



## 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. Many items have been previously discussed at a Council Study Session.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) is reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
  - A. Red Ribbon Week Proclamation
7. Citizen Communication (5 minutes or less)

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 Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

### 8. Consent Agenda

- A. Financial Report for September 2012
- B. Quarterly Insurance Claims Report – July through September 2012
- C. Special Legal Services Contract for Personnel Board
- D. Fleet Maintenance Cumulative Purchases Over \$50,000
- E. Revised Employment Agreement with J. Brent McFall
- F. Revised Employment Agreement with Martin R. McCullough
- G. Second Reading of Councillor's Bill No. 41 re CLUP Amendment re 100<sup>th</sup> Avenue and Alkire Street Property
- H. Second Reading of Councillor's Bill No. 42 re Annexation of the 100<sup>th</sup> Avenue and Alkire Street Property
- I. Second Reading of Councillor's Bill No. 43 re Establish Zoning Designation re 100<sup>th</sup> Ave. and Alkire St. Property
- J. Second Reading of Councillor's Bill No. 44 re Amend the W.M.C. re Water and Wastewater Rate Adjustments
- K. Second Reading of Councillor's Bill No. 45 re 2013/2014 City Budget Appropriations

### 9. Appointments and Resignations

### 10. Public Hearings and Other New Business

- A. Revised Employment Agreement with John A. Stipech
- B. Councillor's Bill No. 46 re Amend the W.M.C. re Municipal Judge Salary
- C. Resolution No. 35 re Acquisition of Property Interests for Westminster Station

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

### 12. Miscellaneous Business and Executive Session

- A. City Council

### 13. Adjournment

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**GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.



**WESTMINSTER**  
**Strategic Plan**  
**2012-2017**  
**Goals and Objectives**

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**STRONG, BALANCED LOCAL ECONOMY**

- Maintain/expand healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Develop business-oriented mixed use development in accordance with Comprehensive Land Use Plan
- Retain and expand current businesses
- Develop multi-modal transportation system that provides access to shopping and employment centers
- Develop a reputation as a great place for small and/or local businesses
- Revitalize Westminster Center Urban Reinvestment Area



**FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES**

- Invest in well-maintained and sustainable city infrastructure and facilities
- Secure and develop long-term water supply
- Focus on core city services and service levels as a mature city with adequate resources
- Maintain sufficient reserves: general fund, utilities funds and self insurance
- Maintain a value driven organization through talent acquisition, retention, development and management
- Institutionalize the core services process in budgeting and decision making
- Maintain and enhance employee morale and confidence in City Council and management
- Invest in tools, training and technology to increase organization productivity and efficiency



**SAFE AND SECURE COMMUNITY**

- Citizens are safe anywhere in the City
- Public safety departments: well equipped and authorized staffing levels staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own safety and well being
- Manage disaster mitigation, preparedness, response and recovery
- Maintain safe buildings and homes
- Protect residents, homes, and buildings from flooding through an effective stormwater management program



**VIBRANT NEIGHBORHOODS IN ONE LIVABLE COMMUNITY**

- Develop transit oriented development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Have HOAs and residents taking responsibility for neighborhood private infrastructure
- Develop Westminster as a cultural arts community
- Have a range of quality homes for all stages of life (type, price) throughout the City
- Have strong community events and active civic engagement



**BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY**

- Have energy efficient, environmentally sensitive city operations
- Reduce energy consumption citywide
- Increase and maintain greenspace (parks, open space, etc.) consistent with defined goals
- Preserve vistas and view corridors
- A convenient recycling program for residents and businesses with a high level of participation



***Mission statement: We deliver exceptional value and quality of life through SPIRIT.***

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, OCTOBER 8, 2012, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE AND PRAYER

Mayor McNally led the Council, Staff and audience in the Pledge of Allegiance and in prayer for the family of Gary Smith, former Boards and Commissions member and City Councillor who had passed away of cancer in Washington, D.C. at the age of 53, as well as for the family of Jessica Ridgeway, a 10-year old girl who resided in the Countryside neighborhood and had been missing since the morning of October 5 when she left her home to walk to school. Prayers were included for emergency responders from Westminster and the entire Metro Denver region who were working diligently to find Jessica and return her safely to her parents and loved ones.

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Faith Winter, and Councillors Herb Atchison, Bob Briggs, Mark Kaiser, Mary Lindsey, and Scott Major were present at roll call. Stephen P. Smithers, Acting City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, were also present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of September 24, 2012, as presented. The motion carried unanimously.

CITY MANAGER'S REPORT

Mr. Smithers reported that City Manager J. Brent McFall was at the ICMA Annual Conference in Phoenix where he had been invited to moderate a panel during an educational session.

Mr. Smithers advised that at the conclusion of this meeting, the Westminster Economic Development Authority (WEDA) Board of Directors would meet, followed by a consolidated meeting of the Board of Directors for each of the City's General Improvement Districts. After adjournment of those meeting, the Council would hold a post-meeting to receive a presentation on Westminster COnnect. The public was welcome to attend. After adjournment of the post-meeting, the City Council would convene in executive session to discuss a personnel matter (the City Attorney's performance evaluation) pursuant to Section 1-11-3(C)(1), W.M.C., and Section 24-6-402 (4)(f), C.R.S.

Finally, Mr. Smithers thanked everyone who had been involved with the Jessica Ridgeway case. Law enforcement officers from other municipalities, as well as county, state and federal levels were assisting Westminster Police Department with the search effort. Jessica's safe and swift return home was upmost in the minds of emergency responders and residents.

CITY COUNCIL REPORTS

Mayor Pro Tem Winter invited residents to attend the Mayor and Council Breakfast being held at 7 a.m. on October 18 in the Covenant Village. They were urged to bring their questions and suggestions and engage in conversation with the Council members while enjoying a donut, some juice and coffee.

Councillor Major reported that the Business Appreciation event on Friday, October 5, had presented an opportunity to celebrate businesses of long tenure within the City (25 to 60 years) and to thank all business owners for locating and staying in Westminster.

Mayor McNally reported that she and Councillor Lindsey had attended the Access Housing poster award event on October 6 where youth from the community received awards for the posters they had designed and created. None of the young people had known in advance that they had won and their surprise was priceless. The judging produced three state award winners and one national award winner.

Councillor Briggs reported having been a judge of the entries in the Westminster High School Homecoming Parade on October 6.

#### FIRE PREVENTION MONTH PROCLAMATION

Councillor Briggs read a proclamation signed by Mayor McNally to declare October to be Fire Prevention Month in Westminster. He presented the proclamation to Sherri Leeka, Public Education Officer, and Bob Hose, Fire Marshal. Ms. Leeka announced the activities planned throughout the month and encouraged residents to change the batteries in their smoke alarms.

#### DAY OF THE GIRL PROCLAMATION

Mayor Pro Tem Winter read a proclamation to make October 8 the “Day of the Girl” in recognition of The Blossom Project, a program designed to empower and inspire high school girls to celebrate their potential and pursue their dreams. Accepting the proclamation were Marissa Shevins, Abby Wetmore, and Roweena Naidoo, adult leader.

#### INDUCTION OF THE 2012-2013 YOUTH ADVISORY PANEL

Mayor McNally read a proclamation to acknowledge the induction of the 2012-2013 Youth Advisory Panel. She and Mayor Pro Tem Winter presented the proclamation to Danny Yeager, Chairperson of the Panel, and asked each of the fourteen members to introduce themselves and state the high school they attended. Both the Mayor and Mayor Pro Tem voiced confidence in and gratitude for the members’ participation and recommendations to Council.

#### CITIZEN COMMUNICATIONS

Patrick Tennyson, President and CEO of the Butterfly Pavilion, updated the Council on upcoming activities to be held at the Pavilion.

Larry Dean Valente, 7250 Meade, voiced concern about the development of proposed low-income housing on Lowell Boulevard between 72<sup>nd</sup> and 73<sup>rd</sup> Avenues. The density proposed would be unprecedented for the area and was not the type of additional housing the neighborhood envisioned. He urged open communication about what was being proposed.

#### CONSENT AGENDA

The following items were submitted for Council’s consideration on the consent agenda: authorize the City Manager to enter into a Master Lease Agreement, in substantially the same form as distributed in the agenda packet, with JP Morgan Chase Bank, N.A. to refinance eight capital leases; authorize the City Manager to accept a \$169,704 grant award from the State of Colorado Historical Fund for the Shoenberg Farm Milk House stabilization and preservation project; final passage on second reading of Councillors Bill No. 38 regarding an appropriation of Colorado Department of Transportation grant money for the 112<sup>th</sup> Avenue traffic signal installation at Front Range Community College; final passage on second reading of Councillor’s Bill No. 39 appropriating \$1,400,000 received from the United States Department of Housing and Urban Development, HUD Section 108 Loan Fund Program; and final passage on second reading of Councillor’s Bill No. 40 to accomplish the supplemental appropriation of the \$87,500 advance of the Adams County share of the Federal Boulevard Trail Project’s construction cost.

No items were removed from the consent agenda for individual consideration and it was moved by Councillor Major and seconded by Councillor Kaiser to approve the consent agenda, as presented. The motion carried.

PUBLIC HEARING ON 100<sup>TH</sup> /ALKIRE PROPERTY CLUP AMENDMENT, ANNEXATION AND ZONING

At 7:36 p.m. the Mayor opened a public hearing to consider the Comprehensive Land Use Plan (CLUP) amendment, annexation and zoning of City-owned property north of 100<sup>th</sup> Avenue and Alkire Street. The property contained 28.778 acres and had been purchased from Sisters of the New Covenant for open space purposes. Mac Cummins, Planning Manager, entered the agenda memorandum and attachment into the record and provided proof that public notice had been given in accordance with Westminster Municipal Code provisions. After making findings of fact, it was recommended that City Council designate the property as City-owned Open Space, annex the parcel, and zone it Open Area (O-1). The Sisters of the New Covenant retained a portion of their overall property holdings in this area for their use. Access to the Open Space would be over an easement through the Sisters' parcel.

Mayor McNally opened the hearing to public comment. No one wished to speak.

Mr. Cummins reported that the Planning Commission had considered this proposal on September 25 and advanced it to City Council with a recommendation for approval.

There were no additional questions or comments. Mayor McNally closed the hearing at 7:42 p.m.

RESOLUTION NO. 29 MAKING FINDINGS OF FACT TO ANNEX 100<sup>TH</sup> AND ALKIRE PROPERTY

It was moved by Councillor Major and seconded by Councillor Atchison to adopt Resolution No. 29 making certain findings of fact as required under Section 31-12-110, C.R.S., regarding the proposed 100<sup>th</sup> Avenue and Alkire Street property annexation. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 41 AMENDING CLUP TO DESIGNATE 100<sup>TH</sup>/ALKIRE AS OPEN SPACE

It was moved by Councillor Major and seconded by Councillor Atchison to pass on first reading Councillor's Bill No. 41 amending the Comprehensive Land Use Plan for the 100<sup>th</sup> Avenue and Alkire Street property by designating the property as City-Owned Open Space based on finding that the proposed amendment would be in the public good; that there was justification for the proposed change and the Plan was in need of revision as proposed; that the amendment was in conformance with the overall purpose and intent and the goals and policies of the Plan; that the proposed amendment was compatible with existing and planned surrounding land uses; and that the proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems. The motion carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 42 ANNEXING THE 100<sup>TH</sup> AVENUE AND ALKIRE STREET PROPERTY

Councillor Major moved to pass on first reading Councillor's Bill No. 42 annexing the 100<sup>th</sup> Avenue and Alkire Street property into the City. Councillor Atchison seconded the motion, and it passed unanimously at roll call.

COUNCILLOR'S BILL NO. 43 ZONING THE 100<sup>TH</sup> AVENUE AND ALKIRE STREET PROPERTY

Upon a motion by Councillor Major, seconded by Councillor Atchison, the Council voted unanimously on roll call vote to pass on first reading Councillor's Bill No. 43 establishing a zoning designation of Open Area (O-1) for the 100<sup>th</sup> Avenue and Alkire Street property.

RESOLUTION NO. 30 ALLOCATING 2013 SERVICE COMMITMENTS

It was moved by Councillor Briggs and seconded by Councillor Kaiser to adopt Resolution No. 30 allocating 2,923 Service Commitments for the year 2013 to the various categories of the Growth Management Program including 1,100 Service Commitments for residential competitions for new Single-Family Detached, Single-Family Attached, Multi-Family, Senior Housing, and Traditional Mixed Use Neighborhood Developments. On roll call vote, the motion passed unanimously.

RESOLUTION NO. 31 ADDING AN INCENTIVE TO RESIDENTIAL DESIGN GUIDELINES

Mayor Pro Tem Winter moved, seconded by Councillor Kaiser, to adopt Resolution No. 31 amending the language of all residential design guidelines to incorporate an incentive for using WaterSense fixtures in all new construction. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 44 AMENDING WATER AND WASTEWATER RATES IN W.M.C.

It was moved by Councillor Briggs and seconded by Councillor Major, to pass on first reading Councillor's Bill No. 44 implementing water and sewer rate adjustments for 2013 and 2014 by amending sections 8-7-7 and 8-8-5 of the Westminster Municipal Code. The motion carried with all Council members voting affirmatively at roll call.

RESOLUTION NO. 32 ANNUALLY INCREASING STORMWATER BASE RATE 2014 - 2016

It was moved by Councillor Atchison, seconded by Councillor Briggs, to adopt Resolution No. 32 increasing the City base rate for the assessment of fees for stormwater management services provided by the City of Westminster to the public from three dollars (\$3.00) per 3,100 square feet of impervious area to four dollars (\$4.00) per 3,100 square feet of impervious area effective January 1, 2014; from four dollars (\$4.00) per 3,100 square feet of impervious area to five dollars (\$5.00) per 3,100 square feet of impervious area effective January 1, 2015; and from five dollars (\$5.00) per 3,100 square feet of impervious area to six dollars (\$6.00) per 3,100 square feet of impervious area effective January 1, 2016. At roll call, the motion passed unanimously.

RESOLUTION NO. 33 ADOPTING THE 2013/2014 MILL LEVY AND THE 2013/2014 CITY BUDGET

Upon a motion by Councillor Briggs, seconded by Councillor Atchison, the Council voted unanimously on roll call vote to adopt Resolution No. 33 setting the City mill levy at 3.65 mills for both fiscal years 2013 and 2014 and formally adopting the total 2013/2014 City Budget, including staffing levels and the Five-Year Capital Improvement Program

COUNCILLOR'S BILL NO. 45 APPROPRIATING FUNDS FOR THE 2013/2014 BUDGET

Mayor Pro Tem Winter moved to pass on first reading Councillor's Bill No. 45 appropriating funds for the 2013/2014 Budget. The motion, seconded by Councillor Kaiser, passed unanimously on roll call vote.

RESOLUTION NO. 34 ADOPTING THE 2013 AND 2014 CITY PAY PLAN

It was moved by Councillor Major and seconded by Mayor Pro Tem Winter to adopt Resolution No. 34 adopting the 2013 and 2014 City Pay Plan. On roll call vote, the motion passed unanimously.

2013 EMPLOYEE INSURANCE CONTRACTS AND MEDICAL/DENTAL PLANS AND RATES

Councillor Atchison moved, seconded by Councillor Lindsey, to renew contracts with Cigna and Kaiser Permanente for healthcare and Delta Dental for dental coverage for City employees; and authorize the continuation of a four-tier rate structure with the employer and employee premium rates as presented. The motion carried with all Council members voting affirmatively.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Atchison and seconded by Councillor Major to adjourn. The motion passed and the Mayor adjourned the meeting at 7:50 p.m.

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Mayor

ATTEST:

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City Clerk





## Agenda Item 6 A

### Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Proclamation re Red Ribbon Week

**Prepared By:** Linda Yeager, City Clerk

### Recommended City Council Action

Councilor Major to present the proclamation for Red Ribbon Week to the Westminster Community Awareness and Action Team.

### Summary Statement

- Red Ribbon Week is observed from October 23 through 31, in actuality the last nine days of October annually. The theme of this year's national campaign is, "The Best Me is Drug Free."
- As in the past, the City is joining the Westminster Area Community Awareness Action Team, local schools, churches, and area businesses to take a public stand against drugs and to show a personal commitment to a drug-free lifestyle through the symbol of the Red Ribbon.
- Members of the Westminster Area Community Awareness Action Team Board of Directors will be present to accept the proclamation.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Proclamation re Red Ribbon Week

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**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

Red Ribbon Week emerged from the creation of Camarena Clubs, which were established in 1985 to honor the memory of Drug Enforcement Agent Enrique “Kiki” Camarena, who was killed in the line of duty. By wearing red ribbons during the last week in October, Americans demonstrate their ardent support of a healthy, drug-free lifestyle and pay homage to all men and women who have made the ultimate sacrifice in support of our nation’s struggle against drug trafficking and abuse.

Through its participation, the City of Westminster joins thousands of other municipalities in Colorado and the United States to present a unified and visible commitment to create a drug-free America. This proclamation supports City Council’s strategic goal of a Safe and Secure Community through drug prevention education activities that constitute a public statement to the community’s adult and youth populations about the positive societal impacts of a drug-free lifestyle.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Proclamation

**WHEREAS**, Alcohol, tobacco and other drug use by our youth is a threat to the future of our nation; and

**WHEREAS**, It is imperative that a unified and visible commitment of prevention efforts by community members be continued to reduce the demand for illegal drugs and illegal use of legal drugs; and

**WHEREAS**, The National Family Partnership and the Westminster Area Community Awareness Action Team (C.A.A.T.) are sponsoring the national, statewide and local Red Ribbon Campaign, offering citizens the opportunity to demonstrate their commitment toward helping children stay drug free as they grow up; and

**WHEREAS**, This year's national theme, "The Best Me is Drug Free," will headline celebrations in communities across the nation during Red Ribbon Week, October 23 through October 31, 2012; and

**WHEREAS**, Westminster area school students and faculty, businesses, government, law enforcement, religious institutions, service organizations, youth, health providers, senior citizens, sports teams, and individuals will demonstrate their commitment to drug-free lifestyles by wearing and displaying red ribbons during this week-long campaign; and

**WHEREAS**, The City of Westminster is committed to assisting with the success of the Red Ribbon Campaign.

**NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim October 23 through October 31, 2012 as**

## **RED RIBBON WEEK**

in the City of Westminster, and encourage our citizens to participate in drug prevention education activities, making a visible statement that we are strongly committed to a drug-free community.

Signed this 22nd day of October, 2012.

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Nancy McNally, Mayor



Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Financial Report for September 2012  
**Prepared By:** Tammy Hitchens, Finance Director

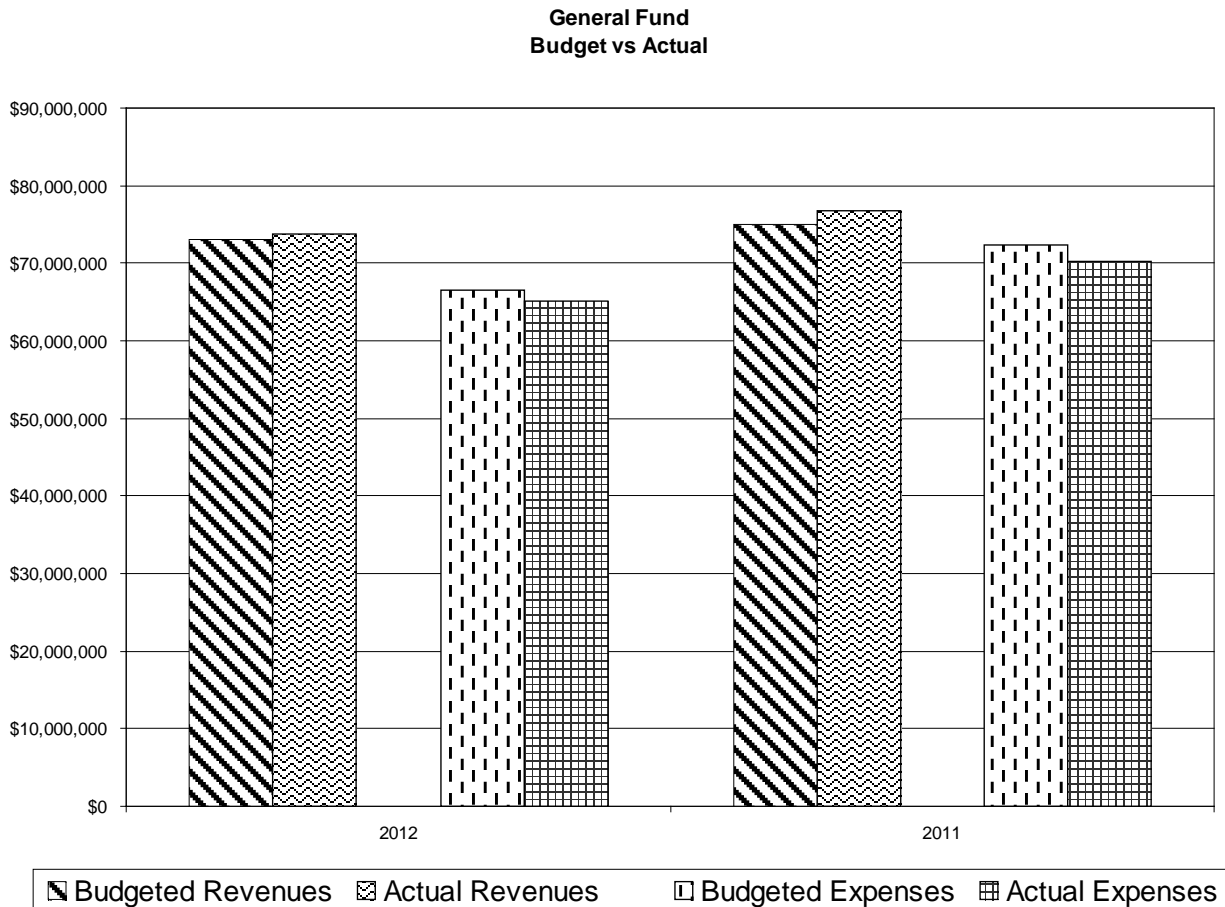
**Recommended City Council Action**

Accept the Financial Report for September as presented.

**Summary Statement**

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, "budget" refers to the pro-rated budget. The budget numbers that are presented reflect the City's amended adopted budget. Both revenues and expense are pro-rated based on 10-year historical averages.

The General Fund revenues and carryover exceed expenditures by \$8,797,831. The following graph represents Budget vs. Actual for 2011-2012.

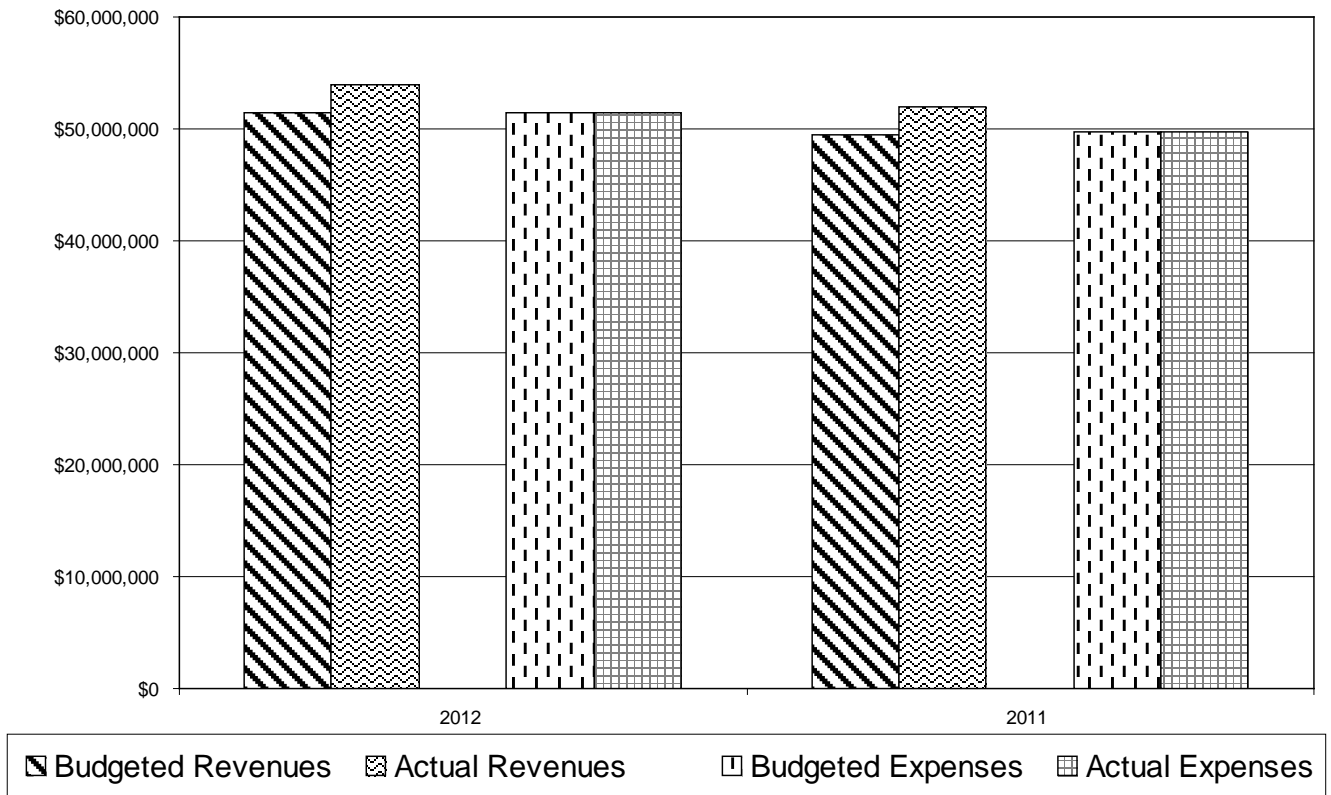


When compared to 2011, 2012 reflects roughly \$2.0 million less in carryover, \$1.0 million less in inter-fund transfers revenue, and \$6.2 million less in inter-fund transfers expenditures.

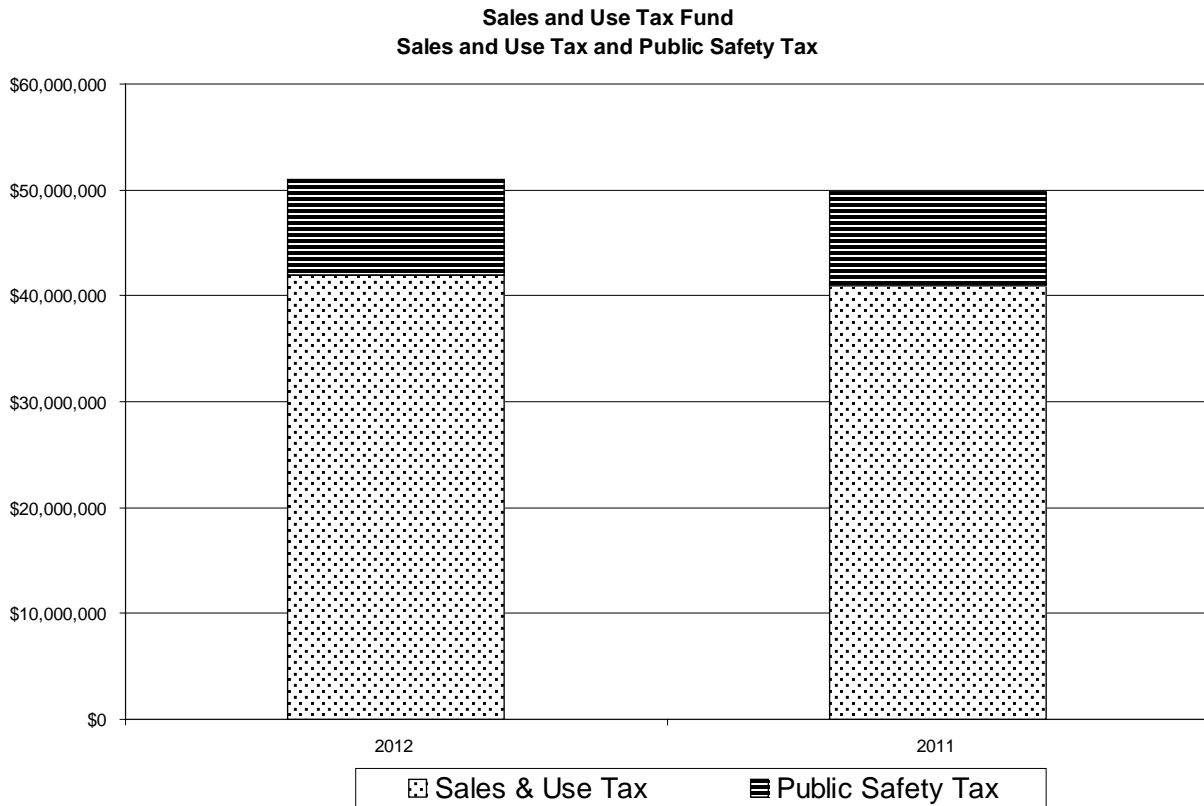
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$2,491,316. On a year-to-date cash basis, total sales and use tax is up 2.3% from 2011. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 1.0% from the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 61.9% of all collections, are down 2.8% for the month.
- Urban renewal areas make up 41.0% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 83.0% of this money is being retained for General Fund use.
- Auto Use tax is up 16.0% on a year-to-date basis.

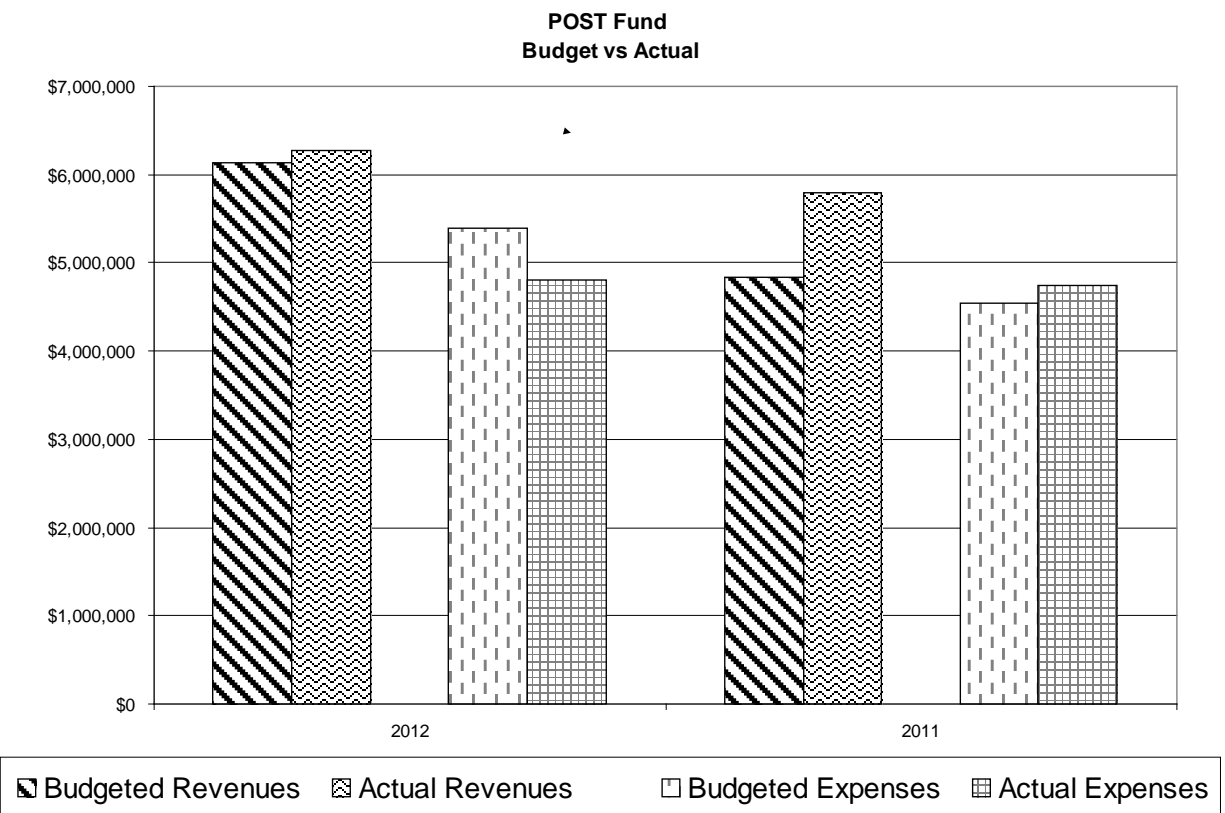
**Sales & Use Tax Fund  
Budget vs Actual**



The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.

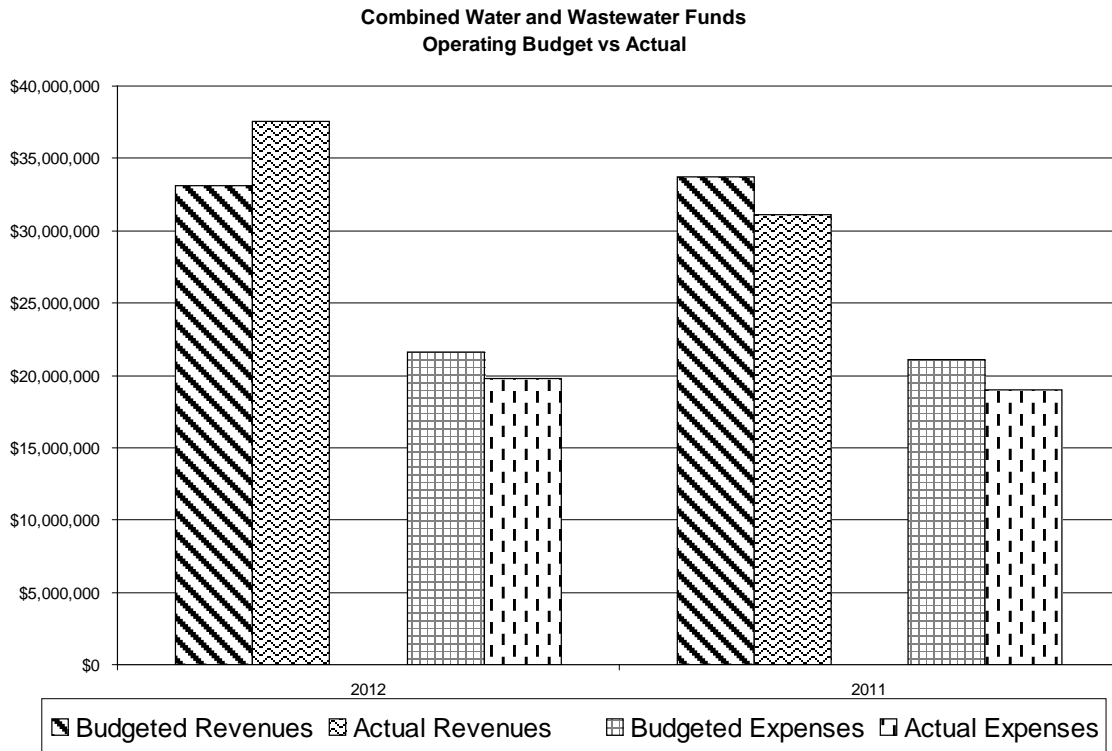


The Parks Open Space and Trails Fund revenues and carryover exceed expenditures by \$1,464,179.



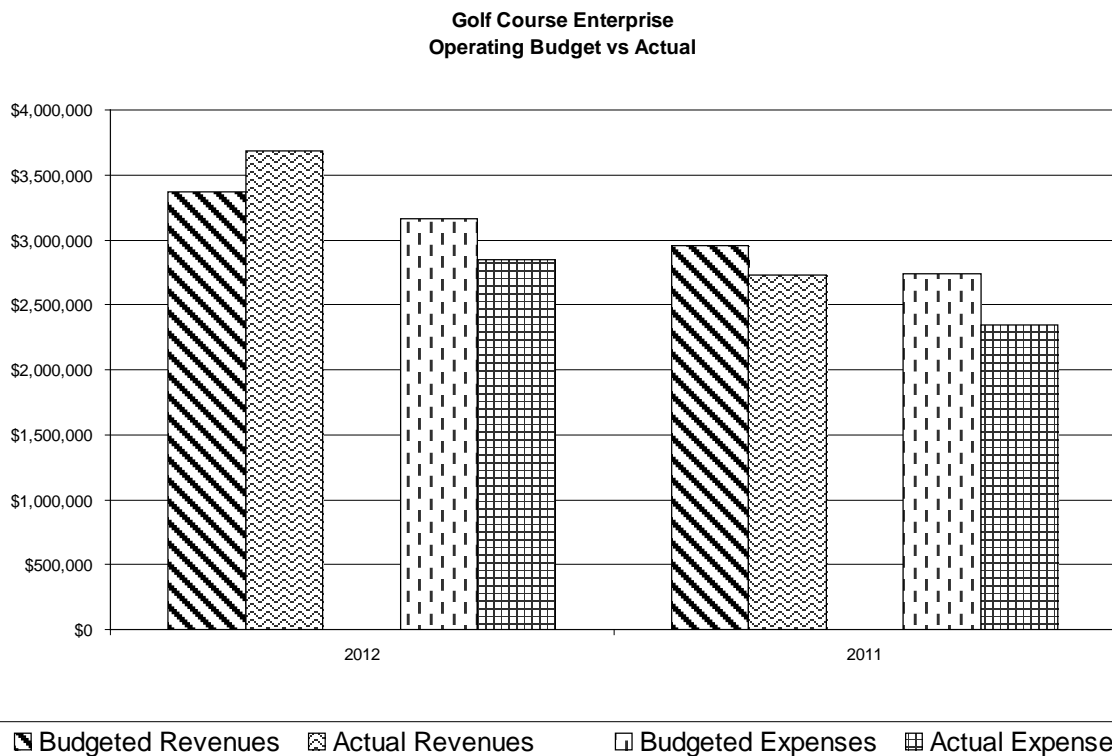
2012 revenues include \$1.4 million of carryover funds. 2011 revenues reflect the receipt of a significant grant that was appropriated in the prior year.

The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$20,825,383. Operating revenues exceed operating expenses by \$17,757,304. \$12,435,927 is budgeted for capital projects and reserves.



The 2012 budget to actual revenue variance is due to the effect of climatic variations on water consumption and changes to billing rates.

The combined Golf Course Fund revenues and carryover exceed expenditures by \$833,840.



On a combined basis, golf course revenues are up by \$315,799 over prorated budget. This is attributable to increased play and primarily corporate memberships.

**Policy Issue**

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

**Alternative**

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

**Background Information**

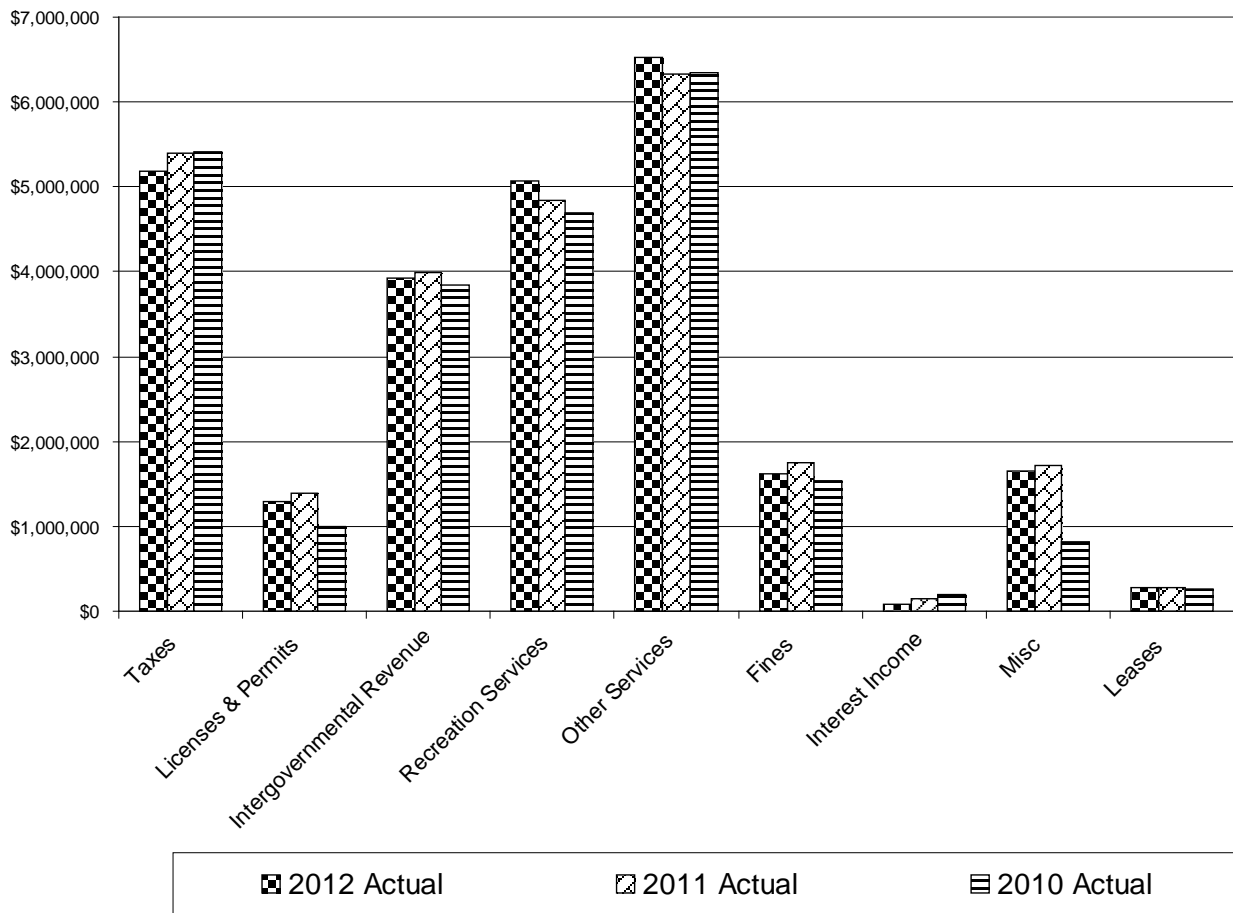
This section includes a discussion of highlights of each fund presented.

**General Fund**

This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Streets Division), Parks Recreation and Libraries, Community Development, and the internal service functions: City Manager, City Attorney, Finance, and General Services.

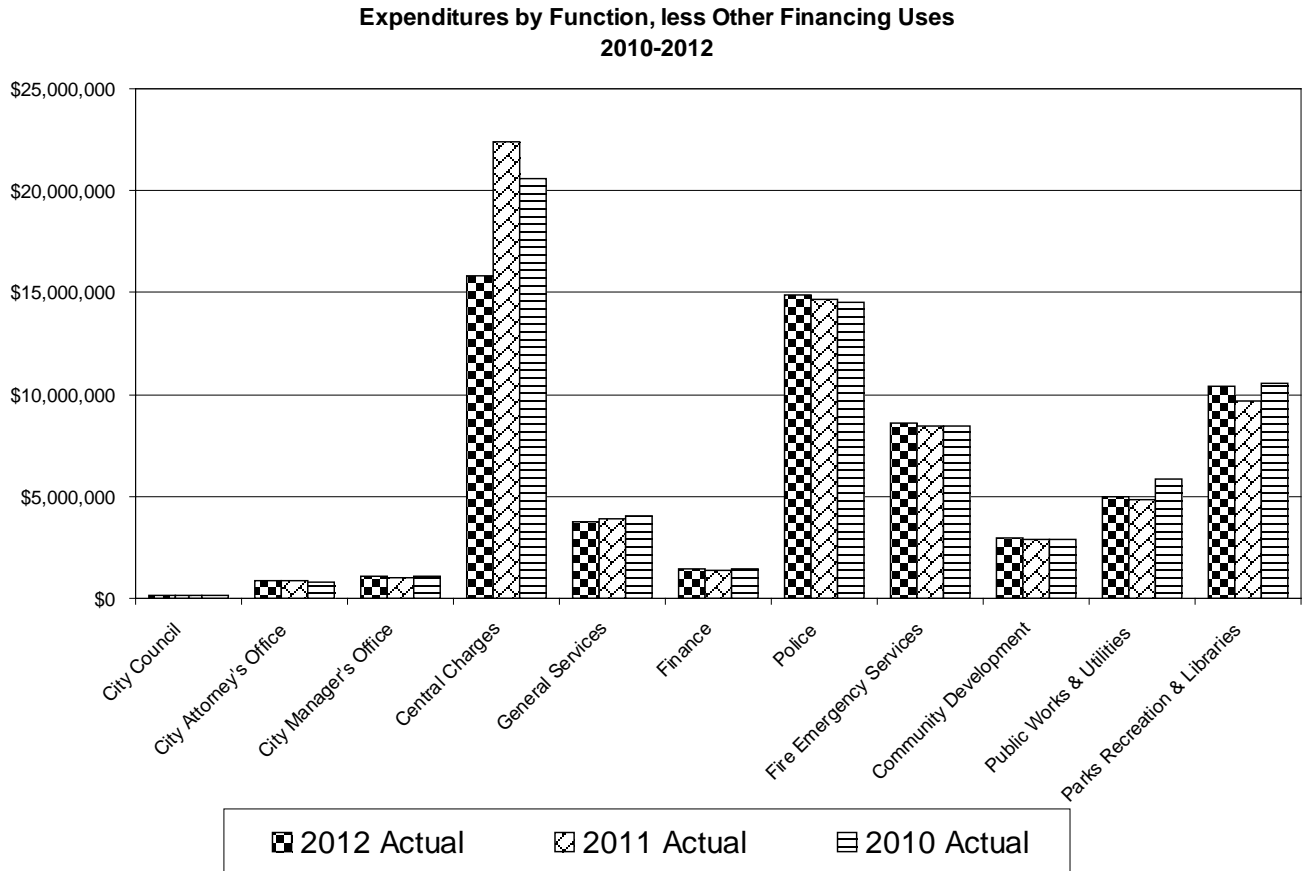
The following chart represents the trend in actual revenues from 2010-2012 year-to-date.

**General Fund Revenues without Transfers, Carryover, and Other Financing Sources  
2010-2012**





The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2010-2012.



The large increase in Central Charges in 2011 was due to a transfer to WEDA of \$4 million for WURP as well as a larger transfer budgeted for the General Capital Improvement Fund in 2011 when compared to 2012.

2010 Central Charges expenditures reflect \$4.4 million more in transfers than in 2012, primarily to WEDA and the General Capital Improvement Fund, and an adjustment to eliminate the skewing effect of the 2001 COP debt refinancing.

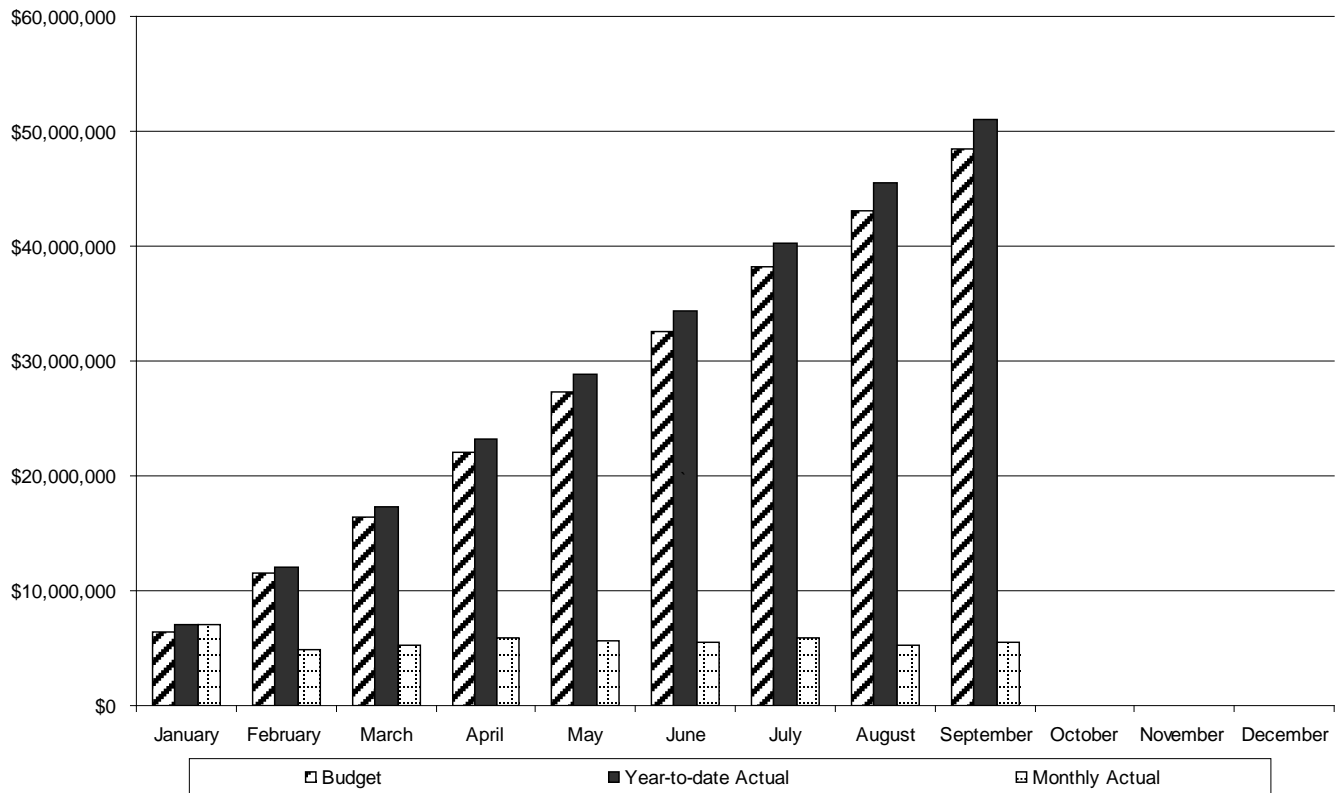
**Sales and Use Tax Funds (Sales & Use Tax Fund and Parks, Open Space and Trails Sales & Use Tax Fund)**

These funds are the repositories for the 3.85% City Sales & Use Tax. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, and the Debt Service Fund. The Parks, Open Space, and Trails Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

This chart indicates how the City's Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.

**Sales & Use Tax - excluding Interest,  
Transfers and Carryover  
2012**

Budget = \$64,660,872

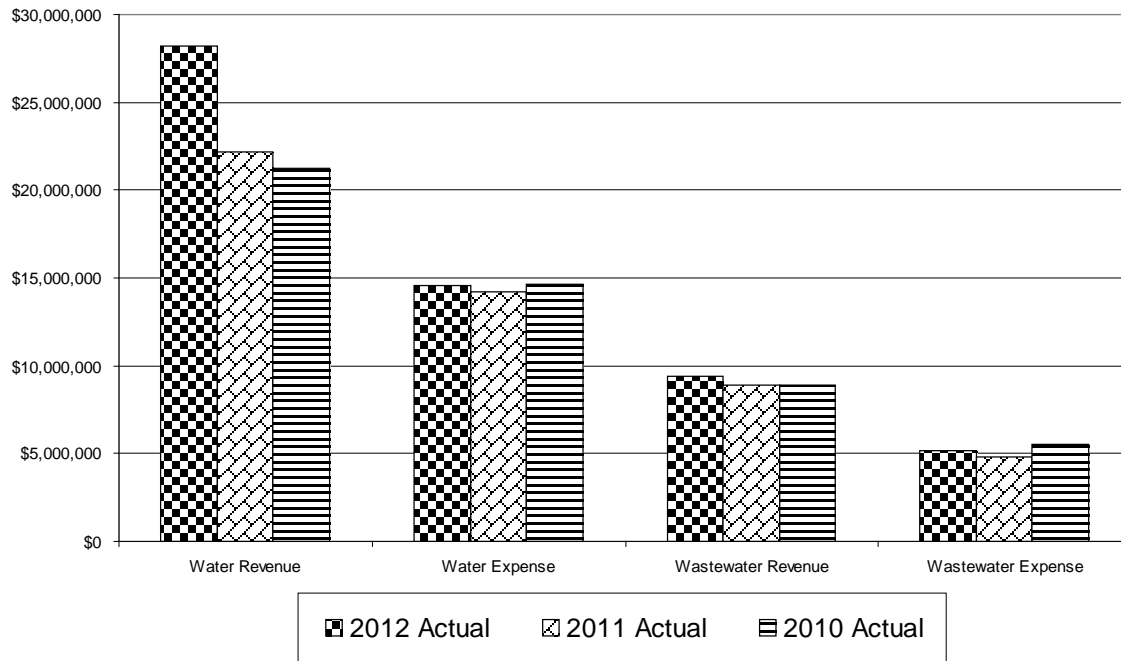


**Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)**

This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects and reserves.

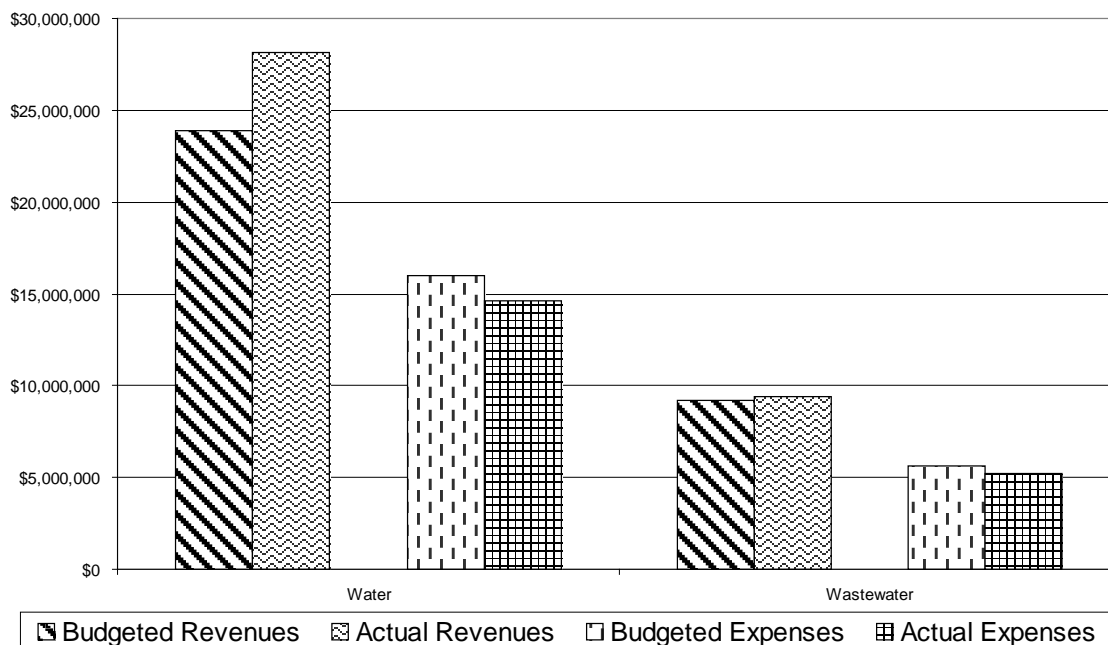
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds  
Operating Revenue and Expenses 2010-2012**



The water revenue variance is due to the effect of climatic variations on water consumption and 2012 changes to billing rates.

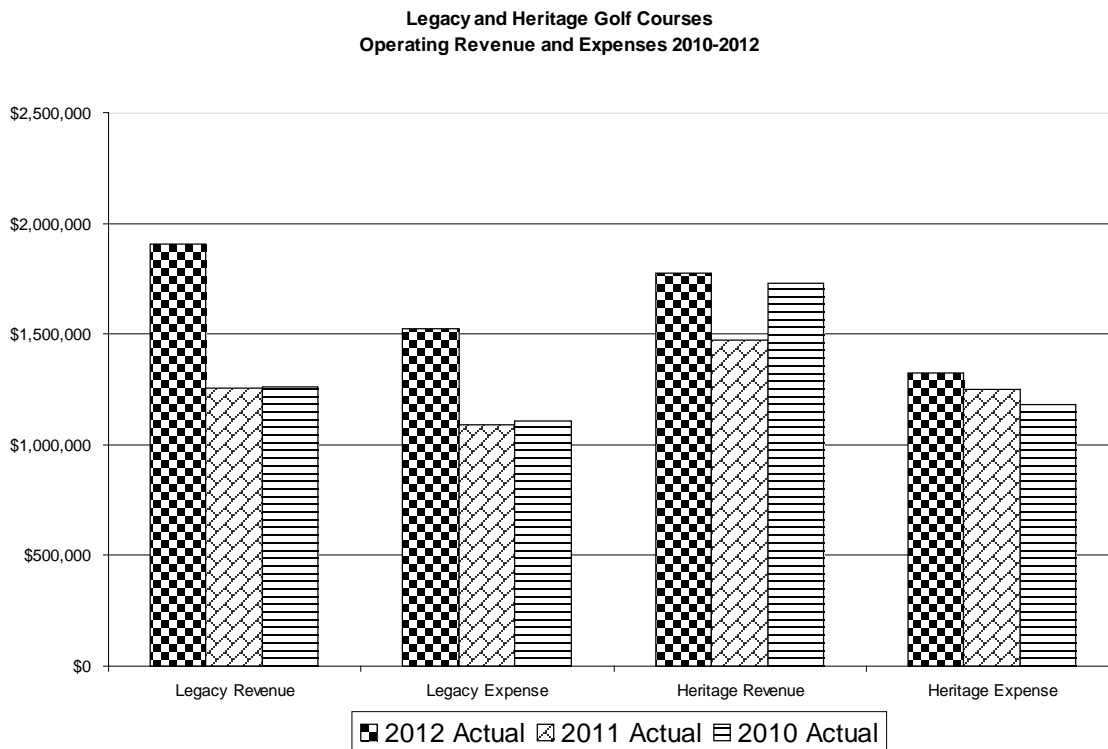
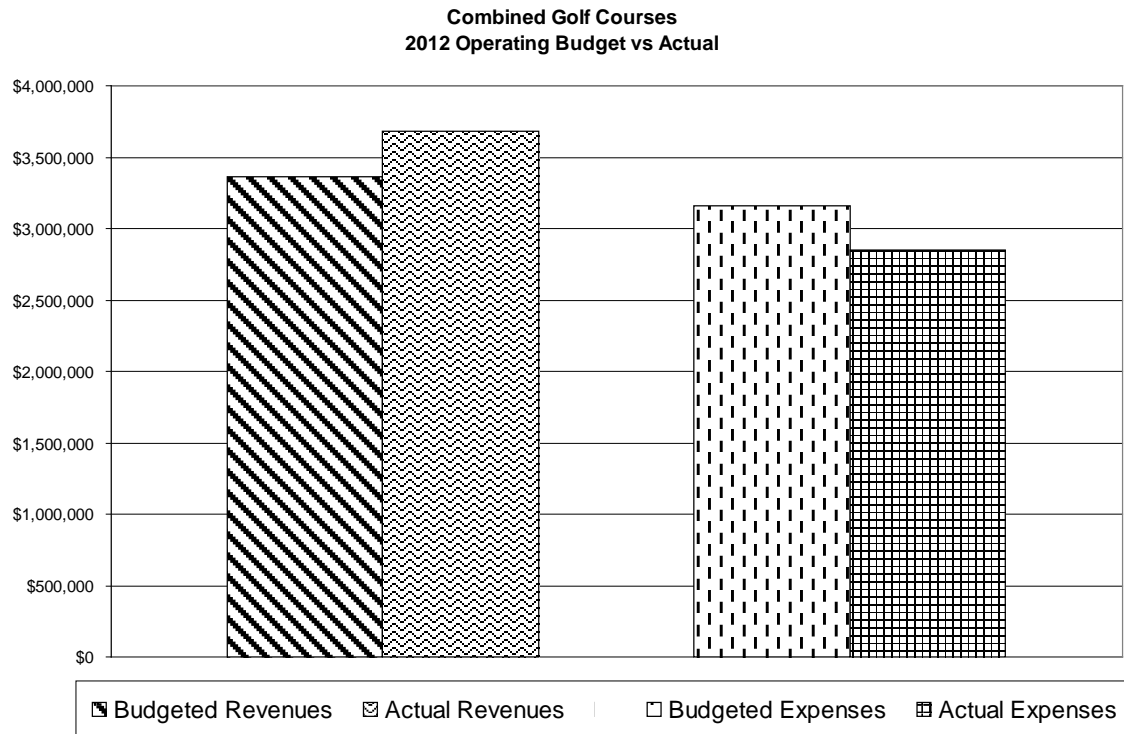
**Water and Wastewater Funds  
2012 Operating Budget vs Actual**



The 2012 budget to actual Water Fund revenue variance is due to the effect of climatic variations on water consumption and changes to billing rates.

**Golf Course Enterprise (Legacy and Heritage Golf Courses)**

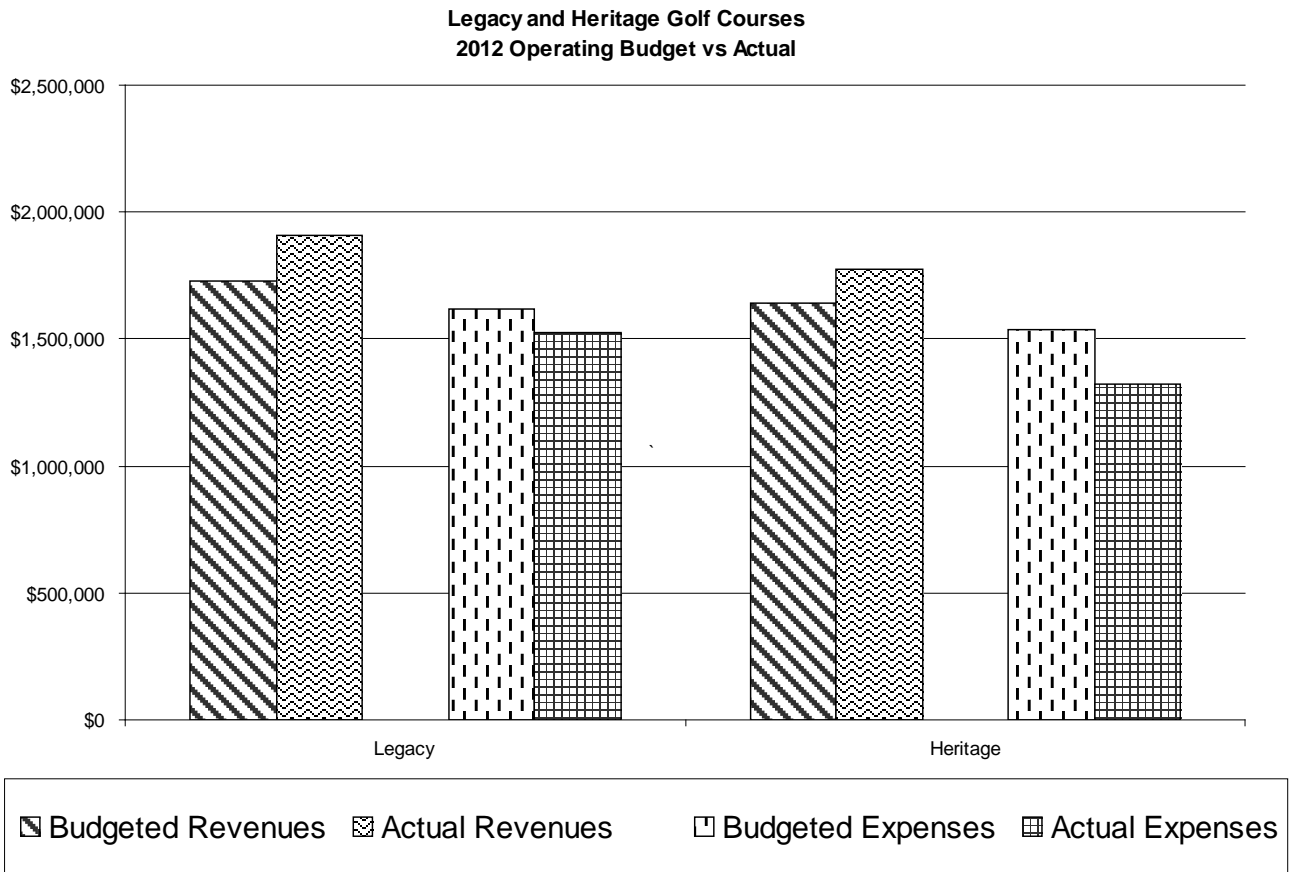
This enterprise reflects the operations of the City's two municipal golf courses.



Carryover of \$380,000 and charges for services, including driving range and green fees at both courses, account for increased revenues, as does transfers in from other funds. Transfers decreased in 2011 as a result of savings from refunding of the bonds.

A transfer of \$380,000 to the General Capital Improvement Fund for the Heritage Golf Course back nine land acquisition is reflected in 2012 Legacy Ridge expenses.

The following graphs represent the information for each of the golf courses.



This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Financial Statements
- Shopping Center Report

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

<b>Description General Fund</b>	<b>Budget</b>	<b>Pro-rated for Seasonal Flows</b>	<b>Notes</b>	<b>Actual</b>	<b>(Under) Over Budget</b>	<b>% Budget</b>
<b>Revenues</b>						
Taxes	5,575,590	5,296,577		5,189,080	(107,497)	98.0%
Licenses & Permits	1,415,000	1,035,721		1,295,507	259,786	125.1%
Intergovernmental Revenue	5,067,067	3,565,126		3,924,788	359,662	110.1%
Charges for Services						
Recreation Services	6,418,338	4,730,961		5,066,231	335,270	107.1%
Other Services	9,530,695	6,650,580		6,531,324	(119,256)	98.2%
Fines	2,110,000	1,598,875		1,616,136	17,261	101.1%
Interest Income	180,000	116,422		89,557	(26,865)	76.9%
Miscellaneous	1,737,844	1,534,112		1,656,174	122,062	108.0%
Leases	386,208	279,633		279,633	0	100.0%
Interfund Transfers	61,684,647	46,263,485		46,263,485	0	100.0%
Sub-total Revenues	<u>94,105,389</u>	<u>71,071,492</u>		<u>71,911,915</u>	<u>840,423</u>	<u>101.2%</u>
Carryover	1,926,631	1,926,631		1,926,631	0	100.0%
Total Revenues	<u>96,032,020</u>	<u>72,998,123</u>		<u>73,838,546</u>	<u>840,423</u>	<u>101.2%</u>
<b>Expenditures</b>						
City Council	240,119	183,327		148,460	(34,867)	81.0%
City Attorney's Office	1,197,764	870,979		842,662	(28,317)	96.7%
City Manager's Office	1,520,610	1,102,795		1,082,558	(20,237)	98.2%
Central Charges	26,900,601	16,079,046		15,817,093	(261,953)	98.4%
General Services	5,828,493	4,161,027		3,779,993	(381,034)	90.8%
Finance	1,994,706	1,461,060		1,448,462	(12,598)	99.1%
Police	20,403,971	14,950,788		14,892,690	(58,098)	99.6%
Fire Emergency Services	11,792,644	8,541,664		8,608,494	66,830	100.8%
Community Development	4,125,271	2,973,283		2,975,091	1,808	100.1%
Public Works & Utilities	7,767,031	5,823,266		5,015,856	(807,410)	86.1%
Parks, Recreation & Libraries	14,260,810	10,442,077		10,429,356	(12,721)	99.9%
Total Expenditures	<u>96,032,020</u>	<u>66,589,312</u>		<u>65,040,715</u>	<u>(1,548,597)</u>	<u>97.7%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>6,408,811</u>		<u>8,797,831</u>	<u>2,389,020</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Sales and Use Tax Fund</b>						
<b>Revenues</b>						
Sales Tax						
Sales Tax Returns	44,669,579	33,725,907		34,995,246	1,269,339	103.8%
Sales Tx Audit Revenues	719,000	539,250		368,723	(170,527)	68.4%
S-T Rev. STX	<u>45,388,579</u>	<u>34,265,157</u>		<u>35,363,969</u>	<u>1,098,812</u>	103.2%
Use Tax						
Use Tax Returns	7,193,750	5,171,891		6,093,034	921,143	117.8%
Use Tax Audit Revenues	785,000	588,750		470,013	(118,737)	79.8%
S-T Rev. UTX	<u>7,978,750</u>	<u>5,760,641</u>		<u>6,563,047</u>	<u>802,406</u>	113.9%
Total STX and UTX	<u><u>53,367,329</u></u>	<u><u>40,025,798</u></u>		<u><u>41,927,016</u></u>	<u><u>1,901,218</u></u>	104.7%
Public Safety Tax						
PST Tax Returns	10,985,043	8,171,961		8,908,228	736,267	109.0%
PST Audit Revenues	308,500	231,375		167,683	(63,692)	72.5%
Total Rev. PST	<u>11,293,543</u>	<u>8,403,336</u>		<u>9,075,911</u>	<u>672,575</u>	108.0%
Interest Income	95,000	71,250		55,293	(15,957)	77.6%
Interfund Transfers	257,000	192,750		192,750	0	100.0%
Carryover	2,693,412	2,693,412		2,693,412	0	100.0%
Total Revenues and Carryover	<u><u>67,706,284</u></u>	<u><u>51,386,546</u></u>		<u><u>53,944,382</u></u>	<u><u>2,557,836</u></u>	105.0%
<b>Expenditures</b>						
Central Charges	<u>67,706,284</u>	<u>51,453,066</u>		<u>51,453,066</u>	<u>0</u>	100.0%
Revenues Over(Under) Expenditures	<u><u>0</u></u>	<u><u>(66,520)</u></u>		<u><u>2,491,316</u></u>	<u><u>2,557,836</u></u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

<b>Description</b>	<b>Budget</b>	<b>Pro-rated for Seasonal Flows</b>	<b>Notes</b>	<b>Actual</b>	<b>(Under) Over Budget</b>	<b>% Budget</b>
<b>POST Fund</b>						
<b>Revenues</b>						
Sales & Use Tax	4,814,510	3,632,064		3,780,660	148,596	104.1%
Intergovernmental Revenue	1,138,493	929,108		930,793	1,685	100.2%
Interest Income	3,400	2,550		17,120	14,570	671.4%
Miscellaneous	199,260	149,446		123,660	(25,786)	82.7%
Interfund Transfers	19,000	14,250		14,250	0	100.0%
Sub-total Revenues	<u>6,174,663</u>	<u>4,727,418</u>		<u>4,866,483</u>	<u>139,065</u>	<u>102.9%</u>
Carryover	1,400,000	1,400,000		1,400,000	0	100.0%
Total Revenues	<u>7,574,663</u>	<u>6,127,418</u>		<u>6,266,483</u>	<u>139,065</u>	<u>102.3%</u>
<b>Expenditures</b>						
Central Charges	7,296,823	5,217,365		4,663,980	(553,385)	89.4%
Park Services	277,840	173,163		138,324	(34,839)	79.9%
	<u>7,574,663</u>	<u>5,390,528</u>		<u>4,802,304</u>	<u>(588,224)</u>	<u>89.1%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>736,890</u>		<u>1,464,179</u>	<u>727,289</u>	



**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water and Wastewater Funds - Combined</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	56,250		76,800	20,550	136.5%
Intergovernmental Revenue	0	0		258,630	258,630	
Rates and Charges	43,153,638	32,687,528		36,957,906	4,270,378	113.1%
Miscellaneous	474,896	356,172		255,703	(100,469)	71.8%
Total Operating Revenues	<u>43,703,534</u>	<u>33,099,950</u>		<u>37,549,039</u>	<u>4,449,089</u>	113.4%
<b>Operating Expenses</b>						
Central Charges	5,893,555	4,420,167		4,398,261	(21,906)	99.5%
Finance	669,344	487,282		463,498	(23,784)	95.1%
Public Works & Utilities	20,919,246	14,599,566		13,017,616	(1,581,950)	89.2%
Parks, Recreation & Libraries	132,272	100,659		85,643	(15,016)	85.1%
Information Technology	2,784,438	2,010,364		1,826,717	(183,647)	90.9%
Total Operating Expenses	<u>30,398,855</u>	<u>21,618,038</u>		<u>19,791,735</u>	<u>(1,826,303)</u>	91.6%
Operating Income (Loss)	<u>13,304,679</u>	<u>11,481,912</u>		<u>17,757,304</u>	<u>6,275,392</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	3,700,000	2,848,700		4,666,200	1,817,500	163.8%
Interest Income	553,600	415,200		244,564	(170,636)	58.9%
Interfund Transfers	3,967,501	2,975,626		2,975,626	0	100.0%
Sale of Assets	0	0		121,388	121,388	
Carryover	4,591,155	4,591,155		4,591,155	0	100.0%
Debt Service	(7,219,424)	(3,069,270)		(3,069,270)	0	100.0%
Reserve Transfer	(6,461,584)	(6,461,584)		(6,461,584)	0	100.0%
Total Other Revenue (Expenses)	<u>(868,752)</u>	<u>1,299,827</u>		<u>3,068,079</u>	<u>1,768,252</u>	
Increase (Decrease) in Net Assets	<u>12,435,927</u>	<u>12,781,739</u>		<u>20,825,383</u>	<u>8,043,644</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water Fund</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	56,250		76,800	20,550	136.5%
Intergovernmental Revenue	0	0		258,630	258,630	
Rates and Charges	30,892,138	23,491,403		27,586,240	4,094,837	117.4%
Miscellaneous	464,896	348,672		248,619	(100,053)	71.3%
Total Operating Revenues	<u>31,432,034</u>	<u>23,896,325</u>		<u>28,170,289</u>	<u>4,273,964</u>	117.9%
<b>Operating Expenses</b>						
Central Charges	4,170,645	3,127,984		3,106,165	(21,819)	99.3%
Finance	669,344	487,282		463,498	(23,784)	95.1%
Public Works & Utilities	14,740,795	10,294,620		9,107,309	(1,187,311)	88.5%
PR&L Standley Lake	132,272	100,659		85,643	(15,016)	85.1%
Information Technology	2,784,438	2,010,364		1,826,717	(183,647)	90.9%
Total Operating Expenses	<u>22,497,494</u>	<u>16,020,909</u>		<u>14,589,332</u>	<u>(1,431,577)</u>	91.1%
Operating Income (Loss)	<u>8,934,540</u>	<u>7,875,416</u>		<u>13,580,957</u>	<u>5,705,541</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	3,000,000	2,314,400		3,452,220	1,137,820	149.2%
Interest Income	365,600	274,200		171,064	(103,136)	62.4%
Interfund Transfers	2,984,511	2,238,383		2,238,383	0	100.0%
Sale of Assets	0	0		121,388	121,388	
Carryover	3,746,765	3,746,765		3,746,765	0	100.0%
Debt Service	(5,715,075)	(2,483,506)		(2,483,506)	0	100.0%
Reserve Transfer	(5,692,414)	(5,692,414)		(5,692,414)	0	100.0%
Total Other Revenues (Expenses)	<u>(1,310,613)</u>	<u>397,828</u>		<u>1,553,900</u>	<u>1,156,072</u>	
Increase (Decrease) in Net Assets	<u>7,623,927</u>	<u>8,273,244</u>		<u>15,134,857</u>	<u>6,861,613</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Wastewater Fund</b>						
<b>Operating Revenues</b>						
Rates and Charges	12,261,500	9,196,125		9,371,666	175,541	101.9%
Miscellaneous	10,000	7,500		7,084	(416)	94.5%
Total Operating Revenues	<u>12,271,500</u>	<u>9,203,625</u>		<u>9,378,750</u>	<u>175,125</u>	101.9%
<b>Operating Expenses</b>						
Central Charges	1,722,910	1,292,183		1,292,096	(87)	100.0%
Public Works & Utilities	6,178,451	4,304,946		3,910,307	(394,639)	90.8%
Total Operating Expenses	<u>7,901,361</u>	<u>5,597,129</u>		<u>5,202,403</u>	<u>(394,726)</u>	92.9%
Operating Income (Loss)	<u>4,370,139</u>	<u>3,606,496</u>		<u>4,176,347</u>	<u>569,851</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	700,000	534,300		1,213,980	679,680	227.2%
Interest Income	188,000	141,000		73,500	(67,500)	52.1%
Interfund Transfers	982,990	737,243		737,243	0	100.0%
Carryover	844,390	844,390		844,390	0	100.0%
Debt Service	(1,504,349)	(585,764)		(585,764)	0	100.0%
Reserve Transfer	(769,170)	(769,170)		(769,170)	0	100.0%
Total Other Revenues (Expenses)	<u>441,861</u>	<u>901,999</u>		<u>1,514,179</u>	<u>612,180</u>	
Increase (Decrease) in Net Assets	<u>4,812,000</u>	<u>4,508,495</u>		<u>5,690,526</u>	<u>1,182,031</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Storm Drainage Fund</b>						
<b>Revenues</b>						
Charges for Services	2,050,000	1,537,500		1,495,236	(42,264)	97.3%
Interest Income	82,000	61,500		35,363	(26,137)	57.5%
Miscellaneous	0	0		462	462	
Carryover	418,574	418,574		418,574	0	100.0%
Total Revenues	<u>2,550,574</u>	<u>2,017,574</u>		<u>1,949,635</u>	<u>(67,939)</u>	96.6%
<b>Expenses</b>						
General Services	86,200	54,565		45,165	(9,400)	82.8%
Community Development	169,090	125,296		120,732	(4,564)	96.4%
PR&L Park Services	200,000	102,800		101,617	(1,183)	98.8%
Public Works & Utilities	359,710	237,768		136,635	(101,133)	57.5%
Total Expenses	<u>815,000</u>	<u>520,429</u>		<u>404,149</u>	<u>(116,280)</u>	77.7%
Increase (Decrease) in Net Assets	<u>1,735,574</u>	<u>1,497,145</u>		<u>1,545,486</u>	<u>48,341</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Golf Course Funds - Combined</b>						
<b>Revenues</b>						
Carryover	380,000	380,000		380,000	0	100.0%
Charges for Services	2,745,022	2,423,687		2,735,545	311,858	112.9%
Interest Income	0	0		3,941	3,941	
Interfund Transfers	751,143	563,357		563,357	0	100.0%
<b>Total Revenues</b>	<u>3,876,165</u>	<u>3,367,044</u>		<u>3,682,843</u>	<u>315,799</u>	<u>109.4%</u>
<b>Expenses</b>						
Central Charges	588,427	537,827		515,125	(22,702)	95.8%
Recreation Facilities	3,287,738	2,620,805		2,333,878	(286,927)	89.1%
<b>Total Expenses</b>	<u>3,876,165</u>	<u>3,158,632</u>		<u>2,849,003</u>	<u>(309,629)</u>	<u>90.2%</u>
 Increase (Decrease) in Net Assets	 <u>0</u>	 <u>208,412</u>		 <u>833,840</u>	 <u>625,428</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Legacy Ridge Fund</b>						
<b>Revenues</b>						
Carryover	380,000	380,000		380,000	0	100.0%
Charges for Services	1,456,167	1,284,339		1,459,546	175,207	113.6%
Interest Income	0	0		3,941	3,941	
Interfund Transfers	85,000	63,750		63,750	0	100.0%
<b>Total Revenues</b>	<u>1,921,167</u>	<u>1,728,089</u>		<u>1,907,237</u>	<u>179,148</u>	<u>110.4%</u>
<b>Expenses</b>						
Central Charges	489,383	462,256		448,120	(14,136)	96.9%
Recreation Facilities	1,431,784	1,158,313		1,077,573	(80,740)	93.0%
<b>Total Expenses</b>	<u>1,921,167</u>	<u>1,620,569</u>		<u>1,525,693</u>	<u>(94,876)</u>	<u>94.1%</u>
<b>Increase (Decrease) in Net Assets</b>	<u>0</u>	<u>107,520</u>		<u>381,544</u>	<u>274,024</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2012**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Heritage at Westmoor Fund</b>						
<b>Revenues</b>						
Charges for Services	1,288,855	1,139,348		1,275,999	136,651	112.0%
Interfund Transfers	666,143	499,607		499,607	0	100.0%
Total Revenues	<u>1,954,998</u>	<u>1,638,955</u>		<u>1,775,606</u>	<u>136,651</u>	108.3%
<b>Expenses</b>						
Central Charges	99,044	75,571		67,005	(8,566)	88.7%
Recreation Facilities	1,855,954	1,462,492		1,256,305	(206,187)	85.9%
Total Expenses	<u>1,954,998</u>	<u>1,538,063</u>		<u>1,323,310</u>	<u>(214,753)</u>	86.0%
Increase (Decrease) in Net Assets	<u>0</u>	<u>100,892</u>		<u>452,296</u>	<u>351,404</u>	

CITY OF WESTMINSTER  
GENERAL RECEIPTS BY CENTER  
MONTH OF SEPTEMBER 2012

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	389,139	10,117	399,256	377,709	9,482	387,191	3	7	3
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	351,827	943	352,770	341,702	961	342,663	3	-2	3
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	249,605	4,217	253,822	189,455	685	190,141	32	515	33
SHOPS AT WALNUT CREEK 104TH & REED TARGET	220,976	1,387	222,363	226,978	1,061	228,040	-3	31	-2
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	199,307	591	199,899	195,554	707	196,261	2	-16	2
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	179,528	4,178	183,706	163,331	1,081	164,412	10	286	12
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	173,794	590	174,384	165,084	677	165,761	5	-13	5
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	164,298	2,502	166,799	154,052	706	154,757	7	255	8
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	118,342	18,071	136,413	108,024	17,598	125,623	10	3	9
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	108,627	421	109,048	99,324	627	99,951	9	-33	9
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	85,439	325	85,764	101,828	371	102,200	-16	-12	-16
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	74,772	55	74,827	72,725	348	73,073	3	-84	2
WESTMINSTER GATEWAY CHURCH RANCH BOULEVARD SPRINGHILL/LA QUINTA	10,206	49,555	59,762	9,949	2,086	12,035	3	2276	397
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	58,423	573	58,996	62,488	363	62,851	-7	58	-6
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	55,313	0	55,313	51,622	0	51,622	7	*****	7



CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 MONTH OF SEPTEMBER 2012

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	51,931	255	52,186	50,122	231	50,353	4	10	4
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	48,848	1,466	50,314	88,333	630	88,963	-45	133	-43
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	46,755	691	47,446	40,615	639	41,254	15	8	15
PARK TECHNOLOGY CENTER 124TH & HURON FUN SERVICES	4,739	42,214	46,953	4,039	117	4,157	17	35922	1030
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	43,357	189	43,546	42,379	142	42,521	2	33	2
LAKE ARBOR PLAZA W SIDE HARLAN/INDUS PRK ASPEN AUTO BODY	20,824	15,507	36,332	16,794	210	17,004	24	7283	114
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	11,091	24,755	35,846	33,147	29,399	62,546	-67	-16	-43
WILLOW RUN 128TH & ZUNI SAFEWAY	33,510	196	33,706	33,266	195	33,461	1	0	1
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	28,981	392	29,373	49,242	436	49,678	-41	-10	-41
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	28,779	48	28,826	21,092	55	21,148	36	-14	36
	2,758,412	179,237	2,937,650	2,698,858	68,807	2,767,665	2	160	6

CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 SEPTEMBER 2012 YEAR-TO-DATE

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	3,549,604	127,536	3,677,140	3,323,155	146,936	3,470,091	7	-13	6
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,125,473	19,756	3,145,229	3,038,168	19,538	3,057,706	3	1	3
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,126,366	15,824	2,142,190	2,047,740	39,551	2,087,291	4	-60	3
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,101,272	8,716	2,109,988	1,958,045	10,946	1,968,991	7	-20	7
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,766,537	4,720	1,771,256	1,736,315	4,974	1,741,289	2	-5	2
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,727,133	17,876	1,745,009	1,602,366	10,490	1,612,856	8	70	8
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,509,810	16,674	1,526,484	1,433,475	9,971	1,443,447	5	67	6
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,492,383	5,270	1,497,653	1,454,600	9,808	1,464,408	3	-46	2
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,152,907	167,045	1,319,952	1,093,421	234,966	1,328,387	5	-29	-1
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,084,781	7,124	1,091,906	991,308	38,243	1,029,552	9	-81	6
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,057,455	6,881	1,064,336	1,086,252	6,547	1,092,799	-3	5	-3
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	729,762	1,778	731,540	752,435	7,472	759,907	-3	-76	-4
WESTMINSTER MALL 88TH & SHERIDAN JC PENNEY	718,009	17,704	735,712	1,080,760	21,236	1,101,996	-34	-17	-33
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	646,107	6,031	652,138	714,235	3,054	717,290	-10	97	-9
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	550,065	2,343	552,408	569,941	2,037	571,979	-3	15	-3

CITY OF WESTMINSTER  
GENERAL RECEIPTS BY CENTER  
SEPTEMBER 2012 YEAR-TO-DATE

Center Location Major Tenant	YTD 2012			YTD 2011			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	532,128	5,258	537,386	575,209	2,390	577,599	-7	120	-7
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	480,388	6,985	487,373	465,832	2,700	468,532	3	159	4
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	392,151	20,981	413,132	361,367	7,135	368,502	9	194	12
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	392,077	7,042	399,119	407,430	1,585	409,015	-4	344	-2
WILLOW RUN 128TH & ZUNI SAFEWAY	300,984	2,876	303,860	288,488	2,455	290,942	4	17	4
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	270,972	5,419	276,391	259,396	4,164	263,560	4	30	5
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	252,193	2,434	254,627	231,587	3,140	234,727	9	-22	8
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	251,064	900	251,963	242,035	12,732	254,766	4	-93	-1
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	229,127	4,476	233,602	230,921	1,956	232,877	-1	129	0
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	228,315	8,133	236,448	214,731	6,096	220,827	6	33	7
	26,667,062	489,783	27,156,845	26,159,214	610,120	26,769,335	2	-20	1



## Agenda Item 8 B

### Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Quarterly Insurance Claims Report – July through September 2012

**Prepared By:** Martee Erichson, Risk Manager

### Recommended City Council Action

Accept the Third Quarter 2012 Insurance Claims Report.

### Summary Statement

- The attached report provides detailed information on each insurance claim made to the City including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office on litigated claims to make sure the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Manager, acting as the City Manager's designee, has the authority to settle claims of less than \$30,000. However, under the City's contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjuster and settlement of claims proceed with the concurrence of both CIRSA and the Risk Manager. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

Information on the status of each claim received during the 3rd quarter of 2012 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the third quarter of 2012, Staff has noted the following summary information:

- Sixteen of the 19 claims reported in the third quarter of 2012 are closed at this time.
- Total claims for the quarter and year-to-date are broken down by department as follows:

Department	3rd Qtr 2012			YTD
	Total Claims	Open	Closed	Total
City Attorney's Office (CAO)	0	0	0	1
Community Development (CD)	1	1	0	2
Fire	0	0	0	2
Police (PD)	1	1	0	11
Parks, Recreation and Libraries (PRL)	6	0	6	13
Public Works and Utilities (PWU) – Street Maintenance	6	0	6	11
Public Works and Utilities (PWU) – Utility Operations	5	1	4	19
Public Works and Utilities (PWU) – Utilities Planning & Engineering	0	0	0	1
<b>TOTAL</b>	19	3	16	60

Risk Management supports Council’s Strategic Plan goals of a Financially Sustainable City Government and Safe and Secure Community by working to mitigate the cost of claims to the City and maintaining a loss control program that strives to keep City streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Quarterly Insurance Report

**Quarterly Insurance Report  
July - September 2012**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2012-252	7/11/2012	PWU - Util	Claudette Sheldon	9210 Osceola St, Westminster CO 80031	Claimant alleges her vehicle was damaged when she hit a water meter valve box lid that was loose and lying in the middle of Sheridan.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-239	7/18/2012	PRL	Fernando Estrada	8070 Stuart Pl, Westminster CO 80031	Claimant alleges he was injured when the resistance band he was using to exercise with at the Swim & Fitness Center, snapped in half.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-251	7/20/2012	PWU - Streets	Vicki Servold	8358 Chase Dr, Arvada CO 80003	Claimant alleges her vehicle was damaged when she hit a street sign that was in the roadway.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-288	7/20/2012	PWU - Util	CenturyLink	c/o CMR Claims Department, P O Box 60770, Oklahoma OK 73146	Claims Administrator for CenturyLink alleges City Utility staff damaged a buried cable during a sewer line excavation.	\$ -	Closed	Claim denied as the location was not within the City and claimant was referred to Adams County who was performing the work.
2012-293	7/20/2012	PRL	Re Ann Walters	9706 Kendall Ct, Westminster CO 80021	Claimant alleges weeds in City open space that borders her backyard, are damaging her landscaping.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2010-377	7/23/2010	PD	John Barnes	7361 Clay St, Westminster CO 80030	Claimant has filed a lawsuit against a former Westminster Police Officer alleging the officer violated the claimant's civil rights.	\$ 4,875.00	Open	CIRSA Investigating.
2012-248	7/24/2012	PWU - Util	Barbara Cinkosky	12625 Hazel St, Broomfield CO 80020	Claimant's vehicle was damaged when a Utility employee backed the tandem dump truck he was driving into the claimant's vehicle that was stopped behind him.	\$ 803.09	Closed	

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2012-253	7/26/2012	PWU - Util	Max and Theresa Vigil	7490 Winona Ct, Westminster CO 80031	Claimant's vehicle was damaged when a water main line in front of their home unexpectedly ruptured.	\$ 2,500.00	Closed	Claim denied based on Colorado Governmental Immunity Act; however, claimant was paid under the City's "good neighbor" settlement program.
2012-209	7/5/2012	PWU - Util	Angelee Skar	9102 Meade St, Westminster CO 80031	Claimant alleges damage to her home's basement from a leaking fire hydrant up the street from her home.	\$ -	Open	CIRSA Investigating.
2012-219	7/5/2012	PRL	Doug Arnett	5593 S Coolidge Ct, Aurora CO 80016	Claimant alleges his vehicle was damaged when he drove over a section of the parking lot that was heaved at the Westminster Sport Center.	\$ 695.78	Closed	Claim denied based on Colorado Governmental Immunity Act; however, claimant was paid under the City's "good neighbor" settlement program.
2012-225	7/9/2012	PWU - Streets	Natalie Bowen	2790 W 105th Dr, Westminster CO 80234	Claimant alleges her vehicle was damaged from tar during a paving project.	\$ -	Closed	Contractor doing work at the time of the incident took responsibility and responded to claim.
2012-300	8/31/2012	PRL	James Bolger	14509 Josephine St, Thornton CO 80602	Claimant's parked vehicle was damaged during Parks mowing operations in front of the Public Safety Center.	\$ 396.16	Closed	
<b>CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 3rd QUARTER 2012:</b>								
2012-250	2/8/2012	PWU - Streets	Gloria Brouse	c/o Bachus & Schanker, 1899 Wynkoop St Ste 700, Denver CO 80202	Claimant alleges she was injured when she slipped and fell on an icy sidewalk at the RTD Park and Ride in Westminster. Claimant's attorney put both RTD and the City on notice.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-298	3/7/2012	PRL	Mario Navarra (child) c/o Alberto Navarra (father)	2838 W 111th Loop, Westminster CO 80234	Claimant's father alleges the claimant was injured when he fell on a tree stump while playing in Foxshire Park in Westminster.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-320	4/1/2012	CD - WHA	Patricia Hampton	3170 W 76th Ave #206-A, Westminster CO 80030	Claimant alleges she was injured when she tripped on a water meter in a sidewalk that was raised above the level of the sidewalk.	\$ -	Open	CIRSA Investigating.

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2012-291	4/20/2012	PRL	Humana Inc. c/o Sentry Insurance	P O Box 8026, Stevens Point WI 54481	Employee of Humana Inc., Gayle Jennings, alleges she was injured when she tripped over a bolt and metal strap sticking up from the cement in a Westminster park pavilion during a work function. Claims Administrator for Humana filed a subrogation claim against the City for Workers' Compensation benefits paid on behalf of the employee.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2012-274	6/13/2012	PWU - Streets	Tammy Quintana	41 S Depew St, Lakewood CO 80226	Claimant alleges she was injured when the motorcycle she was a passenger on, collided with another car due to road construction on Sheridan.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City as CDOT was performing the road work.
2012-274	6/13/2012	PWU - Streets	Marcus Bridgewater	42 S Depew St, Lakewood CO 80226	Claimant alleges he was injured when the motorcycle he was riding, collided with another car due to road construction on Sheridan.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City as CDOT was performing the road work.
2012-287	6/28/2012	PWU - Streets	Daniel Dixon	10363 Irving Ct, Westminster CO 80031	Claimant's automobile insurance company, Geico, alleges the claimant's parked vehicle was damaged from street painting.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
					<b>TOTAL</b>	<b>\$ 9,270.03</b>		





**Agenda Memorandum**

City Council Meeting  
October 22, 2012



**SUBJECT:** Special Legal Services Contract for Personnel Board

**Prepared By:** Debbie Mitchell, General Services Director  
Dee Martin, Workforce Planning and Compensation Manager

**Recommended City Council Action**

Authorize the City Manager to sign a contract with Nancy Cornish Rodgers of Kissinger & Fellman, P.C. to serve as the Personnel Board Attorney to provide legal services to the Board on an as-needed basis.

**Summary Statement**

- Westminster's Personnel Board fulfills a quasi-judicial function in matters involving employees that appeal disciplinary actions involving suspension, demotion or termination. The Personnel Board is authorized by Home Rule Charter 6.1(b) and by the Westminster Municipal Code 1-24-12(J) and is advised by special counsel on legal issues that may arise within the scope of their charter.
- Three qualified responses were received by the City after a Request for Proposal (RFP) was opened to solicit bids for Personnel Board attorney services.
- Nancy Cornish Rodgers of Kissinger & Fellman, P.C. is recommended to Council to be awarded a contract for Personnel Board attorney services by a selection panel made up of representatives from the Personnel Board and Human Resources Staff after a thorough review and interview process of all three qualified RFP bidders.
- The proposed expenditure of \$160 / hour for attorney services was the lowest bid and will be expended only on an as-needed basis. Other costs that may be incurred as part of these services include \$75 / hour for research or legal projects (non-secretarial) plus incidental charges including \$0.20 per copy for photocopy and telecopy, plus actual expenses for postage, overnight delivery and long distance phone calls. These expenses will incurred only on an as-needed basis.

**Expenditure Required:** \$160 / hour for attorney services (used only on an as-needed basis), not to exceed \$50,000

**Source of Funds:** Central Charges - Professional Services Legal Counsel Account

**Policy Issue**

Should the City retain special legal counsel to serve as the Personnel Board Attorney and advise the Board on matters involving employees that appeal disciplinary actions involving suspension, demotion or termination to the Personnel Board?

**Alternative**

Hire one of the other qualified bidders for legal services to the Personnel Board. This alternative is not recommended, as Ms. Rodgers and the firm of Kissinger & Fellman, P.C. has extensive experience in public employment law, was the selected vendor of the Personnel Board panel, and was the low bidder.

**Background Information**

The City of Westminster Personnel Board is comprised of lay persons who are fulfilling a quasi-judicial function in matters involving employees that appeal disciplinary actions involving suspension, demotion or termination. The Board's responsibility in the appeal proceeding is to hold a hearing, act as a fact-finder, reach a decision, and make a written recommendation to the City Manager as set forth in W.M.C. § 1-24-12(J).

The Personnel Board attorney acts as an advisor on any legal issues that may arise prior to, during or as a result of a hearing and, at the Board's request, may prepare written findings of fact and recommended decisions for final action by the City Manager.

Attorney John Hayes of the law firm Hayes, Phillips, Hoffman and Carberry, P.C. has previously been contracted by City Council to serve as the Personnel Board attorney. John Hayes resigned from this role resulting in the City needing to seek Personnel Board attorney services.

A Request for Proposal soliciting bids for Personnel Board attorney services was opened from September 6, 2012 through September 19, 2012. The RFP outlined the minimum scope of attorney services being solicited to include:

- Advising the Personnel Board on employee issue and hearing procedures;
- Drafting decisions for review and approval by the Board;
- Attending meetings as needed on Personnel Board matters;
- Being available for consultation on emerging issues and hearings; and
- Providing timely document review and development of Board recommendation(s).

As a result of the RFP, three qualified bids were accepted from Kathie B. Guckenberger of Widner Michow & Cox; Nancy Cornish Rodgers of Kissinger & Fellman, P.C.; and William P. Hayashi of Williamson & Hayashi, LLC.

<b>Bidding Attorney</b>	<b>Firm</b>	<b>Proposed Hourly Rate</b>
Kathie B. Guckenberger	Widner Michow & Cox	\$190 / hour
William P. Hayashi	Williamson & Hayashi, LLC	\$175 / hour
Nancy Cornish Rodgers	Kissinger & Fellman, P.C.	\$160 / hour

Attorney interviews were conducted on October 4, 2012, with a panel consisting of three members of the Personnel Board, including Chairperson Margaret Rivera, as well as two City staff members including Dee Martin, Workforce Planning and Compensation Manager.

Based on the interviews, reference checks and a thorough review of the bids, Nancy Cornish Rodgers of Kissinger & Fellman, P.C. is recommended to be awarded a contract for Personnel Board attorney services. This unanimous recommendation is based on Ms. Rodgers' extensive experience in public sector employment law and her personal approach to public sector employment law and the appeal process. The selection panel felt that all three attorneys and their firms that submitted RFP bids were very qualified. Ms. Rodgers, along with her firm of Kissinger & Fellman, P.C., has provided public sector attorney services to the Town of Empire, the City of Cherry Hills Village, the Greater Metro Telecommunication Consortium and the City of Aurora, to name a few.

The proposed expenditure of \$160 / hour for attorney services from Ms. Rodgers of Kissinger & Fellman, P.C. was the lowest bid and will be expended only on an as-needed basis. Other costs that may be incurred as part of these services include \$190 / for attorney services by Paul Godec and/or \$205 / for attorney services by Ken Fellman who will both serve as back up counsel for Ms. Rodgers. In addition, other costs that may be incurred from these attorney services may include \$75 / hour for research or legal projects (non-secretarial) and incidental costs including \$0.20 per copy for photocopy and telecopy, plus actual expenses for postage, overnight delivery and long distance phone calls. These expenses will be expended only on an as-needed basis.

Consistent with the City's practice, the interview panel feels that the award of this contract to Ms. Rodgers is in the best interests of the City. Funds are available for these services in the Central Charges - Professional Services Legal Counsel Account.

Contracting with a qualified attorney for Personnel Board attorney services addresses City Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services by maintaining the integrity of the City's appeals process for City employees as outlined in section XI of the City's Personnel Policies and Rules.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Contract for Legal Services

## CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **KISSINGER & FELLMAN, P.C.**, Attorneys at Law (the "Firm"), and the **CITY OF WESTMINSTER, COLORADO** (the "City").

### RECITALS

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

### AGREEMENT

1. The Firm shall furnish special legal services to advise the City's Personnel Board on an as-needed basis (the "Services").

2. Nancy Cornish Rodgers of the Firm shall be principally responsible for the Services.

3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.

4. The City shall pay for Ms. Rodgers' Services at an hourly rate not to exceed \$160 per hour. Paul Godec and Ken Fellman from the Firm will serve as backup counsel at an hourly rate not to exceed \$190 per hour and \$205 per hour respectively. Additional fees generated as part of the Services may include work by support personnel consisting of legal assistance and paralegals at an hourly rate not to exceed \$75 per hour.

5. The City shall pay additional incidental charges of \$0.20 per photocopy and telecopy, and actual costs for postage, overnight delivery, Lexis research charges, long distance phone calls, etc., on an as needed basis.

6. This Contract may be terminated by the City with or without cause.

7. No payments to the Firm shall be made prior to the approval of this Contract by the Westminster City Council.

8. Payments pursuant to this Contract shall not exceed \$50,000 without further written authorization by the City.

9. The City Council authorized this contract on \_\_\_\_\_, 2012.

10. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the Firm shall not enter into a contract with a subcontractor that fails to certify to the Firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Firm shall notify the subcontractor and the City within three (3) days that the Firm has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, the Firm shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that the Firm shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Firm certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). The Firm shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

The Firm shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

**Kissinger & Fellman, P.C.**

By \_\_\_\_\_

**CITY OF WESTMINSTER, COLORADO**

By \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office



## Agenda Item 8 D

### Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Fleet Maintenance Cumulative Purchases Over \$50,000

**Prepared By:** Jeffery Bowman, Fleet Manager

### Recommended City Council Action

Determine that the public interest will be best served by ratifying the purchase of diesel fuel with Hill Petroleum and with Chief Petroleum not to exceed \$436,680 through year end, and by ratifying the purchase of tires through Tire Centers Inc. not to exceed \$125,000 through year end, and by approving Fleet Maintenance cumulative purchases with Gray Oil for purchases of diesel fuel not to exceed \$70,000 through year end.

### Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council for approval. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- The Fleet Maintenance Division uses a number of vendors to provide diesel fuel required to maintain City of Westminster vehicles. Total aggregate purchases from two of these vendors, Hill Petroleum and Chief Petroleum, exceed \$50,000 each during 2012. Staff is asking for ratification of past purchase of diesel fuel with Hill Petroleum in the amount of \$146,629, and ratification of past purchase of diesel fuel with Chief Petroleum in the amount of \$103,424. The Fleet Maintenance Division has spent \$36,007, to date, with a third vendor, Gray Oil, and could easily exceed \$50,000 if they are awarded one additional fuel delivery. Staff is asking for approval of purchases not to exceed \$506,680 for the three diesel fuel vendors through 2012. The available budget dollars in fuel is \$406,680 and Staff may need to request up to \$100,000 in additional funds to cover anticipated diesel fuel expenses.
- Diesel fuel is purchased on spot bid competition between Chief Petroleum, Gray Oil and Hill Petroleum. Diesel fuel is generally purchased in 7,500 gallon quantities; one delivery can exceed \$28,000, quickly increasing the amount spent with a winning vendor.
- The Fleet Maintenance Division uses a number of vendors to provide tires and tire services required to maintain City of Westminster vehicles. Total aggregate purchases from Tire Centers Inc. have exceeded \$50,000. Staff is asking for the ratification of the past purchase of tires through Tire Centers Inc. in the amount of \$84,088. Staff is requesting the approval of purchases not to exceed \$125,000 for tires and tire services from Tire Centers Inc. through 2012.

**Expenditure Required:** \$631,680

**Source of Funds:** 2012 Fleet Maintenance Fund

**Policy Issue**

Should Council ratify the cumulative purchase of diesel fuel and vehicle tires that total over \$50,000 per vendor in 2012, and approve cumulative purchases of diesel fuel to Gray Oil that may exceed \$50,000 in 2012?

**Alternative**

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more prudent approach is to treat the smaller transactions as cumulative larger purchases with the vendors that are subject to Council approval.

**Background Information**

The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council for approval. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceed \$50,000. Fleet Maintenance has identified four vendors where the total cumulative purchases or expenses will exceed \$50,000 for the year 2012 and thus require Council authorization. Staff is seeking approval for these expenditures for the calendar year 2012. Funds are available in the Fleet Maintenance Commodities accounts and additional funds may be required up to \$100,000 for fuel expenses in 2012.

Fleet Maintenance uses a variety of diesel fuel and tire vendors to provide diesel fuel and tires for City vehicles. The 2012 Fleet Maintenance Commodities budget contains \$1,422,226 in line items for vehicle fuel, parts, tires and repair services. These on-going purchases include routine, competitively bid parts and services. Some are sole-source purchases since the needed item(s) are only stocked by either sole vendors or a limited number of vendors in our area.

To date, Fleet Maintenance has identified Gray Oil as the vendor that is used on a regular basis that may accumulate over \$50,000 in diesel fuel orders during 2012. Purchases to date are \$36,007 and even one more successful diesel fuel bid may take the purchase amount over \$50,000 as an average delivery can exceed \$28,000.

Fleet Maintenance has identified three additional vendors that have already exceeded \$50,000; Chief Petroleum, Hill Petroleum and TCI Tires. Hill Petroleum has been awarded the majority of the spot-bid awards for diesel fuel, already equaling \$146,630, while Chief Petroleum has been awarded \$103,424 spot-bid awards. Chief Petroleum is also the 2012 sole provider for unleaded gasoline up to \$610,000, per Council Agenda Memorandum 8H, December 19, 2011. Depending on which vendor (Chief Petroleum, Gray Oil, or Hill Petroleum) is the successful bidder for the remaining 2012 fuel purchases, diesel fuel could be awarded to one or all three vendors, totaling \$506,680, which is \$100,000 above the budgeted amount for 2012 diesel fuel purchases. TCI Tire Centers has the State Bid on the Michelin tires used for the City's Fire apparatus and is the most frequently used vendor for recap tires for heavy duty trucks, already equaling \$84,087. Staff anticipates that it will be purchasing additional tires and services from TCI for the remainder of the year that will not exceed \$125,000. The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified and brought to City Council for approval.

This approach helps achieve the City Council's Strategic Plan Goals of "Safe and Secure Community" and "Financially Sustainable City Government Providing Exceptional Services" by meeting the following objectives: maintaining well equipped Police and Fire Departments and spending tax dollars in a responsible manner.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 E

### Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Revised Employment Agreement with J. Brent McFall

**Prepared By:** Debbie Mitchell, General Services Director

### Recommended City Council Action

Authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2013 with an effective date of January 1, 2013, and automatic renewal for 2014 unless terminated pursuant to the provisions of the agreement.

### Summary Statement

- City Council is requested to approve a revised employment agreement with Brent McFall for services as City Manager beginning January 1, 2013. The agreement will be automatically renewed for 2014 unless it is terminated by City Council or by Mr. McFall in accordance with the agreement provisions.
- Under the proposed revised agreement, Mr. McFall's combined salary and deferred compensation will be \$219,759, which reflects a three percent increase over his annual compensation in 2012.
- No additional modifications have been made to the existing agreement with the exception of the effective dates. If approved, the proposed contract between Mr. McFall and the City will be renewed automatically unless terminated by Council prior to October 31, 2013.

**Expenditure Required:** \$219,759, plus the cost of other fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund - City Manager's Office Budget



**Policy Issue**

Should City Council approve the employment agreement with J. Brent McFall for the continuation of his services as City Manager for 2013 and 2014?

**Alternative**

Council could make adjustments to the proposed employment agreement with Mr. McFall.

**Background Information:**

J. Brent McFall has been employed as City Manager since May 21, 2001. His previous experience includes holding city manager or city administrator positions in four cities in Kansas and Washington prior to becoming Westminster's City Manager. Mr. McFall is an active member of the International City/County Management. He is a past president of the Metro City Managers' Association and is also active with the Colorado City/County Managers' Association (CCCMA), and with the Jefferson and Adams County/City Managers' groups. He recently completed duties as chair of the CCCMA Professional Advocacy Committee and during the past year has been a speaker or panelist at several regional conferences. Mr. McFall has been a recipient of the Edwin O. Stene Award for Managerial Excellence by University of Kansas City Managers' Alumni in recognition of his outstanding accomplishments over thirty years as chief executive in five cities. His activities at the community level include serving on the Boards of Directors of the Metro North Chamber of Commerce and the Westminster Legacy Foundation. He also serves on the Board of Advisors for the Rocky Mountain Land Institute.

Under Mr. McFall's leadership, the City continues to use the City Council's Strategic Plan to guide the City's ongoing activities. The City's strategic approach to management is further demonstrated in the recently updated 2013/2014 Budget that included an organization wide review and the second update of the City core service priorities.

Mr. McFall continues to champion the City organization's key values of service, pride, integrity, responsibility, innovation and teamwork (SPIRIT). Under his leadership, the City continues to be a leader on many fronts and enjoys an excellent reputation nationwide for the quality of its facilities and programs.

City Council met with Mr. McFall on September 24 to review his job performance during the past twelve months. The proposed employment agreement with Mr. McFall reflects Council's direction with regard to his annual salary for 2013. The revised agreement will provide for a combined salary and deferred compensation of \$219,759, a three percent increase from his 2012 salary. No additional modifications have been made to the existing agreement with the exception of the effective dates. If approved, the proposed contract between Mr. McFall and the City will be renewed automatically unless terminated by Council prior to October 31, 2013.

The employment agreement allows the City Manager to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. As in previous years, the proposed employment agreement with City Manager Brent McFall provides that, except in those cases where the agreement provides for a different benefit level, the City Manager will receive the same fringe benefits as those extended to department heads.

Funds are available in the 2013 Budget to cover the expense for the salary and fringe benefits described in the agreement.

**SUBJECT:** Revised Employment Agreement with J. Brent McFall

Page 3

City Council's favorable action on the continuation of the City Manager's employment agreement will support all five of the City Strategic Plan Goals by ensuring the City organization will continue to be managed by a highly skilled and experienced chief executive.

Respectfully submitted,

Barbara Opie  
Assistant City Manager

Attachment - Agreement

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January 2013, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "the CITY" as party of the first part, and J. BRENT McFALL, hereinafter called "EMPLOYEE", as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of J. BRENT McFALL, as City Manager of the City of Westminster as provided by City Charter, Chapter IV, Section 7; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DUTIES:

A. The CITY hereby agrees to continue the employment of J. BRENT McFALL as City Manager of the CITY to perform the duties and functions specified in Section 4.8 of the City Charter and such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated June 30, 2010, as amended ("Personnel Policies and Rules").

### SECTION 2. TERM:

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as City Manager for calendar years 2013 and 2014. EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. This Agreement shall be in effect through December 31, 2013, but shall be automatically renewed through December 31, 2014, unless terminated on or before October 31, 2013.

SECTION 3. TERMINATION AND SEVERANCE PAYMENT:

A. In the event the City Council decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then and in that event, the CITY agrees to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing twelve (12) months, plus the pro rata share of deferred compensation to which EMPLOYEE is entitled based on his termination date (the "Severance Payment"); provided however, that in the event the EMPLOYEE is terminated because of his conviction of an illegal act, then, and in that event, the CITY has no obligation to pay the Severance Payment.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than sixty (60) days notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3.A. hereof and shall entitle EMPLOYEE to the Severance Payment described therein.

SECTION 4. SALARY AND EVALUATIONS:

A. The CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary of \$219,759 (the "Gross Salary"), which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take as deferred compensation. The Base Salary portion of this amount shall be payable in installments at the same time as other employees of the CITY are paid. EMPLOYEE may designate a portion of this amount not to exceed the amount allowed by Federal Law to be paid as a lump sum payment to EMPLOYEE'S deferred compensation plan.

B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31st of each year. Salary evaluation each year shall be at the discretion of the CITY, and salary evaluation shall be based on the Gross Salary.

SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, in compliance with the Personnel Policies and Rules.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the City Council, and such consulting or other non-City connected business shall not constitute a conflict of any nature with EMPLOYEE'S work as City Manager. The City Council shall be the sole judge of such conflicts, and its determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$750 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY hereby agrees to budget and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for the CITY, including but not limited to the International City/County Management Association, the Colorado City/County Management Association, the Colorado Municipal League, and such other national, regional, state and local governmental groups and committees thereof which EMPLOYEE serves as a member.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

A. The CITY shall provide EMPLOYEE with all benefits that are provided to all other Department Head level employees by the Personnel Policies and Rules, except that when such benefits are in conflict with this Agreement, this Agreement shall control.

B. EMPLOYEE shall continue to accrue General Leave at the rate prescribed for "over 20" years of continuous municipal service in the City Code and Personnel Policies and Rules and shall be able to use such accrued leave in accordance with the rate of use accorded to employees in the "over 20" category.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on January 1, 2013, and if automatically renewed shall be in effect through December 31, 2014.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. Nothing in this Agreement shall be construed as creating a multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

F. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement.

APPROVED by Westminster City Council on this 22nd day of October, 2012.

\_\_\_\_\_  
Nancy McNally, Mayor

ATTEST:

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

\_\_\_\_\_  
J. Brent McFall

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney



**Agenda Memorandum**

City Council Meeting  
October 22, 2012



**SUBJECT:** Revised Employment Agreement with Martin R. McCullough

**Prepared By:** Debbie Mitchell, General Services Director

**Recommended City Council Action**

Authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2013 with an effective date of January 1, 2013, and an automatic renewal for 2014 unless terminated pursuant to the terms of the agreement.

**Summary Statement**

- City Council is requested to approve a revised Employment Agreement with Martin McCullough for services as City Attorney beginning January 1, 2013. The Agreement will be automatically renewed for 2014 unless it is terminated by City Council or Mr. McCullough in accordance with the termination section of the Agreement.
- City Council met with Mr. McCullough for his annual performance and salary review on October 8, 2012. The attached proposed agreement reflects Council's direction with regard to renewal of the current agreement.
- Under the proposed revised Agreement, Mr. McCullough's 2013 combined salary and deferred compensation will be \$174,345, which represents a three percent increase over his 2012 combined compensation.
- No additional modifications have been made to the existing agreement with the exception of effective dates. If approved, the proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2013.

**Expenditure Required:** \$174,345 plus the cost of fringe benefits as described in the attached Employment Agreement

**Source of Funds:** General Fund - City Attorney's Office Budget

**Policy Issue**

Should City Council continue its employment agreement with Martin McCullough for his services as City Attorney for 2013 and 2014?

**Alternative**

Council could make adjustments to the employment agreement with Mr. McCullough.

**Background Information**

Martin McCullough was appointed City Attorney on February 10, 1986, after serving as Acting City Attorney since September 1985. Prior to holding these positions, he was an attorney with the municipal law firm of Calkins, Kramer, Grimshaw and Harring. Mr. McCullough holds a B.A. from the University of Virginia, an M.S. from Florida State University and graduated magna cum laude from the University of Houston School of Law in 1982. He is admitted to practice law in Texas and Colorado and is a member of the National Institute of Municipal Law Officers and the Colorado and Denver Bar Associations. Mr. McCullough has served as President of the Attorneys' Section of the Colorado Municipal League, is past President of the Metro City Attorneys' Association, and is a member and past Chairperson of the Local Government Committee of the Colorado Bar Association. Mr. McCullough is also a past recipient of the Metro City Attorney's Association's "City Attorney of the Year" and "Leadership" awards. In 2004, Mr. McCullough was designated a Fellow In Local Government Law by the International Municipal Lawyers' Association. Mr. McCullough's fellowship status was recently extended through 2014.

During the past twelve months, the City Attorney's Office has provided a significant amount of legal support in a number of key areas: continued work on the Westminster Center Urban Reinvestment Project, leading to acquisition of all the properties needed for the project with all litigation concerns resolved; executed a final agreement between the City and RTD for construction of the Westminster Commuter Rail Station and Parking Garage; deliver outstanding prosecution services to citizens, particularly in regards to difficult domestic violence prosecution in Municipal Court; and collected over \$228,000 in unpaid sales and use tax. In addition, the City Attorney and staff continue to provide regular legal support to City Council and City Staff.

The proposed City Attorney's employment agreement reflects City Council's decision to increase the City Attorney's salary and deferred compensation by three percent to \$174,345. No additional modifications have been made to the existing agreement with the exception of the effective dates. If approved, the proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2013.

The employment agreement allows the City Attorney to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. As in previous years, the proposed employment agreement with City Attorney McCullough provides that, except in those cases where the agreement provides for a different benefit level, the City Attorney will receive the same fringe benefits as those extended to all department heads.

Funds are available in the 2013 Budget to cover the expense for the salary and fringe benefits described in the agreement.

The continuation of an employment agreement with Mr. McCullough supports all five of the City's Strategic Plan goals by ensuring quality legal advice and support for the wide range of government functions provided by the City organization.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment - Agreement



## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2013, by and between the CITY OF WESTMINSTER, State of Colorado, a municipal corporation, hereinafter called "the CITY" as party of the first part, and MARTIN R. McCULLOUGH, hereinafter called "EMPLOYEE," as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of MARTIN R. McCULLOUGH, as City Attorney of the City of Westminster as provided by City Charter, Chapter IV, Section 4.13; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE's services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ; and

WHEREAS, EMPLOYEE previously accepted employment as City Attorney of the CITY.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DUTIES:

A. The CITY hereby agrees to continue the employment of EMPLOYEE as City Attorney of the CITY to perform the duties and functions specified in Section 4.13 of the City Charter, Chapter 16 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall prepare and submit a proposed budget for the City Attorney's Office following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

C. EMPLOYEE shall supervise the staff of the City Attorney's Office as may be authorized by the City Council. All employees of the City Attorney's Office shall be employed by the City Attorney in accordance with the provisions of Section 1-16-3 of the City Code.

D. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated June 30, 2010, as amended ("Personnel Policies and Rules").

### SECTION 2. TERM:

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as City Attorney for calendar years 2013 and 2014. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3, paragraph C of this Agreement.

D. This Agreement expires December 31, 2013 but shall be automatically renewed for 2014 unless terminated no later than October 31, 2013.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAYMENT:

A. In the event the City Council decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Attorney, then and in that event, the CITY agrees to give EMPLOYEE six (6) months' prior written notice or, if no such notice is given, to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing six (6) months, plus or minus the pro rata share of deferred compensation to which EMPLOYEE is entitled based on his termination date and the amount of deferred compensation already paid to EMPLOYEE for that year (the "Severance Payment"); provided however, that in the event EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, the CITY has no obligation to give notice or pay the Severance Payment.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the CITY refuses, following written notice, to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than sixty (60) days notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3A hereof and shall entitle EMPLOYEE to the Severance Payment described herein.

### SECTION 4. SALARY AND EVALUATIONS:

A. Effective January 1, 2013, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of \$174,345 which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take as deferred compensation. EMPLOYEE may elect to receive a portion of his Gross Salary in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The Base Salary shall be payable in installments at the same time as other employees of the CITY are paid.

B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY.

SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, in compliance with the Personnel Policies and Rules.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the express prior approval of the City Council, and such consulting or other non-City connected business shall not constitute a conflict of any nature with EMPLOYEE'S work as City Attorney. The City Council shall be the sole judge of such conflicts, and its determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$500 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the City, including, but not limited to, the Colorado Bar Association, NIMLO, the Colorado Municipal League, and continuing legal education courses and seminars related to the practice of municipal law. In addition to reasonably funding educational/training programs for EMPLOYEE's professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each calendar year.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

The CITY shall provide EMPLOYEE with all benefits that are provided to all Department Head level employees by the Personnel Policies and Rules; provided that when such benefits are in conflict with this Agreement, this Agreement shall control.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This agreement becomes effective on January 1, 2013, and if automatically renewed, shall be in effect through December 31, 2014.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Nothing in this Agreement shall be construed as creating any multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement both effective as of the day and year first above written.

APPROVED by Westminster City Council this 22nd day of October, 2012.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Mayor

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

\_\_\_\_\_  
Martin R. McCullough



Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Second Reading for Councillor’s Bills Nos. 41, 42 and 43 re Comprehensive Land Use Plan Amendment, Annexation, and Establishment of Zoning for the 100<sup>th</sup> Avenue and Alkire Street Property

**Prepared By:** Walter Patrick, Planner II

**Recommended City Council Action**

1. Pass Councillor’s Bill No. 41 on second reading amending the Comprehensive Land Use Plan for the 100<sup>th</sup> Avenue and Alkire Street property designating the property as City-Owned Open Space. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
  - a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
  - b) The amendment is in conformance with the overall purpose and intent and the 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.
2. Pass Councillor’s Bill No. 42 on second reading annexing the 100<sup>th</sup> Avenue and Alkire Street property into the City.
3. Pass Councillor’s Bill No. 43 on second reading establishing a zoning designation of Open Area (O-1) for the 100<sup>th</sup> Avenue and Alkire Street property.

**Summary Statement**

- The 100<sup>th</sup> Avenue and Alkire Street property consists of 28.7788 acres and is located on the north side of 100<sup>th</sup> Avenue east of Alkire Street.
- The property was purchased by the City in 2011 for use as City Open Space.
- The property is 100 percent owned by the City of Westminster and the annexation will include the public right-of-way along the adjacent section of 100<sup>th</sup> Avenue.
- Councillor’s Bills Nos. 41, 42, and 43 were approved on first reading on October 8, 2012.

**Expenditure Required:** \$0  
**Source of Funds:** N/A

Respectfully Submitted,

J. Brent McFall  
City Manager

Attachments - Ordinances

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **41**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**Major - Atchison**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That the City has initiated an amendment to the Westminster Comprehensive Land Use Plan, pursuant to W.M.C. §11-4-16(D), for the property described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from Unincorporated Jefferson County to "City-Owned Open Space" for the 26.7788 acre property located north of W. 100<sup>th</sup> Avenue and east of Alkire Street.

b. That such amendment has been referred to the Planning Commission, which body held a public hearing thereon on September 25, 2012, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendment.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. §11-4-16(B).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly the goal that encourages the enhancement of the City's open space system to preserve and protect natural areas, vistas, and view corridors, and to complete the open space and trail system.

Section 2. The City Council approves the requested amendment and authorizes City Staff to make the necessary change to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described on attached Exhibit A, to "City-Owned Open Space," as depicted on the map attached as Exhibit B.

Section 3. 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 4. This ordinance shall take effect upon its passage after second reading.

Section 5. 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 8<sup>th</sup> day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of October, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office

EXHIBIT A

ANNEXATION DESCRIPTION

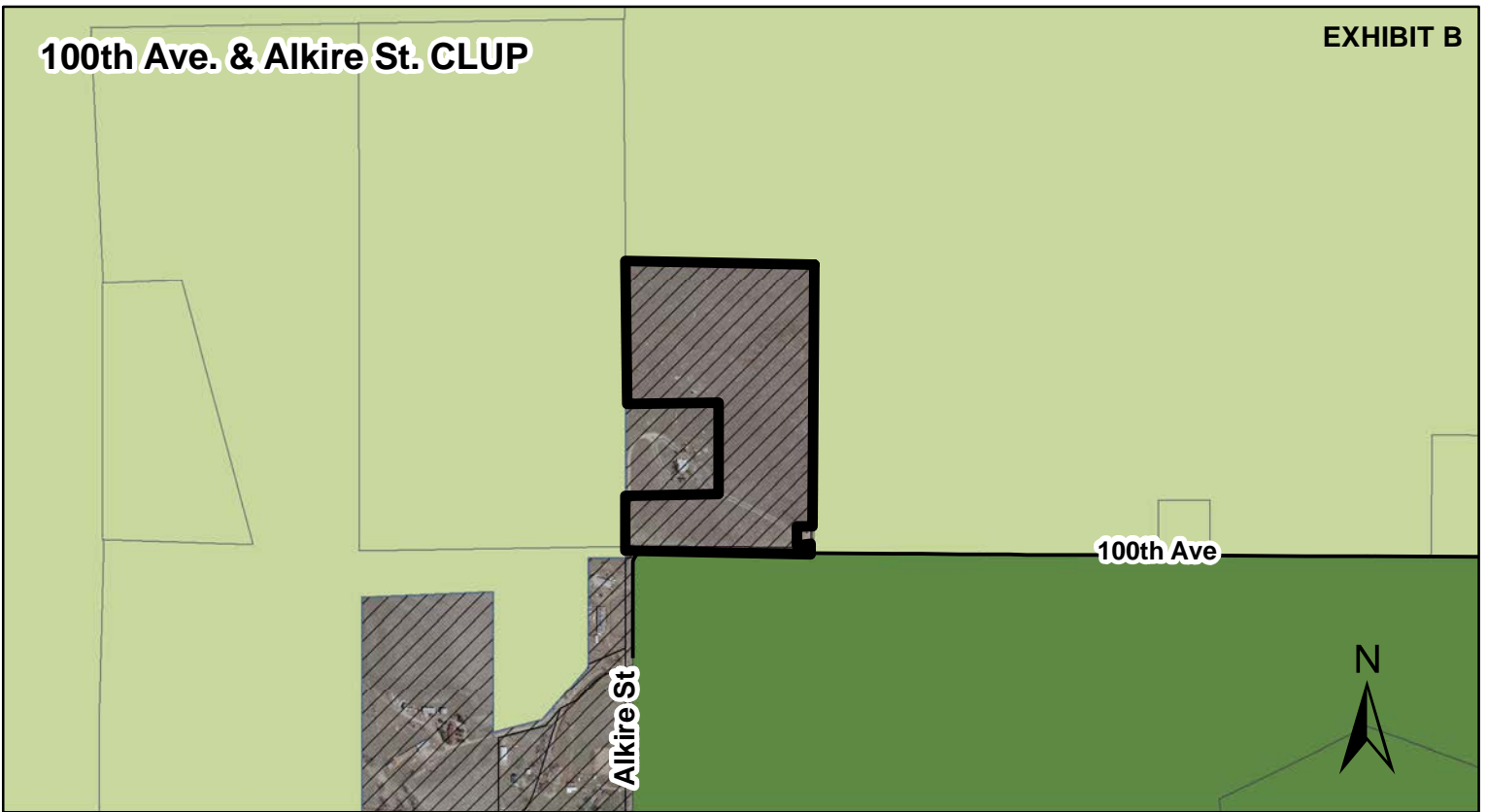
A PARCEL OF LAND BEING A PART OF THE W ½ OF SECTION 17, T.2S, R.69W, OF THE 6<sup>TH</sup> P.M., COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF THE NW ¼ OF SECTION 17, T.2S., R.69W., OF THE 6<sup>TH</sup> P.M.; THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW ¼ OF SECTION 17, A DISTANCE OF 247.36 FEET;  
THENCE S89°42'09"E A DISTANCE OF 466.70 FEET;  
THENCE N00°17'51"E A DISTANCE OF 466.70 FEET;  
THENCE N89°42'09"W A DISTANCE OF 466.70 FEET;  
THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW ¼ OF SECTION 17, A DISTANCE OF 716.02 FEET;  
THENCE S89°04'05"E A DISTANCE OF 933.46 FEET;  
THENCE S00°17'51"W A DISTANCE OF 1330.09 FEET;  
THENCE N89°04'05"W A DISTANCE OF 80.00 FEET;  
THENCE S00°17'51"W A DISTANCE OF 82.00 FEET;  
THENCE S89°04'05"E A DISTANCE OF 80.00 FEET;  
THENCE S00°17'51"W A DISTANCE OF 78.00 FEET TO A POINT ON THE SOUTH R.O.W. LINE OF WEST 100<sup>TH</sup> AVENUE;  
THENCE N89°04'05"W ALONG THE SOUTH R.O.W. LINE OF WEST 100<sup>TH</sup> AVENUE, A DISTANCE OF 933.45 FEET TO A POINT ON THE WEST LINE OF THE SW ¼ OF SECTION 17, T.2S., R.69W., OF THE 6<sup>TH</sup> P.M.,  
THENCE N00°17'24"E ALONG THE WEST LINE OF THE SW ¼ OF SECTION 17 A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

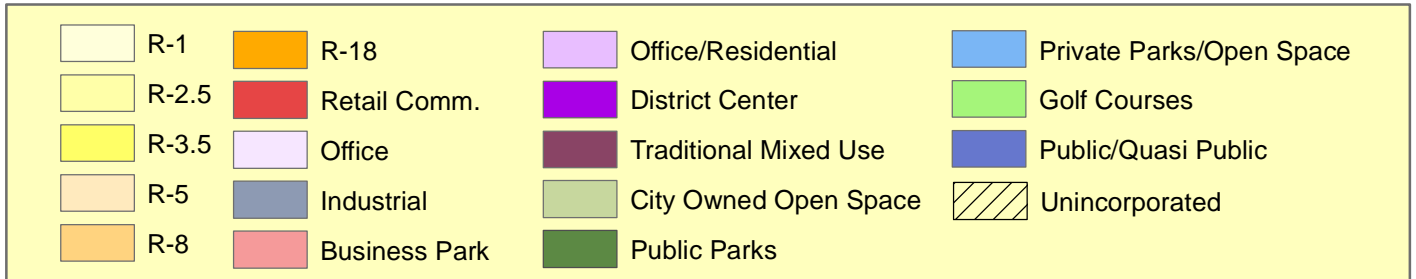
SAID ANNEXATION PARCEL CONTAINS (1,166,483 SQUARE FEET) 26.7788 ACRES, MORE OR LESS, SUBJECT TO ALL EASEMENTS AND ENCUMBRANCES OF RECORD.

# 100th Ave. & Alkire St. CLUP

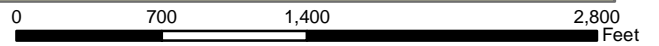
EXHIBIT B



## Change From: Unincorp. Jefferson County



## Change To: City Owned Open Space





BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **42**

SERIES OF 2012

INTRODUCED BY COUNCILLORS  
**Major - Atchison**

**A BILL**

**FOR AN ORDINANCE ANNEXING A PARCEL OF LAND IN SECTION 17, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6<sup>TH</sup> P.M., JEFFERSON COUNTY, COLORADO, KNOWN AS THE 100<sup>TH</sup> AVENUE & ALKIRE STREET PROPERTY.**

WHEREAS, pursuant to the laws of the State of Colorado, there was presented to the City Council of the City of Westminster a petition for annexation to and by the City of Westminster of the hereinafter-described contiguous, unincorporated area being in the County of Jefferson, State of Colorado; and

WHEREAS, the Council of the City of Westminster has held the required annexation hearing in conformance with all statutory requirements; and

WHEREAS, City Council has heretofore adopted Resolution No. 29, Series of 2012 making certain findings of fact and conclusions regarding the proposed annexation, as required by Section 31-12-110, C.R.S., and now finds that the property proposed for annexation under the Annexation Petition may be annexed by ordinance at this time; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning that the proposed annexation conforms with the Comprehensive Land Use Plan of the City of Westminster; and

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. That the annexation is hereby accomplished by and to the City of Westminster, State of Colorado, of the following described contiguous unincorporated territory situated, lying and being in the County of Jefferson, State of Colorado, to wit:

A parcel of land being a part of the West ½ of Section 17, Township 2 South, Range 69 West of the 6<sup>th</sup> P.M., Jefferson County, Colorado being more particularly described as follows:

Beginning at the SW corner of the NW ¼ of Section 17, Township 2 South, Range 69 West of the 6<sup>TH</sup> P.M.; Thence N00°17'51"E along the West line of the NW ¼ of Section 17, a distance of 247.36 feet; Thence S89°42'09"E a distance of 466.70 feet; Thence N00°17'51"E a distance of 466.70 feet; Thence N89°42'09"W a distance of 466.70 feet; Thence N00°17'51"E along the West line of the NW ¼ of Section 17, a distance of 716.02 feet; Thence S89°04'05"E a distance of 933.46 feet; Thence S00°17'51"W a distance of 1330.09 feet; Thence N89°04'05"W a distance of 80.00 feet; Thence S00°17'51"W a distance of 82.00 feet; Thence S89°04'05"E a distance of 80.00 feet; Thence S00°17'51"W a distance of 78.00 feet to a point on the South R.O.W. line of West 100<sup>th</sup> Avenue; Thence N89°04'05"W along the south R.O.W. line of West 100<sup>th</sup> Avenue, a distance of 933.45 feet to a point on the West line of the SW ¼ of Section 17, Township 2 South, Range 69 West, of the 6<sup>TH</sup> P.M., Thence N00°17'24"E along the West line of the SW ¼ of Section 17 a distance of 60.00 feet to the point of beginning.

Total annexation containing in total 26.7788 acres more or less.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. 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 8<sup>th</sup> day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 22<sup>nd</sup> day of October, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

**Major - Atchison**

**A BILL**

**FOR AN ORDINANCE AMENDING THE ZONING OF  
THE 100<sup>th</sup> AVENUE & ALKIRE STREET PROPERTY, A 26.7788 ACRE PARCEL LOCATED  
AT 100<sup>TH</sup> AVENUE EAST OF ALKIRE STREET, JEFFERSON COUNTY, COLORADO FROM  
P-D (JEFFERSON COUNTY) TO O-1**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for rezoning of the property generally located on the north side of W. 100<sup>th</sup> Avenue and east of Alkire Street, as described in attached Exhibit A, incorporated herein by reference, from the Jefferson County P-D zone to an O-1 zone in the City of Westminster has been submitted to the City for its approval pursuant to W.M.C. §11-5-2.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such rezoning has been referred to the Planning Commission, which body held a public hearing thereon on September 25, 2012, and has recommended approval of the requested amendment.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. §11-5-3.

e. That based on the evidence produced at the public hearing, a rezoning to the proposed O-1 zoning complies with all requirements of Westminster Municipal Code, including, but not limited to, the provisions of W.M.C. §11-4-3, requiring compliance with the Comprehensive Land Use Plan, and the criteria of W.M.C. §11-5-3.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property, described in Exhibit A, attached hereto and incorporated herein by reference, from the Jefferson County P-D zoning district to the O-1 zoning district, as depicted on Exhibit B, attached hereto.

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 8th day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of October, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office

EXHIBIT A

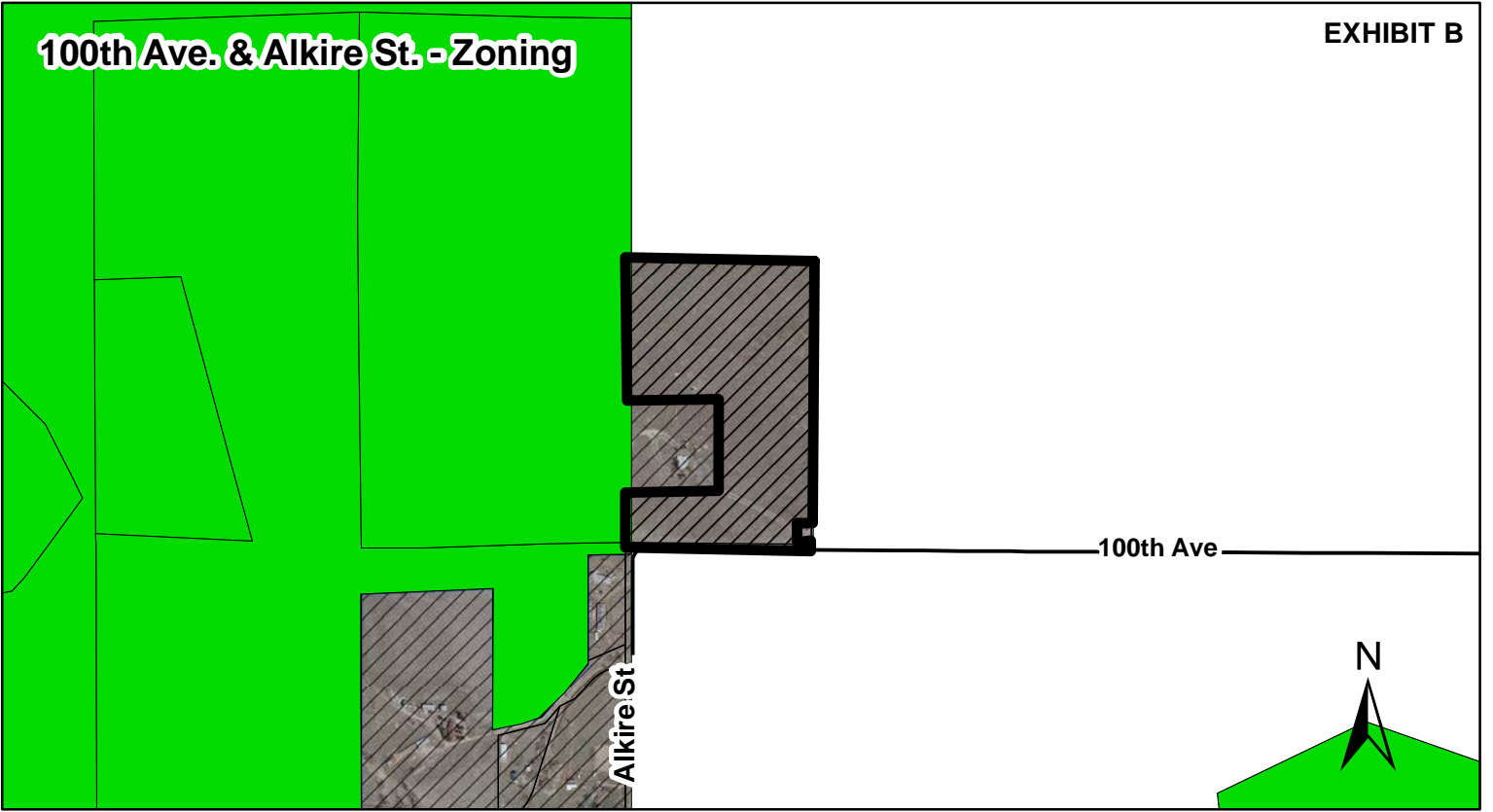
ANNEXATION DESCRIPTION

A PARCEL OF LAND BEING A PART OF THE W ½ OF SECTION 17, T.2S, R.69W, OF THE 6<sup>TH</sup> P.M., COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:















BEGINNING AT THE SW CORNER OF THE NW ¼ OF SECTION 17, T.2S., R.69W., OF THE 6<sup>TH</sup> P.M.; THENCE N00°17'51"E ALONG THE WEST LINE OF THE NW ¼ OF SECTION 17, A DISTANCE OF 247.36 FEET;  
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THENCE N89°04'05"W ALONG THE SOUTH R.O.W. LINE OF WEST 100<sup>TH</sup> AVENUE, A DISTANCE OF 933.45 FEET TO A POINT ON THE WEST LINE OF THE SW ¼ OF SECTION 17, T.2S., R.69W., OF THE 6<sup>TH</sup> P.M.,  
THENCE N00°17'24"E ALONG THE WEST LINE OF THE SW ¼ OF SECTION 17 A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

SAID ANNEXATION PARCEL CONTAINS (1,166,483 SQUARE FEET) 26.7788 ACRES, MORE OR LESS, SUBJECT TO ALL EASEMENTS AND ENCUMBRANCES OF RECORD.

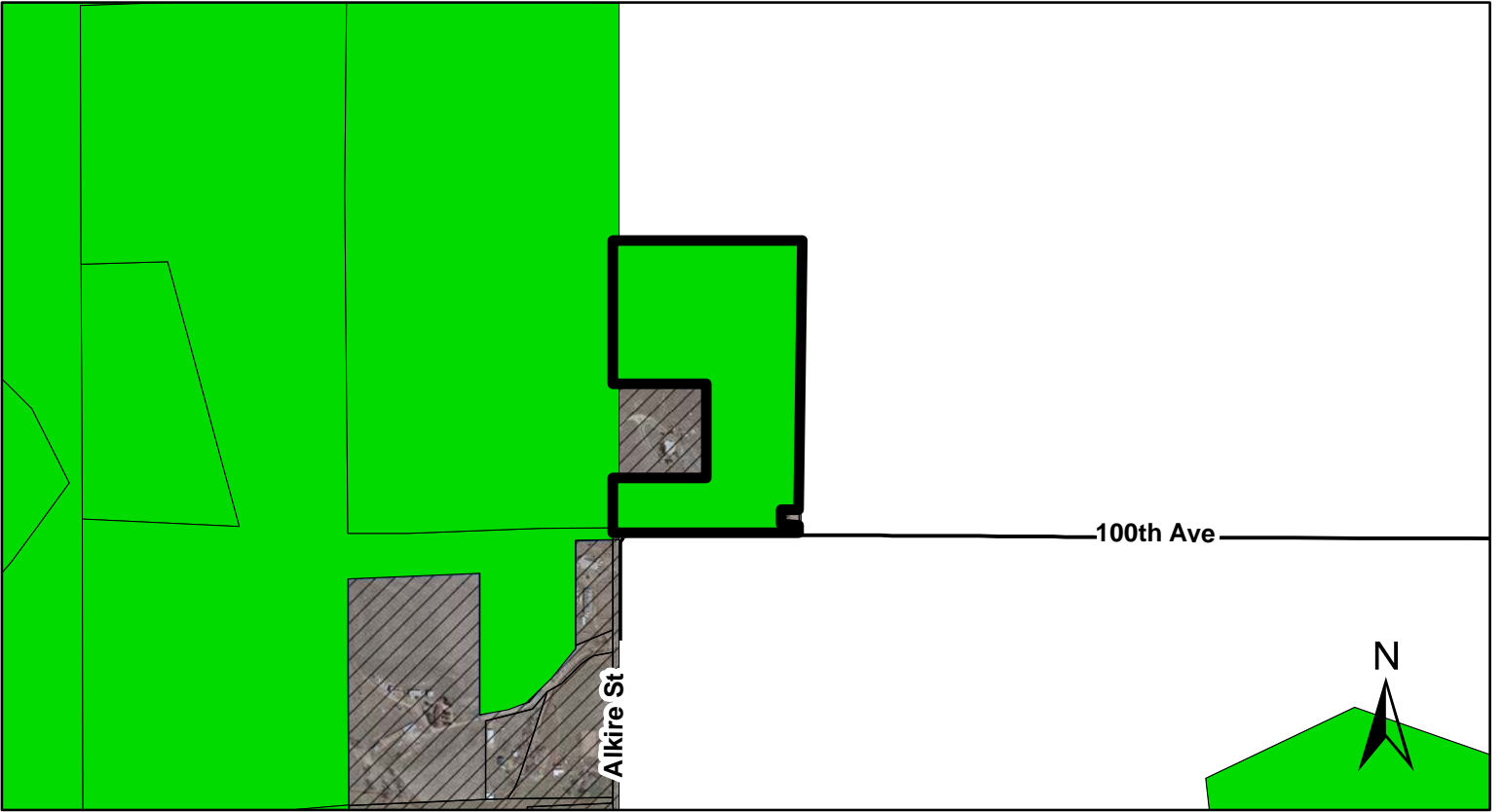
# 100th Ave. & Alkire St. - Zoning



Change From: Jefferson County P-D

Legend									
	B-1		O-1		R-1		R-5		T-1
	C-1		PUD		R-2		R-A		Outside City Limits
	M-1		R-3		R-4		R-E		

Change To: O-1





**Agenda Memorandum**

City Council Meeting  
October 22, 2012



**SUBJECT:** Second Reading of Councillor's Bill No. 44 re Amend the Westminster Municipal Code Concerning Water and Wastewater Rate Adjustments

**Prepared By:** Christine Gray, Management Analyst  
Stu Feinglas, Water Resources Analyst

**Recommended City Council Action**

Pass Councillor's Bill No. 44 on second reading implementing water and sewer rate adjustments for 2013 and 2014 by amending sections 8-7-7 and 8-8-5 of the Westminster Municipal Code.

**Summary Statement**

- In 2006, City Council adopted financial policies to provide a sustainable framework for the City's water and wastewater utilities.
- Water and sewer rates are recommended to be increased 4.00% in 2013 and 4.00% in 2014.
- These rate increases adhere to the City's strategy of long-term sustainability for the Utility.
- The combined increase cost for the 2013 average single family home is \$2.03/month. The combined increase cost for the 2014 average single family home is \$2.13/month.
- Monthly sewer charges are based on the average volume of water consumed during the months of December, January and February. This time period is used because it reflects a more accurate use of indoor water use and therefore sewer flows.
- This bill was approved on first reading by City Council on October 8, 2012.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2012

COUNCILLOR'S BILL NO. **44**  
INTRODUCED BY COUNCILLORS  
**Briggs - Major**

**A BILL  
FOR AN ORDINANCE AMENDING SECTIONS 8-7-7 AND 8-8-5 OF THE WESTMINSTER  
MUNICIPAL CODE CONCERNING THE CITY'S WATER RATE SCHEDULE AND  
SANITARY SEWER SERVICE AND INCREASING USER CHARGES**

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, 2012; 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

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

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

NOW THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-7-7, subsections (B), (C) and (D), W.M.C., are hereby AMENDED as follows:

**8-7-7: WATER RATE SCHEDULE:** (1320 1364 1467 1659 1743 1819 1954 1960 2025 2080 2169 2179 2367 2460 2635 2968 3145 3298 3306 3438 3545 3546)

(B) RESIDENTIAL: Three (3) dwelling units or less served by one meter primarily used for residential occupancy shall, in 2013~~4~~, be charged a six dollars and ~~forty-two~~~~ninety-three~~ cents (\$6.~~93~~~~42~~) per month meter service charge, and shall, in 201~~4~~~~2~~, be charged a ~~seven~~~~ix~~ dollars and ~~sixty-seven~~~~twenty~~ cents (\$~~7.20~~~~6.67~~) per month meter service charge plus:

201 <del>3</del> <del>4</del> Block Rate	201 <del>4</del> <del>2</del> Block Rate	Monthly Consumption Range
\$ <del>2.47</del> <del>29</del> per 1,000 gallons	\$ <del>2.56</del> <del>38</del> per 1,000 gallons	First 4,000 gallons
\$ <del>4.08</del> <del>3.78</del> per 1,000 gallons	\$ <del>4.24</del> <del>3.93</del> per 1,000 gallons	5,000 to 20,000 gallons
\$ <del>6.05</del> <del>5.60</del> per 1,000 gallons	\$ <del>6.29</del> <del>5.82</del> per 1,000 gallons	21,000 gallons and over

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per unit. Unit consumption shall be determined by dividing the number of units using one meter.

(C) RESIDENTIAL IRRIGATION, TOWNHOME/CONDOMINIUM (CONSISTING OF FOUR UNITS OR MORE), PUBLIC/QUASI-PUBLIC USERS: Shall, in 2013~~4~~, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: ~~five~~~~four~~ dollars and ~~seventy~~ cents (\$~~5.07~~~~4.70~~) per thousand (1,000) gallons, and shall, in 201~~4~~~~2~~, be charged a monthly meter service charge based on the meter size as listed in schedule A plus: ~~five~~~~four~~ dollars and ~~twenty-seven~~~~eighty-eight~~ cents (\$~~5.27~~~~4.88~~) per thousand (1,000) gallons.

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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, in 2013~~4~~, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: ~~fourteen~~~~three~~ dollars and ~~eighty-seven~~~~two~~ cents (~~\$4.183-87~~) per thousand (1,000) gallons, and shall, in 2014~~2~~, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: four dollars and ~~thirty-four~~~~two~~ cents (~~\$4.340-2~~) 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.

(D) COMMERCIAL: Commercial users shall, in 2013~~4~~, be charged a monthly meter service charge based on meter size as listed in Schedule A plus: ~~five~~~~four~~ dollars and ~~seventy~~ cents (~~\$45.07-70~~) per thousand (1,000) gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A, and shall, in 2014~~2~~, be charged a monthly meter service charge based on meter size as listed in Schedule A plus: ~~five~~~~four~~ dollars and ~~twenty-seven~~~~eighty-eight~~ cents (~~\$5.274-88~~) per thousand (1,000) gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A. In 2013~~4~~, commercial users shall be charged ~~six~~~~five~~ dollars and ~~seventy-two~~ cents (~~\$6.175-72~~) per thousand (1,000) gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A, and in 2014~~2~~, ~~six~~~~five~~ dollars and ~~forty-one~~~~ninety-four~~ cents (~~\$6.415-94~~) per thousand (1,000) gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A.

Schedule A					
Meter Size Code	Meter Size	Number of Service Commitments	2013 <del>4</del> Monthly Meter Service Charge	2014 <del>2</del> Monthly Meter Service Charge	Breakpoint for Second Tier Based on Meter Size (Gallons)
1	5/8" X 3/4"	1	<del>\$6.9342</del>	<del>\$7.206-67</del>	20,000
2	3/4" x 3/4"	1.5	<del>\$11.000-18</del>	<del>\$11.440-58</del>	30,000
3	1"	2.5	<del>\$15.154-01</del>	<del>\$15.754-57</del>	50,000
5	1-1/2"	5	<del>\$23.902-11</del>	<del>\$24.852-99</del>	100,000
6	2"	8	<del>\$33.150-66</del>	<del>\$34.471-88</del>	160,000
7	2" x 5/8"	8	<del>\$33.150-66</del>	<del>\$34.471-88</del>	160,000
8	3"	17.5	<del>\$67.802-70</del>	<del>\$70.5165-20</del>	350,000
9	3" x 3/4"	17.5	<del>\$67.802-70</del>	<del>\$70.5165-20</del>	350,000
10	4"	30	<del>\$79.763-75</del>	<del>\$82.9576-70</del>	600,000
11	4" x 1"	30	<del>\$79.763-75</del>	<del>\$82.9576-70</del>	600,000
12	6"	62.5	<del>\$123.6414-32</del>	<del>\$128.5818-89</del>	1,250,000
13	6" x 1-1/2"	62.5	<del>\$123.6414-32</del>	<del>\$128.5818-89</del>	1,250,000
14	6" x 3"	62.5	<del>\$123.6414-32</del>	<del>\$128.5818-89</del>	1,250,000
15	8"	90	<del>\$201.03485-87</del>	<del>\$209.07493-30</del>	1,800,000
18	10"	145	<del>\$279.2458-18</del>	<del>\$290.4068-50</del>	2,900,000
20	10" x 12" x 6"	215	<del>\$346.2520-14</del>	<del>\$360.1032-94</del>	4,300,000

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Section 2: Section 8-8-5, subsection (D), W.M.C. is hereby AMENDED to read as follows:

**8-8-5: SERVICE AND USER CHARGES WITHIN THE CITY OF WESTMINSTER AND SHAW HEIGHTS; LIEN ON PROPERTY:** (1131 1312 1320 1430 1455 1528 1788 1819 1900 1954 2025 2030 2080 2097 2123 2166 2197 2460 2634 2635 2836 2955 2968 3145 3281 3298 3306 3438 3496 3545)



(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 amount for use of the City of Westminster sanitary sewerage system by residential, including multiple unit residential, and public users shall, in 2013~~4~~, be a sum equal to four dollars and ~~nineteen fifty-two~~ nineteen cents (\$4.~~5249~~) per thousand (1,000) gallons, and shall, in 201~~24~~, be a sum equal to four dollars and ~~thirty-five-seventy~~ thirty-five cents (\$4.~~7035~~) 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, in 2013~~4~~, be a sum equal to ~~four-five~~ four dollars and ~~sixty-eight-five~~ eighty-six cents (\$~~5.05468~~) per thousand (1,000) gallons, and shall, in 201~~42~~, be a sum equal to ~~four-five~~ four dollars and ~~eighty-six-twenty-five~~ eighty-six cents (\$~~5.25486~~) 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, in 2013~~4~~, be charged twenty-~~two~~ two dollars and ~~ninetysixty-eight~~ eighty-one cents (\$~~202.698~~), and shall, in 201~~42~~, be charged twenty-~~three-one~~ three dollars and ~~eighty-one-fifty-eight~~ eighty-one cents (\$~~23.58484~~) minimum monthly sewer charge until an experience rate has been established. Single-family residential customers that, based upon occupancy patterns, register no water use during any month of the annual calculation period shall be charged based on a monthly minimum volume of two thousand (2,000) gallons per each month of zero water use. Individual reviews of indoor water consumption may be made on a case-by-case basis.

Residential users who appeal the initial sewer charge rate can have the rate adjusted to actual usage of the first four (4) months of occupancy. Any new multi-unit or commercial account shall be charged a rate based on water consumption of similar accounts in the Westminster or the Denver Metro area. Any account not receiving Westminster water will be based on actual consumption, if available, or consumption of similar accounts.

Section 3: This ordinance shall be effective for any charges billed after January 1, 2013.

Section 4: This ordinance shall take effect upon its passage after second reading. 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 8<sup>th</sup> day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22<sup>nd</sup> day of October, 2012.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office



Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Second Reading of Councillor’s Bill No. 45 re 2013/2014 City Budget Appropriations

**Prepared By:** Steve Smithers, Deputy City Manager  
Barbara Opie, Assistant City Manager  
Aric Otzelberger, Assistant to the City Manager  
Ben Goldstein, Management Analyst

**Recommended City Council Action:**

Pass Councillor’s Bill No. 45 on second reading appropriating funds for the 2013/2014 Budget.

**Summary Statement**

- City Council action is requested to pass the attached Councillors Bill on second reading the Appropriations Ordinance for 2013/2014, which sets forth the amounts of estimated revenue and expenditures by each separate fund of the City for the calendar years/fiscal years 2013 and 2014.
- Under City Charter provisions, City Council is to hold a public hearing on the proposed City Budget for the ensuing year and adopt it no later than the fourth Monday in October. Two public meetings were held on June 11 and July 23 and the required public hearing was held on the proposed 2013/2014 Budget on September 10. A copy of the proposed 2013/2014 Budget has been on file in the City Clerk’s Office, at College Hill and Irving Street Libraries, and on-line for citizen review since August 30, and the appropriate legal notices have been published in the official City newspaper.
- The 2013/2014 Budget reflects all City operations and services to be provided to Westminster citizens and businesses in 2013/2014. This budget is balanced based on no tax increases or new taxes. 2013 will be the twenty-first and 2014 will be the twenty-second consecutive years maintaining the City’s property tax mill levy at 3.65 mills. The 2013/2014 Budget reflects the City’s ongoing work towards sustainability.
- The total Proposed 2013 Budget is \$171,258,944, excluding \$44,143,894 in reserves and \$1,000,000 in contingency. The total Proposed 2014 Budget is \$175,458,143, excluding \$43,980,425 in reserves and \$1,000,000 in contingency.
- This Councillor’s Bill was passed on first reading on October 8, 2012.

**Expenditure Required:**

2013 = \$171,258,944, plus \$44,143,894 in reserves and \$1,000,000 in contingency; and  
2014 = \$175,458,143, plus \$43,980,425 in reserves and \$1,000,000 in contingency.

**Source of Funds:** General; Utility; General Reserve; General Fund Stabilization Reserve; Utility Fund Rate Stabilization Reserve; Utility Fund Capital Projects Reserve; Golf Course; Fleet Maintenance; General Capital Outlay Replacement; Sales & Use Tax; Parks, Open Space and Trails (POST); Conservation Trust; General Capital Improvement; and Debt Service Funds

Respectfully submitted,

J. Brent McFall, City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **45**

SERIES OF 2012

INTRODUCED BY COUNCILLORS  
**Winter - Kaiser**

**A BILL  
FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF  
CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2013 AND 2014 AND OTHER  
PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW**

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Carryover as of December 31, along with revenue for the calendar and fiscal year are combined and reflected as the total in each of the following funds:

NON-EMERGENCY RESERVE AND NEW REVENUE

	Fiscal Year 2013	Fiscal Year 2014
a. General Fund	\$97,461,094	\$100,430,674
b. Utility Fund	55,415,938	59,276,785
c. General Capital Improvement Fund	10,164,000	8,449,000
d. Fleet Maintenance Fund	2,488,578	2,536,530
e. General Capital Outlay Replacement Fund	2,083,648	2,353,451
f. General Debt Service Fund	7,728,464	7,595,264
g. Conservation Trust Fund	650,000	650,000
h. Sales and Use Tax Fund	69,670,593	70,513,218
i. Parks Open Space & Trails Fund	5,199,897	5,270,637
j. General Reserve Fund	0	0
k. General Fund Stabilization Reserve Fund	0	0
l. Utility Fund Rate Stabilization Reserve Fund	0	0
m. Utility Fund Capital Projects Reserve Fund	2,533,172	1,603,371
n. Golf Course Fund	<u>3,549,751</u>	<u>3,598,479</u>
Total Funds Available	\$256,945,135	\$262,277,409
Less Transfers	<u>-84,686,191</u>	<u>-85,819,266</u>
GRAND TOTAL	\$172,258,944	\$176,458,143

Section 2: The following amounts are hereby appropriated for expenditure by fund to be expended by the City Manager in accordance with the City Charter.

	Fiscal Year 2013	Fiscal Year 2014
a. General Fund	\$97,461,094	\$100,430,674
b. Utility Fund	55,415,938	59,276,785
c. General Capital Improvement Fund	10,164,000	8,449,000
d. Fleet Maintenance Fund	2,488,578	2,536,530
e. General Capital Outlay Replacement Fund	2,083,648	2,353,451
f. General Debt Service Fund	7,728,464	7,595,264
g. Conservation Trust Fund	650,000	650,000
h. Sales and Use Tax Fund	69,670,593	70,513,218
i. Parks Open Space & Trails Fund	5,199,897	5,270,637
j. General Reserve Fund	0	0
k. General Fund Stabilization Reserve Fund	0	0
l. Utility Fund Rate Stabilization Reserve Fund	0	0
m. Utility Fund Capital Projects Reserve Fund	2,533,172	1,603,371
n. Golf Course Fund	<u>3,549,751</u>	<u>3,598,479</u>
Total Funds Available	\$256,945,135	\$262,277,409
Less Transfers	<u>-84,686,191</u>	<u>-85,819,266</u>
GRAND TOTAL	\$172,258,944	\$176,458,143

Section 3. This ordinance shall become effective January 1, 2013.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED  
PUBLISHED this 8<sup>th</sup> day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 22<sup>nd</sup> day of October, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 10 A&B

### Agenda Memorandum

City Council Meeting  
October 22, 2012



**SUBJECT:** Revised Employment Agreement with John A. Stipech and  
Councillor's Bill No. 46 re Municipal Judge Salary

**Prepared By:** Debbie Mitchell, General Services Director

### Recommended City Council Action

1. Authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2013 with an effective date of January 1, 2013, and an automatic renewal for 2014 unless terminated by City Council.
2. Pass Councillor's Bill No. 46 on first reading setting the salary for the Municipal Judge for 2013.

### Summary Statement

- City Council is requested to approve a revised employment agreement with John A. Stipech for services as Presiding Judge. The agreement will be automatically renewed for 2014 unless it is terminated by City Council agreement or by Judge Stipech in accordance with the agreement.
- Under the proposed agreement, Judge Stipech's 2013 combined salary and deferred compensation will be \$134,144. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2013. The new combined salary and deferred compensation for 2013 is three percent higher than the Judge's compensation in 2012.
- No additional modifications have been made to the existing agreement with the exception of the effective dates. If approved, the proposed contract between Judge Stipech and the City will be renewed automatically unless terminated by Council prior to October 31, 2013.

**Expenditure Required:** 2013 - \$134,144 plus the cost of fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund - Municipal Court Division Budget

**Policy Issue**

Should City Council approve a revised employment agreement with the Presiding Judge for the continuation of his services through 2013 and 2014?

**Alternative**

Council could make further adjustments to the employment agreement with Judge Stipech.

**Background Information**

Since July 1991, City Council has used an employment agreement for Presiding Judge services. This approach is consistent with the practice of having employment agreements with the City Manager and the City Attorney who also serve at the pleasure of City Council. The agreement with the Presiding Judge addresses the overall duties of the position, the term of the agreement, compensation and benefits, professional development, and termination and separation provisions.

Presiding Judge John Stipech graduated from the University of Utah in 1967 with a Bachelor of Arts Degree and received his Juris Doctorate degree from the University of Denver Law School in 1971. In July 1979, he was appointed as an Associate Judge in Westminster's Municipal Court and has served as Presiding Judge since January 1, 1996. He is a member of the Colorado and Adams County Bar Associations and serves on the Board of Directors of the Colorado Municipal Judges' Association. Judge Stipech is a member of the Westminster Rotary Club and a member of the School District 50 Education Foundation Board of Directors.

The proposed employment agreement with Judge Stipech is similar to the current agreement that Council approved in October 2011 with the exceptions of the effective dates of the agreement.

City Council met with Judge Stipech on October 1 to review his job performance since his last performance appraisal and to determine his compensation for the coming year. The revised agreement incorporates the direction given by Council to Staff and will provide for a three percent increase over the Judge's 2012 compensation level to \$134,144.

The employment agreement allows the Judge to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. As in previous years, the proposed employment agreement with Judge Stipech provides that, except in those cases where the agreement provides for a different benefit level, the Judge will receive the same fringe benefits as those extended to all department heads.

Funds are available in the 2013 Budget to cover the expense for the salary and fringe benefits described in the agreement.

Section 16.2 of the Westminster City Charter requires that the Council set the Presiding Judge's salary by ordinance. The attached Councillor's Bill fulfills this requirement by designating a salary in the Municipal Code that reflects the amount listed in the proposed employment agreement.

The proposed agreement and Councillor's Bill supports City Council's Strategic Plan goal of a "Safe and Secure Community" by ensuring that a highly competent and experienced jurist continues to serve as the City's Presiding Judge.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments - Employment Agreement and Ordinance

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2013, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "the CITY," and JOHN A. STIPECH, hereinafter called "EMPLOYEE," both of whom understand as follows:

WHEREAS, the CITY desires to continue to employ the services of John A. Stipech as Presiding Municipal Judge of the City of Westminster as provided by City Charter, Chapter XVI, Section 16.2; and

WHEREAS, it is the desire of the City Council of the CITY (the "City Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties or when the CITY may desire to otherwise terminate his employ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DUTIES:

A. The CITY hereby agrees to continue the employment of EMPLOYEE as Presiding Municipal Judge of the CITY to perform the duties and functions specified in Section 16.2 of the City Charter, Chapter 22 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall administer the judicial component of the Municipal Court and shall be responsible for providing judicial coverage to insure efficient and expeditious hearing of all matters scheduled for hearing in the Municipal Court.

C. EMPLOYEE and the Court Administrator shall prepare and submit jointly a proposed budget for the Municipal Court, following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

D. EMPLOYEE shall supervise the judicial staff of the Municipal Court as may be authorized by the City Council. EMPLOYEE shall provide advice and direction to the Court Administrator in connection with the governance of the Court staff.

E. Except as otherwise expressly provided in this Agreement, EMPLOYEE shall be subject to the City of Westminster Personnel Policies and Rules, dated June 30, 2010, as amended ("Personnel Policies and Rules").

### SECTION 2. TERM

A. It is the intent of the City Council and EMPLOYEE that EMPLOYEE will serve as Presiding Judge for calendar years 2013 and 2014. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of the CITY. Further, EMPLOYEE agrees not to become employed by any other employer until this Agreement is terminated. Notwithstanding the foregoing, the term "employed" shall not be construed to include other judicial service, private law practice, teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of EMPLOYEE at any time and for any reason, subject only to the provisions set forth in Section 3 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. This Agreement is for a one-year term, but shall be automatically renewed for 2014 unless terminated no later than October 31, 2013.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAYMENT:

A. In the event the City Council decides to terminate EMPLOYEE's employment with the CITY before expiration of the aforementioned term of employment and during such time EMPLOYEE is willing and able to perform the duties of Presiding Municipal Judge, then, and in that event, the CITY agrees to give EMPLOYEE six (6) months' prior written notice or, if no such notice is given, to pay EMPLOYEE a lump sum cash payment equal to his Base Salary for the ensuing six (6) months, plus or minus the pro rata share of deferred compensation to which EMPLOYEE is entitled based on his termination date and the amount of deferred compensation already paid to EMPLOYEE for that year (the "Severance Payment"). In the event the CITY elects to terminate this Agreement without giving EMPLOYEE six (6) months' advance written notice thereof, the EMPLOYEE shall have as his sole and exclusive remedy the Severance Payment as provided in this paragraph and EMPLOYEE shall have no other rights or claims against the CITY and hereby expressly waives and releases the same; provided, however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, the CITY has no obligation to give notice or pay the Severance Payment .

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the CITY refuses, following written notice, to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a written suggestion by at least four (4) members of the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction and be entitled to the Severance Payment as described in subsection A of this Section 3.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY no less than sixty (60) days notice in advance in writing, and this agreement shall terminate on the effective date of the resignation.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this Section 3.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3.A hereof and shall entitle EMPLOYEE to the Severance Payment described therein.

### SECTION 4. SALARY AND EVALUATIONS:

A. Effective January 1, 2013, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual gross salary ("Gross Salary") of \$134,144 which consists of a base salary ("Base Salary") and the amount EMPLOYEE elects to take in deferred compensation. EMPLOYEE may elect to receive a portion of his Gross Salary in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The Base Salary shall be payable in installments at the same time as other employees of the CITY are paid.



B. The CITY agrees to review EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY. Such evaluation shall consider the salary of judges of similar municipalities.

C. Pursuant to the City Charter, the Base Salary and deferred compensation provided in this Section shall be approved by ordinance of the City Council.

SECTION 5. HOURS OF WORK:

It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours, in compliance with the Personnel Policies and Rules.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. The CITY shall pay EMPLOYEE a monthly car allowance of \$500 to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

The CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

SECTION 8. PROFESSIONAL DEVELOPMENT:

The CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the CITY, including, but not limited to, the American Bar Association, the Colorado Bar Association, the Colorado Municipal Judges Association, and continuing legal education courses and seminars related to topics of the judiciary. In addition to reasonably funding educational/training programs for EMPLOYEE'S professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each calendar year.

SECTION 9. GENERAL EXPENSES:

The CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

The CITY shall provide EMPLOYEE with all benefits that are provided to Department Head level employees by the Personnel Policies and Rules; provided that when such benefits are in conflict with this Agreement, this Agreement shall control. EMPLOYEE'S years of service with the City in an unbenefited capacity will be treated as years of continuous municipal service when the level of EMPLOYEE'S benefits is computed.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter or any other law.

B. EMPLOYEE is ultimately responsible for providing judicial coverage of all docketed matters in the Westminster Municipal Court.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on January 1, 2013, and, if automatically renewed, shall be in effect through December 31, 2014.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Effective January 1, 2013, this Agreement replaces and supersedes prior employment agreements between CITY and EMPLOYEE.

G. Nothing in this Agreement shall be construed as creating a multiple fiscal year obligation on the part of the CITY within the meaning of Colorado Constitution Article X, Section 20.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has voluntarily signed and executed this Agreement.

APPROVED by the Westminster City Council on November 12, 2012, contingent upon approval of the Councillor's Bill amending the Municipal Judge salary.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Mayor

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

\_\_\_\_\_  
John A. Stipech

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2012

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE SETTING THE SALARY OF THE MUNICIPAL JUDGE FOR 2013**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-7-2, W.M.C., is hereby AMENDED as follows:

**1-7-2: MUNICIPAL JUDGE:** The salary of the Municipal Judge shall be as follows:

~~\$130,237~~\$134,144 per annum, effective January 1, ~~2012~~2013, payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation. Such deferred compensation amount may, at the Municipal Judge's option, be paid as a lump sum at the beginning of the calendar year. ~~A bonus of \$5,000 shall be payable on or before January 20, 2012.~~

Section 2. 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 22<sup>nd</sup> day of October, 2012.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of November, 2012.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney



**Agenda Memorandum**

City Council Meeting  
October 22, 2012



**SUBJECT:** Resolution No. 35 re Acquisition of Property Interests for Westminster Station

**Prepared By:** Stephen C. Baumann, Assistant City Engineer

**Recommended City Council Action**

Adopt Resolution No. 35 authorizing City Staff to proceed with the acquisition of fee simple and easement interests necessary for the Westminster Station project, including the use of eminent domain, if necessary; and authorize all reasonable costs associated with the acquisitions.

**Summary**

- An intergovernmental agreement between the City and the Regional Transportation District calls for the City to acquire certain property rights necessary for the installation of infrastructure that will support the FasTracks project for Westminster Station scheduled to go into service in 2016. The property interests include fee simple and easement parcels that will be used to install public utilities, streets and pedestrian improvements.
- The first of the necessary acquisitions has been identified, and appraisals will be prepared to determine a basis for compensation to the three landowners involved.
- This item was discussed with City Council in executive session on October 1, 2012, and Council directed staff to prepare the resolution to authorize the necessary acquisitions and expenditures, including the use of eminent domain, if necessary.
- Funds are available and were appropriated by City Council for this project.

**Expenditure Required:** Reasonable expenditures to be determined by the City

**Source of Funds:** General Capital Improvement Fund—South Westminster TOD Project;  
Utility Fund—South Westminster TOD – Wastewater Project

**Policy Issue**

Should the City pursue the acquisition of properties needed for the construction of the Westminster Station infrastructure?

**Alternative**

The intergovernmental agreement between the City and the Regional Transportation District requires that these acquisitions be accomplished by the City. The only alternative to the recommended action would be a complete abandonment of the Westminster Station project by the City.

**Background Information**

In June of 2012, City Council authorized the signing of an intergovernmental agreement (IGA) with the Regional Transportation District (RTD) that defined the parties' obligations and responsibilities in planning and constructing the supporting infrastructure for the Westminster Station commuter rail station at approximately 70<sup>th</sup> Avenue and Irving Street. The station will go into service in the spring of 2016 under the present schedule and is expected to spur redevelopment of the area in conformance with the City's Transit Oriented Development (TOD) plan.

Among the City's responsibilities under the IGA is the acquisition of certain private property rights needed to construct public facilities that will be necessary for the station. These generally include street and utility infrastructure, sidewalks, pedestrian plazas and drainage facilities. City Council is being asked to adopt the attached resolution authorizing the acquisition of the property rights necessary to implement these improvements and meet the requirements of the IGA.

The parcels proposed for acquisition are depicted in the attachments to this memo and will include a portion of the fee simple interests now held by KEW Realty Corporation at 3200-3240 West 71<sup>st</sup> Avenue along with temporary easements necessary for construction. The parcel is necessary in part to provide street and pedestrian access through a public plaza that will be used by commuters to access the tunnel and station platform being built by RTD and its concessionaire, Denver Transit Partners (DTP). An easement for DTP's relocation of the City's sanitary sewer facilities will be needed from the properties at 3300 West 71<sup>st</sup> Avenue (Hunter Leather) and 6945 Federal Boulevard (Nolan's RV). Easements for drainage facilities, also being installed by DTP, will be required from both 6935 Federal Boulevard and 6945 Federal Boulevard. Temporary construction easements to provide access for work or staging areas for the contractor will also be developed for each of these permanent easement areas.

Since the design of these facilities is now in progress, the description of these acquisitions will evolve and be refined in the very near future. Appraisals to determine the fair market value of the acquisitions will be prepared by qualified real estate appraisal professionals. Under the proposed resolution, the City Manager will have the authority to approve a compensation amount on the basis of the appraised value or such other negotiated value that is just and necessary to facilitate settlement. Authority to condemn the property interests in an eminent domain action is also included in the resolution, but efforts will focus on negotiated settlements.

The attached resolution authorizes Staff to proceed with activities and expenditures necessary to secure legal possession and acquire fee interests and easements for the Westminster Station project.

Property acquisition activities related to the Westminster Station project help achieve the City Council's Strategic Plan Goals of a "Strong Balanced Local Economy" and "Vibrant Neighborhoods In One Livable Community" by contributing to the development of multi-modal transportation systems and the transit-oriented community that is expected to grow around the station.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Resolution with Exhibits A and B

RESOLUTION

RESOLUTION NO. **35**

INTRODUCED BY COUNCILLORS

SERIES OF 2012

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**A RESOLUTION TO ACQUIRE FEE INTERESTS AND  
EASEMENTS FOR THE WESTMINSTER STATION PROJECT**

WHEREAS, the Westminster City Council has determined that it is necessary to the public health, safety and welfare to acquire certain property rights for the public purpose of installing public infrastructure to support the proposed Westminster Station (the "Project"); and

WHEREAS, appraisals of real property prepared by a professional appraisal company experienced in performing appraisals will be used to determine the fair market value of the property rights and parcels to be acquired; and

WHEREAS, the City of Westminster (the "City") will make a good faith offer to purchase each of the subject parcels; and

WHEREAS, the City is a home rule municipality under Colorado Constitution Article XX with the legal authority and power of eminent domain and the City Attorney has advised that the City may exercise its right of eminent domain should normal negotiations fail; and

WHEREAS, if the property cannot be obtained voluntarily, the City is authorized to commence condemnation proceedings to acquire the property interests identified below and to prosecute the proceedings to their conclusion; and

WHEREAS, City Council finds that if acquisition by condemnation of any parcel described in this resolution is commenced, immediate possession by the City may be necessary for the public health, safety and welfare in order to keep the Project on the desired schedule.

NOW, THEREFORE, the Westminster City Council resolves that:

1. The property interests sought to be acquired for the Project include permanent easements and temporary construction easements at 3300 West 71<sup>st</sup> Avenue, 6935 Federal Boulevard and 6945 Federal Boulevard, depicted in the attached Exhibit A; and fee interests and temporary construction easements at 3200-3240 West 71<sup>st</sup> Avenue, depicted in the attached Exhibit B (collectively, the "Property"); and
2. The acquisition of the Property serves the public purpose of constructing improvements to streets, utility systems, pedestrian plazas, drainage and other facilities to support public transit systems; and
3. The City Manager or his designee is hereby authorized to establish minimum just compensation for acquisition of the Property necessary to build the Project; and
4. The City Manager or his designee is authorized to proceed with negotiations to acquire the necessary Property on the basis of the appraised value, or such higher value as is considered just and necessary to facilitate the acquisition and avoid the necessity of condemnation.
5. The City Manager or his designee is hereby authorized to acquire such Property consistent with applicable law, including the execution of all documents necessary to complete these purchases.

6. The City Attorney is authorized to take all necessary legal measures to acquire the Property, including proceeding with condemnation of the Properties against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such further action as may be reasonably necessary for or incidental to the filing and diligent prosecution of any litigation or proceedings required to obtain the Property should normal negotiations fail or exceed the time constraints of the overall Project. In the event that acquisition by condemnation is commenced, the City Attorney is further authorized to request a grant of immediate possession of the Property.

7. The City Manager or his designee shall be further authorized to incur reasonable costs associated with acquiring the Properties; including, without limitations, contractual services, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filings fees and charges and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property. The cost shall be charged to the General Capital Improvement Fund and the Utility Capital Improvement Fund, as appropriate.

8. The City Manager or his designee is hereby authorized to call for amendment of the legal descriptions of the Property to be acquired and the nature of the interests to be acquired, including the commencement date and duration of any temporary easement, if necessary in the course of the Project.

PASSED AND ADOPTED this 22nd day of October, 2012.

\_\_\_\_\_  
Mayor

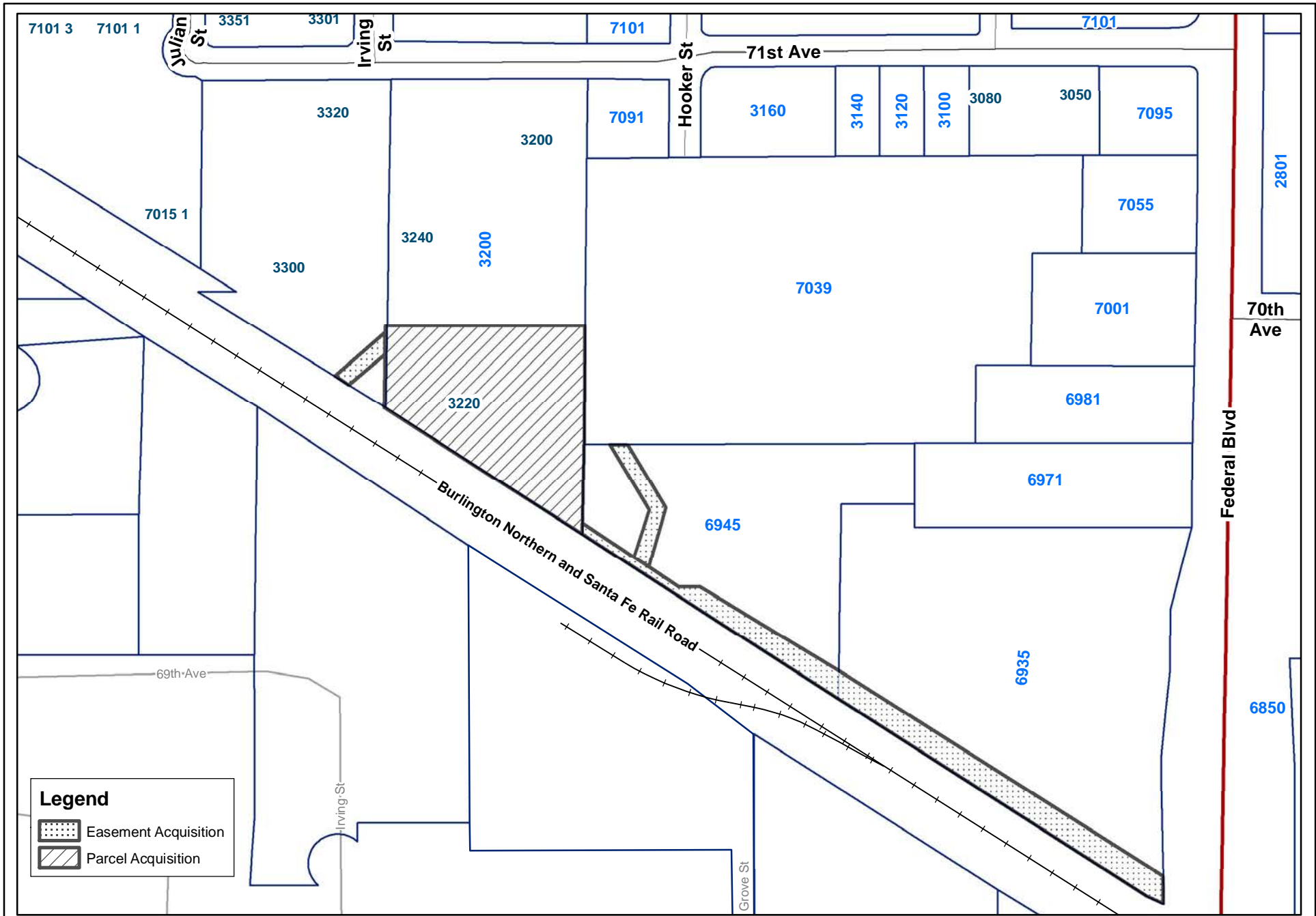
ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney



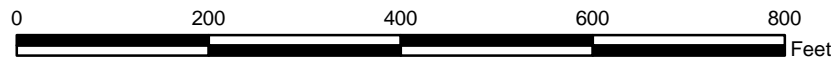


lgis-apps\gis-apps\WestGIS\Department\Projects\CommDev\TOD\_Station\_SouthWest\TOD\_Station\_BaseMap\Stev#8\_AgendaMemo\_10-4-2012.mxd

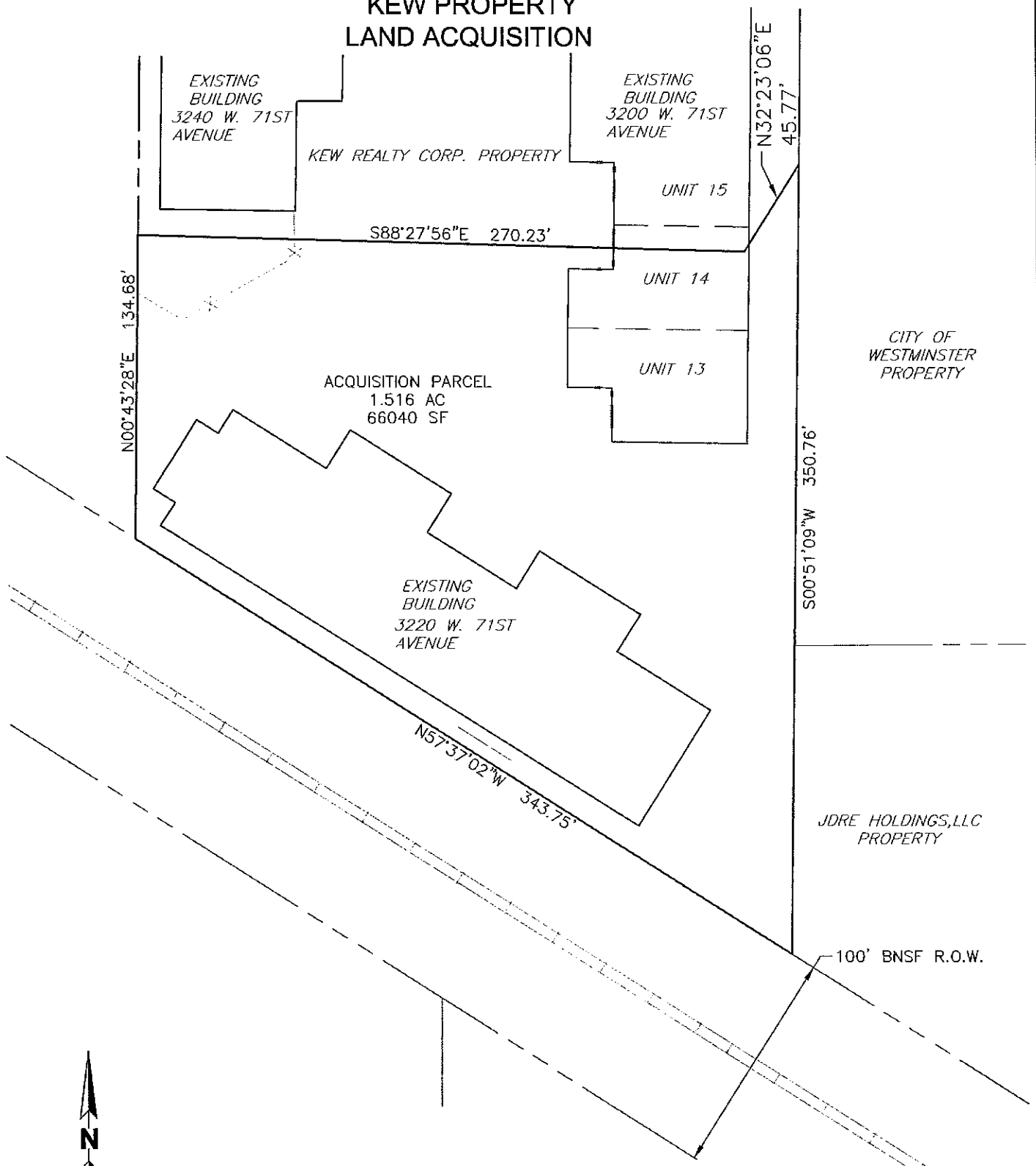
# Exhibit A



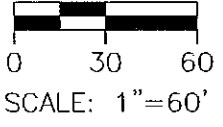
1 inch = 200 feet



# EXHIBIT B KEW PROPERTY LAND ACQUISITION



DRAWING LOCATION: G:\Title\22630--Westminster Station\PLANS\EXHIBITS\PHASE 1\_KEW\Kew Exhibit-PH1.dwg



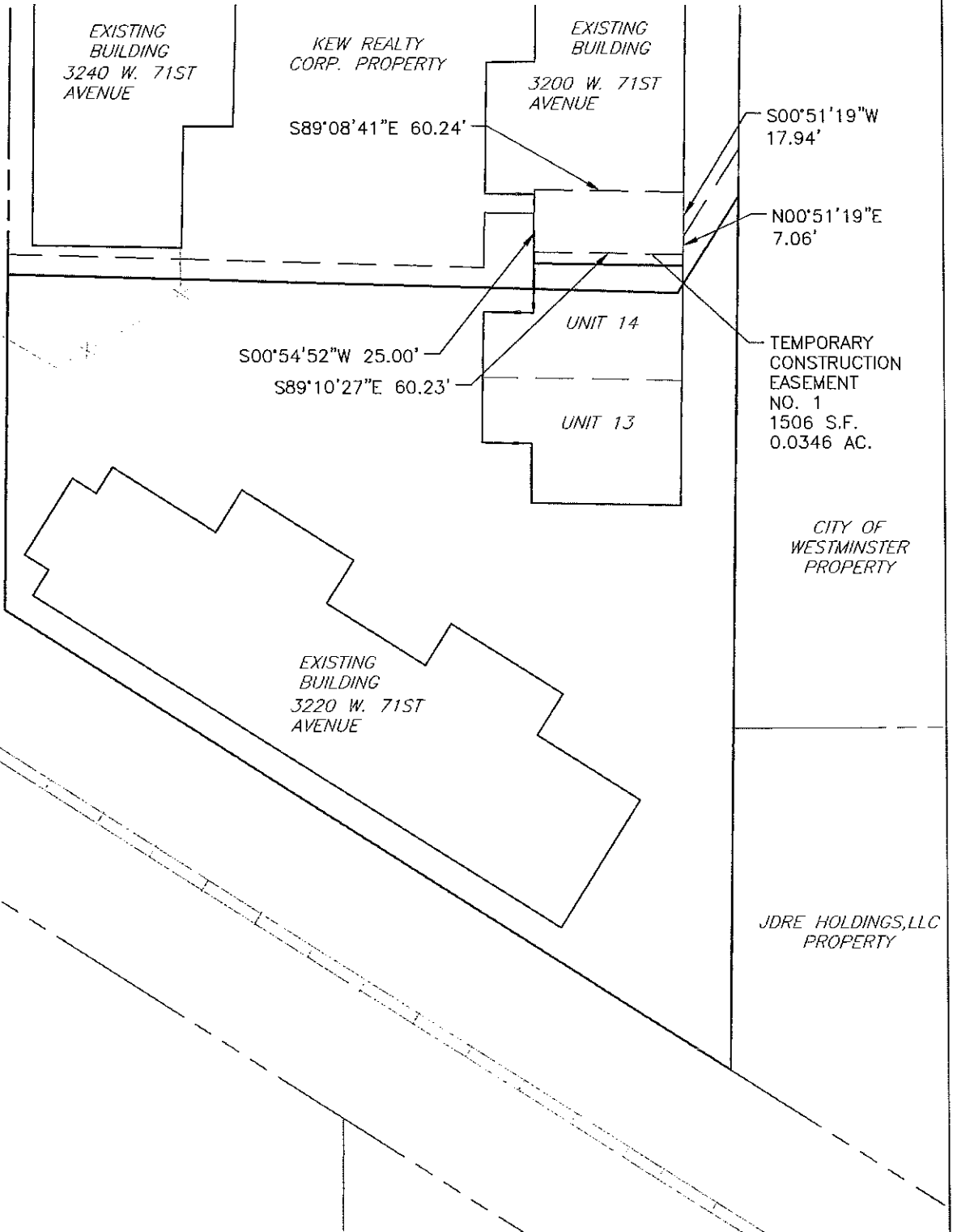
OCTOBER 11, 2012



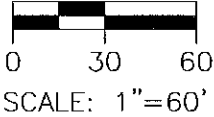
**MARTIN / MARTIN**  
CONSULTING ENGINEERS

12499 WEST COLFAX AVE.  
LAKEWOOD, CO 80215  
303.431.6100  
FAX 303.431.4028

**EXHIBIT B  
KEW PROPERTY  
TEMPORARY CONSTRUCTION EASEMENT NO. 1**



DRAWING LOCATION: G:\Turtle\22630-Westminster\_Station\PLANS\EXHIBITS\PHASE 1 KEW KEW Exhibit-PH1.dwg

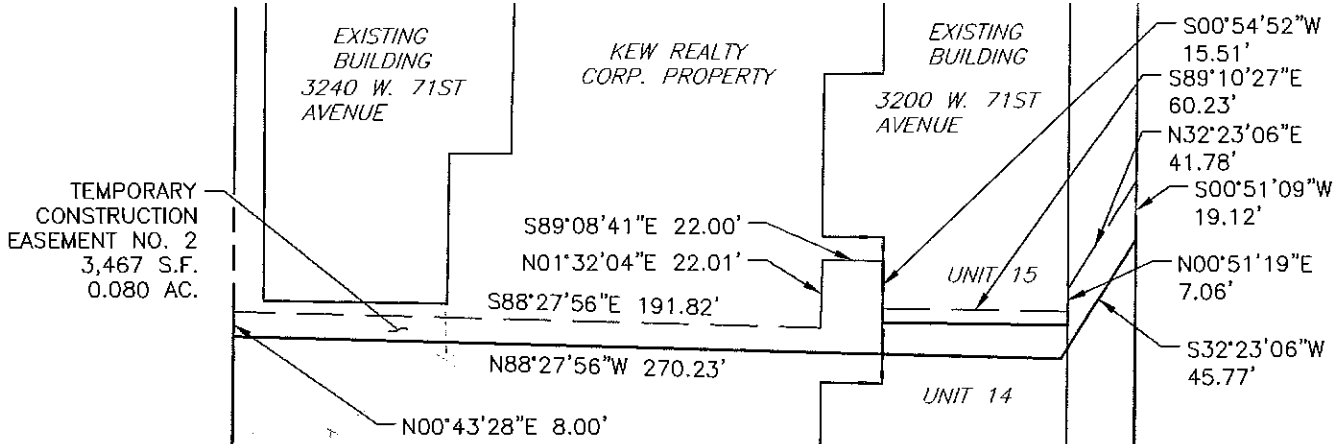


OCTOBER 11, 2012

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**EXHIBIT B  
KEW PROPERTY  
TEMPORARY CONSTRUCTION EASEMENT NO. 2**

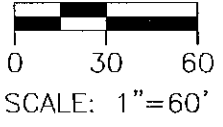


CITY OF WESTMINSTER PROPERTY

EXISTING BUILDING  
3220 W. 71ST AVENUE

JDRE HOLDINGS, LLC PROPERTY

DRAWING LOCATION: G:\Turtle\22630--Westminster Station\PLANS\EXHIBITS\PHASE 1 KEW KEW Exhibit- PH1.dwg



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