case dispositions where a stipulation agreement, or other similar
agreement, was made providing a tenant with an opportunity to vacate a
judgement for possession at a later date;
(E) Case dispositions where a tenant was required to vacate a residence, but
was provided additional time to vacate and, in such cases, the amount of
additional time provided to such tenants; and
(F) Case dispositions that otherwise resulted in a tenant vacating a residence
prior to the end of their lease term; and
(G) Instances where the attorney was discharged or withdrew.
- (4) Orders for possession filed in county court, writs of restitution issued in county
court in forcible entry and detainer proceedings, and residential evictions
conducted by the county sheriff.
- (f) Funding. The spending obligations required by this Section are to be funded
through the no eviction without representation by the tax levied pursuant to Chapter
3-20 "Rental License Excise Tax," B.R.C. 1981.
- (g) Amendment and Rulemaking. The Boulder City Council may amend this Section,
and the City Manager may supplement the provisions of this Section through
rulemaking, if such amendment or rulemaking serves the purpose of ensuring and

1 effectuating the provision of legal representation *and/or rental assistance* to tenants
2 faced with legal proceedings imperiling their homes.

3 (h) Severability. If any provision of this Section or any application thereof to any
4 person or circumstance is held invalid, such invalidity shall not affect any provision
5 or application of this Section that can be given effect without the invalid provision
6 or application. To this end, the provisions of this Section are severable.

7 Adding a new Chapter 3-20 as follows:

8 **Chapter 20 - Rental License Excise Tax.**

9 **3-20-1. - Findings and Purpose.**

10 An excise tax on each dwelling unit that is not exempt from the rental license
11 requirement will be used to fund legal representation for persons that may be subject to an
12 eviction proceeding and to provide funding for rental assistance for persons that may be facing
13 an eviction or need emergency rental assistance.

14 **3-20-2. - Imposition and Rate of Tax.**

15 There is levied and shall be paid and collected an excise tax of \$75 per year for each
16 dwelling unit that is required go get a rental license by the city, unless it is exempt from the tax
17 by Section 3-20-5, B.R.C. 1981.

18 **3-20-3. - License holder Liable for Tax.**

19 The rental license holder is responsible for payment of the tax.

20 **3-20-4. - Definitions.**

21 The definitions in Chapter 12-2, “Landlord-Tenant Relations, No Eviction Without
22 Representation,” B.R.C. 1981, shall apply to this Chapter.

23 **3-20-5. - Exemptions.**

24 The tax imposed by this Chapter shall not apply to any rental license if associated with
25 any dwelling unit that is exempt from a rental license in Section 10-3-2, B.R.C. 1981.

3-20-6. - Dedicated Revenues.

The revenues from this sales tax shall be designated for the administrative cost of the tax,
and once that obligation has been fulfilled, used for implementation and administration and
enforcement of a program to provide representation to tenants who face the loss of housing in
eviction and administrative proceedings, to provide a Tenant’s Legal Services and Assistance
Coordinator to administer the program; to create a tenants’ committee comprised of five
members paid a \$1,000 per year stipend; and to pay any related expenses; and to use funding for
rental assistance for persons that are vulnerable to eviction.

1 **3-20-7. - Tax Increase.**

2 The city council is authorized to increase the annual excise tax rate by an amount not to
3 exceed the Colorado consumer price index or a similar index that is tied to the annual rate of
4 inflation in the state or Denver metropolitan area.

5 Section 5. The election shall be conducted under the provisions of the Colorado
6 Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981, and this
7 ordinance.

8 Section 6. The officers of the city are authorized to take all action necessary or
9 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to
10 conduct the election for the city.

11 Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any
12 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
13 provisions of this ordinance.

14 Section 8. This ordinance is necessary to protect the public health, safety, and welfare of
15 the residents of the City, and covers matters of local concern.

16 Section 9. The City Council deems it appropriate that this ordinance be published by title
17 only and orders that copies of this ordinance be made available in the office of the city clerk for
18 public inspection and acquisition.

1 INTRODUCED, READ ON FIRST READING AND ORDERED PUBLISHED BY
2 TITLE ONLY this 4th day of August 2020.

3
4 _____
Sam Weaver,
Mayor

5
6 Attest:

7 _____
8 Pamela Davis,
City Clerk

9
10 READ ON SECOND READING, AMENDED, this 18th day of August 2020.

11
12 _____
Sam Weaver,
Mayor

13
14 Attest:

15 _____
16 Pamela Davis,
City Clerk

17
18 READ ON THIRD READING, PASSED AND ADOPTED, this 1st day of September
19 2020.

20 _____
21 Sam Weaver,
Mayor

22 Attest:


23 _____
24 Pamela Davis,
City Clerk

To The Office of the City Clerk of Boulder, Colorado,


We, the members of the Petition Committee for the No Eviction Without Representation Initiative, vote to certify to the city clerk the submission of the amended ordinance 8412, with file title "o-8412 1st Rdg NEWR TABOR (petitioners option v-2)," presented to city council via the council hotline on 8/18/20 to the voters of Boulder.

 8/19/20
Rudy Arango,

 8/19/2020
Meagan Arango

 8/19/20
Austin Bennett

 8/19/20
Amanda Mercado

 8/19/2020
Carl Perez



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Third reading and consideration of a motion to adopt Ordinance 8417 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2025 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy- related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

PRIMARY STAFF CONTACT

Tom Carr, City Attorney, 303-441-3020

REQUESTED ACTION OR MOTION LANGUAGE

Motion to adopt Ordinance 8417 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2025 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the

city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy-related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

ATTACHMENTS:

Description

- ▣ **Item 3N - Ord 8417 3rd Rdg UOT Repurpose & Extension**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: September 1, 2020**

AGENDA TITLE

Third reading and consideration of a motion to adopt Ordinance 8417 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2025 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy-related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
David Gehr, Chief Deputy City Attorney
Steve Catanach, Director, Climate Initiatives
Jonathan Koehn, Chief Resilience and Sustainability Officer

EXECUTIVE SUMMARY

The purpose of this agenda item is to complete third reading and the final adoption of ordinance 8417, setting the ballot title for a ballot question that asks the voters to approve repurposing and extension of the Utility Occupation Tax.

At the July 28, 2020 council meeting council directed staff to bring forward an ordinance to allow funds collected by the Utility Occupation Tax dedicated to exploring municipalization to be used to fund a partnership with Xcel Energy. The ordinance extends the tax until December 31, 2025.

The council passed and amended the ordinance after hearing from the community at a public hearing on August 18, 2020. The amendments included the correction of some typographical errors and setting the expiration of the tax at 2025 rather than 2030.

STAFF RECOMMENDATION

Suggested Motion Language

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

Motion to adopt Ordinance 8417 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 3, 2020, the question, whether the portion of the Utility Occupation Tax dedicated to exploring municipalization that was approved by the voters in November 2011 and amended in November 2017, be extended from its current expiration date of December 31, 2022 to a new expiration date of December 31, 2025 and be used to repay costs associated with the municipal utility effort and further to be used to fund projects, pilots, initiatives, and research that support the city's clean energy goals in the context of the city's racial equity goals and the community's commitment to the Paris climate agreement, including to provide energy-related assistance to disadvantaged members of the community, improve system reliability and modernization, and support clean energy-related business, including, without limitation, new approaches in electrification of buildings and transportation, enhancement of resilience, and increased access to energy efficiency and renewable energy solutions; only if a majority of electors vote to approve a franchise agreement with Public Service Company of Colorado at the November 3, 2020 election; giving approval for the collection, retention, and expenditure of the full tax proceeds and any related earnings notwithstanding any state revenue or expenditure limitation; setting forth the ballot title; specifying the form of the ballot and other election procedures; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The extension of an existing tax should not have an increased impact on the economy. Any tax does affect the economy.
- Environmental – The funding will assist the community in addressing climate change by supporting the city’s goal to reach 100 percent renewable electricity by 2030.
- Social – The proposed ordinance would prioritize dedicating funds to assisting disadvantaged members of the community with utility bill payments and renewable energy projects.

OTHER IMPACTS

- Fiscal – The proposed measure would provide approximately \$2 million per year in additional funding to the city budget.
- Staff time – Implementing the proposed partnership will require staff work that is not part of any workplan.

BACKGROUND

Ordinance 8417 is being considered in conjunction with a larger effort to settle disputes with Xcel Energy related to the City’s municipal electric utility formation efforts.

- Concepts were discussed at the council’s July 28 Study Session.
- August 4, 2020 first reading completed.
- August 20, 2020 public hearing, second reading, and amendment of the ordinance.

ANALYSIS

Voters originally approved the Utility Occupation Tax at the November 2010 election. This portion of the tax was intended to replace a fee paid under the previous franchise with Xcel Energy. This portion of the tax goes to the general fund. It will cease and be replaced by a franchise fee if the voters approve a new franchise.

At the November 2011 election the voters approved an increase of the Utility Occupation Tax to be used to fund municipalization. This portion of the tax was increased and extended at the November 2017 election. The tax expires on December 31, 2022. In 2021 and 2022, it will collect approximately \$2.1 million.

The Utility Occupation Tax is a tax on any utility providing gas and electricity in the city. The tax is a fixed amount that the utility can, pursuant to a tariff, pass on to its customers.

Under the proposed ordinance the tax would be repurposed and extended to allow for the tax to be used to fund the city’s efforts to meet its climate goals. One of the city’s

goals is to maintain or reduce electrical rates. The potential agreement with Xcel Energy does not address this goal. Staff recommends that a portion of the funding from the repurposed tax be used to fund utility bill relief for disadvantaged members of the community. Other funds could be used to repay the general fund for costs associated with municipalization and to fund the projects that will address the city's climate goals.

The ballot measure only authorizes the imposition and repurposing of the tax. If the voters approve, council will need to pass an ordinance imposing the tax, changing the language related to dedication of the revenue, and appropriating the funds. Council will be able to decide how the funds should be expended within the limitations imposed by the ballot measure.

NEXT STEPS

- If the council passes Ordinance 8417, it will proceed to the November 3, 2020 election.
- If the voters pass the ballot question, then the staff will return to council with amendments to the City's tax code to implement the tax.

ATTACHMENT

A – Proposed Ordinance 8417 – UOT Repurpose and Extension

ORDINANCE 8417

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION WHETHER THE PORTION OF THE UTILITY OCCUPATION TAX DEDICATED TO EXPLOARING MUNICIPALIZATION THAT WAS APPROVED BY THE VOTERS IN NOVEMBER 2011 AND AMENDED NOVEMBER 2017, BE EXTENDED FROM ITS CURRENT EXPIRATION DATE OF DECEMBER 31, 2022 TO A NEW EXPIRATION DATE OF DECEMBER 31, 2025 AND BE USED TO REPAY COSTS ASSOCIATED WITH THE MUNICIPAL UTILITY EFFORT AND FURTHER; TO FUND PROJECTS, PILOTS, INITIATIVES, AND RESEARCH THAT SUPPORT THE CITY'S CLEAN ENERGY GOALS IN THE CONTEXT OF THE CITY'S RACIAL EQUITY GOALS AND THE COMMUNITY'S COMMITMENT TO THE PARIS CLIMATE AGREEMENT, INCLUDING TO PROVIDE ENERGY-RELATED ASSISTANCE TO DISADVANTAGED MEMBERS OF THE COMMUNITY, IMPROVE SYSTEM RELIABILITY AND MODERNIZATION, AND SUPPORT CLEAN ENERGY-RELATED BUSINESS, INCLUDING, WITHOUT LIMITATION, NEW APPROACHES IN ELECTRIFICATION OF BUILDINGS AND TRANSPORTATION, ENHANCEMENT OF RESILIENCE, AND INCREASED ACCESS TO ENERGY EFFICIENCY AND RENEWABLE ENERGY SOLUTIONS; ONLY IF A MAJORITY OF ELECTORS VOTE TO APPROVE A FRANCHISE AGREEMENT WITH PUBLIC SERVICE COMPANY OF COLORADO AT THE NOVEMBER 3, 2020 ELECTION; GIVING APPROVAL FOR THE COLLECTION, RETENTION, AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; SETTING FORTH THE BALLOT TITLE; SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the city of Boulder, county of
Boulder and state of Colorado, on Tuesday, November 3, 2020.

Section 2. The official ballot shall contain the following ballot title, which shall also be
the designation and submission clause for the issue:

Ballot Question No. ____

Repurpose the Utility Occupation Tax

WITHOUT RAISING THE TAX RATE SHALL THE EXISTING
UTILITY OCCUPATION TAX, WHICH IN 2021 AND 2022
WILL BE IN THE AMOUNT OF \$ 2,076,181, BE EXTENDED
FROM A CURRENT EXPIRATION DATE OF DECEMBER 31,
2022 TO DECEMBER 31, 2025 AND BE REPURPOSED TO
PAY ALL COSTS ASSOCIATED WITH THE FORMATION OF
A MUNICIPAL ELECTRIC UTILITY AND TO BE USED TO
FUND PROJECTS, PILOTS, INITIATIVES, AND RESEARCH
THAT SUPPORT THE CITY'S CLEAN ENERGY GOALS IN
THE CONTEXT OF THE CITY'S RACIAL EQUITY GOALS
AND THE COMMUNITY'S COMMITMENT TO THE PARIS
CLIMATE AGREEMENT, SUCH AS:

- PROVIDING ENERGY-RELATED ASSISTANCE TO
DISADVANTAGED MEMBERS OF THE
COMMUNITY, INCLUDING SUPPORT FOR UTILITY
BILL PAYMENTS AND ACCESS TO RENEWABLE
ENERGY;
- IMPROVING SYSTEM RELIABILITY AND
MODERNIZING, AND SUPPORTING CLEAN
ENERGY-RELATED BUSINESSES, INCLUDING,
WITHOUT LIMITATION, NEW APPROACHES IN
ELECTRIFICATION OF BUILDINGS AND
TRANSPORTATION, ENHANCEMENT OF
RESILIENCE;
- IMPLEMENTING A PARTNERSHIP AGREEMENT
WITH PUBLIC SERVICE COMPANY OF COLORADO;
AND

- INCREASING ACCESS TO ENERGY EFFICIENCY
AND RENEWABLE ENERGY SOLUTIONS;

ONLY IF A MAJORITY OF REGISTERED ELECTORS
APPROVE A FRANCHISE AGREEMENT WITH PUBLIC
SERVICE COMPANY OF COLORADO AT THE NOVEMBER
3, 2020 ELECTION,

AND SHALL THE EXTENDED PORTION OF THE TAX BE
SUBJECT TO THE SAME TERMS AND CONDITIONS AS THE
ORIGINAL TAX AND ALL EARNINGS THEREON
(REGARDLESS OF AMOUNT) CONSTITUTE A VOTER
APPROVED REVENUE CHANGE, AND AN EXCEPTION TO
THE REVENUE AND SPENDING LIMITS OF ARTICLE X,
SECTION 20 OF THE COLORADO CONSTITUTION?

FOR THE MEASURE ____ AGAINST THE MEASURE ____

Section 3. If this ballot measure is approved by the voters, the Charter shall be so
amended, and the City Council may adopt any necessary amendments to the Boulder Revised
Code to implement this change.

Section 4. If any section, paragraph, clause, or provision of this ordinance shall for any
reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
provisions of this ordinance. The tax established by this measure is intended to be authorized
under any lawful means of taxation, including license taxation pursuant to city of Boulder
Charter Section 122.

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.

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.

1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 4th day of August 2020.

3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk

11 READ ON SECOND READING, AMENDED, this 20th day of August 2020.

12
13 _____
14 Sam Weaver,
15 Mayor

16 Attest:

17 _____
18 Pamela Davis,
19 City Clerk

1 READ ON THIRD READING, PASSED AND ADOPTED, this 1st day of September
2 2020.

3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk
11
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COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

LAC Consideration of a proposal to demolish a non-contributing house and accessory building and to construct a new 3,295 sq. ft. house and 400 sq. ft. two-car detached garage at 406 Pearl Street in the West Pearl Historic District

PRIMARY STAFF CONTACT

James Hewat, Senior Planner

BRIEF HISTORY OF ITEM

Landmarks Board meeting 8/12/2020

ATTACHMENTS:

Description

- ▣ **Item 4A - Call Up LAC Consideration: 406 Pearl Street Demo and Construction**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: Tuesday, September 1, 2020

AGENDA TITLE: Call up consideration and extension of call up period: Landmark Alteration Certificate for 406 Pearl St. (HIS2020-00163)

PRESENTER/S

Jane S. Brautigam, City Manager
Chris Meschuk, Deputy City Manager
Mary Ann Weideman, Interim Planning Director
Charles Ferro, Interim Comprehensive Planning Manager
Lucas Markley, Assistant City Attorney II
James Hewat, Senior Historic Preservation Planner
Marcy Cameron, Historic Preservation Planner II

EXECUTIVE SUMMARY

The proposal to demolish a non-contributing house and accessory building and to construct a new 3,295 sq. ft. house and 400 sq. ft. two-car detached garage at **406 Pearl St.** in the West Pearl Historic District, was approved, subject to conditions, by the Landmarks Board (5-0) at its August 12, 2020 meeting.

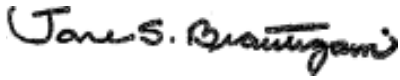
The decision was based upon the Board's consideration that the proposal meets the Standards for Issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981, subject to conditions.

This Landmark Alteration Certificate is subject to a 14-day call-up period by City Council. However, the 14-day call-up period cannot be met because the next regularly scheduled City Council meeting is on Tuesday, September 1, 2020.

Section 9-11-16(a) of B.R.C. 1981 states: "The City Manager may extend the call-up period until the council's next regular meeting, if the manager finds in writing within the original call-up period that the council will not receive notice of a decision of the board in time to enable it to call-up the decision for review."

The city manager finds that, because the next regularly scheduled City Council meeting is after the call-up period, it did not receive notice of the Landmarks Board's decision regarding 406 Pearl St. in time to consider call-up within 14 days. Therefore, the City Manager extends the call-up period for this application until the City Council's next scheduled meeting on Tuesday, September 1, 2020.

Approved By:

A handwritten signature in black ink that reads "Jane S. Brautigam". The signature is written in a cursive, flowing style.

Jane S. Brautigam,
City Manager

ATTACHMENTS

Attachment A: Disposition for 406 Pearl St., dated August 12, 2020

Attachment B: [Link to August 12, 2020 Landmarks Board Memorandum for 406 Pearl St.](#)

Notice of Disposition

You are hereby advised that on August 12, 2020 the following action was taken by the Landmarks Board:

- ACTION:** Recommended for conditional approval by a vote of **5-0**
- APPLICATION:** Public hearing and consideration of a proposal to demolish a non-contributing house and accessory building and to construct a new 3,295 sq. ft. house and 400 sq. ft. two-car detached garage at **406 Pearl St.** in the West Pearl Historic District, pursuant to Section 9-11-18 B.R.C. 1981 (HIS2020-00163).
- LOCATION:** 406 Pearl St.
- ZONING:** Residential-Mixed 1 (RM-1)
- OWNER:** Andrew and Diana Fordyce
- APPLICANT:** Samuel Austin, Samuel Austin & Company Architects

This decision was based on the Board's consideration that per the application and evidence presented, provided the stated conditions are met, the proposed Landmark Alteration Certificate application is consistent with Section 9-11-18 B.R.C., 1981.

Applicant's Presentation

Andrew and Diana Fordyce (Nyhavn Number 12, Copenhagen, Denmark) spoke about their reasons for returning to Boulder and converting the property back to a single-family residence.

Samuel Austin, Samuel Austin & Company Architects (1701 15th Street #101, 80302) introduced the application and explained the design concept of the proposed new structure.

Public Comment

1. Gwen Dooley
730 Spruce St.
80302
Voiced concern regarding lack of notice of the application. Spoke against the application.
2. Gene Rozgonyi
419 Canyon Blvd.
80302
Spoke in support of the application.
3. Susan Collins
308 Pearl St.
80302
Spoke about the implementation of the Design Guidelines in the design of the building, and in support of retaining the barn.

Motion

On a motion by **R. Pelusio**, seconded by **W. Jellick**, the Landmarks Board voted **(5-0)**, to adopt the staff memorandum dated August 12, 2020 as findings of the board and approves, with conditions, the demolition of the non-contributing main house and cottage and in their place the construction of a roughly 3,295 sq. ft. house and a 400 sq. ft. garage as shown on plans dated May 27th, 2020, finding that the proposal generally meets the Standards for Issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981.

Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall submit to the Landmarks design review committee (Ldrc), for its final review and approval:

- a) Redesign the proposed house to significantly reduce the size of the rear porch and deck to have a more open railing system, redesign of fenestration on the south portion of the west elevation and south elevation to be more traditionally scaled and proportioned, and eliminate the west facing skylights;
- b) Determine the appropriateness of metal roofing elements and use of stone on new garage by studying precedents in the district;
- c) Explore locating the main entrance of the house with a porch on the north elevation (facing Pearl Street), increasing the space between the historic barn and garage and change the stone facing on the garage to wood siding;
- d) Provide details of windows, doors, trim, siding, roofing, material colors/finishes and hardscaping.



Figure 1. Location map, 406 Pearl Street, West Pearl Historic District, Boulder, CO.



Figure 2. Tax Assessor Card photograph, c.1949 (Photograph Courtesy the Carnegie Branch Library for Local History)



Figure 3. Historic Building Inventory Photograph (Photograph Courtesy the Carnegie Branch Library for Local History)



Figure 4. 406 Pearl Street, 2018



Figure 5. 406 Pearl Street, looking east from 4th Street, 2018



Figure 6. view of back yard at 406 Pearl Street looking north with c.1950 cottage (mid-ground) proposed for demolition, 2020



Figure 7. South wall of pre-1900 barn with lean-to addition (left) to be rehabilitated. Non-historic (right) shed proposed for removal, 2020

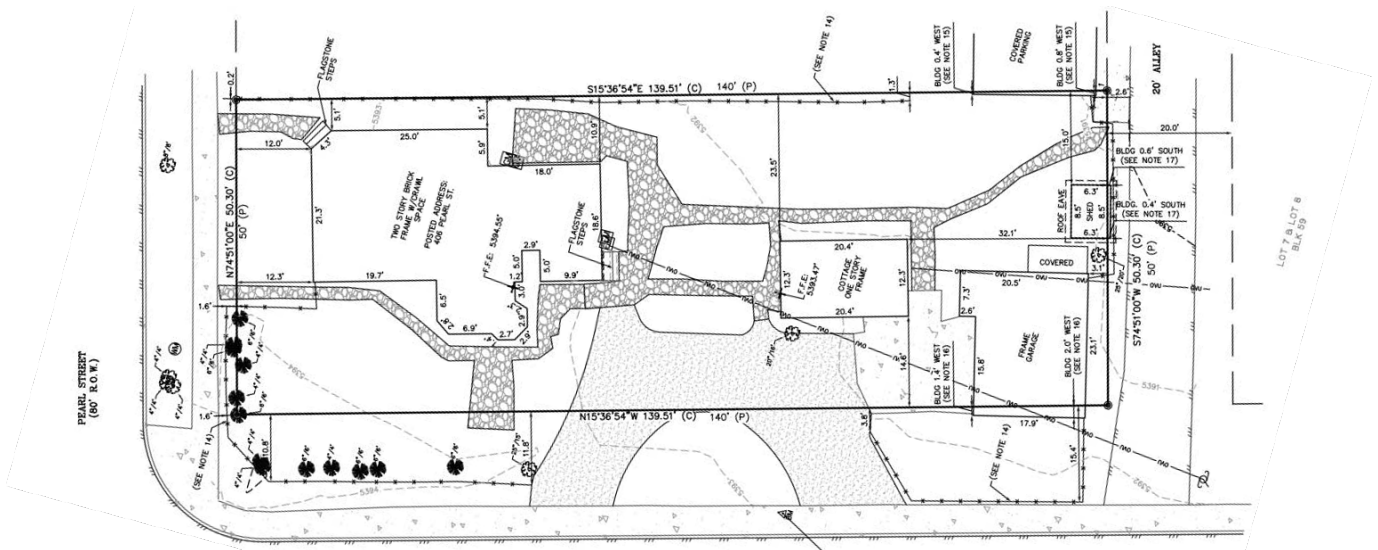


Figure 8. Existing Site Plan. Not to scale.

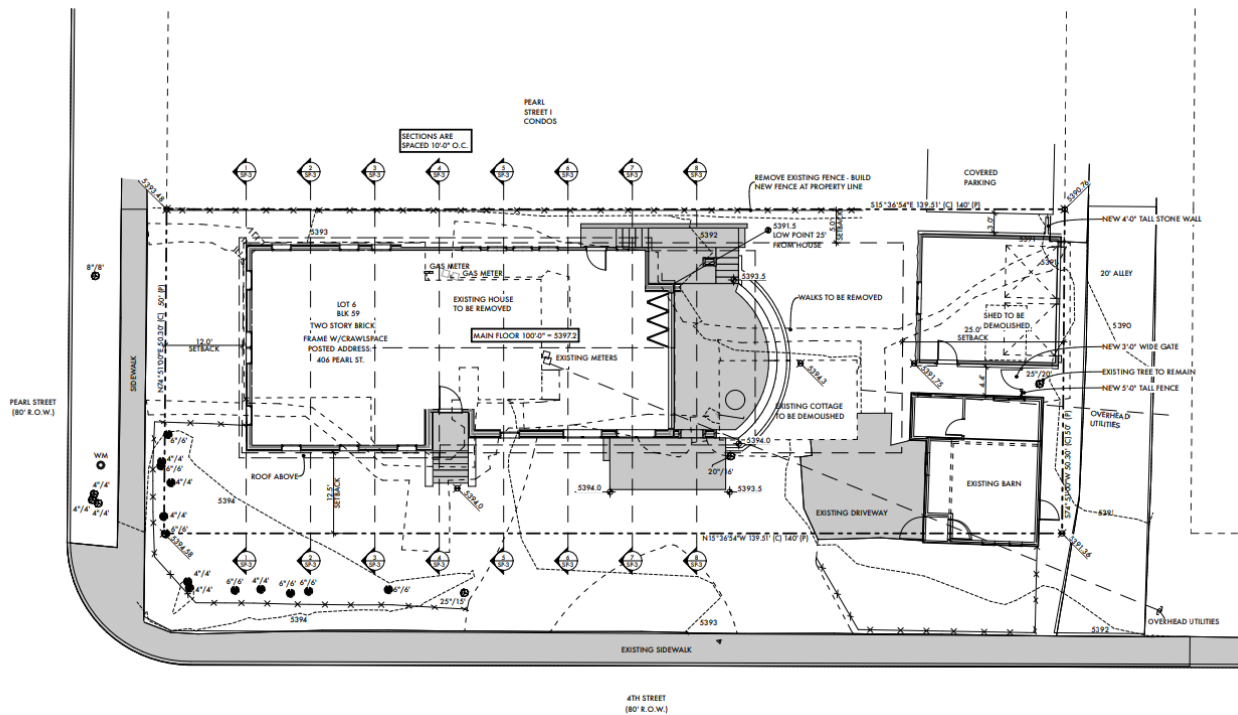


Figure 9. Proposed Site Plan. Not to scale.

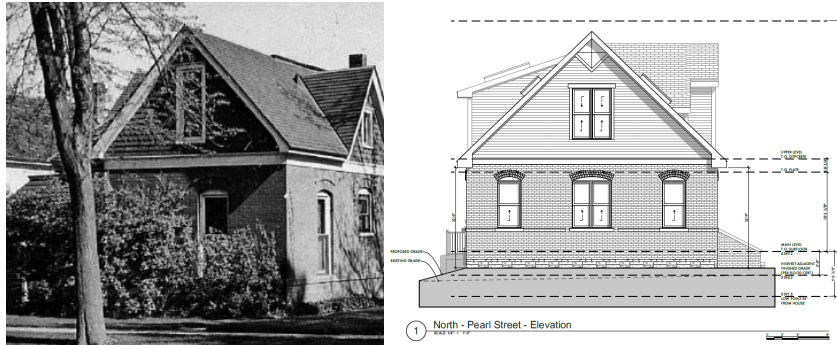


Figure 10. Detail of 1949 Photo of house (left) Proposed North (Pearl Street) Elevation (right). Not to scale.

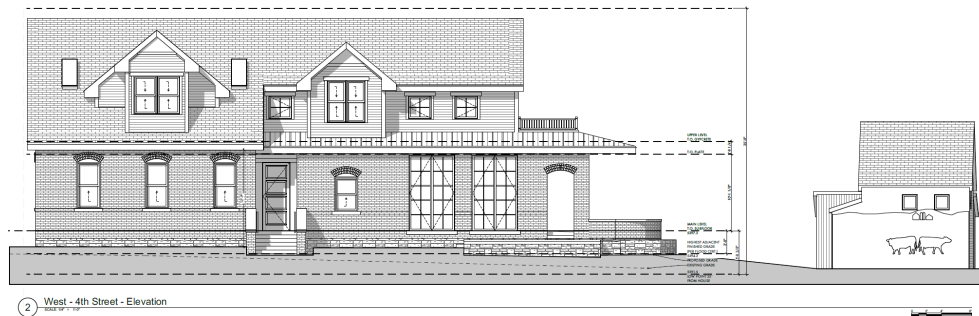


Figure 11. Proposed West (4th Street) Elevation. Not to scale.



Figure 12. Proposed East (side) Elevation. Not to scale.

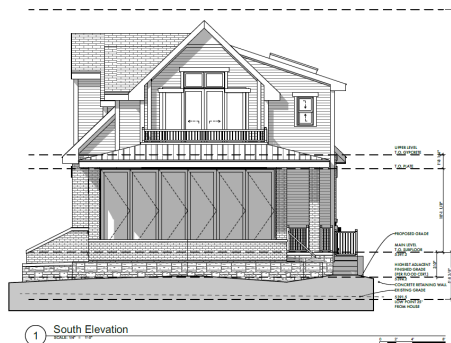


Figure 13. Proposed South (rear) Elevation. Not to scale.

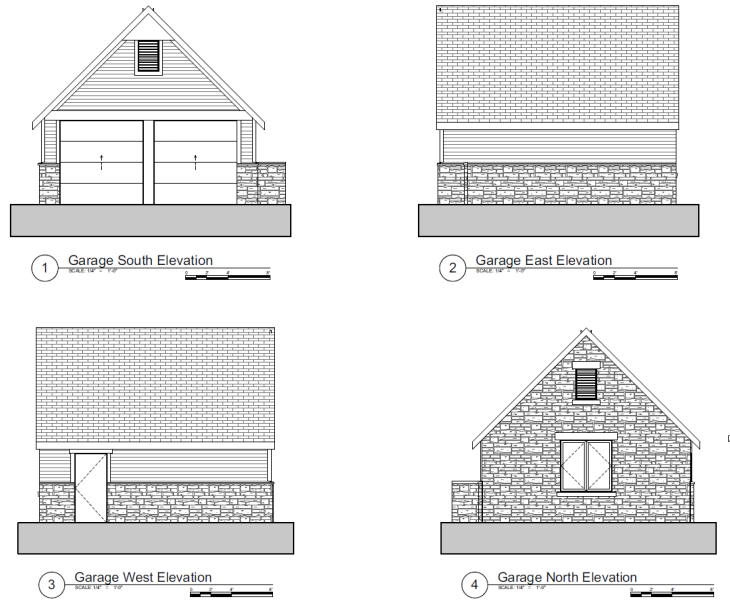


Figure 14. Proposed Garage: (clockwise from top left) South (alley), east, north (yard) and west (side) elevations. Not to scale.

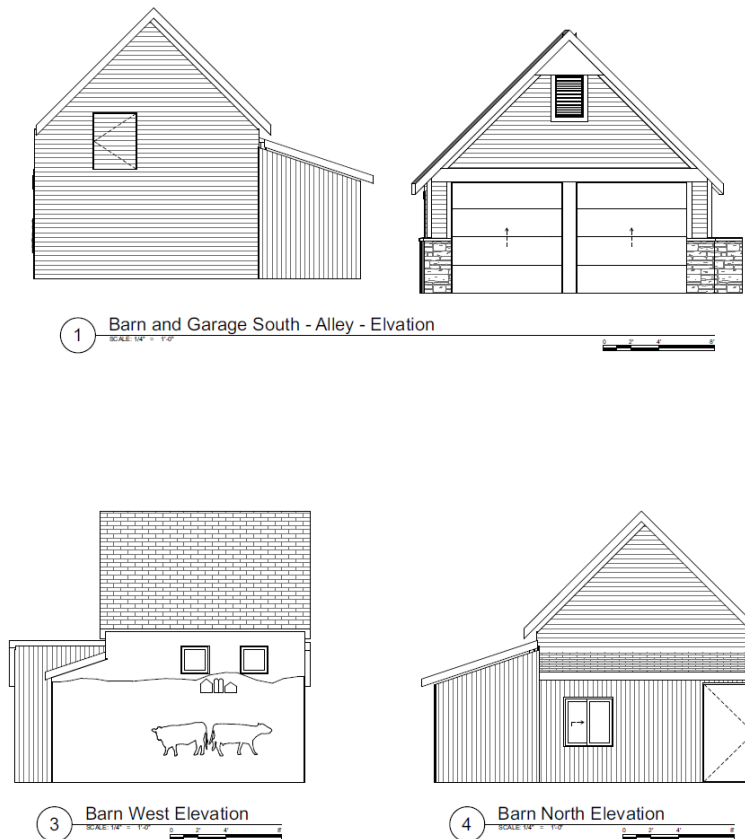


Figure 15. Proposed garage relative to contributing barn. Not to scale.

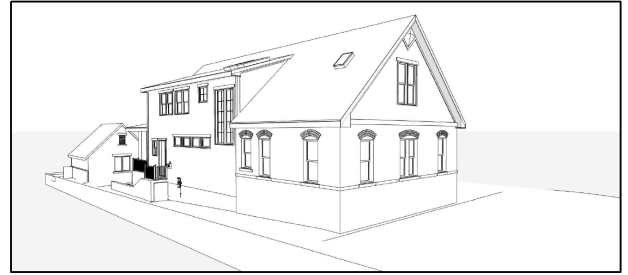


Figure 16. Architectural renderings showing proposed redevelopment of the property



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Continuation of the August 11 consideration of a motion regarding the management of Open Space and Mountain Parks irrigated agricultural lands occupied by prairie dogs – No New Public Testimony

PRIMARY STAFF CONTACT

Dan Burke

REQUESTED ACTION OR MOTION LANGUAGE

Consideration of a motion pertaining to the Open Space Board of Trustees recommended preferred alternative regarding the management of Open Space and Mountain Parks irrigated agricultural lands occupied by prairie dogs for soil health, agricultural sustainability and ecological viability in an area north of Jay Road and generally east of US Highway 36 and northwest of Colorado Highway 119

ATTACHMENTS:

Description

- ▣ **Item 5B - OSMP Irrigated Ag Lands and Prairie Dogs**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Consideration of a motion pertaining to the Open Space Board of Trustees recommended preferred alternative regarding the management of Open Space and Mountain Parks irrigated agricultural lands occupied by prairie dogs for soil health, agricultural sustainability and ecological viability in an area north of Jay Road and generally east of US Highway 36 and northwest of Colorado Highway 119.

PRESENTERS

Jane S. Brautigam, City Manager
Dan Burke, Director, Open Space and Mountain Parks (OSMP)
John Potter, Resource and Stewardship Division Manager, OSMP
Heather Swanson, Ecological Stewardship Supervisor, OSMP
Victoria Poulton, Prairie Dog Conservation and Management Coordinator, OSMP
Andy Pelster, Agricultural and Water Stewardship Supervisor, OSMP
Valerie Matheson, Urban Wildlife Conservation Coordinator, Planning Department
Mark Gershman, Senior Planner, OSMP

EXECUTIVE SUMMARY

Staff is returning to City Council as directed with a set of actions and policy modifications for the management of prairie dogs on irrigated agricultural lands in the area of city Open Space where irrigated Open Space lands are most affected by prairie dogs (“the project area”). These were unanimously recommended by the Open Space Board of Trustees (OSBT) and will allow Open Space and Mountain Parks (OSMP) to better achieve Charter Open Space goals.

The current situation reveals a fundamental policy conflict between feasible, cost effective management of irrigated agricultural lands (and the health of their soils) and elements of the city’s current overall program for wildlife protection. The parts of the wildlife protection program dealing with prairie dogs are largely implemented through the wildlife protection ordinance, which is designed to discourage the killing of prairie dogs. However, using a program that has relied almost entirely on non-lethal relocation resulted in an inability to keep up with the rates of establishment and spread of prairie dogs in OSMP irrigated fields. This has led to noticeable impacts to agricultural viability and to vegetation and soils across the landscape.

The OSBT-recommended preferred alternative identifies humane lethal control as a critical tool to ensure and restore agricultural viability and soil health on irrigable agricultural lands and to allow OSMP to achieve the Charter purposes of Open Space, while continuing to successfully conserve prairie dogs across thousands of acres elsewhere that are designated for prairie dog conservation. Sections of the

wildlife protection ordinance also prohibit damage to prairie dog burrows which severely limits the ability of ranchers and farmers to operate in irrigated fields once prairie dogs become established. The preferred alternative recommends the promulgation of a regulation by the City Manager to allow for limited damage to prairie dog burrows resulting from activities to maintain and restore agricultural land uses on city-managed Open Space.

Currently, an estimated 132,000 prairie dogs inhabit 4,457 acres of city-managed Open Space. These numbers represent the highest levels since OSMP began tracking acres occupied in 1996. Of these 4,457 acres occupied by prairie dogs, 3,490 acres (~80%) of OSMP-managed lands are unaffected by the preferred alternative that the OSBT is recommending.

In the project area, generally north of Jay Road and west of the Longmont Diagonal (**Attachment A**), there are 2,400 acres of irrigated OSMP land which were acquired for the purpose of agricultural use. Of the 196 irrigated fields in this area, a large proportion (135 or 69%) currently have active prairie dog colonies on them due to high prairie dog populations built up as a result of past policies and practices. Approximately 967 acres of these irrigated agricultural fields were occupied by prairie dogs at the end of 2019. The majority (526 acres) of this conflict is on OSMP lands previously identified in council-approved plans for the removal of prairie dogs. Land managers including OSMP, have not been successful in managing the same parcels of land both for irrigated agriculture and for prairie dog populations simultaneously as these goals are incompatible and result in conflict and impacts to vegetation and soils.

Staff and the OSBT are recommending that, on these lands where there is this high conflict situation, in-burrow humane lethal control, coupled with the exclusion of prairie dog recolonization through barrier fence construction, the restoration of soil health and agricultural productivity, and allowing limited damage to prairie dog burrows, comprise a necessary and appropriate approach that will allow OSMP to meet the City Charter purposes for Open Space in a manner consistent with council-accepted OSMP plans.

This recommendation follows an extensive community engagement process developed by staff working with the OSBT that included three phases or “windows.” The first of these (Oct 23-Nov 15, 2019) focused on building a shared understanding of the situation within the project area and collecting ideas about how to make the improvements identified by the OSBT and City Council. Staff developed a draft approach based upon a strong response from community members, feedback from partner agencies and staff experience. This approach broadly summarized was an integration within the project area of lethal and non-lethal removal, exclusion of prairie dogs from irrigated lands and restoration of agricultural productivity and soil health and changes which allow limited impacts to prairie dog burrows. The second engagement window (Jan 6- Feb 15) focused on gathering the community’s ideas about how to improve the general approach and resulted in a draft preferred alternative calling out specific actions and policy changes.

The third engagement window (originally March 5 - April 21 but extended to August 11) included or will include public hearings before the OSBT and City Council. In March, staff presented the draft preferred alternative to the OSBT. Among other changes, the OSBT unanimously amended staff’s preferred alternative to reflect a greater emphasis on partnerships with farmers and ranchers, and to focus available resources on in-burrow lethal control. The Board clarified their preference for speedy implementation through increased lethal control so that agricultural lands could be quickly returned to production, and soil loss and degradation halted as soon as possible. The OSBT amendments to the staff-recommended preferred alternative are included here as **Attachment B**.

The preferred alternative being recommended to City Council includes relocation as an important means of prairie dog removal consistent with the community’s longstanding values and expectations. Based on community feedback including the OSBT and council’s concerns about soil loss, and impacts to agricultural values, the preferred alternative expands the use of lethal control as a feasible way to keep up

with the establishment and growth of prairie dog colonies on OSMP irrigated agricultural land within the project area. The alternative also includes exclusion to prevent re-occupation by prairie dogs (and therefore repeated efforts of lethal control on the same ground), restoration of agricultural productivity, allowing limited damage to prairie dog burrows and the policy changes to ensure consistency with city code, regulations and administrative practices.

The OSBT-recommended preferred alternative (**Attachment C**) calls for the following annual actions starting in 2021, depending on available budget:

- Approximately 30-40 acres of prairie dog removals by relocation from OSMP irrigated fields (and up to 20 individual prairie dogs from other city priority projects) to OSMP receiving sites
- Approximately 100-200 acres of prairie dog removals in the project area by in-burrow humane lethal control.
- Both relocations and lethal control would be followed first by the installation of barriers (fences) in appropriate locations to reduce subsequent recolonization by neighboring prairie dog colonies, and then second by the restoration of soils and vegetation.
- Previously prohibited agricultural activities on OSMP irrigated fields resulting in damage to prairie dog burrows would be allowed.

To accomplish the activities described above in the project area, OSMP will apply for a special permit as described in the city code at 6-1-39. The special permit requires a showing that:

The birds or prairie dogs must be removed in order to permit completion or maintenance of a public improvement project approved by the city council, but only after the city council has been provided with notice that bird or prairie dog removal will be required. (6-1-39 (a)(2) B.R.C., 1981)

Therefore, the staff recommended motion includes language by which council approves and recognizes on-going agricultural management and soil restoration activities on OSMP-managed properties as necessary public improvement projects for the management of city lands and other assets. Staff also wants to be clear that this memo, and the associated public hearing *is* the notification (notice) described in the section of code quoted above regarding the removal, by means of in-burrow lethal control of prairie dogs.

Staff's recommendation regarding the degree to which agricultural management and soil health restoration activities will be allowed to damage prairie dog burrows differs from the approach described by the OSBT in their comments to staff at their July 8 meeting when they were updated about the recommendations for implementation. The city-wide jurisdiction of the Wildlife Protection Ordinance and the need to ensure policy consistency and administration required consultation and coordination with the Planning Department, and offices of the City Attorney and City Manager. The recommendations for implementing the burrow damage sections of the OSBT-Recommended Preferred Alternative are staff's. In order to allow agricultural activities that may damage prairie dog burrows on OSMP irrigated fields, staff is proposing a City Manager Rule in accordance with the provisions at 6-1-40 B.R.C., 1981 and a special use permit in accordance with the provisions at [6-1-39](#), B.R.C. 1981.

OSMP will continue to manage over 3,000 additional acres occupied by prairie dogs for their ecological values, while focusing the use of lethal control on the ~526 acres already identified in council-approved plans as agricultural areas appropriate for the removal of prairie dogs. The 3,000+ acres occupied by prairie dogs where grassland conservation is the goal are unaffected by the recommended implementation approach, and this level of conservation is consistent with the maximum extent goal for prairie dog conservation described in the council-accepted [Grassland Ecosystem Management Plan](#) (Grassland Plan, 2010).

STAFF RECOMMENDATION

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

That City Council accept and approve the Management Review of Irrigable Agricultural Fields Occupied by Prairie Dogs and Showing Signs of Soil Loss, Ecological Impact, and Loss of Agricultural Viability OSBT-Recommended Preferred Alternative (as amended) dated July 30, 2020 and the staff recommendations on burrow damage, and accept and approve the same as necessary public improvement projects for the management of city lands and other assets, to be administered through the development of a city manager rule and special use permit.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - OSMP's agricultural program represents one of the few remaining ways that the agricultural sector of the economy can prosper in the Boulder Valley. In particular, the city's irrigated fields have been identified as the best opportunity areas for agricultural production across the Open Space system. To the degree this project will improve these areas, it will support greater economic vitality for tenant farmers and ranchers leasing lands from the city and avoid the need for additional city staff to maintain these lands. The recommendation would better support the investments made in the acquisition of city lands and water rights to support the agricultural-related Charter purposes of Open Space.
- **Environmental** – This project would improve the sustainability and health of soil resources, which are the basis of ecological and agricultural systems. In addition, it balances the multi-Charter use of some city lands for agricultural uses and some lands for conservation of prairie dogs and associated native grassland species. The recommendation improves the ability of OSMP to care for broad ecosystems over the long term while making short-term localized improvements to agricultural properties by allowing lethal removal of prairie dogs. The removal of prairie dogs would in turn support restoration and modification of agricultural uses to maintain and enhance soil health. A driving factor for establishing this project was a concern over the current loss of production and longer-term loss of soil, a very precious asset that is typically very challenging to replace. Maintaining healthy soils and ecosystems is a critical practice that helps the city address the climate crisis through carbon drawdown.
- **Social** - The recommendation would improve the sustainability of OSMP's agricultural infrastructure and support the continued participation of farmers and ranchers in the Boulder Valley community and economy. New farmers are typically not in the position to purchase property and are increasingly dependent upon the availability of agricultural lands in good condition from community Open Space provides a place to pursue careers in farming and ranching. This project provides stewardship for agricultural lands supporting a local food supply on the city land that is best suited for agriculture. The current pandemic and economic disruptions have highlighted food supply chain vulnerabilities at multiple scales (global to local), underscoring the need for local food system resilience and the associated need to carefully manage local food system productivity in accordance with council-accepted plans including the Grassland Plan and Agricultural Resources Management Plan. This project supports opportunities for the public to better observe agricultural landscapes such as irrigated fields and croplands in their traditional condition.

OTHER IMPACTS

- **Fiscal** – -The recommendation can be accomplished with an estimated new expenditure of \$296,000-\$545,000 per year. This is in addition to spending on other previously planned prairie dog conservation and management activities budgeted at \$300,000-402,000 per year. The number of years to accomplish the goal of removing prairie dogs from priority irrigated fields is uncertain due to expected fluctuations in prairie dog populations from plague, precipitation, and other unpredictable factors.

- **Staff time** - Approximately \$90,000 of the estimated new expenditure described above would be used to hire a temporary crew lead and seasonal crew (~2.25 FTE). Other staff time associated with the recommendation can be incorporated into the OSMP work plan.
- **COVID-19 Considerations:** COVID-19 revenue shortfalls for the Open Space Fund are estimated between \$4.2M (-14%) and \$5.9M (-20%) in 2020 with additional impacts in out years as local sales and use taxes gradually recover. Staff will be adjusting budgets and workplans to steward the Open Space Fund during COVID-19 response and recovery, and OSMP anticipates reductions across personnel, non-personnel and capital expenditure types in 2020 and 2021. The level of investment available to support this work may be impacted if the recommendation is approved by City Council. Staff believes this approach to management is scalable and could be successfully implemented with less annual funding; however, the implementation horizon would need to be adjusted out.

RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

No questions were posed by the Council Agenda Committee at their Aug. 3, 2020 meeting.

BOARD AND COMMISSION FEEDBACK

An amended preferred alternative was unanimously approved by the OSBT at their March 11 meeting. The OSBT amendments to the staff-recommended alternative are included as **Attachment B**. The public hearing for City Council was initially scheduled for April, however due to the COVID-19 pandemic it was delayed until August. As a result, staff had the opportunity to present the amended version of the preferred alternative to the OSBT in July to ensure that their thoughts had been appropriately incorporated. OSBT comments at the July update dealt with provisions in the preferred alternative dealing with how to bring prairie dog burrow disturbance resulting from agricultural management and soil health restoration activities into compliance with city policies and laws. The OSBT members' comments indicated a desire to implement the OSBT-recommended preferred alternative with a tool that would allow all agricultural activities regardless of depth of impact. As described elsewhere in the memo, the development of policy changes required consultation with the Planning Department, which administers the Wildlife Protection Ordinance and the offices of the City Attorney and City Manager. Staff's recommendation on how to implement the preferred alternative differs from the July 8 comments made by the OSBT. However, staff feel they address the board's OSBT's desire to see expeditious implementation and will allow many of the desired agricultural activities to occur in a manner that is consistent with city-wide standards and requirements. These changes are presented in greater detail in the Analysis section of this memo. The OSBT-recommended preferred alternative (**Attachment C**) includes staff's response to those comments.

This item was not scheduled for consideration by the Environmental Advisory Board or presented by OSMP staff to the EAB. However, the EAB did provide feedback directly to the OSBT, recommending support for staff's preferred alternative and raising other points (**Attachment D**).

PUBLIC FEEDBACK

Staff and two members of the OSBT¹ serving as process advisors developed a three-step community engagement process. (Figure 1).

¹ Karen Hollweg and Dave Kuntz

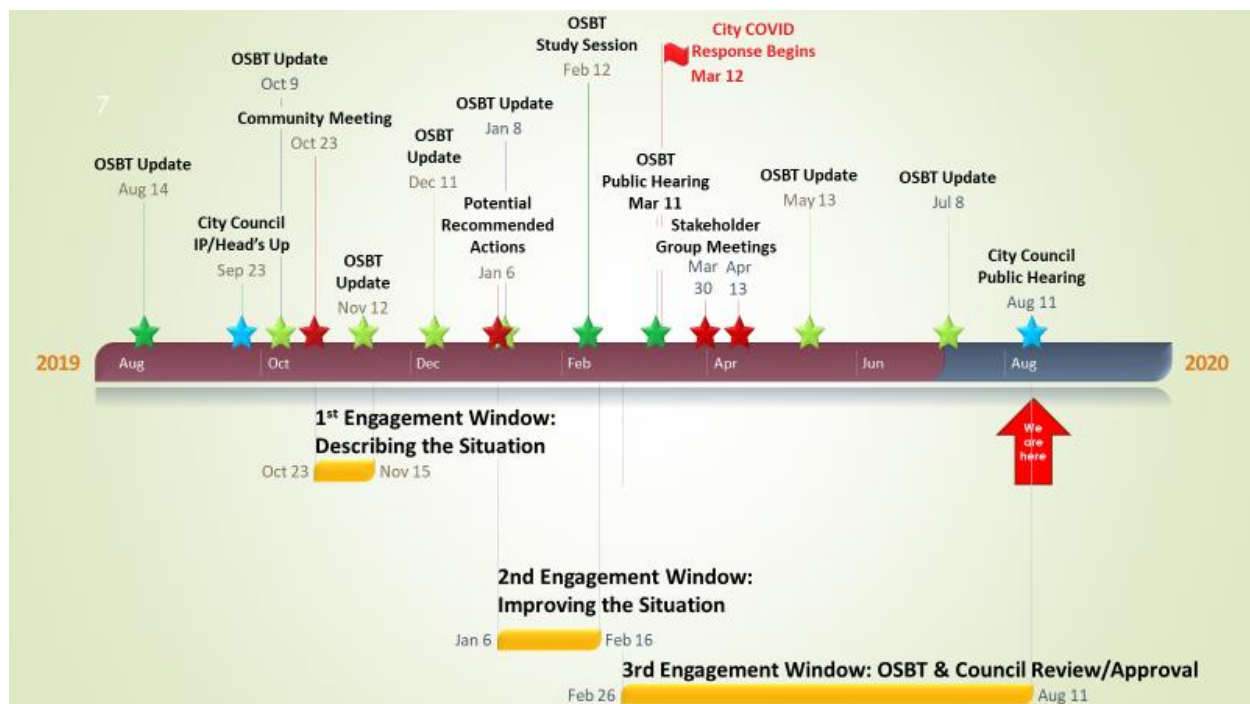


Figure 1: Project timeline/process through the OSBT's recommendation.

The first engagement window ("Describing the Situation") included an open house, online questionnaire and other opportunities to build a shared understanding among staff and the community of the current situation based upon an exploration of values and concerns. Community members also shared their preliminary ideas about what actions should be considered to improve the situation. Staff prepared both a [summary](#) and [compendium](#) of community input from the first engagement window which was shared on the [project website](#).

The second engagement window ("Improving the Situation") was focused on community-suggested refinements to a [draft approach](#) built upon the ideas shared during the first window. The draft also included the evaluation of specific ways to improve the situation looking at benefit, feasibility and cost of about 50 ideas suggested by community members and agency partners. This window also included a study session with the OSBT. A [summary](#) and [compendium](#) of community comment was prepared and posted to the web.

Community engagement from the second engagement windows confirmed several messages that had been shared during the first: agricultural uses of Open Space, conservation of prairie dogs and the ability of agricultural lands to sequester carbon as part of the city's climate crisis response were important values for community members. Significantly, the community was clearly divided about lethal control of prairie dogs and the urgency of removing prairie dogs from irrigated lands. A study session with the OSBT conducted on Feb 12, near the end of the second engagement window, clarified the board's interest in a course of actions that would improve the situation quickly and included an increased reliance upon lethal control as an unfortunate but unavoidably necessary action to remove prairie dogs from irrigated OSMP lands.

Feedback from the second engagement window was used to draft staff's preferred alternative which was presented to the OSBT with a request that it be recommended to council for approval. Among other changes, the OSBT amended staff's preferred alternative to reflect a greater emphasis on partnerships with tenant farmers and ranchers, and a greater amount of expenditure for in-burrow lethal control. The OSBT unanimously supported the amended recommendation. The staff-presented preferred alternative is available [here](#). The OSBT's amendments are summarized in **Attachment B**, and the recommended preferred alternative based upon the OSBT feedback is **Attachment C**.

Council's April 21 scheduled public hearing on this item was postponed as a result of the COVID-19 epidemic. This created an extended timeline during which some stakeholder groups requested opportunities to learn more about next steps and ask other questions. Although not originally planned, the OSBT process advisors supported the idea of staff meeting on-line with groups to respond to their questions. Staff met with three groups who had reached out to staff. Notes from these meetings were posted on the project website. Staff met with [OSMP agricultural tenants](#), Healthy Ecosystems and Agricultural Lands ([HEAL](#)) and [Keep Boulder Wild](#). Staff received no other meeting requests from community members or stakeholder groups.

BACKGROUND

OSBT and City Council Direction

In the spring of 2019, the [Prairie Dog Working Group's](#) (PDWG) recommendations was being advanced to the OSBT and council for recommendation and approval. During the public hearings, some members of the community, including OSMP tenant farmers and ranchers, expressed concern that the overlap of prairie dogs on irrigated agricultural lands was making agriculture impractical and creating operational hardships. They asked that the city examine this situation and develop ways to improve it. During the meetings at which the OSBT and City Council took action on the PDWG recommendations, they also recommended and directed staff to undertake this project.

Specifically, the OSBT and City Council identified that conflicts with city's prairie dog management and viable agricultural operations have affected OSMP's ability to fully meet the Charter purposes of Open Space and have contributed to soil degradation and soil loss. Following an April 2019 recommendation by the OSBT, the City Council directed OSMP staff in May to undertake a review of the management of irrigated lands occupied by prairie dogs with a focus on the OSMP system where conflicts are generally the highest. The language of the motion was to:

“direct OSMP to undertake an expedited public process that looks at agricultural uses on the northern grasslands including factors affecting the ecological conditions of the land, high soil health, healthy agricultural uses, wildlife health, and other conditions. New land management tools can be considered, including key-lining, soil amendments, lethal control and other measures to achieve charter open space goals.”

Addressing the Open Space Charter Purposes

In 1986, the City Charter was amended to include the purposes for which Open Space “shall be acquired, maintained, preserved, retained, and used.” Both agriculture and prairie dogs are related to multiple charter purposes (Table 1). OSBT and City Council approval of land and water acquisition projects and management plans reflect the historic and on-going community support for both agriculture and prairie dogs. However, it is not possible to fulfill goals for both values on every acre of Open Space simultaneously.

At the time of council's direction, the objectives of the Grassland Plan addressing the conservation of prairie dogs and associated species were generally being achieved, however the objectives in the Grassland and [Agricultural Resource Management Plan](#) (Ag Plan) dealing with management of prairie dogs on agricultural land were not. Staff interpreted the OSBT and City Council direction for this project to mean that the significant overlap of prairie dog colonies and irrigated OSMP lands has reduced OSMP's ability to meet the charter purposes of open space associated with agriculture.

Table 1: City of Boulder Charter Purposes and relevance for prairie dogs and agriculture.

Charter Purpose	Prairie Dogs	Agriculture
Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species	✓	
Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems	✓	✓
Preservation of agricultural uses and land suitable for agricultural production		✓
Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community	✓	✓
Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing	✓	✓
Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth		
Utilization of non-urban land for spatial definition of urban areas		
Utilization of land to prevent encroachment on floodplains		✓

Importance of Irrigated Lands

Because of the high levels of plant production possible by providing supplemental water, irrigated² lands have been identified as OSMP's best opportunity areas to support successful agricultural operations across the landscape. The city has made significant investments in the purchase of land and water and the construction and maintenance of water delivery infrastructure to support irrigated agriculture in the project area and throughout the OSMP land system. The loss of the ability to conduct agriculture on irrigated fields due to prairie dog colonization threatens the viability of agricultural operations most of which would not be possible without some level of irrigated acreage integrated into the overall agricultural production system.

Importance of Prairie Dogs

Black-tailed prairie dogs have far-reaching effects on the grassland that they inhabit, and their presence provides prey and landscape structure necessary for many associated species that would not otherwise be present (e.g., burrowing owls, American badgers). Because of these far-reaching effects, prairie dogs are often considered a "keystone" species. In recognition of the importance of prairie dogs in native grasslands, the city has made large investments over the years in the conservation of habitat for prairie dogs and their associated species. Prairie dog investments have gone beyond acquisition and management of habitat. They are one of only a very few wildlife species that the city has spent funds to actively manage individuals and populations. For example, the city has invested considerable funds in the relocation of prairie dogs to viable habitat with low prairie dog occupation.

The Nature of Conflicting Land Use

Burrowing and feeding by prairie dogs in irrigated fields are incompatible with applying irrigation water, cutting hay, growing vegetables, and conducting associated agricultural practices. The delivery of

² For this project "*irrigated*" describes OSMP lands that are associated with water rights and water that is typically available at a time, in a place and in amounts such that those OSMP lands are, or are able to be, irrigated for agricultural or other purposes for which the applicable water rights are decreed. This definition does not address historic irrigability including situations where water rights have been abandoned.

irrigation water and operation of agricultural equipment is made difficult or impossible because of prairie dog burrows and burrow mounds. Prairie dogs graze and clip hay and pasture vegetation that is intended for use by livestock and create bare ground conducive to the germination and spread of noxious weeds. Irrigation, plowing, mowing and harvesting hay can also have adverse effects on prairie dogs.

Once prairie dogs are established in an irrigated field, for example, farmers and ranchers will usually stop using the field to grow hay because prairie dog mounds can damage their equipment and make haying difficult or impossible. In addition, haying operations are likely to damage occupied burrows and that sort of damage is prohibited by city regulations. Eventually the farmer may see no benefit from continuing a lease payment and ask OSMP for a rent reduction. In these cases, properties are removed from the agricultural lease program and are instead managed by the OSMP agricultural stewardship staff who respond within available resources to the concerns of neighboring landowners for the spread of noxious weeds and of the prairie dogs themselves. In addition to the direct loss of lease revenue, agricultural production and the degradation of the land for future agricultural use; irrigation infrastructure can also be degraded from the direct effects of prairie dogs or from lack of on-going use and maintenance. Irrigation requires specific knowledge of a property gained over years and is time consuming work. OSMP staff capacity to irrigate lands is limited.

Irrigated agricultural fields typically support vegetation communities that are reliant on the increased water availability delivered by ditches. These systems are especially vulnerable to removal of irrigation water which typically leads to a rapid collapse in vegetation. Although living pasture and hayfield grass roots are very effective at holding soil, when the vegetation collapses, the roots die and no longer function to hold soil. Bare ground, even in situations of blowing or otherwise eroding soil, provides opportunities for invasive plant species to become established. These plants do not typically bind soil as well as a healthy hayfield or pasture and create additional management challenges and costs for the city.

Consequently, OSMP has tried to limit the overlap of irrigated lands and areas managed for prairie dogs through planning, policy development and on-the-ground actions. The Grassland Plan established prairie dog management designations which provide extensive areas across the Open Space system for the conservation of prairie dogs and associated species, but then also called for the removal of prairie dogs from most irrigated agricultural land.

OSMP Management: Conserving Both Prairie Dogs and Local Agriculture

The OSMP Master Plan (2019), guides the projects, programs, and plans of OSMP for the next decade. It identifies forty-six strategies across five focus areas. The plan's strategies are arranged into three tiers with Tier 1 representing the highest community priorities. One of the ten Tier 1 strategies is:

“Address conflicts between agriculture and prairie dogs--Maintain the viability of agricultural operations by reducing impacts from prairie dogs on irrigated lands, while supporting ecologically sustainable prairie dog populations across the larger landscape.”

In the 2010 Grassland Plan and the 2017 Ag Plan, the city established indicators and measurable objectives for the management of both irrigated fields and prairie dogs (Table 2). For example, OSMP seeks to ensure that more than 80% of the 6,640 acres of irrigated fields are leased and in agricultural production and that the water delivery infrastructure that supports irrigated agriculture is in acceptable condition. It is worth recognizing that while OSMP is meeting the numeric goal, the actual viability of the individual leaseholds is not well reflected in our current measures. Some OSMP tenants have indicated that they are struggling to maintain viable operations due to the level of prairie dog occupation, and just because a field continues to be leased does not mean that it is able to be used at this time.

Table 2: Key agricultural and prairie dog objectives from the Grassland (GP) and Ag Plans (AP).

Indicator	Objective	2020 Status
Acres in agricultural production (GP +AP)	> 12,000	~ 16,200
Irrigated land leased for agriculture (GP +AP)	> 80%	~ 78%
Acres of active prairie dog colonies (GP +AP)	800 – 3,137	4,457
Percent of [prairie dog] occupied land in protected status (GP +AP)	> 70%	77%
Acres of prairie dog colonies on transition or removal areas (AP)	None	1,018
Grassland preserves w/occupancy between 10 and 26% (GP +AP)	All (3)	2 over; 1 under
Soil organic matter (GP +AP) and soil biological diversity (AP)	Maintain increase	In progress
<i>Baseline soil sampling and measurements are being established in 2020</i>		
Proportion of agricultural operations implementing soil BMPs (AP)	100%	In progress
<i>Not yet documented, many lessees use one or more soil management best practices.</i>		
Proportion of necessary irrigation structures in an acceptable condition (AP)	100%	In progress
<i>Irrigation infrastructure currently being inventoried.</i>		

The plan objectives include maintaining prairie dog populations across the Open Space system within a range of between 800 and 3,137 acres. The approach to accomplishing this includes management designations on over 3,400 acres where prairie dog colonies are in protected status (Table 3). The city also conserves prairie dogs on lands managed by other departments (e.g., on Utilities lands around Boulder Reservoir) and has established policies and a regulatory framework that requires both the city and private landowners in the city to allocate significant effort to the exploration and use of conflict avoidance, prairie dog relocation and other non-lethal techniques as alternatives to lethal control.

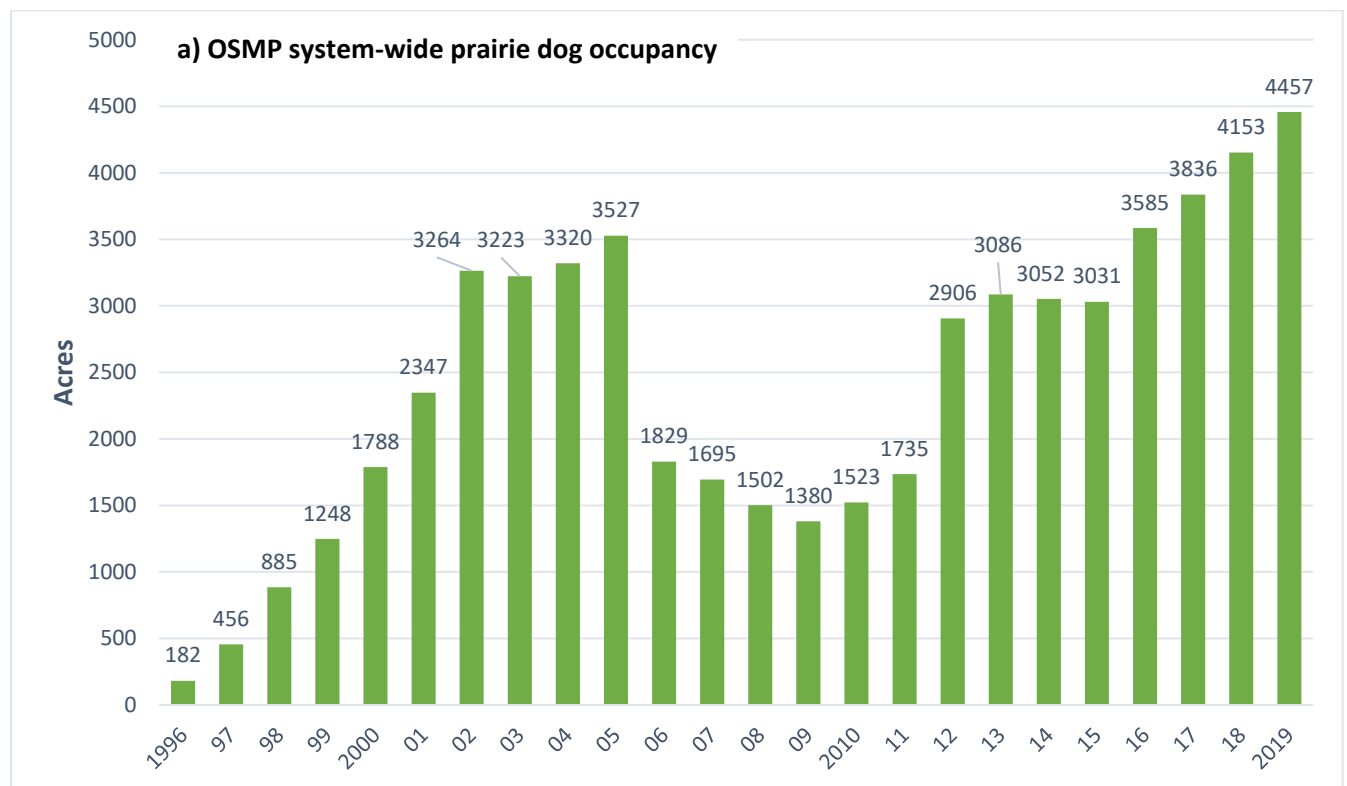
Table 3: Levels of prairie dog occupation by management designation

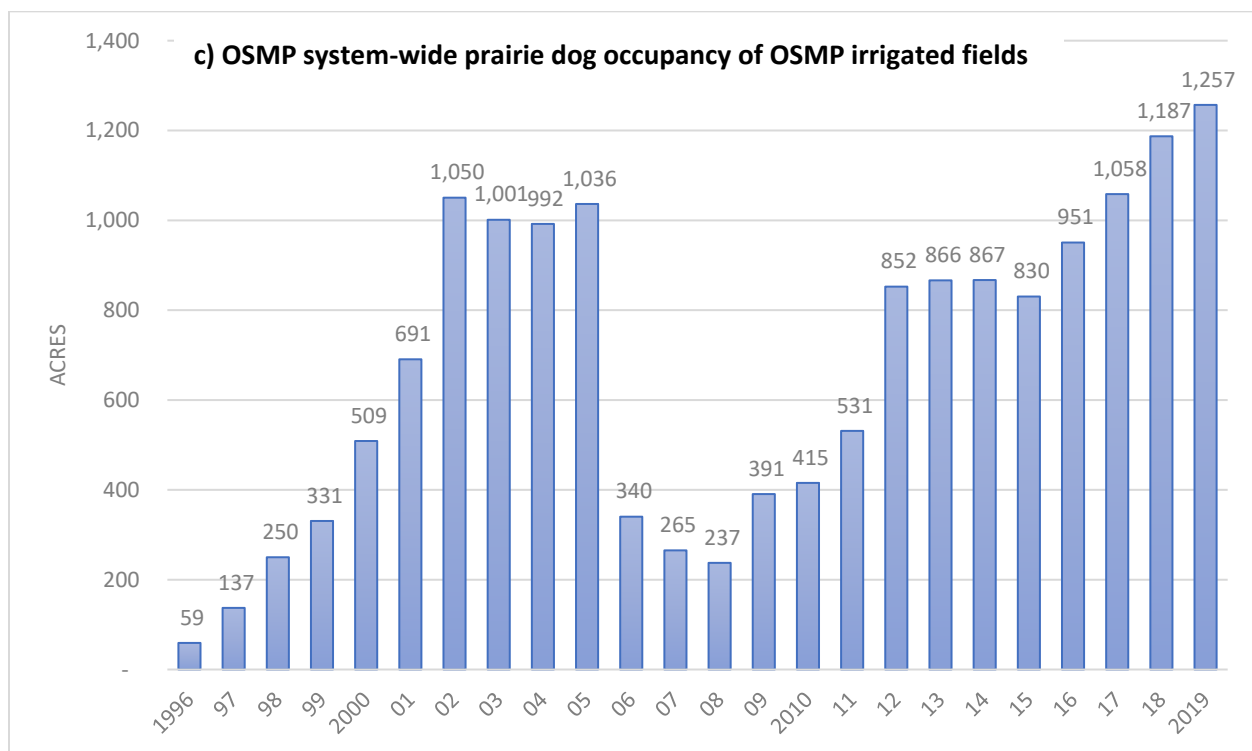
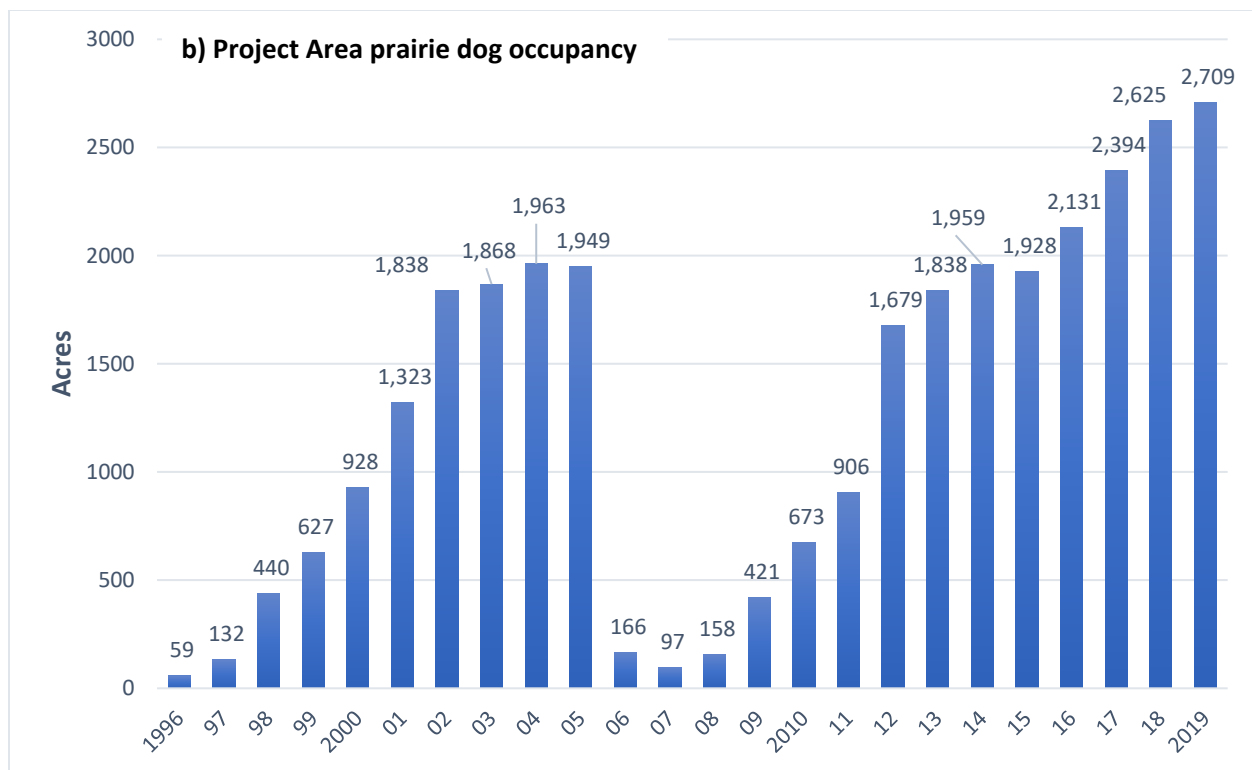
Management Designation	OSMP system-wide (acres)	OSMP Project Area (acres)	Irrigated OSMP in Project Area (acres)
Grassland Preserve	2,470	1,801	395
Prairie Dog Conservation Area	385	23	23
Multiple Objective Area	576	215	23
Total in Protected Status (GP+PCA+MOA)	3,432	2,039	441
Transition Area (TA)	725	431	353
Removal Area (TA)	293	222	173
Total in Conflict Status	1,018	653	526
Grand Totals	4,450	2,692	967

In 2018, recommended enhancements to the department's prairie dog management strategies were developed by the [PDWG](#). These were prioritized by staff and recommended and then approved for action by the OSBT and City Council in 2019.

The Problem in General

The current situation reveals a fundamental policy conflict between feasible, cost effective management of irrigated agricultural lands and the city's current policies for wildlife protection. The wildlife protection program elements dealing with prairie dogs are largely implemented through the wildlife protection ordinance, which is designed to discourage the killing of prairie dogs. Lethal control, however, has been identified as a critical tool to ensure and restore agricultural viability and soil health on irrigable agricultural lands, and allow OSMP to better achieve the agricultural related charter purposes of open space. Sections of the wildlife protection ordinance also prohibit damage to prairie dog burrows which, in turn, severely limits the ability of tenant farmers to operate in irrigated fields once prairie dogs become established.





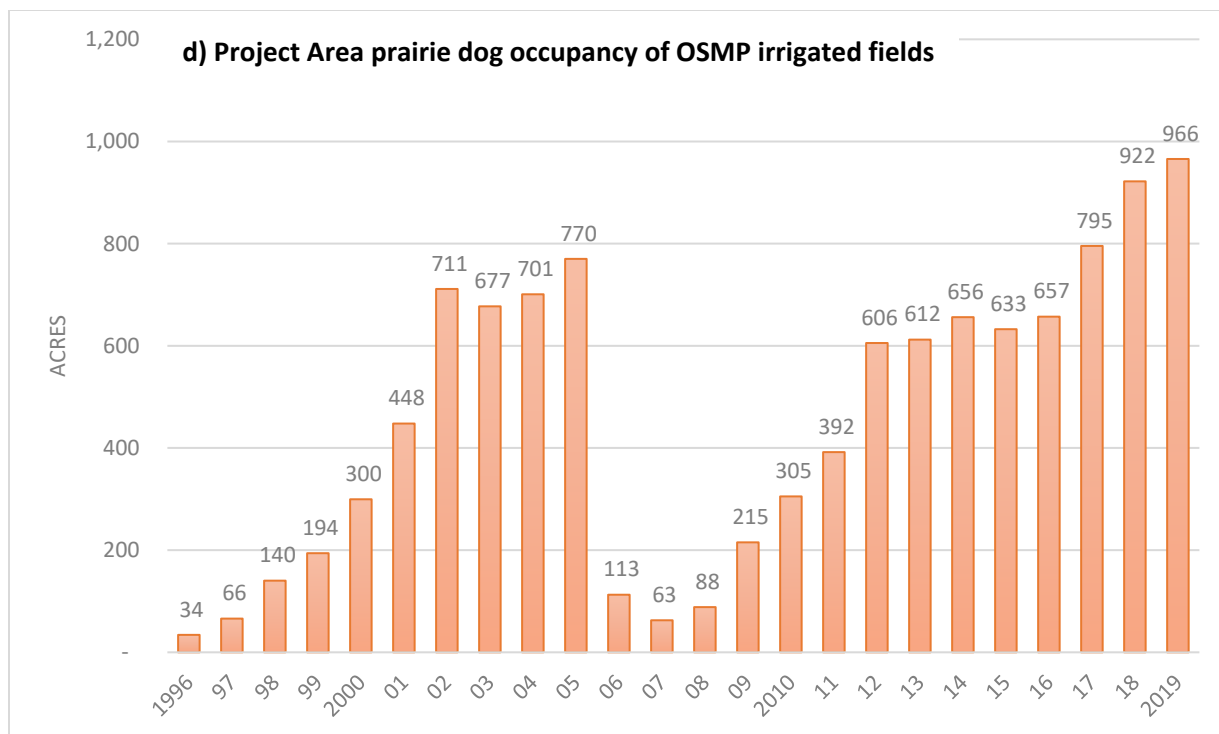


Figure 2: Prairie dog occupancy 1996-2019 a) OSMP Systemwide b) Project Area, c) Irrigated OSMP Systemwide, and d) Irrigated OSMP in Project Area *Note: Y(vertical) axis units differ in a)/b) versus. c)/d)*

Due to continued growth of prairie dog populations (Figure 2 a-d) and other factors, OSMP has not been able to keep up with the rates of establishment and spread of prairie dogs in irrigated fields by relying on relocation alone as the removal method. The department is not meeting the prairie dog related management objectives defined in the council-approved Grassland and Ag Plans established to support sustainable agricultural operations. The city has used relocation as the primary way to remove prairie dogs, consistent with the community goal of minimizing lethal control of native wildlife. Unfortunately, relocation is expensive and time intensive. Even with high levels of spending, relocation has not been an effective means to meet objectives in removal and transition areas given the rate at which prairie dogs colonies have been expanding into irrigated fields. This conflict has been increasing since the northern portion of the Boulder Valley entered a sustained phase of prairie dog expansion beginning in 2009 following a substantial die-off due to sylvatic plague (Figure 2.). For example, in 2019, the city spent approximately \$140,000 to relocate prairie dogs from 28 acres, and there are currently over 1,000 acres of prairie dog colonies on irrigated fields.

The Situation in the Project Area

The project area lies north of Jay Rd and west of the Diagonal Highway (CO Hwy 119) (**Attachment A**). This is the area on the OSMP system where conflicts are generally the highest, and the greatest number of agricultural tenants are affected. The project area has over 2,000 acres of active colonies where the management designations were designed to protect prairie dogs and associated species. Most of these colonies (1,600 acres) are on unirrigated grasslands. The project area contains approximately 2,400 acres of irrigated lands managed by OSMP. Prairie dogs occupy approximately 967 acres (43%) of the irrigated land in the project area (see Table 3).

Irrigated land in the project area is divided into 196 fields, 135 of which (69%) are occupied by prairie dogs. Five of OSMP's agricultural tenants in the project area have over 10 percent of the irrigated portion of their leaseholds occupied by prairie dogs. Prairie dogs occupy over half the irrigated acreage of the two tenants with the largest leaseholds. The conflicts associated with prairie dogs have created significant hardships for these tenants, as well as neighboring landowners. In the absence of a plague epizootic (i.e.,

the only recent, significant check on prairie dog populations), the level of overlap, conflict and hardship are likely to increase annually and affect additional tenants and neighbors.

Since 2002, all or of a portion of nine OSMP properties have been removed from the city's agricultural lease program at least in part because of conflicts between irrigated agriculture and prairie dogs (Figure 3). Issues with water delivery, in addition to conflicts with prairie dogs, affect about half of these properties. These conflicts impact about 460 acres of irrigated land. The first property was removed from the lease program in the project area in 2002, the most recent removal was in 2018. Although OSMP has been actively engaged in removal and restoration, no properties have yet been returned to the lease program.

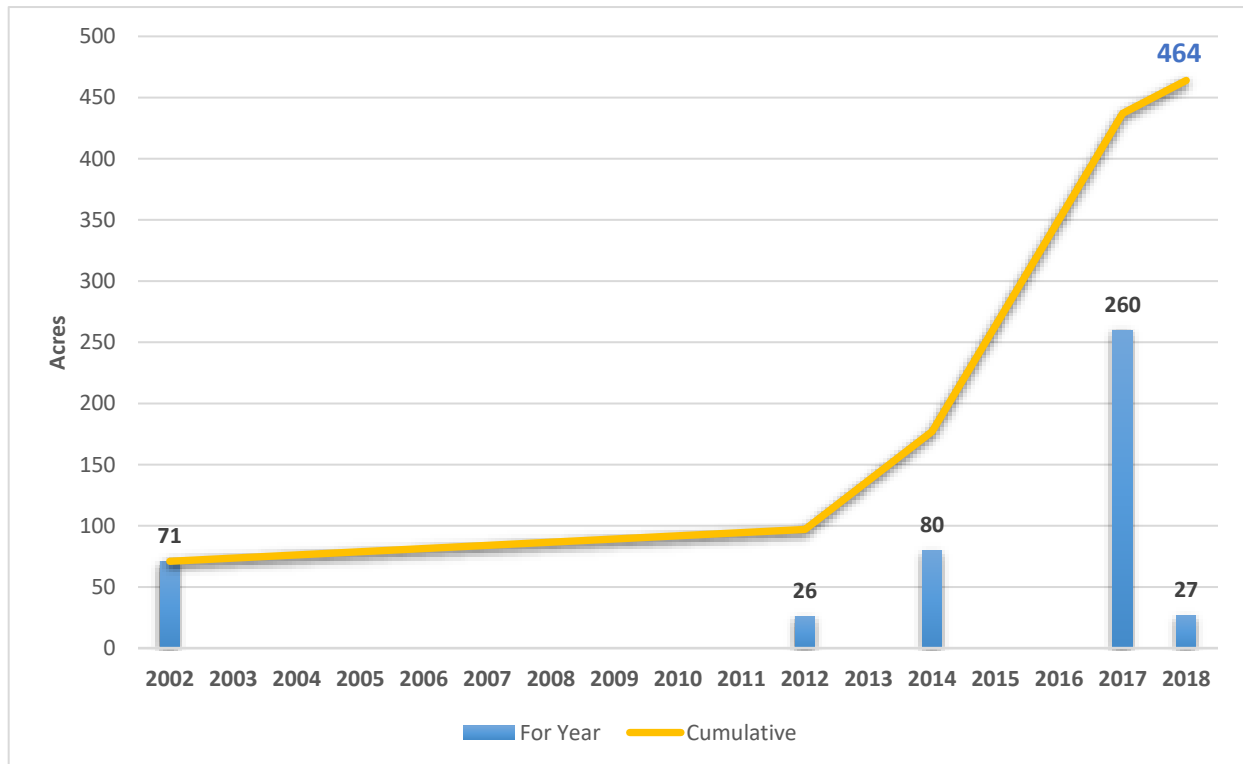


Figure 3: Acres of irrigated OSMP-managed lands removed from agricultural lease program at least in part due to conflicts with prairie dogs.

ANALYSIS

Through this project, staff has worked with the community to develop and evaluate specific actions, levels of implementation and an overall approach to address council's direction. The evaluation of the benefit, feasibility and costs of specific on-the-ground management actions and policies is summarized in the [Draft Approach and Analysis of Potential Actions](#).

Recognizing strong and opposing community sentiments with regards to lethal control, staff developed and analyzed six packages with alternative levels of reliance upon relocation and lethal control for consideration by the OSBT at their February 12 study session which are summarized in [this handout](#).

This section provides an analysis of alternative approaches. These include:

- continuing OSMP's current practices;
- an approach that eliminates conflict by emphasizing prairie dog conservation on irrigated agriculture lands; and
- a combination of prairie dog removal, exclusion and land restoration as described in the preferred alternative.

Continuing Current Practices

The greatest advantage of the current approach is that it results in minimal lethal control of an important native grassland species. This consideration is of importance to a portion of the community but opposed by others. Staff's review of current management practices concluded that they do not support OSMP's ability to fully meet the plan-based objectives for the agricultural related Charter purposes for Open Space. This approach would also result in some level of removal, limited lethal control associated with relocation projects, exclusion and restoration.

An alternative characterized by no change from existing policies and practices is unlikely to result in additional improvements to the current situation. Under this approach, staff would rely on relocation alone and would be able to relocate up to approximately 40 acres annually, install barriers to minimize recolonization and restore areas after prairie dogs are removed. With approximately 1,000 acres to be addressed in the project area in 2019, if populations are not reduced by plague or other factors, it would take decades and decades, assuming no expansion of colonies and an on-going availability of receiving sites.

However, in the absence of plague, colony expansion is a certainty and eventually receiving sites in OSMP grassland preserves will be filled. Unless receiving sites off-OSMP lands become available, which based upon historic precedent is extremely unlikely, removal would be stalled. The combined effect of limited receiving sites and prairie dog population growth would create conditions under which conflicts would increase and the current conflict situation would worsen over time creating greater hardships for agricultural tenants and neighbors and make it nearly impossible for OSMP to achieve the agricultural-related OSMP purposes set out in the City Charter and detailed in the Ag Plan. In addition, operating under the current approach would also make soil restoration initiatives extremely difficult to implement and unlikely to succeed. Without a change in direction, OSMP would likely have to continue to remove irrigated lands from our agricultural leasing program.

Emphasize Prairie Dog Conservation on Irrigated Agriculture Lands

Staff received comments from community members advocating for the reduction or removal of agricultural operations from irrigated lands to eliminate prairie dog/agriculture conflicts.

While this approach would reduce conflict, it would not address soil degradation or soil loss. Irrigated lands are especially vulnerable to vegetation collapse when irrigation is stopped, and soil loss after prairie dogs colonize. In addition, irrigated lands carry with them special value for agricultural producers in the Boulder Valley (Figure 4). They have been identified in the Grassland and Ag Plan as the best opportunity areas for successful agricultural operations either by themselves, or as part of a larger operation that includes upland, unirrigated grasslands.

Staff considered this approach but concluded that in addition to creating an extensive need for restoration, it would be fundamentally inconsistent with the general direction provided by the OSBT and council in 2019 because it would distance OSMP further from successfully delivering on the charter purposes addressing the preservation of agriculture and water resources in their traditional state.

There are also significant economic and potential opportunity costs associated with removing agriculture from irrigated lands. The economic costs are largely associated with the need to irrigate and control invasive species on OSMP whether it is leased or not. Failure to irrigate could endanger the city water rights under Colorado’s “use it or lose it” policies. State and county laws as well as good neighbor practices require or call upon OSMP to manage certain invasive plant species. When land is no longer of interest to agricultural tenants, tenants and the community derive no agricultural benefit, and there are no associated lease payments. Under an agricultural lease, the community enjoys land, water and soil stewardship by the tenant, support for local agriculture and a positive revenue stream to the open space fund. When a property is removed from an agricultural lease, staff must be hired or redirected to irrigate the property, manage invasive species, and there is typically less or no associated agricultural production. Opportunity costs are those associated with other work that those employees could be completing, and the potential loss of water rights and the establishment of invasive species should the scope exceed OSMP’s staff capacity or budget. Once lost, the cost of re-acquiring water would be extremely, perhaps prohibitively expensive. Finally, once established, invasive species are expensive to eradicate. As a result, it would be impractical and very costly to re-establish irrigated agriculture in the future on OSMP lands taken out of irrigation, agricultural production or both.

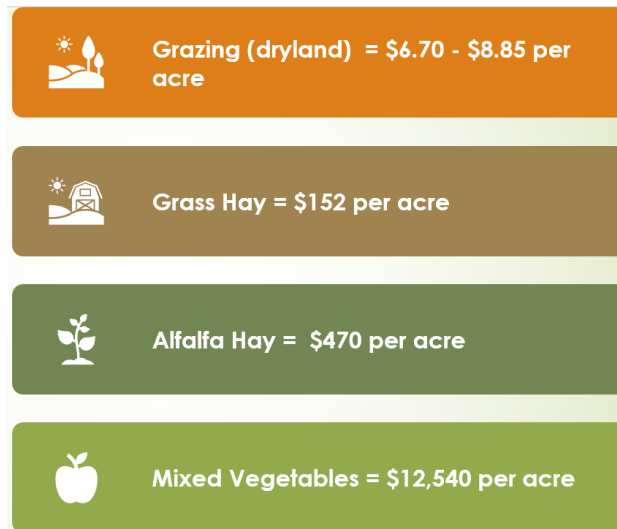


Figure 4.: Average return per acre in Colorado – the bottom three crops require irrigation in the Boulder Valley. (source: Colorado State University Extension, Agriculture and Business Management)

While the analysis of costs and benefits of this alternative led staff to the conclusion that it was not viable as a wholesale approach, there may be some places where the landscape context, and ability to redirect water rights may allow for limited, local application. For example, OSMP has essentially taken this approach to establish the Prairie Dog Conservation Area south of Niwot Road between and east of N. 55th on the Johnson and Dawson Open Space properties.

OSBT-Recommended Preferred Alternative

The OSBT-recommended preferred alternative (**Attachment C**) is an approach focused on relatively quickly returning agricultural uses on irrigated lands. The preferred alternative includes removal of prairie dogs from irrigated lands using a combination of relocation and in-burrow humane lethal control; steps to exclude prairie dogs from recolonization; a commitment to the restoration of soil condition as well as changes to policies that allow damage of prairie dog burrows from typical agricultural activities so long as that damage is limited in their depth of disturbance.

This approach was built from actions recommended by community members, including agricultural tenants, and peer agencies, as well as staff’s experience managing prairie dogs and recent attempts to restore agricultural lands in the presence of prairie dogs and otherwise. The preferred alternative delivers the benefits of reducing conflicts between prairie dogs and irrigated agriculture in a manner that is consistent with the council-approved Grassland and Ag Plan, allows OSMP to fulfill the Charter purposes associated with both conservation of ecological systems and the management of lands to support sustainable agricultural operations and addresses the city’s Climate Commitment strategies associated

with carbon sequestration in agricultural soils. Implementation of the preferred alternative would result in the loss of habitat for prairie dogs and associated species as described below but would restore plant and animal habitat associated with irrigated pastures and hayfields for other wildlife species.

The preferred alternative involves tradeoffs. It is more expensive than other approaches, primarily because of the continued commitment to relocation and the deployment of barrier fencing, and there is a substantial increase in the use of lethal control of native wildlife—a practice which the city, including OSMP has sought to minimize in the past. Along with the direct effects upon prairie dogs, there would be impacts to prairie dog associated species. The impacts would include non-target effects of animals killed in burrows at the time of lethal control, the reduction of available habitat for prairie dog associates on irrigated lands, and the effects of reduced availability of prey for raptors and other predators that rely on prairie dogs for a portion of their diet. The preferred alternative also allows non-lethal effects to prairie dog burrows from agricultural activities, potentially reducing the need for lethal control in some situations.

The OSBT-recommended preferred alternative includes the following sections:

Findings

A bulleted description of the key elements and understandings of the current situation organized by sections on agriculture, grassland ecology, management conflict and prairie dog management. The underlying information source for this an all sections of the preferred alternative is what we heard from the community including the OSBT, staff expertise and experience and conversations with agency partners.

Assumptions

Through the process of community engagement—especially hearing from community members about their values, developing and evaluating potential actions, and formulating packages, staff identified a number of key assumptions to help develop a preferred alternative and provide transparency about what was being considered during the drafting process. These assumptions are based on community engagement, direction from plans and policies, feasibility analyses, conversations with the OSBT and among staff.

The Preferred Alternative Actions

This section presents eleven components of the preferred alternative and accompanying text. The components include a combination of on-the-ground actions and policy revisions describing *what* would happen and key specific guidance that provide responses to some of the higher-level comments and questions about *how* the work would be done. This section also provides information on how these actions would fit into the context of other city plans, programs and projects.

Prioritization Criteria

There are currently 967 acres (526 of which are in transition and removal areas) where prairie dog colonies overlap irrigable lands in the project area. The prioritization criteria provide suggested guidance for staff to follow in crafting annual plans for relocation, lethal control, exclusion and restoration.

Implementation Timeframe

Using the prioritization factors discussed with the OSBT, and included in this memo, staff put together a potential approach for the first two years of implementation. This was developed prior to the COVID-19 pandemic. The timeframe estimate was based on status quo for 2020 followed by implementation of the preferred alternative (to the degree possible with current budgets and resources) in 2021 and 2022. This included planning and cost estimation using specific information about colonies that would likely be removed. Although based on specific projects, the cost estimates are subject to change based on prairie dog occupancy and on-the ground conditions that can change rapidly. Consequently, staff is not presenting additional details further into the future at this time because the colonies to be managed are

likely to change. As part of the PDWG recommendations, the city holds an annual meeting to report out on prairie dog related topics. Staff anticipates using the direction provided in the preferred alternative accepted by council to develop future annual work plans which would be presented as a regular feature of these annual public meetings and included as part of the annual budget presentations to the OSBT and City Council.

Staff and the OSBT are recommending that in the current high conflict situation, relocation coupled with in-burrow lethal control, barriers against prairie dog recolonization, restoration of soil and agricultural productivity, and changes to city policies that allow limited burrow disturbance comprise an appropriate approach that will allow OSMP to better meet the City Charter purposes for Open Space.

Alternative Approaches to Policy Modification

The fundamental policy conflict between feasible, cost effective management of irrigated agricultural lands and the city's current program for wildlife protection is that the wildlife protection ordinance is designed to discourage the killing of prairie dogs, whereas the OSBT-recommended preferred alternative identifies humane lethal control as a critical tool to ensure and restore agricultural viability and soil health on irrigable agricultural lands to allow OSMP to achieve the Charter purposes of Open Space. Less critical and controversial, but still significant, are sections of the city code that prohibit damage to prairie dog burrows. These policies limit the ability of tenant farmers to operate in irrigated fields as prairie dogs are becoming established.

Therefore, the implementation of the preferred alternative requires some combination of the development of interpretive or administrative rules by the City Manager (based on 6-1-40, B.R.C., 1981) or a Special Permit issued by the City Manager under the provisions of the code. The OSBT-recommended preferred alternative directs staff to move forward expeditiously to investigate and implement the most effective approach.

Staff used the delay between the OSBT public hearing, and the City Council public hearing necessitated by the COVID-19 pandemic to evaluate the options and develop a specific implementation recommendation that would bring the preferred alternative into compliance with existing city code. There were two items addressed through these recommendations, lethal control and burrow damage. Staff presented these recommendations to the OSBT as an update during their July 8 meeting. Staff's recommendation regarding lethal control received no comments and is advanced to council without significant modification. However, OSBT members commented that staff's proposal to allow burrow disturbances to a depth of only three inches below the typical ground surface was inconsistent with their expectations, and that their preference would be that all agricultural activities be allowed on irrigated OSMP lands regardless of the degree to which prairie dog burrows or their inhabitants were affected.

In responding to these July 8 OSBT comments, OSMP staff further collaborated with staff from Planning, the City Attorney's Office and the City Manager's Office. The policies and administration of the Wildlife Protection Ordinance reach beyond their application on OSMP lands, and developing a pathway to implement the preferred alternative required careful consideration of policy consistency, realistic standards for administration and legal review. As a result, staff is recommending an approach to council that it believes will deliver outcomes consistent with the intent of the OSBT comments and the preferred alternative, but does not allow unlimited damage to prairie dog burrows.

The result are the following specific implementation recommendations for City Council:

- 1. Staff will implement Action #4 of Attachment C, the OSBT-Recommended Preferred Alternative, (lethal control) through:**
 - a. The use of a Special Permit (as described at [6-1-39](#), B.R.C. 1981) to allow the City of Boulder Open Space and Mountain Parks Department to lethally control prairie dogs on leased and unleased irrigated agricultural lands managed by the Open Space and Mountain Parks Department in the project area as shown in Figure 1 of the *"Management Review of*

Irrigable Agricultural Fields Occupied by Prairie Dogs and Showing Signs of Soil Loss, Ecological Impact, and Loss of Agricultural Viability OSBT-Recommended Preferred Alternative (as amended) 7-30-2020.”

- b. City Council’s approval and recognition that, consistent with the requirements of 6-1-39 (a)(2):
 - i. The management, including soil health restoration, of irrigated agriculture land uses on lands managed by the City of Boulder Open Space and Mountain Parks Department are “maintenance of a public improvement project” [as described at 6-1-39 (a) (2)].
 - ii. Non-lethal means of control were evaluated during the development of the Preferred Alternative and found not to be feasible to fully address the management and maintenance of irrigated lands (as described at 6-1-39).
 - iii. The staff memo to City Council, and public hearing before City Council associated with these recommendations constitute “notice” per 6-1-39 (a) (2) B.R.C. that prairie dog removal by in -burrow humane lethal control will be required.

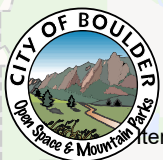
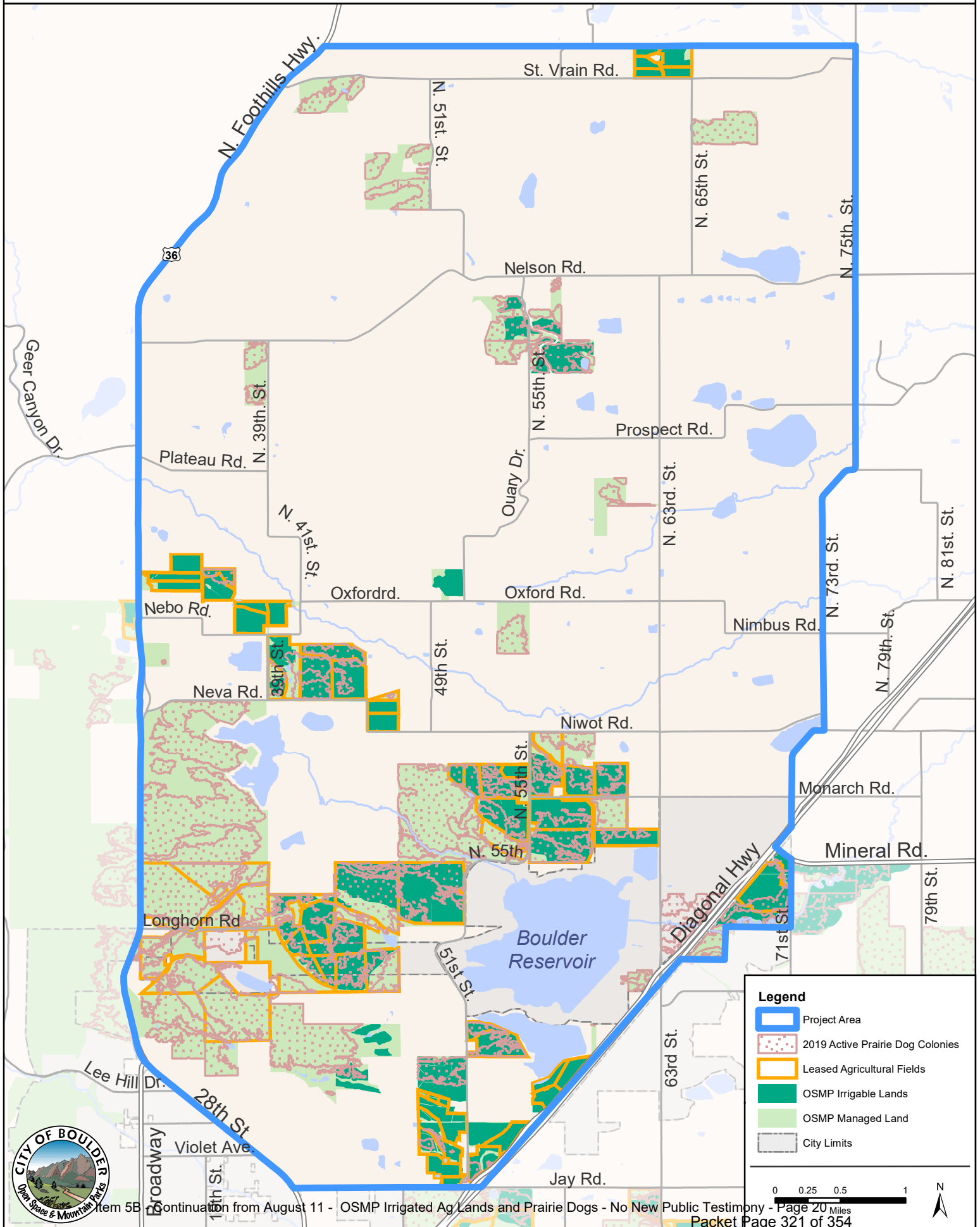
2. Staff will implement Action #10 of Attachment C, the OSBT-Recommended Preferred Alternative, (allowing burrow damage) through:

- a. The rule making authority delegated to the City Manager under [6-1-40](#) B.R.C. The City Manager will issue a rule clarifying that agricultural or soil health restoration activities on irrigated lands managed by OSMP that damage prairie dog burrows but are limited to a depth of no more than three inches below the typical ground surface are allowed on all OSMP irrigated agricultural properties (system wide) as public projects consistent with 6-1-12 (b) (4)(see [6-1-12](#) B.R.C.). The rule will further describe allowances for the City of Boulder Open Space and Mountain Parks Department agricultural management and soil health restoration activities on irrigated OSMP fields in the project area, to damage prairie dog burrows to a depth of up to six inches; and
- b. The use of a Special Permit (as described at [6-1-39](#), B.R.C. 1981) to allow the City of Boulder Open Space and Mountain Parks Department agricultural management and soil health restoration activities on irrigated OSMP fields in the project area to disturb prairie dog burrows to a depth of up to twelve inches under special conditions that consider the context of the land and with advance notification. The special conditions for damage to prairie dog burrows at depths greater than six inches and no more than twelve inches would be the following whereby they would be allowed on irrigated OSMP lands in the project area only:
 - i. In Transition Areas and Removal Areas as defined in the City Council accepted OSMP Grassland Ecosystem Management Plan (2010);
 - ii. Between June 2 and February 28 to avoid dependent young; and
 - iii. For the following activities:
 1. Key-line plowing to restore previously irrigated OSMP fields;
 2. Key-line plowing to improve soil health and water infiltration;
 3. Creating and maintaining irrigation laterals with V-plows and ditch plows;
 4. Tillage for seedbed preparation, including plowing, chiseling, disking, roto-tilling, harrowing and minor land leveling;
 5. Mechanical seeding of grain, vegetable, forage and cover crops;
 6. Tillage between crop rows or planting beds intended to control invasive species; and
 7. Mechanical harvesting of deep-rooted vegetable crops.

ATTACHMENTS

- **Attachment A** – Map of Project Area
- **Attachment B** – OSBT amendments to the staff-recommended preferred alternative
- **Attachment C** – OSBT-Recommended Preferred Alternative (as amended)
- **Attachment D** – Environmental Advisory Board email to OSBT

Attachment A: Project Area



Preferred Alternative Changes Recommend by the Open Space Board of Trustees

A public hearing was held as part of the March 11, 2020 Open Space Board of Trustees (OSBT) meeting¹ to consider staff's preferred alternative for the Council-Directed Management Review of OSMP Irrigated Lands with Prairie Dogs. The following summarize the recommendations made by the Board regarding changes to staff's preferred alternative. As stated in the March 11 [minutes](#), following the public participation, *The Board discussed the alternative and provided suggestions to amend the staff proposal. Staff captured all comments and will make the requested changes.*

These changes to the preferred alternative were unanimously approved by the OSBT through the following motion made by Hal Hallstein and seconded by Curt Brown: *Recommending that the City Council approve the preferred alternative as amended for the management of irrigated agricultural fields on City-managed Open Space and Mountain Parks lands occupied by prairie dogs in the project area*

The Open Space Board of Trustees Recommended the following changes to the preferred alternative:

- Clarify that Open Space and Mountain Parks (OSMP) agricultural tenants are stakeholders and strengthen the language throughout the preferred alternative to emphasize partnerships with agricultural tenants.
- Identified several topics for reporting during the annual stakeholder engagement meeting including reporting out on the results of the previous year's work, what was learned, adaptive responses, and plans for the upcoming year.
- Remove live trapping, euthanization and donating (trap and donate) to a raptor rehabilitation center, and additional relocations, as a component of the preferred alternative.
- Clarify whether agricultural tenants may conduct in burrow lethal control using pressurized exhaust
- Pursue changes to city code, city regulations and the development of special permits on parallel tracks as expediently as possible and as appropriate.
- Remove the portion of the preferred alternative directing OSMP to transfer funding to a city Grassland Conservation Fund as compensatory mitigation for the use of lethal control
- Redirect funds saved by removing "trap and donate," and donations to the conservation fund to additional lethal control.

In addition, the OSBT also:

- Clarified that there is not an expectation that in the first few years of implementation the project will result in zero prairie dogs on irrigated agricultural lands in the project area.
- Recommended that the irrigated lands occupied by prairie dogs in the project area should be clearly shown and listed along with the prairie dog management designation of the colonies.
- Chose not to expand the geographic extent of the project area.
- Agreed that it is appropriate to limit OSMP's investment in relocation to approximately 40 acres even if opportunities for receiving sites off OSMP became available.
- Did not modify the prioritization criteria in the preferred alternative.

¹ A video recording of the OSBT meeting can be viewed [here](#).

Management Review of Irrigable Agricultural Fields Occupied by Prairie Dogs and Showing Signs of Soil Loss, Ecological Impact, and Loss of Agricultural Viability

OSBT-Recommended Preferred Alternative (as amended)

City of Boulder Open Space and Mountain Parks
07-30-2020

Executive Summary

In May 2019, City Council identified that prairie dog population levels on numerous Open Space and Mountain Parks (OSMP) irrigated agricultural properties have resulted in a conflict between the city prairie dog and agricultural policies and prevent OSMP from fully meeting City Charter purposes of open space and have caused degradation. In response, council directed OSMP to undertake an expedited public process to look at agricultural uses on the northern grasslands including factors affecting the ecological conditions of the land, high soil health, healthy agricultural uses, wildlife health, and other conditions. Council provided additional direction that new land management tools could be considered, including key-lining, soil amendments, lethal control and other measures to achieve the charter's open space goals.

The review has focused on identifying a package of actions that integrates existing policy, community values and on-the-ground actions to conserve prairie dogs and associated species, protect irrigable lands as critical elements of sustainable agricultural operations and restore and enhance soil health and the ability of soils to sequester carbon.

Since receiving City Council direction, working with stakeholders from across the community and agency partners, OSMP and Planning Department staff developed a draft approach and evaluated the potential actions to resolve the conflict identified by City Council. Staff presented a range of options to the Open Space Board of Trustees for guidance and to the community for review and has developed a preferred alternative based on what was heard. Next, a staff-prepared preferred alternative was presented to the OSBT for recommendation to City Council. The OSBT amended and unanimously recommended the preferred alternative for City Council approval. This document describes the preferred alternative with emphasis on how it addresses prairie dog conservation, agricultural sustainability and soil health and the potential of soils in irrigable lands to help address the climate crisis.

Findings

Through a process of consultation with community members, partner agencies and the OSBT; review of applicable regulations, plans and policies; and staff's knowledge and experience on the ground; OSMP first developed the following findings regarding the management of irrigated agricultural lands that overlap with prairie dogs colonies in the project area (Figure 1):

Agricultural

1. The city charter describes the purposes of open space to include, among others, the preservation of agricultural uses and land suitable for agricultural production as well as the preservation of water resources in their natural or traditional state. Water resources in their traditional state includes agricultural water rights. Most of OSMP's water rights were purchased for and are dedicated to agricultural uses.
2. The inclusion of *Agriculture Today and Tomorrow* as one of five focus areas in the OSMP Master Plan (2019) is a reflection that agriculture continues to be a relevant and important purpose and community service provided by the city.
3. Since the passage of the open space tax in 1967, the city has invested tens of millions of dollars to purchase and protect approximately 16,400 acres of agricultural lands, including water rights associated with about 6,400 irrigable acres.
4. The role of irrigable lands as the best opportunities for OSMP to deliver sustainable agricultural services was affirmed by the community, board and council in both the Grassland Ecosystem Management Plan (Grassland Plan 2010) and again, in the Agricultural Resource Management Plan (Ag Plan - 2017).
5. The Grassland Plan set a management objective of having 80% or more of irrigable land leased for agriculture; and as of 2020, 78% of irrigable land system-wide is leased for agricultural uses.
6. Irrigable lands are a critical component of agricultural operations in the Boulder Valley and on OSMP lands. Irrigation is required to support the greatest diversity in agricultural production (e.g., hay, regenerative agriculture, vegetables, pasture and forage for a variety of animals including honeybees).
7. Irrigable agricultural fields are also well-suited to manipulations that will enhance their ability to sequester atmospheric carbon in soil. In the presence of water and sunlight, plants are able to take in carbon dioxide during photosynthesis and ultimately store that carbon in plant structures and soil — this is a strategy for carbon sequestration included in the Ag Plan , the OSMP Master Plan and the city's Climate Commitment (2017).
8. The city's strategy when acquiring irrigable fields has been to place them in agricultural management not only to meet the charter purposes, but also to keep costs down. With the basic responsibilities for irrigation maintenance and operations assumed by agricultural tenants, this has proven to be a cost-effective way of preserving lands and waters for a variety of open space purposes that go beyond agriculture, such as supporting wetlands, controlling weeds and preventing sprawl.
9. While leasing agricultural lands provides some cost recovery for maintaining an agricultural landscape and dependent ecological resources; revenue generation has not been the primary driver for the agricultural leasing program.

10. Revenue loss and significant costs have accrued to the city when OSMP staff has had to manage fields (including conducting or contracting out irrigation operations) that have been so degraded they no longer attract agricultural tenants.
11. As of 2019, over 1,200 acres or 19% of OSMP irrigable land (including 967 acres in the project area) are at risk to no longer support an agricultural tenant or are already effectively abandoned in terms of use and maintenance of water rights.

Ecological

12. The city charter also identifies the purposes of open space to include, among others, the preservation and restoration of natural areas, wildlife habitat, and fragile ecosystems.
13. The inclusion of *Ecosystem Health and Resilience* as one of five focus area in the OSMP Master Plan is a reflection that the conservation of plants, animals, and ecological systems, including prairie dogs, continues to be a relevant and important purpose and community service of OSMP.
14. Prairie dogs are an important component of OSMP grasslands worthy of conservation and protection because of their unique and far-reaching ecological effects upon soils, vegetation, and other wildlife. Furthermore, many people enjoy observing them.
15. The importance of prairie dogs in defining a unique ecological system on OSMP is reflected in the Grassland Plan's focus on the protection, preservation and enhancement of habitat suitable for prairie dogs and their associates.
16. OSMP seeks to maintain ecologically viable prairie dog populations in the range of 800 to 3,137 acres and has established management designations on over 5,300 acres of city-managed open space where prairie dogs can live in protected status without removal of prairie dogs except in exceptional circumstances.
17. Anecdotal reports suggest that increasing numbers of raptors and other prairie dog associates reflect an ecological response to the growing abundance and distribution of prairie dogs in the northern portion of the OSMP system.
18. The 2019 occupation of prairie dogs on OSMP lands that are not irrigable agricultural land exceed the Grassland Plan goal of 3,137 acres of occupation, thus satisfying the Grassland Plan conservation goal for prairie dogs and associated species. As a result, removal of prairie dogs from irrigated agricultural properties will not hinder the department's ability to meet its overall prairie dog occupation goals with current occupation levels system wide.
19. The importance of prairie dog colonies is reflected in the city's Wildlife Protection Ordinance (2005) which establishes regulations to minimize the use of lethal control and damage to occupied prairie dog burrows. These regulations apply to city-managed open space.
20. The Urban Wildlife Management Plan Prairie Dog Element (2006) outlines strategies to protect prairie dogs in Boulder's urban areas— none of which are on irrigable open space lands.
21. In the fragmented landscapes of the project area, impacts from reduction or removal of irrigation and current, very high extent of prairie dog occupation, without the ability to move freely across the landscape and under altered predator-prey relationships, have led to locally concentrated soil and vegetation loss.
22. Preliminary analysis of grassland surface soils (top 15 cm) sampled from the Grassland Planning Area demonstrate that soil organic carbon and total nitrogen levels are, on average, lower on OSMP lands occupied by prairie dogs than those never occupied by prairie dogs – further analyses will aim to tease out the relative importance of prairie dogs in altering soil carbon.

Conflict

23. Agricultural activities common in irrigable fields such as irrigation, mowing, seeding, harrowing and hay-baling can potentially harm or kill prairie dogs and damage prairie dog burrows in those fields.
24. Prairie dogs living in irrigable fields can, by virtue of their feeding and digging activities, damage or destroy vegetation and irrigation infrastructure.
25. The presence of prairie dogs in irrigable fields, coupled with prohibitions on damage to occupied burrows has made irrigation and other agricultural management impractical, leading tenants to reduce management and abandon these fields.
26. Because of the land use history of irrigable lands (e.g., disturbed soil horizons, soil erosion), the cessation of irrigation coupled with grazing by prairie dogs can lead to a collapse of existing vegetation communities. The loss of living root systems makes soils more susceptible to erosion, such as during high winds that occur commonly in the Boulder Valley. Depending on the extent of root death, the type of soil exposure and intensity of wind, varying levels of soil degradation and loss occur, some of which can be severe.
27. Because of the effects of irrigated agriculture on prairie dogs and vice versa, areas where prairie dogs and irrigated agriculture overlap present ongoing management conflicts.
28. There are approximately 1,260 acres where irrigable lands overlap with prairie dog colonies on city-managed open space, the majority of which (967 acres) lie within the project area. These areas of overlap were the specific areas of management conflict addressed in this project.
29. Each year, prairie dogs disperse from the location where they were born, expanding existing colonies and establishing new ones. Some colonies expand into irrigable fields; some onto neighboring private property. Consequently, the extent and severity of conflict in the absence of a plague event increases annually.
30. During community engagement, neighboring landowners shared their concerns about the negative impacts of prairie dogs on soils and agricultural operations on adjacent private lands when they emigrate from irrigable OSMP lands. Neighbors are asking that OSMP consider ways to improve the situation for them and help reduce the thousands and thousands of dollars they are spending annually on lethal control.
31. OSMP maps the extent of prairie dog colonies on its lands prior to winter each year, and while colonies occupied only 1,380 acres in 2009, they were found to have expanded to 4,153 acres in 2018 and 4,457-acres system-wide by 2019.
32. The Grassland Plan goal for ecologically viable prairie dog colonies is system-wide occupancy in a sweet spot range between 800 to 3,137 acres; in 2019, prairie dog occupancy was at 142% of the upper end goal, and the majority of prairie dogs system-wide existed in protected colonies so important conservation goals for prairie dogs have been met.
33. The city's Grassland Plan considers the need to conserve *both* prairie dogs and agricultural operations by identifying areas that provide the best opportunity to do each. Irrigable fields are identified as best opportunity areas for agriculture. Native upland prairies are identified as the best opportunity areas for conserving prairie dogs and their associates.
34. The Grassland Plan provides a process to integrate conservation of agricultural operations, prairie dogs and their associates as well as the conservation of six other important elements.
35. Since 2010, all prairie dog colonies on city-managed open space have been assigned to one of five management designation. Most irrigable land on OSMP and the project area is designated as either "Removal Areas" or "Transition Areas" that are intended for the removal of prairie dogs.

36. With a focus on alternatives to lethal control, and limited opportunities and capacities for relocation, the negative impacts to agricultural operations in the project area has greatly increased.
37. In the absence of prairie dog removal and given natural patterns of colony growth on irrigable lands, eleven (11) agricultural tenants are now experiencing conflicts with prairie dogs on >19% of their leased, irrigable agricultural land—most of the conflict is in the project area.
38. Two (2) agricultural tenants are experiencing prairie dog occupation at the levels of 50% and 58% of their entire leasehold, making continued operation extremely difficult or not viable.
39. Changes to the landscape has resulted in decreased revenues and other hardships for these leaseholders; an additional former tenant abandoned a 119-acre leasehold on the Bennett property due to multiple years of unaddressed and growing conflicts with prairie dogs.
40. There is a total of 475 acres of irrigable land system-wide that is no longer leased.
41. Preliminary results from grassland soil inventory work has shown that, on OSMP lands grazed by cattle without prairie dogs present, the soil organic carbon and total nitrogen levels are higher than on either soils where there are prairie dogs present or those where there is no cattle grazing.

Prairie Dog Removals

42. Between 2010 and 2018, only about 750 prairie dogs were removed and relocated from OSMP irrigable agricultural lands because other city and private land prairie dog relocation needs were prioritized over OSMP lands.
43. Receiving site availability for relocations is routinely limited due to prairie dog occupancy, issues of site sustainability and habitat suitability such as the condition of vegetation to support prairie dogs, soils, and topography, as well as concerns from neighboring property owners – these all play a role in decisions by the city and state in determining if a grassland can be used as a receiving site.
44. Until 2019, city policies prioritized receiving sites available on OSMP for private property owners and other city lands (e.g., parks and recreation developments, utility projects). The rationale was that OSMP needs for relocation from irrigable agricultural lands would not result in immediate need for lethal control of prairie dogs, while other imminent developments would. Although a complex process to obtain a lethal control permit exists, OSMP and other city departments acted in a manner consistent with the city's overall policy of avoiding lethal control.
45. While OSMP deferred relocations from its lands, prairie dog populations expanded affecting greater and greater areas outside of conservation areas, including irrigable agricultural lands and neighboring private property.
46. In 2019, OSMP relocated prairie dogs from irrigable lands following a change in the city's policy on prioritizing receiving sites – enabling OSMP lands to be used as receiving sites for relocation from removal and transition Areas.
47. In 2019, with a growing concern over the gap between the on-the-ground situation and the city's objectives for the management of prairie dogs and irrigable agricultural lands, city general fund revenues were allocated to OSMP to support its soil health program (and augment open space funding directed at this management issue) and implementation of the Prairie Dog Working Group recommendations.
48. In 2020, funding and staff capacity (reduced due to COVID-19 budget cuts) is anticipated to support the relocation of approximately 18 acres (ca. 360-540 prairie dogs).

49. Even relocation removals involve lethal control for the small numbers of prairie dogs that cannot be trapped, and there is an inherent mortality rate associated with relocations, although staff attempt to minimize loss of prairie dogs through the use of relocation best management practices.
50. Assuming the on-going availability of funding and receiving sites, and absence of plague, relocation at this 30-40-acre per year level would take decades and decades to fully address grassland management objectives within the project area—longer if all irrigable land and prairie dog conflict areas on city open space are considered.
51. The Prairie Dog Working Group prepared recommendations related to prairie dog conservation and conflict resolution over a 2-year period from 2017-2018. Most of the recommendations from this group were accepted by the city manager and city council and are currently being implemented. Unfortunately, due to the scale of conflict on irrigable agricultural lands, it was determined that these recommendations alone were not enough to address these issues in a timely or feasible manner.
52. In response to the OSBT recommendation and City Council direction, staff has worked with the community to evaluate the benefits, feasibility and estimated costs of various potential management actions in the project area.
53. During community engagement, neighboring landowners have shared their concerns about the negative impacts of prairie dogs on agricultural operations on adjacent private lands when they emigrate from irrigable OSMP lands. Neighbors are asking that OSMP consider ways to improve the situation for them and help reduce the amount of lethal control that they are engaged in.

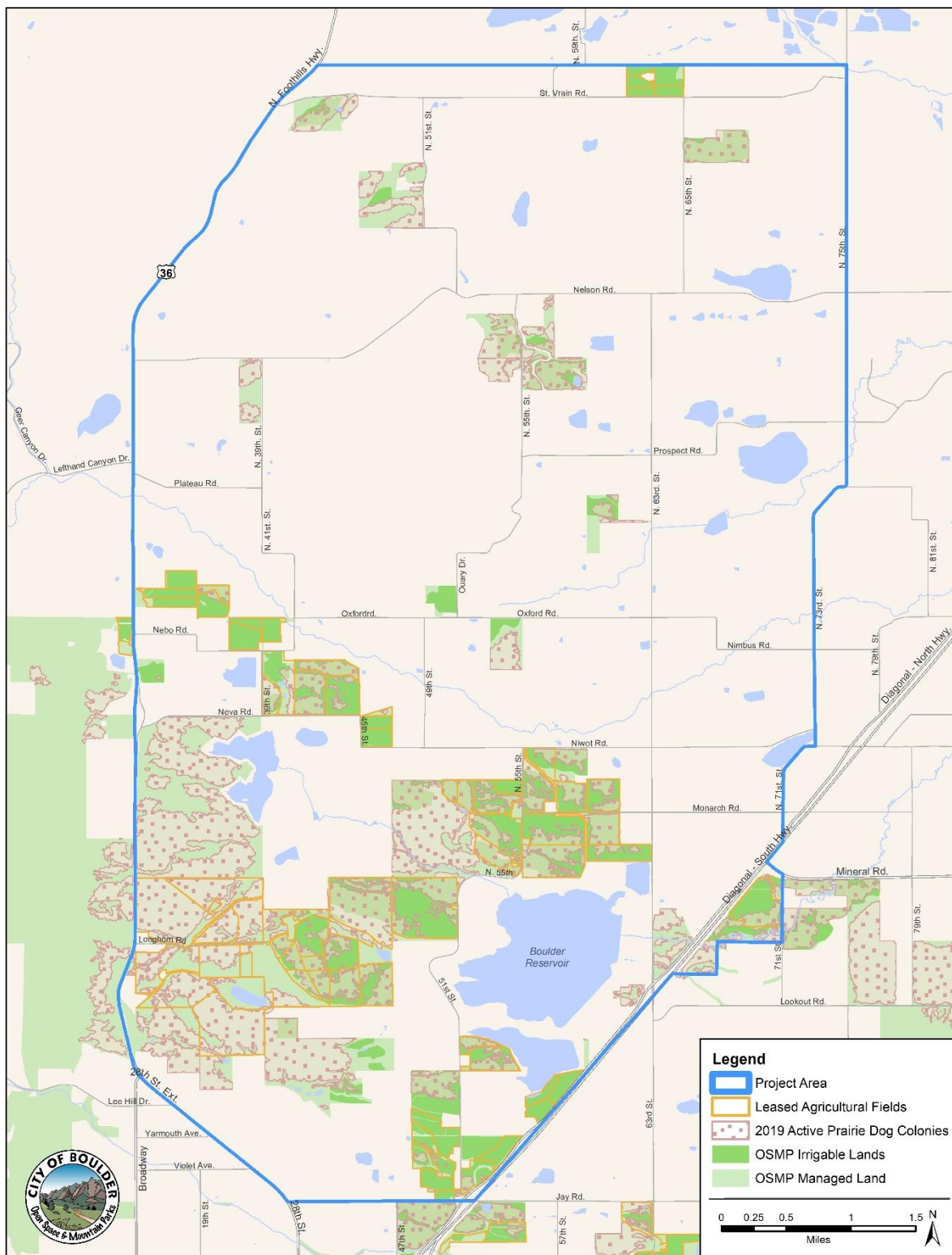


Figure 1: Map of Project Area

Assumptions

Through the process of community engagement—especially hearing from community members about their values, developing and evaluating potential actions, and formulating packages, staff identified a number of key *assumptions* to help draft the preferred alternative and provide transparency about what staff was considering during the drafting process. These assumptions, based on community engagement, direction from plans and policies, feasibility analyses, conversations with the OSBT and between staff have been revised to reflect input from the OSBT at the Feb 12 study session.

Staff assumptions are that it is desirable to:

- A. Support farmers and ranchers so they can continue to lease OSMP lands.
- B. Support the conservation of black-tailed prairie dogs and associated species, including burrowing owls, horned larks, ferruginous hawks, rough-legged hawks, bald and golden eagles.
- C. Be efficient in our actions so that goals are met while removing as few prairie dogs as possible over the long term.
- D. Remove prairie dogs using effective, efficient, and humane methods, not just in the project area but across the OSMP system.
- E. Be able to maintain and use the city's water rights and irrigation infrastructure to deliver open space services.
- F. Exclude prairie dogs after they are removed from an area to avoid additional use of lethal control.
- G. Invest in the restoration of land after prairie dogs are removed to the most appropriate vegetative cover type and consider the use of native species.
- H. Minimize soil erosion and degradation.
- I. Mitigate conflicts with neighbors by reducing emigration of prairie dogs from irrigable lands to neighboring private properties.
- J. Avoid prairie dog removal that results in large scale, landscape level impacts to associated species.
- K. Implement consistent with budget and staffing constraints recognizing the difficulty and expense of adding additional staff and purchasing and maintaining equipment assets.
- L. Consider other OSMP priority projects and the other work that staff are assigned to when evaluating costs and trade-offs of new management actions such as those in this preferred alternative.
- M. Recommend adjustments to city plans, policies, rules, and/or code to better integrate the charter purposes of open space.
- N. Maintain detailed documentation, produce monitoring and progress reports, hold an annual prairie dog meeting, and keep the public informed so that implementation is a transparent process.
- O. Manage prairie dog receiving sites to be ecologically and agriculturally sustainable rather than moving a problem from one part of the system to another.
- P. Take actions that affirm, support and implement the recommendations of the Prairie Dog Working Group as approved by OSBT and council.

- Q. Integrate prairie dog removal efforts with our conservation program in order to support the overall viability of prairie dogs on OSMP lands over the long term and in what has been a plague-dominated landscape.
- R. Work directly with agricultural tenants to identify agricultural practices to mitigate conflicts arising around the overlap of prairie dog colonies and irrigated agriculture.

Preferred Alternative

Working with the community and the OSBT, staff has developed and compared packages that reflect a range of types and levels of nonlethal and lethal removal, barriers and other means of exclusion, restoration and enhancement of soils and vegetation and collaborative efforts with partner agencies and neighboring landowners, as well as changes to plans, policies, rules and/or city code. These packages were summarized in the materials developed for the [Feb 12 OSBT study session](#).

The preferred alternative described below is based on the level of action presented to the board at the Feb 12 study session as "Package C." This modified package includes the following specific components:

1. Meet with stakeholders annually, including agricultural tenants, to evaluate success, to review lessons learned, to review and update annual goals, funding allocated, implementation priorities, properties addressed, and any adjustments to the program, at minimum, at an annual public meeting.
2. Relocate approximately 30-40 acres annually (depending on available funding) from the project area's irrigable lands that are designated as removal or transition areas by: trapping until five clear weather days with no captures, and then, in-burrow humane lethal control using pressurized exhaust (PERC) to complete the removal.
3. Allow for some minor relocations (up to 20 prairie dogs) from urban sites onto open space, if receiving sites are available.
4. In addition to the relocation removals described in #2, conduct approximately 100 to 200 acres (depending on available funding) of removals annually from the project area's irrigable lands (approximately 10% to 20% of the total occupied irrigable land) that are designated as removal or transition areas by in-burrow humane lethal control using carbon monoxide (CO) in the form of Pressurized Exhaust (PERC) or CO cartridges.
5. Have a goal of 100 percent removal from each field where removal is conducted.
6. Conduct removals through private contractors (some of whom may be agricultural tenants) overseen by OSMP staff, as a first preference, or directly by OSMP staff.
7. Use barriers or other exclusion methods to prevent re-colonization by prairie dogs.
8. Work with neighboring landowners and agricultural tenants to take a landscape approach to removal that reduces opportunities for re-colonization.
9. Restore all areas for irrigated agricultural use following removal to re-establish soil profiles with key-line plowing, seeding and adding soil amendments, and repair irrigation infrastructure.
10. Intend to allow usual and ordinary agricultural activities in the project area even if they disturb prairie dog burrows and have incidental impacts to prairie dogs.
11. Implement this preferred alternative legally by special permit and rule change, as described herein and as expeditiously as possible.

In response to the items above, OSMP staff subsequently collaborated with staff from Planning, the City Attorney's Office and the City Manager's Office. The policies and administration of the Wildlife Protection Ordinance reach beyond their application on OSMP lands, and developing a pathway to implement the preferred alternative required careful consideration of policy consistency, realistic standards for administration and legal review. The result are the following specific implementation **recommendations for City Council:**

1. Staff will implement Action #4 of Attachment C, the OSBT-Recommended Preferred Alternative, (lethal control) through:

- a. The use of a Special Permit (as described at [6-1-39](#), B.R.C. 1981) to allow the City of Boulder Open Space and Mountain Parks Department to lethally control prairie dogs on leased and unleased irrigated agricultural lands managed by the Open Space and Mountain Parks Department in the project area as shown in Figure 1 of the *"Management Review of Irrigable Agricultural Fields Occupied by Prairie Dogs and Showing Signs of Soil Loss, Ecological Impact, and Loss of Agricultural Viability OSBT-Recommended Preferred Alternative (as amended) 7-30-2020."*
- b. City Council's approval and recognition that, consistent with the requirements of 6-1-39 (a)(2):
 - i. The management, including soil health restoration, of irrigated agriculture land uses on lands managed by the City of Boulder Open Space and Mountain Parks Department are "maintenance of a public improvement project" [as described at 6-1-39 (a) (2)];
 - ii. Non-lethal means of control were evaluated during the development of the Preferred Alternative and found not to be feasible to fully address the management and maintenance of irrigated lands (as described at 6-1-39)
 - iii. The staff memo to City Council, and public hearing before City Council associated with these recommendations constitute "notice" per 6-1-39 (a) (2) B.R.C. that prairie dog removal by in burrow humane lethal control will be required.

2. Staff will implement Action #10 of Attachment C, the OSBT-Recommended Preferred Alternative, (allowing burrow damage) through:

- a. The rule making authority delegated to the City Manager under [6-1-40](#) B.R.C. The City Manager will issue a rule clarifying that agricultural or soil health restoration activities on irrigated lands managed by OSMP that damage prairie dog burrows but are limited to a depth of no more than three inches below the typical ground surface are allowed on all OSMP irrigated agricultural properties (system wide) as public projects consistent with 6-1-12 (b) (4)(see [6-1-12](#) B.R.C.). The rule will further describe allowances for the City of Boulder Open Space and Mountain Parks Department agricultural management and soil health restoration activities on irrigated OSMP fields in the project area, to damage prairie dog burrows to a depth of up to six inches; and
- b. The use of a Special Permit (as described at [6-1-39](#), B.R.C. 1981) to allow the City of Boulder Open Space and Mountain Parks Department agricultural management and soil health restoration activities on irrigated OSMP fields in the project area to disturb prairie dog burrows to a depth of up to twelve inches under special conditions that consider the context of the land and with advance notification. The special conditions for damage to prairie dog burrows at depths greater than six inches and no more than twelve inches would be the following whereby they would be allowed on irrigated OSMP lands in the project area only:

- i. In Transition Areas and Removal Areas as defined in the City Council accepted OSMP Grassland Ecosystem Management Plan (2010);
- ii. Between June 2 and February 28 to avoid dependent young; and
- iii. For the following activities:
 - 1. Key-line plowing to restore previously irrigated OSMP fields;
 - 2. Key-line plowing to improve soil health and water infiltration;
 - 3. Creating and maintaining irrigation laterals with V-plows and ditch plows;
 - 4. Tillage for seedbed preparation, including plowing, chiseling, disking, roto-tilling, harrowing and minor land leveling;
 - 5. Mechanical seeding of grain, vegetable, forage and cover crops;
 - 6. Tillage between crop rows or planting beds intended to control invasive species; and
 - 7. Mechanical harvesting of deep-rooted vegetable crops.

The preferred alternative targets removal of prairie dogs from approximately 130-240 acres annually. Of this, approximately 30-40 acres would be through relocation to OSMP receiving sites and approximately 100-200 acres would be through in-burrow humane lethal control. In addition to relocation from irrigable agricultural lands, the preferred alternative proposes that up to 20 individual prairie dogs from non-OSMP project areas might also be included as part of annual relocation efforts, if it would not disrupt meeting the 30-40-acre relocation goal from irrigable OSMP lands in the project area. This provision is included in anticipation of periodic needs, often by other city departments to relocate small numbers of prairie dogs from urban development projects.

Lethal control on OSMP lands would be focused on properties that are designated as removal or transition areas in the Grassland Plan. There are also irrigable agricultural lands in the study area that are designated as grassland preserve and multiple objective area, however removal from these areas would be a second-tier priority to be considered at future annual reviews. Pursuing relocation or humane lethal control from these properties might occur once removal and transition areas are addressed across the project area and only if OSMP goals for prairie dog conservation continue to be met system-wide, anticipated impacts to associated species are determined to be limited at the landscape level, and barriers could be effective at excluding prairie dogs from re-entering these areas.

Lethal control efforts in the project area would primarily be using PERC, the most humane method of control found to date. Following 100 percent removal of prairie dogs on properties where prairie dog immigration may lead to recolonization, barriers would be constructed to protect the property from future re-colonization.

After removals, restoration of the property would be accomplished using a suite of tools, depending on the characteristics of each property. For example, staff would work with agricultural tenants to restore the topography and fix damage to field lateral ditches so the property can be properly irrigated. Burrow mounds would be scraped and leveled, and fields may be tilled to ensure that the existing burrows are not visible to dispersing prairie dogs. Similar coordination would occur with neighboring landowners, as possible.

A customized restoration plan would be developed to address soil health, invasive species, revegetation and agricultural production with the goal to restore each field as quickly as possible to irrigated

agriculture. Staff would use regenerative agricultural practices including soil amendments and key-line plowing where appropriate and enhance the potential for soil carbon sequestration as part of restoration.

In some areas, removing and excluding prairie dogs and then returning irrigation to the field may be all that is needed to begin the process of restoration. On the other extreme, in places that are basically devoid of vegetation and have suffered significant soil erosion, it may be necessary to add soil amendments and reseed, perhaps with a cover crop to exclude invasive plant species, until the desired vegetation becomes established. Experiments on the OSMP Bennett property have indicated that compost and deep subsoil plowing using a key-line plow will increase the success of cover crops.

Restoration of healthy soils, and enhancement of carbon sequestration are a focus of OSMP's soil health coordinator. She is working with agricultural tenants to analyze and identify appropriate techniques to limit physical disturbance of the soil, armor soil with vegetation or litter, incorporate a wider diversity of plants species, maintain living roots in the soil throughout the year, and ensure that livestock are at the appropriate stocking rates, and the season and duration of grazing is a match for site conditions and stewardship objectives.

The soil health coordinator has sampled over 100 sites this field season in an effort to establish a baseline soil health assessment on OSMP irrigated agricultural land. These sites have been sampled and analyzed for thirteen (13) indicators of soil health and will allow the city to quantify carbon sequestration into the future. This project will be OSMP's first systematic soil condition baseline and marks the beginning of a long-term and system-wide sampling of OSMP soils that will contribute to long-term monitoring for programs to improve soil health and enhance carbon sequestration. OSMP's soil health and sequestration work will also coordinate with other similar initiatives both in Colorado and elsewhere to accelerate the development of effective soil health and carbon drawdown strategies now critical to stabilizing climate and increasing the ecological resilience of local environments to increasing climate change.

Shifts in OSMP management of irrigable lands are also being developed by OSMP's agricultural land restoration coordinator. He is looking at ways to shift the dominance of OSMP's irrigated hayfields and pastures from a few introduced grass species to a diverse combination of native and introduced grasses and forbs (wildflowers). This will not only provide benefits to native species including pollinators and other beneficial insects but will also provide greater resilience in the face of changing environmental conditions associated with the climate crisis. The agricultural land restoration coordinator has identified approximately 200 acres of the irrigable lands that are no longer able to be leased, due to the conflicts described in this attachment, as good places to try techniques to create more diverse vegetation types in irrigated pastures so that he can experiment without disrupting active agricultural operations. The scaling up and success of the agricultural land restoration coordinator's work is dependent on resolving the conflicts described in this attachment.

Currently OSMP lacks the expertise, infrastructure, equipment or capacity to complete relocation, lethal control and barrier installation with existing staff. Consequently, for the next few years, relocation, lethal control and barrier installation may best be carried out by contractors working with OSMP staff oversight. Restoration projects would be undertaken directly by staff, staff working with contractors and staff collaborating with agricultural tenants. As OSMP gains greater experience with removal techniques,

staff would evaluate the benefits, feasibility and cost effectiveness of transitioning to in-house, staff-led removal and barrier installation.

Staff will also be developing a plan for monitoring and follow up treatment of any prairie dogs that may re-colonize after removal. OSMP is working with Boulder County Parks and Open Space to better understand their program for this ongoing need and evaluate whether parts of their approach could work or be adapted for use by the city.

In order to implement the preferred alternative legally and expeditiously, it will be necessary to develop a special permit and undertake a rule change. OSMP would work with Planning Department staff, the City Attorney's Office and the City Manager's Office to develop the most expedient approach.

Related to implementing the preferred alternative, OSMP and Planning Department staff would continue to work on prairie dog conservation efforts described in the Grassland Plan and as recommended by the Prairie Dog Working Group.

First phase PDWG implementation items that are planned to be undertaken in the next three years include:

- Updating information and websites to provide consistent messaging around prairie dogs and plague
- Supporting barrier installation to mitigate conflict with irrigable agriculture and neighboring land uses
- Create and begin implementing a plague management plan for city owned prairie dog colonies
- Evaluate commitment to black-footed ferret reintroduction on city-owned lands
- Create ferret reintroduction plan with collaborating agencies and landowners if commitment is made for reintroduction on city-owned lands
- Work with outside groups to leverage in-kind donations, volunteer help and funding
- Increase relocations performed across the Boulder area
- Update habitat suitability modeling for prairie dogs on city-owned lands
- Report progress on implementation at least annually to decision-makers and the community
- Other recommendations as funding and staff capacity allow

Integration with Other City Initiatives

The preferred alternative does not stand alone; it has been developed to be integrated with and supported by many other city plans, programs and projects. The removal of prairie dogs from these OSMP irrigated lands north of the city will not conflict with OSMP's long-term program of conservation of the black-tailed prairie dogs. In fact, the current conflict is draining OSMP resources that could otherwise be put more productively to the conservation program. The table below shows the elements of the preferred alternative along with other city initiatives as they related to the three main parts of City Council's direction, "Ecological Condition of Land & Wildlife Health," "Healthy Agricultural Uses," and "High Soil Health."

Ecological Condition of Land & Wildlife	Supporting Agricultural Use
<p><u>RECOMMENDATION IN THE PREFERRED ALTERNATIVE</u></p> <ul style="list-style-type: none"> • Relocate 30-40 acres of prairie dogs annually from the project area's irrigable fields • Restoration of removal areas using regenerative agricultural practices to improve ecological benefits of irrigable OSMP lands. • Implement appropriate rule changes and special permits. 	<p><u>RECOMMENDATION IN THE PREFERRED ALTERNATIVE</u></p> <ul style="list-style-type: none"> • Remove all prairie dogs from up to 130-240 acres of the project area's irrigable lands annually • Exclude prairie dogs from areas in the project area where they have been removed • Work with lessees and neighbors to reduce likelihood of re-colonization. • Restore all cleared land for irrigated agriculture once removal has been completed. • Examine appropriate rule changes, and special permits.
<p><u>RELATED PLANS, PROGRAMS & PROJECTS</u></p> <ul style="list-style-type: none"> • On-going funding and implementation of the Prairie Dog Working Group Recommendations. • On-going management for black-tailed prairie dogs and associates per the specific objectives in the Grassland Plan: <ul style="list-style-type: none"> ○ 800-3,137 acres of prairie dog colonies on OSMP grasslands ○ 70-85% of all prairie dog occupancy occurring in colonies with protected designations ○ 10-26% of all Grassland Preserves occupied ○ 3-4 successful burrowing owl nesting attempts per year ○ 50-75% of colonies with territorial horned larks ○ Desired abundance and distribution of generalist and sensitive predator species present • Administration of the Wildlife Protection Ordinance • Implementation of Urban Wildlife Plan: Prairie Dog Element • Implementation of other Grassland Plan elements to conserve the ecological values of Boulder's grasslands and ensure on-going agricultural production. • Continue mapping and monitoring all prairie dog colonies annually. 	<p><u>RELATED PLANS, PROGRAMS & PROJECTS</u></p> <ul style="list-style-type: none"> • Creation and ongoing funding of Soil Health Coordinator and Agricultural Restoration Coordinator positions • Ongoing management to achieve the specific objectives of the Grassland Plan and Ag Plan <ul style="list-style-type: none"> ○ 80-90% of irrigable land in agricultural production. ○ Maintain 60% of grazing lands in "Good" condition according to an integrated measure of quality ○ Maintain an agricultural lease program compatible with agricultural and resource stewardship and a working lands program ○ Maintain and support a diversity of agricultural operations and uses on OSMP lands ○ Provide and maintain the infrastructure necessary to support a diversity of agricultural operations ○ Maintain water delivery (irrigation) infrastructure in good condition • Implementation of other Grassland and Ag Plan elements to maintain and enhance agricultural-related values and long-term sustainability of agricultural operations.
Improving Soil Health Carbon Sequestration	
<p><u>RECOMMENDATION IN THE PREFERRED ALTERNATIVE</u></p> <ul style="list-style-type: none"> • Restore all areas for irrigated agricultural use following removal to re-establish soil profiles with key-line plowing, seeding and adding soil amendments, and repair irrigation infrastructure. • Implement appropriate rule changes and special permits. 	
<p><u>RELATED PLANS, PROGRAMS & PROJECTS</u></p> <ul style="list-style-type: none"> • Creation and ongoing funding of Soil Health Coordinator position. • Soil monitoring program to establish objectives for soil health. • On-going experimentation and implementation of techniques to increase or maintain soil organic matter and soil biological diversity on tilled/converted agricultural lands • Implementation of related Grassland Ag Plan and Climate Commitment elements to achieve soil health and increase the ability of converted OSMP agricultural landscape to sequester carbon. 	

Prioritizing Removals from Irrigated Lands in the Project Area

There are currently 967 acres where prairie dog colonies overlap irrigable lands in the project area. The criteria below are ranked in order and intended to guide OSMP's prioritization for the removal of prairie dogs from irrigated lands in the project area.

1. Areas designated as removal and transition areas.
2. Areas where the likelihood of effective removal, exclusion and restoration are most likely to be successful (to avoid recurring needs for lethal control on the same field) based on:
 - a. Landscape context.
 - b. Smaller parts of a larger area where removal and exclusion can be successfully implemented over time.
 - c. Considerations around progressing from areas of low occupancy to areas of higher occupancy.
 - d. Recent colonization or expansion.
 - e. Opportunities to coordinate with neighboring landowners.
3. Areas leased by tenants that are most affected by prairie dog occupation.
4. Areas that are currently unleased but can be restored to production.
5. Areas where successful management will increase OSMP lease revenue.
6. Areas where removal will have least impact to associated species (e.g., raptors)
7. Areas with the highest degree of neighbor conflict.
8. Areas that provide some degree of relief to the greatest number of tenants.

Implementation of the Preferred Alternative

Adaptive Management

Consistent with best resource conservation practices, and as described in the OSMP Master Plan, staff's commitment is to take an adaptive approach to this project for each aspect of the project, each year of implementation and for 2021 and 2022. Staff will be reviewing and modifying practices in real time to improve efficiency, effectiveness and consistency with the preferred alternative. On an annual basis staff will report out what we have learned in partnership with other agencies, researchers, agricultural tenants, contractors and neighbors, and progress in taking the actions described in the preferred alternative. Changes based upon learning will be shared with the community and presented as appropriate including budget recommendations to the Open Space Board of Trustees and City Council.

Staff have not tried to forecast specific actions beyond 2022. It may be that the practices described in the preferred alternative are found to be appropriate to continue in out years. However, because so much depends upon changes in environmental conditions (e.g., precipitation, plague), our understanding of grassland ecology, economic shifts, and other factors changes in approach will be needed in the future. Revised actions will be developed for 2023 and beyond.

Implementation in 2021 and 2022

Using the prioritization criteria discussed with the board, and included in this memo, staff put together an implementation approach describing work in years 2021 and 2022. This includes planning and cost estimates based on the specifics of colonies that would likely be removed. This is not intended to mean that efforts will stop after two years, but to give an indication about how staff envisions moving forward operationally. It is staff's expectation that it will learn a great deal during the first years of implementation, and that conditions on the ground will change. OSMP's ability to implement the preferred alternative at recommended levels may also be affected by unanticipated events (such as the COVID-19 pandemic).

As proposed, relocations in 2021 and 2022 would result in approximately 60-80 acres of prairie dogs relocated from the project area – with potential inclusion of small numbers of animals from other sites. Additional small relocations may occur outside the project area such as irrigated fields elsewhere on the system where small colonies have recently become established or where agricultural priorities are highest—such as areas suitable for conversion to vegetable production.

Beginning in 2021 and continuing in 2022, in addition to relocation, approximately 100 to 200 acres of prairie dogs would be lethally controlled. The result is expected that through these relocations and lethal control between 260 and 480 acres of irrigable agricultural land within the study site would be prairie dog free and ready for restoration to agricultural production.

Since these numbers are based on specific projects, they are also based on occupancy and on-the-ground conditions that, as described above, will change through time. As a result, staff is not presenting additional details at this time because the colonies to be managed may change.

Table A summarizes the estimated costs based on the assumptions listed. An estimated \$596,000-\$976,000 would be required annually to implement the preferred alternative as presented.

Table A: Estimated Implementation Costs of the OSBT- Recommended Preferred Alternative for 2021-2022 *(All numerical values are estimates)*
 Note: This table has been updated since the draft preferred alternative was presented on March 11 based on feedback from the OSBT.

Two Year Focus (2021-2022)	Conservation Efforts	Annual Acres of Removal	Acres of Transition & Removal Areas w/ Prairie Dogs in Project Area	Extent/Numbe r of Prairie Dogs on OSMP System	Prairie Dogs Relocated Annually	Prairie Dogs Lethally Controlled Annually	Annual Non-Staff Cost Estimate	Additional Annual Staff Cost	Total Annual Cost
Removal and Transition Areas in the Project Area	Continue PDWG and other conservation efforts	<u>Relocation:</u> 30-40 <u>Lethal Control:</u> 100-200	<u>Start of 2020:</u> 526 <u>Start of 2023</u> 71 - 333	<u>Start of 2020:</u> 4,457 acres or 133,710 prairie dogs <u>Start of 2023:</u> 4,371-4,690 acres or 131,100- 140,700 prairie dogs	900-1,200	3,000-6,000	<u>Relocation</u> \$300,000 - \$402,000 <u>Lethal Control</u> \$206,000 - \$455,000	<u>Lethal Control</u> \$90,000	\$596,000-\$976,000

Calculations are based on the following assumptions:

- All costs are annualized and include planning and permitting, contracting, prairie dog removals, barrier installations, soil restoration work, and mitigation.
- Contractors are assumed to be available for work not done by staff.
- Relocation contractors charge a range of prices based on availability and need to comply with city procurement requirements; estimates are based on past bid amounts of up to \$4,400 per acre for relocation done to the city wildlife ordinance standard (i.e., five days of trapping in clear weather without capture before using PERC);
- Cost estimates are based on \$221 per acre for humane lethal control by PERC.
- Barriers are a mixture of metal, wire mesh or no barrier specific to each property and estimated costs are \$7.70 per foot for wire, \$38 per foot for metal, and \$1.70 per foot for temporary.
- Restoration costs are estimated to range from \$124 to \$360 per acre depending on the condition of the site, based on staff experience.
- Current acreage overlap of prairie dogs in 2019 with irrigable ag land was 967 acres and those in areas designated as transition and removal areas was 526 acres (54%). The 526 acres is the basis for determining prairie dog extent results for the start of 2023.
- Density averages are 30 prairie dogs per acre.
- Baseline growth rate for prairie dog colonies in the project area in acres are +3% (based on last several years data).
- FTE = full-time equivalent (2,080 hours), and fully loaded staff costs will range from \$23 – \$44 per hour depending on the level of work required.
- No plague or other factors to cause unusual population declines (or increases) occur in the area.

From: Rio, Delanie <RioD@bouldercolorado.gov>
Sent: Wednesday, March 11, 2020 9:50 AM
To: Brown, Curt <BrownC@bouldercolorado.gov>; Burke, Dan <BurkeD@bouldercolorado.gov>; Case, Leah <CaseL@bouldercolorado.gov>; Dave Kuntz <KuntzD@bouldercolorado.gov>; Hallstein, Hal <HallsteinH@bouldercolorado.gov>; Hollweg, Karen <HollwegK@bouldercolorado.gov>; Isaacson, Tom <IsaacsonT@bouldercolorado.gov>
Cc: Justin Brant <jbbrant@gmail.com>; Karen Crofton <croftonkaren@yahoo.com>; KenCairn, Brett <KenCairnB@bouldercolorado.gov>; Martin Hoerling <mhoerling@yahoo.com>; Michael SanClements <mike.sanclements@gmail.com>; Miriam Hacker <miriamhacker45@gmail.com>; Rio, Delanie <RioD@bouldercolorado.gov>
Subject: EAB Prairie Dog Recommendation to OSBT
Importance: High

OSBT Members & Staff,

In advance of your meeting tonight, please see the Environmental Advisory Board's recommendations regarding the removal of prairie dogs on irrigated lands, both below and attached.

To: Open Space Board of Trustees
 From: Environmental Advisory Board
 Re: Prairie Dog Removal on Irrigated Lands
 Date: March 10, 2020

Thank you for the opportunity to provide input on the City's policy around prairie dog removal on irrigated lands. The Environmental Advisory Board ("EAB") is tasked with providing advice to other boards and City staff on issues related to the environment. It is through this lens that we provide the following suggestions and comments as you consider recommendations for City Council around prairie dog management options.

EAB believes the preservation of the City's irrigated agricultural lands is of the utmost importance for the region's environment. Healthy grasslands are the single most effective terrestrial storage vehicle for carbon, exceeding the effectiveness of forests. Further, healthy irrigated lands are less susceptible to fire and drought, reduce soil loss, and ameliorate runoff and flooding risks. Finally, expansive grasslands rather than barren soils act as an environmental cooler that greatly buffers the rate of rising temperatures in Boulder County which is increasingly struggling under the effects of global warming.

To implement this, we urge OSBT to adopt the staff recommendations of the five common elements, including updating City ordinances to allow for prairie dog burrow destruction in limited circumstances and allow for the lethal control of prairie dogs on City-owned irrigated agricultural lands.

In addition, EAB asks OSBT to consider the following comments as it considers which package of options to recommend to City Council.

Environmental Impacts

EAB is concerned about potential environmental impacts associated with prairie dog colonies, in particular as they conflict with open space lands designated land use. The City has shared experiential data showing that land occupied by the prairie dog colonies is virtually unworkable, even after their removal. The City is attempting to provide demonstrations of how carbon sequestration may be achieved through proper soils management in agriculture and has had issues with destruction of the plots by the prairie dog colonies.

An Honors Thesis titled *“Impacts of Urban Prairie Dogs on Soils in Boulder, Colorado”* by Matthew R. Olivier University of Colorado at Boulder from May 2013 shows results indicating that urban prairie dogs along with erosional forces in Boulder County are impacting the soil organic matter of surface soils on their colonies. Mr. Oliver notes that vegetation surveys on Boulder County prairie dog colonies illustrate that the percentage of bare soil generally increased with the number of years that the prairie dogs occupied their colonies. These studies along with the fact that minor dust storms and dust emissions from prairie dog colonies in Boulder County were observed during the winters of 2008/2009, 2010/2011, and 2011/2012 suggests that desertification may be occurring.

A report published in Ecology in 2014 by S.C. Beals, titled *“The effects of black-tailed prairie dogs on plant communities within a complex urban landscape: an ecological surprise?”* shows the effects of black-tailed prairie dogs on lands adjacent to or surrounded by urban areas may not result in the same ecosystem benefits historically associated with their presence, contradicting historical assumptions of prairie dogs being considered essential keystone species of western United States grassland ecosystems. The Beals study was comprised of 71 paired (occupied by prairie dogs vs. unoccupied) vegetation surveys and 156 additional unpaired surveys collected from around the city of Boulder, Colorado, USA for 14 yr. The results of the study showed the following:

- In the absence of prairie dogs, vegetation in this region exhibited declines in native grasses, no changes in introduced grasses, and increases in native and nonnative forbs and bare soil over the study interval.

- In the presence of prairie dogs, these observed directional changes were nearly all amplified at rates four to 10 times greater than when prairie dogs were absent.
- Areas in Boulder occupied by prairie dogs also had significantly lower richness, evenness, and diversity of plant species, compared to unoccupied areas.
- Analysis of plant functional groups revealed the significant reduction of perennial native grasses, as well as a significantly higher cover of introduced forbs in occupied areas.
- Prairie dogs amplified the effects of low-impact environmental directional changes, creating more novel vegetation communities than the environmental factors alone.

Costs of Lethal Control & Ordinance

EAB has some questions about the costs of various management packages laid out in Table 4 of the February 12, 2020 staff memo. The costs of the options with increasing lethal control do not appear consistent with the costs of removal. It is our understanding that lethal control options may include costs for barriers and land remediation that are not included in options without lethal control. We urge OSBT to consider an “apples-to-apples” comparison of costs and benefits when considering the appropriate path forward. As such, all management options should include the same suite of costs, as removal will eventually lead to the need for land remediation, just on a much longer timescale. In addition, we urge OSBT to further research the costs of lethal control to ensure they are reasonable as these costs may not be consistent with recent prairie dog removal costs on Boulder County lands.

Change of Irrigated Lands to Managed

Ensure that the designation of irrigable lands is consistent with past practices and all Boulder planning documents. Members of the public have raised concerns with EAB that some lands that were classified as irrigable in the past may have been recently reclassified to “Managed” lands. As irrigable lands are the only ones where prairie dog removal is considered, we encourage OSBT to ensure that any land reclassification was consistent with all City policies and provides the most productive use of the City’s land resources.

Time Scale

EAB urges OSBT to expedite removal of prairie dogs from irrigated agricultural lands. The threat of climate change and environmental impacts discussed are imperatives that call for an expedient solution with an end-goal of revitalizing irrigated agricultural lands. As such, the rapid removal of prairie dogs and reclamation of the lands should guide OSBT’s recommendations.

Thank You,

Delanie Rio
Administrative Specialist II
Environmental Advisory Board Secretary



City of Boulder
Climate Initiatives

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COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Consideration of a motion to approve the order of the City of Boulder ballot measures in the 2020 Coordinated Election

PRIMARY STAFF CONTACT

Pam Davis

REQUESTED ACTION OR MOTION LANGUAGE

Consideration of a motion to order the City of Boulder non-Tabor ballot measures as determined by council.

ATTACHMENTS:

Description

- ▣ **2020 Ballot Order**



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2020

AGENDA TITLE

Consideration of a motion to approve the order of the City of Boulder ballot measures in the 2020 Municipal Coordinated Election.

PRESENTER/S

Jane S. Brautigam, City Manager
Pam Davis, Acting City Clerk
Debbie Stamp, Acting Deputy City Clerk

EXECUTIVE SUMMARY

The purpose of this item is to establish the order of City of Boulder ballot measures for the 2020 Municipal Coordinated Election in compliance with state statutes and Colorado Secretary of State Rules. Those rules require referred TABOR measures (Issues) to be listed first, in the order of (a) increasing taxes, (b) retaining excess revenues, and (c) increasing debt. Referred non-TABOR measures (Questions) are listed next.

Referred measures are identified by the number for municipalities (2), then a letter. The City of Boulder measures have not yet been assigned identifying letters by Boulder County. Initiated measures are identified by a number only (municipal measures are 300-399).

2A-2Z Series

Referred TABOR Measures (Issues)

- To Increase Taxes
- To Retain Excess Revenues
- To Increase Debt

BACKGROUND

The following ballot measures will potentially be adopted at the September 1, 2020 regular meeting of the Boulder City Council:

1. Arts Commission Increase Members from Five to Seven
2. Direct Elect Mayor Using Rank Choice Voting
3. Legal Representation for Evictions
4. Utility Occupation Tax
5. Xcel Franchise

STAFF RECOMMENDATION

Suggested Motion Language:

Consideration of a motion to order the City of Boulder non-Tabor ballot measures as determined by council.

For the following TABOR measure, council does not have discretion as to order. Order is determined by the Secretary of State rules:

1. Legal Representation for Evictions (referred) – Ordinance 8412
(Increase Taxes)

Council does have discretion as to the order of the following non-Tabor measures:

1. 2 ___ Arts Commission Increase Members from Five to Seven – Ordinance 8405
2. 2 ___ Direct Elect Mayor Using Rank Choice Voting – Ordinance 8420
3. 2 ___ Utility Occupation Tax – Ordinance 8417
4. 2 ___ Xcel Franchise – Ordinance 8410



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

City Manager Search Subcommittee Update

PRIMARY STAFF CONTACT

TBD

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Eviction Prevention Letter Discussion

PRIMARY STAFF CONTACT

Sam Weaver and Junie Joseph

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Appoint PD Master Plan Process Subcommittee Members

PRIMARY STAFF CONTACT

tbd

ATTACHMENTS:

Description

No Attachments Available



COVER SHEET

MEETING DATE

September 1, 2020

AGENDA ITEM

Information Item: Update on the Public Works and Planning and Development Services (P&DS) Design the Future Process

PRIMARY STAFF CONTACT

Molly Scarbrough, Senior Project Manager, Public Works - Business Services Division

ATTACHMENTS:

Description

- ▣ **Information Item Update on the Public Works and Planning and Development Services DTFP - FINAL**



INFORMATION ITEM MEMORANDUM

To: Mayor and Members of Council

From: Jane S. Brautigam, City Manager
Mary Ann Weideman, Interim Director of Planning & Development Services
Joe Taddeucci, Director of Utilities
Bill Cowern, Interim Director of Transportation and Mobility
Joanna Crean, Director of Facilities and Fleet; Interim Director of Public Works-
Business Services Division
Molly Scarbrough, Senior Project Manager, Public Works-Business Services Division

Date: September 1, 2020

Subject: Information Item: Update on the Public Works and Planning and Development Services (P&DS) Design the Future Process

EXECUTIVE SUMMARY

The purpose of this item is to update City Council on progress of the Public Works Assessment and Planning & Development Services Strategic Plan Design The Future Process (DTFP) recommendations and to identify next steps.

FISCAL IMPACT

Implementation of DTFP recommendations for organizational structural and cultural changes may require additional funding for staffing or consultant support for specific projects or process improvements in the future. Resources needed for these implementation activities would be evaluated and included in departmental budget decisions. It is anticipated that implementation of the DTFP recommendations will result in greater efficiencies of staff time and improved staff retention, resulting in future cost savings for the city.

BACKGROUND

In early March 2020 the City Manager accepted the Public Works Assessment and Planning & Development Services Strategic Plan Design The Future Process (DTFP) 1.0 recommendations for structural and cultural changes in the organization. These recommendations were developed through an inclusive process involving extensive staff participation and address foundational issues identified in last year's Insights and Implications report. These recommendations were shared citywide earlier this year.

The recommendations identify Operational Excellence as the shared cultural anchor, with a focus on streamlining processes, procedures and decision-making to provide a high level of service to our community. Some of the recommendations will be implemented through the normal course of business. Other recommendations identified focus areas for future improvements. Seven DTFP 2.0 staff teams were formed to provide more specific detailed recommendations for how these improvements will be made.

ANALYSIS

Over the past six months, city staff have been taking the next steps toward implementing the structural and cultural recommendations from the DTFP 1.0. The following organizational structural changes have been made:

- Public Works consists of two departments: (1) Public Works-Transportation & Mobility and (2) Public Works-Utilities.
 - These departments will continue to share an identity around implementing, maintaining and operating public infrastructure, with a focus on Operational Excellence.
 - Erika Vandenbrande has accepted the Director of Transportation & Mobility position and her first day will be September 7. Bill Cowern, currently serving as interim director, will resume his position as Deputy Director for Transportation and Mobility.
 - Joe Taddeucci is the Director of Utilities.
- A new, separate Facilities and Fleet Department has been established (replacing what was previously referred to as FAM or Facilities Asset Management and the Fleet services divisions).
 - The Facilities and Fleet Department will serve citywide to implement, maintain and operate our building infrastructure and fleet services.
 - Joanna Crean is the Director of the Facilities and Fleet Department.
- Planning and Development Services has been established as a single department (merging what was previously referred to as the Planning Department and the Public Works Development Services Division).
 - The P&DS Department includes all the functions previously included in the Planning department and P&DS services center.
 - Mary Ann Weideman is currently serving as Interim Director of P&DS; the city is recruiting for the P&DS Director and anticipates filling that position by the end of the year.

In the face of incredibly challenging conditions brought on by COVID-19, the staff teams formed for DTFP 2.0 have continued to serve the community while adapting and innovating their work. These teams have been tasked with accelerating the progress of the DTFP 1.0 teams, taking the WHAT needs to change recommendations and thinking through the HOW, WHEN and WHO of the change to make more specific and detailed recommendations. We are proud to share that three of the seven teams have finalized their recommendations and are starting the next steps of implementation.

P&DS Business Model

The DTFP 2.0 P&DS Business Model Team has been instrumental in developing ways to operate fully and efficiently during COVID-19, support our business community through the pandemic and continue development of a department mission and vision. In addition to their key work on the Boulder Business Recovery effort, this team has also finalized its recommendations and is beginning the implementation process through work on defining process optimizations.

The DTFP 2.0 team recommendations for creating a Business Model for P&DS include:

- Defining the departmental identity by adopting mission and purpose statements and guiding principles, defining core services, defining customer service in the context of operational excellence, and confirming P&DS as the departmental name.
- Optimizing service delivery by adopting a teaming approach.
- Identifying and prioritizing processes and procedures to be standardized and streamlined that are critical to the success of the implementation of the Business Model.

The recommendations are focused on achieving Operationally Excellent outcomes and have been developed based on the assumption that viewing P&DS processes from the customer's perspective allows the department to streamline the process and address the identified points of friction. The outcomes of process improvements will benefit both staff and the customer.

EnerGov

EnerGov is the software that supports the city's Land Management, Permitting, Code Enforcement and Licensing functions. However, the DTFP 2.0 team recognizes that EnerGov operates as more than a software and should be viewed and leveraged as an ecosystem to balance people, processes and technology through clear objectives, a well-articulated strategy and governance model. Operational Excellence is achievable when these elements are in harmony, along with well-trained people performing high-quality work using efficient processes and a technology that meets their needs. The EnerGov team is now working toward implementation of these recommendations.

Public Works Support Services

The Support Services DTFP 2.0 recommendations build on the DTFP 1.0 recommendations to maintain a shared Public Works identity and pursue the cultural anchor of Operational Excellence. Given the current city financial realities due to COVID, the team was asked to focus on how to best provide support to the new department structure in a manner that does not increase costs or resource needs. The team recommends:

- Forming a shared Public Works-Business Services Division to support PW-Utilities, PW-Transportation & Mobility and, in the short-term, the Facilities and Fleet Department;
- Moving Utility Billing to the PW-Utilities Department;
- Changing reporting lines for the financial analysts to the department directors; and
- Assessing these changes at consistent intervals to ensure continued progress.

The Business Services Division includes the service areas and work functions of Project and Process Services, Asset Management & Information Resources, Operational Support Services, and Financial Transactional Services.

Additional DTFP 2.0 Teams

The four remaining DTFP 2.0 staff teams are continuing to move forward and will focus on building their recommendations over the next year. These teams include GIS / Data Services, Psychological Safety, Project Management and Public Works-Operations and Maintenance.

NEXT STEPS

Staff work is now shifting to prioritization and resourcing needed to turn the recommendations into reality. Some of the recommendations can be implemented quickly – for example the Utility Billing division has already moved to the Utilities Department. Other recommendations may take months or years to fully achieve the goals for a different future, but steady, continued progress will be made on the path to Operational Excellence.

P&DS has already started work to identify development review process optimizations, using a teaming approach and considering the work through the lens of the customer's perspective as recommended by the DTFP 2.0 P&DS Business Model team. The foundational EnerGov ecosystem changes recommended by the EnerGov 2.0 team will provide the structure for any EnerGov software changes needed to support future P&DS business process improvements.

We are proud of our staff for undertaking these efforts for transformational change while continuing to serve our community through day-to-day operations, even as staff resources have been reduced in response to the new financial realities resulting from COVID. The DTFP recommended improvements create a culture of efficient and effective service delivery based on a foundation of trust, teamwork and support at all levels. This is an example of our Leadership Philosophy in action.