



**WESTMINSTER  
COLORADO**

**August 12, 2002  
7:00 P.M.**

## **CITY COUNCIL 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
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Presentations
  - A. Employee Service Awards
  - B. Board & Commission Recognition
  - C. Colorado Association of Chiefs of Police Re-Accreditation
  - D. Recognition of Margaret Rivera as a Member of the Complaint Review Team
5. Citizen Communication (5 minutes or less)
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. Rocky Mountain Butterfly Consortium Expansion Agreement
  - B. Open Space Acquisition of 30 Acres North of Lower Church Lake
  - C. 73rd Avenue Street Reconstruction Contract
  - D. Revised Intergovernmental Agreement with Hyland Hills Park and Recreation District
  - E. 2002 Wastewater Collection System Improvement Program
  - F. Purchase of Two Tandem Dump Trucks (with Plows) for the Street Division
  - G. 2002 Slurry Seal Project Bid

9. Appointments and Resignations
  - A. Recommendation re Appointment to Jefferson County Corrections Board

10. Public Hearings and Other New Business
  - A. TABLED Swim and Fitness Center Weight Room Expansion Contractor Award
  - B. Public Hearing re on the proposed use of 2003 Community Development Block Grant funds
  - C. Public Hearing re Boulevard Plaza PUD (Wadsworth Pkwy & Wadsworth Blvd, N of 92nd)
  - D. CB No. 37 re CLUP Amendment for Boulevard Plaza Planned Unit Development
  - E. 4th Amended PDP re Boulevard Plaza Planned Unit Development
  - F. Public Hearing re Cascade Village Apartments Refunding
  - G. CB No. 38 re Cascade Village Apartments Refunding
  - H. CB No. 39 re Supplemental Appropriation for Standley Lake Renovations
  - I. CB No. 40 re Water and Sewer Rates Adjustment

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

**A. CB No. 36 re Adoption of International Building and Fire Codes (Dittman-McNally)**

**12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**

**A. City Council**

**B. Executive Session Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, AUGUST 12, 2002 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor Moss led Council, Staff and the audience in the Pledge of Allegiance.

ROLL CALL

Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, Kauffman, and McNally were present at roll call. Brent McFall, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk, were also present. Absent none.

CONSIDERATION OF MINUTES

Councillor Dittman moved, seconded by Dixon to accept the minutes of the meeting of July 22, 2002 with no additions of corrections. The motion carried unanimously.

PRESENTATIONS

Mayor Moss presented service pins and certificates of appreciation to Ron Lamb and Greg McSwain for 20 years, and service pins, certificates of appreciation and \$2,500 bonus checks to Rory Gonzales, Bill Morgan, Mike Normandin, and Frances Velasquez for 25 years of service with the City.

Mayor Moss presented certificate of appreciation for dedicated service to Kim Wolf of the Board of Adjustment.

Gary Maas, Police Chief for the City of Lakewood, presented Dan Montgomery, Police Chief and Darrel Tygart, Lieutenant, with an award from the Colorado Association of Chiefs of Police (CACP), recognizing the Police Department's successful re-accreditation as being in compliance with the Professional Standards of the Colorado Association of Chiefs of Police, and the County Sheriffs of Colorado.

Mayor Moss and Dan Montgomery, Police Chief presented an appreciation plaque to Ms. Rivera for serving on the Police Department Complaint Review Team.

CITIZEN COMMUNICATION

Mike Borek, 6583 W 99<sup>th</sup> Ave, addressed Council in reference to prairie dogs in his yard.

CITY MANAGER COMMENTS

Brent McFall, City Manager, commented that Sheridan Blvd north of 112<sup>th</sup> Avenue is now open ahead of schedule and under budget. He also advised that the WEDA board will be meeting after the Council meeting.

COUNCIL COMMENTS

Mayor Moss advised there will be a 9-11 memorial held at 8:00 a.m. in the City Hall Plaza.

Councillor Dixon attended a meeting with Broomfield in reference to Rocky Flats. She also thanked staff for their work at the Westminster Faire.

Councillor Hicks commented on the Westminster Faire, the Shop Westminster campaign and National Night Out.

Councillor Kauffman commented on the success of National Night Out.

Councillor McNally thanked the Fire and Police Departments re National Night Out and commented on the great Westminster Faire.

#### CONSENT AGENDA

The following items were considered as part of the Consent Agenda: Rocky Mountain Butterfly Consortium Expansion Agreement; Open Space Acquisition of 30 acres North of Lower Church Lake from Jefferson County in three yearly installments; 73<sup>rd</sup> Avenue Street Reconstruction Contract with Goodland Construction, Inc. for \$790,216.55, with a contingency of \$79,021; Revised IGA with Hyland Hills Park and Recreation District regarding the distribution of Hyland Hills Bond proceeds; 2002 Wastewater Collection System Improvement Program with Crossroads Underground for \$193,885 with a contingency of \$19,388; Award the bid for the two Tandem Dump Truck Cab and Chassis to the low bidder, Western Star of Colorado, in the amount of \$144,264; award the bid for the body and snow plow to O.J. Watson Co. in the amount of \$88,204; 2002 Slurry Seal Project with Quality Resurfacing Company, for \$143,694 with a \$7,184 contingency.

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.

Councillor Dixon moved, seconded by McNally to adopt the Consent Agenda items as presented. The motion carried unanimously.

#### RECOMMENDATION RE APPOINTMENT TO JEFFERSON COUNTY CORRECTIONS BOARD

Mayor Pro-Tem Atchison moved, seconded by McNally to recommend to the Jefferson County Commissioners, the appointment of Robert DeLong as the City of Westminster representative to the Jefferson County Corrections Board. Robert DeLong was present and addressed Council. The motion carried unanimously.

#### TABLED SWIM AND FITNESS CENTER WEIGHT ROOM EXPANSION CONTRACTOR AWARD

Councillor Dittman moved, seconded by Atchison to remove this item from the table and authorize the City Manager to enter into a contract with JHL Constructors, Inc. in the amount of \$367,240, and appropriate a 10 percent contingency fund in the amount of \$36,724 for the construction of the Swim and Fitness Center Weight Room Expansion. The motion carried unanimously.

#### PUBLIC HEARING RE USE OF 2003 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

At 7:38 p.m. the public hearing was opened on the proposed use of 2003 CDBG funds. No one spoke. The hearing was declared closed at 7:39 p.m.

#### PUBLIC HEARING RE BOULEVARD PLAZA PLANNED UNIT DEVELOPMENT

At 7:40 p.m. the public hearing was opened on the Boulevard Plaza PUD located between Wadsworth Pkwy and Wadsworth Blvd, north of 92<sup>nd</sup> Ave. Dave Shinneman, Planning Manager, entered a copy of the Agenda Memorandum, Planning Commission recommendation, and other related items into the record. Vince Vecchiarelli, Chai Investments, was present and addressed Council. There was no opposition. The hearing was declared closed at 8:47 p.m.

#### COUNCILLOR'S BILL NO. 37 RE BOULEVARD PLAZA PLANNED UNIT DEVELOPMENT

Councillor Kauffman moved, seconded by Atchison to pass Councillor's Bill No. 37 on first reading to change the land use designation on Parcel A, 1.415 acres, from "Business Park" to "Retail Commercial" and on Parcel B, 2.833 acres, from "Business Park" to "Industrial". Upon roll call vote, the motion carried unanimously.

4<sup>TH</sup> AMENDED PDP RE BOULEVARD PLAZA PLANNED UNIT DEVELOPMENT

Councillor Kauffman moved, seconded by Dixon to approve an amendment to the Fourth Amended Preliminary Development Plan for Boulevard Plaza Planned Unit Development to allow Retail/Commercial and Public Open Space uses on Parcel A, 1.415 acres, and Retail/Commercial uses including general automobile repair and automotive collision repair on Parcel B, 2.833 acres. The motion carried unanimously.

PUBLIC HEARING RE TEFRA CASCADE VILLAGE APARTMENTS REFUNDING

At 7:50 p.m. the public hearing was opened on the Cascade Village Apartments Refunding. Mary Ann Parrot, Finance Manager, was present and addressed Council. There was no opposition. The hearing was declared closed at 7:51 p.m.

COUNCILLOR'S BILL NO. 38 RE CASCADE VILLAGE APARTMENTS REFUNDING

Councillor Dittman moved, seconded by Atchison to pass Councillor's Bill No. 38 as an emergency ordinance approving the supplemental indenture to extend the maturity on the Tax-Exempt Multi-Family Rental Housing Refunding Revenue Bonds in the amount of \$14,675,000 for the Cascade Village Apartment Project and authorizing the City Manager to execute such documents as necessary to finalize the transaction. David Hartwig was present and addressed Council. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 39 RE SUPP. APPROPRIATION FOR STANDLEY LAKE RENOVATIONS

Mayor Pro-Tem Atchison moved, seconded by Dixon to pass Councillor's Bill No. 39 on first reading authorizing a supplemental appropriation of \$12,500,000 for the construction of the renovations at Standley Lake and reversing an earlier appropriation of \$3.0 million for partial bonding of this project. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 40 RE WATER AND SEWER RATES ADJUSTMENT

Councillor Dixon moved, seconded by Atchison to pass Councillor's Bill No. 40 on first reading implementing water and sewer rate adjustments. Curt Doss, 14119 Lexington Cir, and Mary Lou Rea, 3921 W 97<sup>th</sup> Pl, were present and addressed Council. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 36 RE ADOPTION OF INTERNATIONAL BUILDING AND FIRE CODES

Councillor Dittman moved, seconded by McNally to pass Councillor's Bill No. 36 on second reading adopting the International Building and Fire Codes. Upon roll call vote, the motion carried unanimously.

ADJOURNMENT:

The meeting was adjourned at 8:10 P.M.

ATTEST:

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

\_\_\_\_\_  
Mayor



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**Subject:** Presentation of Employee Service Awards

**Prepared by:** Michele Kelley, City Clerk

**Recommended City Council Action:**

Council present service pins and certificates of appreciation to employees celebrating 20 and 25 years of service with the City, and providing special recognition to our 25 year employees with the presentation of a \$2,500 bonus.

**Summary Statement:**

- City Council is requested to present service pins and certificates of appreciation to those employees who are celebrating their 25<sup>th</sup> and 20<sup>th</sup> anniversary of employment with the City.
- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting. .
- In 1986, City Council adopted a resolution to award individuals who have given 25 years of service to the City with a \$2,500 bonus to show appreciation for such a commitment. Under the program, employees receive \$100 for each year of service, in the aggregate, following the anniversary of their 25th year of employment. The program recognizes the dedicated service of those individuals who have spent most, if not all, of their careers with the City.
- There are four employees celebrating 25 years of service, and they will be presented with a check for \$2,500, less income tax withholding.

**Expenditure Required:** \$10,000

<b>Source of Funds:</b>	Public Works & Utilities Operating Budget Account	\$5,000
	Community Development Operating Budget Account	\$5,000

**Policy Issue(s):**

No policy issues identified

**Alternative(s):**

No alternatives identified.

**Background Information**

The following 20 year employees will be presented with a certificate and service pin:

Ron Lamb	Fire Department	Firefighter
Greg McSwain	Parks, Recreation & Libraries	Recreation Program Manager

The following 25 year employees will be presented with a certificate, service pin and check for \$2,500 minus amounts withheld for Federal and State income taxes:

Rory Gonzalez	Public Works & Utilities	Meter Technician
Bill Morgan	Public Works & Utilities	Equipment Operator
Mike Normandin	Community Development	Senior Engineer
Frances Velasquez	Community Development	Secretary

**Rory Gonzalez:** Rory began his career with the City of Westminster in 1977 as a Seasonal for the Street Division, where he spent 17 years. In that time Rory was promoted to Maintenance worker and then to Equipment Operator I and was eventually promoted to Equipment Operator II. In 1994, Rory moved to the Utilities Division as a crew leader with the Field Crew. In 1995, Rory cross-trained with the construction crew and was promoted to the Meter Shop as a Meter Technician. He has been in the capacity ever since. Rory's hobbies include motorcycle riding and traveling. Rory also enjoys spending time with his daughter, Lynnsey.

**Bill Morgan:** Bill began his career with the City of Westminster as a Seasonal with the Street Division in July of 1977. In November 1977, Bill was hired on full time as a Maintenance worker for the Street Division. Bill spent 19 years with the Street Division. In April 1980, Bill was promoted to Operator I, still within the Street Division. In July 1996, Bill took advantage of an opportunity to learn the water system in the Utilities Division on the construction crew and did a lateral transfer as an Operator I, where he has been ever since. Bill's hobbies include playing competitive baseball, fishing, traveling, and playing golf whenever he gets a chance. He also enjoys spending time with his family.

**Mike Normandin:** Mike was hired by the City to fill the position of Traffic Technician in the Department of Construction Services on July 5, 1977. In December of 1983, he was promoted to the newly created position of Traffic Engineer, and the title of this position was changed to Transportation Engineer in 1997. Over the past 25 years, Mike has helped to secure hundreds of thousands of dollars of federal funding for City roadway improvement projects in his capacity as Staff Representative to the Denver Regional Council of Governments Transportation Advisory Committee. Away from work, Mike, who is a native of Kansas but a long-time resident of Westminster, is an avid water skier and Broncos fan. He and his wife Sandy now spend most of their spare time chauffeuring sons James and Matthew to various sports practices.

**Frances Velasquez:** Frances began her career with the City on July 18, 1977 as a temporary Clerk/Typist in the Building & Code Enforcement Division of the Department of Construction Services. She was quickly moved into a permanent position as soon as the temporary appointment expired in January of 1978. In January of 1980, Frances transferred to the Engineering Division of the newly formed Department of Community Development and was promoted to the position of Secretary.

In her 22 years of employment within the Engineering Division, Frances has served under four City Engineers...so far! It is hard to believe that the eternally youthful-looking Frances is a great grandmother! When she isn't helping to raise her great granddaughter and 8 grandchildren, Frances enjoys cheering the Broncos and visiting her relatives in southern Colorado.

On August 21st, the City Manager will host an employee awards luncheon at which time 4 employees will receive their 15 year service pin, 2 employees will receive their 10 year service pin and 13 employees will receive their five year service pins, while recognition will also be given to those who are celebrating their 20<sup>th</sup> and 25<sup>th</sup> anniversary. This is the third of four luncheons for 2002 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees is 285 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens.

Respectfully submitted,

J. Brent McFall  
City Manager





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Recognition of Former Board and Commission Members

**Prepared by:** Michele Kelley, City Clerk

**Recommended City Council Action**

Present certificates of appreciation for dedicated service to Michael Condon of the Special Permit and License Board, Kim Wolf of the Board of Adjustment and Karen Scheuerman of the Open Space Advisory Board.

**Summary Statement**

- The City Council is requested to present Certificates of Appreciation in recognition of time dedicated to the City by several Board members whose have recently resigned.
- Michael Condon has recently resigned from the Special Permit & License Board.
- Kim Wolf has recently resigned from the Board of Adjustment.
- Karen Scheuerman recently left the Open Space Advisory Board.
- Certificates of Appreciation recognizing the time and efforts of Michael Condon, Kim Wolf and Karen Scheuerman have been prepared to be presented on behalf of the Mayor and entire Council.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue(s):**

No policy issue identified.

**Alternative(s):**

No alternative identified.

**Background Information**

Michael Condon was originally appointed to the Special Permit and License Board on February 9, 1998 and recently resigned because he moved out of the City.

Kim Wolf was originally appointed to the Board of Adjustment on March 2, 1998 and he recently resigned due to health problems.

Karen Scheuerman was appointed to the Open Space Advisory Board on February 26, 1990 and served continuously until December, 2001.

These previous Board and Commission members, along with all the current Board and Commission members spend a considerable amount of time working on the Boards and Commissions.

The time and dedication of these individuals is greatly appreciated by the City.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Colorado Association of Chiefs of Police Re-Accreditation

**Prepared By:** Dan Montgomery, Chief of Police

**Recommended City Council Action**

Mayor Moss, City Manager Brent McFall, and Police Chief Dan Montgomery accept an award from the Colorado Association of Chiefs of Police (CACP), recognizing the Police Department's successful re-accreditation as being in compliance with the Professional Standards of the Colorado Association of Chiefs of Police, and the County Sheriffs of Colorado (CSOC).

**Summary Statement**

Recently, an independent assessment team, under the direction of the Colorado Association of Chiefs of Police and the County Sheriffs of Colorado, reviewed the Police Department's operating policies and procedures. The purpose of this assessment, which was initiated by Police Chief Dan Montgomery, was to 1) determine whether or not the department's policies, procedures and rules are in compliance with the rigorous professional standards of both associations, and 2) to become professionally re-accredited under the "Colorado Professional Law Enforcement Standards" currently in effect. The assessment was completed, and the Police Department was granted professional re-accreditation.

**Expenditure Required:** \$500.00

**Source of Funds:** Expenditure was paid from the 2001 Police Department budget.

**Policy Issues**

None identified.

**Alternatives**

None identified.

**Background**

In 1986, the Metropolitan Association of Chiefs of Police, and the Colorado Association of Chiefs of Police organizations followed the lead of the National Commission On Accreditation for Law Enforcement Agencies (CALEA), and developed more than 100 professional law enforcement standards for Colorado Law Enforcement Agencies. These standards covered such law enforcement topics as the use of force, training, organization, records management, media relations, internal affairs investigations, police patrol, police investigations, drug investigations, etc., and reflected contemporary and professional state-of-the-art policies, procedures and rules. These standards served, and continue to serve, as “models” for Colorado law enforcement agencies to follow, and participation in this certification program is still today, as it was in 1986, optional. Of the 156 municipal police departments in Colorado, only 34 are professionally accredited at this point in time.

Several years ago, the County Sheriffs of Colorado (CSOC), and the Colorado Association of Chiefs of Police (CACP) joined forces insofar as professional standards were concerned, and today, the standards in effect are referred to as the “Colorado Professional Law Enforcement Standards.” They are endorsed by both associations, and continue to serve as model policies, procedures and rules for Colorado law enforcement agencies. Accredited agencies must be re-accredited every five years in order to maintain their status, and it is up to each police chief or sheriff to initiate the re-accreditation assessment.

Littleton Police Chief Gary Maas, the Immediate Past President of the Colorado Association of Chiefs of Police, will be present to make the formal presentation on re-accreditation.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Recognition of Margaret Rivera as a Member of the Complaint Review Team

**Prepared By:** Dan Montgomery, Chief of Police

**Recommended City Council Action**

Mayor Moss to present an appreciation plaque to Ms. Rivera on behalf of the City of Westminster.

**Summary Statement**

- On March 2, 1998, City Council passed Resolution Number 14, creating the Police Department Complaint Review Team, consisting of two citizens from the community and two police supervisors.
- Margaret Rivera was one of the two citizens appointed to this team, and for the past three years, she has worked very hard and very conscientiously to help make this program the success it is today. Ms. Rivera has completed her three-year term and has resigned from the team.
- Ms. Rivera will be present at this City Council meeting to accept an appreciation plaque from Mayor Moss, acknowledging her three years of community service commitment.

**Expenditure Required:** \$50.00

**Source of Funds:** Police Department 2002 General Fund Budget

**Policy Issues**

None identified.

**Alternatives**

While there may be other ways for Council to recognize Ms. Rivera's contributions, it is Staff's perspective that the awarding of a plaque is the appropriate thank you for three years of hard work and commitment.

**Background Information**

Police Chief Dan Montgomery and former City Manager Bill Christopher approached City Council on December 24, 1997 requesting the creation of a Police Department Complaint Review Team. The purpose of this strategy was to incorporate an element of citizen review into the investigation of police misconduct allegations. On March 2, 1998, City Council adopted Resolution Number 14 supporting the creation of the Police Department Complaint Review Team. Appointments to the team are made by the City Manager and the Chair of the City's Personnel Board. Michele Haney and Margaret Rivera were appointed in 1998 to the team. Both of these individuals were appointed for three-year terms. Ms. Haney's term expired, and Myron Treber was recently appointed to the team to replace her. Margaret's position on the team has now expired, and Ms. Rivera, who now chairs the City's Personnel Board, appointed Betty Whorton to the team.

The Police Department Complaint Review Team has functioned exceptionally well since inception, and has been recognized as only the second such system of citizen review in the State of Colorado. Additionally, this program received a DRCOG Innovation Award on April 14, 2000.

Ms. Rivera has worked tirelessly to help make this program a success. In the three years she has served, she has reviewed approximately 70 cases of alleged police misconduct. Her performance and her commitment have been exceptional, and she will be missed as a member of the Police Department's Complaint Review Team.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Rocky Mountain Butterfly Consortium Expansion Agreement

**Prepared By:** J. Brent McFall, City Manager

**Recommended City Council Action:**

Authorize the City Manager to sign an agreement with the Rocky Mountain Butterfly Consortium providing certain incentives to the Consortium for the purpose of expansion of the Butterfly Pavilion on its current site, and further authorizing the City Manager to execute all documents necessary to fully effectuate the provisions contained in said Agreement.

**Summary Statement:**

- The Rocky Mountain Butterfly consortium has operated a Butterfly Pavilion in the City of Westminster since 1994.
- The Butterfly Consortium has a desire to expand its facilities and has previously entered into an Agreement in September 2000 for the relocation of a new and expanded Butterfly Pavilion on City owned property north of 104<sup>th</sup> Avenue and west of Big Dry Creek adjacent to the Westin Westminster Hotel.
- It has been determined that it is in the best interest of both the Butterfly Consortium and the City of Westminster that the Consortium expand its Butterfly Pavilion on its existing site.
- The proposed Agreement voids the September 2000 Agreement and provides assistance to the Butterfly Consortium in the form of a rebate of 20% of City Sales Tax collections and Admissions Tax collections for a 3-year period beginning January 1, 2003 in an amount not to exceed \$40,000. Further, the City will waive one half of all use taxes imposed on materials used in the construction of the Butterfly Pavilion expansion Phases I - III. The City will deed to the Consortium a 1.16 acre parcel that the Consortium currently uses for overflow parking and will grant a trail easement to the Butterfly Consortium on a 4.7 acre parcel of City open space that is adjacent to the Butterfly Pavilion.
- The Butterfly Pavilion agrees to commence construction of Phase I of their expansion no later than July 1, 2003.

**Expenditure Required:** \$0

**Source of Funds:** N/A

### **Policy Issues**

Does the City wish to retain the Butterfly Pavilion as an attraction and point of interest in the City of Westminster? Should the City enter into an incentive agreement with the Rocky Mountain Butterfly Consortium to assist them in the expansion of the Butterfly Pavilion on its current site?

### **Alternatives**

- To not approve the agreement with the Rocky Mountain Butterfly Consortium to provide assistance in their expansion on the existing site.
- Direct staff to continue negotiations with the Butterfly Consortium for the purpose of building a new facility on the site north at 104<sup>th</sup> Avenue and west of Big Dry Creek adjacent to the Westin Westminster Hotel as was contemplated in the September 2000 agreement.
- Offer no assistance to the Butterfly Consortium regarding their expansion plans and run the risk of seeing the Butterfly Pavilion being relocated outside the City of Westminster.

Staff does not recommend any of these alternatives as both the Butterfly Consortium staff and City staff have determined that it's in the best interest of both parties to see the Butterfly Pavilion expanded on its current site. This frees up the site adjacent to the Westin Westminster Hotel for further commercial development which can be a significant tax generator for the City of Westminster.

### **Background Information**

In April 1994, the City of Westminster and the Rocky Mountain Butterfly Consortium entered into an agreement calling for the development of a Butterfly Pavilion on property in the City of Westminster. The City contributed land and other assistance to the establishment of the Butterfly Pavilion. In September 2000, the City and Rocky Mountain Butterfly Consortium entered into an agreement wherein the Consortium would expand its facilities onto a new site north of 104<sup>th</sup> Avenue and west of Big Dry Creek adjacent to the Westin Westminster Hotel. This property was to be leased to the Consortium for \$1.00 per year, and it was anticipated that the City would be a co-developer of the site with an adjacent IMAX theater.

Since September 2000, the City and Consortium staff have entered into good faith negotiations regarding a land lease for the new site but were unable to reach agreement satisfactory to both parties. Staff then began discussions with Consortium staff regarding providing assistance to the Consortium for expansion of Butterfly Pavilion on its existing site. The proposed agreement is the result of those negotiations.

The Agreement provides that in exchange for the Butterfly Pavilion facility being expanded on its current site with commencement of construction of Phase I of the project no later than July 1, 2003 the City will provide the following incentives: a rebate of 20% of City Sales Tax collections and Admissions Tax collections at the Butterfly Pavilion for a 3-year period beginning January 1, 2003 in an amount not to exceed \$40,000. A waiver of one half of all use taxes that would otherwise be imposed on materials used on the construction of the Butterfly Pavilion expansion Phases I – III. The City shall deed to the Consortium a 1.16 acre parcel adjacent to Butterfly Pavilion property and currently used by the Pavilion for overflow parking. The City will grant a trail easement to the Consortium on a 4.7 acre parcel adjacent to the existing Butterfly Pavilion which the Pavilion currently uses for nature trail purposes. In addition to the above incentives the Agreement provides that the September 2000 Agreement which provided for a \$1.00 per year land lease on the new site north of 104<sup>th</sup> Avenue is null and void.



**SUBJECT:** Rocky Mountain Butterfly Consortium Expansion Agreement

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It is the opinion of staff that this Agreement best provides for the expansion of the Butterfly Pavilion to meet its customer service demands while keeping the facility in the City of Westminster. Furthermore, this Agreement frees the previously encumbered site north of 104<sup>th</sup> Avenue for other commercial development that can produce significant tax revenue to the City as well as revenue to the City from the sale of property. Staff believes that this agreement is in the best interest of the City and encourages favorable City Council action.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Open Space Acquisition of 30 Acres North of Lower Church Lake through Jefferson County Open Space Program

**Prepared By:** Lynn Wodell, Open Space Coordinator

**Recommended City Council Action:**

Authorize the City Manager to execute the necessary documents for Jefferson County to purchase the 30 acres north of Lower Church Lake property on the City's behalf and to execute the necessary documents for the City to buy the property from Jefferson County in three yearly installments.

**Summary Statement:**

- City staff has negotiated for the purchase of approximately 30 acres from Whole Foods.
- The property is located on the west side U.S. Highway 36 north of Lower Church Lake.
- Acquisition of this site is recommended for scenic preservation of the views of the mountains from U. S. Highway 36 and to allow for public enjoyment of the adjacent Lower Church Lake.

**Expenditure Required:** \$3,000,000 Over Three Years To Be Paid to Jefferson County Open Space with approximately 5% interest

**Source of Funds:** City Open Space Sales Tax/Land Purchases Account

**Policy Issues:**

Should Open Space funds be used for the preservation of this property? Should the City ask Jefferson County Open Space to acquire the property on the City's behalf? Should the City enter into an agreement to buy the property from Jefferson County?

**Alternatives:**

1. Authorize the acquisition of this property.
2. Decide not to acquire this property at this time.
3. Decide not to ask Jefferson County to help with this transaction.

**Background Information:**

Although the City had hoped to preserve this site under the open space program for scenic preservation for many years, the property was purchased by the Amrion Corporation and proposed for an office complex. Since then, Amrion merged with Whole Foods, who did not need the property for this purpose, and the property has been for sale. Staff has been negotiating for a potential acquisition for open space purposes.

The results of our negotiations are as follows:

1. Purchase price of \$5,000,000 that will be reduced to \$3,000,000 by a \$2,000,000 gift/charitable contribution by Whole Foods, for the acquisition of 30 acres.
2. Jefferson County Open Space Advisory Committee has expressed a willingness to recommend to the Board of County Commissioners the acquisition of the property on the City's behalf.
3. The City would be required to purchase the property from the County over a three year period at \$1,000,000 per year with interest on the unpaid balance at the rate of interest the County would have earned on the Open Space Bond Funds. The interest rate is anticipated to be between 4% and 5%.

The proposal is for Jefferson County to acquire the property from Whole Foods with the City buying it from the County over a three-year period. The City is unable to request an outright grant for this property because the City used its bond money allocation for the purchase of the 23 acres at City Park. However, the Jefferson County Open Space Director and the Open Space Advisory Committee are supportive of assisting the City with this purchase, and therefore are offering the loan approach.

The acquisition of this property is a high priority of the Open Space Advisory Board. It continues the preservation of open space along U.S. Highway 36; preserve the views for those traveling through the City; and provides one more body of water for the public to enjoy.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** 73<sup>rd</sup> Avenue Street Reconstruction Contract

**Prepared By:** Tony Chacon, South Westminster Revitalization Coordinator  
Robin Byrnes, Community Development Programs Coordinator

**Recommended City Council Action:**

Authorize the City Manager to sign a contract with Goodland Construction, Inc. in the amount of \$790,216.55, with a construction contingency fund of \$79,021.66 for the reconstruction of 73<sup>rd</sup> Avenue from Bradburn Blvd. to Lowell Blvd.

**Summary Statement**

- The reconstruction of 73<sup>rd</sup> Avenue from Bradburn Blvd. to Lowell Blvd. was an identified improvement of the South Westminster Revitalization Plan adopted by City Council on January 22, 2001.
- The City allocated funding out of the Street Improvement budget and Community Development Block Grant funds to complete this project.
- A total of three bids were received in response to the request for proposal (RFP) issued by J.R. Engineering on behalf of the City.
- Goodland Construction, Inc. was the lowest most qualified bidder and is being proposed to be the contractor for the reconstruction of 73<sup>rd</sup> Ave. between Bradburn Blvd. and Lowell Blvd.
- Project contingency on the construction contract is \$79,021.66.

**Expenditure Required:** \$869,238.21

**Source of Funds:** CDBG funds: \$794,238.21; Street Improvement funds: \$75,000.00

**Policy Issues**

Should the City expend CDBG funds in order to proceed with the 73<sup>rd</sup> Avenue project? CDBG funds have been allocated for the construction portion of this project. The City has also expended CDBG funds on the design and construction documents. If the CDBG funds are not expended in a timely manner it will impact the City’s compliance with U.S. Department of Housing and Urban Development (HUD) regulations governing the City’s CDBG rate of expenditure, which require the City to expend CDBG funds within a specific timeframe.

**Alternatives**

Do not proceed with the reconstruction of 73<sup>rd</sup> Avenue or partially fund the project and only complete a smaller section of the street at this time. These options are not recommended because the City needs to expend CDBG funds in a timely manner in order to comply with HUD regulations governing the City’s CDBG rate of expenditure.

**Background Information**

The 73<sup>rd</sup> Avenue reconstruction project is part of a larger revitalization strategy within the Urban Renewal Area. Currently there are several active projects in various stages of implementation within this area, including the Career Enrichment Park improvement project, the Lowell Blvd. redevelopment project, and the rehabilitation of the Della Villa apartment complex. All of these projects are within ½ mile of one another and represent the City’s commitment to the revitalization of this area.

The reconstruction of 73<sup>rd</sup> Avenue between Bradburn Blvd. and Lowell Blvd. will include grading of the street to improve Fire Department vehicle access to Fire Station #1, installation of historic bronze markers, undergrounding of the electrical lines to include decorative street lighting, landscaping, widening of the sidewalks, decorative pavers, benches, asphalt paving, handicapped accessibility curb cuts, etc.

City Staff solicited proposals and received bids from three qualified construction firms for the desired services. After careful consideration and bid evaluation conducted by J.R. Engineering, Staff determined that Goodland Construction, Inc. offered the lowest and most responsive bid. Goodland Construction, Inc. has worked with the City in the past on several construction projects: traffic calming, Bishop’s Square ballfield, Community Senior Center parking lot and Terrace Park improvements. Staff recommends that Council authorize the City Manager to execute a contract with Goodland Construction, Inc. to provide the construction services for this project. The proposed bids of the three responding construction company’s are listed below:

<b>CONTRACTOR</b>	<b>WATER LINE LOWERING ALTERNATE</b>	<b>BASE BID</b>	<b>TOTAL BID</b>
Goodland Construction, Inc.	\$12,500.00	\$777,716.55	\$790,216.55
Technology Constructors, Inc.	\$5,236.00	\$837,326.39	\$842,562.39
Concrete Express, Inc.	\$5,700.00	\$842,210.75	\$847,910.75

Funds to proceed with this work have been set aside in the CDBG account. Funds for the project have been accumulating since 1999 when the project was initially approved by City Council. Following is an accounting of the project.

**Accounting of 73<sup>rd</sup> Avenue Street Reconstruction Budget:**

Total Project Budget:	\$1,069,121.44
CDBG funds:	\$994,121.44
Street Improvement funds:	\$75,000.00
Design and Engineering Services (completed):	\$142,914.38
Miscellaneous Engineering and utility related costs:	\$56,968.85
Goodland Construction Contract:	\$790,216.55
Construction Contingency funds (10%):	\$79,021.66

With Council's authorization of the execution of this contract, work will begin by September 1, 2002.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment(s)



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Revised Intergovernmental Agreement with Hyland Hills Park and Recreation District

**Prepared By:** Bill Walenczak, Director of Parks, Recreation and Libraries

**Recommended City Council Action**

Authorize the City Manager to sign the revised intergovernmental agreement with Hyland Hills Park and Recreation District regarding the distribution of Hyland Hills Bond proceeds to the City of Westminster.

**Summary Statement**

- On April 22, 2002, City Council voted to authorize the City Manager to sign an intergovernmental agreement (IGA) between the City of Westminster and Hyland Hills Park and Recreation District.
- On May 7, 2002, the Hyland Hills general obligation bond was passed by voters of the district.
- The original draft of the IGA did not specify a proposed City match for the development of L.I.F.E. Fellowship Park or the park to be developed at 128<sup>th</sup> Avenue and Big Dry Creek. Hyland Hills is committing \$900,000 for L.I.F.E. Fellowship and \$500,000 for 128<sup>th</sup> Avenue and Big Dry Creek.
- Since the City’s Five-year CIP indicated approved funding for the above projects, the Hyland Hills Board has requested that language be added to the IGA to reflect the City’s intention to provide said funds.
- If for some reason either party (Hyland Hills or the City) fails to follow through on commitments outlined in the IGA, the terms and conditions of the agreement will be subject to renegotiation by either party.

<b>Expenditure Required:</b>	\$ 500,000	match for the Carol Butts match
	\$1,400,000	match for L.I.F.E. Fellowship over budget years 2003 – 2005
	\$700,000	for 128 <sup>th</sup> Avenue and Big Dry Creek over budget years 2005 & 2006

**Source of Funds:**

- Parks and Recreation Capital Improvement Funds for construction.
- General Fund or other sources for maintenance.

### **Policy Issues**

- Is the City Council willing to commit future Parks and Recreation Capital Funds to develop these park sites described within this agenda memorandum?
- Is the City Council willing to budget funds in future operating budgets for ongoing maintenance of these park sites once they are developed?

### **Alternatives**

- City Council could elect to not approve the attached revised IGA.
- City Council could propose to modify the proposed IGA.
- City Council could elect to reduce the scope of one or all of the projects proposed in the IGA.
- City Council could choose to stand by the original IGA approved on April 22, 2002.

### **Background Information**

On May 7, 2002, voters approved the Hyland Hills Park and Recreation District general obligation bond issue in the amount of approximately \$18 million to acquire open space, develop trails and improve/develop parks and facilities throughout the district.

The following Westminster parks were included in the millage proposal.

L.I.F.E. Fellowship Park – Hyland Hills Contribution - \$900,000 - This undeveloped community park site of approximately 25 acres is located at 115<sup>th</sup> Avenue, east of Sheridan Boulevard behind the L.I.F.E. Fellowship Church. Development would include soccer and little league fields, trails, play lot and picnic shelters. The City's 2003 proposed five-year C.I.P. shows \$1.4 million to be budgeted for construction of this park through 2005.

128<sup>th</sup> Avenue and Big Dry Creek - \$500,000 – This undeveloped community park is located south of 128<sup>th</sup> Avenue, east of Big Dry Creek. Development would include soccer and little league fields, trails, play lot and picnic shelters and possible court games. The City's five-year proposed 2003 C.I.P. shows \$700,000 to be budgeted for this park through 2006.

Carroll Butts Park - \$750,000 Hyland Hills Contribution - This park is located at 95<sup>th</sup> Avenue and Raleigh Street and is jointly owned by Hyland Hills and the City of Westminster. This provision requires that the City provide a match of \$500,000 to the Hyland Hills contribution, which can be easily funded over two years in the five-year Capital Improvement Plan. Improvements will include upgrades to the irrigation system, soccer fields, ballfields, paved parking lots and other amenities. The City and the district share the cost of maintaining this park, which is approximately \$90,000 per year for contracted maintenance.

In addition, Hyland Hills has agreed to improve/develop the following district-owned parks/facilities located within the City:

- Valley View Park at 105<sup>th</sup> Avenue and Federal Boulevard: The IGA would also require the City to vacate the west 105<sup>th</sup> Dr. right of way that is platted through this park site. Staff concurs with this recommendation.
- Hyland Hills Gymnastic Center expansion at 72<sup>nd</sup> and Irving St.

As is standard practice for all City park developments, neighborhood meetings will be held to get input from residents on how these parks will be designed.



Additional provisions of the IGA include the following:

- City staff and Hyland Hills staff will jointly schedule the use of these parks.
- The City will maintain the L.I.F.E. Fellowship and 128<sup>th</sup> and Big Dry Creek parks. It is estimated that it will cost approximately \$6,000 per acre to maintain these parks once developed. This adds up to roughly \$270,000 per year for maintenance of these parks. However, Staff will explore other options, such as contract maintenance, to possibly reduce maintenance costs.
- Changes to the original IGA approved by City Council are noted on the revised document attached to this memorandum.

Staff is excited about the prospect of developing some key City-owned park sites with Hyland Hills Park and Recreation District. Westminster still has ten (10) community and neighborhood parks that need to be developed as well as five (5) parks that need to be renovated or redeveloped. The potential addition of Hyland Hills bond money will add a significant resource to the City's capital improvement funding and allow for full development of these key City parks.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** 2002 Wastewater Collection System Improvement Program

**Prepared By:** Richard A. Clark, Utilities Operations Manager  
Andy Mead, Utilities Operations Coordinator

**Recommended City Council Action**

Authorize the City Manager to execute a contract with Crossroads Underground to complete the specified work as described in the project documentation; authorize a project budget of \$193,885 with a 10% contingency budget of \$19,388, and charge the appropriate budget account in the Utilities Division Operations Budget.

**Summary Statement**

- This project consists of replacing approximately 1,834 linear feet of six-inch sanitary sewer lines with eight-inch sewer line, installing seven, four-foot diameter sanitary sewer manholes, and reconnecting existing sanitary sewer services to the proposed sanitary sewer lines.
- Formal bids were issued, and a bid opening took place on July 18, 2002. A total of nine contractors bid on this project.
- Funds were budgeted for this experience in the 2002 Utilities Fund Budgets.
- The lowest responsible bid was received from Crossroads Underground.
- City Council is requested to approve the project contract with Crossroads Underground in the amount of \$193,885.

**Expenditure Required:** \$193,885

**Source of Funds:** Utilities Operations Division Budget

**Policy Issue**

Should the City utilize Utility Fund monies to complete the needed wastewater collection system improvements utilizing an outsourced contractor as specified in the contract documents?

**Alternative**

Delay this sanitary sewer line replacement project and continue with additional maintenance costs and assume responsibility for any damages that may occur due to a complete line failure.

**Background Information**

The project consists of replacing approximately 1,835 linear feet of six-inch sanitary sewer lines with eight-inch sewer line, installing seven (7) four-foot diameter sanitary sewer manholes, and connecting the existing sanitary sewer services. The work also includes removal and disposal of existing sanitary sewer pipe and manholes and street patching. The project is located on Raleigh Street from 78<sup>th</sup> Avenue to Turnpike Drive; 75<sup>th</sup> Avenue from Newton Street 65 feet east; 74<sup>th</sup> Avenue from Raleigh Street to Quitman Street; and, Orchard Court from 73<sup>rd</sup> Avenue to 74<sup>th</sup> Avenue. This project is expected to start in early September and should be completed by November 30, 2002.

The 2002 Wastewater Collection System Improvement Project was advertised in the *Daily Journal* with a mandatory pre-bid meeting on July 10, 2002. Nine bids were received and read at the public bid opening on July 18, in the City Council Chambers. Crossroads Underground was the apparent low responsible bidder. JR Engineering checked references on Crossroads Underground, since the City has not used them as a contractor for any previous projects. The results of the reference check were favorable. All of the companies and cities that have used Crossroads Underground were satisfied with the work product. Also, OSHA records showed no concerns with the contractor.

<u>Bidder</u>	<u>Bid Amount</u>
Crossroads Underground	\$193,885
Levi Contractors	\$210,975
Trainor	\$227,835
AISA Civil	\$234,216
T. Lowell Construction	\$248,000
Wycon Construction	\$261,156
Asphalt Specialties	\$292,150
Concrete Works	\$332,304
K.R. Swerdfeger	\$351,841

The sanitary sewer in the project location for sewer line replacement has been identified as needing replacement due to the deterioration and poor condition of the existing pipe. In addition, the pipe is not large enough to handle the current flows and should be upsized to relieve this condition. Utilizing Trenchless Technology (relining the existing 6-inch sewer lines) is not considered a viable option since the lined pipe would be undersized for the necessary sewer flows that run through this pipe.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Purchase of Two Tandem Dump Trucks (with Plows) for the Street Division

**PREPARED BY:** Sam Laconte, Street Operations Manager  
Carl F. Pickett, Purchasing Specialist

**Recommended City Council Action**

Award the bid for the two Tandem Dump Truck Cab and Chassis to the low bidder, Western Star of Colorado, in the amount of \$144,264 and award the bid for the body and snow plow to O.J. Watson Co. in the amount of \$88,204 and charge the expense to the appropriate 2002 Public Works and Utilities Department budget account.

**Summary**

- In June 2002, the City's Purchasing Specialist solicited formal bids for a Tandem Dump Truck Cab and Chassis and for the body and snowplow. This equipment will be used primarily by the Street Division.
- This expense was previously approved by City Council in the 2002 budget.
- Funds have been specifically allocated in the 2002 General Fund, Street Operations Division Budget for this expense.
- The lowest net bid of \$72,132 for each cab and chassis was submitted to the City by Western Star of Colorado; the lowest qualified bid of \$44,102 for each body and plow was submitted by O.J. Watson Co.; for a purchase price of \$116,234 per unit or \$232,468 for this purchase.

**Expenditure Required:** \$232,468

**Source of Funds:** General Fund, Street Operations Division Budget

**Policy Issue**

Should vehicles and equipment be replaced as they reach the end of their useful service life?

**Alternative**

Reject all bids and continue to use the existing unit. This is not recommended due to the anticipated increase in maintenance costs.

**Background Information**

As part of the 2002 budget, City Council approved the purchase of a replacement Tandem Dump Truck Cab and Chassis and a Single Axel Dump Truck. Staff requested of City Managers Office to upgrade the Single Axle to a Tandem since the tandem units are used year round in plowing and construction projects and are more cost effective to operate than single axles. The City Managers Office approved the recommended upgrade, providing that no additional funds were requested. No additional funds are being requested for this purchase.

Unit #6120 (tandem) and unit #6223 (single) have reached a point that it is no longer economically reasonable to maintain them in service. Information regarding these vehicles replacements and trade-ins is as follows:

UNIT #	YEAR	MAKE	HOURS	VEHICLE MAINTENANCE COSTS LIFE TO DATE (LTD)	TRADE IN ALLOWANCE
6120	1993	Freightliner	8,957	\$67,062.85	\$15,800.00
6223	1990	International	6,786	\$40,866.80	\$7,500.00

The present condition and maintenance history of these vehicles would make it impractical to continue to operate them in regular service based on the Fleet Maintenance Division’s replacement recommendations.

The bid for the dump trucks was separated into two separate bids as was done last year so the City could realize savings by having the vendors bid on their area of specialty. The base cost before added warranties of the split bid was held to just a 3% increase over last year.

Bids for the Cab and Chassis were solicited from seven vendors and received from five vendors. Those bids are as follows:

Vendor	Bid	Average Trade-in	Bid less Trade-in	Brand
American La France Transwest	\$87,143	\$15,000	\$72,143	Freightliner
Western Star of Colorado	\$83,782	\$11,650	\$72,132	Western Star
Colorado Mack Sales	\$81,600	\$5,250	\$76,350	Mack
Kenworth	\$95,120	\$7,625	\$87,495	Kenworth
Rocky Mountain International	\$83,500	\$11,000	\$72,500	International

The low bid for the replacement Tandem Dump Truck Cab and Chassis with trade in is from Western Star of Colorado in the amount of \$72,132.

Bids for the body and plow were solicited from four local vendors. Those bids are as follows:

<b>Vendor</b>	<b>Bid</b>
MacDonald Equipment Co.	\$52,095
Kois Equipment	\$48,636
O.J. Watson Equipment	\$44,102
Frontier Equipment	\$41,493

Upon evaluation, the low bid by Frontier Equipment was determined by staff to be a prototype model that Frontier has never built before. Staff determined not to commit City funds to an unknown and unproven product, and recommends the second low bid by O.J. Watson.

The bids received from Western Star Co. and O.J. Watson Equipment Co. meet all specifications and requirements set by the City. The total cost of the two Tandem Dump Trucks, with body and plows, of \$232,468 is within the amount previously authorized by City Council for this expense.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** 2002 Slurry Seal Project Bid

**Prepared By:** Ron Elrod, Street Inspector  
Ray Porter, Infrastructure Improvements Division Manager

**Recommended City Council Action**

Authorize the City Manager to sign a contract for the 2002 Slurry Seal Project to the low bidder, Quality Resurfacing Company, in the amount of \$143,694; authorize a \$7,184 contingency amount; and charge the expenses to the appropriate 2002 Department of Public Works and Utilities - Infrastructure Improvements Division.

**Summary Statement**

City Council action is requested to award the bid for the 2002 Slurry Seal Project.

- Funds are available and were specifically budgeted for this expense in the 2002 Department of Public Works and Utilities - Infrastructure Improvements Division budget for this expenditure.
- Formal bids were solicited in accordance with City Charter bidding requirement for the 2002 Seal Coat Project. Bid documents were sent to the only two contractors who do this type of sealing with two responding.

**Expenditure Required:** \$150,878

**Source of Funds:** General Fund - Infrastructure Improvements Division

**Policy Issue**

Should City Council approve authorization to award the 2002 Slurry Seal Bid to Quality Resurfacing Company?

**Alternative**

1. Resurface these streets with a thin overlay of Hot-Mix Asphalt (HMA). With this alternative, the cost would increase by 175% and the strength of the pavement structure would increase by less than 5%.
2. Apply a chipseal surface to the streets earmarked for slurry seal. The cost with this alternative would increase by 20%. Using this process would decrease the amount of total citywide street work compared to using the slurry seal treatment. Staff has determined the chipseal process would not be the most cost effective improvement strategy at this time.

**Background Information**

The low bidder, Quality Resurfacing Company, meets all of the City bid requirements and has successfully completed this process for the City in 2001.

The 2002 Slurry Seal Project represents a total of 22 lane miles of pavement surface improvements at 66 locations. (See location list). Staff believes slurry seal is the best viable alternative.

In an effort to respond to citizen concerns, staff will again be sending a letter to affected residents explaining the process of the slurry seal application and what to expect during the curing period.

The following sealed bids were received:

Quality Resurfacing Company	\$ 143,694
Intermountain Pavement Preservation, LLC	\$ 149,975
Staff Estimate	\$157,042

The Slurry Seal application price of \$0.915 per square yard is a decrease of 15% below the 2001 price. This decrease is directly attributed to a larger quantity of work on this year's bid.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



	<b>Location</b>
1.	Xavier Street – 92 <sup>nd</sup> Avenue to 93 <sup>rd</sup> Avenue
2.	92 <sup>nd</sup> Place – Xavier Street to Utica Court
3.	Winona Court – 92 <sup>nd</sup> Place to South end
4.	Vrain Court – 92 <sup>nd</sup> Place to South end
5.	Utica Court – 92 <sup>nd</sup> Place to 93 <sup>rd</sup> Avenue
6.	93 <sup>rd</sup> Avenue – Utica Court to City Center Drive
7.	97 <sup>th</sup> Avenue – Lowell Boulevard to Perry Way
8.	Meade Street – 97 <sup>th</sup> Avenue to 96 <sup>th</sup> Avenue
9.	Lowell Court - Meade Street to South end
10.	Meade Court – Meade Street to South end
11.	Meade Court – Meade Street to North end
12.	Newton Street – Meade Street to North end
13.	Perry Way – 97 <sup>th</sup> Avenue to 99 <sup>th</sup> Avenue
14.	99 <sup>th</sup> Avenue – Perry Way to Lowell Boulevard
15.	Osceola Street – 97 <sup>th</sup> Avenue to South end
16.	Perry Street – 97 <sup>th</sup> Avenue to South end
17.	97 <sup>th</sup> Place – Perry Way to West end
18.	Quitman Way – Perry Way to 98 <sup>th</sup> Avenue
19.	98 <sup>th</sup> Avenue – Perry Way to West end
20.	Newton Street – 97 <sup>th</sup> Avenue to 98 <sup>th</sup> Avenue
21.	98 <sup>th</sup> Avenue – Perry Way to East end
22.	Osceola Street – 98 <sup>th</sup> Avenue to South end
23.	Meade Circle – Newton Street to 9829 Meade Circle
24.	98 <sup>th</sup> Place – Meade Circle to 4024 - 98 <sup>th</sup> Place
25.	Newton Court – 99 <sup>th</sup> Avenue to 99 <sup>th</sup> Place
26.	Perry Court – 99 <sup>th</sup> Avenue to 99 <sup>th</sup> Place
27.	99 <sup>th</sup> Place – 3730 - 99 <sup>th</sup> Place to Raleigh Street
28.	Raleigh Street – 99 <sup>th</sup> Place to 97 <sup>th</sup> Court
29.	97 <sup>th</sup> Court – Raleigh Street to East end
30.	98 <sup>th</sup> Way – Raleigh Street to East end
31.	99 <sup>th</sup> Court – Raleigh Street to East end
32.	100 <sup>th</sup> Place – Garrison Street to West end
33.	100 <sup>th</sup> Way – Garrison Street to West end
34.	101 <sup>st</sup> Place – Garrison Street to West end
35.	Garrison Street – 100 <sup>th</sup> Avenue to 103 <sup>rd</sup> Avenue
36.	101 <sup>st</sup> Avenue – Garrison Street to 8937 West 103 <sup>rd</sup> Avenue
37.	103 <sup>rd</sup> Avenue – Garrison Court to 101 <sup>st</sup> Avenue
38.	Garrison Court – 102 <sup>nd</sup> Place to 103 <sup>rd</sup> Avenue
39.	Flower Court – 102 <sup>nd</sup> Place to South end
40.	102 <sup>nd</sup> Place – Garland Street to 101 <sup>st</sup> Avenue
41.	Routt Court – South of 107 <sup>th</sup> Place
42.	Routt Street – Routt Way to 108 <sup>th</sup> Avenue
43.	Ross Court – South of 107 <sup>th</sup> Place
44.	Routt Way – 107 <sup>th</sup> Place to 105 <sup>th</sup> Place
45.	107 <sup>th</sup> Place – Ross Street to Routt Way
46.	Ross Street – 105 <sup>th</sup> Place to 107 <sup>th</sup> Place
47.	Ross Place – South of 105 <sup>th</sup> Place
48.	105 <sup>th</sup> Place – Ross Street to Routt Street
49.	Routt Street – Countryside Drive to 105 <sup>th</sup> Place
50.	Newcombe Street – 107 <sup>th</sup> Avenue to 106 <sup>th</sup> Place

51.	Newcombe Way – East of Newcombe Street
52.	106 <sup>th</sup> Place – 107 <sup>th</sup> Avenue to Newcombe Street
53.	Nelson Street – 106 <sup>th</sup> Avenue to 106 <sup>th</sup> Place
54.	106 <sup>th</sup> Court – West of 106 <sup>th</sup> Place
55.	Lewis Court – Southwest of Moore Street - 10702 to 10792
56.	Moore Way – Northeast of Moore Street - 10702 to 10792
57.	Lewis Street – Moore Street to 108 <sup>th</sup> Avenue
58.	107 <sup>th</sup> Circle – Oak Street to 10712 to 10798 - 107 <sup>th</sup> Circle
59.	Moore Court – 107 <sup>th</sup> Avenue to South end
60.	107 <sup>th</sup> Avenue – Oak Street to Moore Street
61.	107 <sup>th</sup> Circle – Lewis Street to Lewis Street
62.	Lewis Circle – Moore Street to Moore Street
63.	106 <sup>th</sup> Place – 107 <sup>th</sup> Avenue to East end
64.	106 <sup>th</sup> Way – 107 <sup>th</sup> Avenue to West end
65.	Moore Street – 108 <sup>th</sup> Avenue to 106 <sup>th</sup> Avenue
66.	Miller Court – North of Moore Street



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Recommendation on Appointment to Jefferson County Corrections Board

**Prepared By:** Michele Kelley, City Clerk

**Recommended City Council Action**

Recommend to the Jefferson County Commissioners, the appointment of Robert DeLong as the City of Westminster representative to the Jefferson County Corrections Board.

**Summary Statement**

- City Council is being asked by the Jefferson County Corrections Board Staff to provide a recommendation to the Jefferson County Commissioners for a Westminster representative on the Jefferson County Corrections Board.
- John Nelson has served as the City of Westminster since 1999 and Mr. Nelson has recently submitted his resignation effective July 31, 2002, since he has moved out of the City of Westminster.
- The recommendation of the City Council will then be forwarded to the Jefferson County Board of Commissioners. The Commissioners would then make the actual appointment.
- Two people have expressed an interest in this appointment. Robert DeLong, 9537 West 89<sup>th</sup> Place and Cheryl Parker, 7821 King Street.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Does City Council want to appoint a citizen to the Jefferson County Community Corrections Board as the City of Westminster representative?

**Alternatives**

Council could appoint a Staff member to the Jefferson County Community Corrections Board. This alternative is not recommended because of the amount of time involved to participate in this program.

Council could appoint a Council member as the representative to the Jefferson County Community Corrections Board.

**Background Information**

Westminster has been a participant in the Jefferson County Corrections program since Council approved the City's participation through an intergovernmental agreement on August 23, 1993. An important component of the Community Corrections Program is the Jefferson County Corrections Board, whose members are appointed by the Jefferson County Commissioners. Participants on the Board include representatives from the cities of Westminster, Arvada, Edgewater, Golden, Wheat Ridge, and Lakewood and other individuals associated with the District, County and municipal criminal justice system, social services organizations, and the County.

The major responsibilities of the Board are threefold: to approve placement of felony offenders in the community, to contract service providers for community corrections, and to set standards for how the program will work in the community.

The City sent letters to all of the current Board and Commission pool members, with 1 application being received from an Adams County resident, Cheryl Parker. In addition, Council has been contacted by a Jefferson County resident, Robert DeLong, of his interest in this position.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** TABLED Swim and Fitness Center Weight Room Expansion Contractor Award

**Prepared By:** Brad Chronowski, Landscape Architect II

**Recommended City Council Action**

Remove this item from the Table and authorize the City Manager to enter into a contract with JHL Constructors, Inc. in the amount of \$367,240, and appropriate a 10 percent contingency fund in the amount of \$36,724 for the construction of the Swim and Fitness Center Weight Room Expansion.

**Summary Statement**

- During the 2002 Capital Improvement Program budget cycle, Staff identified the need to increase the service level of the Swim and Fitness Center by expanding the original and aging weight and cardiovascular room that was constructed in 1975.
- City Council approved this project as part of the 2002 General Capital Improvement Fund budget.
- Plans call for adding 1,800 square feet of floor space to the Center, providing additional fitness equipment, increasing wellness opportunities and improving lighting and aesthetics.
- The Parks, Recreation, and Libraries Department received six competitive bids for construction of the Swim and Fitness Weight Room Expansion Project.
- The bids received are as follows:

	Base Bid	Bid Alternate #1	Total
<b>Tamminga</b>	<b>\$ 330,948</b>	<b>\$1,400</b>	<b>\$332,348</b>
<b>Tower One</b>	<b>\$ 365,000</b>	<b>\$2,100</b>	<b>\$367,100</b>
<b>JHL</b>	<b>\$ 366,000</b>	<b>\$1,240</b>	<b>\$367,240</b>
<b>Newcastle</b>	<b>\$ 391,000</b>	<b>\$1,800</b>	<b>\$392,800</b>
<b>Fischer</b>	<b>\$ 398,928</b>	<b>\$2,000</b>	<b>\$400,928</b>
<b>Pinkard</b>	<b>\$ 426,000</b>	<b>\$1,052</b>	<b>\$427,052</b>

- With the assistance of BBB Architects, Staff has concluded that JHL is well qualified to perform this work.
- The Parks, Recreation and Libraries Department is currently in contract with BBB Architects for design and administration of the construction improvements.
- Funds for this improvement in the amount of \$500,000 are available in the Parks, Recreation and Libraries 2002 Capital Improvement Program.
- New weight room equipment will be included following the completion of the weight room expansion.
- Construction for this improvement will begin in August 2002 and is scheduled to be completed by March 2003.
- The existing weight room at the Swim and Fitness center will be expanded to 2,610 square feet from its current size of 823 square feet.

**Expenditure Required:** \$ 403,964.00

**Source of Funds:** 2002 General Capital Improvement Fund Budget

**Policy Issue**

Should the City improve the service level and revenue generation at the Swim and Fitness Center by constructing an addition to the existing weight and cardiovascular room?

**Alternatives**

1. Council could choose to negotiate with the low bidder.
2. Council could choose to select the second low bidder.
3. Council could choose to reject all bids. Staff would discourage Council from taking this action because of the time delay and potential loss of qualified bidders for this small project.

**Background Information**

The Department of Parks, Recreation and Libraries began design work on the Swim and Fitness Center Expansion following Council's approval on December 17, 2001. Key Staff members participated in the design process with the project manager and architect.

As noted in the bid tabulation, the low bidder for this project was Tamminga Construction. However, Craig Tamminga has requested that their bid be withdrawn and City Staff has allowed Mr. Tamminga to do so without any penalties.

The City has a strong history with JHL Contractors in that they were the general contractor for the construction of the West View Recreation Center. While Tower One submitted a slightly lower bid, the City has no prior experience with them and the difference between the second (Tower One) a low bid and the third low bid (JHL) is only \$140. Therefore, Staff recommends awarding the Swim and Fitness Center contract to JHL Contractors.

The 2002 budget for this project is \$500,000. The following describes how the funds will be allocated in order to complete the project as expected:

Architectural Design and Construction Observation	\$ 49,786
Building Construction	\$ 367,240
Building Construction Contingency (10%)	\$ 36,724
Fitness Equipment and Furnishings	\$ 46,250
<b>Total</b>	<b>\$ 500,000</b>

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Public Hearing on the proposed use of 2003 Community Development Block Grant (CDBG) funds

**Prepared By:** Robin Byrnes, Community Development Programs Coordinator

**Recommended City Council Action**

Hold a public hearing on the proposed use of 2003 CDBG funds.

**Summary Statement**

- The City receives approximately \$680,000 annually in Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD).
- \$100,000 of 2003 CDBG funds is proposed to be allocated to the Human Service Advisory Board (HSB) to use for non-profit organizations in place of City General Fund allocation.
- A public hearing to receive citizen input on the proposed use of 2003 Community Development Block Grant (CDBG) funds is scheduled Monday night to satisfy HUD regulatory requirements that govern citizen participation.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Public Hearing on the proposed use of 2003 Community Development Block Grant (CDBG) funds  
Page 2

### **Policy Issues**

The U.S. Department of Housing and Urban Development (HUD) requires citizen input during the allocation planning process for Community Development Block Grant (CDBG) funds.

### **Alternatives**

Hold an administrative public hearing in the community in place of a scheduled public hearing before City Council. Due to time constraints on a staff presentation to City Council on the HSB allocation of 2003 CDBG funds and General funds to non-profit organizations, scheduled for Study Session on August 19, 2002, a public hearing before City Council was scheduled to meet HUD regulatory requirements governing citizen input on the allocation of CDBG funds.

### **Background Information**

The City is required by HUD to solicit public input on the proposed uses of CDBG funding. The public input process starts 8-9 months prior to the City receiving it's 2003 CDBG funding from HUD, which is scheduled for March 1, 2003, the start of the City's 2003 CDBG program year.

The Human Services Board (HSB) started the 2003 application process for funding in May 2002 for fund allocation disbursements in January (general funds) and March (CDBG funds) 2003.

A public hearing is needed at this time since City Council has requested that Staff bring back for their consideration the HSB allocation for funding in 2003. Since Staff is recommending that CDBG funds be utilized in place of the General Fund allocation, a hearing must be conducted per HUD requirements prior to City Council reviewing this information.

The public hearing scheduled for tonight will allow formal public input on the use of 2003 CDBG funding for non-profit community service projects. A public notice was published in the Westminster Window on August 1, 2003 informing citizens of this public hearing.

Staff will return to City Council at the August 19 Study Session with the proposed HSB funding recommendations and gather input from City Council on the proposed funding levels.

Respectfully submitted,

J. Brent McFall  
City Manager





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Public Hearing and Action on a Comprehensive Land Use Plan Amendment and Fourth Amended Preliminary Development Plan for Boulevard Plaza Planned Unit Development

**Prepared By:** Daniel E. Osborn, Planner I

**Recommended City Council Action**

1. Hold a public hearing.
2. Pass Councillors Bill No. 37 on first reading to change the land use designation on Parcel A, 1.415 acres, from “Business Park” to “Retail Commercial” and on Parcel B, 2.833 acres, from “Business Park” to “Industrial”. This action is based on the findings set forth in the Westminster Comprehensive Land Use Plan as follows:
  - a) The proposed amendment is justified and the Plan is in need of revision as proposed; and
  - b) The amendment is in conformance with the overall purpose, intent, goals and policies of the Plan; and
  - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
  - d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.
3. Approve an amendment to the Fourth Amended Preliminary Development Plan for Boulevard Plaza Planned Unit Development to allow Retail/Commercial and Public Open Space uses on Parcel A, 1.415 acres, and Retail/Commercial uses including general automobile repair and automotive collision repair on Parcel B, 2.833 acres. This recommendation is based on the findings set forth in Section 11-5-14 of the Westminster Municipal Code (WMC).

**Summary Statement**

City Council is requested to hold a public hearing regarding the application of William M. Moore and the representatives for Hank’s Automotive to:

- Amend the land use designations on Parcel A, 1.415 acres, from “Business Park” to “Retail Commercial” and Parcel B, 2.833 acres, from “Business Park” to “Industrial”. Parcel A is under contract for purchase as City Open Space.
- Amend the Fourth Amended Preliminary Development Plan for Boulevard Plaza Planned Unit Development to allow Public Open Space and Retail/Commercial uses on Parcel A, 1.415 acres, and Retail/Commercial uses including general automobile repair and automotive collision repair on Parcel B, 2.833 acres.

**Expenditure Required:** \$0

**Source of Funds:** Not applicable

### **Planning Commission Recommendation**

This request was heard by the Planning Commission on July 23, 2002. The Planning Commission voted 7-0 to approve the Comprehensive Land Use Plan amendment to amend Parcel A, 1.415 acres, from “Business Park” to “Retail Commercial” and Parcel B, 2.833 acres, from “Business Park” to “Industrial.” The Planning Commission voted 7-0 to approve the amendment to the Fourth Amended Preliminary Development Plan for Boulevard Plaza Planned Unit Development to allow Retail/Commercial and Public Open Space uses on Parcel A and Retail/Commercial uses including general automobile repair and automotive collision repair on Parcel B.

### **Policy Issues**

1. Should the City approve a Comprehensive Land Use Plan amendment for Boulevard Plaza changing the designations of Parcel A from “Business Park” to “Retail Commercial” and Parcel B from “Business Park” to “Industrial?”
2. Should the City approve the Fourth Amended Preliminary Development Plan within the Boulevard Plaza Planned Unit Development to allow Public Open Space and Retail/Commercial uses on Parcel A, 1.415 acres, and Retail/Commercial uses including general automobile repair and automotive collision repair on Parcel B, 2.833 acres?

### **Alternatives**

1. Deny the amendment to change the Comprehensive Land Use Plan designation of Parcel A from “Business Park” to “Retail Commercial” and Parcel B from “Business Park” to “Industrial” or another appropriate designation and deny the Fourth Amended Boulevard Plaza Preliminary Development Plan based on the following:
  - a) The proposed amendments are not justified; and
  - b) The proposed amendments are not consistent with the overall purpose, intent, goals and policies of the Comprehensive Land Use Plan; and
  - c) The proposed amendments are incompatible with the existing and proposed surrounding land uses.

This would make the site available only to uses allowed by the “Business Park” land use designation, and would not allow the property owner to utilize the property for an automobile collision center.

### **Background Information**

#### **Property Owner**

Gamma Investment Co.  
William M. Moore  
5 Glenmoor Circle  
Cherry Hills Village, Colorado 80110

#### **Applicant**

Chai Investments, LLC.  
Vince Vecchiarelli  
4890 Robb Street  
Wheat Ridge, Colorado 80033-2106

Surrounding Land Use and Comprehensive Land Use Plan Designations

The subject property is abutted on the north by an agriculturally zoned parcel of land in unincorporated Jefferson County, Wadsworth Boulevard to the east, Brentcross Shops and a State Farm Insurance building to the south, and Wadsworth Parkway on the west. The Comprehensive Land Use Plan designates the properties to the east as Retail/Commercial, to the south Office and Retail/Commercial. To the west of the subject property is Wadsworth Parkway. The unincorporated parcel to the north is governed by the Northeast Comprehensive Development Plan that would allow existing land uses (currently a single-family home on 2.8 acres) and other uses allowed by the City of Westminster subsequent to annexation and Planned Unit Development (PUD) approval.

Site Plan Information

The site is accessed from Wadsworth Boulevard with the alignment located inline with the Meadow Point Subdivision. Pedestrian access will be determined during the Official Development Plan review. The Preliminary Development Plan splits the overall property (4.247 acres) into two parcels; Parcel A (1.415 acres) and Parcel B (2.8330 acres).

Parcel A would allow Public Open Space or Retail/Commercial uses. Parcel A is under contract to the City for Open Space acquisition in combination with the larger “wetlands site” to the north as part of the Wadsworth Wetlands Open Space agreement Council approved on March 25, 2002.

Parcel B would allow Retail/Commercial uses with general automobile repair and automotive collision repair. The Preliminary Development Plan specifically requires high quality building materials and extensive landscaping to insure the development of Parcel B is compatible with the surroundings. Setbacks, building materials and overall design are in compliance with the Commercial Design Standards and high quality building material including masonry (brick and integrally tinted textured masonry block) are required as the primary building material. High quality materials are required on all elevations and rooftop mechanical units shall be screened 360 degrees. Fencing and screen walls around any vehicle storage areas are required to be constructed using masonry columns matching the building and 6-8 foot high plastic fencing between the columns. Landscaping and setbacks will be used in conjunction with fencing to create appropriate buffering around the project. Signage for the project will be determined during the Official Development Plan review. No public land dedication is required for this project.

Referral Agency Responses

No referral responses were received for this project.

Public Comments

A neighborhood meeting was held at the Mountain View Church, 8400 94<sup>th</sup> Avenue, on June 17, 2002 where the project was presented to two people in attendance. There were no concerns regarding this proposal.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **37**

SERIES 2002

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN

WHEREAS, the City maintains a Comprehensive Land Use Plan which regulates land uses within the City; and

WHEREAS, the City has received an application requesting a land use change for the Boulevard Plaza Parcels A and B as described below; and

WHEREAS, the Planning Commission has reviewed the proposed amendment and has recommended approval to the City Council.

NOW THEREFORE, the City Council hereby finds that the required procedures for amending the Comprehensive land Use Plan as delineated in the Westminster Municipal Code have been satisfied.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council authorizes City Staff to make the necessary changes to the maps and text of the Westminster Comprehensive Land Use Plan, which are necessary to alter the designation of the parcels legally described as follows:

Parcel A: That part of the northwest  $\frac{1}{4}$  of Section 23, Township 2 South, Range 69 west of the 6<sup>th</sup> Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, described as follows:

Beginning at the southeast corner of the northwest  $\frac{1}{4}$  of said Section 23; thence N00°22'52"E on an assumed bearing, along the east line of the said northwest  $\frac{1}{4}$  a distance of 330.00 feet; thence S89°13'17"W. Along the north line of that parcel described in Book 720 at Page 362 of the Jefferson County Records, a distance of 579.69 to the true point of beginning; thence continuing S89°13'17"W along said north line a distance of 210.39 feet to a point on the northeasterly right-of-way of Colorado State Highway No. 121; thence N32°58'12"W along said northeasterly right-of-way line, a distance of 195.26 feet; thence N56°32'38"E a distance of 129.73 feet to a point on the westerly extension of the south line of a parcel described in Book 2170 at Page 429 of the Jefferson County Records; thence S89°30'42"E a distance of 209.94 feet; thence S00°22'52"W a distance of 230.69 feet to the true point of beginning; containing an area of 61,632 square feet or 1.415 acres more or less.

Parcel B: That part of the northwest  $\frac{1}{4}$  of Section 23, Township 2 South, Range 69 West of the 6<sup>th</sup> Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, described as follows:

Beginning at the southeast corner of the northwest  $\frac{1}{4}$  of said Section 23; thence N00°22'52"E on an assumed bearing along the east line of the said northwest  $\frac{1}{4}$  a distance of 330.00 feet; thence S89°13'17"W a distance of 30.00 feet to the true point of beginning; thence continuing S89°13'17"W along the north line of a parcel described in Book 720 at Page 362, Jefferson County Records, a distance of 549.69 feet; thence N00°22'52"E and parallel to said east line of the northwest  $\frac{1}{4}$ , a distance of 230.62 feet to a point on the southerly line of that parcel described in Book 2170 a Page 429, Jefferson County Records; thence S89°30'42"E along said south line a distance of 549.58 feet to a point on the west right-of-way line of Wadsworth Boulevard; thence S00°22'52"W along said west right-of-way line a distance of 218.54 feet to the true point of beginning; containing 123,406 square feet or 2.8330 acres more or less.

Parcel A shall be changed from “Business Park” to “Retail/Commercial” and parcel B shall be changed from “Business Park” to “Industrial” as described on “Exhibit A” attached hereto.

Section 2. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12<sup>th</sup> day of August, 2002.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of August, 2002.

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Mayor

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City Clerk

Boulevard Plaza



**WESTMINSTER**  
**COLORADO**  
**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Councillor's Bill No. 38 re Cascade Village Apartments Refunding

**Prepared By:** Mary Ann Parrot, Finance Director  
Martin R. McCullough, City Attorney

**Recommended City Council Action**

1. Hold a "TEFRA" public hearing to receive any comments the public may have regarding the extension of the maturity of the \$14,675,000 bonds issued to refinance the Cascade Village Apartments.
2. Pass Councillor's Bill No. 38 as an emergency ordinance approving the supplemental indenture to extend the maturity on the Tax-Exempt Multi-Family Rental Housing Refunding Revenue Bonds in the amount of \$14,675,000 for the Cascade Village Apartment Project and authorizing the City Manager to execute such documents as necessary to finalize the transaction.

**Summary Statement**

The current developer, LBK L.P., is requesting approval of an amendment to the indenture of trust, for the following reasons:

- They wish to extend the maturity of the bonds by five years to December 1, 2012 to preserve the tax-exempt financing for the project. This in turn allows them to maximize the spread between the rents they receive and the expenses they incur in operating the project, thus maximizing their net income and reducing rents.
- In return, LBK is willing to do the following:
  - Increase the affordable housing set-aside requirement from 20% of units to 30% of units for persons or families whose income is 80% or less of area median gross income.
  - Pay City fees as follows:
    - Pay the City an initiation fee of \$73,375, to be paid at closing in August-September 2002.
    - Pay the City annual administrative fees of approximately \$36,690.
    - Pay for the City's bond counsel and financial advisor fees.
  - Retain the current indemnification provisions.
  - Retain current credit enhancement and credit rating standards. These bonds are currently privately placed but any transfer of these bonds into the public domain would require compliance with the City's credit enhancement and AA or better rating requirements.
- Attached is a letter from the City's Financial Advisor indicating that he has reviewed the transaction and is recommending it for approval for the following reasons:
  - The City's risk is not increased and the credit quality of the transaction remains the same as with prior approved bond issues.
  - The revised indenture will result in an increase in affordable housing between now and the maturity date (2012).
- The "TEFRA" public hearing is required by section 147(f) of the Internal Revenue Code of 1986, as amended.

**Expenditure Required:** \$0

**Source of Funds:** None Required

## **Policy Issues**

Should the City agree to extend a term to maturity on an Industrial Development Revenue Bond (known as an IDRB)?

## **Alternatives**

Do not agree to the indenture amendment agreeing to the extension of the maturity on the bonds. This is not recommended, due primarily to the fact that the fees paid to the City will be adequate to cover any additional work which will be required over the remaining term to maturity (2012). In addition, the City is also indemnified by the developer against any claims brought against it relating to this bond issue.

## **Background Information**

In December of 1985, City Council authorized the issuance of \$14,675,000 in Tax-Exempt Multi-Family Revenue Bonds for the Cascade Village Apartment Project. This Project is located at the southwest corner of 92nd Avenue and Pierce Street in the City of Westminster. The primary reason for approving this conduit financing was to be able to enable the construction of housing at reasonable rates, without agreeing to federally-subsidized housing constraints as imposed by the Federal Government. In addition, although the City was the issuer of the bonds, it was fully indemnified by the developer. Lastly, these bonds, known as Industrial Development Revenue Bonds (or IDRB's) were well tested in the market, having been in existence since the 1970's.

In 1988, the original 1985 bonds were refunded in order to replace the expiring Fannie Mae security used to credit-enhance the bonds by a FGIC insurance policy. The 1988 bonds were further secured by a direct-pay letter of credit issued by Homestead Savings, and received the City's required "AA" rating from Moody's and Standard and Poor's.

In 1997 the owners of the Project, LBK 3, Limited Partnership, requested authorization to refund this bond issue in order to substitute the credit enhancement for these bonds. The refunding bonds met the City's "AA" or better rating requirement. The refunding bonds were secured by a letter of credit issued by the Bank of New York rated as "AA-" by Standard & Poor's. The refunding bonds were variable rate bonds, to allow the developer to reduce interest costs. The maturity of the new refunding bonds remained the same as under the previous bond documents.

In 1998, the owners of the project, LBK3, Lt., Partnership requested authorization to privately place the bonds with Merrill Lynch in order to lower the financing costs by eliminating the letter of credit requirements. The "AA" rating and surety requirements did not apply with a private placement, as these criteria are intended to protect the City's reputation in the public market. The bondholder, Merrill Lynch signs statements to the effect they are a sophisticated investor and accept the risks associated with the transaction. They also waive all rights against the City for any defaults or other problems with the bonds so purchased, and broadly indemnify the City against any claims related to the bonds. They also agree not to transfer the bonds to the public. With a private placement, if the developer defaults, the investor, Merrill Lynch has no recourse against the City, and the City's reputation is not harmed in the public market.

The current transaction extends the maturity of the bonds by 5 years to 2012. In general, Staff is not in favor of extending the maturities on IDRB's. The reason is that this extends the City's risk of an audit by the IRS, and the City, although indemnified by the developer against any IRS claims, should not have to bear the risk of the additional work caused by an IRS audit. However, under the circumstances, the fees paid to the City by the developer would cover any additional staff work should an IRS audit occur. Lastly, the increase of the affordable housing set-aside from 20% to 30% in this IDRB is cause to agree to recommend a favorable position on this transaction.

The Tax Equity and Fiscal Responsibility Act ("TEFRA") of 1986 requires that a public hearing be held prior to the issuance of any new tax-exempt private activity bonds or any extension of the maturity of such bonds. Notice of the TEFRA hearing for this proposed bond issue was published on July 25, 2002, in the Westminster Window.

In summary, this is a good business decision for the City, covers the City's fees in the case of the extra workload involved and minimizes the risk to the City. Staff will be in attendance at the August 12 City Council meeting to answer questions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



**Attachment A: Letter from James Capital Advisors, Inc.**

July 15, 2002

Mary Ann Parrot, Finance Director  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, CO 80030

Re: \$14,675,000  
City of Westminster, Colorado  
Variable Rate Demand Multifamily Housing Revenue Refunding Bonds  
(Cascade Village Apartments Project)  
1997 Issue A

Dear Mary Ann:

I have reviewed the documents prepared by Developer's Counsel with respect to the restructuring of the bonds referenced above. In my opinion, these documents accomplish the intended objectives of the restructuring, which are to extend the maturity date and principal repayment of the bonds from 2007 to 2012, and to increase the number of units rented to persons or families whose income is 80% or less of area median gross income from 20% to 30% of total units.

The fees to be paid by the Developer to the City at closing and over the life of the issue have been agreed to, and will be defined in separate documents to be executed by the City Manager prior to closing.

Other details of the transaction are unchanged, including the following:

- The bonds are owned by Merrill Lynch as a private placement purchaser;
- The bonds are non-rated, which is permitted by City guidelines for privately-placed industrial development bonds;
- The current interest rate of 6.375% will be subject to adjustment in 2004;
- Annual interest payments on the bonds are secured by project revenues;
- No principal payments will be made prior to maturity, making a subsequent refinancing of the project prior to 2012 the most likely source of principal repayment; and,
- No City revenues, resources, or assets of any kind are available for repayment of the bonds.

Please let me know of any additional assistance I can provide with respect to this transaction.

Sincerely,

JAMES CAPITAL ADVISORS INC.

James Manire  
President

BY AUTHORITY

ORDINANCE NO. **2964**

COUNCILLOR'S BILL NO. **38**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

**Dittman-Atchison**

A BILL

FOR AN ORDINANCE AUTHORIZING A SECOND SUPPLEMENTAL INDENTURE OF TRUST TO THE INDENTURE OF TRUST EXECUTED IN CONNECTION WITH THE CITY OF WESTMINSTER, COLORADO VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (CASCADE VILLAGE APARTMENTS PROJECT) 1997 ISSUE A, A FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND A FIRST AMENDMENT TO LOAN AGREEMENT; RATIFYING CERTAIN ACTION HERETOFORE TAKEN; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF SAID SECOND SUPPLEMENTAL INDENTURE OF TRUST, FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND A FIRST AMENDMENT TO LOAN AGREEMENT; REPEALING ACTION HERETOFORE TAKEN IN CONFLICT HERewith; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Westminster, Colorado (the "City") is authorized by the County and Municipality Development Revenue Bond Act, constituting Sections 29-3-101 through 29-3-123, inclusive, Colorado Revised Statutes (the "Act"), to finance and refinance one or more projects, including any land, building or other improvement, and all real and personal properties, whether or not in existence, which shall be suitable for residential facilities for low- and middle-income families or persons and intended for use as the sole place of residence by the owners or intended occupants to the end that more adequate residential housing facilities for low- and middle-income families and persons may be provided, which promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, pursuant to the Act, the City has heretofore issued its City of Westminster, Colorado, Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Cascade Village Apartments Project) 1997 Issue A (the "Bonds") pursuant to the terms of an Indenture of Trust dated as of October 1, 1997 (the "Indenture"), between the City and U.S. Bank National Association, as trustee (the "Trustee"), the proceeds of which Bonds were used to make a loan to LBK, L.P., a Delaware limited partnership (successor in interest to LBK 3, L.P.) (the "Borrower") to refinance a multifamily residential project development located within the City of Westminster known as Cascade Village Apartments (the "Project"); and

WHEREAS, the Indenture has been amended and supplemented as set forth in the First Supplemental Indenture of Trust dated as of July 1, 1998 (the "First Supplemental Indenture of Trust") between the City and the Trustee for the purpose of (i) converting the Bonds to a Fixed Rate for a Fixed Period of six years and six months and eliminating the requirement of credit enhancement and making other modifications for such Fixed Period during which Merrill, Lynch, Pierce, Fenner & Smith Incorporated, any of its affiliates or any trust established by Merrill, Lynch, Pierce, Fenner & Smith Incorporated for the purpose of owning the Bonds will be the initial sole holder of the Bonds and (ii) establishing the effective date of the First Supplemental Indenture of Trust as a Fixed Rate Conversion Date, as defined in the Indenture, and providing the terms of optional redemption of the Bonds during the Fixed Rate Period thereby established; and

WHEREAS, the Borrower has requested that the City further amend and supplement the terms of the Indenture pursuant to the terms of a Second Supplemental Indenture of Trust dated as of August 1, 2002 (the "Second Supplemental Indenture of Trust") between the City and the Trustee in substantially the form presented to the City Council at this meeting, for the purpose of extending the maturity of the Bonds by a term of five years, resulting in a new maturity date of December 1, 2012; and

WHEREAS, the City has agreed to the extension of the term of the Bonds, provided, that the Borrower agree to increase the percentage of residential rental units in the Project to be set aside for Low Income Persons, as defined in the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 1997 (the "Regulatory Agreement") among the Borrower, the Trustee and the City, from 20% to 30%; and

WHEREAS, the increase in the percentage of residential units in the Project to be set aside for Low Income Persons is effected pursuant to the provisions of the First Amendment to Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of August 1, 2002 (the "First Amendment to Regulatory Agreement") among the Borrower, the Trustee and the City in substantially the form presented to the City Council at this meeting; and

WHEREAS, the Borrower shall acknowledge the extension of the maturity of the Bonds and its obligation to pay the City certain fees in the First Amendment to Loan Agreement dated as of August 1, 2002 (the "First Amendment to Loan Agreement") among the Borrower, the City and the Trustee in substantially the form presented to the City Council at this meeting; and

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. All action (not inconsistent with the provisions of this ordinance) heretofore taken by the City Council and the officers of the City directed toward the amendment of the Indenture, the Regulatory Agreement and the Loan Agreement dated as of October 1, 1997 (the "Loan Agreement") among the City, the Borrower and the Trustee as provided herein is hereby, ratified, approved and confirmed.

Section 2. The form, terms and provisions of the Second Supplemental Indenture of Trust, the First Amendment to Regulatory Agreement and the First Amendment to Loan Agreement (together, the "Supplemental Documents") are hereby approved and the City shall enter into the Supplemental Documents substantially in the forms of such document presented to the City Council at this meeting with such changes therein which are approved by the City Attorney; and the Mayor of the City is hereby authorized and directed to execute and deliver the Supplemental Documents, and the City Clerk is hereby authorized and directed to affix the City seal to and to attest the Supplemental Documents.

Section 3. The officers of the City shall take all action in conformity with the Act necessary for carrying out, giving effect to and consummating the transactions contemplated by this ordinance and the Supplemental Documents.

Section 4. Nothing contained in this ordinance or in the Bonds, the Indenture, the Regulatory Agreement, the Loan Agreement or the Supplemental Documents or any other instrument shall give rise to a pecuniary liability of the City or a charge upon the general credit or taxing powers of the City, nor shall the breach of any agreement contained in this ordinance, the Bonds, the Indenture, the Regulatory Agreement, the Loan Agreement or the Supplemental Documents impose any pecuniary liability on the City or a charge upon the general credit or taxing powers of the City, the City having no power to pay out of its general fund, or otherwise contribute any part of the costs of financing the Project, nor power to operate the Project as a business or in any manner, nor shall the City condemn any land or other property for the Project nor contribute any land or other property to the Project. Nothing contained in this ordinance or in the Bonds, the Indenture, the Regulatory Agreement, the Loan Agreement or the Supplemental Documents shall give rise to any personal or pecuniary liability of any officer, employee or agent of the City.

Section 5. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not effect any of the remaining provisions of this ordinance.

Section 6. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

Section 7. In order to help preserve the stock of rental housing units for low- and middle-income families or persons within the City, it is hereby declared that an emergency exists and that this ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the City Charter, exempt from referendum.

Section 8. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in the City Book of Ordinances kept for that purpose, and shall be authenticated by the signatures of the Mayor and City Clerk, and published in accordance with law.

INTRODUCED, READ AND ADOPTED AS AN EMERGENCY ORDINANCE ON AUGUST 12, 2002.

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_

City Clerk

It was thereupon moved by Council member \_\_\_\_\_ and seconded by Council member \_\_\_\_\_ that the foregoing ordinance be passed as an emergency ordinance in compliance with the City Charter. The question being upon the adoption of said motion, the roll was called with the following result:

Those Voting Yes:

Those Voting No:

Those Absent:

\_\_\_\_\_ members of the Council having voted in favor of said motion, the presiding officer thereupon declared said motion carried, and said ordinance passed on first reading.

Thereupon, the Council considered other business not related to the amendments.

There being no further business to come before the meeting, on motion duly made, seconded and unanimously carried, the meeting was adjourned.

---

Mayor

(SEAL)

Attest:

---

City Clerk

STATE OF COLORADO )  
 )  
COUNTIES OF ADAMS AND ) SS.  
JEFFERSON )  
 )  
CITY OF WESTMINSTER )

I, City Clerk of the City of Westminster, Colorado (the "City"), do hereby certify:

1. The foregoing pages numbered 1 to 5, inclusive, constitute a full and correct copy of the record of the proceedings taken by the City Council of the City at a regular meeting thereof held on August 12, 2002, so far as said proceedings relate to an ordinance, a copy of which is therein set forth.

2. Said copy of said ordinance as contained in said proceedings is a full, true and correct copy of the original of said ordinance as passed on first reading at said August 12, 2002 in compliance with the City Charter.

3. \_\_\_\_\_ members of the City Council were present at said meeting on August 12, 2002 and \_\_\_\_\_ members of the City Council affirmatively voted on the passage of said ordinance.

4. Said ordinance was, on \_\_\_\_\_, 2002 published in the Westminster Window, being a newspaper meeting the requirements of Section 17.5 of the City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the City this \_\_\_ day of August, 2002.

(SEAL)

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

**ATTACHMENT C: SECOND SUPPLEMENTAL INDENTURE OF TRUST**

EXECUTION COPY

**SECOND SUPPLEMENTAL INDENTURE OF TRUST**

**THIS SECOND SUPPLEMENTAL INDENTURE OF TRUST** dated as of August 1, 2002 (this "Second Supplement") is by and between the **CITY OF WESTMINSTER, COLORADO**, a municipal corporation and a political subdivision of the State of Colorado (the "Issuer"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee"), and amends and supplements the Indenture of Trust dated as of October 1, 1997 (the "Original Indenture") between the Issuer and the Trustee as amended by that First Supplemental Indenture of Trust dated July 1, 1998 (the "First Supplement") by and between the Issuer and Trustee (the "First Supplement" and the "Original Indenture" together the "Indenture") both relating to the Issuer's Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Cascade Village Apartments Project) 1997 Issue A (the "Bonds") issued on October 30, 1997 in the original aggregate principal amount of \$14,675,000 for the benefit of LBK, L.P., a Delaware limited partnership (successor in interest to LBK 3, L.P., a Delaware limited partnership) (the "Borrower").

**RECITALS:**

WHEREAS, Section 9.02 of the Indenture provides for, among other things, the amending and supplementing thereof by the Issuer and the Trustee to extend the maturity of the Bonds with the prior written consent of the Borrower, all of the holders of the Bonds, the Credit Facility Provider, if any, and the Standby Credit Facility Provider, if any; and

WHEREAS, the Borrower has requested that the Issuer and the Trustee enter into this Second Supplement for the purpose of extending the maturity on the Bonds by five (5) years to December 1, 2012; and

WHEREAS, on the date hereof, Merrill, Lynch, Pierce, Fenner & Smith Incorporated (the "Bondholder") is the beneficial owner of all the Bonds through its nominee Embassy and Co., the registered owner of all Bonds; and

WHEREAS, pursuant to the First Supplement the Bonds are being held without a Credit Facility by the Bondholder, an institutional investor (as defined in the First Supplement) and, as such, the prior written consent of the Credit Facility Provider is not necessary; and

WHEREAS, there is no Standby Credit Facility Provider; and

WHEREAS, by Certified Ordinance adopted at a meeting of the Issuer held on August 12, 2002 and herewith delivered to the Trustee in accordance with Section 9.02 of the Indenture, the Issuer has authorized and approved this Supplement. The consents of the Borrower and the Bondholder to this Supplement in the forms attached as Exhibits A and B hereto, respectively, have also been delivered to the Trustee. Such consents contain waivers of the notices required by Section 9.02 of the Indenture with respect to delivery of supplemental indentures.

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Recitals; Definitions.** The foregoing recitals are hereby agreed to and acknowledged. All capitalized terms used in this Second Supplement and not otherwise defined have the meanings assigned in the Original Indenture.

**Section 2.** Subsection 2.01(b) of the Indenture is hereby amended in whole to read as follows:

“(b) *General Terms.* During the Initial Variable Period, Bonds shall be in substantially the form set forth in Exhibit A hereto and, thereafter, in the form of Exhibit A with such modifications as shall be approved by Bond Counsel with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture, including any Supplemental Indenture. The Bonds shall be issuable only as fully registered Bonds, without coupons, in Authorized Denominations, and shall be numbered from one upward, in the order of their authentication, with any other designation as the Trustee deems appropriate. The Bonds shall be dated the Closing Date and all Bonds shall mature on December 1, 2012, subject to acceleration, redemption and mandatory tender for purchase prior to maturity as provided in Article IV hereof. Interest on the Bonds during any Variable Period shall be computed on the basis of a 365- or 366-day year, based on the actual number of days elapsed. Interest on the Bonds during any Fixed Period shall be computed on the basis of a 360-day year of twelve (12) thirty-(30-) day months. Anything herein to the contrary notwithstanding, no Bond shall bear interest at a rate in excess of the Maximum Interest Rate. Each Bond shall bear interest, payable on each Interest Payment Date with respect to such Bond, as provided in Section 2.02, Section 2.03 and Section 2.04, shall be subject to mandatory tender as provided in Sections 2.03, 2.04 and 2.10 hereof, shall be subject to demand purchase as provided in Section 2.10 and shall be subject to redemption prior to maturity as provided in Article IV. Each Bond shall bear interest from the date to which interest has been paid on the Bonds next preceding the date of its registration, unless it is registered as of an Interest Payment Date for which interest has been paid or after the Record Date in respect thereof, in which event it shall bear interest from such Interest Payment Date, or unless it is registered on or before the Record Date for the first Interest Payment Date, in which event it shall bear interest from its date.

Notwithstanding the foregoing, any Bond registered after any Record Date and before the following Interest Payment Date shall bear interest from such Interest Payment Date, provided, however, that if there is a default in the payment of interest due on such Interest Payment Date, then such Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Bonds, from the Closing Date.”

**Section 3. Bond Form.** The maturity on the Bonds is hereby extended by five (5) years to December 1, 2012. To memorialize this amendment, the form of Bond attached as Exhibit E to the First Supplement is hereby amended as provided in Exhibit C hereto; provided, that in the event of any conflict between the Indenture and a Bond certificate, the provisions of the Indenture shall control. The Trustee is hereby authorized and directed to authenticate and deliver a replacement Bond in such form to Bondholder on the effective date of this Second Supplement.

**Section 4. Ratification.** Except as amended and supplemented hereby, all provisions of the Indenture remain in full force and effect and unamended hereby, and the Indenture, as amended and supplemented by this Second Supplement, is hereby ratified. No references to this Second Supplement need be made in any instrument or document at any time referring to the Indenture. Any such reference to the Indenture in any such instrument or document is deemed to be a reference to the Indenture as amended hereby.

**Section 5. Counterparts.** This Second Supplement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplement to be duly executed, all as of the date set forth above.

[Signature page follows]



[Signature Page for Second Supplemental Indenture of Trust]

CITY OF WESTMINSTER, COLORADO

By \_\_\_\_\_  
Title \_\_\_\_\_

(SEAL)

Attest:

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

[Signature Page for Second Supplemental Indenture of Trust]

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT A**

**WAIVER AND CONSENT OF BORROWER**

\$14,675,000  
City of Westminster, Colorado  
Variable Rate Demand Multifamily Housing  
Revenue Refunding Bonds  
(Cascade Village Apartments Project)  
1997 Issue A

LBK 3, L.P., through the undersigned Authorized Borrower Representative for purposes of the Indenture of Trust dated as of October 1, 1997 (the "Original Indenture") as amended by that First Supplemental Indenture of Trust dated July 1, 1998 (the "First Supplement", together with the Original Indenture, the "Indenture") between the City of Westminster, Colorado and U.S. Bank National Association pursuant to which the above-referenced Bonds were issued, hereby: (a) acknowledges receipt of the proposed Second Supplemental Indenture of Trust dated as of August 1, 2002 (the "Second Supplement") amending and supplementing the Indenture and the other documents referred to therein; (b) waives any notice required by the Original Indenture with respect to the execution and delivery of the Second Supplement and to the extension of the maturity of the Bonds effected thereby; (c) consents to the execution and delivery of the Second Supplement; and (d) acknowledges and agrees to comply with the provisions of the Second Supplement. All capitalized terms used herein and not otherwise defined have the meanings assigned in the Indenture.

Dated: \_\_\_\_\_, 2002

LBK, L.P., a Delaware limited partnership

By: Beneke Real Estate Companies, Inc., a Texas  
corporation, its Authorized Agent

By: \_\_\_\_\_  
Ron Beneke, President

**EXHIBIT B**

**WAIVER AND CONSENT OF BONDHOLDER**

\$14,675,000  
City of Westminster, Colorado  
Variable Rate Demand Multifamily Housing  
Revenue Refunding Bonds  
(Cascade Village Apartments Project)  
1997 Issue A

Merrill, Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”), through the undersigned duly authorized officer, hereby: (a) certifies that Merrill is the sole the above-captioned Bonds issued pursuant to the Indenture of Trust dated as of October 1, 1997 as amended by that First Supplemental Indenture of Trust dated July 1, 1998 (the “First Supplement”, together with the Original Indenture, the “Indenture”) between the City of Westminster, Colorado and U.S. Bank National Association, as Trustee; (b) acknowledges receipt of the proposed Second Supplemental Indenture of Trust dated as of August 1, 2002 (the “Second Supplement”) amending and supplementing the Indenture; (c) waives any notice required by the Indenture with respect to the execution and delivery of the Second Supplement; and (d) consents to the execution and delivery of the Second Supplement and to the extension of the maturity of the Bonds effected thereby and will cause the Bonds held prior to effectiveness of the Second Supplement to be surrendered upon receipt of a new Bond delivered to or upon the order of Merrill pursuant to the Second Supplement. All capitalized terms used herein and not otherwise defined have the meanings assigned in the Indenture.

Dated: \_\_\_\_\_, 2002

Merrill, Lynch, Pierce, Fenner & Smith Incorporated

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C

**BOND FORM  
EXHIBIT C**

**BOND FORM**

SALES OR TRANSFERS OF THIS BOND MAY BE MADE ONLY TO AN ACCREDITED INVESTOR WITHIN THE MEANING OF THE SECURITIES ACT OF 1933, AS AMENDED. BY ITS PURCHASE OF THIS BOND, EACH PURCHASER HEREOF AGREES THAT ANY RESALE OR OTHER DISPOSITION OF THIS BOND WILL BE MADE ONLY TO AN ACCREDITED INVESTOR. IN ORDER TO ASSURE COMPLIANCE WITH THE AFORESAID RESTRICTION, THE PROPOSED TRANSFEREE OF THIS BOND MUST EXECUTE AND DELIVER TO THE TRUSTEE AN INVESTOR LETTER IN THE FORM OF EXHIBIT D TO THE FIRST SUPPLEMENTAL INDENTURE OF TRUST REFERRED TO BELOW.

IN THE EVENT OF FAILURE BY AN OWNER OF THIS BOND TO DELIVER THIS BOND TO THE TRUSTEE ON OR PRIOR TO A MANDATORY TENDER DATE AS PROVIDED IN THE INDENTURE, SUCH OWNER SHALL NOT BE ENTITLED TO ANY PAYMENT (INCLUDING ANY INTEREST TO ACCRUE ON OR SUBSEQUENT TO SUCH MANDATORY TENDER DATE) OTHER THAN THE PURCHASE PRICE FOR SUCH UNDELIVERED BOND, AND ANY SUCH UNDELIVERED BOND SHALL NO LONGER BE ENTITLED TO THE BENEFITS OF THE INDENTURE, EXCEPT FOR THE PURPOSE OF PAYMENT OF THE PURCHASE PRICE THEREFOR.

No. R-\_\_\_

UNITED STATES OF AMERICA  
STATE OF COLORADO  
VARIABLE RATE DEMAND MULTIFAMILY HOUSING  
REVENUE REFUNDING BOND  
(CASCADE VILLAGE APARTMENTS PROJECT)  
1997 ISSUE A

MATURITY DATE	FIXED RATE CONVERSION DATE	INTEREST RATE	CUSIP
December 1, 2012	July 1, 1998	6.375%	960665 CS4

OWNER: EMBASSY AND CO.

PRINCIPAL SUM: FOURTEEN MILLION SIX HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS

THE CITY OF WESTMINSTER, COLORADO (the "Issuer"), a municipal corporation and a political subdivision of the State of Colorado (the "State") empowered to issue revenue bonds pursuant to the County and Municipality Development Revenue Bond Act, Part 1 of Article 3 of Title 29 of the Colorado Revised Statutes, as amended (the "Act"), for value received, hereby promises to pay (but only out of Revenues as hereinafter provided) to the registered owner identified above (as nominee for Merrill, Lynch, Pierce, Fenner & Smith Incorporated) or registered assigns, on the Maturity Date set forth above (subject to any right of prior redemption as hereinafter provided), the principal sum identified above in lawful money of the United States of America, and to pay interest thereon, until payment of such principal sum, at the interest rates per annum described here. Commencing on the Fixed Rate Conversion Date, i.e., July 1, 1998, through the Fixed Period ending on December 31, 2004, this Bond shall bear interest at the Interest Rate per annum identified above. Thereafter, each Bond shall bear interest payable on each applicable Interest Payment Date at the interest rate

determined by Lehman Brothers Inc., the initial Remarketing Agent, as described in the Indenture. All capitalized terms not defined herein shall have the definitions assigned thereto in the Indenture (as defined below). The principal or redemption price is payable only upon presentation and surrender hereof at the principal operations office of U.S. Bank National Association (the "Trustee") located at First Trust National Association in St. Paul, Minnesota, and interest shall be paid by check mailed on each Interest Payment Date by first-class mail, postage prepaid, to the person in whose name this Bond is registered on the Record Date, at the address of such registered owner shown on the books of the Trustee, except that such interest payments may be made by wire transfer to any registered owner of \$1,000,000 or more in aggregate principal amount of the Bonds who shall have designated to the Trustee an account for such payments at least 15 days before the Record Date.

This Bond is one of a duly authorized issue of bonds of the Issuer designated as "Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Cascade Village Apartments Project) 1997 Issue A" (the "Bonds"), in the aggregate principal amount of \$14,675,000 authorized to be issued pursuant to the Act and issued under and secured by an Indenture of Trust, dated as of October 1, 1997, as amended by that First Supplemental Indenture of Trust dated as of July 1, 1998 and that Second Supplemental Indenture of Trust dated August 1, 2002 (all together, the "Indenture"), all between the Issuer and the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the holder of this Bond, by acceptance hereof, assents and agrees.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE MEMBER OF THE ISSUER'S GOVERNING BODY, OR THE OFFICERS, COUNSEL OR AGENTS OF THE ISSUER, OR OF ANY SUCCESSOR THERETO, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION, AND ALL SUCH LIABILITY IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

The Issuer hereby certifies that all of the conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee or the Tender Agent.

THE BONDS, TOGETHER WITH INTEREST AND PREMIUM, IF ANY, THEREON, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED IN THE INDENTURE TO THE PAYMENT THEREOF AND SHALL BE A VALID CLAIM OF THE RESPECTIVE HOLDERS THEREOF ONLY AGAINST THE TRUST ESTATE SO PLEDGED AS AFORESAID, WHICH TRUST ESTATE IS PLEDGED BY THE INDENTURE, ASSIGNED AND OTHERWISE SECURED FOR THE EQUAL AND RATABLE PAYMENT OF THE BONDS AND SHALL BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS, EXCEPT AS MAY BE OTHERWISE EXPRESSLY AUTHORIZED IN THE INDENTURE. NEITHER THE STATE NOR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE BONDS, THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE TRUST ESTATE. THE BONDS SHALL NEVER CONSTITUTE THE DEBT OR INDEBTEDNESS OF THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER) WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE STATE CONSTITUTION, STATUTES OR HOME RULE CHARTER OF THE ISSUER, AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OR MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATION OF THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER) OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

The Bonds have been issued in order to provide funds to make a loan (the "Loan") to LBK, L.P., a Delaware limited partnership (successor in interest to LBK 3, L.P., a Delaware limited partnership) (the "Borrower"), pursuant to a Loan Agreement, dated as of October 1, 1997 (the "Loan Agreement"), among the Issuer, the Trustee and the Borrower, to provide funds to redeem certain bonds of the Issuer which financed the acquisition, construction and equipping of a multifamily residential rental project (the "Project") in Westminster, Colorado constituting a "project" within the meaning of the Act. The Borrower has agreed under the Loan Agreement to repay the Loan, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable.

This Bond may, in accordance with the terms of and subject to the limitations set forth in the Indenture and upon delivery of an investor letter required by the terms thereof, be transferred, upon the books of the Trustee, or the Tender Agent in connection with a purchase of Bonds required to be kept pursuant to the provisions of the Indenture, by the person in whose name it is registered, in person or by his duly authorized attorney, except with respect to Undelivered Bonds, upon surrender of such Bond for cancellation at the Principal Office of the Trustee or the Principal Office of the Tender Agent, accompanied by a duly executed written instrument of transfer in a form acceptable to the Trustee or the Tender Agent, as the case may be. Bonds may be exchanged at the Principal Office of the Trustee for a like aggregate principal amount of Bonds of the same series of other Authorized Denominations. Whenever any Bond shall be surrendered for transfer or exchange, the Issuer shall execute and the Trustee or the Tender Agent, as the case may be, shall authenticate and deliver a new Bond or Bonds of the same series, for a like aggregate principal amount.

The Trustee is authorized but not obligated to require the payment by the Bondholder requesting any such transfer or exchange of any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The cost of any printing of any new Bonds and reasonable expenses incurred by the Issuer or the Trustee in connection with any exchange or transfer provided for in the Indenture shall be paid by the Borrower.

No transfer or exchange shall be required to be made of any Bonds called for redemption or of any Bonds during the 10 days next preceding the giving of any notice of redemption, except any transfer of Bonds remarketed following a mandatory tender for purchase pursuant to the Indenture.

The Bonds are subject to mandatory redemption in whole at any time or in part on any Interest Payment Date, for which notice of redemption may be given after written notice from the Borrower of the receipt of Net Proceeds, at a price equal to the principal amount of Bonds redeemed plus interest accrued thereon to the date fixed for redemption without premium, upon prepayment of the Loan in whole or in part, in an amount as nearly equal as possible to, but not exceeding, the amount of any Net Proceeds of insurance or condemnation awards not used to repair or replace the Project.

The Bonds are subject to mandatory redemption in whole at a price equal to the principal amount of Bonds redeemed plus interest accrued thereon to the date fixed for redemption, without premium, on the earliest practicable date for which notice of redemption may be given following receipt by the Trustee of notice that a Determination of Taxability (as defined in the Regulatory Agreement) has occurred.

The Bonds are subject to redemption at the option of the Issuer upon the direction of the Borrower on such dates as may be directed by the Borrower in whole or in part, in Authorized Denominations on any date, at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the date of redemption.

When any redemption is made and less than all of the outstanding Bonds are to be redeemed, the Trustee shall select the Bonds to be redeemed in Authorized Denominations.

The Trustee shall select Bonds to be redeemed in part by lot.

Notice of redemption shall be given by the Trustee for and on behalf of the Issuer, by first-class mail, postage prepaid, not more than 30 and not less than 15 days to the Issuer, the Remarketing Agent and the registered owner of each Bond called for redemption, at its address as it appears on the registration books or at such address as it may have filed with the Trustee for that purpose, but neither failure to mail such notice to the Remarketing Agent or any owner nor any defect in any notice so mailed shall affect the sufficiency of the

proceedings for the redemption of any of the Bonds. Each notice of redemption shall state the information required by the Indenture including the redemption date, the place of redemption, the source of the funds to be used for such redemption, the principal amount and, if less than all, the numbers of the Bonds to be redeemed, and shall also state that the interest on the Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified).

If the Bonds are called for redemption in whole under the Indenture, the Bonds so called may be purchased, in whole but not in part, from Available Amounts at the direction of the Borrower on the date upon which such Bonds were to have been redeemed (the "Purchase In Lieu of Redemption Date"), at a purchase price equal to the redemption price thereof, plus accrued interest, if any, thereon to, but not including, such Purchase In Lieu of Redemption Date. By 2:00 p.m., Mountain Time, on the second Business Day following the receipt by the Borrower of notice from the Trustee of its notification of bondholders of the call for redemption of Bonds as provided in the Indenture, the Borrower shall give written notice (the "Borrower Notice") to the Tender Agent, the Trustee and the Remarketing Agent of the aggregate principal amount of Bonds, if any, for which an election to purchase pursuant to the Indenture is being made. Bonds to be purchased pursuant to the Indenture which are not delivered to the Trustee on the Purchase In Lieu of Redemption Date shall be deemed to have been so purchased, and the purchaser of such Bonds shall be the Owner of such Bonds for all purposes under this Indenture, and interest accruing on such Bonds on and after the Purchase In Lieu of Redemption Date shall be payable solely to the Borrower or any third party designated by the Borrower or any assignee(s) of its interest in such Bonds.

The Indenture contains provisions permitting the Issuer and the Trustee to execute supplemental indentures adding provisions to, or changing or eliminating any of the provisions of the Indenture, subject to the limitations set forth in the Indenture.

IN WITNESS WHEREOF, THE CITY OF WESTMINSTER, COLORADO has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk, and has caused its seal, or a facsimile thereof, to be affixed hereto all as of the Fixed Rate Conversion Date set forth above.

THE CITY OF WESTMINSTER, COLORADO

By \_\_\_\_\_  
Mayor

(Seal)

Attest:

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



**AUTHENTICATION CERTIFICATE**

U.S. Bank National Association, as Trustee or Tender Agent, certifies that this Bond is one of the Bonds referred to in the within-mentioned Indenture.

Date of  
Authentication:

\_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee or Tender Agent

By \_\_\_\_\_  
Authorized Signatory

**FORM OF  
ASSIGNMENT**

For value received, the undersigned do(es) hereby sell(s), assign(s) and transfer(s) unto the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) attorney to transfer the same on the books of the Trustee with full power of substitution in the premises.

Date \_\_\_\_\_

Signature Guaranteed:

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Notice: Signature must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program member firm of the New York Stock Exchange or a commercial bank or trust company.

**Attachment D Amended and Restated Regulatory Agreement**

EXECUTION COPY

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**FIRST AMENDMENT TO AMENDED AND RESTATED  
REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

By and Among

**CITY OF WESTMINSTER, COLORADO,**  
as Issuer

and

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

and

**LBK, L.P., a Delaware limited partnership,**  
as Borrower

dated as of August 1, 2002

\$14,675,000  
City of Westminster, Colorado  
Variable Rate Demand Multifamily Housing  
Revenue Refunding Bonds  
(Cascade Village Apartments Project)  
1997 Issue A

---

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**FIRST AMENDMENT TO AMENDED AND RESTATED  
REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** dated August 1, 2002 (this "First Amendment"), is by and between the **CITY OF WESTMINSTER, COLORADO**, a municipal corporation and a political subdivision of the State of Colorado (the "Issuer"), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee") and **LBK, L. P.**, a Delaware limited partnership (successor in interest to LBK 3, L.P., a Delaware limited partnership) (the "Borrower").

W I T N E S S E T H :

WHEREAS, pursuant to that Indenture of Trust dated as of October 1, 1997 (the "Original Indenture") between the Issuer and the Trustee as amended by that First Supplemental Indenture of Trust dated July 1, 1998 (the "First Supplement") by and between the Issuer and Trustee (the "First Supplement" and the "Original Indenture" together the "Indenture") the Issuer issued its Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Cascade Village Apartments Project) 1997 Issue A (the "Bonds") on October 30, 1997 in the original aggregate principal amount of \$14,675,000; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer, the Trustee and the Borrower entered into that Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 1997 (the "Regulatory Agreement") to set forth certain restrictions as to the use and occupancy of that multifamily housing project (the "Project") financed with the proceeds of the Bonds and known as Cascade Village Apartments (located on the property described in Exhibit A hereto) in order to ensure the exemption of interest on the Bonds from gross income for federal income tax purposes and to further the Authority's goals of providing for safe, sanitary and affordable housing for persons of low and moderate income in Jefferson County, Colorado; and

WHEREAS, the Borrower has requested that the Issuer and the Trustee enter into a Second Supplemental Indenture of Trust dated as of August 1, 2002 (the "Second Supplement") for the purpose of extending the maturity on the Bonds by five (5) years to December 1, 2012; and

WHEREAS, in conjunction with the approval of a Second Supplemental, the Issuer, the Trustee and the Borrower, at the Issuer's request, hereby desire to make certain changes to the Regulatory Agreement to increase the affordable housing set-aside requirement from 20% to 30% of units for persons or families whose income is 80% or less of area median gross income as set forth in this First Amendment; and

WHEREAS, Section 18 of the Regulatory Agreement provides for the amending thereof only by a written instrument executed by the parties thereto or their successors in title and duly recorded in the real property records of the County of Jefferson, Colorado and only when accompanied by an opinion of Bond Counsel to the effect that such amendment will not affect the exclusion from federal income taxation of interest on the Bonds; and

WHEREAS, the Authority and the Trustee have received an opinion of Bond Counsel that the execution and delivery of this First Amendment will not adversely affect the exclusion on interest on the Bonds from gross income for federal income tax purposes; and

WHEREAS, in connection with the delivery of this First Amendment, the Issuer has requested that Merrill, Lynch, Pierce, Fenner & Smith Incorporated (the "Bondholder") approve and consent to the First Amendment.

NOW THEREFORE, THE REGULATORY AGREEMENT IS HEREBY AMENDED AS FOLLOWS:

**Section 6. Amendment to Section 4A(c).** Section 4A(c) of the Regulatory Agreement is hereby deleted and replaced by the following:

“(c) the Borrower hereby represents, covenants and agrees as follows:

(1) consistent with the terms of the Regulatory Agreement, all of the dwelling units in the Project shall be occupied or held available for occupancy by Eligible Tenants:

(2) the Borrower shall permit any duly authorized representative of the Trustee to inspect the books and records of the Borrower pertaining to the incomes of all persons residing in the Project; and

(3) The Borrower shall prepare and submit to the Trustee, within 30 days after each October 1 during the term hereof, a certificate executed by the Borrower stating the number of dwelling units in the Project and the number of dwelling units in the Project which were occupied by Eligible Tenants, at all times during the year preceding the date of such certificate; and

(4) Notwithstanding any other requirement contained in the Regulatory Agreement, the Borrower agrees to set aside an additional 10% of the units in the Project in the same manner and subject to same conditions as those provided for Low-Income Persons in Section 2(c), Section 4(a) and Section 4(b) of the Regulatory Agreement, which units shall be in addition to the 20% requirement stated in such sections.”

**Section 7. Contrary Provisions Deleted.** Any provisions of the Regulatory Agreement, prior to its amendment by this First Amendment, which directly conflict with this First Amendment, are hereby deleted and of no force and effect.

**Section 8. Counterparts.** This First Amendment may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original.

**Section 9. Governing Law.** The First Amendment shall be governed by the laws of the State of Colorado.

**Section 10. Effective Date.** The provisions of this First Amendment shall become effective immediately upon the execution and delivery hereof by the parties hereto. This First Amendment and all terms and provisions herein contained shall form a part of the Regulatory Agreement as fully and with the same effect as if all such terms and provisions had been set forth therein, and the Regulatory Agreement as amended by this First Amendment remains in full force and effect in accordance with the terms and provisions thereof, as amended and supplemented hereby.

IN WITNESS WHEREOF, the parties hereto have caused the First Amendment to be duly executed, all as of the date set forth above.

(SEAL)

CITY OF WESTMINSTER, COLORADO

Attest:

By \_\_\_\_\_

Title \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2002 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

\_\_\_\_\_



[Signature Page for First Amendment to Amended and Restated  
Regulatory Agreement and Declaration of Restrictive Covenants]

LBK, L.P., a Delaware limited partnership

By: Beneke Real Estate Companies, Inc., a Texas  
corporation, its Authorized Agent

By: \_\_\_\_\_  
Ron Beneke, President

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2002 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:  
  
\_\_\_\_\_



CONSENTED TO AND APPROVED

Dated: \_\_\_\_\_, 2002

Merrill, Lynch, Pierce, Fenner & Smith Incorporated

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

## ATTACHMENT E: FIRST AMENDMENT TO THE LOAN AGREEMENT

### FIRST AMENDMENT TO LOAN AGREEMENT

EXECUTION COPY

**THIS FIRST AMENDMENT TO LOAN AGREEMENT** dated as of August 1, 2002 (this “First Amendment”) is by and among the **CITY OF WESTMINSTER, COLORADO**, a municipal corporation and a political subdivision of the State of Colorado (the “Issuer”), **LBK, L.P.**, a Delaware limited partnership (successor in interest to LBK 3, L.P., a Delaware limited partnership) (the “Borrower”) and **U.S. BANK NATIONAL ASSOCIATION**, as trustee (the “Trustee”) and amends and supplements the Loan Agreement dated as of October 1, 1997 (the “Agreement”) among the Issuer, the Borrower and the Trustee relating to the Issuer’s loan of the proceeds of its Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Cascade Village Apartments Project) 1997 Issue A (the “Bonds”) issued on October 30, 1997 in the original aggregate principal amount of \$14,675,000 to the Borrower.

#### RECITALS:

WHEREAS, the Borrower has requested that the Issuer and the Trustee enter into a Second Supplemental Indenture of Trust dated as of August 1, 2002 (the “Second Supplement”) for the purpose of extending the maturity on the Bonds by five (5) years to December 1, 2012; and

WHEREAS, in connection with the approval of the Second Supplement, the Issuer and the Borrower desire to enter into this First Amendment to amend certain provisions of the Agreement that (i) acknowledge the extension of the maturity of the Bonds and of the Borrower’s obligations under the Loan Agreement and (ii) require the Borrower to pay certain additional fees to the Issuer following execution of the Second Supplement; and

WHEREAS, Section 10.4 of the Loan Agreement provides that the Loan Agreement may be amended with the prior written consent of the Trustee and the Credit Facility Provider; and

WHEREAS, the Issuer, the Trustee and the Borrower have agreed to enter into this First Amendment; and

WHEREAS, on the date hereof, Merrill, Lynch, Pierce, Fenner & Smith Incorporated (the “Bondholder”) is the beneficial owner of all the Bonds through its nominee Embassy and Co., the registered owner of all Bonds and has agreed to the extension of the maturity of the Bonds; and

WHEREAS, pursuant to the First Supplement to Indenture of Trust dated July 1, 1998 (the “First Supplement”) between the Issuer and the Trustee the Bonds are being held without a Credit Facility by the Bondholder, an institutional investor (as defined in the First Supplement) and, as such, the prior written consent of the Credit Facility Provider is not necessary; and

WHEREAS, there is no Standby Credit Facility Provider; and

WHEREAS, by Certified Ordinance adopted at a meeting of the Issuer held August 12, 2002, and herewith delivered to the Trustee, the Issuer has authorized, approved and agreed to enter into this First Amendment; and

WHEREAS, in connection with the delivery of this First Amendment, the Issuer has requested that Merrill, Lynch, Pierce, Fenner & Smith Incorporated (the “Bondholder”) approve and consent to the First Amendment.

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**Section 11. Recitals; Definitions.** The foregoing recitals are hereby agreed to and acknowledged. All capitalized terms used in this First Amendment and not otherwise defined have the meanings assigned in the Indenture.

**Section 12.** Subsection 4.2 (c) of the Loan Agreement is hereby amended in whole to read as follows:

“(c) The Borrower agrees to pay to the Issuer an annual fee equal to .25% of the outstanding principal amount of the Bonds on each January 1, commencing on January 1, 2003, and the Borrower also agrees to pay to the Issuer or to any payee designated by the Issuer within 30 days after receipt of request for payment therefor, all reasonable expenses of the Issuer related to the Project and the financing thereof which are not paid from the Cost of Issuance Fund under the Indenture, including, without limitation, any post-closing legal or financial advisory fees and expense incurred in connection with the interpretation and enforcement of any documents relating to the Project or the Bonds.”

**Section 13. Bond Maturity.** The Borrower hereby acknowledges and agrees to the extension of the maturity of the Bonds by five (5) years to December 1, 2012, and hereby further agrees that the Borrower’s obligations under the Loan Agreement, including, but not limited to Section 4.2 thereof, include repayment of the Bonds to their extended maturity date.

**Section 14. Ratification.** Except as amended and supplemented hereby, all provisions of the Loan Agreement remain in full force and effect and unamended hereby, and the Loan Agreement, as amended and supplemented by this First Amendment, is hereby ratified.

**Section 15. Counterparts.** This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed, all as of the date set forth above.

[Signature page follows]

[Signature Page for First Amendment to Loan Agreement]

CITY OF WESTMINSTER, COLORADO

By \_\_\_\_\_  
Title \_\_\_\_\_

(SEAL)

Attest:

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

[Signature Page for First Amendment to Loan Agreement]

LBK, L.P., a Delaware limited partnership

By: Beneke Real Estate Companies, Inc., a  
Texas corporation, its Authorized Agent

By: \_\_\_\_\_  
Ron Beneke, President

[Signature Page for First Amendment to Loan Agreement]

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By \_\_\_\_\_  
Title \_\_\_\_\_

CONSENTED TO AND APPROVED

Dated: \_\_\_\_\_, 2002

Merrill, Lynch, Pierce, Fenner & Smith Incorporated

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_





**WESTMINSTER**  
**COLORADO**

## Agenda Memorandum

City Council Meeting  
August 12, 2002

**SUBJECT:** Councillor's Bill No. 39 re Supplemental Appropriation for Standley Lake Renovations

**Prepared By:** Mary Ann Parrot, Finance Director

### Recommended City Council Action

Pass Councillor's Bill No. 39 on first reading authorizing a supplemental appropriation of \$12,500,000 for the construction of the renovations at Standley Lake and reversing an earlier appropriation of \$3.0 million for partial bonding of this project.

### Summary Statement

City Council action is requested to adopt the attached Councillor's Bill on first reading, appropriating \$12.5 million for construction of renovations at the Standley Lake Dam and surrounding area.

- Adoption of the attached ordinance is in accordance with the reimbursement resolution approved by the City Council on November 26, 2001.
- This will cash-fund these improvements in full. As City Council will recall, Staff was working on one of three alternatives to resolve IRS tax issues surrounding the ownership of the dam and the desire of the Enterprise to issue tax-exempt bonds. The three alternatives, in priority order, were as follows:
  1. Attempt to resolve the tax issues and issue tax-exempt variable bonds. This has not happened due to an outstanding IRS ruling that is still in litigation.
  2. Finance Standley Lake Improvements with cash. In 2004, when the improvements for the Big Dry Creek Improvements are needed, fund these with variable rate tax-exempt bonds, as the Enterprise owns these outright. This is the Staff recommendation.
  3. Issue taxable variable rate bonds. This alternative is not necessary and therefore not recommended due to costs.
- The Enterprise is in a favorable cash position and can cash fund this project. Staff is proposing to fund Big Dry Creek with tax-exempt bonds in 2004.
- The ordinance will also reverse the earlier appropriation of bond proceeds for Standley Lake Improvements, which is now not needed.
- Staff will return to City Council in September for approval to issue a smaller bond of \$7.0 million to complete the payments for at the City's Northwest Water Treatment Plant. This action complies with City Council direction to Staff from last November and again this past July.

**Expenditure Required:** \$12,500,000

**Source of Funds:** Appropriation of carryover funds from 2001 and 2002 to fund Standley Lake Improvements, previously intended for cash funding Big Dry Creek Improvements.

**SUBJECT:** Councillor's Bill re Supplemental Appropriation for Standley Lake Renovations Page 2

## **Policy Issues**

Should the Standley Lake Improvements be cash funded rather than bond-financed?

## **Alternatives**

1. Delay financing until the tax issues are resolved. This alternative is not recommended. First of all, the construction is proceeding, as planned last month. Staff does not expect a court decision for several months, and the project needs to proceed. Attempts at resolving the tax issues have not resolved the other cities' concerns. It is also Staff's opinion that the tax issues surrounding this financing should not hold up the project. Regardless of whether the IRS rules favorably or unfavorably, the City should not delay the project. Lastly, if the IRS rules unfavorably, Staff had developed an alternative strategy to appeal the IRS ruling on the basis of a Colorado Supreme Court ruling, but this strategy would also result in continued potential delays.
2. Issue taxable variable rate. This alternative is not recommended. This would have cost the City another .5% to 1.0% in interest costs, or \$100,000 to \$200,000 per year in additional interest costs. In addition, even though the attorneys involved expect a favorable court ruling there is some risk the court would not rule favorably on the IRS tax issues.

## **Background Information**

Standley Lake Dam Renovation: The renovation consists of the following:

- Additional berming to be added to the dam embankment.
- A new spillway on the north side of the dam, to conform to the Colorado State Engineer's mandate to provide an enlarged spillway for additional protection during large precipitation events.
- A new valve house and new multi-level underground water supply tunnels (in bedrock), to improve the safety and functionality of the dam.

The dam is owned by FRICO, which constitutes private ownership. In addition, because the IRS has issued a private letter ruling, known as the "Geyser Ruling," the ratepayers who buy the City's water and sewer services are considered by the IRS to be making payments to FRICO. This is a very controversial ruling and is currently under litigation, but a decision has not yet been issued by the court of law. In essence, the IRS "looks through" the City when considering the payments made by rate payers; the IRS has ruled that the payments are made "in consideration to" the private organization, or FRICO. Simply put, the IRS considers these payments to be made by ratepayers as made to FRICO, even though these payments do not actually get to FRICO. A ruling on this court case is expected in the next few months, but in the meantime Staff has developed an alternative strategy that is both practical and cost effective.

Staff is proposing cash-funding Standley Lake and debt financing Big Dry Creek (BDC). The BDC improvements are tentatively scheduled for final design in 2003, bidding and construction to start in late 2003 or early 2004. Because the Enterprise will own these improvements outright, there are no tax issues surrounding issuing tax-exempt bonds for this project.

The system is in a positive cash and cash flow position and can accommodate this project without harm to the system or other needed capital projects. The previous carryover allocation of \$5.0 million to the BDC project is proposed to be shifted to the Standley Lake Dam Renovation Project. In addition, \$5.0 million from the 2001 Utility Fund Carryover is proposed to be allocated for this project.

Northwest Water Treatment Plant Completion: The total cost of the Northwest Water Treatment Plant (NWTP) project remains at the \$22 million approved by City Council on September 25, 2000. The first segment of the financing was \$15 million in bond proceeds. These bonds were issued through the Colorado Water and Power and Development Authority (CWPA) were received on April 18, 2000. The remainder of this financing will be completed with a \$7.0 million bond, issued as a tax-exempt bond, in order to complete this project.

**SUBJECT:** Councillor's Bill No. re Supplemental Appropriation for Standley Lake Renovations

On November 26, 2001, Council adopted Resolution No. 68 allowing the Utility Enterprise Fund to be reimbursed for expenses incurred prior to the issuance of bonds for the remaining Water Treatment Plant costs. The bond financing, to be issued in August 2002 will serve to reimburse the City for the advanced funding for the remainder of this project.

Staff will return to City Council with a request for approval of a bond issue for \$7.0 to fund only the improvements for the Northwest Water Treatment Plant (NW WTP). This is revised downward from the earlier estimate of \$19.75 million, for both the NW WTP and Standley Lake.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **39**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2002 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2002 appropriation for the Utility Fund initially appropriated by Ordinance No. 2913 in the amount of \$37,255,609 is hereby increased by \$2,000,000 which, when added to the fund balance as of the City Council action on August 12, 2002 will equal \$58,654,384. The actual amount in the Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This net increase is due to the appropriation of 2001 carryover and the reversal of an earlier appropriation of anticipated bond proceeds as a result of the decision to cash fund the Standley Lake Dam Renovations.

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

<u>Description</u>	<u>Current Budget</u>	<u>Increase</u>	<u>Final Budget</u>
<b>REVENUES</b>			
Carryover – Water 2000.40020.0000	4,598,304	\$10,000,000	\$14,598,304
Carryover – Wastewater 2100.40020.0000	4,414,473	(5,000,000)	(585,527)
Bond Proceeds 2000.46020.0216	10,000,000	<u>(3,000,000)</u>	7,000,000
Total Change to Revenues		<u>\$2,000,000</u>	
<b>EXPENSES</b>			
Big Dry Creek 80121035044.80400.8888	\$6,471,179	\$(5,000,000)	\$1,471,179
Gravel Lakes Storage 80120035078.80400.8888	7,958,922	(2,500,000)	5,458,922
Standley Lake Renovation 80220035525.80400.8888	\$2,650,000	<u>9,500,000</u>	12,150,000
Total Change to Expenditures		<u>\$2,000,000</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. 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 12th day of August, 2002. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of August, 2002.

ATTEST:

\_\_\_\_\_  
Mayor

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



## WESTMINSTER COLORADO

### Agenda Memorandum

City Council Meeting  
August 12, 2002

**SUBJECT:** Councillor's Bill No. 40 re Water and Sewer Rates Adjustment

**PREPARED BY:** Bob Krugmire, Water Resources Engineer  
Byron Jefferson, Treasury Manager  
Kelly DiNatale, Water Resources and Treatment Manager

### Recommended City Council Action

Pass Councillor's Bill No. 40 on first reading implementing water and sewer rate adjustments.

### Summary Statement

- The proposed 2003 and 2004 Utility Fund budgets are predicated on a 7% overall increase in operating revenues in 2003. The recommended revenue increase is required to meet cash flow requirements for operating costs, pay-as-you-go capital improvement projects and the continuing debt service for the Reclaimed Water System, Standley Lake Renovation and the Northwest Water Treatment Facility. The renovation of Standley Lake Dam, a 90-year-old facility, and the construction of the Northwest Water Treatment Facility, to replace the 45-year-old England Water Treatment Facility, are used to provide service to existing water customers. The Big Dry Creek Wastewater Treatment Facility renovation and expansion will also extend the life of the existing facility for existing users. As a result, it is necessary to recover a portion of these costs through water and sewer rates.
- This proposal is in keeping with City Council's bi-annual water and sewer rates adjustments. Staff, utilizing water billing records and the long-range financial planning model, has analyzed water rates and usage patterns and is recommending changes to water rates in order to meet these revenue requirements. The current drought and lack of success with voluntary water conservation measures suggest that existing water rates are too low to encourage meaningful conservation.
- Staff has analyzed the water use patterns for various customer classes and are recommending modification of specific upper tier rates for both residential and commercial customers to serve as additional, permanent conservation incentives.
- These rates would be effective October 1, 2002 through 2004, and barring unexpected costs or significant revenue reductions due to a continued drought, no increase would be recommended for calendar year 2004. In response to Council's concerns regarding customer notification, staff will be mailing out information regarding the approved rates to all water customers.
- There are also housekeeping measures covering an increase to the City's meter testing fees, meter re-read fees, modifications to the fines associated with meter turn-ons and turn-offs, a modification to the meter deposit fee and modifications to the meter set fee schedule.

**Expenditure Required:** None

**Source of Funds:** N/A

### **Policy Issues**

Should the meter service charges, water and sewer rates and tap fees recover the costs of providing water and sewer services?

Is it appropriate to utilize the upper tiers of both residential and commercial rates to further encourage conservation and recover a portion of water resources costs?

Should operating and capital improvement budgets be reduced further to minimize the recommended adjustments? Growth limitations or service reductions could result depending on the nature of the budget restrictions.

### **Alternatives**

1. Do not adjust water and sewer rates and instead reduce expenditures to balance the budget. The operating and capital improvement budgets for 2003 and 2004 have been carefully scrutinized and reduced to minimize the need for rate adjustments. Additional reductions in expenditures could affect the schedule for renovating Standley Lake Dam, which is under a directive from the State Engineer, operations of the water and wastewater treatment facilities, ongoing operations, maintenance and system replacement and renewal activities or central charges and transfers to the General Fund.

2. Do not modify the upper tier rates for residential and commercial users and leave the current block structure as is. Water demand studies indicate that commercial users are the most inefficient user class. In addition, commercial users generally use more water than comparable average residential use and have not paid their share of initial water resources related capital costs. Additionally, increasing block water rate structures create a strong water conservation incentive.

### **Background Information**

As mentioned previously, the 2003 and 2004 Utility Fund budgets are predicated on a 7% overall increase in operating revenues in 2003-2004. The recommended revenue increase is required to meet cash flow requirements for operating costs, pay-as-you-go capital improvement projects and the continuing debt service for the Reclaimed Water System, Standley Lake Renovation and the Northwest Water Treatment Facility.

As part of the City of Westminster's overall Drought Response Program, the City initiated mandatory watering restrictions on August 1, 2002. The mandatory program includes adherence to the established circle-diamond-square, three-day watering schedule. Staff determined that the water savings realized by the voluntary program was not sufficient to carry Westminster through a prolonged, multi-year drought. As a result of this analysis, Staff is recommending the implementation of specific rate increases, which would serve as conservation incentives in conjunction with the planned implementation of the mandatory program. These would include an increase to both the upper residential block as well as the upper commercial block.

City Council normally adjusts water and sewer rates every two years. Staff, utilizing water billing records and the long-range financial planning model, has analyzed water rates and usage patterns and, in addition to the proposed conservation incentive rates, recommends the following changes to water rates in order to meet the revenue requirements. The rate increases would be effective October 1, 2002, and would be effective through 2004. No additional increases are anticipated through calendar year 2004 if Council concurs with moving forward with the recommended rate adjustments.

1. Single Family Residential Water Rates: Adjust the residential block rates as follows:

- a. Reduce the breakpoint between the middle block and top block from 25,000 to 20,000 gallons.
- b. Add \$0.10 to the middle block, going from \$2.85 to \$2.95 per 1,000 gallons for usage between 5,000 and 20,000 gallons per month.
- c. \$0.26 would be added to the top block, going from \$3.99 to \$4.25 per 1,000 gallons for consumption above 20,000 gallons. The third block has remained at \$3.99 per 1,000 gallons since 1995.
- d. The "lifeline rate" of \$1.95 per 1,000 gallons for the first 4,000 gallons would remain unchanged.
- e. A portion of Section 8-7-7(B) would be repealed. This section provides that residential customers who use more than 50,000 gallons for two billing cycles in a twelve-month period will be billed the commercial rate. This was implemented years ago at the request of an out-of-city resident who was paying greater than the commercial rate. Since the commercial rates have been adjusted and a second block added, this section is no longer applicable.

2. Single Family Meter Service Charge: Increase the residential Meter Service Charge from \$3.75 per month to \$4.70. The cost allocation study found that the cost to provide residential meter reading and billing services is \$4.70 per month per account. This increase would bring the Meter Service Charge up to the level of recovering actual costs, and would include appropriate CPI adjustments. The monthly water bill for the average customer, including the recommended rate adjustment and meter service charge, would increase by \$1.90 per month.

4. Meter Service Charge for Non-Single Family Residential: Adjust the Meter Service Charge for all non-Single Family Residential 5/8” meters by adding \$0.95, going from \$3.75 to \$4.70.

5. Commercial Water Rates: Adjust the commercial block rates by adding \$0.20 to the bottom block, going from \$3.45 to \$3.65 per 1,000 gallons, and by adding \$0.65 to the top block, going from \$3.85 to \$4.50 per 1,000 gallons. As with the residential blocks, the breakpoint for commercial blocks would also be adjusted, going from a base breakpoint of 25,000 gallons to 20,000 gallons, as shown in the table below:

Meter Size	Service Commitments	Breakpoint (x 1,000 gallons)
5/8”	1	20
3/4”	1.5	30
1”	2.5	50
1-1/2”	5	100
2”	8	160
3”	17.5	350
4”	30	600
6”	62.5	1,250
8”	90	1,800
10”	145	2,900
12”	215	4,300

6. Residential Irrigation, Town home, Condo, Public/Quasi-Public Users and Residential Irrigation: Add \$0.20 to the rate charged to these customers, going from \$3.45 to \$3.65 per 1,000 gallons. Additionally, town home communities that apply for, and can prove at least 80% occupancy, are entitled to receive a blended rate (currently \$2.85 per 1,000 gallons). The new blended rate would increase to \$3.00.

7. Shaw Heights: Shaw Heights water users, per the perpetual comprehensive agreement, are charged the corresponding in-City rates plus 10%.

8. Sewer Rates: Adjust residential and public rates from \$2.68 to \$2.84 and Commercial from \$2.99 to \$3.17 per 1,000 gallons of average winter water usage. This increase equates to a 6% increase in rates. In addition to covering inflationary costs, this adjustment is required to pay for the renovation related costs at the Big Dry Creek Wastewater Treatment Facility.

**Housekeeping Measures**

1. Meter Testing Fees: Increase the residential meter testing fee from \$10.00 to \$25.00. Test of commercial and industrial meters, by customer request, will be based upon the following schedule:

Meter Model	Meter Size	Test Charge
25	5/8"	\$25.00
35	3/4"	\$35.00
70	1"	\$70.00
120	1-1/2"	\$120.00
160 Turbo	1-1/2"	\$160.00
170	2"	\$170.00
200 Turbo	2"	\$200.00
450 Turbo	3"	\$450.00
Meters Over 3"	>3"	\$450.00

2. Meter Re-Read Fee: Increase the meter re-read fee from \$5.00 to \$15.00 for a customer requested re-read. Note that this fee will be waived if the initial reading was incorrect. Additionally, increase the leak detection inspection fee from \$5.00 to \$15.00, which would be waived if leaks are detected.

3. Modify the fines and penalties associated with water service turn-offs and turn-ons as follows: Increase the charge for third and any additional turn-off/on for residential customers from \$60.00 to \$90.00. Additionally, implement the following fines and penalties:

Action	Residential	All Other Classifications
Unauthorized Turn-on	\$30.00	\$30.00
Damaged Lock	\$15.00	\$15.00
Damaged Can	\$30.00	\$30.00
Damaged Pin	\$30.00	\$30.00

4. Modify the language of Section 8-7-10, addressing meter deposit fees, as follows:

(A) The Department of Public Works and Utilities shall collect a deposit fee of sixty dollars (~~\$60~~) AN AMOUNT EQUIVALENT TO THE VALUE OF THE METERING DEVICE for the use of metering devices in connection with temporary water service used in construction and similar activities. The charge for the temporary water service shall be deducted from the deposit fee when the meter is returned LESS A TWENTY FIVE DOLLAR (\$25) ADMINISTRATIVE FEE. If the meter is not returned by the deadline specified by the City, the ENTIRE deposit fee shall be forfeited in order to compensate the City for loss of the equipment and for administering this service.



**SUBJECT:** Councillor's Bill re Water and Sewer Rates Adjustment

Page 5

5. Increase the meter set installation third inspection fee from \$45.00 to \$90.00, and increase all subsequent inspection fees from \$15.00 to \$30.00.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **40**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE INCREASING THE RATES FOR WATER SALES AND SEWER USER CHARGES

THE CITY OF WESTMINSTER ORDAINS:

WHEREAS, the City of Westminster operates a water and wastewater enterprise utility; and

WHEREAS, the City Charter requires that the utility be self-supporting; and

WHEREAS, the last water rate increase and the last rate increase for sewer user charges took effect January, 2001; and

WHEREAS, costs to operate the Water and Wastewater Utility have increased; and

WHEREAS, since the Utility is operated as an enterprise exempt from the TABOR amendment, the City Council may set rates to adequately fund the operation of the enterprise; and

WHERE, the City wishes to minimize the need for large increases in the future; and

WHEREAS, water rates have been designed so as to encourage conservation.

NOW, THEREFORE, be it ordained by the City Council of the City of Westminster as follows:

Section 1. Title VIII, Chapter 7, Section 7, Subsection B, is hereby amended as follows:

(B) RESIDENTIAL: Three (3) dwelling units or less served by one meter primarily used for residential occupancy shall be charged a ~~\$3.75~~ FOUR DOLLAR AND SEVENTY CENT (\$4.70) per month meter service charge plus:

Block Rate	Consumption Range
\$1.95 per 1,000 gallons	First 4,000 gallons
<del>\$2.85</del> \$2.95 per 1,000 gallons	5,000 to <del>25,000</del> 20,000 gallons
<del>\$3.99</del> \$4.25 per 1,000 gallons	<del>26,000</del> 21,000 gallons and over

per unit. Unit consumption shall be determined by dividing the number of units using one meter. ~~Notwithstanding the above, residential customers who use more than 50,000 gallons for two billing cycles in a twelve month period will be billed at the rate of \$3.45 per 1,000 gallons for any usage exceeding 50,000 gallons. If usage exceeds 50,000 gallons for more than two billing cycles in a twelve month period, the first two qualifying cycles will be billed at the \$3.45 rate.~~

Section 2: Title VIII, Chapter 7, Section 7, Subsection C, is hereby amended as follows:

(C) RESIDENTIAL IRRIGATION, TOWNHOME/CONDOMINIUM (CONSISTING OF FOUR UNITS OR MORE), PUBLIC/QUASI-PUBLIC USERS: Shall be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: ~~\$3.45~~ \$3.65 per 1,000 gallons.

Non-irrigation accounts for multiple residential units consisting of four (4) units or more that are not individually metered and that are classified as town homes or condominiums and can demonstrate that they are eighty percent (80%) owner occupied on a complex wide basis shall be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: ~~two dollars and eighty five cents (\$2.85)~~ THREE DOLLARS (\$3.00) per thousand (1,000) gallons for all water delivered through the meter. The Director of Finance is authorized to prescribe and accept such forms of documentation as the Director may deem sufficient to demonstrate an applicant's eligibility for the rate described in this paragraph. For purposes of this section, a town home or condominium is a residential unit physically attached to another residential unit and separately owned.

Section 3: Title VIII, Chapter 7, Section 7, Subsection D, is hereby amended as follows:

(D) COMMERCIAL: Commercial users shall be charged a monthly meter service charge based on meter size as listed in Schedule A plus: ~~\$3.45~~ THREE DOLLARS AND SIXTY-FIVE CENTS (\$3.65) per 1,000 gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A. ~~\$3.85~~ FOUR DOLLARS AND FIFTY CENTS (\$4.50) per 1,000 gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A.

<b>SCHEDULE A</b>				
<b>Meter Size Code</b>	<b>Meter Size</b>	<b>Number of Service Commitments</b>	<b>Monthly Meter Service Charge</b>	<b>Breakpoint For Second Tier Based On Meter Size (Gallons)</b>
1	5/8" X 3/4"	1	<del>\$4.45</del> \$4.70	<del>25,000</del> 20,000
2	3/4" x 3/4"	1.5	\$7.50	<del>38,000</del> 30,000
3	1"	2.5	\$10.00	<del>63,000</del> 50,000
5	1-1/2"	5	\$15.00	<del>125,000</del> 100,000
6	2"	8	\$20.00	<del>200,000</del> 160,000
7	2" x 5/8"	8	\$20.00	<del>200,000</del> 160,000
8	3"	17.5	\$40.00	<del>438,000</del> 350,000
9	3" x 3/4"	17.5	\$40.00	<del>438,000</del> 350,000
10	4"	30	\$40.00	<del>750,000</del> 600,000
11	4" x 1"	30	\$40.00	<del>750,000</del> 600,000
12	6"	62.5	\$50.00	<del>1,563,000</del> 1,250,000
13	6" x 1-1/2"	62.5	\$50.00	<del>1,563,000</del> 1,250,000
14	6" x 3"	62.5	\$50.00	<del>1,563,000</del> 1,250,000
15	8"	90	\$90.00	<del>2,250,000</del> 1,800,000
18	10"	145	\$110.00	<del>3,625,000</del> 2,900,000
20	10" x 12" x 6"	215	\$110.00	<del>5,375,000</del> 4,300,000

Section 4: Title VIII, Chapter 7, Section 8, Subsection B, is hereby amended as follows:

(B) Water meters are to be read to the nearest one thousand (1,000) gallons. Any meter reading containing a portion of one thousand (1,000) gallons shall be rounded down to the nearest one thousand (1,000) gallons. The City will charge ~~ten dollars (\$10)~~ TWENTY-FIVE DOLLARS (\$25.00) to test a residential water meter upon customers request. Test of commercial and industrial meters, by customer request, will be ~~actual cost~~ AS LISTED IN SCHEDULE B. This fee will be waived if the meter is over-registering. If the meter is over-registering, the customer will receive a credit for excess charges on the prior twelve (12) months consumption. If City records indicate a meter change or accuracy test during the twelve (12) months, the credit will apply from the date of the meter change or test.

<b>SCHEDULE B</b>		
<b>Meter Model</b>	<b>Meter Size</b>	<b>Test Charge</b>
25	5/8"	\$25.00
35	3/4"	\$35.00
70	1"	\$70.00
120	1-1/2"	\$120.00
160 Turbo	1-1/2"	\$160.00
170	2"	\$170.00
200 Turbo	2"	\$200.00
450 Turbo	3"	\$450.00
Meters Over 3"	>3"	\$450.00

Section 5: Title VIII, Chapter 7, Section 8, Subsection C, is hereby amended as follows:

(C) The City will charge ~~five dollars (\$5)~~ FIFTEEN DOLLARS (\$15.00) to reread a water meter at the customer's request. This fee will be waived if the first reading was incorrect. The City will charge ~~five dollars (\$5)~~ FIFTEEN DOLLARS (\$15.00) to check the water meter for evidence of a leak. This fee will be waived if a leak is found.

Section 6: Title VIII, Chapter 7, Section 9, Subsection A, is hereby amended as follows:

<b>Action</b>	<b>Residential</b>	<b>All Other Classifications</b>
First turn off/on	\$30.00	\$30.00
Second turn off/on	\$60.00	\$60.00
All additional	<del>\$60.00</del> \$90.00	\$100.00
UNAUTHORIZED TURN-ON	\$30.00	\$30.00
DAMAGED LOCK	\$15.00	\$15.00
DAMAGED CAN	\$30.00	\$30.00
DAMAGED PIN	\$30.00	\$30.00

Section 6: Title VIII, Chapter 7, Section 10, Subsection A, is hereby amended as follows:

(A) The Department of Public Works and Utilities shall collect a deposit fee of ~~sixty dollars (\$60)~~ AN AMOUNT EQUIVALENT TO THE VALUE OF THE METERING DEVICE for the use of metering devices in connection with temporary water service used in construction and similar activities. The charge for the temporary water service shall be deducted from the deposit fee when the meter is returned LESS A TWENTY FIVE DOLLAR (\$25) ADMINISTRATIVE FEE, if the meter is not returned by the deadline specified by the City, the ENTIRE deposit fee shall be forfeited in order to compensate the City for loss of the equipment and for administering this service.

Section 7: Title VIII, Chapter 7, Section 26, is hereby amended as follows:

**8-7-26: METER SET INSTALLATION REINSPECTION FEE:** Water tap fees provide for customary inspection of the meter set only. Where additional inspections are made necessary by incomplete or faulty work or incorrect posting by the contractor, no fee shall be charged for the first two (2) inspections, however a fee of ~~forty five dollars (\$45)~~ NINETY DOLLARS (\$90.00) will be charged for the third inspection and a fee of ~~fifteen dollars (\$15)~~ THIRTY DOLLARS (\$30.00) for each inspection thereafter. This fee shall be charged to the holder of the permit and paid to the City before any additional inspections will be made. (1453)

Section 8: Title VIII, Chapter 8, Section 5, Subsection D, is hereby amended as follows:

(D) The rates for user charges hereinafter set forth are based generally upon the quantity and quality of sewage collected and they are subject to change periodically as circumstances require. The minimum monthly rate for use of the City of Westminster sanitary sewerage system by residential, including multiple unit residential, and public users shall be a sum equal to ~~two dollars and sixty eight cents (\$2.68)~~ TWO DOLLARS AND EIGHTY-FOUR CENTS (\$2.84) per thousand (1,000) gallons multiplied by the average monthly water consumption per user billed during the months of January through March. The minimum monthly rate for use of the City of Westminster's Sanitary Sewage System by multiple units and commercial users shall be a sum equal to ~~two dollars and ninety nine cents (\$2.99)~~ THREE DOLLARS AND SEVENTEEN CENTS (\$3.17) per thousand (1,000) gallons multiplied by the average monthly water consumption per user billed during the months of January through March. The minimum monthly sewer charge for commercial users may be appealed to the Utility Billing Division for user charges resulting from the average monthly water billed during the period of January through March and may be adjusted if the water billed during the months of July through September is less. Commercial users shall be allowed to install a separate meter to record out of house use which consumption will not be assessed a sewer use charge. The meter readings actually taken prior to and closest to the specified time frame shall be used for purposes of accomplishing the required calculation. However, City Council may by Resolution adjust the period of time to be used to calculate said user charges when, in the opinion of the Council, climate conditions and water consumption patterns warrant such an adjustment. The monthly charge shall apply to an account that is billed for more than fifteen (15) days service. Any new occupant of a residential unit shall be charged fifteen dollars and fifty cents (\$15.50) sewer charge until an experience rate has been established.

Section 9: This ordinance shall be effective for any water charges billed after October 1, 2002.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12<sup>th</sup> day of August, 2002.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of August, 2002.

\_\_\_\_\_  
Mayor

ATTEST:

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
August 12, 2002

**SUBJECT:** Second Reading of Councillor's Bill No. 36 re Adoption of the International Building and Fire Codes

**Prepared By:** Dave Horras, Chief Building Official  
Bill Work, Fire Marshal

**Recommended City Council Action**

Pass Councillor's Bill No. 36 on second reading adopting the International Building and Fire Codes.

**Summary Statement**

- Staff is asking City Council to adopt, by reference, the International Building Codes developed and published by the International Code Council (ICC) as the building and fire codes for the City of Westminster. These codes would replace the Uniform Building and Fire Codes that have been adopted as the City's building codes since the 1960's.
- The Uniform codes that are currently being utilized by the City, have been published by the International Conference of Building Officials (ICBO), will no longer be published.
- Staff is proposing the adoption of the following codes published by the International Code Council:
  - The International Building Code, 2000 Edition
  - The International Fire Code, 2000 Edition
  - The International Residential Code, 2000 Edition
  - The International Plumbing Code, 2000 Edition
  - The International Mechanical Code, 2000 Edition
  - The International Fuel Gas Code, 2000 Edition
  - The International Energy Conservation Code, 2000 Edition
- In addition to the above referenced codes, staff is also proposing the adoption of the 2002 edition of the National Electrical Code (NEC). The 2002 NEC is published by the National Fire Protection Association and is the latest edition of the electrical code.
- The Councillor's Bill was passed on first reading on July 22, 2002.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2002

COUNCILLOR'S BILL NO. **36**  
INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE ADOPTING THE 2000 INTERNATIONAL BUILDING CODE AND THE 2000 INTERNATIONAL FIRE CODE . . .

THE CITY OF WESTMINSTER ORDAINS:

Section 1 Chapter 9 of Title 11 of the Westminster Municipal Code is hereby repealed and reenacted to read as follows:

**11-9-1: ADOPTION OF BUILDING CODES:**

(A) **Intent and Findings.** The intent of this chapter is to adopt by reference and with modifications the International Building Code, 2000, the International Residential Code, 2000 Edition, the National Electrical Code, 2002 Edition; the International Plumbing Code, 2000 Edition; the International Mechanical Code, 2000 Edition; the International Fuel Gas Code, 2000 Edition, and the International Energy Conservation Code, 2000 Edition.

Hereinafter, all such Codes may be referred to as "Building Codes." The City Council finds that the adoption of such Codes is essential in the preservation of the health, safety, and welfare of the citizens of Westminster. City Council finds that it is necessary to protect the health, safety and welfare of the citizens of the City to exempt the procedural requirements specified in Colorado Revised Statutes, Section 31-16-203, as the procedures contained therein are duplicative of existing procedures established in the City Charter and Ordinances.

(B) **Adoption of Building Codes.** The following documents, one copy each of which is on file in the Office of the City Clerk, being marked and designated as stated, are hereby referred to, adopted, and made a part hereof as if fully set forth in this codification with, however, the amendments indicated in the following sections of this chapter.

1. **International Building Code.** The "International Building Code, 2000 Edition, published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401, and in particular Chapters 2 through 35 inclusive and Appendix Chapters G, I and J inclusive are hereby adopted as the Building Code of and for the City of Westminster.

2. **International Residential Code.** The "International Residential Code, 2000 Edition", published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401, and in particular Chapters 2 through 43 inclusive and Appendix Chapters G, H, J, and K inclusive are hereby adopted as the Residential Building Code of and for the City of Westminster.

3. **National Electrical Code.** The "National Electrical Code, 2002 Edition", published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and in particular Article 70, Chapters 1 through 9 inclusive and Appendix Chapters A, B, C, D, and E inclusive are hereby adopted as the Electrical Code of and for the City of Westminster.

4. **International Plumbing Code.** The "International Plumbing Code, 2000 Edition", published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church,

Virginia 22041-3401, in particular Chapters 2 through 13 inclusive and Appendix Chapters C, E, and G inclusive is hereby adopted as the Plumbing Code of and for the City of Westminster.

5. **International Mechanical Code.** The "International Mechanical Code, 2000 Edition", published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401 and in particular Chapters 2 through 15 inclusive is hereby adopted as the Mechanical Code of and for the City of Westminster.

6. **International Fuel Gas Code.** The "International Fuel Gas Code, 2000 Edition", published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401 and in particular Chapters 2 through 7 inclusive is hereby adopted as the Fuel Gas Code of and for the City of Westminster.

7. **International Energy Conservation Code.** The "International Energy Conservation Code, 2000 Edition", published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401, and in particular Chapters 2 through 9 inclusive and the Appendix, is hereby adopted as the Energy Code of and for the City of Westminster.

## **11-9-2: ADMINISTRATIVE PROVISIONS:**

### **(A) Purpose and Scope.**

1. The provisions of the Building Codes shall apply to the construction, installation, alteration, moving, enlargement, replacement, abatement, demolition, repair, use, occupancy, location or maintenance of any building or structure or part thereof; electrical system; plumbing system; heating, ventilating, cooling, and refrigeration system, incinerator or other miscellaneous heat-producing appliance; swimming pool, spa, or hot tub; elevator, escalator, or moving walk; or fire protection system within the City, except structures and equipment specifically exempted or not specifically regulated by this chapter or the Building Codes.

2. Where, in any specific case, different sections of the Building Codes specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

3. Whenever in the Building Codes reference is made to an appendix, the provisions of such appendix shall not apply unless specifically adopted.

4. The codes and standards referenced in the Building Codes shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of the Building Codes and the referenced codes and standards, the provisions of the Building Codes shall apply.

5. The Building Codes adopted by reference in this chapter do not include "administrative" provisions. Whenever an administrative provision is referred to in a Building Code, the respective provision in the Westminster Municipal Code shall apply.

### **(B) Alternate Materials and Methods of Construction.**

1. **General.** The provisions of the Building Codes are not intended to prevent the use of any material or method of construction not specifically prescribed by the Building Codes, provided any alternate material or method has been approved and its use authorized by the Building Official. The Building Official may approve an alternate material or method, provided he finds that the proposed design is satisfactory and complies with the provisions of the Building Codes and that the material, method, or work offered, is, for the purpose intended, at least the equivalent of that prescribed in the Building Codes for suitability, strength, effectiveness, fire resistance, durability, safety, and sanitation. The Building Official shall require that sufficient



evidence or proof be submitted to substantiate any claims that may be made regarding the use of an alternate material or method. Any decision approving or denying the use of an alternate material or method of construction shall be documented by the Building Official and shall include the reasons therefor.

2. **Tests.** Whenever there is insufficient evidence of compliance with the provisions of the Building Codes regarding the use of an alternate material or method of construction, or evidence that a proposed material or method of construction does not conform to the requirements of the Building Codes, the Building Official may require that tests be made at the expense of the proponent of the questioned material or method of construction.

(a) Test methods shall be as specified by the Building Official or by other recognized test standards. In the absence of recognized and accepted test methods of the proposed alternate material or method of construction, the Building Official shall determine which test procedures are appropriate.

(b) All tests shall be made by an approved agency. Reports of such tests shall be retained by the Building Official.

**(C) Modifications.** Whenever there are practical difficulties involved in complying with the provisions of the Building Codes, the Building Official shall have the authority to grant modifications for individual cases, provided he shall first find that a special individual reason makes the strict letter of the Building Codes impractical; that the modification is consistent with the intent and purpose of this Code; and that such modification not lessen health, life, fire safety, accessibility or structural requirements. Any decision granting a modification shall be documented by the Building Official and shall include the reasons therefor.

**(D) Enforcement of Building Codes.**

1. **General.** The Building Official is authorized to enforce all the provisions of this Chapter and the Building Codes. For such purposes, he and those persons to whom enforcement authority is delegated shall be deemed a peace officer. The Building Official shall have the power to render interpretations of the Building Codes and to adopt policies and procedures, as he may deem necessary in order to clarify the application of the provisions of the Building Codes. Such interpretations, policies and procedures shall be consistent with the intent and purpose of this Code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in the building codes. The Building Official may delegate certain duties for the administration and authority to enforce the Building Codes to qualified officers, inspectors, and other qualified employees.

2. **Right of Entry.** Whenever it is necessary to make an inspection to enforce the provisions of the Building Codes, or whenever the Building Official or his authorized representative has probable cause to believe that there exists in any building or upon any premises any condition or violation of the Building Codes which makes the building or premises unsafe, dangerous, or hazardous, the Building Official or authorized representative may enter the building or premises at all reasonable times to inspect or to perform the duties imposed upon the Building Official by this Code, provided that if such building is occupied, he shall first present his credentials to the occupant and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If the owner or occupant cannot be located after a reasonable effort, a notice of intent to inspect shall be posted on the premises and mailed to the property owner at his last known address. The notice shall state that the property owner has the right to refuse entry and that, in the event such entry is refused, inspection may be made upon issuance of a search warrant by the Municipal Judge of the City.

(a) After entry is refused or 24 hours after the building has been posted, the Building Official may appear before the Municipal Judge and, upon showing of probable

cause, shall obtain a search warrant entitling him to enter upon the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of unoccupied premises, the Building Official may enter upon the premises using such reasonable force as may be necessary to gain entry.

- (b) For purposes of Subsection (D) of this section, "probable cause" exists where the facts and circumstances within the Building Official's knowledge are sufficient to warrant a person of reasonable caution in the belief that there exists a condition or violation of the Building Codes which makes the building or premises unsafe, dangerous, or hazardous to life or property. The Building Official shall not be required to demonstrate specific knowledge of the conditions of the particular premises in issue to obtain a search warrant.
- (c) It is unlawful for any owner or occupant of the premises to resist reasonable force used by the Building Official acting pursuant to Subsection (D) of this section.

3. **Stop Orders.** Whenever any work is being done in violation of the provisions of the Building Code or other ordinances implemented through the enforcement of this Code, or in a dangerous or unsafe manner, or in a manner so that construction debris accumulates on the site, the Building Official may order the work stopped by issuing a notice in writing and serving it upon any persons engaged in doing such work or causing such work to be done. Upon receipt of the notice, such persons shall stop work until authorized by the Building Official to proceed with the work. It is unlawful to continue any work after receipt of a notice to stop work except such work as directed to remove a violation or unsafe condition. In instances where a stop work order has been issued, a fee as set forth in the fee schedule shall be paid to the City by the holder of the permit before any additional work is performed. Each day that work is continued after receipt of a notice shall constitute a separate violation of this Code.

4. **Authority to Disconnect Utilities in Emergencies.** In the case of an emergency, where it is necessary to eliminate an immediate hazard to life or property, the Building Official or his authorized representative shall have the authority to cause the disconnection of fuel-gas utility service or energy supplies to a building, structure, premises, or equipment regulated by the Building Code. The Building Official shall, whenever possible, notify the serving utility, the owner, and the occupant of the building, structure, or premises of the decision to disconnect prior to taking such action.

- (a) It is unlawful to make connections from any energy, fuel, or power supply which has been disconnected or to supply energy or fuel to any equipment regulated by the Building Codes which has been disconnected, ordered to be disconnected, or the use of which has been ordered to be disconnected by the Building Official. Each day that such unlawful connection or supply continues shall be considered a separate violation of this Code.

**(E) Unsafe Buildings, Structures and Equipment.**

1. **Unsafe Buildings, Structures, and Equipment.** Any building, structure, or equipment regulated by the Building Codes which is structurally unsafe, unsanitary or not provided with adequate egress, or not provided with adequate light and ventilation or which constitutes a fire or health hazard or is otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy is deemed unsafe.

- (a) Any building or structure which has any of all of the conditions or defects herein described shall be deemed to be a unsafe building, provided that such condition or defects exist to the extent that life, health, property or safety of the public or its occupants are endangered.
  - 1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.
7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building, (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.
11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Rental Property Maintenance Code, or of any law or ordinance of this state or Jurisdiction relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
19. A vacant structure that is not secured against entry shall be deemed unsafe.

- (b) In addition to the above unsafe conditions, any use of buildings, structures, or equipment constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary, and other appendages or structural members which are supported by, attached to, or part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in the Building Code are deemed unsafe building appendages.

**2. Abatement of Unsafe Buildings.** All buildings or portions thereof which are determined after inspection by the Building Official to be unsafe as defined in this section are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in section 11-9-2(E)3 of this code.

- (a) Any building declared an unsafe building shall be made to comply with one of the following:

1. The building shall be repaired in accordance with the current building code or other current code applicable to the type of substandard conditions requiring repair; or
2. The building shall be demolished at the option of the building owner; or
3. If the building does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry.

(b) If the building is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public and its occupants, it shall be ordered to be vacated.

3. **Notice and Orders.** When the Building Official has inspected or caused to be inspected any building and has found and determined that such building is unsafe, the Building Official shall commence proceedings to cause the repair, vacation or demolition of the building.

(a) **Notice and Order.** The Building Official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

1. The street address and legal description of the property that the unsafe building is located.
2. A statement that the Building Official has found the building to be unsafe with a brief and concise description of the conditions found to deem the building unsafe under the provisions of this section.
3. A statement of action required to be taken and the time period allowed for such action.
4. Statements advising that if the required action is not commenced within the time specified, the Building Official will order the building vacated and posted to prevent further occupancy until the work is completed and may proceed to cause the work to be done and charged the costs thereof against the property or its owner.
5. A statement advising that any person having any record title or legal interest in the building may appeal the notice and order or any action of the Building Official to the Board of Building Code Appeals, provide that the appeal is made in writing as provide in this code within 30 days from the date of service of such notice and order and that failure to appeal will constitute a waiver of all rights to an administrative hearing and determination of the matter.

(b) **Service.** The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the building affected by such notice. The Building Official may serve additional such notice and order on any parties that may have interest in the property. The failure of the Building Official to serve any person required to be served shall not invalidate any proceedings herein or relieve any person from any duty or obligation imposed by the provisions of this code.

(c) **Method of Service.** Service of the notice and order shall be deemed properly served if a copy thereof is delivered to the owner personally or sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested.

(d) **Recordation of Notice and Order.** If compliance is not had with the notice and order within the specified time, and no appeal has been properly filed, the Building Official may file in the

office of the county recorder a certificate describing the property and certifying that the building is unsafe and the owner has been so notified.

- (e) **Notice to Vacate.** Every notice to vacate shall, in addition to being served as required in this section, be posted at or upon each exit of the building. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such posting until the required repairs, demolition or removal have been completed.

4. **Appeal and Procedure for Conduct of Hearing Appeals.** Appeals shall be made to the Board of Building Code Appeals. Appeals and hearings shall be as set forth in Chapter 10 of Title II of the Westminster Municipal Code.

- (a) **Effects of Failure to Appeal.** Failure of any person to file an appeal in accordance with the provisions of this code shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

- (b) **Scope of Hearing on Appeal.** Only those matters or issues raised by the appellant shall be considered in the hearing of the appeal.

- (c) **Staying of Orders of Appeal.** Except for vacation orders, enforcement of any notice and order of the building official issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

5. **Enforcement of Orders.** After any order of the Building Official or the Board of Building Code Appeals made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with such order is guilty of a misdemeanor.

- (a) **Failure to Obey Order.** If, after any order of the Building Official or the Board of Building Code Appeals made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Building Official may (i) cause such person to be prosecuted per paragraph F of section 11-9-2 below, or (ii) institute any appropriate action to abate such building as a public nuisance.

- (b) **Failure to Commence Work.** Whenever the required repair or demolition is not commenced within the specified time as required in the notice and order the Building Official may cause the building to be vacated.

- (c) **Extension of Time.** Upon receipt of an application from the person required to conform to the order and by agreement of such person to comply with the order if allowed additional time, the Building Official may grant an extension of time, not to exceed 120 days, within which to complete said repair, rehabilitation, or demolition, if the Building Official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Building Official's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal the notice and order.

- (d) **Interference with Repair or Demolition.** No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated, or demolished under the provisions of this code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

6. **Performance of Work.** When any work of repair or demolition is to be done pursuant to this Code, the Building Official shall issue his order therefor and the City of Westminster may decide to delay the work, perform the work with City personnel, or contract with a private entity to do the work. Plans and specification therefor may be prepared by the City or outside consultants under contract with the City.

(a) **Costs.** The costs of such work may be collected in the same manner as provided in Section 8-4-5 of the Westminster Municipal Code.

**(F) Compliance With Building Codes.**

1. **Violation.** It is unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure; electrical system; plumbing system; heating, ventilating, cooling, or refrigeration system; incinerator or other miscellaneous heat-producing appliance; swimming pool, spa, or hot tub; elevator, escalator, or moving walk; or fire protection system, in the City, or cause or permit the same to be done in violation of any of the provisions of the Building Codes.

2. **Nuisance.** It is a public nuisance to use a building, structure, or equipment in violation of the Building Codes. This condition may be abated pursuant to the provisions of Chapter 4 of Title VIII of this Code.

3. **Penalties.** Any person in violation of any of the provisions of this chapter shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine or imprisonment for each violation as set forth in Section 1 of Chapter 8 of Title I of this Code. Any violation of the provisions of this chapter shall be a criminal offense.

4. **Notice of Violation.** Prior to causing a summons to be issued for a violation of the provisions of this chapter, the Building Official may, at his discretion, issue a written notice to the person found in violation, describing the violation and ordering the person to correct or remedy the violation within a stated period of time.

(G) **Board of Building Code Appeals.** Appeals of orders, decisions, or determinations made by the Building Official or Fire Chief regarding the application or interpretation of the Building and Fire Codes, and amendments thereto, shall be made to the Board of Building Code Appeals pursuant to Chapter 10 of Title II of this Code.

**11-9-3: PERMITS AND FEES:**

**(A) Permits Required.**

1. **General.** No person shall construct, install, enlarge, alter, repair, move, improve, remove, replace, convert, demolish, equip, occupy, or maintain any building or structure; electrical system; plumbing system; heating, ventilating, cooling, or refrigeration system; gas system, incinerator or other miscellaneous heat-producing appliance; swimming pool, spa or hot tub; elevator, escalator, or moving walk; fire protection system, or other work regulated by this code, or portion thereof, in the City, or cause the same to be done without first obtaining a building permit for all such work from the Building Official, except as follows:

(a) A public utility, duly franchised or authorized as such in the City, shall not be required to obtain a permit prior to performing emergency maintenance or repairs on its equipment, building, or structure, when necessary to sustain service or protect life or property; provided, however, that the public utility shall obtain a permit for the work as soon as it is practical to do so.

(b) Public utilities, duly franchised or authorized as such in the City, shall not be required to obtain a permit for the installation, alteration or repair of generation,

transmission, or distribution equipment that is under the ownership and control of the public utility.

2. **Exempt work.** Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any manner in violation of this Code or any other laws or ordinances of the City. A building permit shall not be required for the following:

- (a) One-story, detached accessory buildings used as tool and storage sheds, playhouses, and similar uses provided that the floor area does not exceed 120 square feet;
- (b) Oil derricks;
- (c) Movable cases, counters, and movable partitions not over 5 feet 9 inches in height;
- (d) Retaining walls which are not over 3 feet in height when measured from the grade level on the low side to the top of the wall, unless supporting an additional load due to a surcharge of earth; a structure; or impounding Class I, II, or IIIA flammable liquids;
- (e) Water tanks supported directly upon the grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed two to one (2:1);
- (f) Platforms, patios, or decks associated with Group R occupancies not more than 30 inches above grade at any point and not over any basement or story below or which are not part of an accessible route;
- (g) Non-structural concrete slabs on grade;
- (h) Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
- (i) Temporary motion picture, television, and theater sets and scenery, except that, the Fire Code provisions shall apply;
- (j) Window awnings supported by an exterior wall of any structure regulated by the International Residential Code or accessory thereto, when projecting not more than 54 inches beyond the plane of the wall;
- (k) Agricultural buildings as defined in Appendix Chapter C of the International Building Code;
- (l) Portable heating, ventilating, and cooling appliances or equipment; unit refrigeration systems; and the replacement of any component part or assembly or an appliance so long as the appliance continues to comply with other applicable requirements of this Code;
- (m) Portable wading pools constructed of flexible plastic, rubber, or similar materials 24 inches or less in depth;
- (n) The repair of broken or defective electrical receptacles, switches or lamps;
- (o) The clearing of stoppages or the repair of leaks in pipes, valves, or fixture drains, provided such maintenance or repair does not involve or require the replacement or rearrangement of valves or pipes, or the replacement of fixtures provided such replacement does not involve the replacement or relocation of valves or pipes;
- (p) Fences not over 30" high.



3. **Separate Permits.** Unless otherwise exempt, separate plumbing, electrical, or mechanical permits may be required for work on the buildings or structures listed in subsection (A)2 of this section.

**(B) Contractor Registration/License Required.**

1. **Contractor Registration Required.** Only persons, firms, or corporations holding a current City contractor's registration certificate, issued pursuant to Chapter 5 of Title V of this Code may obtain a building permit, except as follows:

- (a) Any person who intends to build and occupy a single family detached home, or a building or structure accessory thereto, may apply for a building permit without a City contractor's registration certificate provided, however, that only one such permit may be issued in any calendar year.
- (b) Homeowners shall not be required to obtain a City contractor's registration certificate for the purposes of remodeling, enlarging, altering, repairing, or in any other way improving any building regulated by the International Residential Code, or accessory thereto, which they own.

2. **License Required.** The State of Colorado laws applicable to licensing of electricians and plumbers shall apply within the City.

**(C) Application for Permit.**

1. **Application.** To obtain a permit, the applicant shall file an application therefor in writing on a form furnished by the Building Official for that purpose. Each application shall:

- (a) Identify and describe the work to be covered by the permit for which application is made.
  - (b) Describe the land on which the proposed work is to be done by street address and legal description, or similar description that will readily identify and definitely locate the proposed building or work.
  - (c) Fully describe the use or occupancy for which the proposed work is intended. For non-residential uses, state the name of the user and describe the nature of the use or business.
  - (d) Include plans, diagrams, computations, specifications, and other data as required in Subsection (C)2 of this section.
- (e) State the valuation of the proposed work.
- (f) Be signed by the applicant or the applicant's authorized agent.
  - (g) Give such other data and information as may be required by the Building Official.

2. **Plans and Specifications.** Plans, engineering calculations, diagrams, and other data shall be submitted in accordance with the City's submittal requirements with each application for a permit. The construction documents shall be prepared by an architect or engineer licensed by the State of Colorado when required by section 11-9-3(C)3. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared. The Building Official may waive the submission of plans, calculations, construction inspection requirements and other data if it is found that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this Code.

3. **Design Professional.** All proposed erection, construction, reconstruction, alteration, or remodeling shall be prepared by and bear the seal of an architect or engineer licensed by the State of Colorado unless exempted in this section. When such plans are not prepared by an architect or engineer, the Building Official may require the applicant submitting such plans or other data to demonstrate that the State law does not require that the plans be prepared by a licensed architect or engineer. The Building Official may require plans, computations and specifications to be prepared and designed by an architect or engineer licensed by the state to practice as such even if not required by state law.

Exemptions. Any applicant may prepare plans, calculations, and specifications for construction, alterations, remodeling, additions to, or repair of any of the following:

- (a) One, two, three, and four unit family dwellings, including accessory buildings commonly associated with such dwellings;
- (b) Garages, industrial buildings, offices, farm buildings and buildings for the marketing, storage, or processing of farm products, and warehouses, which do not exceed one story in height, exclusive of a one-story basement, and which under the provisions of this Code are not designed for occupancy by more than ten people.
- (c) Additions, alterations, or repairs to the foregoing buildings which do not cause the completed buildings to exceed the applicable limitations set forth in this subsection.
- (d) Nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building.

An architect's or engineer's design and stamp will be required on plans, engineering calculations, diagrams, and other data on the following types of projects:

- (a) Smoke Control Systems;
- (b) Elevators, escalators and moving walks;
- (c) Foundation designs for all buildings or structures excluding accessory structures to buildings regulated by the International Residential Code;
- (d) Retaining walls over 3 feet in height when measured from the grade level on the low side to the top of the wall.

4. **Structural Observation.** When special inspection and/or structural observation is required by Chapter 17 of the International Building Code, the architect or engineer of record shall prepare an inspection program which shall be submitted to the Building Official for approval prior to issuance of the building permit. The inspection program shall designate the portions of the work that require special inspection and the name or names of the individuals and firms who are to perform the special inspections, and indicate the duties of the special inspectors. The special inspector shall be employed by the owner, the engineer or architect of record, or an agent of the owner, but not the contractor or any other person responsible for the work.

5. **Information on Construction Documents.** Construction documents shall be dimensioned and drawn to scale upon substantial paper. Electronic media documents are permitted to be submitted when approved by the Building Official. Construction documents shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed, and shall show in detail that it will conform to the provisions of the Building Codes and all relevant laws, ordinances, rules, and regulations, as determined by the Building Official.

6. **Expiration of Permit Applications or Plan Review.** Applications for which no permit is issued within 180 days following the date of application shall expire by limitation unless

such application has been pursued in good faith, and the plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for action by the applicant for a period not exceeding 180 days upon written request by the applicant, showing that circumstances beyond the control of the applicant have prevented action from being taken. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

**(D) Permit Issuance.**

**1. Issuance.**

- (a) The application, plans, specifications, computations, and other data submitted by the applicant for a permit shall be reviewed by the Building Official. Such plans may be reviewed by other City departments to substantiate compliance with any applicable laws under their control. If the Building Official finds that the work described in an application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of the Building Codes and other pertinent laws, and that all applicable fees have been paid, a building permit shall be issued to the applicant.
- (b) When the Building Official issues a permit for which plans are required, the plans shall be approved in writing or by stamp. The approved plans and specifications shall not be changed, modified, or altered without authorization from the Building Official, and all work regulated by this Code shall be done in accordance with the approved plans
- (c) The Building Official may issue a permit for the construction of part of a building and structure before all of the plans and specifications for the entire building or structure have been submitted or approved provided that adequate information verifying compliance with all pertinent requirements of the Building Codes have been submitted and approved for that portion of the building or structure. A permit issued based on partial plan approval will be restricted to the portion of the work that has been reviewed and approved and the holder of such permit shall proceed at his own risk without assurance that the permit for the entire building or structure will be granted.

**2. Retention of Plans.** One set of approved plans, specifications, and computations shall be retained by the Building Official for a period of not less than 90 days from the date of completion of the work covered therein, and one set of approved plans shall be returned to the applicant and shall be kept on the job site at all times during which work is in progress.

**3. Validity of Permit.** The issuance of a permit or approval of plans, specifications, and computations shall not be construed to be a permit for or an approval of any violation of any of the provisions of the Building Codes or other ordinances of the City. Permits presuming to give authority to violate or cancel the provisions of the Building Codes or other ordinances of the City shall not be valid. The issuance of a permit based upon plans, specifications, and other data shall not prevent the Building Official from thereafter requiring the correction of errors in the plans, specifications, and other data, or from ordering the work being carried on to be stopped when in violation of the Building Codes or other ordinances of the City. The building official is also authorized to prevent occupancy or use of a structure in violation of the building code or of any other ordinance of the City.

**4. Expiration of Permit.**

- (a) Every permit issued by the Building Official under the provisions of the Building Codes shall expire if the building or work authorized by such permit is not commenced within 180 days from the date the permit was issued, or if the building or work authorized by such permit is suspended or abandoned for a period of 180 days

at any time after the work is commenced. Before such work can be resumed, a new permit shall be obtained to do so, and the fee therefor shall be one-half the amount required for a new permit for such work, provided no changes are to be made in the original plans and specifications for such work and, provided further, that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after the work authorized by such permit has been suspended or abandoned for more than one year, the permittee shall pay a new, full permit fee.

- (b) When a permittee is unable to commence work within the time required by this subsection for good and satisfactory reasons, a permittee holding an unexpired permit may apply for an extension of the time in which he may commence work under that permit. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

5. **Suspension or Revocation.** The Building Official may, in writing, suspend or revoke a permit issued under the provisions of the Building Codes or any other ordinance or regulation of the City whenever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information supplied by the applicant.

**(E) Fees and Taxes.**

1. **General.** A permit shall not be valid until the prescribed fees have been paid. Fees shall be assessed in accordance with the provisions of this subsection.

- (a) Building use tax shall be paid in accordance with this Code.
- (b) Park development fees shall be paid in accordance with this Code.
- (c) Water and sanitary sewer tap fees shall be paid in accordance with this Code.

(d) School Land Dedication fees shall be paid in accordance with this code.

2. **Permit Fees.** A fee for each building permit shall be paid to the City of Westminster as specified in the "Building Permit Fee Schedule" as adopted by Resolution of the City Council; except that, the City, the Counties of Adams and Jefferson, the State of Colorado, the United States Government, and all agencies and departments thereof, shall be exempt from payment of building permit fees for the construction or repair of buildings or structures owned wholly by such agencies and departments and devoted to governmental use. Fees shall be reduced by twenty percent (20%) for building permits issued for work within the boundaries of the urban renewal area of the city.

EXCEPTION: The Building Official shall indefinitely waive the permit fees and use tax for the conversion of existing non-conforming solid fuel burning devices to gas, electric, EPA certified phase II, Colorado Phase III, or devices meeting the emission standard for solid fuel burning devices established under the State statutes and/or regulations promulgated by the Colorado Department of Public Health and Environment, as demonstrated by a test by an EPA accredited laboratory. This exemption shall be in effect for those devices purchased or installed on or after September 1, 1993.

3. **Valuation.** The applicant for a permit shall provide an estimated permit value at time of permit application. The valuation to be used in computing the permit and plan review fees shall be the total value of all construction work, including labor and materials, for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, conveyance systems, fire protection systems, and other permanent work or equipment. The final determination of value or valuation shall be made by the Building Official.

4. **Plan Review Fees.** When plans or other data are required to be submitted by the building codes, a plan review fee shall be paid at the time the plans and specifications are submitted for review. Said plan review fee shall be 65 percent of the building permit fee as shown in the fee schedule adopted by the City Council. The plan review fees specified in this subsection are separate fees from the permit fees and are in addition thereto. Where plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the fee schedule.

5. **Work Commenced Without a Permit.** When work for which a permit is required by the Building Codes is commenced without first obtaining the required permit, the fee for any subsequently issued permit shall be double the prescribed permit fee as set forth in the fee schedule, but not less than two hundred fifty dollars (\$250) for the first such offense, triple the prescribed permit fee as set forth in the fee schedule, but not less than five hundred dollars (\$500) for the second such offense, and the immediate revocation of the contractors license for the third such offense. These provisions shall not apply to emergency work when it can be demonstrated to the satisfaction of the Building Official that such work was urgently necessary and that it was not practical to obtain a permit prior to the commencement of such work. In all such cases, a permit shall be obtained as soon as practical to do so, and any unreasonable delay in obtaining such permit shall result in the assessment of fees as outlined above. Payment of such increased permit fee shall not relieve any persons from fully complying with the requirements of the building codes in the execution of the work nor from any other penalties prescribed herein.

6. **Reinspection Fees.** Permit fees provide for customary inspections only. A reinspection fee may be assessed when the portion of work for which an inspection is scheduled is not complete or when corrections listed during a previous inspection have not been made. Reinspection fees may be assessed when the inspection record card is not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, for failure to provide access on the date for which an inspection is requested, or for deviating from plans requiring the approval of the Building Official. This subsection is not to be interpreted as requiring reinspection fees the first time work fails to comply with the requirements of the building codes but as a means of controlling the practice of calling for inspections before the work is ready for inspection or reinspection. In instances where a reinspection fee has been assessed, a reinspection fee as set forth in the fee schedule shall be paid by the holder of the permit to the City of Westminster before any additional inspections or reinspections may be made.

7. **Fee Refunds.** The Building Official may authorize fee refunds as follows:

- (a) The Building Official may authorize the refund of any fee which was erroneously paid or collected.
- (b) The Building Official may authorize the refund of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this Code.
- (c) The Building Official may authorize the refund of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plans are reviewed.
- (d) The Building Official shall not authorize the refund of any fee paid except upon receipt of a written request, by the original permittee, filed not later than 180 days after the date such fee was paid.

#### **11-9-4: INSPECTIONS:**

## **(A) Inspection Procedures.**

### **1. General.**

- (a) All construction or work for which a permit is required shall be subject to inspection by the Building Official, and all such construction or work shall remain accessible and exposed for inspection until approved by the Building Official. In addition, certain types of construction shall have continuous inspection as specified in the Building Codes. It shall be the duty of the permittee to cause the work to remain accessible and exposed for inspection. Neither the Building Official nor the City shall be liable for expense entailed in the removal or replacement of any material to allow inspection.
- (b) Approval as a result of inspection shall not be construed to be an approval of a violation of the provisions of the building code or other ordinances of the City. Inspections presuming to give authority to violate or cancel the provisions of the Building Codes shall not be valid.
- (c) A survey of the lot may be required by the Building Official, at the permittee's expense, to verify that the structure is located in accordance with the approved plans.
- (d) Before issuing a permit, the Building Official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

**2. Inspection Record Card.** Work requiring a permit shall not be commenced, and required inspections of such work shall not be made, until the permittee or his authorized agent has posted or has otherwise made an inspection record card available to the inspector to make the required entries thereon regarding inspection of the work. This card shall be kept available by the permittee until final approval has been granted by the Building Official.

**3. Inspection Requests.** It shall be the responsibility of the person doing the work authorized by a permit to notify the Building Official that the work is ready for inspection. The Building Official may require that every request for inspection be filed at least one day prior to the day the inspection is desired. The request shall be by telephone as specified on the inspection record card or other means approved by the Building Official. It shall be the duty of the person requesting any inspection required by this Code to provide access to and means for inspection of the work.

**4. Approval Required.** Work shall not be done beyond the point indicated in each successive inspection. The Building Official, upon notification, shall make the requested inspection and shall indicate the portion of the work that is satisfactory as completed, or shall notify the permit holder or authorized agent wherein the same fails to comply with the building code. Any provisions that do not comply shall be corrected and such work shall not be covered or canceled until authorized by the Building Official.

## **(B) Required Inspections.**

**1. General.** The Building Official, upon notification, shall make an inspection required by this subsection. The following are required inspections:

- (a) **Footing Inspection.** Shall be made after excavations are completed, all forms are in place, any required reinforcing steel is in place, and the footing is ready for the placement of concrete but before any concrete is placed.
- (b) **Caisson/Drilled Pier Inspection.** Shall be made after caisson drilling has been completed and prior to any concrete being placed.

- (c) **Foundation Inspection.** For concrete foundations, all forms, required void material, and required reinforcement shall be in place prior to the placement of any concrete. Where the foundation is to be constructed of approved, treated wood, additional inspections may be required by the Building Official.
- (d) **Underslab or Underground Inspection.** Shall be made after all underslab or underground building service equipment, electrical conduit, plumbing piping, and other ancillary equipment items are in place, but before any such equipment, conduit, or piping is buried or any concrete is placed. Required pressure tests of underground piping or ductwork shall be performed at this time, as specified in the Building Codes.
- (e) **Rough Inspection.** Shall be made after all rough-in work is completed and ready for inspection; all circuits are made up, electrical boxes, and plaster rings are installed, electrical panels are set, neutrals and grounds are made up, and all grounding is completed; all air or water tests required by the Building Codes have been performed; all ductwork, venting, and piping are completely roughed in; the roofing, all framing, fire blocking and bracing are complete; and when the job is ready for drywall but prior to the installation of any insulation.
- (f) **Wallboard Inspection.** Gypsum wallboard which is part of a required fire assembly or designed to resist shear forces shall be inspected after all gypsum board, interior and exterior, is in place and properly fastened but before any gypsum board joints or fasteners are taped or finished.
- (g) **Final Inspection.** Shall be made after all work, including final grading, is completed, and the building or space is ready for occupancy.

2. **Other Inspections.** In addition to the inspections specified in Subsection (B) of this section, the Building Official may make or require other inspections of any construction work to ascertain compliance with the provisions of the Building Codes and other laws which are enforced by the City.

3. **Special Inspections.** Special inspections shall be conducted as required by the building code and Building Division procedures.

### **(C) CERTIFICATES OF OCCUPANCY.**

1. **Use and Occupancy.** No building or structure, except Group U occupancies, shall be used or occupied and no change in the existing occupancy classification of a building or structure, or portion thereof, shall be made until the Building Official has issued a certificate of occupancy therefor. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the building codes or other ordinances of the City. Certificates presuming to give authority to violate or cancel the provisions of the Building Codes or other ordinances of the City shall be invalid.

2. **Change in Use.** Changes in the character or use of a building shall not be made without the approval of the Building Official.

3. **Certificate Issued.** After all required final inspections have been made, finding no violations of the provisions of the Building Codes or any other laws or ordinances of the City, all fees have been collected, and all improvements required by the City have been made in accordance with City specifications, including the installation of sidewalks, curbs, gutters, street paving, and any required landscaping, the Building Official shall issue a certificate of occupancy. However, the Building Official may issue the certificate of occupancy prior to the completion of the required improvements provided the City has entered into an agreement with the owner of the property regarding delayed completion. Only those improvements specified in such agreement with the City shall be considered for delayed completion, and the certificate of

occupancy shall not be issued if required improvements, other than those included in the agreement with the City, have not been completed. The certificate of occupancy shall contain the following information:

- (a) The building permit number.
- (b) The address and legal description of the building.
- (c) The name and address of the owner.
- (d) A description of the portion of the building for which the certificate was issued, including the occupancy group classification.
- (e) A statement that the described portion of the building has been inspected for compliance with the requirements of the Building Codes for the group and division of occupancy and the use for which the proposed occupancy is classified.
- (f) The edition of the code under which the permit was issued.
- (g) The type of construction
- (h) Any special stipulations and conditions of the building permit or certificate of occupancy
- (i) The date of issuance of the certificate.
- (j) The signature of the Building Official or his representative.

4. **Temporary Certificate.** If the Building Official finds that no substantial hazard will result from the occupancy of a building or portion thereof before completion, he may issue a temporary certificate of occupancy for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure. The Building Official shall set a time period for which the temporary certificate of occupancy is valid. A fee shall be charged for the issuance or reissuance of a temporary certificate of occupancy as set forth in the fee schedule. The fee for the temporary certificate of occupancy shall be based upon the permit fee paid for the building or portion thereof.

5. **Revocation.** The Building Official may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of the Building Codes whenever the certificate is issued in error or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of the Building Codes or any ordinance or regulation of the City.

#### **11-9-5: INTERNATIONAL BUILDING CODE AMENDMENTS:**

**(A) Section 302.3.3, exception #2 of the International Building Code is amended to read:**

302.3.3 Separated uses. Exception #2. The private garage shall be separated from the residence and its attic area by means of minimum 5/8-inch type X gypsum board applied to the garage side. Where the separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by not less than 5/8-inch type "X" gypsum board or equivalent. Other openings between the garage and the residence shall be equipped with a self-closing, self-latching solid wood door not less than 1 3/8 inch in thickness, solid or honeycomb core steel door not less than 1 3/8 inches thick, or 20-minute fire-rated doors. Openings from a garage directly into a room used for sleeping purposes shall not be permitted.

**(B) Section 310.4 of the International Building Code is added to read:**



310.4 Dwelling unit security. The provisions of this section shall apply to openings into all dwelling units as well as to openings between attached garages and dwelling units. Except for vehicular access, door openings in attached garages shall be in accordance with the provisions of this section.

310.4.1 Obstructing means of egress. Security methods of this section shall not create a hazard to life by obstructing any means of egress. The provisions of this section shall not supersede the requirements of chapter 10 of this code.

310.4.2 Entry vision. All main or front entry doors to dwelling units shall be so arranged so that the occupants have a view of the area immediately outside of the door without having to open the door. Such view can be provided by the use of a door viewer with a 180 degree field of view.

310.4.3 Swinging doors. All exterior doors shall be constructed of solid core wood a minimum of 1 3/8 inch in thickness, a metal door constructed with at least 18-gauge metal or similar approved material.

310.4.3.1 Strike plate installation. In wood-frame construction, any open space between trimmers and wood doorjamb shall be solid shimmed not less than 12 inches above and below the strike plate. Strike plates shall be attached to the wood with not less than two No. 8 by 3-inch screws, which have a minimum of 3/4 inch penetration into the nearest framing member. Strike plates when attached to metal shall be attached with not less than two No. 8 machine screws.

310.4.3.2 Hinges. When hinges are exposed to the exterior, at least one of the hinges shall be equipped with a nonremovable hinge pin. Not less than three 4 1/2 inch steel butt hinges shall be fastened to both the door and frame with not less than four No. 9 by 3/4 inch wood screws or to metal with not less than four No. 8 machine screws. In wood construction, an open space between trimmers and wood doorjamb shall be solid shimmed extending not less than 6 inches above and below each hinge.

310.4.3.3 Locking Hardware. Single swinging doors and the active leaf of doors in pairs shall be equipped with an approved exterior key-operated deadbolt. Deadbolt locks shall have at least a one-inch bolt throw that will penetrate the strike at least 3/4 of an inch. See chapter 10 of this code for requirements on door operation for exiting.

**(C) Section 708.3, exception #2 of the International Building Code is deleted:**

Section 708.3 Fire-resistive rating. Exception #2  
Delete in its entirety.

**(D) Section 1003.3.3.5.2 of the International Building Code is amended to read:**

1003.3.3.5.2. Outdoor conditions. Outdoor stairways and outdoor approaches to stairways shall be designed so that water will not accumulate on walking surfaces.

**(E) The following sections of Chapter 11 of the International Building Code are amended to read:**

1103.2.11 Residential Group R-1. Buildings of Group R-1 containing not more than five sleeping units for rent or hire that are also occupied as the residence of the proprietor, are not required to be accessible.

1103.2.12 Day care facilities. Where a day care facility (Groups E, I-4, and R-3) is part of a dwelling unit, only the portion of the structure utilized for the day care facility is required to be accessible.

#### 1104.4 Multilevel buildings and facilities,

Exception 1.1 Multiple tenant facilities of Group M occupancies containing five or more tenant spaces.

#### 1107.3 Dwelling Units and Sleeping Units

1107.3.1 General. In addition to the other requirements of this Chapter, occupancies having dwelling units or sleeping units shall be provided with accessible features in accordance with Section 1107.3.2 through 1107.5.5.

1107.3.2 Design. Dwelling units and sleeping units which are required to be accessible units shall comply with this code and the applicable provisions of Chapters 1-9 of ICC/ANSI A117.1. Type A and Type B units shall comply with the applicable provisions of Chapter 10 of ICC/ANSI A117.1. Units required to be Type A units are permitted to be designed and constructed as accessible units. Units required to be Type B units are permitted to be designed and constructed as accessible units or as Type A units.

1107.3.3 Accessible spaces. Rooms and spaces available to the general public or available for use by residents and serving accessible units, Type A units or Type B units shall be accessible. Accessible spaces shall include toilet and bathing rooms, kitchen, living and dining areas and any exterior spaces, including patios, terraces and balconies.

Exception: Recreational facilities in accordance with Section 1108.14.

1107.3.4 Accessible route. At least one accessible route shall connect accessible building or facility entrances with the primary entrance of each accessible unit, Type A unit and Type B unit within the building or facility and with those exterior and interior spaces and facilities that serve the unit.

Exceptions: 1. If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal (1:12), or where physical barriers prevent the installation of an accessible route, a vehicular route with parking that complies with Section 1106 at each public or common use facility or building is permitted in place of the accessible route.

2. Exterior decks, patios or balconies that are part of Type B units and have impervious surfaces, and are not more than 4 inches below the finished floor level of the adjacent interior space of the unit.

1107.4 Group I. Occupancies in Group I shall be provided with accessible features in accordance with 1107.4.1 through 1107.4.5.

1107.4.1 Group I-1. Group I-1 occupancies shall be provided with accessible features in accordance with Section 1107.4.1.1 and 1107.4.1.2.

1107.4.1.1 Accessible units. At least 4 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

1107.4.1.2 Type B units. In structures with four or more dwelling or sleeping units intended to be occupied as a residence, every dwelling and sleeping unit intended to be occupied as a residence shall be a Type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with 1107.5

1107.4.2 Group I-2 Nursing homes. Nursing homes of Group I-2 shall be provided with accessible features in accordance with Section 1107.4.2.1 and 1107.4.2.2.

1107.4.2.1 Accessible units. At least 50 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

1107.4.2.2 Type B units. In structures with four or more dwelling or sleeping units intended to be occupied as a residence, every dwelling and sleeping unit intended to be occupied as a residence shall be a Type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with 1107.5.

1107.4.3 Group I-2 Hospitals. General purpose hospitals, psychiatric facilities, detoxification facilities and residential care/assisted living facilities of Group I-2, shall be provided with accessible features in accordance with Section 1107.4.3.1 and 1107.4.3.2.

1107.4.3.1 Accessible units. At least 10 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

1107.4.3.2 Type B units. In structures with four or more dwelling or sleeping units intended to be occupied as a residence, every dwelling unit and sleeping unit shall be a Type B unit.

Exception: the number of Type B units in permitted to be reduced in accordance with Section 1107.5.

1107.4.4 Group I-2 Rehabilitation facilities. In hospitals and rehabilitation facilities of Group I-2 which specialize in treating conditions that affect mobility, or units within either which specialize in treating conditions that affect mobility, 100 percent of the dwelling units and sleeping units shall be accessible units.

1107.4.5 Group I-3. In occupancies in Group I-3, at least 5 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

1107.4.6 Group R. Occupancies in Group R shall be provided with accessible features in accordance with Section 1107.4.6.1 and 1107.4.9.2.

1107.4.6.1 Group R-1. Group R-1 occupancies shall be provided with accessible features in accordance with Section 1107.4.6.1.1 and 1107.4.6.1.2.

1107.4.6.1.1 Accessible units. In occupancies in Group R-1, accessible dwelling and sleeping units shall be provided in accordance with table 1107.4.6.1.1. All facilities on a site shall be considered in determining the total number of accessible units. Accessible units shall be dispersed among the various classes of units. Roll in showers provided in accessible units shall include a permanently mounted folding shower seat.

TABLE 1107.4.6.1.1  
Accessible Dwelling and Sleeping Units

Total Number of Units Provided	Minimum Required Number of Accessible Units Associated with Roll-in Showers	Total Number of Required Accessible Units
1 to 15	0	1
26 to 50	0	2
51 to 75	1	4
76 to 100	1	5
101 to 150	2	7
151 to 200	2	8
201 to 300	3	10
301 to 400	4	12
401 to 500	4	13
501 to 1,000	1% of total	3% of total
Over 1,001	10 plus 1 for each 100 over 1,000	30 plus 2 for each 100 over 1,000

1107.4.6.1.2 Type B units. In structures with four or more dwelling or sleeping units intended to be occupied as a residence, every dwelling and sleeping unit shall be a type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with Section 1107.5.

1107.4.7 Group R-2. Type A and Type B units shall be provided in occupancies in Group R-2 in accordance with Sections 1107.4.7.1 and 1107.4.7.2.

1107.4.7.1 Type A units. In buildings containing more than 20 dwelling or sleeping units, at least 2 percent, but not less than one, of the units shall be a Type A unit.

Exception: The number of Type A units is permitted to be reduced in accordance with Section 1107.5.

1107.4.7.2 Type B units. Where there are more than four dwelling or sleeping units intended to be occupied as a residence in a single structure, every dwelling and sleeping unit intended to be occupied as a residence shall be a type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with section 1107.5.

1107.4.8 Group R-3. In occupancies in Group R-3 where there are four or more dwelling or sleeping units intended to be occupied as a residence in a single structure, every dwelling and sleeping unit intended to be occupied as a residence shall be a type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with Section 1107.5.

1107.4.9 Group R-4. Group R-4 occupancies shall be provided with accessible features in accordance with Section 1107.4.9.1 and 1107.4.9.2.

1107.4.9.1 Accessible units. At least one of the dwelling or sleeping units shall be an accessible unit.

1107.4.9.2 Type B units. In structures with four or more dwelling or sleeping units intended to be occupied as a residence, every dwelling and sleeping unit shall be a type B unit.

Exception: The number of Type B units is permitted to be reduced in accordance with Section 1107.5.

1107.5 General exceptions. Where specifically permitted, by sections 1107.4 or 1107.4.6, the required number of Type A and Type B units is permitted to be reduced in accordance with Sections 1107.5.1 through 1107.5.5.

1107.5.1 Buildings without elevator service. Where no elevator service is provided in a building, only the dwelling and sleeping units that are located on stories indicated in Section 1107.5.1.1 and 1107.5.1.2 are required to be Type A and Type B units. The number of Type A units shall be determined in accordance with Section 1107.4.7.

1107.5.1.1 One story with Type B units required. At least one story containing dwelling or sleeping units intended to be occupied as a residence shall be provided with accessible entrances from the exterior of the building and all units intended to be occupied as a residence on that story shall be Type B units.

1107.5.1.2 Additional stories with Type B units. On all other stories that have a building entrance in proximity to arrival points intended to serve units on that story, as indicated in 2.1 and 2.2, all dwelling and sleeping units intended to be occupied as a residence served by that entrance on that story shall be Type B units.

2.1 Where the slopes of the undisturbed site measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance are 10% or less, and

2.2 Where the slopes of the planned finished grade measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance are 10% or less.

Where no such arrival points are within 50 feet of the entrance, the closest arrival point shall be used unless that arrival point serves the story required by Section 1107.5.1.1.

1107.5.2 Multistory units. A multistory dwelling or sleeping unit which is not provided with elevator service is not required to be a Type B unit. Where a multistory unit is provided with external elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B unit, and a toilet facility shall be provided on that floor.

1107.5.3 Elevator service to the lowest story with units. Where elevator service in the building provides an accessible route only to the lowest story containing dwelling or sleeping units intended to be occupied as a residence, only the units on that story which are intended to be occupied as a residence are required to be Type B units.

1107.5.4 Site impracticality. On a site with multiple non-elevator buildings, the number of units required by Section 1107.5.1 to be Type B units is permitted to be reduced to a percentage which is equal to the percentage of the entire site having graded, prior to development, which are 10 percent, provided that all of the following conditional are met:

Not less than 20 percent of the units required by Section 1107.5.1 on the site are Type B units; and

Units required by Section 1107.5.1, where the slope between the building entrance serving the units on that story and a pedestrian or vehicular arrival point is no greater than 8.33 percent, are Type B units, and

Units required by Section 1107.5.1, where an elevated walkway is planned between a building entrance serving the units on that story and a pedestrian or vehicular arrival point and the slope between them is 10 percent or less are Type B units, and

Units served by an elevator in accordance with 1107.5.3 are Type B units.

1107.5.5 Base flood elevation. The required number of Type A and Type B units shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings are required to be at or above the base flood elevation resulting in:

A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, and

A slope exceeding 10 percent between the minimums required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet.

Where no such arrival points are within 50 feet of the property entrances, the closest arrival point shall be used.

1108.14.1 Group R-2 and R-3. In Group R-2 and R-3 occupancies where recreational facilities are provided serving a single building containing Type A or Type B units, 25 percent, but not less than one, of each type of recreational facility shall be accessible. Every recreational facility of each type on a site shall be considered to determine the total number of each type which are required to be accessible.

1108.14.2 Facilities serving multiple buildings. In Group R-2 and R-3 occupancies on a single site where multiple buildings containing Type A or Type B units are served by recreational facilities, 25 percent, but not less than one, of each type of recreational facility serving each building shall be accessible. The total number of each type of recreational facility which is required to be accessible shall be determined by considering every recreational facility of each type serving each building on the site.

1108.14.3 Other occupancies. All recreational facilities not falling within the purview of Section 1108.14.1 or 1108.14.2 shall be accessible.

1108.15 Stairways. Stairway located along accessible routes connecting floor levels that are not connected to an elevator shall be designed and constructed to comply with ICC/ANSI A117.1 and Chapter 10.

**(F) Section 1608.2 of the International Building Code is amended to read:**

1608.2 Ground snow loads. The ground snow load to be used within the City of Westminster in determining the design snow loads for roofs is 30 pounds per square foot. Exposure C shall be used unless specified as exposure B by the Building Official.

**(G) Section 1609.3 of the International Building Code is amended to read:**

1609.3 Basic wind speed. The minimum basic wind speed for any site within the limits of the City of Westminster shall be a minimum of 90 to 110 miles per hour fastest mile or 110 to 130 three second gust as established by Building Division operations and procedures. Exposure C shall be used unless specified as exposure B by the Building Official.

**(H) Sections 1612.3 and 1612.4 of the International Building Code are amended to read:**

1612.3 Establishment of flood hazard areas. The flood hazard areas of the City of Westminster are as established in Article 11, Chapter 8 of the Westminster Municipal Code.

1612.4 Design and construction. The design and construction of buildings and structures located in flood hazard areas, including flood hazard areas subject to high velocity wave action, shall be designed and constructed in accordance with City of Westminster standards and ASCE 24, whichever is the most restrictive.

**(I) Section 1805.2.1 of the International Building Code is amended to read:**

Section 1805.2.1 Frost protection. Except where protected from frost and specifically designed by an Engineer or Architect as required by section 11-9-3(C)2, foundations of buildings and structures larger than 400 square feet in area or more than one story in height or connected thereto shall extend to a depth of at least 36 inches. Spread footings, foundation walls, piles, piers or other permanent supports shall be provided where necessary to properly distribute the load within the allowable load-bearing value of the soil. Footings shall not bear on frozen soils.

**(J) Section 2111.1 of the International Building Code is amended to read:**

2111.1 General. A masonry fireplace is a fireplace constructed of concrete or masonry, hereafter referred to as masonry. Masonry fireplaces shall be constructed in accordance with this section, Table 2111.1 and Figure 2111.1 and subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

**(K) Section 2902.2, exception #4 of the International Building Code is added to read:**

Separate facilities. Exception #4. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load of 50 or less and food and beverages are not being served.

**(L) Section 3007 of the International Building Code is added to read:**

Section 3007 Permits - Certificates of Inspection.

3007.1 Permits required. It shall be unlawful to hereafter install any new elevator or conveying system, or to make major alterations to any existing elevator or conveying system without first obtaining a permit for such installation from the building official. Permits shall not be required for maintenance or minor alterations.

3007.2 Certificate of inspection required. It shall be unlawful to operate any elevator or conveyance system without a current certificate of inspection issued by the building official. Such certificate shall be issued upon payment of the prescribed fees and the presentation of a valid inspection report indicating that the elevator or conveyance system is safe and that the inspections and tests have been performed in accordance with Part X of the ANSI code.

Exception: Elevators or conveyance systems within individual dwelling units.

3007.3 Fees. A fee for each elevator permit shall be paid to the City of Westminster as set forth in this Code. A fee for each certificate of inspection shall be paid to the Building Official as follows:

Annual Certification of Inspection:

For each elevator:	\$150.00
For each escalator or moving walk*:	\$150.00
For each commercial dumbwaiter:	\$150.00

\*Each escalator or moving walk unit powered by one motor shall be considered as a separate escalator or moving walk.

**(M) Section 3109.4.1 of the International Building Code is amended to read:**

3109.4.1 Barrier height and clearances. The top of the barrier shall be at least 60 inches, but not exceed 72 inches, above grade measured on the side of the barrier which faces away from the swimming pool. (remaining unchanged)

3109.4.1.1 through 3109.4.1.6 are unchanged.

3109.4.1.7 Gates. Access gates shall comply with the requirements of section 3109.4.1.1 through 3109.4.1.6, and shall be equipped to accommodate a locking device. Access gates shall be self-closing and be equipped with a self-latching device located a minimum of 54 inches above the bottom of the gate. Where egress hardware is required by Chapter 10 of this code, it shall be used instead of the required latching device. If egress hardware is used, the gate or fence shall have no openings larger than ½ inch within 18 inches of the hardware.

3109.4.1.7.1 Where a wall of a dwelling unit serves as part of the barrier, doors from the dwelling unit need not be equipped with self-closing or self-latching devices.

3109.4.1.8 Pools, spas or hot tubs equipped with locking covers or a powered safety cover in compliance with ASTM F1346 may be surrounded by a barrier not less than 36 inches in height provided that the barrier meets the requirements of Section 3109.4.1.1 through Section 3109.4.1.7. The required latching device shall be located on the pool side of the gate and have no openings larger than ½ inch within 18 inches of the latch.

3109.4.1.9 is unchanged.

3109.4.2 and 3109.4.3 are unchanged.

**(N) The following referenced standards of Chapter 35 of the International Building Code are amended to read:**

ASME A17.12000 Safety Code for Elevators and Escalators.

ASME18.1-1999 Safety Standards for Platform Lifts and Stairway Chairlifts.

ASME B 20.1 – 97 Safety Standards for Conveyors and Related Equipment – with B20.1a– 98 Addendum

**11-9-6: INTERNATIONAL RESIDENTIAL CODE AMENDMENTS:**

**(A) Table R301.2(1) of the International Residential Code is amended to read:**

Roof Snow Load	Wind	Seismic Design Category	Subject to Damage From				Winter Design Temp
	Speed*		Weathering	Frost Depth	Termite	Decay	
30 PSF	90-110MPH	B	Severe	36"	Slight to Moderate	to None to Slight	1° F

\*Fastest Mile

**(B) Section R301.2.4 of the International Residential Code is amended to read:**

R301.2.4 The design and construction of buildings and structures located in flood hazard areas, including flood hazard areas subject to high velocity wave action, shall be designed and constructed in accordance with City of Westminster standards and ASCE 24, whichever is the most restrictive.

**(C) Section R305.1, exception #2 of the International Residential Code is amended to read:**

R305.1 Exception #2. Ceilings in basements shall have a ceiling height as required for habitable spaces. In basements, a minimum clear height of 6 foot 8 inches is permitted under beams, ducts, pipes and other obstructions. The finished clear height under such beams, ducts, pipes and other obstructions may be 6 foot 6 inches.

**(D) Sections R309.1 and R309.2 of the International Residential Code are amended to read:**

R309.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and the residence shall be equipped with a self-closing, self-latching solid wood door not less than 1 3/8 inch in thickness, solid or honeycomb core steel door not less than 1 3/8 inches thick, or 20-minute fire-rated doors.

R309.2 Separation Required. The garage shall be separated from the residence and its attic space by not less than 5/8-inch type "X" gypsum board applied to the garage side. Where the separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by not less than 5/8-inch type "X" gypsum board or equivalent.

**(E) The first sentence of Section R310.1 and Section 310.4 of the International Residential Code is amended to read:**

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one openable emergency escape and rescue window or exterior door opening for emergency escape and rescue. (the rest of the paragraph is unchanged)

R310.1.4 Operational constraints. Emergency escape and rescue openings shall be operational from the inside of the room without the use of keys, tools or removal of any part of the window assembly.

**(F) The following sentence of Section R315.1 of the International Residential Code is amended to read:**

Section 315.1 Handrails. All required handrails shall be continuous the full length of the stairs with four or more risers from a point directly above the top riser of a flight to a point directly above the lowest riser of the flight.



**(G) Section R316.2 of the International Residential Code is amended and section R316.3 is added to read:**

Section R316.2 Guard opening limitations. Required guards on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures that do not allow the passage of a sphere 4 inches or more in diameter.  
(no change to the exception)

Section R316.3 Guard live loads. Guards shall be able to resist a single concentrated load of 200 pounds applied in any direction at any point along the top, and have attachment devices and supporting structure to transfer this loading to appropriate structural elements of the building.

**(H) Section R326 of the International Residential Code is amended to read:**

R326.1 Scope. Detached one-and two- family dwellings and accessory structures, and their associated site and facilities, are not required to be accessible. Townhomes, as defined herein and constructed in accordance with section R321.2, shall comply with the provisions of Chapter 11 of the International Building Code. Where there are four or more dwelling units or sleeping units in a single structure, the provisions of Chapter 11 of the International Building Code for Group R-3.

**(I) Section R328 of the International Residential Code is added to read:**

**R328 BUILDING SECURITY.**

R328.1 General. The provisions of this section shall apply to openings into all dwelling units as well as to openings between attached garages and dwelling units. Except for vehicular access, door openings in attached garages shall be in accordance with the provisions of this section.

R328.2 Obstructing means of egress. Security methods of this section shall not create a hazard to life by obstructing any means of egress. The provisions of this section shall not supersede the requirements of section R311 of this code.

R328.3 Entry vision. All main or front entry doors to dwelling units shall be so arranged so that the occupants have a view of the area immediately outside of the door without having to open the door. Such view can be provided by the use of a door viewer with a 180 degree field of view.

R328.4 Swinging doors. All exterior doors shall be constructed of solid core wood a minimum of 1 3/8 inch in thickness or a metal door constructed with at least 18-gauge metal or similar approved material.

R328.4.1 Strike plate installation. In wood-frame construction, any open space between trimmers and wood doorjambs shall be solid shimmed not less than 12 inches above and below the strike plate. Strike plates shall be attached to the wood with not less than two No. 8 by 3-inch screws, which have a minimum of 3/4 inch penetration into the nearest framing member. Strike plates when attached to metal shall be attached with not less than two No. 8 machine screws.

R328.4.2 Hinges. When hinges are exposed to the exterior, at least one of the hinges shall be equipped with a nonremovable hinge pin. Not less than three 4 1/2 inch steel butt hinges shall be fastened to both the door and frame with not less than four No. 9 by 3/4 inch wood screws or to metal with not less than four No. 8 machine screws. In wood construction, an open space between trimmers and wood doorjambs shall be solid shimmed extending not less than 6 inches above and below each hinge.

R328.4.3 Locking Hardware. Single swinging doors and the active leaf of doors in pairs shall be equipped with an approved exterior key-operated deadbolt. Deadbolt locks shall have at least a one-inch bolt throw that will penetrate the strike at least 3/4 of an inch. See section R311 for requirements on door operation for exiting.

**(J) Section R329 of the International Residential Code is added to read:**

Section R329. Elevators and vertical transportation installed within structures regulated by this code shall be in accordance with the 2000 Edition of ASME A17.1, and the 2001 Edition of ASME A18.1. Hoistways shall be in accordance with Chapter 30 of the International Building Code (IBC)

**(K) Section R502.3.1 and Table R502.3.1(1) of the International Residential Code is deleted and section R502.3.2 is amended to read:**

R502.3.1 Sleeping areas and attic joist. - Delete.

Table R502.3.1(1). – Delete

R502.3.2 Other floor joist. Table 502.3.1(2) shall be utilized to determine the maximum allowable span of floor joist that support all areas of the building provided that the design live load does not exceed 40 psf and the design dead load does not exceed 10 psf.

**(L) Sections R1003.1 and R1004.1 the International Residential Code are amended to read:**

R1003.1 General. Masonry fireplaces shall be constructed in accordance with this section and the applicable provisions of Chapters 3 and 4 of this code and subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

R1004.1 General. Factory-built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory-built fireplaces shall be tested in accordance with UL127 and be subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

**(M) Section R1415 of the International Residential Code is added to read:**

**M1415 UNVENTED ROOM HEATERS**

M1415.1 General. Unvented room heater, fireplaces, gas logs or other similar devices are prohibited.

**(N) Section M1703.3 of the International Residential Code is deleted:**

M1703.3 Single opening or duct. Delete section.

**(O) Section G2443 of the International Residential Code is deleted:**

G2443 UNVENTED ROOM HEATERS. Delete section 2443 in its entirety.

**(P) Section R2903.9.3 of the International Residential Code is amended to read:**

P2903.9.3 Valve requirements. Valves serving individual fixtures, appliances, risers and branches shall be provided with access. An individual shutoff valve shall be required on the water supply pipe to each fixture.

**(Q) Section R3103.1 of the International Residential Code is amended to read:**

P3103.1 Roof extension. Each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six inches above the roof not less than one foot from any vertical surface.

**(R) The General Statement of Chapter 33 and section E3301.1 of the International Residential Code are amended to read:**

#### CHAPTER 33 GENERAL REQUIREMENTS

The Electrical Part is produced and copyrighted by the National Fire Protection Association (NFPA) and is based on the 2002 National Electrical Code, copyright 2002 National Fire Protection Association, all rights reserved. Use of the Electrical part is pursuant to license with the NFPA.

E3301.1 Applicability. Add the following to the section: Whenever there is a conflict between this code and the 2002 NEC, the provisions of the NEC will govern.

**(S) The first sentence of section AG105.2(1) of the International Residential Code is amended and section AG105.2, items 8 and 9 are replaced to read:**

Section AG 105.2 Outdoor swimming pool.

1. The top of the barrier shall be at least 60 inches, but not exceed 72 inches, above grade measured on the side of the barrier which faces away from the swimming pool. (remaining unchanged)

Replace items 8 and 9 with the following:

8. Access gates shall comply with the requirements of section AG105.2, Items 1 through 7, and shall be equipped to accommodate a locking device. Access gates shall be self-closing and be equipped with a self-latching device located a minimum of 54 inches above the bottom of the gate.

8.1. Where a wall of a dwelling unit serves as part of the barrier, doors through the wall need not be equipped with self-closing or self-latching devices.

9. Pools, spas or hot tubs equipped with locking covers or a powered safety cover in compliance with ASTM F1346 may be surrounded by a barrier not less than 36 inches in height provided that the barrier meets the requirements of AG105.2, Items 2 through 7. The required latching device shall be located on the pool side of the gate and have no openings larger than ½ inch within 18 inches of the latch.

#### **11-9-7: NATIONAL ELECTRICAL CODE AMENDMENTS:**

**(A) Article 230.70(A)(1) of the National Electrical Code is amended to read:**

Article 230.70 (A)(1) Location. The service disconnecting means shall be installed at a readily accessible location on the outside of the building unless approved by the Building Official. No service disconnecting means shall be installed inside a residential dwelling unit.

Exception: The service disconnecting means may be installed inside the garage of a residential dwelling unit when it is located back-to-back to the meter.

**(B) Article 408.16(A) of the National Electrical Code is amended to read:**

Article 408.16(A) Overcurrent Protection. Each lighting and appliance branch-circuit panelboard shall be individually protected on the supply side by not more than two main circuit breakers or two sets of fuses having a combined rating not greater than that of the panelboard. No circuit breaker shall be added to the upper section of an existing split bus panelboard unless main overcurrent protection is provided for the panelboard.

Exception No. 1: Individual protection for a lighting and appliance panelboard shall not be required if the panelboard feeder has overcurrent protection not greater than the rating of the panelboard.

Exception No. 2: Is deleted.

**11-9-8: INTERNATIONAL PLUMBING CODE AMENDMENTS:**

**(A) Section 601.5 of the International Plumbing Code is added to read:**

Section 601.5 Water conservation. Water recycling systems shall be mandatory for all automatic full-service commercial car wash facilities constructed in the City after December 23, 1982. Water recycling systems shall not be mandatory for manual self-service commercial car wash facilities.

**(B) Section 904.1 of the International Plumbing Code is amended to read:**

904.1 Roof extension. Each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six inches above the roof not less than one foot from any vertical surface.

**(C) Section 1003.2 and section 1003.3.4.1 of the International Plumbing Code are amended to read:**

Section 1003.2 Approval. The size, type and location of each grease interceptor shall be designed and installed in accordance with City of Westminster specifications, the manufacturer's installation instructions, the requirements of this section and the anticipated conditions of use.

Section 1003.3.4.1 Grease trap capacity. When, in the judgment of the Building Official, it would be impractical or unnecessary to install a grease interceptor due to the anticipated use of an establishment, the installation of a grease trap may be approved. Grease traps shall be sized in accordance with City specifications and have the grease retention capacity indicated in Table 1003.3.4.1 for the flow-through rates indicated.

**11-9-9: INTERNATIONAL MECHANICAL CODE AMENDMENTS:**

**(A) Section 506.3.11, exceptions #1 and #2 of the International Mechanical Code are amended to read:**

Section 506.3.11, Exception #1. The shaft enclosure provisions of this section shall not be required where a duct penetration is protected with a through-penetration firestop system classified in accordance with ASTM E814 and having an "F" and "T" rating equal to the fire-resistance rating of the assembly being penetrated and where the surface of the duct is continuously covered on all sides from the point at which the duct penetrates a ceiling, wall or floor to the outlet terminal with a classified and labeled material system or product specifically evaluated for such purpose, in accordance with ICBO ES AC101.

Exception #2. Delete in its entirety.

**(B) Section 903.1 of the International Mechanical Code is amended to read:**

Section 903.1 General. Factory-built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory-built fireplaces shall be tested in accordance with UL127 and be subject to the restrictions of Title 8, Chapter 6 of the Westminster Municipal Code.

**11-9-10: INTERNATIONAL FUEL GAS CODE AMENDMENTS:**

**(A) Section 303.3, exceptions #2 and #3 of the International Fuel Gas Code are deleted:**

Section 303.3 Prohibited location. Delete Exceptions #3 and #4

**(B) Section 304.11.2 of the International Fuel Gas Code is deleted:**

Section 304.11.2 One opening method. Delete in its entirety.

**(C) Section 620 of the International Fuel Gas Code is amended to read:**

Section 620.1 General. Unvented room heater, fireplaces, gas logs or other similar devices are prohibited.

(remainder of section 620 is deleted)

**11-9-11: INTERNATIONAL ENERGY CONSERVATION CODE AMENDMENTS:**

**(A) Table 302.1 of the International Energy Conservation Code is amended to read:**

Condition	Value
Winter, Design Dry-bulb (°F)	1°F
Summer, Design Dry-bulb (°F)	91°F
Summer, Design Wet-bulb (°F)	63°F
Degree days heating	6150
Degree days cooling	695
Climate zone	13B

**11-9-12: MOBILE HOMES:**

**(A) Permits Required.**

1. **General.** Building permits for work on mobile homes or accessory buildings shall be obtained in accordance with the provisions of the Building Codes unless the work is specifically exempt pursuant to the provisions of the Building Codes.

2. **Initial Installation.** No person shall install or set up a mobile home on any mobile home space without first obtaining a separate permit for each installation from the Building Official. Such permit issuance and fees therefore shall be in accordance with the Building Codes. No utility service shall be provided to any building service equipment without a building permit.

3. **Accessory Buildings and Structures.** Building permits shall be required for the installation of all accessory buildings and structures and their building service equipment, unless the work is specifically exempt pursuant to the provisions of the Building Codes. Such permit issuance and fees therefor shall be pursuant to the Building Codes.

4. **Additions, Alterations, and Repairs to Mobile Homes.** No person shall alter, remodel, repair, or enlarge a mobile home or accessory building subsequent to its initial installation without first obtaining a separate building permit for each such alteration, addition, enlargement, or repair from the Building Official. Such permit issuance and fees therefor shall be pursuant to the Building Codes.

**(B) Installation Requirements.**

1. **General.** The installation of a mobile home upon a mobile home space shall comply with the manufacture's installation instructions as well as the provisions of this subsection, the Building Codes, and other provisions of the City codes. If the manufacture's installation instructions are not available the installation of such mobile home shall comply with the following standards:

Non-permanent Installation: Provisions of the Federal Manufactured Home Construction and Safety Standards, NCSBCS/ANSI A225.1 – 1994 amended.

Permanent foundation installations: Permanent foundation, Guide for Manufactured Housing, September 1996, amended; and

Engineered foundation systems as designed by an architect or engineer licensed by the State of Colorado.

2 **Pier Construction.** Piers shall be designed and constructed to distribute loads evenly. Such piers shall be considered to resist vertical forces acting in a downward direction only and shall not be considered as providing any resistance to horizontal or uplift loads. The construction and spacing of piers shall be as specified in the manufacturers installation instructions or in accordance with section 11-9-10(B)1. Alternate materials and methods of construction may be used for piers when designed by an architect or engineer, licensed as such in the State of Colorado and approved by the Building Official.

3 **Anchorage.** Ground anchors shall be of the auger type and shall be designed and installed to transfer the anchoring loads to the ground. The installation and spacing of all ground anchoring equipment shall be specified in the manufacture's installation instructions or in accordance with section 11-9-10(B)1. Alternate materials and methods of construction may be used for the anchoring systems when designed by an architect or engineer licensed as such in the State of Colorado and approved by the Building Official.

4 **Building Service Equipment.** The installation, alteration, repair, replacement, addition to, or maintenance of all building service equipment within the mobile home park shall comply with the applicable plumbing, mechanical, and electrical provisions of the Building Codes. Utility service shall not be provided to any building service equipment which is regulated by the Building Codes, and for which a mobile home set up permit is required by the Building Codes, until the building service equipment has been inspected and approved by the Building Official.

5 **Stairs and Landings.** Landings and stairways with handrailings and guardrailings shall be provided at each exterior door from a mobile home. Landings, stairways, guardrails and handrails shall comply with the provisions of the Building Code and shall be in place prior to requesting the set-up inspection.

6 **Skirting.** The area beneath each mobile home unit shall be enclosed with full perimeter skirting of material that is compatible with the exterior cladding of the mobile home unit. At least one access opening not less than 18" in any dimension and not less than 3 square feet in area shall be provided and located so that any water supply and sewer drain connections located under the unit are accessible. The skirting shall not be installed prior to the approval of the set-up inspection but shall be installed as soon as it is practical to do so after such inspection.

7 **Smoke Detectors.** Smoke detectors shall be located in each mobile home unit. A detector shall be installed in each sleeping room and at a point centrally located in the hallway or area giving access to each separate sleeping area. Smoke detectors added to satisfy the requirements of this subsection may be of the battery-operated type and shall be installed in accordance with their listing.

Exception: New mobile homes may have smoke detectors located per the State of Colorado, Division of Housing approval.

**(C) Additions, Alterations, and Repairs to Mobile Homes.**

1. **Permanent Additions.** No permanent additions of any type shall be built onto or become part of any mobile home unless designed and constructed to conform with the applicable provisions of the Federal Manufactured Home Construction and Safety Standards, NCSBCS/ANSI A225.1 - 1994. A certificate of compliance issued by the manufacturer and verified by the State of Colorado shall be provided to the Building Official for any such addition.

2. **Carport and Patio Cover Structures.** Temporary carport and patio cover structures may be attached to and structurally supported by a mobile home when justified by engineering calculations or when approved by the Building Official. All such structures shall be of light-weight metal, fiberglass, plastic, or other material similar in type and color to the exterior cladding of the mobile home unit and shall be entirely open on two or more sides. All such structures shall be designed and approved in accordance with the applicable provisions of the Building Codes and other provisions of the City code.

3. **Structural Additions.** Accessory buildings or structures shall not be structurally supported by or attached to any mobile home unless engineered calculations are submitted to the Building Official to substantiate any proposed structural connection and approved by the Building Official; except that the Building Official may waive the submission of engineering calculations if he finds that engineering calculations are not necessary to show conformance to the requirements of the Building Codes.

4. **Fences.** Individual lot perimeter fences may be erected at the lot line of individual mobile home spaces. Such fences shall be constructed of the chain link fencing and shall be of a standard design for the entire mobile home park. The top of such fences shall not exceed 36 inches in height. Fence permit issuance and fees therefor shall be in accordance with the provisions of this Code.

Section 2. Chapter 10 of Title 11 of the Westminster Municipal Code is hereby repealed and reenacted to read as follows:

Title 11 Chapter 10  
FIRE CODES

- 11-10-1: INTENT
- 11-10-2: ADOPTION OF FIRE CODE
- 11-10-3: CHAPTER 1 AMENDMENTS-ADMINISTRATION
- 11-10-4: CHAPTER 5 AMENDMENTS-~~FIRE SERVICE FEATURES~~
- 11-10-5: CHAPTER 9 AMENDMENTS-~~FIRE PROTECTION SYSTEMS~~
- 11-10-6: CHAPTER 33 AMENDMENTS-~~EXPLOSIVES AND FIREWORKS~~
- 11-10-7: CHAPTER 38 AMENDMENTS-~~LIQUIFIED PETEROLEUM GASES~~

Deleted: ¶

**11-10-1: INTENT:** The intent of this chapter is to adopt by reference and with modifications the International Fire Code, 2000 Edition. Hereinafter, this Code may be referred to as the "Fire Code." The City Council of the City of Westminster finds that the adoption of the Fire Code is essential for fire prevention and the preservation of the health, safety, and welfare of the citizens of Westminster. The City Council finds that the adoption of such Codes is essential in the preservation of the health, safety, and welfare of the citizens of Westminster. City Council finds that it is necessary to protect the health, safety and welfare of the citizens of the City to exempt the procedural requirements specified in Colorado Revised Statutes, Section 31-16-203, as the procedures contained therein are duplicative of existing procedures established in the City Charter and Ordinances.

**11-10-2: ADOPTION OF FIRE CODE:** That certain document, one (1) copy of which is on file in the Office of the City Clerk, being marked and designated as the International Fire Code, 2000 Edition, published by the International Code Council, 5360 Workman Mill Road, Whittier, California 90601, and, in particular, Appendix B – Fire Flow Requirements For Buildings, Appendix C – Fire Hydrant Location And Distribution, Appendix D – Fire Apparatus Access Roads, Appendix E – Hazard Categories, Appendix F – Hazard Ranking, and Appendix G – Cryogenic Fluids – Weight And Volume Equivalents is hereby adopted as the Fire Code of and for the City. These sections of the Fire Code, as modified in this chapter, are hereby referred to, adopted, and made a part of the Code as if fully set forth.

**11-10-3: CHAPTER 1 ADMINISTRATION AMENDMENTS:**

**(A) BOARD OF APPEALS.** Subsection 108.1 of the International Fire Code is amended to read as follows:

Subsection 108.1 Appeals of orders, decisions, or determinations made by the Building Official or Fire Code Official relative to the application and interpretation of the Building and Fire Codes, and amendments thereto, shall be made to the Board of Building Code of Appeals pursuant to Title II, Chapter 10, of this Code.

**(B) PENALTIES.** Subsection 109.3 Violation penalties of the International Fire Code is amended to read as follows:

Subsection 109.3 Violation Penalties. Any person who violates any of the provisions of this Code, or who fails to comply therewith, or who builds any structure in violation of a detailed statement of specifications or plans submitted and approved pursuant to this Code and from which no appeal has been taken, or who fails to comply with a final order issued pursuant to this Code within the time fixed therein shall be guilty of a misdemeanor punishable by a fine or imprisonment pursuant to the limits set forth in Section 1-8-1 of the Westminster Municipal Code, or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time and, when not otherwise specified, each day that a prohibited condition is maintained shall constitute a separate offense. The imposition of a criminal penalty shall not prevent the abatement of prohibited conditions.

**(C) REQUIRED OPERATIONAL PERMITS.** Subsection 105.6 of the International Fire Code is amended to read as follows. All other provisions of Subsection 105.6 are hereby deleted.

Subsection 105.6 Permit Required operational permits. An operational permit shall be obtained from the Prevention Bureau prior to engaging in the following activities, functions, operations, or practices as defined in accordance with the Fire Code, unless otherwise specified in this Code:

105.6.2 Amusement buildings

105.6.4 Carnivals and fairs

105.6.11 Cryogenic Fluids

105.6.15 Explosives, explosive materials, and fireworks

105.6.17 Flammable and combustible liquids



To remove Class I or II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes.

To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank.

To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.

#### 105.6.20 Fumigation and thermal insecticidal fogging

105.6.20.1 Fumigation and/or associated operations for removing biological, chemical, or other naturally occurring agents, chemicals, organisms, or substances

#### 105.6.21 Hazardous Materials

105.6.27 Liquid- or gas-fueled vehicles or equipment in buildings for display, demonstrating, or operation. This shall not apply to parking garages, private garages, repair garages, or other buildings normally utilized for the operation, repair, restoration, and storage of motor vehicles.

105.6.28 LP-gas

#### 105.6.29 Magnesium

105.6.31 Open burning

105.6.35 Private fire hydrants

105.6.36 Pyrotechnic special effects material

105.6.43 Temporary membrane structures, tents and canopies

**(D) REQUIRED CONSTRUCTION PERMITS.** Subsection 105.7 shall be amended to read as follows: Upon approval of required construction documents, as required by Subsection 105.4, a fire protection permit shall be obtained from the Fire Prevention Bureau prior to initiating any alterations, construction, installation, modification, remodel, of any fire protection system or other fire- or life-safety system, as defined by the Fire Code. The following fire protection systems shall require submittal of plans, specifications, design and installation criteria, as required by the Fire Code Official, prior to issuance of a fire protection permit, those not listed are excluded from the requirements of this Section:

105.7.1 Automatic fire-extinguishing systems

105.7.2 Compressed gases

105.7.3 Fire alarm and detection systems and related equipment

105.7.4 Fire pumps and related equipment

105.7.5 Flammable and combustible liquids

105.7.6 Hazardous materials

105.7.8 LP-gas

105.7.9 Private fire hydrants

105.7.10 Spraying and dipping

105.7.11 Standpipe systems

105.7.12 Temporary membrane structures, tents and canopies

**(E) FEES.** Section 105 of the International Fire Code is amended by the addition of the following subsections:

**Subsection 105.8 Operational Permit Fees.** The fee for operational permits required by Subsection 105.6 of this Code shall be as set forth in the fee schedule adopted by Resolution by the City Council. Fees shall be collected by the Fire Prevention Bureau.

**Subsection 105.9 Construction Permit Fees.** Permit fees and taxes are required for fire protection and life safety systems required by Subsection 105.7 of this Code for initiating any alterations, construction, installation, modification, remodel, of any fire protection system or other fire- or life-safety system, as defined by the Fire Code. These fees shall be assessed by and paid to the City of Westminster in accordance with the provisions of the fee schedule adopted by Resolution by the City Council.

#### **11-10-4: CHAPTER 5 FIRE SERVICE FEATURES AMENDMENTS:**

**(A) MARKINGS.** Subsection 503.3 of the International Fire Code is amended by the addition of the following subsection:

**Subsection 503.3.1.** The marking of fire lanes on private property devoted to public use shall be approved by the Fire Code Official in accordance with the Fire Code and the Uniform Traffic Control Manual.

**(B) OBSTRUCTION OF FIRE APPARATUS ACCESS ROADS.** Subsection 503.4 of the Uniform Fire Code is amended by the addition of the following section:

**Subsection 503.4.1.** The Fire Code Official or any of his subordinates, or the Police Department with knowledge of the existence of any vehicle parked in the fire lane, or in such manner as to interfere with the use of any fire hydrant, or in any manner in violation of this Section may have such vehicle towed away and the charges of such towing shall be assessed to the owner of such vehicle. The aforesaid violation shall be sufficient grounds to cause a citation to be issued. In the event of a fire, the Fire Department shall have the authority to cause the vehicle blocking a fire hydrant or fire lane to be removed with any subsequent damage to the vehicle being paid by the owner of said vehicle. The towing of any vehicle pursuant to this section shall comply with the provisions of Chapter 1 of Title X of the Westminster Municipal Code.

**(C) PRIVATELY OWNED HYDRANT SYSTEMS.** Section 508 of the International Fire Code is amended by the addition of the following subsections:

**Subsection 508.5.3.1.** Privately owned hydrants shall be maintained at the expense of the private property owner, subject to the direction and requirements of the Fire Code Official. Such private hydrants shall be flushed and tested periodically according to the Fire Code. In the event

such testing reveals that the flow from private hydrants is inadequate according to applicable standards, modifications necessary to meet these standards shall be ordered by the Fire Code Official and made at the expense of the property owner. All private hydrants shall be painted the same color as hydrants on public rights-of-way or elsewhere throughout the City. Appropriate markings or signs restricting parking in front of or adjacent to fire hydrants shall be designated by the Fire Code Official and implemented at the expense of the owner of the property. No point of connection to any private fire hydrant shall be left uncapped without permission of the Fire Code Official.

Subsection 508.5.7. Existing Private Fire Hydrants. Existing hydrants which do not conform to City specifications or which do not face in the direction most consistent with emergency use by the Fire Department, as established by the Fire Code Official, shall be changed to meet the City's requirements by the property owner and at the property owner's expense, within 15 days of service of notice of the required changes upon the property owner or its resident agent.

#### **11-10- 5: CHAPTER 9 FIRE PROTECTION SYSTEMS AMENDMENTS:**

(A) **AUTOMATIC SPRINKLER SYSTEMS.** Section 903 of the International Fire Code shall be amended by the addition of the following paragraphs:

Subsection 903.2.8.1. New Construction. Group R-2 Occupancies required to be protected with an automatic fire sprinkler system shall provide fire sprinkler coverage for all exterior balconies. This requirement shall apply to all retroactive installations for Group R-2 Occupancies.

Exception: Existing R-2 buildings and occupancies constructed prior to the adoption of this code.

Subsection 903.2.9.1 New Construction. Group R-4 Occupancies required to be protected with an automatic fire sprinkler system shall provide fire sprinkler coverage for all exterior balconies. This requirement shall apply to all retroactive installations for Group R-4 Occupancies.

Exception: Existing R-4 buildings and occupancies constructed prior to the adoption of this code.

Subsection 903.3.2 Quick-response and residential sprinklers, of the International Fire Code shall be deleted and amended by adding the following:

903.3.2 Residential automatic sprinkler heads. Where automatic sprinkler systems are required by this code, only residential automatic sprinkler heads shall be permitted in:

Throughout all spaces within a smoke compartment containing patient sleeping rooms in Group I-2 in accordance with the *International Building Code*.

Dwelling units, guestrooms, and sleeping rooms in Group R and I-1 occupancies.

903.3.2.1 Quick-response automatic sprinkler heads. Quick-response sprinkler heads shall be installed in light hazard occupancies as defined in NFPA 13. Residential automatic sprinkler heads are prohibited.

903.3.2.2 Residential and quick-response automatic sprinkler heads. All installation of residential and quick-response automatic sprinkler heads shall be in strict accordance with their listings. Where listings authorize installation where prohibited in 903.3.2 and 903.3.2.1 the Fire Code Official may waive the requirements mandated by 903.3.2 and 903.3.2.1.

Subsection 903.3.7 of the International Fire Code shall be amended by adding the following:

Subsection 903.3.7.1 The fire department connection (FDC) shall be located whenever possible on the street addressed side of the building in a location visible to the responding fire engine. The FDC shall be located at a location visible from the exterior of the main entrance door where the fire alarm annunciator is located. The FDC shall have a fire hydrant within 100 feet in a location approved by the fire department.

**(B) STANDPIPE SYSTEMS.** Section 905 of the International Fire Code shall be amended by the addition of the following paragraphs:

Subsection 905.3.1. Building Height shall be amended by adding the following exceptions:

Exception 5: Class I standpipes are allowed to be manual systems.

Exception 6: Fire hose is not required for Class I standpipes. Standpipe hose outlets shall be 2-1/2-inch outlets with a 2-1/2-inch to 1-1/2-inch reducing cap.

**(C) FIRE ALARM AND DETECTION SYSTEMS.** Section 907 of the International Fire Code is amended by the following:

Subsection 907.2 Where required-new buildings and structures:

907.2.1 Group A. The exceptions are deleted.

907.2.2 Group B. The exceptions are deleted.

907.2.4 Groups F and S. A manual fire alarm system shall be installed in Group F and Group S occupancies that are two or more stories in height or have an occupant load of 500 or more. The exceptions are deleted.

907.2.5 Group H. A manual fire alarm system shall be required in all Group H occupancies. The exceptions are deleted.

907.2.7 Group M. The exceptions are deleted.

Subsection 907.9 Zones

The fire code official shall determine the extent of zone coverage for fire alarm systems in all buildings and structures.

**11-10-6: CHAPTER 33 EXPLOSIVES AND FIREWORKS AMENDMENTS:**

(A) GENERAL. Section 3301 of the International Fire Code is amended by the following:

Subsection 3301.1.3 Fireworks is amended by deleting the following exceptions:

Storage and handling of fireworks as permitted in Section 3304.

Manufacture, assembly and testing of fireworks as permitted in Section 3305.

The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by applicable local or state laws, ordinances and regulations provided such fireworks comply with CPSC 16 CFR, Parts 1500—1507, and DOTn 49 CFR, Parts 100-178, for consumer fireworks.

Subsection 3301.1.3 Fireworks is amended by adding the following exception:

State of Colorado defined “permissible fireworks” will be allowed for possession, handling, and use only during the timeframe beginning at 12:00 AM on July 3rd and ending at 12:00 PM on July 5<sup>th</sup> of any given calendar year.

**(B) EXPLOSIVES MATERIALS STORAGE AND HANDLING.** Section 3304 of the International Fire Code is amended by adding the following:

**Subsection 3304.1.1 General storage limitations.** The storage of explosives and blasting agents is prohibited within all zones except 01 and PUD (Planned Unit Development) where such storage is specifically listed as an allowed use, except for temporary storage for use in connection with approved blasting operations; provided, however, that this prohibition shall not apply to wholesale and retail stocks of small arms, ammunition, explosive bolts, explosive rivets, or cartridges for explosive-actuated power tools in aggregate quantities involving less than 500 pounds of explosive material.

**11-10-7: CHAPTER 38 LIQUEFIED PETROLEUM GASES AMENDMENTS:**

**(A)** Subsection 3804.2 of the International Fire Code is amended **by adding the following:**

Deleted:

**Subsection 3804.2** Maximum capacity within established limits.

**This maximum capacity limitation specifically applies to the following zoning areas:** RA, RE, R1, R2, R3, R4, R5, B1, C1, T1, and PUD (Planned Unit Development) zoned districts.

**Section 3** This ordinance shall take effect September 1, 2002.

**Section 4.** The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this \_\_\_\_ day of \_\_\_\_\_, 2002.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Mayor

ATTEST:

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

## Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, August 12, 2002. Present at roll call were Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, Kauffman, and McNally. Absent None.

The minutes of the July 22, 2002 meeting were approved.

Mayor Moss presented service pins and certificates of appreciation to employees celebrating 20 and 25 years of service; presented certificates of appreciation to Board & Commission members who have resigned; and presented an appreciation plaque to Ms. Rivera for serving on the Police Department Complaint Review Team.

Lakewood Police Chief presented Westminster PD with the Colorado Association of Chiefs of Police award recognizing their successful re-accreditation.

Council recommended to the Jefferson County Commissioners, the appointment of Robert DeLong as the City of Westminster representative to the Jefferson County Corrections Board.

The following public hearings were held: At 7:38 p.m. on the 2003 Community Development Block Grant Funds; at 7:40 p.m. on the Comprehensive Land Use Plan Amendment for Boulevard Plaza PUD; at 7:50 p.m. on the Cascade Village Apartments Refunding.

Council approved the following: Rocky Mountain Butterfly Consortium Expansion Agreement; Open Space Acquisition of 30 acres North of Lower Church Lake from Jefferson County in three yearly installments; 73<sup>rd</sup> Avenue Street Reconstruction Contract with Goodland Construction, Inc.; Revised IGA with Hyland Hills Park and Recreation District; 2002 Wastewater Collection System Improvement Program with Crossroads Underground; Awarded the bid for the two Tandem Dump Truck Cab and Chassis to Western Star of Colorado; Awarded the bid for the body and snow plow to O.J. Watson Co.; 2002 Slurry Seal Project with Quality Resurfacing Company; Contract for construction of the Swim & Fitness Center Weight Room Expansion with JHL Constructors, Inc.; and 4<sup>th</sup> Amended PDP re Boulevard Plaza PUD.

The following Councillor's Bill was passed as an emergency ordinance:

A BILL FOR AN ORDINANCE AUTHORIZING A SECOND SUPPLEMENTAL INDENTURE OF TRUST TO THE INDENTURE OF TRUST EXECUTED IN CONNECTION WITH THE CITY OF WESTMINSTER, COLORADO VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (CASCADE VILLAGE APARTMENTS PROJECT) 1997 ISSUE A, A FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND A FIRST AMENDMENT TO LOAN AGREEMENT; RATIFYING CERTAIN ACTION HERETOFORE TAKEN; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF SAID SECOND SUPPLEMENTAL INDENTURE OF TRUST, FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND A FIRST AMENDMENT TO LOAN AGREEMENT; REPEALING ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH; AND DECLARING AN EMERGENCY purpose: extending the maturity on the Cascade Village Apartment Project

The following Councillor's Bills were passed on first reading:

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER COMPREHENSIVE LAND USE PLAN purpose: CLUP Amendment re Boulevard Plaza PUD

A BILL FOR AN ORDINANCE INCREASING THE 2002 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THE FUND purpose: supplemental appropriation for the construction of the renovations at Standley Lake

A BILL FOR AN ORDINANCE INCREASING THE RATES FOR WATER SALES AND SEWER USER CHARGES purpose: implementing water and sewer rate adjustments.

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

A BILL FOR AN ORDINANCE ADOPTING THE 2000 INTERNATIONAL BUILDING CODE AND THE 2000 INTERNATIONAL FIRE CODE

At 8:10 P.M. the meeting was adjourned.

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window on August 22, 2002.

BY AUTHORITY

ORDINANCE NO. **2964**

COUNCILLOR'S BILL NO. **38**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

**Dittman-Atchison**

A BILL

FOR AN ORDINANCE AUTHORIZING A SECOND SUPPLEMENTAL INDENTURE OF TRUST TO THE INDENTURE OF TRUST EXECUTED IN CONNECTION WITH THE CITY OF WESTMINSTER, COLORADO VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (CASCADE VILLAGE APARTMENTS PROJECT) 1997 ISSUE A, A FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND A FIRST AMENDMENT TO LOAN AGREEMENT; RATIFYING CERTAIN ACTION HERETOFORE TAKEN; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF SAID SECOND SUPPLEMENTAL INDENTURE OF TRUST, FIRST AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND A FIRST AMENDMENT TO LOAN AGREEMENT; REPEALING ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Westminster, Colorado (the "City") is authorized by the County and Municipality Development Revenue Bond Act, constituting Sections 29-3-101 through 29-3-123, inclusive, Colorado Revised Statutes (the "Act"), to finance and refinance one or more projects, including any land, building or other improvement, and all real and personal properties, whether or not in existence, which shall be suitable for residential facilities for low- and middle-income families or persons and intended for use as the sole place of residence by the owners or intended occupants to the end that more adequate residential housing facilities for low- and middle-income families and persons may be provided, which promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, pursuant to the Act, the City has heretofore issued its City of Westminster, Colorado, Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Cascade Village Apartments Project) 1997 Issue A (the "Bonds") pursuant to the terms of an Indenture of Trust dated as of October 1, 1997 (the "Indenture"), between the City and U.S. Bank National Association, as trustee (the "Trustee"), the proceeds of which Bonds were used to make a loan to LBK, L.P., a Delaware limited partnership (successor in interest to LBK 3, L.P.) (the "Borrower") to refinance a multifamily residential project development located within the City of Westminster known as Cascade Village Apartments (the "Project"); and

WHEREAS, the Indenture has been amended and supplemented as set forth in the First Supplemental Indenture of Trust dated as of July 1, 1998 (the "First Supplemental Indenture of Trust") between the City and the Trustee for the purpose of (i) converting the Bonds to a Fixed Rate for a Fixed Period of six years and six months and eliminating the requirement of credit enhancement and making other modifications for such Fixed Period during which Merrill, Lynch, Pierce, Fenner & Smith Incorporated, any of its affiliates or any trust established by Merrill, Lynch, Pierce, Fenner & Smith Incorporated for the purpose of owning the Bonds will be the initial sole holder of the Bonds and (ii) establishing the effective date of the First Supplemental Indenture of Trust as a Fixed Rate Conversion Date, as defined in the Indenture, and providing the terms of optional redemption of the Bonds during the Fixed Rate Period thereby established; and



WHEREAS, the Borrower has requested that the City further amend and supplement the terms of the Indenture pursuant to the terms of a Second Supplemental Indenture of Trust dated as of August 1, 2002 (the "Second Supplemental Indenture of Trust") between the City and the Trustee in substantially the form presented to the City Council at this meeting, for the purpose of extending the maturity of the Bonds by a term of five years, resulting in a new maturity date of December 1, 2012; and

WHEREAS, the City has agreed to the extension of the term of the Bonds, provided, that the Borrower agree to increase the percentage of residential rental units in the Project to be set aside for Low Income Persons, as defined in the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 1997 (the "Regulatory Agreement") among the Borrower, the Trustee and the City, from 20% to 30%; and

WHEREAS, the increase in the percentage of residential units in the Project to be set aside for Low Income Persons is effected pursuant to the provisions of the First Amendment to Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of August 1, 2002 (the "First Amendment to Regulatory Agreement") among the Borrower, the Trustee and the City in substantially the form presented to the City Council at this meeting; and

WHEREAS, the Borrower shall acknowledge the extension of the maturity of the Bonds and its obligation to pay the City certain fees in the First Amendment to Loan Agreement dated as of August 1, 2002 (the "First Amendment to Loan Agreement") among the Borrower, the City and the Trustee in substantially the form presented to the City Council at this meeting; and

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. All action (not inconsistent with the provisions of this ordinance) heretofore taken by the City Council and the officers of the City directed toward the amendment of the Indenture, the Regulatory Agreement and the Loan Agreement dated as of October 1, 1997 (the "Loan Agreement") among the City, the Borrower and the Trustee as provided herein is hereby, ratified, approved and confirmed.

Section 2. The form, terms and provisions of the Second Supplemental Indenture of Trust, the First Amendment to Regulatory Agreement and the First Amendment to Loan Agreement (together, the "Supplemental Documents") are hereby approved and the City shall enter into the Supplemental Documents substantially in the forms of such document presented to the City Council at this meeting with such changes therein which are approved by the City Attorney; and the Mayor of the City is hereby authorized and directed to execute and deliver the Supplemental Documents, and the City Clerk is hereby authorized and directed to affix the City seal to and to attest the Supplemental Documents.

Section 3. The officers of the City shall take all action in conformity with the Act necessary for carrying out, giving effect to and consummating the transactions contemplated by this ordinance and the Supplemental Documents.

Section 4. Nothing contained in this ordinance or in the Bonds, the Indenture, the Regulatory Agreement, the Loan Agreement or the Supplemental Documents or any other instrument shall give rise to a pecuniary liability of the City or a charge upon the general credit or taxing powers of the City, nor shall the breach of any agreement contained in this ordinance, the Bonds, the Indenture, the Regulatory Agreement, the Loan Agreement or the Supplemental Documents impose any pecuniary liability on the City or a charge upon the general credit or taxing powers of the City, the City having no power to pay out of its general fund, or otherwise contribute any part of the costs of financing the Project, nor power to operate the Project as a business or in any manner, nor shall the City condemn any land or other property for the Project nor contribute any land or other property to the Project. Nothing contained in this ordinance or in the Bonds, the Indenture, the Regulatory Agreement, the Loan Agreement or the Supplemental Documents shall give rise to any personal or pecuniary liability of any officer, employee or agent of the City.

Section 5. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not effect any of the remaining provisions of this ordinance.

Section 6. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

Section 7. In order to help preserve the stock of rental housing units for low- and middle-income families or persons within the City, it is hereby declared that an emergency exists and that this ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the City Charter, exempt from referendum.

Section 8. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in the City Book of Ordinances kept for that purpose, and shall be authenticated by the signatures of the Mayor and City Clerk, and published in accordance with law.

INTRODUCED, READ AND ADOPTED AS AN EMERGENCY ORDINANCE ON AUGUST 12, 2002.