



**WESTMINSTER  
COLORADO**

**JUNE 7, 1999  
7:00 P.M.**

**AGENDA**

**NOTICE TO READERS:** City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given.

**Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 5) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.**

- 1. Pledge of Allegiance Boy Scout Troop 324**
- 2. Roll Call**
- 3. Consideration of Minutes of Preceding Meetings**
- 4. Presentations**
  - A. Presentation of 25 Years of Service Awards to Bob Booze, Art Cornay and Steve Schuyler
  - B. Presentation of 25 Years of Service Award to Alan Miller
- 5. Citizen Communication (5 minutes or Less in Length)**
- 6. Report of City Officials**
  - A. City Manager's Report
- 7. City Council Comments**

**The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.**

- 8. Consent Agenda**
  - A. Purchase of Articulated Loader to Denver East Machinery Company for \$36,825
  - B. Purchase of 2 Pup Trailers to Transwest Trailers Inc for \$40,000
  - C. Purchase of 1.1 acres of Open Space for \$130,000 in the Big Dry Creek Corridor at 99<sup>th</sup> Avenue and Ammons Circle
  - D. Design Contract for Westminster Boulevard Extension from Harlan Street at 95<sup>th</sup> Avenue across US 36 to Centennial Engineering Inc for \$472,000
  - E. Westminster Promenade West Parking Lot Design Contract to Martin/Martin Inc for \$131,410
  - F. Councillor's Bill No. 23 on second reading re Kohl's Department Store Amended Assistance Package for an additional \$50,000 in assistance (Hicks-Smith)
  - G. CB No. 24 on second reading approving the annexation agreement for the Zehnder property located north of 96<sup>th</sup> Avenue, east of Woman Creek Reservoir (Merkel-Dixion)
  - H. CB No. 25 on second reading annexing the Zehnder property (Merkel-Dixion)
  - I. CB No. 26 on second reading zoning the Zehnder property O-1 (Merkel-Dixion)
  - J. CB No. 27 on second reading amending the Comprehensive Land Use Plan to include the Zehnder property as private parks and open space (Merkel-Dixion)
  - K. CB No. 28 on second reading Supplemental Appropriation for Contracted Construction Plan Review Services for \$100,000 (Merkel-Allen)
  - L. CB No. 29 on second reading appropriating \$500,000 for Big Dry Creek Trail project (Smith-Allen)
  - M. CB No. 30 on second reading re 1998 carryover funds into the 1999 budgets (Merkel-Hicks)

**9. Appointments and Resignations**

None

**10. Public Hearings and Other New Business**

- A. TABLED - Intergovernmental Agreement with City of Arvada addressing issues of Northwest Parkway, cleanup of Rocky Flats, annexation boundaries, revenue sharing and Standley Lake Regional Park
- B. Public Meeting re 2000 Budget to receive public input
- C. Public Hearing re Adult Business Licensing and Regulations
- D. Councillor's Bill No. 31 re Adult Business Licensing and Regulations
- E. Resolution No. 39 re Category B-3 Service Commitment Award to Westcliff Apartment Project
- F. Resolution No. 40 re Stewart Property Annexation Finding of Compliance for 40 acres located south of 108<sup>th</sup> Avenue between Wadsworth Boulevard and Wadsworth Parkway
- G. Councillor's Bill No. 32 re 1999 Community Development Block Grant Funding Appropriation of \$666,000

**11. Business and Passage of Ordinances on Second Reading**

None

**12. Citizen Presentations (5 Minutes + in Length) & Miscellaneous Business**

- A. City Council
- B. Request for Executive Session

**13 Adjournment**

**NON-LAND USE PUBLIC HEARINGS,**

THE FOLLOWING RULES SHALL APPLY:

Persons wishing to speak may do so whether in favor or opposed. No specified order of those in favor or in opposition will be used.

The presiding officer shall conduct the hearing in such manner as to provide for freedom of speech and expression of opinion of all persons speaking, subject only to the limits of courtesy and respect to other persons and their opinion as long as the subject is related to the public hearing notwithstanding the presiding officer has the authority to limit debate to a reasonable length of time to be equal for both positions.

Any person speaking may be questioned by members of Council or by the City Administration.

The presiding officer shall rule upon all disputed matters of procedure, unless, on motion duly made, he is overruled by a majority vote of Council members present.

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, JUNE 7, 1999 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE:

Members of Boy Scout Troop #324 led Council, Staff and the audience in the Pledge of Allegiance.

ROLL CALL:

Present at roll call were Mayor Heil, Mayor Pro Tem Merkel and Councillors Atchison, Dixon, Hicks and Smith. Also present were William Christopher, City Manager; Martin McCullough, City Attorney; and, Michele Kelley, City Clerk. Absent was Councillor Allen.

CONSIDERATION OF MINUTES:

A motion was made by Merkel and seconded by Hicks to accept the minutes of the meeting of May 10, 1999 with no additions or corrections. Councillor Atchison requested to abstain as he was not present at the meeting. The motion carried with 5 aye votes and Councillor Atchison abstaining.

PRESENTATIONS:

Mayor Heil presented \$2,500 checks to Bob Booze, Utilities Services Supervisor, Art Cornay, Plant Operator IV and George Bosser accepting the check for Steve Schuyler, Maintenance worker, in recognition of their 25 years of service to the City.

Mayor Heil presented a \$2,500 check to Assistant City Manager Alan Miller in recognition of his 25 years of service to the City.

REPORT OF CITY OFFICIALS:

City Manager Bill Christopher reminded everyone present that the Study Sessions will be June 14 and 21, and that the next City Council meeting will be June 28. He also stated that City offices will be closed Monday, July 5 and there will be no Study Session on that date.

CONSENT AGENDA:

The following items were considered as part of the Consent Agenda: Purchase of Articulated Loader – Award the bid for the articulated loader to the sole bidder, Denver East Machinery Company, in the amount of \$36,825 because it is in the best interest of the City, and charge the expense to the appropriate 1999 Public Works & Utilities Water Resources Division Budget account; Purchase of Two Pup Trailers – Award the bid for the two pup trailers to the low bidder, Transwest Trailers, Inc, in the amount of \$40,000 and charge the expense to the appropriate 1999 Public Works & Utilities Department Water Fund Budget account; Purchase of Open Space – Big Dry Creek Corridor – Authorize the City Manager to sign all the necessary documents necessary to achieve the purchase for open space and other public purposes, approximately 1.1 acres of land at a cost of \$130,000 from the Susmarski family, and charge the expense to the Open Space Fund; Design Contract for Westminster Boulevard Extension - Authorize the City Manager to sign a contract for final design for the Westminster Boulevard Extension with Centennial Engineering, Inc. in an amount not to exceed \$472,000 because it is in the City's best interests; authorize \$71,000 for use as a project contingency and charge these expenses to the appropriate project account in the General Capital Improvement Fund; Westminster Promenade West – Parking Lot Design Contract - Authorize the City Manager to execute an engineering design contract with Martin/Martin, Inc. in the amount of \$131,410 for the Westminster Promenade West Parking Lot project because it is in the best interests of the City; authorize a project contingency of \$20,000 and charge the expense to the appropriate project account in the General Capital Improvement Fund;

Councillor's Bill No. 23 – Kohl's Department Store Amended Assistance Package; Councillor's Bill No. 24 – Zehnder Property Annexation Agreement; Councillor's Bill No. 25 – Zehnder Property Annexation; Councillor's Bill No. 26 – Zehnder Property Zoning; Councillor's Bill No. 27 – Comprehensive Land Use Plan Amendment; Councillor's Bill No. 28 – Contracted Construction Plan Review Supplemental Appropriation; Councillor's Bill No. 29 – Big Dry Creek Trail Project Appropriation; and Councillor's Bill No. 30 – 1998 Carryover Funds Appropriation. The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. There was no request.

A motion was made by Atchison and seconded by Dixon to adopt the Consent Agenda items as presented. The motion carried unanimously.

PUBLIC MEETING ON 2000 CITY BUDGET:

Patricia Crossen, 10607 Kipling Way addressed Council requesting monies from Capital Improvement Fund to be used for neighborhood traffic mitigation in 2000 and future years. Patricia Thomas, 9215 Stuart Street addressed Council regarding the increase in noise level in the past few years along 92<sup>nd</sup> Avenue, from Sheridan Boulevard to Raleigh Street. Requested 8 foot or higher fence to block traffic noise. Suggested using the fencing that is being replaced by CDOT along US 36.

PUBLIC HEARING ON ADULT BUSINESS LICENSING AND REGULATIONS:

At 7:40 P.M. the meeting was opened to a public hearing on the proposed ordinance which provides for the licensing and regulation of adult businesses in the City. Barry Arrington, Esq., addressed Council on the regulation of adult businesses which impacts constitutionally protected expressive activity and answered questions from Council. Assistant City Attorney Vicky Bunsen entered 16 studies from various cities that identify higher rates of crimes against people and property, as well as decreased property values, in the vicinity of adult businesses. No one spoke in opposition to the proposed ordinance. At 7:58 P.M. the public hearing was declared closed.

ORDINANCE NO. 2687 – ADULT BUSINESS LICENSING AND REGULATIONS:

A motion was made by Hicks and seconded by Dixon to adopt Councillor's Bill No. 31 as an emergency ordinance amending the Westminster Municipal Code by adopting a new chapter 23 to Title V, providing for the licensing and regulation of adult businesses and providing additional health and safety regulations for adult business, and amending section 11-4-13. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 39 – CATEGORY B-3 SERVICE COMMITMENT AWARD:

A motion was made by Atchison and seconded by Dixon to adopt Resolution No. 39 awarding Category B-3 Service Commitments to the Westcliff Apartment project as part of the 1999 Category B-3 competition based on 50 Service Commitments in 2000, 75 Service Commitments in 2001 and 70 Service Commitments in 2002. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 40 – STEWART PROPERTY ANNEXATION PETITION:

A motion was made by Merkel and seconded by Dixon to adopt Resolution No. 40 accepting the annexation petition submitted by Bonnie Stewart and make the findings required by State Statute on the sufficiency of the petition; and set the date of August 9, 1999 for the annexation hearing. Upon roll call vote, the motion carried unanimously.

COUNCILLOR’S BILL NO. 32 – 1999 CDBG FUND APPROPRIATION:

A motion was made by Dixon and seconded by Atchison to pass Councillor’s Bill No. 32 on first reading appropriating 1999 Community Development Block Grant funds in the amount of \$666,000. John Carpenter, Director of Community Development, and Galen Requist, Community Development Programs Coordinator, were present to address Council. Upon roll call vote, the motion carried unanimously.

ADJOURNMENT:

The meeting was adjourned at 8:06 P.M.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Presentation of 25 Years of Service Awards

**Prepared by:** Andy Mead, Acting Utilities Operations Manager  
George Bosser, Water Treatment Facility Supervisor

**Introduction**

City Council action is requested to present a \$2,500 check to Bob Booze, Utilities Services Supervisor, Art Cornay, Plant Operator IV, and Steve Schuyler, Maintenanceworker, in recognition of their 25 years of service to the City of Westminster. Funds have been specifically allocated in the 1999 Utilities Operations Budget for this expense.

**Summary**

All three employees started their careers with the City with the Department of Public Works and Utilities. Bob Booze began his career on May 9, 1972, when he became employed as a Seasonal Laborer, Art Cornay began his career with the City on June 3, 1974, when he was hired as a Maintenanceworker and Steve Schuyler began his career on June 17, 1974, when he was hired as a Maintenanceworker. The purpose of this Agenda Memorandum is to recognize these employees for their 25 years of outstanding service to the City of Westminster.

**Staff Recommendation**

Mayor present a check in the amount of \$2,500 to Bob Booze, Utilities Services Supervisor, Art Cornay, Water Treatment Facility Operator IV, and Steve Schuyler, Water Treatment Facility Maintenanceworker, for their 25 years of service to the City of Westminster.

**Background**

Bob Booze has worked for the City of Westminster for the past 25 years and is currently working in the capacity of a Utilities Services Supervisor. His current responsibilities include: meter reading, meter maintenance, water and wastewater pumping facilities, underground utilities locate program, Municipal Service Center Gasoline Recover System, and Utilities Operations contractual services. Bob is also in charge of the City's water meter retro-fit program. This program converts all manual-read water meters to a radio frequency read system.

Bob has served on various committees within the City, including the citywide Safety Committee, Public Works/Finance Meter Reader Relocation Task Force, Traffic Accident Review Board, Development Technical Review Committee, and the Utility Rate Study Task Force. Bob is presently serving on the Rock Flats "Ready 99" Emergency Preparedness Task Force.

Bob's hobbies include: golf, snow skiing, watching both of his daughters participate in baton competitions and watching his son play college basketball.

Bob began his career with the City of Westminster as a Seasonal Laborer on May 9, 1972. He worked only on Saturdays until June 1, 1972, when he became a full-time Seasonal Laborer. Bob worked as a Seasonal Laborer for three summers while attending college. On October 1, 1974, he was hired as a full-time Maintenance worker in the Public Works and Utilities Department. Bob was promoted to Utilities Technician on July 25, 1976. Then, on June 25, 1980, Bob was promoted to Utilities Foreman. He was once again promoted to Utilities Supervisor on May 25, 1981. However, following a department reorganization in February 1986, Bob's title was changed to Operations Coordinator. On August 1, 1994, during a second reorganization, Bob's title was again changed to Utilities Services Supervisor, where he has continued up to the present time.

Art Cornay has worked for the City of Westminster for the past 25 years and is currently working in the capacity of Water Treatment Facility Operator at the Semper Water Treatment Facility. Art is responsible for producing high quality drinking water for the citizens of Westminster.

Art began his career with the City of Westminster as a Maintenance worker on June 3, 1974. Art was promoted to Water Plant Operator on April 10, 1976 and worked his way up to a Class A State of Colorado Certified Operator. Art enjoys hunting, camping, and fishing. Art also enjoys attending the high school basketball playoffs each year.

Steve Schuyler has worked for the City of Westminster for the past 25 years and is currently working in the capacity of Water Treatment Facility Maintenance worker at the Semper Water Treatment Facility. Steve is responsible in all aspects of maintenance on water treatment equipment and building maintenance.

Steve began his career with the City of Westminster as a Maintenance worker on June 17, 1974. Steve was promoted to Senior Maintenance worker in 1980, promoted to Equipment Operator I in 1985, and again promoted to TV Technician in 1990, and then transferred to the Semper Water Treatment Facility in 1991. Steve enjoys camping, fishing, softball and attending the Colorado Rockies baseball games.

In 1986, City Council passed a resolution to award individuals who have given 25 years of service to the City with a \$2,500 check. Under the program, employees receive \$100 for each year of service, in the aggregate, following the anniversary of their 25<sup>th</sup> year of employment. The program recognizes the dedicated service of those individuals who have spent most, if not all, of their career with the City.

Respectfully submitted,

William M. Christopher  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Presentation of 25 Years of Service Award to Alan Miller

**Prepared by:** Bill Christopher, City Manager

**Introduction**

City Council action is requested to present a \$2,500 check to Assistant City Manager Alan Miller in recognition of his 25 years of service to the City of Westminster. Funds have been specifically allocated in the 1999 City Manager's Office budget for this expense.

**Summary**

Alan Miller started his career with the City of Westminster in the City Manager's Office on June 26, 1972. He was first hired as Administrative Assistant in the City Manager's Office. His position title was changed to Assistant to the City Manager in September, 1975. He resigned in September, 1976 to accept the City Administrator position in Crestwood, Missouri and returned to Westminster when he was hired as Assistant City Manager in July, 1978. He has held this position since then and has accomplished numerous major achievements for the City while also being very effective in carrying out the regular responsibilities of his position.

The presentation of the \$2,500 check is in keeping with City Council policy to recognize those City employees who have celebrated 25 years of outstanding service to the City of Westminster.

**Staff Recommendation**

Mayor presents a check in the amount of \$2,500 to Assistant City Manager Alan Miller for his 25 years of service to the City of Westminster.

**Background**

Alan Miller has worked for the City of Westminster for the past 25 years with his entire Westminster career being in the City Manager's Office. He was first hired by then Assistant City Manager Bill Christopher as an Administrative Assistant on June 26, 1972. His title was changed to Assistant to the City Manager effective September 1975. Alan remained with the City of Westminster until resigning on September 9, 1976 to assume the City Administrator position in Crestwood, Missouri, a suburb of St. Louis. He was "lured" back to Westminster by City Manager Bill Christopher as Assistant City Manager effective July 17, 1978 and has served very capably in that position since that time.

Westminster has been very fortunate to have Alan in the Assistant City Manager position while he has played a valuable contributing role in the management of the City as it has grown from less than 50,000 population in 1978 to a current estimated population of 97,000. Along with this growth has been a most significant expansion of the organization, the size and complexity of the City budget, and the overall administration of the City. He has served very effectively as part of the "dynamic duo" with City Manager Bill Christopher in providing overall managerial direction of the City organization.

In addition to his regular responsibilities as Assistant City Manager, which have traditionally focused on budget administration and internal matters working closely with Department Heads in particular, he has very capably administered a number of highly visible, key projects for the City. Most noteworthy of these are the City Hall design and construction project that was completed in February 1988; the Legacy Ridge Golf Course Community effort in the early 1990's; the negotiations and construction coordination with Leonard and Tim O'Byrne and the Westin Hotel representatives pertaining to the 365-room Westin Hotel and 50,000 square foot conference center; and most recently the negotiations with Catellus Corporation on the sale of City property known as the Northwest Business Park. This multi-million dollar sale by the City will assure a major infusion of class A office space in Westminster that ultimately will approximate 1.0 million square feet of needed office development.

Alan's administrative capability, interpersonal skills and financial savvy have all been important contributing factors to a most successful career with the City of Westminster.

In 1986, City Council adopted a resolution to award City Employees who have give 25 years of service to the City with a \$2,500 check. Under this program, employees receive \$100 for each year of service in the aggregate, following the anniversary of their 25<sup>th</sup> year of employment. The program recognizes the dedicated service and talents of those individuals who have spent most if not all their career with the City of Westminster.

Respectfully submitted,

William M. Christopher  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999  
**Subject:** Purchase of an Articulated Loader  
**Prepared by:** Carl F. Pickett, Purchasing Specialist

**Introduction**

City Council action is requested to award a bid in the amount of \$36,825 to purchase a replacement articulated loader to be used by the Public Works and Utilities, Water Resources Division at the Big Dry Creek Water Reclamation Facility. Funds have been specifically allocated in the 1999 Public Work and Utilities, Water Resources Division Budget for this expense.

**Summary**

In April 1999, the City's Purchasing Specialist sent out formal bid proposals for the purchase of an articulated loader to replace the current articulated loader used Big Dry Creek Water Reclamation Facility. The articulated loader purchase was previously approved by City Council in the 1999 Budget. The only bid, submitted by Denver East Machinery Company, meets bid specifications and is being recommended for this purchase.

An alternative to the proposed purchase would be to not purchase the articulated loader at this time and continue to use the existing loader.

**Staff Recommendation**

Award the bid for the articulated loader to the sole bidder, Denver East Machinery Company in the amount of \$36,825 because it is in the best interest of the City, and charge the expense to the appropriate 1999 Public Works and Utilities Water Resources Division Budget account.

**Background Information**

As part of the 1999 Budget, City Council approved the purchase of an articulated loader. This replacement vehicle will be utilized to move chemicals at the Big Dry Creek WasteWater Reclamation Facility. It will also be used to plow snow at the facility, and serve as a forklift. This extremely versatile piece of equipment has proven to be indispensable to the Big Dry Creek Staff.

Fleet Maintenance Staff has determined that the current articulated loader is no longer economically viable to maintain. Service costs over the past six years total \$5,073. While the current vehicle has not been overly expensive to maintain, its age has made parts costly and hard to obtain, resulting in excessive downtime, and hampering operations at Big Dry Creek.

This bid was single sourced for the make "Swinger." The reason for this is that Swinger is the only manufacturer that makes an articulated loader. Other types of loaders will not provide the versatility necessary to perform the various applications needed at the plant. Also, overall dimensions of the Swinger allow it to enter the buildings at Big Dry Creek to facilitate the work there. Other types of loaders are larger in overall dimensions.

Purchase of an Articulated Loader  
Page 2

Three vendors were invited to bid. The results of the bid process were as follows:

Denver East Machinery Company	\$36,825
Masonry Equipment Supply	No Bid
Heartland Ag	No Bid

The bid from Denver East Machinery Company includes the cost of two options, the snow plow dozer, and the forks for a forklift, and a credit of \$4,000 for the trade-in of the existing Swinger loader.

Respectfully submitted,

William M. Christopher  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999  
**Subject:** Purchase of Two Pup Trailers  
**Prepared by:** Carl F. Pickett, Purchasing Specialist

**Introduction**

City Council action is requested to award the bid for two pup trailers in the amount of \$40,000, to be used by the Public Works and Utilities, Utilities Division. Funds have been specifically allocated in the 1999 Public Works and Utilities Department, Water Fund Budget for this expense.

**Summary**

In April 1999, the City's Purchasing Specialist sent out formal bid proposals for the purchase of two pup trailers. The trailers will be additions to the City's heavy equipment fleet. A pup trailer is like a large dump truck without the truck. It is pulled behind a dump truck to increase the unit's hauling capacity. This purchase was previously approved by City Council in the 1999 Budget. The low bid submitted by Transwest Trailers, Inc. is being recommended for this purchase.

An alternative to the proposed purchase would be to not purchase the pup trailers at this time and continue to lease the trailers on a monthly basis.

**Staff Recommendation**

Award the bid for the two pup trailers to the low bidder, Transwest Trailers, Inc. in the amount of \$40,000 and charge the expense to the appropriate 1999 Public Works and Utilities Department Water Fund Budget account.

**Background Information**

As part of the 1999 Budget, City Council approved the purchase of two pup trailers. These new additions to the fleet will be utilized to move roadbase, asphalt and squeegee to and from water line breaks and new installations. They will take the place of pup trailers leased on a monthly basis.

Using a pup trailer allows the Utilities Division to reduce one staff person from each water break crew and reallocate their services. Fewer drivers are required per break. The approximate savings to the Utilities Division would be \$9,085 per year. Also, the amount of time required on a water break would be shortened, resulting in better service to customers.

On a lease program, two pup trailers would cost \$8,000 for 4 months service per year. Fleet Maintenance staff has estimated that the expected life span for a pup trailer will be in excess of ten years. Over the ten-year life expectancy of the trailer, this equals \$80,000, while only having the trailers available four months out of the year. Utilities Staff have determined that purchase of these two pup trailers will save the City \$40,000 over the life of the trailers. An added benefit will be that the trailers will be available on site year round.

Purchase of Two Pup Trailers  
Page 2

Four vendors were invited to bid. The results of the bid process were as follows:

Transwest Trailers, Inc.	\$40,000
IMCO Trailer	\$45,990
Intermountain Wholesale, Inc.	No Bid
Sauber Manufacturing	No Bid

The low bid submitted by Transwest Trailers, Inc. meets the City's specifications and is being recommended for the bid award.

Respectfully submitted,

William M. Christopher  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Purchase of Open Space/Big Dry Creek Corridor

**Prepared by:** Lynn Wodell, Open Space Acquisition Agent

**Introduction**

City Council action is requested to authorize the City Manager to purchase approximately 1.1 acres of land in the Big Dry Creek Corridor at W. 99th Avenue and Ammons Circle west of Wadsworth Boulevard for open space and trail purposes (see attached map). City Open Space funds are available to purchase this property.

**Summary**

The City's goal is to complete the Big Dry Creek Trail Corridor, a Trails 2000 project, by next year. This acquisition is key to the completion of the trail from Standley Lake to City Park and offers an opportunity to have the least impactful approach to the environment and neighborhood. It may also result in savings of trail construction dollars by eliminating the need for multiple bridges across Big Dry Creek and eliminating the need to relocate power poles, mature trees, wells and driveway.

Staff has been finalizing the trail layout for the Big Dry Creek Trail Corridor and negotiating with several key landowners in this area for the last 2-3 years, as well as working with Jefferson County Open Space to complete this open space and trail corridor through the unincorporated area. The Susmarski family now proposes to sell approximately 1.1 acres to the City, at a cost of \$130,000. The property is already formally subdivided into one residential lot by Jefferson County, which is available for immediate building. Lots like this one command a high price. The agreed upon price is market value and is supported by another offer that the family has recently received to buy the house. If the City wishes to complete the open space and trail corridor, the purchase should be completed quickly. This acquisition would allow the yet unbuilt segment of the Big Dry Creek trail to be located on the site as well as a possible trail rest area before heading into or out of the box culvert underneath the railroad tracks. After the trail has been built, it may be possible to sell or trade a portion of this property to another party to recoup some of the purchase price while the City retains an easement on right of way for the trail.

Alternatives to the Proposed Action:

1. Do not acquire the property and do not complete the Big Dry Creek trail along Big Dry Creek west of Wadsworth Boulevard, within the unincorporated area. The funds could be expended toward other priority open space purchases. However, this alternative would fall short of the City's goal of completing the Big Dry Creek trail corridor.
2. Attempt to acquire a smaller portion of the property, however, but this would likely require condemnation and cost more in legal fees. The owners are agreeable to the larger sale, and the 1-acre proposal provides the City with an opportunity to preserve a "window" of open space along the trail.

3. Delay purchase until some future date. In this case, it is likely that the property would be lost to development. The owners are motivated now. Both land and funding are available now, but may not be available in the future. Another offer has been extended to the landowner for the property for development.
4. Shift trail and acquisitions to a different location. This would also result in likely condemnations and delays.

In light of the benefits of acquiring this property, with increasing land values and immediate development pressure, Staff does not recommend the alternatives.

The Open Space Advisory Board (OSAB) strongly supports the completion of the Big Dry Creek Trail. This property was included in the list of properties for potential funding from the Jefferson County Open Space SOS Bond funds. This purchase may be reimbursed in the future, but the City should move quickly to acquire the property, “up front”, before it is lost to development.

### **Staff Recommendation**

Authorize the City Manager to sign all the necessary documents necessary to achieve the purchase for open space and other public purposes, approximately 1.1 acres of land at a cost of \$130,000 from the Susmarski family, and charge the expense to the Open Space Fund.

### **Background Information**

The proposed acquisition fits the Criteria for the selection of open space sites very well, as follows:

- < AESTHETICS: This land lies in the proposed Big Dry Creek Trail Corridor, is highly visible from W. 99th Avenue and Ammons Circle, and would preserve an open corridor through the residential area.
- < PROTECTION AND PRESERVATION: Acquiring the property would protect the “open feeling”; allow for trees and native areas to grow, and avoid encroachment of development..
- < LOCATION: Properties along Big Dry Creek are important links in a central trail corridor throughout the City and provide an area for the trail to access W. 99<sup>th</sup> Avenue, provide for a possible trail rest area in the future, and demonstrate the value that the City of Westminster places on open space preservation.
- < USE POTENTIAL: The trail along Big Dry Creek will provide an ideal City-wide open space and trail corridor which will link Standley Lake, City Park, Front Range Community College, College Hill Library and many other local parks and trails.
- < NEED FOR IMMEDIATE ACTION and ACQUISITION CONSIDERATION: If the City wishes to preserve the property and complete the trail, now is the time to do so. The owners are willing sellers, they have received another offer and contract, the price they ask for the property at this time is acceptable, and funds are available for the purchase. It is possible that Jefferson County Open Space will reimburse some or all of the purchase at a future date.

Respectfully submitted,

William M. Christopher, City Manager

Attachment: Map



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Design Contract for Westminster Boulevard Extension

**Prepared by:** Steve Baumann, Assistant City Engineer

**Introduction**

City Council action is requested to authorize the City Manager to sign a contract with Centennial Engineering, Inc. in an amount not to exceed \$472,000 for the final design of the Westminster Boulevard Extension. The project will extend Harlan Street from its present terminus at approximately 95<sup>th</sup> Avenue across US 36 and connect to Westminster Boulevard near the Butterfly Pavilion. Funds for the contract, related expenses and a contingency of \$71,000 are available in the appropriate project account in the General Capital Improvement Fund.

**Summary**

Preliminary design of a roadway connection between the north end of Harlan Street and Westminster Boulevard near West 104<sup>th</sup> Avenue is nearly complete. The preferred alignment crosses US 36 near the 97<sup>th</sup> Avenue alignment and continues north across Big Dry Creek on the east side of US 36. City Council's recent approval of funding in the form of Certificates of Participation make it possible to begin final design, anticipating a construction start in the spring of year 2000.

Proposals for final design services were received from four engineering firms, all experienced with similar projects. Staff is recommending that the final design contract for the Westminster Boulevard Extension be awarded to Centennial Engineering, Inc. Their team brings several positive components to the project, including the same environmental consulting firm that is preparing the permit applications to the Army Corps of Engineers for the Big Dry Creek Trails project in the same general area. Centennial's proposed design fees are also the lowest range of the four proposals.

Alternatives to this award recommendation include delaying or abandoning the Westminster Boulevard Extension project, which would be contrary to City Council's goals for transportation improvements in the Westminster Center area. The award could also be made to one of the other firms, but the compensation and level of authorization would have to be increased. Neither alternative is recommended.

**Staff Recommendation**

Authorize the City Manager to sign a contract for final design for the Westminster Boulevard Extension with Centennial Engineering, Inc. in an amount not to exceed \$472,000 because it is in the City's best interests; authorize \$71,000 for use as a project contingency and charge these expenses to the appropriate project account in the General Capital Improvement Fund.

**Background**

An extension of Harlan Street north from its present terminus at the Farmer's High Line Canal has long been a necessary component of Westminster's transportation improvements. The construction of West 104<sup>th</sup> Avenue west of Sheridan Boulevard in 1988 was followed by the adoption of Westminster's Comprehensive Roadway Plan, which shows the extension as a north-south minor arterial between 92<sup>nd</sup> Avenue and 104<sup>th</sup> Avenue. It will accommodate links to Sheridan Boulevard at 98<sup>th</sup> Avenue and ease congestion in the area, while improving access to undeveloped areas east of US 36.

In 1996, Westminster voters approved the sale of Sales Tax Revenue Bonds to fund various transportation improvement projects in the Westminster Center area. Council approved a contract for preliminary design of the Harlan Street Flyover in 1997, which resulted in the evaluation of several alignments and the selection of a preferred route for the street (see attached project map). Major components of the project will include a structure carrying Westminster Boulevard over US 36 (no interchange ramps), a connection to the Westcliff Subdivision and a structure over Big Dry Creek which will accommodate the planned trails installation there. The preliminary design effort included input from local landowners and residents of both the Franklin Square Subdivision and the Trendwood development. Concerns about the increased traffic and noise, which would result from the project were voiced by many residents, along with counterpoint perceptions that the congestion of other north-south arterials in the City might be alleviated somewhat. Residents recognized that an extension of Harlan Street to Westminster Boulevard actually provides more transportation options to them. The final design effort will attempt to address the concerns by reviewing progress with those involved on an on-going basis.

Proposals for final engineering and design were received from four consulting firms, all well qualified to perform the job. These firms are experienced in projects such as the Westminster Boulevard Extension, which includes the structures mentioned above and a relatively complicated hydraulic analysis of Big Dry Creek to allow some channelization downstream of US 36.

City Staff interviewed the prospective consultants and developed a recommendation that the final design contract be awarded to Centennial Engineering, Inc. Like all of the firms, Centennial shows a good understanding of the project, has the appropriate and applicable experience and brings several positive aspects to their project plan. They have only two sub-consultants, which reduces the time and effort necessary to coordinate project activities among team members. One of those sub-consultants is the same firm that is working for the Department of Parks, Recreation and Libraries on the environmental clearances for the Big Dry Creek Trails segment between US 36 and West 104<sup>th</sup> Avenue. While not a complicated project, the elements of floodplain permits, environmental clearances and public involvement will need adequate attention. Since the Westminster Boulevard Flyover necessitates receiving similar critical clearances, this association is extremely valuable.

The range of fees for the engineering services from each of the consultants is shown below. Centennial's fee range is lower than the other three consultants but in each case, some interpretation of the proposals was necessary. Until a specific scope of work is negotiated, the range of values is only a starting point. It became clear that Centennial's effort in terms of proposed personnel hours was among the lowest of those described. Staff believes they may have been somewhat optimistic about the time necessary to accomplish the project. As a result, we are recommending that the contract compensation be established using a not to exceed amount of \$472,000. This still ranks Centennial as one of the more economical cost proposals even when compared to the top of the range of Carter-Burgess, Inc.

Centennial Engineering, Inc.	\$415,000 - \$472,000
Carter-Burgess, Inc.	\$447,000 - \$543,000
Parsons Transportation Group	\$510,000 - \$575,000
Transystems, Inc.	\$525,000 - \$580,000

Recently, City Council gave approval for the sale of Certificates of Participation to fund construction of the Westminster Boulevard Extension. With final design soon to get under way, construction is expected to begin in the spring or summer of the year 2000 and be complete the following year. In order to meet that schedule, right-of-way acquisition will need to begin later this summer and proceed relatively smoothly. The design effort will include a significant public information program beginning in July. It will also require a phasing plan to get the most mileage out of a limited construction budget.

Staff is recommending authorization of \$472,000 for the contract with Centennial Engineering, Inc. along with a project contingency of \$71,000 for a total of \$543,000. Alternatives to the recommended award include delaying or abandoning the Westminster Boulevard Extension entirely. This might please a few of the residents near existing Harlan Street, but is clearly not in line with Council's on-going objective of improving the transportation system in the Westminster Center area. This is not a recommended alternative. Another option would be to award the contract to another of the consulting firms. The Parsons Group's proposal was judged to be very good and they have familiarity with the project area from other engineering work on behalf of the City. This choice would necessitate authorization of an additional \$75,000 for the design contract. All other things being equal, this approach would not be necessary. Adequate funding for the design effort exists in appropriations made to the General Capital Improvement Fund in prior years.

Respectfully submitted,

William M. Christopher  
City Manager

Attachment: Map



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999  
**Subject:** Public Meeting on 2000 City Budget  
**Prepared by:** Barbara Gadecki, Assistant to the City Manager

**Introduction**

City Council is scheduled to hold a public meeting to receive initial public input on the 2000 City Budget at Monday night's City Council meeting.

**Summary**

City Staff will be preparing budget information for both 2000 and 2001, but this initial meeting is intended to focus only on 2000 citizen requests, comments and suggestions. The public meeting is a more informal opportunity for the public to provide input to the City Council on the City Budget.

Development and preparation of the City Budget will continue through the summer and will culminate in the distribution of the Proposed Budget to City Council in September. Public hearings are also scheduled for July 12 and September 13 so that citizens will have two more opportunities to comment and provide feedback on the 2000 City Budget. City Council must adopt the budget by the October 25 City Council meeting, in accordance with the City Charter.

**Staff Recommendation**

Hold a public meeting on the 2000 City Budget and receive citizen comments.

**Background Information**

In April, City Council identified focus areas to be pursued in 2000. The following is the list identified by the City Council:

- Improve transportation systems in the northwest quadrant of the Denver Metro Area;
- Continue to develop Westminster as the "City of Choice" in the Metro Area;
- Maintain high quality services;
- Broaden citizen communication and involvement;
- Enhance the City's economic/fiscal viability; and
- Strengthen regional cooperation on priority projects.

The direction provided by City Council assists City Staff as they prepare and review the proposed 2000 City Budget. Other considerations that go into developing a comprehensive budget are department priorities that strive to maintain existing service levels and citizen or neighborhood input.

The development of the City Budget will occur throughout the summer, and a Proposed Budget will be submitted to City Council on September 3 for their review. After reviewing the Proposed Budget for several weeks, City Council is scheduled to meet in early October at the Budget Retreat to deliberate on final funding decisions on staffing levels, programs, services, and capital projects.

Public Meeting on 2000 City Budget  
Page 2

Two formal public hearings will be held on the 2000 Proposed City Budget to solicit citizen input. The first public hearing is scheduled for Monday, July 12, and the second hearing is scheduled for Monday, September 13.

Respectfully submitted,

William M. Christopher  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Councillor’s Bill No. 31 Licensing and Regulation of Adult Businesses

**Prepared by:** Vicky Bunsen, Assistant City Attorney

**Introduction**

City Council action is requested to adopt the attached Councillor’s Bill as an emergency ordinance providing for the licensing and regulation of adult businesses in the City.

**Summary**

Most local jurisdictions have adopted land use ordinances that separate adult businesses from residential, school and some other types of land uses in order to mitigate the secondary impacts of such businesses on incompatible land uses. Adult businesses continue to proliferate, and many of them are operated in a manner that has serious public health and safety concerns. Several cities have taken the additional step of imposing licensing and regulatory requirements in order to mitigate these concerns.

**Recommendation**

1. Hold public hearing on proposed Councillor’s Bill No. 31.
2. Adopt Councillor’s Bill No. 31 as an emergency ordinance amending the Westminster Municipal Code by adopting a new chapter 17 to Title V, providing for the licensing and regulation of adult businesses and providing additional health and safety regulations for adult business, and amending section 11-4-13.

**Background Information**

City Council adopted an ordinance in 1990 which provided locational requirements for adult businesses. Cities have been permitted for some time to separate adult businesses from other land uses because of the secondary impacts they have on the surrounding neighborhood. City Staff has collected studies from the following cities, which identify higher rates of crimes against people and property, as well as decreased property values, in the vicinity of adult businesses:

Los Angeles, California	1977
Amarillo, Texas	1977
Phoenix, Arizona	1979
Indianapolis, Indiana	1984
Oklahoma City, Oklahoma	1986
Austin, Texas	1986
Tucson, Arizona	1990
Garden Grove, California	1991
New York City	1994
Rochester, Minnesota	1995
Denver, Colorado	1998

and summaries of studies from:

Cleveland, Ohio	1977
Whittier, California	1978
Minneapolis, Minnesota	1980
Beaumont, Texas	1982
Houston, Texas	1983
Seattle, Washington	1989

In spite of the locational requirements imposed on adult businesses, they were found to continue to have an adverse impact on communities due to the casual sexual contacts and criminal activity that often occurred on the premises. For this reason, cities began to regulate contact between employees and patrons of the businesses and to prohibit conditions within the building that allowed sexual contacts between patrons.

The U.S. Supreme Court reviewed a comprehensive licensing and regulatory ordinance in FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990). Similar types of ordinances have been litigated to the Colorado Supreme Court in City of Colorado Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995) rehearing denied, and to the federal Tenth Circuit Court of Appeals in Z.J. Gifts v. City of Aurora, 136 F.3d 683 (10<sup>th</sup> Cir. 1998) cert. denied. Each of these cases has provided substantial guidance for cities in determining what can and cannot be done to regulate the operations of adult businesses. Based upon these cases, several cities, including Aurora, Lakewood, Parker, Lafayette, and Glendale have drafted or are working on ordinances that would require adult businesses to be licensed and to conform to operational requirements aimed at decreasing unhealthy casual sexual liaisons and criminal activity.

Aurora is attempting to enforce its ordinance against existing adult businesses. Other cities have passed their ordinance in spite of the fact that no adult businesses exist in those cities. The goal in those cities is to get the regulations in place so that adult businesses are aware of the level of regulation before making the decision to locate in that city. The City of Westminster may benefit from this approach as well.

#### Summary of Proposed Ordinance Provisions

It is not and cannot be the goal of an ordinance regulating adult businesses to suppress any speech activities protected by the First Amendment or the Colorado Constitution. The intent must be limited to the enactment of a content-neutral ordinance which addresses only the adverse secondary effects of adult businesses.

This proposed ordinance covers the following points:

1. Adult business licensees and managers will be subject to a criminal background check. If an applicant is found to have a conviction within a specified length of time for sexual crimes against children, sexual abuse, sexual assault, or crimes connected with another adult business, such as distribution of obscenity, prostitution, pandering or tax violations, the license would be denied.
2. Individual booths for viewing videos and other visual displays would be required to be open, allowing the manager to view the interior of all booths from the manager's station. Holes between the booths would be prohibited. These regulations are intended to prevent sexual contact between patrons and the danger of sexually transmitted diseases.
3. Stages, barriers or buffers between stages and patrons, and tip jars would be required. The purpose of these and other regulations is to prevent physical contact between employees of the business and patrons.

4. Minimum lighting requirements inside and outside of the business are imposed for safety reasons and to cut down on illegal activity.

5. Minimum ages for patrons and employees are established. The Colorado Supreme Court has ruled that persons 18 years or older could not be barred from adult businesses except in the case of live nude entertainment, in which case the age limit could be set at 21 years.

6. Businesses that currently qualify as adult businesses under the City land use code are exempted from the licensing requirements until such time as the ownership of the business changes, at which point the new owner(s) would need to comply with the ordinance if they wish to maintain the adult portion of the business.

#### Public Hearing

The case law has indicated that regulation of adult businesses impacts constitutionally protected expressive activity and is therefore subject to strict scrutiny. One part of the analysis requires demonstration of the government's compelling interest in regulating the businesses. Thus, it is necessary to hold a public hearing to receive evidence and testimony in support of the ordinance. At the public hearing, Staff will introduce studies and documentation from other jurisdictions, both within Colorado and from across the country concerning the negative secondary impacts that adult businesses have on the community.

In addition to documentary evidence, Staff has invited Barry Arrington, Esq. to testify at the public hearing. Mr. Arrington represented the City of Aurora in the litigation that culminated in the Tenth Circuit Court of Appeals decision upholding Aurora's adult business ordinance, which is very similar to that proposed in this Councillor's Bill. He also has advised several other Front Range cities on these issues and is very knowledgeable concerning the impacts of adult businesses.

Respectfully submitted,

William M. Christopher  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. \_\_\_\_\_

SERIES OF 1999

INTRODUCED BY COUNCILLORS  
\_\_\_\_\_

A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER, COLORADO, MUNICIPAL CODE BY ADOPTING A NEW CHAPTER 17 TO TITLE V, PROVIDING FOR THE LICENSING AND REGULATION OF ADULT BUSINESSES AND PROVIDING ADDITIONAL HEALTH AND SAFETY REGULATIONS FOR ADULT BUSINESSES, AND AMENDING SECTION 11-4-13.

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Findings of Fact. The City Council of the City of Westminster hereby finds:

(a) Adult businesses require special supervision to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the City of Westminster through the implementation of a comprehensive ordinance regulating such businesses.

(b) The City Council and staff have reviewed land use studies concerning the secondary effects of sexually oriented businesses in the following cities around the United States.

Los Angeles, California	1977
Amarillo, Texas	1977
Phoenix, Arizona	1979
Indianapolis, Indiana	1984
Oklahoma City, Oklahoma	1986
Austin, Texas	1986
Tucson, Arizona	1990
Garden Grove, California	1991
New York City	1994
Rochester, Minnesota	1995
Denver, Colorado	1998

and summaries of studies from:

Cleveland, Ohio	1977
Whittier, California	1978
Minneapolis, Minnesota	1980
Beaumont, Texas	1982
Houston, Texas	1983
Seattle, Washington	1989

From the review of these studies and surveys and testimony from citizens, there is compelling documented evidence that adult businesses have a deleterious effect on both existing businesses around them and the residential areas adjacent to them, causing among other adverse secondary effects, increased crime and decreasing property values.

It is recognized that adult businesses frequently have operating characteristics that contribute to crime, lower property values, urban blight, sexually transmitted diseases, and the downgrading of the quality of life in adjacent areas.

Adult businesses are frequently used for casual sexual liaisons and unlawful sexual activities, including prostitution.

(f) Experience in other municipalities, including the City of Colorado Springs, Aurora, Lakewood and Federal Heights, has shown that the location of sexually oriented businesses degrade the quality of the area of the municipality in which they are located and cause a blighting effect upon the City.

(g) Increased crime and unhealthy conduct tend to accompany, concentrate around, and be aggravated by adult businesses, including but not limited to prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances, violent crimes against persons, and crimes against property.

(h) Concern over sexually transmitted disease, including herpes, chlamydia, gonorrhea, hepatitis and AIDS, is a legitimate public health concern of the City which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens.

(i) Zoning, licensing and other police power regulations are legitimate reasonable means of accountability to ensure that the operators of adult businesses comply with reasonable regulations and that such businesses are located in places that minimize the adverse secondary effects which accompany their operation.

(j) Licensing is a legitimate and reasonable means of ensuring that operators of sexually oriented business comply with reasonable regulations and to ensure that operators do not knowingly allow their businesses to be used as a place for illegal sexual activity or solicitation.

(k) The City Council desires to minimize and control these adverse secondary effects and thereby protect the health, safety and welfare of the citizens by protecting the citizens from increased crime; preserving the quality of life, property values, and character of neighborhoods and businesses; deterring the spread of urban blight; and protecting against the spread of sexual transmitted diseases.

(l) The City Council has considered the decisions of the United States Supreme Court, the Tenth Circuit Court of Appeals, and the Colorado Supreme Court regarding the regulation of adult businesses, and has considered the stated secondary effects on communities which are the topics of these decisions.

(m) The City Council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the residents of the City and thus certain requirements with respect to the ownership and operation of adult businesses is in the public interest.

(n) The City Council, consistent with limitations on the sale of alcohol, further finds that restricted hours of operation will further prevent the adverse secondary effects of adult businesses.

(o) It is necessary to have a manager on the premises of adult businesses at all times as such establishments are offering adult entertainment, to monitor the actions of patrons, entertainers and other employees.

(p) The license fees required hereinafter are necessary as nominal fees designed to help defray the substantial expenses incurred by the City in regulating adult businesses.

(q) It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment or the Colorado Constitution, but to enact a content-neutral ordinance which addresses only the adverse secondary effects of adult businesses.

(r) It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state law prohibits the distribution of obscene materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities in the City.

Section 2. The City Code of the City of Westminster, Colorado, is hereby modified by the addition of a new Chapter 17 in Title V, to read as follows:

**5-17-1: PURPOSE AND INTENT:** The purpose and intent of this Chapter is to regulate the time, place, and manner in which adult entertainment is presented, to promote the health, safety, and general welfare of the citizens, and to establish reasonable and uniform regulations designed to curb the harmful secondary effects of adult businesses upon the surrounding communities. These reasonable and uniform regulations are designed to protect citizens from increased crime, to preserve the quality of life, property values and the character of neighborhoods and businesses, to deter the spread of urban blight, and to protect against the spread of sexually transmitted diseases. The provisions of this Chapter are not intended to impose limitations or restrictions on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution or Article II, Section 10, of the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is also not the intent or purpose of this Chapter to condone or legitimize the distribution of obscene material.

**5-17-2: DEFINITIONS:** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adult arcade* means any commercial establishment where, for any form of consideration, monetary or otherwise, one or more still or motion picture projectors, slide projectors, videocassette players or similar machines, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

*Adult bookstore, adult novelty store or adult video store* means a commercial establishment which (i) devotes a significant or substantial portion of its stock-in-trade or interior floor space to, (ii) receives a significant or substantial portion of its revenues from, or (iii) devotes a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing, for any form of consideration, of any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

(c) The definition of principal business purpose shall include any establishment having as a substantial or significant portion of its stock in trade the items listed in subparagraphs (a) and (b) above or any premises in which at least one hundred (100) square feet of floor space is occupied by the display of such items.

*Adult business* means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort service, nude model studio, or sexual encounter center. A business shall be considered an adult business under this Code regardless of whether attempts are made to obscure the sexual nature of products with labels or packaging, if a reasonably prudent person would regard the products as designed for, depicting or describing specified sexual activities or specified anatomical areas. The definition of adult business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

*Adult cabaret* means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment which regularly features:

- (a) Persons who appear nude or in a state of nudity or semi-nudity; or
- (b) Live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities; or
- (c) Films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

*Adult motel* means a hotel, motel or similar commercial establishment which:

Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

Offers a sleeping room for rent for a period of time that is less than six (6) hours; or

Allows a tenant or occupant of a sleeping room to sub-rent the room for a period that is less than twenty-four (24) hours.

*Adult motion picture theater* means a commercial establishment which is distinguished or characterized by the showing of films, motion pictures, video cassettes, slides, or similar photographic reproductions with an emphasis on the depiction or description of specified sexual activities or specified anatomical areas which are regularly shown for any form of consideration.

*Adult theater* means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on the exposure of specified anatomical areas or by specified sexual activities.

*Commercial establishment* includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships. It may have other principal business purposes that do not involve the depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."

*Escort* means a person required to be licensed as such pursuant to Title V, Chapter 19 of this Code.

*Escort service* means a person or business required to be licensed as such pursuant to Title V, Chapter 19 of this Code.

*Employee* means a person who works or performs in and for an adult business, regardless of whether or not the person is paid a salary, commission, wage, or other compensation by the operator of the business.

*Establishment* means and includes any of the following:

- (a) The opening or commencement of any adult business as a new business;
- (b) The conversion of an existing business, whether or not an adult business, to any adult business;
- (c) The addition of any adult business to any other existing adult business; or
- (d) The relocation of any adult business.

*Licensee* means a person in whose name a license to operate an adult business has been issued.

*Location* means a particular parcel of land that may be identified by an address or by other descriptive means.

*Manager* means an operator, other than a licensee, who is employed by an adult business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

*Nude model studio* means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

*Nudity* or a *state of nudity* means (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or areola or nipple of the female breast, or (b) a state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

*Operator* means and includes the owner, license holder, custodian, manager, operator, or person in charge of any adult business premises.

*Ownership or partnership interest* means a person who has a five (5) percent or greater interest in the business, and directors and officers of a corporation, but excluding stockholders.

*Person* means an individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity or managing agent, servant, officer, or employee of any of them.

*Premises* means a distinct and definite location which may include a building, a part of a building, a room, or any other definite area contiguous to the building, part of a building or room that requires a license and that is classified as an adult business, including parking lots and sidewalks immediately adjacent to the structure containing the sexually oriented business, which location is specified in an approved application for a license under this article and which is owned or is in the possession of the licensee and within which such licensee is authorized to operate an adult business.

*Residential district* means any area, regardless of zoning, which is used for residential purposes, whether within the City or outside of the City boundaries.

*Semi-nude* means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

*Sexual encounter center* means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude, except therapy performed by a massage therapist as the latter term is defined at section 5-15-2(F).

*Specified anatomical areas* means and includes any of the following:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified criminal acts* means sexual crimes against children, sexual abuse, sexual assault, any offense for which a person must register as a sex offender under state law, or crimes connected with another adult business, including but not limited to distribution of obscenity, prostitution, pandering or tax violations.

*Specified sexual activities* means and includes any of the following:

- (a) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated; or

- (d) Human genitals in a state of sexual stimulation, arousal, or tumescence; or
- (e) Excretory functions as part of or in connection with any of the activities set forth in (a) through (d) above.

*Substantial enlargement* of an adult business means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas existed on September 25, 1990.

*Transfer of ownership or control of a sexually oriented business* includes any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, management arrangement, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**5-17-3: ADULT BUSINESS LICENSE REQUIRED:** Except as provided herein, it shall be unlawful for a person to operate or cause to be operated an adult business without a license, including when the license has been suspended, revoked or has expired. The adult business license shall be required in addition to any other license required by this Code, such as a cabaret or dance hall license, or liquor license. An adult business in existence on June 7, 1999, shall not require a license unless a transfer of ownership or control occurs, as defined in this chapter.

**5-17-4: MANAGER'S LICENSE REQUIRED:**

- (a) It shall be unlawful for any person to work as a manager of an adult business without first obtaining a manager's license.
- (b) An adult business manager shall submit a verified application for a manager's license on a form provided by the City Clerk. The application shall contain the applicant's name, any aliases, address, proof of date of birth, and telephone number. Each applicant shall pay the nonrefundable fee charged by the Colorado Department of Public Safety for a criminal history check and the license fee required by this Chapter.
- (c) Upon receipt of a completed application and the payment of all applicable fees, the City Clerk shall transmit the application to the Police Department for investigation of the applicant. The background investigation shall be sufficient to verify the accuracy of all information provided in the application and to determine whether the applicant has been convicted of or has plead nolo contendere to specified criminal activities, as defined above, within the times set forth below:

Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense,

Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense, or

Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the applicant has been convicted of two or more misdemeanors.

Whenever "conviction" is specified in this subsection, the term shall also include a plea of *nolo contendere*. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant. An applicant who has been convicted of a specified criminal act may qualify for an adult business manager license only when the time period required in this subsection has elapsed.

(d) The City Manager shall grant the application within thirty (30) days of its filing unless:

(1) The applicant is under the age of eighteen (18) years, or twenty-one (21) years if the adult business offers live nude entertainment.

(2) The applicant has failed to provide the information required by this section,

(3) The license fee has not been paid, or

(4) The applicant has been convicted of a specified criminal act within the times set forth in subsection (c) above.

(e) Applicants and licensees shall have a continuing duty to promptly supplement application information required by this section in the event that information previously provided to the City changes from that stated in the application. The failure to comply with this continuing duty within thirty (30) days from the date of the change in information, shall be grounds for immediate suspension of the manager's license until such information is provided, as well as such other penalties that may be imposed pursuant to this Code.

(f) A manager's license shall remain in effect until the manager's employment by the licensee is terminated or is revoked pursuant to this chapter or the grounds stated in Chapter 1 of Title V.

#### **5-17-5: ADULT BUSINESS LICENSE APPLICATION:**

(a) The applicant for a license to operate an adult business shall submit a verified application to the City Clerk on forms provided by the City Clerk. The application to operate an adult business shall include:

(1) The address and complete plans and specifications for the interior of the premises to be licensed,

(2) A copy of the lease, deed or other evidence of the applicant's right to possession of the premises,

(3) Information regarding the zoning of the location of the premises,

(4) The fees required by this Chapter,

(5) Names of each person with an ownership or partnership interest in the business, including directors and officers of the applicant, each of whom shall be photographed and fingerprinted at the Westminster Police Department,

(6) Address, proof of age, driver's license number, social security number and federal tax identification number of each person named in the application,

(7) If the applicant is a corporation or limited liability company, its date of formation or incorporation, evidence that it is in good standing or authorized to do business in Colorado, the names and capacity of all officers, directors, and the name of the registered corporate agent and the address of the registered office for service of process,

(8) Whether the applicant or any individual listed in the application has had a previous adult business permit or license under this chapter or the adult business ordinances of another city, county or state denied, suspended or revoked, including the name and location of the business for which such permit or license was denied, suspended or revoked,

(9) The name and location of any other adult business in which the applicant or any individual listed in the application has an interest,

(10) A current certificate and straight-line drawing by a land surveyor depicting the property lines and the distances from the land uses specified in Section 11-4-13(D), as it may be amended.

(b) Applicants and licensees shall have a continuing duty to promptly supplement application information required by this section in the event that information previously provided to the City changes from that stated in the application. The failure to comply with this continuing duty within thirty (30) days from the date of the change in information, shall be grounds for immediate suspension of the license until such information is provided, as well as such other penalties that may be imposed pursuant to this Code.

(c) Upon receipt of a completed application, including fingerprints and photographs taken by the Westminster Police Department, and the payment of all applicable fees, the City Clerk shall transmit the application to the Police Department for investigation of the background of each individual listed in the application. Each applicant shall pay the nonrefundable fee charged by the Colorado Department of Public Safety for a criminal history check. The background investigation shall be sufficient to verify the accuracy of all information provided in the application and to determine whether any applicant or individual listed in the application has been convicted of or plead *nolo contendere* to specified criminal activities, as defined above, within the times set forth below:

(1) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense,

(2) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense, or

(3) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the applicant has been convicted of two (2) or more misdemeanors.

Whenever "conviction" is specified in this subsection, the term shall also include a plea of *nolo contendere*. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant. An applicant who has been convicted of a specified criminal act may qualify for an adult business license only when the time period required in this subsection has elapsed.

#### **5-17-6: LICENSE DENIAL, SUSPENSION, OR REVOCATION:**

(a) A license may be denied, cancelled, denied renewal, suspended or revoked by the City Manager for any violation of the provisions of this Chapter, for any reason set forth in Chapter 1 of this Title or on the grounds that the health, safety or welfare of the community may be endangered by the continued operation of the licensee, or any of the following:

(1) The applicant has been convicted of a specified criminal act within the times set forth in section 5-17-5(c).

(2) The applicant is under the age of twenty-one (21) years.

(3) The individual applicant or a director or officer of a corporation or a partner of a partnership or manager of a limited liability company has had an adult business license revoked or suspended or has operated an adult business which was determined to be a public nuisance anywhere within Colorado within one (1) year prior to the application.

(4) A corporate applicant or limited liability company applicant is not in good standing or authorized to do business in Colorado.

(5) The applicant is in default to the City or State with regard to taxes, fees, judgments, fines, or penalties assessed against the applicant.

(6) Any reason provided in section 5-1-5 of this Code.

(b) In the event that the City Manager takes one of the adverse actions listed in (a) above, he shall make written findings of fact stating the reasons for denial and a copy of such decision shall be sent by certified mail to the address shown in the application. An applicant shall have the right to file a written appeal of the decision to the Special Permit and License Board within ten (10) days of the City Manager's mailing of the decision.

(c) A license may be summarily suspended for no more than thirty (30) days by the City Manager when required for the immediate protection of the public health, safety and welfare. A hearing shall be scheduled as soon as may be reasonably possible.

(d) The Special Permit and License Board shall conduct an appeal of the denial of a new license or a hearing pursuant to the procedures established for hearings in Chapter 1 of this Title. The Special Permit and License Board shall deliver its decision in writing within thirty (30) days.

(e) Decisions of the Special Permit and License Board are final, subject only to appeal to a court of competent jurisdiction.

#### **5-17-7: RENEWAL:**

(a) All licenses issued pursuant to this Chapter shall expire December 31st of the year for which issued unless cancelled, suspended or revoked, and shall be renewed annually upon application for renewal and payment of the required fees, unless renewal is denied as provided below.

#### **5-17-8: CHANGE OF LOCATION; TRANSFER OF BUSINESS OR STOCK:**

(a) A licensee shall not operate an adult business under the authority of a license at any place other than the address designated in the application for the license. Each license issued under this chapter is separate and distinct, and no person shall exercise any of the privileges

granted under any license other than that which he holds. A separate license shall be issued for each specific business or business entity and each geographical location.

(b) At least thirty (30) days prior to the transfer of ownership of an adult business, or of the transfer of ownership of five (5) percent or more of an ownership or partnership interest, the proposed new owner of the stock or business shall file with the City Clerk a written application for approval of the transfer on forms provided by the City Clerk. The same information shall be submitted as for a new adult business license.

(c) Upon receipt of the application, the City Clerk shall report the proposed transfer to the City Manager and to the Police Department for further investigation of the character of the proposed new owner. If a decision on the transfer by the City Manager is not issued within thirty (30) days from the City Clerk's receipt of the application, it shall be deemed approved.

(d) Any transfer of ownership of an adult business in noncompliance with this section shall cause the termination of the adult business license.

(e) When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the term of the license.

(f) No license may be transferred if the City has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

(g) Any attempt to transfer a license either directly or indirectly in violation of this section shall render the license void.

#### **5-17-9: LICENSE FEES:**

(a) The annual fee for an adult business license is \$150.

(b) The annual manager's license fee is \$50.00.

(c) An applicant for an adult business license or for approval of a change of ownership shall pay a nonrefundable application fee of \$500.00 at the time of filing an application to cover the costs of investigation and processing.

#### **5-17-10: EMPLOYEE CONDUCT:**

(a) Manager Required On Premises. A licensed manager or his designee shall be on the premises and occupying each manager's station at all times that the business is occupied by patrons.

(b) Right of Entry to Inspect Premises. The application for an adult business license shall constitute consent of the licensee and its agents or employees to permit the Police Department or any other agent of the City to conduct routine inspections of any licensed adult business during the hours the establishment is conducting business. It shall be unlawful for any person, applicant, licensee, or manager or the agent of any of said persons to refuse to permit such inspection of the premises.

(c) Clothing. No licensee, manager or employee mingling with business patrons or serving food or drinks shall be unclothed or in such attire, costume or clothing so as to expose any specified anatomical areas. It is a defense to prosecution for a violation of this section that an

employee exposed any specified anatomical area only during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room which is accessible only to employees.

(d) Physical Contact: No licensee, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress, or fondle specified anatomical areas of any other person.

(e) View From Outside the Premises. No adult entertainment occurring on the premises shall be visible at any time from outside the premises.

(f) Doors To Remain Unlocked. It is the duty of the licensee and manager to ensure that any doors to areas open to customers remain unlocked during business hours.

(g) Tips. It shall be unlawful for any employee to receive tips from patrons except as set forth in this section.

(h) Minimum Age. No employees, agents, servants or independent contractors shall be permitted to work on the premises who are under the age of eighteen (18) years of age, except for adult businesses that offer live nude entertainment, the minimum age shall be twenty-one (21).

#### **5-17-11: REGULATION OF PREMISES:**

Display. Any adult business license issued pursuant to this chapter shall be prominently displayed at all times upon the premises for which the license was issued.

#### Viewing Rooms.

A person who operates or causes an adult business to be operated which exhibits on the premises in a viewing room a film, videocassettes, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the requirements of this subsection.

The business shall have one or more manager's stations. A manager's station shall not exceed thirty-two (32) square feet. No alteration in the configuration or location of a manager's station may be made without the prior approval of the City Manager.

At least one employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises. The interior of the manager's station shall be visible from all parts of the interior of the premises.

The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video display equipment. If the premises has two or more manager's stations designated, the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purposes from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the license application.

No viewing room of less than one hundred fifty square feet (150') may be occupied by more than one person at any one time.

Viewing rooms must be separated from other viewing rooms by a solid, uninterrupted physical divider which is a minimum of one-quarter inch thick and serves to prevent physical contact between patrons. No holes or openings shall be placed or allowed to remain in the wall between any two adjacent viewing rooms.

No door, screen, or other covering shall be placed or allowed to remain on any viewing room.

(c) Hours of Operation. It shall be unlawful for an adult business to be open for business or for the manager or any employee of a licensee to allow patrons upon the premises during the following time periods:

On any Tuesday through Saturday from 2:00 a.m. until 7:00 a.m.

On any Monday, other than a Monday which falls on January 1, from 12:00 a.m. until 7:00 a.m.

On any Sunday from 2:00 a.m. until 8:00 a.m.

On any Monday which falls on January 1, from 2:00 a.m. until 7:00 a.m.

(d) Patron Minimum Age. It shall be unlawful for any person under the age of eighteen (18) years to be upon the premises of an adult business. It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of eighteen (18) years upon the premises of the adult business. If the adult business offers live nude entertainment, then the minimum age shall be twenty-one (21) years of age.

(e) Interior Lighting. The interior portion of the premises of an adult business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place, including viewing rooms, at an illumination of not less than five foot-candles, as measured at the floor level. Adult motion picture theaters shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than one foot-candle of light as measured at the floor level. It shall be the duty of the licensee, manager and employees present on the premises to ensure that the illumination is maintained at all times that any patron is present on the premises.

(f) Exterior Lighting. All off-street parking areas and premises entries of an adult business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the adult business to help ensure the personal safety of patrons and employees and to reduce the incidence of vandalism and other criminal conduct.

(g) Stage. No employee or entertainer shall be unclothed in such attire, costume or clothing so as to expose any specified anatomical area, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from the nearest patron or behind a solid uninterrupted physical barrier which completely separates the entertainer from any patrons. This barrier must be a minimum of one-quarter inch thick and have no openings between the entertainer and any patrons. The stage shall be fixed and immovable.

(h) Tip Boxes. A licensee or manager who provides for tips from patrons shall establish one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron into the tip box.

A business that provides tip boxes for its patrons shall post one or more signs to be conspicuously visible to the patrons, in letters at least one inch high, to read as follows:

"All tips are to be placed in a tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

**5-17-12: ADULT MOTELS:**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated more than five (5) times in a twenty-four (24) hour period creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Chapter.

(b) It shall be unlawful for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment to rent a sleeping room more than five (5) times in a twenty-four (24) hour period.

(c) For purposes of this section, the term "rent" means the permitting a room to be occupied for any form of consideration. If a customer immediately rejects a particular room and requests a different room, only the latter room shall be considered rented for purposes of this section.

**5-17-13: NO LIQUOR LICENSE VIOLATIONS:**

Nothing in this section shall be construed to permit any act on the premises of a licensed adult business in violation of Title 12, Article 46 or 47, Colorado Revised Statutes.

**5-17-14: EXEMPTIONS:** It is not an unlawful act under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

(a) By a proprietary school, licensed by the State of Colorado; a college, junior college, or university supported entirely or partly by taxation;

(b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(c) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(2) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(3) Where no more than one nude model is on the premises at any one time.

**5-17-15: SEVERABILITY:** If any provision of this Chapter is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this Chapter are valid, unless it appears to the court that the valid provisions of this Chapter are so essentially and inseparably

connected with, and so dependent upon, the void provision that it cannot be presumed that the City Council would have enacted the valid provisions without the void provision or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

#### **5-17-16: PROHIBITED ACTS AND PENALTY:**

(a) It shall be unlawful for any person to violate a provision of this Chapter or knowingly to permit any patron to violate the requirements of this Chapter. A violation of this Chapter shall be a criminal offense. Violators shall be subject to the penalties provided by Section 1-8-1 of this Code, including imprisonment. A violation of this Chapter is hereby declared to be a public nuisance subject to civil remedies provided by Chapter 4 of Title VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

(b) In addition to any other penalties, the court trying such offense may decree that any license issued under the provisions this chapter be suspended or revoked and may decree that no such license shall thereafter be issued to any such person for a period not to exceed five (5) years.

(c) The penalties provided in this section shall not be affected by the penalties provided in any other provision of state or local law but shall be construed to be in addition to any other penalties.

Section 3. Section 11-4-13 of the Westminster Municipal Code is hereby amended to read as follows:

#### **(A) FINDINGS OF FACT.** The City Council hereby finds:

1. There are a substantial number of adult businesses in the Denver metropolitan area that require special supervision from the public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the area.
2. Adult businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature.
3. The concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens.
4. There is convincing documented evidence that adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas, causing increased crime and the downgrading of property values.
5. It is recognized that adult businesses, due to their nature, have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.
6. The City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight.
7. The City Council has previously acted to regulate the location and operation of other types of businesses that cause secondary effects, such as pawnshops and social gaming outlets.

This ordinance is part of an overall plan to improve and protect the quality of life from the secondary effects of a variety of activities through reasonable regulation and land use controls.

8. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult businesses.

9. It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state law prohibits the distribution of obscene materials and expects and encourages law enforcement officials to enforce anti-obscenity laws against any such illegal activities that are now occurring or may occur in the future within the City.

**(B) PURPOSE AND INTENT:** It is the purpose of this ordinance to regulate adult businesses to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of adult businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

**(C) DEFINITIONS:.** THE DEFINITIONS CONTAINED IN SECTION 5-17-2 OF THIS CODE SHALL APPLY TO THE SAME TERMS FOUND IN THIS SECTION.

~~(C) DEFINITIONS:~~

~~"Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."~~

~~-(a) "Adult bookstore" or "adult video store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:~~

~~Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas;" or Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."~~

~~A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."~~

~~The definition of "principal business purpose" shall include any establishment having as a substantial or significant portion of its stock in trade the items listed in subparagraphs (a) and (b) above or any premises in which at least 100 square feet of floor space is occupied by the display of such items.~~

"Adult business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort service, nude model studio, or sexual encounter center.

"Adult cabaret" means a nightclub, bar, restaurant, or other commercial establishment which regularly features:

Persons who appear in a state of nudity; or Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or  
Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult motel" means a hotel, motel or similar commercial establishment which:

Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or  
Offers a sleeping room for rent for a period of time that is less than six (6) hours; or  
Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty four (24) hours.

6. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

7. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

8. "Escort" means a person required to be licensed as such pursuant to Title V of this Code.

9. "Escort service" means a person or business required to be licensed as such pursuant to Title V of this Code.

10. "Establishment" means and includes any of the following:

The opening or commencement of any adult business as a new business;

The conversion of an existing business, whether or not a adult business, to any adult business;

The addition of any adult business to any other existing adult business; or

The relocation of any adult business.

11. "Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

12. "Nudity" or a "state of nudity" means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

13. "Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

14. "Sexual encounter center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration: (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

15. "Specified anatomical areas" means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

16. "Specified sexual activities" means and includes any of the following:

The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

~~Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;~~

~~Masturbation, actual or simulated; or~~

~~Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.~~

~~17. "Substantial enlargement" of an adult business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas existed on September 25, 1990.~~

~~18. "Transfer of ownership or control" of a sexually-oriented business means and includes any of the following:~~

~~The sale, lease, or sublease of the business;~~

~~The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or~~

~~The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.~~

#### **(D) LOCATION OF ADULT BUSINESSES.**

1. It shall be unlawful to operate or cause to be operated an adult business outside a designated PUD district. All adult businesses shall be located within a PUD district and are subject to the same regulation as all other PUD uses.

2. It shall be unlawful to operate or cause to be operated an adult business within one thousand feet (1,000') of:

- (a) A church;
- (b) A public or private preschool, day care center, elementary or secondary school;
- (c) A public park;
- (d) Boundary of any residential district;
- (e) The property line of lot devoted to residential use, REGARDLESS OF THE ZONING DESIGNATION

3. It shall be unlawful to cause or permit the operation, establishment, substantial enlargement, or transfer of ownership or control of an adult business within one thousand feet (1,000') of another adult business.

4. It shall be unlawful to cause or permit the operation, establishment, or maintenance of more than one adult business in the same building, structure, or portion thereof, or the increase of floor areas of any adult business in any building, structure, or portion thereof containing another adult business.

5. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult business is conducted, to the nearest property line of the premises of a church or public or private preschool, day care center, or elementary or secondary school, a public park, or to the nearest boundary of an residential district, or residential lot.

6. For purposes of subsection 3 of this section, the distance between any two adult businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

7. Any adult business lawfully operating on September 25, 1990, that is in violation of subsection 1 through 6 of this section shall be deemed a nonconforming use. The

nonconforming use shall be permitted to continue to operate unless abandoned as provided in section 11-4-15 of this Code. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.

8. An adult business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a church, public or private preschool, day care center, or elementary or secondary school, public park, residential district, or a residential lot within one thousand feet (1,000') of the adult business. THIS APPLIES ONLY TO THE RENEWAL OF A VALID LICENSE AND DOES NOT APPLY WHEN AN APPLICATION FOR A LICENSE IS SUBMITTED AFTER THE LICENSE HAS EXPIRED OR HAS BEEN REVOKED.

**(E) EXEMPTIONS.** THE RESTRICTIONS CONTAINED IN THIS SECTION SHALL NOT APPLY TO ANY BUSINESS THAT IS NOT REQUIRED TO BE LICENSED PURSUANT TO CHAPTER 17 OF TITLE V.

~~ADULT MOTELS. 1. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated more than five (5) times in a twenty four (24) hour period creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Chapter. 2. It shall be unlawful for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment to rent a sleeping room more than five (5) times in a twenty four (24) hour period. 3. For purposes of this section, the term "rent" means the act of permitting a room to be occupied for any form of consideration. If a customer immediately rejects a particular room and requests a different room, only the latter room shall be considered rented for purposes of this section.~~

~~EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS. A person who operates or causes to be operated an adult business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:~~

~~It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.~~

~~The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.~~

~~It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subsection (B) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.~~

~~No viewing room may be occupied by more than one person at any time.~~

~~The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.~~

~~It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.~~

~~(G) EXEMPTIONS. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:  
By a proprietary school, licensed by the State of Colorado; a college, junior college, or university supported entirely or partly by taxation;  
By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or  
-In a structure:  
Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and  
Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and  
Where no more than one nude model is on the premises at any one time.~~

**(F) ~~(H)~~ PENALTIES:** It shall be unlawful for any person to violate a provision of this Chapter or knowingly to permit any patron to violate the requirements of this Chapter. Violators shall be subject to the penalties provided by section 1-8-1 of this Code and may also be subject to civil remedies provided by Chapter 4 of Title VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

**(G) ~~(I)~~ SEVERABILITY:** If any provision of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this section are valid, unless it appears to the court that the valid provisions of this section are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the City Council would have enacted the valid provisions without the void provision or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 4. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on June 7, 1999, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 7th day of June, 1999.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Resolution No. 39 re Category B-3 Service Commitment Award

**Prepared by:** Shannon Sweeney, Planner III

**Introduction**

City Council action is requested on the attached Resolution awarding Category B-3 Service Commitments to the Westcliff Apartment project. This Resolution relates to the City's Growth Management Program and the 1999 Category B-3 new residential competition.

**Summary**

City Council and Staff previously reviewed the U.S. Home request for a supplemental Service Commitment award for the Westcliff Apartment project. (Please see attached vicinity map). Various options were reviewed in the material provided to City Council, and City Council directed Staff to accommodate the request for Service Commitments to the Westcliff multi-family project beginning in the year 2000.

The attached Resolution awards Service Commitments to the Westcliff Apartment project. Because the award is not effective until the beginning of the year 2000, no supplemental Category B-3 Service Commitment allocation for 1999 is necessary. Only the project-specific Service Commitment award is required at this time. The project totals 390 apartment units, and because multi-family units are calculated at .5 Service Commitment per unit, the project requires a total of 195 Service Commitments to build out the project. The Resolution awards 50 Service commitments in 2000, 75 in 2001, and the remaining 70 in 2002.

**Staff Recommendation**

Adopt Resolution No. 39 awarding Category B-3 Service Commitments to the Westcliff Apartment project as part of the 1999 Category B-3 competition based on 50 Service Commitments in 2000, 75 Service Commitments in 2001 and 70 Service Commitments in 2002.

**Background**

The City conducted three new residential competitions this year. Two applications were received in each of the three competitions. City Council had allocated 60 Service Commitments for one or two Category B-1 (New Single-Family Detached) projects, 21 Service Commitments for one Category B-2 (New Single-Family Attached) project, and 75 Service Commitments for one Category B-3 (New Multi-Family) to be awarded on a competitive basis. In March, City Council awarded Service Commitments to both of the Category B-1 projects submitted and the highest-scoring project in each of the Category B-2 and B-3 competitions.

As a result of the competitions, the Westcliff Apartment project in the Category B-3 competition and Parkside Village in the Category B-2 competition did not receive Service Commitments. Following the competition results, U.S. Home submitted correspondence to the City requesting supplemental Service Commitments to accommodate the Westcliff Apartment project. They put forth arguments to support their position of unique circumstances. This request was discussed in detail with the City Council in executive session on Monday, May 10, 1999.

As part of the Westcliff project, the developer has invested a significant amount in public improvements for the Westcliff Planned Unit Development and, in particular, Westcliff Parkway, a major transportation connection is a part of the Westcliff development. Due to several factors such as a major investment by U.S. Homes in public infrastructure, the fact that no Multi-Family Competitions have been held in the previous five (5) years and the difficulty which a vacant parcel in a mostly developed P.U.D. has in the competition process, a supplemental allocation is being recommended at this time. Another significant factor is that the Westcliff project would provide for the completion of Westcliff Parkway at no added expense to the City. This is viewed as a key transportation road and link at this time.

Although the developer for the project requested initial Service Commitments in 1999, the attached Resolution delays the first Service Commitment award until the year 2000. The Water Resources Division finds that this new development can be accommodated without compromising the City's water supply or treatment capacity.

Respectfully submitted,

William M. Christopher  
City Manager

Attachments

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1999

CATEGORY B-3 (NEW MULTI-FAMILY RESIDENTIAL) COMPETITION AND SERVICE COMMITMENT AWARDS

WHEREAS, the City of Westminster has adopted by Ordinance No. 2651 a Growth Management Program for the period 1990 through 2000; and

WHEREAS, within Ordinance No. 2651 there is a provision that Service Commitments for residential projects shall be awarded in Category B-3 (new multi-family) on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City's ability to absorb and serve new multi-family development is limited, and the City of Westminster has previously adopted Resolution No. 75, Series of 1998, specifying the various standards for new multi-family projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster has previously allocated 75 Service Commitments for the year 1999 for use in servicing new multi-family residential projects based on the criteria set forth in Section 11-3-1 of the Westminster Municipal Code; and

WHEREAS, two applications were received for the multi-family competition with a total of 490 Service Commitments requested over the next four years for the total build-out of the 980 total multi-family units proposed; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City's ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster, that:

1. Category B-3 Service Commitment awards are hereby made to the specific project listed below as follows:

<u>Project</u>	<b># SERVICE COMMITMENTS PER YEAR</b>			
	<b><u>2000</u></b>	<b><u>2001</u></b>	<b><u>2002</u></b>	<b><u>Total</u></b>
Westcliff Apartment Project	<b>50</b>	<b>75</b>	<b>70</b>	<b>195</b>

2. These Service Commitment awards to the projects listed above are conditional and subject to the following:

- a) For each project, the applicant must complete and submit proposed development plans to the City for the required development review processes.

- b) Each Service Commitment award is conditional upon City approval of each project listed above and does not guarantee City approval of any project or proposed density.

c) The City of Westminster shall not be required to approve any Preliminary Development Plan, Official Development Plan, or rezoning action necessary for development of property involved in this Category B-3 award nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category B-3 award.

d) The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. The City Staff during the competition process does not review the sketch plans submitted by applicants. Significant changes to the sketch plan are probable once the City's development review process begins for any project.

e) Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.

f) Service Commitment awards for the projects listed above, if approved by the City, may only be used within the project specified above.

g) These Service Commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.

h) The Category B-3 Service Commitment awards shall be valid for a period of two years from the date of award specified on this Resolution (June 7, 1999) provided the applicant proceeds with the development review process and the project is approved by the City. The Service Commitment award for any project shall expire unless at least one building permit is issued for the project during that two-year period. Future year awards are effective as of January 1 of the specified year.

i) If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the water supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.

j) All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.

3. Service Commitments for Category B-3 projects may be requested prior to their effective award year by developers or builders under the following conditions and stipulations:

a) In order to draw from a future year Service Commitment award, an "accelerated development surcharge" per Service Commitment shall apply.

b) The surcharge receipts will be added to the City's Utility Fund.

c) The surcharge shall be as follows:

Service Commitments requested from the next award year:  
\$1,275.00 per Service Commitment

Service Commitments requested from two award years in the future:  
\$2,550.00 per Service Commitment

Service Commitments requested from three or more award years in the future: \$3,800.00  
per Service Commitment

d) An award from a future year may be requested in writing by the developer or builder. The written request shall be submitted to the City Water Resources Division, and the request is subject to City Staff review and approval. The additional surcharge shall be paid when water tap fees are paid for the units.

e) Service Commitments drawn prior to their effective date of award shall have the same expiration date as if the Service Commitments were not drawn prior to the effective date of award.

4. The Category B-3 Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications. If fewer Service Commitments are needed in any given year, the unused amount in that year will be carried over in to the following year provided the Service Commitments have not expired as specified above. Requests for additional Service Commitments from future award years must be submitted in writing to the City for review and consideration.

Passed and adopted this 7<sup>th</sup> day of June, 1999

ATTEST:

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Mayor

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City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Westminster Promenade West – Parking Lot Design Contract

**Prepared by:** David W. Loseman, Senior Projects Engineer

**Introduction**

City Council action is requested to authorize the City Manager to enter into an agreement with Martin/Martin, Inc. consulting engineers in the amount of \$131,410 to provide civil engineering design work and construction engineering services for the parking lot north of the existing Promenade West/AMC Parking Lot. Council action is further requested to authorize a design contingency in the amount of \$20,000, which is approximately 15% of the proposed fee. Funds for this expense are available in the appropriate project budget in the General Capital Improvement Fund.

**Summary**

- Martin/Martin, Inc. has been the design engineer for the site work in the Westminster Promenade project since its beginning. The aggressive schedule for this project makes it necessary to use a firm with strong familiarity with the project as well as one with the ability to immediately access and utilize the existing project database.
- Martin/Martin's design fee compares very favorably with engineering fees paid on previous phases of the Promenade and similar work done attendant to City capital projects. The design contingency of \$20,000 is appropriate given the type of work to be performed, and the accelerated schedule. It is approximately 15% of the contract compensation.
- The City's obligation to design and construct this parking lot is identified in the 1996 Agreement with 104<sup>th</sup> Avenue and Pierce Development LLC, the original developers of the Westminster Promenade West property. No acceptable alternatives to performing this work are realistic.

**Staff Recommendation**

Authorize the City Manager to execute an engineering design contract with Martin/Martin, Inc. in the amount of \$131,410 for the Westminster Promenade West Parking Lot project because it is in the best interests of the City; authorize a project contingency of \$20,000 and charge the expense to the appropriate project account in the General Capital Improvement Fund.

**Background**

In 1996, the City entered into a contract with 104<sup>th</sup> Avenue and Pierce Development LLC relating to the development of the Westminster Promenade West Property. This property includes the AMC Theatre and currently undeveloped lots in front of the AMC Theatres (see attached map). These lots are currently under City review for development of a Dave and Buster's Entertainment Center, a Johnny Carino's Restaurant and a variety of smaller retail shops. In addition to these tenants, the Promenade itself consists of gazebos, seating areas, planter boxes, attractive lighting and signage. All of these amenities are included to create a family oriented entertainment complex.

The contract with Pierce Development includes a requirement by the City to complete the construction of additional parking spaces once the buildings mentioned above are ready to open. The parking lot needs to be completed by April 2000. The additional parking will be north of the existing parking lot for the Westminster Promenade West property.

Staff solicited a proposal from Martin/Martin, Inc. (M/M) to provide engineering design and construction engineering services for the parking lots. Since there is such an aggressive schedule for the work, Staff is recommending that Martin/Martin do this work. They have a strong familiarity with the project, having been the design engineer for site work and utilities for the entire Promenade project, including the Promenade East project where the Ice Centre and Westin Hotel are currently under construction. As a result, they have created and have ready access to the engineering database needed to create working drawings for the subject site improvements. M/M has always been extremely responsive to the City's needs and strives to complete their responsibilities in a timely manner, thus keeping the project on schedule. Martin/Martin's fee is approximately seven percent (7%) of the anticipated cost of construction, which compares very favorably to fees paid on other recent capital improvement projects. Staff recommends that Martin/Martin be awarded the design and construction engineering services contract for this project.

Respectfully submitted,

William M. Christopher  
City Manager

Attachment: Map



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Resolution No. 40 re Stewart Property Annexation Petition

**Prepared by:** David Falconieri, Planner III

**Introduction**

City Council action is requested on the attached resolution concerning a finding of compliance with statutory requirements for the petitions requesting annexation of the Stewart property, including adjacent portions of the 108th Avenue right-of-way and establishing a hearing date. The proposed annexations consist of a total of approximately 40 acres located on the south side of 108th Avenue between Wadsworth Boulevard and Wadsworth Parkway. (See attached vicinity map).

**Summary**

The Stewart property is currently improved with two residences (rental properties) and several agriculturally related outbuildings. The property is subject to the terms and provisions of the Northeast Comprehensive Development Plan, which was jointly adopted by the City of Westminster and Jefferson County, and lies within the Jefferson County Airport influence area. As such the Plan limits the amount of residential units that can be developed to what is currently permitted under existing County zoning. The A-2 zone permits one (1) unit per acre and therefore the Stewart property may be developed for four (4) residential units.

Due to the very low density proposed for the property, the applicant has requested relief from the normal public improvement costs for 108th Avenue and from the Public Land Dedication Fee. These items will be detailed in the Preliminary Development Plan (PDP).

**Staff Recommendation**

Adopt Resolution No. 40 accepting the annexation petition submitted by Bonnie Stewart and make the findings required by State Statute on the sufficiency of the petition. This resolution also sets the date of August 9, 1999, for the annexation hearing.

**Background**

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary.
2. An allegation that the requirements of Section 31-12-104 and 31-12-105 C.R.S have been met. (These sections are to be reviewed by the Council at the formal public hearing.)
3. Signatures and mailing addresses of at least 50% of the landowners of the land to be annexed. (In this case, Bonnie Stewart, and Jefferson County, signers of the petitions, own 100% of the property.)
4. The legal description of the land to be annexed.
5. The date of each signature.
6. An attached map showing the boundaries of the area.

Planning Staff has reviewed the petition and has determined that it complies with the above requirements.

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date at which time the City Council will review the merits of the proposed annexation.

Respectfully submitted,

William M. Christopher  
City Manager

Attachments

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1999

WHEREAS, there has been filed with the City Clerk of the City of Westminster, two petitions, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City;

WHEREAS, the City Council has been advised by the City Attorney and the City Manager that the petitions and accompanying maps are in substantial compliance with Sections 31-12-101, et.seq., Colorado Revised Statutes, as amended;

NOW, THEREFORE, be it resolved by City Council of the City of Westminster that:

1. City Council finds the said petitions and annexation maps to be in substantial compliance with all state statutory requirements, including C.R.S. Section 31-12-107 (1).
2. City Council hereby establishes August 9, 1999, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. Section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with C.R.S. Section 31-12-108 (2).

Passed and adopted this 7th day of June, 1999.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Date:** June 7, 1999

**Subject:** Councillor's Bill No. 32 re 1999 CDBG Fund Appropriation

**Prepared By:** Galen Requist, Community Development Programs Coordinator

**Introduction**

City Council action is requested to pass on first reading the attached Councillor's Bill appropriating 1999 Community Development Block Grant (CDBG) funds in the amount of \$666,000. This is a formal appropriation of 1999 CDBG funds, which were discussed during the 1999 CDBG budget discussion at City Council Study Session on November, 25, 1998.

**Summary**

The City annually receives Community Development Block Grant (CDBG) funds from the U.S. Department of Housing & Urban Development to be used for community development projects in the City. The exact amount of CDBG funds is generally not known until official notification is received from HUD in the mid-year timeframe. The City was officially notified on April 26, 1999 that \$666,000 in CDBG funds would be awarded in 1999. It is now necessary to formally appropriate the funds to accurately amend the City budget. Due to the nature of the CDBG fund, whose revenue source is based solely on federal financial assistance, it is necessary to appropriate the 1999 CDBG budget as a separate City Council action.

**Staff Recommendation**

Pass Councillor's Bill No. 32 on first reading to appropriate 1999 Community Development Block Grant funds in the amount of \$666,000.

**Background Information**

Each year the U.S. Department of Housing & Urban Development (HUD) awards CDBG funds to the City. These funds are managed by the Community Development Programs Division and are coordinated independent of the City's budget process. The CDBG budget process includes public meetings, contact with outside agencies, and internal meetings among City Staff. Once a draft budget is prepared it is brought to City Council Study Session for discussion, and then later approved as a budget ordinance.

At the November 25, 1998, City Council Study Session, Council reviewed a Staff Report which outlined Staff's recommended list of projects to be funded with 1999 CDBG funds. At the Study Session, Council consented to the CDBG budget recommended by Staff with one note. City Council stipulated that \$50,000 in CDBG funds be set aside for the Adams County Housing Authority for rehabilitation of the apartment building located at 75<sup>th</sup> Avenue and Lowell Boulevard. Council directed that this award of funds be contingent upon the Adams County Housing Authority's compliance with a 1995 IGA to complete landscaping improvements at the Greenbriar and Della Villa housing complexes. To date, the improvements have not been completed. However, \$50,000 in CDBG funds left over from previous years has been set aside. Staff is currently working with the Housing Authority to develop a plan to complete the work.

The budget discussed at the November Study Session was based on an estimated amount the City was expected to receive in 1999 CDBG funds. The actual dollar amount to be received was not determined until the City was officially notified by HUD in April 1999. At that time the City was notified of the \$666,000 grant to be awarded.

Staff now seeks Council action to formally appropriate the \$666,000 in CDBG funds for the following approved projects.

Project

Street Repairs (Original Westminster) \$100,000

Funds will be used for construction/repair of streets in original Westminster area

Original Westminster Revitalization Projects \$355,000

Staff has identified a number of projects which would make a significant improvement in areas of original Westminster that are currently in need of attention. The following projects are currently being considered for funding:

Aspen Care Facility Redevelopment – Staff is currently studying redevelopment options for the vacant nursing home at 75<sup>th</sup> Avenue and Lowell Boulevard. CDBG funds could be used to acquire the site and remove the existing buildings for follow-on redevelopment.

73<sup>rd</sup> Avenue & Lowell Boulevard Commercial Redevelopment – This commercial area is in very poor condition and is in need of redevelopment. Staff is analyzing the possibility of improving facades on some buildings, and possible acquisition and redevelopment of certain parcels.

73<sup>rd</sup> Avenue & Bradburn Boulevard Streetscaping and Landscaping – A preliminary study has been completed with plans to improve this area, which is Westminster’s original “main street”. Plans include widening sidewalks and installing additional trees, benches and landscaping. Staff is also studying possibilities to reinvigorate the area with arts and cultural activities.

Homeowner Rehabilitation Program \$ 75,000

This program provides low interest loans and grants to low income Westminster homeowners for essential home repairs. Staff recently finalized an agreement with 1<sup>st</sup> Bank to provide loan services directly to borrowers. The City will participate by “buying down” the interest rate on each loan to 3%, thus making it more affordable to low income homeowners.

Handicapped Access Improvements \$ 40,000

These funds will be used to rebuild the entrance at the Swim & Fitness Center to provide easier access for seniors and handicapped individuals.

Program Administration \$ 90,000

Funds will be used to cover all administrative costs for the CDBG program to include salaries, supplies, meeting expenses, training and professional development costs.

Unallocated Funds (for future use)		\$ 6,000
Funds to be allocated as needed throughout the year.	Total	\$666,000

The attached ordinance reflects the actual CDBG funds received by the City in 1999 and will enable the City's Finance Department to adjust the records accordingly.

Respectfully submitted,

William M. Christopher  
City Manager

Attachment: Councillors Bill

BY AUTHORITY

ORDINANCE NO.  
SERIES OF 1999

COUNCILOR'S BILL NO. \_\_\_\_\_  
INTRODUCED BY COUNCILLORS  
\_\_\_\_\_

A BILL

FOR AN ORDINANCE APPROPRIATING THE 1999 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING AN APPROPRIATION FROM THE ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 1999 Community Development Block Grant award from the U.S. Department of Housing & Urban Development in the amount of \$666,000 is hereby appropriated for approved CDBG projects. Due to the nature of the CDBG fund, whose revenue source is based solely on Federal Financial Assistance, it is necessary to appropriate the 1999 CDBG budget on a separate City Council

Section 2. The \$666,000 increase in the CDBG Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	\$Increase	Final Budget
REVENUES			
CDBG 1999 Block Grant			
76-0426-449	\$0	<u>\$666,000</u>	\$666,000
Total Change to Revenues		<u>\$666,000</u>	
EXPENSES			
CDBG 1999 Block Grant			
76-30-88-613-303	\$0	<u>\$666,000</u>	\$666,000
Total Change to Expenditures		<u>\$666,000</u>	

Section 3. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 7<sup>th</sup> day of June, 1999.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this \_\_\_\_ day of \_\_\_\_, 1999.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

## Summary of Proceedings

Summary of Proceedings of the regular City Council meeting held Monday, June 7, 1999.

Present at roll call were Mayor Heil, Mayor Pro Tem Merkel and Councillors Atchison, Dixon, Hicks and Smith. Absent was Councillor Allen.

The minutes of the meeting of May 24, 1999 were approved with no additions or corrections.

The Mayor presented checks to employees celebrating 25 years of service to the City of Westminster.

A public meeting was held to receive public input on the 2000 City Budget.

Public Hearing held on a proposed ordinance providing for the licensing and regulation of adult businesses in the City.

Council approved the following: Purchase of Articulated Loader, Purchase of 2 Pup Trailers, Purchase of 1.1 acres of Open Space, Design Contract for Westminster Boulevard Extension, and Westminster Promenade West design contract.

The following Councillor's Bill was introduced and adopted as an emergency ordinance:

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER, COLORADO, MUNICIPAL CODE BY ADOPTING A NEW CHAPTER 23 TO TITLE V, PROVIDING FOR THE LICENSING AND REGULATION OF ADULT BUSINESSES AND PROVIDING ADDITIONAL HEALTH AND SAFETY REGULATIONS FOR ADULT BUSINESSES, AND AMENDING SECTION 11-4-13. Purpose: Provide for licensing and regulation of adult businesses.

The following Councillor's Bill was introduced and passed on first reading:

A BILL FOR AN ORDINANCE APPROPRIATING THE 1999 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING AN APPROPRIATION FROM THE ESTIMATED REVENUES IN THE FUND. Purpose: Appropriate 1999 CDBG Funds.

The following Councillor's Bills were passed and adopted on second reading:

A BILL FOR AN ORDINANCE AUTHORIZING AN AMENDED ASSISTANCE AGREEMENT WITH KOHL'S DEPARTMENT STORE.

A BILL FOR AN ORDINANCE APPROVING AN AGREEMENT FOR THE ANNEXATION OF THE ZEHNDER PROPERTY ON THE NORTH SIDE OF 96<sup>TH</sup> AVENUE EAST OF THE WOMAN CREEK RESERVOIR PROPERTY.

A BILL FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN A PARCEL OF LAND LOCATED IN SECTION 18, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6<sup>TH</sup> P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 18, TOWNSHIP 2 SOUTH, RANGE 69 WEST, 6<sup>TH</sup> P.M., COUNTY OF JEFFERSON, STATE OF COLORADO.

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN.

A BILL FOR AN ORDINANCE AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO INCREASE THE 1999 BUDGET IN THE GENERAL FUND.

A BILL FOR AN ORDINANCE INCREASING THE 1999 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT PROJECT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 1999 ESTIMATED REVENUES IN THE FUND.

A BILL FOR AN ORDINANCE INCREASING THE 1999 BUDGET OF THE GENERAL, RESERVE, FLEET, GENERAL CAPITAL IMPROVEMENT, GOLF COURSE AND UTILITY FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 1998 CARRYOVER IN THE VARIOUS FUNDS.

The following Resolutions were adopted:

Resolution No. 39 – Category B-3 Service Commitment Award to Westcliff Apartment Project.

Resolution No. 40 – Stewart Property Annexation Petition and Finding of Compliance.

At 8:06 P.M. the meeting was adjourned.

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

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