

**Mayor**  
Aaron Brockett

**Council Members**  
Taishya Adams  
Matt Benjamin  
Lauren Folkerts  
Tina Marquis  
Ryan Schuchard  
Nicole Speer  
Mark Wallach  
Tara Winer



Council Chambers  
1777 Broadway  
Boulder, CO 80302  
February 6, 2025  
4:30 PM

**City Manager**  
Nuria Rivera-Vandermyde

**City Attorney**  
Teresa Taylor Tate

**City Clerk**  
Elesha Johnson

## **AGENDA FOR THE REGULAR MEETING OF THE BOULDER CITY COUNCIL**

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1. **Call to Order and Roll Call**
  - A. **Consideration of a motion to call an Executive Session of the City Council pursuant to C.R.S. § 24-6-402(4)(b) for conference with attorneys for the City for the purpose of receiving legal advice on specific legal questions regarding meeting management and the First Amendment**
  - B. **Black History Month Declaration presented by Council Member Schuchard** **10 Min**
2. **Open Comment**
3. **Consent Agenda**
  - A. **Consideration of a motion to accept the December 5, 2024 Regular Council Meeting Minutes**
  - B. **Consideration of a motion to accept the December 19, 2024 Regular Council Meeting Minutes**
  - C. **Consideration of a motion to accept Council Board and Committee Assignments for the year of 2025**
  - D. **Consideration of a motion to cancel the February 27th, 2025, Study Session and approve replacing it with the 2025 City Council Midterm Check-in to be held that night**
  - E. **Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8651, amending Title 1, "General Administration," Title 4, "Licenses and Permits," Title 5, "General Offices," Title 9, "Land Use Code," and Title 10, "Structures," B.R.C. 1981, to update residential occupancy standards to ensure conformance with Colorado House Bill 24-1007, "Concerning Residential Occupancy Limits," and setting forth related details**

- F. Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8684 amending Title 10, "Structures," B.R.C. 1981 and adopting by reference the 2024 international codes regarding property maintenance, building, electrical, fire, mechanical, fuel, gas, and plumbing; and setting forth related details
  - G. Second reading and consideration of a motion to adopt Ordinance 8682 amending Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, providing the city manager with authority to designate the place and period of time for claim submittal; and setting forth related details
  - H. Third reading and consideration of a motion to adopt Ordinance 8666, amending Chapters 9-2, "Review Processes," 9-6, "Use Standards," and 9-8, "Intensity Standards," of Title 9, "Land Use Code," B.R.C. 1981, to amend density and intensity standards to allow development of additional dwelling units in the Residential – Rural 1 (RR-1), Residential – Rural 2 (RR-2), Residential – Low 1 (RL-1), Residential – Medium 1 (RM-1), and Residential – Mixed 1 (RMX-1) zoning districts and to amend review procedures and use standards to reduce regulatory requirements for certain residential developments, and setting forth related details
  - I. Consideration of a motion to call a Special Meeting of City Council on February 13, 2025 to call an Executive Session of the City Council pursuant to C.R.S. § 24-6-402(4)(b) for conference with attorneys for the City for the purpose of receiving legal advice on specific legal questions regarding emerging federal guidelines
4. Call-Up Check-In
- A. Concept Plan Review and Comment Request for a mixed-use proposal to develop 5450 Airport Blvd. with 170 attached dwelling units, a community building, and approximately 10,000 square-foot of office and restaurant space. Buildings 1 and 2 are mixed use three-story buildings, Building 3 is a three-story residential building, and Building 4 is a community building. Reviewed under case no. LUR2024-00056.
  - B. Landmark Alteration Certificate application to construct a new accessory building at 600 Spruce St. a contributing property in the Mapleton Hill Historic District, pursuant to Section 9-11-18 of the Boulder Revised Code 1981 and under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Owner / Applicant: Hal and Schuyler Bailey
5. Public Hearings
- A. Second reading and consideration of a motion to adopt Ordinance 8650, amending Title 9, "Land Use Code," B.R.C. 1981, to amend the regulations for accessory dwelling units, and setting forth related details **15 min – 5 min presentat / 10 min public**





## **A. 12.04.24 EAB Minutes**

### **Declarations**

#### **A. World Migratory Bird Day Declaration**

#### **Heads Up! Email**

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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](http://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](mailto:CityClerkStaff@bouldercolorado.gov) no later than 2 p.m. the day of the meeting.



**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Consideration of a motion to call an Executive Session of the City Council pursuant to C.R.S. § 24-6-402(4)(b) for conference with attorneys for the City for the purpose of receiving legal advice on specific legal questions regarding meeting management and the First Amendment

**PRIMARY STAFF CONTACT**

NA

**REQUESTED ACTION OR MOTION LANGUAGE**

Motion to call an Executive Session of the City Council pursuant to C.R.S. § 24-6-402(4)(b) for conference with attorneys for the City for the purpose of receiving legal advice on specific legal questions regarding meeting management and the First Amendment

**ATTACHMENTS:**

**Description**

No Attachments Available



**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Black History Month Declaration presented by Council Member Schuchard

**PRIMARY STAFF CONTACT**

Megan Valliere, City Council Program Manager

**ATTACHMENTS:**

**Description**

- ▣ **Black History Month Declaration**

## **Black History Month**

**February 2025**

The early origins of Black History Month took root in 1915. That year, historian Carter G. Woodson founded the Association for the Study of African American Life and History after being inspired by an Illinois-based national celebration of the 50<sup>th</sup> anniversary of the 13<sup>th</sup> Amendment abolishing slavery in the United States. The Association would later go on to declare a week-long celebration of Black History in the month of February in 1926. The second week in February was chosen because it coincided with the birthdays of two individuals who played substantial roles in shaping Black History in the United States: Abraham Lincoln and Frederick Douglass.

Through the tireless work of Black and African American historians, activists, educators, and intellectuals, the week-long celebration evolved into an annual month-long celebration of the achievements, resilience, and critical role of Black Americans throughout U.S. history. In 1976, fifty years after the first week-long celebration, President Gerald Ford proclaimed the first Black History Month. Since then, every American president has issued a proclamation endorsing the annual Black History Month theme established by the Association for the Study of African American Life and History.

As in the United States at large, Black people have played an essential role in Boulder's history and community since the city's founding. The exploration of Black history in Boulder reveals robust community organizing, cultural gathering, and spiritual life in Boulder's Black community throughout the city's history. O.T. Jackson, a restaurateur and the first manager of the Chautauqua Dining Hall in the late 1890s, exemplifies the early entrepreneurial spirit of Boulder's Black community. The existence of the Black baseball team, the Boulder Blues, in the early 1900s illustrates the thriving social and recreational spaces that Black Boulderites built in the city. The founding in 1884 of the Allen Chapel African Episcopal Methodist Church and subsequent founding in 1908 of the Second Baptist Church, which still serves Northern Colorado as the only predominantly Black church in the region, both demonstrate the strong spiritual and community roots that the Black community continues to nurture in Boulder to this day.

While the city, like the whole U.S., must continue to reckon with historical displacement of and racial injustices against Black community members, the history of Black Boulderites reveals the strength, resilience, joy, and triumphs of Boulder's Black community.



All community members are encouraged to delve into these rich and complex histories by visiting the Museum of Boulder's "Proclaiming Colorado's Black History" Exhibit, exploring programming and resources offered by CU Boulder's Center for African and African American Studies, which opened in 2022, and seeking out opportunities to attend community events that honor and acknowledge the contributions and experiences of Black community members in Boulder and beyond.

This year's theme for Black History Month recognizes "African Americans and Labor," acknowledging the profound ways that work intersects with the experiences of Black people, both today and throughout history. Through their labor - free and unfree, manual and skilled, vocational and voluntary - Black and African Americans have shaped the lives, culture, and history of all Americans and people across the world.

Despite the historic atrocities and continued inequities faced by Black Americans, through their strength and resilience, they have made and continue to make vital and enduring contributions to our nation as artists, scientists, educators, entrepreneurs, thinkers, members of the faith community, athletes, and civic leaders, and more.

We, the City Council of the City of Boulder, Colorado declare February 2025 as

### **Black History Month**

And encourage everyone in the community to join in honoring and celebrating by seeking out and taking in Black culture and history, supporting Black-owned local businesses, and taking time to reflect on what Black history means to each of us this month and all year.

Let us also bear in mind that Black History is America's History and that for as much as each of us has benefitted from the free labor of enslaved Africans and centuries of systemic oppression, we each have a responsibility to examine how we will heal the ills that still plague us.



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**Aaron Brockett, Mayor**





**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Consideration of a motion to accept the December 5, 2024 Regular Council Meeting Minutes

**PRIMARY STAFF CONTACT**

Elesha Johnson, City Clerk

**REQUESTED ACTION OR MOTION LANGUAGE**

Motion to accept the December 5, 2024 Regular Council Meeting Minutes

**ATTACHMENTS:**

**Description**

- ▢ **Item 3A - DRAFT December 5, 2024 City Council Regular Meeting Minutes**





## CITY COUNCIL MEETING

### Council Chambers

Thursday, December 5, 2024

# MINUTES

1. **Call to Order and Roll Call:**

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

Council Members present: Benjamin, Brockett, Folkerts, Marquis, Schuchard,  
Speer, Wallach, Winer

Virtually present: Adams

Motion	Made By/Seconded	Vote
Motion to <b>AMEND</b> the agenda to:  <b><u>ADD:</u></b> <ul style="list-style-type: none"><li>Item 8B – Ranking proposed priority items for the Boulder County Regional Homelessness Working Group</li></ul> <b><u>REMOVE:</u></b> <ul style="list-style-type: none"><li>Item 3B – Consideration of a motion to authorize the city manager to enter into 20-year license agreement with Public Service Company of Colorado, dba Xcel Energy, providing access to the Valmont Butte property in order to perform groundwater monitoring and remediation from the published agenda for 12/05/24 and reschedule it for the 12/19/24 consent agenda to allow council members more time to review the materials and ask questions.</li></ul>	Wallach / Benjamin	Carried 9:0

- A. **Declaration Honoring Emergency Response Connectors** presented by Mayor Brockett
- B. **International Day of Persons with Disabilities Declaration** presented by Council Member Winer
- C. Consideration of a **motion to approve the election returns from the 2024 Coordinated Special Municipal Election** held on November 5, 2024
  - 1. **Motion to convene as the General Canvassing and Election Board** for the City of Boulder Coordinated Special Municipal Election
  - 2. **Roll call** of the General Canvassing and Election Board
  - 3. **Administration of oath** and signing of same by Board members
  - 4. Consideration of a motion **nominating a member to chair the Board – Mayor Brockett nominated and elected.**
  - 5. **Submission of the following** to the Board found in Attachments:
    - A. Certificate of the Public Notice of the November 5, 2024 Special Election
    - B. Certificate of Approved Ballot
    - C. Official Summary of Votes
    - D. Boulder County Audit, Reconciliation Report and Certification
    - E. 2024C Boulder County Canvass Certification Sign-Off Compiled
  - 6. Consideration of a motion to **approve the election returns** and, if approved, signing of the Certificate of the General Canvassing and Election Board
  - 7. Motion to **adjourn from the General Canvassing and Election Board for the City of Boulder Coordinated Special Municipal Election and reconvene as the Boulder City Council**

Elesha Johnson, City Clerk, provided a presentation outlining the process guidelines and ballot measure results.

**Council member Benjamin made a motion to approve the elections returns of the City of Boulder 2024 Coordinated Special Municipal Election held on November 5<sup>th</sup>, 2024. Council member Folkerts seconded the motion. The motion passed unanimously.**

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 **opened** at 6:37 p.m.

➤ **In-Person (Council Chambers):**

1. Barbara Steinmetz spoke on safety of Jewish constituency after council member uses language which fires up antisemitism
2. Bart Windrum spoke on urban-adjacent mountain backdrop human caused wildfire-ignition- mitigation
3. Aram Bingham spoke on ceasefire
4. Martha McPherson spoke on Gaza
5. Michele Rodriguez spoke on general
6. Dan Ronken spoke on comments of psilocybin therapy in Boulder
7. Bruce Shaffer spoke on antisemitism in Boulder, city council conduct
8. Robert Smoke spoke on global issues affecting Boulder
9. Sarah Napier spoke on education
10. Erik Castro spoke on Boulder psilocybin ordinance
11. Elise Mordos spoke on antisemitism
12. Dikla Leon spoke on last meetings antisemitic comments

➤ **Virtual**

13. Samantha Grigsby spoke on hate speech throughout Boulder
14. Aidan Reed spoke on Gaza and housing
15. ~~Dikla Leon spoke on last meetings antisemitic comments~~ ***moved to in-person***
16. Ella O'Neil spoke on improving the voice and sight program
17. Susan Alban spoke on fire prevention
18. ~~Laura Gonzalez spoke on impacts of settler colonialism~~ ***did not show***
19. Lauren Lambart Feldman spoke on decorum
20. Jonathan Wood spoke on standing against hate speech
21. Eve Bluestein spoke on peace, not hate in Boulder

Open Comment **closed** at 7:17 p.m.

***Due to disruptions in Chambers, Mayor Brockett called for a recess at 7:32 p.m. and council reconvened at 7:41 p.m.***

Due to continuous disruptions in Chambers, Mayor Brockett called for an additional recess at 7:46 p.m. and council reconvened at 8:00 p.m.

3. **Consent Agenda**

- A. Consideration of a motion to **authorize the City Manager to enter into a 10-year intergovernmental agreement between the City of Boulder and the Town of Nederland regarding phosphorus removal at Nederland’s wastewater treatment facility** at Barker Reservoir
- B. **REMOVED:** ~~Consideration of a motion to authorize the city manager to enter into 20-year license agreement with Public Service Company of Colorado, dba Xcel Energy, providing access to the Valmont Butte property in order to perform groundwater monitoring and remediation~~
- C. Consideration of a motion to **approve an Intergovernmental Agreement (IGA) between the City of Boulder and the Mountain View Fire Protection District concerning the installation, use and management of a firefighting cistern on City of Boulder property**
- D. Consideration of a motion to **adopt Resolution 1357 of the City Council of the City of Boulder, Colorado (acting through its Stormwater and Flood Management Utility Enterprise), to participate in a future issuance of stormwater and flood management revenue bonds** and to reimburse itself up to \$20,000,000 for capital expenditures undertaken in advance of such financing in connection with the construction of the project; and setting forth related details
- E. **Introduction, first reading and consideration of a motion to order published by title only Ordinance 8665, amending Title 9, “Land Use Code,” B.R.C. 1981, to implement Senate Bill 23-290 and locally permit natural medicine businesses, defined in the state bill as Natural Medicine Healing Centers, Cultivation, Production, and Testing Facilities, and setting forth related details**
- F. **Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8676 amending Sections 3-7-2, “Imposition and Rate of Tax,” 4-2-3, “Authority to Issue City Licenses,” and 4-20-2, “Alcohol and Fermented Malt Beverage License and Application Fees,” B.R.C. 1981, converting the license of lodging and entertainment facility to two separate licenses to comply with a change to state law; and setting forth related details**
- G. **Second reading and consideration of a motion to adopt Ordinance 8667 approving an Intergovernmental Agreement (IGA) concerning the management of the Coalton Trail on property co-owned by both the City of Boulder and Boulder County; and setting forth related details**
- H. **Second reading and consideration of a motion to amend and pass Ordinance 8670 amending Section 5-7-5, “City Manager Authority to Grant Permission to**

**Consume Alcoholic Beverages on City-Owned Property”, B.R.C. 1981, to allow alcohol consumption at farm-to-table events on open space properties with a current farm crop and grazing lease in good standing; and setting forth related details**

- I. **Second reading** and consideration of a motion to **adopt Ordinance 8672 amending the introduction and Chapters 8, 9 and 11 of the City of Boulder Design and Construction Standards (D.C.S.)**, originally adopted pursuant to Ordinance 5986, adding standards for narrow trenching related to installation of telecommunications infrastructure; and setting forth related details
- J. **Second reading** and consideration of a motion to **adopt Ordinance 8674 amending Section 4-20-23, “Water Permit Fees,” Chapter 11-1, “Water Utility,” and Chapter 11-2, Wastewater Utility,” B.R.C. 1981, updating water permit fees and clarifying enforcement provisions under the Backflow Prevention and Cross-Connection Control Program** to protect the drinking water system and public health; and setting forth related details
- K. **Second reading** and consideration of a **motion to adopt Ordinance 8675 approving supplemental appropriations to the 2024 Budget** and setting forth related details

Motion	Made By/Seconded	Vote
Motion to <b>APPROVE</b> the consent agenda items A and C thru K	Speer / Folkerts	Carried 9:0

4. **Call-Up Check-In**

- A. **Concept Plan Review and Comment Request for a proposal to redevelop the 55,246 square foot site at 777 Broadway** with a five-story, 55 foot tall, 82,500 square foot, 63 unit, multi-family residential building with ground floor podium parking and amenity space. The unit type mix would include studio, two-, three-, and five-bedroom units. The proposal includes a request for a 57% parking reduction. **Reviewed under case no. LUR2024-00037**

Brad Mueller, Planning and Development Services Director, and Chandler Van Schaack, Development Review Principal Planner, answered questions from Council.

A motion was made by Council Member Wallach to defer this item to the Design Advisory Board for their review. The motion was seconded by Council Member Marquis. The motion carried with a vote of 9:0.

**NO ACTION**

- B. **Landmark Alteration Certificate application to install solar panels at the front of the Higman House at 479 Arapahoe Ave., an individually landmarked property,**

pursuant to Section 9-11-18 of the Boulder Revised Code 1981 and under the procedures prescribed by chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981

**NO ACTION**

- C. **Landmark Alteration Certificate application to modify the garage door opening on a non-contributing accessory building at 527 Maxwell Ave.** in the Mapleton Hill Historic District, pursuant to Section 9-11-18 of the Boulder Revised Code 1981 and under the procedures prescribed by chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981

**NO ACTION**

5. **Public Hearings**

A. **Mayor Pro Tem Elections**

Council member Winer and Folkerts put their names forward for Mayor Pro Tem consideration via Hotline.

The public hearing **opened** at 8:13 p.m. and the following spoke:

➤ **Virtual:**

1. Lynn Segal

The public hearing **closed** at 8:13 p.m.

Council member Wallach nominated Council member Winer and provided remarks. Council member Winer accepted the nomination.

Mayor Pro Tem Speer nominated Council member Folkerts and provided remarks. Council member Folkerts accepted the nomination.

Council member Marquis made a motion to close the nominations and Council member Wallach seconded the motion. The motion was approved unanimously.

Council member Winer and Folkerts provided statements regarding their interests and qualifications in serving as Mayor Pro Tem.

Council member Winer withdrew her candidacy.

**Council member Folkerts was elected to serve as Mayor Pro Tem for one year.**

- B. Consideration of a motion to **approve amendments to the East Boulder Subcommunity Plan (EBSP), including the 55th and Arapahoe Station Area Plan**, to align East Boulder Connections Plan with the refined vision for East Boulder areas of change and additional supporting information

AND

**Second reading** and consideration of a motion to **adopt Ordinance 8669**, amending Title 9, “**Land Use Code**,” B.R.C. 1981, by **adopting form-based code standards for parts of East Boulder, moving the form-based code from Appendix M to Chapter 9-14, “Form-Based Code,”** B.R.C. 1981, revising rezoning and trip reduction standards for East Boulder; and setting forth related details

Kathleen King, Comprehensive Planning Planner Principal and Kristopher Johnson, Senior Comprehensive Planning Manager provided a presentation and answered questions from Council.

The public hearing **opened** at 9:37 p.m. and the following spoke:

➤ **In-Person:**

1. Marc Painter – *Pooling with #4 Erik & #7 Mark – 5 min*
2. Devin Edgley
3. John Tayer

➤ **Virtual:**

4. Lynn Segal
5. Erik Stegemiller – *Pooling with #1 Marc*
6. ~~John Tayer~~ *moved to in-person*
7. Salil Payappilly
8. ~~Mark Hamilton~~ - *Pooling with #1 Marc*

The public hearing **closed** at 9:56 p.m.

Hella Pannewig, Senior Counsel and Brad Mueller, Planning and Development Services Director, answered questions from Council.

*Council Member Marquis made a motion to continue the item to the February 20<sup>th</sup>, 2025 meeting. Council member Winer seconded the motion. The motion was carried with a vote of 7:2.*

6. **Matters from the City Manager**

7. **Matters from the City Attorney**

8. **Matters from the Mayor and Members of Council**

A. **Council Retreat Subcommittee Midterm Check-in Plan**



Council Members Speer and Winer provided Council with the outline and agenda for the February 27<sup>th</sup> Mid-Term Council Check-in.

- B. **Ranking proposed priority items** for the Boulder County Regional Homelessness Working Group

Mayor Pro Tem Folkerts presented Council with the suggested Workplan Priority Rankings.

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 by Mayor Brockett at 10:43 p.m.

Approved this 6<sup>th</sup> day of February 2025.

APPROVED BY:

\_\_\_\_\_  
Aaron Brockett, Mayor

ATTEST:

\_\_\_\_\_  
Elesha Johnson, City Clerk



**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Consideration of a motion to accept the December 19, 2024 Regular Council Meeting Minutes

**PRIMARY STAFF CONTACT**

Elesha Johnson, City Clerk

**REQUESTED ACTION OR MOTION LANGUAGE**

Motion to accept the December 19, 2024 Regular Council Meeting Minutes

**ATTACHMENTS:**

**Description**

- **Item 3B- DRAFT December 19, 2024 City Council Regular Meeting Minutes**



## CITY COUNCIL MEETING

### Council Chambers

Thursday, December 19, 2024

## MINUTES

### 1. **Call to Order and Roll Call:**

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

Council Members present: Benjamin, Brockett, Folkerts, Marquis, Schuchard,  
Speer, Wallach, Winer

Present virtually: Adams

A. **Dr. Dick Jessor Day Declaration** presented by Council Member Wallach

B. **National Homeless Persons' Memorial Day Declaration** presented by Council Member Benjamin

### 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 **opened** at 6:22 p.m.

#### ➤ **In-Person (Council Chambers):**

1. Macon Cowles spoke on vision zero and climate action plan update
2. Eric Gross spoke on antisemitism
3. Evan Ravitz spoke on various subjects

**Due to disruptions in Chambers, Mayor Brockett called a recess at 6:29 p.m. and Chambers was cleared. Council reconvened at 6:48 p.m.**

4. Rokhiya Ngom spoke on humanity
5. Laura Kaplan spoke on climate action plan
6. Aaron Brooks spoke on City Council processes
7. ~~Dylan Barlow - *withdrew*~~
8. Daniel Howard spoke on climate action under BVCP regarding compact land use forms
9. ~~Graham Hill spoke on bicycle theft - *did not show*~~

➤ **Virtual:**

10. Amy Kaufman spoke on community mental health support and Israel support
11. Luann Myers spoke on stopping hate speech and antisemitism in the Boulder community
12. Foster Goodwill spoke on foreign affairs
13. Hannah Davis spoke on climate action plan update
14. Lynn Segal spoke on Gaza, library district
15. Michael Mills reaffirming Vision Zero and including “compact land use and transportation choices” in climate action plan
16. Adilene Marquez spoke on Free Palestine
17. Richard Sax spoke on antisemitism is un-American
18. ~~Jeffrey Levine - *withdrew*~~
19. Rachel Namordi spoke on stop antisemitism
20. Mindy Miller spoke on staying focused on the issues the city is facing

Open Comment **closed** at 7:15 p.m.

**3. Consent Agenda**

- A. Consideration of a motion to **accept the October 3, 2024 Regular City Council Meeting Minutes**
- B. Consideration of a motion to **accept the October 10, 2024 Special City Council Meeting Minutes**
- C. Consideration of a motion to **accept the October 17, 2024 Regular City Council Meeting Minutes**
- D. Consideration of a motion to **amend the 2025 Council Meeting Calendar**

- E. Consideration of a motion to **authorize the City Manager to enter into 20-year license agreement with Public Service Company of Colorado, dba Xcel Energy, providing access to the Valmont Butte property** in order to perform groundwater monitoring and remediation
- F. **Introduction**, first reading and consideration of a motion to **order published by title only Ordinance 8666**, amending Chapters 9-2, **“Review Processes,”** 9-6, **“Use Standards,”** and 9-8, **“Intensity Standards”** of Title 9, **“Land Use Code,”** B.R.C. 1981, to **amend density and intensity standards to allow development of additional dwelling units** in the Residential – Rural 1 (RR-1), Residential – Rural 2 (RR-2), Residential – Low 1 (RL-1), Residential – Medium 1 (RM-1), and Residential Mixed – 1 (RMX-1) zoning districts **and to amend review procedures and use standards to reduce regulatory requirements for certain residential developments, and setting forth related details**
- G. **Introduction**, first reading and consideration of a motion to **order published by title only Ordinance 8677 designating the property at 3168 6th St.,** City of Boulder, Colorado, to be **known as the Leach-Moritz House, as an individual landmark** under Chapter 9-11, **“Historic Preservation,”** B.R.C. 1981; and setting forth related details
- H. **Introduction**, first reading and consideration of a motion to **order published by title only Ordinance 8678 repealing and reenacting Section 7-4-78, “Misuse of a Wireless Telephone,”** B.R.C. 1981, to **align the use of mobile electronic devices while driving a motor vehicle within City of Boulder boundaries** with state law; and setting forth related details
- I. **Introduction**, first reading and consideration of a motion to **order published by title only and adopt by emergency measure Ordinance 8679 adopting Supplement 161 which codifies previously adopted ordinances** as amendments to the Boulder Revised Code, 1981; and setting forth related details
- J. **Introduction**, first reading and consideration of a motion to **order published by title only Ordinance 8680 designating the property at 575 Euclid Ave.,** City of Boulder, Colorado, to be **known as the Sirotkin – Woodman House, as an individual landmark** under Chapter 9-11, **“Historic Preservation,”** B.R.C. 1981; and setting forth related details
- K. **Second reading** and consideration of a motion to **adopt Ordinance 8658 amending Section 2-3-7, “Landmarks Board,”** and Chapter 9-11 **“Historic Preservation,”** B.R.C. 1981, to **remove the appointment of a Planning Board member to the Landmarks Board and revise the review process timeframes** and approval expiration dates; and setting forth related details
- L. **Second reading** and consideration of a motion to **adopt Ordinance 8676 amending Sections 3-7-2, “Imposition and Rate of Tax,”** 4-2-3, **“Authority to Issue City**

Licenses,” and 4-20-2, “Alcohol and Fermented Malt Beverage License and Application Fees,” B.R.C. 1981, converting the license of lodging and entertainment facility to two separate licenses to comply with a change to state law; and setting forth related details

- M. **Third reading** and consideration of a motion to **adopt Ordinance 8670 amending Section 5-7-5, “City Manager Authority to Grant Permission to Consume Alcoholic Beverages on City-Owned Property”, B.R.C. 1981, to allow alcohol consumption at farm-to-table events on open space properties** with a current farm crop and grazing lease in good standing; and setting forth related details
- N. Consideration of a motion to **adopt Resolution 1358 reaffirming the City of Boulder’s commitment to Vision Zero**
- O. Consideration of a motion to **approve the October 24, 2024, Study Session Summary** regarding the **Police Oversight Update**

Motion	Made By/Seconded	Vote
Motion to <b>PASS the consent agenda items 3A – 3O</b>	Benjamin / Speer	Carried 9:0  <b>NAY on 3N: Marquis and Wallach</b>

4. **Call-Up Check-In**

5. **Public Hearings**

- A. **Second reading** and motion to **adopt by emergency measure Ordinance 8665, amending Title 9, “Land Use Code,” B.R.C. 1981, to implement Senate Bill 23-290 and locally permit natural medicine businesses, defined in the state bill as Natural Medicine Healing Centers, Cultivation, Production, and Testing Facilities;** and setting forth related details

Karl Guiler, Senior Policy Advisor, provided a presentation and answered questions from Council.

Joel Wagner, Interim Chief Financial Officer, also answered questions from Council.

The public hearing **opened** at 7:51 p.m. and the following spoke:

➤ **In-Person:**

- 1.—Charlies Lief - **withdrew**
- 2.—Ken Weingardt **moved to virtual**

3. Erik Castro
4. ~~Nicole Lussow~~ *moved to virtual*

➤ **Virtual:**

5. Natasia Poinatte
6. Nicole Lussow

The public hearing **closed** at 7:55 p.m.

Hella Pannewig, Senior Counsel, answered questions from Council.

*Mayor Brockett made a motion to continue Ordinance 8665 with direction to staff to draft amendments to the ordinance based on Council direction. Mayor Pro Tem Folkerts seconded the motion. The motion was carried with a vote of 9:0.*

6. **Matters from the City Manager**

A. **Climate Action Plan Update**

Jonathan Koehn, Climate Initiative Director, Yael Gichon, Climate Initiatives Principal Project Manager and Kate Galbo, Senior Data Analyst provided a presentation and answered questions from Council.

Carlos Hernan Villanueva, an Environmental Advisory Board member, provided feedback from the board and answered questions from Council.

Carolyn Elam, Sustainability Senior Manager, and Brett Kencairn, Senior Policy Advisor, answered questions from Council.

7. **Matters from the City Attorney**

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 by Mayor Brockett at 10:06 p.m.**

Approved this 6<sup>th</sup> day of February 2025.



APPROVED BY:

\_\_\_\_\_  
Aaron Brockett, Mayor

ATTEST:

\_\_\_\_\_  
Elesha Johnson, City Clerk

DRAFT



**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Consideration of a motion to accept Council Board and Committee Assignments for the year of 2025

**PRIMARY STAFF CONTACT**

Elesha Johnson, City Clerk

**REQUESTED ACTION OR MOTION LANGUAGE**

Motion to accept Council Board and Committee Assignments for the year of 2025

**ATTACHMENTS:**

**Description**

- **Item 3C - Consideration of a motion to accept Council Board and Committee Assignments for the year of 2025**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Consideration of a motion to accept Council Board and Committee Assignments for the year 2025.

**PRESENTER**

Nuria Rivera-Vandermyde, City Manager  
Elesha Johnson, City Clerk

**EXECUTIVE SUMMARY**

At the January 23<sup>rd</sup>, 2025 study session, council discussed its current participation on intergovernmental and inter-organization committees and boards to make requested changes to assignments for 2025. One change has been requested and supported, to extend Council Member Wallach's term on the Financial Strategies Committee through 2025.

Council also briefly discussed the membership to National League of Cities, which was erroneously included in the committee appointment listing. All members of council are members of NLC through the city's membership, but there is no formal committee appointment associated with that membership. Individual members are free to engage in NLC Constituency Groups and other initiatives at their own discretion.

There are two groups that have more than two council members appointed, and in accordance with the Boulder Revised Code Charter Section 9 the justification for those groups are as follows:

- Intergovernmental Affairs Committee (appointments: Brockett, Benjamin, Folkerts, Marquis) - The Intergovernmental Affairs Committee works with Chief Policy Advisor, Carl Castillo, and makes recommendations to the whole city

council on what legislative positions the council should take. In order for the committee to be successful, it requires members with a diversity of political perspectives, policy focuses and relationships. Having only two members is insufficient to provide this diversity, therefore the city council finds it necessary for the committee to have up to four members to provide the different perspectives critical to its success.

- Financial Strategy Committee (appointments: Wallach, Schuchard, Speer) - The Financial Strategy Committee works with city staff to review the city's annual budget, evaluates adjustments to base, as necessary, and recommends to council ballot and policy matters relating to the city's finances. These tasks and the longer-term nature of financial strategy work benefit from a diversity of backgrounds, term lengths, knowledge, experience, and perspectives among the council members who serve on the committee. This degree of diversity can be challenging, if not impossible, to achieve with only two participating council members. Given how critical financial strategies are to the city's current and future goals, city council finds it appropriate that up to four council members serve on the Financial Strategy Committee, because more than two members are needed to create a diverse and representative committee.

#### **STAFF RECOMMENDATION**

**Suggested Motion Language:**

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

Motion to accept Council Board and Committee Assignments for the year 2025.

#### **NEXT STEPS**

Staff will meet with and brief any council members with new board and committee assignments as needed.

#### **ATTACHMENTS**

A – 2025 Council Board and Committee Assignments

**COUNCIL COMMITTEE APPOINTMENTS FOR 2025**

<b>INTERGOVERNMENTAL ORGANIZATIONS</b>		<b>Date &amp; Times of Meetings</b>
Boulder County Consortium of Cities (BCCC)	Folkerts, Winer (alt), Valliere (staff alt)	First Wednesday evenings of every other month, 6:30 pm to 8:30 pm.
Colorado Municipal League (CML) – Policy Committee	Marquis, Benjamin, Castillo (staff alt)	Meetings as needed on Fridays, 9 am to Noon.
Denver Regional Council of Governments (DRCOG)	Speer, Schuchard (alt)	Study Sessions on first Wednesdays of the month at 4 pm (Virtual, 2 hours) and Board Meetings on third Wednesdays of the month at 6:30 pm (in-person, 2-3 hours).
Metro Mayors Caucus	Brockett	First Wednesdays of the month at 7:30 am.
Resource Conservation Advisory Board (RCAB)	Adams	Fourth Wednesday of the month at 4:45 pm.
North/Northwest Mayors/Commissioners Coalition (MCC)	Brockett	Second Thursday morning of the month from 8am to 9:30am.
Commuting Solutions	Schuchard, Marquis (alt)	Membership meetings are typically on Wednesdays, every other month, from 9am to 10:30am
Mile High Flood District (Gubernatorial appointment)	Folkerts	Thursdays at 1pm once a month, with virtual option, the same day as council meetings.
State Highway 119 Coalition	Brockett, Benjamin (alt)	Times vary, approximately quarterly
State Highway 7 Coalition	Schuchard, Winer (alt)	Times vary, virtual meetings.
Boulder Public Library District Board of Trustees Appointment Committee	Adams, Marquis	Meets between February and May of each year to support appointments. Typically, 3-5 meetings.
<b>INTERNAL CITY COMMITTEES</b>		
Audit Committee	Wallach, Adams	April & July, 1-hour meetings scheduled per committee member calendars.

Boards and Commissions Committee	Winer, Folkerts	Meets on an as needed basis.
Charter Committee	Folkerts, Wallach	Meets early in the spring, with date and times to be determined.
Council Retreat Committee	Speer, Winer	Meetings scheduled based on availability. Likely several meetings between January and March.
Council Employee Evaluation Committee	Schuchard, Speer	Confidential, non-public meetings. As needed, June to September. Target: Two planning meetings, two working meetings, evaluation delivery.
Intergovernmental Affairs Committee	Brockett, Benjamin, Folkerts, Marquis	Scheduled per committee member calendars as needed. Approximately three times during state legislative session and twice in advance of session. Approx. Two-hour meetings.
Financial Strategy Committee	Speer: 2-year term to 12/25 Schuchard: 2-year term to 12/25 Wallach: 3-year term to 12/25	Monthly meetings, regular date determined per committee member calendars.
Council Engagement Committee	Benjamin, Winer	Monthly 90-minute meetings; regular date and time to be set in collaboration with committee members.
<b>LOCAL BOARD MEMBER APPOINTMENTS</b>		
Boulder Museum of Contemporary Art (BMoCA) Board	Benjamin	Quarterly
Boulder Convention and Visitors Bureau Board	Adams, Marquis (alt)	Monthly, two-hour meetings, generally on 3 <sup>rd</sup> or 4 <sup>th</sup> Thursdays of month. No meetings from June through August.
Dairy Arts Center Board	Folkerts	Quarterly
Downtown Business Improvement District Board	Benjamin, Marquis	Monthly basis for 1.5 hours.
<b>LOCAL TERM BOARD MEMBER APPOINTMENTS (to be appointed during annual March recruitment)</b>		
Boulder Housing Partners (Mayoral appointment)	Wallach	Second Mondays of the month from 9 am to 11:30 am
Colorado Chautauqua Association	Winer	Eight regular monthly meetings on Monday

		evenings, from 5:30 pm to 8 pm. Annual meetings in July and board retreats in January.
<b>SISTER CITY LIAISONS</b>		
Dushanbe, Tajikistan	Schuchard	
Jalapa, Nicaragua	Brockett	
Kathmandu, Nepal	Benjamin	
Kisumu, Kenya	Winer	
Llaza, Tibet	Marquis	
Mante, Mexico	Speer	
Nablus, Palestine	Adams	
Ramat HaNegev, Israel	Wallach	
Yamagata, Japan	Folkerts	
Yateras, Cuba	Adams	





## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Consideration of a motion to cancel the February 27th, 2025, Study Session and approve replacing it with the 2025 City Council Midterm Check-in to be held that night

### **PRIMARY STAFF CONTACT**

Megan Valliere, City Council Program Manager

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to cancel the February 27th, 2025, Study Session and approve replacing it with the 2025 City Council Midterm Check-in to be held that night

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3D - Consideration of a motion to cancel the February 27th, 2025, Study Session and approve replacing it with the 2025 City Council Midterm Check-in to be held that night**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Consideration of a motion to cancel the February 27<sup>th</sup>, 2025, Study Session and approve replacing it with the 2025 City Council Midterm Check-in to be held that night.

**PRESENTER(S)**

Nuria Rivera-Vandermyde, City Manager  
Pam Davis, Assistant City Manager  
Elesha Johnson, City Clerk

**EXECUTIVE SUMMARY**

At the December 5<sup>th</sup>, 2024, regular City Council meeting during Matters from the Mayor and Members of Council Item 8A – Council Retreat Subcommittee Midterm Check-in Plan, Council Members Speer and Winer requested council input on the direction for the Midterm Check-in. Pursuant to that conversation, approval of this motion will amend the council meeting calendar by cancelling the regularly scheduled February 27<sup>th</sup>, 2025, study session and scheduling the 2025 Midterm Check-in that same evening in its place.

**STAFF RECOMMENDATION**

**Suggested Motion Language:**

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

Motion to cancel the February 27<sup>th</sup>, 2025, Study Session and approve replacing it with the 2025 City Council Midterm Check-in to be held that night.

**BACKGROUND**

Traditionally, the Boulder City Council hosts a priority-setting retreat during the first year of each council term in which council members define the council’s priority projects for the upcoming two years. During the second year of the council term, the council typically hosts a Midterm Check-in to assess progress on the priority projects determined in the prior year’s priority-setting retreat.

**ANALYSIS**

Heather Bergman from Peak Facilitation will serve as the facilitator for this year’s Midterm Check-in.

The planned agenda for the Council Midterm Check-in is as follows:

4:30 – 5:00 pm	Opening exercise
5:00 – 6:00 pm	Begin Council Priority Projects Update
6:00 – 6:30 pm	Dinner Break
6:30 – 7:30 pm	Finish Council Priority Projects Update
7:30 – 7:45	Break
7:45 – 9:15 pm	Citywide Strategic Plan Exercise and Updates
9:15 – 9:30 pm	Overview of upcoming years’ retreat schedule & completion of 2025 Midterm Check-in feedback questionnaire

**NEXT STEPS**

City staff are preparing read ahead materials for the Midterm Check-in according to regular study session packet deadlines. Should this motion pass, staff will update the city’s website and public notices accordingly.



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8651, amending Title 1, "General Administration," Title 4, "Licenses and Permits," Title 5, "General Offices," Title 9, "Land Use Code," and Title 10, "Structures," B.R.C. 1981, to update residential occupancy standards to ensure conformance with Colorado House Bill 24-1007, "Concerning Residential Occupancy Limits," and setting forth related details

### **PRIMARY STAFF CONTACT**

Karl Guiler

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3E - 1st Rdg Ord 8651 Occupancy Update to Meet State Law**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Introduction, first reading and consideration of a motion to order published by title only Ordinance 8651, amending Title 1, “General Administration,” Title 4, “Licenses and Permits,” Title 5, “General Offices,” Title 9, “Land Use Code,” and Title 10, “Structures,” B.R.C. 1981, to update residential occupancy standards to ensure conformance with Colorado House Bill 24-1007, “Concerning Residential Occupancy Limits,” and setting forth related details.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Teresa Taylor Tate, City Attorney  
Mark Woulf, Assistant City Manager  
Brad Mueller, Director of Planning & Development Services  
Hella Pannewig, Senior Counsel  
Charles Ferro, Senior Planning Manager  
Karl Guiler, Senior Policy Advisor

**EXECUTIVE SUMMARY**

This ordinance has been drafted in response to state legislation passed in the 2024 Colorado legislative session regarding residential occupancy (HB24-1007, Concerning Residential Occupancy Limits). The state law states that local governments shall not limit the number of people who may live together in a single dwelling based on familial relationships as of July 1, 2024, but allows established life and safety occupancy

restrictions to be enforced. The changes in Ordinance 8651 update occupancy limits in Boulder to align with the health and safety standards in the International Property Maintenance Code ([IPMC](#)), rather than basing occupancy limits on [numbers](#) of unrelated people, and thereby familial relationship. The ordinance would also update terminology throughout the Boulder Revised Code accordingly. Staff is recommending adoption of the ordinance to have consistency with the state law and to avoid any confusion in property owners, landlords, and tenants on what occupancy standards apply.

In addition to the descriptions and analysis provided in this memo, an annotated ordinance that explains individual changes in footnotes is provided in [Attachment A](#). The ordinance proposed for adoption does not include these footnotes and is available in [Attachment B](#).

Planning Board unanimously recommended that City Council adopt the ordinance at its December 3, 2024 public hearing. If adopted, changes would go into effect 30 days after adoption by City Council. Consistent with the state law, the city has ceased enforcement of the current zoning regulations on occupancy that are based on familial relationships. The city continues to apply and enforce the occupancy standards of the IPMC, which are demonstrated health and safety standards and have been in use by the city for years.

### **KEY ISSUE**

Staff has identified the following key issue to help guide the City Council’s discussion:

1. Does City Council recommend any modifications to the draft ordinance?

### **STAFF RECOMMENDATION**

**Suggested Motion Language:**

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

Motion to introduce and order published by title only Ordinance 8651, amending Title 1, “General Administration,” Title 4, “Licenses and Permits,” Title 5, “General Offices,” Title 9, “Land Use Code,” and Title 10, “Structures,” B.R.C. 1981, to update residential occupancy standards to ensure conformance with Colorado House Bill 24-1007, “Concerning Residential Occupancy Limits,” ;and setting forth related details.

### **RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE**

**None.**

## **BOARD AND COMMISSION FEEDBACK**

**Planning Board** – Planning Board unanimously recommended that City Council adopt Ordinance 8651 at its December 3, 2024 public hearing on a vote of 5 to 0. After asking staff questions regarding the ordinance, the board deliberated with one board member mentioning the importance of the ordinance in opening up housing opportunities, removing zoning barriers to housing, and eliminating zoning regulations that have discriminatory roots. The board member noted that the change is a human rights issue and the ordinance is a powerful step forward. The other board members agreed. One member noted that while zoning occupancy limits would no longer apply should the ordinance pass, life and safety occupancy limits based on the number and size of bedrooms would still apply. The board’s motion to recommend adoption of the ordinance is below:

**C. Hanson Thiem** made a motion seconded by **K. Nordback** that Planning Board recommend that City Council adopt Ordinance 8651, amending Section 4-20-18, "Rental License Fee," Title 9, "Land Use Code," and Title 10 "Structures," B.R.C. 1981, to update the occupancy regulations, and setting forth related details. Planning Board voted 5-0. Motion passed.

**Housing Advisory Board** – Staff briefed Housing Advisory Board on the proposed ordinances on accessory dwelling units and occupancy on November 20, 2024. The board expressed support for the ordinances moving forward. On January 22, 2025, the board considered Ordinance 8651 and unanimously recommended that City Council adopt the ordinance.

## **COMMUNITY FEEDBACK**

Since these changes are in response to state legislation, an *inform* level of engagement for this project has been used. Significant feedback on the topic was received during the most recent updates in 2023 for [occupancy](#). Extensive feedback was received in 2023 on the changes to occupancy at that time. The city used a variety of methods, including meeting with specific interested groups and neighborhoods and an online questionnaire that had over 2,000 responses and 1,000 written comments. This feedback can be reviewed within a [2023 memo to City Council at this link](#). Notification of the current changes has been announced in the Planning and Development Services monthly newsletter, which reaches over 5,000 people. As part of the newsletter, staff has provided a link to [an online presentation at this link](#) that includes detailed descriptions of all the land use related state bills.

## **BACKGROUND**

The city of Boulder has adopted several ordinances over the past few years to address the growing cost of housing. This includes 2023 code updates to the city’s ADU standards to enable more ADUs citywide, changing the prior occupancy limitations per dwelling unit

from 3 or 4 unrelated people per unit to 5 unrelated per unit, and the removal of zoning barriers to residential uses with a focus on the high density residential, business, and industrial zones. In early 2024, the city also removed its residential growth management system, which previously limited the number of residential building permits per year in response to a 2023 state bill that prohibited such restrictions.

Since the adoption of these local ordinances, the state legislature adopted several new bills related to land use and housing in the 2024 legislative session. [HB24-1007](#) prohibits residential occupancy limits based on familial relationships (which is aimed predominantly on restrictions on the number of unrelated people per unit). A more detailed description of the house bill is provided below:

### ***HB24-1007, Prohibit Residential Occupancy Limits***

[HB24-1007](#), adopted on April 15, 2024, specifies the following:

- States that local governments may not limit the number of people who may live together in a single dwelling based on family relationships as of July 1, 2024.
- Only allows occupancy limits based on demonstrated health and safety standards, such as international building code standards, fire code regulations, or Colorado Department of Public Health and Environmental Wastewater and Water Quality Standards or based on Local, State, Federal, or Political Subdivision Affordable Housing Program Guidelines.

Since adoption of the state bill, staff has ceased enforcement of the existing residential occupancy standards in the land use code (e.g., maximum of five unrelated persons per units) and has continued to enforce the life safety related [International Property Maintenance Code \(IPMC\)](#) to regulate residential occupancy based on the number and size of bedrooms in each dwelling unit. The IPMC requires that each bedroom be no less than 70 square feet in size, with a minimum of 50 square feet per occupant of a bedroom (IPMC sec.404.4.1). In addition, IPMC table 404.5 prescribes minimum areas for living and dining rooms based on the number of occupants of the dwelling unit.

Staff has prepared a draft ordinance that would bring the city's land use code into compliance with HB24-1007 for occupancy as described in detail below.

### **SUMMARY OF PROPOSED CHANGES IN ORDINANCE 8651**

The changes in Ordinance 8651 update occupancy limits to align with the health and safety standards in the International Property Maintenance Code, rather than familial relationships, and updates terminology throughout the municipal code accordingly. The following sections provide background and summarize major topics related to the draft ordinance.

### ***Ordinance 8651: Occupancy***



- Removes all references to residential occupancy limits in the Boulder Revised Code based on “unrelated persons” and replaces with references to Chapter 10-2, “Property Maintenance Code,” B.R.C., and the International Property Maintenance Code
- Completely removes the ‘Cooperative Housing License’ requirements within Title 10, “Structures,” in the BRC, which are a permitting process to request more than five unrelated persons in a dwelling unit and up to 12 with special approval.
- Clarifies that a condition or other requirement in any prior approvals under Title 9, Land Use Code, that may have restricted occupancy based on unrelated persons would no longer apply and would be superseded by the updated regulations to comply with H.B.24-1007;
- Removes references to occupancy in the land use code related to congregate care, custodial care facilities, residential care facilities, and group homes to avoid conflicts with state law for any units that may be considered a “single dwelling” (e.g., a household living configuration). These uses will continue to be subject to applicable IPMC and International Building Code occupancy limitations.
- Moves enforcement provisions for occupancy from Title 9, Land Use Code, to Title 10, Structures, because that is where occupancy standards will be located.
- Updates references and definitions for ‘single-family dwellings’ and ‘multi-family dwellings’ to be ‘detached dwelling units’ and ‘multi-unit dwellings’ consistently throughout the code. This aligns with terminology used in recent state bills on housing and advances city goals reflected in the Sustainability, Equity and Resilience (“SER”) Framework.

**Attachment A** contains the annotated version of the ordinance and **Attachment B** is the ordinance proposed for adoption.

### ANALYSIS

Staff has identified the following key issues to help guide the City Council’s discussion:

1. Does City Council recommend any modifications to the draft ordinance?

The following analysis is provided to demonstrate how the project objective is met through the proposed ordinance.

*What is the reason for the ordinance and what public purpose will be served?*

This ordinance has been drafted in response to recent state legislation. The occupancy changes in Ordinance 8651 will ensure that the health and safety standards in the International Property Maintenance Code are used to regulate maximum occupancy of dwelling units rather than basing occupancy on number of unrelated persons.

The change is intended to open up more housing opportunities in municipalities to help mitigate the ever-growing cost of housing. Allowing more unrelated occupants within units offers a wider variety of housing types and sizes.

*Are there consequences in denying this ordinance?*

The changes in the ordinance are intended to address the new state legislation. Not updating the land use code relative to occupancy would create inconsistencies with the state law, create confusion in the community on what occupancy limitations apply to dwelling units, create a risk of litigation alleging violation of or preemption by state legislation, and ambiguity on what is considered compliant.

*What adverse effects may result with the adoption of this ordinance?*

An increase in the number of people that are unrelated within dwelling units could potentially increase parking demand on sites and areas where there is insufficient off-street parking, since there may be fewer instances of car sharing. In turn, a large family within a dwelling unit (permissible under the current land use code) could present commensurate or even larger parking impacts than a dwelling unit occupied by unrelated people. Residential parking impact is something that is being evaluated as part of the current Access Management Parking Strategy project, which is slated to be completed in mid-2025. Beyond the potential for additional intensity on some sites from increased occupancy, staff does not anticipate adverse effects will result from the adoption of this ordinance.

*What factors are influencing the timing of the proposed ordinance? Why?*

HB24-1007 related to occupancy established July 1, 2024, as the effective date. It does not have a stated deadline for which municipalities must update their zoning to comply. Updating the occupancy regulations at this time will help to make the regulations clear to property owners and rental property management companies that market properties and prepare leases. The Colorado Department of Local Affairs considers jurisdictions that do not enforce occupancy standards that are inconsistent with the bill as complying with the bill.

*How does the ordinance compare to practices in other cities?*

This ordinance will align Boulder’s requirements with the recent state legislation. The state bill states that it applies to any “*home rule or statutory city, home rule or statutory county, town, territorial charter city, or city and county.*”

*How will this ordinance implement the comprehensive plan?*

This project implements several relevant policies noted below. Allowing more occupants within units offers a wider variety of housing types and sizes consistent with the policies below.

- **Growth Management Policy 1.11 Jobs: Housing Balance**  
Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the

balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.

➤ **Built Environment Policy 2.10: Preservation & Support for Residential Neighborhoods**

The city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock. The city will also work with neighborhoods to identify areas for additional housing, libraries, recreation centers, parks, open space or small retail uses that could be integrated into and supportive of neighborhoods. The city will seek appropriate building scale and compatible character in new development or redevelopment, appropriately sized and sensitively designed streets and desired public facilities and mixed commercial uses. The city will also encourage neighborhood schools and safe routes to school.

➤ **Housing Policy 7.01: Local Solutions to Affordable Housing**

The city and county will employ local regulations, policies and programs to meet the housing needs of low, moderate and middle-income households. Appropriate federal, state and local programs and resources will be used locally and in collaboration with other jurisdictions. The city and county recognize that affordable housing provides a significant community benefit and will continually monitor and evaluate policies, processes, programs and regulations to further the region's affordable housing goals. The city and county will work to integrate effective community engagement with funding and development requirements and other processes to achieve effective local solutions.

➤ **Housing Policy 7.07: Mixture of Housing Types**

The city and county, through their land use regulations and housing policies, will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities to meet the housing needs of the low-, moderate- and middle-income households of the Boulder Valley population. The city will encourage property owners to provide a mix of housing types, as appropriate. This may include support for ADUs/OAUs, alley houses, cottage courts and building multiple small units rather than one large house on a lot.

➤ **Housing Policy 7.08: Preserve Existing Housing Stock**

The city and county, recognizing the value of their existing housing stock, will encourage its preservation and rehabilitation through land use policies and regulations. Special efforts will be made to preserve and rehabilitate existing housing serving low-, moderate- and middle-income households. Special efforts will also be made to preserve and rehabilitate existing housing serving low-, moderate- and middle-income households and to promote a net gain in affordable and middle-income housing.

➤ **Housing Policy 7.10: Housing for a Full Range of Households**

The city and county will encourage preservation and development of housing attractive to current and future households, persons at all stages of life and abilities, and to a variety of household incomes and configurations. This includes singles, couples, families with children and other dependents, extended families, non-traditional households and seniors.

➤ **Housing Policy 7.11: Balancing Housing Supply with Employment Base**

The Boulder Valley housing supply should reflect, to the extent possible, employer workforce housing needs, locations and salary ranges. Key considerations include

housing type, mix and affordability. The city will explore policies and programs to increase housing for Boulder workers and their families by fostering mixed-use and multi-family development in proximity to transit, employment or services and by considering the conversion of commercial- and industrial-zoned or -designated land to allow future residential use.

➤ **Housing Policy 7.17: Market Affordability**

The city will encourage and support efforts to provide market rate housing priced to be more affordable to middle-income households by identifying opportunities to incentivize moderately sized and priced homes.

➤ **Local Governance & Community Engagement Policy 10.01: High-Performing Government**

The city and county strive for continuous improvement in stewardship and sustainability of financial, human, information and physical assets. In all business, the city and county seek to enhance and facilitate transparency, accuracy, efficiency, effectiveness and quality customer service. The city and county support strategic decision-making with timely, reliable and accurate data and analysis.

**NEXT STEPS**

Second Reading and public hearing of proposed Ordinance 8651 is scheduled for March 6, 2025. Council can choose whether to adopt this ordinance or not.

**ATTACHMENTS**

Attachment A: Annotated Ordinance 8651

Attachment B: Proposed Ordinance 8651

ANNOTATED ORDINANCE 8651

AN ORDINANCE AMENDING TITLE 1, "GENERAL ADMINISTRATION," TITLE 4, "LICENSES AND PERMITS," TITLE 5, "GENERAL OFFENSES," TITLE 9, "LAND USE CODE," AND TITLE 10, "STRUCTURES," B.R.C. 1981, TO AMEND RESIDENTIAL OCCUPANCY STANDARDS TO COMPLY WITH COLORADO HOUSE BILL 24-1007, CONCERNING RESIDENTIAL OCCUPANCY LIMITS , AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 1-2-1, "Definitions," B.R.C. 1981, is amended to read as follows:

**1-2-1. - Definitions.**

- (a) The definitions in this chapter apply throughout this code unless a term is defined differently in a specific title, chapter or section.
- (b) The following words used in this code and other ordinances of the City have the following meanings unless the context clearly indicates otherwise:

*Dwelling unit, detached* means a detached principal building other than a mobile home, designed for or used as a dwelling with no more than one dwelling unit within a structure.

*Duplex* means a structure containing only two dwelling units.<sup>1</sup>

*Family* means the heads of household plus the following persons who are related to the heads of the household: parents and children, grandparents and grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, first cousins, the children of first cousins, great grandchildren, great grandparents, great great grandchildren, great great grandparents, grandnieces, grandnephews, great aunts and great uncles. These relationships may be of the whole or half blood, by adoption, guardianship, including foster children, or through a marriage or a domestic partnership meeting the requirements of chapter 12-4, "Domestic Partners," B.R.C. 1981, to a person with such a relationship with the heads of household.

<sup>1</sup> As Title 1 includes definitions about dwelling unit types, other types of dwellings from Title 9, Land Use Code, are also listed here. The definitions match those in Title 9.

*Multi-unit dwelling* means a building of two or more dwelling units but not including motels, hotels, and detached dwelling units...

<sup>2</sup>

*Rooming house* means an establishment where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is offered for one month or more for three or more roomers living independently within rooming units.

*Rooming unit* means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and studying, and that may include a private bath but does not include a sink or any cooking device.

*Townhouse* means an attached dwelling unit located or capable of being located on its own lot, and separated from adjoining dwelling units by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit.

Section 2. Section 4-4-4, "Classification of Licenses," B.R.C. 1981, is amended to read as follows:

**4-4-4. Classification of Licenses.**

- (a) A Class A license entitles the licensee to contract for the construction, alteration, wrecking, or repair of any type or size of building or structure permitted by the City of Boulder Building Code. The annual fee for a Class A license is that prescribed in Section 4-20-4, "Building Contractor License, Building Permit Fees, and Payment of Estimated Use Tax," B.R.C. 1981.
- (b) A Class B license entitles the licensee to contract for the construction, alteration, wrecking, or repair of all commercial and residential buildings or structures defined as Type V, Type V-1 hour, Type IV, Type II-N, and Type III-N in the City of Boulder Building Code.<sup>3</sup> The

<sup>2</sup> This definition in Title 1 included the anticipated occupancy requirements from years ago and thus, is being removed. The limitations are also inconsistent with the recent state law.

<sup>3</sup>Chapter 10-5, "Building Code," B.R.C. 1981.

annual fee for a Class B license is that prescribed in Section 4-20-4, "Building Contractor License, Building Permit Fees, and Payment of Estimated Use Tax," B.R.C. 1981.

(c) A Class C license entitles the licensee to contract for:

(1) The construction, alteration, wrecking, or repair of any R-3 occupancies or of R-1 occupancies, as defined in the City of Boulder Building Code, Chapter 10-5, "Building Code," B.R.C. 1981, of two stories or less not involving reinforced concrete construction; and

(2) The repair of nonresidential buildings not involving load-bearing structures. But this Class C license does not entitle the holder to contract for construction, alteration, or repair of public buildings or places of public assembly, nor for nonresidential projects whose total value of the labor and material exceeds \$5,000. The annual fee for a Class C license is that prescribed in Section 4-20-4, "Building Contractor License, Building Permit Fees, and Payment of Estimated Use Tax," B.R.C. 1981.

(d) A Class D license entitles the licensee to contract for labor or for labor and materials involving only one trade, these trades will be identified as listed below:

D-1.	Moving and wrecking of structures
D-2.	Roofing
D-3.	Siding
D-4.	Landscaping, irrigation, and site work
D-5.	Detached one-story garage and sheds accessory to detached dwelling units <sup>4</sup>
D-6.	Mobile home installer
D-7.	Elevator and escalator installer
D-8.	Class not identified above but requiring a building permit and inspection
D-9.	Rental housing inspector

<sup>4</sup> As the state has prompted local governments to not regulate occupancy based on familial relationships, it also has been using dwelling unit terminology that removes the term "family" from any unit type. For instance, multi-family is now termed multi-unit and single-family is either single-unit or detached dwelling unit. Other local governments have been making that change. Therefore, this ordinance makes this change throughout the Boulder Revised Code and the primary reason for the length of the ordinance and number of sections being changed.

Section 3. Section 4-13-4, "Classification of Licenses," B.R.C. 1981, is amended to read as follows:

**4-13-4. Classifications of Licenses.**

- (a) A Class A license entitles the licensee to undertake or perform any work covered by the city mechanical code. The annual fee for a Class A license is that prescribed by section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.
- (b) A Class B license entitles the licensee to undertake or perform work covered by the mechanical code for commercial and dwelling units except for work associated with sections 507 and 508 and the following occupancies "H" and "I" as defined in the city mechanical code. The annual fee for a Class B license is that prescribed by section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.
- (c) A Class C license entitles the licensee to undertake or perform work covered through the city mechanical code for detached dwelling units and duplexes. The annual fee for a Class C license is that prescribed by section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.
- (d) A Class D license entitles the licensee to undertake or perform work covered by sections 507 and 508 of the city mechanical code. The annual fee for a Class D license is that prescribed by section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.
- (e) A Class E license entitles the licensee to undertake or perform boiler, water heaters and hydronics covered in chapters 10 and 12 of the city mechanical code. The annual fee for a Class E license is that prescribed by Section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.

Section 4. Section 4-20-4(f), "Building Contractor License, Building Permit Fees, and Payment of Estimated Use Tax.," B.R.C. 1981, is amended to read as follows:

- (f) Other fees are as follows:

	<i>Permit</i>	<i>Fee</i>
(1)	Demolition Permit	
	(A) Interior/nonloadbearing	\$ 24.55
	(B) All other	\$173.70
(2)	Fence Permit and Retaining Wall Permit	\$4.05 for each \$100 (No maximum)
(3)	Temporary Event Permit Fee	\$28.05



(4)	Reinspection Fee	\$94 per occurrence (Payable before any further inspections can be done.)
(5)	Change of Use Fee	\$81 (Can be credited to building permit fee if permit applied for and paid within ninety days.)
(6)	After Hours Inspection	\$123 per hour - two-hour minimum
(7)	Plan Check Fee (due at time of permit application):	
	(A) Residential, detached dwelling units in the RR-1, RR-2, RE, RL-1, RMX-1; and detached dwelling units in RL-2 on lots larger than 8,000 square feet and that are not within the boundaries of a planned development, planned residential development, planned unit development, or an approved site review; or shown on Appendix H of Title 9, Land Use Code	Fifty percent of the building permit fee
	(B) All other residential, detached dwelling units not covered by (A) above	Twenty-five percent of the building permit fee
	(C) Residential, multi-unit dwellings	Sixty-five percent of the building permit fee
	(D) Nonresidential	Sixty-five percent of the building permit fee
(8)	Energy Code Calculation Fee:	
	Heat Loss Calculation Check Fee:	
	(A) Residential	\$ 83.90
	(B) Commercial	\$104.05
(9)	Reinstatement of Permit	Fifty percent of Building Permit Fee (Energy Fee will not be charged if no further review is required.)
(10)	Temporary Certificate of Occupancy	\$173.70

(11)	Replacement of Lost Plans/New Red-lines:	
	(A) Residential/tenant finish	\$116.60 plus cost of reproduction
	(B) Commercial - New	\$347.60 plus cost of reproduction
(12)	Gasoline Tank Installations	\$69.54
(13)	House Moving Permit	\$58.50
(14)	Grading Fees:	
	(A) Grading Plan Review Fees:	
	(i) Fifty cubic yards or less No fee	
	(ii) Fifty-one through one hundred cubic yards \$18.65	
	(iii) One hundred one through one thousand cubic yards \$28	
	(iv) One thousand one through ten thousand cubic yards \$37.30	
	(v) Ten thousand one through one hundred thousand cubic yards - \$37.30 for the first ten thousand cubic yards, plus \$18.65 for each additional ten thousand yards or fraction thereof.	
	(vi) One hundred thousand one through two hundred thousand cubic yards - \$205.60 for the first one hundred thousand cubic yards, plus \$11.15 for each additional ten thousand cubic yards or fraction thereof.	
	(vii) Two hundred thousand one cubic yards or more - \$317.45 for the first two hundred thousand cubic yards, plus \$5.55 for each additional ten thousand cubic yards or fraction thereof.	
	(viii) Additional plan review required by changes, additions, or revisions to approved plans - \$51.30 per hour (minimum charge—one-half hour).	
	(B) Grading Permit Fees:	
	(i) Fifty cubic yards or less \$18.65	
	Fifty-one through one hundred cubic yards \$28	

	(ii) One hundred one through one thousand cubic yards - \$28 for the first one hundred cubic yards plus \$12.60 for each additional one hundred cubic yards or fraction thereof.
	(iii) One thousand one through ten thousand cubic yards - \$145.70 for the first one thousand cubic yards, plus \$11.15 for each additional one thousand cubic yards or fraction thereof.
	(iv) Ten thousand one through one hundred thousand cubic yards - \$246.50 for the first ten thousand cubic yards, plus \$50.25 for each additional ten thousand cubic yards or fraction thereof.
	(v) One hundred thousand one cubic yards or more - \$700.30 for the first one hundred thousand cubic yards, plus \$28 for each additional ten thousand yards or fraction thereof.
The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.	

Section 5. Section 4-20-8, “Electrical Contractor Registration and Electrical Permit Fees,” B.R.C. 1981, is amended to read as follows:

**4-20-8. Electrical Contractor Registration and Electrical Permit Fees.**

- (a) For each electrical permit, the following fees shall be paid in addition to the fees established for building permits under Section 4-20-4, "Building Contractor License, Building Permit Fees, and Payment of Estimated Use Tax," B.R.C. 1981:

- (1) **Permit fees.**

- (A) Residential (one- and two-unit dwellings, and townhouses, new construction, extensive remodeling, and additions [based on enclosed living area]):

<i>Size</i>	<i>Fee</i>
Less than 500 square feet	\$36.70
500 through 999 square feet	51.75
1,000 through 1,499 square feet	69.60

1,500 through 1,999 square feet	90.25
2,000 square feet or more	90.25 plus \$5.90 per 100 square feet over 2,000 square feet

- (B) Residential Service Change \$36.70
- (C) Photovoltaic/Thermal System Permit \$69.60
- (2) All other fees (including, without limitation, commercial construction and multi-unit dwelling) based on the total cost of the electrical installations, including labor and electrical materials and items except as provided in Paragraphs (a)(3) and (a)(4) of this section:

<i>Value</i>	<i>Fee</i>
\$300 or less	\$ 42.85
\$300.01 through \$3,000	50.90
\$3,000.01 and up	19.60 per \$1,000 of total valuation or fraction thereof
Photovoltaic/Thermal System Permit	139.20

- (3) Mobile Home Spaces \$42.85 per space
- (4) Temporary Construction Power Permit \$36.40
- (b) The reinspection fee is \$94 per occurrence.
- (c) The after-hours inspection fee is \$123 per hour, with a two-hour minimum.
- (d) The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Section 6. Section 4-20-43, "Development Application Fees," B.R.C. 1981, is amended to read as follows:

**4-20-43. Development Application Fees.**

(b) Land use regulation fees:

- (1) Applicant for a blue line amendment shall pay \$524.
- (2) An applicant for zoning of land to be annexed shall pay the following fees:

Feasibility study

Annexation feasibility study \$2,100 ;b23; (Will apply as credit to initial annexation application fee if submitted within the same calendar year.)

Simple Residential Detached Dwelling Unit

Initial application \$5,000

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied) \$2,500

Standard

Initial application \$15,000

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied) \$7,500

Complex

Initial application \$20,000

Each additional annexation agreement \$2,500

Reapplication for same type of revision on same property within six months (if initial application is withdrawn or denied) \$10,000

Section 7. Section 4-20-44, "Cooperative Housing License Fee," B.R.C. 1981, is amended to read as follows:

**4-20-44. Floodplain Development Permits and Flood Control Variance Fees.**

- (a) If the floodplain development permit is for a development not located within the conveyance zone:
  - (1) An applicant for a floodplain development permit for the construction of a fence, or for flatwork, shall pay \$35.
  - (2) An applicant for a floodplain development permit for construction of a shed, garage, deck, or for interior or exterior "rehabilitation" as defined in Section 9-16-1, "General Definitions," B.R.C. 1981, of an existing structure shall pay \$85.

- (3) An applicant for a floodplain development permit for improvements or additions to an existing structure not meeting the thresholds for "substantial damage," "substantial improvement" or "substantial modification" as defined in Section 9-16-1, "General Definitions," B.R.C. 1981, shall pay \$350.
- (4) An applicant for a floodplain development permit for work on an existing residential structure exceeding the threshold for "substantial damage," "substantial improvement" or "substantial modification" as defined in Section 9-16-1, "General Definitions," B.R.C. 1981, or any new residential, commercial, or mixed-use structure elevated to flood protection elevation shall pay \$700.
- (5) An applicant for a floodplain development permit for an addition to an existing structure, "substantial improvement," "substantial modification" or construction of a new structure with "floodproofing" as that term is defined in Section 9-16-1, "General Definitions," B.R.C. 1981, shall pay \$3,675.
- (b) If the floodplain development permit is for a development located within the conveyance zone or the floodway:
- (1) An applicant for a floodplain development permit where a floodplain analysis is not required shall pay \$700.
- (2) An applicant for a floodplain development permit where the city manager, pursuant to Paragraph 9-3-6(b)(3), B.R.C. 1981, requires the applicant to furnish a floodplain analysis, the applicant shall pay \$3,600.
- (c) An applicant for a floodplain development permit for an emergency operations plan shall pay:
- (1) \$700 for an evacuation plan.
- (2) \$1,400 for a shelter-in-place plan.
- (d) An applicant for a floodplain development permit for a hazardous materials facility shall pay \$700 for containment of hazardous materials or shall apply for elevation or floodproofing permits as described above.
- (e) An applicant for a floodplain map revision shall pay:
- (1) \$700 for a map revision that involves fill.
- (2) \$3,600 for a map revision that includes a floodplain analysis.
- (f) An applicant for a variance from the floodplain regulation provisions of Section 9-3-7, "Variances," B.R.C. 1981, shall pay \$1,400.
- (g) An applicant shall pay a revision fee of twenty-five percent of the application fee for review of revisions to items (a) through (f) of this section.
- (h) An applicant for a floodplain information request shall pay \$28 for each address.

Section 8. Section 4-20-69, "Cooperative Housing License Fee," B.R.C. 1981, is

amended to read as follows:

**4-20-69. Reserved.**<sup>5</sup>

Section 9. Section 4-22-6, "Conveyances to Which Chapter Not Applicable," B.R.C.

1981, is amended to read as follows:

**4-22-6. Conveyances to Which Chapter Not Applicable.**

Nothing in this chapter applies to the installation or operation of an elevator, dumbwaiter, materials lift, escalator or moving walk in a private residence. For purposes of this chapter, the term *private residence* means a dwelling unit regulated under the Residential Code of the City of Boulder. .

Section 10. Section 4-23-2, "Permit Issuance," B.R.C. 1981, is amended to read as follows:  
**4-23-2. Permit Issuance.**

- (a) Upon designation of a neighborhood permit parking zone pursuant to Section 2-2-15, "Neighborhood Permit Parking Zones," B.R.C. 1981, the city manager shall issue parking permits for vehicles owned by or in the custody of and regularly used by residents of such zone, by persons employed by a business located within such zone, and, if provided in the zone, by individual nonresidents upon receipt of a completed application therefor and payment of the fees prescribed in Section 4-20-49, "Neighborhood Parking Permit Fee," B.R.C. 1981.
- (b) A vehicle displaying a valid permit or, for digital permits, with a valid permit in effect issued pursuant to this section may be parked in the zone specified in the permit without regard to the time limits prescribed for the zone.
- (c) Resident Permits. No more than two resident permits shall be in effect at any time for any person. No person shall be deemed a resident of more than one zone, and no more than one permit may be issued for any one vehicle even if persons residing in different zones share ownership or use.

<sup>5</sup> The coop sections of the code are based on allowing occupancies above five unrelated persons with special approval. This conflicts with the state law and thus, all coop sections are proposed for removal from the Boulder Revised Code. Occupancy within units would just have to meet the current International Property Maintenance Code (IPMC) occupancy limits that are based on established life safety standards as noted in the state law.

- (d) Resident permits issued under this section shall be specific for a single vehicle, shall not be transferred, and shall be displayed thereon only as the manager by regulation may prescribe. The permittee shall remove the permit from the vehicle if the vehicle is sold, leased or no longer in the custody of the permittee.
- (e) Business Permits. Business, for the purpose of this chapter, includes nonresidential institutions, but does not include home occupations. Three business employee permits may be in effect at any time for any business without regard to number of employees or off-street parking. In the alternative, upon application by the manager of the business, the city manager may issue employee permits to a business according to the following formula: half of the number of full-time equivalent employees minus the number of off-street parking spaces under the control of the business at that location equals the maximum number of employee permits for the business. Full-time equivalent employees of the business are calculated based upon one such employee for every full forty hours worked at that location by employees of the business within the periods of time in a week during which the neighborhood permit parking restrictions are in effect. On its application, the employer shall designate the employee vehicles, not to exceed the number allowed, for which each permit is valid. A business permit is valid only for the vehicles listed thereon, and shall be displayed on the vehicle for which the permit is being used only as the manager by regulation may prescribe.
- (f) The manager shall by regulation declare when the permit year shall begin for each neighborhood parking permit zone. Permits issued based on new applications submitted during the last month of a permit year shall also be valid for the succeeding permit year. Otherwise there shall be no proration of the fee.
- (g) In considering applications for resident permits, the manager may require proof that the applicant has a legal right to possession of the premises claimed as a residence. If the manager has probable cause to believe that the occupancy limitations of Subsection 9-8-5(a), B.R.C. 1981, are being violated, no further permits shall be issued under this section for the residence in question until the occupancy thereof is brought into compliance.
- (h) If the permit or the portion of the vehicle to which a resident permit has been affixed is damaged such that it must be replaced, the permittee, upon application therefor, shall be issued a replacement at a prorated cost. The manager may require display of the damaged permit before a new permit is issued.
- (i) No person shall use or display any permit issued under this section in violation of any provision of this code.
- (j) Commuter Permits. The maximum number of nonresident permits issued on any given block face within a zone shall be four. In addition, if the manager determines that the average daily percentage of unoccupied neighborhood parking spaces, on block faces where commuter permits have been allocated, drops below twenty-five percent for four consecutive hours between the hours of 9:00 a.m. and 5:00 p.m. of any given weekday, then the manager shall reduce the number of commuter permits by a number estimated to maintain an average daily percentage of unoccupied neighborhood parking spaces of twenty-five percent. But for any part of Goss Street or Circle, Grove Street or Circle or the



portions of 16th Street through 23rd Street between Arapahoe Avenue and Canyon Boulevard, included within any neighborhood parking permit zone, the average daily percentage of unoccupied neighborhood parking spaces which must be maintained without reduction in commuter permits shall be fifteen percent. The manager may also, for this Goss-Grove zone, allocate commuter permits initially to educational institutions and organizations representing postal workers in rough proportion to the needs of these groups. Such groups may renew such permits. Distribution of such permits by such groups to their clientele shall be at a price not to exceed the cost of the permit.

Section 11. Section 4-23-3, "Guest Permits," B.R.C. 1981, is amended to read as

follows:

**4-23-3. Guest Permits.**

Residents of a zone may obtain two two-week permits per year at no cost for use by houseguests of the resident. The permit shall be indelibly marked in the space provided thereon with, or for digital permits shall indicate, the date of its first use. The permit shall thereafter be valid only for the succeeding thirteen consecutive days. The manager may by regulation define the circumstances under which additional guest permits may be issued in cases of reasonable need consistent with residential use of the dwelling.

Section 12. Section 4-30-3, "Permit Issuance," B.R.C. 1981, is amended to read as follows:

**4-30-3. Permit Issuance.**

- (a) Pursuant to Section 2-2-21, "Chautauqua Parking Management Plan," B.R.C. 1981 and unless delegated by regulation to Colorado Chautauqua Association, the city manager shall issue and manage parking permits for vehicles owned by or in the custody of and regularly used by residents and lodgers of such zone, by persons employed by a business located within such zone, and if available as determined by the city manager, by resident guests upon receipt of a completed application. The permits shall be effective during the Season each year.
- (b) A vehicle displaying a valid permit issued pursuant to this Section, may be parked in the zone specified in the permit without regard to the time limits prescribed for the zone. The city manager may provide for a mobile device system which does not require display of a permit.

- (c) The permit requirement shall begin during the Season each year. Permits issued based on new applications submitted during the last month of a permit period, shall also be valid for the succeeding permit year. Otherwise there shall be no proration of the fee.
- (d) Resident Permits. No more than two resident permits shall be in effect at any time for any cottage. No person shall be deemed a resident of more than one parking zone, and no more than one permit may be issued for any one vehicle, even if persons residing in different zones share ownership or use.
- <sup>6</sup>(e) Guest Permits. Residents may obtain a guest permit for use by their overnight guests. The permit shall be indelibly marked in the space provided, indicating dates of the visit and the license plate number of the guest vehicle, which shall not exceed two weeks. A guest permit shall not be used by a resident for their own vehicle. Such permit shall be issued to a resident demonstrating proof of residency who shall ensure that its use is consistent with the terms set forth in this Chapter and any other relevant rules or regulations. The number of available guest permits shall be determined by the city manager.
- (f) Lodger Permits. Lodger permits are only available to lodgers who rent cottages without off-street parking or rooms at lodges owned by Colorado Chautauqua Association.
- (g) Business Permits. Business permits are only available to businesses for issuance to their employees. The number of available business permits shall be determined by the city manager.
- (h) No person shall use or display any permit issued under this Section in violation of any provision of this code or associated rule or regulation.

Section 13. Section 5-9-2, "Definitions," B.R.C. 1981, is amended to read as follows:

### **5-9-2. Definitions.**

As used in this chapter, the following words are defined to mean:

*Commercial district* or *commercial zone* or *commercial* means any area zoned A, BCS, BMS, BC, MU, P, BT, BR or DT.

*Group living arrangement* means those group residencies in which one or more individuals live in a room or rooms of their own, but which contains common dining facilities and where decisions concerning the use of common areas for social events are shared among the individual residents. These include, without limitation, congregate or residential care facilities, rooming houses, dormitories, fraternities and sororities, as those terms are used in Title 9, "Land Use Code," B.R.C. 1981. These exclude buildings where people only reside temporarily such as hotels, motels or bed and breakfasts and buildings where each person resides in and controls a complete dwelling unit, including, multi-unit dwellings.

<sup>6</sup> Zoning related occupancy limits stated in Section 9-8-5 based on the number of unrelated persons will be going away so this section is no longer necessary.

*Industrial district or industrial zone or industrial* means any zoning district in the industrial classification of Table 5-1 in Section [9-5-2](#), B.R.C., 1981..<sup>7</sup>

*Light construction work* means work which uses only hand tools and power tools of no more than five horsepower, but not including power actuated fastening devices (e.g., nail guns).

*Residential district or residential zone or residential* means any zoning district in the residential classification of Table 5-1 in Section [9-5-2](#), B.R.C., 1981..<sup>8</sup>

*Zoned* means classified into one of the zoning districts specified in Section 9-5-2, "Zoning Districts," B.R.C. 1981, as shown on the zoning map adopted by Section 9-5-3, "Zoning Map," B.R.C. 1981. Each district includes all areas zoned under the same prefix (i.e., RL includes RL-1 and RL-2). If new districts are established without amendment to this section, it is intended that the new district be governed under this chapter as if in the existing district which it most closely resembles, and if it could as easily be in one category or another, that it be in the category with the lower allowable decibel levels.

Section 14. Section 6-1-12(b), "Damaging Prairie Dog Burrows Prohibited," B.R.C.

1981, is amended to read as follows:

**6-1-12. Damaging Prairie Dog Burrows Prohibited.**

- (a) Except as authorized by other provisions of this chapter, no person shall damage any prairie dog burrow.
- (b) It shall be an affirmative defense to a violation of this section that:
  - (1) The burrow was uninhabited when it was damaged;
  - (2) A state permitted relocater had, within the twelve previous months, attempted to relocate all prairie dogs utilizing that burrow, whether or not all those prairie dogs were successfully captured and relocated;
  - (3) The burrow was damaged by a person who owned, or was responsible for operating, an airport facility or by a person who was acting at the direction of the owner of an airport facility and the activity that damaged the burrow was necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;
  - (4) The burrow was damaged in connection with temporary disturbances caused by public or utility-related projects where such activities were conducted in conformity with best management practices within an area containing prairie dog habitat;

<sup>7</sup> This change simplifies the references to the existing industrial zoning districts. If new zones are every added, this section wouldn't have to be updated each time.

<sup>8</sup> This change simplifies the references to the existing residential zoning districts. If new zones are every added, this section wouldn't have to be updated each time.

- (5) The burrow was damaged by a person who owned, or was responsible for operating, a dam or other existing structure where the structural integrity or the safety of the dam or structure was threatened by the burrow or by burrowing;
- (6) The burrow was on the property of a detached dwelling unit in which the person who destroyed the burrow, or authorized its destruction, was residing;
- (7) Activities were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;
- (8) The burrow was damaged during the process of utilizing lethal means of control in conformity with the provisions of this chapter; or
- (9) The burrow was damaged in connection with an ongoing and continuous program approved by the city manager that was designed to prevent recolonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

Section 15. Section 6-1-36(h), “Procedures for Obtaining Prairie Dog Lethal Control Permits,” B.R.C. 1981, is amended to read as follows:

**6-1-36. Procedures for Obtaining Prairie Dog Lethal Control Permits.**

...

- (h) Owners or occupants of residential lots containing a detached dwelling unit may, at any time, obtain a lethal control permit to exterminate prairie dogs on their property. No fee shall be charged for such a lethal control permit and no waiting period longer than that period of time reasonably required to process an application shall be required.
- (1) The intent of the permit process for such residential lots is to provide a mechanism for the city to monitor prairie dog populations and related ecological issues within its boundaries while allowing owners or occupants of small residential lots to respond to the presence of unwanted wildlife.
- (2) Applications for a lethal control permit for such residential lots shall be approved upon receipt of the following information:
  - (A) Address of the subject property;
  - (B) The name and telephone number of the applicant;
  - (C) The date of application;
  - (D) A demonstration of compliance with any applicable state and federal regulations pertaining to the utilization of lethal control measures; and

- (E) Such other information as the manager may require to adequately evaluate such requests, their purposes, and the expected outcomes of the use of lethal control measures.
- (3) Lots containing multi-unit residential structures shall not qualify for treatment under this subsection.

Section 16. Section 6-3-3, “Accumulation of Trash, Recyclables, and Compostables

Prohibited,” B.R.C. 1981, is amended to read as follows:

**6-3-3. Accumulation of Trash, Recyclables, and Compostables Prohibited.**

- (a) No owner of any vacant land or property; occupant, owner, or manager of any detached dwelling unit or similar property; owner, manager, or operator of any multi-unit dwelling, private club, or similar property; or owner, operator, manager, or employee of any commercial or industrial establishment or similar property shall fail to:
  - (1) Prevent the accumulation of trash, recyclables, and compostables that are visible to the public on such property and on the public right-of-way adjacent to the property;
  - (2) Remove trash, recyclables, and compostables located on such property and on the public right-of-way adjacent to the property;
  - (3) Remove trash frequently enough so that it does not cause putrid odors on the property;
  - (4) Remove or repair broken or damaged windows located on such property.  
However, it shall be an affirmative defense to a violation of this provision that a person is a tenant who, under the terms of the tenancy, is not responsible for the maintenance of that property and who failed to address a particular maintenance issue for that reason;
  - (5) Remove accumulated newspapers or other periodical publications from such property when such accumulated newspapers or publications are visible to the public and remain so for a period of more than twenty-four hours. It shall be an affirmative defense to any alleged violation of this paragraph that no more than three such newspapers or periodicals were accumulated for each residential unit or each business entity located on the property and that no newspaper or periodical more than three days old is located on the property; and
  - (6) Sufficiently bundle or contain recyclable materials so that those materials are not scattered onto the public right-of-way or onto other properties.
- (b) No owner of any property shall fail to maintain in effect a current and valid contract with one or more haulers providing for the removal of accumulated trash, recyclables and compostables from the property, which contract shall provide for sufficient trash, recyclables and compostable materials hauling to accommodate the regular accumulation of trash, recyclables and compostables from the property. Properties containing one or more

rental dwelling units shall maintain a contract for the collection of trash no less frequently than on a biweekly basis.

- (c) No property owner or contractor in charge of any construction site or responsible for any construction activity shall fail to:
  - (1) Prevent trash from being scattered onto the public right-of-way or onto other properties; and
  - (2) Ensure that all trash generated by construction and related activities or located on the site of construction projects is picked up at the end of each workday and placed in containers sufficient to prevent such trash from being scattered onto the public right-of-way or onto other properties.
- (d) No owner, operator, or manager of any restaurant, brewpub, tavern, or any other business shall fail to:
  - (1) Prevent trash from being scattered from the business property onto the public right-of-way or onto other properties; and
  - (2) Remove or cause to remove immediately after closing all trash located on an outdoor seating area of the establishment and on the public right-of-way adjacent to the establishment.
- (e) If the city manager finds a violation of any provision of this section, the manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may impose a civil penalty according to the following schedule:
  - (1) For the first violation of the provision, \$100;
  - (2) For the second violation of the same provision, \$250;
  - (3) For the third violation of the same provision, \$500; and
  - (4) The hearing officer may adjust the penalty, based on evidence presented at a hearing.
- (f) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, including but not limited to Section 5-2-4, "General Penalties," B.R.C. 1981, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.
- (g) Notice under this subsection is sufficient if hand delivered, emailed, mailed, or telephoned to such person, or by posting on the premises.

Section 17. Section 6-3-4, "Containers Required," B.R.C. 1981, is amended to read as follows:

**6-3-4. Containers Required.**

No owner or occupant of any detached dwelling unit; owner or manager of any multi--unit dwelling or private club; or owner, operator, or manager of any business; or any similar property shall fail to provide at all times one or more trash containers on such property. Such containers shall be of a size sufficient to accommodate the regular accumulation of trash from the property.

Section 18. Section 6-3-12, "Bear-Resistant Containers Required," B.R.C. 1981, is amended to read as follows:

**6-3-12. Bear-Resistant Containers Required.**

- (a) No private owner, agent appointed pursuant to Section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult occupant of a detached dwelling unit, a duplex, a triplex, or a fourplex shall fail to keep all refuse attractants in bear resistant enclosures, in bear resistant containers, bear resistant dumpsters or securely stored within a house, garage, shed or other structure at least as secure as a bear resistant enclosure at all times, except when being transported from a house, garage or bear resistant enclosure for pickup. Refuse attractants transported for pickup not in a bear resistant container shall be attended, by a person remaining within 15 feet of the container at all times. It is not a defense to a violation of this section that a container or enclosure was damaged and the owner had not received the notice under subsection (d) below.
- (b) No person shall place into the public right-of-way or front yard setback any bear-resistant container that is not securely closed, regardless of whether it contains refuse attractants.
- (c) This section shall apply to the area bounded by Broadway Street, the city's southern boundary, the city's western boundary and a line extended from Sumac Avenue due west through Wonderland Lake Park. Provided that the city manager may extend the area by rule adopted pursuant to Section 6-3-11 "City Manager Authorized to Issue Rules," B.R.C. 1981.
- (d) No private owner, agent appointed pursuant to Section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult occupant of a detached dwelling unit, a duplex, a triplex, or a fourplex shall fail to repair a damaged container or enclosure within seventy-two hours after written notification by any city official, or such other time designated in the notice by the city official.
- (e) If the city manager finds a violation of any provision of this section, the manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may impose a civil penalty according to the following schedule:

- (1) For the first violation of the provision, \$100.00;
  - (2) For the second violation of the same provision, \$250.00;
  - (3) For the third violation of the same provision, \$500.00; and
  - (4) The hearing officer may adjust the penalty, based on evidence presented at a hearing.
- (f) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, including but not limited to Section 5-2-4, "General Penalties," B.R.C. 1981, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.
- (g) The city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.
- (h) Notice under this subsection is sufficient if hand delivered, emailed, mailed, or telephoned to such person, or by posting on the premises.

Section 19. Section 6-4-9, "Entryway," B.R.C. 1981, is amended to read as follows:

**6-4-9. Entryway.**

- (a) No person shall smoke within any entryway of a building, enclosed area, or common entrance to a multi-unit dwelling, except a detached dwelling unit.
- (b) No owner, principal manager, proprietor, or any other person in control of a business shall fail to ensure compliance of this section by subordinates, employees, and agents.

Section 20. Section 6-10-11(g), "Pre-Application Notification of Airborne Application," B.R.C. 1981, is amended to read as follows:

**6-10-11(g). Pre-Application Notification of Airborne Application.**

- (g) If a commercial property or an attached (i.e., multi-unit) residential dwelling is located adjacent to property on which an airborne application of any pesticide is to occur as set forth above, no contracting party or other user of pesticides shall fail to make a reasonable attempt to notify the owner or manager of the property at least forty-eight hours prior to the pesticide application. Upon receipt of such notice, such owner or manager shall not fail to post in a prominent place the information that the adjacent property will be treated.



Section 21. Section 6-12-2, "Definitions," B.R.C. 1981, is amended to read as follows:

Multi-unit customer means the residents, taken together, of a residential building or set of residential buildings that uses a collective, common system for the collection of trash generated by the residents.

Section 22. Section 6-12-5, "Disposition of Recyclable or Compostable Materials," B.R.C. 1981, is amended to read as follows:

**6-12-5. Containers for Recycling or Composting Collection.**

- (a) Haulers providing trash collection service to multi-unit customers through centralized collection areas shall provide containers for recyclable materials at no additional charge. Containers shall be of a sufficient size to accommodate the regular accumulation of recyclables from that customer, but, at a minimum, such containers shall be of a volume equal to one-half of the volume of the trash collection service. If the city manager requires the collection of compostables, haulers shall provide containers for that service of a sufficient size to accommodate the regular accumulation of compostables from that customer.
- (b) Haulers providing trash collection service to residential customers are not required to provide recyclables or compostables containers. However, if the hauler requires a specific type of container, then the hauler shall deliver such container at no cost to the residential customer. This provision does not apply to any container required by the city pursuant to Section 6-3-12, "Bear-Resistant Containers," B.R.C. 1981.

Section 23. Section 6-12-6, "Disposition of Recyclable or Compostable Materials," B.R.C. 1981, is amended to read as follows:

**6-12-6. Disposition of Recyclable or Compostable Materials.**

- (a) No person other than the person placing the recyclables or compostables for collection or that person's designated hauler shall take physical possession of any recyclables or compostables separated from trash, set out in the vicinity of the curb or alleys, and plainly marked for recyclables or compostables collection.
- (b) Each property owner, property manager, residential customer, commercial customer, or multi-unit customer shall relinquish recyclable materials to a hauler only on the condition that the hauler deliver the recyclable materials only to a recyclables processing center as set forth in subparagraph (c) below.
- (c) It shall be presumed that each property owner, property manager, residential customer, commercial customer or multifamily customer has designated both single stream and source-separated, clean fiber recyclable materials as defined by city manager rules to be hauled to the recyclables processing center owned by Boulder

County or its successor in interest ("Boulder County Recycling Center"). The City Manager may designate conditions under which the presumption in this subsection (c) shall not apply with respect to source-separated, clean fiber recyclable materials.

- (d) Haulers shall take all compostable materials collected to a compost facility that is in compliance with state composting regulations and can certify that the material is processed into a compost or biogas product. Alternatively, haulers may deliver compostable materials to a facility that repurposes the materials for beneficial uses, such as feeding animals, if the facility is in compliance with all federal, state and local laws. Haulers shall maintain receipts and records for a period of five years. Upon request by any customer or the city manager, haulers shall produce receipts from the facility utilized.

Section 24. Section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, is amended to read as follows:

**7-6-14. Unauthorized Parking Prohibited.**

- (a) No vehicle shall be parked upon any public or private property without the express or implied consent of the owner, lessee or occupant of the property or for a time period in excess of or in a manner other than that for which consent was given by such person.
- (b) For the purposes of this section, there is an implied consent to park in areas set aside for parking on any private or public property except on property used as a detached dwelling unit, but such implied consent is deemed revoked with respect to any person who has parked a vehicle or has allowed a vehicle to remain parked in disregard of or contrary to the direction or intended function of any of the following:
- (1) A parking attendant, a card or coin-operated gate or any other means calculated to bar or otherwise control entrance onto or use of the property by unauthorized vehicles;
  - (2) Parking meters or pay stations located on the property;
  - (3) Signs or pavement markings located on the property indicating a limitation or prohibition on parking thereupon or that a parking fee must be paid, if the signs or markings:
    - (A) Clearly indicate, in not less than one-inch-high lettering on a sign or twelve-inch-high lettering or symbols on the pavement, the limitation, prohibition or fee schedule and method of payment;
    - (B) Are located in or near the area where the limitation, prohibition or fee applies; and
    - (C) Are located so as to be seen by an ordinarily observant person; or
  - (4) Any other method of express revocation of implied consent communicated directly to the owner or driver of the vehicle by the owner of the property or the owner's authorized agent.

Section 25. Section 7-6-24, “All-Night Parking of Commercial Vehicle, Camper or Motor Home, or Trailer Prohibited,” B.R.C. 1981, is amended to read as follows:

**7-6-24. All-Night Parking of Commercial Vehicle, Camper or Motor Home, or Trailer Prohibited.**

- (a) No commercial vehicle shall be parked on any street in any district of the city zoned RR-1, RR-2, RE, RL-1, RL-2, RM-1, RM-2, RM-3, RMX-1, RMX-2, RH-1, RH-2, RH-3, RH-4, RH-5, RH-6, RH-7<sup>9</sup>, MH, P, or A for more than thirty minutes between 8 p.m. and 7 a.m. The penalty for a first violation of this section is \$40. The penalty for a second violation of this section by the same vehicle or the same registered owner of a vehicle is \$50. The penalty for a third and any subsequent violation of this section by the same vehicle or the same registered owner of a vehicle is \$60.
- (b) No camper, motor home, or trailer shall be parked on any street except as follows:
  - (1) When located directly on a street frontage of the detached dwelling unit or multi-unit dwelling of the vehicle's registered owner for a consecutive period of forty-eight hours or less;
  - (2) For a maximum of seventy-two hours when providing a service to a residence or business located directly adjacent to the parked vehicle; or
  - (3) In compliance with the terms and conditions of a permit issued by the city manager; or
  - (4) The penalty for a first violation of this section is \$40. The penalty for a second violation of this section by the same vehicle or the same registered owner of a vehicle is \$50. The penalty for a third and any subsequent violation of this section by the same vehicle or the same registered owner of a vehicle is \$60.
- (c) It shall not be a defense to this section that the camper, motor home, or trailer has been moved to a different location on any street. To be in compliance with this section, the vehicle must be removed from the street.

Section 26. Section 7-7-5, “Private Towing and Impounding of Vehicle Parked Without Authorization on Private Property,” B.R.C. 1981, is amended to read as follows:

**7-7-5. Private Towing and Impounding of Vehicle Parked Without Authorization on Private Property.**

- (a) The owner or lessee of real property or an agent authorized by the owner or lessee may cause any motor vehicle, parked on such property without the permission of the owner, lessee or occupant of the property, to be removed or impounded by a towing carrier, but,

<sup>9</sup> These zones are relatively new and are added here for consistency.

except on property used as a detached dwelling unit, only if any applicable requirements of Subsection 7-6-14(b), B.R.C. 1981, and subsection (b) of this section have been met. It is not necessary that a citation be issued for violation of Section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, for a vehicle to be removed or impounded pursuant to this section.

- (b) Except on property used as a detached dwelling unit, the owner, lessee or occupant of real property or an agent thereof, prior to causing the removal and impoundment of a motor vehicle from any area set aside for motor vehicle parking on such person's property, shall:
  - (1) Provide clear notice on signs or pavement markings meeting the requirements of Paragraph 7-6-14(b)(3), B.R.C. 1981, that unauthorized vehicles will be towed away at the owner's expense, including the name and telephone number of each towing company authorized to remove any vehicle;
    - (A) Provided however, after April 1, 2019, all such signs shall include a symbol depicting a tow truck towing a car as set forth in regulations adopted by the city manager; and
    - (B) The requirements of subsection (A) above shall not apply to commercial non-residential properties except for external remodel, change of ownership and new construction; and
    - (C) The requirements of subsection (A) shall not apply to residential properties unless there are more than five tows in any twelve-month period or there is an external remodel, change of ownership or new construction.
  - (2) Not receive any payment monetary or otherwise from any towing company.
- (c) A vehicle parked on private property in violation of Section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, is subject to immediate towing under state law as an abandoned vehicle on private property if the provisions of subsection (b) of this section are also met. Furthermore, any motor vehicle left unattended on private property for a period of twenty-four hours or longer without the consent of the owner or lessee of such property or the owner's or lessee's legally authorized agent is also subject to immediate towing under state law as an abandoned vehicle on private property.
- (d) Vehicles towed pursuant to this section are privately impounded. All actions by the towing carrier and others shall be in accordance with and pursuant to the state statutes and regulations governing private tows of abandoned vehicles and pursuant to Section 7-7-11, "Towing Regulations," B.R.C. 1981.
- (e) Disputes concerning the propriety of impoundments under this section shall be settled by the parties involved in the civil courts, and the city shall not be a proper party defendant in any such suit.

Section 27. Section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981, is amended to read as follows:

**8-2-13. Duty to Keep Sidewalks Clear of Snow.**

- (a) Removal of Snow, Ice, and Sleet from Sidewalks Required. No private owner, agent appointed pursuant to Section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult occupant of a detached dwelling unit, a duplex, a triplex, or a fourplex shall fail to keep all public sidewalks and walkways abutting the premises such person owns, leases, or occupies clear of snow, ice, and sleet, as provided in this section. Such persons are jointly and severally liable for such responsibility, criminally and administratively. Such persons shall remove any accumulation after any snowfall or snowdrift as promptly as reasonably possible and no later than twenty-four hours after the snowfall or the formation of the snowdrift. Such persons shall remove the snow, ice, or sleet from the full width of all sidewalks and walkways, except those with a width exceeding five feet, which must be cleared to a width of at least five feet.
  - (b) City Manager Authorized to Correct Hazardous Situations on Sidewalks With Snow, Ice, or Sleet. The city manager has the authority to cause any sidewalk to be cleared of snow, ice, and sleet. If the city manager intends to charge any person responsible for keeping public sidewalks and walkways abutting the premises clear of snow, ice, and sleet, the manager will satisfy the requirements of this section.
  - (c) Findings and Notice. If the city manager finds that any portion of a sidewalk or walkway has not been cleared of snow, ice, and sleet as required by Subsection (a) of this section and that a hazardous condition exists, the manager is authorized to charge the costs of clearing the snow, ice, or sleet to the person responsible under this section.
- (1) The city manager will notify the owner, agent appointed pursuant to Section 10-3-14, "Local Agent Required," B.R.C. 1981, or manager of any property, the lessee leasing the entire premises or any adult occupant of a detached dwelling unit, a duplex, a triplex, or a fourplex, that such person must remove the snow within the earlier of twenty-four hours or 12 noon of the day following the notice.

Section 29. Section 8-9-2, "Definitions," B.R.C. 1981, is amended to reach as follows:

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<sup>10</sup> These definitions are proposed for removal since they use the term "family" but more importantly that they are not even used in the chapter.

Section 30. Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, is amended to read as follows:

**9-2-3. Variances and Interpretations.**

- (a) Purpose: This section identifies those standards that can be varied by either the city manager or the Board of Zoning Adjustment (BOZA). Some standards can be varied by the city manager through an administrative Review process, others by BOZA by another level of administrative Review. The city manager may defer any administrative decision pursuant to this section to BOZA. This section also identifies which city manager interpretations of this title may be appealed to BOZA and establishes a process for such appeals.
- (b) Interpretations: The city manager may decide questions of interpretation and application of the regulations of this title as a ministerial function. Interpretations made by the city manager of Chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, may be appealed to the BOZA by filing an application in compliance with this section.
  - (1) Planning Board Call-Up: A member of the planning board may call-up any interpretation of the BOZA through the procedures of Section 9-4-4, "Appeals, Call-Ups, and Public Hearings," B.R.C. 1981. The planning board may consider the record, or any portion thereof, of the hearing before the BOZA in its consideration of the matter.
  - (2) City Council Call-Up: The city council may call-up for review any interpretation of the BOZA upon which the planning board has acted pursuant to the procedures of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. The council may consider the record, or any portion thereof, of the hearing before the planning board in its consideration of the matter.
- (c) Administrative Variances: The city manager may grant a variance from:
  - (1) The minimum yard setback requirement and the building separation requirements of Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, of up to twenty percent of the required yard setback, if the manager finds that the application satisfies all of the requirements in Subsection (h) of this section and if the applicant obtains the written approvals of impacted property owners.
  - (2) The minimum requirements of Section 9-7-9, "Side Yard Bulk Plane," and Section 9-7-10, "Side Yard Wall Articulation," for lots 4,600 square feet or less or for lots forty-eight feet in width or less based on the average lot width measured at the front yard setback, midpoint of the lot and the rear yard setback, if the city manager finds that the application satisfies all of the requirements of Paragraph (h)(5) of this section.
  - (3) The minimum requirements of Section 9-7-11, "Maximum Building Coverage," and Section 9-8-2, "Floor Area Ratio Requirements," to existing detached dwelling units,

by up to two hundred square feet. The purpose of this administrative variance is to permit minor modifications to detached dwelling units that will allow residents or a family member of a head of household with existing or anticipated impairments that restricts their ability to perform a major life activity to be in the home. This variance may be granted if the city manager finds that:

- (A) The request meets the requirements of Subparagraphs (h)(5)(A) and (B) of this section; and
  - (B) The improvements are necessary to remedy any impairment, or anticipated impairment, that would prohibit or significantly restrict a resident's or a family member of a head of household's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity.
- (4) The height of the plane above a side lot line in bulk plane requirements of Section 9-7-9, "Side Yard Bulk Plane," B.R.C. 1981, and the side yard wall articulation standards of Section 9-7-10, "Side Yard Wall Articulation Standards," B.R.C. 1981, may vary by up to twenty percent and the building coverage requirements of Section 9-7-11, "Maximum Building Coverage," or the floor area ratio requirements of Section 9-8-2, "Floor Area Ratio Requirements," by up to two hundred square feet for existing detached dwelling units if the manager finds that the application satisfies all of the requirements in Subsection (h) of this section.
- (5) Maximum variance that may be granted to a lot under paragraph (3) or (4) above shall be a total of two hundred square feet of floor area or building coverage.
- (6) If written approvals of impacted property owners cannot be obtained, the applicant may apply for consideration of the variance before the BOZA.
- (7) Applicants shall apply for the variance on a form provided by the city manager and shall pay the application fee required by title 4, "Licenses and Permits," B.R.C. 1981, at time of submittal of the application.
- (8) The city manager may also grant variances or refer variance requests to the BOZA to allow development not in conformance with the provisions of this title which otherwise would result in a violation of federal or state legislation or regulation, including but not limited to the Federal Fair Housing Act or the Americans with Disabilities Act.

**Section 31. Section 9-3-11, "Medium Density Overlay Zone," B.R.C. 1981, is amended to read as follows: 9-3-11. Medium Density Overlay Zone.**

- (a) Purpose and Scope: Medium density residential areas adjacent to the downtown central business district originally developed with a character predominately composed of detached dwelling units and are now redeveloping with higher densities. Development and

redevelopment in certain RM-2 and RM-3 zoning districts has been very disruptive of the existing residential character of those areas, has failed to preserve certain historic structures, has led to many inappropriate structures being erected and thus has negatively affected the value of adjoining properties. The medium density overlay zone map which designates those portions of the medium density areas to which this section applies is set forth as Appendix D, "Medium Density Overlay Zone," of this title.

(b) Additional Regulations: The following additional regulations shall apply in the medium density residential overlay zone:

(1) No person shall construct a second detached dwelling on a lot as set forth in Section 9-7-12, "Two Detached Dwellings on a Single Lot," B.R.C. 1981.

(2) No person shall create additional multidwelling units except that one additional dwelling unit per lot may be created by internal conversions of existing principal structures that are not enlarged in size subsequent to September 2, 1993, and provided that such conversions do not involve exterior modifications other than for access, including, without limitation, doors, windows and stairways.

**Section 32. Section 9-3-12, "Opportunity Zone Overlay," B.R.C. 1981, is amended to read as follows:9-3-12. Opportunity Zone Overlay.**

(a) Legislative Intent: The purpose of this section is to enact an overlay zone for Census Tract 122.03, described in Appendix O, "Census Tract 122.03," and associated standards in order to protect the public health, safety and welfare:

(1) Federal Census Tract 122.03 was certified by the federal government as an opportunity zone;

(2) Investors in the opportunity zone, through opportunity zone funds, will receive favorable tax relief as an incentive to invest in business and real estate within Census Tract 122.03;

(3) It is anticipated that opportunity zone funds may lead to accelerated investment in Census Tract 122.03;

(4) The Boulder Valley Comprehensive Plan provides that the city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock;

(5) The Boulder Valley Comprehensive Plan describes that the city will make special efforts to preserve and rehabilitate existing housing servicing low-, moderate-, and middle-income households; and

(6) It is the intent of this section to prevent accelerated demolition of the existing relatively affordable multi-unit dwelling housing stock in Census Tract 122.03 to protect existing



neighborhood character in this area and preserve the existing housing stock and its relative affordability.

- (b) **Applicability of this Section:** The standards of this section shall apply during that period of time that Census Tract 122.03 is a qualified opportunity zone, as that term is defined in 26 U.S.C. § 1400Z-1, or any successor legislation.
- (c) **No Demolition:** Except as expressly allowed under subsection (e), no person shall carry out or permit demolition of a building or part thereof that results in removal of any attached dwelling unit in Census Tract 122.03.
- (d) **No Demolition Applications:** The city manager shall not accept any demolition or development application that proposes the demolition of a building or a part thereof and results in removal of any attached dwelling unit in Census Tract 122.03 unless the application proposes work allowed under subsection (e).
- (e) **Unsafe Buildings:** As an exception to the standards of this section, a building or part thereof may be demolished if the city manager has declared the building or relevant part thereof to be unsafe or dangerous to the general public, residents, or property or otherwise unfit for human occupancy, and such that it is unreasonable to repair the structure or relevant part thereof. In making such determination, the city manager will consider the deficiencies of the structure or part thereof, including without limitation, damage, decay, faulty construction, potential for collapse, disrepair or the presence of health and safety concerns such as unsanitary conditions, infestation of rats or vermin, the presence of filth and contamination, or other conditions that constitute a hazard to residents or the public.
- (f) **Maintenance:** The city council intends to preserve from deliberate or inadvertent neglect attached dwelling units in Census Tract 122.03. No owner, lessee or occupant of an attached dwelling unit shall fail to comply with the ordinances of the city regulating property maintenance, including without limitation Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

Section 33. Section 9-5-2, "Zoning Districts," B.R.C. 1981, is amended to read as follows:

**9-5-2. Zoning Districts.**

- (a) **Classification:** Zoning districts are classified according to the following classifications based on the predominant character of development and current or intended use in an area of the community:
  - (1) R: Residential;
  - (2) M: Mixed Use, a mix of residential and business;
  - (3) B: Business;
  - (4) DT: Downtown business zones;
  - (5) I: Industrial;
  - (6) P: Public;
  - (7) A: Agricultural.

- (b) Zoning Districts: Under the classifications defined in Subsection (a) of this section, the particular zoning districts established for the city are as in table 5-1 of this section:

**TABLE 5-1: ZONING DISTRICTS**

<i>Classification</i>	<i>Zoning District (Abbreviation)</i>	<i>Use Module</i>	<i>Form Module</i>	<i>Intensity Module</i>	<i>Former Zoning District Abbreviation</i>
Residential	Residential - Rural 1 (RR-1)	R1	a	2	RR-E
	Residential - Rural 2 (RR-2)	R1	b	2	RR1-E
	Residential - Estate (RE)	R1	b	3	ER-E
	Residential - Low 1 (RL-1)	R1	d	4	LR-E
	Residential - Low 2 (RL-2)	R2	g	6	LR-D
	Residential - Medium 1 (RM-1)	R3	g	9	MR-D
	Residential - Medium 2 (RM-2)	R2	d	13	MR-E
	Residential - Medium 3 (RM-3)	R3	j	13	MR-X
	Residential - Mixed 1 (RMX-1)	R4	d	7	MXR-E
	Residential - Mixed 2 (RMX-2)	R5	k	8	MXR-D
	Residential - High 1 (RH-1)	R6	j	12	HR-X
	Residential - High 2 (RH-2)	R6	c	12	HZ-E
	Residential - High 3 (RH-3)	R7	l	14	HR1-X
	Residential - High 4 (RH-4)	R6	h	15	HR-D
	Residential - High 5 (RH-5)	R6	c	19	HR-E
	Residential - High 6 (RH-6)	R8	j	17.5	-
	Residential - High 7 (RH-7)	R7	l	14.5	-
	Mobile Home (MH)	MH	s	-	MH-E

Mixed Use	Mixed Use 1 (MU-1)	M2	i	18	MU-D
	Mixed Use 2 (MU-2)	M3	r	18	RMS-X
	Mixed Use 3 (MU-3)	M1	n	24	MU-X
	Mixed Use 4 (MU-4)	M4	o	24.5	-
Business	Business - Transitional 1 (BT-1)	B1	f	15	TB-D
	Business - Transitional 2 (BT-2)	B1	e	21	TB-E
	Business - Main Street (BMS)	B2	o	17	BMS-X
	Business - Community 1 (BC-1)	B3	f	19	CB-D
	Business - Community 2 (BC-2)	B3	f	19	CB-E
	Business - Commercial Services (BCS)	B4	m	28	CS-E
	Business - Regional 1 (BR-1)	B5	f	23	RB-E
	Business - Regional 2 (BR-2)	B5	f	16	RB-D
Downtown	Downtown 1 (DT-1)	D3	p	25	RB3-X/E
	Downtown 2 (DT-2)	D3	p	26	RB2-X
	Downtown 3 (DT-3)	D3	p	27	RB2-E
	Downtown 4 (DT-4)	D1	q	27	RB1-E
	Downtown 5 (DT-5)	D2	p	27	RB1-X
Industrial	Industrial - Service 1 (IS-1)	I1	f	11	IS-E
	Industrial - Service 2 (IS-2)	I1	f	10	IS-D
	Industrial - General (IG)	I2	f	22	IG-E/D
	Industrial - Manufacturing (IM)	I3	f	20	IM-E/D
	Industrial - Mixed Services (IMS)	I4	r	18	IMS-X
Public	Public (P)	P	c	5	P-E
Agricultural	Agricultural (A)	A	a	1	A-E
Flex District	Flex (F)	TBD	TBD	TBD	n/a

## (c) Zoning District Purposes:

## (1) Residential Districts and Complementary Uses:

- (A) Residential - Rural 1, Residential - Rural 2, Residential - Estate, and Residential - Low 1: Primarily detached dwelling units with some duplexes and attached dwelling units at low to very low residential densities.
- (B) Residential - Low 2, and Residential - Medium 2: Medium density residential areas primarily used for small-lot residential development, including without limitation, duplexes, triplexes, or townhouses, where each unit generally has direct access at ground level.
- (C) Residential - Medium 1, and Residential - Medium 3: Medium density residential areas which have been or are to be primarily used for attached residential development, where each unit generally has direct access to ground level, and where complementary uses may be permitted under certain conditions.
- (D) Residential - Mixed 1: Mixed density residential areas with a variety of detached dwelling units, duplexes, and multi- unit dwellings that will be maintained; and where existing structures may be renovated or rehabilitated.
- (E) Residential - Mixed 2: Medium density residential areas which have a mix of densities from low density to high density and where complementary uses may be permitted.
- (F) Residential - High 1, Residential - High 2, Residential - High 4, Residential - High 5: High density residential areas primarily used for a variety of types of attached residential units, including without limitation, apartment buildings, and where complementary uses may be allowed.
- (G) Residential - High 3: High density residential areas in the process of changing to high density residential uses and limited pedestrian-oriented neighborhood-serving retail uses in close proximity to either a primary destination or a transit center and where complementary uses may be allowed.
- (H) Residential - High 6: High density residential urban areas that are predominately townhouses in close proximity to either a primary destination or a transit center and where complementary uses may be allowed.
- (I) Residential - High 7: High density residential areas that have a fine grain of residential streets either existing or as part of a right-of-way plan approved by the city council and limited pedestrian-oriented neighborhood-serving retail uses in close proximity to either a primary destination or a transit center and where complementary uses may be allowed.

Section 34. Section 9-6-3, “Specific Use Standards - Residential Uses,” B.R.C. 1981, is amended to read as follows:

**9-6-3. Specific Use Standards - Residential Uses.**

- (j) **Congregate Care Facility, Custodial Care Facility, and Residential Care Facility:**

- (1) **Applicability:** This subsection (j) sets forth standards for congregate care facilities, custodial care facilities, and residential care facilities that are subject to specific use standards pursuant to Table 6-1, Use Table.
- (2) **Intensity:** The number of dwelling units or sleeping rooms or accommodations shall be consistent with Section 9-8-6, “Density Equivalencies for Group Residences and Hostels,” B.R.C. 1981.<sup>11</sup>

...

(l) **Group Home Facility:**

- (1) The following standards apply to any group home facility that may be approved as a conditional use or pursuant to a use review:
  - (A) **General Standards:** Any group home facility approved as a conditional use or pursuant to a use review shall meet the following standards:
    - (i) **Intensity:** The number of dwelling units or sleeping rooms or accommodations shall be consistent with Section 9-8-6, “Density Equivalencies for Group Residences and Hostels,” B.R.C. 1981.<sup>12</sup>
    - (ii) **Concentration:** In order to prevent the potential creation of an institutional setting by concentration of group homes in a neighborhood, no group home facility may locate within three hundred feet of another group home facility, but the city manager may permit two such facilities to be located closer than three hundred feet apart if they are separated by a physical barrier, including, without limitation, an arterial, a collector, a commercial district or a topographic feature that avoids the need for dispersal. The planning department will maintain a map showing the locations of all group home facilities in the city.
    - (iii) **Safety:** No person shall make a group home facility available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. A determination that a person poses a direct threat to the health or safety of others or a risk of substantial physical damage to property must be based on a history of overt acts or current conduct of that individual and must not be based on general assumptions or fears about a class of disabled persons.

<sup>11</sup> Density equivalency standards already exist in Section 9-8-6. As the current language links to limiting occupancy of units, staff is recommending that it be removed for conflict with state law and also the Fair Housing Act. The intensity would still be limited on multi-family lots consistent with existing congregate care standards.

<sup>12</sup> Same as the prior footnote.

**(m) Transitional Housing:**

- (1) The following standards apply to any transitional housing facility that may be approved as a conditional use or pursuant to a use review:
- (A) General Standards: Any transitional housing approved as a conditional use or pursuant to a use review shall meet the following standards:
- (i) Density: The maximum number of dwelling units with transitional housing facility shall be the same as is permitted within the underlying zoning district, except that for any zoning district that is classified as an industrial zoning district pursuant to Section 9-5-2, "Zoning Districts," B.R.C. 1981, the number of dwelling units permitted shall not exceed one dwelling unit for each one thousand six hundred square feet of lot area on the site.
- <sup>13</sup>(ii) Parking: The facility shall provide one off-street parking space for each dwelling unit on the site. The approving authority may grant a parking deferral of up to the higher of fifty percent of the required parking or what otherwise may be deferred in the zoning district if the applicant can demonstrate that the criteria set forth in Subsection 9-9-6(e), B.R.C. 1981, have been met.

Section 35. Section 9-6-5, "Specific Use Standards- Commercial Uses," B.R.C. 1981, is amended to read as follows:

**9-6-5. Specific Use Standards - Commercial Uses.****FOOD, BEVERAGE, AND LODGING****(a) Bed and Breakfast:**

- (1) The following standards apply to bed and breakfast uses that may be approved as a conditional use or pursuant to a use review:
- (A) The structure is compatible with the character of the neighborhood in terms of height, setbacks, and bulk. Any modifications to the structure are compatible with the character of the neighborhood.
- (B) One parking space is provided for each guest bedroom, and one space is provided for the operator or owner's unit in the building.
- (C) No structure contains more than twelve guest rooms. The number of guest rooms shall not exceed the occupancy limitations set forth in Section 9-8-6, "Density Equivalencies for Group Residences and Hostels," B.R.C. 1981.

<sup>13</sup> Occupancy will no longer be regulated in Title 9, but rather Title 10, which references the IPMC. This section is no longer necessary.

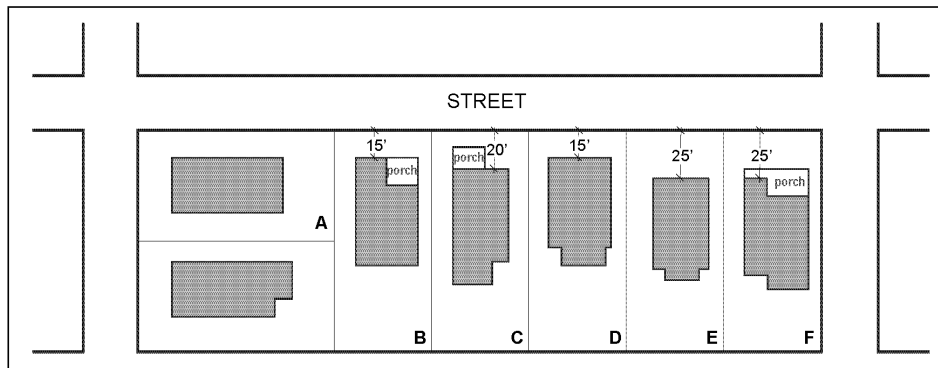
- (D) No cooking facilities including, without limitation, stoves, hot plates, or microwave ovens are permitted in the guest rooms. No person shall permit such use.
- (E) One attached exterior sign is permitted to identify the bed and breakfast, subject to the requirements of Section 9-9-21, "Signs," B.R.C. 1981.
- (F) No long-term rental of rooms is permitted. No person shall permit a guest to remain in a bed and breakfast for a period in excess of thirty days.
- (G) No restaurant use is permitted. No person shall serve meals to members of the public other than persons renting rooms for nightly occupancy and their guests.
- (H) No person shall check in or check out of a bed and breakfast or allow another to do so except between the times of 6 a.m. and 9 p.m.

Section 36. Section 9-7-2, "Setback Standards," B.R.C. 1981, is amended to read as

follows:

**9-7-2. Setback Standards.**

- (a) **Front Yard Setback Reductions:** The front yard setback required in Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may be reduced for a principal structure on any lot if more than fifty percent of the principal buildings on the same block face or street face do not meet the required front yard setback. The setback for the adjacent buildings and other buildings on the block face shall be measured from the property line to the bulk of the building, excluding, without limitation, any unenclosed porches, decks, patios or steps. The bulk of the building setback shall not be less than the average bulk of the building setback for the principal buildings on the two adjacent lots. Where there is only one adjacent lot, the front yard setback reduction shall be based on the average of the principal building setbacks on the two closest lots on the same block face. (See Figure 7-1 of this section.)



### Figure 7-1: Setback Averaging Example

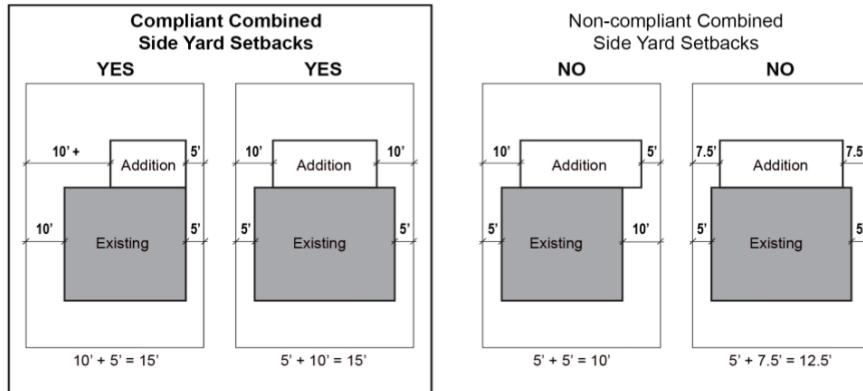
*In this example, lots "B" through "F" are the face block. Lot "A" is not included in the face block, as the front of this lot is on a different street. Setback averaging is measured to the bulk of the buildings and does not include porches.*

*Assuming this block is zoned RL-1, the minimum required front yard setback would be twenty-five feet. The block face shown would qualify for setback averaging, as more than fifty percent of the principal buildings do not meet the required front yard setback. An addition to the front of lot "E" would require the averaging of the setbacks of lots "D" and "F", the two closest buildings on the same block face. In this example the resulting setback would be 20 feet - the average of lot "D" (fifteen feet) and lot "F" (twenty-five feet). An addition to the front of lot "F" would be based on the average of the two closest buildings on the same block face; in this case, lots "D" and "E."*

#### (b) Side Yard Setback Standards:

- (1) **Setbacks for Upper Floors in Non-Residential Zoning Districts:** A principal building constructed with a side yard setback of zero for the first story above grade in the BC-2, BR-1, DT-1, DT-2, DT-3, DT-4, DT-5, IS-1, IG or IM zoning districts, where the side yard setback is noted as "0 or 12," may have upper stories set back either five feet or the distance required by Chapter 10-5 "Building Code," B.R.C. 1981, whichever is greater.
- (2) **Maintenance Easements Required in Residential Zoning Districts:** In residential zoning districts that allow a zero side yard or rear yard setback, the applicant shall be required to secure a recorded maintenance easement from the adjoining property owner if the zero setback side is not attached to another structure. The easement shall be effective for the life of the building. The easement shall not be less than three feet in width measured parallel to that portion of the building at zero setback.
- (3) **Wall Height for Residential Zero Lot Line:** The maximum wall height for detached dwelling units at the zero setback property line shall be twelve feet. Townhouses, consistent with Subparagraph (7), below, are not subject to this restriction.
- (4) **Calculating Residential Zero Lot Line Side Yard Setbacks:** For detached dwelling units, the side yard setback opposite the zero setback property line shall be the sum of both side yards for the district.
- (5) **Combined Side Yard Setbacks:** When combined side yard setbacks are required by Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, the resulting structure, including the existing structure and any addition, must meet the combined side yard setback requirements. (See Figure 7-2 of this section for compliant and noncompliant examples.)





**Figure 7-2: Combined Side Yard Setbacks**

*Example: In the RL-1 district, the combination of side yard setbacks must be no less than fifteen feet, with a minimum of five feet. Both existing structures and additions (hatched) are included in the calculation.*

- (6) Existing Nonstandard Side Yard Setbacks for Existing Detached Dwelling Units: A second story addition that does not comply with the minimum interior or combined side yard setbacks may be added to an existing detached dwelling unit subject to the following:
- (A) The interior side yard setback for the existing detached dwelling unit complied with the setback requirements in existence at the time of initial construction and was not created by a variance or other procedure;
  - (B) The resulting interior side yard setback will not be less than five feet and combined side yard setbacks will not be less than ten feet;
  - (C) That portion of the building in the side yard setback shall vertically align with the existing first story wall.

Section 37. Section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981, is amended to read as follows:

**9-7-8. Accessory Buildings in Residential Zones.**

- (a) Maximum Building Coverage: In an RR, RE, RL or RMX-1 residential zoning district, unless the property has been designated as an individual landmark or is located within a historic district under Chapter 9-11, "Historic Preservation," B.R.C. 1981, the total cumulative building coverage of accessory buildings or structures between the principal

building rear yard setback and the rear yard property line shall not exceed five hundred square feet. For a property that has been designated as an individual landmark or is located within a historic district under Chapter 9-11, "Historic Preservation," B.R.C. 1981, such total cumulative building coverage may be increased to permit the addition of one new accessory building or structure of up to five hundred square feet of coverage if such property has existing structures within the principal building rear yard setback area. There shall be no limitation on building coverage for accessory buildings or structures located entirely within the principal building envelope except as set forth in the definition of "accessory building or structure," in Chapter 9-16, "Definitions," B.R.C. 1981.

- (b) **Connections Between a Dwelling Unit and an Accessory Building Located Within the Principal Building Envelope:** In a residential zoning district, a detached dwelling unit may be connected to an accessory building by a breezeway that is built in compliance with the principal building setback standards set forth in this chapter, or the principal building setback standards in place at the time of its construction, if the breezeway meets the following standards:
- (1) The sides of the breezeway shall be completely open except for structural support columns and the walls of the accessory structure and the dwelling unit to which it is attached.
  - (2) No useable floor area is located above the breezeway.
  - (3) The accessory building and the dwelling unit shall comply with the use limitations for such buildings set forth in Chapter 9-16, "Definitions," B.R.C. 1981.
  - (4) A breezeway shall be classified as building coverage for purposes of calculating the required open space for the dwelling unit.
- (c) **Breezeway Connections Between Accessory and Principal Buildings:** In a residential zoning district, a detached dwelling unit may be connected to an accessory building which is located partially or entirely within principal building rear yard setback by a breezeway if the breezeway meets the following standards:
- (1) No portion of the roof shall exceed a height of twelve feet, measured to the finished grade directly below it, or the height of the accessory building to which it is attached, whichever is less. (See Figure 7-8 of this section.)
  - (2) No walkways are permitted on the roof of a breezeway.
  - (3) The width of the breezeway, measured from the outside edge of the supporting columns, shall not exceed six feet.
  - (4) Each eave, measured from the outside edge of the supporting columns, to the fascia, shall not exceed eighteen inches.
  - (5) The sides of the breezeway above grade shall remain completely open except for structural support columns and the walls of the accessory building and the detached dwelling unit to which it is attached.
  - (6) The breezeway shall be set back from the interior side yard the greater of ten feet or the minimum principal building side yard setback for the underlying zoning district.

- (7) Any portion of a breezeway that is located within the principal building rear yard setback shall be included in the maximum coverage limitations for accessory buildings set forth in subsection (a) of this section.
- (8) A breezeway may be building coverage pursuant to Section 9-16-1, "General Definitions, B.R.C. 1981 and subject to Section 9-7-11, "Maximum Building Coverage," B.R.C 1981.

Section 38. Section 9-7-9, "Side Yard Bulk Plane," B.R.C. 1981, is amended to read as follows:

**9-7-9. Side Yard Bulk Plane.**

- (a) Purpose: Buildings with tall side walls may impact privacy, views or visual access to the sky on neighboring properties. The purpose of this side yard bulk plane standard is to ensure that buildings step down towards neighboring properties in order to enhance privacy, preserve some views and visual access to the sky for lots or parcels that are adjacent to new development.
- (b) Scope: All construction related to principal and accessory buildings shall comply with the bulk plane requirements of this section. This section applies to all construction related to buildings, including new construction, building addition or modification of existing buildings as follows:
  - (1) All residential principal and accessory buildings in the RR-1, RR-2, RE and RL-1 zoning districts; and
  - (2) All principal and accessory buildings that are used as detached dwelling units in the RMX-1 zoning district.

Section 39. Section 9-7-10, "Schedule of Intensity Standards," B.R.C. 1981, is amended to read as follows:

**9-7-10. Side Yard Wall Articulation.**

- (a) Purpose: Buildings with tall side walls may impact privacy, views or visual access to the sky on neighboring properties. The purpose of the side yard wall articulation standard is to reduce the perceived mass of a building by dividing it into smaller components, or to step down the wall height in order to enhance privacy, preserve views and visual access to the sky for lots or parcels that are adjacent to new development.

- (b) Scope: All construction related to principal and accessory buildings shall comply with the side yard wall length articulation requirements of this section. This section applies to all construction related to buildings, including new construction, expansion or modification of existing buildings as follows:
  - (1) All residential buildings in the RR-1, RR-2, RE and RL-1 zoning districts, including lots located in planned developments, planned residential developments and planned unit developments.
  - (2) All buildings that are used detached dwelling units in the RMX-1 zoning district, including lots located in planned developments, planned residential developments and planned unit developments.

Section 40. Section 9-7-11, “Maximum Building Coverage,” B.R.C. 1981, is amended to read as follows:

**9-7-11. Maximum Building Coverage.**

- (a) Purpose: The purposes of the building coverage standards are to establish the maximum percentage of lot surface that may be covered by principal and accessory buildings to preserve open space on the lot, and to preserve some views and visual access to the sky and enhance privacy for residences that are adjacent to new development.
- (b) Scope: All construction related to principal and accessory buildings shall comply with the building coverage requirements of this section. This section applies to all construction related to residential buildings, including new construction, building additions or modification of existing buildings as follows:
  - (1) All residential and principal and accessory buildings in the RR-1, RR-2, RE and RL-1 zoning districts, including lots located in planned developments, planned residential developments and planned unit developments.
  - (2) All principal and accessory buildings that are used as detached dwelling units in the RMX-1 zoning district, including lots located in planned developments, planned residential developments and planned unit developments.
  - (3) In the RL-2 zoning district, the building coverage requirements shall apply to lots that are eight thousand square feet or larger that are not within the boundaries of a planned development, planned residential development, planned unit development or an approved site review.
  - (4) In the RL-2 zoning district, the requirements shall apply to all lots and parcels that are within the boundaries of a planned development, planned residential development and planned unit development that are shown on Appendix H of this title.

Section 41. Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, is amended

to read as follows:

**9-8-1. - Schedule of Intensity Standards.**

The purpose of this chapter is to indicate the requirements for the allowed intensity of all types of development, including maximum density for residential developments based on allowed number of units.<sup>14</sup> All primary and accessory structures are subject to the standards set forth in Table 8-1 of this section except that developments within an area designated in Appendix L, "Form-Based Code Areas," and subject to the standards or Chapter 9-14, "Form-Based Code," are exempt from Table 8-1 and Sections 9-8-1 through 9-8-4, B.R.C. 1981. Developments within an area designated in Appendix L, "Form-Based Code Areas," and subject to the standards or Chapter 9-14, "Form-Based Code," are subject to the standards of Sections 9-8-5, "Occupancy of Dwelling Units," 9-8-6, "Density Equivalencies for Group Residences and Hostels," and 9-8-7, "Density of Efficiency Living Units," B.R.C. 1981. No person shall use any land within the city authorized by Chapter 9-6, "Use Standards," B.R.C. 1981, except according to the following requirements unless modified through a use review under Section 9-2-15, "Use Review," B.R.C. 1981, or a site review under Section 9-2-14, "Site Review," B.R.C. 1981, or granted a variance under Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or approved through a form-based code review under Section 9-2-16, "Form-Based Code Review," B.R.C. 1981.

**Section 42. Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, is amended to read as follows:****9-8-2. Floor Area Ratio Requirements.**

- (a) Purpose: The purpose of the floor area ratio requirements is to limit the impacts of the use that result from increased building size.
- (b) Maximum Floor Area Ratio: The maximum floor area ratio on a lot or parcel shall be the greatest of the following:
  - (1) The floor area set forth in this section;
  - (2) The floor area approved prior to June 3, 1997, as part of a valid existing or unexpired planned development (PD), planned residential development (PRD), planned unit development (PUD), or a site review; or
  - (3) The floor area on the lot or parcel on June 3, 1997.
- (c) Calculating Floor Area Ratios and Floor Area Ratio Additions: The floor area ratio shall be calculated based on all buildings on a lot according to the definitions in Chapter 9-16, B.R.C., 1981, "Floor Area," "Floor Area Ratio," "Uninhabitable Space," and "Basement". In addition to the floor area ratio limitations set forth in Table 8-1, Intensity Standards, B.R.C. 1981, floor area ratio additions may be added above the base floor area ratio and certain

<sup>14</sup> Occupancy is no longer regulated in the land use code.

floor areas may be excluded from the floor area calculations as set forth in Table 8-2 of this section.

**TABLE 8-2: FLOOR AREA RATIO ADDITIONS**

	<i>DT-1</i>	<i>DT-2</i>	<i>DT-3</i>	<i>DT-4</i>	<i>DT-5</i>	<i>MU-1</i> <sup>(c)</sup>	<i>MU-2</i> <sup>(c)</sup>	<i>MU-3</i>	<i>BT-2</i>	<i>B</i>
Base FAR	1.0	1.5	1.7	1.7	1.7	0.6	0.6	1.0	0.5	0.
Maximum total FAR additions (FAR) <sup>(d)</sup>	1.0	0.5	1.0	0.5	1.0	0.07	-	-	-	0.
FAR additional components:										
1) Residential floor area (FAR)	0.5	0.5	0.5	0.5	1.0 <sup>(b)</sup>	-	-	-	-	-
2) Residential floor area if at least 35% of units are permanently affordable and at least 50% of total floor area is residential (FAR)	-	-	-	-	-	0.07	-	-	-	-
3) Residential floor area for a project NOT located in a general improvement district that provides off-street parking	-	-	-	-	-	-	-	-	-	0.

4) Floor area used as off-street parking, bicycle parking, and vehicular circulation that is above grade and provided entirely within the structure	0.5	0.5	0.5	0	0.5	Not counted	Not counted	Not counted	-	N
5) Below grade area used for occupancy	Not counted	Not counted	Not counted	Not counted	Not counted	-	-	-	Not counted	N
6) Nonresidential floor area (FAR) (see Paragraph 9-8-2(d)(3) and Section 4-20-62, Table 4)	-	-	-	-	1.0 <sup>(b)</sup>	-	-	-	-	-
Maximum allowable FAR (sum of base plus all available additions)	2.0 + row 5	2.0 + row 5	2.7 + row 5	2.2 + row 5	2.7 + row 5	0.67. + row 4 above	+ row 4 above	1.0 + row 4 above	0.5 + row 5 above	1.0 + row 4 above

Footnotes:

- (a) FAR up to 1.85 if property is located in a general improvement district providing off-street parking.
- (b) The maximum additional FAR component is 1.0. FAR additional components may be combined, but shall not exceed the 1.0 maximum total floor are ratio limit.
- (c) See Subparagraph 9-2-14(h)(6)(B), B.R.C. 1981.

- (d) For properties located in an area designated in Appendix L, "Form-Based Code Areas," and subject to the standards of Chapter 9-14, "Form-Based Code," the floor area and floor area ratio (FAR) requirements do not apply. Refer to Chapter 9-14, "Form-Based Code," for specific form, bulk, intensity, and outdoor space requirements.
- (e) See Subsection 9-6-3(a)(2), B.R.C. 1981.
- (f) Floor area ratio (FAR) in the RH-2 zoning district may be increased up to a maximum FAR of 1.07 in a site review.
- (g) FAR in the BT-1 zoning district may be increased up to a maximum FAR of 1.4 in a site review.
- (h) FAR in the BC zoning districts may be increased up to a maximum FAR of 2.0 provided the lot or parcel is located within an area identified in Appendix N, "Business Community (BC) Areas Subject to Special Use Restrictions."
- (-) Not applicable.

(d) District-Specific Standards:

(1) Maximum Floor Area in the RR-1, RR-2, RE, RL-1, RL-2, and RMX-1 Zoning Districts:

(A) Purpose: The purpose of a floor area ratio standard is to address the proportionality of building size to lot size and allow variation in building form within the established building envelope.

(B) Scope: All construction related to principal and accessory buildings shall comply with the floor area ratio requirements of this section. This section applies to all construction related to residential buildings, including new construction, building additions, or modification of existing buildings as follows:

(i) All principal and accessory buildings in the RR-1, RR-2, RE, and RL-1 zoning districts, including lots located in planned developments, planned residential developments, and planned unit developments.

(ii) All principal and accessory buildings in the RMX-1 zoning district, including lots located in planned developments, planned residential developments, and planned unit developments.

(iii) In the RL-2 zoning district, the floor area ratio requirements shall apply to lots that are 8,000 square feet or larger, used for detached dwelling units that are not within the boundaries of a planned development, planned residential development, planned unit development, or an approved site review.

(iv) In the RL-2 zoning district, the floor area ratio requirements shall apply to all lots and parcels used for detached dwelling units that are within the boundaries of a planned development, planned residential development, and planned unit development that are shown on Appendix H to this title.



- (v) For projects subject to site review in Section 9-2-14, "Site Review," B.R.C. 1981, the floor area shall be calculated based upon each lot or parcel.

Section 43. Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is amended to read as follows:

**9-8-5. Occupancy of Dwelling Units.**

- (a) General Occupancy Restrictions: No person shall occupy a dwelling unit in violation of the provisions of Chapter 10-2, "Property Maintenance Code," B.R.C.1981, or intentionally or negligently misrepresent the permitted occupancy of a dwelling unit under Title 10 of this code. A violation of this section shall be considered a violation of Title 10.<sup>15</sup>
- (b) Prior Approvals: Any requirement under a city approval granted under this title that restricts occupancy based on familiar relationship, such as number of unrelated persons, or restricts occupancy or beyond the occupancy permitted by Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, is void and shall not be enforced. <sup>16</sup> Notwithstanding the foregoing, this subsection does not apply to any residential occupancy limit based on the standards in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, or based on any local, state, federal or political subdivision affordable housing program guidelines.

<sup>17</sup>

Section 44. Section 9-8-6, "Occupancy Equivalencies for Group Residences," B.R.C. 1981, is amended to read as follows:

**9-8-6. Density Equivalencies for Group Residences and Hostels.**

The permitted density for the following uses shall be calculated as indicated below. The density equivalencies shall not be used to convert existing uses referenced in this section to dwelling units except as set forth in subsection (g). The number of allowed dwelling units shall be determined by using Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981:

- (a) Boarding or Rooming House, Fraternity, Sorority, or Dormitory: In boarding or rooming houses, fraternities, sororities, or dormitories, three sleeping rooms constitute one dwelling unit.

<sup>15</sup> The existing section on occupancy in the land use code is proposed to be updated to refer specifically to Chapter 10-2, "Property Maintenance Code" which has direct links to the IPMC.

<sup>16</sup> This "Prior Approval" section makes it clear that if there are any prior approvals from the city that may have restricted occupancy based on familial relationships that these provisions are not null and void in light of state laws that note that local governments may not enforce occupancy laws based on the numbers of unrelated persons.

<sup>17</sup> All of these sections would not be consistent with the state law and thus, are proposed for removal.

- (b) Hostel: In hostels, three sleeping rooms constitute one dwelling unit, but the planning board may increase the density of a hostel to four sleeping rooms per dwelling unit through a use review as provided in Section 9-2-15, "Use Review," B.R.C. 1981.
- (c) Custodial Care and Residential Care Facilities: In custodial care and residential care facilities, eight sleeping rooms or accommodations without kitchen facilities constitute one dwelling unit in custodial care and residential care facilities. If units are provided in a household living configuration, one detached dwelling unit constitutes one dwelling unit and one attached dwelling unit constitutes one dwelling unit.
- (d) Group Home Facilities: In group home facilities, eight sleeping rooms or accommodations without kitchen facilities constitute one dwelling unit. If units are provided in a household living configuration, one detached dwelling unit constitutes one dwelling unit and one attached dwelling unit constitutes one dwelling unit.<sup>18</sup>
- (e) Congregate Care Facility: In congregate care facilities, five sleeping rooms or accommodations without kitchen facilities constitute one dwelling unit, three attached dwelling units constitute one dwelling unit, and one detached dwelling unit constitutes one dwelling unit.
  - (1) A congregate care facility that is built or the use is established after October 31, 2013, and uses the dwelling unit equivalency of three attached dwelling units to constitute one dwelling unit shall meet the following additional standards:
    - (A) The facility shall include a minimum of ten attached congregate care dwelling units.
    - (B) The average dwelling unit floor area for attached congregate care facilities shall not exceed one thousand square feet per unit, and no single dwelling unit shall exceed one thousand two hundred square feet. The average dwelling unit floor area shall include the floor area within the attached dwelling unit and associated storage areas and shall exclude common areas and garages.
  - (2) A congregate care facility built or the use is established prior to October 31, 2013, may use the definition of congregate care to define the use classification and the average floor area per dwelling units for attached and detached dwelling units in effect when the congregate care facility was built or the use was established.
- (f) Bed and Breakfast: Three guest rooms in a bed and breakfast constitute one dwelling unit. In any bed and breakfast, up to twelve guest rooms are permitted, provided the required parking can be accommodated on site and the provisions of Subsection 9-6-5(a), B.R.C. 1981, are met.

<sup>18</sup> These uses in detached dwelling units would be regulated the same as any detached dwelling unit per the IPMC and to comply with the Fair Housing Act. Attached housing projects would have to meet the density equivalencies of this section, which in some scenarios already allows and incentivizes additional units. The new language makes it clear that if traditional dwelling units are used in these projects, the occupancy limits would have to meet the IPMC and International Building Code (IBC).

- (g) Conversion of Rooming Units to Dwelling Units: Pursuant to approval of a use review under Sections 9-2-15, "Use Review," B.R.C. 1981, for nonconforming uses, rooming units in RM and RH zoning districts that were legally established under prior zoning ordinances and have continued as a legal nonconforming use may be converted to dwelling units at a ratio of four rooming units to one dwelling unit.

Section 45. Section 9-8-7, "Density and Occupancy of Efficiency Living Units," B.R.C.

1981, is amended to read as follows:

**9-8-7. Density of Efficiency Living Units.**

- (a) Dwelling Unit Equivalents for Efficiency Living Units: For purposes of the density limits of Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, two efficiency living units constitute one dwelling unit.
- (b) Dwelling Unit Equivalents for Moderate Income Housing: For purposes of counting dwelling units under the provisions of Ordinance No. 4638, as amended, "Moderate Income Housing," one efficiency living unit equals one dwelling unit.

19

Section 46. Section 9-9-5, "Site Access Control," B.R.C. 1981, is amended to read as

follows:

**9-9-5. Site Access Control.**

- (a) Access Control: Vehicular access to property from the public right-of-way shall be controlled in such a manner as to protect the traffic-carrying capacity and safety of the street upon which the property abuts and access is taken, ensuring that the public use and purpose of public rights of way is unimpaired as well as to protect the value of the public infrastructure and adjacent property. The requirements of this section apply to all land uses, including detached dwelling units, as follows:
  - (1) For all uses, except for detached dwelling units, the standards shall be met prior to a final inspection for any building permit for new development; redevelopment exceeding twenty-five percent of the value of the existing structure; or the addition of a dwelling unit. For purposes of this paragraph (1), the applicant shall demonstrate the value of the existing structure by submitting, at the discretion of the applicant, either the actual value assessed by the Boulder

<sup>19</sup> This is already specified clearly in the IPMC.

County Assessor's Office or the fair market value determined by a real estate appraiser licensed in Colorado.

(2) For detached dwelling units, the standards of this section shall be met prior to a final inspection for any building permit for new development; the demolition of a principal structure; or the conversion of an attached garage or carport to a use other than use as a parking space.

(3) Notwithstanding the above, development on a property that has three or fewer dwelling units must meet the driveway width standards of this section if the development has to comply with the landscape standards of Subsection 9-9-12(b), "Landscaping and Screening Standards," B.R.C. 1981. Compliance with the driveway width standards shall be met prior to final inspection of a building permit.

(b) Access for Properties Subject to Annexation: Each parcel of land under a single ownership at the time of its annexation will be reviewed in terms of access as one parcel (regardless of subsequent sales of a portion) unless the property is subdivided at the time of its annexation.

(c) Standards and Criteria for Site Accesses and Curb Cuts: Any access or curb cut to public rights of way shall be designed in accordance with the City of Boulder Design and Construction Standards and the following standards and criteria:

(1) Number of Access Points Permitted: One access point or curb cut per property will be permitted, unless a site plan or traffic study, approved by the city manager, demonstrates that additional access points and curb cuts are required to adequately address accessibility, circulation, and driveway volumes, and only where additional accesses and curb cuts would not impair any public use of any public right-of-way, or create safety or operational problems, or be detrimental to traffic flow on adjacent public streets.

(2) Access Restrictions: On arterial and collector streets, or if necessary for the safe and efficient movement of traffic, all accesses shall be designed and constructed with physical improvements and appropriate traffic control measures to assist or restrict turning movements, including, without limitation, acceleration or deceleration lanes, access islands, street medians, and signage, as may be required of the development if the city manager finds that they are necessary to preserve the safety or the traffic-carrying capacity of the existing street. The city manager shall determine the length and degree of the required access restriction measures for the property.

(3) Residential Access to Arterial and Collector Streets Restricted: No residential structures shall have direct access onto an arterial. However, if no alternative street access is possible, an access may be permitted subject to the incorporation of any design standards determined to be necessary by the city manager to preserve the safety and the traffic-carrying capacity of the arterial or collector.

(4) Access From Lowest Category Street Required: A property that has frontage on more than one street, alley or public access shall locate its access or curb cut on the lowest category

street, alley or public access frontage. If more than one access point or curb cut is necessary, an additional access or curb cut will be permitted only where the proposed access or curb cut satisfies the requirements in this section.

(5) **Property Right to Access:** If a property cannot be served by any access point or curb cut that satisfies this section, the city manager will designate the access point or curb cut for the subject property based on optimal traffic safety.

(6) **Multiple Access Points for Detached Dwelling Units:** The city manager will permit multiple access points on the same street for a single lot containing a detached dwelling unit upon finding that there is at least one hundred linear feet of lot frontage adjacent to the front yard on such street, the area has a limited amount of pedestrian activity because of the low density character, and there is enough on-street parking within three hundred feet of the property to meet the off-street parking needs of such area. The total cumulative width of multiple curb cuts shall not exceed the maximum permitted width of a single curb cut. The minimum spacing between multiple curb cuts on the same property shall not be less than sixty-five feet.

(7) **Shared Driveways for Residential Structures:** A lot with a detached dwelling unit that does not have frontage on the street from which access is taken may be served by a shared driveway that meets all of the standards and criteria for shared driveways set forth in the City of Boulder Design and Construction Standards.

Section 47. Section 9-9-11(i), “Useable Open Space,” B.R.C. 1981, is amended to read as follows:

### **9-9-11. Useable Open Space.**

...

(i) **Prohibitions:** Portions of a lot on which a structure or unenclosed use is located shall not be counted as useable open space unless allowed in subsection (d), (e), (f) or (h) of this section. Portions of a lot that are unenclosed include those areas that are designed such that they cannot be enclosed and are generally open to the sky above, except for a balcony or deck. The following are specific examples of areas that may not be counted as useable open space:

- (1) Paved areas intended for pedestrian use, which are located adjacent to alleys or driveways and are not physically separated from the alley or driveway by a barrier such as a fence, wall, bollard or elevated planter or curb which prevent use of the area by any vehicle;
- (2) A recessed window or doorway of less than twenty-four square feet in ground area and less than three feet in any horizontal dimension;

- (3) Any landscaped area less than two feet in width unless located within an elevated planter that is less than eighteen inches in height;
- (4) Public or private rights of way for highways, streets or alleys;
- (5) Roofs that do not meet the provisions of paragraph (f)(1) of this section;
- (6) Parking areas and garages that do not meet the provisions of paragraph (f)(3) of this section;
- (7) Land area with a slope in excess of fifteen percent unless approved as part of a site review;
- (8) Balconies, decks and patio areas attached to a detached dwelling unit which are:
  - (A) Attached at the same level or below the first floor above grade and where the deck floor exceeds six feet above grade; or
  - (B) Constructed over an enclosed building.

Section 48. Section 9-9-12(ii), "Landscaping and Screening Standards," B.R.C. 1981, is amended to read as follows:

**9-9-12. Landscaping and Screening Standards.**

...

- (ii) Maintenance and Replacement: The property owner shall maintain all required landscaping and provide for replacement of plant materials that have died or have otherwise been damaged or removed, and maintenance of all non-live landscaping materials, including, but not limited to, fencing, paving, irrigation systems, and retaining walls from the issuance of a certificate of occupancy or certificate of completion.
- (3) Open Space: Required useable open space shall meet the provisions of this section and Sections 9-7-1, "Schedule of Form and Bulk Standards," and 9-9-11, "Useable Open Space," B.R.C. 1981.
- (4) Pedestrian Access: In all zones except A, P, RR, RE, RL, and RM, paved pedestrian walkways, a minimum of three feet in width, shall be provided as follows:
  - (A) Between at least one building entrance and the sidewalk adjacent to the street;
  - (B) Between the parking lot and the entrance to any buildings larger than 10,000 square feet in size.
- (5) Screening of Trash Collection and Recycling Areas, Service Areas, and Loading Areas: In nonresidential and multi-unit residential developments, trash collection and recycling areas, service areas, and loading areas shall be screened on all sides so that no portion of such areas are visible from public streets and alleys and adjacent properties. Required screening may include

new and existing plantings, walls, fences, screen panels, doors, topographic changes, buildings, horizontal separation, or any combination thereof.

Section 49. Section 9-9-13, "Streetscape Design Standards," B.R.C. 1981, is amended to read as follows:

**9-9-13. Streetscape Design Standards.**

Streetscape improvements shall be designed in accordance with the following standards:

- (a) Scope: The standards set forth in this section apply to all land uses, including detached dwelling units.
- (b) Street Trees: A planting strip consisting of deciduous trees shall be planted along the full length of all public and private streets in all zoning districts. When possible, trees shall be planted in the public right-of-way. Large deciduous trees and detached sidewalks are required wherever possible and shall be planted at a minimum, in accordance with subsection (d) of this section.
- (c) Alley Trees: Except for existing lots with a detached dwelling unit, along all alleys adjacent to or within a residential zone, trees shall be planted at an overall average of one tree per forty linear feet within ten feet of the pavement or edge of alley.

Section 50. Section 9-10-3(b)(1), "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, is amended to read as follows:

**9-10-3. Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses.**

...

(b) Nonstandard Lots or Parcels:

(1) Development Requirements: Vacant lots in all residential districts except RR-1 and RR-2 which are smaller than the lot sizes indicated in Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, but larger than one-half of the required zoning district minimum lot size, may be developed with a detached dwelling unit if the building meets the setback requirements of Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981. In RR-1 and RR-2 districts, lots which are smaller than the minimum lot size but larger than one-fourth of the minimum lot size may be developed if the building meets the setback requirements. In all other

zoning districts, vacant lots which are below one-half of the required minimum lot size for the zoning district shall not be eligible for construction of principal buildings.

Section 51. Section 9-13-3, “General Inclusionary Housing Requirements,” B.R.C.

1981, is amended to read as follows:

**9-13-3. General Inclusionary Housing Requirements.**

(a) Inclusionary Housing Requirements.

(1) A development is required to include at least twenty-five percent of the total number of dwelling units as permanently affordable units.

(2) For required for-sale permanently affordable units, townhouses and detached dwelling units shall have prices set to be affordable to one hundred twenty percent of the AMI. All other types of permanently affordable for-sale units shall have prices set to be affordable to one hundred percent of the AMI.

(3) Required rental permanently affordable units shall include eighty percent of the required permanently affordable units as low/moderate income dwelling units and twenty percent of the required permanently affordable units shall have rents set to be affordable to households earning no greater than fifty percent of the AMI.

(4) As an alternative to providing permanently affordable units on-site developments may satisfy the inclusionary housing requirement through any combination of the alternative means of compliance set forth in Section 9-13-10, "Options for Satisfaction of Inclusionary Housing Requirement," B.R.C. 1981.

(5) The city manager is authorized to use rule-making authority to annually adjust the percentages in Subsection 9-13-3(a) to incentivize on-site affordable units.

(6) Rounding Rule: In determining the number of permanently affordable units required on or off-site, any inclusionary housing requirement resulting in a fractional value with a decimal point that is 0.5 or greater will be rounded up to the next whole number. Any remaining fraction may be met through other options as allowed in Section 9-13-10, "Options for Satisfaction of Inclusionary Housing Requirement," B.R.C. 1981.

Section 52. Section 9-13-7, “Relationship of Permanently Affordable Units to Market Units,” B.R.C. 1981, is amended to read as follows:



**9-13-7. Relationship of Permanently Affordable Units to Market Units.**

- (a) Purpose: Permanently affordable units shall be comparable in quality, design and general appearance to the market rate units creating the inclusionary housing requirement.
- (b) Detached Dwelling Units: When a development contains detached dwelling units, a proportional number of the required permanently affordable units shall also be detached dwelling units or attached townhouses.
- (c) Mixed Dwelling Unit Types: In developments with a mixture of dwelling unit types, including, without limitation, detached dwelling units, townhouses, duplexes, triplexes, four-plexes, eight-plexes, and stacked flats, the required permanently affordable units shall be comprised of the different dwelling unit types in the same proportion as the dwelling units that are not permanently affordable within the development except as allowed in Subsection (b) above.
- (d) Number of Bedrooms and Bathrooms: Permanently affordable units shall have the same proportion of zero bedroom/studio, one-, two-, three- and four-bedroom dwelling units as the market rate units of the development. The city manager will determine the minimum numbers of bathrooms required for permanently affordable units with these numbers of bedrooms.
- (e) Ownership Type: Permanently affordable units shall be for-sale in the same proportion as the market rate units that are for-sale within the development that generated the requirement; for example, if fifty percent of the units in the development are for sale units, then at least fifty percent of the permanently affordable units must be for-sale units except as otherwise approved by the city manager. Rental developments may provide either rental or for-sale permanently affordable units.

Section 53. Section 9-15-4, “Criminal Sanctions,” B.R.C. 1981, is amended to read as follows:

**9-15-4. Criminal Sanctions.**

- (a) The city attorney, acting on behalf of the people of the city, may prosecute any violation of this title or any approval granted under this title in municipal court in the same manner that other municipal offenses are prosecuted.
- (b) The penalty for violation of any provision of this title is a fine of not more than \$2,650.00 per violation. The limitation of this fine shall be adjusted for inflation on January 1, 2025, and on January 1 of each year thereafter. As used in this subsection, “inflation” means the Colorado consumer price index or a similar index that is tied to the annual rate of inflation in the state or Denver-Boulder metropolitan area.<sup>20</sup> In addition, upon conviction

<sup>20</sup> This is an update to reflect current penalties and provide consistency with recent code changes.

of any person for violation of this title, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court issued under this section is a violation of this section and is punishable by a fine of not more than \$4,000.00 per violation, or incarceration for not more than ninety days in jail or both such fine and incarceration.

21

Section 54. Section 9-15-9, “Multiple Dwelling Units and Occupancy- Specific Defenses,” B.R.C. 1981, is amended to read as follows:

### **9-15-9. Multiple Dwelling Units - Specific Defenses.**

- (a) Specific Defenses to Alleged Violations Related to Multiple Dwelling Units: If a charge of violation of any provision of chapter 9-5, "Modular Zone System," 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981, is premised solely upon the multiple dwelling units provisions of subsection 9-16-1(c), B.R.C. 1981, it is a specific defense to such charge that, on a continuing basis, the residents of the dwelling unit share utilities and keys to all entrances to the property and that they function as a single housekeeping unit. For purposes of this section, to function as a single housekeeping unit means to share major functions associated with residential occupancy and to share a single common kitchen as the primary kitchen.

Section 55. Section 9-14-3, “Design Goals for the Form-Based Code Areas,” B.R.C. 1981, is amended to read as follows:

### **9-14-3. DESIGN GOALS FOR THE FORM-BASED CODE AREAS**

The requirements of this chapter are intended to accomplish the following objectives:

- (a) **Character, Context, and Scale.** Preserve or enhance the character, context, and scale planned for the area while supporting a more sustainable future by accommodating future residents, reducing dependence on single occupant vehicles, increasing energy efficiency, and promoting safe transportation options for pedestrians and bicycles.
- (b) **Human-Scaled Building Design.** Design to a human scale and create a safe and vibrant pedestrian experience.
- (c) **Building Design Quality and Aesthetics.** Design high-quality buildings that are compatible with the character of the area or the character established by adopted plans for

<sup>21</sup> As occupancy is no longer a Title 9 violation, this language is being moved from Title 9 and to Title 10 below.

the area through simple, proportional, and varied design, high quality and natural building materials that create a sense of permanence, and building detailing, materials and proportions.

- (d) **A Variety of Housing Types.** Produce a variety of housing types, such as multi-unit dwelling units, townhouses, and detached dwelling units, as well as a variety of lot sizes, number of bedrooms per unit, and sizes of units within the form-based code area.
- (e) **Adaptable Buildings.** Build adaptable buildings with flexible designs that allow changes in uses over time.
- (f) **Provision of Outdoor Space.** Provide outdoor space that is accessible and close to buildings. Active and passive recreation areas will be designed to meet the needs of anticipated residents, occupants, employees, and visitors to the property.
- (g) **Support of Multi-Modal Mobility.** Provide safe and convenient multi-modal connections and promote alternatives to the single occupant vehicle. Connections shall be accessible to the public within the project and between the project and the existing and proposed transportation systems, including, without limitation, streets, bikeways, paseos, and multi-use paths.

Section 56. Section 9-14-4, “Organization and Scope,” B.R.C. 1981, is amended to read

as follows:

#### **9-14-4. ORGANIZATION AND SCOPE**

This section describes how this chapter is organized to provide the user with some guidance using this chapter and it addresses the scope of its application.

- (a) **Organization.** This chapter is organized into the following sections:
  - (1) **Sections 9-14-1 through 9-14-8: General Provisions.** The general provisions include a purpose statement for the form-based code, a description of where the requirements for the form-based code apply, a description of this chapter’s organization and scope, the regulating plans for each form-based code area, and definitions that apply to the terms of this chapter.
  - (2) **Sections 9-14-9 through 9-14-13: Site Design.** These sections establish general site design and minimum outdoor space requirements, applicable to all form-based code areas, unless otherwise specified. Outdoor space types are established to guide the design of common outdoor spaces.
  - (3) **Sections 9-14-14- through 9-14-26: Building Types.** These sections establish a variety of building types and building form, design, location, and use requirements applicable to each building type. The regulating plans determine which building type may be used on a particular site.

- (4) **Sections 9-14-27- through 9-14-33: Building Design.** These sections establish general building design requirements that are applicable to all of the building types, unless otherwise stated.
- (b) **Scope.** The requirements of this chapter supplement those imposed on the same lands by underlying zoning provisions and generally applicable development standards of this title and other ordinances of the city. If there is a conflict between the requirements of this chapter and Title 9, "Land Use Code," B.R.C. 1981, the standards of this section control. The following describes how specific requirements of this title relate to requirements of this chapter:
- (1) **Chapter 9-6: Use Standards.** Chapter 9-6, "Use Standards," B.R.C. 1981, regulates uses which are permitted, conditionally permitted, prohibited, or which may be permitted through use review. Additional use standards may be established for the different building types in sections M-1-15 through M-1-19 of this chapter.
- (2) **Chapter 9-7: Form and Bulk Standards.** This chapter supersedes the standards in Chapter 9-7, "Form and Bulk Standards," B.R.C. 1981, with the exception of Sections 9-7-3, "Setback Encroachments," 9-7-5, "Building Heights," and 9-7-7, "Building Heights, Appurtenances," B.R.C. 1981. Building height shall be measured in accordance with the requirements of Section 9-7-5, B.R.C. 1981.
- (3) **Chapter 9-8: Intensity Standards.** This chapter supersedes the standards in Chapter 9-8, "Intensity Standards," B.R.C. 1981, with the exception of Sections 9-8-5, "Occupancy of Dwelling Units," 9-8-6, "Density Equivalencies for Group Residences and Hostels," and 9-8-7, "Density of Efficiency Living Units," B.R.C. 1981.
- (4) **Chapter 9-9: Development Standards.** Chapter 9-9, "Development Standards," B.R.C. 1981, applies to developments that are regulated by this chapter as follows:
- (5) **Applicable Sections.** The following sections of Chapter 9-9, "Development Standards," B.R.C. 1981, are applicable:
- (A) **9-9-1.** Intent.
  - (B) **9-9-2.** General Provisions.
  - (C) **9-9-4.** Public Improvements.
  - (D) **9-9-5.** Site Access Control, in addition to the access location requirements in Section M-1-11(a) "Driveways," B.R.C. 1981.
  - (E) **9-9-6.** Parking Standards.
  - (F) **9-9-7.** Sight Triangles.
  - (G) **9-9-8.** Reservations, Dedication, and Improvement of Right-of-way.
  - (H) **9-9-9.** Loading.

- (I) **9-9-10.** Easements.
  - (J) **9-9-12.** Landscape and Screening Standards.
  - (K) **9-9-13.** Streetscape Design Standards, in addition to the requirements established in M-1-10, Streetscape Design Requirements.
  - (L) **9-9-14.** Parking Lot Landscape Standards.
  - (M) **9-9-15.** Fences and Walls.
  - (N) **9-9-16.** Lighting, Outdoor.
  - (O) **9-9-17.** Solar Access.
  - (P) **9-9-18.** Trash Storage and Recycling Areas.
  - (Q) **9-9-19.** Swimming Pools, Spas, and Hot Tubs.
  - (R) **9-9-20.** Addressing.
  - (S) **9-9-21.** Signs.
  - (T) **9-9-22.** Trip Generation Requirements for the MU-4, RH-6, and RH-7 Zoning Districts.
- (6) **Superseded Sections.** The following sections of Chapter 9-9, "Development Standards," B.R.C. 1981, are superseded by this chapter:
- (A) 9-9-3, Building Design, is superseded by this chapter.
  - (B) 9-9-11, Useable Open Space, is superseded by the requirements of this chapter.
- (c) **Other Sections and Ordinances.** The Boulder Revised Code and other ordinances of the city are applicable unless expressly waived or modified in this chapter. If there is a conflict between the requirements of this chapter and other portions of the Boulder Revised Code other than Title 9, "Land Use Code," B.R.C. 1981, the most restrictive standards shall control.

Section 57. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended to read as follows:

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

*Breezeway* means a roofed at grade open passage connecting a detached dwelling unit to an accessory building. A breezeway is not a space enclosed by walls.

*Building coverage* means the maximum horizontal area within the outer perimeter of the building walls, dividers, or columns at ground level or above, whichever is the greater area, including, without limitation, breezeways, courts, and exterior stairways, but excluding:

- (1) Uncovered decks, stoops, patios, terraces, and stairways, all less than thirty inches high;
- (2) The outer four feet of completely open, uncovered, cantilevered balconies that have a minimum of eight feet vertical clearance below;
- (3) Up to three hundred square feet of a detached dwelling unit front porch that is adjacent to a street;
- (4) Up to one hundred fifty square feet of additional porch area not located in the front yard for a detached dwelling unit;
- (5) One accessory building, no larger than eighty square feet in size and no taller than ten feet in height, associated with a detached dwelling unit; and
- (6) Up to thirty inches of a roof or a breezeway overhang.

*Conveyance zone* means those portions of the floodplain required for the passage or conveyance of the one hundred-year flood. The conveyance zone is delineated based on an equal encroachment methodology (measured in volume of water), which is applied to the floodplain from the edges of the flood channel to a point where the one-hundred-year flood profile will be raised no more than six inches, after considering a reasonable expectation of blockage at bridges and other obstructions by flood-borne debris. The city may, in its discretion, delineate the conveyance zone on city owned land or right-of-way based on unequal encroachment to minimize delineation on other properties. The conveyance zone is equivalent to a floodway delineation based on a six-inch rise. (Floodplain)

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*Courtyard* means any open, unclimatized space, without a roof, bounded by building walls for at least seventy-five percent of its perimeter.

*Expansion of nonconforming use* means any change or modification to a nonconforming use that constitutes:

- (1) An increase in the floor area, required parking, traffic generation, outdoor storage, or visual, noise, or air pollution;
- (2) Any change in the operational characteristics which may increase the impacts or create adverse impacts to the surrounding area including, without limitation, the hours of operation, noise, or the number of employees;
- (3) The addition of bedrooms to a dwelling unit, except a detached dwelling unit; or
- (4) The addition of one or more dwelling units.

<sup>22</sup> This use is being removed because it is inconsistent with the state law on occupancy. The coop sections of the code are based on allowing occupancies above five unrelated persons with special approval. This conflicts with the state law and thus, all coop sections are proposed for removal from the Boulder Revised Code. Occupancy within units would just have to meet the current International Property Maintenance Code (IPMC) occupancy limits that are based on established life safety standards as noted in the state law.

*Floor area for detached dwelling units* means the total habitable square footage of all levels measured to the outside surface of the exterior framing, or to the outside surface of the exterior walls if there is no exterior framing or portions thereof, which includes stairways, storage, and mechanical rooms internal to the structure, but excluding garages. (Inclusionary Housing)

*Housing type* means the particular form which an attached or detached dwelling unit takes, including, without limitation, the following: detached dwelling units and mobile homes; attached dwelling units such as townhouses and row houses; duplexes, triplexes, and apartments.

*Townhouse* means an attached dwelling unit located or capable of being located on its own lot, and separated from adjoining dwelling units by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit.

*Transitional housing* means a facility providing long-term housing in multi-unit dwelling units with or without common central cooking facilities, where participation in a program of supportive services is required as a condition of residency to assist tenants in working towards independence from financial, emotional, or medical conditions that limit their ability to obtain housing for themselves.

Section 58. Section 10-1-1, “Definitions,” B.R.C. 1981, is amended to read as follows:

**10-1-1. Definitions.**

<sup>23</sup>*Rooming house* means an establishment where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is offered for one month or more for three or more roomers living independently within rooming units

*Rooming unit* means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and study, and that may include a private bath but does not include a sink or any cooking device.

Section 59. Section 10-2-2, “Adoption of International Property Maintenance Code

With Modifications,” B.R.C. 1981, is amended to read as follows:

<sup>23</sup> This use is being removed because it is inconsistent with the state law on occupancy. The coop sections of the code are based on allowing occupancies above five unrelated persons with special approval. This conflicts with the state law and thus, all coop sections are proposed for removal from the Boulder Revised Code. Occupancy within units would just have to meet the current International Property Maintenance Code (IPMC) occupancy limits that are based on established life safety standards as noted in the state law.

**10-2-2. Adoption of International Property Maintenance Code With Modifications.**

- (a) The 2018 edition of the *International Property Maintenance Code* (IPMC) of the International Code Council is hereby adopted by reference as the City of Boulder Property Maintenance Code and has the same force and effect as though fully set forth in this chapter, except as specifically amended for local application by this chapter.
- (b) IPMC Appendix chapters A, "Boarding Standard," B, "Rental Housing Inspections," and C, "Energy Efficiency Requirement - Existing Residential Rental Structures Energy Conservation," are adopted.
- (c) For ease of reference, the following identifies all chapters, sections and appendices of the published and adopted IPMC and includes specific amendments for local application. Chapter, Section, Subsection, or Appendix numbers of provisions not amended appear, followed by the words, "No changes." The amended text of specifically amended provisions appears below. Chapter, Section, Subsection, or Appendix numbers of any provisions not adopted appear, followed by the word, "Deleted."

...

**SECTION 106  
VIOLATIONS**

**106.1 Violations.**

- (a) General Provisions:
  - (1) No person shall erect, construct, enlarge, alter, extend, repair, move, remove, improve, convert, demolish, equip, use, occupy, or maintain any building or structure in the city, or cause or permit the same to be done, except in conformity with all of the provisions of this code and in conformity with the terms and conditions of approval issued under this code, or of any directive of the code official. No person shall violate a provision of this code, or fail to comply therewith or with any of the requirements thereof. No person shall fail to comply with any order issued by the code official under this code.
  - (2) In accordance with the provisions of Section 5-2-11, "Prosecution of Multiple Counts for Same Act," B.R.C. 1981, each day during which illegal construction, alteration, maintenance, occupancy, or use continues, constitutes a separate offense remediable through the enforcement provisions of this code.
  - (3) The owner, tenant, and occupant of a structure or land and the agents of each of them are jointly and severally liable for any violation of this code with respect to such structure or land.
  - (4) The remedies for any violation of any provision of this code or of any permit, certificate, or other approval issued under this code or other City of Boulder code, or of any directive of the code official, may be pursued singly or in combination.
  - (5) If any person fails or refuses to pay when due any charge imposed under this section, the code official may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.
  - (6) If an order under Section 107 is not complied with, the code official may institute any appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or the order or direction made pursuant thereto. The code official may charge the cost of any action taken to correct a violation, plus up to fifteen percent of such cost for administration, to the property owner. If any property owner fails or refuses to pay when due any charge imposed under this section, the code official may, in addition to taking other collection remedies, certify due any unpaid charges, including interest, to the Boulder County Treasurer, to be levied against the person's property for collection by the county in the same manner as delinquent general



taxes upon such property are collected, under the procedures described by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

(b) Administrative Procedures and Remedies:

(1) If the code official finds that a violation of any provision of this code or of any approval granted under this code exists, the manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

(A) Impose a civil penalty according to the following schedule:

(i) For the first violation of the provision or approval, \$100;

(ii) For the second violation of the same provision or approval, \$300; and

(iii) For the third violation of the same provision or approval, \$1,000;

(B) For a violation concerning the use of a residential building under a rental license, revoke such license;

(C) Require the filing of a declaration of use as provided in subsection (e); or

(D) Issue an order reasonably calculated to ensure compliance with the provisions of this code or any approval granted under this code.

(2) Prior to the hearing, the code official may issue an order that no person shall perform any work on any structure or land, except to correct any violation found by the code official to exist with respect to such structure or land.

(3) If notice is given to the code official at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the code official will reinspect the structure or land. If the code official finds that the violation has been corrected, the manager may cancel the hearing.

(4) No person shall fail to comply with any action taken by the code official under this section.

(c) Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-4, "General Penalties," B.R.C. 1981.

(1) Occupancy Limitation Violations: Notwithstanding the provision of subsection (c), Criminal Penalties, of this section, the following specific sentencing considerations shall apply to fines imposed for violations of Section 404, Occupancy Limitations, of this code:

(A) The court shall consider any evidence presented by the defendant that a potential fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally capitalized owner of the ability to continue operating a rental housing business of the sort involved in the case before the court. No fine that is confiscatory shall be enforced by the court.

(B) In imposing a fine in any single case or in any consolidated cases, the court may weigh all factors normally and properly considered in connection with the imposition of fines, including the seriousness of the violation, the past record of the defendant, the economic circumstances of the defendant and all mitigating or aggravating factors relevant to the violation or to the defendant. In addition, in determining the amount of any fine, the court may consider:

(i) The imposition of a fine that would deprive the defendant of any illegal profit collected because of the occurrence of the over-occupancy violation or violations on the rental housing property;

(ii) The imposition of a reasonable penalty in addition to any level of fine that is attributable to illegally obtained profit; and

(iii) The imposition of such additional fine as is determined by the court to constitute a reasonable amount to be suspended in order to ensure compliance with any terms of probation imposed by the court.

(C) No fine imposed in a single case alleging multiple dates of violation, nor any fine in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that might be imposed for fifteen separate violations unless the court finds special aggravating circumstances. Where special aggravating factors are at issue, the following procedures shall apply:

(i) The defendant shall be entitled to ten days' notice of any special aggravating factors upon which the prosecution intends to rely at the sentencing hearing or about which, based upon evidence previously presented, the court is concerned. If necessary in order to provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.

- (ii) A judicial finding of the existence of special aggravating factors shall not mandate that the court impose any particular level of fine but will, rather, provide the sentencing court with discretion to determine a fine based upon all the criteria set forth in this subsection.
- (iii) Special aggravating factors, for the purpose of this subsection, shall require a judicial finding of one or more of the following:
  - a. The occupancy violations at issue were flagrant and intentional on the part of the defendant;
  - b. The defendant, after learning of the over-occupancy condition, failed to attempt corrective action over a sustained period of time; or
  - c. A fine equivalent to the maximum fine permitted for fifteen separate violations would be inadequate to disgorge the defendant of illegal profits obtained as a consequence of the violations or would be inadequate to ensure that the violation is neither profitable nor revenue neutral for the offender.

(2) Specific Defenses to Alleged Violations:

(A) Specific Defenses to Alleged Violations Related to Occupancy of Units for Guest Occupancy: Occupancy limitation violations are premised upon exceeding allowable occupancy limits based upon the number of persons residing in or occupying a dwelling unit pursuant to Section 404, Occupancy Limitations. It is a specific defense as to any alleged occupant that such person spent the night in the unit without remuneration as a social guest for periods of time which never exceeded a cumulative total of fourteen nights in any ninety-day period. Spending the night for the purposes of this subsection means to be on the premises during the hours of 12:00 midnight through 5:00 a.m., or to sleep on the premises for more than five hours at any time in any twenty-four hour period. If the defense is established as to an alleged occupant, that person shall be considered a social guest and not an occupant for the purposes of proof of the charge of violation. Conversely, any person who spends more than a cumulative total of fourteen nights in any ninety-day period in any dwelling unit is an occupant of that unit for those nights for the purposes of the occupancy limits established in this code.

(B) Specific Defenses to Alleged Violations Related to Occupancy of a Unit Which Is a Rental Property: The following shall constitute specific defenses to any alleged violation of Section 404 of this code relating to the occupancy of units:

- (i) It shall be a specific defense to an alleged violation of Section 404 that a defendant is a nonresident landlord or nonresident property manager and:
  - a. Prior to the initiation of the prosecution process, the defendant undertook and pursued means to avoid over-occupancy violations by:
    - 1. receiving rent payments from only those persons on a lease that includes no more than the number of tenants associated with the occupancy limitation of the unit; and
    - 2. requiring each tenant to acknowledge, through a lease provision or otherwise, the established occupancy limitation for the unit; and
- (ii) The defendant had no actual knowledge of the over-occupancy of the relevant rental housing property prior to the initiation of the prosecution process. However, this specific defense shall not apply when a defendant reasonably should have been aware of the occupancy violation.
- (iii) For the purposes of this paragraph, the initiation of a prosecution process occurs when any of the following events occurs:
  - 1. A potential defendant is first contacted by a city investigator in connection with the investigation of an occupancy violation;
  - 2. A summons and complaint alleging an occupancy violation is served upon a defendant; or
  - 3. A criminal complaint is filed against a defendant alleging an occupancy violation.

(iv) For purposes of this paragraph, a nonresident landlord or nonresident property manager means a person who is neither a full-time nor part-time resident of the property that he or she owns or manages.<sup>24</sup>

(d) Other Remedies. The city attorney 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 for any violation of any provision of this code or any approval granted under this code.

(e) Declaration of Use. If the code official determines that a person is using a structure in a way that might mislead a reasonable person to believe that such use is a use by right or otherwise authorized by this title, the code official may require such person to sign under oath a declaration of use that defines the limited nature of the use and to record such declaration in the office of the Boulder County Clerk and Recorder against the title to the land. In addition to all other remedies and actions that the code official is authorized to use under the Boulder Revised Code or other applicable federal, state, or local laws to enforce the provisions of this code, the code official is authorized to withhold any approval affecting such structure or land, including, without limitation, a building permit, use review, site review, subdivision, floodplain development permit, or wetland permit, until such time as the person submits a declaration of use that is in a form acceptable to the code official.

**106.2—106.3 Deleted.**

**106.4 Violation Penalties.** Deleted.

**106.5 Abatement of Violation.** No changes.

Section 60. Section 10-3-2, “Rental License Required Before Occupancy and License Exemptions.,” B.R.C. 1981, is amended to read as follows:

**10-3-2. Rental License Required Before Occupancy and License Exemptions.**

- (a) No operator shall allow, or offer to allow through advertisement or otherwise, any person to occupy any dwelling, dwelling unit or rooming unit as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager, provided however, an operator may advertise for a rental of thirty days or longer, if the operator has submitted a complete rental licensing application or is advertising for pre-leasing of new construction. Any advertisement shall include the rental licensing number once assigned by the city manager.
- (b) Buildings, or building areas, described in one or more of the following paragraphs are exempted from the requirement to obtain a rental license from the city manager, provided, however that the exemptions in subsections (b)(1) and (b)(2) below shall not apply to short-term rentals. No operator shall allow any person to occupy any dwelling, dwelling unit or rooming unit exempted pursuant to subsections (b)(1) and (b)(2) below prior to submitting to the city manager an Affidavit of Exemption for the dwelling, dwelling unit or rooming unit. No person shall be issued any civil penalty or summons for failure to submit an Affidavit of Exemption, unless the person has previously been advised in writing of this requirement.

<sup>24</sup> This language is the enforcement language being moved from Chapter 9-15 as noted above.

- (1) Any dwelling unit occupied by the owner or members of the owner's family who are at least 21 years of age and housing roomers who are unrelated to the owner or the owner's family. An owner includes an occupant who certifies that the occupant owns an interest in a corporation, firm, partnership, association, organization or any other group acting as a unit that owns the rental property.
- (2) A dwelling unit meeting all of the following conditions:
  - (A) The dwelling unit constitutes the owner's principal residence;
  - (B) The dwelling unit is temporarily rented by the owner for one period of time no greater than twelve consecutive months in any twenty-four-month period;
  - (C) The dwelling unit was occupied by the owner immediately before its rental;
  - (D) The owner of the dwelling unit is temporarily living outside of Boulder County; and
  - (E) The owner intends to re-occupy the dwelling unit upon termination of the temporary rental period identified in subparagraph (b)(2)(B) of this section.
- (3) Commercial hotel and motel occupancies which offer lodging accommodations primarily for periods of time less than thirty days, but bed and breakfast facilities are not excluded from rental license requirements.
- (4) Common areas and elements of buildings containing attached, but individually owned, dwelling units.

Section 61. Section 10-3-19, "Short-Term Rentals," B.R.C. 1981, is amended to read as follows:

**10-3-19. Short-Term Rentals.**

- (a) Short-term rentals are prohibited unless the city manager has issued a valid short-term rental license for the property.
- (b) The city manager shall only issue a rental license for short-term rental to:
  - (1) A natural person, whose name appears on the deed to the property;
  - (2) A trust, if the beneficiary of the trust is a natural person; or
  - (3) A not-for-profit corporation licensed pursuant to Section 501(c) of the Internal Revenue Code, provided, however, the city manager shall have discretion to reject any application for a not-for-profit corporation if the city manager deems the application to be inconsistent with the goals of this chapter, which include allowing not-for-profits the opportunity support their mission through short-term rentals, preserving long term rental units and preventing investor owned short-term rentals.
- (c) Any application for a rental license for short-term rental shall include the following:
  - (1) If the applicant is a natural person, the application must include a true copy of a Colorado driver's license or Colorado identification card showing the dwelling

- unit to be licensed is the applicant's address and a sworn statement that said dwelling unit is the applicant's principal residence;
- (2) If the applicant is a trust, a true copy of a Colorado driver's license or Colorado identification card showing the dwelling unit to be licensed is a beneficiary's address and a sworn statement that said dwelling unit is a beneficiary's principal residence;
  - (3) If the applicant is a not-for-profit corporation, the application shall include proof of the corporation's status under Section 501(c) of the Internal Revenue Code and a statement of the manner in which short-term rentals serve the organization's charitable purpose;
  - (4) A certification that the dwelling unit is equipped with operational smoke detectors, carbon monoxide detectors and other life safety equipment as may be required by the city manager; and
  - (5) The names and telephone numbers of two contacts who for owner-operated rentals can be permanent residents on the property and who are capable of responding to the property within sixty minutes.
- (d) If the applicant is a natural person, the applicant's name must appear on the deed to the property on which the dwelling unit to be rented is located, and the applicant must possess at least a fifty percent fee simple ownership interest in the property.
  - (e) If the applicant is a trust, the trust must possess at least a fifty percent fee simple ownership interest in the property.
  - (f) The city manager shall not issue a license for short-term rental of a property in which an entity that is not tax exempt under Section 501(c) of the Internal Revenue Code holds a fee simple ownership interest.
  - (g) The city manager shall not issue a license for short-term rental of a permanently affordable dwelling unit.
  - (h) Short-term rentals shall not be subject to the inspection requirements of Subsection 10-3-3(b), "Terms of Licenses," B.R.C. 1981, except as set forth in subsection (o).
  - (i) The occupancy of a dwelling unit rented as a short-term rental shall not exceed the occupancy permitted pursuant to Chapter 10-2, "Property Maintenance Code," B.R.C. 1981..
  - (j) The dwelling unit rented as a short-term rental shall be the licensee's principal residence.
  - (k) No person shall rent a dwelling unit in a manner that requires or encourages a person to sleep in an area that is not habitable as that term is used in the International Property Maintenance Code as adopted in Section 10-2-2, "Adoption of the International Property Maintenance Code with Modifications," B.R.C. 1981.

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- (l) The city manager shall not issue more than one short-term rental license to any applicant.
- (m) The city manager may not issue more than one rental license pursuant to the standards of this chapter related to the use of a dwelling or dwelling unit. The city manager shall not issue a short-term rental license for and no person shall rent as a short-term rental any dwelling, dwelling unit, rooming unit, room or portion of any of the foregoing if the dwelling, dwelling unit, or rooming unit is otherwise licensed as a rental under this chapter or is subject to an affidavit of exemption filed with the city manager pursuant to Subsection 10-3-2(b), "Rental License Required Before Occupancy and License Exemptions," B.R.C. 1981; and, if a dwelling, dwelling unit, rooming unit, room or any portion of the foregoing is licensed as a short-term rental, the city manager shall not issue a rental license for a rental other than short-term rental for and no person shall rent other than for short-term rental the dwelling, dwelling unit, rooming unit, room, or any portion of any of the forgoing.
- (n) An accessory dwelling unit or a principal dwelling unit on a detached dwelling unit lot or parcel with an accessory unit may not be rented as a short-term rental unless all the following requirements are met:
  - (1) Both the accessory dwelling unit and the principal dwelling unit were legally established by February 1, 2019;
  - (2) A current and valid short-term rental license exists for the unit;
  - (3) If the accessory dwelling unit is licensed for short-term rental, only the accessory dwelling unit and not any other dwelling unit on the same property may be licensed or used as a rental;
  - (4) If a principal dwelling unit is licensed for short-term rental, then no accessory dwelling unit on the same property may be licensed or used as a rental;
  - (5) An accessory dwelling unit may not be rented as a short-term rental for more than one hundred twenty days in any calendar year;
  - (6) Notwithstanding the provisions of subsection (i), the occupancy of the accessory dwelling unit and the principal dwelling unit must meet the requirements of Subsection 9-8-5(b), B.R.C. 1981; and

Section 62. Section 10-3-20, "Occupancy," B.R.C. 1981, is amended to read as follows:

<sup>25</sup> With occupancy rules changing and being based on the IPMC, it will not be a readily known what the occupancy limit is in a unit as it is based on bedroom size, number of bedrooms, provision of dining and living rooms. Therefore, it is unreasonable to continue to require the occupancy limit to be advertised.

**10-3-20. Reserved.**<sup>26</sup>

Section 63. Chapter 10-11, “Cooperative Housing,” B.R.C. 1981, is amended to read as follows:

**Chapter 11** Reserved.<sup>27</sup>

Section 64. Section 10-12-2, “Definition,” B.R.C. 1981, is amended to read as follows:

*Mobile home* means a transportable, detached dwelling unit, suitable for year-round occupancy that contains the same water supply, waste disposal and electrical conveniences as immobile housing, that has no foundation other than wheels or removable jacks for conveyance on highways, and that may be transported to a site as one or more modules, but the term does not include "travel trailers," "campers," "camper buses," or "motor homes," or modular homes designed to be placed on a foundation.

Section 65. Section 11-1-13, “When Connections With Water Mains Are Required,”

B.R.C. 1981, is amended to read as follows:

**11-1-13. When Connections With Water Mains Are Required.**

- (a) All property located in the city or annexed to the city that is open to the public or used for commercial or industrial purposes or uses (other than detached dwelling units) and that requires a potable water supply for human consumption shall be connected with the water utility of the city. The owner of the property, the owner's agent or other person having charge of such property or receiving the rent for it, or a tenant of the property shall pay all applicable fees and charges when the city manager notifies such person that connection is required. The manager shall serve such notice upon the owner of such property by registered mail to the last address of the owner on the records of the Boulder County Assessor and upon the person in possession of such property by mail to the property address. Connection to the water utility is immediately required only where

<sup>26</sup> This section is superseded due to its restrictions on the number of unrelated individuals. The IPMC specifies the occupancy limits.

<sup>27</sup> The coop sections of the code are based on allowing occupancies above five unrelated persons with special approval. This conflicts with the state law and thus, all coop sections are proposed for removal from the Boulder Revised Code. Occupancy within units would just have to meet the current International Property Maintenance Code (IPMC) occupancy limits that are based on established life safety standards as noted in the state law.

there exists a city water main abutting or adjacent to any portion of the boundaries of the property upon which there is an existing structure or a proposed structure requiring the use of potable water. A private water supply may be used for irrigation on property connected to the water utility, but no person in possession of such property shall allow the water from the private supply to be used for human consumption or to be cross-connected with a line containing water from the water utility. Nothing in this subsection shall be deemed to require water connection by properties in the portion of Moore's Subdivision annexed on July 11, 1978 or specifically exempted by any written agreement with the city.

Section 66. Section 11-1-15, "Out of City Water Service," B.R.C. 1981, is amended to read as follows:

**11-1-15. Out of City Water Service.**

- (a) Out of city water service permits are intended for properties that may be eligible for annexation in the near future but are not presently eligible. The purpose of this section is to outline the requirements precedent to the receipt of out of city utility services. A person desiring to make connection to out of city services will be required to make such land dedication and pay such fees as would be anticipated from a similarly situated property that would annex into the city.
- (b) Any person outside of the city limits desiring to make a connection or repair to or disconnect from the water utility or to use water therefrom shall apply to the city manager for a revocable out of city water permit, which may be issued after approval of the city manager if the manager finds that the application meets the following conditions:
  - (1) The property is located within Area II of the Boulder Valley Comprehensive Plan, unless the facility to be served is a publicly owned facility that because of its nature is most appropriately located outside Area II and because of the general public interest should be served by water service;
  - (2) There is no main extension involved for such service beyond one hundred feet or in violation of the main extension limit, whichever is less;
  - (3) The city planning department has determined that the proposal does not constitute new urban development and is consistent with the comprehensive plan;
  - (4) The City has referred the application to the Boulder County Planning Department under the referral provisions of the comprehensive plan;
  - (5) The service is to be extended to a structure, which contains a legal use, that existed on the effective date of this chapter or to a platted lot with a detached dwelling unit existing on the effective date of this chapter;
  - (6) The property is located below the "Blue Line;"



- (7) The property owner agrees in an agreement running with the land to annex to the City as soon as the property is eligible for annexation; and
- (8) The property has an existing permitted out of city sewer connection or has applied for such permit in accordance with the requirements of section 11-2-10, "Out of City Sewer Service," B.R.C. 1981, and agreed to connect to sanitary sewer when eligible.

Section 67. Section 11-2-10, "Out of City Sewer Service," B.R.C. 1981, is amended to read as follows:

**11-2-10. Out of City Sewer Service.**

- (a) Out of city sewer service permits are intended for properties that may be eligible for annexation in the near future but are not presently eligible. The purpose of this section is to outline the requirements precedent to the receipt of out of city utility services. A person desiring to make connection to out of city services will be required to make such land dedication and pay such fees as would be anticipated from a similarly situated property that would annex into the City.
- (b) Any person outside of the city limits desiring to make a connection to the wastewater utility shall apply to the city manager for a revocable out of city wastewater permit, which may be issued after approval of the city manager if the manager finds that the application meets the following conditions:
  - (1) The property is located within Area II of the Boulder Valley Comprehensive Plan, unless the facility to be served is a publicly owned facility that because of its nature is most appropriately located outside Area II and because of the general public interest should be served by sewer service;
  - (2) There is no main extension involved for such service beyond one hundred feet;
  - (3) The city planning department has determined that this proposal does not constitute new urban development and is consistent with the comprehensive plan;
  - (4) The City has referred the application to the Boulder County Planning Department under the referral provisions of the comprehensive plan;
  - (5) The service is to be extended to a structure, which contains a legal use, that existed on the effective date of this chapter or to a platted lot with a detached dwelling unit existing on the effective date of this chapter;
  - (6) The property is located below the "Blue Line;"
  - (7) The property owner agrees in an agreement running with the land to annex to the City as soon as the property is eligible for annexation; and

(8) The property has an existing permitted out of city water connection or has applied for such permit in accordance with the requirements of section 11-1-15, "Out of City Water Service," B.R.C. 1981, and agreed to connect to water service when eligible.

Section 68. Section 11-5-5, "Discharges to the Stormwater Utility System," B.R.C. 1981, is amended to read as follows:

**11-5-5. Discharges to the Stormwater Utility System.**

- (a) Illicit Discharges Prohibited: No user or other person shall discharge any illicit discharge into or upon the stormwater utility system, any public highway, street, sidewalk, alley, land, public place, stream, ditch or other watercourse or into any cesspool, storm or private sewer or natural water outlet, except as specifically provided in this chapter and in accordance with the MS4 permit.
- (b) Cleaning of Hard Surfaces: The owner of any paved parking lot, street or drive shall clean the pavement as necessary to prevent the buildup of pollutants and to prevent an illicit discharge. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this chapter, or other applicable federal, state and local laws.
- (c) Material Storage: No person shall store materials including, without limitation, stockpiles used in construction and landscaping activities, in a manner which may cause an illicit discharge or threatened illicit discharge into the stormwater utility system or receiving water.
- (d) Exemptions: The following discharges are exempt from the requirements established by this chapter:
  - (1) Landscape irrigation and lawn watering associated with detached dwelling units or duplexes,
  - (2) Uncontaminated groundwater or surface water pumped from a foundation drainage or crawl space system in accordance with the regulations of the Colorado Department of Public Health and Environment,
  - (3) Individual residential car washing,
  - (4) Discharges that comply with the Colorado Water Quality Control Division's Low Risk Policy Discharge Guidance or other applicable Division policies or guidance documents including:
    - (A) Dechlorinated swimming pool discharges;
    - (B) Water line and fire hydrant flushing;
    - (C) Uncontaminated groundwater infiltration;

- (D) Discharges from potable water sources that have not been used in any additional process, including without limitation any type of washing, heat exchange, manufacturing, or hydrostatic testing of pipelines not associated with treated water distribution systems; or
- (E) Discharges where the Colorado Water Quality Control Division has stated that it will not pursue permit coverage or enforcement,

Section 69. Section 12-1-2(b)(4), “Discrimination in Housing Prohibited,” B.R.C. 1981, is amended to read as follows:

**12-1-2. Discrimination in Housing Prohibited.**

...

- (b) The provisions of subsection (a) of this section do not apply to prohibit:
  - (1) Any religious or denominational institution or organization that is operated, supervised or controlled by a religious or denominational organization from limiting admission or giving preference to persons of the same religion or denomination or from making such selection of buyers, lessees or tenants as will promote a bona fide religious or denominational purpose.
  - (2) Owner.
    - (A) An owner or lessee from limiting occupancy of a single dwelling unit occupied by such owner or lessee as his or her residence.
    - (B) An owner from limiting occupancy of rooms or dwelling units in buildings occupied by no more than two families living independently of each other if the owner actually maintains and occupies one of such rooms or dwelling units as his or her residence.
    - (C) An owner or lessor of a housing facility devoted entirely to housing individuals of one sex from limiting lessees or tenants to persons of that sex, provided that people shall be allowed to use a housing facility that is consistent with their gender identity. In housing facilities where undressing in the presence of others occurs, owners or lessors shall make reasonable accommodations to allow access consistent with an individual's gender identity.
  - (3) The transfer, sale, rental, lease or development of housing designed or intended for the use of the physically or mentally disabled, but this exclusion does not permit discrimination on the basis of race, creed, color, sexual orientation, gender identity, gender expression, genetic characteristics, marital status, religion, religious expression, ancestry or national origin.

- (4) Compliance with any provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, concerning permitted occupancy of dwelling units.
- (5) Discrimination on the basis of pregnancy, parenthood or custody of a minor child in:
  - (A) Any owner-occupied lot containing four or fewer dwelling units;
  - (B) Any residential building in which the owner or lessor publicly establishes and implements a policy of renting or selling exclusively to persons fifty-five years of age or older, but only as long as such policy remains in effect;
  - (C) Any residential institution, as defined in Section 9-16-1, "General Definitions," B.R.C. 1981;
  - (D) Any dwelling unit rented, leased or subleased for no more than eighteen months while the owner or lessee is temporarily absent, when the owner or lessee leaves a substantial amount of personal possessions on the premises;
  - (E) Any residential building located on real estate whose title was, as of November 17, 1981, encumbered by a restrictive covenant limiting or prohibiting the residence of minor children on such property, but only so long as such covenant remains in effect; and
  - (F) Up to one-third of the buildings in a housing complex consisting of three or more buildings; for purposes of this subparagraph, housing complex means a group of buildings each containing five or more units on a contiguous parcel of land owned by the same person or persons.
- (c) The provisions of subsection (a) of this section shall not be construed to require an owner or lessor of property to make any improvement to a housing facility beyond minimal building code standards applicable to the housing facility in question and approved by a state or local agency with responsibility to approve building plans and designs.

ORDINANCE 8651

AN ORDINANCE AMENDING TITLE 1, "GENERAL ADMINISTRATION," TITLE 4, "LICENSES AND PERMITS," TITLE 5, "GENERAL OFFENSES," TITLE 9, "LAND USE CODE," AND TITLE 10, "STRUCTURES," B.R.C. 1981, TO AMEND RESIDENTIAL OCCUPANCY STANDARDS TO COMPLY WITH COLORADO HOUSE BILL 24-1007, CONCERNING RESIDENTIAL OCCUPANCY LIMITS, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 1-2-1, "Definitions," B.R.C. 1981, is amended to read as follows:

**1-2-1. - Definitions.**

- (a) The definitions in this chapter apply throughout this code unless a term is defined differently in a specific title, chapter or section.
- (b) The following words used in this code and other ordinances of the cCity have the following meanings unless the context clearly indicates otherwise:

...

Dwelling unit, detached means a detached principal building other than a mobile home, designed for or used as a dwelling with no more than one dwelling unit within a structure.

Duplex means a structure containing only two dwelling units.

...

Multi-unit dwelling means a building used by two or more of the following groups of persons living independently of each other in separate dwelling units but not including motels, hotels, and detached dwelling units and resorts:

...

Rooming house means an establishment where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is offered for one month or more for three or more roomers not related to the family of the heads of the household living independently within rooming units. not related to the family of the heads of the household.

1 ...

2 Single unit dwelling means a detached principal building other than a mobile home,  
3 designed for or used as a dwelling exclusively by one group of the following persons as an  
4 independent living unit.:

5 (1) The members of a family plus one or two roomers. The quarters the roomers use  
6 shall not exceed one third of the total floor area of the dwelling unit and shall not be a separate  
7 dwelling unit;

8 (2) Up to three individuals in RR-1, RR-2, RE and RL zones;

9 (3) Up to eight persons sixty years of age or older in RR-1, RR-2, MU-2, RE and RL  
10 zones;

11 (4) Up to four individuals in RM, RMX, MU-1, MU-2, MU-3, RH-1, RH-2, RH-3,  
12 RH-4, RH-5, BT, BC, DT-1, DT-2, DT-3, DT-4, DT-5, IS, IG, IM, IMS, BMS and BR zones; or

13 (5) Two individuals and any of their children by blood, marriage, guardianship,  
14 including foster children, or adoption.

15 ...

16 Townhouse means an attached dwelling unit located or capable of being located on its  
17 own lot and separated from adjoining dwelling units by a wall extending from the foundation  
18 through the roof which is structurally independent of the corresponding wall of the adjoining  
19 unit.

20 ...

21 Section 2. Section 4-4-4, "Classification of Licenses," B.R.C. 1981, is amended to read  
22 as follows:

23 **4-4-4. Classification of Licenses.**

24 (a) A Class A license entitles the licensee to contract for the construction, alteration,  
25 wrecking, or repair of any type or size of building or structure permitted by the City of  
Boulder Building Code. The annual fee for a Class A license is that prescribed in Section  
4-20-4, "Building Contractor License, Building Permit Fees, and Payment of Estimated  
Use Tax," B.R.C. 1981.

(b) A Class B license entitles the licensee to contract for the construction, alteration,  
wrecking, or repair of all commercial and residential buildings or structures defined as  
Type V, Type V-1 hour, Type IV, Type II-N, and Type III-N in the City of Boulder

1 Building Code.<sup>1</sup> The annual fee for a Class B license is that prescribed in Section 4-20-4,  
2 "Building Contractor License, Building Permit Fees, and Payment of Estimated Use  
3 Tax," B.R.C. 1981.

3 ...

4 Section 3. Section 4-13-4, "Classification of Licenses," B.R.C. 1981, is amended to read  
5 as follows:

6 **4-13-4. Classifications of Licenses.**

- 7 (a) A Class A license entitles the licensee to undertake or perform any work covered by the  
8 city mechanical code. The annual fee for a Class A license is that prescribed by section 4-  
9 20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.
- 10 (b) A Class B license entitles the licensee to undertake or perform work covered by the  
11 mechanical code for commercial and dwelling units except for work associated with  
12 sections 507 and 508 and the following occupancies "H" and "I" as defined in the city  
13 mechanical code. The annual fee for a Class B license is that prescribed by section 4-20-  
14 13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C. 1981.
- 15 (c) A Class C license entitles the licensee to undertake or perform work covered through the  
16 city mechanical code for ~~one-and two-family dwellings-one detached dwelling units and~~  
17 ~~two-family dwellingsduplexes~~. The annual fee for a Class C license is that prescribed by  
18 section 4-20-13, "Mechanical Contractor License and Mechanical Permit Fees," B.R.C.  
19 1981.

15 ...

16 Section 4. Section 4-20-4, "Building Contractor License, Building Permit Fees, and  
17 Payment of Estimated Use Tax,," B.R.C. 1981, is amended to read as follows:

18 **4-20-4. - Building Contractor License, Building Permit Fees, and Payment of Estimated  
19 Use Tax.**

- 20 (a) An applicant for a building contractor license shall pay the following annual fee  
21 according to the type of license requested:

21 ...

- 22 (f) Other fees are as follows:  
23

24 \_\_\_\_\_  
25 <sup>1</sup>Chapter 10-5, "Building Code," B.R.C. 1981.

	<i>Permit</i>	<i>Fee</i>
1		
2	(1) Demolition Permit	
3	(A) Interior/nonloadbearing	\$ 24.55
4	(B) All other	\$173.70
5	(2) Fence Permit and Retaining Wall Permit	\$4.05 for each \$100 (No maximum)
6	(3) Temporary Event Permit Fee	\$28.05
7	(4) Reinspection Fee	\$94 per occurrence (Payable before any further inspections can be done.)
8	(5) Change of Use Fee	\$81 (Can be credited to building permit fee if permit applied for and paid within ninety days.)
9	(6) After Hours Inspection	\$123 per hour - two-hour minimum
10	(7) Plan Check Fee (due at time of permit application):	
11		
12	(A) Residential, detached <del>single family</del> dwelling units in the RR-1, RR-2, RE, RL-1, RMX-1; and detached <del>single family</del> dwelling units in RL-2 on lots larger than 8,000 square feet and that are not within the boundaries of a planned development, planned residential development, planned unit development, or an approved site review; or shown on Appendix H of Title 9, Land Use Code	Fifty percent of the building permit fee
13		
14		
15		
16	(B) All other residential, <del>single family</del> detached dwelling units not covered by (A) above	Twenty-five percent of the building permit fee
17	(C) Residential, <del>multi-unit dwellings</del> multifamilyfamily	Sixty-five percent of the building permit fee
18		
19	(D) Nonresidential	Sixty-five percent of the building permit fee
20	(8) Energy Code Calculation Fee:	
21	Heat Loss Calculation Check Fee:	
22	(A) Residential	\$ 83.90
23	(B) Commercial	\$104.05
24	(9) Reinstatement of Permit	Fifty percent of Building Permit Fee (Energy Fee will not be charged if no further review is required.)
25		



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(10)	Temporary Certificate of Occupancy	\$173.70
(11)	Replacement of Lost Plans/New Red-lines:	
	(A) Residential/tenant finish	\$116.60 plus cost of reproduction
	(B) Commercial - New	\$347.60 plus cost of reproduction
(12)	Gasoline Tank Installations	\$69.54
(13)	House Moving Permit	\$58.50
(14)	Grading Fees:	
	(A) Grading Plan Review Fees:	
	(i) Fifty cubic yards or less No fee	
	(ii) Fifty-one through one hundred cubic yards \$18.65	
	(iii) One hundred one through one thousand cubic yards \$28	
	(iv) One thousand one through ten thousand cubic yards \$37.30	
	(v) Ten thousand one through one hundred thousand cubic yards - \$37.30 for the first ten thousand cubic yards, plus \$18.65 for each additional ten thousand yards or fraction thereof.	
	(vi) One hundred thousand one through two hundred thousand cubic yards - \$205.60 for the first one hundred thousand cubic yards, plus \$11.15 for each additional ten thousand cubic yards or fraction thereof.	
	(vii) Two hundred thousand one cubic yards or more - \$317.45 for the first two hundred thousand cubic yards, plus \$5.55 for each additional ten thousand cubic yards or fraction thereof.	
	(viii) Additional plan review required by changes, additions, or revisions to approved plans - \$51.30 per hour (minimum charge—one-half hour).	
	(B) Grading Permit Fees:	
	(i) Fifty cubic yards or less \$18.65	
	Fifty-one through one hundred cubic yards \$28	
	(ii) One hundred one through one thousand cubic yards - \$28 for the first one hundred cubic yards plus \$12.60 for each additional one hundred cubic yards or fraction thereof.	
	(iii) One thousand one through ten thousand cubic yards - \$145.70 for the first one thousand cubic yards, plus \$11.15 for each additional one thousand cubic yards or fraction thereof.	
	(iv) Ten thousand one through one hundred thousand cubic yards - \$246.50 for the first ten thousand cubic yards, plus \$50.25 for each additional ten thousand cubic yards or fraction thereof.	

(v) One hundred thousand one cubic yards or more - \$700.30 for the first one hundred thousand cubic yards, plus \$28 for each additional ten thousand yards or fraction thereof.

The fee for any permit issued after construction has begun shall be twice the amount of each fee listed above.

Section 5. Section 4-20-8, "Electrical Contractor Registration and Electrical Permit Fees," B.R.C. 1981, is amended to read as follows:

**4-20-8. Electrical Contractor Registration and Electrical Permit Fees.**

(a) For each electrical permit, the following fees shall be paid in addition to the fees established for building permits under Section 4-20-4, "Building Contractor License, Building Permit Fees, and Payment of Estimated Use Tax," B.R.C. 1981:

(1) Permit fees.

(A) Residential (one- and two-unit dwellings, and townhouses, new construction, extensive remodeling, and additions [based on enclosed living area]):

...

(B) Residential Service Change \$36.70

(C) Photovoltaic/Thermal System Permit \$69.60

(2) All other fees (including, without limitation, commercial construction and multi-unit dwelling family) based on the total cost of the electrical installations, including labor and electrical materials and items except as provided in Paragraphs (a)(3) and (a)(4) of this section:

...

Section 6. Section 4-20-43, "Development Application Fees," B.R.C. 1981, is amended to read as follows:

**4-20-43. Development Application Fees.**

...

(b) Land use regulation fees:

(1) Applicant for a blue line amendment shall pay \$524.

(2) An applicant for zoning of land to be annexed shall pay the following fees:

1        Feasibility study

2        Annexation feasibility study \$2,100

3        (Will apply as credit to initial annexation application fee if submitted within the same  
4        calendar year.)

5        Simple ~~Single Family~~ ~~Single family~~ Residential Detached Dwelling Unit

6        Initial application \$5,000

7        Reapplication for same type of revision on same property within six months (if initial  
8        application is withdrawn or denied) \$2,500

9        ...

10       Section 7. Section 4-20-44, "Floodplain Development Permits and Flood Control

11       Variance Fees," B.R.C. 1981, is amended to read as follows:

12       **4-20-44. Floodplain Development Permits and Flood Control Variance Fees.**

13       (a)    If the floodplain development permit is for a development not located within the  
14       conveyance zone:

15       ...

16       (4)    An applicant for a floodplain development permit for work on an existing  
17       residential structure exceeding the threshold for "substantial damage," "substantial  
18       improvement" or "substantial modification" as defined in Section 9-16-1,  
19       "General Definitions," B.R.C. 1981, or any new ~~single family detached~~  
20       residential, new commercial, or mixed use, or attached residential  
21       structure residential, commercial, or mixed-use structure elevated to flood  
22       protection elevation shall pay \$700.

21       ...

22       Section 8. Section 4-20-69, "Cooperative Housing License Fee," B.R.C. 1981, is

23       repealed and reserved:

24       **4-20-69. Cooperative Housing License Fee. Reserved.**

1 **RESERVED.**

2 ~~The following fees shall be paid before the city manager issues, renews or recertifies a~~  
3 ~~cooperative housing license or renew a rental license:~~

4 (a) ~~— \$645 per license or renewal.~~

5 (b) ~~— To cover the cost of investigative inspections, the city manager will assess to licensees a~~  
6 ~~\$250 fee per inspection, where the city manager has performed an investigative~~  
7 ~~inspection to ascertain compliance with or violations of Chapter 10-11 "Cooperative~~  
8 ~~Housing," B.R.C. 1981.~~

9 Section 9. Section 4-22-6, "Conveyances to Which Chapter Not Applicable," B.R.C.

10 1981, is amended to read as follows:

11 **4-22-6. Conveyances to Which Chapter Not Applicable.**

12 Nothing in this chapter applies to the installation or operation of an elevator, dumbwaiter,  
13 materials lift, escalator or moving walk in a private residence. For purposes of this chapter, the  
14 term *private residence* means a dwelling unit ~~which is occupied only by the members of a single~~  
15 ~~family, regulated under the Residential Code of the City of Boulder, which is occupied only by~~  
16 ~~the members of a single family.~~<sup>[39]</sup>

17 Section 10. Section 4-23-2, "Permit Issuance," B.R.C. 1981, is amended to read as  
18 follows:

19 **4-23-2. Permit Issuance.**

20 (a) Upon designation of a neighborhood permit parking zone pursuant to Section 2-2-15,  
21 "Neighborhood Permit Parking Zones," B.R.C. 1981, the city manager shall issue parking  
22 permits for vehicles owned by or in the custody of and regularly used by residents of such  
23 zone, by persons employed by a business located within such zone, and, if provided in the  
24 zone, by individual nonresidents upon receipt of a completed application therefor and  
25 payment of the fees prescribed in Section 4-20-49, "Neighborhood Parking Permit Fee,"  
B.R.C. 1981.

...

(c) Resident Permits. No more than two resident permits shall be in effect at any time for any  
person. No person shall be deemed a resident of more than one zone, and no more than  
one permit may be issued for any one vehicle even if persons residing in different zones  
share ownership or use. ~~Provided, however, that no more than a total of three resident~~  
~~permits may be issued for any dwelling unit housing a group of persons or organization~~  
~~licensed pursuant to Section 10-11-3, "Cooperative Housing Licenses," B.R.C. 1981.~~

1 ...

2 Section 11. Section 4-23-3, "Guest Permits," B.R.C. 1981, is amended to read as follows:

3 **4-23-3. Guest Permits.**

4 Residents of a zone may obtain two two-week permits per year at no cost for use by  
5 houseguests of the resident. The permit shall be indelibly marked in the space provided thereon  
6 with, or for digital permits shall indicate, the date of its first use. The permit shall thereafter be  
7 valid only for the succeeding thirteen consecutive days. The manager may by regulation define  
8 the circumstances under which additional guest permits may be issued in cases of reasonable  
9 need consistent with residential use of the dwelling. ~~Provided, however, that no more than a total  
of six two-week guest permits per year may be issued for any dwelling unit licensed pursuant to  
Section 10-11-3, "Cooperative Housing Licenses," B.R.C. 1981.~~ Provided, however, that no more  
than a total of six two-week guest permits per year may be issued for any dwelling unit licensed  
pursuant to Section 10-11-3, "Cooperative Housing Licenses," B.R.C. 1981.

10 Section 12. Section 6-1-12, "Damaging Prairie Dog Burrows Prohibited," B.R.C. 1981,  
11 is amended to read as follows:

12 **6-1-12. Damaging Prairie Dog Burrows Prohibited.**

13 (a) Except as authorized by other provisions of this chapter, no person shall damage any  
14 prairie dog burrow.

15 (b) It shall be an affirmative defense to a violation of this section that:

16 ...

17 (6) The burrow was on the property of a ~~single-family residence~~ detached dwelling  
18 unit in which the person who destroyed the burrow, or authorized its destruction,  
was residing;

19 ...

20 Section 13. Section 6-1-36, "Procedures for Obtaining Prairie Dog Lethal Control  
21 Permits," B.R.C. 1981, is amended to read as follows:

22 **6-1-36. Procedures for Obtaining Prairie Dog Lethal Control Permits.**

23 (a) Except as otherwise provided in this chapter, no person shall utilize lethal control  
24 measures for prairie dogs without first having obtained a lethal control permit from the  
25

1 city manager.

2 ...  
3 (h) Owners or occupants of residential lots containing a detached dwelling unit ~~single~~  
4 ~~residence~~ may, at any time, obtain a lethal control permit to exterminate prairie dogs on  
5 their property. No fee shall be charged for such a lethal control permit and no waiting  
6 period longer than that period of time reasonably required to process an application shall  
7 be required.

8 ...  
9 (3) Lots containing ~~multi-family-unit~~ residential structures shall not qualify for  
10 treatment under this subsection.

11 Section 14. Section 6-3-3, "Accumulation of Trash, Recyclables, and Compostables  
12 Prohibited," B.R.C. 1981, is amended to read as follows:

13 **6-3-3. Accumulation of Trash, Recyclables, and Compostables Prohibited.**

14 (a) No owner of any vacant land or property; occupant, owner, or manager of any ~~single-~~  
15 ~~family~~ detached dwelling unit or similar property; owner, manager, or operator of any  
16 ~~multiple family-unit~~ dwelling, private club, or similar property; or owner, operator,  
17 manager, or employee of any commercial or industrial establishment or similar property  
18 shall fail to:

19 ...  
20 Section 15. Section 6-3-4, "Containers Required," B.R.C. 1981, is amended to read as  
21 follows:

22 **6-3-4. Containers Required.**

23 No owner or occupant of any ~~single-family~~ detached dwelling unit; owner or manager of any  
24 ~~multiple family-unit~~ dwelling or private club; or owner, operator, or manager of any business; or  
25 any similar property shall fail to provide at all times one or more trash containers on such  
property. Such containers shall be of a size sufficient to accommodate the regular accumulation  
of trash from the property.

26 Section 16. Section 6-3-12, "Bear-Resistant Containers Required," B.R.C. 1981, is  
27 amended to read as follows:

1 **6-3-12. Bear-Resistant Containers Required.**

2 (a) No private owner, agent appointed pursuant to Section 10-3-14, "Local Agent Required,"  
3 B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult  
4 occupant of a ~~single-family~~detached dwelling unit, a duplex, a triplex, or a fourplex shall  
5 fail to keep all refuse attractants in bear resistant enclosures, in bear resistant containers,  
6 bear resistant dumpsters or securely stored within a house, garage, shed or other structure  
7 at least as secure as a bear resistant enclosure at all times, except when being transported  
8 from a house, garage or bear resistant enclosure for pickup. Refuse attractants transported  
9 for pickup not in a bear resistant container shall be attended, by a person remaining  
10 within 15 feet of the container at all times. It is not a defense to a violation of this section  
11 that a container or enclosure was damaged and the owner had not received the notice  
12 under subsection (d) below.

13 ...

14 (d) No private owner, agent appointed pursuant to Section 10-3-14, "Local Agent Required,"  
15 B.R.C. 1981, or manager of any property, lessee leasing the entire premises, or adult  
16 occupant of a ~~single-family~~detached dwelling unit, a duplex, a triplex, or a fourplex shall  
17 fail to repair a damaged container or enclosure within seventy-two hours after written  
18 notification by any city official, or such other time designated in the notice by the city  
19 official.

20 (e) If the city manager finds a violation of any provision of this section, the manager, after  
21 notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3,  
22 "Quasi-Judicial Hearings," B.R.C. 1981, may impose a civil penalty according to the  
23 following schedule:

- 24 (1) For the first violation of the provision, \$100.00;
- 25 (2) For the second violation of the same provision, \$250.00;
- (3) For the third violation of the same provision, \$500.00; and
- (4) The hearing officer may adjust the penalty, based on evidence presented at a hearing.

(f) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, including but not limited to Section 5-2-4, "General Penalties," B.R.C. 1981, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.

(g) The city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

1 (h) Notice under this subsection is sufficient if hand delivered, emailed, mailed, or  
2 telephoned to such person, or by posting on the premises.

3 Section 17. Section 6-4-9, "Entryway," B.R.C. 1981, is amended to read as follows:

4 **6-4-9. Entryway.**

5 (a) No person shall smoke within any entryway of a building, enclosed area, or common  
6 entrance to a ~~multifamily~~ multi-unit dwelling, except a ~~single-family~~ detached dwelling  
7 unit.

7 ...

8 Section 18. Section 6-10-11, "Pre-Application Notification of Airborne Application,"  
9 B.R.C. 1981, is amended to read as follows:

10 **6-10-11. Pre-Application Notification of Airborne Application.**

11 (a) Prior to airborne application of any pesticide, no contracting party or other user of  
12 pesticides, shall fail to give notice to all occupants of all adjacent properties. For purposes  
13 of this section, properties located diagonally from the affected property and touching only  
14 on a property corner or other point shall be considered to be adjacent, and rights-of-way  
15 shall be disregarded in such determinations.

14 ...

15 (g) If a commercial property or an attached (i.e., ~~multi-family~~ unit) residential dwelling is  
16 located adjacent to property on which an airborne application of any pesticide is to occur  
17 as set forth above, no contracting party or other user of pesticides shall fail to make a  
18 reasonable attempt to notify the owner or manager of the property at least forty-eight  
19 hours prior to the pesticide application. Upon receipt of such notice, such owner or  
20 manager shall not fail to post in a prominent place the information that the adjacent  
21 property will be treated.

22 Section 19. Section 6-12-2, "Definitions," B.R.C. 1981, is amended to read as follows:

23 ~~Multi-family~~ Multi-unit customer means the ~~occupants~~ residents, taken together, of  
24 a residential building or set of residential buildings that uses a collective, common system for the  
25 collection of trash generated by the ~~occupants~~ residents.

26 Section 20. Section 6-12-5, "Containers for Recycling or Composting Collection,"  
B.R.C. 1981, is amended to read as follows:



1 **6-12-5. Containers for Recycling or Composting Collection.**

- 2 (a) Haulers providing trash collection service to multi-unit family customers through  
3 centralized collection areas shall provide containers for recyclable materials at no  
4 additional charge. Containers shall be of a sufficient size to accommodate the regular  
5 accumulation of recyclables from that customer, but, at a minimum, such containers shall  
6 be of a volume equal to one-half of the volume of the trash collection service. If the city  
manager requires the collection of compostables, haulers shall provide containers for that  
service of a sufficient size to accommodate the regular accumulation of compostables  
from that customer.

7 ...

8 Section 21. Section 6-12-6, "Disposition of Recyclable or Compostable Materials,"

9 B.R.C. 1981, is amended to read as follows:

10 **6-12-6. Disposition of Recyclable or Compostable Materials.**

- 11 (a) No person other than the person placing the recyclables or compostables for  
12 collection or that person's designated hauler shall take physical possession of any  
recyclables or compostables separated from trash, set out in the vicinity of the curb  
or alleys, and plainly marked for recyclables or compostables collection.
- 13 (b) Each property owner, property manager, residential customer, commercial customer,  
14 or multi-unit family customer shall relinquish recyclable materials to a hauler only  
15 on the condition that the hauler deliver the recyclable materials only to a recyclables  
processing center as set forth in subparagraph (c) below.

16 ...

17 Section 22. Section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, is  
18 amended to read as follows:

19 **7-6-14. Unauthorized Parking Prohibited.**

- 20 (a) No vehicle shall be parked upon any public or private property without the express or  
21 implied consent of the owner, lessee or occupant of the property or for a time period in  
22 excess of or in a manner other than that for which consent was given by such person.
- 23 (b) For the purposes of this section, there is an implied consent to park in areas set aside for  
24 parking on any private or public property except on property used as a ~~single-family~~  
25 residence detached dwelling unit, but such implied consent is deemed revoked with  
respect to any person who has parked a vehicle or has allowed a vehicle to remain parked  
in disregard of or contrary to the direction or intended function of any of the following:

...

1           Section 23. Section 7-6-24, "All-Night Parking of Commercial Vehicle, Camper or  
2 Motor Home, or Trailer Prohibited," B.R.C. 1981, is amended to read as follows:

3 **7-6-24. All-Night Parking of Commercial Vehicle, Camper or Motor Home, or Trailer**  
4 **Prohibited.**

- 5 (a) No commercial vehicle shall be parked on any street in any district of the city zoned RR-  
6 1, RR-2, RE, RL-1, RL-2, RM-1, RM-2, RM-3, RMX-1, RMX-2, RH-1, RH-2, RH-3,  
7 RH-4, RH-5, ~~RH-6, RH-7~~, MH, P, or A for more than thirty minutes between 8 p.m. and  
8 7 a.m. The penalty for a first violation of this section is \$40. The penalty for a second  
9 violation of this section by the same vehicle or the same registered owner of a vehicle is  
10 \$50. The penalty for a third and any subsequent violation of this section by the same  
11 vehicle or the same registered owner of a vehicle is \$60.
- 12 (b) No camper, motor home, or trailer shall be parked on any street except as follows:
- 13 (1) When located directly on a street frontage of the ~~single-family~~ detached dwelling  
14 unit or ~~multi-family-unit~~ dwelling of the vehicle's registered owner for a  
15 consecutive period of forty-eight hours or less; or

16 ...  
17 Section 24. Section 7-7-5, "Private Towing and Impounding of Vehicle Parked Without  
18 Authorization on Private Property," B.R.C. 1981, is amended to read as follows:

19 **7-7-5. Private Towing and Impounding of Vehicle Parked Without Authorization on**  
20 **Private Property.**

- 21 (a) The owner or lessee of real property or an agent authorized by the owner or lessee may  
22 cause any motor vehicle, parked on such property without the permission of the owner,  
23 lessee or occupant of the property, to be removed or impounded by a towing carrier, but,  
24 except on property used as a ~~single-family residence~~ detached dwelling unit, only if any  
25 applicable requirements of Subsection 7-6-14(b), B.R.C. 1981, and subsection (b) of this  
section have been met. It is not necessary that a citation be issued for violation of Section  
7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, for a vehicle to be removed or  
impounded pursuant to this section.
- (b) Except on property used as a ~~single-family residence~~ detached dwelling unit, the owner,  
lessee or occupant of real property or an agent thereof, prior to causing the removal and  
impoundment of a motor vehicle from any area set aside for motor vehicle parking on  
such person's property, shall:

26 ...

1        Section 25. Section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981, is  
2 amended to read as follows:

3 **8-2-13. Duty to Keep Sidewalks Clear of Snow.**

4 (a) Removal of Snow, Ice, and Sleet from Sidewalks Required. No private owner, agent  
5 appointed pursuant to Section 10-3-14, "Local Agent Required," B.R.C. 1981, or  
6 manager of any property, lessee leasing the entire premises, or adult occupant of a ~~single-~~  
7 ~~family detached~~ dwelling unit, a duplex, a triplex, or a fourplex shall fail to keep all public  
8 sidewalks and walkways abutting the premises such person owns, leases, or occupies  
9 clear of snow, ice, and sleet, as provided in this section. Such persons are jointly and  
10 severally liable for such responsibility, criminally and administratively. Such persons  
11 shall remove any accumulation after any snowfall or snowdrift as promptly as reasonably  
12 possible and no later than twenty-four hours after the snowfall or the formation of the  
13 snowdrift. Such persons shall remove the snow, ice, or sleet from the full width of all  
14 sidewalks and walkways, except those with a width exceeding five feet, which must be  
15 cleared to a width of at least five feet.

11 ...

12 (1) The city manager will notify the owner, agent appointed pursuant to Section 10-3-  
13 14, "Local Agent Required," B.R.C. 1981, or manager of any property, the lessee  
14 leasing the entire premises or any adult occupant of a ~~single family detached~~  
15 dwelling unit, a duplex, a triplex, or a fourplex, that such person must remove the  
16 snow within the earlier of twenty-four hours or 12 noon of the day following the  
17 notice.

17 Section 26. Section 8-9-2, "Definitions," B.R.C. 1981, is amended to read as follows:

18 For purposes of this chapter and the related fees in Chapter 4-20, "Fees," B.R.C. 1981, the  
19 following words have the following meanings, unless the context clearly indicates otherwise:

20 ...

#

21 ~~*Multifamily residential* means all other residential not included in the definition of single~~  
22 ~~family residential as defined in this section.~~

23 ...

24 ~~*Single family residential* means a single family detached dwelling unit, single family~~  
25 ~~attached dwelling unit that is townhouse or a duplex, or mobile home.~~

25 ...

1           Section 27. Section 9-2-3, "Variances and Interpretations," B.R.C. 1981, is amended to  
2 read as follows:

3 **9-2-3. Variances and Interpretations.**

4 (a) Purpose: This section identifies those standards that can be varied by either the city  
5 manager or the Board of Zoning Adjustment (BOZA). Some standards can be varied by  
6 the city manager through an administrative Review process, others by BOZA by another  
7 level of administrative Review. The city manager may defer any administrative decision  
8 pursuant to this section to BOZA. This section also identifies which city manager  
9 interpretations of this title may be appealed to BOZA and establishes a process for such  
10 appeals.

11 ...

12 (c) Administrative Variances: The city manager may grant a variance from:

13 ...

14 (3) The minimum requirements of Section 9-7-11, "Maximum Building Coverage,"  
15 and Section 9-8-2, "Floor Area Ratio Requirements," to existing ~~single-~~  
16 ~~familydetached~~ dwelling units, by up to two hundred square feet. The purpose of  
17 this administrative variance is to permit minor modifications to ~~single-~~  
18 ~~familydetached~~ dwelling units that will allow residents or a family member of a  
19 head of household with existing or anticipated impairments that restricts their  
20 ability to perform a major life activity to be in the home. This variance may be  
21 granted if the city manager finds that:

22 (A) The request meets the requirements of Subparagraphs (h)(5)(A) and (B) of  
23 this section; and

24 (B) The improvements are necessary to remedy any impairment, or anticipated  
25 impairment, that would prohibit or significantly restrict a resident's or a  
family member of a head of household's ability to perform a major life  
activity as compared to the ability of the average person in the general  
population to perform the same activity.

(4) The height of the plane above a side lot line in bulk plane requirements of Section  
9-7-9, "Side Yard Bulk Plane," B.R.C. 1981, and the side yard wall articulation  
standards of Section 9-7-10, "Side Yard Wall Articulation Standards," B.R.C.  
1981, may vary by up to twenty percent and the building coverage requirements

1 of Section 9-7-11, "Maximum Building Coverage," or the floor area ratio  
2 requirements of Section 9-8-2, "Floor Area Ratio Requirements," by up to two  
3 hundred square feet for existing ~~single-family~~detached dwelling units if the  
4 manager finds that the application satisfies all of the requirements in Subsection  
5 (h) of this section.

6 ...  
7 Section 28. Section 9-3-11, "Medium Density Overlay Zone," B.R.C. 1981, is amended  
8 to read as follows:

9 **9-3-11. Medium Density Overlay Zone.**

- 10 (a) Purpose and Scope: Medium density residential areas adjacent to the downtown central  
11 business district originally developed with a ~~predominantly single-family~~ character  
12 predominantly composed of detached dwelling units and are now redeveloping with  
13 higher densities. Development and redevelopment in certain RM-2 and RM-3 zoning  
14 districts has been very disruptive of the existing residential character of those areas, has  
15 failed to preserve certain historic structures, has led to many inappropriate structures  
16 being erected and thus has negatively affected the value of adjoining properties. The  
17 medium density overlay zone map which designates those portions of the medium density  
18 areas to which this section applies is set forth as ~~appendix~~ Appendix D, "Medium Density  
19 Overlay Zone," of this title.
- 20 (b) Additional Regulations: The following additional regulations shall apply in the medium  
21 density residential overlay zone:
- 22 (1) No person shall construct a second detached dwelling on a lot as set forth in  
23 Section 9-7-12, "Two Detached Dwellings on a Single Lot," B.R.C. 1981.
  - 24 (2) No person shall create additional ~~multiple~~ dwelling units except that one  
25 additional dwelling unit per lot may be created by internal conversions of existing  
principal structures that are not enlarged in size subsequent to September 2, 1993,  
and provided that such conversions do not involve exterior modifications other  
than for access, including, without limitation, doors, windows and stairways.

26 Section 29. Section 9-3-12, "Opportunity Zone Overlay," B.R.C. 1981, is amended to  
27 read as follows:

28 **9-3-12. Opportunity Zone Overlay.**

- 29 (a) Legislative Intent: The purpose of this section is to enact an overlay zone for Census  
30 Tract 122.03, described in Appendix O, "Census Tract 122.03," and associated standards  
31 in order to protect the public health, safety and welfare:

- 1 (1) Federal Census Tract 122.03 was certified by the federal government as an  
2 opportunity zone;
- 3 (2) Investors in the opportunity zone, through opportunity zone funds, will receive  
4 favorable tax relief as an incentive to invest in business and real estate within  
5 Census Tract 122.03;
- 6 (3) It is anticipated that opportunity zone funds may lead to accelerated investment in  
7 Census Tract 122.03;
- 8 (4) The Boulder Valley Comprehensive Plan provides that the city will work with  
9 neighborhoods to protect and enhance neighborhood character and livability and  
10 preserve the relative affordability of existing housing stock;
- 11 (5) The Boulder Valley Comprehensive Plan describes that the city will make special  
12 efforts to preserve and rehabilitate existing housing servicing low-, moderate-,  
13 and middle-income households; and
- 14 (6) It is the intent of this section to prevent accelerated demolition of the existing  
15 relatively affordable multi-family-unit dwelling housing stock in Census Tract  
16 122.03 to protect existing neighborhood character in this area and preserve the  
17 existing housing stock and its relative affordability.

...

- 18 (e) Unsafe Buildings: As an exception to the standards of this section, a building or part  
19 thereof may be demolished if the city manager has declared the building or relevant part  
20 thereof to be unsafe or dangerous to the general public, ~~occupants~~ residents, or property or  
21 otherwise unfit for human occupancy, and such that it is unreasonable to repair the  
22 structure or relevant part thereof. In making such determination, the city manager will  
23 consider the deficiencies of the structure or part thereof, including without limitation,  
24 damage, decay, faulty construction, potential for collapse, disrepair or the presence of  
25 health and safety concerns such as unsanitary conditions, infestation of rats or vermin, the  
presence of filth and contamination, or other conditions that constitute a hazard to  
~~occupants~~ residents or the public.
- (f) Maintenance: The city council intends to preserve from deliberate or inadvertent neglect  
attached dwelling units in Census Tract 122.03. No owner, lessee or occupant of an  
attached dwelling unit shall fail to comply with the ordinances of the city regulating  
property maintenance, including without limitation Chapter 10-2, "Property Maintenance  
Code," B.R.C. 1981.

21 Section 30. Section 9-5-2, "Zoning Districts," B.R.C. 1981, is amended to read as  
22 follows:  
23  
24  
25

1 **9-5-2. Zoning Districts.**

2 (a) Classification: Zoning districts are classified according to the following classifications  
3 based on the predominant character of development and current or intended use in an area  
4 of the community:

- 5 (1) R: Residential;
- 6 (2) M: Mixed Use, a mix of residential and business;
- 7 (3) B: Business;
- 8 (4) DT: Downtown business zones;
- 9 (5) I: Industrial;
- 10 (6) P: Public;
- 11 (7) A: Agricultural.

12 ...

13 (c) Zoning District Purposes:

14 (1) Residential Districts and Complementary Uses:

15 (A) Residential - Rural 1, Residential - Rural 2, Residential - Estate, and  
16 Residential - Low 1: Primarily ~~single-family~~ detached dwelling units with  
17 some duplexes and attached dwelling units at low to very low residential  
18 densities.

19 ...

20 (D) Residential - Mixed 1: Mixed density residential areas with a variety of  
21 ~~single-family~~, detached dwelling units, duplexes, and multi-family units  
22 dwellings that will be maintained; and where existing structures may be  
23 renovated or rehabilitated.

24 ...

25 (H) Residential - High 6: High density residential urban areas that are  
26 ~~predominately~~ predominantly townhouses in close proximity to either a  
27 primary destination or a transit center and where complementary uses may  
28 be allowed.

1            Section 31. Section 9-6-3, "Specific Use Standards - Residential Uses," B.R.C. 1981, is  
2 amended to read as follows:

3 **9-6-3. Specific Use Standards - Residential Uses.**

4 ...

5 **(j) Congregate Care Facility, Custodial Care Facility, and Residential Care Facility:**

6 (1) Applicability: This subsection (j) sets forth standards for congregate care  
7 facilities, custodial care facilities, and residential care facilities that are subject to  
8 specific use standards pursuant to Table 6-1, Use Table.

8 (2) Intensity: The number of dwelling units or sleeping rooms or accommodations shall  
9 be consistent with Section 9-8-6, "Density Equivalencies for Group Residences and  
10 Hostels," B.R.C. 1981.

10 ~~Standards: The following standards apply to any such facility that may be  
11 approved as a conditional use or pursuant to a use review:~~

12 (A) ~~For purposes of density limits in Section 9-8-1, "Schedule of Intensity  
13 Standards," B.R.C. 1981, and occupancy limits, six occupants, including  
14 staff, in any custodial, residential, or congregate care facility constitute  
15 one dwelling unit, but the city manager may increase the occupancy of a  
16 residential care facility to eight occupants, including staff, if:~~

17 (i) ~~The floor area ratio for the facility complies with standards of the  
18 Colorado State Departments of Health and Social Services and  
19 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and~~

20 (ii) ~~Off-street parking is appropriate to the use and needs of the facility  
21 and the number of vehicles used by its occupants, regardless of  
22 whether it complies with other off-street parking requirements of  
23 this chapter.~~

24 ...

25 **(l) Group Home Facility:**

(1) The following standards apply to any group home facility that may be approved  
as a conditional use or pursuant to a use review:

(A) General Standards: Any group home facility approved as a conditional use  
or pursuant to a use review shall meet the following standards:



1 (i) Intensity: The number of dwelling units or sleeping rooms or  
2 accommodations shall be consistent with Section 9-8-6, "Density  
3 Equivalencies for Group Residences and Hostels," B.R.C. 1981.

4 For purposes of density limits in Section 9-8-1, "Schedule of  
5 Intensity Standards," B.R.C. 1981, and occupancy limits, eight  
6 occupants, not including staff, in any group home facility  
7 constitute one dwelling unit, but the city manager may increase the  
8 occupancy of a group home facility to ten occupants, not including  
9 staff, if:

10 a. ~~The floor area ratio for the facility complies with standards~~  
11 ~~of the Colorado State Departments of Public Health and~~  
12 ~~Environment and Human Services and Chapter 10-2,~~  
13 ~~"Property Maintenance Code" B.R.C. 1981; and~~

14 b. ~~Off street parking is appropriate to the use and needs of the~~  
15 ~~facility and the number of vehicles used by its occupants,~~  
16 ~~regardless of whether it complies with other off street~~  
17 ~~parking requirements of this chapter.~~

18 (ii) Concentration: In order to prevent the potential creation of an  
19 institutional setting by concentration of group homes in a  
20 neighborhood, no group home facility may locate within three  
21 hundred feet of another group home facility, but the city manager  
22 may permit two such facilities to be located closer than three  
23 hundred feet apart if they are separated by a physical barrier,  
24 including, without limitation, an arterial, a collector, a commercial  
25 district or a topographic feature that avoids the need for dispersal.  
The planning department will maintain a map showing the  
locations of all group home facilities in the city.

(iii) Safety: No person shall make a group home facility available to an  
individual whose tenancy would constitute a direct threat to the  
health or safety of other individuals or whose tenancy would result  
in substantial physical damage to the property of others. A  
determination that a person poses a direct threat to the health or  
safety of others or a risk of substantial physical damage to property  
must be based on a history of overt acts or current conduct of that  
individual and must not be based on general assumptions or fears  
about a class of disabled persons.

23 (m) **Transitional Housing:**

24 (1) The following standards apply to any transitional housing facility that may be  
25 approved as a conditional use or pursuant to a use review:

1 (A) General Standards: Any transitional housing approved as a conditional use  
2 or pursuant to a use review shall meet the following standards:

3 (i) Density: The maximum number of dwelling units with transitional  
4 housing facility shall be the same as is permitted within the  
5 underlying zoning district, except that for any zoning district that is  
6 classified as an industrial zoning district pursuant to Section 9-5-2,  
7 "Zoning Districts," B.R.C. 1981, the number of dwelling units  
8 permitted shall not exceed one dwelling unit for each one thousand  
9 six hundred square feet of lot area on the site.

10 ~~(ii) Occupancy: No person shall occupy such dwelling unit within a  
11 transitional housing facility except in accordance with the  
12 occupancy standards set forth in Section 9-8-5, "Occupancy of  
13 Dwelling Units," B.R.C. 1981, for dwelling units.~~

14 (iii) Parking: The facility shall provide one off-street parking space for  
15 each dwelling unit on the site. The approving authority may grant a  
16 parking deferral of up to the higher of fifty percent of the required  
17 parking or what otherwise may be deferred in the zoning district if  
18 the applicant can demonstrate that the criteria set forth in  
19 Subsection 9-9-6(e), B.R.C. 1981, have been met.

20 ...

21 Section 32. Section 9-6-5, "Specific Use Standards- Commercial Uses," B.R.C. 1981, is  
22 amended to read as follows:

23 **9-6-5. Specific Use Standards - Commercial Uses.**

24 **FOOD, BEVERAGE, AND LODGING**

25 (a) **Bed and Breakfast:**

(1) The following standards apply to bed and breakfast uses that may be approved as  
a conditional use or pursuant to a use review:

...  
26

(C) No structure contains more than twelve guest rooms. The number of guest  
rooms shall not exceed the occupancy limitations set forth in Section 9-8-  
6, "Density Occupancy Equivalencies for Group Residences and Hostels,"  
B.R.C. 1981.

...  
27

1        Section 33. Section 9-7-2, "Setback Standards," B.R.C. 1981, is amended to read as

2 follows:

3 **9-7-2. Setback Standards.**

4 (a)    Front Yard Setback Reductions: The front yard setback required in Section 9-7-1,  
5 "Schedule of Form and Bulk Standards," B.R.C. 1981, may be reduced for a principal  
6 structure on any lot if more than fifty percent of the principal buildings on the same block  
7 face or street face do not meet the required front yard setback. The setback for the  
8 adjacent buildings and other buildings on the block face shall be measured from the  
9 property line to the bulk of the building, excluding, without limitation, any unenclosed  
10 porches, decks, patios or steps. The bulk of the building setback shall not be less than the  
11 average bulk of the building setback for the principal buildings on the two adjacent lots.  
12 Where there is only one adjacent lot, the front yard setback reduction shall be based on  
13 the average of the principal building setbacks on the two closest lots on the same block  
14 face. (See Figure 7-1 of this section.)

11 ...

12 (b)    Side Yard Setback Standards:

13 ...

14 (6)    Existing Nonstandard Side Yard Setbacks for Existing ~~Single-Family~~ Detached  
15 Dwelling Units: A second story addition that does not comply with the minimum  
16 interior or combined side yard setbacks may be added to an existing ~~single family~~  
17 detached dwelling unit subject to the following:

- 18 (A)    The interior side yard setback for the existing ~~single-family~~ detached  
19 dwelling unit complied with the setback requirements in existence at the  
20 time of initial construction and was not created by a variance or other  
21 procedure;
- 22 (B)    The resulting interior side yard setback will not be less than five feet and  
23 combined side yard setbacks will not be less than ten feet;
- 24 (C)    That portion of the building in the side yard setback shall vertically align  
25 with the existing first story wall.

21        Section 34. Section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981, is  
22 amended to read as follows:

23 **9-7-8. Accessory Buildings in Residential Zones.**

24 (a)    Maximum Building Coverage: In an RR, RE, RL or RMX-1 residential zoning district,

1 unless the property has been designated as an individual landmark or is located within a  
2 historic district under Chapter 9-11, "Historic Preservation," B.R.C. 1981, the total  
3 cumulative building coverage of accessory buildings or structures between the principal  
4 building rear yard setback and the rear yard property line shall not exceed five hundred  
5 square feet. For a property that has been designated as an individual landmark or is  
6 located within a historic district under Chapter 9-11, "Historic Preservation," B.R.C.  
7 1981, such total cumulative building coverage may be increased to permit the addition of  
8 one new accessory building or structure of up to five hundred square feet of coverage if  
9 such property has existing structures within the principal building rear yard setback area.  
10 There shall be no limitation on building coverage for accessory buildings or structures  
11 located entirely within the principal building envelope except as set forth in the definition  
12 of "accessory building or structure," in Chapter 9-16, "Definitions," B.R.C. 1981.

13 (b) Connections Between a Dwelling Unit and an Accessory Building Located Within the  
14 Principal Building Envelope: In a residential zoning district, a ~~single-family~~ detached  
15 dwelling unit may be connected to an accessory building by a breezeway that is built in  
16 compliance with the principal building setback standards set forth in this chapter, or the  
17 principal building setback standards in place at the time of its construction, if the  
18 breezeway meets the following standards:

19 ...  
20 (c) Breezeway Connections Between Accessory and Principal Buildings: In a residential  
21 zoning district, a ~~single-family~~ detached dwelling unit may be connected to an accessory  
22 building which is located partially or entirely within principal building rear yard setback  
23 by a breezeway if the breezeway meets the following standards:

24 ...  
25 (5) The sides of the breezeway above grade shall remain completely open except for  
structural support columns and the walls of the accessory building and the ~~single-~~  
~~family~~ detached dwelling unit to which it is attached.

26 ...  
27 Section 35. Section 9-7-9, "Side Yard Bulk Plane," B.R.C. 1981, is amended to read as  
28 follows:

29 **9-7-9. Side Yard Bulk Plane.**

30 (a) Purpose: Buildings with tall side walls may impact privacy, views or visual access to the  
31 sky on neighboring properties. The purpose of this side yard bulk plane standard is to  
32 ensure that buildings step down towards neighboring properties in order to enhance  
33 privacy, preserve some views and visual access to the sky for lots or parcels that are  
34

1 adjacent to new development.

2 (b) Scope: All construction related to principal and accessory buildings shall comply with the  
3 bulk plane requirements of this section. This section applies to all construction related to  
4 buildings, including new construction, building addition or modification of existing  
5 buildings as follows:

6 (1) All residential principal and accessory buildings in the RR-1, RR-2, RE and RL-1  
7 zoning districts; and

8 (2) All principal and accessory buildings that are used as ~~a detached single family~~  
9 ~~land used~~welling units in the RMX-1 zoning district.

10 ...

11 Section 36. Section 9-7-10, "Schedule of Intensity Standards," B.R.C. 1981, is amended  
12 to read as follows:

13 **9-7-10. Side Yard Wall Articulation.**

14 (a) Purpose: Buildings with tall side walls may impact privacy, views or visual access to the  
15 sky on neighboring properties. The purpose of the side yard wall articulation standard is  
16 to reduce the perceived mass of a building by dividing it into smaller components, or to  
17 step down the wall height in order to enhance privacy, preserve views and visual access  
18 to the sky for lots or parcels that are adjacent to new development.

19 (b) Scope: All construction related to principal and accessory buildings shall comply with the  
20 side yard wall length articulation requirements of this section. This section applies to all  
21 construction related to buildings, including new construction, expansion or modification  
22 of existing buildings as follows:

23 (1) All residential buildings in the RR-1, RR-2, RE and RL-1 zoning districts,  
24 including lots located in planned developments, planned residential developments  
25 and planned unit developments.

(2) All buildings that are used as ~~a detached single family land used~~welling units in  
the RMX-1 zoning district, including lots located in planned developments,  
planned residential developments and planned unit developments.

...

Section 37. Section 9-7-11, "Maximum Building Coverage," B.R.C. 1981, is amended  
to read as follows:

1 **9-7-11. Maximum Building Coverage.**

2 (a) Purpose: The purposes of the building coverage standards are to establish the maximum  
3 percentage of lot surface that may be covered by principal and accessory buildings to  
4 preserve open space on the lot, and to preserve some views and visual access to the sky  
5 and enhance privacy for residences that are adjacent to new development.

6 (b) Scope: All construction related to principal and accessory buildings shall comply with the  
7 building coverage requirements of this section. This section applies to all construction  
8 related to residential buildings, including new construction, building additions or  
9 modification of existing buildings as follows:

10 (1) All residential and principal and accessory buildings in the RR-1, RR-2, RE and  
11 RL-1 zoning districts, including lots located in planned developments, planned  
12 residential developments and planned unit developments.

13 (2) All principal and accessory buildings that are used as ~~a detached single family~~  
14 ~~land use~~ dwelling units in the RMX-1 zoning district, including lots located in  
15 planned developments, planned residential developments and planned unit  
16 developments.

17 ...

18 Section 38. Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, is amended  
19 to read as follows:

20 **9-8-1. - Schedule of Intensity Standards.**

21 The purpose of this chapter is to indicate the requirements for the allowed intensity of all types  
22 of development, including maximum density for residential developments based on allowed  
23 number of units ~~and occupancy~~. All primary and accessory structures are subject to the standards  
24 set forth in Table 8-1 of this section except that developments within an area designated in  
25 Appendix L, "Form-Based Code Areas," and subject to the standards or Chapter 9-14, "Form-  
Based Code," are exempt from Table 8-1 and Sections 9-8-1 through 9-8-4, B.R.C. 1981.  
Developments within an area designated in Appendix L, "Form-Based Code Areas," and subject  
to the standards or Chapter 9-14, "Form-Based Code," are subject to the standards of Sections 9-  
8-5, "Occupancy of Dwelling Units," 9-8-6, "~~Density Occupancy~~-Equivalencies for Group  
Residences and Hostels," and 9-8-7, "Density ~~and Occupancy~~ of Efficiency Living Units,"  
B.R.C. 1981. No person shall use any land within the city authorized by Chapter 9-6, "Use  
Standards," B.R.C. 1981, except according to the following requirements unless modified  
through a use review under Section 9-2-15, "Use Review," B.R.C. 1981, or a site review under  
Section 9-2-14, "Site Review," B.R.C. 1981, or granted a variance under Section 9-2-3,  
"Variances and Interpretations," B.R.C. 1981, or approved through a form-based code review  
under Section 9-2-16, "Form-Based Code Review," B.R.C. 1981.

1 ...

2 Section 39. Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, is amended to  
3 read as follows:

4 **9-8-2. Floor Area Ratio Requirements.**

5 (a) Purpose: The purpose of the floor area ratio requirements is to limit the impacts of the use  
6 that result from increased building size.

7 ...

8 (d) District-Specific Standards:

9 (1) Maximum Floor Area in the RR-1, RR-2, RE, RL-1, RL-2, and RMX-1 Zoning  
10 Districts:

11 (A) Purpose: The purpose of a floor area ratio standard is to address the  
12 proportionality of building size to lot size and allow variation in building  
13 form within the established building envelope.

14 (B) Scope: All construction related to principal and accessory buildings shall  
15 comply with the floor area ratio requirements of this section. This section  
16 applies to all construction related to residential buildings, including new  
17 construction, building additions, or modification of existing buildings as  
18 follows:

19 (i) All ~~residential and~~ principal and accessory buildings in the RR-1,  
20 RR-2, RE, and RL-1 zoning districts, including lots located in  
21 planned developments, planned residential developments, and  
22 planned unit developments.

23 (ii) All principal and accessory buildings ~~that are used as a detached~~  
24 ~~single-family land use~~ in the RMX-1 zoning district, including lots  
25 located in planned developments, planned residential  
developments, and planned unit developments.

(iii) In the RL-2 zoning district, the floor area ratio requirements shall  
apply to lots that are 8,000 square feet or larger, used for detached  
~~single-family land uses~~ dwelling units that are not within the  
boundaries of a planned development, planned residential  
development, planned unit development, or an approved site  
review.

(iv) In the RL-2 zoning district, the floor area ratio requirements shall  
apply to all lots and parcels used for detached ~~single-family land~~

1 ~~uses~~ dwelling units that are within the boundaries of a planned  
2 development, planned residential development, and planned unit  
3 development that are shown on Appendix H to this title.

- 4 (v) For projects subject to site review in Section 9-2-14, "Site  
5 Review," B.R.C. 1981, the floor area shall be calculated based  
6 upon each lot or parcel.

7 ...  
8 Section 40. Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is amended to  
9 read as follows:

10 **9-8-5. Occupancy of Dwelling Units.**

11 (a) General Occupancy Restrictions: No person shall occupy a dwelling unit in violation of  
12 the occupancy limitations of Chapter 10-2, "Property Maintenance Code," B.R.C.1981. A  
13 violation of this section shall be considered a violation of Title 10.

14 (b) Prior Approvals: Any requirement under a city approval granted under this title that  
15 restricts occupancy based on familial relationship, such as number of unrelated persons,  
16 or restricts occupancy beyond the occupancy permitted by Chapter 10-2, "Property  
17 Maintenance Code," B.R.C. 1981, is void and shall not be enforced. Notwithstanding the  
18 foregoing, this subsection does not apply to any residential occupancy limit based on the  
19 standards in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, or based on any local,  
20 state, federal or political subdivision affordable housing program guidelines. Subject to  
21 the provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, no persons  
22 except the following persons shall occupy a dwelling unit:

23 (1) ~~Members of a family plus up to two additional persons. Quarters that roomers use~~  
24 ~~shall not exceed one third of the total floor area of the dwelling unit and shall not~~  
25 ~~be a separate dwelling unit;~~

(2) ~~Up to any five persons except within a residential development exceeding a~~  
~~density of 1,600 square feet of lot area per dwelling unit in the RH-2 and RH-5~~  
~~zoning districts up to four persons;~~

(3) ~~Three persons and any of their children by blood, marriage, guardianship,~~  
~~including foster children, or adoption; or~~

(4) ~~A nonconforming occupancy meeting the requirements of Subsection (c) of this~~  
~~section.~~

(5) ~~The occupancy level allowed by Subparagraphs 9-8-5 (a)(2) and (a)(3) do not~~  
~~apply to nonconforming uses or nonconforming occupancies.~~

(b) ~~Accessory Dwelling Unit: The principal dwelling unit and accessory dwelling unit shall~~  
~~be considered one dwelling unit. The occupancy of the principal dwelling unit together~~



1 with the occupancy of any accessory dwelling unit shall not exceed the occupancy  
2 requirements set forth in this section for one dwelling unit; provided, however, for  
3 purposes of this subsection only, any occupant and his or her dependents shall be counted  
4 as one person. The floor area limitation for quarters used by roomers under Paragraph 9-  
5 8-5(a)(1), B.R.C. 1981, shall not apply to an accessory dwelling unit.

6 (c) ~~Nonconforming Occupancy in Dwelling Units: A dwelling unit that has a legally  
7 established occupancy higher than the occupancy level allowed by Subsection (a) of this  
8 section may maintain such occupancy of the dwelling unit as a nonconforming  
9 occupancy, subject to the following:~~

10 (1) ~~The higher occupancy level was established because of a rezoning of the property,  
11 an ordinance change affecting the property, or other city approval;~~

12 (2) ~~The rules for continuation, restoration, and change of a nonconforming use set  
13 forth in Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-  
14 2-15, "Use Review," B.R.C. 1981;~~

15 (3) ~~Units with an occupancy greater than five unrelated persons shall not exceed a  
16 total occupancy of the dwelling unit of one person per bedroom;~~

17 (4) ~~The provisions of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981; and~~

18 (5) ~~If a property owner intends to sell a dwelling unit with a non-conforming  
19 occupancy that exceeds the occupancy limits in Subsection 9-8-5(a), B.R.C. 1981,  
20 every such contract for the purchase and sale of a dwelling unit shall contain a  
21 disclosure statement that indicates the allowable occupancy of the dwelling unit.~~

22 (d) ~~Nonconforming Uses: A nonconforming residential use that is not permitted by Section  
23 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, or is a lot or parcel that does not  
24 meet the density requirements of Chapter 9-8, "Intensity Standards," B.R.C. 1981, is  
25 subject to the following:~~

(1) ~~Unless the occupancy was established meeting the requirements of Subsection (c)  
of this section, the occupancy of a nonconforming use per dwelling cannot be  
more than:~~

(A) ~~Three unrelated persons in P, A, RR, RE, and RL zones;~~

(B) ~~Four unrelated persons in MU, RM, RMX, RH, BT, BC, BMS, BR, DT,  
IS, IG, IM, and IMS zones; or~~

(C) ~~Two persons and any of their children by blood, marriage, guardianship,  
including foster children, or adoption.~~

(2) ~~The rules for continuation, restoration, and change of a nonconforming use set  
forth in Chapter 9-10, "Nonconformance Standards," B.R.C. 1981, and Section 9-  
2-15, "Use Review," B.R.C. 1981, apply except that occupancy cannot be more  
than that permitted by Subparagraph (1).~~

(e) ~~Cooperative Housing License: A dwelling unit licensed as a cooperative housing unit  
pursuant to Section 10-11-3, "Cooperative Housing Licenses," B.R.C. 1981, shall not be  
subject to the occupancy limits or any exceptions as set forth in this section; and an~~

1 attached accessory dwelling unit or detached accessory dwelling unit licensed with such  
2 dwelling unit as a cooperative housing unit shall not be subject to the occupancy  
3 standards of Subparagraph 9-6-3(n)(1)(A)(ii), "Occupancy Requirements," B.R.C. 1981.  
4 All such dwelling units together with any attached accessory dwelling unit or detached  
5 accessory dwelling unit so licensed shall be limited to no fewer than five occupants with  
6 the maximum number of occupants, without regard to whether the occupants are related  
7 or not, as follows:

8 (1) — In the RR, RE and RL zone districts to no more than twelve occupants, provided,  
9 however, that occupancy shall not exceed more than one person per two hundred  
10 square feet of habitable space;

11 (2) — In all other zone districts to no more than fifteen occupants, provided, however,  
12 that occupancy shall not exceed more than one person per two hundred square  
13 feet of habitable space; and

14 (3) — The city manager may authorize a greater number of occupants in any cooperative  
15 housing unit that is deed restricted as permanently affordable if the planning  
16 board after a public hearing recommends a greater number. Before making any  
17 such recommendation, the planning board shall consider the potential impacts on  
18 the surrounding community, the number of residents proposed, the proposed  
19 habitable square feet per person, the available off-street parking, and the mission  
20 of the cooperative.

21 (f) — Prohibition: No person shall occupy a dwelling unit or accessory dwelling unit in  
22 violation of this section or intentionally or negligently misrepresent the permitted  
23 occupancy of a dwelling unit or accessory dwelling unit in violation of this section.

24 Section 41. Section 9-8-6, "Occupancy Equivalencies for Group Residences," B.R.C.

25 1981, is amended to read as follows:

**9-8-6. Density Occupancy Equivalencies for Group Residences and Hostels.**

The permitted density/~~occupancy~~ for the following uses shall be ~~computed~~ calculated as indicated below. The density/~~occupancy~~ equivalencies shall not be used to convert existing uses referenced in this section to dwelling units except as set forth in subsection (g). The number of allowed dwelling units shall be determined by using Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981:

(a) Boarding or Rooming House, Fraternity, Sorority, or Dormitory: In boarding or rooming houses, fraternities, sororities, or dormitories, three sleeping rooms ~~Accommodations for three occupants in any boarding or rooming house, fraternity, sorority, or dormitory~~ constitute one dwelling unit.

(b) Hostel: In hostels, three sleeping rooms ~~Accommodations for three occupants in any~~ ~~hostel~~ constitute one dwelling unit, but the planning board may increase the density of a hostel to four ~~occupants~~ sleeping rooms per dwelling unit through a use review as provided in Section 9-2-15, "Use Review," B.R.C. 1981.

1 (c) Custodial Care and Residential Care Facilities: In custodial care and residential care  
2 facilities, The occupancy of a custodial care or a residential care facility must meet the  
3 requirements of Subsection 9-6-3(j), B.R.C. 1981 eight sleeping rooms or  
4 accommodations without kitchen facilities constitute one dwelling unit. If units are  
5 provided in a household living configuration, one detached dwelling unit constitutes one  
6 dwelling unit and one attached dwelling unit constitutes one dwelling unit.

7 (d) Group Home Facilities: In group home facilities, eight sleeping rooms or  
8 accommodations without kitchen facilities constitute one dwelling unit. If units are  
9 provided in a household living configuration, one detached dwelling unit constitutes one  
10 dwelling unit and one attached dwelling unit constitutes one dwelling unit.~~The occupancy~~  
11 ~~of a group home facility must meet the requirements of Subsection 9-6-3(l), B.R.C. 1981.~~

12 ...  
13 (g) Conversion of Rooming Units to Dwelling Units: Pursuant to approval of a use review  
14 under Sections 9-2-15, "Use Review," B.R.C. 1981, for nonconforming uses, r~~Rooming~~  
15 units in RM and RH zoning districts that were legally established under prior zoning  
16 ordinances and have continued as a legal nonconforming use may be converted to  
17 dwelling units at a ratio of four rooming units to one dwelling unit.

18 Section 42. Section 9-8-7, "Density and Occupancy of Efficiency Living Units," B.R.C.  
19 1981, is amended to read as follows:

20 **9-8-7. Density and Occupancy of Efficiency Living Units.**

21 (a) Dwelling Unit Equivalents for Efficiency Living Units: For purposes of the density limits  
22 of Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, two efficiency living  
23 units constitute one dwelling unit.

24 (b) Dwelling Unit Equivalents for Moderate Income Housing: For purposes of counting  
25 dwelling units under the provisions of Ordinance No. 4638, as amended, "Moderate  
Income Housing," one efficiency living unit equals one dwelling unit.

~~(c) Maximum Occupancy: No more than three persons shall occupy an efficiency living unit.~~

26 Section 43. Section 9-9-5, "Site Access Control," B.R.C. 1981, is amended to read as  
27 follows:

28 **9-9-5. Site Access Control.**

29 (a) Access Control: Vehicular access to property from the public right-of-way shall be  
30 controlled in such a manner as to protect the traffic-carrying capacity and safety of the  
31 street upon which the property abuts and access is taken, ensuring that the public use and  
32 purpose of public rights of way is unimpaired as well as to protect the value of the public

1 infrastructure and adjacent property. The requirements of this section apply to all land  
2 uses, including ~~single-family residential land uses~~ detached dwelling units, as follows:

3 (1) For all uses, except ~~single-family residential~~ for detached dwelling units, the  
4 standards shall be met prior to a final inspection for any building permit for new  
5 development; redevelopment exceeding twenty-five percent of the value of the  
6 existing structure; or the addition of a dwelling unit. For purposes of this  
7 paragraph (1), the applicant shall demonstrate the value of the existing structure  
8 by submitting, at the discretion of the applicant, either the actual value assessed  
9 by the Boulder County Assessor's Office or the fair market value determined by a  
10 real estate appraiser licensed in Colorado.

11 (2) For ~~single-family residential uses~~ detached dwelling units, the standards of this  
12 section shall be met prior to a final inspection for any building permit for new  
13 development; the demolition of a principal structure; or the conversion of an  
14 attached garage or carport to a use other than use as a parking space.

15 ...  
16 (c) Standards and Criteria for Site Accesses and Curb Cuts: Any access or curb cut to public  
17 rights of way shall be designed in accordance with the City of Boulder Design and  
18 Construction Standards and the following standards and criteria:  
19 ...

20 (6) Multiple Access Points for ~~Single-Family Residential~~ Detached Dwelling Units:  
21 The city manager will permit multiple access points on the same street for a single  
22 lot containing a detached dwelling unit ~~single-family residential lots~~ upon finding  
23 that there is at least one hundred linear feet of lot frontage adjacent to the front  
24 yard on such street, the area has a limited amount of pedestrian activity because of  
25 the low density character, and there is enough on-street parking within three  
hundred feet of the property to meet the off-street parking needs of such area. The  
total cumulative width of multiple curb cuts shall not exceed the maximum  
permitted width of a single curb cut. The minimum spacing between multiple curb  
cuts on the same property shall not be less than sixty-five feet.

(7) Shared Driveways for Residential Structures: A lot with a detached ~~single-family~~  
~~residential lot~~ dwelling unit that does not have frontage on the street from which  
access is taken may be served by a shared driveway that meets all of the standards  
and criteria for shared driveways set forth in the City of Boulder Design and  
Construction Standards.

24 ...

1            Section 44. Section 9-9-11, “Useable Open Space,” B.R.C. 1981, is amended to read as  
2 follows:

3 **9-9-11. Useable Open Space.**

4 (a) Purpose of Open Space: The purpose of useable open space is to provide indoor and  
5 outdoor areas for passive and active uses to meet the needs of the anticipated residents,  
6 tenants, employees, customers and visitors of a property, and to enhance the environment  
of a development or building. Open space can be used to:

7 (i) Prohibitions: Portions of a lot on which a structure or unenclosed use is located shall not  
8 be counted as useable open space unless allowed in subsection (d),(e),(f) or (h) of this  
9 section. Portions of a lot that are unenclosed include those areas that are designed such  
10 that they cannot be enclosed and are generally open to the sky above, except for a  
balcony or deck. The following are specific examples of areas that may not be counted as  
useable open space:

11 ...

12 (8) Balconies, decks and patio areas attached to a ~~single-family~~ detached dwelling  
13 unit which are:

14 ...

15            Section 45. Section 9-9-12, “Landscaping and Screening Standards,” B.R.C. 1981, is  
16 amended to read as follows:

17 **9-9-12. Landscaping and Screening Standards.**

18 (a) Purpose: The purpose of the landscaping and screening requirements set forth in this  
chapter is to:

- 19 (1) Provide minimum requirements for the landscaping of lots and parcels, street  
20 frontages, streetscapes and paved areas;  
21 (2) Provide minimum requirements to ensure the proper installation or cultivation,  
and maintenance of landscaping materials;  
22 (3) Promote sustainable landscapes and improve the quality of the environment by  
enhancing air quality, reducing the amount and rate of stormwater runoff,  
23 improving stormwater runoff quality, the spread of noxious weeds, and increasing  
the capacity for groundwater recharge;  
24 (4) Minimize the amount of water used for landscaping by promoting Xeriscape™  
practices and improving irrigation efficiency;  
25 (5) Enhance the appearance of both residential and nonresidential areas, and reduce

- 1 the visual impacts of large expanses of pavement and rock; and  
2 (6) Minimize impacts between uses both on-site and off-site. Landscaping can  
3 improve the compatibility of adjacent land uses and screen undesirable views. The  
4 landscaping standards also enhance the streetscape by separating the pedestrian  
5 from motor vehicles, auto fumes, and dust, providing shade, attenuating noise,  
6 and filtering air, buffering wind, and reducing glare.

5 ...

6 (d) General Landscaping and Screening Requirements:

- 7 (1) Landscaping Plan: A landscaping plan designed in accordance with this section  
8 and Sections 9-9-13, "Streetscape Design Standards," and 9-9-14, "Parking Lot  
9 Landscaping Standards," B.R.C. 1981, shall be provided for all developments.  
10 The site plan shall include the following:

- 11 (A) A site plan with a north arrow showing the major details of the proposed  
12 landscaping and irrigation, prepared on a scale not less than ~~one inch~~  
13 one-half inch equals thirty feet providing sufficient detail to evaluate the features of  
14 the landscaping and irrigation required by this section and Sections 9-9-  
15 13, "Streetscape Design Standards," and 9-9-14, "Parking Lot  
16 Landscaping Standards," B.R.C. 1981;

- 17 (B) The location of property lines and adjacent streets, the zoning and use of  
18 adjacent properties, the existing and proposed locations of all buildings,  
19 sidewalks and curb cuts, bike paths and pedestrian walkways, drive aisles  
20 and curb islands, ~~utilities, and~~ utilities, easements, and the existing  
21 location, size, and type of all trees one and one-half inch caliper or greater;

16 ...

- 17 (5) Screening of Trash Collection and Recycling Areas, Service Areas, and Loading  
18 Areas: In nonresidential and multi-family ~~unit~~ residential developments, trash  
19 collection and recycling areas, service areas, and loading areas shall be screened  
20 on all sides so that no portion of such areas are visible from public streets and  
21 alleys and adjacent properties. Required screening may include new and existing  
22 plantings, walls, fences, screen panels, doors, topographic changes, buildings,  
23 horizontal separation, or any combination thereof.

22 Section 46. Section 9-9-13, "Streetscape Design Standards," B.R.C. 1981, is amended

23 to read as follows:

24 **9-9-13. Streetscape Design Standards.**

25 Streetscape improvements shall be designed in accordance with the following standards:

1 (a) Scope: The standards set forth in this section apply to all land uses, including ~~single-~~  
2 ~~family residential land uses~~ detached dwelling units.

3 (b) Street Trees: A planting strip consisting of deciduous trees shall be planted along the full  
4 length of all public and private streets in all zoning districts. When possible, trees shall be  
5 planted in the public right-of-way. Large deciduous trees and detached sidewalks are  
6 required wherever possible and shall be planted at a minimum, in accordance with  
7 subsection (d) of this section.

8 (c) Alley Trees: Except for existing ~~single-family~~ lots with a detached dwelling unit, along  
9 all alleys adjacent to or within a residential zone, trees shall be planted at an overall  
10 average of one tree per forty linear feet within ten feet of the pavement or edge of alley.

11 ...

12 Section 47. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and  
13 Nonconforming Uses," B.R.C. 1981, is amended to read as follows:

14 **9-10-3. Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses.**

15 Changes to nonstandard buildings, structures, or nonstandard lots and nonconforming uses shall  
16 comply with the following requirements:

17 ...

18 (b) Nonstandard Lots or Parcels:

- 19 (1) Development Requirements: Vacant lots in all residential districts except RR-1  
20 and RR-2 which are smaller than the lot sizes indicated in Section 9-8-1,  
21 "Schedule of Intensity Standards," B.R.C. 1981, but larger than one-half of the  
22 required zoning district minimum lot size, may be developed with a ~~single-family~~  
23 detached dwelling unit if the building meets the setback requirements of Section  
24 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981. In RR-1 and RR-2  
25 districts, lots which are smaller than the minimum lot size but larger than one-  
fourth of the minimum lot size may be developed if the building meets the setback  
requirements. In all other zoning districts, vacant lots which are below one-half of  
the required minimum lot size for the zoning district shall not be eligible for  
construction of principal buildings.

...

1           Section 48. Section 9-13-3, “General Inclusionary Housing Requirements,” B.R.C.

2 1981, is amended to read as follows:

3 **9-13-3. General Inclusionary Housing Requirements.**

4 (a) Inclusionary Housing Requirements.

5       (1) A development is required to include at least twenty-five percent of the total  
6 number of dwelling units as permanently affordable units.

7       (2) For required for-sale permanently affordable units, townhouses and ~~single-family~~  
8 ~~homes~~ detached dwelling units shall have prices set to be affordable to one  
9 hundred twenty percent of the AMI. All other types of permanently affordable  
10 for-sale units shall have prices set to be affordable to one hundred percent of the  
11 AMI.

12 ...

13 Section 49. Section 9-13-7, “Relationship of Permanently Affordable Units to Market

14 Units,” B.R.C. 1981, is amended to read as follows:

15 **9-13-7. Relationship of Permanently Affordable Units to Market Units.**

16 (a) Purpose: Permanently affordable units shall be comparable in quality, design and general  
17 appearance to the market rate units creating the inclusionary housing requirement.

18 (b) Detached Dwelling Units: When a development contains ~~single-family~~ detached dwelling  
19 units, a proportional number of the required permanently affordable units shall also be  
20 ~~single-family~~ detached dwelling units or attached townhouses.

21 (c) Mixed Dwelling Unit Types: In developments with a mixture of dwelling unit types,  
22 including, without limitation, ~~single-family~~ detached dwelling units, townhouses,  
23 duplexes, triplexes, four-plexes, eight-plexes, and stacked flats, the required permanently  
24 affordable units shall be comprised of the different dwelling unit types in the same  
25 proportion as the dwelling units that are not permanently affordable within the  
development except as allowed in Subsection (b) above.

...

Section 50. Section 9-15-4, “Criminal Sanctions,” B.R.C. 1981, is amended to read as  
follows:

**9-15-4. Criminal Sanctions.**



- 1 (a) The city attorney, acting on behalf of the people of the city, may prosecute any violation  
2 of this title or any approval granted under this title in municipal court in the same manner  
that other municipal offenses are prosecuted.
- 3 (b) The penalty for violation of any provision of this title is a fine of not more than  
4 \$2,650,000.00 per violation. The limitation of this fine shall be adjusted for inflation on  
5 January 1, 2025, and on January 1 of each year thereafter. As used in this subsection,  
6 “inflation” means the Colorado consumer price index or a similar index that is tied to the  
7 annual rate of inflation in the state or Denver-Boulder metropolitan area. In addition,  
8 upon conviction of any person for violation of this title, the court may issue a cease and  
desist order and any other orders reasonably calculated to remedy the violation. Violation  
of any order of the court issued under this section is a violation of this section and is  
punishable by a fine of not more than \$4,000.00 per violation, or incarceration for not  
more than ninety days in jail or both such fine and incarceration.
- 9 ~~(c) Notwithstanding the provisions of subsection (b) of this section, the following specific~~  
10 ~~sentencing considerations shall apply to fines imposed for violations of section 9-8-5,~~  
11 ~~"Occupancy of Dwelling Units," B.R.C. 1981:~~
- 12 ~~(1) The court shall consider any evidence presented by the defendant that a potential~~  
13 ~~fine would be confiscatory. A confiscatory fine is a fine that would deprive a~~  
14 ~~normally capitalized owner of the ability to continue operating a rental housing~~  
15 ~~business of the sort involved in the case before the court. No fine that is~~  
16 ~~confiscatory shall be enforced by the court.~~
- 17 ~~(2) In imposing a fine in any single case or in any consolidated cases, the court may~~  
18 ~~weigh all factors normally and properly considered in connection with the~~  
19 ~~imposition of fines, including the seriousness of the violation, the past record of~~  
20 ~~the defendant, the economic circumstances of the defendant and all mitigating or~~  
21 ~~aggravating factors relevant to the violation or to the defendant. In addition, in~~  
22 ~~determining the amount of any fine, the court may consider:~~
- 23 ~~(A) The imposition of a fine that would deprive the defendant of any illegal~~  
24 ~~profit collected because of the occurrence of the over-occupancy violation~~  
25 ~~or violations on the rental housing property;~~
- 26 ~~(B) The imposition of a reasonable penalty in addition to any level of fine that~~  
is attributable to illegally obtained profit; and
- 27 ~~(C) The imposition of such additional fine as is determined by the court to~~  
constitute a reasonable amount to be suspended in order to ensure  
compliance with any terms of probation imposed by the court.
- 28 ~~(3) No fine imposed in a single case alleging multiple dates of violation, nor any fine~~  
in consolidated cases alleging multiple days of violation, shall exceed the  
maximum fine that might be imposed for fifteen separate violations unless the  
court finds special aggravating circumstances. Where special aggravating factors  
are at issue, the following procedures shall apply:

1           (A) ~~The defendant shall be entitled to ten days' notice of any special~~  
2           ~~aggravating factors upon which the prosecution intends to rely at the~~  
3           ~~sentencing hearing or about which, based upon evidence previously~~  
4           ~~presented, the court is concerned. If necessary in order to provide such~~  
5           ~~notice, a defendant shall be entitled to a continuance of the sentencing~~  
6           ~~hearing.~~

7           (B) ~~A judicial finding of the existence of special aggravating factors shall not~~  
8           ~~mandate that the court impose any particular level of fine but will, rather,~~  
9           ~~provide the sentencing court with discretion to determine a fine based~~  
10           ~~upon all the criteria set forth in this subsection.~~

11           (C) ~~Special aggravating factors, for the purpose of this subsection, shall~~  
12           ~~require a judicial finding of one or more of the following:~~

13           (i) ~~The occupancy violations at issue were flagrant and intentional on~~  
14           ~~the part of the defendant;~~

15           (ii) ~~The defendant, after learning of the over occupancy condition,~~  
16           ~~failed to attempt corrective action over a sustained period of time;~~  
17           ~~or~~

18           (iii) ~~A fine equivalent to the maximum fine permitted for fifteen~~  
19           ~~separate violations would be inadequate to disgorge the defendant~~  
20           ~~of illegal profits obtained as a consequence of the violations or~~  
21           ~~would be inadequate to ensure that the violation is neither~~  
22           ~~profitable nor revenue neutral for the offender.~~

23           Section 51. Section 9-15-9, "Multiple Dwelling Units and Occupancy- Specific  
24           Defenses," B.R.C. 1981, is amended to read as follows:

25           **9-15-9. Multiple Dwelling Units and Occupancy- Specific Defenses.**

(a)       Specific Defenses to Alleged Violations Related to Multiple Dwelling Units: If a charge  
of violation of any provision of chapter 9-5, "Modular Zone System," 9-6, "Use  
Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9,  
"Development Standards," B.R.C. 1981, is premised solely upon the multiple dwelling  
units provisions of subsection 9-16-1(c), B.R.C. 1981, it is a specific defense to such  
charge that, on a continuing basis, the residents of the dwelling unit share utilities and  
keys to all entrances to the property and that they function as a single housekeeping unit.  
For purposes of this section, to function as a single housekeeping unit means to share  
major functions associated with residential occupancy and to share a single common  
kitchen as the primary kitchen.

(b) ~~Specific Defenses to Alleged Violations Related to Occupancy of Units for Guest~~  
~~Occupancy: If a charge of violation of any provision of chapters 9-6, "Use Standards,"~~  
~~and 9-7, "Form and Bulk Standards," or section 9-8-5, "Occupancy of Dwelling Units,"~~

1 ~~B.R.C. 1981, is premised upon exceeding allowable occupancy limits based upon the~~  
2 ~~number of persons residing in or occupying a dwelling unit, it is a specific defense as to~~  
3 ~~any alleged occupant that such person spent the night in the unit without remuneration as~~  
4 ~~a social guest for periods of time which never exceeded a cumulative total of fourteen~~  
5 ~~nights in any ninety day period. Spending the night for the purposes of this subsection~~  
6 ~~means to be on the premises during the hours of 12:00 midnight through 5:00 a.m., or to~~  
7 ~~sleep on the premises for more than five hours at any time in any twenty four hour~~  
8 ~~period. If the defense is established as to an alleged occupant, that person shall be~~  
9 ~~considered a social guest and not an occupant for the purposes of proof of the charge of~~  
10 ~~violation. Conversely, any person who spends more than a cumulative total of fourteen~~  
11 ~~nights in any ninety day period in any dwelling unit is an occupant of that unit for those~~  
12 ~~nights for the purposes of the occupancy limits established in this title.~~

13 ~~(e) Specific Defenses to Alleged Violations Related to Occupancy of a Unit Which Is a~~  
14 ~~Rental Property: The following shall constitute specific defenses to any alleged violation~~  
15 ~~of subsection 9-8-5(a), B.R.C. 1981, relating to the occupancy of units:~~

16 ~~(1) It shall be a specific defense to an alleged violation of subsection 9-8-5(a), B.R.C.~~  
17 ~~1981, that a defendant is a nonresident landlord or nonresident property manager~~  
18 ~~and:~~

19 ~~(A) Prior to the initiation of the prosecution process, the defendant undertook~~  
20 ~~and pursued means to avoid over-occupancy violations by:~~

21 ~~(i) complying with advertising requirements of Chapter 10-3-2,~~  
22 ~~B.R.C. 1981 and the posting requirements of Chapter 10-3-20,~~  
23 ~~B.R.C. 1981;~~

24 ~~(ii) receiving rent payments from only those persons on a lease that~~  
25 ~~includes no more than the number of tenants associated with the~~  
26 ~~occupancy limitation of the unit; and~~

27 ~~(iii) requiring each tenant to acknowledge, through a lease provision or~~  
28 ~~otherwise, the established occupancy limitation for the unit; and~~

29 ~~(B) The defendant had no actual knowledge of the over-occupancy of the~~  
30 ~~relevant rental housing property prior to the initiation of the prosecution~~  
31 ~~process. However, this specific defense shall not apply when a defendant~~  
32 ~~reasonably should have been aware of the occupancy violation.~~

33 ~~(C) For the purposes of this subsection, the initiation of a prosecution process~~  
34 ~~occurs when any of the following events occurs:~~

35 ~~(i) A potential defendant is first contacted by a city investigator in~~  
36 ~~connection with the investigation of an occupancy violation;~~

37 ~~(ii) A summons and complaint alleging an occupancy violation is~~  
38 ~~served upon a defendant; or~~

39 ~~(iii) A criminal complaint is filed against a defendant alleging an~~  
40 ~~occupancy violation.~~

1 (D) — For purposes of this subsection, a nonresident landlord or nonresident  
2 property manager means a person who is neither a full-time nor part-time  
resident of the property that he or she owns or manages.

3 Section 52. Section 9-14-3, “Design Goals for the Form-Based Code Areas,” is amended  
4 to read as follows, as part of a new Chapter 14, “Form Based Code Standards,” B.R.C. 1981:

5 **9-14-3. DESIGN GOALS FOR THE FORM-BASED CODE AREAS**

6 The requirements of this chapter are intended to accomplish the following objectives:

- 7 (a) **Character, Context, and Scale.** Preserve or enhance the character, context, and scale  
8 planned for the area while supporting a more sustainable future by accommodating future  
9 residents, reducing dependence on single occupant vehicles, increasing energy efficiency,  
10 and promoting safe transportation options for pedestrians and bicycles.
- 11 (b) **Human-Scaled Building Design.** Design to a human scale and create a safe and vibrant  
12 pedestrian experience.
- 13 (c) **Building Design Quality and Aesthetics.** Design high-quality buildings that are  
14 compatible with the character of the area or the character established by adopted plans for  
15 the area through simple, proportional, and varied design, high quality and natural  
16 building materials that create a sense of permanence, and building detailing, materials  
17 and proportions.
- 18 (d) **A Variety of Housing Types.** Produce a variety of housing types, such as  
19 multifamily multi-unit dwelling units, townhouses, and detached single family dwelling  
20 units, as well as a variety of lot sizes, number of bedrooms per unit, and sizes of units  
21 within the form-based code area.
- 22 (e) **Adaptable Buildings.** Build adaptable buildings with flexible designs that allow changes  
23 in uses over time.
- 24 (f) **Provision of Outdoor Space.** Provide outdoor space that is accessible and close to  
25 buildings. Active and passive recreation areas will be designed to meet the needs of  
anticipated residents, occupants, employees, and visitors to the property.
- (g) **Support of Multi-Modal Mobility.** Provide safe and convenient multi-modal  
connections and promote alternatives to the single occupant vehicle. Connections shall be  
accessible to the public within the project and between the project and the existing and  
proposed transportation systems, including, without limitation, streets, bikeways, paseos,  
and multi-use paths.

23 Section 53. Section 9-14-4, “Organization and Scope,” B.R.C. 1981, is amended to read  
24 as follows, as part of a new Chapter 14, “Form Based Code Standards,” B.R.C. 1981:

1 **9-14-4. ORGANIZATION AND SCOPE**

2 This section describes how this chapter is organized to provide the user with some guidance  
3 using this chapter and it addresses the scope of its application.

4 (a) **Organization.** This chapter is organized into the following sections:

5 (1) **Sections 9-14-1 through 9-14-8: General Provisions.** The general provisions  
6 include a purpose statement for the form-based code, a description of where the  
7 requirements for the form-based code apply, a description of this chapter's  
8 organization and scope, the regulating plans for each form-based code area, and  
9 definitions that apply to the terms of this chapter.

10 (2) **Sections 9-14-9 through 9-14-13: Site Design.** These sections establish general  
11 site design and minimum outdoor space requirements, applicable to all form-  
12 based code areas, unless otherwise specified. Outdoor space types are established  
13 to guide the design of common outdoor spaces.

14 (3) **Sections 9-14-14- through 9-14-26: Building Types.** These sections establish a  
15 variety of building types and building form, design, location, and use  
16 requirements applicable to each building type. The regulating plans determine  
17 which building type may be used on a particular site.

18 (4) **Sections 9-14-27- through 9-14-33: Building Design.** These sections establish  
19 general building design requirements that are applicable to all of the building  
20 types, unless otherwise stated.

21 (b) **Scope.** The requirements of this chapter supplement those imposed on the same lands by  
22 underlying zoning provisions and generally applicable development standards of this title  
23 and other ordinances of the city. If there is a conflict between the requirements of this  
24 chapter and Title 9, "Land Use Code," B.R.C. 1981, the standards of this section control.  
25 The following describes how specific requirements of this title relate to requirements of  
this chapter:

(1) **Chapter 9-6: Use Standards.** Chapter 9-6, "Use Standards," B.R.C. 1981,  
regulates uses which are permitted, conditionally permitted, prohibited, or which  
may be permitted through use review. Additional use standards may be  
established for the different building types in sections M-1-15 through M-1-19 of  
this chapter.

(2) **Chapter 9-7: Form and Bulk Standards.** This chapter supersedes the standards  
in Chapter 9-7, "Form and Bulk Standards," B.R.C. 1981, with the exception of  
Sections 9-7-3, "Setback Encroachments," 9-7-5, "Building Heights," and 9-7-7,  
"Building Heights, Appurtenances," B.R.C. 1981. Building height shall be  
measured in accordance with the requirements of Section 9-7-5, B.R.C. 1981.

(3) **Chapter 9-8: Intensity Standards.** This chapter supersedes the standards in  
Chapter 9-8, "Intensity Standards," B.R.C. 1981, with the exception of Sections 9-

1 8-5, "Occupancy of Dwelling Units," 9-8-6, "Density Occupancy-Equivalencies  
2 for Group Residences and Hostels," and 9-8-7, "Density and Occupancy of  
3 Efficiency Living Units," B.R.C. 1981.

4 (4) **Chapter 9-9: Development Standards.** Chapter 9-9, "Development Standards,"  
5 B.R.C. 1981, applies to developments that are regulated by this chapter as  
6 follows:

7 (5) **Applicable Sections.** The following sections of Chapter 9-9, "Development  
8 Standards," B.R.C. 1981, are applicable:

- 9 (A) **9-9-1. Intent.**
- 10 (B) **9-9-2. General Provisions.**
- 11 (C) **9-9-4. Public Improvements.**
- 12 (D) **9-9-5. Site Access Control, in addition to the access location requirements**  
13 **in Section M-1-11(a) "Driveways," B.R.C. 1981.**
- 14 (E) **9-9-6. Parking Standards.**
- 15 (F) **9-9-7. Sight Triangles.**
- 16 (G) **9-9-8. Reservations, Dedication, and Improvement of Right-of-way.**
- 17 (H) **9-9-9. Loading.**
- 18 (I) **9-9-10. Easements.**
- 19 (J) **9-9-12. Landscape and Screening Standards.**
- 20 (K) **9-9-13. Streetscape Design Standards, in addition to the requirements**  
21 **established in M-1-10, Streetscape Design Requirements.**
- 22 (L) **9-9-14. Parking Lot Landscape Standards.**
- 23 (M) **9-9-15. Fences and Walls.**
- 24 (N) **9-9-16. Lighting, Outdoor.**
- 25 (O) **9-9-17. Solar Access.**
- (P) **9-9-18. Trash Storage and Recycling Areas.**
- (Q) **9-9-19. Swimming Pools, Spas, and Hot Tubs.**
- (R) **9-9-20. Addressing.**
- (S) **9-9-21. Signs.**
- (T) **9-9-22. Trip Generation Requirements for the MU-4, RH-6, and RH-7**  
**Zoning Districts.**

26 (6) **Superseded Sections.** The following sections of Chapter 9-9, "Development  
27 Standards," B.R.C. 1981, are superseded by this chapter:

- 28 (A) **9-9-3, Building Design, is superseded by this chapter.**
- 29 (B) **9-9-11, Useable Open Space, is superseded by the requirements of this**  
30 **chapter.**

31 (c) **Other Sections and Ordinances.** The Boulder Revised Code and other ordinances of the  
32 city are applicable unless expressly waived or modified in this chapter. If there is a  
33 conflict between the requirements of this chapter and other portions of the Boulder  
34 Revised Code, the requirements of this chapter shall prevail.

1 Revised Code other than Title 9, "Land Use Code," B.R.C. 1981, the most restrictive  
2 standards shall control.

3 Section 54. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended to read as  
4 follows:

5 **9-16-1. General Definitions.**

- 6 (a) The definitions contained in Chapter 1-2, "Definitions," B.R.C. 1981, apply to this title  
7 unless a term is defined differently in this chapter.  
8 (b) Terms identified with the references shown below after the definition are limited to those  
9 specific sections or chapters of this title:

- 10 (1) Airport influence zone (AIZ).  
11 (2) Floodplain regulations (Floodplain).  
12 (3) Historic preservation (Historic).  
13 (4) Inclusionary housing (Inclusionary Housing).  
14 (5) Solar access (Solar).  
15 (6) Wetlands Protection (Wetlands).  
16 (7) Signs (Signs).

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

19 **A—E**

20 ...

21 *Breezeway* means a roofed at grade open passage connecting a detached ~~single-family~~ dwelling  
22 unit to an accessory building. A breezeway is not a space enclosed by walls.

23 ...

24 *Building coverage* means the maximum horizontal area within the outer perimeter of the building  
25 walls, dividers, or columns at ground level or above, whichever is the greater area, including,  
without limitation, breezeways, courts, and exterior stairways, but excluding:

...

- (3) Up to three hundred square feet of a ~~single-family detached residence~~ dwelling  
unit front porch that is adjacent to a street;  
(4) Up to one hundred fifty square feet of additional porch area not located in the  
front yard for a ~~single-family detached residence~~ dwelling unit;

- 1 (5) One accessory building, no larger than eighty square feet in size and no taller than  
2 ten feet in height, associated with a ~~single-family detached residence~~ dwelling  
3 unit; and

4 ...  
5 *Conveyance zone* means those portions of the floodplain required for the passage or  
6 conveyance of the ~~one hundred-year~~ one-hundred-year flood. The conveyance zone is delineated  
7 based on an equal encroachment methodology (measured in volume of water), which is applied  
8 to the floodplain from the edges of the flood channel to a point where the one-hundred-year flood  
9 profile will be raised no more than six inches, after considering a reasonable expectation of  
10 blockage at bridges and other obstructions by flood-borne debris. The city may, in its discretion,  
11 delineate the conveyance zone on city owned land or right-of-way based on unequal  
12 encroachment to minimize delineation on other properties. The conveyance zone is equivalent to  
13 a floodway delineation based on a six-inch rise. (Floodplain)

14 *Cooperative housing unit* has the same meaning as set forth in Section 10-1-1,  
15 "Definitions," B.R.C. 1981.

16 ...  
17 *Expansion of nonconforming use* means any change or modification to a nonconforming  
18 use that constitutes:

- 19 (1) An increase in the ~~occupancy~~, floor area, required parking, traffic generation,  
20 outdoor storage, or visual, noise, or air pollution;  
21 (2) Any change in the operational characteristics which may increase the impacts or  
22 create adverse impacts to the surrounding area including, without limitation, the  
23 hours of operation, noise, or the number of employees or customers;  
24 (3) The addition of bedrooms to a dwelling unit, except a ~~single-family detached~~  
25 dwelling unit; or  
26 (4) The addition of one or more dwelling units.

27 ...  
28 **F—J**

29 *Floor area for detached ~~single-family~~ dwelling units* means the total habitable square  
30 footage of all levels measured to the outside surface of the exterior framing, or to the outside  
31 surface of the exterior walls if there is no exterior framing or portions thereof, which includes  
32 stairways, storage, and mechanical rooms internal to the structure, but excluding garages.  
33 (Inclusionary Housing)

34 ...



1        *Housing type* means the particular form which an attached or detached dwelling unit  
2 takes, including, without limitation, the following: ~~single family detached houses~~ dwelling units  
3 and mobile homes; ~~single family attached dwellings~~ dwelling units such as townhouses and row  
4 houses; duplexes, triplexes, and apartments.

5        ...

6        **P—T**

7        ...

8        *Townhouse* means an attached ~~single family~~ dwelling unit located or capable of being  
9 located on its own lot, and is separated from adjoining dwelling units by a wall extending from  
10 the foundation through the roof which is structurally independent of the corresponding wall of  
11 the adjoining unit.

12        *Transitional housing* means a facility providing long-term housing in ~~multi-family unit~~  
13 dwelling units with or without common central cooking facilities, where participation in a  
14 program of supportive services is required, as a condition of residency, to assist tenants in  
15 working towards independence from financial, emotional, or medical conditions that limit their  
16 ability to obtain housing for themselves.

17        ...

18        Section 55. Section 10-1-1, “Definitions,” B.R.C. 1981, is amended to read as follows:

19        **9-6-1. 10-1-1. - Definitions.**<sup>[2]</sup>

20        (a) The following terms used in this title have the following meanings unless the context  
21 clearly indicates otherwise:

22        ...

23        ~~*Cooperative* means a housing arrangement in which residents share expenses, ownership  
24 or labor.~~

25        ~~*Cooperative housing unit* means a dwelling unit in a private equity not for profit,  
permanently affordable cooperative or rental cooperative.~~

26        ...

27        *Rooming house* means an establishment where, for direct or indirect compensation,  
28 lodging, with or without kitchen facilities or meals, is offered for one month or more for three or  
29 more roomers living independently within rooming units ~~not related to the family of the heads of  
30 the household.~~



- 1 (2) In accordance with the provisions of Section 5-2-11, "Prosecution of Multiple  
2 Counts for Same Act," B.R.C. 1981, each day during which illegal construction,  
3 alteration, maintenance, occupancy, or use continues, constitutes a separate  
4 offense remediable through the enforcement provisions of this code.
- 5 (3) The owner, tenant, and occupant of a structure or land and the agents of each of  
6 them are jointly and severally liable for any violation of this code with respect to  
7 such structure or land.
- 8 (4) The remedies for any violation of any provision of this code or of any permit,  
9 certificate, or other approval issued under this code or other City of Boulder code,  
10 or of any directive of the code official, may be pursued singly or in combination.
- 11 (5) If any person fails or refuses to pay when due any charge imposed under this  
12 section, the code official may, in addition to taking other collection remedies,  
13 certify due and unpaid charges to the Boulder County Treasurer for collection as  
14 provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and  
15 Assessments to County Treasurer for Collection," B.R.C. 1981.
- 16 (6) If an order under Section 107 is not complied with, the code official may institute  
17 any appropriate proceeding at law or in equity to restrain, correct, or abate such  
18 violation, or to require the removal or termination of the unlawful occupancy of  
19 the structure in violation of the provisions of this code or the order or direction  
20 made pursuant thereto. The code official may charge the cost of any action taken  
21 to correct a violation, plus up to fifteen percent of such cost for administration, to  
22 the property owner. If any property owner fails or refuses to pay when due any  
23 charge imposed under this section, the code official may, in addition to taking  
24 other collection remedies, certify due any unpaid charges, including interest, to  
25 the Boulder County Treasurer, to be levied against the person's property for  
collection by the county in the same manner as delinquent general taxes upon  
such property are collected, under the procedures described by Section 2-2-12,  
"City Manager May Certify Taxes, Charges, and Assessments to County  
Treasurer for Collection," B.R.C. 1981.

(b) Administrative Procedures and Remedies:

- (1) If the code official finds that a violation of any provision of this code or of any approval granted under this code exists, the manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

- 1 (A) Impose a civil penalty according to the following schedule:
- 2 (i) For the first violation of the provision or approval, \$100;
- 3 (ii) For the second violation of the same provision or approval, \$300;
- 4 and
- 5 (iii) For the third violation of the same provision or approval, \$1,000;
- 6 (B) For a violation concerning the use of a residential building under a rental
- 7 license, revoke such license;
- 8 (C) Require the filing of a declaration of use as provided in subsection (e); or
- 9 (D) Issue an order reasonably calculated to ensure compliance with the
- 10 provisions of this code or any approval granted under this code.
- 11 (2) Prior to the hearing, the code official may issue an order that no person shall
- 12 perform any work on any structure or land, except to correct any violation found
- 13 by the code official to exist with respect to such structure or land.
- 14 (3) If notice is given to the code official at least forty-eight hours before the time and
- 15 date set forth in the notice of hearing on any violation that the violation has been
- 16 corrected, the code official will reinspect the structure or land. If the code official
- 17 finds that the violation has been corrected, the manager may cancel the hearing.
- 18 (4) No person shall fail to comply with any action taken by the code official under
- 19 this section.
- 20 (c) Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-4,
- 21 "General Penalties," B.R.C. 1981.
- 22 (1) Occupancy Limitation Violations: Notwithstanding the provision of subsection
- 23 (c), Criminal Penalties, of this section, the following specific sentencing
- 24 considerations shall apply to fines imposed for violations of Section 404,
- 25 Occupancy Limitations, of this code:
- (A) The court shall consider any evidence presented by the defendant that a
- potential fine would be confiscatory. A confiscatory fine is a fine that
- would deprive a normally capitalized owner of the ability to continue
- operating a rental housing business of the sort involved in the case before
- the court. No fine that is confiscatory shall be enforced by the court.
- (B) In imposing a fine in any single case or in any consolidated cases, the
- court may weigh all factors normally and properly considered in
- connection with the imposition of fines, including the seriousness of the
- violation, the past record of the defendant, the economic circumstances of
- the defendant and all mitigating or aggravating factors relevant to the

1 violation or to the defendant. In addition, in determining the amount of  
2 any fine, the court may consider:

- 3 (i) The imposition of a fine that would deprive the defendant of any  
4 illegal profit collected because of the occurrence of the over-  
5 occupancy violation or violations on the rental housing property;  
6 (ii) The imposition of a reasonable penalty in addition to any level of  
7 fine that is attributable to illegally obtained profit; and  
8 (iii) The imposition of such additional fine as is determined by the  
9 court to constitute a reasonable amount to be suspended in order to  
10 ensure compliance with any terms of probation imposed by the  
11 court.

12 (C) No fine imposed in a single case alleging multiple dates of violation, nor  
13 any fine in consolidated cases alleging multiple days of violation, shall  
14 exceed the maximum fine that might be imposed for fifteen separate  
15 violations unless the court finds special aggravating circumstances. Where  
16 special aggravating factors are at issue, the following procedures shall  
17 apply:

- 18 (i) The defendant shall be entitled to ten days' notice of any special  
19 aggravating factors upon which the prosecution intends to rely at  
20 the sentencing hearing or about which, based upon evidence  
21 previously presented, the court is concerned. If necessary in order  
22 to provide such notice, a defendant shall be entitled to a  
23 continuance of the sentencing hearing.  
24 (ii) A judicial finding of the existence of special aggravating factors  
25 shall not mandate that the court impose any particular level of fine  
but will, rather, provide the sentencing court with discretion to  
determine a fine based upon all the criteria set forth in this  
subsection.  
(iii) Special aggravating factors, for the purpose of this subsection,  
shall require a judicial finding of one or more of the following:  
a. The occupancy violations at issue were flagrant and  
intentional on the part of the defendant;  
b. The defendant, after learning of the over-occupancy  
condition, failed to attempt corrective action over a  
sustained period of time; or  
c. A fine equivalent to the maximum fine permitted for fifteen  
separate violations would be inadequate to disgorge the  
defendant of illegal profits obtained as a consequence of  
the violations or would be inadequate to ensure that the  
violation is neither profitable nor revenue neutral for the  
offender.

1           (2) Specific Defenses to Alleged Violations:

2           (A) Specific Defenses to Alleged Violations Related to Occupancy of Units  
3           for Guest Occupancy: Occupancy limitation violations are premised upon  
4           exceeding allowable occupancy limits based upon the number of persons  
5           residing in or occupying a dwelling unit pursuant to Section 404,  
6           Occupancy Limitations. It is a specific defense as to any alleged occupant  
7           that such person spent the night in the unit without remuneration as a  
8           social guest for periods of time which never exceeded a cumulative total  
9           of fourteen nights in any ninety-day period. Spending the night for the  
10           purposes of this subsection means to be on the premises during the hours  
11           of 12:00 midnight through 5:00 a.m., or to sleep on the premises for more  
12           than five hours at any time in any twenty-four-hour period. If the defense  
13           is established as to an alleged occupant, that person shall be considered a  
14           social guest and not an occupant for the purposes of proof of the charge of  
15           violation. Conversely, any person who spends more than a cumulative  
16           total of fourteen nights in any ninety-day period in any dwelling unit is an  
17           occupant of that unit for those nights for the purposes of the occupancy  
18           limits established in this code.

19           (B) Specific Defenses to Alleged Violations Related to Occupancy of a Unit  
20           Which Is a Rental Property: The following shall constitute specific  
21           defenses to any alleged violation of Section 404 of this code relating to the  
22           occupancy of units:

23           (i) It shall be a specific defense to an alleged violation of Section 404  
24           that a defendant is a nonresident landlord or nonresident property  
25           manager and:

          a. Prior to the initiation of the prosecution process, the  
          defendant undertook and pursued means to avoid over-  
          occupancy violations by:

          1. receiving rent payments from only those persons on  
          a lease that includes no more than the number of  
          tenants associated with the occupancy limitation of  
          the unit; and

          2. requiring each tenant to acknowledge, through a  
          lease provision or otherwise, the established  
          occupancy limitation for the unit; and

          (ii) The defendant had no actual knowledge of the over-occupancy of  
          the relevant rental housing property prior to the initiation of the  
          prosecution process. However, this specific defense shall not apply

1                   when a defendant reasonably should have been aware of the  
2                   occupancy violation.

3                   (iii) For the purposes of this paragraph, the initiation of a prosecution  
4                   process occurs when any of the following events occurs:

- 5                   1.       A potential defendant is first contacted by a city  
6                   investigator in connection with the investigation of an  
7                   occupancy violation;  
8                   2.       A summons and complaint alleging an occupancy violation  
9                   is served upon a defendant; or  
10                  3.       A criminal complaint is filed against a defendant alleging  
11                  an occupancy violation.

12                  (iv) For purposes of this paragraph, a nonresident landlord or  
13                  nonresident property manager means a person who is neither a full-  
14                  time nor part-time resident of the property that he or she owns or  
15                  manages.

16 (d)       Other Remedies. The city attorney may maintain an action for damages, declaratory  
17 relief, specific performance, injunction, or any other appropriate relief in the District  
18 Court in and for the County of Boulder for any violation of any provision of this code or  
19 any approval granted under this code.

20 (e)       Declaration of Use. If the code official determines that a person is using a structure in a  
21 way that might mislead a reasonable person to believe that such use is a use by right or  
22 otherwise authorized by this title, the code official may require such person to sign under  
23 oath a declaration of use that defines the limited nature of the use and to record such  
24 declaration in the office of the Boulder County Clerk and Recorder against the title to the  
25 land. In addition to all other remedies and actions that the code official is authorized to  
use under the Boulder Revised Code or other applicable federal, state, or local laws to  
enforce the provisions of this code, the code official is authorized to withhold any  
approval affecting such structure or land, including, without limitation, a building permit,  
use review, site review, subdivision, floodplain development permit, or wetland permit,  
until such time as the person submits a declaration of use that is in a form acceptable to  
the code official.

**106.2—106.3 Deleted.**

**106.4 Violation Penalties. Deleted.**

**106.5 Abatement of Violation. No changes.**

1           Section 57. Section 10-3-2, “Rental License Required Before Occupancy and License  
2 Exemptions,” B.R.C. 1981, is amended to read as follows:

3 **10-3-2. Rental License Required Before Occupancy and License Exemptions.**

4 (a) No operator shall allow, or offer to allow through advertisement or otherwise, any person  
5 to occupy any dwelling, dwelling unit or rooming unit as a tenant or lessee or otherwise  
6 for a valuable consideration unless each room or group of rooms constituting the rental  
7 property has been issued a valid rental license by the city manager, provided however, an  
8 operator may advertise for a rental of thirty days or longer, if the operator has submitted a  
complete rental licensing application or is advertising for pre-leasing of new construction.  
Any advertisement shall include the rental licensing number once assigned by the city  
manager.

9 (b) Buildings, or building areas, described in one or more of the following paragraphs are  
10 exempted from the requirement to obtain a rental license from the city manager,  
11 provided, however that the exemptions in subsections (b)(1) and (b)(2) below shall not  
12 apply to short-term rentals. No operator shall allow any person to occupy any dwelling,  
13 dwelling unit or rooming unit exempted pursuant to subsections (b)(1) and (b)(2) below  
prior to submitting to the city manager an Affidavit of Exemption for the dwelling,  
dwelling unit or rooming unit. No person shall be issued any civil penalty or summons  
for failure to submit an Affidavit of Exemption, unless the person has previously been  
advised in writing of this requirement.

14 (1) Any dwelling unit occupied by the owner or members of the owner's family who  
15 are at least 21 years of age and housing ~~no more than two~~ roomers who are unrelated  
16 to the owner or the owner's family. An owner includes an occupant who certifies  
that the occupant owns an interest in a corporation, firm, partnership, association,  
organization or any other group acting as a unit that owns the rental property.

17 (2) A dwelling unit meeting all of the following conditions:

18 (A) The dwelling unit constitutes the owner's principal residence;

19 (B) The dwelling unit is temporarily rented by the owner for ~~one~~ a period of time  
20 no greater than twelve consecutive months in any twenty-four-month  
period;

21 ...

22           Section 58. Section 10-3-19, “Short-Term Rentals,” B.R.C. 1981, is amended to read as  
23 follows:

24 **10-3-19. Short-Term Rentals.**



1 (a) Short-term rentals are prohibited unless the city manager has issued a valid short-term  
2 rental license for the property.

3 ...

4 (i) The occupancy of a dwelling unit rented as a short-term rental shall not exceed the  
5 occupancy permitted pursuant to ~~Section 9-8-5, "Occupancy of Dwelling Units," B.R.C.~~  
6 ~~1981 and Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.; provided, however,~~  
7 ~~for the purposes of this section only, the licensee and people related to the licensee shall~~  
8 ~~be counted as one person.~~

9 ...

10 (l) No person shall advertise a short-term rental, unless the advertisement includes the valid  
11 short-term rental license number once assigned by the city manager~~and the maximum~~  
12 ~~unrelated occupancy permitted in the unit.~~

13 ...

14 (o) An accessory dwelling unit or a principal dwelling unit on a ~~single-family detached~~  
15 dwelling unit lot or parcel with an accessory unit may not be rented as a short-term rental  
16 unless all the following requirements are met:

17 ...

18 Section 59. Section 10-3-20, "Occupancy," B.R.C. 1981, is repealed and reserved:

19 **10-3-20. Occupancy. Reserved.**

20 (a) ~~Every operator of any property with fewer than five dwelling units, shall at the time any~~  
21 ~~dwelling unit is shown to any prospective renter, post conspicuously on the inside of the~~  
22 ~~main entrance to each dwelling unit a sign listing a maximum occupancy number that~~  
23 ~~shall be no greater than the maximum number of unrelated individuals permitted under~~  
24 ~~Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981 in a form specified by the~~  
25 ~~city manager. Any such sign may include an occupancy limit smaller than that allowed~~  
26 ~~by Section 9-8-5.~~

27 (b) ~~Each license shall include a notation of the legal occupancy, including the number of~~  
28 ~~unrelated individuals permitted for each dwelling unit covered by the license. Acceptance~~  
29 ~~of the license shall constitute a waiver of any claim for a non-conforming occupancy in~~  
30 ~~excess of the occupancy stated on the license. The notation on the license shall also not~~  
31 ~~provide the basis for an assertion of non-conforming occupancy.~~

32 (c) ~~Each advertisement for rental shall include a statement of the maximum occupancy, such~~  
33 ~~statement shall include a number no greater than the number of unrelated individuals~~  
34 ~~permissible pursuant to Section 9-8-5, B.R.C. 1981 of the dwelling unit to be rented. Any~~

1 such advertisement may include an occupancy limit smaller than that allowed by Section  
2 9-8-5.

3 Section 60. Chapter 10-11, "Cooperative Housing," B.R.C. 1981, is repealed in its  
4 entirety and reserved:

5 **Chapter 11 Cooperative Housing** Reserved.

6 **RESERVED.**

7 **~~10-11-1. Legislative Intent.~~**

8 (a) ~~— The City Council intends to facilitate cooperative living arrangements. The Council finds  
9 that cooperative living arrangements can provide an affordable alternative for living in  
10 Boulder. In addition, cooperative arrangements can provide supportive and fulfilling  
11 community for their residents. The City Council seeks to balance the benefits of  
12 cooperative living against the impacts from the increased density that comes along with  
13 cooperative living. The City Council also is concerned about cooperatives competing in a  
14 tight housing market with families seeking single family homes. The City Council  
15 intends to monitor the implementation and effects of this ordinance.~~

16 (b) ~~— The City Council intends that all licensed cooperatives be legitimate cooperatives. A  
17 legitimate cooperative is a group living arrangement in which the residents have a high  
18 degree of social cohesion and teamwork. The residents typically govern through  
19 consensus and share responsibilities and resources. New members are typically selected  
20 by the community's existing membership, rather than by real estate agents, property  
21 managers or non-resident landowners.~~

22 **~~10-11-2. Cooperative License Required Before Occupancy.~~**

23 ~~No person shall occupy, allow, or offer to allow through advertisement or otherwise, any person  
24 to occupy any cooperative housing unit unless the cooperative housing unit has been issued a  
25 valid cooperative housing license by the city manager. Nothing in this chapter shall relieve any  
person of the obligation to comply with any other requirement of this code, including, but not  
limited to the requirements of Chapter 10-3 "Rental Licenses," B.R.C. 1981, the requirements of  
Chapter 10-2, "Property Maintenance Code," Appendix C "Energy Efficiency Requirements,"  
B.R.C. 1981 and the requirements of Section 10-2-2 "Adoption of International Property  
Maintenance Code With Modifications," B.R.C. 1981.~~

**~~10-11-3. Cooperative Housing Licenses.~~**

(a) ~~— License terms shall be as follows:~~

(1) ~~— Licenses shall expire four years from issuance or when ownership of the licensed  
property is transferred.~~

(A) ~~— In addition to any other applicable requirements, new licenses and  
renewals shall require that the licensee submit to the city manager a~~

1 completed current baseline (for a new license) or renewal inspection  
2 report, on forms provided by the City. The report shall satisfy the  
3 following requirements:

4 (i) ~~The section of the report concerning fuel burning appliances must  
5 be executed by a qualified heating maintenance person certifying  
6 compliance with those portions of Chapter 10-2, "Property  
7 Maintenance Code," B.R.C. 1981, for which the report form  
8 requires inspection and certification.~~

9 (ii) ~~The section of the report concerning smoke and carbon monoxide  
10 alarms must be executed by the operator certifying that the  
11 operator inspected the smoke and carbon monoxide alarms in the  
12 licensed property and that they complied with the requirements of  
13 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.~~

14 (iii) ~~The section of the report concerning trash removal must be  
15 executed by the operator certifying that the operator has a current  
16 valid contract with a commercial trash hauler for removal of  
17 accumulated trash from the licensed property in accordance with  
18 Subsection 6-3-3(b), B.R.C. 1981.~~

19 (b) ~~Whenever an existing license is renewed, the renewal license shall be effective from the  
20 date of expiration of the last license if the applicant submits a complete renewal  
21 application by or within ninety days from the expiration date. Licenses not renewed  
22 within ninety days will be considered expired, requiring a new baseline inspection report.~~

23 (c) ~~The city manager shall issue no more than ten new cooperative housing licenses in any  
24 calendar year. Provided, however, if in any calendar year, after the city manager issued  
25 ten licenses, there are fewer than two licenses issued to not for profit permanently  
affordable cooperatives, private equity cooperatives or rental cooperatives, the city  
manager may issue sufficient additional license so that there are at least two licensees  
issued in each category up to a total of no more than fourteen licenses for all categories in  
any calendar year.~~

If an application for a cooperative housing unit exceeds the limits set forth in this  
subparagraph (c), the city manager will place the applicant on a waiting list. Applicants  
on the waiting list shall be given priority for consideration of applications in the next  
calendar year.

26 (d) ~~The boundary of a property on which a cooperative housing unit is located shall not be  
27 within five hundred feet from the boundary of the property on which another cooperative  
28 housing unit is located, but the city manager may permit two cooperative housing units to  
29 be located closer than five hundred feet apart if they are separated by a physical barrier,  
30 including, without limitation, an arterial, a collector, a commercial district or a  
31 topographic feature that avoids the need for dispersal. The planning department shall  
32 maintain a map showing the locations of all cooperative housing units in the city.~~

33 (e) ~~Any Not for Profit Permanently Affordable Cooperative shall be permanently affordable.  
34 Affordability shall be measured by individual households. That is, a household consisting~~

1 either of an individual or a family. Rents charged must be affordable to households  
2 earning no more than sixty percent of the area median income.

3 (f) — ~~A cooperative license may be issued to any group of natural persons or organization  
4 formed under Colorado law. If the applicant is an organization, all owners must be  
5 natural persons.~~

6 (g) — ~~No rental cooperative shall be located in a dwelling unit with less than two thousand  
7 square feet of habitable space nor in any dwelling unit that within five years prior to the  
8 application was modified to have two thousand square feet or more of habitable space.~~

9 (h) — ~~No cooperative shall be located in an agricultural, industrial or public zone. Cooperatives  
10 shall be permitted in all other zone districts.~~

11 (i) — ~~No person under twenty-one years of age may own an interest in a cooperative, in real  
12 property on which a cooperative is located or in an organization owning real property on  
13 which a cooperative is located.~~

14 (j) — ~~Any cooperative in which any person resides in return for valuable compensation shall be  
15 subject to the rental licensing provisions included in Section 10-3-2, "Rental License  
16 Required Before Occupancy and License Exemptions," B.R.C. 1981. The exceptions to  
17 the rental licensing requirements that are set forth in Section 10-3-2(b) shall not apply to  
18 any dwelling unit licensed pursuant to this chapter.~~

19 (k) — ~~No dwelling unit licensed pursuant to this chapter shall be licensed as or used as a short-  
20 term rental.~~

21 (l) — ~~Any attached accessory dwelling unit or detached accessory dwelling unit to a dwelling  
22 unit that is licensed pursuant to this chapter shall be part of the licensed cooperative  
23 housing unit and subject to the standards of this chapter. The occupants of the dwelling  
24 unit and accessory unit shall all be members of the cooperative. While such units are  
25 licensed as a cooperative housing unit under this chapter, neither the principal dwelling  
unit nor the accessory dwelling unit shall be required to be owner-occupied as would  
otherwise be required under Subparagraph 9-6-3(n)(1)(A)(iv), "Owner-Occupied,"  
B.R.C. 1981.~~

#### 18 **10-11-4. License Application Procedure for Cooperative Housing Licenses.**

19 (a) — ~~Only a Legitimate Cooperative may be an applicant for a cooperative housing license. A  
20 licensed cooperative may operate only with the written consent of the property owner,  
21 unless the cooperative is the owner.~~

22 (b) — ~~Every applicant for cooperative housing license shall submit the following:~~

23 (1) — ~~A written application for a license to the city, on official city forms provided for  
24 that purpose including:~~

25 (A) — ~~A housing inspector's certification of baseline inspection dated within  
twelve months before the application. Each licensee shall submit evidence  
of a renewal inspection every two years. The applicant shall make a copy  
of the inspection form available to city staff and residents of inspected  
units within fourteen days of a request;~~

1           (B) ~~— A report on the condition and location of all smoke and carbon monoxide~~  
2           ~~alarms required by Chapter 10-2, "Property Maintenance Code," B.R.C.~~  
3           ~~1981, made and verified by the applicant. Each applicant shall submit a~~  
4           ~~verification under this subsection every two years;~~

5           (C) ~~— A trash removal plan meeting the requirements of Section 6-3-3(b), B.R.C.~~  
6           ~~1981, made and verified by the applicant;~~

7           (D) ~~— A parking management plan meeting the requirements of Section 10-11-~~  
8           ~~11, B.R.C. 1981, made and verified by the applicant;~~

9           (E) ~~— Evidence establishing compliance with Section 10-11-14 "Legitimate~~  
10           ~~Cooperatives," B.R.C. 1981. The city manager shall not issue a~~  
11           ~~cooperative housing license unless the applicant can be certified as~~  
12           ~~meeting the criteria set forth in Section 10-11-14. Each licensee shall~~  
13           ~~submit evidence of compliance with Section 10-11-14 every two years;~~  
14           ~~and~~

15           (F) ~~— A list of all persons who have any ownership interest in any entity to be~~  
16           ~~licensed.~~

17           (2) ~~— All applications shall be submitted at least thirty days prior to occupancy,~~  
18           ~~provided, however, that any applicant that can demonstrate operation in the same~~  
19           ~~dwelling unit as a legitimate cooperative on December 6, 2016 may submit an~~  
20           ~~application while in occupation of that dwelling unit.~~

21           (e) ~~— Pay all license fees prescribed by Section 4-20-69, "Cooperative Housing Fee," B.R.C.~~  
22           ~~1981, at the time of submitting the license application.~~

23           (d) ~~— Any licensee shall provide the city manager with a report of any changes in the~~  
24           ~~information required by paragraph (b)(1) above within thirty days of such change.~~

25           (e) ~~— The city manager may issue a conditional approval for any group that has met the~~  
              ~~requirements of Subsections (a), (b)(1)(E), (b)(1)(F).~~

              (f) ~~— Within thirty days after initial occupancy, the licensee shall provide to the city manager a~~  
              ~~certification that the applicant has provided to a resident of each dwelling on the block~~  
              ~~face contact information for the applicant and the organization responsible for certifying~~  
              ~~the applicant. Provided, however, that no notice shall be required to any dwelling unit~~  
              ~~more than six hundred feet from the licensed cooperative.~~

              (g) ~~— A plan showing legal bedroom spaces sufficient to accommodate the number of residents~~  
              ~~requested in the license application.~~

#### 21 **10-11-5. License Renewal Procedure for Cooperative Housing Units.**

22 Every licensee of a cooperative housing unit shall follow the procedures in this section when  
23 renewing an unexpired license:

24           (a) ~~— Pay all license fees prescribed by Section 4-20-69, "Cooperative Housing Fee," B.R.C.~~  
25           ~~1981, before the expiration of the existing license.~~

              (b) ~~— Submit to the city manager, on forms provided by the manager:~~

1           (1) ~~A housing inspector's certification of renewal inspection within twelve months~~  
2           ~~before application. The applicant shall make a copy of the inspection form~~  
3           ~~available to city staff and residents of inspected units within fourteen days of a~~  
4           ~~request;~~

5           (2) ~~A report on the condition and location of all smoke and carbon monoxide alarms~~  
6           ~~required by Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, made and~~  
7           ~~verified by the operator; and~~

8           (3) ~~A trash removal plan meeting the requirements of Subsection 6-3-3(b), B.R.C.~~  
9           ~~1981, made and verified by the operator.~~

10          (4) ~~A parking management plan meeting the requirements of Section 10-11-11,~~  
11          ~~B.R.C. 1981, made and verified by the applicant.~~

12          (c) ~~Take all reasonable steps to notify in advance all residents of the property of the date and~~  
13          ~~time of the inspection. The operator shall be present and accompany the inspector~~  
14          ~~throughout the inspection, unlocking and opening doors as required.~~

#### 15          **10-11-6. Temporary License.**

16          ~~If the inspection shows that there are violations of Chapter 10-2, "Property Maintenance Code,"~~  
17          ~~B.R.C. 1981, in the building, and the applicant cannot correct the deficiencies before the housing~~  
18          ~~is to be occupied (in the case of a new cooperative housing unit) or the existing license expires~~  
19          ~~(in the case of a renewal), the applicant may apply, on forms specified by the city manager, for a~~  
20          ~~temporary license. If the manager finds, based on the number and severity of violations, that such~~  
21          ~~a temporary license would not create or continue an imminent health or safety hazard to the~~  
22          ~~public or the occupants, the manager may issue a temporary license. The manager shall specify~~  
23          ~~the duration of the temporary license, for a period reasonably necessary to make the needed~~  
24          ~~repairs and changes. Upon receipt of an additional certificate of inspection showing correction of~~  
25          ~~the deficiencies, and an additional housing license fee, the manager shall issue the cooperative~~  
26          ~~housing license.~~

#### 27          **10-11-7. License Appeals.**

28          ~~Any applicant denied a temporary license, or aggrieved by the period of time allowed for~~  
29          ~~correction, may appeal the denial or the time for correction, or both, as provided in Section 10-2-~~  
30          ~~2, Section 111 "Means of Appeal," B.R.C. 1981. As to an appeal of the time reasonably required~~  
31          ~~to correct a violation, the board shall either affirm the city manager's originally prescribed time~~  
32          ~~or grant a longer time to correct the alleged violation.~~

#### 33          **10-11-8. Time of License Expiration.**

34          ~~Every rental license expires upon the earliest of the following dates:~~

35          (a) ~~The expiration date on the license unless temporary authority is allowed under Section~~  
36          ~~10-11-6, "Temporary License," B.R.C. 1981, of this chapter;~~

37          (b) ~~The effective date of any order or notice to vacate the property issued under any~~  
38          ~~provision of law;~~

39          (c) ~~The expiration of the temporary certificate of occupancy for the property if a permanent~~  
40          ~~certificate of occupancy has not been issued; or~~

1 (d) — The revocation of the certificate of occupancy for the property.

2 **10-11-9. License Fees.**

3 Applicants for any cooperative housing license, and applicants renewing an existing cooperative  
4 housing license, shall pay the license fees prescribed by Section 4-20-69, "Cooperative Housing  
5 Fee," B.R.C. 1981, upon submission of any license application.

6 **10-11-10. Availability of License.**

7 No person who holds a cooperative housing license shall fail to make the license available to  
8 anyone within seventy-two hours of receiving a request. Posting of a cooperative housing license  
9 at the property is not required.

10 **10-11-11. Parking Management Plan Required.**

11 Each applicant for a cooperative housing license shall prepare a parking management plan.  
12 Approval of any such plan shall be a condition of issuance of any cooperative housing license.  
13 The plan shall limit the number of automobiles to be parked in the public right of way to three. If  
14 the cooperative housing unit is located in a Neighborhood EcoPass district, the plan shall include  
15 a requirement that each resident who licensed to drive, acquire an EcoPass.

16 **10-11-12. Compatibility with Neighborhoods.**

17 Each cooperative shall at all times maintain compatibility with the neighborhood in which the  
18 cooperative is located. The licensee shall take all reasonable steps to reduce excessive parking on  
19 the public right of way and noise, trash and weeds on the property. A cooperative may be  
20 considered incompatible with the neighborhood if the city manager receives multiple complaints  
21 relating to parking on the public right of way, noise, trash or weeds in any twelve-month period.  
22 Complaints from a single person shall not be sufficient to cause a property to be incompatible  
23 with the neighborhood. Prior to making any determination that a cooperative is not compatible  
24 with the neighborhood, the city manager shall provide written notice to the licensee and  
25 encourage the licensee to address the complaints with the residents of the neighborhood.

**10-11-13. Property Rights for Equity Cooperatives.**

Cooperatives that are licensed pursuant to this chapter will have the following status under Title  
9, "Land Use Code," B.R.C. 1981:

(a) — Equity Cooperatives. Any licensed not-for-profit permanently affordable cooperative or  
private equity cooperative is considered a use of land for the purposes of Chapter 9-6,  
"Uses of Land," B.R.C. 1981. If the city changes its land use regulations, such  
cooperatives may continue as non-conforming uses under the requirements in Section 9-  
10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming  
Uses," B.R.C. 1981, provided that all of the requirements of the Boulder Revised code  
continue to be met.

(b) — Rental Cooperatives. Any licensed rental cooperative is considered a dwelling unit  
purposes of Chapter 9-6, "Uses of Land," B.R.C. 1981 and not a use of land. Upon the  
abandonment, expiration, or revocation of such license, the property will continue to be  
considered a dwelling unit.

**10-11-14. Legitimate Cooperatives.**

1 ~~(a) — All applicants for cooperative housing licenses shall demonstrate as part of the licensing~~  
2 ~~process that the community to be formed will be a legitimate cooperative. A legitimate~~  
3 ~~cooperative is a group of individuals or an organization formed under Colorado law that,~~  
4 ~~in addition to any other criteria adopted by the city manager, has the following:~~

5 ~~(1) — a documented governance structure;~~

6 ~~(2) — a list of the number of adults and dependents;~~

7 ~~(3) — a dedicated bank account; and~~

8 ~~(4) — bylaws that provide for the following:~~

9 ~~(A) — provisions prohibiting unlawful discrimination or harassment;~~

10 ~~(B) — a provision requiring regular meetings of all members;~~

11 ~~(C) — a decision-making structure;~~

12 ~~(D) — provisions for discipline or discharge of members;~~

13 ~~(E) — provisions for sharing of resources;~~

14 ~~(F) — provisions for selection of new members; and~~

15 ~~(G) — provisions for sharing information about the dedicated bank account.~~

16 ~~(b) — The city manager shall designate one or more Expert Cooperative Housing Organizations~~  
17 ~~with ninety days after final adoption of this ordinance. An applicant shall seek training~~  
18 ~~and certification by an Expert Cooperative Housing Organization. An applicant shall~~  
19 ~~submit evidence of such training and certification as part of an application for a~~  
20 ~~cooperative housing license.~~

21 **~~10-11-15. City Manager May Order Premises Vacated.~~**

22 ~~(a) — Whenever the city manager determines that any cooperative housing unit is in violation~~  
23 ~~of this chapter or of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, and has~~  
24 ~~caused a summons and complaint requiring the licensee to appear in municipal court to~~  
25 ~~answer the charge of violation to issue, and the summons cannot be served upon the~~  
26 ~~licensee despite reasonable efforts to do so, or, having been served, the licensee has failed~~  
27 ~~to appear in the municipal court to answer the charges or at any other stage in the~~  
28 ~~proceedings, or, having been convicted or entered a plea of guilty or no contest, the~~  
29 ~~licensee has failed to satisfy the judgment of the court or any condition of a deferred~~  
30 ~~judgment, then the city manager may, after thirty days' notice and an opportunity for a~~  
31 ~~hearing to the residents and the licensee, require that the premises be vacated and not be~~  
32 ~~reoccupied until all of the requirements of the Property Maintenance Code and the~~  
33 ~~cooperative housing code have been satisfied and a cooperative housing license is in~~  
34 ~~effect. No person shall occupy any cooperative housing unit after receiving actual or~~  
35 ~~constructive notice that the premises have been vacated under this section.~~

36 ~~(b) — Any notice required by this section to be given to a licensee is sufficient if sent by first~~  
37 ~~class or certified mail to the address of the last known owner of the property as shown on~~  
38 ~~the records of the Boulder County Assessor as of the date of mailing. Any notice to a~~  
39 ~~resident required by this section is sufficient if sent by first class or certified mail to or~~  
40 ~~delivered to any occupant at the address of the premises and directed to "All Residents."~~



1 ~~(e) — The remedy provided in this section is cumulative and is in addition to any other action~~  
2 ~~the city manager is authorized to take.~~

3 **~~10-11-16. Administrative Remedy.~~**

4 ~~(a) — If the city manager finds that a violation of any provision of this chapter or Chapter 10-2,~~  
5 ~~"Property Maintenance Code," B.R.C. 1981, exists, the manager, after notice to the~~  
6 ~~operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3,~~  
7 ~~"Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following~~  
8 ~~actions to remedy the violation:~~

9 ~~(1) — Impose a civil penalty according to the following schedule:~~

10 ~~(A) — For the first violation of the provision, \$150;~~

11 ~~(B) — For the second violation of the same provision, \$300; and~~

12 ~~(C) — For the third violation of the same provision, \$1,000;~~

13 ~~(2) — Revoke the cooperative housing license; and~~

14 ~~(3) — Issue any order reasonably calculated to ensure compliance with this chapter and~~  
15 ~~Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.~~

16 ~~(b) — If notice is given to the city manager by the licensee at least forty-eight hours before the~~  
17 ~~time and date set forth in the notice of hearing on any violation, other than a violation of~~  
18 ~~Section 10-11-12 "Compatibility with Neighborhoods," B.R.C. 1981, that the violation~~  
19 ~~has been corrected, the manager will re-inspect the cooperative housing unit. If the~~  
20 ~~manager finds that the violation has been corrected, the manager may cancel the hearing.~~

21 ~~(c) — If notice is given to the city manager by the licensee at least forty-eight hours before the~~  
22 ~~time and date set forth in the notice of hearing on any violation of Section 10-11-12~~  
23 ~~"Compatibility with Neighborhoods," B.R.C. 1981, that the licensee has scheduled a~~  
24 ~~community mediation with concerned neighbors, the manager may continue the hearing~~  
25 ~~until the manager receives a report regarding the conclusion of the mediation. If after~~  
~~reviewing a community mediation report, if the city manager is satisfied that the~~  
~~cooperative housing unit meets the requirements of Section 10-11-12 "Compatibility with~~  
~~Neighborhoods," B.R.C. 1981, the city manager may dismiss any pending complaint.~~

~~(d) — The city manager's authority under this section is in addition to any other authority the~~  
~~manager has to enforce this chapter, and election of one remedy by the manager shall not~~  
~~preclude resorting to any other remedy as well, provided however, the city manager shall~~  
~~not seek criminal penalties for any violation of this chapter.~~

~~(e) — The city manager may, in addition to taking other collection remedies, certify due and~~  
~~unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-~~  
~~2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer~~  
~~for Collection," B.R.C. 1981.~~

~~(f) — To cover the costs of investigative inspections, the city manager will assess operators a~~  
~~\$250 fee per inspection, where the city manager performs an investigative inspection to~~  
~~ascertain compliance with or violations of this chapter.~~

1 **10-11-17. Authority to Issue Rules.**

2 The city manager may adopt reasonable rules to implement this chapter.

3 **10-11-18. Reporting.**

4 The city manager shall prepare an annual report to the city council regarding the implementation  
5 and enforcement of this chapter. Council will consider the impacts of this ordinance and make  
6 changes as necessary.

7 Section 61. Section 10-12-2, "Definition," B.R.C. 1981, is amended to read as follows:

8 The following words used in this chapter have the following meanings unless the context clearly  
9 indicates otherwise:

10 ...

11 *Mobile home* means a transportable, ~~single-family~~detached dwelling unit, suitable for year-  
12 round occupancy that contains the same water supply, waste disposal and electrical conveniences  
13 as immobile housing, that has no foundation other than wheels or removable jacks for  
14 conveyance on highways, and that may be transported to a site as one or more modules, but the  
15 term does not include "travel trailers," "campers," "camper buses," or "motor homes," or modular  
16 homes designed to be placed on a foundation.

17 ...

18 Section 62. Section 11-1-13, "When Connections With Water Mains Are Required,"

19 B.R.C. 1981, is amended to read as follows:

20 **11-1-13. When Connections With Water Mains Are Required.**

21 (a)      All property located in the city or annexed to the city that is open to the public or used for  
22 commercial or industrial purposes or uses (other than ~~single-family~~detached dwelling  
23 units-residential) and that requires a potable water supply for human consumption shall  
24 be connected with the water utility of the city. The owner of the property, the owner's  
25 agent or other person having charge of such property or receiving the rent for it, or a  
tenant of the property shall pay all applicable fees and charges when the city manager  
notifies such person that connection is required. The manager shall serve such notice  
upon the owner of such property by registered mail to the last address of the owner on the  
records of the Boulder County Assessor and upon the person in possession of such  
property by mail to the property address. Connection to the water utility is immediately  
required only where there exists a city water main abutting or adjacent to any portion of  
the boundaries of the property upon which there is an existing structure or a proposed  
structure requiring the use of potable water. A private water supply may be used for  
irrigation on property connected to the water utility, but no person in possession of such  
property shall allow the water from the private supply to be used for human consumption

1 or to be cross-connected with a line containing water from the water utility. Nothing in  
2 this subsection shall be deemed to require water connection by properties in the portion  
3 of Moore's ~~Subdivision~~ Subdivision, annexed on July 11, ~~1978~~ 1978, or specifically  
4 exempted by any written agreement with the city.

5 ...

6 Section 63. Section 11-1-15, "Out of City Water Service," B.R.C. 1981, is amended to  
7 read as follows:

8 **11-1-15. Out of City Water Service.**

9 (a) Out of city water service permits are intended for properties that may be eligible for  
10 annexation in the near future but are not presently eligible. The purpose of this section is  
11 to outline the requirements precedent to the receipt of out of city utility services. A  
12 person desiring to make connection to out of city services will be required to make such  
13 land dedication and pay such fees as would be anticipated from a similarly situated  
14 property that would annex into the city.

15 (b) Any person outside of the city limits desiring to make a connection or repair to or  
16 disconnect from the water utility or to use water therefrom shall apply to the city manager  
17 for a revocable out of city water permit, which may be issued after approval of the city  
18 manager if the manager finds that the application meets the following conditions:

19 ...

20 (5) The service is to be extended to a structure, which contains a legal use, that  
21 existed on the effective date of this chapter or to a platted ~~single-family lot~~ with a  
22 detached dwelling unit existing on the effective date of this chapter;

23 ...

24 Section 64. Section 11-2-10, "Out of City Sewer Service," B.R.C. 1981, is amended to  
25 read as follows:

26 **11-2-10. Out of City Sewer Service.**

27 (a) Out of city sewer service permits are intended for properties that may be eligible for  
28 annexation in the near future but are not presently eligible. The purpose of this section is  
29 to outline the requirements precedent to the receipt of out of city utility services. A  
30 person desiring to make connection to out of city services will be required to make such  
31 land dedication and pay such fees as would be anticipated from a similarly situated  
32 property that would annex into the City.

1 (b) Any person outside of the city limits desiring to make a connection to the wastewater  
2 utility shall apply to the city manager for a revocable out of city wastewater permit,  
3 which may be issued after approval of the city manager if the manager finds that the  
4 application meets the following conditions:

5 ...

6 (5) The service is to be extended to a structure, which contains a legal use, that  
7 existed on the effective date of this chapter or to a ~~platted single-family lot~~ with a  
8 detached dwelling unit existing on the effective date of this chapter;

9 ...

10 Section 65. Section 11-5-5, “Discharges to the Stormwater Utility System,” B.R.C. 1981,  
11 is amended to read as follows:

12 **11-5-5. Discharges to the Stormwater Utility System.**

13 (a) Illicit Discharges Prohibited: No user or other person shall discharge any illicit discharge  
14 into or upon the stormwater utility system, any public highway, street, sidewalk, alley,  
15 land, public place, stream, ditch or other watercourse or into any cesspool, storm or  
16 private sewer or natural water outlet, except as specifically provided in this chapter and in  
17 accordance with the MS4 permit.

18 ...

19 (d) Exemptions: The following discharges are exempt from the requirements established by  
20 this chapter:

21 (1) Landscape irrigation and lawn watering associated with ~~single-family detached~~  
22 dwelling units or ~~duplexes development~~,

23 ...

24 Section 66. Section 12-1-2, “Discrimination in Housing Prohibited,” B.R.C. 1981, is  
25 amended to read as follows:

26 **9-6-1. 12-1-2. - Discrimination in Housing Prohibited.<sup>[4]</sup>**

27 ...

28 (b) The provisions of subsection (a) of this section do not apply to prohibit:

1 ...

2 (4) Compliance with any provisions of ~~Section 9-8-5, "Occupancy of Dwelling~~  
3 ~~Units," or Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, concerning~~  
4 permitted occupancy of dwelling units.

4 ...

5 Section 67. If any section, paragraph, clause, or provision of this ordinance shall for any  
6 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
7 provisions of this ordinance.

8 Section 68. This ordinance is necessary to protect the public health, safety, and welfare  
9 of the residents of the city and covers matters of local concern.

10 Section 69. The city council deems it appropriate that this ordinance be published by title  
11 only and orders that copies of this ordinance be made available in the office of the city clerk for  
12 public inspection and acquisition.

13

14 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
15 TITLE ONLY this 6<sup>th</sup> day of February 2025.

16

\_\_\_\_\_  
Aaron Brockett,  
Mayor

17

18 Attest:

19

20 \_\_\_\_\_  
Elesha Johnson,  
21 City Clerk

22

23

24

25

1 READ ON SECOND READING, PASSED AND ADOPTED this 6<sup>th</sup> day of March 2025.

2

3

4

\_\_\_\_\_  
Aaron Brockett,  
Mayor

5

Attest:

6

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\_\_\_\_\_  
Elesha Johnson,  
City Clerk

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## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8684 amending Title 10, "Structures," B.R.C. 1981 and adopting by reference the 2024 international codes regarding property maintenance, building, electrical, fire, mechanical, fuel, gas, and plumbing; and setting forth related details

### **PRIMARY STAFF CONTACT**

Rob Adriaens

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to order published by title only Ordinance 8684 amending Title 10, "Structures," B.R.C. 1981 and adopting by reference the 2024 international codes regarding property maintenance, building, electrical, fire, mechanical, fuel, gas, and plumbing; and setting forth related details

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3F - 1st Rdg Ord 8684 2024 International Building Code Updates**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8684 amending Title 10, "Structures," B.R.C. 1981 and adopting by reference the 2024 international codes regarding property maintenance, building, electrical, fire, mechanical, fuel, gas, and plumbing; and setting forth related details.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Mark Woulf, Assistant City Manager  
Brad Mueller, Director of Planning & Development Services  
Mike Calderazzo, Fire Chief  
Robert Adriaens, Chief Building Official  
Jenn Ross, Code Compliance Manager  
David Lowry, Fire Marshall  
Christy Fitch, Assistant City Attorney III

**EXECUTIVE SUMMARY**

The purpose of this item is for City Council to consider the attached proposed Ordinance 8684 ([Attachment A](#)) to update the City of Boulder's building, fire and property maintenance codes on first reading.

The International Codes are updated every three years by the International Code Council (ICC) through a collaborative and consensus-based process involving experts, stakeholders and public comment. ICC's approach to code development ensures that its



building codes are robust, adaptable, and reflective of current safety and construction standards.

Boulder's construction codes were last updated from the 2012 edition to the 2018 edition in 2019. The proposed code updates address a wide range of public health and safety issues as well as significant sustainability improvements from previous codes. Adoption of the most recent codes will improve Boulder's Building Code Effectiveness Grading Schedule (BCEGS®) rating, which is used by insurers to help determine risk, and potentially will result in lower insurance premium increases for residents and businesses and reduce the number of insurers pulling out of our market due to the high wildfire risk.

Jurisdictions, including the City of Boulder, adopt local amendments to reflect conditions specific to their geography and local requirements. The recommended local amendments are compiled in the proposed ordinance and included in **Attachment A** to the memo. Significant recommended changes from the 2018 amendments include:

- Older obsolete amendments now addressed by base code have been deleted to clean up the ordinance.
- Cleanup of the mobile home park chapter to reflect compliance with state law.
- Increasing the size limitation for storage sheds exempt from permitting from 80 square feet to 120 square feet.
- Exempting from permit requirements freestanding decks under 200 square feet and less than 30" above grade.
- Exempting from permit requirements playground equipment installed on residential private property or homeowners' associations in accordance with consumer safety commission guidelines.
- Deleting the local amendment to the National Electric Code requiring arc fault breakers for replacement panels.
- Requiring building permits for re-siding projects to ensure compliance with wildland urban interface and historic preservation requirements.
- Requiring permits for window replacements to ensure compliance with wildland urban interface, historic preservation, egress and energy code requirements.

This code update is a significant code simplification and cleanup from previous code adoptions. Many of the amendments initially pioneered by Boulder have now been incorporated into the building code by the International Code Council, reducing the need for local amendments and significantly simplifying the required ordinance.

This code simplification and cleanup will help reduce construction costs by improving uniformity with international standards reducing the need for Boulder specific design modifications and the number of plan review resubmittals due to local amendments not found in the international codes. The changes to the 2024 code allowing for reduced ceiling heights in existing buildings and larger allowable areas for heavy timber construction also bring cost savings to construction.

## **KEY ISSUES**

Staff has identified the following key issues to help guide City Council’s discussion:

1. Does the City Council recommend any modifications to the draft ordinance?

### **STAFF RECOMMENDATION**

#### **Suggested Motion Language:**

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

Motion to introduce and order published by title only Ordinance 8684 amending Title 10, "Structures," B.R.C. 1981 and adopting by reference the 2024 international codes regarding property maintenance, building, electrical, fire, mechanical, fuel, gas, and plumbing; and setting forth related details.

### **RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE**

None.

### **BOARD AND COMMISSION FEEDBACK**

**Planning Board** – Planning Board reviewed Ordinance 8684 on January 28, 2025

- Planning Board had some general feedback about permitting replacement windows and siding. Of particular concern was the difference between “replacement” vs “repair. Staff clarified that repairing glazing without replacement of the window frame would not trigger permitting.
- For siding replacement, Planning Board asked if it would be possible to only require permitting in the wildland urban interface, staff explained that homeowners and contractors are generally unaware if they are located in the WUI and permitting is required so staff can ensure that all siding in the wildland urban interface is complaint. There are also weather resistant barrier and waterproofing code requirements that need to be complied with city wide.
- Planning Board asked why the definition for ADUs was updated with language requiring that ADU’s must share utilities with the principal dwelling. Staff explained that this was done to align with the definition in 9-16-1.

- Planning Board also asked about DCS standards and clothes drying in the Mobile home chapter, staff clarified these are existing standards and not part of the building code update but agreed to review them as part of a future code cleanup.
- Planning Board asked why cooperative housing was still in the definitions in chapter 10. Staff clarified that it wasn't deleted as it may still be relevant for historical code information in the future.

Planning Board voted unanimously to pass the following motion: Planning Board recommends that City Council adopt Ordinance 8684 amending Title 10, "Structures," B.R.C. 1981 and adopting by reference the 2024 international codes regarding property maintenance, building, electrical, fire, mechanical, fuel, gas, and plumbing; and setting forth related details.

### **COMMUNITY ENGAGEMENT.**

Community engagement has included targeted outreach to key stakeholders that are most impacted by building code updates. Two remote meetings were held via Zoom, one with a group of local architects and builders on December 19 and an additional open house for members of the public on January 16, which was attended by design professionals, builders, homeowners and landlords. Additionally, an in-person lunch and learn was held with a group of local architects on January 8<sup>th</sup>. The drafted local amendments and significant code changes were provided before each session, and additional feedback and materials was received afterwards by email.

Feedback from stakeholder groups consisted of:

- Concern about the proposed timeline and its impact on projects already in a land use process.
- Positive statements about the reduction of local amendments and the simplification of the ordinance.
- Positive statements about the new lower basement and attic ceiling heights for existing buildings.
- Concern about the impacts of the new imaginary lot line provisions in the IRC on ADU's.

Based on this feedback, staff made a change to allow projects already in a land use process to submit under either code. Staff clarified that the imaginary lot line provisions will not affect accessory dwelling units as it does not apply to accessory buildings, only two principal dwellings on a single lot.

### **BACKGROUND**

The International Codes are updated every three years by the International Code Council (ICC) through a collaborative and consensus-based process involving design professionals, engineers, home builders, government stakeholders and extensive public engagement. ICC's approach to code development ensures that its building codes are robust, adaptable, cost effective and environmentally sustainable.

Boulder adopts the latest version of the international codes on a 6-year cycle, the construction codes were last updated in 2019. The proposed code updates address a wide range of public health and safety issues as well as significant sustainability improvements from previous codes.

## **ANALYSIS**

Staff recommends that proposed Ordinance 8684 be adopted on February 6, 2025, to adopt the 2024 International Building Codes with an effective date of August 1, 2025.

### **Summary of significant changes to the International Building Codes.**

**The 2024 International Residential Code (IRC®)** is a comprehensive code comprising all building, plumbing, mechanical, and fuel gas standards for one- and two-family dwellings and townhouses up to three stories. Important 2024 IRC changes include:

- Habitable attics and basements in existing buildings may now have a ceiling height of 6'8", previously required 7'.
- Imaginary lot lines are added for calculating fire separation distance when considering multiple dwellings on a single lot.
- Shared accessory rooms are now an option in two-family dwellings.
- Many requirements for energy storage systems are added to improve fire safety.
- New protection requirements for storage batteries in garages.
- Sleeping loft requirements for habitable attic style lofts and tiny home style lofts now have maximum size limits to meet an exception.
- Reinforcement of the floor below guards at a mezzanine is now required.
- The final test of the drain waste vent (DWV) system may be visual. (plumbing)
- Air exhaust openings now allowed near operable windows and doors. (mechanical)

- A2L refrigerants are added as an option for cooling equipment. (low global warming potential)
- Solvent cement joints for CPVC pipe are allowed above and below ground.
- Snow, wind, and seismic maps updated.
- Accessibility in care facilities clarified.

**The 2024 International Building Code (IBC®)** applies to all buildings except detached one- and two-family dwellings and townhouses up to three stories. Important 2024 IBC changes include:

- Duties and powers of the building official: Section 104 regulating duties of the building official and the approach for reviewing for code compliance has been significantly updated to reflect the current manner that alternate materials, designs and methods are evaluated.
- The updated design rain loads are now based on the summation of the static head, the hydraulic head, and the ponding head.
- Updates to Risk Categories including Photovoltaic (PV) panel systems and facilities providing power generation.
- Updated and expanded provisions for Temporary Structures.
- New provisions regarding the wind resistance of aggregate-surfaced roofs.
- Roof Coverings: Updated provisions for underlayment.
- New special inspection provisions for metal building systems.
- New provisions for structural concrete reinforced with glass-fiber reinforcement.
- Increased the allowable height of a Group R-2 occupancy building with a National Fire Protection Association (NFPA) 13R sprinkler system.
- Occupiable space requirements now apply if a roof is usable for anything more than maintenance or repair, and occupants must have access to multiple egress options from a story based on the occupant load and the story requirements.

- Adult changing tables regulations are added where they are required in large assembly and mercantile, college lecture hall/classroom buildings and highway rest stops, or provided.
- Fire-resistance-rated Wall Continuity: Updates on how supporting construction for exterior walls is to be fire-resistance-rated, especially in the case of a parapet.
- Openings in Shaft Enclosures: Additional exceptions are provided for shaft enclosures, including new allowances for openings and penetrations.
- Carbon Monoxide Detection: Carbon monoxide (CO) detection is now required in all occupancies where a CO-producing device is present. Detection and notification can be addressed in several ways.
- Vapor retarders: Several updates have been made to the vapor retarder provisions for consistency with the IRC. The changes also provide additional options and better guidance for allowable types and locations of permitted vapor retarders.
- Vertical and lateral flame propagation compliance methods: Clarification has been provided as to when testing in accordance with NFPA 285, related to vertical and lateral flame propagation, is required. Previously this information was scattered in a variety of locations within Chapters 14 and 26.
- New Appendix P sets forth the scoping limitations and technical criteria for sleeping lofts that are provided within Group R dwelling units and sleeping units.

**The 2024 International Plumbing Code (IPC®)** provides minimum regulations for plumbing facilities and allows for the acceptance of new and innovative products, materials, and systems. Plumbing and plumbing fixture related accessibility provisions and requirements from the ICC A117.1 Accessibility Standard have also been included. Important 2024 IPC changes include:

- Provisions added for support of buried piping beneath buildings where expansive soil conditions exist.
- Requirement added for tracer wire for buried plastic sewer piping.
- Option added for vacuum testing of drain waste and vent (DWV) piping.
- Plumbing fixture requirements significantly updated for various Group I occupancies.

- Exception added for allowing special locking mechanism for doors to multiple-user toilet facilities.
- Plastic pans for gas-fired water heaters required to be tested in accordance with ASTM E84 or UL 723.
- Showerhead flowrate limited to 2.0 GPM complying with high efficiency requirements.
- Installation standards added for solvent-cemented plastic piping joints.
- Standards added for chemical waste piping materials.

**The 2024 International Mechanical Code (IMC®)** establishes minimum regulations for mechanical systems using prescriptive and performance-related provisions that allow the use of new and innovative materials, methods and designs. Important 2024 IMC changes include:

- Provisions prohibiting the use of domestic ductless range hoods in Groups I-1 and I-2 were removed.
- A new identification requirement for Group A2L and B2L refrigerants.
- The requirements for machinery rooms containing Group A2L refrigerants were changed and Group B2L refrigerants were added to the provisions.
- Limits for the use of Group A1 and A2L refrigerants changed in high probability systems used for human comfort, unless permitted as excepted.
- UL 2158A Standard was added to the requirements for commercial dryer exhaust.
- Ventilation requirements for outpatient healthcare facilities updated match the requirements in ASHRAE 62.1-2019.
- Addition of a new minimum landing requirement at the roof hatch for personnel to safely use the hatch when accessing the roof for repair and maintenance.
- Addition of a new testing option for grease ductwork.
- Requirements for steam baths were added.

- A new standard requirement for refrigeration systems containing carbon dioxide.

**The 2024 International Existing Building Code (IEBC®)** encourages the use and reuse of existing buildings. This code covers repair, alteration, addition and change of occupancy for existing buildings and historic buildings to achieve appropriate levels of safety without requiring full compliance with new construction requirements. Important 2024 IEBC® changes include:

- Occupiable roofs. The concept of occupiable roofs requirements has been incorporated in a variety of locations to correlate with the IBC.
- Storm Shelters. The requirements have been coordinated with revisions in the IBC and ICC 500, clarifying where constructed, storm shelters shall comply with IBC Section 423.
- Risk category increase. Clarifies how risk categories should be assigned for structural design where the addition and the existing building have different uses.
- Smoke compartment requirements. Existing Group I-1, condition 2 occupancies and ambulatory care facilities may be required to divide stories into no fewer than two smoke compartments for more substantial additions and alterations.
- Adult Changing stations. Where additional toilet facilities are being added and IBC Section 1110.4.1 would require adult changing stations, Section 306.7.15 would require that at least one accessible family or assisted use toilet room must contain one.
- Exterior wall covering and wall envelopes sprinkler requirement. Section 309.2.1 has been added to require that if combustible exterior wall envelopes or coverings are installed on a high-rise building, the building must be equipped throughout with a sprinkler system. There are some exceptions for smaller installations and when only a combustible water resistive barrier is installed.
- Owner's responsibility at construction sites. Section 1502 was added to address the need for the owner to properly develop, implement and maintain a site safety plan during construction. A site safety director must be designated who is responsible for conducting daily fire safety inspections.
- Non-required automatic sprinkler system. A section has been added to Chapter 10 (under the change of occupancy classification requirements) to allow removal of a nonrequired existing automatic sprinkler system if several criteria are met.



- **APPENDIX E: TEMPORARY EMERGENCY USES.** This new appendix was created to provide guidance for designers, engineers, architects, and fire and building officials to allow temporary emergency uses of existing buildings with respect to the minimum code requirements. This appendix is intended to serve as a template or checklist for use during an emergency that references the relevant code requirements.

**The 2024 International Fuel Gas Code (IFGC®)** addresses the design and installation of fuel gas systems and gas-fired appliances through prescriptive and performance requirements. Important 2024 IFGC® changes include:

- **304.1 General.** The entire section is new for the 2024 Codes. Existing code language has been deleted.
- **304.12 Protection from fumes and gases.** Existing code language has been deleted. The entire section is new for the 2024 Codes.
- **403.6 Workmanship and defects.** Existing code language has been re-written and additional code language has been added for the 2024 Codes.

**The 2024 International Fire Code (IFC®)** This code establishes regulations affecting or relating to structures, processes, premises and safeguards regarding hazards from fire and explosions, conditions that are hazardous to life, property or the public welfare regarding structures or the premise as well as fire hazards in a structure or on a premise from the occupancy or operation, fire protection systems, and the safety of all first responders. Important 2024 IFC® changes include:

- Addressing valet trash with a new appendix O that establishes requirements for Group R-2 occupancies to if valet trash is allowed. Boulder Fire will adopt appendix O to allow valet trash where applicable.
- Two new sections in Chapter 3 that specifically address the storage of lithium ion and lithium metal batteries as well as powered micromobility devices.
- The requirements for fire sprinklers were expanded in the 2024 IFC to specifically address the storage, research, and manufacturing of lithium ion and lithium metal batteries. Please note that the City of Boulder already requires sprinklers in these areas with the adoption of past codes. There is no change to our current requirements.
- The fire protection requirements for the storage of distilled spirits and wines was expanded for new storage facilities.

**The 2024 International Property Maintenance Code (IPMC®)** This code establishes minimum requirements for the maintenance of existing buildings through model code regulations that contain clear and specific property maintenance and property improvement provisions. The IPMC is a maintenance document intended to establish minimum maintenance standards for basic equipment, light, ventilation, heating, sanitation and fire safety. Responsibility is fixed among owners, operators and occupants for code compliance. The IPMC provides for the regulation and safe use of existing structures in the interest of the social and economic welfare of the community. The IPMC is adopted with local amendments to comply with the needs of our community. Important 2024 IPMC changes include:

- New sections under Section 105 that clarify the types of experts required for owners and operators to employ for required testing and reports for compliance.
- Section 105.3.1 “Warrant” section added to clarify the use of a warrant for legal entry of a property by the Code Official(s).
- Adjustment of the Administrative Procedures and Remedies civil penalties and the addition of an investigative fee to align with Title 10 Chapter 3 violations.
- Section 109: Unsafe Structures and equipment; 109.1.1, change the basis for an Unsafe structure from “dangerous” to “hazardous”. This allows for a broader placarding use for hazardous structures to be posted as Unsafe.

### **CODES NOT PART OF THIS UPDATE.**

- The 2024 City of Boulder Energy Conservation Code (COBECC) this code was just updated last year.
- The 2024 Wildland Urban Interface Code, Staff will be bringing this code for adoption in May, due to the significant and disproportionate potential cost implications for homeowners located in the WUI, more extensive public outreach is required.

### **PROPOSED AMENDMENTS TO THE ORDINANCE THAT ARE NOT IN BASE CODE.**

Staff are proposing the following amendments that are not part of the 2024 base code or the previous local amendments.

- Requiring building permits for replacement windows and siding; This change is to ensure that any replacement windows or siding being installed in the wildland urban interface meet the fire resistance requirements of the Wildland Urban Interface code.

- Increasing the size limitation for storage sheds exempt from permitting from 80 square feet to 120 square feet; through use of the racial equity instrument, staff found that there is a disproportionate need for low cost storage sheds in our mobile home parks, 120 square feet is still less than the 200 square feet allowed by base code but does allow people a bit more space for storage without being big enough to have any life safety concerns.
- Exempting from permit requirements freestanding decks under 200 square feet and less than 30” above grade; using the racial equity instrument, it was identified that requiring permits for these small freestanding decks has a disproportionate impact on the residents of mobile home parks. Almost every mobile home in Boulder has one or more such unpermitted decks.
- Deleting the local amendment to the National Electric Code requiring arc fault breakers for replacement panels; staff identified this local amendment as being a major cost barrier to low-income homeowners being able to upgrade electrical services to accommodate electrification and safety upgrades. Deleting the amendment will bring our code into alignment with national code.
- Deleting the blocking and tie down requirement in the mobile home park chapter. Blocking and tie down of mobile homes is regulated by the Division of Local Affairs and has been since 2006, this is just updating the ordinance to comply with state law.
- Deleted the non-residential use of mobile homes, mobile homes do not meet building code or accessibility requirements for non-residential use.

## **ATTACHMENTS**

Attachment A: Proposed Ordinance 8684

ORDINANCE 8684

AN ORDINANCE AMENDING TITLE 10, "STRUCTURES," B.R.C. 1981 AND ADOPTING BY REFERENCE THE 2024 INTERNATIONAL CODES REGARDING PROPERTY MAINTENANCE, BUILDING, ELECTRICAL FIRE MECHANICAL, FUEL, GAS, AND PLUMBING; AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 10-1-1, "Definitions," B.R.C. 1981, is amended to read as follows:

**10-1-1. Definitions.<sup>1</sup>**

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

...

*Accessory dwelling unit* means an accessory dwelling unit permitted under Section 9-6-3(n), "Accessory Dwelling Unit," B.R.C. 1981. Accessory dwelling units shall not have separate utilities from the principal dwelling.

...

*Approved sewer system* means a sewer system authorized by the city manager to be connected to the municipal ~~waste water~~wastewater system or by the Boulder County Health Department to be connected to a properly constructed individual sewage disposal system.

...

*Dwelling* means any building, structure, or other housing accommodation that is wholly or partly used or intended to be used for living or sleeping by human ~~occupants~~, but occupants but excludes temporary housing.

...

*Floor area* means the total square footage of all levels included within the outside walls of a building or portion thereof, but excluding courts, garages useable exclusively for the storage of

<sup>1</sup>Amended by Ordinance No. 7725, effective commencing January 1, 2011.

1 motor vehicles and uninhabitable areas that are located above the highest inhabitable level or  
2 below the ~~first floor~~first-floor level.

...

3 *Industrial processes* means any ~~business-related~~business-related process supported by  
4 mechanical or electrical systems other than base building systems.

...

5 *Readily accessible* means capable of being reached safely and quickly for operation, repair,  
6 or inspection without the necessity of climbing over or removing ~~obstacles~~, obstacles or using  
7 portable access equipment.

...

8 Retrocommissioning means the process of making low-cost adjustments to an existing  
9 building's operation to improve its energy performance, in a manner specified by the City  
10 Manager

...

11 *Water heater insulation* means a thermal insulation blanket with a membrane facing which  
12 has a flame spread classification of no more than two hundred for an electric water heater and  
13 twenty-five for an oil- and gas-fired water heater when tested in accordance with ASTM E 84-  
14 80, ~~or 84-80~~ or originally installed insulation integral to the water heater which provides  
15 equivalent resistance to heat loss.

...

16 Section 2. Section 10-2-1, "Legislative Intent," B.R.C. 1981, is amended to read as  
17 follows:

18 **10-2-1. Legislative Intent.**

19 (a) The city council finds:

20 (1) Energy efficiency requirements for housing are necessary because:

- 21 (A) Reducing greenhouse gas emissions in existing buildings is imperative to  
22 meet the City of Boulder's sustainability goals;
- 23 (B) Rental housing represents the largest number of existing housing units in  
24 the city; and
- 25 (C) Efforts to establish incentives for voluntary energy efficiency retrofits in  
rental housing have proven to be ineffective.

(b) Reducing greenhouse gas emissions has been established as an important public policy  
objective and mandated by the city due to:

- 1 (1) The well-documented link between reduction of such emissions and current and projected climate change; and
- 2 (2) The profound public health and safety impacts of such emissions, including but
- 3 not limited to:
  - 4 (A) Increased risk of extreme weather events,
  - 5 (B) Increased flood severity,
  - 6 (C) Increased risk and intensity of catastrophic wildfire,
  - 7 (D) Increased insect invasions causing forest die-offs, and
  - 8 (E) Increased risk of drought.

9 (c) The purposes of this chapter are as follows:

- 10 (1) To protect the public health, safety, and general welfare of the residents of the city by regulating existing residential rental and privately occupied residential structures and to promote conservation and the efficient use of energy;
- 11 (2) To establish minimum energy efficiency requirements for existing rental and privately occupied housing in the city with the goal of reducing greenhouse gas emissions; and
- 12 (3) To address the unique needs and challenges associated with energy retrofits in existing rental and privately occupied housing.

13 (d) The city council hereby adopts the 202418 edition of the *International Property Maintenance Code* as the Property Maintenance Code of the City of Boulder. This chapter establishes minimum code standards related to: administration; definitions; general requirements; light, ventilation and occupancy limitations; plumbing facilities and fixture requirements; mechanical and electrical systems; fire safety requirements; and rental licensing; and existing residential rental structure energy conservation.

14 Section 3. Section 10-2-2, "Adoption of International Property Maintenance Code With Modifications," B.R.C. 1981, is amended to read as follows:

15 **10-2-2. - Adoption of International Property Maintenance Code With Modifications.**

- 16 (a) The 202418 edition of the International Property Maintenance Code (IPMC) of the International Code Council is hereby adopted by reference as the City of Boulder Property Maintenance Code and has the same force and effect as though fully set forth in this chapter, except as specifically amended for local application by this chapter.
- 17 (b) IPMC Appendix chapters A, "Boarding Standard," B, "Rental Housing Inspections," and C, "Energy Efficiency Requirement - Existing Residential Rental Structures Energy Conservation," are adopted.
- 18 (c) For ease of reference, the following identifies all chapters, sections and appendices of the published and adopted IPMC and includes specific amendments for local application.

Chapter, Section, Subsection, or Appendix numbers of provisions not amended appear, followed by the words, "No changes." The amended text of specifically amended provisions appears below. Chapter, Section, Subsection, or Appendix numbers of any provisions not adopted appear, followed by the word, "Deleted."

**CHAPTER 1  
SCOPE AND ADMINISTRATION**

**PART 1 - SCOPE AND ADMINISTRATION**

**SECTION 101  
GENERAL**

**101.1 Title.** These regulations shall be known as the Property Maintenance Code of the City of Boulder, hereinafter referred to as "this code."

**101.2 Scope.** This code applies to all existing structures and all existing premises and establishes minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, energy conservation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; this code also specifies the responsibility of owners, operators, and occupants related to code compliance, establishes requirements and standards for the occupancy of existing structures and premises, and provides for administration, licensing, enforcement, and penalties.

**101.2.1 Application of Rental Licenses Code.** Existing residential structures utilized as rental properties will also be subject to the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.

**101.3 Intent.** This code shall be construed to secure its expressed intent, which is to ensure public health, safety, and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Except as provided below, existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Existing structures and premises that comply with all applicable codes in force at the time of construction will be deemed to comply with this code except where the code official determines that deviations from this code pose a danger to the health, safety, or welfare of the public or occupants, and issues an order for the owner to correct those specific conditions or alterations.

**101.4 Severability.** No changes.

**SECTION 102  
APPLICABILITY**

**102.1 General.** No changes.

1 **102.2 Maintenance.** Equipment, systems, devices, and safeguards required by this code  
2 shall be maintained in accordance with the code in effect when the structure or premises  
3 were legally constructed, altered, or repaired and shall be maintained in good working  
4 order.

5 **102.3 Application of Other Codes.** Repairs, additions, or alterations to a structure,  
6 inspections, or changes of occupancy shall be done in accordance with the procedures  
7 and provisions of the City of Boulder Building Code, City of Boulder Residential Code,  
8 City of Boulder Existing Building Code, City of Boulder Fuel Gas Code, City of Boulder  
9 Mechanical Code, City of Boulder Plumbing Code, City of Boulder Fire Code, City of  
10 Boulder Energy Conservation Code, and City of Boulder Electrical Code.

11 **102.4—102.110** No changes.

12 **PART 2 - ADMINISTRATION AND ENFORCEMENT**

13 **SECTION 103**

14 **DIVISION OF BUILDING SAFETY CODE COMPLIANCE DIVISION**

15 **103.1 General.** "~~Division of Building Safety Code Compliance Division~~" means the  
16 administrative unit established by the city manager or the manager's delegates, and the  
17 personnel assigned to the unit by the manager. The ~~Division of Building Safety Code~~  
18 ~~Compliance Division~~ administers the Property Maintenance Code. The executive official  
19 in charge of the ~~Division of Building Safety Code Compliance Division~~ is the code  
20 official.

21 **103.2 Appointment.** Deleted.

22 **103.2 Deputies.** Deleted.

23 **103.4 Liability Fees.** ~~Neither the City nor any employee of the City who enforces,~~  
24 ~~attempts to enforce, or is authorized to enforce this code, or any related provisions or~~  
25 ~~reviews under the Boulder Revised Code, shall be liable to third parties for any damage~~  
~~or injury to person or property as a result of enforcement or nonenforcement. The City~~  
~~assumes no duty of care by the adoption of this code or any related provisions or reviews~~  
~~under the Boulder Revised Code. No person is justified in relying upon the results of an~~  
~~inspection, and such inspections are not a guarantee that the premises so approved,~~  
~~inspected and licensed in fact complies with all the requirements of this code or any~~  
~~related provisions or reviews under the Boulder Revised Code. It is the duty of the~~  
~~persons owning and controlling any building or structure to ensure that the building is~~  
~~maintained in accordance with the requirements of this code, and it is such persons, and~~  
~~not the City, who are responsible for damages caused by breach of such duty. The fees~~  
~~and costs for activities and services performed by the department in carrying out its~~  
~~responsibilities under this code shall be as detailed in Section 4-20-47, "Zoning~~  
~~Adjustment and Building Appeals Filing Fees," B.R.C. 1981.~~



1 **103.5 Fees.** The fees and costs for activities and services performed by the department in  
2 carrying out its responsibilities under this code shall be as detailed in Section 4-20-47,  
3 "~~Zoning Adjustment and Building Appeals Filing Fees,~~" B.R.C. 1981.

4 **SECTION 104 FEES, DELETED**

5 **SECTION 104**

6 **DUTIES AND POWERS OF THE CODE OFFICIAL**

7 **104.1 General.** The code official is hereby authorized and directed to enforce the  
8 provisions of this code and Chapter 10-3, "Rental Licenses," B.R.C. 1981. The code  
9 official shall have the authority to render interpretations of this code and to adopt  
10 policies and procedures in order to clarify the application of its provisions. Such  
11 interpretations, policies and procedures shall be in compliance with the intent and  
12 purpose of this code. Such policies and procedures shall not have the effect of waiving  
13 requirements specifically provided for in this code.

14 **104.2 Inspections.** No changes.

15 **104.3 Right of Entry.** Where it is necessary to make an inspection to enforce the  
16 provisions of this code, or whenever the code official has reasonable cause to believe  
17 that there exists in a structure or upon a premises a condition in violation of this code,  
18 the code official is authorized to enter the structure or premises at reasonable times to  
19 inspect or perform the duties imposed by this code and as necessary to effect  
20 compliance with the provisions of this code and Chapter 10-3, "Rental Licenses,"  
21 B.R.C. 1981, provided that, if such structure or premises is occupied, the code official  
22 shall present credentials to the occupant and request entry. If such structure or premises  
23 is unoccupied, the code official shall first make a reasonable effort to locate the owner  
24 or other person having charge or control of the structure or premises and request entry.  
25 If entry is refused, the code official shall have recourse to the remedies provided by  
law to secure entry.

**104.4 — 104.6** No changes.

**104.7 Clerk and Recorder Notices.** When the code official finds that there is a  
violation of this code, a notice to that effect may be filed with the Boulder County  
Clerk and Recorder against the title of the land upon which the dwelling or structure is  
built. The code official shall inform the property owner of this action in advance, in  
writing according to Section 107, allowing adequate time to correct the violation.  
When the condition upon which the notice described in the record was based has been  
corrected, the code official shall provide a written release.

**104.8 Authority to Issue Rules.** The code official may adopt reasonable rules to  
implement the provisions of this code pursuant to Chapter 1-4, "Rulemaking," B.R.C.  
1981.

**SECTION 105**

**APPROVAL DUTIES AND POWERS OF THE CODE OFFICIAL**

**105.1 — 105.6** No changes.

1 **105.1 General.** The code official is hereby authorized and directed to enforce the  
 2 provisions of this code and Chapter 10-3, "Rental Licenses," B.R.C. 1981. The code  
 3 official shall have the authority to render interpretations of this code and to adopt policies  
 4 and procedures in order to clarify the application of its provisions. Such interpretations,  
 5 policies and procedures shall be in compliance with the intent and purpose of this code.  
 6 Such policies and procedures shall not have the effect of waiving requirements  
 7 specifically provided for in this code.

8 **105.2 Determination of Compliance** No changes.

9 **105.3 Right of Entry.** Where it is necessary to make an inspection to enforce the  
 10 provisions of this code, or whenever the code official has reasonable cause to believe that  
 11 there exists in a structure or upon a premises a condition in violation of this code, the  
 12 code official is authorized to enter the structure or premises at reasonable times to inspect  
 13 or perform the duties imposed by this code and as necessary to effect compliance with  
 14 the provisions of this code and Chapter 10-3, "Rental Licenses," B.R.C. 1981, provided  
 15 that, if such structure or premises is occupied, the code official shall present credentials  
 16 to the occupant and request entry. If such structure or premises is unoccupied, the code  
 17 official shall first make a reasonable effort to locate the owner or other person having  
 18 charge or control of the structure or premises and request entry. If entry is refused, the  
 19 code official shall have recourse to the remedies provided by law to secure entry.

20 **105.3.1 Warrant.** No changes.

21 **105.4—105.6** No changes.

22 **105.7 Liability.** Neither the City nor any employee of the City who enforces, attempts to  
 23 enforce, or is authorized to enforce this code, or any related provisions or reviews under  
 24 the Boulder Revised Code, shall be liable to third parties for any damage or injury to  
 25 person or property as a result of enforcement or nonenforcement. The City assumes no  
duty of care by the adoption of this code or any related provisions or reviews under the  
Boulder Revised Code. No person is justified in relying upon the results of an inspection,  
and such inspections are not a guarantee that the premises so approved, inspected and  
licensed in fact complies with all the requirements of this code or any related provisions  
or reviews under the Boulder Revised Code. It is the duty of the persons owning and  
controlling any building or structure to ensure that the building is maintained in  
accordance with the requirements of this code, and it is such persons, and not the City,  
who are responsible for damages caused by breach of such duty.

**105.8. Approved Materials and Equipment.** No changes

**105.9 Clerk and Recorder Notices.** When the code official finds that there is a violation  
 of this code, a notice to that effect may be filed with the Boulder County Clerk and  
 Recorder against the title of the land upon which the dwelling or structure is built. The  
 code official shall inform the property owner of this action in advance, in writing  
 according to Section 109.4, allowing adequate time to correct the violation. When the

1 condition upon which the notice described in the record was based has been corrected,  
2 the code official shall provide a written release.

3 **105.10 Authority to Issue Rules.** The code official may adopt reasonable rules to  
4 implement the provisions of this code pursuant to Chapter 1-4, "Rulemaking," B.R.C.  
5 1981.

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**SECTION 106**  
**VIOLATIONS MEANS OF APPEALS**

**106.1 Violations.**

(a) ~~General Provisions:~~

(1) ~~No person shall erect, construct, enlarge, alter, extend, repair, move, remove, improve, convert, demolish, equip, use, occupy, or maintain any building or structure in the city, or cause or permit the same to be done, except in conformity with all of the provisions of this code and in conformity with the terms and conditions of approval issued under this code, or of any directive of the code official. No person shall violate a provision of this code, or fail to comply therewith or with any of the requirements thereof. No person shall fail to comply with any order issued by the code official under this code.~~

(2) ~~In accordance with the provisions of Section 5-2-11, "Prosecution of Multiple Counts for Same Act," B.R.C. 1981, each day during which illegal construction, alteration, maintenance, occupancy, or use continues, constitutes a separate offense remediable through the enforcement provisions of this code.~~

(3) ~~The owner, tenant, and occupant of a structure or land and the agents of each of them are jointly and severally liable for any violation of this code with respect to such structure or land.~~

(4) ~~The remedies for any violation of any provision of this code or of any permit, certificate, or other approval issued under this code or other City of Boulder code, or of any directive of the code official, may be pursued singly or in combination.~~

(5) ~~If any person fails or refuses to pay when due any charge imposed under this section, the code official may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.~~

(6) ~~If an order under Section 107 is not complied with, the code official may institute any appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or the order or direction made pursuant thereto. The code official may charge the cost of any action taken to correct a violation, plus up to fifteen percent of such cost for administration, to the property owner. If any property owner fails or refuses to pay when due any charge imposed under this section, the code official may, in addition to taking other collection remedies, certify due any unpaid charges, including interest, to the Boulder County Treasurer, to be levied against the~~

1 person's property for collection by the county in the same manner as delinquent general  
2 taxes upon such property are collected, under the procedures described by Section 2-2-12,  
3 "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for  
4 Collection," B.R.C. 1981.

5 (b) ~~Administrative Procedures and Remedies:~~

6 (1) ~~If the code official finds that a violation of any provision of this code or of any  
7 approval granted under this code exists, the manager, after notice and an  
8 opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-  
9 Judicial Hearings," B.R.C. 1981, may take any one or more of the following  
10 actions to remedy the violation:~~

11 (A) ~~Impose a civil penalty according to the following schedule:~~

12 (i) ~~For the first violation of the provision or approval, \$100;~~

13 (ii) ~~For the second violation of the same provision or approval, \$300;  
14 and~~

15 (iii) ~~For the third violation of the same provision or approval, \$1,000;~~

16 (B) ~~For a violation concerning the use of a residential building under a rental  
17 license, revoke such license;~~

18 (C) ~~Require the filing of a declaration of use as provided in subsection (e); or~~

19 (D) ~~Issue an order reasonably calculated to ensure compliance with the provisions  
20 of this code or any approval granted under this code.~~

21 (2) ~~Prior to the hearing, the code official may issue an order that no person shall  
22 perform any work on any structure or land, except to correct any violation found  
23 by the code official to exist with respect to such structure or land.~~

24 (3) ~~If notice is given to the code official at least forty eight hours before the time and  
25 date set forth in the notice of hearing on any violation that the violation has been  
corrected, the code official will reinspect the structure or land. If the code official  
finds that the violation has been corrected, the manager may cancel the hearing.~~

(4) ~~No person shall fail to comply with any action taken by the code official under  
this section.~~

(c) ~~Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-4,  
"General Penalties," B.R.C. 1981.~~

(d) ~~Other Remedies. The city attorney 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 for any violation of any provision of this code or  
any approval granted under this code.~~

(e) ~~Declaration of Use. If the code official determines that a person is using a structure in a  
way that might mislead a reasonable person to believe that such use is a use by right or  
otherwise authorized by this title, the code official may require such person to sign under  
oath a declaration of use that defines the limited nature of the use and to record such  
declaration in the office of the Boulder County Clerk and Recorder against the title to the~~

land. In addition to all other remedies and actions that the code official is authorized to use under the Boulder Revised Code or other applicable federal, state, or local laws to enforce the provisions of this code, the code official is authorized to withhold any approval affecting such structure or land, including, without limitation, a building permit, use review, site review, subdivision, floodplain development permit, or wetland permit, until such time as the person submits a declaration of use that is in a form acceptable to the code official.

**106.1 Application of Appeal.**

(a) Any appeal under this section shall be heard by the Board of Building Appeals established under Section 2-3-4, "Board of Building Appeals," B.R.C. 1981, unless the city manager determines, due to the nature of the issues in a particular appeal, to appoint a hearing officer under Section 1-3-5, "Hearings and Determinations," B.R.C. 1981.

(b) Any person directly affected by a decision of the code official or by an order issued under this code may appeal the decision or order on the ground that:

(1) The decision or order was based on an error of fact or an erroneous interpretation of this code or the rules legally adopted thereunder;

(2) The code official has erroneously failed to approve an alternative material or method pursuant to Section 105.2.2 prior to its installation or use. In determining such an appeal, the board shall apply the standards of Section 105.2.2, but the board shall have no jurisdiction to consider if a material or method expressly prohibited by this code is an acceptable alternative; or

(3) The code official has erroneously failed to grant a modification pursuant to Section 105.2.3 prior to its installation. In determining such an appeal, the board or hearing officer shall apply the standards of Section 105.2.3.

The code official has the burden of proof under paragraph 1. The appellant has the burden of proof on appeals brought pursuant to paragraphs 2 and 3. The board or hearing officer shall determine the appeal and decide whether the code official's interpretation or application of such code was correct or in error at a hearing under the procedures described in Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

(c) An application for appeal must be filed in writing with the city manager within fourteen days after the date the decision or order was served.

(d) An applicant for an appeal shall pay the fee prescribed by Section 4-20-47, "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981. The fee for an appeal heard by a hearing officer shall be the same as the fee for an appeal heard by the Board of Building Appeals.

1 (e) The city manager may apply to the Board of Building Appeals, without fee, for an  
2 advisory opinion concerning alternative methods, applicability of specific requirements,  
3 approval of equipment and materials, and granting of special permission as contemplated  
4 in Section 105.1 or 105.2 of the Property Maintenance Code.

5 (f) The board or hearing officer has neither authority to interpret Chapter 1 (the  
6 administrative requirements) of this code, except as expressly provided in this section,  
7 nor, because this code sets minimum standards, to waive any requirement of this code.

8 ~~106.2—106.3 Deleted.~~

9 ~~106.4 Violation Penalties.~~

10 ~~106.2—106.43 Deleted.~~

11 ~~Deleted.~~

12 ~~106.5 Abatement of Violation. No changes.~~

13 SECTION 107  
14 ~~NOTICES AND ORDERS~~ VIOLATIONS

15 ~~107.1 Notice to Person Responsible. No changes.~~

16 107.1 Violations.

17 (a) General Provisions:

18 (1) It shall be unlawful for a person, firm, or corporation to be in conflict with or in  
19 violation of any of the provisions of this code. No person shall erect, construct,  
20 enlarge, alter, extend, repair, move, remove, improve, convert, demolish, equip,  
21 use, occupy, or maintain any building or structure in the city, or cause or permit  
22 the same to be done, except in conformity with all of the provisions of this code  
23 and in conformity with the terms and conditions of approval issued under this  
24 code, or of any directive of the code official. No person shall violate a provision  
25 of this code or fail to comply therewith or with any of the requirements thereof.  
No person shall fail to comply with any order issued by the code official under  
this code.

(2) In accordance with the provisions of Section 5-2-11, "Prosecution of Multiple  
Counts for Same Act," B.R.C. 1981, each day during which illegal construction,  
alteration, maintenance, occupancy, or use continues, constitutes a separate  
offense remediable through the enforcement provisions of this code.

(3) The owner, tenant, and occupant of a structure or land and the agents of each of  
them are jointly and severally liable for any violation of this code with respect to  
such structure or land.

1       (4) The remedies for any violation of any provision of this code or of any permit,  
2       certificate, or other approval issued under this code or other City of Boulder  
3       code, or of any directive of the code official, may be pursued singly or in  
4       combination.

5       (5) If any person fails or refuses to pay when due any charge imposed under this  
6       section, the code official may, in addition to taking other collection remedies,  
7       certify due and unpaid charges to the Boulder County Treasurer for collection as  
8       provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and  
9       Assessments to County Treasurer for Collection," B.R.C. 1981.

10       (6) If a notice or an order under Section 108 or 109.4 is not complied with, the code  
11       official may institute any appropriate proceeding at law or in equity to restrain,  
12       correct, or abate such violation, or to require the removal or termination of the  
13       unlawful occupancy of the structure in violation of the provisions of this code or  
14       the order or direction made pursuant thereto. The code official may charge the  
15       cost of any action taken to correct a violation, plus up to fifteen percent of such  
16       cost for administration, to the property owner. If any property owner fails or  
17       refuses to pay when due any charge imposed under this section, the code official  
18       may, in addition to taking other collection remedies, certify due any unpaid  
19       charges, including interest, to the Boulder County Treasurer, to be levied against  
20       the person's property for collection by the county in the same manner as  
21       delinquent general taxes upon such property are collected, under the procedures  
22       described by Section 2-2-12, "City Manager May Certify Taxes, Charges, and  
23       Assessments to County Treasurer for Collection," B.R.C. 1981.

24       (b) Administrative Procedures and Remedies:

25       (1) If the code official finds that a violation of any provision of this code or of any  
26       approval granted under this code exists, the manager, after notice and an  
27       opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-  
28       Judicial Hearings," B.R.C. 1981, may take any one or more of the following  
29       actions to remedy the violation:

30       (A) Impose a civil penalty according to the following schedule:

31               (i) For the first violation of the provision or approval, \$150;

32               (ii) For the second violation of the same provision or approval, \$300;

33                       and

34               (iii) For the third violation of the same provision or approval, \$1,000;

35       (B) For a violation concerning the use of a residential building under a rental  
36       license, revoke such license;

37       (C) Require the filing of a declaration of use as provided in subsection (e); or





1. ~~Be in writing.~~
2. ~~Include a description of the real estate sufficient for identification.~~
3. ~~Include a statement of the violation or violations and why the notice is being issued.~~
4. ~~Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.~~
5. ~~Inform the property owner or other person responsible to correct the violation of the right to appeal.~~
6. ~~Include a statement of the rights under Section 106.1(a)(6).~~

**107.3 Method of Service.** Such notice shall be deemed to be properly served if a copy thereof is:

1. ~~Delivered personally upon the responsible person, or by leaving a copy thereof at the person's usual place of abode, with any person eighteen years of age or older and who is a member of the person's family; or at the person's usual workplace, with the person's supervisor, secretary, administrative assistant, bookkeeper, human resources representative, or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process;~~
2. ~~Sent by certified mail addressed to the owner at the last known address with return receipt requested; or~~
3. ~~Delivered in any other manner as prescribed by law. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.~~

**107.4 Unauthorized Tampering.** ~~No changes.~~

**107.2-107.4** Deleted

**107.5 Abatement of Violation Penalties.** ~~No changes~~

**107.6 Transfer of Ownership.** Deleted.

**SECTION 108**

**UNSAFE STRUCTURES AND EQUIPMENT STOP WORK ORDER**

**108.1—108.73** No changes.

**108.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to the penalties as detailed in Section 107, "Violations" or \$1000 per day per violation, 90 days in jail or both.

**SECTION 109**  
**EMERGENCY MEASURES UNSAFE STRUCTURES AND EQUIPMENT**

~~**109.1 Imminent danger.** When in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice bearing the words "Unsafe, Do Not Enter." It shall be unlawful for any person to enter such structure, except with the prior approval of the building official, for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.~~

~~**109.2—109.6** No changes.~~

~~**109.2—109.61-109.3** No changes.~~

**109.4 Notice. No Changes**

**109.4.1 Form.** Except in those instances where Section 308, Rubbish and Garbage, or Section 309, Pest Elimination, applies, or if a violation of Chapter 10-3, "Rental Licenses," B.R.C. 1981, is alleged, whenever the code official determines that there is or has been a violation of any provision of this code, notice shall be given of such determination to the person responsible to correct the violation. The notice shall:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner or other person responsible to correct the violation of the right to appeal.
6. Include a statement of the rights under Section 1076.1(a)(6).

**109.4.2 Method of Service.** Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally upon the responsible person, or by leaving a copy thereof at the person's usual place of abode, with any person eighteen years of age or older and who is a member of the person's family; or at the person's usual workplace, with the person's supervisor, secretary, administrative assistant, bookkeeper,

- human resources representative, or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process;
- 2. Sent by certified mail addressed to the owner at the last known address with return receipt requested; or
- 3. Delivered in any other manner as prescribed by law. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

**109.4.3 Penalties.** Penalties for non-compliance with notices issued under this section shall be as set forth in Section 107.1.

**109.5 Unauthorized Tampering.** No changes.

**109.6 Transfer of Ownership.** Deleted.

**109.7 – 109.9** No Changes

**SECTION 110**  
**DEMOLITION EMERGENCY MEASURES**

**110.1 – 110.4** No changes.

**110.1 Imminent danger.** When in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice bearing the words "Unsafe, Do Not Enter." It shall be unlawful for any person to enter such structure, except with the prior approval of the building official, for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

**110.2 – 110.6** No changes.

**SECTION 111**  
**MEANS OF APPEAL DEMOLITION**

**111.1 Application of Appeal.**

- (a) ~~Any appeal under this section shall be heard by the Board of Building Appeals established under Section 2-3-4, "Board of Building Appeals," B.R.C. 1981, unless the~~

city manager determines, due to the nature of the issues in a particular appeal, to appoint a hearing officer under Section 1-3-5, "Hearings and Determinations," B.R.C. 1981.

(b) ~~Any person directly affected by a decision of the code official or by an order issued under this code may appeal the decision or order on the ground that:~~

(1) ~~The decision or order was based on an error of fact or an erroneous interpretation of this code or the rules legally adopted thereunder;~~

(2) ~~The code official has erroneously failed to approve an alternative material or method pursuant to Section 105.2 prior to its installation or use. In determining such an appeal, the board shall apply the standards of Section 105.2, but the board shall have no jurisdiction to consider if a material or method expressly prohibited by this code is an acceptable alternative; or~~

(3) ~~The code official has erroneously failed to grant a modification pursuant to Section 105.1 prior to its installation. In determining such an appeal, the board or hearing officer shall apply the standards of Section 105.1.~~

~~The code official has the burden of proof under paragraph 1. The appellant has the burden of proof on appeals brought pursuant to paragraphs 2 and 3. The board or hearing officer shall determine the appeal and decide whether the code official's interpretation or application of such code was correct or in error at a hearing under the procedures described in Chapter 1-3, "Quasi Judicial Hearings," B.R.C. 1981.~~

(c) ~~An application for appeal must be filed in writing with the city manager within fourteen days after the date the decision or order was served.~~

(d) ~~An applicant for an appeal shall pay the fee prescribed by Section 4-20-47, "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981. The fee for an appeal heard by a hearing officer shall be the same as the fee for an appeal heard by the Board of Building Appeals.~~

(e) ~~The city manager may apply to the Board of Building Appeals, without fee, for an advisory opinion concerning alternative methods, applicability of specific requirements, approval of equipment and materials, and granting of special permission as contemplated in Section 105.1 or 105.2 of the Property Maintenance Code.~~

(f) ~~The board or hearing officer has neither authority to interpret Chapter 1 (the administrative requirements) of this code, except as expressly provided in this section, nor, because this code sets minimum standards, to waive any requirement of this code.~~

~~**111.2 Membership of Board.** Deleted.~~

~~**111.2.1 Alternate Members.** Deleted.~~

~~**112.2.2 Chairman.** Deleted.~~

~~**112.2.3 Disqualification of Member.** Deleted.~~

~~**112.2.4 Secretary.** Deleted.~~

~~**112.2.5 Compensation of Members.** Deleted.~~

~~**111.3 Notice of Meeting.** Deleted.~~

~~**111.4 Open Hearing.** Deleted.~~

~~**111.4.1 Procedure.** Deleted.~~

1 ~~111.5 Postponed Hearing.~~ Deleted.  
 2 ~~111.6 Board Decision.~~ Deleted.  
 3 ~~111.6.1 Records and Copies.~~ Deleted.  
 4 ~~111.6.2 Administration.~~ Deleted.  
 5 ~~111.7 Court Review.~~ Deleted.  
 6 ~~111.8 Stays of Enforcement.~~ Deleted.  
 7 ~~111.9 Fees.~~ Deleted.  
 8 111.1 - 111.4 No changes.

6 **SECTION 112**  
 7 **~~STOP WORK ORDER~~**

8 ~~112.1—112.~~ No changes.

9 ~~112.4 Failure to Comply. Any person who shall continue any work after having been~~  
 10 ~~served with a stop work order, except such work as that person is directed to perform to~~  
 11 ~~remove a violation or unsafe condition, shall be subject to the penalties as detailed in~~  
 12 ~~Section 106.1, "Violations."~~

12 **CHAPTER 2**  
 13 **DEFINITIONS**

14 **SECTION 201**  
 15 **GENERAL**

16 **201.1—201.5** No changes.

17 **SECTION 202**  
 18 **GENERAL DEFINITIONS**

19 **(No changes except as follows)**

20 **CODE OFFICIAL.** The city manager and any city manager's delegate charged with the  
 21 administration and enforcement of this code.

22 **KITCHEN SINK.** A kitchen sink shall be no smaller than twenty inches by sixteen  
 23 inches, with a minimum uniform depth of six inches and a maximum uniform depth of  
 24 twenty inches. Laundry tubs, lavatory basins, or bathtubs are not acceptable substitutes  
 25 for required kitchen sinks.

**MANUFACTURED HOME.** Means a structure, transportable in sections, built on a  
 permanent chassis and designed for use with or without a permanent foundation when  
 connected to the required utilities. The term "manufactured home" includes "modular  
 home" but does not include "recreational vehicle."

1 **TECHNICALLY IMPRACTICAL.** Alterations that are unlikely to be accomplished  
2 because existing structural conditions or site constraints prohibit practical modifications  
3 or addition of elements or features that would attain the energy efficiency requirements of  
4 Appendix C of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.

5 **CHAPTER 3**  
6 **GENERAL REQUIREMENTS**  
7 **SECTION 301**  
8 **GENERAL**

9 **301.1—301.3** No changes.

10 **SECTION 302**  
11 **EXTERIOR PROPERTY AREAS**

12 **302.1—302.3** No changes.

13 **302.4 Weeds.** Weed control is regulated and enforced under Chapter 6-2, "Weed  
14 Control," B.R.C. 1981.

15 **302.5 Rodent Harborage.** Rodent control is regulated and enforced under Chapter 6-5,  
16 "Rodent Control," B.R.C. 1981.

17 **302.6—302.7** No changes.

18 **302.8 Motor Vehicles.** Motor vehicle parking and storage are regulated by Title 7,  
19 "Regulation of Vehicle, Pedestrian and Parking," B.R.C. 1981.

20 **302.9 Defacement of Property.** Graffiti control is regulated and enforced under Section  
21 5-4-14, "Graffiti Prohibited," B.R.C. 1981.

22 **SECTION 303**  
23 **SWIMMING POOLS, SPAS AND HOT TUBS**

24 **303.1—303.2** No changes.

25 **SECTION 304**  
**EXTERIOR STRUCTURE**

**304.1.-304.6** No changes.

~~**304.2 Protective Treatments.** Deleted.~~

~~**304.3 Premises Identification.** No changes.~~

~~**304.4 Structural Members.** No changes.~~

1 ~~304.5 Foundation Walls.~~ No changes.

2 ~~304.6 Exterior Walls.~~ No changes.

3 **304.7 Roofs and Drainage.** The roof and flashing shall be sound, tight and not have  
4 defects that admit water. Roof drainage shall be adequate to prevent dampness or  
5 deterioration in the walls or interior portion of the structure. Roof drains, gutters and  
downspouts shall be maintained in good repair and free from obstructions. Roof water  
shall not be discharged in a manner that creates a public nuisance.

6 ~~304.8-304.13 Decorative Features.~~ No changes.

7 ~~304.9 Overhang Extensions.~~ All overhang extensions, including but not limited to  
8 eanopies, marquees, signs, metal awnings, fire escapes, sandpipes and exhaust ducts,  
shall be maintained in good repair and be properly anchored so as to be kept in a sound  
condition.

9 ~~304.10 Stairways, Decks, Porches and Balconies.~~ No changes.

10 ~~304.11 Chimneys and Towers.~~ Deleted.

11 ~~304.12 Handrails and Guards.~~ No changes.

12 ~~304.13 Window, skylight and Door Frames.~~ No changes.

13 ~~304.13.1 Glazing.~~ Deleted.

14 ~~304.13.2 Openable Windows.~~ Deleted.

15 ~~304.14 Insect Screens.~~ Deleted.

16 ~~304.15-304.16 Doors.~~ No changes.

17 ~~304.16 Basement Hatchways.~~ No changes.

18 ~~304.17 Guards for Basement Windows.~~ Deleted.

19 ~~304.18-304.19 Building Security.~~ Doors, windows, or hatchways for dwelling units,  
20 room units, or housekeeping units shall be provided with devices designed to provide  
security for the occupants and property within.

21 ~~304.19 Gates.~~ No changes.

22 **SECTION 305**  
23 **INTERIOR STRUCTURE**

24 **305.1 General.** No changes.

25 **305.1.1 Potentially Unsafe Conditions.** The following conditions shall be determined as  
unsafe and shall be repaired or replaced to comply with the City of Boulder Residential

Code or the City of Boulder Existing Building Code as required for existing buildings:

- ~~1. The nominal strength of any structural member is exceeded by nominal loads, the load effects, or the required strength;~~
- ~~2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;~~
- ~~3. Structures or components thereof that have reached their limit state;~~
- ~~4. Structural members are incapable of supporting nominal loads and load effects;~~
- ~~5. Stairs, landings, balconies and all similar walking surfaces, including guards and handrails, are not structurally sound, not properly anchored or are anchored with connections not capable of supporting all nominal loads and resisting all load effects;~~
- ~~6. Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.~~

1-5: No changes.

**Exceptions: 1-2:** No changes.

- ~~1. When substantiated otherwise by an approved method.~~
- ~~2. Demolition of unsafe conditions shall be permitted when approved by the code official.~~

~~**305.2 Structural Members.** No changes.~~

~~**305.3 Interior Surfaces.** Deleted.~~

~~**305.4 – 305.6** No changes.~~

~~**305.2-305.6** No changes~~

**SECTION 306  
COMPONENT SERVICEABILITY**

**306.1** No changes.

**306.1.1 Unsafe Conditions.** Where any of the following conditions cause the component or system to be beyond its limit state, the component or system shall be determined as unsafe and shall be repaired or replaced to comply with the City of Boulder Residential Code or the City of Boulder Existing Building Code as required for existing buildings:

- 1. Soils that have been subjected to any of the following conditions:



- 1.1. Collapse of footing or foundation system.
  - 1.2. Damage to footing, foundation, concrete or other structural element due to soil expansion.
  - 1.3. Adverse effects to the design strength of footing, foundation, concrete or other structural element due to a chemical reaction from the soil.
  - 1.4. Inadequate soil as determined by a geotechnical investigation.
  - 1.5. Where the allowable bearing capacity of the soil is in doubt.
  - 1.6. Adverse effects to the footing, foundation, concrete or other structural element due to the ground water table.
2. Concrete that has been subjected to any of the following conditions:
- 2.1. Deterioration.
  - 2.2. Ultimate deformation.
  - 2.3. Fractures.
  - 2.4. Fissures.
  - 2.5. Spalling.
  - 2.6. Exposed reinforcement.
  - 2.7. Detached, dislodged or failing connections.
3. Aluminum that has been subjected to any of the following conditions:
- 3.1. Deterioration.
  - 3.2. Corrosion.
  - 3.3. Elastic deformation.
  - 3.4. Ultimate deformation.
  - 3.5. Stress or strain cracks.
  - 3.6. Joint fatigue.
  - 3.7. Detached, dislodged or failing connections.
4. Masonry that has been subjected to any of the following conditions:
- 4.1. Deterioration.
  - 4.2. Ultimate deformation.
  - 4.3. Fractures in masonry or mortar joints.
  - 4.4. Fissures in masonry or mortar joints.
  - 4.5. Spalling.
  - 4.6. Exposed reinforcement.
  - 4.7. Detached, dislodged or failing connections.
5. Steel that has been subjected to any of the following conditions:
- 5.1. Deterioration.
  - 5.2. Elastic deformation.
  - 5.3. Ultimate deformation.
  - 5.4. Metal fatigue.

5.5. Detached, dislodged or failing connections.

6. Wood that has been subjected to any of the following conditions:

- 6.1 Ultimate deformation.
- 6.2 Deterioration.
- 6.3 Damage from insects, rodents and other vermin.
- 6.4 Fire damage beyond charring.
- 6.5 Significant splits and checks.
- 6.6 Horizontal shear cracks.
- 6.7 Vertical shear cracks.
- 6.8 Inadequate support.
- 6.9 Detached, dislodged or failing connections.
- 6.10 Excessive cutting and notching.

Exceptions:

- 1. Where substantiated otherwise by an approved method.
- 2. Demolition of unsafe conditions shall be permitted where approved by the code official.

**SECTION 307  
HANDRAILS AND GUARDRAILS**

~~**307.1 General.** Every exterior and interior flight of stairs having four or more risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp, or other walking surface which is more than 30 inches (762 mm) high above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762 mm) high or more than 42 inches (1067 mm) high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck or ramp, or other walking surface.~~

~~**Exception:** Guards shall not be required where exempted by the adopted building code.~~

**307.1-307.2** No Changes

**307.2.1 Height.** Guards shall be not less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck, or ramp, or other walking surface.

**SECTION 308  
RUBBISH AND GARBAGE**

**308.1 Accumulation of Rubbish or Garbage.** All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish and

1 garbage as required by Chapter 6-3, "Trash, Recyclables and Compostables," B.R.C.  
2 1981.

3 **308.2 Disposal of Rubbish.** Every occupant of a structure shall dispose of all rubbish in  
4 a clean and sanitary manner by placing such rubbish in approved containers as required  
5 by Chapter 6-3, "Trash, Recyclables and Compostables," B.R.C. 1981.

6 **308.2.1 Rubbish Storage Facilities.** Deleted.

7 **308.2.2 Refrigerators.** Deleted.

8 **308.3 Disposal of Garbage.** Every occupant of a structure shall dispose of garbage in a  
9 clean and sanitary manner by placing such garbage in an approved garbage disposal  
10 facility or approved garbage containers as required by Chapter 6-3, "Trash, Recyclables  
11 and Compostables," B.R.C. 1981.

12 **308.3.1 Garbage Facilities.** Deleted.

13 **308.3.2 Containers.** Deleted.

14 **SECTION 309**  
15 **PEST ELIMINATION**

16 **309.1 Infestation.** All structures shall be kept free from insect and rodent infestation. All  
17 structures in which insects or rodents are found shall promptly have the infestation  
18 eradicated by approved processes that will not be injurious to human health. After  
19 eradication, proper precautions shall be taken to prevent reinfestation. Rodent control is  
20 regulated and enforced under Chapter 6-5, "Rodent Control," B.R.C. 1981.

21 **309.2 Owner.** The owner of any structure shall be responsible for eradication within the  
22 structure prior to renting or leasing the structure.

23 **309.3 Single Occupant.** The occupant of a one-family dwelling or single-tenant structure  
24 shall be responsible for eradication on the premises.

25 **309.4 Multiple Occupancy.** The owner of a structure containing two or more dwelling  
units, a multiple occupancy or a rooming house shall be responsible for eradication in the  
public or shared areas of the structure and exterior property. If infestation is caused by  
failure of an occupant to prevent such infestation in the area occupied, the occupant shall  
be responsible for eradication.

**309.5 Occupant.** The occupant of any structure shall be responsible for the continued  
rodent and pest-free condition of the structure.

**Exception:** Where the infestations are caused by defects in the structure, the  
owner shall be responsible for the eradication.

1 **309.6 Preapplication Pesticide Notification.** No operator or occupant shall fail to  
2 comply with the preapplication pesticide notification provisions of Section 6-10-7,  
"Notification to Tenants and Employees of Indoor Application," B.R.C. 1981.

3 **SECTION 310**  
4 **ACCESSIBILITY FLOODPLAIN SAFETY SIGNAGE**

5 **310.1 General.** ~~The owner and operator of every property located in the floodplain as~~  
6 ~~detailed in paragraph 9-3-3(a)(10), B.R.C. 1981, shall post and maintain on the exterior~~  
7 ~~of the premises at the entrance a sign approved by the code official stating that the~~  
8 ~~property is subject to flood hazard in accordance with the following:~~

- 9 1. ~~The sign shall state: "This property is located in an area subject to sudden and~~  
10 ~~severe flooding. In case of flood emergency, be prepared to seek high ground~~  
11 ~~immediately. For information go to [www.boulderfloodinfo.net](http://www.boulderfloodinfo.net)" or similar~~  
12 ~~language.~~  
13 2. ~~The sign shall be a metal plaque with minimum ¼ inch letters in a contrasting~~  
14 ~~color attached with nonremovable fasteners on the exterior of the structure at the~~  
15 ~~entrance.~~

16 No Changes.

17 **SECTION 311**  
18 **STORM SHELTERS**

19 No Changes.

20 **SECTION 312**  
21 **FLOODPLAIN SAFETY SIGNAGE**

22 **312.1 General.** The owner and operator of every property located in the floodplain as  
23 detailed in paragraph 9-3-3(a)(10), B.R.C. 1981, shall post and maintain on the exterior  
24 of the premises at the entrance a sign approved by the code official stating that the  
25 property is subject to flood hazard in accordance with the following:

1. The sign shall state: "This property is located in an area subject to sudden and  
severe flooding. In case of flood emergency, be prepared to seek high ground  
immediately.
2. For information go to [www.boulderfloodinfo.net](http://www.boulderfloodinfo.net)" or similar language. The sign  
shall be a metal plaque with minimum ¼ inch letters in a contrasting color  
attached with nonremovable fasteners on the exterior of the structure at the  
entrance.

**CHAPTER 4**  
**LIGHT, VENTILATIONS AND OCCUPANCY LIMITATIONS**

**SECTION 401  
GENERAL**

**401.1—401.3** No changes.

**SECTION 402  
LIGHT**

**402.1—402.3** No changes.

**SECTION 403  
VENTILATION**

**403.1 Habitable Spaces.** Every habitable space shall have at least one openable window. The total openable area of the window in every room shall be equal to at least 45 percent of the minimum glazed area required in Section 402.1.

**Exceptions:**

1. Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet (2.33 m). The ventilation openings to the outdoors shall be based on a total floor area being ventilated.
2. In R-3 occupancies, the glazed area need not be openable, where the opening is not required to be an emergency escape and rescue opening, and an approved mechanical ventilation system capable of producing 0.35 air changes per hour in the room is provided.

**403.2 Bathrooms and Toilet Rooms.** Deleted.

**403.3 Cooking Facilities.** Deleted.

**403.4 Process Ventilation.** Deleted.

**403.5 Clothes Dryer Exhaust.** No changes.

**SECTION 404  
OCCUPANCY LIMITATIONS**

**404.1—404.7** No changes.

**CHAPTER 5  
PLUMBING FACILITIES AND FIXTURE REQUIREMENTS**

No changes.



Equipment Ground." An equipment grounding conductor shall not be connected from the GFCI-type receptacle to any outlet supplied from the GFCI-type receptacle.

- 3. A two-prong receptacle may be replaced with a three-prong, grounding-type receptacle where supplied through a GFCI device. Three-prong, grounding-type receptacles, supplied through the GFCI shall be marked "GFCI Protected" and "No Equipment Ground." An equipment grounding conductor shall not be connected between the grounding-type receptacles.

**605.3 Luminaires.** No changes.

**605.4 Wiring.** No changes.

**605.5 Branch Circuits in Buildings With More Than One Occupancy.** Each occupant shall have ready access to all circuit breakers protecting the conductors supplying that occupancy.

**605.6 Flexible Cord Uses Not Permitted.** Flexible cords and cables shall not be used:

- 1. As a substitute for the fixed wiring of the structure.
- 2. Where run through holes in walls, structural ceilings, suspended ceilings, dropped ceilings, or floors.
- 3. Where run through doorways, windows, or similar openings.

**SECTION 606  
ELEVATORS, ESCALATORS AND DUMBWAITERS**

**606.1 General.** Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator or be posted in a publicly conspicuous location approved by the State of Colorado. The inspection and tests shall be performed at not less than the periodic intervals as required by the State of Colorado.

**606.2 Elevators.** No changes.

**606.3 Private residence elevators.** No changes

**SECTION 607  
DUCT SYSTEMS**

~~**607.1 General.**~~ No changes.





the manufacturer's installation instructions and in accordance with Chapter 10-8, Section 915, "Fire Code," B.R.C. 1981. ~~with National Fire Protection Association 70.~~

2. Alarms must be installed in existing rental dwellings upon change of tenant occupancy after July 1, 2009.
3. Alarms must be installed in all newly constructed or renovated single-family and multi-family rental units.
4. Alarms may be installed within 25' of any fuel-fired heater or appliance, fireplace, or garage entrance in a multi-family dwelling used for rental purposes ONLY if the multi-family dwelling is equipped with a centralized alarm system or other mechanism that allows a responsible person to hear the alarm at all times (commercially monitored system).
5. Rental owners are responsible for replacing nonfunctioning carbon monoxide alarms upon written request of the tenant or when the unit is being vacated and re-rented.
6. Carbon monoxide detectors shall not be disarmed, removed or have the batteries removed to make them inoperable.

**705.5 Carbon Monoxide Alarm Inspections.** Carbon monoxide alarm inspections shall be conducted by the property owner or agent as detailed below:

1. Carbon monoxide alarms that receive their primary power from the building wiring shall be checked for good operating condition once each year and supplied with battery backup. The battery shall be replaced as necessary for proper function of the carbon monoxide alarm.
2. Battery-powered carbon monoxide alarms shall be tested for proper function on an annual basis. Batteries shall be replaced as necessary for proper function of the carbon monoxide alarm.

**SECTION 706  
PORTABLE FIRE EXTINGUISHERS**

**706.1 Where Required.** Portable fire extinguishers shall be installed as required by the City of Boulder Fire Code Section 906.

**706.1.1** In new and existing R-1, R-2 and R-4 occupancies, portable fire extinguishers need only be installed when interior corridors and common areas exist in accordance with Section 906.1 and table 906.3(2) for light (low) hazard occupancies and Sections 906.3 through 906.9.

**APPENDIX A  
BOARDING STANDARD**

**A101—A104** No changes.

**APPENDIX B  
RENTAL HOUSING INSPECTION AND LICENSING**

**B101 Scope.** Appendix B sets standards for administering the rental housing maintenance, inspection and licensing process.

**B102 Rental Licenses.** Residential rental licenses are applied for and renewed in accordance with Chapter 10-3, "Rental Licenses," B.R.C. 1981.

**B103 Inspections.** Rental inspections shall be performed and certified by licensed contractors as detailed in Chapter 4-4, "Building Contractor License," B.R.C. 1981.

**APPENDIX C  
ENERGY EFFICIENCY REQUIREMENT  
EXISTING RESIDENTIAL RENTAL STRUCTURES  
ENERGY CONSERVATION**

**C101 SCOPE**

**C101.1 Scope.** Appendix C sets standards for residential rental dwelling unit energy efficiency. Effective January 2, 2019, the energy efficiency requirements of this section shall apply to all residential rental dwelling units licensed according to Chapter 10-3, "Rental Licenses," B.R.C. 1981, except:

1. Buildings that can be verified as meeting or exceeding the energy efficiency requirements of the Energy Conservation Code, Chapter 10-7, B.R.C. 1981; and
2. Any manufactured home; and
3. Attached accessory dwelling units as detailed in Section 9-6-3, "Specific Use Standards Residential Uses," B.R.C. 1981.

**C101.2 Compliance.** The energy efficiency of existing residential rental dwelling units must comply with Section C101.2.1 for performance-based energy efficiency requirements or Section C101.2.2 for prescriptive-based energy efficiency requirements. The code official may grant exceptions as follows:

1. Innovative Materials: Buildings achieving equivalent energy efficiency performance through the use of innovative materials, methods and/or equipment in accordance with Section 105 of this code as an alternative to the performance and prescriptive methods. The code official shall determine the relative values and effectiveness of innovative materials, methods and/or equipment in satisfying the intent and purpose of this code.
2. Historic Buildings: Reasonable modifications in the award of prescriptive and performance points of this appendix upon a finding by the code official that the application of this section requires an exterior alteration to an individual landmark or a contributing building within a historic district established under Chapter 9-11, "Historic Preservation," B.R.C. 1981, that would not be eligible for a landmark certificate.

- 1           3.     Affordable Housing: Rental dwelling units meeting the requirements for a  
2                     permanently affordable unit as follows:
- 3                     a.     Units weatherized according to state or federal subsidy program standards  
4                             after September 1994.
- 5                     b.     Units eligible for weatherization according to state or federal subsidy  
6                             program standards that have applied for weatherization service: an  
7                             exception for one rental license cycle, to reach compliance. The code  
8                             official may approve additional time to achieve compliance if one rental  
9                             license cycle is not adequate.
- 10                    c.     Units not qualifying for weatherization according to state or federal  
11                            subsidy programs: an exception for one rental license cycle to achieve  
12                            compliance. The code official may approve additional time to achieve  
13                            compliance if one rental license cycle is not adequate.
- 14            4.     Technically Impractical: For buildings where energy efficiency upgrades are  
15                    technically impractical in accordance with IPMC Section 105.1, owners shall  
16                    demonstrate equivalent code compliance as follows:
- 17                    a.     Except as provided below, owners shall make the energy efficiency  
18                            improvements that are practical and shall pay, for each rental license cycle  
19                            an energy impact offset fee established in Section 4-20-18, "Rental  
20                            License Fee," B.R.C 1981, to the city's energy impact offset fund.
- 21                    b.     If the building is the subject of an application for concept review, site  
22                            review, or a demolition permit, and the application shows that the building  
23                            will be demolished or substantially remodeled within the next licensing  
24                            period, the owner need not make energy efficiency improvements, but  
25                            must pay, for each rental license cycle, the energy impact offset fee  
                          established in Section 4-20-18, "Rental License Fee," B.R.C. 1981.
- c.     The energy impact offset fee required under this section will be  
                          approximately equivalent to the energy offsets that would have been  
                          achieved through the energy efficiency requirements that have been  
                          waived as a modification pursuant this Paragraph 4 of Section C101.2. and  
                          IPMC Section 105.1. The fee will be imposed per SmartRegs point waived  
                          that is otherwise required under IPMC Section C101.2.2. The city  
                          manager shall create and maintain an energy impact offset fund for the  
                          receipt and management of the energy impact offset fee. Monies received  
                          in that fund must be used solely to promote or facilitate reduction in  
                          greenhouse gas emissions or otherwise directly offset the effects of  
                          greenhouse gas emission and for the costs of administering programs  
                          consistent with these purposes. Possible uses of the fund may include but  
                          are not limited to energy efficiency and renewable energy programs and  
                          projects, such as programs installing or facilitating the installation of  
                          rooftop solar and other measures that have demonstrable carbon reduction  
                          benefits. For accounting purposes, the monies received in the fund shall be  
                          held in a separate account established for the purposes of this fund.

**C101.2.1 Performance energy efficiency option.** Existing residential rental structures shall demonstrate energy efficiency compliance by obtaining a minimum Home Energy Rating System (HERS) index of 120 per rental dwelling unit. A HERS index shall be determined by a rater accredited by the Residential Energy Services Network (RESNET). For multi-dwelling rental structures, a HERS index sampling protocol authorized and approved by the code official may be utilized.

**C101.2.2 Prescriptive energy efficiency option.** The energy efficiency of residential structures shall be determined by an energy efficiency inspection score of 100 points as documented on table C101.2. The applicant shall provide an energy efficiency compliance certificate signed by a licensed and approved contractor per Subsection 4-4-4(g), "Building Contractor License," and Section 4-4-5, "License Application and Qualifications," B.R.C. 1981.

**Table 101.2  
SmartRegs Prescriptive Pathway**

Need 100 Total Points + Mandatory Water Conservation Measures

**WALLS**

<i>R-VALUE BASE</i>	<i>FINAL</i>			
	<i>25%</i>	<i>50%</i>	<i>75%</i>	<i>100%</i>
No Insulation	0	0	0	0
R-3 Continuous (must be at least R-3)	3	6	9	12
R-5 Continuous	4	8	12	15
R-13 or Uninsulated Basement Wall	5	10	15	20
R-19 or Better	5	11	16	21
Shared Wall or Insulated Basement Wall	6	13	19	26

**WINDOWS/FENESTRATIONS**

<i>TYPE BASE</i>	<i>FINAL</i>			
	<i>25%</i>	<i>50%</i>	<i>75%</i>	<i>100%</i>

1	Single Metal (1.2 U-Value)	0	0	0	0
2	Single Non-Metal <sup>1</sup> (.95 U-Value)	0	1	1	2
3					
4	Double Metal (.8 U-Value)	1	2	3	4
5	Double Non-Metal <sup>1</sup> (.55 U-Value)	2	3	5	6
6	0.35 U-Value <sup>1</sup>	3	7	10	13
7	0.30 U-Value	3	7	10	14
8	0.25 U-Value or Better	4	7	11	14
9					

<sup>1</sup> Historically designated properties and properties older than 50 years with wooden window frames that rehabilitate and install storm panels will receive credit at the 0.35 U-Value level.

**ATTIC**

<b><i>TYPE BASE</i></b>	<b><i>FINAL</i></b>			
	<b><i>25%</i></b>	<b><i>50%</i></b>	<b><i>75%</i></b>	<b><i>100%</i></b>
No Insulation	0	0	0	0
R-19	6	12	18	24
R-30	6	13	19	26
R-38 or Better	7	13	20	26
Shared Ceilings	7	14	20	27

**INFILTRATION**

<b><i>nACH BASE</i></b>	<b><i>FINAL POINTS</i></b>
1.20 nACH or Less	2
0.75 nACH	4

1	0.50 nACH	6
2	0.35 nACH or Less (ventilate per ASHRAE 62.2)	7

**SLAB ON GRADE**

<b>TYPE</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
Slab Edge: R-0	2	3	5	6
Slab Edge: R-5	2	4	5	7
Slab Edge: R-10 or Better	2	4	6	8
Slab Edge R-10 plus Under Slab: R-10 or Better	3	6	8	11

**BELOW GRADE SLAB (Basement Slab)**

Basement Slab	2	4	6	8
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**FOUNDATION WALLS (Crawlspace)**

R-0	0	0	0	0
R-2	2	3	5	6
R-11	2	4	6	8
R-19 or Better	2	5	7	9

**FLOOR**  
*(Only Available if No Ducts or HVAC Equipment are Located in Uninsulated Crawlspace Below Floor)*

Floor Over Crawl: R-0	0	0	0	0
Floor Over Crawl: R-13	3	5	8	11
Floor Over Crawl: R-25	3	6	9	12

1	Floor Over Crawl: R-38 or Better	4	7	11	14
2	Shared Floor	4	8	11	15

**SLAB/FOUNDATION      Base:      Final:**  
**DUCT LEAKAGE**

<i>CFM per 100 SF BASE</i>	<i>FINAL POINTS</i>
80 cfm @ 25 Pa	0
60 cfm @ 25 Pa	4
40 cfm @ 25 Pa	9
20 cfm @ 25 Pa	14
10 cfm @ 25 Pa or Less or no ducts (radiant)	17

**DUCTS/RADIANT**

<i>LOCATION/INSULATION BASE</i>	<i>FINAL</i>			
	<i>25%</i>	<i>50%</i>	<i>75%</i>	<i>100%</i>
Uninsulated Ducts (In Unconditioned Space)	0	0	0	0
Ducts Insulated to at Least R-4 (In Unconditioned Space)	1	3	4	6
Radiant Heat or Ducts Entirely Within Conditioned Space	2	3	5	7

**HEATING**

<i>SPECIFICATION BASE</i>	<i>FINAL POINTS</i>
Electric, Oil or ASHP	0
Gas 65 AFUE or worse	0
Gas 80 AFUE	13

1	Gas 90 AFUE	17
2	Gas 96 AFUE	19
3	GSHP (COP 3.3)	29
4	GSHP (COP 4.1)	38
5	GSHP (COP 4.8)	43

**COOLING**

<i><b>SPECIFICATION BASE</b></i>	<i><b>FINAL POINTS</b></i>
10 SEER or worse	0
13 SEER	4
15 SEER/Evaporative Cooler/no A/C	6
17 SEER	7
19 SEER/Indirect Evaporative Cooler	8
GSHP (>EER 13.5)	4

**FANS**

<i><b>SPECIFICATION BASE</b></i>	<i><b>FINAL POINTS</b></i>
Whole House Fan (In Addition to Cooling Points)	2

**LIGHTING**

<i><b>HIGH-EFFICIENCY LIGHTING POINTS (solar tubes/light tunnels counted as light fixtures)</b></i>	<i><b>FINAL POINTS</b></i>
0%	0
25%	2
50%	4
75%	6



100%	7
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**HOT WATER**

<i><b>SPECIFICATION BASE</b></i>	<i><b>FINAL POINTS</b></i>
Electric, Oil, or Heat Pump	0
Gas 56 EF	0
Gas 60 EF	1
Gas 64 EF	2
Gas Tankless 82 EF or Better	6
Gas Boiler Side Arm (65 AFUE Boiler)	0
Gas Boiler Side Arm (80 AFUE Boiler)	3
Gas Boiler Side Arm (95 AFUE Boiler)	5

**REFRIGERATION**

<i><b>SPECIFICATION BASE</b></i>	<i><b>FINAL POINTS</b></i>
750 kWh	0
650 kWh	2
450 kWh	3
350 kWh or Better	4

**SOLAR THERMAL**

<i><b>SPECIFICATION BASE</b></i>	<i><b>FINAL POINTS</b></i>
Points per 20 sq. ft. of collector surface area	8

PV (includes power purchase agreements and solar leases) or verified subscription in a Community Solar Garden.<sup>2</sup>

<i><b>kW BASE</b></i>	<i><b>FINAL POINTS</b></i>
Points per kW	44

**OCCUPANT**

<i><b>MEASURE BASE</b></i>	<i><b>FINAL POINTS</b></i>
Sub-Metering: Real Time Energy Monitoring Device	1
Programmable Thermostat	1
Provide Operation/Training Manual	1
Tenant Attends Energy Conservation Class	1

**OTHER**

<i><b>MEASURE BASE</b></i>	<i><b>FINAL POINTS</b></i>
Heat Pump Desuperheater	1
Electrically Commutated Motor ("ECM")	3
Passive Solar Design	Discretionary - approved by City of Boulder
Innovative Practice	Discretionary - approved by City of Boulder

**MANDATORY WATER CONSERVATION**

Must Earn Two Points Regardless of Whether Performance or Prescriptive SmartRegs Pathway is Chosen.

<i><b>WATER CONSERVATION MEASURE<sup>3</sup></b></i>	<i><b>POINTS PER FIXTURE</b></i>
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<sup>2</sup>Must earn 70 prescriptive pathway points in other categories to be eligible to earn PV Points.

1	Low flow showerhead <sup>5</sup>	1
2	Low flow lavatory faucets <sup>4</sup>	1
3	Self-closing faucet valves	1
4	High-efficiency or dual-flush toilet <sup>6</sup>	2
5		
6	ENERGY STAR washing machine	2
7	ENERGY STAR dishwasher	2

<sup>3</sup> Points earned in this category do not count towards prescriptive ~~100-point~~100-point requirement.

<sup>4</sup> The average flow rate for all bathroom faucets must be less than or equal to 1.5 gallons per minute (gpm).

<sup>5</sup> The average flow rate for all shower heads must be less than or equal to 2.0 gpm.

<sup>6</sup> The average flow rate for all toilets, including dual-flush toilets, must be less than or equal to 1.28 gpf (gallons per flush). A common dual-flush toilet has a 1.6 gpf and a 0.8 gpf. This makes an average of 1.2, which would qualify.

#### Definitions of acronyms:

**R-value:** A measure of thermal resistance used to describe insulation. The bigger the number, the better the insulation's effectiveness.

**U-value:** The overall heat transfer coefficient, describes how well a building element conducts heat. U-value is the inverse of R-value. The lower the U-value, the better.

**nACH:** Natural air changes per hour.

**HVAC:** Heating, Ventilating and Air Conditioning.

**cfm:** Cubic feet per minute.

**Pa:** Pascal; a measure of force per unit area.

**ASHP:** Air source heat pump.

**AFUE:** Annual fuel utilization efficiency; the most widely used measure of a furnace's heating efficiency.

**GSHP:** Ground source heat pump.

**COP:** Coefficient of performance of a heat pump is the ratio of the change in heat at the "output" (the heat reservoir of interest) to the supplied work.

**SEER:** Seasonal energy efficiency ratio; used to measure the efficiency of air conditioners.

**EF:** Energy factor is the ratio of useful energy output from the water heater to the total amount of energy delivered to the water heater. The higher the EF is, the more efficient the water heater.

**kWh:** Kilowatt hour; a unit of energy equal to ~~1,000-watt~~1,000-watt hours.

1           **kW:** Kilowatt.

2           **C101.3 Administration and enforcement.** Administration and enforcement of these  
3 measures shall be as detailed in Part 2 of this code.

4           Section 4. Section 10-5-1, "Legislative Intent," B.R.C. 1981, is amended to read as  
5 follows:

6           **10-5-1. Legislative Intent.**

7           The purpose of this chapter is to protect the public health and safety by regulating the  
8 construction, alteration, repair, wrecking, and moving of structures in the city. The city council  
9 hereby adopts the ~~2018~~2024 edition of the *International Building Code* with certain amendments  
10 and deletions thereto found to be in the best interests of the residents of the city.

11           Section 5. Section 10-5-2, "Adoption of International Building Code With  
12 Modifications," B.R.C. 1981, is amended to read as follows:

13           **10-5-2. Adoption of International Building Code With Modifications.**

- 14 (a) The ~~2018~~2024 edition of the *International Building Code* of the International Code  
15 Council is hereby adopted by reference as the City of Boulder Building Code and has the  
16 same force and effect as though fully set forth in this chapter, except as specifically  
17 amended by the provisions of this chapter.
- 18 (b) The appendix chapters E "SUPPLEMENTARY ACCESSIBILITY REQUIREMENTS",  
19 I, "PATIO COVERS," J, "GRADING," and K, "ADMINISTRATIVE PROVISIONS,"  
20 and sections contained therein are adopted.
- 21 (c) Section 101.1, "Title," is repealed and reenacted to read:

22           **101.1 Title.** These regulations shall be known as the Building Code of the City of  
23 Boulder or building code, hereinafter referred to as "this code." Where other codes are  
24 referenced in this code, those code provisions shall not apply unless otherwise adopted by  
25 the City of Boulder. Where reference is made anywhere in this code to the "Department"  
or "Department of Building Safety," it shall have the same meaning as the "Division of  
Building Safety." Where reference is made anywhere in this code to the "International  
Energy Conservation Code," it shall have the same meaning as the "City of Boulder  
Energy Conservation Code."

- 26 (d) Section 101.4, "Referenced codes," is repealed and reenacted to read:

Chapter 1, "Administration," in this code shall also apply and serve as Chapter 1,  
"Administration," in the following codes: Chapter 10-2, "International Property

Maintenance Code"; Chapter 10-5.5, "International Residential Code"; Chapter 10-5.6, "International Existing Building Code"; Chapter 10-7, "City of Boulder Energy Conservation Code"; Chapter 10-8.5, "International Wildland-Urban Interface Code"; Chapter 10-9, "International Mechanical Code"; Chapter 10-9.5, "International Fuel Gas Code"; Chapter 10-10, "International Plumbing Code," B.R.C. 1981. Where administrative provisions are expressly adopted, or adopted in an altered form, for use in those chapters, they shall supersede any conflicting provisions of the administrative provisions of this chapter.

The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered as part of the requirements of this code as applicable.

(e) Section 102.6, "Existing structures," is amended by addition of the following:

Existing structures and their systems, equipment, devices, installations, and safeguards shall be maintained in proper operating condition in accordance with the original design and in a safe and sanitary condition. Structures, their systems, equipment, devices, installations, and safeguards required by this code shall be maintained in compliance with the code in effect when they were installed. The owner or the owner's designated agent shall be responsible for the maintenance of the structures, their systems, equipment, devices, installations, and safeguards. To determine compliance with this provision, the city manager shall have authority to require a structure, equipment, system, device, installations, or safeguards to be reinspected.

(f) Section 103, "~~Department of Building Safety~~Code Compliance Agency," is repealed and reenacted to read:

**103 Division of Building Safety Code Compliance Agency.**

~~Division of Building Safety~~Code Compliance Agency means the administrative unit established by the city manager or the manager's delegates, and the personnel assigned to the unit by the manager.

(g) Section 104.8, "Liability," is repealed and reenacted to read:

**104.8 Liability.**

No employee of the cCity who enforces, attempts to enforce, or is authorized to enforce this code renders him or herself or the City liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or nonenforcement of this code. The cCity assumes no duty of care by virtue of the adoption of this code. No person is justified in relying upon the approval of a plan, the results of an inspection, or the issuance of a certificate of inspection or occupancy, and such approvals, inspections, and certificates are not a guarantee that the plan or work so approved, inspected, or certificated in fact complies with all the requirements of this

code. It is the duty of the person owning, controlling, or constructing any building or structure to ensure that the work is done in accordance with the requirements of this code, and it is such persons and not the cCity who are responsible for damages caused by negligent breach of such duty.

(h) ~~Subsection 104.10.1, "Flood hazard areas," is repealed.~~

(h) A new Section 104.12 is added to read:

**104.12 - Compliance with Federal and State Legislation.**

The building official may modify for individual cases the provisions of this code to allow a design, installation, or construction not in compliance with the provisions of this code, if otherwise the provisions of this code would result in a violation of federal or state legislation, including but not limited to the Federal Fair Housing Act or the Americans with Disabilities Act, and the modification would be the minimum modification that provides relief.

...

(j) Section 105.2, "Work exempt from permit," is repealed and reenacted to read:

**105.2 Work exempt from permit.** Exemptions from the building permit requirements of this code do not grant authorization for any work to be done in violation of the requirements of this code or any other laws or ordinances of the cCity. Building permits shall not be required for the following:

General:

1. One-story detached nonconditioned buildings accessory to a residential structure and not more than ~~12080~~ square feet in area or ten feet in height and not being served by any electrical, mechanical, or plumbing fixtures or systems.
2. Fences not over 7 feet (2,134 mm) high.
3. Retaining walls which are not over 3 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or III-A flammable liquids.
4. Sidewalks and driveways not more than thirty inches above grade and not over any basement or story below and which are not part of an accessible route.
5. Painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work.
6. Temporary motion picture, television, and theater stage sets and scenery.
7. Prefabricated swimming pools accessory to a Group R-3 occupancy which are less than 24 inches deep, do not exceed 5,000 gallons, and are installed entirely above ground.

- 8. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
- 9. Swings and other playground equipment on private property or in a Common Interest Community as that is defined in C.R.S. Section 38-33.3-101, et seq. The equipment shall be in compliance with the consumer product safety commission guidance. Swings and other playground equipment accessory to detached one and two family dwellings.
- 10. Window awnings in Group R and Group U occupancies supported entirely by an exterior wall and which do not project more than 54 inches from the exterior wall.
- 11. Moveable cases, counters and partitions not over 5 feet 9 inches in height.
- 12. Decks accessory to single-family homes or townhomes, not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4 of the IRC.
- ~~12. Replacement of windows in low-rise residential buildings that are three stories or less in height. Decks are~~
- ~~13. Replacement of exterior siding on low-rise residential buildings that are three stories or less in height.~~
- ~~14. Building energy efficiency components that (a) are required as part of a city energy efficiency program; (b) do not include any electrical, heating, ventilation, and air conditioning equipment, solar photovoltaic and solar hot water heating systems; and (c) are inspected by a HERS rater (a Home Energy Rating System rater certified through Residential Energy Services Network) or a city licensed energy inspector as defined in Chapter 4-4, "Building Contractor License," B.R.C. 1981.~~

Electrical:

Minor repair and maintenance work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles, radio and television transmitting stations, temporary testing systems for the testing or servicing of electrical systems or apparatus and those items in Article 90.2 (B) of the electrical code.

Gas:

- 1. Portable heating appliances.
- 2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

- 1. Portable heating appliance, portable cooling unit, portable evaporative cooler, or portable ventilation equipment.

- 2. Steam, hot, or chilled water piping within any heating or cooling equipment regulated by this code.
- 3. Replacement of any part which does not alter an approval or listing or make any appliance or equipment unsafe.
- 4. Self-contained refrigeration system containing ten pounds (4.54 kg) or less of refrigerant and actuated by motors of one horsepower (746 W) or less.

Plumbing:

- 1. The stopping of leaks in drains, water, soil, waste, or vent pipe; provided, however, that if any concealed trap, drain pipe, water, soil, waste, or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
- 2. The clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures, and the replacement of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves or pipes.

(k) A paragraph is added to Section 105.3.1, "Action on application," to read:

No building permit shall be issued until approved by every department of the city or Boulder County that has applicable regulations, including, without limitation, the following departments: building, flood control, utilities, wastewater, health, fire, engineering, zoning, planning, parks, and city clerk.

(l) Section 105.3.2, "Time limitation of application," is repealed and reenacted to read:

**105.3.2 Time limitation of application.** An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good ~~faith~~faith, or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing before the expiration date and justifiable cause demonstrated.

(m) Section 105.5, "Expiration," is repealed and reenacted to read:

**105.5 Expiration.** Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one hundred eighty days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of one hundred eighty days after the time the work is commenced. The building official is authorized to grant in writing one or more extensions of time for periods not more than one hundred eighty days each. The extension shall be requested in writing and justifiable cause demonstrated. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not completed and approved for



1 occupancy within three years from the date the permit was issued. The permit fee for  
2 renewals may be prorated based on the amount of work completed and approved under  
the previous permit.

3 (n) Section 107.1, "General," is repealed and reenacted to read:

4 **107.1 General.** An applicant for a building permit shall submit, in digital format, submit  
5 a minimum of two sets of plans and specifications with each application when required  
6 by the building official for enforcement of any provisions of this code. Where special  
7 conditions exist, the building official is authorized to require additional construction  
8 documents to be prepared by a registered design professional for any work.

9 (1) A professional engineer or architect registered in the State of Colorado shall  
10 prepare the plans and specifications for and observe the construction of all  
11 buildings except for the following:

- 12 (a) Detached dwellings intended solely for private use, occupancy, or resale,  
including accessory buildings commonly associated with the same;
- 13 (b) Farm buildings and buildings for the marketing, storage, or processing of  
farm products;
- 14 (c) Minor additions, alterations, or repairs to the foregoing buildings that do  
not cause the completed buildings to exceed the applicable limitations  
herein set forth; or
- 15 (d) Nonstructural alterations of any nature to any building if such alterations  
do not affect the safety of the building.

16 (2) Drawings and specifications for footings and foundations shall bear the seal and  
signature of a professional engineer registered in Colorado or an architect licensed  
in Colorado and be designed as specified in Chapter 18 of the building code for  
all occupancies.

17 Exceptions:

- 18 (a) Detached structures not intended for human occupancy;
- 19 (b) Additions to existing detached dwellings not exceeding 200150 square  
20 feet where the existing foundation is found to be performing adequately  
without evidence of excessive settling or heaving.

21 (o) Section 107.3.2, "Previous approvals," is amended to read:

22 **107.3.2 Previous approvals.** This code shall not require changes in the construction  
23 documents, construction or designated occupancy of a structure for which a lawful permit  
24 has heretofore been issued or otherwise lawfully authorized, and the constraints of which  
25 have been pursued in good faith within one hundred eighty days after the effective date of  
this code and has not been abandoned. No person shall fail to comply with all of the  
conditions of such a building permit and the provisions of the building code under which  
such building permit has been issued.

1 (p) Section 109.3, "Building permit valuations," is repealed and reenacted to read:

2 **109.3 Building permit valuation.** The valuation for buildings shall be as set forth in  
3 Subsections 4-20-4(d) and (e), B.R.C. 1981.

4 (q) Section 113, "~~Means Board~~ of Appeals," is repealed and reenacted to read:

5 **113 Appeals and advisory opinions.**

6 (a) Any appeal under this section shall be heard by the Board of Building Appeals  
7 established under Section 2-3-4, "Board of Building Appeals," B.R.C. 1981,  
8 unless the city manager determines, due to the nature of the issues in a particular  
9 appeal, to appoint a hearing officer under Section 1-3-5, "Hearings and  
10 Determinations," B.R.C. 1981.

11 (b) A person refused a building permit or refused approval of work done under a  
12 permit on the grounds that the proposed or completed construction fails to comply  
13 with this code or any other city building code other than the fire code may appeal  
14 the decision on the ground that:

15 (1) The denial was based on an error in fact or an erroneous interpretation of  
16 such code by the Building Official ~~city manager~~;

17 (2) The Building Official ~~manager~~ has erroneously failed to approve an  
18 alternate material or method pursuant to Section 104.2.311 prior to its  
19 installation or use. In determining such an appeal, the board or hearing  
20 officer shall apply the standards of Section 104.2.311, but the board or  
21 hearing officer shall have no jurisdiction to consider if a material or  
22 method expressly prohibited by this code is an acceptable alternative;

23 (3) The Building Official ~~manager~~ has erroneously failed to grant a  
24 modification pursuant to Section 104.2.410 prior to its installation. In  
25 determining such an appeal, the board or hearing officer shall apply the  
standards of Section 104.2.410; or

(4) The Building Official ~~manager~~ has erroneously failed to approve an  
alternative design pursuant to Section K105 prior to its installation or use.  
In determining such an appeal, the board or hearing officer shall apply the  
standards of Section K105, but the board or hearing officer shall have no  
jurisdiction to consider if a design expressly prohibited by this code is an  
acceptable alternative.

The Building Official ~~manager~~ has the burden of proof under paragraph  
(1). The appellant has the burden of proof on appeals brought pursuant to

1 paragraphs (2), (3), and (4). The board or hearing officer shall determine  
 2 the appeal and decide whether the Building Official's ~~manager's~~  
 3 interpretation or application of such code was correct or in error at a  
 4 hearing under the procedures described by Chapter 1-3, "Quasi-Judicial  
 5 Hearings," B.R.C. 1981.

6 (c) Any person whose building permit or certificate of occupancy or certificate of  
 7 completion has been suspended or revoked may appeal such action by the  
 8 Building Official ~~city manager~~ on the ground that the suspension or revocation  
 9 was based on an error in fact or an erroneous application of this code to the facts.  
 10 The manager has the burden of proving the facts upon which the Building Official  
 11 ~~manager~~ relies at such a hearing.

12 (d) An application for appeal must be filed in writing with the Building Official ~~city~~  
 13 ~~manager~~ within fourteen days after the date of refusal of the building permit or  
 14 approval of work performed under the permit or revocation or suspension of the  
 15 building permit or certificate of occupancy or certificate of completion stating the  
 16 basis for appeal.

17 (e) An applicant for an appeal shall pay the fee prescribed by Section 4-20-47,  
 18 "Zoning Adjustment and Building Appeals Filing Fees," B.R.C. 1981. The fee for  
 19 an appeal heard by a hearing officer shall be the same as the fee for an appeal  
 20 heard by the Board of Building Appeals.

21 (f) The Building Official ~~city manager~~ may apply to the Board of Building Appeals,  
 22 without fee, for an advisory opinion concerning alternative methods, applicability  
 23 of specific requirements, approval of equipment and materials, and granting of  
 24 special permission as contemplated in Section 104.2.3 or 104.2.4 ~~10 or 104.11~~ of  
 25 the Building Code.

(g) The board or hearing officer has no authority to interpret Chapter 1 (the  
 administrative requirements) of this code except as expressly provided in this  
 section, nor, because this code sets minimum standards, to waive any requirement  
 of this code.

(r) Section 114, "Violations," is repealed and reenacted to read:

### **114 Violations.**

(a) General Provisions.

(1) No person shall violate a provision of this code or fail to comply therewith  
 or with any of the requirements thereof. No person shall fail to comply  
 with any order issued by the code official under this code. No person shall  
 erect, construct, enlarge, alter, extend, repair, move, remove, improve,

convert, demolish, equip, use, occupy, or maintain any building or structure in the city or cause or permit the same to be done except in conformity with all of the provisions of this code and in conformity with the terms and conditions of any permit, certificate, or other approval issued under this code, or of any directive of the building official.

(2) In accordance with the provisions of Section 5-2-11, "Prosecution of Multiple Counts for Same Act," B.R.C. 1981, each day during which illegal construction, alteration, maintenance, occupancy, or use continues constitutes a separate offense remediable through the enforcement provisions of this code.

(3) The owner, tenant, and occupant of a structure or land, and the agents of each of them, are jointly and severally liable for any violation of this code with respect to such structure or land.

(4) The remedies for any violation of any provision of this code or of any permit, certificate, or other approval issued under this code or other City of Boulder code, or of any directive of the code official, may be pursued singly or in combination.

(5) If any person fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

(b) Administrative Procedures and Remedies.

(1) If the city manager finds that a violation of any provision of this code or any approval granted under this code exists, the manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

(A) Impose a civil penalty according to the following schedule:

- (i) For the first violation of the provision or approval, \$100;
- (ii) For the second violation of the same provision or approval, \$300; and;
- (iii) For the third violation of the same provision or approval, \$1,000;

(B) For a violation concerning the use of a residential building under a rental license, revoke such license;

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(C) Require the filing of a declaration of use as provided in subsection (e) of this section; or

(D) Issue an order reasonably calculated to ensure compliance with the provisions of this code or any approval granted under this code.

(2) Prior to the hearing, the manager may issue an order that no person shall perform any work on any structure or land, except to correct any violation found by the manager to exist with respect to such structure or land.

(3) If notice is given to the manager at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the structure or land. If the manager finds that the violation has been corrected, the manager may cancel the hearing.

(4) No person shall fail to comply with any action taken by the manager under this section.

(c) Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-4, "General Penalties," B.R.C. 1981.

(d) Other Remedies. The city attorney 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 for any violation of any provision of this code or any approval granted under this code.

(e) Declaration of Use. If the city manager determines that a person is using a structure in a way that might mislead a reasonable person to believe that such use is a use by right or otherwise authorized by this title, the manager may require such person to sign under oath a declaration of use that defines the limited nature of the use and to record such declaration in the officer of the Boulder County Clerk and Recorder against the title to the land. In addition to all other remedies and actions that the manager is authorized to use under the Boulder Revised Code or other applicable federal, state, or local laws to enforce the provisions of this code, the manager is authorized to withhold any approval affecting such structure or land, including, without limitation, a building permit, use review, site review, subdivision, floodplain development permit, or wetland permit until such time as the person submits a declaration of use that is in a form acceptable to the manager.

...

(s) Section 116.1, "Unsafe Conditions," is repealed and reenacted to read:

**116.1 Unsafe Conditions.** Premises, structures, or existing equipment that are or hereafter become unsafe, insanitary, or deficient because of inadequate means of egress

1 facilities, inadequate light and ventilation, or which constitute a fire hazard, or are  
2 otherwise dangerous to human life or the public welfare, or that involve illegal or  
3 improper occupancy or inadequate maintenance, shall be deemed an unsafe condition.  
4 Unsafe premises shall be made safe and unsafe structures shall be taken down and  
5 removed or made safe, as the building official deems necessary and as provided for in  
6 this section. A vacant structure that is not secured against entry shall be deemed unsafe.

5 (t) Section 116.3, "Notice," is repealed and reenacted to read:

6 **116.3 Notice.** If an unsafe condition is found, the building official shall serve on the  
7 owner, agent, or person in control of the structure or premises, a written notice that  
8 describes the condition deemed unsafe and specifies the required repairs, improvements,  
9 or modifications to be made to abate the unsafe condition, or that requires the unsafe  
10 structure to be demolished within a stipulated time. Such notice shall require the person  
11 thus notified to declare immediately to the building official acceptance or rejection of the  
12 terms of the order.

10 (u) The last two sentences of Section 116.4, "Method of service," are amended to read as  
11 follows:

12 If the certified or registered letter is returned showing that the letter was not delivered, a  
13 copy thereof shall be posted in a conspicuous place on the premises or in or about the  
14 structure affected by such notice. Service of such notice in the foregoing manner upon the  
15 owner's agent or upon the person responsible for the premises or structure shall constitute  
16 service of notice upon the owner.

15 (v) Section 116.5, "Restoration or abatement," is amended by adding the following sentence:

16 The abatement of an unsafe condition of premises shall comply with the requirements of  
17 this code.

18 ~~(w) The definition of "Building official" in Section 202 is repealed and reenacted to read:  
19 BUILDING OFFICIAL is the city manager.~~

19 ~~(wx)~~ Section 202, "Definitions," is amended by the addition of the following new definitions:

20 ~~MULTIPLE FIXTURE~~-ALL GENDER TOILET FACILITY. A toilet facility consisting  
21 of multiple water closet compartments and associated lavatories which serve all genders.

22 PERMIT ISSUANCE is the date that the approved building permit is paid for and  
23 received back from the Building Official ~~city manager~~ by the applicant or a  
24 representative of the applicant.

24 (xy) A new Subsection ~~96~~ is added to Section 708.1, "General," to read:

1 96. Walls separating marijuana growing, processing, and dispensing occupancies from  
2 adjacent occupancies.

3 (yz) A paragraph is added to Section (F) 903.2, "Where required," to read:

4 The maximum fire area without an automatic sprinkler system shall be determined by  
5 Section 903.2 of the fire code.

6 ~~(aa) Section 907.2.10, "Single and multiple station smoke alarms," is amended by the  
7 addition of the following subsections:~~

8 ~~**907.2.10.8 Alterations, repairs, and enlargements.** (1) When buildings or structures, or  
9 portions of buildings or structures, classified as Group R<sub>2</sub> are altered, repaired, or  
10 enlarged and the work requires a building permit, or (2) when one or more sleeping  
11 rooms are added or created, smoke alarms shall be installed for each dwelling or sleeping  
12 unit affected by such work in accordance with Section 907.2.10, except as provided  
13 otherwise in this section or its subsections.~~

14 **Exceptions:**

- 15 1. ~~Work involving solely the exterior surfaces of the building or structure, such as~~  
16 ~~replacement of roofing or siding or the addition of a porch or deck.~~
- 17 2. ~~Installation, alterations, and repairs of plumbing or mechanical systems.~~

18 ~~**907.2.10.8.1 Exception to interconnection.** Section 907.2.10.5 applies except that  
19 interconnection of smoke alarms in existing areas shall not be required where alterations  
20 and repairs do not include removal of interior wall and ceiling finishes exposing the  
21 structure unless an attic, crawlspace, or basement is available to provide access for  
22 interconnection without removal of interior finishes.~~

23 ~~**907.2.10.8.2 Exception to power source.** Section 907.2.10.6 applies except that (1)  
24 smoke alarms may be battery operated when installed in a building without commercial  
25 power and (2) hard wired smoke alarms shall not be required in existing areas where  
alterations or repairs do not result in the removal of interior wall and ceiling finishes  
exposing the structure unless an attic, crawlspace, or basement is available to provide  
access for hard wiring without removal of interior finishes.~~

26 ~~(bb) Section 1109.2.2, "Water closet compartment," is repealed and reenacted to read:~~

27 ~~**1109.2.2 Water closet compartment.** Where water closet compartments are provided in  
28 a toilet room or bathing room, at least one wheelchair accessible compartment shall be  
29 provided. Where the combined total water closet compartments and urinals provided in a  
30 toilet room or bathing room is eleven or more, at least one ambulatory accessible water  
31 closet compartment shall be provided in addition to the wheelchair accessible  
32 compartment.~~

33 ~~(cc) Section 1404.3, "Vapor retarders," is amended by adding two exceptions:~~

4. ~~Commercial and multiple-residence buildings complying with the 20240 City of Boulder Energy Conservation Code Section C402.5, Air leakage (mandatory).~~

5. ~~Residential buildings complying with the 20240 City of Boulder Energy Conservation Code Section R402.4, Air leakage (mandatory).~~

(zdd) Section 1505.1, "General," is repealed and reenacted to read:

**1505.1 General.** All roof assemblies and roof coverings required to be listed by this section shall be tested in accordance with ASTM Standard E 108 or UL Standard 790. Class A roofs and the exceptions noted in Section 1505.3 for class B roofs as described in this Chapter 15 are the only roof assemblies and roof coverings allowed to be installed on any new or existing building within the City of Boulder. Wood shakes, wood shingles, and wood roof covering materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, for certain minimal repairs.

(aaee) Section 1608.2, "Ground snow loads," is repealed and reenacted to read:

Ground snow loads shall be 40 pounds per square foot,  $P_g = 40 \text{ lb/ft}^2$

(bbff) Section 1609.3, "Basic design wind speed," is amended by adding the following sentence:

The basic design wind speed, V, in mph, for the determination of wind loads shall be determined by Table 1609.3. based on the wind zone and building risk category.

TABLE 1609.3.<sup>a</sup>  
BASIC DESIGN WIND SPEED

Basic Design Wind Speed (V) in MPH according to Wind Zone and Building Risk Category			
Wind Zone	Risk Category I	Risk Category II	Risk Category III and IV
East of Broadway	140	150	160
West of Broadway	155	165	175

<sup>a</sup> These standards were developed by Jon A. Peterka in the Colorado Front Range Gust Map—ASCE 7-16 Compatible dated November 18, 2013.

(ccgg) Sections 1612.2, 1612.3 and 1612.4 are repealed.

(ddhh) Section 1705, "Required Special Inspections and Tests," is amended by adding the following subsection:



1 **1705.19 Special inspection for medical gas systems.** Medical gas systems shall be  
2 tested as detailed in Chapter 12, "Special Piping and Storage Systems," of the City of  
Boulder Plumbing Code.

3 (~~eei~~) A new exception 75 is added to Section 2902.2, **Separate Facilities**:

4 75. Separate facilities are not required when multiple fixture all gender facilities are  
5 provided. Multiple fixture all gender facilities are not required; they are an  
alternative to be determined by the property owner or the owners' agent.

6 (~~jj~~) ~~2902.4 "Signage" is repealed and reenacted to read:~~

7  
8 ~~**2902.4 Signage.** Required public facilities shall be provided with signs that designate  
9 which genders the facility accommodates as required by section 2902.2. Signs shall be  
10 readily visible and located near the entrance to each toilet facility. Signs for accessible  
toilet facilities shall comply with Section 1111.~~

11 ~~Exception: Toilet facilities with only one water closet shall not be identified for  
12 exclusive use by any gender and shall be deemed to meet the requirements of this  
section. Signage shall be provided in accordance with Section 2902.4.2.~~

13 ~~**2902.4.1 Directional signage.** Directional signage indicating the route to the required  
14 public toilet facilities shall be posted in a lobby, corridor, aisle or similar space, such that  
the sign can be readily seen from the main entrance to the building or tenant space.~~

15 ~~**2902.4.2 All gender signage.** Single-user toilet facilities provided in accordance with  
16 Section 2902.1.2, and family or assisted use toilet facilities provided in accordance with  
17 Section 2902.2.1, shall be provided with signs which clearly indicate the facilities are  
available for use by all genders.~~

18 ~~**2902.4.2.1 Existing facilities.** After December 31, 2024, all existing single-user toilet  
19 facilities and family or assisted use toilet facilities, shall be provided with signage in  
accordance with Section 2902.4.2.~~

20 (~~ffkk~~) Section J103, "Permits required," of Appendix J, "GRADING," is amended by adding the  
following subsections:

21 **J103.3 Compliance with code and permit requirements.** No person shall fail to  
22 perform and no property owner shall fail to perform or fail to cause the performance of  
23 all grading in compliance with this code, the Boulder Revised Code, and the conditions of  
the grading permit.

24 **J103.4 No adverse effects.** No person shall perform and no property owner shall perform  
25 or fail to prevent any grading that adversely affects the property of another without first  
obtaining the consent of the owner of such property.

1 **J103.5 Unsafe premises.** No person shall perform and no property owner shall perform  
2 or fail to prevent grading that results in any premises that are unsafe. For purposes of this  
3 Appendix J, premises are considered unsafe if they are found to be dangerous to life,  
4 health, property, or the safety of the public.

4 **J103.6 Abatement of unsafe premises.** If the city manager determines that grading is  
5 not performed in accordance with the law and resulted in unsafe premises, the city may  
6 notify the owner of the unsafe premises, agent, or other person in control of the premises  
7 in accordance with Section 116.3 of this code. If the person so notified fails to abate the  
8 unsafe condition as required by the notice, the manager may enter the property, pursuant  
9 to an administrative warrant issued by the municipal ~~court, and~~ court and abate the unsafe  
10 condition. The manager may collect the full cost of the abatement and any expense to the  
11 city related to the abatement against the property owner, agent, or other person in control  
12 of the premises, and against the financial guarantee provided under Subsection J103.7.  
13 The permit holder, property owner, and guarantor shall be jointly and severally liable for  
14 such costs and expenses. If the property owner fails or refuses to pay when due any  
15 charge imposed under this subsection, the manager may certify due and unpaid charges,  
16 including interest, to the Boulder County Treasurer for collection, as provided in Section  
17 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County  
18 Treasurer for Collection," B.R.C. 1981.

13 **J103.7 Financial guarantee.** Prior to the issuance of a permit under this Appendix J,  
14 "GRADING," for any work on steep slope lots with a 15 percent or greater slope and on  
15 any projects with a cut, fill, or excavation of ten feet or more, or cut, fill, or excavation  
16 less than two feet from the property line, the permittee or property owner shall provide a  
17 financial security in the form of a performance bond or other form of guarantee approved  
18 by the city manager that will satisfy the objectives of this subsection, for the benefit of  
19 the city to secure the abatement of an unsafe condition of any premises that may result  
20 from grading work. The performance bond or other financial guarantee shall be provided  
21 for a period of two years following the expiration of the ~~permit, and~~ permit and shall be  
22 for \$10,000 for construction costs less than \$10,000 and for the value of the project  
23 permit for construction costs greater than \$10,000. At the time of permit application, the  
24 permittee shall submit documentation of the project costs, subject to review and approval  
25 by the manager. A bond shall be issued by a company licensed to do business in  
Colorado and shall be in a form acceptable to the city attorney. The manager shall review  
the performance bond or other financial guarantee annually to assure that it meets the  
term requirements and the full current cost of the completion of the work that is  
guaranteed and may require the permittee to augment the performance bond or other  
financial guarantee amount to meet such costs.

23 (ggh) A new Chapter 36 is added to read:

24 **CHAPTER 36. COMMERCIAL CONSTRUCTION WASTE RECYCLING.**

1 **3601.1 Commercial construction recycling requirement.** An applicant for a building  
2 permit to construct a new building shall demonstrate all recyclable wood, metal and  
cardboard materials were donated, reused or recycled.

3 **3601.1.1 Reporting.** Within sixty days following the completion of the project and prior  
4 to final inspection, the applicant shall submit documentation to the city manager which  
5 proves that all recyclable wood, metal and cardboard was donated, reused, or recycled.  
6 The documentation shall consist of a final completed waste diversion report in a form as  
7 prescribed by the city manager showing the tonnage of materials salvaged for recycling  
8 and reuse, supported by original weight receipts or other waste documentation that  
9 reasonably verifies that materials generated from the site have been accepted for  
recycling, reuse, salvage or otherwise diverted. For construction debris for which  
weighing is not practical due to size, lack of scales at the facility, or other considerations,  
a volumetric measurement shall be used. For conversion of volumetric measurements to  
weight, the applicant shall use the standardized conversion rates established by the city  
manager.

10 **3601.2 Commercial deconstruction waste recycling.** An applicant for a full demolition  
11 shall adhere to the requirements of Sections 3601.2.1 through 3601.2.5.

12 **3601.2.1 Diversion requirements.** The applicant shall divert from landfills at least  
13 seventy-five percent of the waste tonnage of demolition debris generated from the project  
14 by using recycling, reuse, and diversion programs. The city manager may modify this  
15 requirement if the applicant demonstrates it is unfeasible as set forth in Section 3601.2.2.  
16 The materials diverted must also include at least three of the material types set forth in  
17 the deconstruction plan form established by the city manager.

18 **3601.2.2 Information required before issuance of demolition permit.** The applicant  
19 shall submit a properly completed deconstruction plan in a form as established by the city  
20 manager. The applicant must propose to divert at least three of the material types  
21 identified by the city manager in the deconstruction plan form. No building permit or  
22 demolition permit shall be issued prior to the approval of the deconstruction plan by the  
23 city manager. In estimating the volume or weight of materials identified in the  
24 deconstruction plan, the applicant shall use the standardized conversion rates established  
25 by the city manager. The city manager may modify the required diversion percentage if  
the applicant demonstrates in the deconstruction plan that the percentage is not feasible  
because the maximum weight of materials that can be reused or recycled is less than the  
required diversion rate, or due to the presence of materials that are unable to be diverted  
due to special waste conditions such as environmental hazards.

**3601.2.3 Administrative fee and deposit required.** Prior to issuance of a permit for a  
full demolition or level 4 alteration as defined in the *2024~~0~~ City of Boulder Energy  
Conservation Code*, the applicant shall post a cash deposit and pay the administrative fee  
described in Section 4-20-72, B.R.C. 1981. The cash deposit shall be one dollar per  
square foot of the demolition or work area of the alteration as identified in the permit  
application, or \$1,500, whichever is greater.

1 **3601.2.4 Reporting.** Within sixty days following the completion of the demolition, the  
 2 applicant shall submit documentation to the city which proves compliance with the  
 3 requirements of Sections 3601.2.1 and 3601.2.2. The documentation shall consist of a  
 4 final completed waste diversion report in a form established by the city manager showing  
 5 the tonnage of materials salvaged for recycling and reuse, supported by original weight  
 6 receipts or other waste documentation that reasonably verifies that materials generated  
 7 from the site have been accepted for recycling, reuse, salvage or otherwise diverted at the  
 8 required diversion percentage. The documentation shall further demonstrate that the  
 9 diverted materials include at least three material types. For demolition debris for which  
 10 weighing is not practical due to size, lack of scales at facility, or other considerations, a  
 11 volumetric measurement shall be used. For conversion of volumetric measurements to  
 12 weight, the applicant shall use the standardized conversion rates established by the city  
 13 manager.

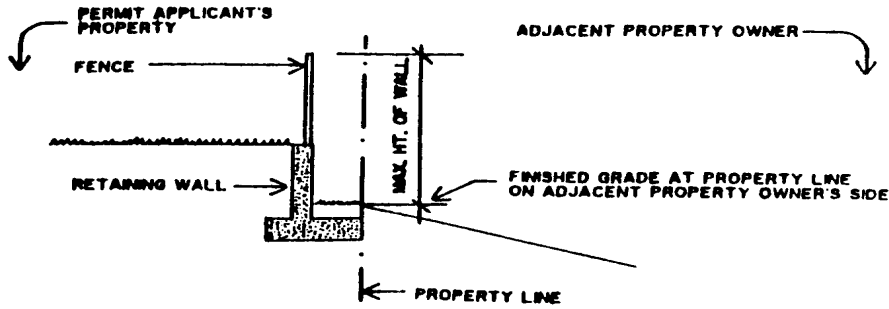
14 **3601.2.5 Deposit refunded or forfeited.** No applicant shall fail to comply with Sections  
 15 3601.2.1 through 3601.2.4. The deposit shall be refunded to the applicant in proportion to  
 16 the ratio of the actual diversion rate to the required diversion rate. If the required  
 17 diversion percentage is not fully complied with, the remainder of the deposit shall be  
 18 forfeited to the city as a civil penalty for failure to comply with the requirements of this  
 19 chapter, after notice and an opportunity for hearing under the procedures prescribed by  
 20 Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The city manager may adjust the  
 21 amount of the refund or forfeiture where the applicant demonstrates that the required  
 22 diversion percentage was not feasible based on the factors identified in Section 3601.2.2  
 23 for modification of the diversion percentage. The forfeiture remedy is cumulative and is  
 24 in addition to any other action the city manager is authorized to take, including  
 25 suspension or revocation of a building contractor license or prosecution in the municipal  
 court. Each 2,500 square feet of the demolition or alteration shall give rise to a separate  
 violation, and each violation is subject to a maximum fine of \$2,500.

(hhmm)A new Chapter 99 is added to the Building Code to read:

## CHAPTER 99. FENCES AND WALLS.

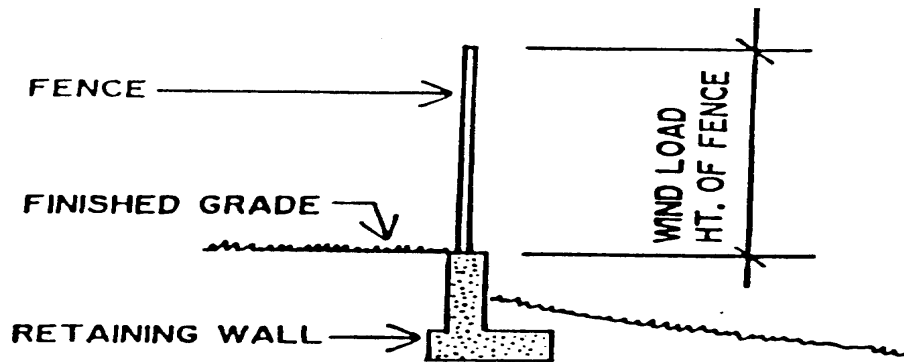
### 9901. Definitions.

- (1) As used herein, the term "wall" means a freestanding structure such as a fence or retaining wall.
- (2) As used herein and in Section 9-9-15, "Fences and Walls," B.R.C. 1981, the term "finished grade" means the top surfaces of lawns, walks, drives, or other improved surfaces after completion of construction or grading ~~operations,~~ ~~but operations~~ but not including vegetation growing on the surface.
- (3) For purposes of determining the maximum height allowable for any fence or wall other than wind load height as specified in subsection (4) of this section, refer to Section 9-9-15, "Fences and Walls," B.R.C. 1981, and the diagram below.



B.R.C. 9-9-15(c), Figure #19.

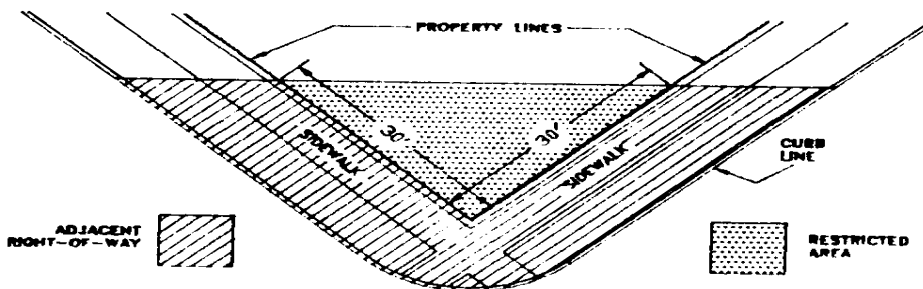
(4) For purposes of determining the maximum height allowable for any fence or wall other than wind load height as specified in subsection (4) of this section, refer to Section 9-9-15, "Fences and Walls," B.R.C. 1981, and the diagram below:



B.R.C. 9-9-15(c), Figure #20.

(5) Nothing in this section is intended to prohibit the installation of a guardrail for safety purposes which otherwise conforms to the requirements of this code.

9902. All fences and walls hereafter installed in the City shall comply with Section 9-9-15, "Fences and Walls," B.R.C. 1981, and the following provisions:



B.R.C. 9-9-7, Figure #17.

- (6) Where permitted, fences exceeding seven feet in height shall conform to the zoning requirements for accessory structures.

Section 6. Section 10-5-3, "Adoption of Uniform Code for Abatement of Dangerous Buildings With Modifications," B.R.C. 1981, is amended to read as follows:

**10-5-3. Adoption of Uniform Code for Abatement of Dangerous Buildings With Modifications.**

Repealed.

Section 7. Section 10-5-4, "Building Permit Fees," B.R.C. 1981, is amended to read as follows:

**10-5-4. Building Permit Fees.**

Building permit fees are those prescribed by Subsection 4-20-4(c), B.R.C. 1981. Fees for other permits issued pursuant to this chapter and charges for services are those prescribed by Subsection 4-20-4(d), B.R.C. 1981.

Section 8. Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, is amended to read as follows:

**10-5-5. Wood Roof Covering Materials Prohibited.**

- (a) No person shall install or cause to be installed any wood roof covering materials, including, without limitation, wood shakes or wood shingles. This prohibition includes wood roof covering materials with fire retardant treatments of any kind.
- (b) No person owning a building with wood roof covering materials shall fail to remove or cause to be removed from the building all wood roof covering materials before January 1, 2014, and to replace the removed roofing with approved roof covering materials which conform to the *International Building Code* as adopted, and no person shall thereafter take possession or ownership of a building with wood roof covering materials.
- (c) The following additional definition applies to this section and to Chapter 15 of the building code:

*"Wood roof covering material"* means an exterior surface material used as a top covering and made of wood. "Wood," for the purposes of this definition, means any natural or composite material containing at least fifty percent wood by volume.

1           Section 9. Section 10-5.5-1, "Legislative Intent," B.R.C. 1981, is amended to read as  
2 follows:

3 **10-5.5-1. Legislative Intent.**

4           The purpose of this chapter is to protect the public health, safety, and general welfare by  
5 regulating the construction, alteration, movement, enlargement, replacement, repair, equipment,  
6 use and occupancy, location, removal, and demolition of detached one- and two-family  
7 dwellings and townhouses, not more than three stories above grade in height with a separate  
8 means of egress, and their accessory structures. The city council hereby adopts the 2024~~2018~~  
9 edition of the *International Residential Code* with certain amendments thereto found to be in the  
10 best interests of the city.

11           Section 10. Section 10-5.5-2, "Adoption of the International Residential Code With  
12 Modifications," B.R.C. 1981, is amended to read as follows:

13 **10-5.5-2. Adoption of the International Residential Code With Modifications.**

14 (a)       The 2024~~2018~~ edition of the International Residential Code of the International Code  
15 Council is hereby adopted by reference as the City of Boulder Residential Building Code  
16 and has the same force and effect as though fully set forth in this chapter, except as  
17 specifically amended by the provisions of this chapter.

18 (b)       The Appendix chapters CC, BA, BE, BF, BO, BG, CF, BB, BI AND BJ ~~D, E, F, H, J, K,~~  
19 ~~P, Q, R and S~~ and sections contained therein are adopted.

20 (c)       Section R101.1, "Title," is repealed and reenacted to read:

21           **R101.1 Title.** These provisions shall be known as the Residential Code of the City of  
22 Boulder or residential code and shall be cited as such and will be referred to herein as  
23 "this code".

24 (d)       Sections R102 through R114 are repealed. This code shall be administered in accordance  
25 with Chapter 1, "Administration," of the International Building Code as adopted, with  
26 amendments, by Section 10-5-2, "Adoption of International Building Code With  
27 Modifications," B.R.C. 1981.

28 (e)       The following definitions are added to Section R202, "Definitions":

29           COMMUNITY SOLAR GARDEN. A solar generation facility where the beneficial use  
30 of the electricity generated by the facility belongs to subscribers to the solar generation  
31 facility as authorized in Section 40-2-127, C.R.S.

32           FLOOR AREA. The total square footage of all levels as measured from the inside  
33 finished surface of the walls, but excluding courts, garages usable exclusively for the

1 storage of motor vehicles and uninhabitable areas that are located above the highest  
2 inhabitable level or below the first-floor level.

3 NEW DWELLING UNIT. A dwelling unit is considered to be a new dwelling unit when  
4 the entire structure is newly built and when the dwelling unit is built on top of an existing  
5 foundation, such as caissons, footings, and other foundation systems, that remains from a  
6 demolished structure.

7 SHADING. Shading is the protection from heat gains because of direct solar radiation by  
8 permanently attached exterior devices or building elements, interior shading devices,  
9 glazing material, or adherent materials.

10 SKYLIGHT AREA. Skylight area is the area of the rough opening for the skylight.

11 SOLAR ZONE. A solar zone is a section of the roof designated and reserved for the  
12 future installation of a solar electric or solar thermal system.

13 STANDARD TEST CONDITIONS. A fixed set of conditions for which PV module  
14 performance is rated. These conditions are 1000 W/m<sup>2</sup> incident solar radiation, 24°C cell  
15 temperature, 0.0 wind speed, and air mass 1.5 spectrum.

16 STORAGE ROOMS OR SPACES. Storage rooms or spaces are rooms or spaces with a  
17 level of finish sufficient only to make the room usable for the intended storage purposes.  
18 Rooms or areas that exceed these minimums will be considered habitable space and will  
19 have to meet the code requirements applicable to habitable space.

20 (f) A new sentence is added to the end of Section R301.1, "Application," stating:

21 Structural calculations shall be submitted to the building official, demonstrating the  
22 proposed construction meets the applicable requirements for design loads.

23 (g) The climatic and geographic design criteria applicable to Table R301.2(1) are:

24 Ground snow load = 40 pounds per square foot,  $P_g = 40 \text{ lb/ft}^2$ .

25 Three-second wind gust velocity = 150 mph east of Broadway, 165 mph west of  
Broadway

Topographic effects = Yes

Special wind region = Yes

Windborne debris zone = No

Seismic Design Category = B

Weathering = severe

Frost line depth = 32 inches

Termite = slight

Decay = none to slight

Winter Design Temp = 2 degrees Fahrenheit



1 Ice barrier underlayment required = NO  
 2 Flood Hazards = See Sections 9-3-3 through 9-3-9, B.R.C. 1981  
 3 Air freezing index = 459  
 4 Mean annual temp = 52.1  
 5 Elevation = 5,385 feet  
 6 Latitude = 40 degrees  
 7 Winter Heating = 0 degrees Fahrenheit  
 8 Summer Cooling = 91 degrees Fahrenheit  
 9 Altitude Correction Factor= 0.821  
 10 Indoor Design Temperature = 72 degrees Fahrenheit  
 11 Design Temperature Cooling = 75 degrees Fahrenheit  
 12 Heating Temperature difference = 66 degrees Fahrenheit  
 13 Cooling Temperature difference = 18 degrees Fahrenheit  
 14 Wind Velocity Heating = 15  
 15 Wind Velocity Cooling = 7.5  
 16 Coincident Wet Bulb = 59 degrees Fahrenheit  
 17 Daily Range = High  
 18 Winter Humidity = 30%  
 19 Summer Humidity = 50%

20 (h) Section R301.2.4, "Floodplain construction": A new sentence is added to the end of the  
 21 section reading "All work on structures in the scope of this code shall also meet the  
 22 requirements of Sections 9-3-2 through 9-3-9, B.R.C 1981."

23 (i) ~~The exception listed in Section R302.2, "Townhouses," is repealed and reenacted to read:~~

24 ~~**Exception:** A common 1-hour fire-resistance-rated wall assembly tested in accordance  
 25 with ASTM E 119 or UL 263 is permitted for townhouses equipped throughout with an  
 automatic sprinkler system installed in accordance with the requirements of Section  
 P2904 if such walls do not contain plumbing or mechanical equipment, ducts, or vents in  
 the cavity of the common wall. The wall shall be rated for fire exposure from both sides  
 and shall extend to and be tight against exterior walls and the underside of the roof  
 sheathing. Electrical installations shall be installed in accordance with chapters 34  
 through 41 and chapter 43. Penetrations of electrical outlet boxes shall be in accordance  
 with Section R302.4. For townhouses not equipped throughout with an automatic  
 sprinkler system installed in accordance with the requirements of Section P2904, a  
 common 2-hour fire-resistance-rated wall is permitted if such walls do not contain  
 plumbing or mechanical equipment, ducts or vents in the cavity of the common wall.  
 Electrical installations shall be installed in accordance with chapters 34 through 41 and~~

chapter 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

Section R306, "Flood-resistant construction," is repealed and reenacted to read:

**R306 Flood resistant construction.** Buildings and structures constructed in whole or in part in the floodplain must be designed and constructed in accordance with the floodplain regulations of Title 9, Land Use Code, B.R.C. 1981.

(f) The first sentence of the Exception to Item 2 in Section R302.2.4, "Parapets for townhouses," is amended by deleting "a minimum class C roof covering" and replacing it with "a minimum Class B roof covering."

(j) A new Section R333, Construction Waste Management, is added to read:

**SECTION R333 CONSTRUCTION WASTE MANAGEMENT**

**R333.1 Residential construction waste recycling.** An applicant for a building permit to construct a new dwelling unit shall demonstrate all recyclable wood, metal and cardboard materials were donated, reused or recycled.

**R333.1.1 Reporting.** Within sixty days following rough inspections and prior to final inspection, the applicant shall submit documentation to the city manager which proves that all recyclable wood, metal and cardboard was donated, reused, or recycled. The documentation shall consist of a final completed waste diversion report in a form as prescribed by the city manager showing the tonnage of materials salvaged for recycling and reuse, supported by original weight receipts or other waste documentation that reasonably verifies that materials generated from the site have been accepted for recycling, reuse, salvage or otherwise diverted. For construction debris for which weighing is not practical due to size, lack of scales at the facility, or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates established by the city manager.

**R333.2 Residential deconstruction waste recycling.** An applicant for a full demolition shall adhere to the requirements of Sections R333.2.1 through R333.2.5.

**R333.2.1 Diversion requirements.** The applicant shall divert from landfills at least seventy-five percent of the waste tonnage of demolition debris generated from the project by using recycling, reuse, and diversion programs. The building official may modify this requirement if the applicant demonstrates it is unfeasible as set forth in Section R333.2.2. The materials diverted must also include at least three of the material types set forth in the deconstruction plan form established by the city manager.

1 **R333.2.2 Information required before issuance of demolition and/or building**  
 2 **permit.** The applicant shall submit a properly completed deconstruction plan in a form as  
 3 established by the city manager. The applicant must propose to divert at least three of the  
 4 material types identified by the building official in the deconstruction plan form. No  
 5 building permit or demolition permit shall be issued prior to the approval of the  
 6 deconstruction plan by the building official. In estimating the volume or weight of  
 7 materials identified in the deconstruction plan, the applicant shall use the standardized  
 8 conversion rates established by the building official. The building official may modify  
 9 the required diversion percentage if the applicant demonstrates in the deconstruction plan  
 10 that the percentage is not feasible because the maximum weight of materials that can be  
 11 reused or recycled is less than the required diversion rate, or due to the presence of  
 12 materials that are unable to be diverted due to special waste conditions such as  
 13 environmental hazards.

14 **R333.2.3 Administrative fee and deposit required.** Prior to issuance of a permit for a  
 15 full demolition or level 4 alteration as defined in the 2024 City of Boulder Energy  
 16 Conservation Code, the applicant shall post a cash deposit and pay the administrative fee  
 17 described in Section 4-20-72, B.R.C. 1981. The cash deposit shall be one dollar per  
 18 square foot of the demolition or work area of the alteration as identified in the permit  
 19 application, or \$1,500, whichever is greater.

20 **R333.2.4 Reporting.** Within sixty days following the completion of the demolition or  
 21 alteration, the applicant shall submit documentation to the city which proves compliance  
 22 with the requirements of Sections R328.2.1 and R328.2.2. The documentation shall  
 23 consist of a final completed waste diversion report in a form established by the building  
 24 official showing the tonnage of materials salvaged for recycling and reuse, supported by  
 25 original weight receipts or other waste documentation that reasonably verifies that  
materials generated from the site have been accepted for recycling, reuse, salvage or  
otherwise diverted at the required diversion percentage. The documentation shall further  
demonstrate that the diverted materials include at least three material types. For  
demolition debris for which weighing is not practical due to size, lack of scales at facility,  
or other considerations, a volumetric measurement shall be used. For conversion of  
volumetric measurements to weight, the applicant shall use the standardized conversion  
rates established by the building official.

**R333.2.5 Deposit refunded or forfeited.** No applicant shall fail to comply with Sections  
R328.2.1 through R328.2.4. The deposit shall be refunded to the applicant in proportion  
to the ratio of the actual diversion rate to the required diversion rate. If the required  
diversion percentage is not fully complied with, the remainder of the deposit shall be  
forfeited to the city as a civil penalty for failure to comply with the requirements of this  
chapter, after notice and an opportunity for hearing under the procedures prescribed by  
Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The city manager may adjust the  
amount of the refund or forfeiture where the applicant demonstrates that the required  
diversion percentage was not feasible based on the factors identified in Section R328.2.2  
for modification of the diversion percentage. The forfeiture remedy is cumulative and is  
in addition to any other action the city manager is authorized to take, including

suspension or revocation of a building contractor license or prosecution in the municipal court. Each 2,500 square feet of the demolition or alteration shall give rise to a separate violation, and each violation is subject to a maximum fine of \$2,500.

(k) Section R302.5.1, "Opening protection," is repealed and reenacted to read:  
**R302.5.1 Opening protection.** Openings from a garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with weather stripped, solid wood doors not less than 1 and 3/8 inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 1 and 3/8 inches (35 mm) in thickness, or 20-minute fire-rated doors, equipped with a self-closing device.

The first paragraph of Section R401.1, "Application," is repealed and reenacted to read:

**R401.1 Application.** The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for all buildings. In addition to the provisions of this chapter, the design and construction of foundations in a floodplain as established in Title 9, Land Use Code, B.R.C. 1981, shall meet all applicable provisions of Title 9, Land Use Code, B.R.C. 1981. Where, in any specific case, the provisions of this code and the B.R.C. are in conflict, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Wood foundations shall be designed and installed in accordance with AF&PA PWF.

(l) Section R311.2, "Egress doors," is repealed and reenacted to read:  
**R311.2 Egress doors.** At least one egress door shall be provided for each dwelling unit. The egress door shall be side hinged, and shall provide a minimum clear width of 32 inches (813 mm) when measured between the face of the door and the stop, with the door open 90 degrees (1.57 rad). The minimum clear height of the door opening shall not be less than 78 inches (1981 mm) in height measured from the top of the threshold to the bottom of the stop.

A new Section R401.5, "Placement of backfill," is added to read:

**R401.5 Placement of backfill.** The provisions of Section 1804.3 of the Building Code of the City of Boulder shall apply to the placement of backfill.

(m) The following sentences are added to the end of Section R311.7.5.1, "Risers":  
Where the bottom or top riser adjoins a sloping public way, walkway, or driveway having an established grade and serving as a landing, the bottom or top riser is permitted to be reduced along the slope, with the variation in height of the bottom or top riser not to exceed one unit vertical in 12 units horizontal (8 percent slope) of stairway width. The nosings or leading edges of treads at such non uniform height risers shall have a distinctive marking stripe, different from any other nosing marking provided on the stair flight. The

1 distinctive marking stripe shall be visible in descent of the stair and shall have a slip-  
2 resistant surface. Marking stripes shall have a width of at least 1 inch (25 mm) but not  
3 more than 2 inches (51 mm).

4 Section R408.7, "Flood resistance," is repealed and reenacted to read:

5 **R408.7 Flood resistance.** Buildings located in a floodplain as established in Title 9, Land  
6 Use Code, B.R.C. 1981, shall comply with the applicable provisions in Title 9, Land Use  
7 Code, B.R.C. 1981.

8 (n) ~~A new Section R311.9, "Access to exterior balconies, porches, decks, and other walking  
9 surfaces from the interior of the building," is added, reading as follows:~~

10 ~~**R311.9 Access to exterior balconies, porches, decks, and other walking surfaces**  
11 **from the interior of the building.** Access to exterior balconies, porches, decks, and  
12 other walking surfaces from the interior of the building shall be through a side-hinged or  
13 sliding glass door and shall provide a minimum clear width of 24 inches (610 mm), when  
14 measured between the face of the door and the stop, when the door, other than the sliding  
15 glass door, is open 90 degrees (1.57 rad). The minimum clear height of the door opening  
16 shall not be less than 78 inches (1981 mm) in height, measured from the top of the  
17 threshold to the bottom of the stop. Access to exterior balconies, porches, decks, and  
18 other walking surfaces from the interior of the building for the required egress door shall  
19 meet the provisions of Section 311.2 for required height and width.~~

20 (o) ~~Section R315.1, "Carbon monoxide alarms," is repealed and reenacted to read:~~

21 ~~**R315.1 Carbon monoxide alarms.** For new construction, an approved carbon monoxide  
22 alarm shall be installed outside each sleeping area in the immediate vicinity of bedrooms  
23 in dwelling units within which fuel-fired appliances are installed and in dwelling units  
24 and accessory structures containing habitable space that have attached garages. All  
25 carbon monoxide alarms shall be installed so as to meet the requirements of Section  
26 R315, Carbon monoxide alarms, and of the applicable provisions of Sections 38-45-101  
27 through 106, C.R.S. Where the provisions of this code and the C.R.S. are in conflict, the  
28 most restrictive shall govern. Where there is a conflict between a general requirement and  
29 a specific requirement, the specific requirement shall be applicable.~~

30 Item 3 of Section R806.5, "Unvented attic and unvented enclosed rafter assemblies," is  
31 deleted.

32 (p) ~~Section R322, "Flood resistant construction," is repealed and reenacted to read:~~

33 ~~**R322 Flood resistant construction.** Buildings and structures constructed in whole or in  
34 part in the floodplain must be designed and constructed in accordance with the floodplain  
35 regulations of Title 9, Land Use Code, B.R.C. 1981.~~

36 Section R902.1, "Roof assemblies," is repealed and reenacted to read:

**R902.1 Roof covering materials.** All roof covering materials shall be listed as Class A as tested in accordance with UL Standard 790 or ASTM Standard E 108. Roof assemblies with covering of brick, masonry, slate, clay, or concrete roof tile, exposed concrete roof deck, ferrous or copper shingles or sheets, and metal sheets and shingles, shall be considered Class A roof coverings. Unless otherwise specified in this section, roof coverings shall be installed to resist the component and cladding loads specified in table R301.2(2), adjusted for height and exposure in accordance with table R301.2(3).

~~(q)~~ A new Section R328, Construction Waste Management, is added to read:

~~(tu)~~ Exception 1 in Section R703.2, "Water resistive barrier," is repealed and reenacted to read:

~~**Exception 1:** In detached accessory buildings which are not intended to be conditioned and where the interior wall cavities will remain exposed and unfilled.~~

~~(uv)~~ Exception 3 of Section R806.5, "Unvented attic and unvented enclosed rafter assemblies," is deleted.

~~(vw)~~ Section R902.1, "Roof covering materials," is repealed and reenacted to read:

~~**R902.1 Roof covering materials.** All roof covering materials shall be listed as Class A as tested in accordance with UL Standard 790 or ASTM Standard E 108. Roof assemblies with covering of brick, masonry, slate, clay, or concrete roof tile, exposed concrete roof deck, ferrous or copper shingles or sheets, and metal sheets and shingles, shall be considered Class A roof coverings. Unless otherwise specified in this section, roof coverings shall be installed to resist the component and cladding loads specified in table R301.2(2), adjusted for height and exposure in accordance with table R301.2(3).~~

~~(qx)~~ Section R905.7, "Wood shingles," is repealed and reenacted to read:

~~**R905.7 Wood shingles.** Wood shakes, wood shingles, and wood roof covering materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, for certain minimal repairs.~~

~~(ry)~~ Section R905.8, "Wood shakes," is repealed and reenacted to read:

~~**R905.8 Wood shakes.** Wood shakes, wood shingles, and wood roof covering materials are prohibited except as provided in Section 10-5-5, "Wood Roof Covering Materials Prohibited," B.R.C. 1981, for certain minimal repairs.~~

~~(sz)~~ Chapter 11, "Energy Efficiency." Sections N1101 through N111305 are repealed. A new Section N1101 is added to read:

~~**N1101 Scope.** Regulations concerning the design and construction of buildings for the effective use of energy and requirements for green building practices shall be~~

administered in accordance with the ~~2024~~ *City of Boulder Energy Conservation Code* as adopted by Chapter 10-7, "Energy Conservation Code," B.R.C. 1981.

(taa) Section M1301.1.1, "Flood-resistant installation," is repealed and reenacted to read:

**M1301.1.1 Flood-resistant installation.** In floodplains, as established in Title 9, Land Use Code, B.R.C. 1981, the mechanical appliances, equipment and systems shall be located or installed in accordance with the applicable provisions of Title 9, Land Use Code, B.R.C. 1981.

~~(aabb) A new Section M1308.3, "Rooftop equipment support and clearances," is added to read:~~

~~**M1308.3 Rooftop equipment support and clearances.**~~

~~(1) Mechanical equipment placed, replaced, or resting over roofing shall be supported by curbs or legs which shall be flashed to the roofing and made watertight. Mechanical equipment includes, but is not limited to, heating equipment, cooling and refrigeration equipment, ventilating fans, blowers, and other similar devices located on the roof.~~

~~(2) Flat roofs. On roofs having a pitch of less than 2 in 12, mechanical equipment shall be supported on a solid curb greater in size than the equipment which it serves. Curbs may be manufactured or built in place. If built in place, the curb shall be covered with metal of at least 26 gauge. The metal shall be weather tight. The curb shall be a minimum of 9 inches above the finished roof.~~

~~(A) Ducts less than 4 feet in width shall have at least 12 inches clearance from the finished roof surface to the bottom of the duct.~~

~~(B) Ducts between 4 feet and 8 feet in width shall have at least 24 inches clearance from the finished roof surface to the bottom of the duct.~~

~~(C) Ducts over 8 feet in width shall have at least 36 inches clearance from the finished roof surface to the bottom of the duct.~~

~~(3) Pitched roofs. On roofs having a roof pitch exceeding 2 in 12, mechanical equipment may be set on legs which provide a minimum of 11 inches clearance between the finished roof surface and the equipment frame.~~

(uee) Section M1401.5, "Flood hazard," is repealed and reenacted to read:

**M1401.5 Flood hazard.** In floodplains, as established in Title 9, Land Use Code, B.R.C. 1981, heating and cooling equipment and appliances shall be located or installed in accordance with the provisions of Title 9, Land Use Code, B.R.C. 1981.

(vdd) Section M1601.4.10, "Flood hazard areas," is repealed and reenacted to read:

1 **M1601.4.10 Flood hazard areas.** In floodplains, as established in Title 9, Land Use  
2 Code, B.R.C. 1981, duct systems shall be located or installed in accordance with the  
provisions of Title 9, Land Use Code, B.R.C. 1981.

3 (wee) A new sentence is added to Section M1602.2, "Return air openings," to read:

4 11. Within individual dwelling units there shall be at least one return air opening on each  
5 floor.

6 (xff) Section M2001.4, "Flood-resistant installation," is repealed and reenacted to read:

7 **M2001.4 Flood-resistant installation.** In floodplains, as established in Title 9, Land Use  
8 Code, B.R.C. 1981, boilers, water heaters and their control systems shall be located or  
installed in accordance with the provisions of Title 9, Land Use Code, B.R.C. 1981.

9 (ygg) Section M2201.6, "Flood-resistant installation," is repealed and reenacted to read:

10 **M2201.6 Flood-resistant installation.** In floodplains, as established in Title 9, Land Use  
11 Code, B.R.C. 1981, tanks shall be located or installed in accordance with the provisions  
of Title 9, Land Use Code, B.R.C. 1981.

12 (zhh) Section G2404.7, "Flood hazard," is repealed and reenacted to read:

13 **G2404.7 Flood hazard.** In floodplains, as established in Title 9, Land Use Code, B.R.C.  
14 1981, the appliance, equipment, and system installations regulated by this code shall be  
located or installed in accordance with the provisions of Title 9, Land Use Code, B.R.C.  
15 1981.

16 (aañ) ~~Items 2 and 3 of Section G2427.8, "Venting system termination- clearances location," is~~  
17 ~~amended by adding~~ are amended by adding a new sentence to the end of the section  
reading:

18 ~~of each Items 2 and 3, reading:~~

19 \_\_\_\_\_ Mechanical draft venting system and through-the-wall direct vent terminals shall  
20 terminate a minimum of 18 inches (46 mm) above finished grade in the immediate  
vicinity of each vent.

21 ~~Vents shall terminate a minimum of 18 inches (46 mm) above finished grade in the~~  
22 ~~immediate vicinity of each vent.~~

23 (~~iiij~~) ~~Section P2503.7, "Water supply system testing," is repealed and reenacted to read:~~

24 ~~**P2503.7 Water supply system testing.** Upon completion of the water supply system or a~~  
25 ~~portion of it, the system or portion completed shall be tested and proved tight under a~~  
~~water pressure of not less than the working pressure of the system or by an air test of not~~



~~less than 100 psi (689.5 kPa). This pressure shall be held for not less than 15 minutes. The water used for tests shall be obtained from a potable water source.~~

~~(bbkk)~~ The Exception to Section P2601.2, "Connections to drainage system," is deleted in its entirety.

~~(ccH)~~ Section P2601.3, "Flood hazard areas," is repealed and reenacted to read:

**P2601.3 Flood hazard areas.** In floodplains, as established in Title 9, Land Use Code, B.R.C. 1981, plumbing fixtures, drains, and appliances shall be located or installed in accordance with the provisions of Title 9, Land Use Code, B.R.C. 1981.

~~(ddmm)~~ The first sentence of Section P2602.2, "Flood-resistant installation," is repealed and reenacted to read:

In floodplains, as established in Title 9, Land Use Code, B.R.C. 1981:

Items 1 and 2 remain unchanged.

~~(mmnn)~~ Table P2903.2, "Maximum Flow Rates and Consumption for Plumbing Fixtures and Fixture Fittings," shall be repealed and reenacted to read:

<del>PLUMBING FIXTURE OR FIXTURE FITTING</del>	<del>PLUMBING FIXTURE OR FIXTURE FITTING</del>
<del>Lavatory Faucet</del>	<del>1.5 gpm at 60 psi</del>
<del>Shower Head</del>	<del>2.0 gpm at 60 psi</del>
<del>Sink Faucet</del>	<del>1.5 gpm at 60 psi</del>
<del>Water Closet</del>	<del>1.28 gallons per flushing cycle</del>

~~For SI: 1 gallon per minute = 3.785 L/m,~~

~~1 pound per square inch = 6.895 kPa.~~

~~a. A handheld shower spray is also a shower head.~~

~~b. Consumption tolerances shall be determined from referenced standards.~~

~~(eeoo)~~ Section P3001.3, "Flood-resistant installation," is repealed and reenacted to read:

**P3001.3 Flood-resistant installation.** In floodplains, as established in Title 9, Land Use Code, B.R.C. 1981, drainage, wastes, and vent systems shall be located and installed to prevent infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

1 (~~ffpp~~) Section P3009, "Subsurface Landscape Irrigation Systems Greywater Soil Absorption  
2 Systems," is deleted in its entirety.

3 (~~ggqq~~) Section P3101.5, "Flood resistance," is repealed and reenacted to read:

4 **P3101.5 Flood resistance.** In floodplains, as established in Title 9, Land Use Code,  
5 B.R.C. 1981, vents shall be located or installed in accordance with the provisions of Title  
6 9, Land Use Code, B.R.C. 1981.

7 (~~hhrr~~) Appendix BEF, "Radon Control Method," is hereby repealed and reenacted to read as  
8 follows:

9 **APPENDIX BEF**  
10 **RADON CONTROL METHOD**

11 The requirements of Appendix BE F to the 202418 edition of the *International*  
12 *Residential Code* of the International Code Council shall hereby be complied with which  
13 appendix is hereby adopted by reference as part of the City of Boulder Residential Code  
14 and have the same force and effect as though fully set forth in this subsection.

15 (~~iiss~~) Appendix CFP, "Sizing of Water Piping System," is hereby repealed and reenacted to  
16 read as follows:

17 **APPENDIX CFP**  
18 **SIZING OF WATER PIPING SYSTEM**

19 The requirements of Appendix CFP to the 202418 edition of the *International Residential*  
20 *Code* of the International Code Council shall hereby be complied with which appendix is  
21 hereby adopted by reference as part of the City of Boulder Residential Code and have the  
22 same force and effect as though fully set forth in this subsection, except as specifically  
23 amended by the provisions of this subsection.

24 (~~jjtt~~) Appendix BBQ, "Tiny Houses," is hereby repealed and reenacted to read as follows:

25 **APPENDIX BBQ**  
**TINY HOUSES**

The requirements of Appendix BBQ to the 202418 edition of the *International*  
*Residential Code* of the International Code Council shall hereby be complied with which  
appendix is hereby adopted by reference as part of the City of Boulder Residential Code  
and have the same force and effect as though fully set forth in this subsection, except as  
specifically amended by the provisions of this subsection.

~~AQ101.1 "Scope" is hereby repealed and reenacted to read as follows:  
This appendix shall be applicable to tiny houses used as single dwelling units. Tiny  
houses shall comply with this code except as otherwise stated in this appendix. Tiny~~

houses shall be on permanent foundations and permanently connected to utilities, as required by this code. Tiny houses constructed off site shall be inspected and approved for compliance with this code, by third party special inspectors pre-approved by the building official. The building official may use the provisions of the City of Boulder Building Code to administer the requirements for approving special inspectors.

BB101.1 "Scope" is hereby repealed and reenacted to read as follows:

This appendix shall be applicable to site built tiny houses used as single dwelling units. Tiny houses shall comply with this code except as otherwise stated in this appendix. Tiny houses shall be on permanent foundations and permanently connected to utilities, as required by this code. Tiny houses constructed off-site shall be built and installed in accordance with C.R.S. § 24-32-3311(6).

~~(ttuu) A new footnote notation "b" is added to the heading and a new footnote "b" is added to AP Table AP103.3(2), "Load values assigned to fixtures," reading:~~

~~b. For the purpose of determining the largest instantaneous demand required in order to size a water meter, this table is repealed and replaced by Chapter 11-1-35, "Meter Size Requirements," B.R.C. 1981.~~

Section 11. Section 10-5.6.1, "Legislative Intent," B.R.C. 1981, is amended to read as follows:

**10-5.6-1. Legislative Intent.**

The purpose of this chapter is to protect the public health and safety by regulating the repair, alteration, change of occupancy, addition to and relocation of existing buildings in the city. This chapter is intended to encourage the use and reuse of existing buildings while requiring reasonable upgrades and improvements. The city council hereby adopts the 2024~~18~~ edition of the *International Existing Building Code* with certain amendments, additions and deletions found to be in the best interests of the city.

Section 12. Section 10-5.6.2, "Adoption of the International Existing Building Code With Modifications," B.R.C. 1981, is amended to read as follows:

**10-5.6-2. Adoption of the International Existing Building Code With Modifications.**

(a) The 2024~~18~~ edition of the *International Existing Building Code* of the International Code Council is hereby adopted by reference as the City of Boulder Existing Building Code and has the same force and effect as though fully set forth in this chapter, ~~except as specifically amended by the provisions of this chapter. This code shall be administered in accordance with Chapter 1, "Administration," of the International Building Code as~~

1 adopted, with amendments, by Section 10-5-2, "Adoption of International Building Code  
2 With Modifications," B.R.C. 1981.

- 3 (b) ~~Section 104.2.1, Determination of substantially improved or substantially damaged  
4 existing buildings and structures in flood hazard areas, is amended by the addition of a  
5 new sentence to read:~~

6 ~~"In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
7 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
8 Code, B.R.C. 1981."~~

9 Section 101.1, "Title" is repealed and reenacted to read:

10 101.1 Title. These regulations shall be known as the Existing Building Code of the City  
11 of Boulder or existing building code and shall be cited as such and will be referred to  
12 herein as "this code."

- 13 (c) ~~Section 104.10.1, "Flood hazard areas," is repealed and reenacted to read:~~

14 ~~In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
15 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
16 Code, B.R.C. 1981.~~

17 Sections 102 through 103 are repealed. This code shall be administered in accordance  
18 with Chapter 1, "Administration," of the International Building Code as adopted, with  
19 amendments, by Section 10-5-2, "Adoption of International Building Code with  
20 Modifications," B.R.C. 1981.

- 21 (d) ~~Section 104.2.4.1, "Flood hazard areas," is repealed and reenacted to read:~~

22 ~~In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
23 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
24 Code, B.R.C. 1981.~~

- 25 (e) ~~Section 104.3.1, "Determination of substantially improved or substantially damaged  
existing buildings and structures in flood hazard areas", is amended by the addition of a  
new sentence to read:~~

~~"In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981."~~

- (f) ~~Section 109.3.3, "Lowest floor elevation," is repealed and reenacted to read:~~

1 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
2 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

3 (ge) Section 301.3 Alteration, addition or change of occupancy, is amended by replacing the  
4 exception with the following:

5 Exception:

6 Subject to the approval of the code official, alterations complying with the laws in  
7 existence at the time the building or the affected portion of the building was built  
8 shall be considered in compliance with the provisions of this code. New structural  
9 members added as part of the alteration shall comply with the International  
10 Building Code. This exception shall not apply to alterations that constitute  
substantial improvement in flood hazard areas, which shall comply with Section  
503.2, 701.3 or 1301.3.3; and in accordance with the provisions of Title 9, Land  
Use Code, B.R.C. 1981. This exception shall not apply to the structural provisions  
of Chapter 5 or to the structural provisions of Sections 706, 806 and 906.

11 (hf) Section 401.3 "Flood hazard areas" is repealed and reenacted to read:

12 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
13 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

14 (ig) Section 405.2.6~~5~~ "Flood hazard areas" is repealed and reenacted to read:

15 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
16 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

17 (jh) Section 502.2~~3~~ "Flood hazard areas" is repealed and reenacted to read:

18 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
19 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
20 Code, B.R.C. 1981.

21 (ki) Section 503.2 Flood hazard areas is repealed and reenacted to read:

22 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
23 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

24 (lj) Section 507.3 "Flood hazard areas" is repealed and reenacted to read:

1 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
2 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

3 (mk) Section 701.3 "Flood hazard areas" is repealed and reenacted to read:  
4 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
5 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

6 (nl) Section 1103.3 "Flood hazard areas" is repealed and reenacted to read:  
7  
8 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
9 scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

10 (om) Section 1201.4 "Flood hazard areas" is repealed and reenacted to read:  
11  
12 In floodplains, as established in Title 9, Land Use Code, all work on structures in the  
scope of this code shall also be in accordance with the provisions of Title 9, Land Use  
Code, B.R.C. 1981.

13 (pn) Section 1301.3.3 "Compliance with flood hazard provisions" is repealed and reenacted to  
14 read:

15 **1301.3.3 Compliance with flood hazard provisions.** In floodplains, as established in  
16 Title 9, Land Use Code, all work on structures in the scope of this code shall also be in  
accordance with the provisions of Title 9, Land Use Code, B.R.C. 1981.

17 (qe) Section 1402.6 "Flood hazard areas" is repealed and reenacted to read:  
18  
19 If relocated or moved into a flood hazard area, as established in Title 9, Land Use Code,  
all work on structures in the scope of this code shall also be in accordance with the  
provisions of Title 9, Land Use Code, B.R.C. 1981.

20 (p) ~~Section 803.2.2 "Groups A, B, E, F-1, H, I, M, R-1, R-2, R-4, S-1 and S-2" is repealed  
and reenacted to read:~~

21 ~~In buildings with occupancies in Groups A, B, E, F-1, H, I, M, R-1, R-2, R-4, S-1 and S-  
22 2, work areas that have exits or corridors shared by more than one tenant or that have  
exists or corridors serving an occupant load greater than 30 shall be provided with  
23 automatic sprinkler protection where both of the following conditions occur:~~

24 ~~1. The work area is required to be provided with automatic sprinkler protection in  
25 accordance with the *International Building Code* as applicable to new  
construction.~~

2. ~~The work area exceeds 50 percent of the floor area.~~

(q) ~~Section 904.1.4 Other required automatic sprinkler systems, is repealed and reenacted to read:~~

~~**904.1.4 Other required automatic sprinkler systems.** In buildings and areas listed in Table 903.2.11.6 of the *International Building Code*, work areas that have exits or corridors shared by more than one tenant or that have exits or corridors serving an occupant load greater than 30 shall be provided with an automatic sprinkler system under the following conditions:~~

1. ~~The work area is required to be provided with an automatic sprinkler system in accordance with the International Building Code applicable to new construction.~~

(r) APPENDIX B, "SUPPLEMENTARY ACCESSIBILITY REQUIREMENTS FOR EXISTING BUILDINGS AND FACILITIES," and sections contained therein are adopted.

Section 13. Section 10-6-1, "Legislative Intent," B.R.C. 1981, is amended to read as follows:

**10-6-1. Legislative Intent.**

The purpose of this chapter is to protect the public health and safety by regulating the installation, alteration, or repair of or addition to electrical conductors or equipment installed within or on any structure in the city. The city council hereby adopts the current National Electrical Code, as currently adopted by the State of Colorado or as is from time to time modified, reenacted or readopted by the State of Colorado.

Section 14. Section 10-6-2, "Adoption of the National Electrical Code With Modifications," B.R.C. 1981, is amended to read as follows:

**10-6-2. Adoption of the National Electrical Code With Modifications.**

(a) The current National Electrical Code of the National Fire Protection Association, as currently adopted by the State of Colorado or as is from time to time modified, reenacted or readopted by the State of Colorado is hereby adopted by reference as the City of Boulder Electrical Code or electrical code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) This code shall be administered in accordance with Chapter 1, Administration, of the 202418 edition of the International Building Code and Appendix K, Administrative Provisions, of the 202418 edition of the International Building Code, as adopted,

1 respectively, with amendments, by Section 10-5-2, "Adoption of the International  
2 Building Code With Modifications," B.R.C. 1981.

3 Section. Section 10-6-3, "Arc-Fault Circuit-Interrupter Protection in Existing Dwelling  
4 Units," is deleted in its entirety and reserved:

5 ~~When electrical panels or sub-panels are replaced or added in existing dwelling units, arc-  
6 fault circuit interrupter protection shall be provided for each replaced or added electrical  
7 panel or subpanel meeting the standards for new construction under the City of Boulder  
8 Electrical Code. The listed arc-fault circuit interrupter protective device shall be located  
9 at the origin of each circuit requiring protection.~~

10 Section 15. Section 10-8-1, "Legislative Intent," B.R.C. 1981, is amended to read as  
11 follows:

12 **10-8-1. Legislative Intent.**

13 The purpose of this chapter is to protect public health and safety by regulating the use, condition,  
14 construction, alteration, and repair of property, structures, and occupancies in the city in order to  
15 prevent the ignition and spread of fire and risk of harm to persons or property from fire and other  
16 causes. The city council hereby adopts the 202418 edition of the *International Fire Code* with  
17 certain amendments, additions, and deletions thereto found to be in the best interests of the city.  
18 The standards provided in this chapter shall be used, insofar as they are applicable, in  
19 determining whether a condition is hazardous, whether any work that has been performed has  
20 been done in an approved manner, or whether any equipment is of an approved type or quality,  
21 and in any determination concerning fire hazards and fire safety in the city building code not  
22 specifically provided for therein.

23 Section 16. Section 10-8-2, "Adoption of International Fire Code With Modifications,"  
24 B.R.C. 1981, is amended to read as follows:

25 **10-8-2. Adoption of International Fire Code With Modifications.**

- 26 (a) The 202418 edition of the *International Fire Code* of the International Code Council is  
27 adopted by reference as the City of Boulder Fire Code, and Code and has the same force  
28 and effect as though fully set forth in this chapter, except as specifically amended by the  
29 provisions of this chapter.
- 30 (b) The Fire Code adopted by Subsection (a) of this section is amended in the following  
31 places:
  - 32 (1) ~~Section 102.3 is repealed and reenacted to read:~~



~~**102.3 Change of use or occupancy.** No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made comply with the requirements of this code and the International Building Code.~~

(12) Section 103.1 is repealed and reenacted to read:

**103.1 Community Risk Reduction.** A Community Risk Reduction is established within the fire department under the direction of the manager, which shall consist of such fire department personnel as may be assigned thereto by the manager. The function of this division shall be to assist the manager in the administration and enforcement of the provisions of this code.

(2) Section 104.5 is repealed and reenacted to read:

**104.5 Identification.** For the purposes of this section, the term "fire code official" includes all firefighters appointed pursuant to Section 2-5-4, "Identification Card for Firefighters," B.R.C. 1981.

(3) Section ~~104.8~~ ~~103.4~~ is repealed and reenacted to read:

**104.8 ~~103.4~~ Liability.**

The fire code shall not be construed to hold the City of Boulder or any of its employees or agents responsible for any damage to persons or property by reason of inspection or reinspection or failure to inspect or reinspect as herein provided or by reason of the approval or disapproval of any equipment as herein provided.

No employee of the city who enforces, attempts to enforce, or is authorized to enforce the fire code renders him or herself or the city liable to third parties for any damage or injury to the person or property of such third parties as a result of the enforcement or nonenforcement of the fire code. The city assumes no duty of care by virtue of the adoption of the fire code. No person is justified in relying upon the approval of a plan, the results of an inspection, or the issuance of a certificate of inspection or occupancy, and such approvals, inspections, and certificates are not a guarantee that the plan or work so approved, inspected, or certificated in fact complies with all requirements of the fire code. It is the duty of the person owning, controlling, or constructing any building or structure to ensure that the work is done in accordance with the requirements of the fire code, and it is such persons and not the city who are responsible for damages caused by negligent breach of such duty.

(4) Section ~~104.4~~ is repealed and reenacted to read:

**104.4 Identification.** For the purposes of this section, the term "fire code official" includes all firefighters appointed pursuant to Section 2-5-4, "Identification Card for Firefighters," B.R.C. 1981.

Section 105.5 is repealed and reenacted to read:

**105.5 Required operational permits.** The fire code official may issue an operational permit for the following operations:

- (a) 105.5.16, Explosives
- (b) 105.5.25 Hot Work Operations (outside)
- (c) 105.5.29 Lithium batteries
- (d) 105.5.36, Open Burning
- (e) 105.5.40, Outdoor assembly events
- (f) 105.5.44, Pyrotechnic special effects material
- (g) 105.5.51, Temporary membrane structures and tents
- (h) 105.5.58 Valet trash and recycling collection in Group R-2 occupancies

(5) Section 105.6 is repealed and reenacted to read:

**105.6 Required operational permits.** The fire code official may issue an operational permit for the following operations:

- (a) 105.6.14, Explosives
- (b) 105.6.32, Open Burning
- (c) 105.6.36, Outdoor assembly events
- (d) 105.6.38, Plant extraction systems
- (e) 105.6.40, Pyrotechnic special effects material
- (f) 105.6.47, Temporary membrane structures and tents

**105.6 Required construction permits.** All construction permits will be issued by the building official. Community Risk Reduction will be the approving authority for the following:

- (a) 105.6.1, Automatic fire-extinguishing systems
- (b) 105.6.2 Automatic sprinkler systems
- (c) 105.6.3 Compressed gases
- (d) 105.6.5 Emergency responder communication coverage system
- (e) 105.6.7, Fire alarm and detection systems and related equipment
- (f) 105.6.8, Fire pumps and related equipment
- (g) 105.6.11 Gas detection systems
- (h) 105.6.14 High-pile combustible storage
- (i) 105.6.16 LP-Gas
- (j) 105.6.24, Stand-pipe systems
- (k) 105.6.26 Access control system

- 1 (6) ~~Section 105.7 is repealed and reenacted to read:~~  
 2 ~~**105.7 Required construction permits.** All construction permits will be issued by~~  
 3 ~~the building official. Community Risk Reduction will be the approving authority~~  
 4 ~~for the following:~~  
 5 (a) ~~105.7.1, Automatic fire extinguishing systems~~  
 6 (b) ~~105.7.7, Fire alarm and detection systems and related equipment~~  
 7 (c) ~~105.7.8, Fire pumps and related equipment~~  
 8 (d) ~~105.7.11 Gas detection systems~~  
 9 (e) ~~105.7.14 High pile combustible storage~~  
 10 (f) ~~105.7.18 Plant indoor cultivation and extraction systems~~  
 11 (g) ~~105.7.24, Stand pipe systems~~

12 Section 112, "Means of Appeals," is repealed and reenacted to read:

13 **112 Appeals.**

- 14 (a) Any appeal under this section shall be heard by the Board of Building Appeals  
 15 established under Section 2-3-4, "Board of Building Appeals," B.R.C. 1981,  
 16 unless the city manager determines, due to the nature of the issues in a particular  
 17 appeal, to appoint a hearing officer under Section 1-3-5, "Hearings and  
 18 Determinations," B.R.C. 1981.
- 19 (b) Appeal of refusal to approve work or building permit. A person refused a building  
 20 permit or refused approval of work done under a permit on the grounds that the  
 21 proposed or completed construction fails to comply with this code or any other  
 22 city building code may appeal the decision on the grounds that:
- 23 1. The denial was based on an erroneous interpretation of such code by the  
 24 manager; or
  - 25 2. The manager has erroneously failed to approve an alternate material or  
method pursuant to Section 104.2.3 of the fire code prior to its installation  
or use. In determining such an appeal, the board or hearing officer shall  
apply the standards of Section 104.2.3 of the fire code.

The manager has the burden of proof under paragraph 1. above. The appellant has the  
burden of proof on appeals brought pursuant to paragraph 2. The board or hearing officer  
shall determine the appeal and decide whether the manager's interpretation or application  
of such code was correct or in error at a hearing under the procedures described by  
Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

- 26 (c) Appeal of suspension or revocation of building permit or certificates. Any person  
 27 whose building permit or certificate of occupancy or certificate of completion has  
 28 been suspended or revoked may appeal such action by the city manager on the  
 29 ground that the suspension or revocation was based on an error in fact or an  
 30 erroneous application of this code to the facts. The manager has the burden of  
 31 proving the facts upon which the manager relies at such a hearing.

1 (d) An application for appeal must be filed in writing with the city manager within  
 2 fourteen days after the date of refusal of the building permit or approval of work  
 3 performed under the permit or revocation or suspension of the building permit or  
 4 certificate of occupancy or certificate of completion stating the basis for appeal.

5 (e) Appeals Concerning Existing Conditions.

6 1. Any aggrieved person who has been issued an order or other notice of  
 7 violation under this fire code, other than a summons and complaint, under  
 8 Sections 102.1 and 102.2 concerning legally existing conditions in a  
 9 structured based upon the city manager's determination that such  
 10 conditions constitute a distinct hazard to life or property, and who believes  
 11 the alleged violation to be factually or legally contrary to the requirements  
 12 of this fire code or rules and regulations issued pursuant to this fire code  
 13 may appeal the order or notice. An appellant shall file the appeal with the  
 14 board within thirty days from the date of service of the notice of alleged  
 15 violation. The appellant may request enlargement of time to file if such  
 16 request is made before the end of the time period. The manager may  
 17 extend for a reasonable period the time to file with the board if the  
 18 applicant shows good cause therefor.

19 2. Any person aggrieved by a decision of the manager upon a reinspection  
 20 that any or all of the violations alleged in the notice of violation have not  
 21 been adequately corrected may appeal such determination by filing a  
 22 notice of appeal within fourteen days of the date of the reinspection.

23 3. The appeal will be conducted under the procedures of Chapter 1-3,  
 24 "Quasi-Judicial Hearings," B.R.C. 1981. The burden of proof is on the  
 25 manager to establish an alleged violation.

4. If the board of appeals or hearing officer affirms the determination by the  
manager, it shall grant the person a reasonable period of time to correct the  
violation appealed. Any subsequent determination by the manager as to  
whether the violations alleged in the notice of violation have been  
adequately corrected is final.

5. If no person appeals a notice of violation under this section, the provisions  
of the notice become final when the time for filing an appeal with the  
board has expired. An order appealed to court is final unless a stay is in  
effect.

6. If a person to whom the manager has issued a notice of violation does not  
appeal under this section, such person may not raise a defense to any  
subsequent prosecution in municipal court for a violation of an order that  
the conditions alleged to be violations in the notice of violation were not  
in fact or law violations.

1  
2 (f) An applicant for an appeal shall pay the fee prescribed by Section 4-20-52, "Fire  
3 Code Permit and Inspection Fees," B.R.C. 1981. The fee for an appeal heard by a  
4 hearing officer shall be the same as the fee for an appeal heard by the Board of  
5 Building Appeals.

6 (g) The manager may apply to the Board of Building Appeals, without fee, for an  
7 advisory opinion concerning alternative methods, applicability of specific  
8 requirements, approval of equipment and materials, and granting of special  
9 permission as contemplated in Section 104.2.3 or 104.2.4 of the fire code.

10 (h) The Board of Building Appeals or hearing officer has no authority to interpret  
11 Chapter 1 (the administrative requirements) of this code except as expressly  
12 provided in this section, nor, because this code sets minimum standards, to waive  
13 any requirement of this code.

14 (i) An aggrieved person seeking judicial review of a decision of the Board of  
15 Building Appeals or hearing officer made under this section shall file a complaint  
16 for such review within thirty days after the date of the decision under Colorado  
17 Rule of Civil Procedure 106(a)(4).

18 (j) If the city manager determines that the subject of an order or notice issued under  
19 this fire code constitutes an immediate hazard to the public health, safety, or  
20 welfare, the manager may order immediate compliance. Persons subject to such  
21 orders shall comply forthwith but shall be entitled to a prompt post-compliance  
22 appeal hearing before the Board of Building Appeals or a hearing officer under  
23 the procedures specified in this section.

24 (7) Section 109, "Board of Appeals," is repealed and reenacted to read:  
25 **109 Appeals.**

(a) ~~Any appeal under this section shall be heard by the Board of Building Appeals established under Section 2-3-4, "Board of Building Appeals," B.R.C. 1981, unless the city manager determines, due to the nature of the issues in a particular appeal, to appoint a hearing officer under Section 1-3-5, "Hearings and Determinations," B.R.C. 1981.~~

(b) ~~Appeal of refusal to approve work or building permit. A person refused a building permit or refused approval of work done under a permit on the grounds that the proposed or completed construction fails to comply with this code or any other city building code may appeal the decision on the grounds that:~~

1. ~~The denial was based on an erroneous interpretation of such code by the manager; or~~

2. ~~The manager has erroneously failed to approve an alternate material or method pursuant to Section 104.9 of the fire code prior to its installation or use. In determining such an appeal, the board or hearing officer shall apply the standards of Section 104.9 of the fire code.~~

1 The manager has the burden of proof under paragraph 1. above. The appellant has the  
 2 burden of proof on appeals brought pursuant to paragraph 2. The board or hearing officer  
 3 shall determine the appeal and decide whether the manager's interpretation or application  
 4 of such code was correct or in error at a hearing under the procedures described by  
 5 Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

6 (e) — ~~Appeal of suspension or revocation of building permit or certificates. Any person  
 7 whose building permit or certificate of occupancy or certificate of completion has  
 8 been suspended or revoked may appeal such action by the city manager on the  
 9 ground that the suspension or revocation was based on an error in fact or an  
 10 erroneous application of this code to the facts. The manager has the burden of  
 11 proving the facts upon which the manager relies at such a hearing.~~

12 (d) — ~~An application for appeal must be filed in writing with the city manager within  
 13 fourteen days after the date of refusal of the building permit or approval of work  
 14 performed under the permit or revocation or suspension of the building permit or  
 15 certificate of occupancy or certificate of completion stating the basis for appeal.~~

16 (e) — ~~Appeals Concerning Existing Conditions.~~

17 1. — ~~Any aggrieved person who has been issued an order or other notice of  
 18 violation under this fire code, other than a summons and complaint, under  
 19 Sections 102.1 and 102.2 concerning legally existing conditions in a  
 20 structured based upon the city manager's determination that such  
 21 conditions constitute a distinct hazard to life or property, and who believes  
 22 the alleged violation to be factually or legally contrary to the requirements  
 23 of this fire code or rules and regulations issued pursuant to this fire code  
 24 may appeal the order or notice. An appellant shall file the appeal with the  
 25 board within thirty days from the date of service of the notice of alleged  
 violation. The appellant may request enlargement of time to file if such  
 request is made before the end of the time period. The manager may  
 extend for a reasonable period the time to file with the board if the  
 applicant shows good cause therefor.~~

2. — ~~Any person aggrieved by a decision of the manager upon a reinspection  
 that any or all of the violations alleged in the notice of violation have not  
 been adequately corrected may appeal such determination by filing a  
 notice of appeal within fourteen days of the date of the reinspection.~~

3. — ~~The appeal will be conducted under the procedures of Chapter 1-3,  
 "Quasi-Judicial Hearings," B.R.C. 1981. The burden of proof is on the  
 manager to establish an alleged violation.~~

4. — ~~If the board of appeals or hearing officer affirms the determination by the  
 manager, it shall grant the person a reasonable period of time to correct the  
 violation appealed. Any subsequent determination by the manager as to  
 whether the violations alleged in the notice of violation have been  
 adequately corrected is final.~~

5. — ~~If no person appeals a notice of violation under this section, the provisions  
 of the notice become final when the time for filing an appeal with the~~

board has expired. An order appealed to court is final unless a stay is in effect.

6. If a person to whom the manager has issued a notice of violation does not appeal under this section, such person may not raise a defense to any subsequent prosecution in municipal court for a violation of an order that the conditions alleged to be violations in the notice of violation were not in fact or law violations.

(f) An applicant for an appeal shall pay the fee prescribed by Section 4-20-52, "Fire Code Permit and Inspection Fees," B.R.C. 1981. The fee for an appeal heard by a hearing officer shall be the same as the fee for an appeal heard by the Board of Building Appeals.

(g) The manager may apply to the Board of Building Appeals, without fee, for an advisory opinion concerning alternative methods, applicability of specific requirements, approval of equipment and materials, and granting of special permission as contemplated in Section 104.8 or 104.9 of the fire code.

(h) The Board of Building Appeals or hearing officer has no authority to interpret Chapter 1 (the administrative requirements) of this code except as expressly provided in this section, nor, because this code sets minimum standards, to waive any requirement of this code.

(i) An aggrieved person seeking judicial review of a decision of the Board of Building Appeals or hearing officer made under this section shall file a complaint for such review within thirty days after the date of the decision under Colorado Rule of Civil Procedure 106(a)(4).

(j) If the city manager determines that the subject of an order or notice issued under this fire code constitutes an immediate hazard to the public health, safety, or welfare, the manager may order immediate compliance. Persons subject to such orders shall comply forthwith, but shall be entitled to a prompt post-compliance appeal hearing before the Board of Building Appeals or a hearing officer under the procedures specified in this section.

Section 113.1, "Unlawful acts," is repealed and reenacted to read:

**113.1 Violations.**

**(a) General Provisions:**

(1) No person shall violate a provision of this code or fail to comply therewith or with any of the requirements thereof. No person shall fail to comply with any order issued by the city manager under this code. No person shall erect, construct, enlarge, alter, extend, repair, move, remove, improve, convert, demolish, equip, use, occupy, maintain, or utilize any building, structure, occupancy, premises, or system in the city or cause or permit the same to be done except in conformity with all of the provisions of this code and in conformity with the terms and conditions of approval issued under this code, or of any directive of the code official.

1           (2) In accordance with the provisions of Section 5-2-11, "Prosecution of  
2           Multiple Counts for Same Act," B.R.C. 1981, each day during  
3           which illegal construction, alteration, maintenance, occupancy, or use  
4           continues, constitutes a separate offense remediable through the  
5           enforcement provisions of this code.

6           (3) The owner, tenant, and occupant of a structure or land, and the agents of  
7           each of them, are jointly and severally liable for any violation of this code  
8           with respect to such structure or land.

9           (4) The remedies for any violation of any provision of this code or of any  
10           permit, certificate, or other approval issued under this code or other City  
11           of Boulder code or of any directive of the fire code official may be  
12           pursued singly or in combination.

13           (5) If any person fails or refuses to pay when due any charge imposed under  
14           this section, the fire code official may, in addition to taking other  
15           collection remedies, certify due and unpaid charges to the Boulder County  
16           Treasurer for collection as provided by Section 2-2-12, "City Manager  
17           May Certify Taxes, Charges, and Assessments to County Treasurer for  
18           Collection," B.R.C. 1981.

19           (6) The fire code official may charge the cost of any action taken to correct or  
20           abate a violation, as authorized by this code, plus up to fifteen percent of  
21           such cost for administration, to the property owner. If any property owner  
22           fails or refuses to pay when due any charge imposed under this section, the  
23           fire code official may, in addition to taking other collection remedies,  
24           certify due any unpaid charges, including interest, to the Boulder County  
25           Treasurer, to be levied against the person's property for collection by the  
          county in the same manner as delinquent general taxes upon such property  
          are collected, under the procedures described by Section 2-2-12, "City  
          Manager May Certify Taxes, Charges, and Assessments to County  
          Treasurer for Collection," B.R.C. 1981.

20           (b) Administrative Procedures and Remedies:

21           (1) If the fire code official finds that a violation of any provision of this code  
22           or any approval granted under this code exists, the city manager, after  
23           notice and an opportunity for hearing under the procedures prescribed by  
24           Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or  
25           more of the following actions to remedy the violation:

(A) Impose a civil penalty according to the following schedule:

(i) For the first violation of the provision or approval, \$100;





1 permit, use review, site review, subdivision, floodplain development permit, or  
2 wetland permit, until such time as the person submits a declaration of use that is  
3 in a form acceptable to the fire code official.

4 (8) ~~Section 110.1, "Unlawful acts," is repealed and reenacted to read:~~

5 **110.1 Violations.**

6 (a) ~~General Provisions:~~

7 (1) ~~No person shall violate a provision of this code, or fail to comply~~  
8 ~~therewith or with any of the requirements thereof. No person shall~~  
9 ~~fail to comply with any order issued by the city manager under this~~  
10 ~~code. No person shall erect, construct, enlarge, alter, extend, repair,~~  
11 ~~move, remove, improve, convert, demolish, equip, use, occupy,~~  
12 ~~maintain, or utilize any building, structure, occupancy, premises,~~  
13 ~~or system in the city or cause or permit the same to be done except~~  
14 ~~in conformity with all of the provisions of this code and in~~  
15 ~~conformity with the terms and conditions of approval issued under~~  
16 ~~this code, or of any directive of the code official.~~

17 (2) ~~In accordance with the provisions of Section 5-2-11, "Prosecution~~  
18 ~~of Multiple Counts for Same Act," B.R.C. 1981, each day during~~  
19 ~~which illegal construction, alteration, maintenance, occupancy, or~~  
20 ~~use continues, constitutes a separate offense remediable through~~  
21 ~~the enforcement provisions of this code.~~

22 (3) ~~The owner, tenant, and occupant of a structure or land, and the~~  
23 ~~agents of each of them, are jointly and severally liable for any~~  
24 ~~violation of this code with respect to such structure or land.~~

25 (4) ~~The remedies for any violation of any provision of this code or of~~  
any permit, certificate, or other approval issued under this code or  
other City of Boulder code or of any directive of the fire code  
official may be pursued singly or in combination.

(5) ~~If any person fails or refuses to pay when due any charge imposed~~  
under this section, the fire code official may, in addition to taking  
other collection remedies, certify due and unpaid charges to the  
Boulder County Treasurer for collection as provided by Section 2-  
2-12, "City Manager May Certify Taxes, Charges, and  
Assessments to County Treasurer for Collection," B.R.C. 1981.

(6) ~~The fire code official may charge the cost of any action taken to~~  
correct or abate a violation, as authorized by this code, plus up to  
fifteen percent of such cost for administration, to the property  
owner. If any property owner fails or refuses to pay when due any  
charge imposed under this section, the fire code official may, in  
addition to taking other collection remedies, certify due any unpaid

charges, including interest, to the Boulder County Treasurer, to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, under the procedures described by Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

(b) ~~Administrative Procedures and Remedies:~~

(1) ~~If the fire code official finds that a violation of any provision of this code or any approval granted under this code exists, the city manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:~~

(A) ~~Impose a civil penalty according to the following schedule:~~

- (i) ~~For the first violation of the provision or approval, \$100;~~
- (ii) ~~For the second violation of the same provision or approval, \$300; and~~
- (iii) ~~For the third violation of the same provisions or approval, \$1,000.~~

(B) ~~For a violation concerning the use of a residential building under a rental license, revoke such license;~~

(C) ~~Require the filing of a declaration of use as provided in subsection (e); or~~

(D) ~~Issue an order reasonably calculated to ensure compliance with the provisions of this code or any approval granted under this code.~~

(2) ~~Prior to the hearing, the fire code official may issue an order that no person shall perform any work on any structure or land, except to correct any violation found by the fire code official to exist with respect to such structure or land.~~

(3) ~~If notice is given to the fire code official at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the fire code official will reinspect the structure or land. If the fire code official finds that the violation has been corrected, the manager may cancel the hearing.~~

(4) ~~No person shall fail to comply with any action taken by the fire code official under this section.~~

(e) ~~Criminal Penalties. Violations of this code are punishable as provided in Section 5-2-4, "General Penalties," B.R.C. 1981.~~

(d) ~~Other Remedies. The city attorney 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 for any violation of any provision of this code or any approval granted under this code.~~

(e) ~~Declaration of Use. If the fire code official determines that a person is using a structure in a way that might mislead a reasonable person to believe that such use is a use by right or otherwise authorized by this title, the fire code official may require such person to sign under oath a declaration of use that defines the limited nature of the use and to record such declaration in the office of the Boulder County Clerk and Recorder against the title to the land. In addition to all other remedies and actions that the code official is authorized to use under the Boulder Revised Code or other applicable federal, state, or local laws to enforce the provisions of this code, the city manager is authorized to withhold any approval affecting such structure or land, including, without limitation, a building permit, use review, site review, subdivision, floodplain development permit, or wetland permit, until such time as the person submits a declaration of use that is in a form acceptable to the fire code official.~~

Section 113.3.3, "Prosecution of violations," is repealed.

(9) ~~Section 110.3.3, "Prosecution of violations," is repealed.~~

Section 113.4.1, "Abatement of violationViolation penalties," is repealed and reenacted to read:

**113.4.1 Abatement of violation.** In addition to the imposition of the penalties described in Section 113.1, Violations, the fire code official is authorized to institute appropriate action to prevent unlawful construction or to restrain, correct, or abate a violation; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act, conduct of business, or occupancy of a structure on or about any premises.

(10) ~~Section 110.4, "Violation penalties," is repealed and reenacted to read:~~

~~**110.4 Abatement of violation.** In addition to the imposition of the penalties described in Section 110.1, Violations, the fire code official is authorized to institute appropriate action to prevent unlawful construction or to restrain, correct, or abate a violation; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act, conduct of business, or occupancy of a structure on or about any premises.~~

(11) Chapter 2, "Definitions," is amended by the addition of the following additional definitions. For any definition that already exists, it is repealed and reenacted with the definition listed here:

1           *Accessible Private Drive* means a twenty-foot unobstructed clear width with a twelve-  
2 foot hard, all-weather, drivable surface which can support forty tons on ten wheels and has an  
SU-30 turning radius for the fire department's fire apparatus.

3           ~~*Attached Dwelling Unit* means a structure which contains more than one dwelling unit  
4 regardless of any fire separation features.~~

4           *Ceremonial Fire* means a fire that is used as an indispensable part of a religious  
5 ceremony or ritual. The fire must be attended by a qualified individual recognized by the  
organization and conducted in a ceremonial fire oven or ceremonial fire pit.

6           *Ceremonial Fire Chantico* is a structure enclosed on three sides by brick, cinderblock,  
7 stone, or other non-combustible construction. The oven is covered on the top with non-  
combustible construction and contains a chimney at least two feet in height that has a spark  
8 arrestor conforming to nationally recognized standards.

8           *Ceremonial Fire Pit* is a three-foot-deep pit that does not exceed ten feet in diameter with  
9 a twenty-four-inch horseshoe shaped berm void of vegetation. A five-foot buffer zone surrounds  
the berm and is clear of vegetation and/or other combustibles.

10           ~~*Detached Dwelling Unit* means a structure which contains only one dwelling unit  
11 together with any building accessory to the dwelling unit, and is structurally independent of other  
12 structures or occupancies, and has a fire separation distance of not less than six feet from other  
structures.~~

13           *Emergency Vehicle Access Street* means a street meeting the requirements of this code  
and the City of Boulder Design and Construction Standards.

14           *Fire Access Distance* means the distance between two hydrants, or the distance from a  
15 hydrant to any external portion of any building or buildings, or the distance from the centerline  
of a non-dead-end emergency vehicle access street to the point on the curb on such street from  
16 which access to such building is gained, measured along public or private (but accessible to fire  
equipment) roadways or fire lanes, as would be traveled by motorized firefighting equipment.

17           *Fire code official* means the city manager or the manager's delegate.

18           *Fire Department or Municipal Fire Department* means the Fire Department of the City of  
Boulder, Colorado.

19           ~~*House Behind a House* exists if the dwelling unit is on a lot which does not front on an  
20 emergency vehicle access street meeting the requirements of sections 503.1 and 503.2, or the  
dwelling unit is not served by a fire lane meeting the requirements of Section 502.1 from an  
21 emergency vehicle access street to an entrance to the dwelling unit, and access from the  
emergency vehicle access street to the unit is obstructed by any structure.~~

22           *Open Burning* is the burning of materials where visible products of combustion are  
23 emitted directly into the ambient air without passing through a chimney from a fireplace built in  
compliance with the City of Boulder Building Code.

24           *Portable Appliance* means any appliance that is designed to be moved or relocated on a  
25 daily basis without any special knowledge. This includes, but is not limited to, box or oscillating  
fans, power tools, vacuum cleaners, and floor polishers.

1 ~~Sky Lantern means an unmanned device, whether tethered or untethered, made of paper~~  
2 ~~or other thin material with a frame that contains a candle or other fuel source which creates an~~  
3 ~~open flame or other heat source designed to heat the air inside the device, causing it to lift into~~  
4 ~~the air in a manner similar to a hot air balloon.~~

5 ~~Unobstructed by Any Structure Above Grade means that no structure blocks the view so~~  
6 ~~that there is not at least one entire face of the building substantially visible in a direct line over~~  
7 ~~the lot upon which the building sits from the nearest emergency vehicle access street, and no~~  
8 ~~structure would significantly interfere with a stream of water being sprayed on the building by a~~  
9 ~~nozzle mounted on a fire truck parked on the nearest emergency vehicle access street. For the~~  
10 ~~purposes of this definition, a legal fence shall not be considered an obstruction if it has a gate~~  
11 ~~which opens at least three feet wide, which is not locked, and through which firefighters on foot~~  
12 ~~have ready access to the building within the distance limitations.~~

13 (12) 304.1.1 Valet trash is repealed and reenacted to read:

14 Valet trash collection shall be permitted only where approved. The owner and  
15 valet trash collection service provider shall comply with Appendix O as adopted  
16 and amended.

17 (13) 304.1.1.1 Permits Required is added to read:

18 Permits required. An operational permit shall be obtained from the fire code  
19 official in accordance with Section 105.5.58 prior to contracting and using valet  
20 trash services. Operational permit will be issued to the owner or the owner's  
21 designated representative for the property where the services will be used.

22 (14) 307, "Open burning, recreational fires, and portable outdoor fireplaces," is  
23 repealed and reenacted to read:

24 **307 Open burning and recreational fires.**

- 25 (1) No person shall kindle or maintain outside of a habitable building or  
outside of an exterior fireplace built in accordance with the City of  
Boulder Building Code any bonfire or burn or permit to be burned any  
trash, paper, rubbish, wastepaper, wood, weeds, brush, plants, or other  
combustible or flammable material anywhere within the city limits or  
anywhere on city property outside of the city limits, except when:
- (a) The burning is in the course of an agricultural operation in the  
growing of crops as a gainful occupation and presents no fire  
hazard to other property in the vicinity;
  - (b) The burning is a smokeless flare flare, or a safety flare used to  
indicate some danger to the public;
  - (c) The burning is a training fire conducted by the fire department, or  
is a training fire conducted by another fire department, or privately  
for industrial or commercial fire training purposes; or

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(d) The burning is solely for the purpose of fuel mitigation to alleviate wildland fire potential, ~~or potential~~ or weed abatement to assist restoration of native plants.

(e) The burning is part of a "ceremonial fire" where all the following are met:

1. A permit must be obtained from Boulder Fire Rescue Department;
2. Fire must be contained in a ceremonial fire pit or a ceremonial chantico;
3. A water source with a garden hose attached and charged must be readily available and can reach all parts of the ceremonial fire;
4. Ceremonial fire must be extinguished if winds exceed 15 mph; and
5. Ceremonial fire must adhere to all state and county requirements for air quality and burn restrictions.

(2) Mobile or portable type outdoor fireplaces are prohibited to use within the city limits or anywhere on city property outside of the city limits.

~~(1315)~~ Section 308.1.6.3 is repealed and reenacted to read:

~~**308.1.6.3 Sky lanterns.** No person shall use any sky lantern within the City of Boulder, or anywhere on city-owned property outside of city limits, including Open Space and Mountain Parks land.~~

Section 308.1.7 "Sky lanterns" is repealed and reenacted to read:

**308.1.7 Sky lanterns.** No person shall use any sky lantern(s) within the City of Boulder, or anywhere on city-owned property outside of city limits, including Open Space and Mountain Parks land.

~~(14)~~ Exceptions 1, 2 and 3 to Section 311.2.2, "Fire protection," are repealed.

(16) **322.4 Battery charging areas:** is amended by the addition of the following:

9. The indoor room or area shall be protected with an automatic fire sprinkler system designed as an ordinary group II hazard and a maximum sprinkler area coverage of 100 square feet.

~~(1517)~~ A new Section 401.9, "Fire alarm fees," is added to read:

**401.9 Fire alarm fees.**

- 1 (a) After the fire department has responded to two nuisance alarms from the
- 2 fire alarm system from any property or address in any calendar year, the
- 3 city manager may impose a charge for each additional response to an
- 4 alarm which originates from the property during the same calendar year, in
- 5 accordance with the schedule prescribed by Section 4-20-52, "Fire Code
- 6 Permit and Inspection Fees," B.R.C. 1981.
- 7
- 8 (b) The city manager may waive a charge imposed for a nuisance fire alarm
- 9 response if the property owner of record demonstrates that such alarm was
- 10 caused by a fire or the threat of a fire, or that such alarm was not under the
- 11 property owner's control. It shall not be a defense that the alarm system is
- 12 malfunctioning, unless the owner or manager is able to demonstrate that
- 13 said alarm system is currently being serviced to remedy the problems
- 14 being encountered.
- 15
- 16 (c) If any fee is not paid within thirty days after demand therefor has been
- 17 mailed to the record owner of the building, the city manager may certify
- 18 the amount due to the County Treasurer pursuant to Section 2-2-12, "City
- 19 Manager May Certify Taxes, Charges, and Assessments to County
- 20 Treasurer for Collection," B.R.C. 1981.

21 (1846) Section 503.2.1, "Dimensions," is repealed and reenacted to read:

22 **503.2.1 Dimensions.** Fire apparatus access roads shall have an unobstructed  
23 width of not less than twenty feet (6,096 mm), except for approved security gates  
24 in accordance with Section 503.6, and an unobstructed vertical clearance of not  
25 less than fifteen feet (4,572 mm).

(1947) Section 507.5.1, "Where required," is repealed and reenacted to read:

**507.5.1 Where required.** Location and spacing of fire hydrants will be in  
accordance with the City of Boulder Design and Construction Standards.

(2048) Section 510.4.1.1 is repealed and reenacted to read:

**510.4.1.1 Minimum signal strength into the building.** ~~A minimum signal  
strength of -95 dBm shall be receivable within the building.~~

The minimum downlink signal strength shall be sufficient to provide usable voice  
communications throughout the coverage area as specified by the fire code  
official. The downlink signal level shall be a minimum of -95 dBm throughout the  
coverage area and sufficient to provide not less than a Delivered Audio Quality  
(DAQ) of 3.0 throughout the coverage area using either narrow band analog,  
digital or wideband LTE signals or an equivalent bit error rate (BER), or signal-  
to-interference-plus-noise ratio (SINR) applicable to the technology for either  
analog or digital signals.



1 (2119) Section 5140.4.1.2 is repealed and reenacted to read:

2 **510.4.1.2 Minimum signal strength out of the building.** A minimum signal  
3 strength of -95 dBm shall be received by the agency's radio system ~~with~~  
4 ~~transmitted from within the building.~~

5 ~~(21) Section 603.4, "Portable unvented heaters," is repealed and reenacted to read:~~

6 ~~**603.4 Portable unvented heaters.** Portable unvented fuel-fired heating  
7 equipment are prohibited inside any occupied structure.~~

8 (221) Section 901.6, "Inspection, testing and maintenance," is amended by the addition  
9 of the following:

10 If any building, structure, or portion of the same is protected by a fire detection,  
11 alarm, and extinguishing system, or the owner has agreed with the city manager  
12 so to protect the building or structure or portion thereof, then no person shall shut  
13 off or disable such system except as authorized under Section 11-1-45, "Water to  
14 Be Shut Off for Failure to Pay," B.R.C. 1981, and no owner, manager, or tenant  
15 of such space shall fail to prevent the shutting off or disabling of such system. It is  
16 a specific defense to a charge of violation of this section that the system was shut  
17 off in order to perform maintenance work on the system, that it was shut off for  
18 the minimum period of time necessary to perform such work, and that  
19 maintenance personnel were on the premises performing such work during the  
20 entire time the system was shut off. The minimum penalty for violation of this  
21 section, no portion of which may be suspended, is a fine of \$1,000.

22 (232) Section 903 is amended by the addition of the following:

23 Any new building or change of occupancy of an existing building that does not  
24 have approved fire department access as required by the fire code may be required  
25 by the fire code official to have an automatic fire sprinkler system installed  
regardless of the building size.

(243) Section 903.1 is repealed and reenacted to read:

**903.1 General.** An automatic sprinkler system shall be installed in the  
occupancies and locations as set forth in this section.

(254) The first sentence of Section 903.2 is repealed and reenacted to read:

Approved automatic sprinkler system in new buildings and structures shall be  
provided in the locations described in Sections 903.2.1 through 903.2.156.

(265) Section 903.2.1 is amended by the addition of the following:

1 **903.2.1 Group A.** All basements classified as, or a part of, a Group A occupancy  
2 shall be provided with an automatic sprinkler system regardless of the gross  
square footage.

3 (a) Section 903.2.1.1 Group A-1, #1 is repealed and reenacted to read:

4 1. The fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>)

5 (b) Section 903.2.1.2 Group A-2, #1 is repealed and reenacted to read:

6 1. The fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>)

7 (c) Section 903.2.1.3 Group A-3, #1 is repealed and reenacted to read:

8 1. The fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>)

9 (d) Section 903.2.1.4 Group A-4, #1 is repealed and reenacted to read:

10 1. The fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>)

11 (276) Section 903.2.32, Group ~~E~~, ~~B~~ is repealed and reenacted to read:

12 ~~An automatic sprinkler system shall be provided for Group E occupancies as~~  
13 ~~follows:~~

14 (a) ~~Throughout all Group E fire areas greater than 2,000 square feet~~  
15 ~~(185.8 m<sup>2</sup>) in area.~~

16 (b) ~~The Group E fire area is located on a floor other than a level of exit~~  
17 ~~discharge serving such occupancies.~~

18 (c) ~~The Group E fire area has an occupant load of 300 or more.~~

19 (d) ~~All basements classified as, or a part of, a Group E occupancy shall~~  
20 ~~be provided with an automatic sprinkler system regardless of the~~  
21 ~~gross square footage.~~

22 An automatic sprinkler system shall be provided for all new Group B occupancies  
23 greater than 2,000 square feet (185.8m<sup>2</sup>) and as required by Sections 903.2.2.1  
24 and 903.2.2.2.

25 (287) Section 903.2.43, Group ~~F~~, ~~E~~, is repealed and reenacted to read:

~~An automatic sprinkler system shall be provided throughout all new Group F~~  
~~occupancies greater than 2,000 square feet (185.8 m<sup>2</sup>).~~

An automatic sprinkler system shall be provided for Group E occupancies as  
follows:

23 (a) Throughout all Group E fire areas greater than 2,000 square feet (185.8  
24 m<sup>2</sup>) in area.

25 (b) The Group E fire area is located on a floor other than a level of exit  
discharge serving such occupancies.

(c) The Group E fire area has an occupant load of 300 or more.

(d) All basements classified as, or a part of, a Group E occupancy shall be provided with an automatic sprinkler system regardless of the gross square footage.

(298) Section 903.2.74, Group ~~MF-1, #1~~ is repealed and reenacted to read:

~~An automatic sprinkler system shall be provided throughout all Group M occupancies greater than 2,000 square feet (185.8 m<sup>2</sup>).~~

1. A group F-1 fire area exceeds 2,000 square feet (185.5 m<sup>2</sup>)(29)

(30) 903.2.4.1, Woodworking operations, is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout all Group F-1 occupancy fire areas that contain woodworking operations in excess of 2,000 square feet (185.8 m<sup>2</sup>) in area that generate finely divided combustible waste or use finely divided combustible materials.

(31) 903.2.4.3, Group F-1 upholstered furniture or mattresses, is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout a Group F-1 fire area that exceeds 2,000 square feet (185.8 m<sup>2</sup>) used for the manufacture of upholstered furniture or mattresses.

~~(3029) Section 903.2.8 is amended by the addition of the following:~~

- ~~(a) — Detached one and two family dwellings and multiple single family dwellings (townhomes) not more than three stories above grade plane in height with a separate means of egress and their accessory structure shall comply with the fire sprinkler system requirements of the City of Boulder Residential Building Code.~~
- ~~(b) — An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire areas.~~

~~(3130) Section 903.2.9, Group S-1, is repealed and reenacted to read:~~

~~An automatic sprinkler system shall be provided throughout all Group S-1 occupancies greater than 2,000 square feet (185.8 m<sup>2</sup>), including, but not limited to, repair garages.~~

~~(324) Section 903.2.107, Group ~~S-2M~~, is repealed and reenacted to read:~~

~~An automatic sprinkler system shall be provided throughout all Group S-2 occupancies greater than 2,000 square feet (185.8 m<sup>2</sup>).~~

An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

1. A Group M fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 2,000 square feet (185.8 m<sup>2</sup>).

~~(332) A new Section 903.2.13, "Group U occupancies," is added to read:~~

~~**903.2.13 Group U occupancies.** An automatic sprinkler system shall be provided throughout all new Group U occupancies greater than 2,000 gross square feet (185.8 m<sup>2</sup>).~~

903.2.7.2 Group M upholstered furniture or mattresses is repealed and reenacted to read:

An automatic sprinkler system shall be provided throughout a Group M fire area where the area used for the display and sale of upholstered furniture or mattresses exceeds 2,000 square feet (185.8 m<sup>2</sup>).

~~(343) A new Section 903.2.14, Group B Occupancies, is added to read:~~

~~**Section 903.2.14 Group B Occupancies.** An automatic sprinkler system shall be provided throughout all new Group B occupancies greater than 2,000 gross square feet (185.8m<sup>2</sup>).~~

Section 903.2.8, Group R, is amended by the addition of the following:

(a) Detached one- and two-family dwellings and multiple single-family dwellings (townhomes) not more than three stories above grade plane in height with a separate means of egress and their accessory structure shall comply with the fire sprinkler system requirements of the City of Boulder Residential Building Code.

(b) An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire areas.

~~(354) A new Section 903.2.15 is added to read:~~

~~**903.2.15.** Any occupancy, structure, or unit required to be protected by a sprinkler system by one provision of the fire code or the building code, and falling within an exception to a requirement of such protection to any other provision of the fire code or building code, shall be so protected.~~

1 Section 903.2.9, Group S-1, is repealed and reenacted to read:

2 An automatic sprinkler system shall be provided throughout all buildings  
 3 containing a Group S-1 occupancy where one of the following conditions exists:

- 4 1. A Group S-1 fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>).
- 5 2. A Group S-1 fire area is located more than three stories above grade plane.
- 6 3. The combined area of all Group S-1 fire areas on all floors, including any  
mezzanines, exceeds 2,000 square feet (185.8 m<sup>2</sup>).
- 7 4. A Group S-1 fire area used for the storage of commercial motor vehicles  
where the fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>).
- 8 5. A Group S-1 fire area used for the storage of lithium-ion or lithium metal  
batteries or any equipment containing lithium-ion or lithium metal  
batteries including vehicles, micro-mobility devise and energy storage  
systems.

9  
 10 ~~(365) A new Section 903.2.16 is added to read:~~

11 ~~**903.2.16.** If the floor area of an addition to any existing occupancy as described in~~  
 12 ~~Sections 903.1 through 903.2.14 above is greater than either fifty percent of the~~  
 13 ~~existing gross floor area or 2,000 square feet, and the total altered structure would~~  
 14 ~~be required to be protected by a sprinkler system by this section if it were new~~  
 15 ~~construction, then the entire addition shall be protected throughout by an~~  
 16 ~~approved and supervised automatic sprinkler system, installed in accordance with~~  
 17 ~~Section 903.3.1. Said sprinkler system shall be continuous throughout the addition~~  
 18 ~~up to a fire barrier built in accordance with the building code for that occupancy.~~

19 Section 903.2.9.1, Repair garages, is repealed and reenacted to read:

20 An automatic sprinkler system shall be provided throughout all buildings used as  
 21 repair garages in accordance with Section 406.8 of the International Building  
 22 Code, as shown:

- 23 1. Buildings having two or more stories above grade plane, including  
basement, with fire area containing a repair garage exceeding 2,000 square  
feet (185.8 m<sup>2</sup>).
- 24 2. Buildings not more than one story above grade plane, with a fire area  
containing a repair garage exceeding 2,000 square feet (185.8 m<sup>2</sup>).
- 25 3. Buildings with repair garages servicing vehicles parked in basements.
- 4 A Group S-1 fire used for the repair of commercial motor vehicles where  
the fire area exceeds 2,000 square feet (185.8 m<sup>2</sup>)
- 5 A Group S-1 fire area used for the storage of lithium-ion or lithium metal  
powered vehicles.

6 ~~(3736) Section 903.3.1.1.1 Exception 4 is repealed.~~

1 Section 903.2.9.4, Group S-1 upholstered furniture and mattresses, is repealed and  
2 reenacted to read.

3 An automatic sprinkler system shall be provided throughout a Group S-1 fire area  
4 where the area used for the storage of upholstered furniture or mattresses exceeds  
5 2,000 square feet (185.8 m<sup>2</sup>).

6 Exception: New self-service storage facilities not greater than on story  
7 above grade plane and separated by a fire barrier per the International  
8 Building Code every 2,000 square feet (185.8 m<sup>2</sup>)

9 (3837) Section 903.2.10, Group S-2 Parking Garages, is repealed and reenacted to read:

10 An automatic sprinkler system shall be provided throughout buildings classified  
11 as parking garages where any of the following conditions exist:

12 1. Where the fire area of the enclosed parking garage, in accordance with section  
13 406.6 of the International Building Code, exceeds 2,000 square feet (185.8 m<sup>2</sup>)  
14 3.1.2.3, #4—Subsections 4.2 and 4.5 are repealed.

15 2. Where the enclosed parking garage, in accordance with Section 406.6 of the  
16 International Building Code, is located beneath other groups

17 Exception: Enclosed parking garages located beneath Group R-3  
18 occupancies where the fire area of the open parking garage, in accordance  
19 with Section 406.5 of the International Building Code, exceeds 2,000  
20 square feet (185.8 m<sup>2</sup>).

21 (3938) Section 903.2.10.1, Commercial parking garages, is repealed and reenacted to  
22 read:

23 An automatic sprinkler system shall be provided throughout buildings used for  
24 storage of commercial motor vehicles where the fire area exceeds 2,000 square  
25 feet (185.8 m<sup>2</sup>)~~Section 903.3.5.2 is repealed and reenacted to read:~~

~~**903.3.5.2 Residential combination services.** Combination of domestic and fire  
service lines shall be in accordance with the City of Boulder Design and  
Construction Standard.~~

(4039) Section 903.4.1, "Monitoring," is repealed and reenacted to read:

~~**903.4.1 Monitoring.** Alarm, supervisory and trouble signals shall be distinctly  
different and shall be automatically transmitted to an Underwriters Laboratory  
listed supervising station.~~

**Exceptions:**

- 1. ~~Underground key or hub valves in roadway boxes provided by the municipality or public utility need not be supervised.~~
- 2. ~~Systems installed in accordance with NFPA 13D.~~

A new Section 903.2.13, "Group U occupancies," is added to read:

**903.2.13 Group U occupancies.** An automatic sprinkler system shall be provided throughout all new Group U occupancies greater than 2,000 gross square feet (185.8 m<sup>2</sup>).

(4140) Section 903.4.2, "Alarms," is repealed and reenacted to read:

~~**903.4.2 Alarms.** Approved audible and visual devices shall be connected to every new automatic sprinkler system. Such sprinkler water flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided in the interior of the building in accordance with NFPA 72 and on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler shall actuate the building fire alarm system.~~

A new Section 903.2.14 is added to read:

**903.2.14.** Any occupancy, structure, or unit required to be protected by a sprinkler system by one provision of the fire code or the building code and falling within an exception to a requirement of such protection to any other provision of the fire code or building code, shall be so protected.

(4241) A new Section 903.7, "Response time sprinkler requirement," is adopted to read:

**903.7 Response time sprinkler requirement.**

~~(a) — It is the city's goal, as reflected in the Boulder Valley Comprehensive Plan's urban fire service criteria, that land not be annexed unless the response travel time for service is normally four minutes or less. Nonetheless, there may be occasions when annexation outside the existing four-minute travel time but within six minutes or less is allowed due to special circumstances, in the city's best interest. Before such land is annexed, consideration must be given to the need for and provision of additional fire stations and equipment to serve properly the area being annexed and to bring it within the four-minute travel time eventually. Protection by a sprinkler system as required by subsection (c) below is a temporary substitute, and is not intended to eliminate the requirement for additional fire stations and equipment.~~

~~(b) — Land used or to be used for residential purposes will not normally be annexed if it is outside the four-minute travel time unless excepted from~~

~~this policy by subsection (d) below. All new dwelling units on land annexed outside the four minute travel time shall be protected by an automatic fire sprinkler system.~~

~~(c) — On land annexed after the effective date of this chapter and not excepted under subsection (d) below, all new nonresidential construction and any existing nonresidential structures shall be provided throughout with an approved and supervised fire sprinkler system installed in accordance with Section 903.3.1 adopted in Chapter 10-8, "Fire Code," B.R.C. 1981, if such land is outside of the four minute travel time from city fire stations housing at least one pumper which is rated at one thousand gallons per minute pumping capacity or greater, and which requires a crew of three or more for proper operation.~~

~~(d) — The requirements of this Section may be waived by the city council by a provision doing so in an annexation agreement incorporated into an annexation ordinance if, in the opinion of the city council, it is in the city's best interest to do so because:~~

~~(1) — Of changed or special conditions;~~

~~(2) — The land to be annexed is located on Arapahoe Avenue west of the city; or~~

~~(3) — The land to be annexed is below the blue line, west of Broadway, south of Norwood Avenue, and north of Table Mesa Drive.~~

~~Exceptions (2) and (3) above reflect the fact that it is not anticipated that new fire stations will be constructed to bring these areas within the six minute limit. In other areas, it is anticipated that new fire stations will eventually be constructed or upgraded to bring the service area within this limit.~~

A new Section 903.2.15 is added to read:

**903.2.15.** If the floor area of an addition to any existing occupancy as described in Sections 903.1 through 903.2.14 above is greater than either fifty percent of the existing gross floor area or 2,000 square feet, and the total altered structure would be required to be protected by a sprinkler system by this section if it were new construction, then the entire addition shall be protected throughout by an approved and supervised automatic sprinkler system, installed in accordance with Section 903.3.1. Said sprinkler system shall be continuous throughout the addition up to a fire barrier built in accordance with the building code for that occupancy.

~~(432) Section 903.3.1.1.1 Exception 3 is repealed. A new Section 903.8, Fire suppression systems, is added to read:~~

~~**903.8 Fire suppression systems.** All existing structures in the following categories shall be protected throughout by an approved and supervised automatic sprinkler system installed in accordance with the provisions of Section 903.3.1. Except that any structure or portion thereof required by this section to be so~~



protected prior to the effective date of Ordinance No. 7566, shall be immediately so protected:

(a) ~~— R-1 and R-2 occupancies greater than fifty-five feet high.~~

(b) ~~— Hotels and motels. Exceptions: One and two-story structures, and three-story structures with an exterior exit balcony for all rooms above grade.~~

(c) ~~— Congregate residences classified as Group R-4.~~

(d) ~~— Group I-1 and I-2 occupancies as defined in the fire code.~~

(e) ~~— Basements greater than 2,000 gross square feet.~~

~~Exception 1. Basements below R occupancies.~~

~~Exception 2. Basements used exclusively for "services to the building," such as electric meters, compressors, and so forth. But "services to the building" shall not include any storage (either combustible or noncombustible), nor routine human occupancy.~~

~~Exception 3. Basements where there is provided at least 20 square feet of opening entirely above the adjoining ground level in each fifty lineal feet or fraction thereof of exterior wall in the basement on at least one side of the building. Openings shall have a minimum dimension of not less than 30 inches, and shall be accessible to the fire department from the exterior, and shall not be obstructed in a manner that firefighting or rescue cannot be accomplished from the exterior.~~

~~When openings are provided on only one side and the opposite wall of said basement is more than seventy-five feet from such openings, said basement shall be provided with an approved automatic sprinkler system, or openings as specified above shall be provided on at least two sides of an exterior wall of the basement.~~

(f) ~~— All Group A occupancies used primarily for dining, drinking, or motion picture viewing shall be protected throughout by an approved and supervised automatic sprinkler system installed in accordance with the provisions of Section 903.3.1 when said Group A occupancy is greater~~

~~than 2,000 gross square feet in size.~~

~~For Group A occupancies described in this part (f) not currently provided with complete automatic sprinkler protection, this paragraph shall take effect during a remodel or renovation which 1) requires one or more building permits with a combined valuation (labor and materials) of \$30 per square foot or more within any calendar year, and 2) necessitates business closure for a combined period of five calendar days or more, in the aforementioned calendar year.~~

1 (443) Section 907.6.6 is repealed and reenacted to read:

2 **907.6.6 Monitoring.** Fire alarm systems shall be supervised by an Underwriters  
3 Laboratory listed supervising station or a Proprietary Supervising Station Alarm  
4 System meeting all of the requirements in NFPA 72, *The National Fire Alarm and  
5 Signaling Code.*

6 **Exception:** Monitoring by a supervising station is not required for:

7 (1) — Single and multiple station smoke alarms required by Section  
8 907.2.10.

9 (2) — Automatic sprinklers systems in one and two family dwellings.

10 Section 903.3.1.2.3, Attics, #4 - Subsections 4.2 and 4.5 are repealed.

11 (454) Section 1103.5, Sprinkler systems, is repealed and reenacted to read:

12 **1103.5 Sprinkler systems.** The automatic sprinkler system requirements set forth  
13 in Sections 903.1 and 903.2 of this code shall be complied with in existing  
14 buildings where the occupancy or use, as defined in Chapter 2 of the Existing  
15 Building Code of the City of Boulder, changes in a fire area exceeding 2,000  
16 square feet.

17 **Exception:** Changes of occupancy or use which are a lower relative  
18 hazard per Table 1011.4 of the City of Boulder Existing Building Code  
19 and the new occupancy or use is not required to be provided with an  
20 automatic sprinkler system by other provisions of the City of Boulder  
21 Building Code or the City of Boulder Existing Building Code.

22 Section 903.3.5.2, Residential combination services, is repealed and reenacted to  
23 read:

24 **903.3.5.2 Residential combination services.** Combination of domestic and fire  
25 service lines shall be in accordance with the City of Boulder Design and  
Construction Standard.

(465) Section 1204.2.1.1, Pathways to ridge, is repealed and reenacted to read:

**1204.2.1.1, Pathways to ridge.** No fewer than two 30-inch wide (914 mm)  
pathways on separate roof planes, from the lowest roof edge to ridge, shall be  
provided on all buildings. At least one pathway shall be provided on the street or  
driveway side of the roof. For each roof plane with a photovoltaic array, at least  
one 30-inch wide (914 mm) pathway from lowest roof edge to ridge shall be  
provided on the same roof plane as the photovoltaic array, on an adjacent roof  
plane or straddling the same and adjacent roof plane.

All access pathways required under this section shall be provided in a structurally strong location on the building capable of supporting the live load of fire fighters accessing the roof.

Section 903.4.2, "Monitoring," is repealed and reenacted to read:

**903.4.2 Monitoring.** Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an Underwriters Laboratory listed supervising station.

(476) Section 1204.2.1.2, Setbacks at ridge, is repealed and reenacted to read: **1204.2.1.2, Setbacks at ridge.** Not less than a 12-inch wide setback is provided on each side of the horizontal ridge.

Section 903.4.3, "Alarms," is repealed and reenacted to read:

**903.4.3 Alarms.** Approved audible and visual devices shall be connected to every new automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided throughout the interior of the building in accordance with NFPA 72 and at least one on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler shall actuate the building fire alarm system.

**Exception:** Automatic sprinkler systems protecting one-and two-family dwellings.

(487) Section 1204.2.1.3, Alternative setbacks at ridge, is repealed.

A new Section 903.7, "Response time sprinkler requirement," is adopted to read:

**903.7 Response time sprinkler requirement.**

(a) It is the city's goal, as reflected in the Boulder Valley Comprehensive Plan's urban fire service criteria, that land not be annexed unless the response travel time for service is normally four minutes or less. Nonetheless, there may be occasions when annexation outside the existing four-minute travel time but within six minutes or less is allowed due to special circumstances, in the city's best interest. Before such land is annexed, consideration must be given to the need for and provision of additional fire stations and equipment to serve properly the area being annexed and to bring it within the four-minute travel time eventually. Protection by a sprinkler system as required by subsection (c) below is a temporary substitute and is not intended to eliminate the requirement for additional fire stations and equipment.

1           **(b)**    Land used or to be used for residential purposes will not normally be  
2                    annexed if it is outside the four-minute travel time unless excepted from  
3                    this policy by subsection (d) below. All new dwelling units on land  
4                    annexed outside the four-minute travel time shall be protected by an  
5                    automatic fire sprinkler system.

6            **(c)**    On land annexed after the effective date of this chapter and not excepted  
7                    under subsection (d) below, all new nonresidential construction and any  
8                    existing nonresidential structures shall be provided throughout with an  
9                    approved and supervised fire sprinkler system installed in accordance with  
10                   Section 903.3.1 adopted in Chapter 10-8, "Fire Code," B.R.C. 1981, if  
11                   such land is outside of the four-minute travel time from city fire stations  
12                   housing at least one pumper which is rated at one thousand gallons per  
13                   minute pumping capacity or greater, and which requires a crew of three or  
14                   more for proper operation.

15           **(d)**    The requirements of this Section may be waived by the city council by a  
16                    provision doing so in an annexation agreement incorporated into an  
17                    annexation ordinance if, in the opinion of the city council, it is in the city's  
18                    best interest to do so because:

- 19                    **(1)**    Of changed or special conditions;
- 20                    **(2)**    The land to be annexed is located on Arapahoe Avenue west of the  
21                    city; or
- 22                    **(3)**    The land to be annexed is below the blue line, west of Broadway,  
23                    south of Norwood Avenue, and north of Table Mesa Drive.

24                    Exceptions (2) and (3) above reflect the fact that it is not anticipated that  
25                    new fire stations will be constructed to bring these areas within the six-  
26                    minute limit. In other areas, it is anticipated that new fire stations will  
27                    eventually be constructed or upgraded to bring the service area within this  
28                    limit.

29           **(498)**    ~~Section 5601.2.4.2, "Fireworks," is amended by the addition of the following:~~

30                    ~~The city manager shall require a certificate of insurance to protect persons and~~  
31                    ~~property from death or injury as a result of the fireworks display, in an amount not~~  
32                    ~~less than \$1,000,000 general liability per occurrence and \$2,000,000 aggregate~~  
33                    ~~limit. The insurance shall cover any liability of the city or any employee or agent~~  
34                    ~~thereof arising out of or connected with the permit and the fireworks display~~  
35                    ~~permitted thereunder. Before any permit for a fireworks display is issued, the~~  
36                    ~~applicant shall comply with the provisions of this section.~~

37                    A new Section 903.8, Fire suppression systems, is added to read:

38                    **903.8 Fire suppression systems.** All existing structures in the following  
39                    categories shall be protected throughout by an approved and supervised automatic

1 sprinkler system installed in accordance with the provisions of Section 903.3.1.  
2 Except that any structure or portion thereof required by this section to be so  
3 protected prior to the effective date of Ordinance No. 7566, shall be immediately  
4 so protected:

- 5 (a) R-1 and R-2 occupancies greater than fifty-five feet high.
- 6 (b) Hotels and motels. Exceptions: One- and two-story structures, and three-  
7 story structures with an exterior exit balcony for all rooms above grade.
- 8 (c) Congregate residences classified as Group R-4.
- 9 (d) Group I-1 and I-2 occupancies as defined in the fire code.
- 10 (e) Basements greater than 2,000 gross square feet.

11 Exception 1. Basements below R occupancies.

12 Exception 2. Basements used exclusively for "services to the building,"  
13 such as electric meters, compressors, and so forth. But "services to the  
14 building" shall not include any storage (either combustible or  
15 noncombustible), nor routine human occupancy.

16 Exception 3. Basements where there is provided at least 20 square feet of  
17 opening entirely above the adjoining ground level in each fifty lineal feet  
18 or fraction thereof of exterior wall in the basement on at least one side of  
19 the building. Openings shall have a minimum dimension of not less than  
20 30 inches and shall be accessible to the fire department from the exterior,  
21 and shall not be obstructed in a manner that firefighting or rescue cannot  
22 be accomplished from the exterior.

23 When openings are provided on only one side and the opposite wall of said basement is  
24 more than seventy-five feet from such openings, said basement shall be provided with an  
25 approved automatic sprinkler system, or openings as specified above shall be provided on  
26 at least two sides of an exterior wall of the basement.

- 27 (f) All Group A occupancies used primarily for dining, drinking, or motion  
28 picture viewing shall be protected throughout by an approved and  
29 supervised automatic sprinkler system installed in accordance with the  
30 provisions of Section 903.3.1 when said Group A occupancy is greater  
31 than 2,000 gross square feet in size.

32 For Group A occupancies described in this part (f) not currently provided with  
33 complete automatic sprinkler protection, this paragraph shall take effect during a  
34 remodel or renovation which 1) requires one or more building permits with a  
35 combined valuation (labor and materials) of \$30 per square foot or more within any  
36 calendar year, and 2) necessitates business closure for a combined period of five  
37 calendar days or more, in the aforementioned calendar year.

1 (5049) Chapter 80, Referenced Standards, is amended by the addition of the following:

2 **8001 NFPA Standards.** ~~In every case where this code references a standard~~  
3 ~~published by the National Fire Protection Association (NFPA), the most current~~  
4 ~~edition of the referenced standard is hereby adopted. The most current edition of~~  
5 ~~the referenced NFPA standard shall become effective on January 1<sup>st</sup> following the~~  
6 ~~publication and release of the standard.~~

7 Section 907.6.6, Monitoring, is repealed and reenacted to read:

8 **907.6.6 Monitoring.** Fire alarm systems shall be supervised by an Underwriters  
9 Laboratory listed supervising station or a Proprietary Supervising Station Alarm  
10 System meeting all of the requirements in NFPA 72, *The National Fire Alarm and*  
11 *Signaling Code.*

12 **Exception:** Monitoring by a supervising station is not required for:

- 13 (1) Single and multiple-station smoke alarms required by  
14 Section 907.2.11.
- 15 (2) Automatic sprinklers systems in one- and two-family  
16 dwelling.

17 (51) Section 1103.5, Sprinkler systems, is repealed and reenacted to read:

18 **1103.5 Sprinkler systems.** The automatic sprinkler system requirements set forth  
19 in Sections 903.1 and 903.2 of this code shall be complied with in existing  
20 buildings where the occupancy or use, as defined in Chapter 2 of the Existing  
21 Building Code of the City of Boulder, changes in a fire area exceeding 2,000  
22 square feet.

23 **Exception:** Changes of occupancy or use which are a lower relative hazard per  
24 Table 1011.5 of the City of Boulder Existing Building Code and the new  
25 occupancy or use is not required to be provided with an automatic sprinkler  
system by other provisions of the City of Boulder Building Code or the City of  
Boulder Existing Building Code.

(52) A new section 1108, Battery Storage, is added to read:

**Battery storage.** Existing battery storage areas containing lithium-ion and lithium  
metal batteries shall comply with Section 320.

(53) A new Section 1109, Micro Mobility Devices, is added to read:

**Micro Mobility Devices.** Existing lithium-ion and lithium metal battery powered  
micro mobility devices shall be operated and maintained in accordance with  
Section 322.

1 (54) Section 1205.2.1.1, Pathways to ridge, is repealed and reenacted to read:

2 **1205.2.1.1, Pathways to ridge.** No fewer than two 30-inch-wide (914 mm)  
3 pathways on separate roof planes, from the lowest roof edge to ridge, shall be  
4 provided on all buildings. At least one pathway shall be provided on the street or  
5 driveway side of the roof. For each roof plane with a photovoltaic array, at least  
6 one 30-inch-wide (914 mm) pathway from lowest roof edge to ridge shall be  
7 provided on the same roof plane as the photovoltaic array, on an adjacent roof  
8 plane or straddling the same and adjacent roof plane.

9 All access pathways required under this section shall be provided in a structurally  
10 strong location on the building capable of supporting the live load of fire fighters  
11 accessing the roof.

12 (55) Section 1205.2.1.2, Setbacks at ridge, is repealed and reenacted to read:

13 **1205.2.1.2, Setbacks at ridge.** Not less than a 12-inch-wide setback is provided  
14 on each side of the horizontal ridge.

15 (56) Section 1205.2.1.3, Alternative setbacks at ridge, is repealed.

16 (57) Section 5307.1, General, is repealed and reenacted to read:

17 General. Compressed gases in storage or use not regulated by this material-  
18 specific provisions of Chapters 6, 54, 55 and 60 through 67, including asphyxiant,  
19 irritant and radioactive gasses, shall comply with this section in addition to other  
20 requirements of this chapter. The provisions of this chapter shall apply to new or  
21 existing systems.

22 (58) Section 5307.3, Insulated liquid carbon dioxide systems used in beverage  
23 dispensing applications, is repealed and reenacted to read:

24 **5307.3 Insulated liquid carbon dioxide systems used in beverage dispensing**  
25 **applications.** Liquid carbon dioxide systems used in beverage dispensing  
26 applications. Liquid carbon dioxide systems with more than 100 pounds (45.4 kg)  
27 of carbon dioxide used in beverage dispensing applications shall comply with  
28 Section 5307.3.1

29 (59) Section 5601.2.4.2, "Fireworks display," is amended by the addition of the  
30 following:

31 The city manager shall require a certificate of insurance to protect persons and  
32 property from death or injury as a result of the fireworks display, in an amount not  
33 less than \$1,000,000 general liability per occurrence and \$2,000,000 aggregate  
34 limit. The insurance shall cover any liability of the city, or any employee or agent  
35 thereof arising out of or connected with the permit and the fireworks display

permitted thereunder. Before any permit for a fireworks display is issued, the applicant shall comply with the provisions of this section.

(60) Chapter 80, Referenced Standards, is amended by the addition of the following:

**8001 NFPA Standards.** In every case where this code references a standard published by the National Fire Protection Association (NFPA), the most current edition of the referenced standard is hereby adopted. The most current edition of the referenced NFPA standard shall become effective on January 1<sup>st</sup> following the publication and release of the standard.

(61) Appendix O is adopted and amended with the addition of the following sections:

O102.4, Capacity limit, is amended by the addition of the following:

O102.4.1 Quantities more than the capacity limit. Trash and recyclables not able to fit within the approved container with a closed lid, shall not be left within the corridor.

A new section, O102.6 Container lids, is added:

All valet trash and recycling container lids shall be self-closing.

O104, Additional Requirements, is amended by the addition of the following:

O104.4. Automatic sprinkler systems. An automatic sprinkler system shall be installed in accordance with Chapter 9.

O104.5. Door closing. Each dwelling unit shall have an operable self-closing door from the living space to the corridor. Doors shall close from a fully open position and latch automatically.

O104.6. Emergency planning and preparedness. Each complex shall create an emergency guide describing the location, function, and use of fire protection equipment and appliance available for use by residents, including fire alarm systems, smoke alarms, and portable fire extinguishers. Guides shall include fire evacuation plans in accordance with Section 404.2.1 and fire safety plans in accordance with Section 404.2.2 for each dwelling and distributed to each resident.

Section 17. Section 10-9-1, "Legislative Intent," B.R.C. 1981, is amended to read as follows:



1 **10-9-1. Legislative Intent.**

2 The purpose of this chapter is to protect the public health and safety by regulating the  
3 installation, alteration, and repair of heating, ventilating, cooling, and refrigeration devices in  
4 structures in the city. The city council hereby adopts the 2024~~18~~ edition of the *International  
Mechanical Code* with certain amendments and deletions thereto found to be in the best interests  
5 of the residents of the city.

6 Section 18. Section 10-9-2, "Adoption of the International Mechanical Code With  
7 Modifications," B.R.C. 1981, is amended to read as follows:

8 **10-9-2. Adoption of the International Mechanical Code With Modifications.**

9 (a) The 2024~~18~~ edition of the *International Mechanical Code*, including Appendix A thereto,  
10 of the International Code Council, is hereby adopted by reference as the Mechanical  
11 Code of the City of Boulder or mechanical code and has the same force and effect as  
12 though fully set forth in this chapter, except as specifically amended by the provisions of  
13 this chapter.

14 (b) Except as specified below, Chapter 1 is repealed. This code shall be administered in  
15 accordance with Chapter 1, "Administration," of the International Building Code as  
16 adopted, with amendments, by Section 10-5-2, "Adoption Of International Building Code  
17 With Modifications," B.R.C. 1981.

18 (1) Section 101.2, "Scope," is adopted as an administrative provision.

19 (2) Section 101.2.1, "Appendices," is adopted as an administrative provision.  
Appendix A is adopted as a part of this code.

20 (3) Section 101.3, "Purpose," is adopted as an administrative provision.

21 (c) Section 301.10, "Electrical," is repealed and reenacted to read:

22 **301.10 Electrical.** Electrical wiring, controls, and connections to equipment and  
23 appliances regulated by this code shall be in accordance with Chapter 10-6, "Electrical  
24 Code," B.R.C. 1981.

25 (d) A new Section 306.6, "Rooftop equipment support and clearances," is added:

**306.6 Rooftop equipment support and clearances.**

(1) Mechanical equipment placed, replaced, or resting over roofing shall be supported  
by curbs or legs which shall be flashed to the roofing and made watertight.  
Mechanical equipment shall include, but not be limited to, heating equipment,  
cooling and refrigeration equipment, ventilating fans, blowers, and other similar  
devices located on the roof.

1  
2 (2) Flat roofs. On roofs having a pitch of less than 2 in 12, mechanical equipment  
3 shall be supported on a solid curb greater in size than the equipment which it  
4 serves. Curbs can be manufactured or built-in-place. If built-in-place, the curb  
5 shall be covered with metal of at least 26 gauge. All seams and miter corners of  
6 the metal shall be riveted and soldered so as to be weather-tight. The curb shall be  
7 a minimum of 9 inches above the finished roof.

8 (A) Ducts less than four feet in width shall have at least twelve inches  
9 clearance from the finished roof surface to the bottom of the duct.

10 (B) Ducts between four feet and eight feet in width shall have at least twenty-  
11 four inches clearance from the finished roof surface to the bottom of the  
12 duct.

13 (C) Ducts over eight feet in width shall have at least thirty-six inches clearance  
14 from the finished roof surface to the bottom of the duct.

15 (3) Pitched Roofs. On roofs having a slope over a 2 and 12, mechanical equipment  
16 may be set on legs which provide a minimum of 11 inches clearance between the  
17 finished roof surface and the equipment frame.

18 (e) ~~Section 603.6.1.1, "Duct length," is repealed and reenacted to read:~~

19 ~~603.6.1.1 Duct length. Approved Class 0 and Class 1 flexible air duct shall not  
20 exceed fourteen feet in length.~~

21 (f) ~~Section 606.3, "Installation," is amended by the addition of a new sentence to read:~~

22 ~~Smoke detectors must be capable of being tested from a remote and readily  
23 accessible location.~~

24 ...

25 Section 19. Section 10-9.5-1, "Legislative Intent," B.R.C. 1981, is amended to read as  
follows:

**10-9.5-1. Legislative Intent.**

The purpose of this chapter is to protect the public health and safety by regulating fuel gas systems and gas-fired appliances in the city. The city council hereby adopts the 2024~~18~~ edition of the *International Fuel Gas Code* as a new Chapter 10-9.5 with certain amendments thereto found to be in the best interest of the city.

Section 20. Section 10-9.5-2, "Adoption of the International Fuel Gas Code With Modifications," B.R.C. 1981, is amended to read as follows:

**10-9.5-2. Adoption of the International Fuel Gas Code With Modifications.**

(a) The 2024~~18~~ edition of the *International Fuel Gas Code* of the International Code Council is hereby adopted by reference as the City of Boulder Fuel Gas Code or fuel gas code and has the same force and effect as though fully set forth in this chapter, except as specifically amended by the provisions of this chapter.

(b) Except as specified below, Chapter 1 is repealed. This code shall be administered in accordance with Chapter 1, "Administration," of the International Building Code as adopted, with amendments, by Section 10-5-2, "Adoption of International Building Code With Modifications," B.R.C. 1981.

(1) Section 101, "General," is adopted as an administrative provision with the following amendment:

(A) Section 101.1, "Title," is amended to read:

**101.1 Title.** These regulations shall be known as the Fuel Gas Code of the City of Boulder or fuel gas code.

(2) Section 111~~07~~, "Inspections and Testing," is adopted as an administrative provision.

~~(c) Exceptions 2, 3, and 4 in Section 303.3, "Prohibited locations," are repealed.~~

~~(d) Section 404.4, "Piping through foundation wall," is repealed and reenacted to read:~~

~~404.4 Piping through foundation wall. Gas piping shall enter the building above grade through the foundation wall, building, or structure.~~

~~(f) Section 602.1, "General," is amended by adding a new sentence to read:~~

~~Within a vented fireplace, the damper must be removed or welded open and glass doors installed over the fire place.~~

Section 21. Section 10-10-1-, "Legislative Intent," B.R.C. 1981, is amended to read as follows:

**10-10-1. Legislative Intent.**

The purpose of this chapter is to protect the public health and safety by regulating the installation, alteration, and repair of plumbing devices in structures in the city. The city council hereby adopts the 2024~~18~~ edition of the *International Plumbing Code* with certain amendments and deletions thereto found to be in the best interests of the residents of the city.

1           Section 22. Section 10-10-2, "Adoption of the International Plumbing Code With  
2 Modifications," B.R.C. 1981, is amended to read as follows:

3 **10-10-2. Adoption of the International Plumbing Code With Modifications.**

4 (a)     The 2024~~18~~ edition of the *International Plumbing Code*, published by the International  
5 Code Council, including Appendix E, "Sizing of Water Piping System," is hereby  
6 adopted by reference as the City of Boulder Plumbing Code or plumbing code, and has  
7 the same force and effect as though fully set forth in this chapter, except as specifically  
8 amended by the provisions of this chapter.

9 (o)     Section 903.1, "Vent Terminal Required Roof extension," is repealed and reenacted to  
10 read:

11           **903.1 Vent Terminal Required Roof extension.** Open vent pipes that extend through a  
12 roof shall be terminated not less than 6 inches above the roof, ~~except that where a roof is~~  
13 ~~to be used for any purpose other than weather protection, the vent extensions shall~~  
14 ~~terminate not less than 7 feet above the roof.~~

15 (t)     Chapter 14, "SUBSURFACE GRAYWATER SOIL ABSORPTION SYSTEMS  
16 LANDSCAPE IRRIGATION SYSTEMS," is deleted in its entirety.

17           Section 23. Section 10-12-1, "Legislative Intent," B.R.C. 1981, is amended to read as  
18 follows:

19 **10-12-1. Legislative Intent.**

20           The purpose of this chapter is to protect the public health, safety, and welfare of the  
21 residents of the city by regulating the construction, alteration, extension, location, installation,  
22 use and maintenance of all mobile homes and mobile home parks in the city. Mobile homes,  
23 manufactured housing, and factory-built housing are important and effective ways to meet  
24 Boulder's affordable housing needs. Moving mobile homes is costly and it is challenging to find  
25 an alternative mobile home park with vacancies willing to accept a mobile home. In some  
instances, a mobile ~~home owner~~homeowner may not be able to move their mobile home because  
of the mobile home's age and condition. A mobile ~~home owner~~homeowner 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.

1           Section 24. Section 10-12-6, “Nonresidential Use of Mobile Home,” B.R.C. 1981, is  
2 amended to read as follows:

3 ~~**10-12-6. Nonresidential Use of Mobile Home.**~~

4 ~~(a) — A person may use a mobile home as an office or other nonresidential use on a temporary  
5 basis during construction or remodeling connected with a use permitted on the lot, if the  
6 use and location of the mobile home comply with all applicable zoning and building  
7 provisions of this code and other ordinances of the city, but only if the mobile home is  
8 removed from the site upon completion of the construction or remodeling and only if the  
9 home is adequately secured against damage and overturning by winds while on the  
10 premises.~~

11 ~~(b) — A person may use a mobile home for nonresidential purposes on other than a mobile  
12 home park for other than construction or remodeling if the person requests a special  
13 exception for such use from the board of zoning adjustment. The board may grant a  
14 special exception if it finds that:~~

15 ~~(1) — The use of the mobile home is a temporary and accessory use necessary to  
16 enhance the principal use of the property;~~

17 ~~(2) — The use is limited to no more than twenty four months, unless the board finds  
18 good cause for a longer use;~~

19 ~~(3) — The mobile home installation meets all of the requirements of this chapter relating  
20 to tie down and wind security;~~

21 ~~(4) — The applicant has demonstrated an undue hardship and the need for the temporary  
22 use pending permanent construction of other facilities; and~~

23 ~~(5) — If granted, the special exception will not adversely affect the character of the  
24 neighborhood in which the mobile home is proposed to be located nor  
25 substantially impair the appropriate use and development of adjacent property.~~

~~(c) — The board may impose reasonable conditions upon the use that it deems necessary to  
promote the purposes of this chapter.~~

~~(d) — Until April 15, 2014, the city manager may waive any zoning requirement, building  
provision, or other provision of this code for the nonresidential use of a mobile home as  
made necessary by flooding.~~

26           Section 25. Section 10-12-8, “Foundations Blocking and Tie-Down Required,” B.R.C.  
27 1981, is amended to read as follows:

28 ~~**10-12-8. Blocking and Tie-Down Required.**~~

29 ~~(a) — No owner or occupant of a mobile home shall fail to provide a skirting of rigid material  
30 for the mobile home or fail to secure the mobile home against wind damage by providing  
31 tie-downs as required in this section.~~

(b) The city manager may reduce the number of tie-down sets for any mobile home park constructed before July 5, 1973 and annexed to the city after July 5, 1973, if the manager determines, after presentation of evidence by the owner or occupant of a mobile home, that certain spaces are not subject to the wind forces upon which these requirements are based.

(c) No owner or occupant of a mobile home shall fail to provide it with tie-downs to the main framing members of the mobile home that comply with the following conditions:

(1) In mobile home parks constructed before July 5, 1973:

<i>Length of Mobile Home</i>	<i>Required Tie-Down Sets</i>	<i>Number of Anchors</i>
Up to 50 feet	2	4
50 to 70 feet	3	6
Over 70 feet	4	8

(2) In mobile home parks constructed after July 5, 1973:

<i>Length of Mobile Home</i>	<i>Required Tie-Down Sets</i>	<i>Number of Anchors</i>
Up to 30 feet	2	4
30 to 50 feet	3	6
50 to 70 feet	4	8
Over 70 feet	5	10

(3) All ties are fastened to an anchorage as provided in Section 10-12-9, "Anchorage," B.R.C. 1981, and are drawn tight with one-half inch or larger galvanized, drop-forged turnbuckles, or other equivalent tightening device approved by the city manager. Turnbuckles are ended with jaws or forged or welded eyes. Turnbuckles with hood ends are not used.

(4) All cable ends are secured with at least two U-bolt type cable clamps or other fastening device approved by the city manager.

(5) Cable used for tie-downs is either galvanized steel or stainless steel and either three-eighths inch diameter 7 × 7 (seven strands of seven wires each) steel cable or three-eighths inch diameter 7 × 19 (seven strands of nineteen wires each) "aircraft" cable.

(6) When flat steel strapping is used, it meets federal specifications QQ-S-781 (one and one-fourth inch × 0.035 inch Type 1, Class B, Grade 1). Zinc coating is a minimum of 0.30 ounces per square foot of surface. Breaking strength is a

minimum of four thousand seven hundred fifty pounds.<sup>3</sup> Other material used is at least equal to the above specifications in tensile strength and weather resistance.

(7) — Steel bands used for ties terminate with a D ring bolt or other device that will not cause distortion of the band with a tensioning device attached.

(8) — Sharp edges of the mobile home that would tend to cut the cable when the home is buffeted by wind are protected by a thimble or other device to prevent such cutting.

(9) — Connection to the I beam may be by a five eighths inch drop forged closed eye, bolted through a hole drilled through the beam. A washer or its equivalent is used so that the beam is sufficiently fish plated through the hole.

(d) — The city manager may approve other connectors or means of securing the cable to the beam if they are of equivalent holding power and permanence.

**10-12-8. Foundations.**

(a) Mobile Homes must be installed in compliance with the Colorado Department of Local Affairs, Division of Housing, handbook and must bear the state insignia prior to receiving a certificate of occupancy.

Section 26. Section 10-12-9, "Anchorage," B.R.C. 1981, is deleted in its entirety and reserved:

**10-12-9. Anchorage.**

(a) — Ground anchors shall comply with the following conditions:

(1) — They are aligned with the piers required by Section 10-12-10, "Piers and Footings," B.R.C. 1981, and are situated immediately below the outer wall if they are to accommodate over the home ties, if this placement allows for sufficient angle for the anchor to frame connection.

(2) — Steel rods are of a five eighths inch minimum diameter with a forged or welded eye at the top; the bottom of the rod for dead man anchors is hooked into the concrete.

(3) — Augers are at least six inches in diameter, with arrowheads of eight inches, and are sunk to a depth of at least five feet.

(4) — Dead man anchors are sunk to a depth of at least five feet with a minimum vertical dimension of two feet and a diameter of six inches; no celled concrete blocks are provided.

(b) — The city manager may approve anchors to reinforced concrete slabs if they are of strength comparable to the requirements set forth in this section and if the weight of the mobile home rests on the slab.

<sup>3</sup>See paragraphs 1.2.11, 1.2.1.2, 3.10.2, 6.1.7, and table II of QQ S-781.

1        Section 27. Section 10-12-10, "Piers and Footings," B.R.C. 1981, is amended to read as  
2 follows:

3 **10-12-10. Piers and Footings.**

- 4 (a) ~~Piers and footings on all mobile homes, except those installed before April 21, 1972,~~  
5 ~~shall meet the following conditions:~~
  - 6 (1) ~~All piers are placed on footers of concrete with a minimum dimension of sixteen~~  
7 ~~inches by sixteen inches by four inches or an equivalent as approved by the city~~  
8 ~~manager.~~
  - 9 (2) ~~Piers are constructed as standard eight inches by eight inches by sixteen inches~~  
10 ~~celled concrete blocks placed over the footings with the long dimension~~  
11 ~~crossways to the main frame members and centered under them, with cells~~  
12 ~~vertical; piers are of a height so that the mobile home will be located as close to~~  
13 ~~the ground as possible.~~
  - 14 (3) ~~Piers are topped with a concrete cap eight inches by sixteen inches by four inches.~~
  - 15 (4) ~~Hardwood shims are driven tight between the cap and the main frame to provide~~  
16 ~~uniform bearing and are four inches or less in thickness and wide enough to~~  
17 ~~provide bearing over the top cap.~~
  - 18 (5) ~~Required piers are centered under each main frame or chassis member within five~~  
19 ~~feet of anchorage, and the end piers are no farther than five feet from the ends of~~  
20 ~~the mobile home. There is at least one pier for required anchorage.~~
- 21 (b) ~~The city manager may approve other types of piers and footings of equivalent~~  
22 ~~permanence and weight bearing ability.<sup>4</sup>~~

23 Mobile homes must be installed in compliance with the Colorado Department of Local Affairs,  
24 Division of Housing, Installation Handbook

25        Section 28. Section 10-12-12, "Alternative Tie Down and Blocking Methods," B.R.C.  
1981, is deleted in its entirety and reserved:

~~**10-12-12. Alternative Tie Down and Blocking Methods.**~~

~~If a mobile home park owner or developer wishes to use different tie down, blocking or  
anchorage systems than those required by this chapter, before seeking approval of a final mobile  
home park site plan from the planning board, the owner or developer shall obtain approval from  
the city manager for typical tie downs and for each individual space shown on the proposed final  
site plan, based on plans for the method and materials for tie down pads designed by a Colorado  
licensed professional engineer and complying with the city building code, Chapter 10-5,  
"Building Code," B.R.C. 1981.~~

~~<sup>4</sup>The use of a heavy metal adjustment column anchored to both frame and footing is recommended.~~



1 ...

2 Section 4. 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 5. 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  
8 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
9 TITLE ONLY this 6<sup>th</sup> day of February 2025.

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\_\_\_\_\_  
Aaron Brockett,  
Mayor

Attest:

\_\_\_\_\_  
Elesha Johnson,  
City Clerk

16 READ ON SECOND READING, PASSED AND ADOPTED this day of 20<sup>th</sup> day of  
17 February 2025.

\_\_\_\_\_  
Aaron Brockett,  
Mayor

Attest:

\_\_\_\_\_  
Elesha Johnson,  
City Clerk



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Second reading and consideration of a motion to adopt Ordinance 8682 amending Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, providing the city manager with authority to designate the place and period of time for claim submittal; and setting forth related details

### **PRIMARY STAFF CONTACT**

Elizabeth Crowe/HHS Deputy Director

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8682 amending Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, providing the city manager with authority to designate the place and period of time for claim submittal; and setting forth related details

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3G - 2nd Rdg Ord 8682 to amend "Qualifications for Tax Refund", providing the city manager with authority to designate the details for claim submittal**
- ▣ **Item 3G - Addendum Memo**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Second reading and consideration of a motion to adopt Ordinance 8682 amending Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, providing the city manager with authority to designate the place and period of time for claim submittal; and setting forth related details

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Mark Woulf, Assistant City Manager  
Kurt Firnhaber, Director of Housing & Human Services  
Elizabeth Crowe, Deputy Director of Housing & Human Services  
Roberto Ramirez, Deputy City Attorney  
Carin Armstrong, Community Resolution Manager  
Rewa Ward, Paralegal II

**EXECUTIVE SUMMARY**

The City of Boulder [Food Tax Rebate program](#) (FTR) provides rebates to compensate qualified low-income residents for the city sales tax they pay on food. For decades the rebate has benefited older adults, people with disabilities and households with children. As with any program that has existed as long as FTR, staff continue to improve up on the process to make it more efficient and effective for program staff and volunteers and, most importantly, for community members eligible for the rebate. However, the current language in the FTR ordinance – Section 3-5-3, "QUALIFCATIONS FOR TAX REFUND," B.R.C. 1981 – require an application start- and end-date that limits the ability of staff to implement

other helpful changes to the process.

Staff request removing the language specifying the months within which the FTR process is conducted, and instead enable staff to work with the City Manager's Office to determine the exact timeframe within which applications will be received. (See **Attachment A**, Proposed Ordinance 8682)

## **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 8682 amending Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, providing the city manager with authority to designate the place and period of time for claim submittal; and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic** - Staff do not anticipate any economic impacts from streamlining the application process.
- **Environmental** - Staff do not anticipate any environmental impacts from streamlining the application process.
- **Social** - A more efficient streamlined process will benefit community members who are seeking information about, applying for and receiving rebate funds. With greater flexibility in setting the application submission start date and deadlines, staff will better be able to recruit and utilize volunteers; efficiently bundle hours for application review and verification, direct customer service and administrative tasks; and reduce the timeframe between application submission and payments for an improved community member experience.

## **OTHER IMPACTS**

- **Fiscal** - Staff do not anticipate any fiscal impacts from streamlining the application process.
- **Staff time** - FTR is part of the normal staff work plan. Staff do not anticipate any additional staffing resources.

## **RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE**

None

## **BOARD AND COMMISSION FEEDBACK**

None

## **PUBLIC FEEDBACK**

None

## **BACKGROUND**

The City of Boulder has for decades provided rebates to compensate qualified lower income residents for the city sales tax they pay on food. Currently, the program is administered through the Housing & Human Services department. Residents eligible for FTR must fall into one of the following categories: 1) an older adult age 62 or over for the entire calendar year; 2) a person with a disability; 3) or a household with children under 18 years of age. To qualify, all applicants must meet financial eligibility requirements established by the Department of Housing and Urban Development (HUD). Each year, the rebate amount is updated to reflect changes in cost of living based on the U.S. Department of Labor Consumer Price Index for the metro region. In 2024 FTR provided funds to 1092 low-income households, at a total cost of \$166,750.

## **ANALYSIS**

In 2024 HHS updated the FTR application, verification and customer support processes for more efficient use of staff and volunteer time, and better overall service to community members. However, the specific application dates set out in the ordinance are preventing staff from additional changes that we believe would make for a more efficient and dignified process. For example, staff would like to reduce the timeframe between receiving and reviewing applications and submitting payments. This would enable better use of staff time and coordination with program volunteers; and enable more timely response to community members. This is only possible through modification of the current ordinance language, for more flexibility.

## **NEXT STEPS**

City Council will consider the proposed ordinance changes for a first reading on January 9, 2025, and second reading on January 16, 2025. Following council adoption, the proposed change to the city's ordinance will go into effect in 30 days from January 16 or February 15, 2025. HHS staff would then coordinate with the City Manager's Office to propose a new application start-date and deadline that would still provide a generous timeframe for community members to apply for the rebate, but also ensure more effective use of staff and volunteer time, and a more transparent and dignified process for applicants.

## **ATTACHMENT**

A – Proposed Ordinance 8682

ORDINANCE 8682

AN ORDINANCE AMENDING SECTION 3-5-3, "QUALIFICATIONS FOR TAX REFUND," B.R.C. 1981, PROVIDING THE CITY MANAGER WITH AUTHORITY TO DESIGNATE THE PLACE AND PERIOD OF TIME FOR CLAIM SUBMITTAL; AND SETTING FORTH RELATED DETAILS

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

Section 1. Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, is amended to read as follows:

Every person desiring to claim a tax refund shall submit to the city manager a verified, written application therefor signed under oath, on the form specified by the city manager and with the attachments required by the city manager, and filed at such place and time as designated by the city manager~~between March 1 and June 30 of the year subsequent to the year for which the refund application is made~~. Each applicant must satisfy the following qualifications to be entitled to a refund in the amount provided in this chapter:

- (a) The applicant must be one of the following categories of families or individuals:
  - (1) A family at least one of the members of which is a child under the age of eighteen who is the son or daughter of one of the other persons who is:
    - (A) Claiming the dependent deduction on his or her tax return as set forth on I.R.S. Form 1040, Section 6c, "Exemptions," or I.R.S. Form 1040NR, Section 7c, "Dependents;" or
    - (B) Filing Head of Household status with the I.R.S. if applicant is unmarried and pays more than 50% of the cost of upkeep for a home with children under 18; or
  - (2) A person with a disability or over the age of sixty-one and who is not a member of a family which has applied or which subsequently applies for a refund for the same year. For purposes of this section, Person with a disability means a person receiving Supplemental Security Income or Social Security Disability Income or who can produce a letter from a physician stating that the individual has a disability as defined by the federal Americans with Disabilities Act.

(b) The applicant must have been a resident of the city of Boulder during the entire year for which the refund application is made. Individuals experiencing homelessness can meet this residency requirement by providing documentation that they are receiving services from a city-recognized homelessness services agency.

(c) The applicant’s income during the year for which the refund is requested must be no greater than fifty percent of the Area Median Income for Boulder County by family size, as published by the United States Department of Housing and Urban Development or its successor agency, for such year. For purposes of this requirement, income is the total income found on the following tax forms in the following places:

I.R.S. Form 1040	Line 6 “Total Income”
I.R.S. Form 1040NR	Line 23 “Total Effectively Connected Income”

Section 2. 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 3. 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 9th day of January 2025.

\_\_\_\_\_  
Aaron Brockett,  
Mayor

Attest:

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City Clerk

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READ ON SECOND READING, PASSED AND ADOPTED this 6th day of February  
2025.

---

Aaron Brockett,  
Mayor

Attest:

---

City Clerk





**CITY OF BOULDER  
CITY COUNCIL ITEM ADDENDUM**

**MEETING DATE: February 6, 2025**

**AGENDA ITEM:**

3G: Second reading and consideration of a motion to adopt Ordinance 8682 amending Section 3-5-3, "Qualifications for Tax Refund," B.R.C. 1981, providing the city manager with authority to designate the place and period of time for claim submittal; and setting forth related details

**PAGE NUMBER:**

Page 3, the first two sentences of the paragraph titled NEXT STEPS

**DESCRIPTION:**

The NEXT STEPS section on page 3 of the memo should be updated to reflect the actual second reading date, and actual date at which the ordinance change would take effect. The sentences should read:

City Council will consider the proposed ordinance changes for a first reading on January 9, 2025, and second reading on February 6, 2025. Following council adoption, the proposed change to the city's ordinance will go into effect in 30 days from February 6 or March 8, 2025.

Please see the following, for the full corrected page 3 of the memo.

## **BOARD AND COMMISSION FEEDBACK**

None

## **PUBLIC FEEDBACK**

None

## **BACKGROUND**

The City of Boulder has for decades provided rebates to compensate qualified lower income residents for the city sales tax they pay on food. Currently, the program is administered through the Housing & Human Services department. Residents eligible for FTR must fall into one of the following categories: 1) an older adult age 62 or over for the entire calendar year; 2) a person with a disability; 3) or a household with children under 18 years of age. To qualify, all applicants must meet financial eligibility requirements established by the Department of Housing and Urban Development (HUD). Each year, the rebate amount is updated to reflect changes in cost of living based on the U.S. Department of Labor Consumer Price Index for the metro region. In 2024 FTR provided funds to 1092 low-income households, at a total cost of \$166,750.

## **ANALYSIS**

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## **NEXT STEPS**

City Council will consider the proposed ordinance changes for a first reading on January 9, 2025, and second reading on February 6, 2025. Following council adoption, the proposed change to the city's ordinance will go into effect in 30 days from February 6 or March 8, 2025. HHS staff would then coordinate with the City Manager's Office to propose a new application start-date and deadline that would still provide a generous timeframe for community members to apply for the rebate, but also ensure more effective use of staff and volunteer time, and a more transparent and dignified process for applicants.

## **ATTACHMENT**

A – Proposed Ordinance 8682



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Third reading and consideration of a motion to adopt Ordinance 8666, amending Chapters 9-2, "Review Processes," 9-6, "Use Standards," and 9-8, "Intensity Standards," of Title 9, "Land Use Code," B.R.C. 1981, to amend density and intensity standards to allow development of additional dwelling units in the Residential – Rural 1 (RR-1), Residential – Rural 2 (RR-2), Residential – Low 1 (RL-1), Residential – Medium 1 (RM-1), and Residential – Mixed 1 (RMX-1) zoning districts and to amend review procedures and use standards to reduce regulatory requirements for certain residential developments, and setting forth related details

### **PRIMARY STAFF CONTACT**

Karl Guiler, Policy Advisor Senior

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8666, amending Chapters 9-2, "Review Processes," 9-6, "Use Standards," and 9-8, "Intensity Standards," of Title 9, "Land Use Code," B.R.C. 1981, to amend density and intensity standards to allow development of additional dwelling units in the Residential – Rural 1 (RR-1), Residential – Rural 2 (RR-2), Residential – Low 1 (RL-1), Residential – Medium 1 (RM-1), and Residential – Mixed 1 (RMX-1) zoning districts and to amend review procedures and use standards to reduce regulatory requirements for certain residential developments, and setting forth related details

### **ATTACHMENTS:**

#### **Description**

- **3H - 3rd Rdg Ord 8666 Family Friendly Vibrant Neighborhoods**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Third reading and consideration of a motion to adopt Ordinance 8666, amending Chapters 9-2, “Review Processes,” 9-6, “Use Standards,” and 9-8, “Intensity Standards” of Title 9, “Land Use Code,” B.R.C. 1981, to amend density and intensity standards to allow development of additional dwelling units in the Residential – Rural 1 (RR-1), Residential – Rural 2 (RR-2), Residential – Low 1 (RL-1), Residential – Medium 1 (RM-1), and Residential Mixed – 1 (RMX-1) zoning districts and to amend review procedures and use standards to reduce regulatory requirements for certain residential developments, and setting forth related details.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Teresa Taylor Tate, City Attorney  
Hella Pannewig, Senior Counsel  
Mark Woulf, Assistant City Manager  
Brad Mueller, Director of Planning & Development Services  
Charles Ferro, Senior Planning Manager  
Karl Guiler, Senior Policy Advisor

**EXECUTIVE SUMMARY**

The purpose of this item is for City Council to consider a motion to adopt the attached proposed Ordinance 8666 (**Attachment A**) on third reading. The second reading and public hearing on the ordinance occurred on Jan. 9, 2025.

Ordinance 8666 would implement the Family-Friendly Vibrant Neighborhoods project, which is a City Council 2024-2025 Work Program Priority Item. The content of the ordinance focuses on specific suggestions that were made by City Council in September 2023, when it adopted Ordinance 8599 as part of the Zoning for Affordable Housing project.

City Council initiated the project at its retreat in March of 2024 with a goal of adding more missing middle housing (e.g., duplexes, triplexes, etc.) and remove additional zoning related barriers to housing in Boulder in efforts to provide more housing options and price points beyond just large, detached dwelling units or apartment/condominium buildings to deal with the growing housing challenges of the city.

Planning Board reviewed Ordinance 8666 on Nov. 19 and voted 6-1 to recommend approval of the ordinance to City Council with some modifications. City Council considered and passed the ordinance on first reading on Dec. 19, 2024. At the second reading of Ordinance 8666, City Council voted 6-3 to amend Ordinance 8666 to change the standards related to allowing additional units on lots and parcels within the Residential – Mixed 1 (RMX-1) zoning district. This amendment is reflected in the attached, revised ordinance and is discussed within 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 8666, amending Chapters 9-2, “Review Processes,” 9-6, “Use Standards,” and 9-8, “Intensity Standards” of Title 9, “Land Use Code,” B.R.C. 1981, to amend density and intensity standards to allow development of additional dwelling units in the Residential – Rural 1 (RR-1), Residential – Rural 2 (RR-2), Residential – Low 1 (RL-1), Residential – Medium 1 (RM-1), and Residential Mixed – 1 (RMX-1) zoning districts and to amend review procedures and use standards to reduce regulatory requirements for certain residential developments, and setting forth related details.

### **RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE**

**None.**

### **BOARD AND COMMISSION AND COMMUNITY FEEDBACK**

For Planning Board and Housing Advisory Board feedback on Ordinance 8666, community feedback on the changes, and a background on the project, see the [memorandum to City Council dated Jan. 9, 2025](#).

## **BACKGROUND**

Background on the project can be accessed at the link above. This section will summarize the City Council's Jan. 9, 2025 deliberation and decision.

Council members that supported the ordinance made the following points:

- Boulder is in need of more housing options. Intergenerational housing would be provided if more missing middle housing is added. This is what people want. This project is exciting, because it links housing and transportation, which should be interrelated. Housing security does affect affordability.
- Deed restricted affordability was not a requirement of this project. Rather, it was to allow more housing to increase the amount of choice. There was interest in increasing the transit buffer distance to 550 feet, but members of council supported staying with 350 feet, since that was what was represented to the community as part of the outreach process.
- This project increases density in a responsible way.
- Allowing people of different incomes to live near each other shouldn't be so scary.
- This is a modest change that impacts all walks of life.
- The questionnaire was an informative tool where the comments helped inform the changes.

The council members that voted against the ordinance made the following criticisms:

- Concerns were expressed about increasing density in areas that were wildfire prone. Addition of duplexes would likely increase the amount of wood fences in yards demarcating open spaces, which could exacerbate the spread of wildfire. Suggestions were made to exclude portions of South Boulder west of Broadway until after the Wildfire Hardening project (a period of six months) was completed based on this concern. This suggested change was then withdrawn.
- Dwelling units that are three-bedrooms should be encouraged if the project is to be more "family-friendly."
- The focus of the project should be on incentives for more affordability and not just adding housing. New units will likely be more units for the wealthy.
- Investors will buy up properties and this should be addressed prior to allowing more housing.

Much of the discussion centered around a proposed provision in the ordinance that would disallow additional units on lots or parcels in the Residential – Mixed 1 (RMX-1) where an owner or applicant moved forward with a demolition of a building over 50 years old, if there was a finding of probable cause to landmark the building. Per the proposed language, no density increase would have been permitted on such a lot. This provision would've applied even if the Landmarks Advisory Board or City Council were to overrule the finding at a later stage. Therefore, council made a motion that amended the ordinance to remove the restriction. City Council then voted 6-3 to pass and amend Ordinance 8666. The amendment is reflected in the attached, revised ordinance and is discussed in the 'Analysis' section below.

## ANALYSIS

Staff recommends that City Council adopt Ordinance 8666 on February 6, 2025, to implement and complete the Family Friendly Vibrant Neighborhoods project. For the full staff analysis and recommendation, see the [memorandum to City Council dated Jan. 9, 2025](#). The changes to the Land Use Code within Ordinance 8666 have been found consistent with the [Boulder Valley Comprehensive Plan \(BVCP\)](#). The city has started the 2025 major update to the BVCP. The BVCP update is anticipated to further address the city's need for missing middle housing and work towards 15-minute neighborhoods. Following the BVCP update, changes to the land use code can be considered to implement updated BVCP goals and policies.

As noted above, only one amendment was made by City Council and entailed removing the following language below in red, which would have not permitted any density increase in the Residential – Mixed 1 (RMX-1) if a property owner or applicant were to move forward with the demolition of a building over 50 years old after a finding of probable cause that a building may be eligible for landmark designation.

The specific language change, which is reflected in the attached Ordinance 8666 (**Attachment A**), is shown below:

*Additional Density in the RMX-1 District: In the RMX-1 zoning district, the minimum lot area per dwelling unit requirement is reduced from 6,000 square feet to 2,500 square feet, except on a lot or parcel under the following circumstances:*

- (1) (1) Following the demolition of a principal building without permits required for such demolition under the Boulder Revised Code, ~~or~~*
- (2) ~~Following the demolition of a principal building after a finding of probable cause that it may be eligible for landmark designation in an "Initial Review" under Subsection (d) of Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981.~~*

The other criterion in subsection (1) above would remain and would prohibit the density increase on any lot where a building is illegally demolished.

## ATTACHMENTS

Attachment A: Ordinance 8666

ORDINANCE 8666

AN ORDINANCE AMENDING CHAPTERS 9-2, "REVIEW PROCESSES," 9-6, "USE STANDARDS," AND 9-8, "INTENSITY STANDARDS" OF TITLE 9, "LAND USE CODE," B.R.C. 1981, TO AMEND DENSITY AND INTENSITY STANDARDS TO ALLOW DEVELOPMENT OF ADDITIONAL DWELLING UNITS IN THE RESIDENTIAL – RURAL 1 (RR-1), RESIDENTIAL – RURAL 2 (RR-2), LOW 1 (RL-1), RESIDENTIAL – MEDIUM 1 (RM-1), AND RESIDENTIAL MIXED – 1 (RMX-1) ZONING DISTRICTS AND TO AMEND REVIEW PROCEDURES AND USE STANDARDS TO REDUCE REGULATORY REQUIREMENTS FOR CERTAIN RESIDENTIAL DEVELOPMENTS, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Table 2-2 of Section 9-2-14, "Site Review," B.R.C. 1981, is amended to read as follows:

**9-2-14. - Site Review.**

- (a) Purpose: The purpose of site review is to allow flexibility in design, to encourage innovation in land use development, to promote the most appropriate use of land, to improve the character and quality of new development, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space, to ensure compatible architecture, massing and height of buildings with existing, approved, and known to be planned or projected buildings in the immediate area, to ensure human scale development, to promote the safety and convenience of pedestrians, bicyclists and other modes within and around developments and to implement the goals and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community. Review criteria are established to achieve the following:

...



(b) Scope: The following development review thresholds apply to any development that is eligible or that otherwise may be required to complete the site review process:

**TABLE 2-2: SITE REVIEW THRESHOLD TABLE**

<i>Zoning District Abbreviation</i>	<i>Use</i>	<i>Form</i>	<i>Intensity</i>	<i>Minimum Size for Site Review</i>	<i>Concept Plan and Site Review Required</i>
A	A	a	1	2 acres	-
BC-1	B3	f	19	1 acre	3 acres or 50,000 square feet of floor area
BC-2	B3	f	19	1 acre	2 acres or 25,000 square feet of floor area
BCS	B4	m	28	1 acre	3 acres or 50,000 square feet of floor area
BMS	B2	e	17	0	3 acres or 50,000 square feet of floor area
BR-1	B5	f	23	0	3 acres or 50,000 square feet of floor area
BR-2	B5	f	16	0	3 acres or 50,000 square feet of floor area
BT-1	B1	f	15	1 acre	2 acres or 30,000 square feet of floor area
BT-2	B1	e	21	0	2 acres or 30,000 square feet of floor area
DT-1	D3	p	25	0	1 acre or 50,000 square feet of floor area
DT-2	D3	p	26	0	1 acre or 50,000 square feet of floor area
DT-3	D3	p	27	0	1 acre or 50,000 square feet of floor area
DT-4	D1	q	27	0	1 acre or 50,000 square feet of floor area
DT-5	D2	p	27	0	1 acre or 50,000 square feet of floor area
IG	I2	f	22	2 acres	5 acres or 100,000 square feet of floor area
IM	I3	f	20	2 acres	5 acres or 100,000 square feet of floor area
IMS	I4	r	18	0	3 acres or 50,000 square feet of floor area
IS-1	I1	f	11	2 acres	5 acres or 100,000 square feet of floor area
IS-2	I1	f	10	2 acres	5 acres or 100,000 square feet of floor area
MH	MH	s	-	5 or more units are permitted on the property	-
MU-1	M2	i	18	0	1 acre or 30,000 square feet of floor area
MU-2	M3	r	18	0	3 acres or 50,000 square feet of floor area
MU-3	M1	n	24	5 or more units are permitted on the property	1 acre or 30,000 square feet of residential floor area or 20,000 square feet of nonresidential floor area
MU-4	M4	e	24.5	0	3 acres or 50,000 square feet of floor area
P	P	e	5	2 acres	5 acres or 100,000 square feet of floor area
RE	R1	b	3	5 or more units are permitted on the property	-
RH-1	R6	j	12	0	2 acres or 30,000 square feet of floor area
RH-2	R6	e	12	0	2 acres or 30,000 square feet of floor area
RH-3	R7	l	14	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area

RH-4	R6	h	15	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RH-5	R6	e	19	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RH-6	R8	j	17.5	5 or more units are permitted on the property	3 acres or 30,000 square feet of floor area
RH-7	R7	i	14.5	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RL-1	R1	d	4	5 or more units are permitted on the property	3 acres or 18 dwelling units
RL-2	R2	g	6	5 or more units are permitted on the property	3 acres or 18 dwelling units
RM-1	R3	g	9	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RM-2	R2	d	13	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RM-3	R3	j	13	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RMX-1	R4	d	7	5 or more units are permitted on the property	2 acres or 30,000 square feet of floor area
RMX-2	R5	k	8	0	2 acres or 30,000 square feet of floor area
RR-1	R1	a	2	-	-
RR-2	R1	b	2	-	-

Footnote to Table 2-2, Site Review Threshold Table:

- (a) See Section 9-2-14(b)(3), B.R.C. 1981, for development projects that are exempt from the Concept Plan and Site Review Required threshold.

**TABLE 2-2: SITE REVIEW THRESHOLD TABLE**

<u>Zoning District</u>	<u>Concept Plan and Site Review Required (a)</u>	<u>Minimum Size for Site Review</u>
<u>RL-1</u> <u>RL-2</u>	<u>3 acres or 18 dwelling units</u>	<u>Standard in footnote (b) applies</u>
<u>RH-3</u> <u>RH-4</u> <u>RH-5</u> <u>RH-7</u>	<u>2 acres or 30,000 square feet of floor area</u>	<u>7,500 square feet of floor area</u>
<u>RH-6</u>	<u>3 acres or 30,000 square feet of floor area</u>	
<u>MU-1</u>	<u>1 acre or 30,000 square feet of floor area</u>	
<u>MU-3</u>	<u>1 acre or 30,000 square feet of residential floor area or 20,000 square feet of nonresidential floor area</u>	<u>Standard in footnote (b) applies</u>

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<u>DT-1</u> <u>DT-2</u> <u>DT-3</u> <u>DT-4</u> <u>DT-5</u>	<u>1 acre or 50,000 square feet of floor area</u>	
<u>BC-2</u> <u>BT-1</u> <u>BT-2</u> <u>RH-1</u> <u>RH-2</u> <u>RM-1</u> <u>RM-2</u> <u>RM-3</u> <u>RMX-1</u> <u>RMX-2</u>	<u>2 acres or 30,000 square feet of floor area</u>	
<u>BC-1</u> <u>BMS</u> <u>BR-1</u> <u>BR-2</u> <u>IMS</u> <u>MU-2</u> <u>MU-4</u>	<u>3 acres or 50,000 square feet of floor area</u>	
<u>MH</u>	<u>Not required</u>	
<u>P</u>	<u>5 acres or 100,000 square feet of floor area</u>	
<u>F</u>	<u>All projects</u>	
<u>BCS</u>	<u>3 acres or 50,000 square feet of floor area</u>	<u>1 acre</u>
<u>IG</u> <u>IM</u>	<u>5 acres or 100,000 square feet of floor area</u>	
<u>IS-1</u> <u>IS-2</u>		<u>2 acres</u>
<u>A</u>	<u>Not required</u>	
<u>RE</u> <u>RR-1</u> <u>RR-2</u>	<u>Not required</u>	<u>Not eligible</u>
<i>Footnotes to Table 2-2, Site Review Threshold Table:</i>		
<u>(a) See Section 9-2-14(b)(3), B.R.C. 1981, for development projects that are exempt from the Concept Plan and Site Review Required threshold.</u>		
<u>(b) Lots or parcels with non-residential uses are eligible for site review. Lots or parcels with only residential uses are eligible for site review if the lot or parcel includes at least five dwelling units or is permitted to have at least five dwelling units pursuant to the standards of Chapter 9-8, "Intensity Standards," B.R.C. 1981, and, for projects in the RL-1 and RL-2 zones, the project is also at least 3 acres in size.</u>		

21 ...

- (3) Exceptions: The following developments that exceed the minimum site review thresholds set forth in this section shall not be required to complete a site review:
- (A) Minor modifications and amendments under this section to approved development review applications;
  - (B) Building permits for additions to existing structures that do not exceed a cumulative total, over the life of the building, of twenty-five percent of the

size of the building on which the addition is proposed and that do not alter the basic intent of an approved development;

- (C) Subdivisions solely for the purpose of amalgamating lots or parcels of land;
- (D) Subdivisions solely for the purpose of conveying property to the city;
- (E) City of Boulder public projects that are otherwise required to complete a public review process; and
- (F) Projects located in areas defined by Appendix L, "Form-Based Code Areas," that are required to complete form-based code review pursuant to Section 9-2-16, "Form-Based Code Review," B.R.C 1981.
- (G) Residential projects where all units will meet the requirements for permanently affordable units in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, provided the applicant for such a project applies for and receives approval of an affordable housing design review pursuant to Section 9-13-4, "Affordable Housing Design Review," B.R.C. 1981.

Section 2. Section 9-6-3, "Specific Use Standards - Residential Uses," B.R.C. 1981, is

amended to read as follows:

**(a) Residential Uses:**

- (1) This Subsection (a) sets forth standards for uses in the residential use classification that are subject to specific use standards pursuant to Table 6-1, Use Table.
- (2) Residential Uses in the IG and IM Zoning Districts: The following standards apply in the IG and IM zoning districts to residential uses that may be approved pursuant to a use review:
  - (A) Location: Dwelling units may be constructed only on a lot or parcel that meets one or more of the following requirements (i), (ii), or (iii). If a lot or parcel meets this location standard, the approving authority shall presume that the standard in Paragraph 9-2-15(e)(4), B.R.C. 1981, has been met.
    - (i) The residential use is consistent with the land use plan or map in an adopted subcommunity or area plan; or
    - (ii) The lot or parcel is located within one-quarter mile of the Boulder Junction transit station. Distance shall be measured by the city manager on official maps as the radius from the closest point on the perimeter of the applicant's lot or parcel to the closest point on the transit station lot; or

(iii) At least one-sixth of the perimeter of the lot or parcel is contiguous with a residential use that includes one or more dwelling units, a residential zoning district, or a city- or county-owned park or open space. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, or a public or private transportation right-of-way or area.

(B) Floor Area Ratios (FAR): The following floor area ratio standards apply to a lot or parcel in the IG or IM zone with a residential use:

(i) FAR by Use: Residential floor area is limited to a 1.0 FAR. FAR on a lot or parcel and a Non-residential floor area is limited to a 0.5 FAR in the IG zone and 0.4 FAR in the IM zone. If at least 0.3 FAR of light manufacturing or research and development use is on the lot or parcel, the residential FAR may be increased to 1.25 FAR in each zone.

(ii) Additional Residential FAR for Certain Industrial Mixed-Use Projects: If 0.3 or more of allowed nonresidential FAR consists, individually or in combination, of building and landscaping contractors, building material sales, business support services, equipment repair and rentals, light manufacturing, non-vehicular repair and rental services, research and development, service of vehicles, warehouse or distribution facilities, or wholesale businesses, the maximum residential FAR is 1.25.

(iii) FAR Averaging Across Parcels in Site Review: The FAR limits of this subparagraph (a)(2)(B) may be modified in a site review to permit averaging of these FAR limits across multiple lots or parcels that are subject to the site review and within the same zoning district provided that, when averaged across the lots and parcels, the FAR standards are met and do not result in a FAR exceeding that permitted under this subparagraph.

Section 3. Section 9-7-9, "Side Yard Bulk Plane," B.R.C. 1981, is amended to read as

follows:

**9-7-9. Side Yard Bulk Plane.**

(a) Purpose: Buildings with tall side walls may impact privacy, views or visual access to the sky on neighboring properties. The purpose of this side yard bulk plane standard is to ensure that buildings step down towards neighboring properties in order to enhance privacy, preserve some views and visual access to the sky for lots or parcels that are adjacent to new development.

1 (b) Scope: All construction related to principal and accessory buildings shall comply with the  
2 bulk plane requirements of this section. This section applies to all construction related to  
3 residential principal and accessory buildings, including new construction and expansion,  
4 ~~building addition or modification of existing buildings as follows: in the RR-1, RR-2, RE,~~  
5 RL-1 and RMX-1 zoning districts.

6 (1) ~~All residential principal and accessory buildings in the RR-1, RR-2, RE and RL-1~~  
7 ~~zoning districts; and~~

8 (2) ~~All principal and accessory buildings that are used as a detached single family land use~~  
9 ~~in the RMX-1 zoning district.~~

10 ...

11 Section 4. Section 9-7-10, "Side Yard Wall Articulation," B.R.C. 1981, is amended to  
12 read as follows:

13 **9-7-10. Side Yard Wall Articulation.**

14 (a) Purpose: Buildings with tall side walls may impact privacy, views or visual access to the  
15 sky on neighboring properties. The purpose of the side yard wall articulation standard is  
16 to reduce the perceived mass of a building by dividing it into smaller components, or to  
17 step down the wall height in order to enhance privacy, preserve views and visual access  
18 to the sky for lots or parcels that are adjacent to new development.

19 (b) Scope: All construction related to principal and accessory buildings shall comply with the  
20 side yard wall length articulation requirements of this section. This section applies to all  
21 construction related to buildings, including new construction and, expansion or  
22 modification of existing buildings, as follows:

23 (1) All residential buildings in the RR-1, RR-2, RE, ~~and RL-1,~~ and RMX-1 zoning  
24 districts, including lots located in planned developments, planned residential  
25 developments and planned unit developments.

26 (2) ~~All buildings that are used as a detached single family land use in the RMX-1~~  
27 ~~zoning district, including lots located in planned developments, planned~~  
28 ~~residential developments and planned unit developments.~~

29 (3) ~~2~~ In the RL-2 zoning district, the side yard wall articulation requirements shall  
30 apply to lots that are eight thousand square feet or larger that are not within the  
31 boundaries of a planned development, planned residential development, planned  
32 unit development or an approved site review.

33 (4) ~~3~~ In the RL-2 zoning district, the requirements shall apply to all lots and parcels that  
34 are within the boundaries of a planned development, planned residential  
35 development and planned unit development that are shown on Appendix H of this  
36 title.

37 ...

Section 5. Section 9-7-11, “Maximum Building Coverage,” B.R.C. 1981, is amended to read as follows:

**9-7-11. Maximum Building Coverage.**

- (a) Purpose: The purposes of the building coverage standards are to establish the maximum percentage of lot surface that may be covered by principal and accessory buildings to preserve open space on the lot, and to preserve some views and visual access to the sky and enhance privacy for residences that are adjacent to new development.
- (b) Scope: All construction related to principal and accessory buildings shall comply with the building coverage requirements of this section. This section applies to all construction related to residential buildings, including new construction ~~and~~, ~~building~~ ~~expansion~~ ~~additions~~ or modification of existing buildings, as follows:
  - (1) All ~~residential and~~ principal and accessory buildings in the RR-1, RR-2, RE<sub>2</sub> ~~and~~ RL-1, and RMX-1 zoning districts, including lots located in planned developments, planned residential developments and planned unit developments.
  - ~~(2) All principal and accessory buildings that are used as a detached single family land use in the RMX-1 zoning district, including lots located in planned developments, planned residential developments and planned unit developments.~~
  - (3) In the RL-2 zoning district, the building coverage requirements shall apply to lots that are eight thousand square feet or larger that are not within the boundaries of a planned development, planned residential development, planned unit development or an approved site review.
  - (4) In the RL-2 zoning district, the requirements shall apply to all lots and parcels that are within the boundaries of a planned development, planned residential development and planned unit development that are shown on Appendix H of this title.

Section 6. Table 8-1 of Section 9-8-1, “Schedule of Intensity Standards,” B.R.C. 1981, is amended to read as follows:

**TABLE 8-1: INTENSITY STANDARDS**

Zoning District	Intensity Module	Minimum Lot Area (in square feet unless otherwise noted)	Minimum Lot Area Per Dwelling Unit (square feet) <sup>(b),(d), and (e)</sup>	Minimum Open Space Per Dwelling Unit (square feet) <sup>(b)</sup>	Minimum Open Space on Lots (Residential Uses) <sup>(a), (b), and (c)</sup>	Minimum Open Space on Lots (Nonresidential Uses) <sup>(a), (b), (c), and (d)</sup>	Minimum Private Open Space (Residential Uses) (square feet) <sup>(b)</sup>	Maximum Floor Area Ratio <sup>(b)</sup>
				<b>Mixed-use developments require the greater amount of the residential or nonresidential</b>				

				standard for open space. See Section 9-9-11 for additional open space requirements.					
1	<b>A</b>	1	5 acres	5 acres	-	-	10-20%	-	-
2	<b>RR-1, RR-2</b>	2	30,000	30,000 <sup>(d)</sup>	-	-	10-20%	-	See Table 8-3
3	<b>RE</b>	3	15,000	7,500	-	-	10-20%	-	See Table 8-3
4	<b>RL-1</b>	4	7,000	7,000 <sup>(d)</sup>	-	-	10-20%	-	See Table 8-3
5	<b>P</b>	5	7,000	7,000	-	-	10-20%	-	-
6	<b>RL-2</b>	6	-	-	6,000	-	10-20%	-	See Table 8-3
7	<b>RMX-1</b>	7	6,000	6,000 <sup>(d)</sup>	600	-	10-20%	-	See Table 8-3
8	<b>RMX-2<sup>(e)</sup></b>	8	-	See footnote (e)	-	15%	15%	60	-
9	<b>RM-1</b>	9	-	=	<del>3,000</del> 2,000	-	10-20%	-	-
10	<b>IS-2</b>	10	-	-	600	-	10-20%	60	0.5
11	<b>IS-1</b>	11	-	-	-	-	10-20%	60	0.5
12	<b>RH-1, RH-2</b>	12	-	-	-	40%	40%	-	0.67 <sup>(f)</sup>
13	<b>RM-2, RM-3</b>	13	6,000	3,500	-	-	10-20%	-	-
14	<b>RH-3</b>	14	-	-	-	30%	30%	60	-
15	<b>RH-7</b>	14.5	-	-	-	60% <sup>(d)</sup>	60% <sup>(d)</sup>	60	-
16	<b>RH-4, BT-1</b>	15	-	-	-	30%	30%	-	1.0 <sup>(g)</sup>
17	<b>BR-2</b>	16	-	-	-	40% <sup>(c)</sup>	10-20% <sup>(c)</sup>	60	-
18	<b>BMS</b>	17	-	-	-	15% <sup>(c)</sup>	15% <sup>(c)</sup>	60	0.67 (1.85 if within CAGID or UHGID) <sup>(c)</sup>
19	<b>RH-6</b>	17.5	-	1,800	600	-	-	-	-
20	<b>MU-1, MU-2, IMS</b>	18	-	-	-	15% <sup>(c)</sup>	15% <sup>(c)</sup>	60	0.6
21	<b>RH-5, BC-1, BC-2</b>	19	-	-	-	15%	15%	-	1.5 (2.0 if within a BC zoned area identified in Appendix N)
22	<b>IM</b>	20	-	-	-	30%	10-20%	60	0.4
23	<b>BT-2</b>	21	-	-	600	-	10-20%	-	0.5 <sup>(h)</sup>
24	<b>IG</b>	22	-	-	-	30%	10-20%	60	0.5
25	<b>BR-1</b>	23	-	-	-	-	10-20%	-	2.0 <sup>(c)</sup>
	<b>MU-3</b>	24	-	-	-	15% <sup>(c)</sup>	15% <sup>(c)</sup>	60	1.0
	<b>MU-4</b>	24.5	-	-	-	15%	15%	60	2.0
	<b>DT-1</b>	25	-	-	-	-	10-20% <sup>(c)</sup>	60	1.0
	<b>DT-2</b>	26	-	-	-	-	10-20% <sup>(c)</sup>	60	1.5
	<b>DT-3, DT-4, DT-5</b>	27	-	-	-	-	10-20% <sup>(c)</sup>	60	1.7
	<b>BCS</b>	28	-	-	-	-	10-20%	-	-



Footnotes:

- (a) This requirement may increase based on building height pursuant to Subsection 9-9-11(c), B.R.C. 1981.
- (b) For properties within an area designated in Appendix L, "Form-Based Code Areas," and subject to the standards of Appendix M, "Form-Based Code," the footnoted requirement is not applicable. Refer to Appendix M, "Form-Based Code," for specific form, bulk, intensity, and outdoor space requirements.
- (c) This requirement may be modified pursuant to Section 9-2-14(h)(6)(C), B.R.C. 1981, for specified zoning districts.
- (d) ~~Open space per lot in the RH-7 zoning district may be reduced from sixty percent to thirty percent of the lot as part of a site review if at least half of the open space provided meets the open space requirements of Subparagraph 9-9-11(e)(3), B.R.C. 1981. Except as allowed under the additional density standards in Section 9-8-3, "Density in the RR-1, RR-2, RL-1, RMX-1, and RH-7 Districts," B.R.C. 1981. Any dwelling units created under this exception shall not be considered nonconforming to the intensity standards of Chapter 9-8, "Intensity Standards," B.R.C. 1981.~~
- (e) Dwelling units per acre on a lot or parcel in the RMX-2 zoning district are limited to 10 dwelling units per acre. This limitation may be modified up to 20 dwelling units per acre pursuant to a site review.
- (f) Floor area ratio (FAR) in the RH-2 zoning district may be increased up to a maximum FAR of 1.07 in a site review.
- (g) FAR in the BT-1 zoning district may be increased up to a maximum FAR of 1.4 in a site review.
- (h) FAR in the BT-2 zoning district may be increased up to a maximum FAR of 0.9 in a site review.

Section 7. Section 9-8-2, "Floor Area Ratio Requirements", B.R.C. 1981, is amended to read as follows:

...

(d) District-Specific Standards:

(1) Maximum Floor Area in the RR-1, RR-2, RE, RL-1, RL-2, and RMX-1 Zoning Districts:

(A) Purpose: The purpose of a floor area ratio standard is to address the proportionality of building size to lot size and allow variation in building form within the established building envelope.

(B) Scope: All construction related to principal and accessory buildings shall comply with the floor area ratio requirements of this section. This section applies to all construction related to residential buildings, including new construction, building additions, or modification of existing buildings as follows:

(i) All ~~residential and~~ principal and accessory buildings in the RR-1, RR-2, RE, and RL-1 zoning districts, including lots located in planned developments, planned residential developments, and planned unit developments.

- (ii) All principal and accessory buildings ~~that are used as a detached single-family land use~~ in the RMX-1 zoning district, including lots located in planned developments, planned residential developments, and planned unit developments.
- (iii) In the RL-2 zoning district, the floor area ratio requirements shall apply to lots that are 8,000 square feet or larger, used for detached single-family land uses that are not within the boundaries of a planned development, planned residential development, planned unit development, or an approved site review.
- (iv) In the RL-2 zoning district, the floor area ratio requirements shall apply to all lots and parcels used for detached single family land uses that are within the boundaries of a planned development, planned residential development, and planned unit development that are shown on Appendix H to this title.
- (v) For projects subject to site review in Section 9-2-14, "Site Review," B.R.C. 1981, the floor area shall be calculated based upon each lot or parcel.

(C) Maximum Floor Area Permitted: The maximum floor area shall be the floor area that is in Table 8-3, "Maximum Floor Area Ratio in the RR, RE, RL-1, and RMX-1 Zoning Districts for Residential Land Uses."

**TABLE 8-3: MAXIMUM FLOOR AREA RATIO IN THE RR, RE, RL, AND RMX-1 FOR ZONING DISTRICTS ~~RESIDENTIAL LAND USES~~**

Lot Size:	< 5,000 SF	5,000 to 10,000 SF		10,001 to 22,500 SF	> 22,500 SF
RR-1, RR-2, RE, RL-1 and RL-2	0.62	(Lot Size x 0.2) + 2,100		(Lot Size x 0.122) + 2,880	0.25
Lot Size:	< 4,000 SF	4,000 to 4,999 SF	5,000 to 6,499 SF	6,500 to 10,000 SF	> 10,000 SF
RMX-1	0.74	(Lot Size x 0.20) + 2,150	(Lot Size x 0.20) + 2,320	(Lot Size x 0.195) + 2,450	0.42

Section 8. Section 9-8-3, "Density in the RH-1, RH-2, and RH-7 Districts", B.R.C. 1981, is amended to read:

**9-8-3. Density in the RR-1, RR-2, RL-1, RMX-1 ~~RH-1, RH-2,~~ and RH-7 Districts.**

(a) ~~Additional Density in the RH-7 District: In the RH-7 zoning district, the open space per lot may be reduced from sixty percent to thirty percent of the lot if at least half of the open space provided meets the open space requirements of Paragraph 9-9-11(e)(3), B.R.C. 1981.~~

1 Duplexes or Two Detached Dwelling Units in the RR-1, RR-2, and RL-1 zoning districts: A  
2 duplex or two detached dwelling units may be developed in the RR-1, RR-2, and RL-1 zoning  
3 districts if the lot or parcel meets the following standards:

4 (1) Location Near Transit Corridors: The lot or parcel is located within 350 feet of a transit  
5 corridor identified in Appendix J, "Duplexes Along Transit Corridors," B.R.C. 1981. The  
6 distance shall be measured on an official city map, identified by the city manager, from the  
7 closest point on the perimeter of the applicant's property to the closest point on the edge of  
8 the public right-of-way of the transit corridor; and

9 (2) Minimum Lot Area: The lot or parcel meets the minimum lot area of the applicable  
10 zoning district established in Table 8-1, "Intensity Standards," or is a nonstandard lot that  
11 meets the minimum lot size established for development of such lot in Subsection 9-10-3(b),  
12 "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C.  
13 1981.

14 ~~(b) Minimum Lot Area for Two Dwelling Units in the RH-1 and RH-2 zoning districts: Two~~  
15 ~~attached units may be developed on a lot in the RH-1 and RH-2 districts without a site~~  
16 ~~review if the lot is a minimum of five thousand square feet in area and the structures meet~~  
17 ~~the setback requirements of Section 9-7-1, "Schedule of Form and Bulk Standards,"~~  
18 ~~B.R.C. 1981, or the requirements of Section 9-7-12, "Two Detached Dwellings on a~~  
19 ~~Single Lot," B.R.C. 1981, are met~~

20 Additional Density in the RMX-1 District: In the RMX-1 zoning district, the minimum  
21 lot area per dwelling unit requirement is reduced from 6,000 square feet to 2,500 square  
22 feet, except on a lot or parcel under the following circumstance:

23 (1) Following the demolition of a principal building without permits required for such  
24 demolition under the Boulder Revised Code.

25 ~~(c) Additional Density in the RH-7 District: In the RH-7 zoning district, the open space per~~  
~~lot may be reduced from sixty percent to thirty percent of the lot if at least half of the~~  
~~open space provided meets the open space requirements of Paragraph 9-9-11(e)(3),~~  
~~B.R.C. 1981.~~

Section 9. Section 9-9-2(b), "General Provisions", B.R.C. 1981, is amended to read as

follows:

**9-9-2. General Provisions.**

No person shall use or develop any land within the city except according to the following standards, unless modified through a use review under Section 9-2-15, "Use Review," B.R.C. 1981, or a site review, Section 9-2-14, "Site Review," B.R.C. 1981, or a variance granted under Section 9-2-3, "Variances and Interpretations," B.R.C., 1981.

1 (a) Fire and Life Safety: All development shall meet the applicable requirements of Chapter 10-  
2 8, "Fire Code," B.R.C. 1981.

3 (b) Maximum Permitted Buildings on a Lot: No more than one principal building shall be  
4 placed on a lot in the RR, RE, and RL-1, and RM zoning districts unless approved under the  
5 provisions of Section 9-8-3(a), "Density in the RR-1, RR-2, RL-1, RMX-1, and RH-7  
6 Districts" B.R.C. 1981, Section 9-2-14, "Site Review," or Section 9-7-12, "Two Detached  
7 Dwellings on a Single Lot," B.R.C. 1981.

8 ...  
9 Section 10. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and  
10 Nonconforming Uses", B.R.C. 1981, is amended to read as follows:

11 Changes to nonstandard buildings, structures, or nonstandard lots and nonconforming uses shall  
12 comply with the following requirements:

13 ...  
14 (b) Nonstandard Lots or Parcels:

15 (1) Development Requirements: Vacant lots in all residential districts except RR-1  
16 and RR-2 which are smaller than the lot sizes indicated in Section 9-8-1,  
17 "Schedule of Intensity Standards," B.R.C. 1981, but larger than one-half of the  
18 required zoning district minimum lot size, may be developed with a ~~single-family~~  
19 detached dwelling unit or, pursuant to the standards in Subsection 9-8-3(b),  
20 "Density in the RR-1, RR-2, RL-1, RMX-1, and RH-7 Districts," B.R.C. 1981,  
21 with a duplex or two detached dwelling units, if the building or buildings meets  
22 the setback requirements of Section 9-7-1, "Schedule of Form and Bulk  
23 Standards," B.R.C. 1981. In RR-1 and RR-2 districts, lots which are smaller than  
24 the minimum lot size but larger than one-fourth of the minimum lot size may be  
25 developed with a detached dwelling unit or, pursuant to the standards in  
subsection 9-8-3(b), with a duplex or two detached dwelling units, if the building  
or buildings meets the setback requirements. In all other zoning districts, vacant  
lots which are below one-half of the required minimum lot size for the zoning  
district shall not be eligible for construction of principal buildings.

26 Section 11. Section 9-13-4, "Affordable Housing Design Review", B.R.C. 1981, is  
27 amended to read as follows:

28 **9-13-4. Affordable Housing Design Review.**

29 (a) Purpose: The affordable housing design review is established to provide a uniform and  
30 consistent method for evaluating proposals for meeting inclusionary housing requirements  
where site review or form-based code review is not required.

(b) Affordable Housing Design Review Required: All developments with more than forty units providing permanently affordable units on or off-site to meet an inclusionary housing requirement and all off-site developments in excess of forty units providing permanently affordable units shall be subject to the affordable housing design review unless the development is approved pursuant to a site or form-based code review. Residential projects seeking to be exempt from site review pursuant to Subparagraph 9-2-14-(b)(3)(G), B.R.C. 1981, may be reviewed under the affordable housing design review process regardless of the number of units proposed in the development.

Section 12. Section 9-16, "General Definitions", B.R.C. 1981, is amended to read as follows:

(a) The definitions contained in Chapter 1-2, "Definitions," B.R.C. 1981, apply to this title unless a term is defined differently in this chapter.

(b) Terms identified with the references shown below after the definition are limited to those specific sections or chapters of this title:

- (1) Airport influence zone (AIZ).
- (2) Floodplain regulations (Floodplain).
- (3) Historic preservation (Historic).
- (4) Inclusionary housing (Inclusionary Housing).
- (5) Solar access (Solar).
- (6) Wetlands Protection (Wetlands).
- (7) Signs (Signs).

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

**A—E**

...

*Conforming use* means any use of a building or use of a lot that is permitted by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981 and meets any applicable specific use standards. A conforming use also includes:

- (1) A legal existing use that is not prohibited but was not approved as a conditional use or use review use;
- (2) A use approved pursuant to a valid use review or special review, except where the review was a nonconforming use review.

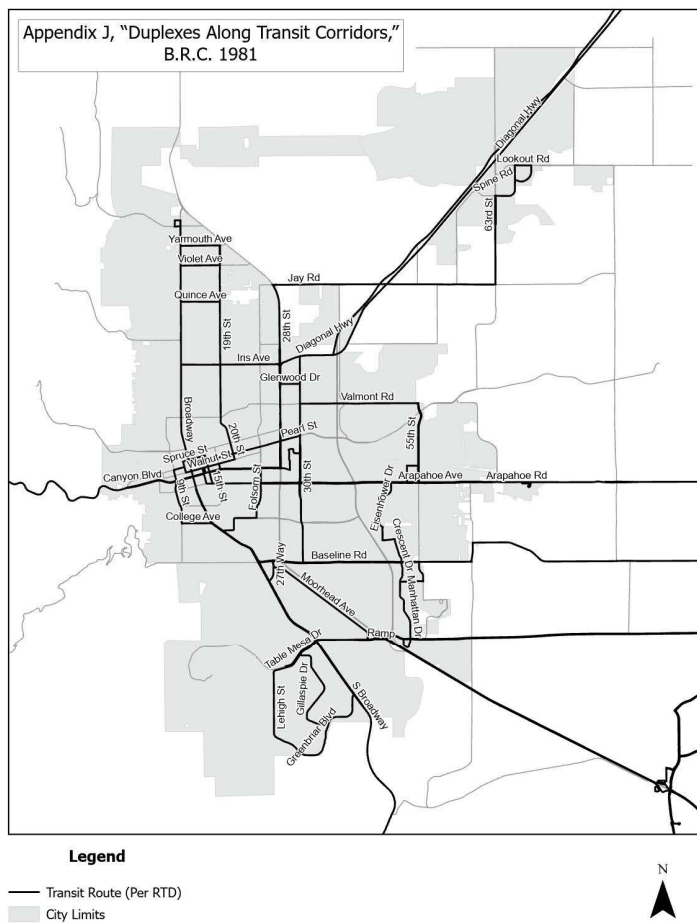
...

*Nonconforming use* means any legally established use of a building or use of a lot that is prohibited by Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981. A

1 nonconforming use also includes an otherwise conforming use, except a single dwelling unit  
2 on a lot, that, as a result of adoption of or amendments to zoning standards, does not meet the  
3 following parking or residential density requirements, including, without limitation, the  
4 requirements for minimum lot area per dwelling unit, or useable open space per dwelling unit  
5 requirements of Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981, or the required  
6 off-street parking requirements of Sections 9-8-1, "Schedule of Intensity Standards," or 9-9-6,  
7 "Parking Standards," B.R.C. 1981.

8 ...

9 Section 13. Appendix J, "Reserved", B.R.C. 1981, is amended to read as follows:



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22 Section 14. This ordinance is necessary to protect the public health, safety, and welfare of  
23 the residents of the city, and covers matters of local concern.



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READ ON THIRD READING, PASSED, AND ADOPTED, this 6th day of February  
2025.

\_\_\_\_\_  
Aaron Brockett,  
Mayor

Attest:

\_\_\_\_\_  
Elesha Johnson,  
City Clerk





## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Consideration of a motion to call a Special Meeting of City Council on February 13, 2025 to call an Executive Session of the City Council pursuant to C.R.S. § 24-6-402(4)(b) for conference with attorneys for the City for the purpose of receiving legal advice on specific legal questions regarding emerging federal guidelines

### **PRIMARY STAFF CONTACT**

Teresa Taylor Tate, City Attorney

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to call a Special Meeting of City Council on February 13, 2025 to call an Executive Session of the City Council pursuant to C.R.S. § 24-6-402(4)(b) for conference with attorneys for the City for the purpose of receiving legal advice on specific legal questions regarding emerging federal guidelines

### **ATTACHMENTS:**

#### **Description**

No Attachments Available



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Concept Plan Review and Comment Request for a mixed-use proposal to develop 5450 Airport Blvd. with 170 attached dwelling units, a community building, and approximately 10,000 square-feet of office and restaurant space. Buildings 1 and 2 are mixed use three-story buildings, Building 3 is a three-story residential building, and Building 4 is a community building. Reviewed under case no. LUR2024-00056.

### **PRIMARY STAFF CONTACT**

Shannon Moeller, Planning Manager

### **ATTACHMENTS:**

#### **Description**

- ▣ **4A - 5450 Airport Concept Plan**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE:** Call-up consideration of a Concept Plan Review and Comment Request for a mixed-use proposal to develop 5450 Airport Blvd. with 170 attached dwelling units, a community building, and approximately 10,000 square-feet of office and restaurant space. Buildings 1 and 2 are mixed use three-story buildings, Building 3 is a three-story residential building, and Building 4 is a community building. Reviewed under case no. LUR2024-00056.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Mark Woulf, Assistant City Manager  
Brad Mueller, Director Planning & Development Services  
Charles Ferro, Senior Planning Manager  
Shannon Moeller, Planning Manager

**EXECUTIVE SUMMARY**

The purpose of this item is for the City Council to consider whether to call up the above-referenced application for review and comment at a public hearing. On **January 7, 2025**, the Planning Board held a virtual meeting and reviewed and commented on the proposal. The 30-day call up period concludes on **February 6, 2025**. City Council is scheduled to consider this application for call-up at its **February 6, 2025** meeting.

The staff memorandum to Planning Board, recorded video, and the applicant's submittal materials along with other related background materials are available in the [city archives for Planning Board](#). The recorded video from the hearing can be found [here](#) (item begins at about 53:30 into the meeting). The applicant's submittal package is provided in **Attachment A**. The draft meeting minutes from the Planning Board meeting are provided in **Attachment B**.

## **REVIEW PROCESS**

In a concept plan review, no formal action is required on behalf of City Council. Public, staff, Planning Board, and Council comments will be documented for the applicant's use in a future Site Review application.

The proposal is eligible to undergo a Concept Plan Review and subsequent Site Review because the property is greater than 2 acres in the IM zoning district. (Table 2-2 of Section 9-2-14, B.R.C. 1981).

The purpose of the Concept Plan review is to determine the general development plan for a particular site and to help identify key issues in advance of a site review submittal. This step in the development process is intended to give the applicant an opportunity to solicit comments from the Planning Board, City Council (if called up) as well as the public early in the development process as to whether a development concept is consistent with the requirements of the city as set forth in its adopted plans, ordinances, and policies (Section 9-2-13, B.R.C. 1981).

In addition to a public hearing at City Council, City Council has authority to refer Concept Plan Review proposals to the Design Advisory Board (DAB) and/or Transportation Advisory Board (TAB) for their respective opinions. The purpose of such a review by DAB is to encourage thoughtful, well-designed development projects that are sensitive to the existing character of an area, or the character established by adopted design guidelines or plans for the area. TAB's opinion can be requested by council on transportation matters implicated in a Concept Plan Review proposal.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic** – None noted.
- **Environmental** – None noted.
- **Social** – None noted.

## **OTHER IMPACTS**

- **Fiscal** - The review of this application and a potential Site Review application fall within staff's normal scope of work, and as such do not present any unusual fiscal impacts.
- **Staff time** - The application was completed under standard staff review time. If the proposal moves forward, staff anticipates that the review will also be completed under standard staff review time.

## **BOARD AND COMMISSION FEEDBACK**

The property was previously reviewed as a Concept Plan proposal in October 2023 (case number LUR2023-00026) and this latest proposal is intended to respond to the previous feedback received. Refer to the staff memo for a summary of the 2023 Planning Board feedback and comparison of the previous and current proposal.

At the public hearing on January 7, 2025, the Planning Board heard presentations by staff and the applicant, and asked questions following each presentation. One member of the public spoke during the public comments portion of the hearing and expressed concerns regarding the lack of specificity of the BVCP policies and overpopulation.

The Planning Board discussed three key issues at the public hearing:

1. Is the proposed concept plan compatible with the goals, objectives, and recommendations of the Boulder Valley Comprehensive Plan (BVCP)?
2. Does Planning Board have feedback for the applicant on the proposed mix of uses?
3. Does Planning Board have feedback to the applicant on the conceptual site plan and architecture?

Regarding Key Issue One, the Board generally agreed that the proposal was compatible with many BVCP goals and policies and felt that it had been significantly improved since the 2023 concept plan. The Board encouraged additional attention at the time of Site Review to the policies in BVCP Section 6 Transportation such as support for transportation connections, Transportation Demand Management (TDM), and SUMP (shared, unbundled, managed, paid) parking principles. The Board recommended further refining the site design in support of BVCP Policy 2.41 Enhanced Design for All Projects. One board member felt that additional non-residential space should be incorporated per BVCP Policy 2.21 Light Industrial Areas, however this view was not held by other board members who generally felt the amount and type of non-residential spaces proposed were appropriate to avoid creating potentially vacant unused spaces.

Regarding Key Issue Two, the Planning Board discussed issues related to site and building design. Again, the Board generally agreed that the proposal had been significantly improved since the 2023 concept plan, and felt that the overall layout of the site, open spaces and amenities, and incorporation of views could make the site a desirable place. The Board also provided helpful feedback, including:

- Continue to advance connectivity, including on-site to ensure accessibility from Building 3 down to the multi-use path, and to adjacent properties by pursuing completion of the “missing link” multi-use path on the property to the southwest, and investigating a connection on that same property to connect south to Sterling Circle.
- Consider eliminating or setting back/relocating the parking between Buildings 1 and 2 to ensure a positive pedestrian experience, open space and views from the south in this area. The board was open to considering a parking reduction in support of these efforts. Consider a creative use for this area such as a car share/ride share or additional open space.
- Ensure that livability is provided through quality on-site spaces that serve future residents and surrounding area, such as the bodega, community building, and co-working spaces described by the applicant. Consider outdoor workspaces with Wi-Fi and power outlets.
- Ensure that walking and biking are at least as easy, safe, and convenient as car travel. Provide best in class programs, incentives, and physical design for bike

mobility, such as secure bike storage rooms and security cameras, charging for e-bikes, self-service bike repair, and designing bike storage for ease of all users such as horizontal bike racks rather than hanging racks, cargo bikes, and bike trailers. Consider including micromobility and carshare/rideshare options as part of the design and follow SUMP principles.

### **PUBLIC FEEDBACK**

Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject property. A sign was posted on the property a minimum of 10 days prior to the hearing. No written comments were received.

### **ANALYSIS**

The staff memorandum to Planning Board that includes staff analysis, neighbor comments along with the meeting audio, and the applicant's submittal materials are available on the [Records Archive for Planning Board](#).

### **MATRIX OF OPTIONS**

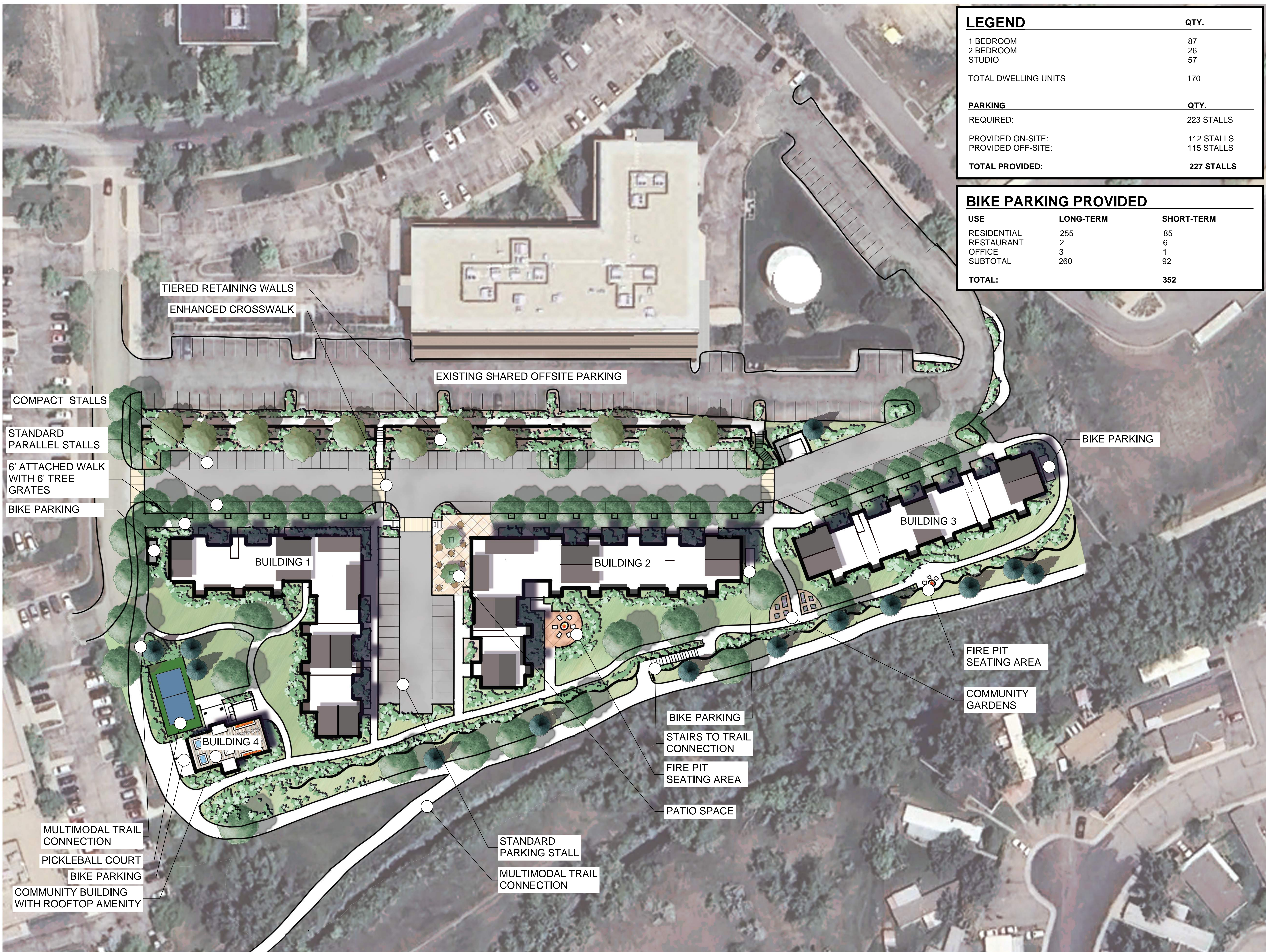
The City Council may call up a Concept Plan application within thirty days of the Planning Board's review. Any application that it calls up, the City Council will review at a public meeting within sixty days of the call-up vote, or within such other time as the city and the applicant mutually agree. The City Council is scheduled to consider this application for call-up at its **February 6, 2025** meeting.

### **ATTACHMENTS**

Attachment A – Applicant's Proposed Plans and Written Statement

Attachment B – Draft January 7, 2025 Planning Board Meeting Minutes





LEGEND		QTY.
1 BEDROOM		87
2 BEDROOM		26
STUDIO		57
TOTAL DWELLING UNITS		170
PARKING		QTY.
REQUIRED:		223 STALLS
PROVIDED ON-SITE:		112 STALLS
PROVIDED OFF-SITE:		115 STALLS
TOTAL PROVIDED:		227 STALLS

BIKE PARKING PROVIDED		
USE	LONG-TERM	SHORT-TERM
RESIDENTIAL	255	85
RESTAURANT	2	6
OFFICE	3	1
SUBTOTAL	260	92
<b>TOTAL:</b>		<b>352</b>

- COMPACT STALLS
- STANDARD PARALLEL STALLS
- 6' ATTACHED WALK WITH 6' TREE GRATES
- BIKE PARKING
- MULTIMODAL TRAIL CONNECTION
- PICKLEBALL COURT
- BIKE PARKING
- COMMUNITY BUILDING WITH ROOFTOP AMENITY

TIERED RETAINING WALLS  
ENHANCED CROSSWALK

EXISTING SHARED OFFSITE PARKING

BUILDING 3

BUILDING 1

BUILDING 2

BUILDING 4

BIKE PARKING

FIRE PIT SEATING AREA

COMMUNITY GARDENS

BIKE PARKING

STAIRS TO TRAIL CONNECTION

FIRE PIT SEATING AREA

PATIO SPACE

STANDARD PARKING STALL

MULTIMODAL TRAIL CONNECTION





















## Boulder Multifamily Airport Blvd. | Written Narrative

09/04/2024

### Introduction

Markel Homes is proud to propose a new multifamily development in the same city where we began our journey back in 1973. A family-owned builder based in Boulder, Colorado, Markel Homes has been crafting high-quality, sustainable neighborhoods for over five decades. With a focus on both custom and production homes, we are driven by a passion for exceptional design and a commitment to fulfilling the aspirations of our homebuyers. As a community developer, we emphasize the creation of inclusive, multi-generational communities, offering a diverse range of home types that appeal to first-time buyers, growing families, and active-aging adults alike. Markel's TrueDesign philosophy ensures that every home we build comes with a comprehensive suite of included features, from luxurious interior comforts to energy-efficient technologies.

### Project Location

The parcel is generally located south of Airport Boulevard and northeast of the Valmont City Park. Addressed as 5450 Airport Blvd. this parcel is currently zoned as Industrial – Manufacturing (I-M) per the City of Boulder's adopted zoning map. The surrounding uses include office buildings with surface parking lots to the west and north. There is an existing mobile home community to the southeast. On the south side of the site there is a large open space with accompanying trails that connect to Valmont City Park. The site generally slopes down from the north to the south. Two ditches, the Boulder & Lefthand Ditch and North Boulder Farmer's Ditch, also run just south of the site. Vehicular access to the property comes from Valmont Rd. to Airport Blvd. and then south along a private road that runs adjacent to the site's west property line. Please see the vicinity map below.

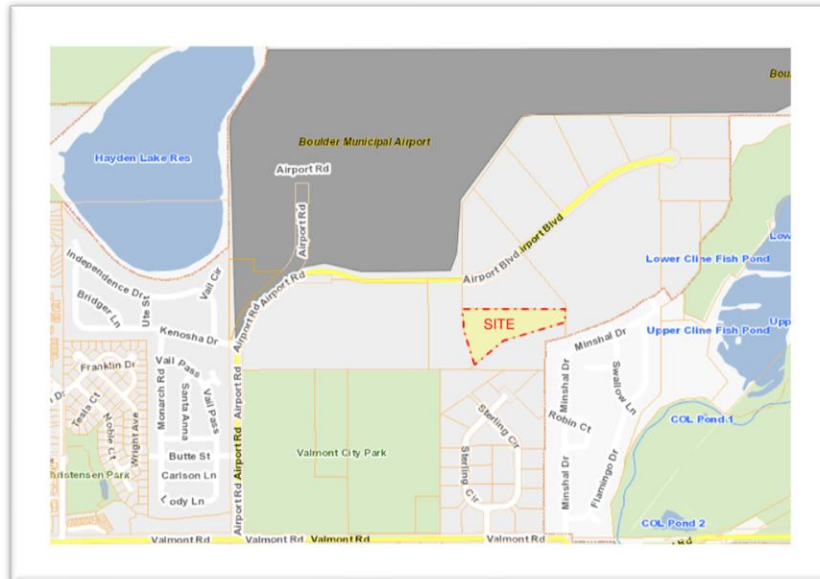


Figure 1: Vicinity Map



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Project Description

- Proposed Land Uses

Markel Home's proposal includes the construction of two attractive, three-story mixed used buildings, a single three-story residential building accompanied by a standalone community building with a total of 170 residential units across the project. Please see building breakdown and unit mix below.

Building 1 – Mixed Use

- Non-Residential – 4,788 sq ft
- Residential
  - Studio: 18 Units
  - One Bedroom: 24 Units
  - Two Bedroom: 12 Units
  - Total: 54 Units

Building 2 – Mixed Use

- Non-Residential – 5,541 sq ft
- Residential
  - Studio: 21 Units
  - One Bedroom: 33 Units
  - Two Bedroom: 8 Units
  - Total: 62 Units

Building 3 – Residential

- Residential
  - Studio: 18 Units
  - One Bedroom: 30 Units
  - Two Bedroom: 6 Units
  - Total: 54 Units

Community Building – Non-Residential

- Non-Residential – 2,848 sq ft.

- Design Approach

The Boulder Airport Multifamily Development is meticulously designed to prioritize centralized open spaces, enhance multi-modal access to existing trail systems, and create neighborhood-supporting amenities, all while maintaining attainable price points. Markel Homes' design approach aligns closely with the vision outlined in the East Boulder Subcommunity Plan, particularly the Park-Side Residential Place Type. This project strategically leverages its proximity to public green spaces and established outdoor recreation sites to provide both new and existing residents with unparalleled access to outdoor activities. The development's close proximity to Valmont City Park and established trails ensures that the design incorporates not just visual, but also physical access to these natural assets. Each residential building is thoughtfully planned to include appropriately scaled green spaces, amenities, patios, or open spaces, all while capturing the stunning views of the surrounding area. The proposed project not only integrates multiple access points to the existing multi-modal system but also expands it with new



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pathways and sidewalks, further connecting residents to outdoor experiences as envisioned in the Subcommunity Plan.

The community building is strategically located near the proposed residential buildings and the multi-modal trail system, offering a convenient and inviting neighborhood hub. This building, equipped with bicycle parking and ADA-compliant pathways, serves as the central connection point for the entire site. It invites residents and visitors to experience the community gardens, gathering places, open spaces, and dining/retail services that will support the local neighborhood, fostering a vibrant atmosphere where community members can live, work, and play. Street-facing retail and dining areas on the ground floor are designed to be active during evenings and weekends, contributing to the vitality of the neighborhood. Building 2 features a spacious outdoor patio that not only engages pedestrians but also serves the commercial uses and the broader community.

The development showcases four-sided architecture, ensuring that park-facing building facades receive the same level of architectural detail as those facing the street, in line with the Subcommunity Plan's vision. The site's streetscape is designed to create an inviting, park-like atmosphere, with an emphasis on street-level activation through an "eyes on the street" residential architecture approach. Homes are designed with front porches that encourage neighborly interactions and open onto a thoughtfully landscaped streetscape. This streetscape features a consistent tree canopy, enhanced pedestrian walkways with integrated tree grates, landscaped beds, seating areas, and bicycle parking—all of which align with the goals set forth in the East Boulder Subcommunity Plan. These elements promote social exchanges and create a sense of community activity for both residents and passers-by in the ground-floor spaces.

- **Sustainability**

The Boulder Airport Multifamily development is designed and situated to not only reduce environmental impacts, but champion sustainability practices. The project site is situated just north of established open space and public parks (Valmont City Park and Valmont Bike Park). This project proposes to make trail connections to these open space and public recreation areas, existing dirt paths within the property boundary are to be enhanced and paved. Additionally new multimodal paths will link not only to newly proposed sidewalks within the site, but also to existing infrastructure. Both short-term and long-term bike parking is proposed throughout the site to further support the use of alternative modes of transportation. EV parking and EV ready spaces for future expansion are incorporated with this proposal. The Boulder Airport Multifamily project is envisioned as a walk and bike first community that also serves traditional modes of transportation. Promoting efficient parking practices through a proposed parking share, the development is designed as a walkable/bikeable community that links users to both incorporated and nearby amenities by capitalizing on and enhancing the existing multimodal network. Allowing residents and users to live, work, and play within their community as identified as a goal and vision of the East Boulder Subcommunity Plan.



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Markel is committed to creating healthier places with sustainable living practices by creating communities that prioritize access to trails and open space, mountain views, nearby shops, restaurants and other services.

- **Attainable Workforce Housing and Traffic Demand**

Efficiency Living Units (ELUs) play a critical role in reducing single-occupancy vehicle (SOV) trips, especially when paired with the rise of electric bikes (e-bikes) and easy access to Boulder's extensive bike path system. By offering compact, affordable housing, ELUs cater to residents who prioritize living in walkable, bike-friendly environments, significantly reducing their dependence on cars. This is particularly important for Boulder's workforce, which faces mounting housing costs. According to the Boulder Chamber, many essential workers are being priced out of the city due to high rents, with over 50% of renters spending more than 30% of their income on housing. ELUs offer a solution, providing affordable options that help retain Boulder's dynamic workforce while addressing the demand for efficient housing that encourages sustainable living practices.

To further support our mission of reducing car dependency, we are introducing an on-site bike-sharing service, allowing residents easy access to e-bikes for daily commutes and errands. Additionally, we plan to offer vouchers for discounted e-bikes, encouraging long-term adoption of this sustainable transportation option. By providing these resources, along with close proximity to Boulder's bike trail network, we aim to foster a community where e-bikes replace cars for the majority of short trips, significantly reducing traffic and emissions.

E-bikes have proven to be a game changer for replacing car trips. A National Renewable Energy Laboratory (NREL) study found that e-bikes replaced 30% of trips in a recent pilot program, significantly reducing car use. Shifting even 25% of short car trips to e-bikes can reduce vehicle miles traveled (VMT) by 3%, cutting emissions and lowering transportation costs. Our project is ideally located within 2.5 miles of major amenities, including Safeway, Whole Foods, Target, Foothills Hospital, and the 30th and Pearl district, making it perfectly suited for residents who prefer to ditch their cars and rely on bikes.

By integrating ELUs with Boulder's trail system and emphasizing the use of e-bikes, our development aims to promote affordability, sustainability, and community connectivity. The Urban Land Institute has noted that smaller, efficient living units are increasingly popular among younger generations who value eco-friendly, bikeable living environments close to work and amenities. Our project aligns perfectly with these preferences, fostering a more livable, inclusive city where residents can reduce their carbon footprints, enjoy a higher quality of life, and remain connected to Boulder's vibrant local economy. Ultimately, this approach not only benefits residents but also supports the city's broader goals of reducing traffic congestion, cutting emissions, and enhancing economic resilience.



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## LUR2024-00056 | Written Response

### **Project Background**

The Lakecentre project located at 5450 Airport Blvd was originally submitted in 2023 under Review Number LUR2023-00026. That application was heard by the City of Boulder Planning Board on October 3rd, 2023. At that meeting the Planning Board provided valuable feedback to the project team. What follows is a written response to the feedback provided by the Planning Board highlighting adjustments made to the site plan based on your concerns and suggestions.

### **Planning Board Comments/Responses**

- **Improved Connectivity with Missing Link:** In response to your concerns about the missing connection to the west, our team has worked diligently and entered into an Memorandum of Understanding (MOU) with the owner of this property. We are excited to continue with the entitlement process and be able to create a connection to the nearby Valmont City Park and Bike Park. This connection will serve as a vital link to the city's assets, enhancing both the functionality and placemaking of the overall site. We view this as a crucial step in integrating our development with Boulder's broader recreational infrastructure.
- **Market Signals for ELUs:** We have carefully reviewed the Board's feedback regarding the market demand for Efficiency Living Units (ELUs). Data from successful projects like Oliv and Weathervane demonstrate considerable demand for these types of units, particularly in a market like Boulder's, where housing affordability is a pressing issue. The City of Boulder's housing crisis further highlights the need for ELUs to provide attainable housing for essential workers. As mentioned by the Boulder Chamber, over 50% of Boulder's renters are cost-burdened, spending more than 30% of their income on housing. ELUs can directly address this issue by providing compact, affordable, and sustainable living options.
- **Transportation Demand Management (TDM) Plan:** To address concerns about transportation demand, we are planning to prepare a comprehensive Transportation Demand Management (TDM) plan that emphasizes bikability. The site's proximity to major bike paths and transit options paired with our on-site bike-sharing service, and the addition of vouchers for discounted e-bikes will encourage residents to rely on bikes rather than cars. Our goal is to reduce single-occupancy vehicle trips and promote a more sustainable, pedestrian- and bike-friendly environment.



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- Livability and Location Benefits: We firmly believe this is the right location for housing. Our site offers exceptional views of the Flatirons and is in close proximity to numerous amenities, including parks, trails, and bike paths. Residents will also have easy access to public transportation, with bus routes nearby, and the site is located near major job centers, such as Foothills Hospital and the 30th and Pearl district. This makes the project highly attractive for those who want to live, work, and play in the same area, further reducing the need for car-centric commutes.
- Reduced Car-Centric Design: We heard your concerns about the site being too car-centric and have redesigned key elements to create a more pedestrian-focused environment. We have reimagined the main road with a pedestrian-friendly street section, incorporating activated front porches to encourage social interaction and street-level activity. Additionally, we have centralized parking to the north of the site, away from pedestrian areas, and introduced shared parking to capitalize on off-hour parking spaces adjacent to the project, reducing the need for excessive on-site parking. Our new site design ensures that the views to the south and west, along with our enhanced amenity spaces, will provide a vibrant and walkable community experience.
- Enhanced Community Spaces for ELUs: To augment the livability of the small ELU units, we have significantly enhanced the shared community spaces. Our design now includes larger, more robust communal areas where residents can gather, relax, and enjoy the surroundings. These spaces will be vital in building a strong sense of community among residents, further enhancing the appeal of the ELUs.
- Timing and the Airport Redevelopment Decision: We acknowledge the previous concern about waiting for the airport redevelopment decision. However, that decision has recently been delayed, and we believe that now is the time to approve housing on this site rather than waiting. With the housing crisis intensifying and Boulder's workforce in need of attainable housing solutions, we see this as a timely opportunity to move forward with a project that addresses these critical needs.

Our team is confident that the changes we have made to the site plan not only reflect the Planning Board's concerns but also align with and further the visions and goals set forth in the Boulder Valley Comprehensive Plan and the East Boulder Subcommunity Plan. Which demonstrates our commitment to creating a livable, sustainable, and well-connected community. We look forward to providing additional details and conversation during the January 7th, 2025 Planning Board Meeting.

**CITY OF BOULDER  
PLANNING BOARD ACTION MINUTES  
January 7, 2025  
Virtual Meeting**

A permanent set of these minutes and an audio recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

**PLANNING BOARD MEMBERS PRESENT:**

Jorge Boone, Chair  
Mark McIntyre, Vice Chair  
Laura Kaplan  
Kurt Nordback  
ml Robles  
Mason Roberts  
Claudia Hason Thiem

**PLANNING BOARD MEMBERS ABSENT:**

None

**STAFF PRESENT:**

Brad Mueller, Director of Planning & Development Services  
Charles Ferro, Development Review Senior Manager  
Christy Fitch, Assistant City Attorney  
Shannon Moeller, Planning Manager  
Kristofer Johnson, Comprehensive Planning Senior Manager  
Laurel Witt  
Pam Davis  
Adam Olinger

**1. CALL TO ORDER**

Chair, **J. Boone**, declared a quorum at 6:30 p.m. and the following business was conducted.

**2. PUBLIC PARTICIPATION**

**Virtual:**

Lynn Segal

**3. APPROVAL OF THE MINUTES**

A. [The October 22, 2024 Draft Meeting Minutes are scheduled for approval.](#)

**M. Roberts** made a motion seconded by **K. Nordback** to approve the October 22, 2024 Draft Pb

Minutes.

#### 4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS

**A. Call-Up Item:** Final Plat to subdivide the property at 1917 Upland Avenue to create five lots. Lot 1 is 24,699 square feet, Lot 2 is 7,376 square feet, Lot 3 is 8,725, Lot 4 is 7,922 square feet, and Lot 5 is 8,260 square feet. (Naumann Subdivision, case no. TEC2018-00044). The Preliminary Plat was approved through case no. LUR2018-00047. This application is subject to potential call-up on or before January 9, 2025.

This item was not called up by the board.

#### 5. PUBLIC HEARING ITEMS

**A. AGENDA TITLE:** Concept Plan Review and Comment Request for a mixed-use proposal to develop 5450 Airport Blvd. with 170 attached dwelling units, a community building, and approximately 10,000 square-feet of office and restaurant space. Buildings 1 and 2 are mixed use three-story buildings, Building 3 is a three-story residential building, and Building 4 is a community building. Reviewed under case no. LUR2024-00056.

**Staff Presentation:**

**Shannon Moeller** presented the item to the board.

**Board Questions:**

**Shannon Moeller** answered questions from the board.

**Applicant Presentation:** Sam Coutts presented the item to the board.

**Board Questions:** Sam Coutts and Jason Markel answered questions from the board.

**Public Hearing:**

**Virtual:**

Lynn Segal

**Board Comments:**

02:23:18

**Key Issue #1:** Is the proposed concept plan compatible with the goals, objectives, and recommendations of the Boulder Valley Comprehensive Plan?

**Key Issue #2:** Does Planning Board have feedback for the applicant on the proposed mix of uses?

**Key Issue #3:** Does Planning Board have feedback for the applicant on the conceptual site plan and architecture?

**Key Issue #4:** Other Key Issues identified by the Board?

**M. McIntyre** appreciated that staff and the applicants took many of the comments made by the board in the prior concept review to heart. He noted that while there is not yet a full TDM plan and there are some lingering questions, the project is headed in the right direction in relation to the location of the front door, back door, and the amenities, and how it takes advantage of existing views. He believes that this could be a desirable place to live if the applicant continues to refine the design. He encouraged the applicant to continue exploring additional connections for this site.

**J. Boone** agreed in general with M. McIntyre's comments. He encouraged the applicant to explore opportunities for connectivity within the site so that residents do not have to traverse a parking lot to get to the amenity space.

**K. Nordback** echoed Mark's appreciation for the changes made from the initial concept review, including the greater mix of uses. He suggested that the parking area between buildings 1 and 2 messes up the site design in relation to flow of motor vehicle and pedestrian traffic. He suggested replacing this area with more active space or green space. He noted that a connection to Sterling Circle would be a great benefit to the property.

**ml Robles** noted that the BVCP contains "area guiding principles" and that one of these principles notes that housing should be located near other residential uses or retail services. She suggested that increasing on-site retail opportunities in the mix of uses could alleviate this concern. She agreed with her colleagues regarding most of the improvements made in the design since the initial review, but noted that the amount of non-residential use was cut in half, which she believes is heading in the wrong direction.

**M. Roberts** noted some existing nearby residential uses and pointed out that residential use is not completely out of context in this area. He feels many of the concerns have been addressed to bring the project closer to compatibility with the goals and objectives of the BVCP.

**C. Hanson Thiem** echoed comments made by her colleagues in relation to the placement of parking between Buildings 1 and 2. She understood ml's concerns about whether this is an appropriate location for this level of residential use but agreed with Mason that other nearby mixed residential uses create a solid precedent. She noted that securing permission to complete the missing link of the multi-use path is critical to make this site connected.

**L. Kaplan** appreciated the comments made by her colleagues and agreed with the general sentiment of the board. She agreed with the need for retail space but is managing expectations of what types of retail will work, due to the location of the site. She noted that a bodega, a restaurant, and a co-working space seem like great uses for the site's retail component. She encouraged the applicant to create a robust TDM plan that supports alternate modes of transportation.

**6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY**

**A.** Discussion of Land Acknowledgement Statement with Planning Board

**B.** Update to the Planning Board Rules of Procedure

**7. DEBRIEF MEETING/CALENDAR CHECK**

**8. ADJOURNMENT**

The Planning Board adjourned the meeting at 12:00am.

APPROVED BY

\_\_\_\_\_  
Board Chair

\_\_\_\_\_  
DATE

DRAFT



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Landmark Alteration Certificate application to construct a new accessory building at 600 Spruce St. a contributing property in the Mapleton Hill Historic District, pursuant to Section 9-11-18 of the Boulder Revised Code 1981 and under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. Owner / Applicant: Hal and Schuyler Bailey

### **PRIMARY STAFF CONTACT**

Clare Brandt, Preservation Planner

### **ATTACHMENTS:**

#### **Description**

- ▣ **4B - 600 Spruce St. Landmark Alteration Certificate**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE: Call-up Consideration: Landmark Alteration Certificate** to construct a new accessory building at 600 Spruce St. a contributing property in the Mapleton Hill Historic District, pursuant to Section 9-11-18 of the Boulder Revised Code 1981 and under the procedures prescribed by chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Brad Mueller, Director of Planning and Development Services  
Kristofer Johnson, Comprehensive Planning Senior Manager  
Chris Reynolds, Deputy City Attorney, City Attorney’s Office  
Marcy Gerwing, Principal Historic Preservation Planner  
Clare Brandt, Historic Preservation Planner

**EXECUTIVE SUMMARY**

The proposal to construct a new accessory building at 600 Spruce St. a contributing property in the Mapleton Hill Historic District, was conditionally approved by the Landmarks Board (4-0 Castellano absent) at its January 8, 2025, 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 and is generally consistent with the [Mapleton Hill Historic District Guidelines](#) and the [General Design Guidelines for Historic Districts and Individual Landmarks](#).

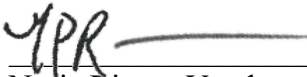
The board’s conditional approval is subject to a 16-day call-up period by City Council, no later than **January 24, 2025**. However, the 16-day call-up period cannot be met because the next regularly scheduled City Council meeting is on Thursday, February 6, 2025.

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 600 Spruce St. in time to consider call-up within 16 days. Therefore, the City Manager extends the call-up period for this application until the City Council’s next scheduled meeting on Thursday, February 6, 2025.

Approved By:

  
\_\_\_\_\_  
Nuria Rivera-Vandermyde,  
City Manager

**ATTACHMENTS**

Attachment A: Disposition for 600 Spruce St., dated February 6, 2025.

Attachment B: January 8, 2025 [Landmarks Board Memo for 600 Spruce St.](#) (link)



**Notice of Disposition**

You are hereby advised that on January 8, 2025, the following action was taken by the Landmarks Board:

**ACTION:** Recommended for conditional approval by a vote of **4-0** (Castellano absent)

**APPLICATION:** Landmark Alteration Certificate application to construct a new accessory building at 600 Spruce St. (HIS2024-00283) a contributing property in the Mapleton Hill Historic District, pursuant to Section 9-11-18 of the Boulder Revised Code 1981 and under the procedures prescribed by chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981.

**LOCATION:** 600 Spruce St.

**OWNER:** Hal and Schuyler Bailey

**APPLICANT:** Hal and Schuyler Bailey

This decision was based on 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 and is generally consistent with the [Mapleton Hill Historic District Guidelines](#) and the [General Design Guidelines for Historic Districts and Individual Landmarks](#).

**Staff Presentation**

C. Brandt presented the application to the board, recommending the Landmarks Board approve the application with conditions.

**Applicant Presentation**

Owners Hal and Schuyler Bailey answered questions from the board.

**Public Comment**

The following members of the public spoke:

1. Kathryn Barth
2. Lynn Segal
3. Fran Sheets

Prior to the January 8, 2025 public hearing, the following members of the community wrote to the Landmarks Board ([link to letters received](#)) with concerns about the application:

4. Martin Boone

**Motion**

On a motion by **R. Pelusio**, seconded by **J. Decker**, the Landmarks Board voted (**4-0**) to adopt the staff memorandum dated Jan. 8, 2025, as the findings of the board and conditionally approve the application

for a Landmark Alteration Certificate to construct a new accessory building at 600 Spruce St., a contributing property in the Mapleton Hill Historic District, pursuant to Section 9-11-18 of the Boulder Revised Code 1981, as shown on application dated Oct. 29, 2024, finding that the proposal meets the Standards for Issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981 and is generally consistent with the Mapleton Hill Historic District Guidelines and the General Design Guidelines for Boulder's Historic Districts and Individual Landmarks.

**Conditions:**

1. The applicant shall be responsible for completing the work in compliance with the approved plans, except as modified by these conditions of approval.
2. Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall submit the following, which shall be subject to final review and approval by the Landmarks Design Review Committee (LDRC) to ensure that the final design of the addition is consistent with the General Design Guidelines and the intent of this approval.
  - a. Revise design to transition and visually blend the existing and proposed retaining walls and sensitively integrate them into the topography and alley.
  - b. Explore reduction in wall height to use terraced walls no taller than 36" to 42" height.
  - c. Revise materiality of retaining wall to match characteristics and dimensionality of historic materials found along the alley.
  - d. Explore the detailing of the windows and the garage door to demonstrate the traditional historic nature of lintels and building foundation.
  - e. Exploration of connection of the retaining wall to the corner of the accessory building.
  - f. Revise design to show a pair of single car garage doors, unless it can be demonstrated that this is impractical for the alley turn.
  - g. Note mature trees to be removed on site plan.
  - h. Provide detail on materiality for driveway (crusher fines, flagstone, or brick).
  - i. Provide detail on materiality of the garage door and exterior lighting.
3. If through Building Permit Review, the proposal requires closing the Spruce Street curb cut (per Section 9-9-5(c)(1), B.R.C. 1981), provide details on the proposed treatment.

Link to January 8, 2025 [Landmarks Board Memo for 600 Spruce St.](#)

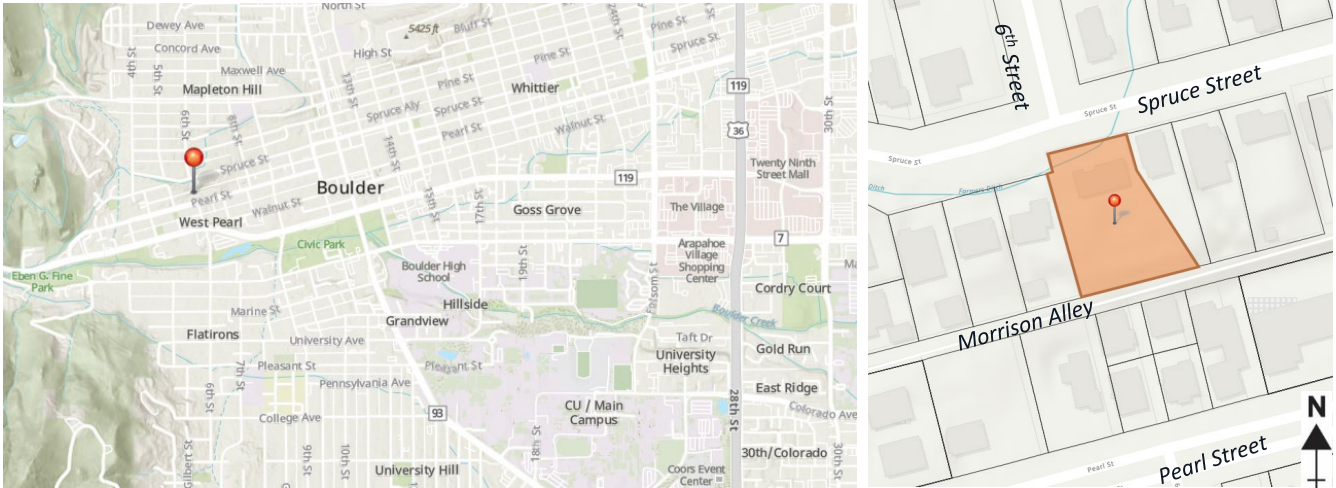


Figure 1. Left: Map of Boulder showing location of 600 Spruce St. west of downtown (location flagged). Right: Location of 600 Spruce St. at the southern terminus of 6<sup>th</sup> Street between Spruce and Pearl streets. The house (outlined and flagged) faces north onto Spruce Street. The rear of the property faces Spruce Alley. [eMapLink \(link\)](#)



Figure 2. Proposed south elevation (view from alley) of proposed new accessory building showing the 25 feet height of the proposed new building, 8 in 12 pitched roof with dormers, steps up to grade at the west (left) side and flanking limewash engineered concrete walls.



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Second reading and consideration of a motion to adopt Ordinance 8650, amending Title 9, "Land Use Code," B.R.C. 1981, to amend the regulations for accessory dwelling units, and setting forth related details

### **PRIMARY STAFF CONTACT**

Lisa Houde, Code Amendment Planner Principal

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8650, amending Title 9, "Land Use Code," B.R.C. 1981, to amend the regulations for accessory dwelling units, and setting forth related details

### **ATTACHMENTS:**

#### **Description**

- ▣ **5A - 2nd Rdg Ord 8650 ADU Update to Meet State Law**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Second reading and consideration of a motion to adopt Ordinance 8650, amending Title 9, "Land Use Code," B.R.C. 1981, to amend the standards for accessory dwelling units and setting forth related details.

**REQUESTING DEPARTMENT / PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Brad Mueller, Director of Planning & Development Services  
Charles Ferro, Senior Planning Manager  
Karl Guiler, Senior Policy Advisor  
Lisa Houde, Principal City Planner

**EXECUTIVE SUMMARY**

This ordinance has been drafted in response to state legislation passed in the 2024 Colorado legislative session regarding accessory dwelling units (ADUs). [HB24-1152](#) establishes certain requirements for ADU supportive jurisdictions and creates a grant program to support development of ADUs.

In addition to the descriptions and analysis provided in this memo, the annotated ordinance is provided in **Attachment A**, and an ordinance without footnotes and intended for adoption is available in **Attachment B**.

On January 9, City Council introduced and ordered the ordinance published at first reading. There were no first reading questions.

**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 8650, amending Title 9, “Land Use Code,” B.R.C. 1981, to amend the standards for accessory dwelling units, and setting forth related details.

**BOARD AND COMMISSION FEEDBACK**

**Planning Board** – Ordinances changing the Land Use Code require Planning Board recommendation to City Council. On December 3, 2024, Planning Board reviewed Ordinance 8650 and unanimously recommended approval of the ordinance to City Council with the following motion:

*K. Nordback made a motion seconded by C. Hanson Thiem to recommend that City Council adopt Ordinance 8650, amending Title 9, “Land Use Code,” B.R.C. 1981, to amend the standards for accessory dwelling units, and setting forth related details. The planning board voted 5-0. Motion passed. J. Boone and M. McIntyre absent.*

Planning Board also noted interest in future changes to ADU regulations to consider allowing ADUs to be accessory to duplexes or triplexes, rather than just to detached dwelling units, to consider flexibility in allowing accessory structures to be constructed prior to a principal structure, and to consider removing the restriction on independent conveyance of ADUs.

**COMMUNITY FEEDBACK**

Since these changes are in response to state legislation, an *inform* level of engagement for this project has been used. Significant community feedback was received during the most recent updates in 2023 and 2019 for [ADUs](#). Notification of the current changes has been announced in the Planning and Development Services monthly newsletter, which reaches over 5,000 people. As part of the newsletter, staff has provided a link to [an online presentation at this link](#) that includes detailed descriptions of all the land use related state bills.

**BACKGROUND**

The city of Boulder has adopted several ordinances over the past few years to address the growing cost of housing. These have included 2023 code updates to the city’s ADU standards to enable more ADUs citywide, changing the prior occupancy limitations per dwelling unit from 3 or 4 unrelated people per unit to 5 unrelated per unit, and the removal of zoning barriers to residential uses with a focus on the high density residential, business, and industrial zones. In early 2024, the city also removed its residential growth management system, which previously limited the number of residential building permits per year in response to a 2023 state bill that prohibited such restrictions.



Since the adoption of these local ordinances, the state legislature also adopted several bills related to land use and housing in the 2024 legislative session. [HB24-1152](#) establishes certain requirements for ADU supportive jurisdictions and creates a grant program to support development of ADUs. A more detailed description of the house bill is provided below:

### ***HB24-1152, Accessory Dwelling Units***

[This bill](#), which was adopted on May 13, 2024, states that subject jurisdictions like Boulder:

- Must allow ADUs subject to an administrative approval process in any location where single-unit detached dwellings are allowed.
- May not require construction of a new parking space for an ADU, with some limited exceptions.
- May not require owner-occupancy except at time of application.
- May not apply certain restrictive design or dimension standards to ADUs, such as architectural styles, size limits that do not allow for 500-750 square foot ADUs, and minimum setbacks or minimum lot sizes that are more restrictive than for single-unit detached dwellings.

The bill also establishes a new “ADU Fee Reduction and Encouragement” grant program for “ADU supportive jurisdictions” to obtain funding to provide financial assistance for the construction of affordable ADUs, develop pre-approved ADU plans, provide technical assistance, and other opportunities to support ADU establishment.

### **SUMMARY OF PROPOSED CHANGES IN ORDINANCE 8650**

Building upon the changes already passed in 2023, Ordinance 8650 incorporates several changes to ensure Boulder meets the standards for an “ADU supportive jurisdiction.”

The following sections provide background and summarize major topics related to the draft ordinance.

### ***Ordinance 8650: Accessory Dwelling Units***

- Allows ADUs in more zoning districts
- Removes minimum lot size requirement for ADUs
- Ensures that attached ADUs of at least 750 square feet are allowed
- Removes minimum off-street parking requirement of 1 space for market-rate ADUs
- Removes owner occupancy requirement
- Removes requirement for recording Declaration of Use for market-rate ADUs
- Voids any previous prohibitions on ADUs in planned unit developments, site reviews, use reviews, or other similar approvals, and establishes administrative approval process for ADUs in these areas

- Aligns maximum height and building coverage of attached ADUs in rear setbacks with detached ADUs
- Removes side entrance screening requirement for attached ADUs
- Removes private open space requirement for detached ADUs

**ANALYSIS**

**Attachment A** contains the annotated version of the ordinance and **Attachment B** is the ordinance intended for adoption.

Staff has identified the following key issue for the City Council’s consideration:

1. Does City Council recommend any modifications to the draft ordinance?

The following analysis is provided to demonstrate how the project objective is met through the proposed ordinance.

***What is the reason for the ordinance and what public purpose will be served?***

This ordinance has been drafted in response to recent state legislation. By ensuring Boulder meets the definition of an ADU supportive jurisdiction, the city will be eligible for certification through the state’s accessory dwelling unit fee reduction and encouragement grant program. The grant program was established by the same state bill and will provide funding to support offsetting costs of developing pre-approved ADU plans, providing technical assistance, or providing financial assistance for ADU fees, such as those related to affordable ADUs. These changes are intended to create more housing opportunities in municipalities to help mitigate the ever-growing cost of housing.

***How is the ordinance consistent with the purpose of the zoning districts or code chapters being amended?***

With this ordinance, ADUs would be allowed uses, subject to specific use standards, in the same districts where all detached dwelling units are allowed, consistent with the purpose to allow residential uses of varying densities.

***Are there consequences in denying this ordinance?***

The changes in the ordinance are intended to address the new state legislation. The consequence of denying this ordinance is that the city would likely not qualify as an ADU supportive jurisdiction for the purpose of the grant program.

***What adverse effects may result with the adoption of this ordinance?***

Staff does not anticipate that adverse effects may result with the adoption of this ordinance. Boulder has a robust and detailed land use code with many requirements that ensure the compatibility of new structures, such as building coverage, floor area ratio requirements, setbacks, height, side wall articulation standards, solar requirements, bulk planes, and more which are expressly intended to ensure compatibility. These standards will remain in effect.



While the requirement of one parking space for a market-rate ADU is proposed to be removed, adverse impacts are not expected. Since 2019, about 80 affordable ADUs have been exempted from providing a parking space and no negative effects have been reported. Long-term rental housing is not required to meet owner occupancy requirements, so removing the owner occupancy requirement for ADUs would not be anticipated to have different impacts than other types of rental housing. While the state bill allows for owner occupancy to be confirmed at the time of application, it cannot be enforced beyond that point, making the initial confirmation of little utility.

HB24-1152 also states that rear minimum setback requirements for all types of ADUs may not be larger than 5 feet. In many low-density districts, the current rear setback for principal buildings is 25 feet. To mitigate potential impacts of attached ADUs built with a 5-foot rear setback, the ordinance incorporates standards similar to those that apply to accessory structures in the rear yard setback: a maximum height of 20 feet and a maximum building coverage limit of 500 square feet in the typical rear yard setback. These align with the restrictions currently in place for detached ADUs.

***What factors are influencing the timing of the proposed ordinance? Why?***

HB24-1152 states that ADU supportive jurisdictions must have certain standards in place by June 30, 2025. The goal is to complete these changes in the first or second quarter of 2024 accordingly. This ordinance would be in place in time to meet this date.

***How does the ordinance compare to practices in other cities?***

This ordinance will align Boulder’s requirements with the recent state legislation, which applies to jurisdictions of a certain size located within metropolitan planning organizations, like the Denver Regional Council of Governments. A total of 67 jurisdictions in the state are subject to the bill.

***How will this ordinance implement the comprehensive plan?***

This project implements several relevant policies noted below. Reducing barriers to ADUs through the proposed code changes will increase workforce and long-term rental housing options in many neighborhoods by providing ADUs as a more viable housing option for many types of households. Neighborhood character will continue to be protected and enhanced through existing zoning standards such as the compatible design standards, building coverage and floor area ratio requirements. Procedurally, the changes will further simplify the approval process for ADUs in Boulder and better ensure efficiency, effectiveness, and quality customer service. As stated above, the changes are intended to create more housing opportunities in municipalities to help mitigate the ever-growing cost of housing. More ADUs will offer a wider variety of housing types and sizes consistent with the policies below.

**Growth Management Policy 1.11 Jobs: Housing Balance**

Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and

housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.

**Built Environment Policy 2.10: Preservation & Support for Residential Neighborhoods**

The city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock. The city will also work with neighborhoods to identify areas for additional housing, libraries, recreation centers, parks, open space or small retail uses that could be integrated into and supportive of neighborhoods. The city will seek appropriate building scale and compatible character in new development or redevelopment, appropriately sized and sensitively designed streets and desired public facilities and mixed commercial uses. The city will also encourage neighborhood schools and safe routes to school.

**Built Environment Policy 2.11: Accessory Units**

Consistent with existing neighborhood character, accessory units (e.g., granny flats, alley houses, accessory dwelling units (ADUs) and owner’s accessory units (OAU)) will be encouraged by the city to increase workforce and long-term rental housing options in single-family residential neighborhoods. Regulations developed to implement this policy will address potential cumulative negative impacts on the neighborhood. Accessory units will be reviewed based on the characteristics of the lot, including size, configuration, parking availability, privacy and alley access.

**Housing Policy 7.01: Local Solutions to Affordable Housing**

The city and county will employ local regulations, policies and programs to meet the housing needs of low, moderate and middle-income households. Appropriate federal, state and local programs and resources will be used locally and in collaboration with other jurisdictions. The city and county recognize that affordable housing provides a significant community benefit and will continually monitor and evaluate policies, processes, programs and regulations to further the region’s affordable housing goals. The city and county will work to integrate effective community engagement with funding and development requirements and other processes to achieve effective local solutions.

**Housing Policy 7.07: Mixture of Housing Types**

The city and county, through their land use regulations and housing policies, will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities to meet the housing needs of the low-, moderate- and middle-income households of the Boulder Valley population. The city will encourage property owners to provide a mix of housing types, as appropriate. This may include support for ADUs/OAUs, alley houses, cottage courts and building multiple small units rather than one large house on a lot.

**Housing Policy 7.08: Preserve Existing Housing Stock**

The city and county, recognizing the value of their existing housing stock, will encourage its preservation and rehabilitation through land use policies and regulations. Special efforts will be made to preserve and rehabilitate existing housing serving low-, moderate- and middle-income households. Special efforts will also be made to preserve and rehabilitate existing housing serving low-, moderate- and middle-income households and to promote a net gain in affordable and middle-income housing.

**Housing Policy 7.10: Housing for a Full Range of Households**

The city and county will encourage preservation and development of housing attractive to current and future households, persons at all stages of life and abilities, and to a variety of

household incomes and configurations. This includes singles, couples, families with children and other dependents, extended families, non-traditional households and seniors.

**Housing Policy 7.11: Balancing Housing Supply with Employment Base**

The Boulder Valley housing supply should reflect, to the extent possible, employer workforce housing needs, locations and salary ranges. Key considerations include housing type, mix and affordability. The city will explore policies and programs to increase housing for Boulder workers and their families by fostering mixed-use and multi-family development in proximity to transit, employment or services and by considering the conversion of commercial- and industrial-zoned or -designated land to allow future residential use.

**Housing Policy 7.17: Market Affordability**

The city will encourage and support efforts to provide market rate housing priced to be more affordable to middle-income households by identifying opportunities to incentivize moderately sized and priced homes.

**Local Governance & Community Engagement Policy 10.01: High-Performing Government**

The city and county strive for continuous improvement in stewardship and sustainability of financial, human, information and physical assets. In all business, the city and county seek to enhance and facilitate transparency, accuracy, efficiency, effectiveness and quality customer service. The city and county support strategic decision-making with timely, reliable and accurate data and analysis.

**ATTACHMENTS**

Attachment A: Annotated Ordinance 8650

Attachment B: Ordinance 8650

# Annotated Ordinance: City Council Review Draft

NOTE: This version of the ordinance includes footnotes that help to describe all of the proposed changes as well as the redlined tracked changes to existing code language.

...

Section 1. The Accessory dwelling unit line under “Residential Uses” of Table 6-1:

Use Table in Section 9-6-1, “Schedule of Permitted Land Uses,” B.R.C. 1981, is amended to read as follows:

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

The schedule in Table 6-1 shows the uses that are permitted, conditionally permitted, prohibited, or that may be permitted through use review.

...

**TABLE 6-1: USE TABLE<sup>1</sup>**

		A = Allowed   C = Conditional Use   U = Use Review   [ ] = Specific Use Standards Apply   - = Prohibited																											
Zoning District	RR-1, RR-2, RE, RL-1	RL-2, RM-2	RM-1, RM-3	RMX-1	RMX-2	RH-1, RH-2, RH-4, RH-5	RH-3, RH-7	RH-6	MH	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BMS	BC-1, BC-2	BCS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2, DT-3	IS-1, IS-2	IG	IM	IMS	P	A	Specific Use Standards	
Use Module	R1	R2	R3	R4	R5	R6	R7	R8	M	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A		
<b>RESIDENTIAL USES</b>																													
<i>Residential Accessory</i>																													
Accessory dwelling unit	[A]	[A]	[A]	[A]	[A]	[A]	[A]	-	-	[A]	[A]	[A]	[A]	[A]	-	[A]	-	[A]	[A]	[A]	[A]	[A]	-	[A]	[A]	-	[A]	[A]	9-6-3(n)

...

Section 2. Section 9-6-3, “Specific Use Standards - Residential Uses,” B.R.C. 1981,

is amended to read as follows:

## 9-6-3. Specific Use Standards – Residential Uses

(a) **Residential Uses:**

...

(n) **Accessory Dwelling Unit:**

<sup>1</sup> HB24-1152 states that ADUs must be allowed in any zoning district that allows a detached dwelling unit.

- (1) The following standards apply to an accessory dwelling unit:
- (A) General Standards: An accessory dwelling unit shall meet the following standards:
- (i) Lot Limitations: An accessory dwelling unit may be ~~created established~~ on a lot ~~of 5,000 square feet or more~~ with ~~a one~~ detached dwelling unit.<sup>2</sup> One accessory dwelling unit may be located on a lot.
  - (ii) Maximum Floor Area: The accessory dwelling unit shall be limited to the maximum floor area set forth in Table 6-3. The board of zoning adjustment may grant a variance to this floor area requirement pursuant to Section 9-2-3, “Variances and Interpretations,” B.R.C. 1981.

**Table 6-3: Maximum Floor Area<sup>3</sup>**

	<i>Accessory Dwelling Unit</i>	<i>Affordable Accessory Dwelling Unit</i>	<i>Designated Historic Property</i>
Attached	One-half of the total floor area of the principal structure or 1,000 square feet, whichever is less, <u>except that if the principal structure has less than 1,500 square feet of floor area, the maximum is 750 square feet.</u>	Two-thirds of the total floor area of the principal structure or 1,200 square feet, whichever is less, <u>except that if the principal structure has less than 1,125 square feet of floor area, the maximum is 750 square feet.</u>	
Detached	800 sq. ft.	1,000 sq. ft.	

- (iii) ~~Off-Street Parking: The minimum number of off-street parking spaces shall be provided on the lot or parcel as required by Table 6-4. The required parking spaces shall meet at least the minimum dimensional requirements in Table 9-6, “Small Car Parking Dimension Standards,” B.R.C. 1981, and may be located in a required landscaped setback abutting the street.~~

<sup>2</sup> HB24-1152 states that subject jurisdictions may not have more restrictive minimum lot size requirements for ADUs than for single-unit detached dwellings. A separate project is contemplating removing the minimum lot size requirements for detached dwellings, so this is proposed to be removed.

<sup>3</sup> In response to HB24-1152, standards in local law must allow for ADU sizes between 500 and 750 sf.

~~Table 6-4: Off-Street Parking Requirement<sup>4</sup>~~

<del><i>Accessory Dwelling Unit</i></del>	<del>The number of off-street parking spaces required in the zoning district for the principal dwelling unit and one additional off-street parking space</del>
<del><i>Affordable Accessory Dwelling Unit</i></del>	<del>The parking required in the zoning district for the principal dwelling unit.</del>
<del><i>Designated Historic Property</i></del>	

~~(iv) Owner-Occupied: The principal dwelling unit or accessory dwelling unit on the parcel or lot must be owner-occupied. The applicant shall provide evidence to the city manager to demonstrate compliance with this requirement at the time of application or any time thereafter. For entities that are similar to ownership by a person, such evidence may include without limitation declaration of trust ownership, articles of organization, operating agreement, or similar documentation. The city manager may approve a temporary absence of the owner-occupant for less than one year with an affidavit of exemption pursuant to the procedures for temporary rental license exemptions in Section 10-3-2, "Rental License Required Before Occupancy and License Exemptions," B.R.C. 1981.<sup>5</sup>~~

~~(iiiiv) Rental License: No owner of the property shall allow, or offer to allow through advertisement or otherwise, any person to occupy the accessory dwelling unit or the principal dwelling unit as a tenant or lessee or otherwise for a valuable consideration unless such rented unit has been issued a valid rental license by the city manager consistent with the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.~~

~~(ivi) Short-Term Rental: Short-term rental of an accessory dwelling unit and short-term rental of a principal dwelling unit on a lot or parcel with an accessory dwelling unit are prohibited except as specifically authorized in Section 10-3-19, "Short-Term Rentals," B.R.C. 1981.~~

<sup>4</sup> HB24-1152 states that subject jurisdictions can only require a new parking space in very limited circumstances – where the zoning district requires one space for a detached dwelling, the street has no on-street parking, and there is no existing space on the lot.

<sup>5</sup> HB24-1152 notes that proof of owner occupancy may only be required at the time of building permit. Without the ability to enforce beyond that point, this requirement has very limited utility and is proposed to be removed.

- (vii) No Independent Conveyance: No person shall convey an accessory dwelling unit independently of the principal dwelling unit on the lot or parcel.
  - (viii) Declaration of Use ~~Required for Affordable Accessory Dwelling Units:~~<sup>6</sup> Before obtaining approval ~~for an affordable accessory dwelling unit,~~ all owners shall sign a declaration of use, including all the standards for continued use, to be recorded in the office of the Boulder County Clerk and Recorder to serve as actual and constructive notice of the legal status of the owner's property. ~~If the unit is to be an affordable accessory dwelling unit,~~ the declaration shall include a sworn certification that the unit will meet the affordability standard and a statement of the number of bedrooms.
- ~~(vii) Prior Approvals: Any prohibition of accessory dwelling units in any prior planned development, planned residential development, planned unit development, site review, or use review approval is void and shall not be enforced, provided the accessory dwelling unit is established consistent with the requirements of this subsection.~~<sup>7</sup>
- ~~a. Review Process: The establishment of an accessory dwelling unit on a property subject to a planned development, planned residential development, planned unit development, or site review shall be reviewed and approved under the minor modification process and standards in Subsection 9-2-14(k) and shall be deemed to not alter the basic intent of the site plan approval under Subparagraph 9-2-14(k)(1)(B), provided the proposal meets the remaining minor modification standards.~~<sup>8</sup>
  - ~~b. Use Review Exception: An accessory dwelling unit may be established as an accessory use to a detached dwelling unit that is subject to a use review approval without an~~

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<sup>6</sup> Without an owner occupancy requirement (HB24-1152 limits enforcement of owner occupancy), the Declaration of Use requirement is proposed to be removed for market rate ADUs. This language has been updated to apply only to affordable ADUs, which use the Declaration of Use as the sworn certification of affordable rent prices.

<sup>7</sup> HB24-1152 states any PUD approval shall not be interpreted or enforced to restrict the creation of an ADU.

<sup>8</sup> The minor modification language ensures that ADUs would be reviewed through an administrative approval process per the bill.

amendment or minor modification review under Section 9-2-15, "Use Review," B.R.C. 1981.<sup>9</sup>

~~(ixviii)~~ Amendments: The owner of an accessory dwelling unit may amend the approved size, affordability status, or other characteristics of an approved accessory dwelling unit by filing a building permit application that demonstrates compliance with applicable accessory dwelling unit standards. ~~Prior to approval the owner must sign an updated declaration of use to be recorded in the office of the Boulder County Clerk and Recorder.~~<sup>10</sup>

(2) Attached Accessory Dwelling Units: In addition to the general standards in Paragraph (n)(1) of this section, the following standards apply to attached accessory dwelling units.

(A) Interior Connections: All attached accessory dwelling units shall be physically separated by a wall or a lockable door. If there is an interior connection between the accessory dwelling unit and the principal dwelling prior to the creation of the accessory dwelling unit, the connection together with the lockable, physical separation shall be maintained for the duration of the accessory dwelling unit.

~~(B) Side Entrances: Any additional entrance resulting from the creation of an attached accessory dwelling unit may face the side of the lot fronting on the street only if such entrance is adequately and appropriately screened in a manner that does not detract from the single-family appearance of the principal dwelling unit.~~<sup>11</sup>

~~(B) Rear Yard Setback: The minimum rear yard setback for principal buildings established in Table 7-1 does not apply to a principal building with an attached accessory dwelling unit provided the following standards are met:~~<sup>12</sup>

~~(i) Any floor area of the building located within the area of the minimum rear yard setback established in Table 7-1 is solely floor area of the accessory dwelling unit;~~

---

<sup>9</sup> This language exempts ADUs in the rare circumstance that there is a Use Review approval for a detached dwelling unit, as the standards for a modification or amendment would not meet HB24-1152.

<sup>10</sup> Removing as DOUs will no longer be required except for affordable ADUs.

<sup>11</sup> Removing because HB24-1152 prohibits a standard that "requires an architectural style, building material, or landscaping that is more restrictive for an ADU than for single-unit detached dwelling in the same district."

<sup>12</sup> This subsection has been added to acknowledge HB24-1152's allowance of 5 foot minimum rear yard setbacks for attached ADUs, while also ensuring impacts of height and building coverage would be limited the same amount as a detached ADU.



- (ii) The attached accessory dwelling unit portion of the building has a rear yard setback of five feet or more;
- (iii) In the RR, RE, RL, and RMX-1 districts, the maximum building coverage of the attached accessory dwelling unit portion of the building and any accessory buildings or structures within the area of the minimum rear yard setback established in Table 7-1 is 500 square feet; and
- (iv) The maximum height of any portion of the building located within the area of the minimum rear yard setback established in Table 7-1 is 20 feet. The height of this portion of the building shall be measured to the uppermost point of the portion of the building with the accessory dwelling unit consistent with Section 9-7-5, "Building Height," B.R.C. 1981.

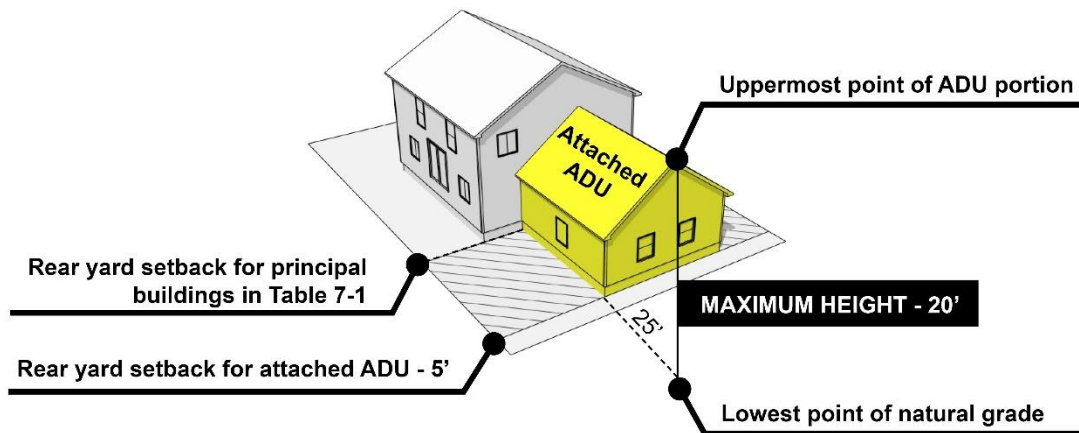


Figure 6-1: Maximum Height of Attached ADU in Rear Yard Setback

- (3) Detached Accessory Dwelling Units: In addition to the general standards in Paragraph (n)(1) of this section, the following standards apply to detached accessory dwelling units:
  - (A) Maximum Height: The maximum height of accessory buildings with a detached accessory dwelling unit shall not be greater than twenty feet. The city manager may modify this height standard if the building meets one of the following:

- (i) If the roof pitch is 8:12 or ~~greater~~steeper<sup>13</sup>, provided the building height does not exceed 25 feet; or
- (ii) If a legal existing accessory building is converted to a detached accessory dwelling unit, provided that no changes are proposed to the existing accessory building’s height, floor area, or roof form.

~~(B) Private Open Space: A detached accessory dwelling unit shall have a minimum of sixty square feet of private open space provided for the exclusive use of the occupants of the detached accessory dwelling unit. Private open space may include porches, balconies, or patio areas.<sup>14</sup>~~

...

Section 3. Footnote (f) to Table 7-1: Form and Bulk Standards in Section 9-7-1, “Schedule of Form and Bulk Standards,” B.R.C. 1981, is amended to read as follows:

**9-7-1. Schedule of Form and Bulk Standards**

...

Footnotes to Table 7-1, Form and Bulk Standards:

...

- (f) Where a rear yard backs on a street, see Paragraph 9-7-2(c), B.R.C. 1981. For attached accessory dwelling units, see Paragraph 9-6-3(n), B.R.C. 1981.<sup>15</sup>

...

Section 4. Row six under “Use” of Table 9-2: Use Specific Motor Vehicle Parking Requirements for Residential Uses in all Zones in Section 9-9-6, “Parking Standards,” B.R.C.

1981, are amended to read as follows:

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

...

- (b) Off-Street Parking Requirements: The number of required off-street motor vehicle parking spaces ~~shall be~~is provided in Tables 9-1, 9-2, 9-3, and 9-4 of this section;

<sup>13</sup> Edited for clarity.

<sup>14</sup> Removing because HB24-1152 prohibits a standard that “requires an architectural style, building material, or landscaping that is more restrictive for an ADU than for single-unit detached dwelling in the same district.”

<sup>15</sup> This has been added to link and raise awareness of the different rear yard setback standard for attached ADUs.

the number of required off-street bicycle parking spaces ~~shall be~~ provided in Table 9-8 of this section:

...

(2) Use Specific Motor Vehicle Parking Requirements for Residential Uses:

**TABLE 9-2: USE SPECIFIC MOTOR VEHICLE PARKING REQUIREMENTS FOR RESIDENTIAL USES IN ALL ZONES**

<i>Use</i>	<i>Parking Requirement</i>
Roomers within a single-unit dwelling	1 space per 2 roomers
Residential developments in which 1-bedroom units are 60 percent or more of the total	1.25 spaces per 1-bedroom unit
Rooming house, boarding house, fraternity, sorority, group living, and hostels	2 spaces per 3 occupants
Efficiency living units, transitional housing	1 space per DU
Bed and breakfast	1 space per guest room + 1 space for operator or owner's DU within building
<del>Attached a</del> Accessory dwelling unit, <del>detached accessory dwelling unit</del>	<del>0</del> The off-street parking requirement for the principal DU must be met, plus any parking space required for the accessory unit, see Subsection 9-6-3(n), B.R.C. 1981 <sup>16</sup>

...

Section 17. 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.

Section 18. 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 19. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

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<sup>16</sup> To align with changes in use standards.

ORDINANCE 8650

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO AMEND THE STANDARDS FOR ACCESSORY DWELLING UNITS; AND SETTING FORTH RELATED DETAILS

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

Section 1. The Accessory dwelling unit line under "Residential Uses" of Table 6-1: Use Table in Section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, is amended to read as follows:

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

The schedule in Table 6-1 shows the uses that are permitted, conditionally permitted, prohibited, or that may be permitted through use review.

**TABLE 6-1: USE TABLE**

A = Allowed   C = Conditional Use   U = Use Review   [ ] = Specific Use Standards Apply   - = Prohibited																												
Zoning District	RR-1, RR-2	RL-2	RM-1, RM-2, RM-3	RMX-1	RMX-2	RH-1, RH-2, RH-3, RH-7	RH-6	MH	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BMS	BC-1, BC-2	BCS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2	IS-1, IS-2	IG	IM	IMS	P	A	Specific Use Standards	
Use Module	R1	R2	R3	R4	R5	R6	R7	R8	MH	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A	
<b>RESIDENTIAL USES</b>																												
<i>Residential Accessory</i>																												
Accessory dwelling unit	[A]	[A]	[A]	[A]	[A]	[A]	[A]	-	-	[A]	[A]	[A]	[A]	[A]	-	[A]	-	[A]	[A]	[A]	[A]	-	[A]	[A]	-	[A]	[A]	9-6-3(n)

Section 2. Section 9-6-3, "Specific Use Standards - Residential Uses," B.R.C. 1981, is amended to read as follows:

1 **9-6-3. - Specific Use Standards - Residential Uses.**

2 (a) **Residential Uses:**

3 ...

4 (n) **Accessory Dwelling Unit:**

5 (1) The following standards apply to an accessory dwelling unit:

6 (A) General Standards: An accessory dwelling unit shall meet the following standards:

7 (i) Lot Limitations: An accessory dwelling unit may be ~~created~~  
 8 established on a lot of ~~5,000 square feet or more~~ with a one  
 9 detached dwelling unit. One accessory dwelling unit may be located on a lot.

10 (ii) Maximum Floor Area: The accessory dwelling unit shall be limited  
 11 to the maximum floor area set forth in Table 6-3. The board of  
 12 zoning adjustment may grant a variance to this floor area  
 13 requirement pursuant to Section 9-2-3, "Variances and Interpretations," B.R.C. 1981.

14 **Table 6-3: Maximum Floor Area**

	<i>Accessory Dwelling Unit</i>	<i>Affordable Accessory Dwelling Unit</i>	<i>Designated Historic Property</i>
Attached	One-half of the total floor area of the principal structure or 1,000 square feet, whichever is less, <u>except that if the principal structure has less than 1,500 square feet of floor area, the maximum is 750 square feet.</u>	Two-thirds of the total floor area of the principal structure or 1,200 square feet, whichever is less, <u>except that if the principal structure has less than 1,125 square feet of floor area, the maximum is 750 square feet.</u>	
Detached	800 sq. ft.	1,000 sq. ft.	

17 (iii) ~~Off-Street Parking: The minimum number of off-street parking spaces shall be provided on the lot or parcel as required by Table 6-4. The required parking spaces shall meet at least the minimum dimensional requirements in Table 9-6, "Small Car Parking Dimension Standards," B.R.C. 1981, and may be located in a required landscaped setback abutting the street.~~

~~Table 6-4: Off-Street Parking Requirement~~

<del><i>Accessory Dwelling Unit</i></del>	<del>The number of off-street parking spaces required in the zoning district for the principal dwelling unit and one additional off-street parking space</del>
<del><i>Affordable Accessory Dwelling Unit</i></del>	<del>The parking required in the zoning district for the principal dwelling unit.</del>
<del><i>Designated Historic Property</i></del>	

~~(iv) Owner Occupied: The principal dwelling unit or accessory dwelling unit on the parcel or lot must be owner-occupied. The applicant shall provide evidence to the city manager to demonstrate compliance with this requirement at the time of application or any time thereafter. For entities that are similar to ownership by a person, such evidence may include without limitation declaration of trust ownership, articles of organization, operating agreement, or similar documentation. The city manager may approve a temporary absence of the owner occupant for less than one year with an affidavit of exemption pursuant to the procedures for temporary rental license exemptions in Section 10-3-2, "Rental License Required Before Occupancy and License Exemptions," B.R.C. 1981.~~

~~(iii) Rental License: No owner of the property shall allow, or offer to allow through advertisement or otherwise, any person to occupy the accessory dwelling unit or the principal dwelling unit as a tenant or lessee or otherwise for a valuable consideration unless such rented unit has been issued a valid rental license by the city manager consistent with the requirements of Chapter 10-3, "Rental Licenses," B.R.C. 1981.~~

~~(vi) Short-Term Rental: Short-term rental of an accessory dwelling unit and short-term rental of a principal dwelling unit on a lot or parcel with an accessory dwelling unit are prohibited except as specifically authorized in Section 10-3-19, "Short-Term Rentals," B.R.C. 1981.~~

~~(vii) No Independent Conveyance: No person shall convey an accessory dwelling unit independently of the principal dwelling unit on the lot or parcel.~~

~~(viii) Declaration of Use Required for Affordable Accessory Dwelling Units: Before obtaining approval for an affordable accessory dwelling unit, all owners shall sign a declaration of use, including~~

1 all the standards for continued use, to be recorded in the office of  
 2 the Boulder County Clerk and Recorder to serve as actual and  
 3 constructive notice of the legal status of the owner's property. If  
 4 ~~the unit is to be an affordable accessory dwelling unit, the~~  
 5 declaration shall include a sworn certification that the unit will  
 6 meet the affordability standard and a statement of the number of  
 7 bedrooms.

8 (vii) Prior Approvals: Any prohibition of accessory dwelling units in  
 9 any prior planned development, planned residential development,  
 10 planned unit development, site review, or use review approval is  
 11 void and shall not be enforced, provided the accessory dwelling  
 12 unit is established consistent with the requirements of this  
 13 subsection.

14 a. Review Process: The establishment of an accessory dwelling  
 15 unit on a property subject to a planned development, planned  
 16 residential development, planned unit development, or site  
 17 review shall be reviewed and approved under the minor  
 18 modification process and standards in Subsection 9-2-14(k)  
 19 and shall be deemed to not alter the basic intent of the site plan  
 20 approval under Subparagraph 9-2-14(k)(1)(B), provided the  
 21 proposal meets the remaining minor modification standards.

22 b. Use Review Exception: An accessory dwelling unit may be  
 23 established as an accessory use to a detached dwelling unit that  
 24 is subject to a use review approval without an amendment or  
 25 minor modification review under Section 9-2-15, "Use  
Review," B.R.C. 1981.

~~(viii)~~ Amendments: The owner of an accessory dwelling unit may  
 amend the approved size, affordability status, or other  
 characteristics of an approved accessory dwelling unit by filing a  
 building permit application that demonstrates compliance with  
 applicable accessory dwelling unit standards. ~~Prior to approval the~~  
~~owner must sign an updated declaration of use to be recorded in~~  
~~the office of the Boulder County Clerk and Recorder.~~

(2) Attached Accessory Dwelling Units: In addition to the general standards in  
 Paragraph (n)(1) of this section, the following standards apply to attached  
 accessory dwelling units.

(A) Interior Connections: All attached accessory dwelling units shall be  
 physically separated by a wall or a lockable door. If there is an interior  
 connection between the accessory dwelling unit and the principal dwelling

1 prior to the creation of the accessory dwelling unit, the connection  
 2 together with the lockable, physical separation shall be maintained for the  
 duration of the accessory dwelling unit.

3 (B) ~~Side Entrances: Any additional entrance resulting from the creation of an~~  
 4 ~~attached accessory dwelling unit may face the side of the lot fronting on~~  
 5 ~~the street only if such entrance is adequately and appropriately screened in~~  
 6 ~~a manner that does not detract from the single-family appearance of the~~  
 7 ~~principal dwelling unit.~~ Rear Yard Setback: The minimum rear yard  
setback for principal buildings established in Table 7-1 does not apply to a  
principal building with an attached accessory dwelling unit provided the  
following standards are met:

8 (i) Any floor area of the building located within the area of the  
 9 minimum rear yard setback established in Table 7-1 is solely floor  
area of the accessory dwelling unit;

10 (ii) The attached accessory dwelling unit portion of the building has a  
 11 rear yard setback of five feet or more;

12 (iii) In the RR, RE, RL, and RMX-1 districts, the maximum building  
 13 coverage of the attached accessory dwelling unit portion of the  
 14 building and any accessory buildings or structures within the area  
 15 of the minimum rear yard setback established in Table 7-1 is 500  
 16 square feet; and

17 (iv) The maximum height of any portion of the building located within  
 18 the area of the minimum rear yard setback established in Table 7-1  
 19 is 20 feet. The height of this portion of the building shall be  
 20 measured to the uppermost point of the portion of the building with  
 21 the accessory dwelling unit consistent with Section 9-7-5,  
 22 “Building Height,” B.R.C. 1981.



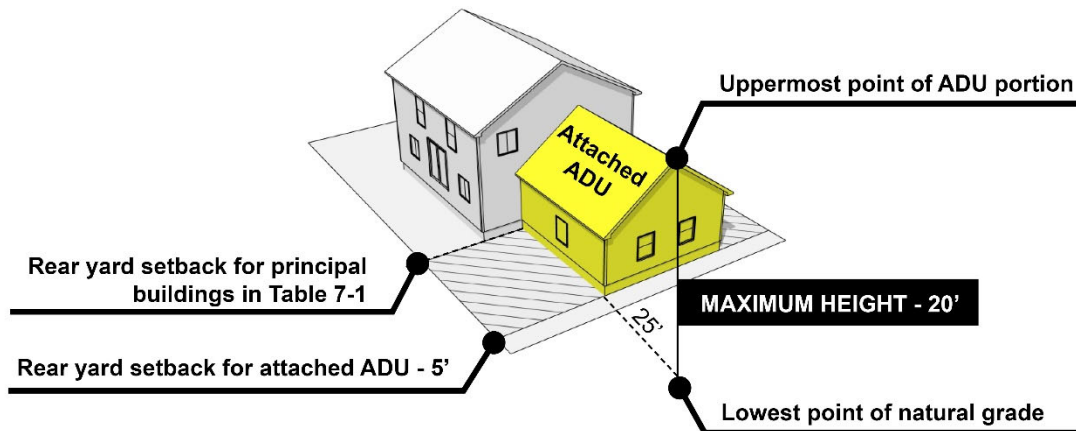


Figure 6-1: Maximum Height of Attached ADU in Rear Yard Setback

- (3) Detached Accessory Dwelling Units: In addition to the general standards in Paragraph (n)(1) of this section, the following standards apply to detached accessory dwelling units:
  - (A) Maximum Height: The maximum height of accessory buildings with a detached accessory dwelling unit shall not be greater than twenty feet. The city manager may modify this height standard if the building meets one of the following:
    - (i) If the roof pitch is 8:12 or ~~greater~~ steeper, provided the building height does not exceed 25 feet; or
    - (ii) If a legal existing accessory building is converted to a detached accessory dwelling unit, provided that no changes are proposed to the existing accessory building’s height, floor area, or roof form.
  - ~~(B) Private Open Space: A detached accessory dwelling unit shall have a minimum of sixty square feet of private open space provided for the exclusive use of the occupants of the detached accessory dwelling unit. Private open space may include porches, balconies, or patio areas.~~

Section 3. Footnote (f) to Table 7-1: Form and Bulk Standards in Section 9-7-1,

“Schedule of Form and Bulk Standards,” B.R.C. 1981, is amended to read as follows:

1 **9-7-1. - Schedule of Form and Bulk Standards.**

2 ...

3 Footnotes to Table 7-1, Form and Bulk Standards:

4 ...

5 (f) Where a rear yard backs on a street, see Paragraph 9-7-2(c), B.R.C. 1981. For attached  
 6 accessory dwelling units, see Paragraph 9-6-3(n), B.R.C. 1981.

7 Section 4. Row four under “Use” of Table 9-2: Use Specific Motor Vehicle Parking  
 8 Requirements for Residential Uses in all Zones in Section 9-9-6, “Parking Standards,” B.R.C.  
 9 1981, are amended to read as follows:

10 **9-9-6. - Parking Standards.**

11 ...

12 (b) Off-Street Parking Requirements: The number of required off-street motor vehicle  
 13 parking spaces ~~shall be~~ provided in Tables 9-1, 9-2, 9-3, and 9-4 of this section; the  
 14 number of required off-street bicycle parking spaces ~~shall be~~ provided in Table 9-8 of  
 this section:

15 ...

16 (2) Use Specific Motor Vehicle Parking Requirements for Residential Uses:

17 **TABLE 9-2: USE SPECIFIC MOTOR VEHICLE PARKING REQUIREMENTS FOR**  
 18 **RESIDENTIAL USES IN ALL ZONES**

<i>Use</i>	<i>Parking Requirement</i>
Rooming house, boarding house, fraternity, sorority, group living, and hostels	2 spaces per 3 occupants
Efficiency living units, transitional housing	1 space per DU
Bed and breakfast	1 space per guest room + 1 space for operator or owner's DU within building
<del>Attached accessory dwelling unit, detached accessory dwelling unit</del>	<del>0. The off-street parking requirement for the principal DU must be met, plus any parking space required for the accessory dwelling unit, see Subsection 9-6-3(n), B.R.C. 1981</del>
...	...

25 ...



1 READ ON SECOND READING, PASSED AND ADOPTED this 6th day of February  
2 2025.

3 \_\_\_\_\_  
4 Aaron Brockett,  
5 Mayor

6 Attest:

7 \_\_\_\_\_  
8 City Clerk

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## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Second reading and consideration of a motion to adopt Ordinance 8681 approving the renewal of a Cable Franchise Agreement with Comcast of Colorado IX, LLC for the period March 1, 2025 through and including February 29, 2035 and authorizing the city manager to sign all agreements attendant thereto; and setting forth related details

### **PRIMARY STAFF CONTACT**

Carl Castillo, Intergovernmental Officer

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8681 approving the renewal of a Cable Franchise Agreement with Comcast of Colorado IX, LLC for the period March 1, 2025 through and including February 29, 2035 and authorizing the city manager to sign all agreements attendant thereto; and setting forth related details

### **ATTACHMENTS:**

#### **Description**

- **Item 5B- 2nd Rdg Ord 8681 Comcast Cable Franchise Agreement**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Second reading and consideration of a motion to adopt Ordinance 8681 approving the renewal of a Cable Franchise Agreement with Comcast of Colorado IX, LLC for the period March 1, 2025 through and including February 29, 2035 and authorizing the city manager to sign all agreements attendant thereto; and setting forth related details

**PRESENTERS**

Nuria Rivera Vandermyde, City Manager  
Chris Meschuk, Deputy City Manager  
Carl Castillo, Chief Policy Advisor  
Andy Frohardt, Assistant City Attorney III

**EXECUTIVE SUMMARY**

The city is party to a non-exclusive franchise agreement (the “Existing Franchise Agreement,” **Attachment B**) with Comcast of Colorado IX, LLC (“Comcast”) which allows Comcast to use the city’s public rights of way to provide cable television services under the Xfinity and Comcast Business brand names. This agreement is set to expire on April 30, 2025. The purpose of this agenda item is to allow council to consider approving proposed Ordinance 8681 (**Attachment A**), which would allow for a 10-year renewal of the franchise agreement (“Proposed Franchise Agreement,” **Exhibit A of Attachment A**). Council approved this ordinance on first reading at their January 16 business meeting. At that meeting, Council Member Adams asked about the ecological impacts of construction related to the franchise, pointing to language referred to in Section 2.1(b) of the Proposed Franchise Agreement related to the city retained right to engage in “widening” and “blasting,” with or without a franchise. She specifically asked why the agreement does not reference habitat or otherwise address ecological impacts of construction. This issue is addressed in the analysis section of this memo, below.

Highlights of the Proposed Franchise Agreement are summarized in the analysis section below. However, it is important to emphasize here why the city enters into cable franchise agreements and the powers and limitations that come with this authority:

- **Permission to Use City ROW** – The city enters into cable franchise agreements to permit private providers to use city right-of-way (“ROW”) to run their cable lines to provide multi-channel program service. Multi-channel program service providers that do not require use of city ROW (i.e., satellite service providers) are not required to enter into a cable franchise agreement with the city.
- **Non-Exclusive Agreement** – Pursuant to Section 109 of the Boulder Home Rule Charter, no exclusive franchises may ever be granted. This means cable franchise agreements may not prevent other entrants from using city ROW to provide competing services.
- **Renewal** – Under federal law, a cable franchise must generally be renewed unless it has not met the terms of its existing franchise agreement or will not be able to provide adequate service to meet the cable-related needs of the community in the future.
- **Permitted Areas for Regulation** – The issues that may be considered in deciding whether to renew a cable franchise agreement relate primarily to:
  - Substantial compliance with the terms of an existing franchise;
  - Customer service, including signal quality, response to consumer complaints and billing practices;
  - Technical ability to provide cable television service;
  - Financial ability to provide cable television service; and
  - Legal ability to provide cable television service.
- **Limits on City Regulation** – Federal law precludes the city from conditioning renewal of the agreement upon Comcast’s willingness to address other issues of interest to the community, such as cable service rates, channel programming and programming packages (including the ability to choose particular cable channels, also known as "a la carte service"), or telecommunication services (including Internet or voice over internet protocol services).
- **No Election for Renewal** – Boulder’s Home Rule Charter, at Article VIII, § 108, requires a vote of the electorate to approve all franchises. However, that charter provision was preempted by federal statute. *See Qwest v. Boulder*, 151 F. Supp.2d 1236 (2001), interpreting that statute. Accordingly, there will be no election concerning a renewal of the Comcast 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 adopt Ordinance 8681 approving the renewal of a Cable Franchise Agreement with Comcast of Colorado IX, LLC for the period March 1, 2025 through and including February 29, 2035 and authorize the city manager to sign all agreements attendant thereto; and setting forth related details

## FISCAL IMPACTS

The city currently collects an annual franchise fee equal to five percent of Comcast's "gross revenue," as that term is defined in Section 11-6-2 of the Boulder Revised Code 1981. In 2023, this amounted to \$864,667. This franchise fee revenue is directed to the city's general fund. The city also currently collects \$.50 per Comcast cable subscriber in public, educational and government ("PEG") access channel fees. In 2023, the PEG revenue generated from these city fees totaled \$65,412. This PEG revenue is limited by federal law to be used only for capital costs associated with the access channels. The city allocates its PEG fee revenue for expenses associated with running Educational Channel 22 and for Government Channel 8.

Both the franchise fee and PEG fee revenue have been in decline over recent years. However, PEG fee revenue is declining at a faster pace as it is tied to the number of Comcast cable subscribers. In contrast, total Comcast gross revenue is somewhat protected by expanded cable offerings and the higher charges for such services. Accordingly, the city has negotiated an agreement with Comcast to tie PEG fee revenue to Comcast cable revenue. More specifically, the Proposed Franchise Agreement would assess a PEG fee equal to 0.48% of Comcast's gross revenue.

## BACKGROUND

The city's Proposed Franchise Agreement builds off the city's Existing Franchise Agreement and includes the requirements found in the city's Cable Code (Chapter 11-6 of the Boulder Revised Code 1981) and the Customer Service Standards found in Appendix A to the city's Cable Code. It also includes new provisions from the latest model cable franchise agreement developed by the Colorado Communications and Utilities Alliance ("CCUA"), some of which are newly required by federal law. CCUA is the state's leading local government professional organization providing cable franchising and related information that impacts the interests of residents and local governments.

## ANALYSIS

The following are the main points of the requirements of the Proposed Franchise Agreement:

1. **Ten-Year Term** –The agreement will be in place for ten-years.
2. **Customer Service Requirements** – The Proposed Franchise Agreement includes Customer Service Standards as Exhibit B that address several matters including minimum requirements for providing courtesy, accessibility, and responsiveness and establish a complaint procedure for receiving, acting upon and resolving customer complaints to Comcast, or to the city as the franchising authority, and the right of the city to impose financial assessments to remedy violations.
3. **Franchise Fee** – As compensation for benefits received, Comcast will continue to pay an amount equal to five percent of its gross revenues to the city.
4. **PEG Channels and Fees** – Comcast will continue to provide the city with four standard definition channels for Public, Educational or Government Access (“PEG) use and one high-definition access channel. Moreover, instead of continuing to provide \$.50 per month per subscriber in PEG fees as required by the Existing Franchise Agreement, Comcast will begin to provide a PEG fee equating to 0.48% of its gross revenues. The rationale behind this change is that it protects the city from the otherwise rapid declining numbers of subscribers. This new formula would generate fees close to the average over the last 5-year on city-collected PEG fee revenue (2019-2023). This approximates a 27% increase over current PEG fee revenue. In 2023, for example, it would have resulted in \$83,073.53, a \$17,661 increase over the PEG fee revenue the city received. The city’s share of this funding is essential to the continued operations of the Communications & Engagement Department’s Creative Services team. The city uses the revenue, as allowed by statute, for equipment purchases that support the broadcasting of City Council meetings, on-demand video coverage for board and commission meetings, and the production of other externally facing videos.
5. **Applicability of City Ordinances** – In addition to the requirements spelled out in the Proposed Franchise Agreement, Comcast is also bound to comply with all applicable city ordinances and regulations, including the Boulder Cable Code (Title 6, Chapter 6, BRC) and the Construction Design Guidelines. However, if there is a direct conflict between the city’s current ordinances and the terms of the Proposed Franchise Agreement, the terms of the Proposed Franchise Agreement will control.
6. **Ecological Impacts** – In response to a question by Council Member Adams about ecological protections associated with franchise activities, note that the following requirements apply to all construction activity within the city, whether pursuant to a franchise agreement or not.
  - Staff prioritizes minimizing disturbance by carefully selecting project locations, designing with natural features in mind, utilizing native vegetation restoration,

implementing wildlife considerations where necessary, managing invasive species, and conducting thorough environmental assessments to identify and mitigate potential impacts throughout the project lifecycle.

- City staff review every right-of-way permit with an emphasis on minimizing all impacts associated to construction activities. This includes nearby drainage, streams, inlets, neighboring properties, our public and transportation users.
- All contractors working within the city, including right-of-way, are required to use best environmental management practices to control dust, sediment, and erosion on every project, regardless of the size of the project/task.
- BRC Section 8-5-11, *Minimizing the Impacts of Work in the Rights-of-Way and Public Easements*, provides for controlling dust and erosion while also requiring the protection of trees and landscaping where any damage, including to vegetation, must be reported to the city's right-of-way inspection team. It also makes the contractor responsible for proper restoration, overseen by city staff.
- B.R.C. Section 9.02 of the DCS prohibits blasting or other use of explosives for excavation.
- No work enters sensitive habitats, such as designated wetlands, if avoidable, without first obtaining the proper permits. Where impacts cannot be avoided, mitigation measures are implemented in accordance with regulatory requirements to offset any ecological effects. BRC Section 9-3-9 *Stream, Wetlands, and Water Body Protection*.

## **NEXT STEPS**

With Council adoption of Ordinance 8681, the city manager would be authorized to sign all agreements required to finalize the renewal of a cable franchise with Comcast.

## **ATTACHMENTS**

A – Proposed Ordinance 8681, with Exhibit A, Proposed Cable Franchise Agreement with Comcast

B - Existing Cable Franchise Agreement with Comcast

ORDINANCE 8681

AN ORDINANCE APPROVING THE RENEWAL OF A CABLE FRANCHISE AGREEMENT WITH COMCAST OF COLORADO IX, LLC FOR THE PERIOD MAY 1, 2025 THROUGH AND INCLUDING APRIL 30, 2035; AND SETTING FOR RELATED DETAILS

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THAT:

A. A cable franchise agreement was previously granted to TCI and its successor AT&T Broadband, and Comcast of Colorado IV, LLC. Comcast of Colorado IV, LLC, is the current grantee of the non-exclusive franchise. The current franchise is scheduled to expire on April 30, 2025.

B. A negotiated agreement for franchise renewal with Comcast of Colorado IX, LLC, has been achieved. That agreement is appended and incorporated into this Ordinance as **Exhibit**

A. The City Council finds that adoption of the proposed franchise agreement is in the best interests of the city and is in compliance with city policies and ordinances that regulate the granting of franchises.

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

Section 1. The City Council grants Comcast of Colorado IX, LLC, a non-exclusive franchise to make reasonable and lawful use of the Public Rights-of-Way within the city for the purpose of providing cable service to residents and business in the city.

Section 2. The City Council approves the Cable Franchise Agreement between the City of Boulder and Comcast of Colorado IX, LLC, in substantially the form of **Exhibit A**, and

1 authorizes the city manager to execute the Cable Franchise Agreement and all agreements  
2 attendant thereto.

3 Section 3. The City Council approved Cable Franchise Agreement with Comcast of  
4 Colorado IX, LLC shall have an effective date of March 1, 2025.

5 Section 4. This Ordinance is necessary to protect the public health, safety, and  
6 welfare of the residents of the city and covers matters of local concern.

7 Section 5. The City Council deems it appropriate that this Ordinance be published by  
8 title only and orders that copies of this Ordinance be made available in the office of the city clerk  
9 for public inspection and acquisition.  
10

11  
12 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED  
13 BY TITLE ONLY this 16th day of January 2025.

14  
15 \_\_\_\_\_  
16 Aaron Brockett,  
17 Mayor

18 Attest:

19 \_\_\_\_\_  
20 City Clerk  
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READ ON SECOND READING, PASSED AND ADOPTED, this 6th day of  
February 2025.

---

Aaron Brockett,  
Mayor

Attest:

---

City Clerk

**CABLE FRANCHISE AGREEMENT**

**COMCAST OF COLORADO IX, LLC  
AND  
THE CITY OF BOULDER, COLORADO**

**March 1, 2025**



**COMCAST OF COLORADO IX, LLC AND  
THE CITY OF BOULDER, COLORADO**

**CABLE FRANCHISE AGREEMENT**

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**COMCAST OF COLORADO IX, LLC AND  
CITY OF BOULDER, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS AND EXHIBITS**

**(A) DEFINITIONS**

For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including without limitation:

(A) “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

(B) “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

(C) “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, including specifically the Cable Act, the Boulder Cable Code and the City’s Design and Construction Standards, that determines the legal standing

of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber within the City and owed by that Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise Agreement, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Boulder Cable Code” means Title 11, Chapter 6 of the Boulder Revised Code 1981 (B.R.C. 1981), as the same may be amended from time to time.

1.9 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC §§ 534 and 535.

1.10 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.11 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.12 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.13 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.14 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. §§ 201 *et seq.*), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.15 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.16 “City” is the city of Boulder, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.17 “City Council” means the Boulder City Council, or its successor, the governing body of the City.

1.18 “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.19 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.20 “Demarcation Point” means up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to the Grantee.

1.21 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.22 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.23 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to interconnection points on the Cable System.

1.24 “Dwelling Unit” one room or rooms connected together for residential occupancy and including bathroom and kitchen facilities. If there is more than one meter for any utility, address to the property or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units; or if there is a lockable, physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, multiple dwelling units are presumed to exist; but this presumption may be rebutted by evidence that the residents of the dwelling share utilities and keys to all entrances to the property and that they: (A) share a single common bathroom as the primary bathroom, or (B) share a single common kitchen as the primary kitchen.

1.25 “Effective Date” means March 1, 2025.

1.26 “FCC” means the Federal Communications Commission.

1.27 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated



electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.28 “Franchise” shall mean a nonexclusive authorization granted in accordance with the Boulder Cable Code to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, maintenance and repair of a cable system along the public rights of way within all or a specified area of the City. Any such authorization, in whatever form granted, shall not mean or include: (A) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (B) any permit or authorization required in connection with operations on public streets, rights of way or other property, including without limitation, permits for attaching devices to poles or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along public rights of way; (C) agreements required for the use of conduits and poles, whether publicly or privately owned; or d) express or implicit authorization to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to Section 621(a)(2) of the Cable Act, 47 USC § 541(a)(2)).

1.29 “Franchise Agreement” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.30 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise Agreement.

1.31 “Franchise Fee” means that fee payable to the City described in Subsection 3.1.

1.32 “Grantee” means Comcast of Colorado IX, LLC or its successor, transferee or assignee.

1.33 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including without limitation pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial or leased access use, allocated on a *pro rata* basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- FCC Regulatory Fees; and
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast EffectTV (“EffectTV”) or their successors associated with sales of advertising on the Cable System within the City allocated according to this Subsection using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes or fees on services furnished by Grantee imposed by any municipality, State or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, State or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate

revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, State or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Subsection 1.33 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to Subsection 1.33(E), below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF or the SEC.

1.34 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.35 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.36 "Manager" means the City Manager of the City or designee.

1.37 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.38 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.39 "Public Right(s)-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City now or hereafter holds any property interest, which, consistent with the purposes for which it was

dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and Grantee shall be deemed to gain only those rights to use as are properly in the City and as the City may have the undisputed right and power to give.

1.40 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.41 "State" means the State of Colorado.

1.42 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.43 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Subscribers.

1.44 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. § 153(43)).

1.45 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. § 153(46)).

1.46 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.47 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.48 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from interconnection points on the Cable System.

## **(B) EXHIBITS**

The following documents, which are occasionally referred to in this Franchise Agreement, are formally incorporated and made a part of this Franchise Agreement by this reference:

- (1) ***Exhibit A***, entitled Report Form.
- (2) ***Exhibit B***, entitled Customer Service Standards.

## SECTION 2. GRANT OF FRANCHISE

### 2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Public Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise Agreement and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise Agreement.

(B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable City ordinance.

(C) Each term, provision or condition herein is subject to the provisions of Applicable Law. In the event of a conflict between the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement and this Franchise Agreement, the Franchise Agreement shall control, except where expressly provided otherwise in this Franchise Agreement. However, although the exercise of rights hereunder is subject to the Boulder Cable Code, the Boulder Cable Code is not a contract. Nothing in this Subsection 2.1 shall prevent Grantee from challenging a particular amendment to the Boulder Cable Code as an impairment of this Franchise Agreement.

(D) This Franchise Agreement shall not be interpreted to prevent the City from imposing additional lawful conditions for the use of the Rights-of-Way.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise Agreement, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise Agreement.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise Agreement shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Public Right-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise Agreement including, without limitation, permits and agreements for placing devices on poles, in

conduits or in or on other structures.

(G) This Franchise Agreement is intended to convey limited rights and interests only as to those Public Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Public Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Public Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

## **2.2 Use of Public Rights-of-Way**

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise Agreement, is granted extensive and valuable rights to operate its Cable System for profit using the City's Public Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise Agreement to be paid for these valuable rights throughout the term of the Franchise Agreement.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

## **2.3 Effective Date and Term of Franchise Agreement**

This Franchise Agreement and the rights, privileges and authority granted hereunder shall take effect on March 1, 2025 (the "Effective Date"), and shall terminate at midnight on February 28, 2035 unless terminated sooner as hereinafter provided.

## **2.4 Franchise Nonexclusive**

The Franchise granted herein shall be nonexclusive, and subject to all prior franchises, rights, interests, easements or licenses granted by the City to any Person to use any Public Right-of-Way for any purpose whatsoever, including the right of the City to use same for any purpose it

deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

## **2.5 Police Powers**

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power. The Grantee reserves the right to challenge any ordinance(s) it believes are not a generally applicable exercise of City's police powers. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

## **2.6 Competitive Equity**

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise Agreement, then the City agrees that the obligations in this Franchise Agreement will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include without limitation: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process for this Franchise Agreement, as provided for in Section 2.6 (A), above, shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise Agreement; (2) identifying the Franchise Agreement terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise Agreement amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.



(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), above, the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise Agreement modifications, and that such negotiation will proceed and conclude within a ninety-day (90) time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the City and Grantee reach agreement on the Franchise Agreement modifications pursuant to such negotiations, then the City shall amend this Franchise Agreement to include the modifications.

(D) In the alternative to Franchise Agreement modification negotiations as provided for in Section 2.6 (C), above, or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise Agreement by substituting the franchise agreement or other similar lawful authorization that the City grants to another provider of Cable Services (with the understanding that Grantee will use its current system design and technology infrastructure to meet any requirements of the new franchise so as to insure that the regulatory and financial burdens on each entity are equivalent). If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise Agreement with the franchise agreement entered into by the City with the other Cable Services provider.

(E) Notwithstanding anything contained in Subsections 2.6(A) through (D), above, to the contrary, the City shall not be obligated to amend or replace this Franchise Agreement unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Subject to Section 15, Severability, in the event that State or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such State or federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

(G) Notwithstanding any provision to the contrary, at any time that a wireline facilities-based entity, legally authorized by State or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

(1) Grantee may negotiate with the City to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is

rendered “commercially impracticable,” and invoke the modification procedures set forth in Section 625 of the Cable Act.

## **2.7 Familiarity with Franchise Agreement**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Agreement and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise Agreement, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act. The City and Grantee agree that this Franchise Agreement is a negotiated agreement and that for the purpose of interpretation neither City nor Grantee shall be deemed the drafter of this Franchise Agreement.

## **2.8 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City’s legal right to issue and enforce the Franchise Agreement; (2) accepts and agrees to comply with every provision of this Franchise Agreement subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Franchise Agreement and in consideration of permission to use the City’s Public Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise Agreement, an amount equal to five percent (5%) of Grantee’s Gross Revenues.

### **3.2 Payments**

Grantee’s Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the City or concurrently sent under separate cover, verified by an authorized representative of Grantee and containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such report shall detail all Gross Revenues of the Cable System.

### **3.5 Annual Franchise Fee Reports**

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

### **3.6 Audits**

On an annual basis, upon thirty (30) days' prior written notice, the City, including the City's Auditor or their authorized auditors, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise Agreement. Pursuant to Subsection 1.33, as part of the Franchise Fee audit/review, the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Subsection 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits, whichever is less), Grantee shall pay the total reasonable cost of the audit/review, such cost not to exceed \$7,500 for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this Subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

### **3.8 Underpayments**

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Public Rights-of-Way for Grantee's use of the City's Public Rights-of-Way, such payments shall be the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise Agreement), to the extent consistent with Applicable Law.

### **3.10 Maximum Legal Compensation**

The Parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Grantee's Gross Revenues. In the event that at any time during the duration of this Franchise Agreement, the City is authorized to collect an amount in excess of five percent (5%) of Grantee's Gross Revenues, then this Franchise Agreement may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

(A) The PEG Capital Contribution pursuant to Subsection 9.5, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the City and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The City likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the City with advance written notice. Such notice shall document the proposed offset or service charges so that the City can make an informed decision as to its course of action. Upon receipt of such notice, the City shall have up to one hundred and twenty (120) days to either (1) maintain the commitment with

the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and nondiscriminatory term and conditions.

(B) Grantee's notice pursuant to Subsection 3.11(A), shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable, provide all information and documentation reasonably necessary to document how Franchise Fee offsets may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this Subsection 3.11(B) shall be construed to extend the one hundred and twenty (120)-day time period for the City to make its election under Subsection 3.11(A); provided, however, that any disagreements or disputes over whether sufficient information has been provided pursuant to this Subsection (B) may be addressed under Subsections 13.1 or 13.2 of this Franchise Agreement.

(C) Upon receipt of Grantee's written notice as provided in Subsection 3.11(B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred and twenty (120)-day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include those modifications.

(D) If the Parties are unable to reach agreement on any Franchise Fee offset issue within one hundred and twenty (120) days or such other time as the parties may mutually agree, each Party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The City acknowledges that Grantee currently provides one outlet of Basic Service and Digital Starter Service and associated equipment to certain City-owned and occupied or leased and occupied buildings, and fire stations located in areas where Grantee provides Cable Service. Outlets of Basic and Digital Starter Service provided in accordance with this Subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary and may be terminated by Grantee at its sole discretion.

(1) Grantee's termination of complimentary services provided shall be pursuant to the provisions of Subsections 3.11(A) through -(E), above. The City may make a separate election for each account or line of service identified in the notice (for example, the City may choose to accept certain services or accounts as offsets to Franchise Fees and discontinue other services or accounts), so long as all elections are made within one hundred and twenty (120) days. Grantee shall also provide written notice to each entity that

is currently receiving complimentary services with copies of those notice(s) sent to the City.

(2) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The City likewise reserves all rights it has under Applicable Law.

(F) The parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311. Should there be a new Order in the 621 Proceeding, or any other change in Applicable Law, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the City's regulatory authority over the use of the rights-of-way by the Grantee, the parties shall, within one hundred and twenty (120) days of written notice from the City, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the City's regulatory authority.

### **3.12 Tax Liability**

The Franchise Fees shall be in addition to all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

### **3.14 Payment on Termination**

If this Franchise Agreement terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Applicable Law, to any agent including without limitation the CCUA in its sole discretion.

(B) Nothing in this Franchise Agreement shall limit nor expand the City's right of eminent domain under State law; provided, however, that in any condemnation action no award shall be made for the value of the Franchise or the use of Public Rights-of-Way where the City is not acquiring Grantee's assets, system, fixtures, or equipment.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or Applicable Law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.



#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise Agreement, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise Agreement. Nothing in this Subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

#### **4.5 Cross-Subsidization**

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross-subsidization.

#### **4.6 Reserved Authority**

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

#### **4.7 Amendment Procedure**

Any amendment to this Franchise Agreement shall be made pursuant to the provisions of the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement. Within thirty (30) days of receipt of written notice that a Party wishes to amend this Franchise Agreement, the City and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise Agreement. If mutual agreement is not reached, there shall be no amendment.

#### **4.8 Performance Evaluations**

(A) The Grantor may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the Grantor.

(B) Special evaluation sessions may be held at any time by the Grantor during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the Grantor. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding

the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Grantor, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Grantor or Grantee's rules; provided that nothing in this Subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this Subsection, Grantee shall fully cooperate with the Grantor and shall provide such information and documents as the Grantor may reasonably require to perform the evaluation.

#### **4.9 Late Fees**

(A) For purposes of this Subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this Subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this Subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be consistent with Applicable Law.

#### **4.10 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance

with the terms of this Franchise Agreement, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

## SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City. Grantee shall not be obligated to indemnify the City to the extent of the City's negligence or willful misconduct.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense, then Grantee shall not be liable for any attorneys' fees, expenses or other costs that the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Subsection 5.1(F) is required. In that event the provisions of Subsection 5.1(F) shall govern Grantee's responsibility for the City's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims

affecting the City without the City's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this Subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then the City shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee.

## 5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance, but in no event shall occurrence basis minimum limits be less than provided for by C.R.S. § 24-10-114(1)(b):

(1) Commercial General Liability insurance with limits of no less than \$2 million per occurrence and \$5 million general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of \$1 million each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.

(3) Statutory workers' compensation and employer's liability insurance in an amount of \$1 million dollars each accident/disease/policy limit.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this

Subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

### 5.3 Deductibles and Certificates of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance. In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and the City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

#### 5.4 Letter of Credit

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of \$25,000.

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a letter of credit to the City as set forth in Subsections 5.4(A) and (B), above, if the City is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in Subsection 5.4(A), Grantee shall not be required to provide a separate letter of credit to the City.

(D) After completion of the procedures set forth in Subsection 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(E) The City shall give Grantee written notice of any withdrawal under this Subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council in its sole discretion acting by ordinance or resolution. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as **Exhibit B**. Grantee reserves the right to challenge any customer service standards which it believes is inconsistent with its contractual rights under this Franchise.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal or State Law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise Agreement, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

### **6.4 Advance Notice to City**

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

### **6.5 Identification of Local Franchise Authority on Subscriber Bills**

Within sixty (60) days after written request from the City, Grantee shall identify the City on Subscriber bills to identify where a Subscriber may call to address escalated complaints.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City’s auditors or their authorized representatives, shall have access to, and the right to inspect any books or records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise Agreement or Applicable Law. Grantee shall not deny the City access to any of Grantee’s records on the basis that Grantee’s records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the



transmittal of such request. One (1) copy of all reports and records required under this or any other Subsection of this Franchise Agreement or Applicable Law shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise Agreement, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

## **7.2 Confidentiality**

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this Section.

## **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall furnish to the City upon thirty (30) days' written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Public Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, and total homes passed for the previous twelve (12) months;

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to Subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

(C) Grantee shall maintain for a period of at least six (6) months those records listed in Section 11-6-6(d) of the Boulder Cable Code.

#### 7.4 Annual Reports

Within sixty (60) days of written request, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information:

(A) A Gross Revenue statement, as required by Subsection 3.5 of this Franchise Agreement;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the then-current year;

(E) A copy or hyperlink of the most recent annual report Grantee filed with the SEC or other governing body;

(F) A list of officers and members of Grantee's board of directors and its parent;

(G) An ownership report, indicating all persons who at the time of filing control or won an interest in the Franchise of ten percent or more;

(H) A report on the Cable System's technical test and measurements; and

(I) A summary of the number and type of outages (an outage being a loss of sound or video on any signal or a significant deterioration of any signal affecting Subscribers) known by Grantee, specifying all details of each outage known to Grantee and the cause thereof.

## 7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

## 7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) On or before April 30, July 31, October 31 and January 31 of each year this Franchise Agreement is in effect and for one month thereafter, Grantee shall provide the City a quarterly executive summary in the form attached hereto as **Exhibit A**, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by the City to Grantee; and
- (4) Such other information as reasonably requested by the City.

The Parties agree that the City's request for these summary reports shall remain effective, and need only be made once. Such request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the City to the contrary.

## 7.7 Failure to Report/Maintain Records

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise Agreement or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), or to keep any records required to be kept may, at the City's option, be deemed a breach of this Franchise Agreement.

## 7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise Agreement (not including clerical errors or errors made in good faith) may be deemed a material

breach of this Franchise Agreement and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise Agreement or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) National and international news, weather, and information;
- (D) Colorado sports;
- (E) National and international sports;
- (F) General entertainment (including movies);
- (G) Children/family-oriented;
- (H) Arts, culture, and performing arts;
- (I) Foreign language;
- (J) Science/documentary; and
- (K) Public, Educational and Government Access, to the extent required by this Franchise Agreement.

### **8.2 Deletion or Reduction of Broad Programming Categories**

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date shall be deemed the mix and quality of Cable Services required under this Franchise Agreement throughout its term.

### **8.3 Obscenity**

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of,

Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if the Federal Communications Commission or a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

#### **8.4 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

#### **8.5 Continuity of Service Mandatory**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this Subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise Agreement, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

#### **8.6 Services for People With Disabilities**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

## **SECTION 9. ACCESS**

### **9.1 Designated Access Providers**

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself, for Access purposes, to control and manage the use of any Access Facilities provided by Grantee under this Franchise Agreement. As used in this Section, such “Access Facilities” includes the Channels, services, facilities, equipment, technical components or financial support provided under this Franchise Agreement, which is used or useable by and for Public Access, Educational Access, and Government Access (“PEG” or “PEG Access”).

(B) Grantee shall cooperate with City in City’s efforts to provide Access programming but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

### **9.2 Channel Capacity and Use**

(A) On the Effective Date, Grantee shall make available to City 5 Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Public Access or Government Access Channel, or portion thereof, within 60 days after a written request for such temporary use is submitted to City, if such Public Access or Government Access Channel is not fully utilized. A Public Access or Government Access Channel shall be considered “fully utilized” if substantially unduplicated programming is delivered over it more than an average of thirty-eight (38) hours per week over a calendar year. Programming that is repeated on a Public Access or Government Access Channel up to two times per day shall be considered “substantially unduplicated programming.” Character-generated programming shall be included for purposes of this Subsection but may be counted towards the total average hours only with respect to two (2) Channels provided to the City. If a Public Access or Government Access Channel will be used by Grantee in accordance with the terms of this Subsection, the institution to which the Public Access or Government Access Channel has been allocated shall have the right to require the return of the Public Access or Government Access Channel or portion thereof. The City shall request return of such Public Access or Government Access Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Public Access or Government Access Channel, or portion thereof, in accordance with this Subsection. In such event, the Public Access or Government Access Channel or portion thereof shall be returned to such institution within 60 days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide four (4) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning,

stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the Demarcation Point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation the FCC's Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry an SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Subsection 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the Demarcation Point. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the Demarcation Point.

(4) SD Access Channels may require SD Subscribers to buy or lease special equipment, available to all SD Subscribers. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(D) High Definition ("HD") Digital Access Channels.

(1) Grantee shall maintain 1 HD Access Channel, for which the City may provide Access Channel signals in HD format to the Demarcation Point at the designated point of origination for the Access Channel.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the Demarcation Point at the designated point of origination for the HD Access Channel. For purposes of this Franchise Agreement, an HD signal refers to a television signal delivering picture resolution of either 720 or 1080, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) The City will maintain a minimum of 5 hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(4) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal



Communications Commission Rules & Regulations, including without limitation the FCC's Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Subsection 9.2(D).

(5) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(6) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(7) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. § 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise Agreement.

(E) Grantee shall simultaneously carry the one (1) HD Access Channels provided for in Subsection 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise Agreement are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

### **9.3 Access Channel Assignments**

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the local governments served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

### **9.4 Relocation of Access Channels**

Grantee shall provide City and all Subscribers within City with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Public, Educational, and Government Access Channel designations are changed.

### **9.5 Support for Access Costs**

During the term of this Franchise, within one hundred and twenty (120) days of a written request from the City, Grantee shall provide to the City up to 0.48% of Grantee's Gross Revenues per month (the "Access Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law. Grantee shall make Access Contribution payments quarterly, following the effective date of this Franchise for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. The City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to Access.

### **9.6 Access Support Not Franchise Fees**

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five (5%) of Grantee's Gross Revenues in any twelve (12)-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise Agreement and Applicable Law.

### **9.7 Access Channels on Basic Service or Lowest Priced HD Service Tier**

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

## **9.8 Change In Technology**

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

## **9.9 Technical Quality**

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the Demarcation Point at the same level of technical quality and reliability required by this Franchise Agreement and all other Applicable Law. Grantee shall provide routine maintenance for all transmission equipment on its side of the Demarcation Point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Subsection 9.2. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the Demarcation Point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission by City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission of Grantee's staff. The City will be responsible for the cost of repairing or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's or its Designated Access Providers' HD Access programming.

## **9.10 Access Cooperation**

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this Subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section 9 as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

### **9.11 Return Lines/Access Origination**

(A) Grantee shall continuously maintain the previously constructed return lines throughout the Term of the Franchise Agreement, in order to enable the distribution of Access programming to Subscribers on the Access Channels; provided, however, that Grantee's maintenance obligations with respect to a particular location shall cease if it is no longer used by the City to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within 1 year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the Parties shall work together to complete the new return line as soon as reasonably possible.

## **SECTION 10. GENERAL PUBLIC RIGHT-OF-WAY USE AND CONSTRUCTION**

### **10.1 Right to Construct**

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

### **10.2 Public Right-of-Way Meetings**

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Public Right-of-Way issues that may impact the Cable System.

### **10.3 Joint Trenching/Boring Meetings**

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Public Right-of-Way cuts within the City.

### **10.4 General Standard**

Grantee shall construct, operate and maintain the Cable System subject to the supervision of all of the authorities of the City who have jurisdiction in such matters and in strict compliance with all Applicable Law, including specifically the Boulder Cable Code and the City's Design and Construction Standards. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature,

durable and installed in accordance with good engineering practices.

### **10.5 Permits Required for Construction**

Prior to doing any work in the Public Right-of Way or other public property, Grantee shall apply for, and obtain, all required permits from the City. As part of the permitting process, the City may impose such conditions and regulations including but not limited to those necessary for the purpose of protecting any structures in such Public Rights-of-Way, proper restoration of such Public Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Public Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

### **10.6 Emergency Permits**

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

### **10.7 Compliance with Applicable Codes**

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, the National Electrical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations, and the City's Design and Construction Standards.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all Applicable Law.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

### **10.8 GIS Mapping**

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Public Rights-of-Way.

### **10.9 Minimal Interference**

Work in the Public Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

### **10.10 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

### **10.11 Hazardous Substances**

(A) Grantee shall comply with all Applicable Law concerning hazardous substances relating to Grantee's Cable System in the Public Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Public Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances arising out of or related to Grantee's Cable System.

### **10.12 Locates**

Prior to doing any work in the Public Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. § 9-1.5-105, and as such may

be amended from time to time. Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Public Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unallocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

### **10.13 Notice to Private Property Owners**

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

### **10.14 Underground Construction and Use of Poles**

(A) When required by Applicable Law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Public Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Public Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Public Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise Agreement does not grant, give or convey to the Grantee the right



or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

### **10.15 Undergrounding of Multiple Dwelling Unit Drops**

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners or owner's association of the Multiple Dwelling Units.

### **10.16 Burial Standards**

(A) Depths. Unless otherwise required by Applicable Law, Grantee, and its contractors, shall comply with the City's Design and Construction Standards when burying lines.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

### **10.17 Cable Drop Bonding**

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

### **10.18 Prewiring**

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

### **10.19 Repair and Restoration of Property**

(A) Notice of Damage. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Prompt Restoration. Whenever Grantee disturbs or damages any Public Right-of-Way, other public property or any private property, Grantee shall promptly restore the Public Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Public Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Public Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

## **10.20 Acquisition of Facilities**

Upon Grantee's acquisition of Cable System-related facilities in any City Public Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise Agreement.

## **10.21 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Public Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Public Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including without limitation access purposes.

### **10.22 Movement of Cable System Facilities for City Purposes**

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than forty-five (45) business days or as otherwise required by Applicable Law, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

### **10.23 Movement of Cable System Facilities for Other Franchise Holders**

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee shall require that the costs associated with the removal or relocation be paid by the benefited party.

### **10.24 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

### **10.25 Reservation of City Use of Public Right-of-Way**

Nothing in this Franchise Agreement shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

### **10.26 Tree Trimming**

Subject to obtaining advance permission from the Manager, which shall not be unreasonably refused, Grantee may prune or cause to be pruned, using pruning practices approved by the City Forester, any tree that overhangs the City's Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with the wires of the Cable System. At the option of the City, such trimming may be done by it for by Grantee, but in either case, at the expense of Grantee. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1)-week's written notice has been given to the owner or occupant of the premises abutting the Public Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at their own expense during this one (1)-week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.27 Inspection of Construction and Facilities**

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

### **10.28 Stop Work**

(A) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(B) The stop work order shall:

(1) Be in writing;

- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

### **10.29 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

## **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network**

(A) Grantee's Cable System shall consist of a mix of fiber to the premises and HFC and shall provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall have the capacity to deliver no less than one hundred and fifty (150) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process and all Applicable Law.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise Agreement or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

## **11.2 Technology Assessment**

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

## **11.3 Standby Power**

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

## **11.4 Emergency Alert Capability**

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise Agreement in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

## **11.5 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

## 11.6 Cable System Performance Testing

(A) Grantee shall provide to the City a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscriber and shall provide the City with any amendments or modifications to the process at such time as they are made.

(B) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the City for a period of at least one year, and individual Subscriber complaints from the City for a period of at least three years, and make such information available to the City upon reasonable request.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) Grantee shall perform any tests required by the FCC.

## 11.7 Additional Tests

Where there exists other evidence which, in the judgment of the City, casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

## SECTION 12. SERVICE AVAILABILITY

### 12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal



request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125)-foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Subsection 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all Persons living in areas with a residential density of thirty-five (35) residences per mile of Cable System plant. If the residential density is less than thirty-five (35) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro-rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remediating Franchise Violations**

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise Agreement or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with Subsection (B), below;

(2) cure the default; or,

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with Subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under Subsection (A)(3), or denies the default and requests a meeting in accordance with Subsection(A)(1), or the City orders a meeting in accordance with Subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City reserves the right to seek any remedy that may be available at law or in equity, including without limitation, revocation, and Grantee reserves the right to assert any defenses it may have to the City's position.

(D) No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

(E) It shall not be a violation of this Franchise if Grantee decides, on a company-wide basis, to cease providing Cable Services. Grantee shall provide a minimum of one (1) year's written notice to City of the termination date, and upon that date all rights, duties and obligations of this Franchise shall terminate except for those that by their nature, should survive termination.

## **13.2 Revocation**

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in Subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the Subsection above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise Agreement expires without renewal after completion of all processes available under this Franchise Agreement and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-

month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in Subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with Subsections (A)(1) or (A)(2), above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by Subsection 13.3(B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

#### **13.4 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred and twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this Subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain fair market value, this

valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

### **13.5 Receivership and Foreclosure**

(A) At the option of the City, subject to Applicable Law, this Franchise Agreement may be revoked one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred and twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred and twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise Agreement.

### **13.6 No Monetary Recourse Against the City**

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise Agreement are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

### **13.7 Effect of Abandonment**

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily

until the Grantee restores service under conditions acceptable to the City, or until the Franchise Agreement is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

### **13.8 What Constitutes Abandonment**

The City shall be entitled to exercise its options in Subsection 13.7 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a) of the Cable Act, the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise Agreement term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then-current Franchise Agreement, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise Agreement and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this Subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and City are engaged in a renewal process, Grantee shall continue to provide Cable Service to its Subscribers on a month-to-month basis, on the same terms and conditions as provided in this Franchise Agreement and the Cable Code. During any such “hold over” period, Franchisee shall continue to pay the Franchise Fee as set forth above, in addition to honoring all other provisions of this Franchise Agreement.

## 14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word “control” as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by App and the City.

(D) In seeking the City’s consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) No Transfer application shall be granted unless the proposed transferee:

(1) Agrees in writing that it will abide by and accept the terms of the Boulder Cable Code, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by the transferee with such Franchise Agreement;



(2) Agrees in writing to assume and be responsible for the obligations and liabilities of Grantee, known and unknown, under this Franchise Agreement and Applicable Law;

(3) Provides reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the proposed transferee;

(4) Agrees in writing that, except as provided in Section 626 of the Cable Act concerning use of previous non-compliance evidence in renewal proceedings following a transfer, approval by the City of the transfer shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or Applicable Law whether arising before or after the effective date of the transfer; and

(5) Posts all required bonds, securities in a manner to ensure that there is no gap in coverage.

(F) The City shall act by ordinance on the request within one hundred and twenty (120) days of the request, provided it has received all information required by this Franchise Agreement or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the one hundred and twenty (120) day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred and twenty 120 days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(G) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of this Franchise Agreement, subject to Applicable Law, and will not be required to file an additional written acceptance.

(H) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(I) Notwithstanding anything to the contrary in this Subsection, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Grantor; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the

provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

If any section, subsection, paragraph, term or provision of this Franchise Agreement is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this Franchise Agreement, all of which will remain in full force and effect for the term of the Franchise Agreement.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

In connection with the performance of work under this Franchise Agreement, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise Agreement, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

### **16.2 Notices**

Throughout the term of the Franchise Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise Agreement:

Grantee's address shall be:

Comcast of Colorado, IX, LLC  
8000 E. Iliff Ave.  
Denver, CO 80231  
Attn: Government Affairs

With a copy to:

Comcast Cable  
Attn.: Government Affairs Department  
1701 JFK Blvd, 49th Floor  
Philadelphia, PA 19103

The City's address shall be:

City Manager  
City of Boulder  
1777 Broadway  
Boulder, CO 80302  
CMOadmin@bouldercolorado.gov

With a copy to:

City Attorney  
City of Boulder  
1777 Broadway  
Boulder, CO 80302  
CAOadmin@bouldercolorado.gov

### **16.3 Descriptive Headings**

The headings and titles of the sections and subsections of this Franchise Agreement are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

### **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the City for all costs incurred in publishing this Franchise Agreement, if such publication is required.

### **16.5 Binding Effect; No Third Party Beneficiaries**

This Franchise Agreement shall be binding upon the parties hereto, their permitted successors and assigns. This Franchise Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any Person not a party to this Agreement.

### **16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties and neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.7 Waiver**

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

**16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

**16.9 Entire Agreement**

This Franchise Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

**16.10 Applicable Law**

This Agreement shall be construed in accordance with the laws of the State of Colorado and the Cable Act. Jurisdiction and venue for any judicial dispute between the City and Grantee arising under or out of this Franchise Agreement shall be in Boulder County District Court, Colorado, or in the United States District Court in Denver.

**16.11 Counterparts**

This Franchise Agreement may be executed in counterparts. Affixation of signatures, or representations of signatures, onto PDF’s shall be sufficient to bind the Parties.

**IN WITNESS WHEREOF**, the parties have set their hands to this Cable Franchise Agreement, which shall be effective as of March 1, 2025.

**COMCAST OF COLORADO IX, LLC**

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

***(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)***

**CITY OF BOULDER**

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Nuria Rivera-Vandermyde,  
City Manager

**ATTEST:**

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City Clerk

**APPROVED AS TO FORM:**

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City Attorney's Office

**EXHIBIT A: REPORT FORM**

Comcast  
 Quarterly Executive Summary - Escalated Complaints  
 Section 7.6 (B) of our Franchise Agreement  
 Quarter Ending \_\_\_\_\_, Year  
 BOULDER, COLORADO

<u>Type of Complaint</u>	<u>Number of Calls</u>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
<b>TOTAL</b>	<b>0</b>

Compliments

## **EXHIBIT B: CUSTOMER SERVICE STANDARDS**

### **Introduction**

The purpose of the Standards is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the City of Boulder (the “City” or “Franchise Authority”) area. The Standards are subject to change from time to time.

The Franchise Authority encourages the Cable Operator to exceed these standards in their day-to-day operations and as such, understands that the Cable Operator may modify their operations in exceeding these standards.

The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and customer service standards of cable television service providers operating in Colorado. Based upon the City’s assessment of the needs of citizens, the City has adopted, modified and created standards specially tailored to the City, based upon the model standards adopted by the Colorado Communications and Utility Alliance (the “CCUA”).

The Standards require the cable operator, in certain circumstances, to post a security fund or letter of credit ensuring Customer Service. The security fund is to be used when the cable company fails to respond to a citizen complaint that the franchising authority determines is valid, and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the City that the security fund will never need to be drawn upon; however, the City believes that some enforcement measures are necessary.

### **CITY OF BOULDER**

### **CUSTOMER SERVICE STANDARDS**

#### **I. POLICY**

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.



These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City of Boulder.

## II. DEFINITIONS

When used in these Customer Service Standards (the “Standards”), the following words, phrases, and terms shall have the meanings given below.

“Adoption” shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

“Affiliate” shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

“Applicable Law” means, with respect to these standards and any Cable Operator’s privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

“Cable Operator” shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

“Cable Service” shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). “Other programming service” is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

“Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

“Colorado Communications and Utilities Alliance” or “CCUA” shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The CCUA may, on behalf of its members, be delegated the authority to review, investigate

or otherwise take some related role in the administration or enforcement of any functions under these Standards.

“Contractor” shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

“Customer” shall mean any person who receives any Cable Service from a Cable Operator.

“Customer Service Representative” (or “CSR”) shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

“Escalated complaint” shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

“Franchising Authority” shall mean the City.

“Necessary” shall mean required or indispensable.

“Non-cable-related purpose” shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

“Normal business hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

“Normal operating conditions” shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

“Other Service(s)” shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

“Personally Identifiable Information” shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. “Personally Identifiable Information” shall not mean any aggregate information

about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

"Service interruption" or "interruption" shall mean the loss or substantial impairment of picture or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"Subcontractor" shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"City" shall mean the City of Boulder, Colorado.

"Writing" or "written" as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

### **III. CUSTOMER SERVICE**

#### **A. Courtesy**

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

#### **B. Accessibility**

1. A Cable Operator shall provide customer service centers/business offices ("Service Centers") which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote "self-help" tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer's own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for

Customer bill payments; and equipment exchanges at a Customer's residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer's concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

### **C. Responsiveness**

#### **1. Guaranteed Seven-Day Residential Installation**

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

#### **2. Residential Installation and Service Appointments**

a. The “appointment window” alternatives for specific installations, service calls, or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection “appointment window” means the period of time in which the representative of the Cable Operator must arrive at the customer’s location.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer’s issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

#### c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator’s actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator’s business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be

provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

d. **Records of Service Interruptions and Outages.** A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

#### 4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

i. Assess the problem within one (1) day of notification;

ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;

iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable

Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator's efforts to address the problem.

5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty-eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

6. Billing, Credits, and Refunds

a. In addition to other options for payment of a customer's service bill, a Cable Operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past-due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks' notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or



replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

i. For pedestal installation or similar major construction, seven (7) days.

ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.

4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **E. Cable Services Information**

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the customer):

- a. Products and services offered by the Cable Operator, including its channel lineup;
- b. The Cable Operator's complete range of service options and the prices for these services;
- c. The Cable Operator's billing, collection and disconnection policies;
- d. Privacy rights of customers;
- e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
- f. Use and availability of parental control/lock out device;
- g. Special services for customers with disabilities;
- h. Days, times of operation, and locations of the service centers;

2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCUA and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the CCUA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.

4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCUA.

5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.

6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

## **F. Customer Privacy**

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.10.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about themselves at the local offices of the Cable Operator or other convenient place within the City designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services.

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other

Service provided by the Cable Operator; (B) used to the extent necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer’s monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website “preference center” features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator’s website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer’s right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator’s bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator’s bill to the Customer, and on the Cable Operator’s website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

## **G. Safety**

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **H. Cancellation of New Services**

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within thirty (30) days of initial installation, then such customer can request disconnection of Cable Service within thirty (30) days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first thirty (30) days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

## **IV. COMPLAINT PROCEDURE**

### **A. Complaints to a Cable Operator**

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.

2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.

3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.



5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.

6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

**B. Complaints to the Franchising Authority**

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.

2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.

3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

**C. Security Fund or Letter of Credit**

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars (\$50,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount. A letter of credit or cash deposit, with the approval of the Franchising Authority, may be

posted jointly for more than one member of the CCUA, and may be administered, and drawn upon, jointly by the CCUA or drawn upon individually by each member; provided however that if such letter of credit or cash deposit is provided to CCUA on behalf of more than one of its members, the letter of credit or cash deposit may, in the sole discretion of CCUA and its effected members, be required in an amount not to exceed one hundred thousand dollars (\$100,000).

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.

3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.

4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

#### **D. Verification of Compliance**

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **E. Procedure for Remediating Violations**

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied;

- b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards;
- c. Reverse any decision of the Cable Operator in the matter;
- d. Grant a specific solution as determined by the Franchising Authority; or
- e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

**V. MISCELLANEOUS**

**A. Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

**B. Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards.



Jane S. Brautigam, City Manager  
City of Boulder  
1777 Broadway, Second Floor  
P.O. Box 791  
Boulder, CO 80302

Dear Ms. Brautigam:


The purpose of this letter agreement is to set forth several commitments between Comcast of Colorado IV, LLC ( "Comcast") and the city of Boulder, Colorado (the "City") that are in addition to the Franchise Agreement to be adopted by Ordinance (the "Franchise Agreement"). These items have been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relate to the unique community needs that exist in the City. This letter agreement shall take effect on May 1, 2015, and shall terminate at 11:59 p.m. on April 30, 2025.

- A. **Channel Capacity and Use – High Definition ("HD") Digital Access Channels:** Pursuant to Section 12.2 of the Franchise, Comcast is required to provide at no cost to the City one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings. In addition to those Section 12.2 requirements, and at the time that the City activates an HD Digital Access Channel pursuant to Section 9.2 of the Franchise, Comcast shall provide to the City, at no cost to the City, one (1) outlet of basic HD service and one (1) HD cable box to be located at the Channel 8 office, for the sole purpose and use by the City to monitor the HD Digital Access Channel's signal.
- B. **Promotion of PEG Programming:** Following the Effective Date of the Franchise, Comcast will work with the City to assist in the promotion of PEG programming, which includes the following:
1. Upon reasonable advanced notice but not more than two (2) times during the term of the Franchise, Comcast will provide one (1) cable box message to Subscribers' cable boxes that receive messages per quarter per year for a total of four (4) messages in a calendar year;
  2. Upon reasonable advanced notice but not more than three (3) times during the term of the Franchise, Comcast will include one (1) written bill message to Subscribers as part of their bills, provided that space for such bill message is available; and
  3. Comcast shall use reasonable efforts to accommodate PEG promotional spots received from the City on a reasonable basis in Comcast's cross-channel ad avails, up to a minimum of 25, 30 second spots per year, with the intention of accommodating additional spots if available at Comcast's reasonable discretion. Any such ad avails provided for PEG promotional spots shall be at no cost to the City or its designated access providers; however, the City or its designated access

provider shall be responsible for all the necessary production costs and shall deliver the ad avail in the format and method requested by Comcast.

The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. Comcast agrees that a violation of these terms by Comcast may be considered by the City as a material violation of the Franchise, subject to the provisions of Section 13 of the Franchise. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Sincerely,  
Comcast of Colorado IV, LLC

By:   
Matthew Chambers  
Its: VP - Finance and Accounting  
Date: 7/29/15

Acknowledged and agreed to this 14 day of May 2015.


City of Boulder, Colorado

By:   
Jane S. Brautigam  
Its: City Manager  
Date: 5-14-15

ATTEST:

  
Alisa D. Lewis  
City Clerk

APPROVED AS TO FORM:

  
Debra S. Kalish  
City Attorney

**CABLE FRANCHISE AGREEMENT**

**COMCAST OF COLORADO IV, LLC  
AND  
THE CITY OF BOULDER, COLORADO**

**May 1, 2015**

**COMCAST OF COLORADO IV, LLC AND  
THE CITY OF BOULDER, COLORADO  
CABLE FRANCHISE AGREEMENT**

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**COMCAST OF COLORADO IV, LLC AND  
CITY OF BOULDER, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS AND EXHIBITS**

**(A) DEFINITIONS**

For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, including specifically the Cable Act, the Boulder

Cable Code and the City's Design and Construction Standards, that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber within the City and owed by that Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise Agreement, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 "Boulder Cable Code" means Title 11, Chapter 6 of the Boulder Revised Code 1981 (B.R.C. 1981), as the same may be amended from time to time.

1.9 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.10 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.11 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.12 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.13 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.14 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system

that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.15 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.16 “City” is the city of Boulder, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.17 “City Council” means the Boulder City Council, or its successor, the governing body of the City.

1.18 “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.19 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.20 “Demarcation Point” means up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to the Grantee.

1.21 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.22 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.23 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to interconnection points on the Cable System.

1.24 “Dwelling Unit” means one room or rooms with internal connections for residential occupancy and including bathroom and kitchen facilities. Multiple Dwelling Units exist if there is more than one meter for any utility, address to the property or kitchen; or if there are separate entrances to rooms which could be used as separate Dwelling Units; or if there is a lockable, physical separation between rooms in the Dwelling Unit such that a room or rooms on each side of the separation could be used as a Dwelling Unit or rooms with no internal connections.

1.25 “Effective Date” means May 1, 2015.

1.26 “FCC” means the Federal Communications Commission.

1.27 “Fiber Optic” means a transmission medium of optical fiber cable, along with all

associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.28 “Franchise” shall mean a nonexclusive authorization granted in accordance with the Boulder Cable Code to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, maintenance and repair of a cable system along the public rights of way within all or a specified area of the City. Any such authorization, in whatever form granted, shall not mean or include: a) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; b) any permit or authorization required in connection with operations on public streets, rights of way or other property, including, without limitation, permits for attaching devices to poles or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along public rights of way; c) agreements required for the use of conduits and poles, whether publicly or privately owned; or d) express or implicit authorization to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to section 621(a)(2) of the Cable Act, 47 USC § 541(a)(2)).

1.29 “Franchise Agreement” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.30 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise Agreement.

1.31 “Franchise Fee” means that fee payable to the City described in Subsection 3.1.

1.32 “Grantee” means Comcast of Colorado IV, LLC or its successor, transferee or assignee.

1.33 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use, allocated on a *pro rata* basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- revenues derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the City and shall be allocated on a *pro rata* basis using total Cable Service Subscribers reached by the advertising;
- all commissions, rep fees, Affiliate fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Gross Revenues" shall not include:

- actual Bad Debt write-offs, except any portion that is subsequently collected;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Government (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(B) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card

value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(C) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.33 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to 1.33(D) below.

(D) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.34 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.35 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.36 "Manager" means the City Manager of the City or designee.

1.37 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.38 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.39 "Public Right(s)-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit



its use for such purposes, and Grantee shall be deemed to gain only those rights to use as are properly in the City and as the City may have the undisputed right and power to give.

1.40 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.41 “Standard Drop” means an aerial connection extending no more than 125 feet from the potential Subscriber’s demarcation point to the point nearest the property line on the public right-of-way, or if closer, to the nearest point on the Cable System from which Cable Service can be provided to that Subscriber.

1.42 “State” means the State of Colorado.

1.43 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

1.44 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Subscribers.

1.45 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.46 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.47 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.48 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.49 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from interconnection points on the Cable System.

**(B) EXHIBITS**

The following documents, which are occasionally referred to in this Franchise Agreement, are formally incorporated and made a part of this Franchise Agreement by this reference:

- 1) *Exhibit A*, entitled Customer Service Standards.

- 2) **Exhibit B**, entitled Report Form.

## SECTION 2. GRANT OF FRANCHISE

### 2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Public Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise Agreement and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise Agreement. This Franchise Agreement and all rights and privileges granted under the Franchise are subject to the City's police and other powers. However, once the Franchise grant is effective, this Franchise Agreement is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither City nor Grantee may take any unilateral action which materially changes the explicit mutual promises in this contract. Subject to the foregoing, Grantee does not waive its right to challenge the lawfulness of any particular amendment to the Boulder Cable Code or any other provision of the City code on the ground that a particular action is in excess of the City's power under Colorado or federal law or violates the Colorado or the United States Constitution.

(B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable City ordinance. The issuance of the Franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the City's Public Rights-of-Way covered by the Franchise, including without limitation the right to perform work on its roadways, Public Rights-of-Way and drainage facilities, by constructing, altering, renewing, paving, widening, grading, blasting or excavating; and the right to build and install systems and facilities, with or without a franchise. Grantee is free to challenge any unilaterally imposed requirement of the City as unlawful and/or in excess of the City's police power, but not on the grounds that it imposes police power requirements over and above this Franchise Agreement.

(C) Each and every term, provision or condition herein is subject to the provisions of Applicable Law. In the event of a conflict between the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement and this Franchise Agreement, the Franchise Agreement shall control, except where expressly provided otherwise in this Franchise Agreement. However, although the exercise of rights hereunder is subject to the Boulder Cable Code, the Boulder Cable Code is not a contract. Nothing in this Section 2.1 shall prevent Grantee from challenging a particular amendment to the Boulder Cable Code as an impairment of this Franchise Agreement.

(D) This Franchise Agreement shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise Agreement, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise Agreement.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise Agreement shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Public Right-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise Agreement including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise Agreement is intended to convey limited rights and interests only as to those Public Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Public Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Public Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise Agreement does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise Agreement is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise Agreement does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

## **2.2 Use of Public Rights-of-Way**

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and

appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise Agreement, is granted extensive and valuable rights to operate its Cable System for profit using the City's Public Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise Agreement to be paid for these valuable rights throughout the term of the Franchise Agreement.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

### **2.3 Effective Date and Term of Franchise Agreement**

This Franchise Agreement and the rights, privileges and authority granted hereunder shall take effect on May 1, 2015 (the "Effective Date"), and shall terminate at midnight on April 30, 2024 unless terminated sooner as hereinafter provided.

### **2.4 Franchise Nonexclusive**

The Franchise granted herein shall be nonexclusive, and subject to all prior franchises, rights, interests, easements or licenses granted by the City to any Person to use any Public Right-of-Way for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

### **2.5 Competitive Equity**

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise Agreement, then the City agrees that the obligations in this Franchise Agreement will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but

are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process for this Franchise Agreement, as provided for in Section 2.5 (A), shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise Agreement; (2) identifying the Franchise Agreement terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise Agreement amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.5 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise Agreement modifications, and that such negotiation will proceed and conclude within a ninety-day (90) time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the City and Grantee reach agreement on the Franchise Agreement modifications pursuant to such negotiations, then the City shall amend this Franchise Agreement to include the modifications.

(D) In the alternative to Franchise Agreement modification negotiations as provided for in Section 2.5 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise Agreement by substituting the franchise agreement or other similar lawful authorization that the City grants to another provider of Cable Services (with the exception of any system design requirements unique to the competitive provider) so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise Agreement with the franchise agreement entered into by the City with the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.5(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise Agreement unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Subject to Section 15, Severability, in the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule,

or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

## **2.6 Familiarity with Franchise Agreement**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Agreement and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise Agreement, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act. The City and Grantee agree that this Franchise Agreement is a negotiated agreement and that for the purpose of interpretation neither City nor Grantee shall be deemed the drafter of this Franchise Agreement.

## **2.7 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise Agreement; (2) accepts and agrees to comply with each and every provision of this Franchise Agreement subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Franchise Agreement and in consideration of permission to use the City's Public Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues.

### **3.2 Payments**

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the

performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

A written report, verified by an authorized representative of Grantee and containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, shall accompany each payment to the City or be sent concurrently under separate cover. Such report shall detail all Gross Revenues of the Cable System.

### **3.5 Annual Franchise Fee Reports**

Grantee shall, within sixty (60) days after the end of each year this Franchise is in effect, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

### **3.6 Audits**

Upon thirty (30) days' prior written notice, but no more frequently than annually, the City, including the City's Auditor or his/her authorized auditors, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise Agreement. Pursuant to subsection 1.33, as part of the Franchise Fee audit/review, the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits, whichever is less), Grantee shall pay the total reasonable cost of the audit/review, such cost not to exceed seven thousand dollars (\$7,000) for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated

from the date the payment was originally due until the date the City receives the payment.

### **3.8 Underpayments**

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Public Rights-of-Way for Grantee's use of the City's Public Rights-of-Way, such payments shall be the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise Agreement), to the extent consistent with Applicable Law.

### **3.10 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise Agreement, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise Agreement may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

No term or condition in this Franchise Agreement, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

### **3.12 Tax Liability**

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business



license fees or other payments. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

### **3.14 Payment on Termination**

If this Franchise Agreement terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise Agreement in the public interest.

(B) Nothing in this Franchise Agreement shall limit nor expand the City's right of eminent domain under State law; provided, however, that in any condemnation action no award shall be made for the value of the Franchise or the use of Public Rights-of-Way.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

### **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual

orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise Agreement, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

#### **4.5 Cross-Subsidization**

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross-subsidization.

#### **4.6 Reserved Authority**

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

#### **4.7 Time Limits Strictly Construed**

Whenever this Franchise Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise Agreement and sufficient grounds for the City to invoke any relevant remedy.

#### **4.8 Amendment Procedure**

Any amendment to this Franchise Agreement shall be made pursuant to the provisions of the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement. Within thirty (30) days of receipt of written notice that a Party wishes to amend this Franchise Agreement, the City and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise Agreement. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Performance Evaluations**

(A) Biennial performance evaluations shall be conducted pursuant to the terms of the Boulder Cable Code provided that the City give Grantee thirty (30) days written notice prior to holding any performance evaluation. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise Agreement, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced one (1) week in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics that may be discussed at any evaluation session may include, but are not limited to, Cable System construction and performance, Grantee's compliance with the Boulder Cable Code and this Franchise Agreement, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise Agreement; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise Agreement.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

#### **4.10 Late Fees**

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise Agreement, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Indemnification**

(A) Grantee shall, at its sole cost and expense, indemnify, hold harmless, and faithfully defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system by Grantee, its employees, Affiliates or agents; copyright infringements or a failure by Grantee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the Cable System; the conduct of Grantee's business in the City; or in any way arising out of Grantee's enjoyment or exercise of the Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by Applicable Law or this Franchise Agreement, except in cases where liability is: (a) solely caused by the gross negligence of the person or persons covered by the indemnity; or (b) results from programming contributed or produced by the City and transmitted over the Cable System.

(B) Without limiting the foregoing, Grantee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the City, and its officers, agents, and employees from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the construction, operation, maintenance or repair of its system by Grantee, its employees, affiliates or agents, including without limitation any claim against Grantee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to intervention by the City in regulatory proceedings brought by Grantee or to the programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless Grantee was in any respect engaged in determining the editorial content of the program, or adopts a policy of pre-screening programming for the purported purpose of banning or regulating indecent or obscene programming, and except for programming contributed or produced by Grantee.

(C) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees consented to by Grantee and payment for any reasonable labor and expenses of the city attorney's office at the going rate for legal services in Boulder County. Such consent shall not be unreasonably withheld.

(D) Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Public Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(E) Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise Agreement to the extent such actions are consistent with this Franchise Agreement and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise Agreement.

(F) The fact that Grantee carries out any activities under this Franchise Agreement through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(G) The provisions of this Section 5.1 shall not be construed to limit the liability of Grantee for damages.

## **5.2 Insurance**

Grantee shall maintain adequate insurance throughout the Term as required by the Boulder Cable Code as of the Effective Date.

## **5.3 Letter of Credit**

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of One Hundred Thousand dollars (\$100,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the City as set forth in Subsections 5.4 (A) and (B) above, if the City is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in 5.4 (A), Grantee shall not be required to provide a separate Letter of Credit to the City.

(D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or

breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with the City's Customer Service Standards, attached hereto as Exhibit A and incorporated herein by this reference, as the same may be amended from time to time. Grantee reserves the right to challenge any future customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise Agreement.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise Agreement, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

### **6.4 Advance Notice to City**

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

### **6.5 Identification of Local Franchise Authority on Subscriber Bills**

Within sixty (60) days after written request from the City, Grantee shall identify the City on Subscriber bills as the Franchising Authority.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's auditors, shall have access to, and the right to inspect any books or records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise Agreement or Applicable Law. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection of this Franchise Agreement or Applicable Law shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise Agreement, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

### **7.2 Confidentiality**

The City shall protect Grantee's confidential commercial data, identified as such by Grantee, from disclosure under the Colorado Open Records Act, § 24-72-204, C.R.S. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee, provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time, and shall withhold release for the maximum period permitted by law to provide the Grantee the opportunity to seek court protection against the release of the requested documents. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

### **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30-days



written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Public Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City, except for information involving the privacy rights of individual Subscribers, is public information and shall be treated as such.

(C) "As-built" drawings for all construction completed by Grantee since the City's last request for such drawings.

(D) Grantee shall maintain for a period of at least six months those records listed in Section 11-6-6(d) of the Boulder Cable Code.

#### **7.4 Annual Reports**

No later than ninety (90) days after the end of its fiscal year, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise Agreement;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any

services added or dropped, and any technological changes occurring in the Cable System;

- (D) A statement of planned construction, if any, for the then-current year;
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body; and
- (F) A list of officers and members of Grantee's board of directors and its parent;
- (G) An ownership report, indicating all persons who at the time of filing control or won an interest in the Franchise of ten percent or more;
- (H) A report on the Cable System's technical test and measurements; and
- (I) A summary of the number and type of outages (an outage being a loss of sound or video on any signal or a significant deterioration of any signal affecting Subscribers) known by Grantee, specifying all details of each outage known to Grantee and the cause thereof.

## **7.5 Copies of Federal and State Reports**

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

## **7.6 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) On or before April 30, July 31, October 31 and January 31 of each year this Franchise Agreement is in effect and for one month thereafter, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;

(3) A summary of customer complaints referred by the City to Grantee; and,

(4) Such other information as reasonably requested by the City, including but not limited to a summary of escalated complaints, indentifying both the number and nature of the complaints received and an explanation of their disposition.

The provisions of this subsection (B) shall survive for one full quarter after the expiration, or termination for any reason, of this Franchise Agreement.

### **7.7 Failure to Report/Maintain Records**

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise Agreement or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), or to keep any records required to be kept may, at the City's option, be deemed a breach of this Franchise Agreement.

### **7.8 False Statements**

Any false or misleading statement or representation in any report required by this Franchise Agreement (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise Agreement and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise Agreement or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;

(I) National news, weather and information (including direct coverage of federal and/or state legislative proceedings); and,

(J) Public, Educational and Government Access, to the extent required by this Franchise Agreement.

## **8.2 Deletion or Reduction of Broad Programming Categories**

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date shall be deemed the mix and quality of Cable Services required under this Franchise Agreement throughout its term.

## **8.3 Obscenity**

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if the Federal Communications Commission or a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

## **8.4 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

## **8.5 Continuity of Service Mandatory**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires

the Cable System in accordance with this Franchise Agreement, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System; and in the event of a change of Grantee not caused by a breach of this Franchise Agreement by Grantee, Grantee shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

## **8.6 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

## **SECTION 9. ACCESS**

### **9.1 Designated Access Providers**

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself, for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise Agreement. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise Agreement, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with City in City's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

### **9.2 Channel Capacity and Use**

(A) On the Effective Date, Grantee shall make available to City five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Public Access or Government Access Channel, or portion thereof, within sixty (60) days after a written request for such temporary use is submitted to City, if such Public Access or Government Access Channel is not fully utilized. A Public Access or Government Access Channel shall be considered "fully utilized" if substantially unduplicated programming is delivered over it more than an average of

38 hours per week over a calendar year. Programming that is repeated on a Public Access or Government Access Channel up to two times per day shall be considered “substantially unduplicated programming.” Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to the City. If a Public Access or Government Access Channel will be used by Grantee in accordance with the terms of this subsection, the institution to which the Public Access or Government Access Channel has been allocated shall have the right to require the return of the Public Access or Government Access Channel or portion thereof. The City shall request return of such Public Access or Government Access Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Public Access or Government Access Channel, or portion thereof, in accordance with this subsection. In such event, the Public Access or Government Access Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide four (4) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the Demarcation Point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry an SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the Demarcation Point. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the Demarcation Point.

(4) SD Access Channels may require SD Subscribers to buy or lease special equipment, available to all SD Subscribers. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) If Grantee does not carry the Audio Information Network of Colorado as

part of its commercial service, and it is available for carriage, Grantee shall continue to provide an FM band PEG channel for carriage of the Audio Information Network of Colorado service on the Basic or Expanded Basic Service tier for at least twelve (12) months from the Effective Date of this Franchise Agreement. The termination of such service on the Cable System shall be publicized by Grantee at its sole cost through bill messages provided to Subscribers at 12 months, 6 months and 3 months prior to the time such service is terminated.

(D) High Definition (“HD”) Digital Access Channels.

(1) Upon written request and within one hundred twenty (120) days of the Effective Date, Grantee shall activate one (1) HD Access Channel, for which the City may provide Access Channel signals in HD format to the Demarcation Point at the designated point of origination for the Access Channel. After the third anniversary of the Effective Date, and with at least 120 day written notice to Grantee, the City may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of HD Access Channels shall only occur after the following conditions are satisfied:

(a) The City shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the Demarcation Point at the designated point of origination for the HD Access Channel. For purposes of this Franchise Agreement, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise Agreement.

(E) Grantee shall simultaneously carry the one (1) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C). At such time as Grantee activates the second HD Access Channel, the number of SD Access Channels Grantee is obligated to provide in Section 9.2(C) shall be reduced from four (4) to three (3).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise Agreement are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

### **9.3 Access Channel Assignments**

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the local governments served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to



Subscribers.

#### **9.4 Relocation of Access Channels**

Grantee shall provide City and all Subscribers within City with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Government Access Channel designations are changed.

#### **9.5 Web-Based Video On Demand and Streaming**

(A) Within one hundred twenty (120) days after written request of the City, Grantee shall additionally provide the City with a one-time grant of funding, in an amount not to exceed TWENTY-FIVE THOUSAND dollars (\$25,000), which the City shall use to acquire and/or replace equipment to facilitate cable and web-based Access programming.

(B) The City's Designated Access Provider(s) may provide web-based video on demand programming on line; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

#### **9.6 Support for Access Costs**

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$0.50) per month per Subscriber (the "PEG Contribution") until a new rate is made effective as set forth below, to be used solely for capital costs related to Public, Educational and Government Access and the web-based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. Following City Council decision, made by motion, Grantee shall provide the City with up to seventy-five cents (\$0.75) per month per Subscriber. Prior to the implementation of any change in the amount of this support the City shall give Grantee one hundred and twenty (120) days' written notice of the City Council's decision and any change will only be implemented concurrent with Grantee's annual price increase. Additional increases may be required by ordinance (including a mandatory public hearing) no sooner than 42 months after the Effective Date, to an amount over seventy-five cents (\$0.75), but in no event will the amount exceed a total of One Dollar (\$1.00) per Subscriber per month and such amount must be applicable to all franchised cable operators in the City. Prior to the implementation of any change in the amount of this support the City must give Grantee one hundred and twenty (120) days' written notice of the City Council's decision and any change will only be implemented concurrent with Grantee's annual price increase. No fees shall be charged on gratis accounts. The City shall be solely responsible for all liability to any third party arising out of the City's use of PEG use capital funds that will be collected and paid to the City. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment

shall be due and payable no later than thirty (30) days following the end of the quarter. If this Franchise expires or terminates for any reason, Grantee is required to make the final PEG Contribution. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise Agreement shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network..

### **9.7 Access Support Not Franchise Fees**

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise Agreement and Applicable Law.

### **9.8 Access Channels on Basic Service or Lowest Priced HD Service Tier**

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

### **9.9 Change In Technology**

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

### **9.10 Technical Quality**

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the Demarcation Point at the same level of technical quality and reliability required by this Franchise Agreement and all other Applicable Law. Grantee shall provide routine maintenance for all transmission equipment on its side of the Demarcation Point, including

modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the Demarcation Point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission by City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

### **9.11 Access Cooperation**

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

### **9.12 Return Lines/Access Origination**

(A) Grantee shall continuously maintain the previously constructed return lines throughout the Term of the Franchise Agreement, in order to enable the distribution of Access programming to Subscribers on the Access Channels; provided, however, that Grantee's maintenance obligations with respect to a particular location shall cease if it is no longer used by the City to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

## **SECTION 10. GENERAL PUBLIC RIGHT-OF-WAY USE AND CONSTRUCTION**

### **10.1 Public Right-of-Way Meetings**

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Public Right-of-Way issues that may impact the Cable System.

## 10.2 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Public Right-of-Way cuts within the City.

## 10.3 General Standard

Grantee shall construct, operate and maintain the Cable System subject to the supervision of all of the authorities of the City who have jurisdiction in such matters and in strict compliance with all Applicable Law, including specifically the Boulder Cable Code and the City's Design and Construction Standards. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

## 10.4 Permits Required for Construction

Prior to doing any work in the Public Right-of Way or other public property, Grantee shall apply for, and obtain, all required permits from the City. As part of the permitting process, the City may impose such conditions and regulations including but not limited to those necessary for the purpose of protecting any structures in such Public Rights-of-Way, proper restoration of such Public Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Public Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

## 10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

## 10.6 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, and the International Mechanical Code, zoning codes and regulations, and the City's Design and Construction Standards.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and

regulations of the Federal Aviation Administration and all Applicable Law.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

### **10.7 GIS Mapping**

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Public Rights-of-Way.

### **10.8 Minimal Interference**

Work in the Public Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

### **10.9 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

### **10.10 Hazardous Substances**

(A) Grantee shall comply with any and all Applicable Law concerning hazardous substances relating to Grantee's Cable System in the Public Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Public Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances arising out of or related to Grantee's Cable System.

### **10.11 Locates**

Prior to doing any work in the Public Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Public Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unallocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

### **10.12 Notice to Private Property Owners**

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

### **10.13 Underground Construction and Use of Poles**

(A) When required by Applicable Law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Public Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such

relocation to all users of the Public Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) If installing cable lines aerially, Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Public Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the reasonable cost of the trenching and boring. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

#### **10.14 Undergrounding of Multiple Dwelling Unit Drops**

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

#### **10.15 Burial Standards on Private Property**

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards when burying lines on private property. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Public Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

Grantee shall comply with the City's Design and Construction Standards when buying lines on public property.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

#### **10.16 Cable Drop Bonding**

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

#### **10.17 Repair and Restoration of Property**

(A) Notice of Damage. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Prompt Restoration. Whenever Grantee disturbs or damages any Public Right-of-Way, other public property or any private property, Grantee shall promptly restore the Public Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Public Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Public Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and



equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

### **10.18 Use of Conduits by the City**

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the right-of-way for the provision of non-cable services. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

### **10.19 Common Users**

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Public Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Public Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Public Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Public Rights-of-Way to comply with the provisions of this subsection.

## **10.20 Acquisition of Facilities**

Upon Grantee's acquisition of Cable System-related facilities in any City Public Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise Agreement.

### **10.21 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Public Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Public Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes, or may remove the facilities at Grantee's expense and Grantee shall reimburse the City within thirty (30) days after receipt of a written invoice.

### **10.22 Movement of Cable System Facilities for City Purposes**

If the City generally makes funds available to users of the Public Rights-of-Way for the relocation of those users' facilities in the Public Rights-of-Way for City purposes, Grantee shall be entitled to its pro rata share of such funds.

### **10.23 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

### **10.24 Reservation of City Use of Public Right-of-Way**

Nothing in this Franchise Agreement shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading,

paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

### **10.25 Tree Trimming**

Subject to obtaining advance permission from the Manager, which shall not be unreasonably refused, Grantee may prune or cause to be pruned, using pruning practices approved by the City Forester, any tree that overhangs the City's Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with the wires of the Cable System. At the option of the City, such trimming may be done by it or by Grantee, but in either case, at the expense of Grantee. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Public Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.26 Inspection of Construction and Facilities**

The City may conduct inspections of the Cable System including, without limitation, the headend, construction areas and Subscriber installations to assess, among other things, Grantee's compliance with this Franchise Agreement and Applicable Law. Inspection does not relieve Grantee of its obligation to build the Cable System in compliance with all provisions of this Franchise Agreement and Applicable Law.

### **10.27 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise Agreement and all Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise Agreement and the Applicable Law governing the work performed by them.

## **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network**

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process and all Applicable Law.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise Agreement or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

## **11.2 Technology Assessment**

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary information upon the City's reasonable request as part of the technology assessment. If confidential or proprietary information is requested by the City, Grantee shall provide such information subject to the terms of a non-disclosure agreement acceptable to both parties.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

### **11.3 Standby Power**

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

### **11.4 Emergency Alert Capability**

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise Agreement in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(B) The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment provided pursuant to this subsection.

### **11.5 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

### **11.6 Cable System Performance Testing**

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise Agreement; and
- (3) All other tests as otherwise specified in this Franchise Agreement.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber or Designated Access Provider complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise Agreement, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise Agreement. Sites shall be re-tested following correction.

### **11.7 Additional Tests**

Where there exists other evidence which, in the judgment of the City, casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem which precipitated the special tests;

- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

## **SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS**

### **12.1 Service Availability**

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request.

(B) Residential Subscribers. Except where Grantee is unable to obtain required easements or permits and subject to Section 12.1(D), upon the request of a potential Subscriber, Grantee shall extend Cable Service at its then-prevailing installation charge for such service to any residence located within the City as of the Effective Date. There shall be no charge for extending plant to a point where Cable Service can be provided with a Standard Drop, or (if closer) to a point on the property line of the potential Subscriber from which service can be provided to the potential Subscriber. There shall be no charge for extending plant to areas with a residential density of twenty-five (25) residences per mile of Cable System plant. There shall be no charge for extension of plant for residences located within the City as of January 1, 2004. Where these standards are not satisfied, Grantee may condition service extensions at the then-prevailing charge upon the person or persons requesting service agreeing to pay a *pro rata* share of the cost of extending the plant to a point where service can be provided with a Standard Drop. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. For purposes of this subsection, in areas where Grantee has not constructed Cable System lines as of the Effective Date, each dwelling unit within a Multiple Dwelling Unit will count as a residential unit if and only if Grantee can obtain access to the Multiple Dwelling Unit on reasonable terms and conditions.

(C) Commercial Subscribers; Annexations After Effective Date. For non-residential locations in the City and for areas annexed to the City after the Effective Date, except where Grantee is unable to obtain required easements or permits and subject to Section 12.1(E), Grantee shall provide Cable Service upon request at its then-prevailing installation charge, but may charge for any required plant extension except where fifteen (15) commercial locations per mile of Cable System plant agree to subscribe to Grantee's cable service for one year at commercial rates in which case there shall be no charge for plant extension. Notwithstanding the foregoing, Grantee may charge any potential customer located in a mall or strip mall for any line



extension greater than 100' required to cross a parking lot to provide Cable Service.

(D) No Service Required. Grantee is not required to provide Cable Service to any:

(1) Occupant of a mall or strip mall where such occupant is unwilling to pay its portion of any applicable line extension costs;

(2) Commercial occupant of commercial structures above the first floor, where inside wiring necessary to provide the Cable Service is not already present, or where the owner or occupant is unwilling to install or pay for the inside wiring necessary to provide the Cable Service;

(3) Occupant of unlawful dwelling units; or,

(4) Potential customer in a building or building complex where Grantee is denied access.

(E) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the Public Right of Way at a Multiple Dwelling Unit.

## 12.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and/or occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

## 12.3 Provision of Broad Categories of Services

This Section shall be interpreted consistent with the limitations set forth in 47 U.S.C. §544(b)(2)(B). In addition to such other service requirements as may be contained in this agreement, Grantee agrees to continue to provide the twelve locally-available FM radio stations,

or if lower, the number of locally available FM radio stations from which Grantee can obtain retransmission consent at no cost (the term costs refers to a payment made to an FM station for the right to carry the station's signal and does not include copyright payments that may be required) for at least twelve (12) months from the Effective Date of this Franchise Agreement. The termination of FM radio service on the Cable System shall be publicized by Grantee at its sole cost through bill messages provided to Subscribers at 12 months, 6 months, and 3 months prior to the time such service is terminated.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Notice of Violation; Right to Cure**

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise Agreement, has violated this Agreement or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the City, that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the letter of credit as monetary damages;

(2) Commence the procedures for the revocation of the Franchise pursuant to

subsection 13.3; or,

(3) Pursue any other legal or equitable remedy available under this Franchise Agreement or any Applicable Law.

(D) The determination as to whether a material breach of this Franchise Agreement has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

### **13.2 Material Breach**

In addition to revocation of the Franchise in accordance with other provisions of this Franchise Agreement, the City may revoke the Franchise and rescind all rights and privileges associated with this Franchise Agreement in the following circumstances, each of which represents a material breach of this Franchise Agreement:

(A) If Grantee fails to perform any material obligation under this Franchise Agreement or under any other agreement, ordinance or document regarding the City and Grantee;

(B) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(C) If Grantee attempts to evade any material provision of this Franchise Agreement or to practice any fraud or deceit upon the City or Subscribers;

(D) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(E) If Grantee makes a material misrepresentation of fact in the application for the Franchise or the negotiation of this Franchise Agreement.

### **13.3 Procedure for Revocation of Franchise and Termination of Franchise Agreement**

(A) Pursuant to the procedures herein, the Franchise granted by this Franchise Agreement may be revoked by the City Council and this Franchise Agreement may be terminated for Grantee's failure to construct, operate or maintain the Cable System as required by this Franchise Agreement, or for any other material breach of this Franchise Agreement.

(B) Upon completing the procedures set forth in subsection 13.1 and prior to forfeiture, revocation of the Franchise or termination of this Franchise Agreement, the City Council shall hold a public hearing, upon at least forty-five calendar days' prior written notice, at which time Grantee and the public shall be given an opportunity to be heard. At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared

equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(C) Following the public hearing, the City Council may determine whether to revoke the Franchise based on the evidence presented at the hearing, and other evidence of record. If the City Council determines to revoke a Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(1) Grantee shall be entitled to such relief as the court may deem appropriate.

(2) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise Agreement in lieu of revocation of the Franchise Agreement.

#### **13.4 Remedies in the Case of Revocation or Abandonment**

(A) If the City revokes the Franchise and terminates this Franchise Agreement pursuant to this Section 13, or if, for any other reason, Grantee abandons or fails to operate or maintain service to its Subscribers as required by the Franchise, the City may, subject to Applicable Law:

(1) Order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore; or

(2) By resolution of the City Council, acquire ownership or effect a transfer of the Cable System at fair market value, with no value assigned to the Franchise itself, with the price adjusted to account for other equitable factors that may be considered consistent with Applicable Law.

(B) If Grantee fails to complete any removal required by subsection 13.4 (A)(1) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(C) If the Grantee abandons its Cable System during the Franchise term, or fails to

operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise Agreement.

### **13.5 What Constitutes Abandonment**

As used in Section 13.4, above, abandonment means:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement.

### **13.6 Receivership and Foreclosure**

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

### **13.7 No Monetary Recourse Against the City**

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise Agreement are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

### **13.8 Alternative Remedies**

No provision of this Franchise Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.9 Assessment of Monetary Damages**

(A) The City may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise Agreement. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise Agreement. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise Agreement or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise Agreement.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Applicable Law, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise Agreement term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then-current Franchise Agreement, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise Agreement and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and City are engaged in a renewal process, Grantee shall continue to provide Cable Service to its Subscribers on a month-to-month basis, on the same terms and conditions as provided in this Franchise Agreement and the Cable Code. During any such "hold over" period, Franchisee shall continue to pay the Franchise Fee as set forth above, in addition to honoring all other provisions of this Franchise Agreement.

## **14.2 Transfer of Ownership or Control**

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by Applicable Law and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) No Transfer application shall be granted unless the proposed transferee:

(1) Agrees in writing that it will abide by and accept the terms of the Boulder Cable Code, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by the transferee with such Franchise Agreement;

(2) Agrees in writing to assume and be responsible for the obligations and liabilities of Grantee, known and unknown, under this Franchise Agreement and Applicable Law;

(3) Provides reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the proposed transferee;

(4) Agrees in writing that, except as provided in Section 626 of the Cable Act concerning use of previous non-compliance evidence in renewal proceedings following a transfer, approval by the City of the transfer shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or Applicable Law whether arising before or after the effective date of the transfer; and

(5) Posts all required bonds, securities in a manner to ensure that there is no gap in coverage.

(F) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(G) Within thirty (30) days of any transfer or sale, if approved or deemed granted by



the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise Agreement, subject to Applicable Law, and will not be required to file an additional written acceptance.

(H) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(I) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise Agreement or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that (i) the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise; (ii) Grantee affirms that it shall be responsible for all of Grantee's obligations and liabilities, known and unknown, under the Franchise Agreement and Applicable Law for all purposes, including but not limited to renewal under Section 626; (iv) required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change I the same as a result of the transaction; (v) Grantee and the party being added to the chain of control must agree in writing that there shall be no waiver or release of any right of the City (whether such right arises before or after the transaction) under this Franchise Agreement or Applicable Law, as a result of the transaction; and (vi) the party being added to the chain of control must be a wholly-owned subsidiary of Comcast Cable Holdings, LLC, and Comcast Cable Holdings, LLC must agree to guarantee unconditionally the performance of the Grantee and the party being added to the chain of control. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Franchise Agreement is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise Agreement, all of which will remain in full force and effect for the term of the Franchise Agreement.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

In connection with the performance of work under this Franchise Agreement, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise Agreement, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

## **16.2 Notices**

Throughout the term of the Franchise Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise Agreement:

Grantee's address shall be:

Comcast of Colorado, IV, LLC  
1899 Wynkoop Street, Suite 550  
Denver, CO 80202  
Attn: Government Affairs

The City's address shall be:

City Manager  
City of Boulder  
1777 Broadway  
Boulder, CO 80302

## **16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise Agreement are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

## **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the City for all costs incurred in publishing this Franchise Agreement, if such publication is required.

## **16.5 Binding Effect; No Third Party Beneficiaries**

This Franchise Agreement shall be binding upon the parties hereto, their permitted successors and assigns. This Franchise Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any Person not a party to this Agreement.

### **16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties and neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.7 Waiver**

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

### **16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

### **16.9 Time of Essence**

In determining whether Grantee has substantially complied with this Franchise Agreement, the Parties agree that time is of the essence to this Franchise Agreement.

### **16.10 Entire Agreement**

This Franchise Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

### **16.11 Applicable Law**

This Agreement shall be construed in accordance with the laws of the State of Colorado and the Cable Act. Jurisdiction and venue for any judicial dispute between the City and Grantee arising under or out of this Franchise Agreement shall be in Boulder County District Court, Colorado, or in the United States District Court in Denver.

### **16.12 Counterparts**

This Franchise Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have set their hands to this Cable Franchise Agreement, which shall be effective as of May 1, 2015.

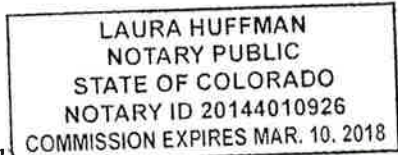
**COMCAST OF COLORADO IV, LLC**

By: *Matthew Chambers*  
Title: Matthew Chambers  
VP - Finance and Accounting

STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me, a Notary Public, this 29<sup>th</sup> day of April, 2015, by Matthew Chambers.

Witness my hand and official seal.  
My commission expires:



(seal)

*Laura Huffman*  
Notary Public

**CITY OF BOULDER**

*Jane S. Beaumont*  
City Manager

**ATTEST:**

*Alisa D Lewis*  
City Clerk

**APPROVED AS TO FORM:**

*Debra S Kalish*  
City Attorney's Office

# Exhibit A

## **Customer Service Standards**

### **I. POLICY**

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within the established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under Normal Operating Conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City Boulder, Colorado.

### **II. DEFINITIONS**

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

"Cable Operator" shall mean the Grantee, as described in the Franchise Agreement, and the Grantee's employees, agents, Contractors or Subcontractors.

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the city of Boulder, Colorado.

"Colorado Communications and Utilities Alliance" or "CCUA" shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The CCUA may, on behalf of its members, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards.

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated Complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the City.

"Necessary" shall mean required or indispensable.

“Normal Business Hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include at least some evening hours one night per week, and include some weekend hours.

“Normal Operating Conditions” shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

“Other Service(s)” shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator Necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

“Service Interruption” or “Interruption” shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

“Service Outage” or “Outage” shall mean a loss or substantial impairment in reception on all channels.

“Subcontractor” shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

“Writing” or “written” as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

### **III. CUSTOMER SERVICE**

#### **A. Courtesy**



Cable Operator employees, Contractors and Subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with Customers.

## **B. Accessibility**

1. A Cable Operator shall provide Customer service centers/business offices (“Service Centers”) which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the Customer’s address if the equipment has not been damaged in any manner due to the fault or negligence of the Customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the Customer with various menu options to address the Customer’s concern, the recorded message must provide the Customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a Customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under Normal Operating Conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under Normal Operating Conditions, a Customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

### **C. Responsiveness**

#### **1. Guaranteed Seven-Day Residential Installation**

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by Customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the Customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the Customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the Customer.

#### **2. Residential Installation and Service Appointments**

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of Customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the Customer's location.

b. A Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment, unless the Customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the Customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as Necessary at a time that is convenient to the Customer, within Normal Business Hours or as may be otherwise agreed to between the Customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the

Customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the Customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd Customer call is received.

b. All other Service Interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the Cable System or its operation of the Cable System, in a manner consistent with the privacy rights of Customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. A Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning Customer complaints referred by the Franchising Authority to the Grantee, a summary of service calls, a log of all Service Interruptions, and any other requirements of a Franchise Agreement, including a summary of complaints, but no Personally Identifiable Information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in Writing by the Franchising Authority that such summaries are no longer required.

d. All Service Outages and Service Interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

### 4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled Interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a Customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the Customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is Necessary to address any video or audio reception problem, the Customer may choose a block of time described in Section III.C.2.a. At the Customer's request, the Cable Operator shall repair the problem at a later time convenient to the Customer, during Normal Business Hours or at such other time as may be agreed to by the Customer and Cable Operator. A Cable Operator shall maintain periodic communications with a Customer during the time period in which problem ascertainment and repair are ongoing, so that the Customer is advised of the status of the Cable Operator's efforts to address the problem.

#### 5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the Customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

#### 6. Billing, Credits, and Refunds

a. In addition to other options for payment of a Customer's service bill, a Cable Operator shall make available a telephone payment option where a Customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a Customer's service bill for that period. If a Customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the Customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with Applicable Law. If the Customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the Customer's service. If a Customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the Customer's service, provided it has provided two (2) weeks' notice to the Customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a Customer within 30 days after determining the Customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

## 7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the Customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or Service Interruption to a large number of Customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. In the case of an emergency, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made., unless such notice is waived by the Customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum,

prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangers must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any Customer with a disability, a Cable Operator shall deliver and pick up equipment at Customers' homes at no charge unless the malfunction was caused by the actions of the Customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other Applicable Law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired Customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) Customers.

4. Any Customer with a disability may request the special services described above by providing a Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **E. Cable Services Information**

1. At any time a Customer or prospective Customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the Customer):

- a. Products and services offered by the Cable Operator, including its channel lineup;
- b. The Cable Operator's complete range of service options and the prices for these services;

- c. The Cable Operator's billing, collection and disconnection policies;
  - d. Privacy rights of Customers;
  - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
  - f. Use and availability of parental control/lock out device;
  - g. Special services for Customers with disabilities;
  - h. Days, times of operation, and locations of the service centers;
2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCUA and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the CCUA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;
- If acceptable to a Customer, Cable Operator may fulfill Customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.
3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to Customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.
4. Copies of notices provided to the Customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCUA.
5. A Cable Operator shall provide Customers with written notification of any change in rates for nondiscretionary Cable Services, and for service tier changes that result in a deletion of programming from a Customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a Customer has subscribed to, at the time the change in rates are announced by the Cable Operator.
6. All officers, agents, and employees of the Cable Operator or its Contractors or Subcontractors who are in personal contact with Customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually

identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with Customers or public employees, a supervisor must be able to communicate clearly with the Customer or public employee. Every vehicle of a Subcontractor or Contractor shall be labeled with the name of the Contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a Customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the Customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the Customer before the actual work is performed.

## **F. Customer Privacy**

### **1. Notice to Customers Regarding Personally Identifiable Information; Definitions**

(1) At the time of entering into an agreement to provide any Cable Service or Other Service to a Customer and at least once a year thereafter, the Cable Operator shall provide notice in the form of a separate, written statement to such Customer which clearly and conspicuously informs the Customer of—

(A) the nature of Personally Identifiable Information collected or to be collected with respect to the Customer and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the Cable Operator;

(D) the times and place at which the Customer may have access to such information in accordance with subsection (4) of this section; and

(E) the limitations provided by this section with respect to the collection and disclosure of information by the Cable Operator and the right of the Customer under 47 U.S.C. §§ 551(f) and (h) to enforce such limitations.

In the case of Customers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section F:

(A) the term “Personally Identifiable Information” does not include any record of aggregate data that does not identify particular persons;



(B) the term “Other Service” includes any wire or radio communications service provided using any of the facilities of the Cable Operator that are used in the provision of Cable Service; and

(C) the term “Cable Operator” includes, in addition to persons within the definition of Cable Operator, above, any person or group of persons who

(i) provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System

(ii) otherwise controls or is responsible for, through any arrangement, the management and operation of the Cable System;

(iii) is owned or controlled by, or under common ownership or control with, the Cable Operator; and

(iv) provides any wire or radio communications service.

## **2. Collection of Personally Identifiable Information Using Cable System**

(1) Except as provided in paragraph (2) below, a Cable Operator shall not use the Cable System to collect Personally Identifiable Information concerning any Customer without the prior written or electronic consent of the Customer concerned.

(2) A Cable Operator may use the Cable System to collect such information in order to—

(A) obtain information Necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer; or

(B) detect unauthorized reception of cable communications.

## **3. Disclosure of Personally Identifiable Information**

(1) Except as provided in paragraph (2) below, a Cable Operator shall not disclose Personally Identifiable Information concerning any Customer without the prior written or electronic consent of the Customer concerned and shall take such actions as are Necessary to prevent unauthorized access to such information by a person other than the Customer or Cable Operator.

(2) A Cable Operator may disclose such information if the disclosure is—

(A) Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer;

(B) subject to 47 U.S.C. §§ 551 (h) (Disclosure of information to governmental entity pursuant to court order), made pursuant to a court order authorizing such disclosure, if the Customer is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of Customers to any Cable Service or Other Service, if—

(i) the Cable Operator has provided the Customer the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the Customer of a Cable Service or Other Service provided by the Cable Operator, or

(II) the nature of any transaction made by the Customer over the Cable System of the Cable Operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, U.S.C. , except that such disclosure shall not include records revealing Customer selection of video programming from a Cable Operator.

#### **4. Customer Access to Information**

A Customer shall be provided access to all Personally Identifiable Information regarding that Customer that is collected and maintained by a Cable Operator. Such information shall be made available to the Customer at reasonable times and at a convenient place designated by such Cable Operator. A Customer shall be provided reasonable opportunity to correct any error in such information.

#### **G. Safety**

A Cable Operator shall install and locate its facilities, Cable System, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are Necessary to remove or eliminate any unsafe condition.

#### **H. Cancellation of New Services**

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

## **IV. COMPLAINT PROCEDURE**

### **A. Complaints to a Cable Operator**

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in Writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the Necessary procedures for filing such complaint with the Franchising Authority.
5. A Cable Operator shall immediately report all customer Escalated Complaints that it does not find valid to the Franchising Authority.
6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

### **B. Complaints to the Franchising Authority**

1. Any Customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The Customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The Customer shall make such filing and notification within thirty (30) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after the last response to the Customer from the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the Customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the Customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem Necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the Customer complaint, or , if further evidence has been requested, after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

#### **D. Verification of Compliance**

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **E. Procedure for Remedying Violations**

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order, after further hearing, such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter; and/or

d. Grant a specific solution as determined by the Franchising Authority; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its Subcontractors in accordance with Applicable Law; and/or

f. Pursue any other legal or equitable remedy available under the Franchise Agreement or Applicable Law.

3. Any assessment or remedy shall not constitute a waiver by the Franchising Authority of any other right or remedy it may have under the Franchise Agreement or Applicable Law including any right to recover from the Cable Operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the Franchising Authority by reason of, or arise out of non-compliance with these standards.



## **COVER SHEET**

### **MEETING DATE**

**February 6, 2025**

### **AGENDA ITEM**

Second reading and consideration of a motion to adopt Ordinance 8683 establishing the Boulder Lodging Business Assessment Area pursuant to Chapter 8-11, "Lodging Business Assessment Areas," B.R.C. 1981; and setting forth related details

### **PRIMARY STAFF CONTACT**

Teresa Taylor Tate, City Attorney

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8683 establishing the Boulder Lodging Business Assessment Area pursuant to Chapter 8-11, "Lodging Business Assessment Areas," B.R.C. 1981; and setting forth related details

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 5C - 2nd Rdg Ord 8683 Establishing Lodging Business Assessment Area**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Second reading and motion to adopt Ordinance 8683 establishing the Boulder Lodging Business Assessment Area pursuant to Chapter 8-11, “Lodging Business Assessment Areas,” B.R.C. 1981; and setting forth related details.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Teresa Taylor Tate, City Attorney  
Christiana McCormick, Assistant City Attorney III  
Mark Woulf, Assistant City Manager  
Jennifer Pinsonneault, Economic Vitality Manager

**EXECUTIVE SUMMARY**

Ordinance 8663, adopted October 17, 2024, created a mechanism and procedures for Lodging Business Assessment Areas (LBAA) to be formed within the city. An LBAA created pursuant to these procedures would be a quasi-governmental entity separate from the city that has the authority to assess fees and taxes, which are used for tourism-related facilities and services beyond that which the city provides and which promote the economic health of the city’s lodging businesses for the benefit of residents and visitors.

The Boulder Visitors and Convention Bureau, d/b/a Visit Boulder, acting as representatives of lodging businesses, submitted a petition and an initial plan on November 21, 2024, under the requirements of Ordinance 8663 to establish an LBAA, titled the “Boulder Lodging Business Assessment Area.” Per procedures set forth in

B.R.C. 1981, 8-11-13, city council shall conduct a hearing to determine if the petition and initial plan satisfy the criteria to create the LBAA. If city council determines the petition and initial plan meet the criteria, council must also adopt an “establishment ordinance,” or Proposed Ordinance 8683, that formally creates the proposed LBAA.

For ease of consideration, staff is condensing the public hearings and considerations of both actions under one agenda item. Formally, council will consider to two separate actions:

1. Determine whether the petition and initial plan meet the criteria set forth in B.R.C. 1981, 8-11-13, and if yes,
2. Adopt Proposed Ordinance 8683, establishing the Boulder Lodging Business Assessment Area.

### **STAFF RECOMMENDATION**

**Suggested Motion Language:**

Motion to adopt Ordinance 8683 establishing the Boulder Lodging Business Assessment Area pursuant to Chapter 8-11, “Lodging Business Assessment Areas,” B.R.C. 1981; and setting forth related details.

### **BACKGROUND**

Since late 2023, Visit Boulder and its Board of Directors have been exploring the feasibility of an LBAA, similar to the Tourism Improvement Districts (TIDs) in Denver and Fort Collins. In early 2024, Visit Boulder approached city staff to discuss the progress on their feasibility study with their project consultants (Civitas). Their feasibility study focused on the TIDs operated in Fort Collins and Denver, the interest amongst local lodging partners, fee structure, and fee amount.

LBAA's or TID's are both quasi-governmental entities established by a local government that are separate from the local government and are intended to improve or enhance tourism-related facilities and services that are otherwise unavailable. These entities are created solely through home rule authority and not through any authority granted by the State in the Colorado Revised Statutes.

The city allowed the formation of LBAA's by adopting Ordinance 8663. An LBAA formed within the city would be a special purpose taxing entity that allows an additional assessment on room stays to be directly distributed to and managed by the Destination Marketing Improvement organization (for the city of Boulder, that entity is Visit Boulder). This would allow lodging businesses to pay into an entity and have direct representation in the allocation of tourism resources to support the lodging business



industry. Primary interests of Visit Boulder and their industry partners are to adequately prepare for the marketing and booking of new hotel rooms at several new locations and including conventions at the soon-to-come CU Conference Center and Hotel (Limelight), improve competitiveness in attracting larger events to the city, and provide a greater level of support to the tourism industry.

The process to create a local LBAA has three steps: (1) city council adopts an enabling ordinance, which was adopted in October 2024; (2) a petition to create an LBAA that meets the criteria in the enabling ordinance is submitted to the city and council determines whether the petition is satisfactory based on the criteria in Section 8-11-13, B.R.C. 1981; and (3) council adopts an “establishment ordinance” that formally creates the LBAA, sets forth council’s findings concerning the criteria in Chapter 8-11, B.R.C. 1981, the LBAA’s boundaries, its powers and limitations, its term, and approves the initial plan with or without amendments. The process is similar to how a business improvement or general improvement district is created.

With the adoption of Ordinance 8663, Visit Boulder began circulating a petition (**Attachment B**) to qualifying lodging business owners or representatives for signature to establish the “Boulder Lodging Business Assessment Area.” Per the requirements under Ordinance 8663, the petition included an initial plan for the proposed area, which defined the area boundaries, assessment structure, assessment amount, and other details. The initial plan is included as **Exhibit 1** to Proposed Ordinance 8683. If council determines the petition and initial plan meet the criteria set forth in B.R.C. 1981, 8-11-13, then council should adopt Proposed Ordinance 8683, which would formally create the Boulder LBAA (**Attachment A**).

## **ANALYSIS**

City council has six criteria to consider in determining the sufficiency of the petition and associated initial plan:

1. The petition has been circulated and signed in conformity with the applicable requirements.
2. The creation of the LBAA will not unreasonably duplicate or interfere with any municipal improvement already constructed or planned to be constructed within the limits of the LBAA or service provided to the LBAA.
3. If applicable, there is sufficient justification for the proposed LBAA’s boundaries to overlap the boundaries of an existing LBAA.
4. The initial plan and proposed fee or assessments are reasonable and appropriate when compared to the type of improvements or services proposed.
5. The proposed improvements and services provided by the LBAA will confer a general benefit on the LBAA and result in benefits to the LBAA distinct in kind or extent from any benefits provided by the city.
6. The initial plan and the establishment of the LBAA are in the best interest of the city.

The following is staff's analysis of the petition and initial plan to help guide council consideration:

- *Criteria 1. The petition has been circulated and signed in conformity with the applicable requirements.*

The petition was circulated and signed in conformity with the enabling ordinance. The petition was circulated with an initial plan for the proposed LBAA with the required information. The petition was signed by authorized managers of over 90% of the total rooms to be included in the LBAA. This is above the minimum threshold of 50%.

- *Criteria 2. The creation of the LBAA will not unreasonably duplicate or interfere with any municipal improvement already constructed or planned to be constructed within the limits of the LBAA or service provided to the LBAA.*

There are no current city improvements constructed or planned with which the creation of the LBAA would unreasonably duplicate or interfere. The initial plan specifies that the LBAA may invest in improvement programs, such as a transportation program to connect hotels with the conference center and points of interest, infrastructure projects, additional signage and wayfinding, creating unique experiences for visitors, and additional resources for lodging businesses.

Staff accepts the list of potential improvements in the initial plan as additive in nature to any existing services or improvements, current or planned. The city would expect close coordination with the LBAA to ensure that any improvement is not duplicative or interfere with current and future city projects.

- *Criteria 3. If applicable, there is sufficient justification for the proposed LBAA's boundaries to overlap the boundaries of an existing LBAA.*

The proposed area of the LBAA is to be coterminous with the City of Boulder municipal boundaries. The proposed area would expand automatically with any changes to the city's boundaries. There is no current LBAA within city limits, thus this criterion is not applicable.

- *Criteria 4. The initial plan and proposed fee or assessments are reasonable and appropriate when compared to the type of improvements or services proposed.*

The stated goal of the proposed LBAA is to support a pipeline of larger group bookings through enhanced sales and marketing programs. This may include, but is not limited to, leading efforts to general increased larger group bookings, tapping into new markets, converting greater prospective bookings into confirmed business, and promoting slower seasons.

In addition, the LBAA is proposed to support additional "destination" improvement programs, such as, but not limited to, a transportation program to connect hotels with the

conference center and points of interest, infrastructure projects, additional signage and wayfinding, creating unique experiences for visitors, and additional resources for lodging businesses.

The initial plan proposes an annual assessment rate of 2% on gross short-term (“short-term” meaning, in this instance, lodging business stays of 30 consecutive days or fewer) room rental revenue for all lodging businesses within the boundaries of the LBAA. According to the initial plan, this fee is projected to raise approximately \$2.4 million annually and is the projected cost of providing the proposed services and programs.

The city relies on the expertise of Visit Boulder and the judgement of the signators of the petition to determine the reasonableness of the assessment rate in balance with the impact on potential visitors. Based on the high proportion of lodging businesses who signed the petition, it is reasonable to conclude that the local lodging industry generally supports the proposed assessment rate and the Boulder LBAA initial plan.

It is also worth noting that annual expenditures will be reviewed annually by the LBAA Board of Directors and City Council. Because any LBAA created within city limits is a quasi-governmental entity, the LBAA is subject to the Taxpayer’s Bill of Rights (TABOR), the Colorado Open Meetings Law, the Colorado Open Records Act, and the Local Government Budget Law. As a separate and distinct entity from the city, all revenues, debts, and liabilities of the LBAA are those of the LBAA only and do not become financial obligations of the city.

- *Criteria 5. The proposed improvements and services provided by the LBAA will confer a general benefit on the LBAA and result in benefits to the LBAA distinct in kind or extent from any benefits provided by the city.*

The proposed improvements and services are likely to confer a general benefit on lodging businesses included within the Boulder LBAA. As discussed previously, the proposed improvements and services are also likely additive to any existing or proposed city improvements or services. Ordinance 8663 requires that, once formed, the LBAA’s board of directors is composed of members who are electors of the LBAA. This direct representation helps ensure that LBAA activities continue to be of direct benefit to LBAA lodging businesses.

The city also has the option to assign a member of city staff to be a non-voting, *ex officio* director. Proposed Ordinance 8683 assigns the city manager or the city manager’s designee to this position. This will help ensure coordination between the city and the Boulder LBAA so that any investments continue to be non-duplicative of city activities.

- *Criteria 6. The initial plan and the establishment of the LBAA are in the best interest of the city.*

The City of Boulder’s *Sustainability, Equity, and Resilience Framework* established “Economically Vital” as one of the top seven community goals for the organization. The

framework describes this goal as: “A healthy, accessible, resilient, and sustainable economy based on innovation, diversity, and collaboration that benefits all residents, businesses, and visitors.” The definition further prioritizes activities that invest “in amenities, infrastructure, and services that contribute to an exceptional quality of life and attract employees and visitors.”

The Citywide Strategic Plan sets a priority to update the city’s Economic Vitality Strategy and as presented to council in September 2024, a proposed initiative to support broader economic vitality goals was the exploration of a lodging business assessment area.

There is a clear nexus between a healthy local economy and a vibrant visitor industry, especially in Boulder. A healthy local economy provides for our small businesses and allows for the city to make broader investments across the community, given the importance of sales and use taxes to support those investments.

The city has historically provided support to the visitor industry through the allocation of a portion of the accommodations tax (20% of collections are provided to Visit Boulder annually) and the food service tax (100% to Visit Boulder annually). The estimated allocation for 2025 is approximately \$2.7 million.

While this has been an important investment, the industry and Visit Boulder are recognizing a changing landscape both locally, with the opening of a major convention center at the University, and nationally, with increased competition for major events and visitor activities. The city also recognizes the importance of being a national leader in this industry for local businesses and the broader community.

Staff anticipates a continued close and productive partnership with Visit Boulder to ensure that all investments are not only in alignment with this initial plan, but will directly benefit all of the community in the future. Overall, staff believes that petition and plan are in the best interest of the city.

#### *Other Notable Establishment Ordinance Provisions*

If Council agrees with staff’s recommendation that the petition and initial plan meet the criteria set forth in Section 8-11-13, B.R.C. 1981, then Council should also adopt Proposed Ordinance 8683 to formally create the Boulder LBAA.

The differences between the initial plan and the provisions of Proposed Ordinance 8683 are as follows:

- The start date of the Boulder LBAA term and the date when the Boulder LBAA may begin collecting the 2% assessment rate in Proposed Ordinance 8683 is the effective date of Proposed Ordinance 8683. The initial plan shows a start date for the collection of the assessment rate as January 1, 2025 and, for the Boulder LBAA term, as January 1, 2025 or as soon as possible thereafter.

- The initial plan includes a provision for the automatic inclusion of lodging businesses annexed into the city after the establishment of the Boulder LBAA. Proposed Ordinance 8683 includes this provision and adds a provision for the automatic inclusion of new lodging businesses that are created within the Boulder LBAA boundaries after the Boulder LBAA is established (once such new lodging businesses have obtained all necessary permits or licenses to operate within the city). Proposed Ordinance 8683 also includes a provision for the automatic exclusion of lodging businesses within the Boulder LBAA that cease to exist after the Boulder LBAA is established. This automatic inclusion and exclusion is permitted by Section 8-11-11, B.R.C. 1981.
- The section of the initial plan titled “Overdue Charges and Interest” purports to make the penalties and interest applicable to the city taxes also applicable to lodging businesses that do not pay the Boulder LBAA assessment rate on time. Certain provisions of the penalties and interest set forth in the Boulder Revised Code for city taxes are not appropriate for the Boulder LBAA fee. Proposed Ordinance 8683 replaces the section of the initial plan titled “Overdue Charges and Interest” in its entirety with Section 13 of the Proposed Ordinance, “Penalties and Interest for Failure to Pay Assessment.”
- As mentioned above, in addition to appointing the 5-member board of directors as proposed in the initial plan, Proposed Ordinance 8683 assigns the city manager or the city manager’s designee to be a non-voting, ex officio member of the board of directors as permitted by subsection (a) of Section 8-11-15, “Board of Directors,” B.R.C. 1981.

### **NEXT STEPS**

Council can adopt the proposed ordinance or not after the public hearing set for February 6, 2025.

### **ATTACHMENTS**

Attachment A – Proposed Ordinance 8683

Attachment B – Petition to Create the Boulder Lodging Business Assessment Area

ORDINANCE 8683

AN ORDINANCE ESTABLISHING THE BOULDER LODGING  
BUSINESS ASSESSMENT AREA PURSUANT TO CHAPTER 8-11,  
"LODGING BUSINESS ASSESSMENT AREAS," B.R.C. 1981; AND  
SETTING FORTH RELATED DETAILS

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, FINDS AND  
RECITES THE FOLLOWING:

A. The city received a petition ("Petition") for the establishment of the Boulder Lodging Business Assessment Area ("Boulder LBAA") within the boundaries of the City of Boulder on November 21, 2024.

B. Submitted with the Petition was the Boulder LBAA's Initial Plan ("Plan"), which describes the proposed assessment to be levied on lodging businesses to pay for sales, marketing, and destination improvements, and other tourism improvements and tourism activities set forth in the Plan.

C. The public hearing to consider the establishment of the Boulder LBAA has been properly noticed in accordance with the provisions of the Title 8, Chapter 11 of the Boulder Revised Code ("LBAA Enabling Ordinance").

D. Based upon the Petition and other information and evidence presented to the City Council at the duly noticed public hearing on the Petition, Council finds and determines the Petition has been presented to the city in conformity with the LBAA Enabling Ordinance, which authorizes the establishment of lodging business assessment areas within the city, as follows:

I. The Petition has been circulated and signed in conformity with the applicable requirements of the LBAA Enabling Ordinance;

- 1           II.     The creation of the Boulder LBAA will not unreasonably duplicate or  
2                     interfere with any municipal improvement already constructed or planned  
3                     to be constructed within the limits of the Boulder LBAA or service provided  
4                     to the Boulder LBAA;
- 5           III.    The Plan and proposed assessments are reasonable and appropriate when  
6                     compared to the type of improvements or services proposed;
- 7           IV.    The proposed improvements and services provided by the Boulder LBAA  
8                     will confer a general benefit on the Boulder LBAA and result in benefits to  
9                     the Boulder LBAA distinct in kind or extent from any benefits provided by  
10                    the city; and
- 11           V.     The Plan and the establishment of the Boulder LBAA are in the best interest  
12                    of the city.

13                   E. Council further finds and determines that the signatures on the Petition are genuine,  
14                   the signatures of the parties thereon are those of an authorized manager pursuant to the LBAA  
15                   Enabling Ordinance, and such signatures represent lodging businesses having at least fifty percent  
16                   (50%) of the total rooms to be included in the LBAA.

17                   F. First reading of this Ordinance to establish the Boulder LBAA was heard on  
18                   January 9, 2025, at the Council Chambers located at 1777 Broadway, Boulder, CO 80302.

19                   G. On February 6, 2025 at 6:00 PM at the Council Chambers located at 1777  
20                   Broadway, Boulder, CO 80302, the Council held a hearing on the Petition of the Boulder LBAA,  
21                   and the Council determined that the Petition and Initial Plan (“Plan”) satisfy the provisions of the  
22                   LBAA Enabling Ordinance, that the Petition signatures are valid, and that the sufficiency of the  
23                   Petition is final, conclusive, and in the Council’s sole discretion.

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

3 Section 1. City Council hereby makes and adopts the determinations and findings set forth  
4 in the recitals above.

5 Section 2. Creation of the Boulder Lodging Business Assessment Area. The city hereby  
6 establishes the Boulder LBAA. The Boulder LBAA is hereby declared a lodging business  
7 assessment area duly established and organized under the LBAA Enabling Ordinance as a body  
8 corporate and politic, a “district” within the meaning of Article X, Section 20(2)(b) of the Colorado  
9 Constitution, a “local government” within the meaning of Local Government Budget Law of  
10 Colorado at Part 1, Article 1, Title 29 of the Colorado Revised Statutes, and a unit of local  
11 government distinct and separate from the city itself. In accordance with Section 8-11-3, B.R.C.  
12 1981, as a legal entity established entirely through the exercise of the city’s home rule authority,  
13 the Boulder LBAA is not considered a political subdivision of the state.  
14

15 Section 3. Name and Term. The name of this lodging business assessment area shall be the  
16 “Boulder Lodging Business Assessment Area.” The initial term of the Boulder LBAA shall be for  
17 ten (10) years, beginning on the effective date of this Ordinance and ending ten (10) years from  
18 such effective date.

19 Section 4. Purpose of the Boulder LBAA. The purpose of the Boulder LBAA is to impose  
20 an assessment upon the lodging businesses included within the boundaries of the Boulder LBAA  
21 in order to provide tourism services and tourism improvements, which aim to: (a) promote  
22 economic health; (b) promote the health, safety, prosperity, security, and general welfare of the  
23 city’s residents and visitors; and (c) specially benefit the lodging businesses within the boundaries  
24  
25



1 of the Boulder LBAA. These tourism-related services and improvements will be used to increase  
2 demand for room night sales for lodging businesses paying the assessment.

3 Section 5. Initial Plan. The Plan is attached to this Ordinance as Exhibit 1 and contains all  
4 provisions and contents required by Section 8-11-9, B.R.C. 1981. The Plan is hereby adopted and  
5 approved except as may be amended by this Ordinance.

6 Section 6. Powers. Except as otherwise provided or limited in this Ordinance, the Boulder  
7 LBAA shall have all the powers granted to lodging business assessment areas as set forth in the  
8 LBAA Enabling Ordinance and as needed to implement and operate under the Plan. Pursuant to  
9 Section 8-11-6, B.R.C. 1981, the Boulder LBAA shall not have the power to incur bonded debt or  
10 similar indebtedness in any other form without City Council’s prior written consent. There are no  
11 anticipated multiple-fiscal year debt or other financial obligations anticipated to be incurred by the  
12 Boulder LBAA. However, as set forth in Section 8-11-6, B.R.C. 1981, the Boulder LBAA may  
13 enter into contractual multiple-fiscal year debt or other financial obligations within the meaning  
14 of Article X, Section 20 of the Colorado Constitution, subject to the approval of the electors of the  
15 Boulder LBAA or provided that the Boulder LBAA’s payment of such debt or other financial  
16 obligations are subject to annual appropriation by its board of directors. The multiple-fiscal year  
17 debt and other financial obligations of the Boulder LBAA shall not be considered obligations of  
18 the city, and the Boulder LBAA’s fiscal year spending and revenue shall not be considered that of  
19 the city. Nothing in this Ordinance shall affect or impair the control and jurisdiction which the city  
20 has over all property within its boundaries. All powers granted by this Ordinance shall be subject  
21 to such control and jurisdiction.  
22

23 Section 7. Boundaries. The boundaries of the Boulder LBAA shall be coterminous with  
24 the boundaries of the city, as shown on the map attached to the Plan. In accordance with Section  
25

1 8-11-11, B.R.C. 1981, because the Boulder LBAA’s boundaries are coterminous with the city’s  
2 boundaries, future lodging businesses annexed into the city after the establishment of the Boulder  
3 LBAA shall automatically be included within the Boulder LBAA upon annexation.

4 Section 8. Included Businesses. The Boulder LBAA shall initially consist of, and shall  
5 continue to consist of, all lodging businesses in the city. “Lodging business,” for purposes of this  
6 Ordinance and the Boulder LBAA, shall mean a person providing accommodations for lodging  
7 purposes and public accommodations, but shall only include accommodations in a hotel, motel,  
8 inn, or bed and breakfast. “Lodging purposes” has the same meaning as set forth in Chapter 3-3,  
9 “Public Accommodations Tax,” B.R.C. 1981. Future lodging businesses as described in this  
10 section that are created within the boundaries of the Boulder LBAA after the Boulder LBAA has  
11 been established shall be automatically included in the Boulder LBAA after such lodging  
12 businesses have obtained all necessary permits or licenses to begin operating in the city. Lodging  
13 businesses within the boundaries of the Boulder LBAA that cease to exist after the Boulder LBAA  
14 is established shall be automatically excluded from the Boulder LBAA.

15  
16 Section 9. Electors. Because only lodging businesses, as defined in Section 8 of this  
17 Ordinance, are included in the Boulder LBAA, an “elector,” for the Boulder LBAA shall be a  
18 natural person who is a resident of the State of Colorado, is eighteen (18) years of age or older, is  
19 registered to vote in general elections in the State of Colorado, and who: (a) is obligated to collect  
20 the public accommodation tax pursuant to Chapter 3-3, B.R.C. 1981, by virtue of ownership and  
21 operation of a lodging service or public accommodation in the Boulder LBAA, or (b) is the natural  
22 person designated to vote for an entity that is not a natural person and is obligated to collect the  
23 public accommodation tax by virtue of ownership of a lodging service or public accommodation  
24 in the Boulder LBAA. Businesses or persons that are obligated to collect the short-term rental tax  
25

1 pursuant to Chapter 3-15, B.R.C. 1981, shall not be considered electors of the Boulder LBAA  
2 unless and until such businesses or persons are included within the Boulder LBAA pursuant to an  
3 amendment to this Ordinance. The Boulder LBAA board of directors may establish procedures,  
4 requirements, and forms that do not conflict with this Ordinance or the LBAA Enabling Ordinance  
5 for lodging businesses to designate persons to vote on behalf of the lodging business.

6 Section 10. Governance and Board of Directors. The Boulder LBAA shall be governed by  
7 a five-member board of directors, each of whom is an elector of the Boulder LBAA. The following  
8 electors of the Boulder LBAA are hereby appointed as the initial board of directors and shall serve  
9 the terms as indicated below:

- 10 (a) Joe Skeiskal, affiliated with the Limelight Boulder, is appointed for a three-year  
11 term;  
12 (b) Aaron Coburn, affiliated with the St. Julien Hotel & Spa, is appointed for a three-  
13 year term;  
14 (c) Matthew Barton, affiliated with the Hampton Inn & Suites, is appointed for a two-  
15 year term;  
16 (d) David LaTessa, affiliated with Boulder Marriott Hotel, is appointed for a two-year  
17 term; and  
18 (e) Mia Opalka, affiliated with Hotel Boulderado, is appointed for a one-year term.

19  
20 Upon expiration of the terms of the above-listed members of the board of directors, or a director's  
21 seat otherwise becoming vacant, and in accordance with Section 8-11-15, B.R.C. 1981, successor  
22 directors shall be nominated and recommended by the board of directors for appointment to the  
23 mayor, who shall appoint such successor directors. Successor directors recommended by the board  
24 and appointed by the mayor must be confirmed by resolution of City Council for terms of three  
25

1 (3) years unless an appointee is filling a vacant director seat, in which case the appointee shall  
2 finish the term of the vacated seat. In addition, City Council hereby assigns the city manager or  
3 the city manager's designee as a non-voting, *ex officio* director of the Boulder LBAA.

4 Section 11. Assessment. As set forth in the Plan, the Boulder LBAA's annual assessment  
5 rate shall be two percent (2%) of gross revenue from lodging business stays of thirty (30)  
6 consecutive days or fewer for all lodging businesses within the boundaries of the Boulder LBAA.  
7 The revenues derived from the assessment will be used in accordance with the Boulder LBAA's  
8 promotional plan. The Boulder LBAA may begin collecting the assessment on the effective date  
9 of this Ordinance. Assessments shall not be collected on:

- 10
- 11 (a) Lodging business stays of more than thirty (30) consecutive days;
  - 12 (b) United States Government, State of Colorado, its departments and institutions and  
13 the political subdivisions thereof, including the city, when acting in their  
14 governmental capacities and performing governmental functions and activities, and  
15 when the government's obligation is paid for directly to the lodging business by a  
16 purchase card or a draft or warrant drawn on the government account; and
  - 17 (c) Religious, charitable and quasi-governmental organizations but only in the conduct  
18 of their regular religious, charitable and quasi-governmental capacities, only if each  
19 such organization has obtained an exempt organization designation under Section  
20 3-17-4, "Requirements for Tax Exempt Organizations," B.R.C. 1981, and furnishes  
21 the exempt tax license to the person who rents or leases lodging business to the  
22 organization, and only if the organization's obligations have been paid for directly  
23 by it to the assessed lodging business without reimbursement therefor.
- 24  
25

1           Section 12. Collection. The Boulder LBAA may negotiate and contract with the city for  
2 collection of the assessment, including any penalties and interest thereon permitted by this  
3 Ordinance, or the Boulder LBAA may self-collect the assessment or contract with another entity  
4 for such collection.

5           Section 13. Penalties and Interest for Failure to Pay Assessment. Section X, “Overdue  
6 Charges and Interest,” of the Plan is replaced in its entirety with this Section 13. The Boulder  
7 LBAA assessment shall be subject to the following penalties and interest:

- 8           (a)     If any lodging business fails, neglects, or refuses to pay the assessment imposed by  
9                   the Boulder LBAA, or fails to remit the correct amount of assessment or underpays  
10                  the assessment because of negligence or fraud, the Boulder LBAA may make an  
11                  estimate of the assessment due, based on available information, and shall add  
12                  thereto penalties, interest, and any additions to the assessment as set forth in this  
13                  Section 13. The Boulder LBAA shall serve upon the delinquent lodging business  
14                  personally, by first-class mail directed to the last address of the lodging business on  
15                  file with the Boulder LBAA, or at the electronic mail address provided by the  
16                  lodging business, written notice of the LBAA assessment amount, penalties, and  
17                  interest due and payable within thirty (30) calendar days after the date of the notice.  
18                  The lodging business may request a hearing on the assessment before the Boulder  
19                  LBAA.  
20                  (b)     If a lodging business neglects or fails to pay the assessment due to the Boulder  
21                   LBAA on the date prescribed therefor, determined including any extension of time  
22                   for payment, such lodging business is liable to pay the penalty and interest provided  
23                   for in subsection (i) of this Section 13 on such deficiency.  
24                     
25

- 1 (c) If a lodging business fails to pay the assessment due to the Boulder LBAA on the  
2 date prescribed therefor, determined with regard to any extension of time for  
3 payment, due to fraud with the intent to evade paying the assessment, such lodging  
4 business is liable to pay a penalty of one hundred percent (100%) of the deficiency  
5 plus interest collected at a rate of three percent (3%) per month on the amount of  
6 the deficiency from the date the payment was due until paid. The Boulder LBAA  
7 shall assess the penalties by serving upon the lodging business a written notice, as  
8 provided in subsection (a) of this Section 13.
- 9 (d) If the amount of assessment is understated on the assessment invoice or return  
10 because of a mathematical error on the face of the invoice or return, the Boulder  
11 LBAA shall notify the lodging business by issuing a written notice for the amount  
12 of assessment liability exceeding that shown in the invoice or return. The lodging  
13 business has no right of appeal from this notice and invoice or return but shall pay  
14 the assessment due within ten (10) days from the date of the notice.
- 15 (e) If any assessment amount is not paid on or before the twentieth day following the  
16 end of the prescribed reporting period, interest on such amount at the rate imposed  
17 under subsection (i) of this Section 13 shall be paid for the period from such date  
18 until paid. The last date prescribed for payment shall be determined without regard  
19 to any extension of time for payment and shall be determined without regard to any  
20 notice and demand for payment issued, by reason of jeopardy, prior to the last date  
21 otherwise prescribed for such payment.
- 22 (f) For good cause shown, the Boulder LBAA may waive any penalty assessed or  
23 interest imposed under this Section 13.  
24  
25

- 1 (g) Interest prescribed under this Section 13 shall be paid upon notice and demand,  
2 shall be assessed, collected, and paid in the same manner as the assessment to which  
3 it applies, and may be assessed and collected at any time during the period within  
4 which the assessment to which the interest relates may be assessed and collected.
- 5 (h) If any portion of an assessment is satisfied by credit of an overpayment, no interest  
6 shall be imposed on the portion of the assessment so satisfied for any period during  
7 which, if the credit had been allowed, interest would have been allowed to the  
8 lodging business upon the overpayment.
- 9 (i) When interest is required or permitted to be charged under any provisions of  
10 subsections (b) through (e) of this Section 13, there shall be a one-time penalty of  
11 ten percent (10%) and interest of one percent (1%) per month on any assessment  
12 deficiency from the date when payment was due until paid.
- 13 (j) The penalties provided in this Section 13 are not exclusive.

14 Section 14. Dissolution. The term for the Boulder LBAA is not perpetual, and the Boulder  
15 LBAA shall be dissolved at the end of its ten-year term upon the adoption of an ordinance by city  
16 council following notice and a hearing as set forth in Section 8-11-22, B.R.C. 1981. No request  
17 for dissolution shall be required for the dissolution of the Boulder LBAA if the Boulder LBAA is  
18 being dissolved due to the expiration of its term. A request for dissolution may be submitted as  
19 provided in Section 8-11-22, B.R.C. 1981, if there is a request to dissolve the Boulder LBAA prior  
20 to the expiration of its term. At the hearing on dissolution, the Boulder LBAA shall present its plan  
21 for dissolution, and city council shall determine whether such plan is consistent with the LBAA  
22 Enabling Ordinance and this Ordinance and whether it is in the best interests of the city to approve  
23 such plan. The plan for dissolution shall, at a minimum, provide:  
24  
25

- 1 (a) A description of the lodging businesses within the Boulder LBAA;
- 2 (b) A description of the tourism improvements and tourism services being furnished
- 3 by the Boulder LBAA;
- 4 (c) A statement regarding whether the Boulder LBAA’s tourism improvements and
- 5 tourism services will continue to be provided after dissolution and, if so, the plan
- 6 for their continued provision;
- 7 (d) A description of the Boulder LBAA’s plan for the disposition of its real and
- 8 personal property, if any; and
- 9 (e) A statement regarding whether and how all the Boulder LBAA’s contracts and legal
- 10 obligations have been fulfilled.
- 11

12 If the city council cannot make the required findings prescribed by this Section 14, it shall request

13 the Boulder LBAA to revise and resubmit the dissolution plan to address any deficiencies, and

14 council shall continue the dissolution hearing to a time and date certain, at which time city council

15 will make findings regarding the revised dissolution plan. If city council makes the required

16 findings and approves the Boulder LBAA’s dissolution plan, the Boulder LBAA shall be dissolved

17 as set forth in the dissolution plan approved by city council. The ordinance approving the

18 dissolution plan shall, at a minimum, contain the findings required by this Section 14, a declaration

19 by city council that the Boulder LBAA is dissolved as set forth in the approved dissolution plan,

20 and any other provisions city council deems necessary to protect the interests of the public health,

21 welfare, and safety.

22 Section 15. Compliance with the Boulder Revised Code. Except as may be expressly

23 provided in this Ordinance, the Boulder LBAA shall be subject to and comply with all applicable

24 provisions of the Boulder Revised Code, as may be amended, including without limitation the

25



1 LBAA Enabling Ordinance. In the event of any conflicting provisions of the Boulder Revised  
2 Code or this Ordinance and the Plan or any Boulder LBAA Annual Plan, the Boulder Revised  
3 Code and this Ordinance shall control.

4 Section 16. Title Headings. The title headings on each section hereof are for convenience  
5 of reference only and shall not be deemed to expand or limit the scope of any section.

6 Section 17. Severability. If any section, subsection, sentence, clause or phrase or word of  
7 this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a  
8 court of competent jurisdiction, such decision shall not affect the validity of the remaining portions  
9 of this Ordinance. City Council declares that it would have passed and adopted this Ordinance and  
10 each and all provisions irrespective of the fact that any one or more of said provisions may be  
11 declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

12 Section 18. This Ordinance is necessary to protect the public health, safety, and welfare of  
13 the residents of the city, and covers matters of local concern.

14 Section 19. The City Council deems it appropriate that this Ordinance be published by title  
15 only and orders that copies of this Ordinance be made available in the office of the city clerk for  
16 public inspection and acquisition.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 9th day of January 2025.

3  
4  
5 \_\_\_\_\_  
6 Aaron Brockett,  
Mayor

7 Attest:

8  
9 \_\_\_\_\_  
10 Elesha Johnson, City Clerk

11 READ ON SECOND READING, PASSED AND ADOPTED this 6th day of February  
12 2025.

13  
14  
15 \_\_\_\_\_  
16 Aaron Brockett,  
Mayor

17 Attest:

18  
19 \_\_\_\_\_  
20 Elesha Johnson, City Clerk



# BOULDER LODGING BUSINESS ASSESSMENT AREA INITIAL PLAN

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Prepared by  
Civitas



## I. AREA'S NAME

The proposed name of this lodging business assessment area shall be the “Boulder Lodging Business Assessment Area” (Boulder LBAA).

## II. LEGAL AUTHORITY

The Boulder LBAA is to be organized and established as a lodging business assessment area (LBAA) as authorized in Chapter 11 of Title 8 of the Code of the City of Boulder (LBAA Ordinance) to fund improved, enhanced, additional, or otherwise unavailable tourism-related facilities and services that are over-and-above the facilities and services regularly provided by the City of Boulder (City).

## III. PURPOSE OF THE BOULDER LBAA

The purpose of the Boulder LBAA, proposed by Visit Boulder (VB) and Boulder lodging businesses, is to impose an assessment upon the lodging businesses included within the Boulder LBAA, pursuant to the LBAA Ordinance, in order to provide tourism services and tourism improvements, which aim to: (i) promote economic health; (ii) promote the health, safety, prosperity, security and general welfare of the City's residents and visitors; and (iii) specially benefit the lodging businesses within the boundaries of the Boulder LBAA. These tourism-related services and improvements will be used to increase demand for room night sales for lodging businesses paying the assessment.

## IV. HISTORY AND PURPOSE OF LBAA's

LBAA's, generally referred as Tourism Improvement Districts (TID's), are an evolution of the traditional business improvement district. The first TID was formed in West Hollywood, California in 1989. Since then, over 200 United States destinations have followed suit. This includes many states that have adopted the California model. For example, Montana, South Dakota, Washington, Texas and Louisiana have adopted TID laws, as well as municipalities in Colorado, including Denver and Fort Collins.

TID's nation-wide collectively raise over \$500 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Boulder lodging businesses invest in stable, lodging-specific sales & marketing and destination improvement programs.

TID's utilize the efficiencies of private sector operation in the market-based promotion of tourism, and allow lodging business owners to organize their efforts to increase room night sales. Participating Boulder lodging business owners within the TID's will pay an assessment and those funds will be used to provide tourism services and tourism improvements that increase room night sales.

There are many benefits to forming a TID that levies an assessment to the lodging businesses within it:

- Assessment revenues must be spent on tourism services and tourism improvements;
- They are customized to fit the needs of assessed businesses in each destination;
- They allow for a wide range of services;
- They are designed, created and governed by those who will pay the assessment; and
- They provide a stable, long-term funding source for tourism services and tourism improvements.

## V. BOUNDARIES

The boundaries of the Boulder LBAA shall be coterminous with the boundaries of the City of Boulder, the current boundaries of which are shown on the map attached as **EXHIBIT A**. The Boulder LBAA's boundaries shall remain coterminous with the City's boundaries for the duration of the term. Therefore,

future lodging businesses annexed into the City after the establishment of the Boulder LBAA shall automatically be included within the Boulder LBAA's boundaries.

"Lodging business" shall mean a person providing accommodations for lodging purposes and public accommodations, but shall only include accommodations in a hotel, motel, inn or bed and breakfast.

"Lodging purposes" has the same meaning as set forth in Chapter 3-3, "Public Accommodations Tax," B.R.C. 1981, of the City Code.

## **VI. INITIAL TERM**

The Boulder LBAA will have an initial term of ten (10) years beginning on January 1, 2025, or as soon as possible thereafter and ending ten (10) years from its start date.

## **VII. PUBLIC PARTICIPATION**

VB and the lodging businesses proposing the Boulder LBAA have been conducting outreach to the other affected lodging businesses, including one-on-one meetings and group meetings with all lodging businesses proposed to be included in the Boulder LBAA and subject to the assessment, to provide them with consistent updates on the process to establish the Boulder LBAA. To ensure accessibility for such lodging businesses, a Dropbox link will be provided to easily submit their signed petitions, view this Initial Plan, and obtain other informational resources regarding the Boulder LBAA.

## **VIII. PROMOTIONAL PLAN**

The specific tourism services and tourism improvements that the Boulder LBAA will fund have been developed and prioritized by the lodging businesses proposing the establishment of the Boulder LBAA. A summary for each of the Boulder LBAA proposed programs is included below:

### ***Sales, Marketing, and Destination Improvements***

The goal of the proposed Boulder LBAA is to increase funds to support both a healthy pipeline of large groups – and the services they will require in destination – and continue to bring qualified business to established lodging businesses in the meeting, groups and leisure markets. The proposed strategy to apply Boulder LBAA assessment funding is multi-pronged, focused on sales & marketing programs to drive overnight business to assessed businesses. Sales & marketing programs may include, but are not limited to:

- Lead generation to increase RFPs to Boulder assessed lodging businesses;
- Tap into new markets through sales, marketing and advertising programs;
- Convert prospective bookings into confirmed businesses; and
- Promote Boulder's winter/shoulder season.

Because the investment in the quality of a destination impacts its ability to attract visitors, workforce, residents and businesses, there's a remarkable opportunity for the Boulder LBAA to create meaningful destination improvements that will support, elevate and sustain a growing hospitality industry. Destination improvement programs may include, but are not limited to:

- Develop a transportation program to connect hotels with the conference center and points of interest, as well as accommodate transportation solutions for city-wide events;
- Investment in infrastructure projects and amenities that enhance Boulder's appeal to visitors, further driving tourism growth;
- Signage and wayfinding for an improved visitor experience around assessed businesses and points

- of interest;
- Create unique experiences for city-wide conferences and events to attract large groups and create meaningful ways for visitors to engage with Boulder; and
- Provide more access to resources for assessed businesses to establish and promote sustainability initiatives.

### ***Administration & Operations***

The administration & operations portion of the budget shall be utilized for administrative staffing costs, office costs, advocacy, and other general administrative costs such as insurance, legal, and accounting fees.

### ***Contingency/Reserve***

The budget includes a contingency line item to account for uncollected assessments, if any. If there are contingency funds collected, they may be held in a reserve fund or utilized for other program, administration or renewal costs at the discretion of the Boulder LBAA Board (“Board”). Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the Board. Contingency/reserve funds may be spent on Boulder LBAA programs or administrative and renewal costs in such proportions as determined by the Board.

The Board, with City Council approval as required in LBAA Ordinance Section 8-11-17, will determine the annual operating budget each year of the Boulder LBAA’s operations, based upon the priorities set out in this Initial Plan.

## **ESTIMATED COST**

The estimated cost of the Boulder LBAA promotional efforts outlined in this Section is anticipated to be approximately \$2,400,000. A similar promotional efforts budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, and as businesses open and close.

## **IX. FINANCIAL PLAN**

### ***Assessment***

The annual assessment rate is proposed to be two percent (2%) of gross short-term room rental revenue for all lodging businesses, as defined in Section V of this Initial Plan, within the boundaries of the Boulder LBAA. Consistent with Chapter 3-3, 'Public Accommodations Tax,' B.R.C. 1981, of the City Code and based on the benefit received, assessments will not be collected on:

1. Lodging business stays of more than thirty (30) consecutive days;
2. United States Government, State of Colorado, its departments and institutions and the political subdivision thereof including the City, when acting in their governmental capacities and performing governmental functions and activities, and when the government’s obligation is paid for directly to the licensee by a purchase card or a draft or warrant drawn on the government account; and
3. Religious, charitable and quasi-governmental organizations but only in the conduct of their regular religious, charitable and quasi-governmental capacities, only if each such organization has obtained an exempt organization license under Section 3-2-12, "Exempt Institution License," B.R.C. 1981, and furnishes the exempt tax license to the person who rents or leases lodging business to the organization, and only if the organization's obligations have been paid for directly



by it to the assessed lodging business without reimbursement therefor.

Gross short-term room rental revenue means revenue derived from the sale, facilitating, or furnishing of rooms or accommodations by any person or retailer to any person, who for consideration, uses, possesses, or has the right to use or possess any room in a lodging business, for a continuous period of less than thirty days under any concession, permit, right of access, license to use or other agreement, or otherwise.

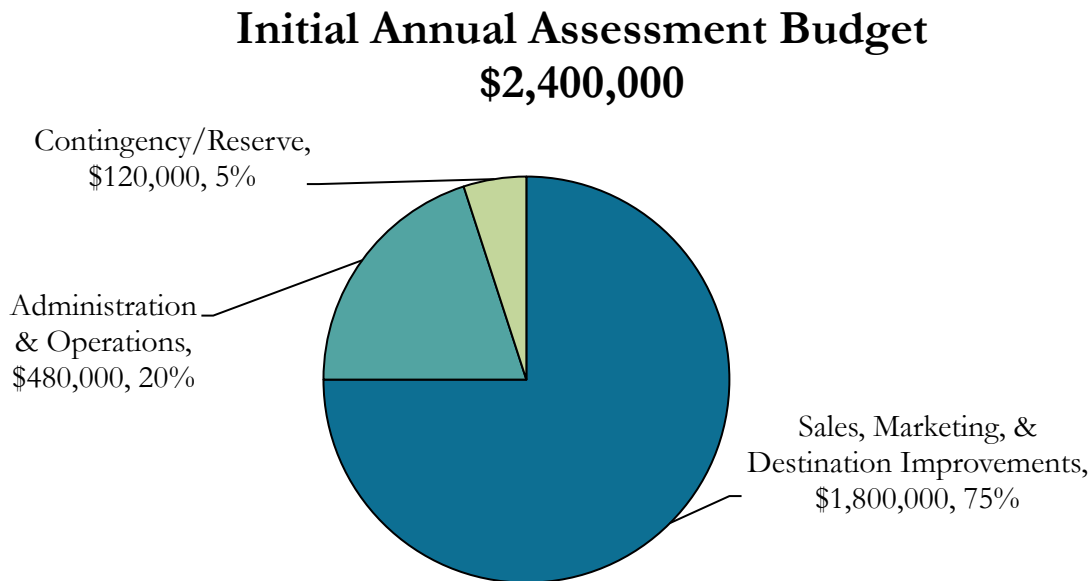
The revenues derived from the assessment will be used in accordance with the promotional plan.

***Financial and Contractual Obligations***

As authorized by the LBAA Ordinance, the Boulder LBAA shall not have the power to incur bonded debt or similar indebtedness in any other form without the City Council’s prior written consent. However, the Boulder LBAA may have the power to enter into contractual multiple-fiscal year debt or other financial obligations within the meaning of Article X, Section 20 of the Colorado Constitution, subject to the approval of the electors of the Boulder LBAA or provided that the Boulder LBAA’s payment of such debt or other financial obligations are subject to annual appropriation by the Board. The multiple-fiscal year debt and other financial obligations of the Boulder LBAA shall not be considered obligations of the City nor shall a Boulder LBAA’s fiscal year spending and revenue be considered that of the City. There are no anticipated multiple-fiscal year debt or other financial obligations anticipated to be incurred by the Boulder LBAA. However, the Boulder LBAA intends to exercise the power authorized in LBAA Ordinance Section 8-11-6 to enter into multiple-fiscal year debt or other financial obligations that are subject to annual appropriation by the Board.

***Estimated Costs***

A budget displaying the reasonably estimated costs of Boulder LBAA tourism improvements and tourism services has been developed. The chart below illustrates the estimated initial annual assessment budget for the initial fiscal year. These activities and allocations will also apply in subsequent years.





Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. Budget categories may require adjustments up or down to continue the intended level of services. The Board will have the authority to re-allocate up to twenty percent (20%) of total service budget between categories. The same activities are proposed for subsequent years. In the event of a legal challenge against the Boulder LBAA, any and all assessment funds may be used for the costs of defending the Boulder LBAA.

Each budget category includes all costs related to providing that service. For example, the sales & marketing budget may include staff time dedicated to overseeing and implementing the sales & marketing program, as well as and other related costs and services. The costs of an individual staff member may be allocated to multiple budget categories.

#### **X. OVERDUE CHARGES AND INTEREST**

The Boulder LBAA assessments are subject to the same penalties and interest as those imposed under Chapter 3-3, 'Public Accommodations Tax,' B.R.C. 1981, of the City Code.

#### **XI. TIME AND MANNER FOR COLLECTING ASSESSMENTS**

The Boulder LBAA's assessment will be implemented beginning January 1, 2025 and will continue for ten (10) years from its start date. If the City Council authorizes the City to do so under an intergovernmental agreement with the Boulder LBAA, the City will be responsible for collecting the assessments (including any delinquencies, penalties and interest) from each lodging business. In such event, lodging businesses shall remit the assessment each month to the City in substantially the same manner and at the same time as the lodging business is required to remit the Public Accommodations Tax to the City.

#### **XII. GOVERNANCE**

The LBAA Ordinance requires the Boulder LBAA to have a governing board consisting of three (3) to seven (7) directors. All board members must be electors. An elector is defined as a natural person who is a resident of the State of Colorado, is eighteen (18) years of age or older and registered to vote in general elections in the State of Colorado and who pays the Public Accommodations Tax within the Boulder LBAA or a natural person designated to vote on behalf of an entity that is not a natural person and pays the Public Accommodation Tax within the Boulder LBAA. Such designation must be in writing, under oath, on a form approved by the Board and filed with the secretary of the Boulder LBAA. Only one (1) such natural person may be designated by the lodging business owner. Upon the expiration of the initial terms, successor directors will be recruited by the Board, which will provide a recommendation for appointment to the mayor. The Board shall nominate appointees by a vote and provide a recommendation for appointment to the mayor.

The mayor will appoint the successor directors, and the successor directors shall be confirmed by city council by resolution for terms of three (3) years unless the appointee is being appointed to finish the term of a director who has left the Board for any reason before the expiration of their term and, in such case, the appointee shall only be appointed to finish the term of the vacated seat. The following persons are proposed to be appointed as the initial directors of the Board:

Board Director	Affiliation
Joe Skeiskal	Area Managing Director, Hiltons on Canyon
Aaron Coburn	General Manager, St Julien Hotel & Spa
Matthew Barton	General Manager, Hampton Inn & Suites by Hilton
David LaTessa	General Manager, Boulder Marriott Hotel
Mia Opalka	Director of Sales and Marketing, Hotel Boulderado

### **XIII. MANAGEMENT STRUCTURE**

The Boulder LBAA intends to enter into an agreement with VB to deliver the programs and services contemplated under this Initial Plan and to manage the Boulder LBAA. VB is a 501(c)(6) organization that supports the development of Boulder.

### **XIV. CITY SERVICES**

The Boulder LBAA is intended to provide supplemental funding and services and not to supplant existing funding or services. After establishing the Boulder LBAA, the City shall not decrease the level of publicly funded tourism promotion services existing prior to the creation of the Boulder LBAA.

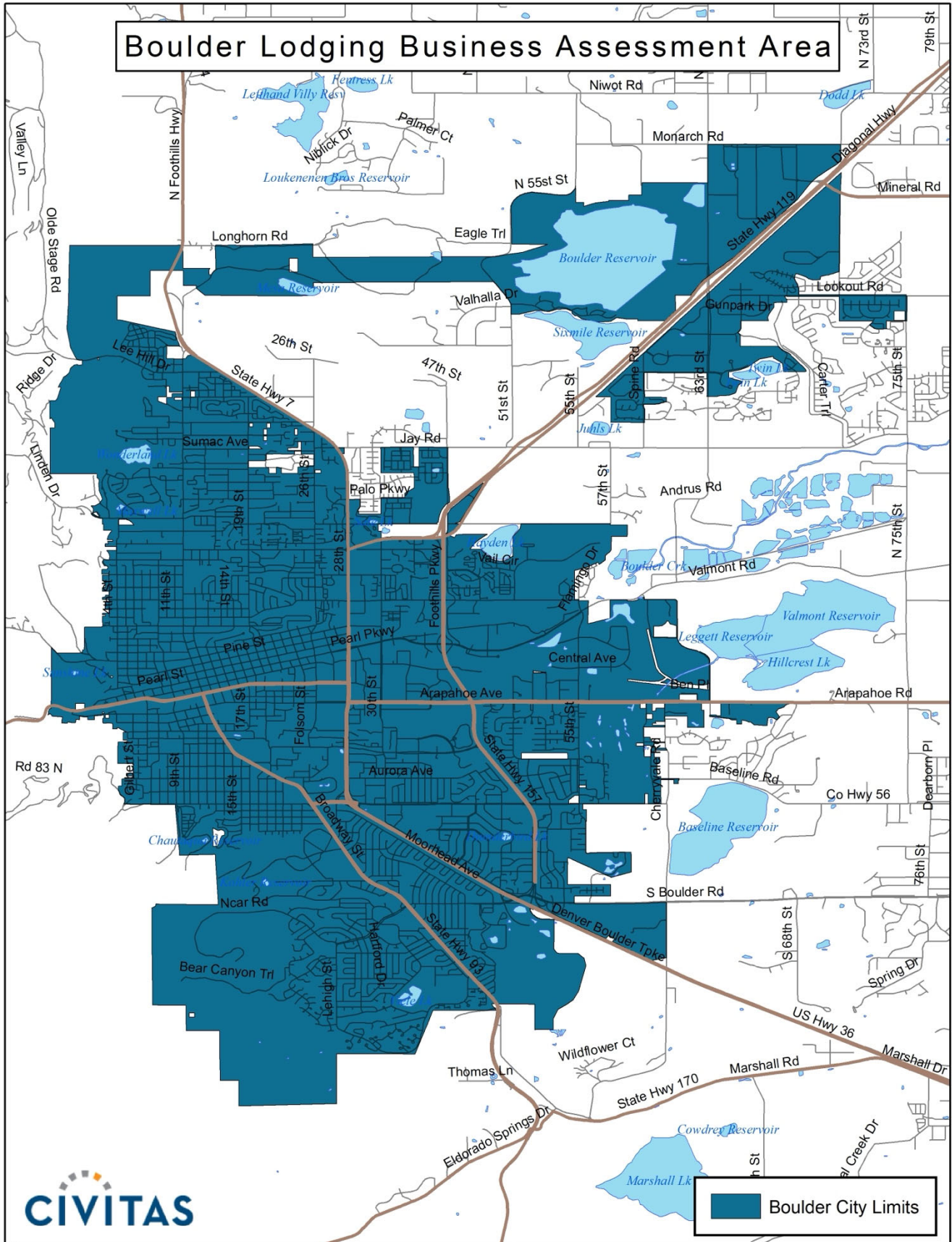
### **XV. ANNUAL PLAN AND OPERATING BUDGET**

Pursuant to 8-11-17 of the LBAA Ordinance, the Board is required to file an annual plan and operating budget for the ensuing year. This annual plan and operating budget must be submitted to the City Manager by January 5 of each year. The annual plan and operating budget shall be subject to City Council approval each year and shall meet the requirements of local government budgets set forth in section 29-1-103, Colorado Revised Statutes and all relevant requirements of the LBAA Ordinance.

### **XVI. CONCLUSION**

With the submission of this Initial Plan, VB and participating lodging businesses hereby request the City Council of the City of Boulder to establish the Boulder LBAA pursuant to the LBAA Ordinance.

EXHIBIT A  
Boundary Map



**PETITION TO THE CITY OF BOULDER  
TO ESTABLISH THE BOULDER LODGING BUSINESS ASSESSMENT  
AREA**

We petition the City of Boulder (City) to initiate proceedings to establish a Lodging Business Assessment Area (LBAA) in accordance with Title 8 of Chapter 11 of the City Code (LBAA Ordinance) for the purpose of providing tourism services and tourism improvements as described in the proposed Initial Plan attached as Exhibit A.

<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
<i>Basecamp Boulder</i>	<i>50</i>	<i>Basecamp Hotels</i>

\*Lodging business owners paying the proposed Boulder LBAA assessment shall be responsible for self-reporting the total number of rooms.

I state, under penalty of law that, to my knowledge and belief, the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder.

*Cameron Bralberg*  
Owner / Owner Representative Name (printed)

*General Manager*  
Title

*Cameron Bralberg*  
Owner/Owner Representative Signature

*11/14/2024*  
Date



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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
BOULDER MARRIOTT	165	SUMMIT HOTELS

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<u>DAVID LATESSA</u>	<u>GM</u>
Owner / Owner Representative Name (printed)	Title

	<u>11-14-24</u>
Owner/Owner Representative Signature	Date

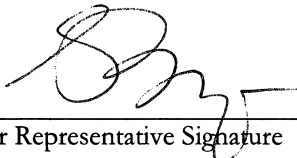
**PETITION TO THE CITY OF BOULDER  
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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
Colorado Chautauqua	134	Colorado Chautauqua Association

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Shelly Benford	CEO
Owner /Owner Representative Name (printed)	Title
	11/15/2024
Owner/Owner Representative Signature	Date

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TO ESTABLISH THE BOULDER LODGING BUSINESS ASSESSMENT  
AREA**

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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
<u>COMFORT INN &amp; SUITES</u>	<u>105</u>	<u>JHW MOTELS, INC.</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

\*Lodging business owners paying the proposed Boulder LBAA assessment shall be responsible for self-reporting the total number of rooms.

**I state, under penalty of law that, to my knowledge and belief, the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder.**

Bridget Stanton General Manager  
Owner / Owner Representative Name (printed) Title

Bridget Stanton 11/14/24  
Owner / Owner Representative Signature Date

**PETITION TO THE CITY OF BOULDER  
TO ESTABLISH THE BOULDER LODGING BUSINESS ASSESSMENT  
AREA**

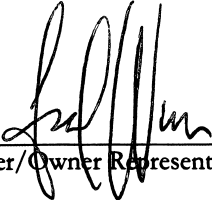
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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner / REPRESENTATIVE</u>
COURTYARD BOULDER	149	MARRIOTT INTERNATIONAL
RESIDENCE INN BOULDER	128	MARRIOTT INTERNATIONAL

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Fred Warren General Manager  
 Owner / Owner Representative Name (printed) Title

 11.15.24  
 Owner / Owner Representative Signature Date





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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
Embassy Suites Boulder	204	Orchim, LLC
Hilton Garden Boulder	172	Orchim, LLC

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<u>Joseph Steiskal</u>	<u>Area Managing Director</u>
Owner /Owner Representative Name (printed)	Title

	<u>11/14/24</u>
Owner/Owner Representative Signature	Date

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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
Hampton Inn + Suites	100	McDermid Management

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<u>Matthew Barton</u>	<u>General Manager</u>
Owner / Owner Representative Name (printed)	Title

<u></u>	<u>11/15/2024</u>
Owner / Owner Representative Signature	Date

**PETITION TO THE CITY OF BOULDER  
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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
Homewood Suites by Hilton Boulder	112	4950 Baseline Road, LLC

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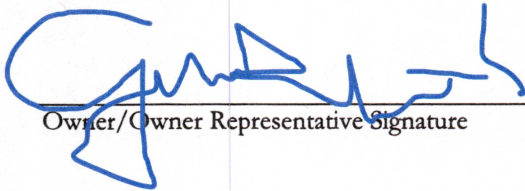
**I state, under penalty of law that, to my knowledge and belief, the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder.**

Giuseppe De Santis

General Manager

Owner /Owner Representative Name (printed)

Title



Owner/Owner Representative Signature

11/20/2024

Date

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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
HOTEL BOULDERADO	160	FRANK DAY

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<u>Caughton Smith</u>	<u>PRESIDENT</u>
Owner /Owner Representative Name (printed)	Title

<u>[Signature]</u>	<u>11/21/2024</u>
Owner/Owner Representative Signature	Date

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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
Ryatt Place Boulder	150	SPRINT HP Boulder Open LLC

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NAVARRO EM  
 Owner / Owner Representative Name (printed) Title

[Signature] 11/21/24  
 Owner / Owner Representative Signature Date

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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
<u>Linelight Boulder</u>	<u>252</u>	<u>Aspen Hospitality</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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I state, under penalty of law that, to my knowledge and belief, the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder.

Angela Blackstock                      Director of Sales & Marketing  
Owner / Owner Representative Name (printed)                      Title

Angela Blackstock                      11/15/24  
Owner / Owner Representative Signature                      Date

**PETITION TO THE CITY OF BOULDER  
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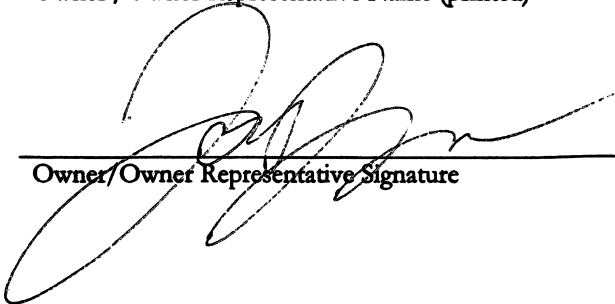
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<u>Lodging Business</u>	<u>Number of Rooms*</u>	<u>Business Owner</u>
Residence Inn Boulder Canyon Boulderland	155	Stonbridge Companies
_____	_____	_____
_____	_____	_____
_____	_____	_____

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I state, under penalty of law that, to my knowledge and belief, the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder.

LAURA BROOKS GENERAL MANAGER  
Owner / Owner Representative Name (printed) Title

 11.15.24  
Owner / Owner Representative Signature Date









**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Discussion and request for nod of 5 to revisit the City's investment portfolio

**PRIMARY STAFF CONTACT**

Joel Wagner, Interim Chief Financial Officer

**ATTACHMENTS:**

**Description**

- **Item 8A - Discussion and request for a "Nod of 5" to revisit the City's investment portfolio**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 6, 2025**

**AGENDA TITLE**

Discussion and request for a “Nod of 5” to revisit the City's investment portfolio

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Chris Meschuk, Deputy City Manager  
Teresa Taylor Tate, City Attorney  
Joel Wagner, Interim Chief Financial Officer  
Anne Penney, Controller

**EXECUTIVE SUMMARY**

This agenda item is a request to revisit the city’s investment policy to add an excluded industry. Because this request may require substantial staff work, under the council’s procedures, a “Nod of Five” is required. The Investment of city funds is guided by city code, located in 2-10, B.R.C., 1981.

While the level of effort depends on the scope of the analysis as directed by council, staff estimates this analysis will likely take 2-7 hours of staff time per week for several months. There may be additional analysis needed by the city’s investment advisor beyond the scope of our existing contract, which staff estimates could be approximately \$5,000. Staff that would support this analysis are also working on the stabilization of the Workday financials implementation, and year-end close and financial reporting. Addition of this analysis may delay these other work plan activities.

If council gives a nod of 5 to proceed with this analysis, staff requests direction from council on the desired scope of analysis and potential exclusion(s) to explore.

## **BACKGROUND**

Investment of city funds is guided by [BRC Title 2, Chapter 10](#). The stated investment objectives in section 2-10-4 are:

- (a) Preservation of capital and protection of investment principal;
- (b) Maintenance of sufficient liquidity to meet anticipated cash flows;
- (c) Diversification to avoid incurring unreasonable market risks;
- (d) Compliance with any city council directive related to socially or environmentally responsible investing;
- (e) Maximization of funds available for investment;
- (f) Maximization of investment earnings consistent with the objectives outlined in this section and within the provisions of this chapter; and
- (g) Conformance with all applicable city, state and federal law.

The Investment Policy was last updated in 2017, and included substantial revisions to the policy, including modifications to minimum credit quality for corporate and bank debt, addition of municipal and state debt, and other administrative changes. The process to amend the investment policy in 2017 included a study session ([memo](#)) and public hearing ([memo](#)) and included significant analysis of potential effects of changes in eligible investments to projected returns.

Furthermore, section 2-10-10 Social Responsibility states that “Investments shall be made in accordance with city ordinances and resolutions concerning social or environmental issues”. In February 2017, council provided guidance to exclude investments in the following sectors:

- Fossil fuels inclusive of pipeline construction and extraction
- Firearms or weapons not used in national defense
- Tobacco companies
- Firms related to mass incarceration/private prisons/detention centers

## **ANALYSIS**

This agenda item is to consider a nod of five to ask staff to perform analysis to support a council recommendation to amend the investment policy. The request was to consider excluding all firearms or weapons, whereas the current language allows for investment in those sectors if used in national defense.

The level of effort required of staff is dependent on many factors, such as:

- The number and types of changes requested (e.g. new industry exclusions vs. changes to allowed investment types).

- The amount of public engagement.
- The amount of policy research and financial analysis desired by council.

Based upon the 2017 process, staff estimates that a revision of the investment policy would need a minimum of two council meetings; one study session (or matters item) to get council guidance, and one public hearing. Staff time is dependent upon council direction, but estimates range from 2-4 hours/week for a limited review of sectors and yield analysis to 5-7 hours/week for a more comprehensive review and analysis. Staff that would support this analysis is also working on the stabilization of the Workday financials implementation, and year-end close and financial reporting. Addition of this analysis may delay these other work plan activities.

A professional investment advisor would be needed to help with yield analysis and advice on potential changes to the policy. The city uses a professional investment advisor to oversee its current investment portfolio. These services are typically provided as part of a standard investment management agreement, but may cost up to \$5,000 if the city were to seek outside support.

#### **NEXT STEPS**

If council directs staff to begin this work, staff will request direction on the scope of the project and then begin community engagement (if any), and schedule subsequent council discussions at upcoming meetings.



**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

Executive Session Action Items

**PRIMARY STAFF CONTACT**

NA

**ATTACHMENTS:**

**Description**

No Attachments Available



**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**BOARDS AND COMMISSIONS ITEM**

12.04.24 EAB Minutes

**PRIMARY STAFF CONTACT**

Jonathan Koehn, Director of Climate Initiatives

**ATTACHMENTS:**

**Description**

- ▣ **12.04.24 EAB Minutes**



# CITY OF BOULDER COLORADO

## BOARDS AND COMMISSIONS

### MEETING SUMMARY

NAME OF BOARD/COMMISSION: Environmental Advisory Board

DATE OF MEETING: December 4, 2024

NAME/TELEPHONE OF PERSON PREPARING SUMMARY:  
Heather Sandine, 303-441-4390

#### NAMES OF MEMBERS, STAFF AND INVITED GUESTS:

Environmental Advisory Board Members Present: Brook Brockett, Hernan Villanueva, Hannah Davis, Anie Roche

Environmental Advisory Board Members Absent: Alex Bothwell,

City Staff Members & Presenters Present: Jonathan Koehn, Heather Sandine, Yael Gichon, Kate Galbo

#### 1. CALL TO ORDER

- A. **B. Brockett** declared a quorum and called the meeting to order at 6:02 PM.
- B. **H. Sandine** reviewed the meeting protocols.

#### 2. APPROVAL OF MINUTES

- A. On a motion by **B. Brockett**, seconded by **H. Davis** the Environmental Advisory Board (EAB) approved the November 4, 2024 meeting minutes.

#### 3. PUBLIC PARTICIPATION

- A. P. Culnan spoke about the city's climate work and encouraged the EAB to seek more information about how the city intends to pay for work to meet the climate goals.
- B. L. Segal spoke about her recent experience having work done on her home through the CARE program.

#### 4. DISCUSSION ITEMS

##### A. Climate Action Plan Update

##### i. Overview

- **J. Koehn, Y. Gichon** and **K. Galbo** presented the update to the Climate Action Plan (CAP), identified as the 11<sup>th</sup> council priority.
- **J. Koehn** provided an overview of the CAP and the city's climate goals. Emissions have been reduced 44% since 2005 and 24% since 2018 (5% annually), but a 7% annual reduction is needed to meet 2030 goals. The update is not a re-write but improves accessibility, aligns goals with current priorities, and integrates mitigation, resilience, adaptation, and equity. Solar access will be emphasized in updated goals.
- **K. Galbo** shared that the update highlights local climate risks, summarizes current climate science, and focuses on six risks: heat, wildfire, drought, extreme weather, flooding, and air quality, with initial resilience plans.

- **Y. Gichon** highlighted the update's stronger equity focus, recognizing that climate impacts affect community members unequally. A new overarching climate equity goal will be similar to the Federal Justice40 model, adapted locally. She emphasized the city's role in systems change and regional collaborations that secured nearly \$1 billion for electrification, along with other systems change initiatives led by the city.
  - **J. Koehn** clarified that the council presentation on 12/19 will outline the CAP's direction, not the final plan. Next steps include an amended resolution on resilience and equity goals in spring 2025 and a full CAP launch with ongoing engagement in late spring 2025.
- ii Questions for the EAB:
- Does EAB have any questions regarding the purpose, content or implementation of the update to the Climate Action plan
  - What does a successful update to the CAP look like for EAB members?
- iii Discussion
- **H. Villanueva** asked how the CAP aligns with the Sustainability Equity and Resilience (SER) Framework, Boulder Valley Comprehensive Plan (BVCP), department strategic plans, and other city plans. He also wanted to know if methods for achieving goals will be included, the data sources informing the plan, and how emergent changes like AI energy demands are considered when not reflected in historic data.
  - **J. Koehn** explained that the CAP will provide a comprehensive overview of climate-related elements within department plans and will guide and inform other plans. Xcel Energy submits load forecasts to the Public Utilities Commission, which are public. These forecasts and renewable use models inform the CAP's overall impact.
  - **K. Galbo** added that emissions are forecasted by sector.
  - **H. Davis** noted interest in land use, asking where it fits in the CAP and how internal policies on density changes can be culturally normed.
  - **J. Koehn** said land use and building density are being discussed. Scientific evidence will guide land use planning discussions, particularly in the comp plan, where tradeoffs will be explored with better data than in the past.
  - **B. Brockett** highlighted the need to hold corporations accountable, suggesting Boulder could leverage current momentum to push for impactful change given limited federal action. High living costs create financial risks, and staff should explore pressure points to hold corporations accountable.
  - **J. Koehn** mentioned the ongoing lawsuit against ExxonMobil and Suncor, which could expose what companies have known about their climate impacts. Cities bare real costs to repair damages caused by climate change, and companies should pay their share.
  - **H. Davis** would like to see the CAP include clarity around its intended purpose, the hierarchy between it and other plans, and actions individuals can take. She also recommended explaining funding sources and uses.
  - **J. Koehn** emphasized the growing financial risks, such as underinsured homes, and the need for recommendations to strengthen financial resilience.

- **B. Brockett** added that high living costs create financial risks and urged exploring pressure points to hold corporations accountable.

**5. Old Business/ Updates**

A. None

**6. Matters from the Environmental Advisory Board, Staff, City Manager and City Attorney**

A. Consideration of a motion to approve a leave of absence for Alex Bothwell from Nov. 1, 2024 through Jan. 31, 2025.

i On a motion by **B. Brockett**, seconded by **A. Roche**, the board unanimously approved **A. Bothwell's** leave of absence November 1 through January 31.

B. Board Recruitment Announcements

i Recruitment for boards and commissions will be December 16 through January 31.

C. Board Chair Discussion

i The board will decide at their next meeting who will be the board chair. Alex would be the next senior member. B. Brockett will reach out to her to gauge her interest. Will formalize board chair and vice chair appointments in January.

**7. DEBRIEF MEETING/ CALENDAR CHECK**

A. Council Calendar Preview

i The board identified the Xcel partnership update as an item of interest. **A. Roche** requested information on the history of municipalization efforts and partnership prior to the Xcel partnership update meeting.

B. The next EAB meeting is scheduled for January 8 at 6 PM.

**8. ADJOURNMENT**

A. The Environmental Advisory Board adjourned at **7:47 PM**.

Approved:



Chair

1/8/25

Date





**COVER SHEET**

**MEETING DATE**

**February 6, 2025**

**AGENDA ITEM**

World Migratory Bird Day Declaration

**PRIMARY STAFF CONTACT**

Megan Valliere, City Council Program Manager

**ATTACHMENTS:**

**Description**

- ▣ **World Migratory Bird Day Declaration**



**A Declaration of the City of Boulder Declaring May 17, 2025, World  
Migratory Bird Day  
May 17, 2025**

**Whereas**, Migratory birds are some of the most beautiful and easily observed wildlife that share our community; and

**Whereas**, Birds bring joy and inspiration to people and are integral to our ecosystems, dispersing seeds, regulating insects, and fostering biodiversity; and

**Whereas**, Migratory birds rely on the parks, yards, riparian areas, ponds, and grasslands of Boulder for nesting, feeding, and roosting; and

**Whereas**, Migratory birds are declining throughout the Americas, as are other animals, including insects that are a crucial food source, due to facing a growing number of threats on their migration routes and in both their summer and winter habitats; and

**Whereas**, Boulder, recognizing that birds are vital components of our ecosystems, designated the city as a Bird Protection Sanctuary (6-1-33), protecting them since 2002 from intentional poisoning and harm; and

**Whereas**, Community members enthusiastic about birds, informed about the threats they face, and empowered to help address those threats can directly contribute to maintaining healthy bird populations; and

**Whereas**, Since 1993, World Migratory Bird Day has become a primary vehicle for focusing public attention on the hundreds of species that travel between our community and other areas of North, South, and Central America; and

**Whereas**, Hundreds of thousands of people will observe World Migratory Bird Day, gathering in town squares, community centers, schools, parks, nature centers, and wildlife refuges to learn about birds, take action to conserve them, and simply to have fun; and

**Whereas,** World Migratory Bird Day is not only a day to foster appreciation for wild birds and to celebrate and support migratory bird conservation, but also a call to action.

**Therefore be it resolved** by the City Council of Boulder, Colorado that May 17, 2025, be designated as

**World Migratory Bird Day**

with a celebration at Boulder's annual Migratory Birds Festival.



---

Aaron Brockett, Mayor

