AGENDA
REGULAR MEETING OF THE CITY COUNCIL
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
NOVEMBER 23, 2020
7:00 P.M.

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website:  https://www.Lakewood.org/CouncilVideos
or
Lakewood Speaks:  https://lakewoodspeaks.org/

Phone Number for Public Comment: (will be provided)
Webinar ID: (will be provided)
(press # after entering the webinar id then press # once more to join the meeting)
Press *9 to Request to Speak
(You will be prompted when to speak. After speaking, you can hang up or hold to speak on a different agenda item)
Press *6 to Unmute

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PLEDGE OF ALLEGIANCE

ITEM 4 – PUBLIC COMMENT

ITEM 5 – EXECUTIVE REPORT

CITY MANAGER

CONSENT AGENDA

ORDINANCES ON FIRST READING

(Ordinances are on first reading for notice and publication only; public hearings are held on second reading)
ITEM 6 – RESOLUTION 2020-44 – DECLARING THE INTENDED USE OF A PARCEL OF LAND HELD BY THE CITY OF LAKEWOOD TO BE FOR OPEN SPACE OR PUBLIC PARK PURPOSES

ITEM 7– ORDINANCE O-2020-28 – AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO THE 2020 CITY OF LAKEWOOD ANNUAL BUDGET IN THE AMOUNT OF $60,000 AND AUTHORIZING THE EXPENDITURE OF GRANT FUNDS FROM THE PEACE OFFICER STANDARDS AND TRAINING BOARD ON BEHALF OF THE ROONEY VALLEY LAW ENFORCEMENT TRAINING FACILITY FOR INSTALLATION OF A PRE-CAST CONCRETE BALLISTIC WALL AT THE TRAINING FACILITY

ITEM 8 – ORDINANCE O-2020-29 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE SOUTH SIDE OF 1ST AVENUE FROM GARRISON STREET TO CREECHTON MIDDLE SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

ITEM 9 – ORDINANCE O-2020-30 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE WEST SIDE OF INDEPENDENCE STREET FROM 6TH AVENUE FRONTAGE ROAD TO LAKEWOOD HIGH SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

ITEM 10– ORDINANCE O-2020-31 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE REPLACEMENT OF TRAFFIC SIGNALS AND INTERSECTION IMPROVEMENTS ALONG KIPLING STREET AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

ITEM 11– ORDINANCE O-2020-32 – ADOPTING A REVISED CHAPTER 3.01 AND ANCILLARY MUNICIPAL CODE CHANGES

ITEM 12 – ACCEPTING MINUTES OF THE BOARDS AND COMMISSIONS

Lakewood Advisory Commission
Executive Committee Meeting February 5, 2020
Lakewood Advisory Commission
Executive Committee Meeting March 4, 2020
Lakewood Advisory Commission
Full Commission Meeting January 15, 2020
Lakewood Advisory Commission
Full Commission Meeting February 19, 2020
Lakewood Advisory Commission
Full Commission Meeting May 20, 2020

END OF CONSENT AGENDA

RESOLUTIONS

ITEM 13 – RESOLUTION 2020-45 – AUTHORIZING ALLOCATIONS FOR 533 VAN GORDON STREET, LAKEWOOD, CO

ITEM 14 – RESOLUTION 2020-46 – AUTHORIZING APPROVAL OF SETTLEMENT AGREEMENT RELATING TO TWO LAWSUITS OVER DEVELOPMENT OF THE FORMER WHITE FENCE FARM PROPERTY

ITEM 15 – RESOLUTION 2020-47 – AMENDING RESOLUTION 2020-8 AND GRANTING AUTHORITY TO CONTINUE UNDER CITY CODE SECTION 14.27 FOR DEVELOPMENT PROJECT AT 6263 W. JEWELL AVE.

ORDINANCES ON SECOND READING AND PUBLIC HEARINGS

ITEM 16 – ORDINANCE O-2020-27 – SETTING THE SALARIES OF MUNICIPAL COURT JUDGES

ITEM 17 – GENERAL BUSINESS

MOTION TO EXTEND EMERGENCY DECLARATION – I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL DECEMBER 14, 2020, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

ITEM 18 – MAYOR AND CITY COUNCIL REPORTS

A. MAYOR
B. MAYOR PRO TEM
C. COUNCIL MEMBERS

ITEM 19 – ADJOURNMENT
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020/ AGENDA ITEM NO. 6

To: Mayor and City Council

From: Kit Newland, Director of Community Resources, 303-987-7822

Subject: DECLARATION OF THE USE OF TRACT G OF THE TAMARISK SUBDIVISION FILING NO. 1

SUMMARY STATEMENT: A resolution declaring the intended use of Tract G of the Tamarisk Subdivision Filing No. 1 held by the City to be open space and park uses.

BACKGROUND INFORMATION: The City of Lakewood obtained ownership of Tract G of the Tamarisk Subdivision Filing No. 1 (Tract G) in 1998 through a dedication on the plat.

The 10.09-acre tract was dedicated to the City for municipal purposes. The dedication statement also indicated that the site could be transferred to the Jefferson County R-1 School District to be used for school purposes, with the restriction that if the School District did not construct a school building on the site within fifteen years of the recording of the official development plan for the area covered by the plat, the property would revert to the City of Lakewood to decide how to use the parcel. The Pattridge Official Development Plan, which regulated the area, was recorded April 11, 1997. The City has never transferred the property to the School District.

Article 14 of the City Charter sets forth parameters for the sale, lease, and disposal of City property. It specifically states that the City Council may only lease, sell, or otherwise dispose of real property used or held for open space or park purposes without the question of such lease or sale, and the terms and consideration therefore being submitted to a vote of the registered electors of the City at a special or regular municipal election and a favorable vote by a majority of those registered electors voting thereon. Property held for municipal purposes may be disposed of, only by a vote of the City Council.

The Department of Community Resources recommends preservation of Tract G as an open space parcel. It is anticipated the Lakewood community would support the open space and park protections of the City Charter to this property. The School District has indicated they no longer have a need for Tract G. There are no specific plans at this time to make improvements to Tract G.

BUDGETARY IMPACTS: The City currently maintains Tract G to include perimeter mowing and trash removal. The only budgetary impact would be moving the expense from the Department of Public Works to the Department of Community Resources.

STAFF RECOMMENDATIONS: The Department of Community Resources recommends the adoption of the resolution declaring Tract G an open space or park property of the City.
**ALTERNATIVES:** There are two alternatives to this proposal. The first would be status quo, leaving the disposition of Tract G to a future City Council. The second would be for Council to dispose of the property at this time.

**PUBLIC OUTREACH:** No public outreach has been specifically conducted regarding the disposition of Tract G.

**NEXT STEPS:** Upon adoption of the resolution, the property would be added to the City’s inventory of open space and park properties. Signs stating potential use as a school would be removed from the site. Maintenance and administration of the site would be taken over by the Department of Community Resources.

**ATTACHMENTS:** Resolution 2020-44
Exhibit A

**REVIEWED BY:** Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
DECLARING THE INTENDED USE OF A PARCEL OF LAND HELD BY THE CITY OF LAKEWOOD TO BE FOR OPEN SPACE OR PUBLIC PARK PURPOSES

WHEREAS, Tract G of Tamarisk Subdivision Filing No. 1, located at 3100 South Indiana Street and generally depicted on Exhibit A attached hereto (“Tract G”), was dedicated to the City of Lakewood (the “City”) for municipal and other purposes, including school purposes, via the Tamarisk Subdivision Filing No. 1 plat (the “Plat”), which the City Council approved on November 24, 1997, and was recorded on January 12, 1998, at Reception No. F0538431 in the real property records of Jefferson County, Colorado;

WHEREAS, the dedication statement on the Plat indicated that the City could transfer Tract G Jefferson County R-1 School District (the “District”) for school purposes, with the restriction that if the District did not construct a school building on Tract G within fifteen (15) years of the recording of the official development plan for the area covered by the Plat, the property would revert to the City;

WHEREAS, the District no longer considers Tract G needed for school purposes;

WHEREAS, the City Council desires to limit future uses of Tract G to park or open space purposes;

WHEREAS, properties held for open space or park purposes are afforded special protections under Article 14 of the City Charter of the City of Lakewood; and

WHEREAS, the City Council hereby finds and determines that holding Tract G for park or open space purposes is and shall be in the best interest of the residents of the City.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Declaration of Use. The City Council hereby declares that Tract G of the Tamarisk Subdivision Filing No. 1 shall henceforth be held by the City of Lakewood for open space or park purposes.

SECTION 2. Site Name. Tract G of the Tamarisk Subdivision Filing No. 1 shall be known as Tamarisk Park and shall be listed on the City’s parkland inventory.

SECTION 3. Effective Date. This Resolution shall become effective immediately upon adoption.
INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a virtual regular meeting of the Lakewood City Council held on November 23, 2020, at 7 o'clock p.m.

______________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 7

To: Mayor and City Council

From: Daniel McCasky, Police Chief, 303-987-7102

Subject: AN ORDINANCE TO ACCEPT GRANT FUNDING TO ASSIST WITH THE COST OF A PRE-CAST CONCRETE BALLISTIC WALL AT THE ROONEY VALLEY LAW ENFORCEMENT TRAINING FACILITY (“RVLETF”)

SUMMARY STATEMENT:
On March 3, 2020, RVLETF submitted a grant funding request to the Peace Officers Standards and Training (“POST”) to assist with the cost of a pre-cast concrete ballistic wall which is necessary for the overall safety at the training facility. On June 25, 2020, POST approved RVLETF’s grant contract in the amount of $60,000. Per City Charter, City Council can make supplemental appropriations to the annual budget by ordinance. This memo requests City Council adopt the attached ordinance authorizing a supplemental appropriation in the amount of $60,000 for the grant contract.

BACKGROUND INFORMATION:
In 1994, the City of Lakewood signed an intergovernmental agreement with Jefferson County, the City of Wheat Ridge, the City of Golden, the Colorado Division of Wildlife, and Red Rocks Community College to establish RVLETF. The intergovernmental agreement names the City of Lakewood as RVLETF’s fiscal agent.

RVLETF is used for tactical and firearms training by Lakewood Police Department, Jefferson County Sheriff’s Office, Arvada Police Department, Wheat Ridge Police Department, Golden Police Department, Colorado Parks and Wildlife, two police training academies, and two multi-agency SWAT teams.

Due to limited funds, few improvements have been made to RVLETF’s infrastructure and it has reached the point that many major improvements are necessary in order to continue to serve the partnering agencies as the primary firearms training facility.

RVLETF sits next to the Thunder Valley Motocross Park. The $60,000 grant award will be used to assist with the cost of a pre-cast concrete ballistic wall, which will provide a necessary barrier between RVLETF and Thunder Valley Motocross Park. Without the wall, the range cannot safely be used when motocross spectators climb a hill nearby RVLETF to watch the racing. Presently when this occurs the range must be shut down, causing the ability to train personnel to be drastically impacted.

On March 3, 2020, RVLETF submitted a grant funding request to POST.

On June 25, 2020, POST approved RVLETF’s grant contract in the amount of $60,000 to assist with the cost of a pre-cast concrete ballistic wall at the training facility.
BUDGETARY IMPACTS:
Adopting this ordinance would authorize a supplemental appropriation to the 2020 annual budget in the amount of $60,000 to assist with the cost of a pre-cast concrete ballistic wall for the training facility.

STAFF RECOMMENDATIONS:
Staff recommends that the City of Lakewood adopt the proposed ordinance.

ALTERNATIVES:
If City Council chooses not to adopt the proposed ordinance, the city will not be able to utilize the awarded grant dollars.

PUBLIC OUTREACH:
There has been no official public outreach on this agenda item.

ATTACHMENTS: Ordinance O-2020-28

REVIEWED BY: Kathleen E. Hodgson, City Manager
               Benjamin B. Goldstein, Deputy City Manager
               Timothy P. Cox, City Attorney
AN ORDINANCE

AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO THE 2020-2021 CITY OF LAKewood ANNUAL BUDGET IN THE AMOUNT OF $60,000 AND AUTHORIZING THE EXPENDITURE OF GRANT FUNDS FROM THE PEACE OFFICER STANDARDS AND TRAINING BOARD ON BEHALF OF THE ROONEY VALLEY LAW ENFORCEMENT TRAINING FACILITY FOR INSTALLATION OF A PRE-CAST CONCRETE BALLISTIC WALL AT THE TRAINING FACILITY

WHEREAS, in 1994 the City of Lakewood (the “City”) entered into an intergovernmental agreement with Jefferson County, the City of Wheat Ridge, the City of Golden, the Colorado Division of Wildlife, and Red Rocks Community College (the “IGA”) to establish the Rooney Valley Law Enforcement Training Facility (“RVLETF”), which includes a shooting range;

WHEREAS, Pursuant to the IGA, the City acts as the procurement agency and fiscal agent for RVLETF;

WHEREAS, on March 3, 2020, RVLETF submitted a grant funding request to the Peace Officer Standards and Training Board (“POST”) to assist with the procurement of a pre-cast concrete ballistic wall required for the safety of trainees and the public;

WHEREAS, on June 25, 2020, POST approved RVLETF’s grant request in the amount of $60,000;

WHEREAS, as the fiscal agent and procurement agency for RVLETF, the City collects all dues and fees paid, and any grants awarded, to RVLETF and, through the City’s budget process, expends such funds and procures goods, services and equipment for and on behalf of RVLETF;

WHEREAS, Article XII, Section 8 of the City Charter allows the City Council to make supplemental budget appropriations by ordinance during the fiscal year for unanticipated expenditures using monies that have become available but were not anticipated in the adopted budget;

WHEREAS, no additional funding is being requested for this grant;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:
SECTION 1. In accordance with Section 12.8 of the Lakewood Home Rule Charter, there is hereby appropriated in the Grant Fund $60,000 for the purpose of assisting with the procurement of a pre-cast concrete ballistic wall for RVLETF.

SECTION 2. In accordance with Lakewood Municipal Code section 3.04.090, the City Council hereby approves the unbudgeted expenditure of not more than $60,000 to assist with the procurement of a pre-cast concrete ballistic wall at RVLETF, subject to the applicable provisions of Lakewood Municipal Code chapter 3.04.

SECTION 3. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 4. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

__________________________
Adam Paul, Mayor

ATTEST:

Ben Goldstein, Interim City Clerk

APPROVED AS TO FORM:

__________________________
Timothy P. Cox, City Attorney
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 8

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901

Subject: ACQUISITION ORDINANCE FOR 1ST AVENUE SIDEWALK PROPERTY RIGHTS, GARRISON STREET TO CREIGHTON MIDDLE SCHOOL

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property for construction of a public sidewalk with curb and gutter along the south side of 1st Avenue from Garrison Street to Creighton Middle School.

BACKGROUND INFORMATION: This sidewalk will enhance pedestrian safety to and from Creighton Middle School, where pedestrians currently walk on the roadway or in the bike lane. The sidewalk will be on the south side of 1st Avenue and connect to existing sidewalk at each end of the project and avoid numerous conflicts with utilities that exist on the north side of 1st Avenue. Curb and gutter is necessary to distinguish between the pedestrian walk and the motor vehicle travel area and to carry local drainage. Using a roadside swale or ditch for local drainage would require more width and, consequently, more land acquisition than installing curb and gutter.

This ordinance declares the city’s intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional City Council approval by resolution.

A map is attached that conceptually illustrates the property rights that are anticipated to be needed. It is anticipated that temporary easements for the construction period, illustrated in orange on the map, will be required from four properties. The temporary easements are required to perform minor re-grading and landscape restoration to blend the area behind the new sidewalk into the surrounding site features and yards.

An unusual circumstance exists along the 95 Holland Street property. In typical circumstances, a temporary easement during construction would be sufficient at this location. However, there is an area between the city-owned 1st Avenue right-of-way and the property of the 95 Holland Street owner. This unusual parcel, shown in blue on the map, was originally part of the right-of-way owned by Jefferson County for 1st Avenue. Jefferson County vacated the parcel in 1959 and it was given to the then-current owner of 95 Holland Street. Subsequent sales of the 95 Holland Street property did not include this vacated parcel. The previous owner has not been located and property taxes on this parcel have not been paid since 1980.
The current owner of 95 Holland Street was unaware of this unusual parcel’s ownership and is interested in owning the portion of the parcel the City will not need. Public Works will work on resolving the ownership issue with the intent of a portion of the parcel becoming part of the 95 Holland Street property when possible.

The sidewalk adjacent to this unusual parcel may be constructed in a temporary configuration until the ownership is resolved. Resolving ownership of this parcel could take several forms. For example, the actual owner may be found. Or the City could condemn the parcel. Anticipating the owner may not be located, the City has begun paying the back taxes and, if ownership is not resolved in some other way, the City will eventually apply to the county for a Treasurer’s deed to take ownership of the parcel.

**BUDGETARY IMPACTS:** The project is funded by a Safe Routes to School Grant and City Capital Improvement Funds.

**STAFF RECOMMENDATION:** Approval of the ordinance.

**ALTERNATIVES:** If this Ordinance is not approved, the sidewalk will not be built. Pedestrians/students will continue to walk in the street. Grant funding would likely be forfeited.

**PUBLIC OUTREACH:** City staff has contacted the affected property owners seeking to discuss the project. Notification of City Council’s consideration of this ordinance has been mailed to each property owner. The notification includes clear language that there could be no discussion of value at the City Council hearing about this ordinance because this is the very start of the acquisition process and no values have yet been determined.

**NEXT STEPS:** Begin the acquisition process and complete preparation of construction bid documents.

**ATTACHMENTS:** Ordinance O-2020-29
Map

**REVIEWED BY:** Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE SOUTH SIDE OF 1 ST AVENUE FROM GARRISON STREET TO CREIGHTON MIDDLE SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian traffic to and from Creighton Middle School, the City of Lakewood (the “City”) desires to build a sidewalk along the south side of 1 st Avenue, from Creighton Middle School to Garrison Street (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Improvements (the “Property Interests”);

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

a. Declare the City’s intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;

b. Authorize negotiations for, and acquisitions of, the Property Interests;

c. Accept the instruments of conveyance for the Property Interests;

d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian traffic on 1st Avenue. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the “City Manager”) identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations and to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired hereunder.

SECTION 5. The City’s Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City’s Chief Financial Officer and all other officers and agents of the City are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance, and the City’s Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.
SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

SECTION 10. This ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

________________________________________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

________________________________________________________
Timothy P. Cox, City Attorney

EXHIBIT A

Property Interests along 1st Avenue for the following addresses:
95 Hoyt Street
90 Hoyt Street
9390 W 1st Avenue
95 Garland Street
Parcel north of 95 Holland Street
CITY OF LAKEWOOD ORDINANCE MAP
1ST AVENUE SIDEWALK ACQUISITION

NOVEMBER 6, 2020
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 9

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901

Subject: ACQUISITION ORDINANCE FOR INDEPENDENCE STREET SIDEWALK PROPERTY RIGHTS, US 6 TO LAKEWOOD HIGH SCHOOL

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property for the construction of sidewalk, curb and gutter along the west side of Independence Street from the 6th Avenue Frontage Road to Lakewood High School.

BACKGROUND INFORMATION: This sidewalk will enhance pedestrian safety along Independence Street to and from Lakewood High School, where pedestrians currently walk on the roadway or in yards, including during peak motor vehicle times as school convenes and dismisses. Building the sidewalk along the west side connects into existing sidewalk along Lakewood High School’s Independence Street frontage. Curb and gutter is necessary to distinguish between the pedestrian walk and the motor vehicle travel area and to carry local drainage. Using a roadside swale or ditch for local drainage would require more width and, consequently, more land acquisition than use of curb and gutter.

This ordinance declares the City’s intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional Council approval by resolution.

A map is attached that conceptually illustrates the property rights that will be required. It is anticipated that temporary easements for the construction period, illustrated in orange on the map, will be required from seven properties. The temporary easements are required to perform minor re-grading and landscape restoration to blend the area behind the new sidewalk into the surrounding site features and yards.

It is also anticipated that permanent easements, shown in red on the map, will be required from four of the properties as follows:

- 605/615 Independence Street – relocate a piped irrigation ditch lateral and comply with the Americans with Disabilities Act (ADA) while providing a smooth driveway transition.
- 635 Independence Street – comply with the ADA while providing a smooth driveway transition.
- 641 Independence Street – comply with the ADA while providing a smooth driveway transition.
- 9700 W 8th Avenue (Lakewood High School) – comply with the ADA while providing a smooth transition to the existing sidewalk and ensuring drainage functions properly.
BUDGETARY IMPACTS: This project is funded from TABOR related revenues retained by the city pursuant to the 2018 citizen vote.

STAFF RECOMMENDATION: Approval of the ordinance.

ALTERNATIVES: If this Ordinance is not approved, the sidewalk will not be built. Pedestrians/students will continue to walk in the street or in yards.

PUBLIC OUTREACH: City staff has contacted the affected property owners seeking to discuss the project. Notification of City Council’s consideration of this ordinance has been mailed to each property owner. The notification includes clear language that there will be no discussion of value during the City Council hearing about this ordinance because this is the very start of the acquisition process and no values have yet been determined.

NEXT STEPS: Begin the acquisition process and complete preparation of construction bid documents.

ATTACHMENTS: Ordinance O-2020-30
Map

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
O-2020-30

AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE WEST SIDE OF INDEPENDENCE STREET FROM 6TH AVENUE FRONTAGE ROAD TO LAKEWOOD HIGH SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian traffic to and from Lakewood High School, the City of Lakewood (the “City”) desires to construct a sidewalk along the west side of Independence Street from 6th Avenue Frontage Road to Lakewood High School (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Improvements (the “Property Interests”);

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

   a. Declare the City’s intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;
   b. Authorize negotiations for, and acquisitions of, the Property Interests;
   c. Accept the instruments of conveyance for the Property Interests;
   d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian traffic on Independence Street. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. The properties from which Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the “City Manager”) identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations and to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired hereunder.

SECTION 5. The City’s Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City’s Chief Financial Officer and all other officers and agents of the City are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance, and the City’s Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.
SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

SECTION 10. This ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney

EXHIBIT A
Property Interests along Independence Street for the following addresses:

- 605/615 Independence Street
- 623 Independence Street
- 635 Independence Street
- 641 Independence Street
- 649 Independence Street
- 665 Independence Street
- 9700 W 8th Avenue
EXISTING WALK

LAKEWOOD HIGH SCHOOL

INDEPENDENCE ST

W 6TH AVE

LAKEWOOD HIGH SCHOOL

EXISTING WALK

CURRENTLY ANTICIPATED

PERMANENT EASEMENT

TEMPORARY EASEMENT

CITY OF LAKEWOOD ORDINANCE MAP

INDEPENDENCE STREET SIDEWALK ACQUISITION

NOVEMBER 6, 2020
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 10

To: Mayor and City Council
From: Jay N. Hutchison, Director of Public Works, 303-987-7901

Subject: ACQUISITION ORDINANCE FOR KIPLING STREET TRAFFIC SIGNALS AT 8TH PLACE AND AT 13TH PLACE/LAKEWOOD HEIGHTS DRIVE

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property for replacement of traffic signals and limited intersection improvements on Kipling Street at 8th Place and at 13th Place/Lakewood Heights Drive.

BACKGROUND INFORMATION: The traffic signals at these locations are old, structurally deficient, have substandard displays and the associated curb ramps do not meet current Americans with Disabilities Act (ADA) standards.

This ordinance declares the city’s intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for the necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional City Council approval by resolution.

Maps are attached that conceptually illustrate the property rights that are anticipated to be needed. It is anticipated that temporary easements for the construction period, illustrated in orange on the maps, will be required from three properties, two at 8th Place and one at Lakewood Heights Drive. The temporary easements are required to blend the construction into surrounding site features and yards through minor re-grading and landscape restoration.

It is anticipated that permanent easements, shown in red on the maps, will be required from four properties as follows:

- 10015 W 8th Place – accommodate traffic signal equipment and new curb ramps necessary to comply with the ADA.
- 830 Kipling Street – accommodate traffic signal equipment and new curb ramp necessary to comply with the ADA.
- 1345 Kipling Street – accommodate traffic signal equipment and the new curb ramps necessary to comply with the ADA.
- 10000 W 13th Place – accommodate traffic signal equipment and new curb ramps to comply with the ADA.
It is anticipated that fee simple interest, shown in blue on the map, along with a temporary easement will be required from 1300 Kipling Street. The purchase of fee simple interest is necessary to improve the intersection with Kipling of Lakewood Heights Drive and 13th Place, which are offset from each other but are served by a single traffic signal. Lakewood Heights Drive is planned to be realigned to the south to match 13th Place. To accomplish this re-alignment, property acquisition is required at 1300 Kipling Street.

The property at 1300 Kipling Street is vacant and owned by the Regional Transportation District (RTD). RTD is requesting this acquisition ordinance (with the conditional condemnation authorization) be in place prior to starting any negotiations.

Concurrent with the traffic signal replacements described above, the signals on Kipling at Federal Center Gate 1 and at 13th Avenue will be replaced. Those replacements can be completed within existing public property and no acquisition of property rights is necessary.

**BUDGETARY IMPACTS:** The project is funded with federal and state grant funds along with City Capital Improvements Funds.

**STAFF RECOMMENDATION:** Approval of the ordinance.

**ALTERNATIVES:** If this ordinance is not approved, the City may lose grant funds. The signals at 8th Place and 13th Place/Lakewood Heights Drive would likely not be replaced because replacement requires compliance with the ADA, which is not possible within the publicly owned land at those locations. The offset intersection at 13th Place/Lakewood Heights Drive would remain in its current configuration.

**PUBLIC OUTREACH:** City staff has contacted the affected property owners seeking to discuss the project. Notification of the City Council’s consideration of this ordinance has been mailed to each owner of property where acquisition is anticipated. The notification includes clear language that there will be no discussion of value during the City Council hearing about this ordinance because this is the very start of the acquisition process and no values have yet been determined.

**NEXT STEPS:** Begin the acquisition process and complete preparation of construction bid documents.

**ATTACHMENTS:**  
- Ordinance O-2020-31  
- Maps

**REVIEWED BY:**  
Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Timothy P. Cox, City Attorney
AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE REPLACEMENT OF TRAFFIC SIGNALS AND INTERSECTION IMPROVEMENTS ALONG KIPLING STREET AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian and vehicle traffic at intersections along Kipling Street, the City of Lakewood (the “City”) desires to implement the Kipling Signals Project (the “Project”) to install certain improvements at the intersections of Kipling Street with 8th Place and 13th Place/Lakewood Heights Drive (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of land adjacent to the Improvements (the “Property Interests”);

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

a. Declare the City’s intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;

b. Authorize negotiations for, and acquisitions of, the Property Interests;

c. Accept the instruments of conveyance for the Property Interests;

d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian and vehicle traffic on Kipling Street. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the "City Manager") identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations and to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired hereunder.

SECTION 5. The City's Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City's Chief Financial Officer and all other officers and agents of the City are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance, and the City's Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.
SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

SECTION 10. This ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood’s website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

______________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney

EXHIBIT A

Property Interests at the Kipling Street intersections for the following addresses:
10015 W 8th Place
10020 W 8th Place
830 Kipling Street
1345 Kipling Street
10000 W 13th Place
1300 Kipling Street
CITY OF LAKEWOOD ORDINANCE MAP
TRAFFIC SIGNAL IMPROVEMENTS AT INTERSECTION OF KIPLING ST AND W 8TH PL

NOVEMBER 6, 2020
CITY OF LAKEWOOD ORDINANCE MAP

TRAFFIC SIGNAL IMPROVEMENTS AT INTERSECTION OF KIPLING ST AND W 13TH PL

NOVEMBER 6, 2020
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 11

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: AN ORDINANCE ADOPTING AN AMENDED CHAPTER 3.01 AND ANCILLARY MUNICIPAL CODE CHANGES

SUMMARY STATEMENT: Staff has rewritten the Sales & Use Tax Code and attendant Regulations to incorporate standardized definitions and simplified language, which is being presented as part of an effort to explore new revenue opportunities.

BACKGROUND INFORMATION: The Lakewood Municipal Code (“LMC”) has been revised to incorporate the standardized definitions that resulted from Senate Joint Resolution 14-038. The intent of this resolution was to simplify taxation by having the municipalities that self-collect sales and use tax use standardized terminology in their tax codes. The City of Lakewood took additional measures to transform its tax code to be more user (business) friendly and more clearly articulate current processes and tax determinations. Additionally, as a result of these, LMC section 3.01.085 is being incorporated into LMC chapter 3.26, which, in turn, necessitated additional changes to that chapter.

BUDGETARY IMPACTS: It is anticipated that the revised Code will result in better compliance and therefore increased revenue.

STAFF RECOMMENDATIONS: Staff recommends that City Council adopt the Ordinance.

ALTERNATIVES: Leave the sales tax code and regulations as they currently exist.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council, and staff sought input from local business groups and two other municipalities.

NEXT STEPS: Ordinance 2nd Reading and Tax Regulations Resolution on December 14, 2020

ATTACHMENTS: Ordinance O-2020-32
Revised Sales & Use Tax Code

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
O-2020-32

AN ORDINANCE

ADOPTING A REVISED CHAPTER 3.01 AND ANCILLARY MUNICIPAL CODE CHANGES

WHEREAS, in 2014, the Colorado General Assembly adopted Senate Joint Resolution 14-038 urging Colorado’s home rule municipalities that self-collect their sales tax (the “Self-Collecting Municipalities”) to work with the Colorado Municipal League (“CML”) to develop uniform definitions for the Self-Collecting Municipalities’ tax codes in order to help simplify taxation by using standardized terminology;

WHEREAS, the definitions developed by the Self-Collecting Municipalities and CML initially consisted of 106 definitions, with five more definitions added since, for a total of 111 standard definitions (the “Standard Definitions”);

WHEREAS, when incorporating the Standard Definitions into Lakewood’s tax code, located in Lakewood Municipal Code (“LMC”) Chapter 3.01 (the “Tax Code”), it became clear that portions of the Tax Code and its associated regulations (the “Regulations”) would need to be revised due to inconsistencies between the language of many of the Standard Definitions and the existing Tax Code;

WHEREAS, over the decades since the Tax Code was first adopted, discrete changes have been made in response to state legislative changes, in response to a similar 1992 standardized definition project, and in response to certain local tax disputes;

WHEREAS, moreover, the current Tax Code contains various typographical, spelling and grammar errors; redundant, archaic and obsolete language and formatting; and outdated concepts and references, all of which combine to make it more difficult for local businesses to understand and apply the requirements of the Tax Code to their own tax situation;

WHEREAS, the revised LMC Chapter 3.01, attached hereto and incorporated herein by this reference (the “Revised Tax Code”), has been written to make the City’s sales and use tax requirements less difficult to understand by simplifying language to make it more straightforward, organizing the Chapter in a more intuitive way, combining related concepts, consolidating certain sections, inserting lists and headers for easier navigation, updating references, and adding an “audit” section to clearly identify that procedure;

WHEREAS, in light of the changes to the Tax Code, LMC Chapter 3.26 must be revised to incorporate the provisions of LMC section 3.01.085 - Economic Development Assistance;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a
public hearing to provide City staff and the public an opportunity to present evidence
and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a
representation that the City Council, or any member of the City Council, supports,
approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of
Lakewood, Colorado, that:

SECTION 1. Revised Tax Code Adopted. The Revised Tax Code attached
hereto is hereby adopted and shall replace Chapter 3.01 of the Lakewood Municipal
Code in its entirety.

DEVELOPMENT INCENTIVE FUND” is hereby amended to read “ECONOMIC
Municipal Code are hereby amended to read in their entirety as follows:

3.26.010 - Purpose.

The granting of financial assistance is determined to be a public purpose. Specifically, such assistance protects the public welfare by promoting and fostering the growth of the city's economic base which in turn has positive effects by generating jobs, increasing the tax base, services and products produced by the private sector, encouraging and providing for the vitality of residential areas and of commercial and industrial businesses within the city, as well as providing increased opportunities for employment for the residents of the city and enabling the city to carry forward its functions in the preservation of the health, safety and welfare of the citizens and residents of the city, all of which have a net positive impact on city revenues, and, in general, improve the quality of life in the city.

3.26.030 - Economic Development Fund established; Funding.

A. Fund Established.

1. There is established a special fund to be known as the economic development fund ("EDF"). The purpose of said fund shall be to provide funds from the city to further the economic development goals of the city by providing financial assistance to projects attracting enterprises that City Council determines will further the accomplishment of the city's economic goals. The economic development goals of the program include efforts to expand the city's tax base, promote development that will enhance the physical and economic environment of the city, provide permanent jobs and skilled labor availability, services, and products within the city thereby improving employment opportunities for the residents of the City of Lakewood, foster revitalization of physically deteriorating areas, promote development that will have a net positive impact on city revenues, and produce a positive impact upon the community as a whole.

2. The City Council specifically finds and determines that creation of the economic development fund is consistent with the city's powers as a home rule municipal corporation and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any
provisions hereof, the city shall never be a joint venture in any private entity or activity which participates in the economic development fund, and the city shall never be liable or responsible for any debt or obligation of any participant in the economic development fund. The City Council finds, determines, and declares that this ordinance is promulgated under the general police power of the City of Lakewood, that it is promulgated for the health, safety and welfare of the public, and that the ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

B. Funding.
   1. The fund shall be funded by transfer of revenues derived from the tax levied on hotel and motel accommodations within the city.
   2. The fund may also be supplemented by City Council at its discretion.


A. Economic Development Assistance. Except as otherwise set forth herein, the following procedure shall govern requests for assistance from the fund:
   1. The City Manager shall analyze the request for conformance with the criteria established pursuant to this chapter.
   2. The City Manager shall forward the request to the City Council together with a recommendation regarding financial assistance for the project, which shall include suggested terms of participation.
   3. The City Council may subsequently direct the City Manager to develop an agreement between the applicant and the City or a cooperating local, state or federal entity or agency, which agreement embodies such terms and conditions as the City Council deems appropriate for the disbursement of moneys from the fund.
   4. The City Council may, by resolution, authorize the City Manager to execute such agreement on behalf of the City.
   5. The City Manager is authorized to promulgate administrative regulations to implement provisions contained herein applicable to the economic development fund.
   6. This procedure shall not be applicable if the City Council has previously budgeted and appropriated funds for programs or expenditures for the purposes described in this chapter 3.26, nor shall it be applicable to the grant of assistance or refunds in accordance with subsection (B) hereof or the waiver or reduction of fees in accordance with Section 14.02.040A.3 of the Lakewood Municipal Code.

B. Tax Rebates.
   1. Upon application to the City Manager, the City Manager may rebate an amount not to exceed seventy-five percent (75%) of the sales and use tax actually paid to the City of Lakewood by the applicant in the construction or renovation of one or more buildings within the city if such rebate, based on findings by the City Manager, will further the economic development goals of the City as set forth in Section 3.26.010 of the Lakewood Municipal Code. Said findings shall be made in writing.
   2. Upon application to the City Manager, the City Manager may rebate an amount not to exceed thirty percent (30%) of the use tax on tangible personal property actually paid to the city by the applicant for a period not to exceed six (6) years if such rebate, based on findings by the City Manager, will further the economic

SECTION 3. Effective Date. This ordinance shall take effect thirty (30) days after final publication.

SECTION 4. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood’s website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

________________________
Adam Paul, Mayor

ATTEST:

________________________
Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

________________________
Timothy P. Cox, City Attorney
Proposed Taxed Code
Chapter 3.01
Sales and Use Tax
### Proposed Tax Code

**Chapter 3.01**

**SALES AND USE TAX**

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PART 1. GENERAL PROVISIONS

3.01.110 Short Title
This chapter 3.01 shall be known as the City of Lakewood Sales and Use Tax Code and may be cited herein as this “Tax Code.”

3.01.120 Notice of Sales and Use Tax Ordinance Amendment
A. In order to initiate a central register of tax ordinances of municipalities that administer local sales tax collection, the Chief Financial Officer shall file with the Colorado Municipal League, prior to the effective date of this section, a copy of this Tax Code reflecting all provisions in effect on the effective date of this section.
B. In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Chief Financial Officer shall file with the Colorado Municipal League prior to the effective date of any amendment hereto a copy of each Tax Code amendment enacted by the City.
C. Failure of the City to file a copy of this Tax Code or amendment to this Tax Code in accordance with this section shall not invalidate any provision of this Tax Code or any amendment thereto.

3.01.130 Sales and Use Tax Regulations
The City Council shall adopt rules and regulations for the proper administration and enforcement of this Tax Code, which rules and regulations shall be known hereinafter as the “Sales and Use Tax Regulations.”

3.01.140 General Administration
The administration of this Tax Code is vested in and shall be exercised by the City Manager. The Chief Financial Officer shall assist the City Manager in the administration of this Tax Code to the extent provided herein and in the Sales and Use Tax Regulations.

3.01.150 Participation in Simplification Meetings
The Chief Financial Officer shall cooperate with and participate on an as-needed basis with a permanent, statewide sales and use tax committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax officials and business officials. Such committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems that might arise.

3.01.160 Intercity Claims for Recovery
The City will comply with Colorado state law with respect to intercity claims for the recovery of sales and use taxes paid to the wrong taxing jurisdiction. The intent and procedure for filing an intercity “claim for recovery” is set forth in the Sales and Use Tax Regulations.

3.01.170 Disposition of Sales and Use Tax Revenue
The moneys received by the Chief Financial Officer from the tax imposed and collected pursuant to this Tax Code shall be deposited in the general fund of the City. One-half cent ($0.005) of every dollar of such moneys shall be applied as follows:
A. To the next maturing payment of the principal of, premium, if any, and interest on the City’s outstanding general obligation bonds; and
B. To the extent currently available after application to such purpose, to defray directly the cost of capital improvements of the City and the operation and maintenance of such capital improvements.
PART 2. ADMINISTRATIVE

3.01.210 Map/Location Guide of City Boundaries; Electronic Database
A. Map/Location Guide. The Finance Department shall make available to any requesting Retailer a map or location guide showing the boundaries of the City. The requesting Retailer may rely on such map or location guide and any update thereof available to such Retailer in determining whether to collect a Sales or Use Tax or both. No penalty shall be imposed or action for Deficiency maintained against a Retailer who in good faith complies with the most recent map or location guide available to such Retailer.

B. Electronic Database.
1. Any Retailer that collects and remits Sales Tax to the Chief Financial Officer as provided in this section may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to C.R.S. § 39-26-105.3 to determine the jurisdictions to which tax is owed.
2. Any Retailer that uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to C.R.S. § 39-26-105.3 to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty, or interest owed the City that otherwise would be due solely as a result of an error in the electronic database, provided that the Retailer demonstrate that it used the most current information available in such electronic database on the date that the Sale occurred.
3. The provisions of this section shall not apply to Use Tax.
C. Safe Harbor. Each Retailer shall keep and preserve such records as prescribed by the City’s Revenue Manager to demonstrate that it used the most current information available in the map/location guide or electronic database on the date that the Sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation, or fraud, the provisions of this section shall not apply.

3.01.220 Applicability to Banks
The provisions of this Tax Code shall apply to national banking associations and to banks organized and chartered under state law.

3.01.230 Definitions
As used in this Tax Code, unless the context otherwise requires, the following terms shall have the following meanings:

“Agricultural Producer” means a Person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen and other Persons similarly engaged, but does not include a Person who breeds or markets animals, birds or fish for domestic pets nor a Person who cultivates, grows or harvests plants or plant products exclusively for that Person’s own consumption or casual Sale.

“Aircraft” means a device that is used or intended to be used for flight in the air.

“Airline Company” means any operator who engages in the carriage by Aircraft of Persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. Airline Company shall not include operators whose Aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and who do not engage in scheduled service or mail carriage service.

“Auction” means any Sale where Tangible Personal Property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

“Automotive Vehicle” means any vehicle or device in, upon or by which any Person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. “Automotive Vehicle” includes, but is not limited to, motor vehicles,
trailers, semi-trailers and mobile homes. “Automotive Vehicle” shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

“Business” means all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

“Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

“Carrier Access Services” means the services furnished by a local exchange company to its customers who provide Telecommunications Services, which allow such customers to provide those Telecommunications Services.

“Charitable Organization” means any entity that:

A. Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and
B. Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of Persons or animals, freely and voluntarily ministers to the physical, mental or spiritual needs of Persons or animals, and thereby lessens the burden of government.

“Chief Financial Officer” or “CFO” means the Chief Financial Officer/City Treasurer of the City of Lakewood, or designee, or such other Person designated by the City.

“City” means the municipality of Lakewood, Colorado.

“Coins” means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

“Collection Costs” shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

“Commercial Packaging Materials” means containers, labels and/or cases that become part of the finished product to the purchaser, used by or sold to a Person engaged in Manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use, and are not returnable to said Person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

“Commercial Shipping Materials” means materials that do not become part of the finished product to the purchaser and are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

“Construction Equipment” means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

“Construction Materials” means Tangible Personal Property which, when combined with other Tangible Personal Property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction Materials include, but are not limited to, such things as: asphalt, bricks, builders’ hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, and other items which do not remain as an integral and inseparable part of a completed structure or project, are not Construction Materials.
“Consumer” means any Person in the City who Purchases, Uses, stores, distributes or otherwise consumes Tangible Personal Property or Taxable Services, Purchased from sources inside or outside the City.

“Contractor” means any Person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, “Contractor” also includes subcontractor.

“Cover Charge” means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive Tangible Personal Property, such as food and/or beverages.

“Digital Product” means an electronic product including, but not limited to:
A. “Digital images,” which are works generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” “drawings” or the like;
B. “Digital audio-visual works,” which are a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
C. “Digital audio works,” which are works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication; and
D. “Digital books,” which are works that are generally recognized in the ordinary and usual sense as “books”.

“Distribution” means the act of distributing any article of Tangible Personal Property for Use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the Sales of other commodities or services the distribution of advertising gifts, shoppers’ guides, catalogs, directories, or other property given as prizes, premiums or for goodwill or in conjunction with the Sales of other commodities or services.

“Economic Nexus”
A. Means the connection between the City and a Person not having a physical nexus in the State of Colorado, which connection is established when the Person makes retail sales into the City, and:
   1. In the previous calendar year, the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended; or
   2. In the current calendar year, ninety (90) days has passed following the month in which the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended.
B. This definition does not apply to any Person who is doing business in this state but otherwise applies to any other Person.
C. For the purpose of clarity, the definition of “Person” includes any Marketplace Facilitator.

“Engaged in Business in the City” means performing or providing services or selling, leasing, renting, delivering or installing Tangible Personal Property for Storage, Use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a Person:
A. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of Business within the City;
B. Sends one or more employees, agents or commissioned salespersons into the City to solicit Business or to install, assemble, repair, service or assist in the use of its products or for demonstration or other reasons;
C. Maintains one or more employees, agents or commissioned salespersons on duty at a location within the City;
D. Owns, leases, rents or otherwise exercises control over real or personal property within the City;
E. If the Person is a Retailer in the state of Colorado, the Person makes more than one (1) delivery into the City within a twelve (12) -month period; or
F. Makes retail sales sufficient to meet the definitional requirements of “Economic Nexus” as set forth in this section.

“Factory-Built Housing” means a Manufactured Home or Modular Home.
“Farm Closeout Sale” means the full and final disposition of all Tangible Personal Property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

“Food for Home Consumption” means food for domestic home consumption as defined in 7 U.S.C. § 2012(k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. § 2012(t), as amended; except that, for the purpose of this definition, “food” does not include:
A. Carbonated water marketed in containers;
B. Chewing gum;
C. Seeds and plants to grow food;
D. Prepared salads and salad bars;
E. Packaged and unpackaged cold sandwiches;
F. Deli trays; and
G. Hot or cold beverages served in containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a Retailer.

“Gross Sales” means the total amount received in money, credit, property or other consideration valued in money for all Sales, leases, or rentals of Tangible Personal Property or services.

“License” means a City of Lakewood Sales and/or Use Tax license.

“Linen Services” means services involving provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

“Lodging Services” means the furnishing of any rooms or accommodations by any Person, whether or not in a representative capacity, to another Person who, for consideration, possesses or has the right to Use or possess any room, including but not limited to, any portion of a hotel, inn, bed and breakfast, apartment, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, dwelling unit, or other area that accommodates a guest, or any similar establishment, under any agreement, concession, permit, right of access, license to use or other arrangement.

“Machinery” means any apparatus consisting of interrelated parts used to produce an article of Tangible Personal Property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

“Manufactured Home” means any pre-constructed building unit or combination of pre-constructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by Persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

“Manufacturing” means the operation or performance of an integrated series of operations which places a product, article, substance, commodity or other Tangible Personal Property in a form, composition or character different from that in which it was acquired whether for Sale or for Use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or Use from the raw or prepared materials.
“Marketplace” means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog or a dedicated sales software application where Tangible Personal Property or Taxable Services are offered for Sale.

“Marketplace Facilitator”
A. Means a Person who:
1. Contracts with a Marketplace Seller to facilitate for consideration, whether or not the consideration is deducted as fees from the transaction, the Sale of the Marketplace Seller’s Tangible Personal Property or Taxable Services through the Person’s Marketplace;
2. Engages directly or indirectly, through one or more affiliated Persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the Marketplace Seller; and
3. Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser on behalf of the seller.
B. “Marketplace Facilitator” does not include a Person that exclusively provides internet advertising services or lists products for Sale, and that does not otherwise meet this definition.

“Marketplace Seller” means a Person, whether or not engaged in business in the City, which has an agreement with a Marketplace Facilitator and offers for Sale Tangible Personal Property or Services through a Marketplace owned, operated or controlled by a Marketplace Facilitator.

“Mobile Machinery and Self-Propelled Construction Equipment” means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of Persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of Persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of Persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or Machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

“Modular Home” means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in C.R.S. § 24-32-706, and is designed to be installed on a permanent foundation.

“Newspaper” means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

“Person” means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, and includes a Marketplace Facilitator.

“Prescription Drugs for Animals” means a drug that, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, et. Seq., as amended, to state at a minimum the symbol “Rx Only” and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

“Prescription Drugs for Humans” means a drug that, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, et. seq., as amended, to state at a minimum the symbol “Rx Only,” and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by
a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

“Price” or “Purchase Price:”

A. “Price” or “Purchase Price” means: the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a Sale, without any discount from the Price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Tax Code, and, in the case of Retail Sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

1. Such exchanged property is to be sold thereafter in the usual course of the Retailer’s Business; or
2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and Aircraft.

Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

B. “Price” or “Purchase Price” includes:

1. The amount of money received or due in cash and/or credits.
2. Property at fair market value taken in exchange but not for resale in the usual course of the Retailer’s Business.
3. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the Retailer for part of the Purchase Price and other media of exchange.
4. The total Price charged on credit Sales including finance charges that are not separately stated. An amount charged as interest on the unpaid balance of the Purchase Price is not part of the Purchase Price unless the amount added to the Purchase Price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the Purchase Price on the face of the note is not part of the Purchase Price. An amount charged for insurance on the property sold and separately stated is not part of the Purchase Price.
5. Installation, applying, remodeling or repairing the property, and delivery and wheeling-in charges, included in the Purchase Price and not separately stated.
6. Transportation and other charges to effect delivery of Tangible Personal Property to the purchaser.
7. Indirect federal manufacturers’ excise taxes, such as taxes on Automotive Vehicles, tires and floor stock.
8. The gross Purchase Price of articles sold after Manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

C. “Price” or “Purchase Price” shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the Retailers’ usual course of Business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are authorized by this Tax Code as adjustments to the Purchase Price.
3. Discounts from the original Price if such discount and the corresponding decrease in Sales Tax due is actually passed on to the purchaser, and the seller is not
reimbursed for the discount by the manufacturer or someone else. In reporting Gross Sales, an anticipated discount to be allowed for payment on or before a given date is not authorized under this Tax Code as an adjustment to the Price.

“Prosthetic Devices for Animals” means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, and orthopedic devices or appliances.

“Prosthetic Devices for Humans” means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, and orthopedic devices or appliances.

“Purchase” or “Sale”
A. Inclusions. “Purchase” or “Sale” means the acquisition for any consideration by any Person of Tangible Personal Property or Taxable Services that are Purchased, leased, rented, sold, Used, stored, distributed or consumed. These terms include capital leases, installment and credit Sales, and property and services acquired by:
1. Transfer, either conditionally or absolutely, of title or possession or both to Tangible Personal Property or Taxable Services;
2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to Use Tangible Personal Property or Taxable Services;
3. Performance of Taxable Services; or
4. Barter or exchange for other Tangible Personal Property or services.

B. Exclusions. “Purchase” and “Sale” does not mean or include:
1. A division of partnership assets among the partners according to their interests in the partnership;
2. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
3. The dissolution and the pro rata distribution of the corporation’s assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
4. A transfer of a partnership or limited liability company interest;
5. The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
6. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
7. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
8. The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the assets;
9. The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis,
when a tax imposed by this Tax Code was paid by the transferor company at the
time it acquired such assets, except to the extent that there is an increase in the
fair market value of such assets resulting from the Manufacturing, fabricating, or
physical changing of the assets by the transferor company. To such an extent any
transfer referred to in this paragraph (9) shall constitute a Sale. For the purposes
of this paragraph (9), a closely held subsidiary company is one in which the parent
company owns stock possessing or membership interest at least eighty percent
(80%) of the total combined voting power of all classes of stock entitled to vote and
owns at least eighty percent (80%) of the total number of shares of all other classes
of stock.

“Qualified Hospital Organization” means any of the following:
A. An organization that is exempt from federal income tax under Section 115 or Section
501(c)(3) of the United States Internal Revenue Code of 1986, as amended, but only
if the organization holds a license to operate a “general hospital” for people issued
pursuant to C.R.S. § 25-3-101 and § 25-3-102, as amended, including any successor
provisions to those sections, and operates a general hospital within the City of
Lakewood; or
B. A corporation or trust that:
   1. Is exempt from federal income tax under Section 501(c)(3) of the United States
   Internal Revenue Code of 1986, as amended; and
   2. Owns or employs personal property or improvements that are used in the
   operations of one or more organizations described in paragraph (A) of this
   definition; and
   3. Either: (i) directly controls, or is controlled by, one or more organizations described
   in paragraph (A) of this definition, (ii) is controlled by a management organization
   as defined in paragraph (C) of this definition in common with one or more
   organizations described in paragraph (A) of this definition, or (iii) owns a hospital
   that is licensed to operate as a “general hospital” for people pursuant to C.R.S. §
   25-3-101 and § 25-3-102 (2012), as amended, including any successor provisions
to those sections, and that is operated by an organization described in paragraph
(1) of this definition; or
C. An organization that is exempt from federal income tax under Section 501(c)(3) of the
United States Internal Revenue Code of 1986, as amended, and which organization’s
principal function is to manage the property or operations, or both, of one or more
organizations described in paragraphs (A) or (B) of this definition; or
D. A partnership, limited partnership, limited liability limited partnership, limited liability
partnership, limited liability company, or joint venture if all of the partners, members,
joint ventures or other participants in such partnership, limited partnership, limited
liability limited partnership, limited liability partnership, limited liability company or joint
venture are organizations described in paragraphs (A), (B) or (C) of this definition.

“Resident” means a Person who resides or maintains one or more places of Business within
the City, regardless of whether that Person also resides or maintains a place of Business outside
of the City.

“Retail Sales” means all Sales except Wholesale Sales.

“Retailer” means any Person selling, leasing, renting or granting license to Use Tangible
Personal Property or services at retail. Retailer shall include, but is not limited to, any:
A. Auctioneer;
B. Salesperson, representative, peddler or canvasser, who makes Sales as a direct or
indirect agent of or obtains such property or services sold from a dealer, distributor,
supervisor or employer;
C. Charitable Organization or governmental entity that makes Sales of Tangible Personal
Property to the public, notwithstanding the fact that the merchandise sold may have
been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; or

D. Marketplace Facilitator or Marketplace Seller.

“Return” means any form prescribed by the City administration for computing and reporting a Total Tax Liability.

“Sales Tax” means the tax that is collected, or required to be collected, and remitted by a Retailer on Sales taxed under this Tax Code.

“School” means a public or nonpublic school for Students in kindergarten through 12th grade or any portion thereof.

“Security System Services” means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

“Soft Drink” means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft Drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

“Software as a Service” means software that is rented, leased or subscribed to from a provider and used at the Consumer’s location, including but not limited to applications, systems or programs.

“Software License Fee” means a fee charged for the right to Use, access, or maintain Software Programs.

“Software Maintenance Agreement” means an agreement, typically with a software provider, that may include:

A. Provisions to maintain the right to Use the software;
B. Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software; or
C. Technical support.

“Software Maintenance Agreement” does not include an agreement that provides only for technical support.

“Software Program” means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. computers, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software Program includes:

A. Custom Software Program, which is a Software Program prepared to the special order or specifications of a single customer;
B. Pre-written Software Program, which is a Software Program prepared for Sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf ("COTS")," “mass produced” or “standardized;”
C. Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
D. The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing Software Programs.

“Sound System Services” means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

“Special Fuel” means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of Aircraft, railroad cars or railroad locomotives.
“Storage” means any keeping or retention of, or exercising dominion or control over, or possession of, for any length of time, Tangible Personal Property not while in transit but on a stand still basis for future Use when leased, rented or Purchased at retail from sources either within or without the City from any Person or Retailer.

“Student” means any Person enrolled in a School.

“Tangible Personal Property” means personal property that can be, or is designed to be, one or more of the following: seen, weighed, measured, felt, touched, stored, transported or exchanged, or that is in any other manner perceptible to the senses with or without the aid of an instrument or device, and includes Digital Products.

“Tax” means the Use Tax due from a Consumer or the Sales Tax due from a Retailer or the sum of both due from a Retailer who also consumes.

“Tax Deficiency” or “Deficiency” means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any Return or payment of the tax is required under the terms of this Tax Code.

“Taxable Sales” means Gross Sales less any exemptions and deductions specified in this Tax Code.

“Taxable Services” means services subject to tax pursuant to this Tax Code.

“Taxpayer” means any Person obligated to collect, pay and/or remit tax under the terms of this Tax Code.

“Telecommunications Service” means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice Over Internet Protocol (VOIP), or any combinations of such media, including any form of mobile two-way communication. “Telecommunications Service” does not include separately stated non-transmission services that constitute computer processing applications used to act on the information to be transmitted.

“Television & Entertainment Services” means audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

“Total Tax Liability” means the total of all tax, penalties and/or interest owed by a Taxpayer and shall include Sales Tax collected in excess of such tax computed on total Sales.

“Use” means the exercise, for any length of time by any Person within the City of any right, power or dominion over Tangible Personal Property or services when rented, leased or Purchased at retail from sources either within or outside the City from any Person or Retailer or used in the performance of a contract in the City whether such Tangible Personal Property is owned or not owned by the Taxpayer. Use also includes the withdrawal of items from inventory for consumption.

“Use Tax” means the tax paid or required to be paid by a Consumer for using, storing, distributing or otherwise consuming Tangible Personal Property or Taxable Services inside the City.

“Wholesale Sale” means a Sale by Wholesalers to Retailers, jobbers, dealers or other Wholesalers for resale and does not include a Sale by Wholesalers to users or Consumers not for resale; the latter types of Sales shall be deemed to be Retail Sales and shall be subject to the provisions of this Tax Code.

“Wholesaler” means any Person doing an organized wholesale or jobbing Business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for Storage, Use, consumption, or Distribution.

3.01.240 Tax Cannot be Absorbed; Tax Separately Stated; Exception Base
A. Cannot Absorb Tax. Except as provided in subsection (B) of this Section 3.01.240, it is unlawful for any Retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Tax Code shall be
assumed or absorbed by the Retailer or that it shall not be added to the Purchase Price of the property sold or the services tendered, or, if added, that it or any part thereof shall be refunded.

B. **Tax Must be Separately Stated; Exceptions.** Except as provided in subsections (B)(1), (2) and (3), the Retailer shall provide to the purchaser a receipt that identifies the property and/or services taxed, the date such property and/or services were sold or ordered, the rate of the tax imposed, and the amount of tax collected or paid, all as separate and distinct items.

1. **Liquor by the Drink.** Any Retailer selling malt, vinous, or spirituous liquors by the drink may include in the Purchase Price the tax levied under this Tax Code, except that no such Retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the Purchase Price to the purchaser. The schedule referred to in section 3.01.410(E) of this Tax Code shall be used by such Retailer in determining amounts to be included in such Purchase Price. No such Retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of the schedule referred to in Section 3.01.410(E) of this Tax Code relieve such Retailer from liability for payment of the full amount of the tax imposed pursuant to Section 3.01.410.

2. **Admission to Liquor Licensed Establishment.** Any establishment licensed to serve malt, vinous or spirituous liquors that is open to the public upon payment of a Cover Charge or fee may incorporate into such charge or fee the tax levied under this Tax Code.

3. **Vending Devices.** City Sales Tax may be incorporated into the Purchase Price of Tangible Personal Property sold through vending devices. The operator, owner or Person selling Tangible Personal Property through vending devices shall be liable additionally for the Sales and Use Tax on the Purchase or Use of the vending devices and on any subsequent lease, rental or Sale thereof on the full lease, rental or sale Price.

**3.01.250 Collection, Payment and Remittance of Tax**

Every Retailer subject to the provisions of this chapter shall be liable and responsible for the collection and remittance of sales tax as set forth in this chapter. Except as otherwise provided in this section, every Taxpayer shall make a Return and payment or remittance of taxes to the City as provided for herein. The Taxpayer or its authorized agent shall sign any such Return under penalty of perjury. Sales and Use Tax Returns, and any payment of taxes to the City in accordance herewith, shall be made via the City’s online tax filing system or by such other method as approved by the Chief Financial Officer.

A. **Marketplace Sales.**

1. **General.**
   a. A Marketplace Facilitator Engaged in Business in the City is required to collect and remit Sales Tax on all Taxable Sales made by the Marketplace Facilitator, or facilitated for Marketplace Sellers to customers in the City, whether or not the Marketplace Seller for whom sales are facilitated would have been required to collect Sales Tax had the Sale not been made in or through the Marketplace. A Marketplace Facilitator has all the liabilities, obligations and rights of a Retailer under this Tax Code.
   b. The liabilities, obligations and rights set forth under this Tax Code are in addition to any requirements the Marketplace Facilitator has under this Tax Code if it also offers for sale Tangible Personal Property or Taxable Services through other means.
   c. Except as provided in subsection (2) of this section, a Marketplace Seller, with respect to sales of Tangible Personal Property or taxable services made in or through a Marketplace Facilitator’s Marketplace, does not have the liabilities, obligations or rights of a Retailer under this Tax Code if the Marketplace Seller can show that such Sale was facilitated by a Marketplace Facilitator:
i. With whom the Marketplace Seller has a contract that explicitly provides that the Marketplace Facilitator will collect and remit Sales Tax on all Sales subject to tax under this Tax Code; or

ii. From whom the Marketplace Seller requested and received in good faith a certification that the Marketplace Facilitator is registered to collect Sales Tax and will collect Sales Tax on all Sales subject to tax under this Tax Code made in or through the Marketplace Facilitator’s Marketplace.

2. **Auditing.** The City shall audit only the Marketplace Facilitator for Sales made by Marketplace Sellers facilitated by the Marketplace Facilitator. The City will not audit or otherwise assess tax against Marketplace Sellers for Sales facilitated by a Marketplace Facilitator.

**B. Third-Party Collectors.**

1. **Definition.** “Third-Party Collector” means any Person, whether through a physical store or an online platform, which collects payments for Sales of Taxable Tangible Personal Property, products, Services, lodging, admissions or telecommunications services for a Retailer.

2. **Duties and Liabilities.**
   a. Third-Party Collectors are deemed to be collection agents for the City and shall assume the duties, responsibilities and liabilities of a Retailer with respect to the collection and remittance of the Taxes imposed under this Tax Code, including obtaining and maintaining a Sales and Use Tax License in accordance with Part 3 of this Tax Code. Third-Party Collectors and the Retailers for which Third-party Collectors collect, withhold and/or remit Taxes hereunder are jointly liable for the collection and remittance of the Taxes imposed by this Tax Code.
   b. The Finance Department may recover unpaid taxes, penalties and interest from Third-Party Collectors, as well as each Retailer for which Third-party Collectors collect, withhold and/or remit Taxes hereunder, in the same manner authorized in this Tax Code for the recovery from Retailers of unpaid taxes, penalties and interest.

**C. Filing Frequencies.**

1. **Standard Filing Frequency.** Unless otherwise provided for herein, every Taxpayer shall make a Return and payment of taxes to the City before the twentieth (20th) day of each month for the preceding calendar month.

2. **Filing Frequencies – Hardship.** If the accounting methods regularly employed by a Taxpayer in the transaction of its Business or other conditions are such that making Returns on a calendar month basis impose unnecessary hardship, the Chief Financial Officer, upon written request of the Taxpayer, may accept Returns at such intervals as shall, in the Chief Financial Officer’s opinion, better suit the convenience of the Taxpayer and shall not jeopardize the collection of the tax.

3. **Other Filing Frequencies.**
   a. Quarterly. The Chief Financial Officer may permit Taxpayers whose monthly collected tax is less than three hundred dollars ($300) to make Returns and pay taxes at intervals not greater than every three (3) months. Such Returns and payment of taxes shall be made before the twentieth (20th) day of the month immediately following the quarter during which such taxes were collected.
   b. Seasonal. The Chief Financial Officer may permit Taxpayers engaged in a seasonal Business, which is not operated at all in the City during certain months of the year, to make Returns and pay taxes monthly only for the months of the year during which the Business is operated. Such Returns and payment of taxes shall be made before the twentieth (20th) day of the month immediately following the month during which such taxes were collected.
c. Annual.
   i. Taxpayers required to pay Use Tax under this Tax Code, which are not obligated under this Tax Code to collect and remit any Sales Tax, shall make a Return and remit such Use Tax to the City before the twentieth (20th) day of January each year for the preceding calendar year.
   ii. Notwithstanding subsection (c)(i) above, Taxpayers located within areas of the City that are subject to public improvements fees (PIF) shall make a Return and remit such taxes to the City before the twentieth (20th) day of each month for the preceding calendar month, unless authorized by the City to make less-frequent Returns in accordance with applicable PIF collection agreements.

D. Amended Returns. Taxpayers may submit amended Returns, subject to the limitations set forth in Section 3.01.560 hereof. If requested by the Finance Department, the Taxpayer shall provide documentation sufficient to support such amendment, as determined by the Finance Department in its sole, reasonable discretion.

E. Multiple Locations. Any Retailer Engaged in Business in the City in two (2) or more locations shall file a separate Return for each location.

F. Exempt Sales. The burden of proving that a Sale of goods or Taxable Services is exempt from the collection of Sales Tax shall be on the Retailer under such reasonable requirements of proof as set forth in the Sales and Use Tax Regulations prescribed therefor.

G. Disputed Exemptions. If a dispute arises between the purchaser and seller as to whether or not any Sale, service or commodity is exempt from taxation under Section 3.01.430, the seller shall collect, and the purchaser shall pay, the tax. The seller shall thereupon issue to the purchaser a receipt or certification showing the name of the seller, the items Purchased, the date, Price, and amount of tax paid. The purchaser may apply to the Chief Financial Officer for a refund of such taxes pursuant to Section 3.01.540.

H. Collection of Tax by Department of Revenue – Automotive Vehicles. If the owner of an Automotive Vehicle is required to register, license or obtain a certificate of title for such Automotive Vehicle at an address located within the City, the Department of Revenue, through its authorized agent in the county, shall collect the Use Tax imposed under this Tax Code pursuant to one or more agreements entered into between the City and such authorized agent. Such authorized agent shall pay proceeds of such Use Tax to the City periodically in accordance with such agreement(s). If such authorized agent fails to collect the Use Tax imposed under this Tax Code, the Chief Financial Officer shall then collect such Use Tax in the manner set forth in Part 5 of this Tax Code.

3.01.260 Duty to Keep Records
It is the duty of every Taxpayer to keep and preserve suitable records and such other books or accounts as may be necessary to determine the amount of tax the Taxpayer is liable for collecting, paying and/or remitting under this Tax Code. It is the duty of every such Taxpayer to keep and preserve for a period of three (3) years all invoices of goods and merchandise Purchased for Sale, Use, consumption or lease; provided, however, that any Person Engaged in Business in the City, which has not obtained a License hereunder, is obligated to keep and preserve, from the date such Person first became Engaged in Business in the City, all invoices of goods and merchandise Purchased for Sale, Use, consumption or lease without limitation. All such books, invoices, and other records shall be open for examination and audit at any time by the Chief Financial Officer or duly authorized agent. The Taxpayer shall produce all such records, if required by the Chief Financial Officer, at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado 80226.

3.01.270 Credit Sales
A. In the case of a Sale upon credit, or a contract for Sale where the Price is paid in installments, and title does not pass until a future date, or a Sale secured by a chattel mortgage or a
conditional Sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total Purchase Price.

B. If a Retailer transfers, sells, assigns or otherwise disposes of an account receivable, it shall be deemed to have received the full balance of the consideration for the original Sale and shall be liable for the remittance of the Sales Tax on the balance of the total Sale Price not previously reported. Except, however, that such transfer, Sale, assignment or other disposition of an account receivable by a Retailer to a closely held subsidiary, as defined in subsection (B)(9). Exclusions in the definition of "Purchase or Sale" in section 3.01.230 shall not be deemed to require the Retailer to pay the Sales Tax on the credit Sale represented by the account transferred prior to the time that the customer makes payment on said account.

3.01.280 Bad Debt Charge-Offs
Taxes paid on Taxable Sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this Tax Code, but if any such accounts are thereafter collected by the Taxpayer, then a tax shall be paid upon the amounts so collected.

PART 3. SALES AND USE TAX LICENSE

3.01.310 License Required; Exceptions
A. Subject to the provisions of this Tax Code, a Sales and Use Tax License is required for the following:
   1. When a Person is Engaged in Business in the City and selling Tangible Personal Property or services that are:
      a. Purchased in the City; and
      b. Subject to Sales Tax pursuant to this Tax Code; or
   2. Tangible Personal Property that is stored, Used or consumed in the City and subject to Use Tax pursuant to this Tax Code.
B. Every Person required to obtain a License hereunder shall make application to the City via the City’s online tax filing system or, at the discretion of the Finance Department, on forms supplied by the Finance Department. Such application shall state the following:
   1. The legal name and mailing address of the Person applying for the License;
   2. The trade name of the Business, if any, for which the License is sought;
   3. The physical location, including the street number, of the place of Business, if different from the mailing address stated on the application; and
   4. Such other information as the City might require on the application.
   The Taxpayer shall notify the City of any changes to the information stated on the application.
C. Approval of a License shall be conditioned upon the proposed Business and the location thereof meeting all applicable provisions of the Lakewood Municipal Code.
D. No License is required for any Person engaged exclusively in the Business of selling, or who stores, Uses or consumes, Tangible Personal Property that is exempt from taxation under this Tax Code.
E. A License issued by the City shall be in force and effect until the earlier of:
   1. The revocation of such License; or
   2. The sale or termination of the Business, if any, relating to such License.

3.01.320 License Fee
A nonrefundable fee, in an amount set by the City Council, shall accompany each License application.
3.01.330 Denial or Revocation; Review and Appeal
A. Denial. The Chief Financial Officer, upon notice of denial to the applicant, may deny a Sales and Use Tax License application for any one or more of the following reasons:
1. The proposed location for the applicant’s Business is not zoned for the type of use proposed;
2. Any person holding an ownership interest of 10% or more in the applicant is in arrears or delinquent with the City in any way;
3. Any individual holding an ownership interest of 10% or more in the applicant also holds an ownership interest of 10% or more in a Business that is in arrears or delinquent with the City in any way;
4. Any individual holding an ownership interest in the applicant who cannot provide legally acceptable proof of lawful presence in the United States as required under C.R.S. § 24-76.5-103, as amended; or
5. Incomplete application.
B. Revocation. The Chief Financial Officer may revoke the License of any Person found by the Chief Financial Officer to have violated any material provision of this Tax Code, as follows:
1. The Chief Financial Officer shall first provide to the Person written notice of intent to revoke the License, which notice of intent shall notify the Person of its right to request a hearing.
2. The Person may make a written request for a hearing to the Chief Financial Officer not more than ten (10) days after the mailing date of such notice.
3. If the Person requests a hearing, the Chief Financial Officer shall conduct the hearing within fourteen (14) days after receipt of the written request unless the Person has requested a later date, but in no event shall such hearing be held later than forty-five (45) days after the mailing date of such notice.
4. The Chief Financial Officer’s decision shall be in writing and, if revoking the License, shall set forth the bases for revocation.
C. Review. Any final decision of the Chief Financial Officer pursuant to this section shall be subject to review in Colorado District Court in accordance with Colorado Rule of Civil Procedure 106 only.

3.01.340 License Non-Transferable
No License issued pursuant to this Part 3 shall be transferred to any other Retailer, owner, Business or location, except as expressly provided for herein.

3.01.350 Multiple Locations – Separate Licenses Required
A Retailer engaged in Business in two (2) or more places or locations within the City must obtain a separate License for each such place or location.

3.01.360 Posted in Conspicuous Location
Each License shall be numbered and shall display the name of the licensee and the place of Business of the licensee and shall be posted in a conspicuous place at the place of Business for which it is issued. If the licensee does not have a place of Business, the License shall display the mailing address of such licensee.

3.01.370 License Additional
The License shall be in addition to all other licenses required by law, except as otherwise provided in this Tax Code.

3.01.380 Certificate of Exemption
Charitable Organizations, as defined in this Tax Code, desiring to be exempt from certain City Sales and/or Use Tax, as described in this Tax Code, must apply to the Finance Department for a Lakewood Certificate of Exemption.
PART 4   SALES AND USE TAX

3.01.410   Imposition of Tax; Rate

A. Sales Tax.
   1. Imposition; Rate. Subject to the provisions of this Tax Code, Sales Tax at the rate of three percent (3%) is hereby levied, and shall be collected and paid to the City, upon the Purchase Price of:
      a. All services identified in section 3.01.420 and provided within the City; and
      b. All Tangible Personal Property, including Digital Products, software and similar items, sold within the City.
   2. Held in Trust. All sums of money paid by purchasers to Retailers as Sales Taxes imposed by this Tax Code shall be and remain public money and the property of the City. Each Retailer shall hold such monies in trust for the sole use and benefit of the City until paid to the City. Any Retailer that fails to hold such monies in trust for, and pay such monies to, the City shall be subject to the penalties herein.

B. Use Tax. Subject to the provisions of this Tax Code, Use Tax at the rate of three percent (3%) is hereby levied, and shall be paid, upon the privilege of Using, storing or consuming Tangible Personal Property or services, whether Purchased inside or outside the City, where Sales Tax or Use Tax has not otherwise been lawfully imposed and paid. Tangible Personal Property initially exempt from the imposition of Sales Tax as a Wholesale Sale, but subsequently used by the initial purchaser, is subject to Use Tax. Any subsequent Sale of such Tangible Personal Property shall be subject to Sales Tax as set forth in section 3.01.420(P).

C. Taxes Paid to Other Municipality. With the exception of Construction Materials, which are addressed elsewhere in this Tax Code, where City Sales or Use Tax would otherwise be due under this Tax Code, but a sales or use tax has been lawfully imposed by and paid to a municipality other than the City, then City Sales or Use Tax, as applicable, shall be imposed and paid only on the difference between: (a) the sales or use tax legally imposed by and paid to such other municipality; and (b) the amount of Sales or Use Tax imposed by the City. In the event the amount of the City’s Sales or Use Tax imposed is less than the amount of sales or use tax legally imposed by and paid to such other municipality, no City Sales or Use Tax would be due on such transaction.

D. Taxes Not Paid. In the event a purchase is reflected on the financial records of a Person located in the City, and no legally imposed sales or use tax was paid or remitted to another municipality, the Person shall pay or remit such tax to the City.

E. Taxes Additional. The taxes imposed by this Tax Code shall be in addition to all other taxes imposed by law, except as otherwise provided in this Tax Code.

F. Schedules/Systems. The Sales and Use Taxes imposed herein shall be computed in accordance with the schedules or systems set forth in the Sales and Use Tax Regulations prescribed therefor. Such schedules or systems shall be designed so that no tax is charged on any Sale of sixteen cents ($0.16) or less.

G. Specific Uses – Voter-Approved Increase. On November 1, 2005, the voters of the City of Lakewood approved an increase in the Lakewood Sales and Use Tax rate from two percent (2%) to three percent (3%). In accordance with such approval, and notwithstanding section 3.01.170 of this Tax Code, the City shall apply the revenue generated from such one percent (1%) Sales and Use Tax increase as follows:
   1. At least fifty percent (50%) of such revenue shall be used for the following:
      a. public safety purposes;
      b. maintenance and construction of streets; and
      c. parks and recreation purposes.
   2. The balance of such revenue shall be used to maintain City services and the emergency fund balance.
H. Belmar – Temporary Partial Waiver of Sales Tax; Expiration.
1. Pursuant to Ordinance O-2002-7, the City temporarily waived, only within the geographic areas specifically described in Exhibit A to Ordinance O-2002-7, one percent (1%) of the Sales Tax imposed under this Tax Code. Pursuant to Ordinance O-2005-26, the Sales Tax increase addressed in subsection (F) of this section is also temporarily waived within the geographic areas specifically described in Exhibit A to Ordinance O-2002-7. The geographic areas described in Exhibit A to Ordinance O-2002-7 are therefore temporarily subject to a Sales Tax rate of one percent (1%).
2. The temporary Sales Tax waivers described above shall expire or terminate as set forth in Ordinances O-2002-7 and O-2005-26, as the case may be, at which time the Sales Tax rate for the areas specifically described in Exhibit A to Ordinance O-2002-7 shall increase as appropriate.
3. The temporary Sales Tax waivers described in this subsection (G) do not and shall not apply to any Use Tax imposed under this Tax Code.

3.01.420 Transactions, Services and Tangible Personal Property – Taxability
Sales or Use Tax, as applicable, shall be imposed upon the Purchase Price of the transactions, services and Tangible Personal Property enumerated in this section, except as otherwise set forth herein. With the exception of “lump sum” construction transactions, any transaction involving services or Tangible Personal Property that would otherwise be exempt or nontaxable under this Tax Code shall be subject to Tax hereunder if such services or Tangible Personal Property are not stated separately from any taxable services or Tangible Personal Property that are part of the same transaction. The enumeration of the transactions and Tangible Personal Property herein is not intended, and shall not be construed, as limiting the taxability of any transactions or Tangible Personal Property subject to taxation under section 3.01.410 of this Tax Code.
A. Admissions. The Price, fee or Cover Charge paid to gain admission or access to a performance of a motion picture, or to a Retailer licensed to serve malt, vinous or spirituous liquors that is open to the public upon payment of a charge or fee.
B. Auctions. Tangible Personal Property sold at Auction.
C. Automotive Vehicles. The Sale, lease or lease-purchase of an Automotive Vehicle if the owner of the Automotive Vehicle for which registration, licensing or titling is required by the state pursuant to Article 6 of Title 42, C.R.S., as amended, is required to register, license or obtain a certificate of title for such Automotive Vehicle at an address located within the City.
D. Commercial Shipping Materials. Commercial Shipping Materials when sold at retail, except as set forth in section 3.01.430(J)(3) hereof.
E. Construction Equipment.
1. Construction Equipment located within the boundaries of the City for a period of more than thirty (30) consecutive days shall be subjected to the full applicable Use Tax of the City.
2. Construction Equipment located within the boundaries of the City for thirty (30) consecutive days or less may be prorated as set forth in Section 3.01.440.
E. Construction Materials. Construction Materials in accordance with Section 3.01.450;
F. Custom Orders. Articles sold after manufacture or after having been made to order, including the cost of material used, the service performed in connection therewith, overhead and profit.
G. Food, Beverages and Candy.
1. Except as exempt pursuant to section 3.01.430(G) of this Tax Code, food and drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops and other like places of Business at which prepared food or drink is regularly sold, including Sales from pushcarts, motor vehicles and other mobile facilities;
2. Upon all other Sales of Candy, Soft Drinks and food, except as exempt pursuant to Section 3.01.430(G).
H. Freight, Shipping, Transportation and Delivery. Transportation and other charges to effect
delivery of Tangible Personal Property to the purchaser, including:
1. Freight, shipping, transportation or delivery charges paid by a Retailer to obtain Tangible
Personal Property before resale, which is passed on to the purchaser in the Price of the
property or through a separate invoice;
2. Charges to the purchaser for delivery, including fuel surcharges, where the Retailer
transports the property being sold; and
3. Freight, shipping, transportation or delivery charges included in the Price of the property
being delivered, whether or not billed separately or included as a separate charge on the
Retailer's invoice for common carrier, postal or other third-party delivery services.

I. Gas, Electricity and Other Fuel.
1. Gas and electric service, whether furnished by municipal, public or private corporations or
enterprises;
2. Gas and electricity furnished and sold for commercial consumption and not for resale;
3. Electricity, coal, wood, gas, fuel oil or coke sold, not for resale, to occupants of residences,
whether owned, leased or rented by said occupants, for the purpose of operating
residential fixtures and appliances that provide light, heat or power for such residences.
For the purposes of this subsection (I), "gas" includes natural, manufactured and liquefied
petroleum gas.

J. Lease, Contract, License or Subscription.
1. When the right to possession or Use of any Tangible Personal Property is granted under
a lease, contract, license or subscription, and such Use or transfer of possession would
be taxable under this Tax Code if an outright Sale were made, then such lease, contract,
license or subscription shall be considered the Sale of such article, and the tax shall be
computed and imposed on each individual lease, contract, license or subscription payment
as it occurs, as though an outright Sale taxable under this Tax Code were occurring upon
each payment.
2. When the right to possession or Use of any Tangible Personal Property is granted under
a lease, contract, license or subscription where the lessor, contracting party, licensor or
subscription offeror is located outside the City and such Tangible Personal Property is not
delivered to a location within the City by the lessor, contracting party, licensor or
subscription offeror, but is picked up by the lessee, other contracting party, licensee or
subscriber and Used within the City for a period exceeding thirty (30) days, and such
transfer of possession would be taxable under this Tax Code if an outright Sale were made
by a lessor, contracting party, licensor or subscription offeror located within the City, then
such lease, contract, license or subscription shall be taxed as follows:
   a. Sales tax shall be imposed on the first thirty (30) days of such lease, contract, license
      or subscription and shall be payable to the taxing jurisdiction, through the lessor,
      contracting party, licensor or subscription offeror, in which such lessor, contracting
      party, licensor or subscription offeror is located and Sales Tax shall be imposed on the
      remaining term of such lease, contract, license or subscription and shall be payable to
      the City through the lessor, contracting party, licensor or subscription offeror.
   b. Such Sales Tax shall be computed and imposed on each individual lease, contract,
      license or subscription payment as it occurs, as though an outright Sale taxable under
      this Tax Code were occurring upon each payment. The payment of the Sales Tax
      shall be made to the lessor, contracting party, licensor or subscription offeror by the
      lessee, other contracting party, licensee or subscriber. Except as hereinabove
      otherwise provided, the lessor, contracting party, licensor or subscription offeror, as
      trustee, shall make payment of any Sales Tax obligation to the City in the manner
      provided by Section 3.01.250.


M. **Security System Services.** Security System Services, including monitoring, whether Purchased, leased or rented.

N. **Software Services – Modified or Custom.** Modified software program services or custom software program services.

O. **Sound System Services.** Sound system services, whether Purchased, leased or rented.

P. **Subsequent Sale.** Except as may be otherwise provided herein, the resale of Tangible Personal Property.

Q. **Tangible Personal Property.** Tangible Personal Property, including Digital Products, software and similar items.

R. **Telecommunications Services.**
   1. Telecommunication Services, whether furnished by public or private corporations or enterprises, for all intrastate Telecommunication Services originating from or received on telecommunication equipment in the City if the charge for the service is billed to (i) a Person in the City; or (ii) an affiliate or division of such Person in the City on behalf of a Person in the City;
   3. Carrier Access Services, whether furnished by public or private corporations or enterprises, for all interstate or intrastate Telecommunication Services originating from or received on telecommunication equipment in the City if the charge for the service is billed to: (i) a Person in the City; or (ii) an affiliate or division of such Person in the City on behalf of a Person in the City.

S. **Television and Entertainment Services.** Television and Entertainment Services sold, Purchased, leased, rented, furnished, streamed or Used.

T. **Vending Devices.** Tangible Personal Property, including food and beverages, dispensed by a vending device.

U. **Warranty and Maintenance Service Contracts.** Any warranty or maintenance service contract relating to Tangible Personal Property, including Software Maintenance Agreements, whether included in the cost of the Tangible Personal Property relating thereto or sold separately as part of a warranty contract, extended warranty contract, service contract or maintenance contract.

3.01.430 **Exemptions.**

This section sets forth the only exemptions from the City Sales and Use Tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the Taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of City Sales and Use Tax, unless stated otherwise:

A. **Cigarettes.** All cigarettes.

B. **Constitutional Preclusion from City Sales and Use Tax.** All Sales the City is prohibited from taxing under the constitution or laws of the United States, the State or the City’s home rule charter.

C. **Construction Materials.**
   1. Railroad tracks. Construction Materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
   2. Delivered outside City. Construction Materials if delivered to a location outside the City.
   3. Tax prepaid on building permit. Construction Materials if the purchaser of such materials presents to the Retailer a building permit where Use Tax has been prepaid.
   4. Certain exempt entities. Construction Materials to be used on a project for an exempt entity identified in subsection (D) below, if the purchaser of such materials presents to the Retailer documentation from the City evidencing that tax is not required to be paid. This
exemption shall not apply to Construction Materials used by contractors who perform contracts for a Qualified Hospital Organization.


D. Exempt Entities.

1. Government - United States, State of Colorado, and their subdivisions. All Sales to the United States government and the State of Colorado, and their respective departments, agencies, institutions, and political subdivisions, in their governmental capacities only, when billed to and paid for by the governmental entity;

2. Schools. All Sales to Schools, including pre-Schools and post-secondary Schools, other than Schools held or conducted for private or corporate profit; when billed to and paid for by the School;

3. Charitable Organizations.
   a. All Sales to Charitable Organizations, which have been granted a Lakewood Certificate of Exemption, in the conduct of their regular charitable functions and activities, when billed to and paid for by the Charitable Organization;
   b. Individual Sales made by Charitable Organizations of five thousand dollars ($5,000.00) or less under the following conditions:
      i. The Charitable Organization has been granted a Lakewood Certificate of Exemption;
      ii. The funds raised by the Charitable Organization through such Sales in Lakewood do not exceed $250,000.00 in a calendar year; and
      iii. The Sale of Tangible Personal Property is not the principal use of any premises from or at which such Sales are made, if such premises are owned, leased or otherwise controlled by the Charitable Organization.

4. Qualified Hospital Organizations.
   a. All Sales made to, billed directly to, and paid for directly by, a Qualified Hospital Organization as defined in Section 3.01.230, provided the Tangible Personal Property or service Purchased by the Qualified Hospital Organization is employed in furtherance of an exempt function. As used in this section, “employed in furtherance of an exempt function” means employed by a Qualified Hospital Organization in an activity from which none of the proceeds are treated as unrelated Business income. As used in this section, “unrelated Business income” means gross income derived from any unrelated trade or Business within the meaning of Section 512 of the United States Internal Revenue Code of 1986, as amended.
   b. Notwithstanding any other exemption granted to a Qualified Hospital Organization pursuant to this Tax Code, Construction Materials, as set forth in subsection (C)(4) of this section, used by contractors who perform contracts for the Qualified Hospital Organization are not exempt from taxation hereunder.
   c. If the Purchase and Sale of any Tangible Personal Property or service would be exempt under this subsection but for the fact that the Tangible Personal Property or service is employed in an activity from which a portion of the proceeds is treated as unrelated Business income, the Chief Financial Officer is authorized to approve written formulas or methods (including formulas or methods of individual Qualified Hospital Organizations) as may be appropriate and reasonable to determine, based on the evidence available, the percentage of the proceeds from such activity that is not treated as unrelated Business income. This calculated percentage shall be the percentage of the cost of such property or service that will be exempt under this section. The Chief Financial Officer may condition approval of formulas and methods on receipt of such information as is reasonably deemed necessary for proper implementation of such formulas and methods.

E. Factory-Built Housing not Requiring a City Building Permit. For Factory-Built housing for which a City building permit (other than for utility hook-ups such as electrical, plumbing, natural
gas and the like) is not required, forty-eight percent (48%) of the Purchase Price on the initial Sale of Factory-Built Housing and the entire Purchase Price in any subsequent Sale.

F. Farms and Agricultural.
1. Farm Closeout Sales. All Farm Closeout Sales;
2. Fertilizer for use in the production of agricultural commodities, not including commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks and cemeteries.
3. Livestock. Cattle, sheep, lambs, poultry, swine and goats; mares and stallions for breeding purposes; and live fish for stocking purposes in a commercial fishery or fish hatchery;
4. Livestock bedding. Straw and other bedding for use in the care of livestock or poultry;
5. Livestock feed. Feed for consumption by livestock, including horses, or poultry;
6. Seeds and orchard trees. Seeds Purchased by an Agricultural Producer, whether or not food-producing, and orchard trees;

G. Food.
1. Food for Home Consumption. Food for Home Consumption, as defined in Section 3.01.230;
2. Food Purchased under Supplemental Nutrition Assistance Program. Food, as specified in 7 U.S.C. § 2012(k), as amended, Purchased with benefits pursuant to the federal Supplemental Nutrition Assistance Program;
3. Food Purchased with a WIC food instrument. Food, as specified in 42 U.S.C. § 1786, as amended, Purchased with a WIC food instrument pursuant to the federal special supplemental nutrition program for women, infants and children;
4. Articles furnished with food. Any article to be furnished by a Retailer to a Consumer or user, together with food, meals or beverages Purchased for human consumption, if: a separate charge is not made for the article to the Consumer or user; such article becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);
5. Containers or bags furnished by food Retailers. Any container or bag furnished by a Retailer of food, meals or beverages for human consumption to a Consumer or user for the purpose of packaging or bagging Tangible Personal Property Purchased at retail, if: a separate charge is not made for the container or bag to the Consumer or user; such container or bag becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);
6. Employee meals. Meals provided to employees of the places described in Section 3.01.420(G)(1) at no charge or at a reduced charge and which are considered as part of their salary, wages or income;
7. Food for Residents of a retirement community. Food, food products, beverages and meals provided for consumption by Residents on the premises of a retirement community, as defined by C.R.S. § 39-26-707(2.5);

H. Fuel and Power.
2. Electricity and other fuels. Electricity, coal, gas, fuel oil, coke or nuclear fuel for use in mining, refining, irrigation, construction, Telecommunication Services and street and railroad transportation services;

I. Lodging Services. Lodging Services provided to a Person, pursuant to a written agreement, for a period of thirty (30) consecutive days or more;
J. Manufacturing.
1. Testing, modification, inspection or similar for Manufacturing. Tangible Personal Property for testing, modification, inspection or similar type of activities in the City if the ultimate use of such property in Manufacturing or similar type of activities occurs outside the City, and if the test, modification or inspection period does not exceed ninety (90) days;
2. Manufacturing or compounding. Tangible Personal Property sold to or Purchased by a Person engaged in Manufacturing or compounding for Use, profit or Sale, which Tangible Personal Property meets all of the following conditions:
   a. Is actually and factually transformed by the process of Manufacturing;
   b. Becomes, by the Manufacturing processes, a necessary and recognizable ingredient component and constituent part of the finished product; and
   c. Is, by its physical presence in the finished product, essential to the Use thereof in the hands of the ultimate Consumer; or
   d. Such Tangible Personal Property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold skin casing, or other material used for the purpose of producing or inducing a chemical or physical change in a food product or for the purpose of placing a food product in a more marketable condition and is directly utilized and consumed, dissipated or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product that is intended to be sold ultimately at retail for human consumption.
3. Shipping and Packaging Materials. Commercial Shipping Materials used by or sold to a Person engaged in Manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use, and Commercial Packaging Materials.
K. Medical.
1. Medical supplies. The following medical supplies for humans:
   a. Wheelchairs and hospital beds;
   b. Prescription eyeglasses and contact lenses;
   c. Prescription hearing aids;
   d. Urine- and blood-testing kits and materials;
   e. Drugs or medical materials when furnished by a licensed medical or dental practitioner of the healing arts as part of professional services provided to a patient (the foregoing exemptions shall not include items used or consumed at a medical or dental office/facility in providing medical services, even though certain of those items might be packaged for single use by individual patients after which the item would be discarded, unless the item leaves the medical or dental office/facility with the patient);
   f. The following items for treatment and testing relating to diabetic conditions:
      i. insulin in all its forms dispensed pursuant to the direction of a licensed medical practitioner of the healing arts;
      ii. glucose to be used for the treatment of insulin reactions;
      iii. insulin measuring and injecting devices, including hypodermic syringes and needles;
   g. Batteries, including replacement materials and parts, required for the operation and maintenance of the foregoing items.
4. Oxygen concentrators with related accessories.
L. Mobile Communications. In accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126, as amended, on or after August 1, 2002, mobile Telecommunications Service provided to a customer whose place of primary use is outside the boundaries of the City.
M. Newsprint, Printer’s Ink and Newspapers. Newsprint and printer’s ink for Use by publishers of Newspapers and commercial printers of Newspapers.

N. Non-Residents. Tangible Personal Property, not including Construction Equipment or Construction Materials, brought into the City by a non-Resident: (i) for the non-Resident’s own Storage, Use or consumption while temporarily within the City; or (ii) where the non-Resident acquires residency within 30 days from the date such Tangible Personal Property is brought into the City.

O. Packaging Materials. Commercial Packaging Materials shall be deemed to be Wholesale Sales and shall be exempt.

P. Payment of Other Municipal Tax. Tangible Personal Property, excluding Construction Materials, or Taxable Services if the transaction was previously subjected to a municipal sales or Use Tax lawfully imposed on the purchaser equal to or greater than the applicable City Sales Tax.

Q. Tangible Personal Property outside the City.
   1. Deliveries outside the City. All Sales of Tangible Personal Property, made by a Retailer located within the City, where the Tangible Personal Property is delivered, and title thereto is transferred at the point of delivery, to a purchaser outside of the City.
   2. Samples transferred outside the City without consideration. The transfer of Tangible Personal Property for no consideration, other than the Purchase, Sale or promotion of the transferor’s product, to a Retailer located outside the City for use outside the City in selling products normally sold at wholesale by the transferor.

R. Transportation.
   1. Aircraft. Aircraft for Use in interstate commerce by an Airline Company;
   2. Automotive vehicles registered outside the City. Automotive vehicles as defined in this Tax Code that are registered and required by state law to be registered outside the City;
   3. Electric-powered Automotive Vehicles. Electric-powered automotive vehicles, including both the original and all subsequent Purchases of such vehicles, and batteries and controls required for the operation and maintenance of such vehicles.

S. Vending. Individual items of Tangible Personal Property sold through vending machines at sixteen cents ($0.16) or less or the price paid to operate vending machine games of chance where the acquisition of Tangible Personal Property is not guaranteed.

T. Wholesale Sales. Tangible Personal Property Purchased in the City for resale, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of Business.

3.01.440 Provisions Related to Construction Equipment

A. Equipment Declaration; Amendment.
   1. Prior to or on the date Construction Equipment is located within the boundaries of the City, the Taxpayer shall file with the City an equipment declaration form provided by the City for any Construction Equipment with a Purchase Price of two thousand five hundred dollars ($2,500) or more. Such declaration shall state: the dates on which the Taxpayer anticipates that the equipment shall be located within, and removed from, the boundaries of the City; a description of each such anticipated piece of equipment; the actual or anticipated Purchase Price of each piece of equipment; and other information as reasonably deemed necessary by the City.
   2. The Taxpayer shall file an amended equipment declaration with the City reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of the City or, for equipment that is brought into the boundaries of the City for a project of less than ninety (90) days’ duration, no later than ten (10) days after substantial completion of such project.

B. Taxation.
1. Construction Equipment located within the boundaries of the City for a period of thirty (30) consecutive days or fewer shall be subject to the City’s Use Tax, the amount of which is calculated as follows: the Purchase Price of the equipment shall be multiplied by one-twelfth \( \left( \frac{1}{12} \right) \), and the resulting product shall be multiplied by the amount of the Use Tax imposed pursuant to Section 3.01.410.

2. Construction Equipment located within the boundaries of the City for a period of more than thirty (30) consecutive days, or equipment for which a declaration has not been properly filed, shall be subject to Use Tax on the full Price of such equipment.

3. Where the provisions of subsection (B)(1) above are employed, the provisions of section 3.01.430(P) shall apply.

3.01.450 Provisions Related to Construction Materials

A. Construction Work Requiring a Building Permit. Any Contractor who Purchases or acquires Construction Materials for work to be performed on real property located within the City and the owner of such real property shall be jointly and severally responsible for paying the Tax set out in this Tax Code.

1. The owner or Contractor shall remit a deposit to the City prior to the issuance of any building permit. For purposes of this subsection, Use Tax shall be calculated on fifty (50%) percent of the total valuation of the construction contract. Upon payment of such deposit, the City shall issue a Tax receipt identifying the address of the permitted project and the City building permit number.

2. The building permit must be presented when Construction Materials are Purchased, whether inside or outside of the City, for the Purchase to be exempt from Tax hereunder. Credit will not be given for taxes paid on Purchases of Construction Materials in another municipality.

3. Upon demand made by the Finance Department, the owner and/or Contractor hired to do the above-stated work, or any portion thereof, to submit to the City, within one hundred eighty (180) days after the issuance of a Certificate of Occupancy, the final costs of the project, including any supporting documentation reasonably required by the City, including, but not limited to, a project cost report, an application and certificate for payment, and final bill for the project. Project cost reports and other documentation shall be submitted on forms approved by the Finance Department and shall state the actual amounts of any Purchases of Construction Materials for such work, including materials Purchased by the owner.

a. The owner and/or Contractor shall remit to the City any Use Taxes and City fees due in excess of Use Taxes and City fees previously paid.

b. In the event the City determines that the deposit remitted by the owner and/or Contractor pursuant to this subsection A exceeds the amount of Use Taxes and City fees due, the City will refund the amount of such excess to the Person who paid the initial Use Tax deposit.

4. The owner and/or Contractor shall be held liable for the payment of all Taxes on such Construction Materials and the amount of any Use Tax due and not paid shall constitute a lien upon the real property benefited by the use of such Construction Materials.

5. The Finance Department, in its discretion, may choose to perform an Audit of the project pursuant to Part 6 of this Tax Code. In such event, the owner or contractor shall comply with the applicable requirements of such Part 6.

6. The owner and/or Contractor shall keep and preserve all invoices, receipts and statements, along with a summary sheet, showing such Purchases of Construction Materials and supplies and Tangible Personal Property for a period of three (3) years after the issuance of Certificate of Occupancy.

B. Construction Work Not Requiring a Building Permit. Any Contractor who Purchases or acquires Construction Materials for work to be performed on real property located within the
City for which a building permit is not required is responsible for paying the Tax set out in this Tax Code.

a. Time and materials billing. When a Contractor bills or invoices its customer on a time and materials basis, the Contractor shall collect Sales Tax on the Construction Materials from the Purchaser and remit such Sales Tax to the City.

b. Lump sum billing. When a Contractor bills or invoices its customer on lump sum basis, the Contractor shall pay Sales Tax on the Construction Materials at the time the Contractor acquires the Construction Materials.

c. Failure to pay or collect and remit Sales Tax. In the event the Contractor fails to pay or collect and remit the Sales Tax as set forth in this subsection B, the Contractor shall be liable for payment to the City of Use Tax on such Construction Materials.

PART 5. COLLECTION AND ENFORCEMENT; REFUNDS

3.01.510 Recovery of Taxes; Penalty and Interest

A. Deficiency; Notice.

1. Estimate. When a Person fails to make a Return in payment of Sales or Use Tax within the timeframe required under this Tax Code, the Finance Department shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the tax is deficient and shall add thereto the amount of fees, penalties and interest calculated as set forth in subsection B below.

2. Assessment. When the Finance Department determines through an audit that the amount of taxes paid is less than the amount owed hereunder, the Finance Department may make an assessment as set forth in this Tax Code.

3. Notice. Promptly after making an estimate or assessment hereunder, the Finance Department shall deliver to the Taxpayer a written notice of Deficiency with an estimate or assessment of the amount of taxes, penalty and interest due, the time limit to file a protest to such notice, and that the Taxpayer has the right to elect a hearing on the Deficiency. The Finance Department shall send such notice to the last address of the Taxpayer on file with the Finance Department. Not more than thirty (30) days after such notice is sent, the Taxpayer may petition the Chief Financial Officer for a hearing in the manner set forth in Section 3.01.710. The Taxpayer may appeal any adverse decision from such hearing as provided for in this Tax Code.

B. Penalties and Interest.

1. Any Deficiency without intent to defraud shall be a debt to the City and there shall be added thereto the greater of an administrative fee of fifteen dollars ($15) or a penalty equal to ten percent (10%) of the deficient taxes, plus interest on such delinquent or deficient taxes at the rate established by the State Commissioner of Banking pursuant to C.R.S. § 39-21-110.5 plus one-half percent (0.5%) per month, not exceeding one and one-half percent (1.5%) per month, from the date when due.

2. If any part of a Deficiency is the result of fraud with the intent to evade the tax, a penalty of one hundred percent (100%) of the total amount of the Deficiency shall be added to the amount due, and an additional three percent (3%) per month on such amount shall be added from the date the Return was due until paid.

3. If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed hereunder Tax Code on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

4. Interest and penalties imposed hereunder may be assessed and collected at any time after the tax, to which such interest and penalties relate, is due and shall be assessed, collected and paid, upon notice and demand, as set forth in this Tax Code.
C. **Extension and Waiver.**

1. **Extensions.** The Chief Financial Officer is hereby authorized to grant, for good cause shown, extensions of time to make payment of taxes due hereunder; provided, however, that interest and penalties shall continue to accrue on such unpaid taxes until all such taxes, interest and penalties are paid in full.

2. **Waivers.** The Chief Financial Officer is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Tax Code and any interest imposed in excess of the rate established by the State Commissioner of Banking, which excess interest is hereby deemed to be a penalty.

D. **Insufficient Funds – Fees; Alternate Payment.** If a Person pays any tax imposed hereunder by a check for which there are insufficient funds, the Finance Department may assess a fee, and the Chief Financial Officer may further require such Taxpayer to make all current and future tax payments by certified funds, cashier’s check or cash.

E. **Lien – Notice; Warrant and Seizure.**

1. In the event of any Deficiency, if the amount of taxes, penalty or interest imposed by this Tax Code is not paid within thirty (30) days after the same are due, the Finance Department may issue a notice of lien, setting forth the name of the Taxpayer; the amount of the tax, penalties and interest owing; the date of the accrual thereof; and that the City claims a first and prior lien therefor on the real and Tangible Personal Property of the Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien as provided in this section on property of the Taxpayer; provided, however, that the goods, stock in trade, and Business fixtures of such Taxpayer shall be subject to such lien.

2. The notice of lien shall be verified by the Chief Financial Officer, or any duly qualified agent of the Chief Financial Officer whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the Taxpayer owns real or Tangible Personal Property. The filing of such notice of lien shall create a lien on such property in that county and constitute notice thereof.

3. Any Person who takes any stock of goods or Business fixtures of, or used by, any seller under lease, title-retaining contract or other contract arrangement, by Purchase, foreclosure Sale or otherwise, takes the same subject to the lien for any deficient Sales Taxes owed by such seller and shall be liable for the payment of all delinquent or deficient Sales Taxes of such seller, not, however, exceeding the value of property so taken or acquired.

F. **Business Seizure – Tax Sale.**

1. After the Finance Department has filed a notice of lien as authorized in subsection (E) of this section, or concurrently therewith, or at any time when taxes due are unpaid, whether or not such notice has been filed, the Chief Financial Officer may issue a warrant directed to any duly authorized revenue collector or the sheriff of the county commanding such Person to seize and sell the real and personal property of the Taxpayer to pay the amount due, together with interest, penalties and Collection Costs, as may be provided by law, subject to valid preexisting claims or liens.

2. The revenue collector or sheriff commanded to seize and sell the real and personal property of the Taxpayer shall forthwith sell such property or any other property used by such Taxpayer in conducting its retail Business, except property made exempt from the tax lien pursuant to Section 3.01.520, to pay the amount due. Such property shall be sold in such manner and method as determined by the Chief Financial Officer, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrants as are allowed by law for similar services.

G. **Bankruptcy, Receivership, Assignment.**
1. Whenever the Business or property of any Taxpayer is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, then all City taxes, penalties and interest imposed under this Tax Code, and for which such Taxpayer is in any way liable under the requirements of this Tax Code, shall be a prior and preferred claim in favor of the City against all the property of such Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided in Section 3.01.510(E) on the property of the Taxpayer, but the goods, stock in trade and Business fixtures of such Taxpayer shall not be excepted from the City’s lien.

2. No sheriff, receiver, assignee or other officer shall sell the property of any Person subject to this Tax Code under process or order of any court without first ascertaining from the Finance Department the amount of any taxes due and payable under this Tax Code, and if any such taxes are due, owing or unpaid, it is the duty of such officer to first pay the amount of such taxes out of the proceeds of the Sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this section.

H. Additional Remedies.

1. Notwithstanding the foregoing, the Chief Financial Officer may treat any such taxes, penalties or interest due and unpaid as a debt due the City from the Taxpayer. The Taxpayer’s Return, or any estimate or assessment made by the Finance Department, as provided in this Tax Code, shall be prima facie proof of the amount due.

2. To recover such taxes, penalties or interest due, the Chief Financial Officer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the City, nor shall any sheriff require of the City an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Chief Financial Officer may prosecute appeals in such cases without the necessity of providing bond therefor. When requested by the Chief Financial Officer, the City Attorney or designee shall commence action for the recovery of taxes due under this Tax Code, and this remedy shall be in addition to all other existing remedies or remedies provided in this Tax Code.

3. The Chief Financial Officer may issue summons and complaints for violations of this Tax Code as set forth in the Lakewood Municipal Code.

3.01.520 Tax Lien Imposed; Exemptions

A. Lien.

1. Sales Tax. The Sales Tax imposed hereunder shall be a first and prior lien upon the Tangible Personal Property and Business fixtures of, or used by, any Retailer under lease, title retaining contract or other contract arrangement, including stock of goods sold or for Sale in the ordinary course of Business, and shall take precedence over other liens or claims of any kind or nature of whatsoever.

2. Use Tax. The Use Tax imposed by hereunder shall be a first and prior lien on the Tangible Personal Property stored, used or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as set forth in Section 3.01.510(E), which lien shall have precedence over all other liens of any kind or nature whatsoever, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice on such Tangible Personal Property.

3. Release. Any lien for taxes as shown on the records of the county clerks and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby shall be released by the Chief Financial Officer in the same manner as mortgages and judgments are released.

B. Exemption – Certain Leases.
1. General. The real or personal property of an owner who has made a bona fide lease to a Retailer, or to any Person owing a Use Tax, shall be exempt from the lien created in subsection (A) of this section if: (a) such property can reasonably be identified from the lease description; and (b) the lessee is given no right to become the owner of the leased property. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or if a memorandum of the lease is filed with the Finance Department within ten (10) days after the execution of the lease.

2. Automotive Vehicles. Automotive vehicles properly registered in the City, showing a lessor as the owner thereof, are exempt from the lien created in subsection (A) of this section, except that such lien shall apply to the extent the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest that is or may be credited to the lessee.

3. Exception – Certain Relationships. Where the lessor and the lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership in the Taxpayer, a lease between such lessee and such lessor shall not be exempt from the lien created in subsection (A) of this section.

4. Filing Frequency. Any Retailer in possession of property under the terms of a lease, which property is exempt from the tax lien as provided in this section, may be required by the Chief Financial Officer to remit taxes collected at more frequent intervals than monthly, but not more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

C. Adjudication of Lien – City as Defendant. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the City in accordance with the Colorado Rules of Civil Procedure shall be required.

3.01.530 Sale/Purchase of Business
A. Any Taxpayer that sells out its Business or stock of goods or quits Business (hereinafter, the “seller”) shall be required to make a Return, as required in this Tax Code, within ten (10) days after the date such seller sold its Business or stock of goods or quit Business. The purchaser of any such Business shall withhold sufficient Purchase money to cover the amount of any taxes due and unpaid until such time as the seller or the purchaser produces a receipt from the Finance Department showing that the taxes have been paid or a certificate that no taxes are due.

B. If a purchaser fails to withhold the Purchase money as provided in subsection (A) of this section, and the taxes are due and unpaid after the ten (10) -day period allowed, such purchaser, as well as the seller, shall be liable for the payment of the taxes unpaid by the seller.

3.01.540 Refunds/Credits
A. Bases for Refunds/Credits. The City shall make a refund or allow a credit for City sales or Use Tax paid only in the event of one of the following:
   1. Tax, fees, penalties or interest were overpaid or paid when not due; or
   2. Tax was paid on a Purchase made by or on behalf of a Person entitled to an exemption under this Tax Code.

B. Conditions. The City will approve a refund request or give a credit only upon satisfaction of the following conditions, as applicable:
   1. An application for refund or credit is made upon the forms prescribed therefor;
   2. The application for refund or credit is made within the Limitations Period set forth in section 3.01.560;
3. The application for refund or credit is made by the Person that Purchased the goods or services and paid the tax thereon as shown on the invoice of the Sale thereof or other documentation satisfactory to the City;
4. The application for refund or credit is supported by the original paid invoice or Sales receipt issued by the seller;
5. Neither a refund nor a credit has been previously granted on the goods or services for which the refund or credit is claimed;
6. The refund or credit applied for is not in an amount greater than the tax paid.

The burden of proving that a transaction for which a refund or credit is claimed is exempt from taxation under this Tax Code shall be on the Person making such claim, under such reasonable requirements of proof as set forth in the Sales and Use Tax Regulations prescribed therefor.

C. Procedure.
1. Upon receipt of an application for a refund or credit, the Finance Department shall examine the application with due speed and shall notify the claimant of a decision thereon in writing.
2. An aggrieved claimant, within thirty (30) days after such decision is mailed to it, may petition the Chief Financial Officer for a local hearing on the claim in the manner provided in Section 3.01.710 and may appeal such decision as set forth in Part 7 of this Tax Code.

D. No Assignment. The right of any Person to a refund under this Tax Code shall not be assignable.

E. False Statements. Any Person who makes any false statement in connection with an application for a refund or credit under this section is guilty of a violation of this Tax Code and shall be punished in the manner provided by state law. If any Person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such Person during the current year were obtained unlawfully, and the Chief Financial Officer is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above-described penalties shall be printed on each form application for a refund.

F. Certain Refund Claims.
1. Claims for tax moneys paid in error shall be processed for refund in accordance with the Sales and Use Tax Regulations, with the following exceptions:
   a. The Finance Department may first apply the proceeds from any claim for refund to any preexisting tax deficiencies or liabilities existing against the claimant.
   b. In the event excess payment of tax moneys in any period is discovered by an Audit, and deficiencies are discovered and assessed against the Taxpayer as a result of such Audit, then such excess moneys may be first applied against such deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.
2. In accordance with the Mobile Telecommunications Sourcing Act, all refunds for charges of mobile Telecommunications Service shall be made in accordance with the Sales and Use Tax Regulations adopted in conformity with this Tax Code.

3.01.550 Confidential Nature of Returns
A. Except in accordance with judicial order or as otherwise provided herein, the City Manager, the Chief Financial Officer, and their agents, clerks and employees shall not divulge any information gained from any Return filed under the provisions of this Tax Code.
B. The City officials charged with the custody of Returns filed pursuant to this Tax Code shall not be required to produce such Returns or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the Chief Financial Officer in an action under the provisions of this Tax Code to which the Chief Financial Officer is a party, or on behalf of any party to an action or proceeding under the provisions of this Tax Code or to punish a violator thereof or pursuant to any judicial order in which event the court may require
the production of and may admit in evidence so much of such Returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

C. No provision of this section shall be construed to prohibit the delivery to a Taxpayer or to its duly authorized representative of a copy of any Return or report filed in connection with its tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or Returns and the information contained therein, nor to prohibit the inspection of the City Attorney or any other legal representative of the City of the report or Return of any Taxpayer who shall bring an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this Tax Code.

D. The provisions of this section shall not preclude the City Manager or the Chief Financial Officer, or any of their respective agents, clerks or employees, from divulging any information gained from any Return or audit to the federal government, the State, the Colorado Department of Revenue, the City or any other municipality, the City Attorney, the City Manager or the Chief Financial Officer, nor shall the City Manager, the Chief Financial Officer or their respective agents, clerks or employees be liable to any Person for such disclosure made for the purpose of computing or collecting the tax due and owing from any Person, or for the purpose of verifying compliance with this Tax Code or for the purpose of investigating any criminal or illegal activity.

E. Any City officer or employee, or any agent thereof, who shall divulge any information classified by this Tax Code as confidential in any manner except in accordance with proper judicial order or as otherwise provided herein or by other law shall be guilty of a violation of this Tax Code and shall be punished in the manner provided by state law.

3.01.560 Limitations Period

A. Limitations Period Established; Automatic Tolling. The “Limitations Period” under this Tax Code shall be three (3) years.

1. Except as expressly set forth in this Tax Code, once the Limitations Period has run, no Person shall engage in any of the following actions:
   a. initiating the recovery of unpaid taxes, interest or penalties, which shall include:
      i. engaging an Audit pursuant to Part VI hereof;
      ii. issuing a notice of Deficiency; or
      iii. issuing a distraint warrant.
   b. applying for a refund hereunder; or
   c. seeking an intercity claim for recovery.

2. Once any action identified in subsection 1 above has been initiated, the Limitations Period shall be tolled, and shall not continue to run, until the action, including any final payment flowing therefrom, has been completed or is abandoned. No tolling of refunds or intercity claims shall be effective until receipt by the City of an application therefor that is complete in every detail.

B. Application.

1. Return Filed; Underpayment. Except as otherwise set forth herein, the Limitations Period for each of the following actions shall begin to run on the date upon which the respective tax is or was payable:
   a. The assessment of taxes for any period, including the imposition of interest and/or penalties thereon;
   b. The filing of any notice of lien;
   c. The issuance of any distraint warrant; and
   d. Any suit or other action for collection of such tax, interest and penalties;

2. Construction Materials. The Limitations Period for a construction project for which the City has issued a building permit or construction permit shall begin on the date of issuance of
a certificate of occupancy for the construction project or the date of the City’s final inspection of the construction project, whichever occurs later.

3. **Refunds/Credits.** The Limitations Period for refunds and credits under section 3.01.540 shall begin to run upon the date the taxes for which the refund or credit is claimed became due and payable.

4. **Intercity Claims for Recovery.** Subject to the provisions of C.R.S. 29-2-106.1(5), the Limitations Period for intercity claims shall begin upon payment to the City of the tax or taxes at issue.

C. **Exceptions.** The Limitations Period shall not apply or run under any of the following circumstances:

   1. **Return Not Filed.** When a Person, whether or not licensed, fails to file a Return. In such instance, the taxes due, together with interest and penalties thereon, may be assessed, and proceedings for the collection of such taxes may be commenced, at any time.

   2. **False or Fraudulent Return.** Notwithstanding anything herein to the contrary, when a Person files a false or fraudulent return.

D. **Extension.** Prior to the expiration of a limitations period, the Taxpayer and the City may agree in writing to an extension thereof, and the period so agreed upon may be extended by subsequent agreements in writing.

**3.01.570 Excess Tax; Remittance**

If any Retailer, during any reporting period, collects as a tax an amount in excess of the tax rate imposed under section 3.01.410 of its total taxable Sales, then it shall remit to the Chief Financial Officer the full net amount of the tax imposed in this Tax Code and also such excess amount. The retention by the Retailer of any excess amount of tax collections the tax rate imposed under section 3.01.410 on the total taxable Sales of such Retailer or the intentional failure to remit punctually to the Finance Department the full amount required to be remitted by the provisions of this Tax Code is declared to be a violation of this Tax Code and shall be recovered, together with interest, penalties and costs, as provided in Section 3.01.510.

**3.01.580 Other Remedies**

A. No provision of this Tax Code shall preclude the City from using any other lawful penalties or other remedies applicable to the collection of Sales or Use Taxes. If the City must use other lawful penalties or other remedies for the collection of the Sales or Use Taxes, the City shall be entitled to recover its attorney fees, costs of litigation and any other legal fees associated with any legal action undertaken to collect the Sales and/or Use Taxes due. The Chief Financial Officer is authorized to make a compromise settlement of any claim for Sales or Use Tax due under this Tax Code.

B. The Chief Financial Officer is authorized to issue subpoenas to require the presence of Persons and the production of papers, books and records necessary to the determination of any matter the Chief Financial Officer is authorized to determine. It is unlawful for any Person to fail to comply with any subpoena issued by the Chief Financial Officer.

C. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the state. Upon failure of any witness to comply with such subpoena, the City Attorney shall, at the direction of the Chief Financial Officer:

   1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or

   2. Petition the District Court in and for the county, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that
the court after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

3.01.590  Jeopardy Assessment
A.  Jeopardy Determination.  If, at any time, the Chief Financial Officer determines that collection of any City tax, whether or not previously assessed, will be jeopardized for any reason, the Chief Financial Officer may, in his or her discretion, declare the taxable period immediately terminated, determine the tax, and issue a notice of lien and notice of Deficiency, and demand immediate payment thereof.
B.  Collection.  Upon the Chief Financial Officer’s jeopardy determination, the tax, along with any interest and penalties thereon, shall be due and payable forthwith, and the Chief Financial Officer may immediately proceed to collect such tax as provided in this Tax Code.
C.  Security.  Collection of the tax under this section may be stayed if the Taxpayer provides security for payment satisfactory to the Chief Financial Officer.

PART 6.  AUDIT AND ASSESSMENT

3.01.610  Audit of Records
The Finance Department may, for the purpose of ascertaining the total correct tax liability from any Person Engaged in Business in the City, conduct an “Audit” by examining all books, accounts and records of such Person to determine the Person’s tax liability to the City and/or the amount of any credit due to the Person.  In lieu of a full audit of all such books, accounts and records, the Chief Financial Officer, in his or her sole and absolute discretion, may authorize the use of a test-period Audit or other appropriate sampling techniques to compute the tax liability of any Person under Audit.

3.01.620  Duty to Keep Records; Availability
It is the duty of every Person liable to the City for any tax imposed under this Tax Code to keep and preserve suitable records and make them available for examination and Audit at any time, as provided in Section 3.01.260.

3.01.630  Engagement; Time and Location
A.  Engagement Letter.  The Finance Department shall engage an Audit by sending notice to the Taxpayer in the form of an “Audit Engagement Letter.”  The Audit Engagement Letter shall:
1.  Notify the Taxpayer of the Audit;
2.  Provide detailed instructions about the audit process, including the nature of the documents, papers and records to be produced; and
3.  Notify the Taxpayer that the Finance Department and the Taxpayer will attempt to come to a mutual agreement on one or more dates and times for the Audit.
B.  Time and Location.
1.  In the event the parties are unable to agree on one or more dates and times for the Audit, the Chief Financial Officer shall designate the time and location of the Audit.
2.  Any Person under Audit may request to have the Audit conducted at a location outside of the Denver metropolitan area.  If the Chief Financial Officer, in the exercise of his/her reasonable discretion, grants such request, the Person shall pay all reasonable costs and expenses incurred by the Finance Department to conduct the Audit at such location.
3.01.640 Subpoena to Obtain Records
If any Person refuses to voluntarily produce any of the foregoing information, the Chief Financial Officer is authorized to issue subpoenas to require the presence of Persons and the production of papers, books and records, as provided in section 3.01.580.

3.01.650 Exempt Organizations
Any exempt organization claiming exemption under the provisions of this Title is subject to audit in the same manner as any other Person Engaged in Business in the City.

3.01.660 Coordinated Audit
Taxpayers licensed with the City under this Tax Code and holding a similar Sales Tax license in at least four (4) other Colorado municipalities that administer their own Sales Tax collection, may request a coordinated audit as provided for in the City Sales and Use Tax Regulations.

3.01.670 Estimated Audit Assessment
If the Finance Department is unable to audit the records of a Person due to the Person’s failure or refusal to provide sufficient records necessary to complete the audit, the Chief Financial Officer shall make an estimate of tax due based upon or reasonably inferred from such information as may be available and shall issue to the Person a notice of Deficiency based on such estimate.

PART 7. HEARINGS AND APPEALS

3.01.710 Local Hearing
A. Request for Hearing. If any Taxpayer contests any Deficiency notice or denial of refund, the Taxpayer may make a written request to the Chief Financial Officer for a hearing and a correction of the amount of the tax so assessed or refund requested. If protesting any amount in a Deficiency notice, the Taxpayer shall pay any unprotested tax, penalty and interest, in full, within the time period specified in the Deficiency notice.
1. Timing of Request. The request for hearing must be postmarked, emailed or hand-delivered to the Finance Department within thirty (30) days after such Deficiency notice or denial of refund is sent to the Taxpayer.
2. Content of Request. Such application for hearing shall contain the following information:
   a. The Taxpayer’s name, address and account number;
   b. The taxable period(s) involved;
   c. The type and amount of tax in dispute;
   d. An itemized schedule of the findings with which the Taxpayer disagrees; and
   e. A summary statement of the grounds upon which the Taxpayer relies for the purpose of showing the tax is not due.
3. Time and Location of Hearing. If an administrative hearing is granted, the Chief Financial Officer shall notify the Taxpayer in writing, within one hundred fifty (150) days after receipt of the Taxpayer’s request for hearing, of the time and location for the hearing; provided, however, that the City and the Taxpayer shall have the option to extend the hearing date by mutual written agreement.

B. Hearing.
1. A hearing officer chosen by the City shall hold a hearing on the merits of the application in accordance with the provisions hereof.
2. The hearing shall be informal in nature, and no transcript, rules of evidence or filing of briefs shall be required. However, the Taxpayer may elect to submit a brief, in which case the City may also submit a brief. Any brief submitted by the Taxpayer shall be submitted to the hearing officer not less than thirty (30) days prior to the date set for the hearing.
Any brief filed by the City in response shall be submitted to the hearing officer not less than fifteen (15) days prior to the date set for the hearing.

3. At the request of the Taxpayer and upon the agreement by the Chief Financial Officer, the hearing officer may hold the hearing solely on the briefs filed by the parties.

C. Decision.
   1. The hearing officer shall make such decision in the matter as is just and lawful and shall furnish a copy of such decision to both the Taxpayer and the Chief Financial Officer in the form of a written order. The hearing shall be held and the order rendered within one hundred and eighty (180) days after the City’s receipt of the Taxpayer’s request for a hearing.
   2. The order shall state the grounds for the hearing officer’s decision and shall set forth the amount of the claim for refund that is denied, and/or the amount of taxes found still due and owing, if any.
   3. The hearing officer’s decision shall become final, and all amounts due shall be paid to the City, including accrued interest and penalties, within thirty (30) days after the date of the order, unless an appeal is timely filed pursuant to Section 3.01.620.
   4. If the hearing officer finds in favor of the Taxpayer, all interest and penalties imposed or assessed upon the amounts to be refunded or the taxes found not to be due shall be eliminated. Any interest and/or penalties assessed or imposed upon taxes due shall continue to accrue until such amounts are paid in full.

D. Exhaustion of Local Remedies.
   1. Failure to strictly comply with the requirements of subsections (A)(1) and (A)(2) of this section shall result in denial of the request for hearing and shall constitute a failure to exhaust local remedies. In such event, the City’s shall respond to the request for hearing in writing, setting forth the reasons for denial.
   2. Failure by the Taxpayer to appear at the hearing shall constitute a failure by the Taxpayer to exhaust local remedies.
   3. If a Taxpayer protested a notice of final determination, assessment and demand for payment, but elects to pay the assessment in lieu of proceeding to a protest hearing, such Taxpayer shall be deemed to have exhausted local remedies and cannot subsequently submit an application for a refund of amounts paid under the notice of final determination.
   4. Conclusion of the hearing provided for herein shall constitute exhaustion of local remedies for purposes of C.R.S. § 29-2-106.1, as amended.

3.01.720 Appeal

Upon exhaustion of local remedies, the Taxpayer may appeal in accordance with the provisions of C.R.S. § 29-2-106.1, as amended, or Colorado Rules of Civil Procedure 106, as amended.
CALL TO ORDER

Chair Laurence Leiber called the meeting to order at 5:30 p.m. in the City Manager’s Office Conference Room in the Lakewood Civic Center South Building, 480 S. Allison Parkway, Lakewood, Colorado.

ROLL CALL

Commissioners Present: Ash, Hensley, Ralph, Malandri, McBride and Leiber were present.

Commissioners Absent: None.

A total of 6 commissioners were present. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg were in attendance.

CORRESPONDENCE

None.

NEW BUSINESS

1) Draft Proposal – 2019-01 – Community Gardens 2.0

Sustainability Committee Chair Casey Hensley presented the draft proposal for Assignment 2019-01: Community Gardens 2.0.

There was a consensus to accept the proposal with all amendments discussed. The proposal will be presented to the LAC Full Commission on February 19, 2020.

2) Draft Proposal – 2019-03 – Kids Visiting Seniors

 Neighborhoods Committee Chair Kate McBride presented the draft proposal recommendations for Assignment 2019-03: Kids Visiting Seniors.
There was a consensus to accept the proposal with all amendments discussed. The proposal will be presented to the LAC Full Commission on February 19, 2020.

3) Lakewood Advisory Commission Planning Meeting

Executive Committee discussed LAC’s annual Planning Meeting. Executive Committee reached consensus to hold the meeting on March 14, 2020.

ADJOURNMENT

There being no further business to come before the Executive Committee, Chair Laurence Leiber adjourned the meeting at 6:46 p.m.

Respectfully submitted,

[Signature]

Peggy Ralph, Secretary
CALL TO ORDER

Chair Laurence Leiber called the meeting to order at 5:30 p.m. in the City Manager’s Office Conference Room in the Lakewood Civic Center South Building, 480 S. Allison Parkway, Lakewood, Colorado.

ROLL CALL

Commissioners present: Ash, Hensley, Ralph, Malandri, McBride and Leiber were present.

LAC Member Roger Freeman was present.

Commissioners Absent: None.

A total of 6 commissioners were present. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg were in attendance.

CORRESPONDENCE

None.

NEW BUSINESS


Sustainability Committee Chair Casey Hensley presented the draft proposal recommendations for Assignment 2018-05: Renewable Energy Mitigation Program. Executive Committee recommended changes to better define what a Renewable Energy Mitigation Program was within the assignment and to better format the exhibits presented in the assignment.

A motion was made by Nicole Malandri to accept the proposal with the amendments discussed. It was seconded by Kate McBride. All Ayes, no Nays. The motion passed.
2) Lakewood Advisory Commission Planning Meeting

Executive Committee discussed LAC’s annual Planning Meeting. The committee suggested changes to the wording and content of the tentative agenda.

REPORTS FROM THE OFFICE OF THE CITY CLERK

City Clerk Michele Millard clarified that LAC social gatherings in which official business is not discussed do not require public posting. She stated that the Unsafe Driving practice presentation would be held the week of March 16, 2020.

ADJOURNMENT

There being no further business to come before the Executive Committee, Chair Laurence Leiber adjourned the meeting at 6:29 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
FULL COMMISSION MEETING
LAKEWOOD ADVISORY COMMISSION
January 15, 2020
@ 7:00 p.m.
Civic Center, South Building
2nd Floor - Human Relations Training Room (Cabinet Room?)

AGENDA

CALL TO ORDER

Chair Laurence Leiber called the meeting to order in the Cabinet Room in the Lakewood Civic Center South Building 480 S. Allison Parkway, Lakewood, Colorado, at 7:00 p.m.

ROLL CALL

Commissioners Present: Ash, Baschiera, Bernhard Barthel, Heide Barthel, Bunch, Cornell, Gelfuso-Goetz, Gordey, Johnson, Leiber, Malandri, McBride, Nowak, Osborne, Ralph, Rein, Rivard, Rosebrook, and Stamps.

Commissioners Absent: Freeman, Gurza, Hensley, and Nguyen.

A total of 19 members were present and 4 members were absent. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg

INTRODUCTION OF GUEST(S)

Teresa MacKillop introduced herself and stated that she was interested in joining the LAC and its Civic Awareness Committee.

Caroline Wolfrum was also in attendance.

PUBLIC COMMENT

There was no public comment.

CORRESPONDENCE

There was no correspondence presented.

APPROVAL OF MINUTES

A motion was made by Rick Ash to approve the September 18, 2019 Full Commission Meeting Minutes. It was seconded by Bernhard Barthel. Vote: All Ayes, No Nays. The motion carried.

NEW BUSINESS


Sustainability Committee Member Andrea Gelfuso presented the draft proposal for LAC Assignment 2018-05: Renewal Energy Mitigation Program. She stated that the
purpose of the assignment was to determine if Renewal Energy Mitigation was viable in Lakewood, and the best practices and proposals if it was found to be so. Full Commission posed a variety of questions and concerns for the proposal, which included: correcting the proposal’s appendices, cutting down the content of the proposal, and modify the proposal’s overall structure.

A motion was made by Rick Ash to send it back to Executive Committee for review on February 5th, 2020. It was seconded by Lynn Nowak. Vote: 18 Ayes, 1 Nay. The motion carried.


Civic Awareness Committee Chair Rick Ash presented the draft proposal for LAC Assignment 2019-02: Unsafe Driving. He stated that the purpose of the assignment was to educate Lakewood citizens on safe driving practices. Full Commission offered several suggestions, which included softening the language regarding the use of red-light cameras in the proposal and updating the traffic accident numbers to include the entirety of 2019.

A motion was made by Bernie Barthel to accept the proposal. It was seconded by Jim Bunch. Vote: 19 Ayes, No Nays. The motion carried.

REPORTS

a. Sustainability Committee member Andrea Gelfuso Goetz reported that the Sustainability Committee is continuing work on Assignment 2019-01: Community Garden Assignment 2.0. She stated that the wording for Assignment 2019-04: Vehicle Anti-Idling was approved by City Council and was delivered to the Sustainability Committee. She stated that Bernhard Barthel was sending the committee a proposal for a solar farm assignment by January 17, 2020.

b. Neighborhoods Committee Chair Kate McBride reported that Dave Rein will be hosting a walkthrough of Assignment 2018-06: Farmers Markets & Healthy Food Access on January 22nd, 2020 in the City Council Chambers at 12:30 p.m. She invited any interested LAC members to attend and offer feedback before the proposal goes to City Council on January 27th. She stated that the Neighborhoods Committee will have the proposal for Assignment 2019-03: Kids Visiting Seniors prepared for review at the February 5, 2020 Executive Committee meeting.

c. Civic Awareness Committee Chair Rick Ash reported that the Civic Awareness Committee did not have any pending assignments. He stated that the committee was interested in researching the effects of a minimum wage increase in Lakewood but will wait for the February 1st City Council Planning Session to determine the committee’s next assignment.
d. Officers
Chair Laurence Leiber stated that the officers intend to plan the LAC’s Annual Planning Session at the February 5th, 2020 officer meeting.

Chair Laurence Leiber welcomed Peggy Ralph as the LAC’s new Secretary.

CITY CLERK’S REPORTS

City Clerk Michele Millard stated that City Council will be discussing topics for LAC to research at their annual planning session on February 1st. She will give an update at the Executive Committee meeting on February 5, 2020.

COMMISSIONERS SPOTLIGHT

Member Karen Gordey was highlighted.

ADJOURN

There being no further business to come before the Full Commission, Chair Laurence Leiber adjourned the meeting at 8:29 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
MINUTES

CALL TO ORDER

Chair Laurence Leiber called the meeting to order in the 2nd Floor Human Relations Training Room in the Lakewood Civic Center South Building 480 S. Allison Parkway, Lakewood, Colorado, at 7:00 p.m.

ROLL CALL

Commissioners Present: Ash, Baschiera, Bunch, Cornell, Freeman, Gordey, Hensley, Leiber, McBride, Nowak, Osborne, Ralph, Rein, Rivard.

Chair Laurence Leiber arrived at the meeting at 7:30 p.m.

Commissioners Absent: Bernard Barthel, Heide Barthel, Gelfuso-Goetz, Gurza, Johnson, Malandri, Nguyen, Rosebrook, Stamps.

A total of 14 members were present and 9 members were absent. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg.

INTRODUCTION OF GUEST(S)

Brent Belisle and Valerie Smith introduced themselves as representatives of The Arc of Jefferson, Clear Creek, and Gilpin Counties. They spoke on The Arc’s mission and the support it provides to individuals with developmental disabilities.

Emily Gambone and Karen Morgan were also in attendance.

PUBLIC COMMENT

There was no public comment.

CORRESPONDENCE

There was no correspondence presented.

APPROVAL OF MINUTES

A motion was made by Roger Freeman to approve the January 15, 2020 Full Commission Meeting Minutes. It was seconded by Casey Hensley. Vote: All Ayes, No Nays. The motion carried.

NEW BUSINESS
1) Ambassador Advertisement – Laurence Leiber

Laurence Leiber spoke on the LAC Ambassador program. He shared his experience serving as an ambassador for LAC. He stated there were several openings for LAC ambassadors that needed to be filled. He stated that he would share more information on the program at LAC’s upcoming Annual Planning Meeting.

2) Draft Proposal – 2019-01 – Community Gardens 2.0 – Casey Hensley

Sustainability Committee Chair Casey Hensley withdrew the draft proposal for LAC Assignment 2019-01: Community Gardens 2.0. She stated that the committee wanted to add additional research to the assignment. She stated that the assignment should be ready for Executive Committee review in April.


Neighborhoods Committee Chair Kate McBride presented the draft proposal for LAC Assignment 2019-03: Kids Visiting Seniors. She stated that the purpose of the assignment was to combat the social isolation of seniors through collaborative activities with kids and what the City could do to facilitate those activities. The Full Commission posed several questions and concerns for the proposal, which included using a term other than senior in the proposal and changing the term elderly in the assignment wording.

A motion was made by Casey Hensley to approve the proposal. It was seconded by Rick Ash. Vote: All Ayes, No Nays. The motion carried.

4) Annual Planning Meeting

Laurence Leiber discussed LAC’s upcoming Annual Planning Meeting. He stated that the meeting will be held on March 14, 2020 from 7:30 a.m. to 2:30 p.m. in the Community Room in the Lakewood Cultural Center.

REPORTS

a. Sustainability Committee chair Casey Hensley reported that the Sustainability Committee will continue work on Assignment 2019-01: Community Gardens 2.0 in preparation for Executive Committee review in April. She stated the committee anticipates having the proposal for Assignment 2018-05: Renewal Energy Mitigation Program ready for Executive Committee Review on March 4, 2020. She stated that Emily Gambone attended the Sustainability Committee meeting.

b. Neighborhoods Committee Chair Kate McBride reported that Assignment 2018-06: Healthy Food Access was presented to Council. She stated that Neighborhoods Committee began brainstorming grassroots proposals after
completed its two pending assignments. She stated that Karen Morgan attended the Neighborhoods Committee meeting.

c. Civic Awareness Committee Chair Rick Ash reported that the Civic Awareness Committee did not have any pending assignments. He stated City Council expressed interest in LAC researching a minimum wage increase. He stated that the committee will update Assignment 2019-02: Unsafe Driving with updated end-of-year data for 2019 before presenting the proposal to City Council. He introduced new Civic Awareness members Marsha Osborne and Jamie Cornell.

d. Officers

Chair Laurence Leiber stated that LAC needed to determine its members and chair for the Diversity ad-hoc committee created in 2019. Secretary Peggy Ralph stated that she was interested in serving as the Diversity Committee chair.

Chair Laurence Leiber also stated that Assignment 2018-02: Municipal Broadband is still awaiting Council direction.

**CITY CLERK'S REPORTS**

City Clerk Michele Millard stated that Assignment 2019-02: Unsafe Driving is set to be presented before Council on March 23, 2020. She stated that Civic Awareness can set up a run-through of the presentation the week prior.

**COMMISSIONERS SPOTLIGHT**

Members Jamie Cornell and Marsha Osborne were highlighted.

**ADJOURN**

There being no further business to come before the Full Commission, Chair Laurence Leiber adjourned the meeting at 8:11 p.m.

Respectfully submitted,

[Signature]

Peggy Ralph, Secretary
FULL COMMISSION SPECIAL MEETING
LAKEWOOD ADVISORY COMMISSION
May 20, 2020, 5:30 p.m.
Virtual Meeting

MINUTES

CALL TO ORDER

Chair Laurence Leiber called the virtual meeting to order at 5:37 p.m.

ROLL CALL

Commissioners Present: Ash, Baschiera, Bernard Barthel, Heide Barthel, Bunch, Cornell, Freeman, Gordey, Gurza, Hensley, Johnson, Leiber, McBride, Nowak, Osborn, Ralph, Rein, Rivard, Rosebrook, and Stamps

Commissioners Absent: Gelfuso-Goetz, Malandri, Nguyen

A total of 20 members were present and 3 members were absent. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg.

PUBLIC COMMENT

There was no public comment.

CORRESPONDENCE

There was no correspondence presented.

NEW BUSINESS

1) COVID-19 Update and Moving Forward - Laurence Leiber

Laurence Leiber discussed the status of the LAC in the wake of the COVID-19 crisis. He stated that LAC meetings going forward would remain virtual. He stated that the Commission would need to decide how it would hold Committee meetings going forward given the change in meeting format. He encouraged the Commission to brainstorm potential assignments moving forward given that the Civic Awareness and Neighborhoods Committees have completed all their assignments.

2) Assignment 2018-05: Renewable Energy Mitigation Program Proposal - Roger Freeman

Roger Freeman presented the draft proposal for Assignment 2018-05: Renewable Energy Mitigation Program. He stated that the REMP was a directive from City Council that focused on promoting sustainability as opposed to a fully developed renewable energy conversion for the City. He stated that the assignment did not address how to communicate the sustainability efforts presented in the REMP to residents and that Council would need to address it if they adopted the proposal.
A motion was made by Chris Rivard to approve the proposal. It was seconded by Michele Rosebrook. Vote: All Ayes, No Nays. The motion carried.

3) Full Commission Brainstorm Planning - Laurence Leiber

Laurence Leiber stated that LAC missed several brainstorming sessions due to the cancellation of the Annual Planning Session. There was a consensus from the Commission to hold brainstorming sessions at future LAC Full Commission meetings to discuss LAC agenda priorities for the rest of the year and potential grassroots assignments.

**ADJOURN**

There being no further business to come before the Full Commission, Chair Laurence Leiber adjourned the meeting at 6:44 p.m.

Respectfully submitted,

[Signature]

Peggy Ralph, Secretary
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 14 & 15

To: Mayor and City Council

From: Travis Parker, Director of Planning, 303-987-7908

Subject: SETTLEMENT AGREEMENT FOR WHITE FENCE FARM LAWSUITS

SUMMARY STATEMENT:
Two lawsuits have been filed against the City regarding potential development at 6263 W. Jewell, the former site of the White Fence Farm Restaurant. City staff has been working with both parties, Crescent Communities LLC and UNIFIED Under the Wilson Property ODP, for a number of months to reach a negotiated settlement agreement acceptable to all sides. All parties have accepted the attached agreement and recommend approval of the two associated resolutions approving the settlement agreement and granting Authority to Continue under Section 14.27 to the project.

BACKGROUND INFORMATION:
In March of 2019, Crescent Communities submitted a site plan to develop the property at 6263 W. Jewell as an apartment complex. In May of 2019 the neighboring Wild Flower Patio Homes HOA requested and received the City’s interpretation of certain provisions of the zoning ordinance and official development plan as they applied to the proposal. Those interpretations were appealed by the HOA. In January of 2020, the Board of Adjustment met on the appeal and did not overturn the City’s interpretations. The HOA and neighboring HOAs filed suit against the City based on these actions. Also in January of 2020 the City Council met to establish housing allocations for the year under Article 14.27 and to choose whether to grant Authority to Continue without allocations to projects submitted prior to the July 2019 election. The Council chose not to grant Authority to Continue to this project in resolution 2020-08 and Crescent subsequently filed suit against the City based on this action. Beginning in August of this year both plaintiffs began formal mediation with each other and the City to find a mutually acceptable negotiated agreement. Over the past three months, the parties have worked diligently and in good faith to reach agreement. The attached settlement agreement is the result of that work and is acceptable to all parties subject to City Council approval.

Highlights of the agreement include, but are not limited to:
1. Lawsuits will be dismissed by both plaintiffs
2. Residential unit count will be lowered from 235 to 202
3. The fourth story will be removed from the proposed east building and half of the west building
4. A minimum of 299 parking spaces will be provided
5. Access to and from Harlan Circle will be limited to emergency vehicles only
6. Developer will consult with the HOA on building architecture
7. Parties have agreed to new maintenance responsibilities in Sanderson Gulch
8. Lakewood will conduct additional future traffic studies at the Jewell & Illif intersection
9. Lakewood will install parking signs agreed to by the HOA along S. Harlan Circle and attached cul-de-sacs.
10. Lakewood will grant Authority to Continue under 14.27 to the project.

**BUDGETARY IMPACTS:**
There are no budgetary impacts beyond legal fees already incurred if the agreement is approved. Any future expenditures of City funds is subject to appropriation by Council. Rejection of the agreement would likely result in the resumption of the two lawsuits. The claims brought by the HOA plaintiffs are limited to declaratory and injunctive relief and, if plaintiffs were to be successful, would not expose the City to any financial liability. The claims brought by Crescent also seek declaratory and injunctive relief, but contain an additional claim for damages for alleged violations of Crescent’s constitutional and property rights resulting from the adoption of resolution 2020-8. The City would also incur legal fees and expenses if the litigation were to resume.

**STAFF RECOMMENDATIONS:**
City staff joins both plaintiffs in recommending approval of the settlement agreement and granting Authority to Continue to this project. A letter from the Wild Flower Patio Homes HOA and UNIFIED Under the Wilson Property ODP recommending approval is attached.

**ALTERNATIVES:**
Should Council choose to reject the proposed agreement, the litigation will likely resume. Due to the parties’s good faith efforts to reach the proposed settlement agreement, little progress has been made in the litigation. In fact, the cases are currently stayed due to the possibility of a full resolution. If litigation were to resume, the HOA claims might result in the questions of the City’s interpretations being remanded to the Board of Adjustment. Crescent’s claims against the City relating to the Authority to Continue and resolution 2020-8 would also resume. Due to settlement efforts, insufficient progress has been made to fully assess the merits of those claims. As noted above, there is a claim for damages asserted against the City that, if successful, could present significant potential liability.

**PUBLIC OUTREACH:**
The mediation process including draft agreements have been legally confidential until this time. Only parties to the lawsuits have been involved.

**NEXT STEPS:**
If this agreement is approved by Council, Crescent will submit a revised site plan conforming with the terms of this agreement. Such site plan and associated building plans would be processed administratively by City staff.

**ATTACHMENTS:**
- Resolution 2020-46
- Proposed Settlement Agreement and exhibits
- Letter of support for the settlement agreement and Authority to Continue from the Wild Flower Patio Homes HOA and UNIFIED Under the Wilson Property ODP

**REVIEWED BY:**
- Kathleen E. Hodgson, City Manager
- Benjamin B. Goldstein, Deputy City Manager
- Timothy P. Cox, City Attorney
A RESOLUTION

AUTHORIZING APPROVAL OF SETTLEMENT AGREEMENT RELATING TO TWO LAWSUITS OVER DEVELOPMENT OF THE FORMER WHITE FENCE FARM PROPERTY

WHEREAS, two lawsuits were filed concerning the potential development of the former White Fence Farm property located at 6263 W. Jewell (the “Property”);

WHEREAS, one of the lawsuits was filed by the property owner and the developer of the site and challenged the City’s decision not to grant “Authority to Continue” under Section 14.27 of the Lakewood Municipal Code;

WHEREAS, the other lawsuit was filed by a neighborhood group and a homeowners association, challenging the City’s interpretation of the City Code and an official development plan for the Property;

WHEREAS, all parties to the two cases in litigation have spent several months in good faith settlement discussions in an effort to resolve the issues in the litigation and to amend the development proposal to meet the needs of the developer, the neighborhood and the City;

WHEREAS, the parties have finalized a proposed settlement agreement, a copy of which is attached to this resolution as Exhibit A (the “Settlement Agreement”);

WHEREAS, City staff has recommended approval of the Settlement Agreement;

WHEREAS, the property owner, the developer, the neighborhood group and the homeowners association also support the City’s approval of the Settlement Agreement;

WHEREAS, the City Council hereby finds and determines that approving the Settlement Agreement is and shall be in the best interest of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The settlement agreement attached hereto as Exhibit A concerning the former White Fence Farm property is hereby approved and shall bind the City.

SECTION 2. The Mayor or his designee is authorized to execute the settlement agreement and to execute any other necessary instruments incident thereto.

SECTION 3. The City staff is directed to implement the terms of the settlement agreement.

SECTION 4. This Resolution shall become effective immediately upon adoption.
INTRODUCED, READ AND ADOPTED by a vote of _____ for and _____ against at a virtual regular meeting of the Lakewood City Council held on November 23, 2020, at 7 o’clock p.m.

______________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney
SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered by and among the CITY OF LAKEWOOD, a political subdivision and home rule municipality of the State of Colorado (the “City”), UNIFIED UNDER THE WILSON PROPERTY ODP, a Colorado nonprofit corporation (“UNIFIED”), THE WILD FLOWER PATIO HOMES @ WHITE FENCE HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation (the “HOA”), CRESCENT COMMUNITIES, LLC, a Delaware limited liability company (“Crescent”), and C&P PROPERTIES, LLC, a Colorado limited liability company (“C&P”), effective as of ____________, 202__ (the “Effective Date”). The City, UNIFIED, the HOA, Crescent, and C&P may sometimes be referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

A. On March 27, 2019, Crescent submitted a major site plan application (the “Application”) to the City Planning Department to redevelop the parcel of land located at 6263 W. Jewell Ave., Lakewood, Colorado 80232, commonly known as White Fence Farm (the “Property”). The Application seeks authorization to construct 234 multifamily residential units, with a maximum structure height of 54 feet, on the Property (the “Project”). On May 10, 2019, the HOA sent City Planning Director Travis Parker (the “Director”) a formal request to interpret the Lakewood Zoning Ordinance as applied to the Project. Director Parker issued response letters containing his interpretations on May 21 and May 31, 2019. The HOA appealed Director Parker’s determinations to the Lakewood Board of Adjustment (the “BOA”).

B. The BOA held hearings to adjudicate the appeal on December 4, 2019, January 15, 2020, and January 22, 2020. The BOA voted 6-0 on Resolution 2020-1, which concerned the BOA’s jurisdiction to hear the appeal. The BOA twice voted 3-3 on Resolution 2020-2, which concerned the Project’s proposed density and height. The BOA voted 4-2 on Resolution 2020-3, which concerned architecture review.

C. On January 27, 2020, the Lakewood City Council, the governing body of the City (the “City Council”), held a meeting to implement certain provisions of the Lakewood Residential Growth Limitation Ordinance, Section 14.27 of the Lakewood Municipal Code (“LMC”). The City Council adopted Resolution 2020-8, which, in part, refused to apply the “Authority to Continue Provision,” LMC § 14.27.160, to the Project, such that the Project would require future “Allocations” under the Lakewood Residential Growth Limitation Ordinance.

D. On February 17, 2020, the HOA and UNIFIED appealed the BOA’s decisions to the District Court for Jefferson County pursuant to C.R.C.P. 57 and C.R.C.P. 106(a)(4), Case No. 20CV30255 (the “BOA Lawsuit”). The BOA Lawsuit is currently pending.

E. On February 24, 2020, Crescent and C&P appealed the City Council’s Resolution 2020-8 to the District Court for Jefferson County pursuant to C.R.C.P. 106(a)(4), C.R.C.P. 57, and 42 U.S.C. § 1983, Case No. 20CV30295 (the “City Council Lawsuit”). The City Council Lawsuit is currently pending. The BOA Lawsuit and the City Council Lawsuit are jointly referred to as the “Lawsuits.”
F. The Parties, without in any way conceding the validity or sufficiency of any claim or contention in the Lawsuits, now desire to fully compromise, finally settle, and fully release all claims, demands, causes of action, disputes, controversies, and/or disagreements related to the Lawsuits to avoid expense, time, effort, and uncertainty of further litigation.

G. This Agreement is intended to resolve the Lawsuits and the unique circumstances and situation presented. This Agreement does not constitute City precedent with respect to any other property or any other development within the City. Further, this Agreement does not constitute binding precedent or a final decision of the Director, the City, the City Council, or the BOA concerning the force and effect of the Wilson Property ODP on any development project other than Crescent’s Project. All Parties agree that, except as modified by the Amended Site Plan (defined below), the Property remains subject to the Wilson Property ODP.

AGREEMENT

NOW THEREFORE, in consideration of the terms, covenants, and conditions contained in this Agreement, including the Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

I. TERMS AND CONDITIONS.

A. THE PROJECT. Upon execution of this Agreement, Crescent will prepare and submit to the Director, on behalf of the City, an amended major site plan application containing the following modifications (the “Amended Site Plan”):

1. Density: 202 units or less.

2. Height: As depicted on Exhibit A:

   a) North Building: up to 3 stories (not to exceed 42 feet in height).

   b) West Building: up to 3 stories on the northern half of the building (not to exceed 42 feet in height), and up to 4 stories on the southern half of the building (not to exceed 54 feet in height).

3. Parking: At least 299 total individual (i.e., non-tandem) parking spaces, and a parking ratio greater than or equal to 1.14 spaces per bedroom (where studio units are considered to have one bedroom).

4. Circulation: Any vehicular access to or from the Property via S. Harlan Circle shall be permanently restricted to emergency use only by a controlled-access gate, the design of which is to be approved by West Metro Fire Protection District. The controlled-access gate shall be maintained by and be the responsibility of the Property owner. Crescent shall submit such designs to the West Metro Fire Protection District, and the City shall use best efforts to facilitate review and approval thereof. The only non-emergency access to or from the Property shall be via W. Jewell Avenue.
5. **Fencing.** Crescent shall construct a white fence of at least 48 inches in height along the S. Harlan Circle frontage on the west side of the Property, the design of which shall be comparable to the existing fence on the Property and the HOA fence surrounding the HOA properties.

**B. PROJECT REVIEW AND PROCEDURES.**

1. **Architecture Consultation.** Prior to submission of the Amended Site Plan, Crescent shall conduct a non-binding consultation with the HOA regarding the Project’s architecture, construction materials, and landscaping. Following approval of the Amended Site Plan and prior to construction, Crescent shall again conduct a non-binding consultation with the HOA regarding the Project’s architecture, construction materials, and landscaping.

2. **Staff Review.** Upon Crescent’s submission of the Amended Site Plan, the City shall expedite the processing and review thereof. The City agrees that the Director will retain jurisdiction of the Amended Site Plan and will not refer the Amended Site Plan to the Planning Commission for review.

3. **Condition to Continue Effectiveness: City Council’s Authorization Under the Authority to Continue Provision.** Within one month of execution of this Agreement, the City Council shall include as an agenda item at a regular or special meeting and decide whether to adopt a resolution: modifying or amending Resolution 2020-8; authorizing the issuance of building permits for the Project under the Authority to Continue Provision; and confirming that the Project does not require Allocations under LMC § 14.27 (the “Amended Resolution”).

4. **HOA and UNIFIED Support for Project.** Within seven (7) days from the execution of this Agreement, the HOA and UNIFIED shall deliver written correspondence to City staff, the City Planning Commission, the BOA, and the City Council, expressing unqualified support for the Project and the Amended Site Plan, and with particular regard to the City Council, a request to modify Resolution 2020-8 and authorize the issuance of building permits for the Project under the Authority to Continue Provision.

5. **Stay of the Lawsuits.** Within seven (7) days from the execution of this Agreement, the Parties shall request stipulated stays of the Lawsuits.

6. **Challenges Prohibited and Notification Required.** The HOA and UNIFIED warrant and represent that neither they nor any of their respective board members have knowledge that any of their homeowners or members intend to object to the Project before the City Council, the Director, or the City, or intend to challenge the Project, approval of the Amended Site Plan or the modification of Resolution 2020-8 to allow the Project to proceed under the Authority to Continue Provision, so long as the Amended Site Plan is consistent with the terms of this Agreement. The HOA and UNIFIED shall not challenge the Project, contest or appeal the approval of the Amended Site Plan, or contest, object to or appeal the modification of Resolution
2020-8, or provide any assistance, of any kind, to any of their homeowners, members or any third party, in any such a challenge, objection or appeal, so long as the Amended Site Plan is consistent with the terms of this Agreement. Any Party that becomes aware of any such potential challenge, objection or appeal, shall immediately notify all other Parties.

7. Denial or Challenge of Approval Terminates Agreement. Upon any of the following, this Agreement shall immediately terminate, unless otherwise agreed by the Parties in writing:

   a) City Council fails to adopt the Amended Resolution;
   b) The Director denies the Amended Site Plan;
   c) The Director approves the Amended Site Plan with unacceptable conditions that would cause Crescent not to proceed with the Project;
   d) The Director approves the Amended Site Plan, but a Party or person not subject to this Agreement appeals such approval; or
   e) A Party or person not subject to this Agreement challenges this Agreement.

8. Effect of Termination. If the Agreement terminates pursuant to Paragraph I.B.7:

   a) The Agreement is automatically void without further action of any Party, and no Party shall have any further rights or obligations hereunder;
   b) Crescent may withdraw the Amended Site Plan and reinstate and proceed with Crescent’s original major site plan pending as of the Effective Date, subject to the Lawsuits and/or further action of the BOA; and
   c) The Parties to the respective Lawsuits, or any of them, shall notify the courts with jurisdiction over the Lawsuits of the termination of this Agreement and the failure of the settlement, and shall request termination of the stays requested pursuant to Paragraph I.B.5.

II. CONTINGENT TERMS AND CONDITIONS. Subject to termination pursuant to Paragraph I.B.7, thirty-one (31) days after the later of the approval of the Amended Site Plan and the City Council’s adoption of the Amended Resolution (the “Effective Date of the Development and Maintenance Agreement and Declaration of Restrictive Covenants”), and assuming there is no challenge or appeal of those actions, the Parties shall execute and record the Development and Maintenance Agreement and Declaration of Restrictive Covenants, contained in Exhibit B, and the following provisions shall become effective as binding agreements of the Parties:
A. DISMISSAL OF THE LAWSUITS.

1. Within one week of the Effective Date of the Development and Maintenance Agreement and Declaration of Restrictive Covenants, the HOA and UNIFIED shall file a stipulated motion to dismiss the BOA Lawsuit with prejudice, each Party to bear its own costs and attorneys’ fees.

2. Within one week of the Effective Date of the Development and Maintenance Agreement and Declaration of Restrictive Covenants, Crescent shall file a stipulated motion to dismiss the City Council Lawsuit with prejudice, each Party to bear its own costs and attorneys’ fees.

B. MUTUAL RELEASE.

1. The Parties, on behalf of themselves and their current and former employees, agents, representatives, attorneys, successors and assigns fully, completely and finally waive, release, remise, acquit, and forever discharge all Parties, their employees, agents, and successors from any and all claims, demands, rights, controversies, agreements, damages, actions, expenses, fees, interest, compensation, judgment, suits, manners of obligation, debts, liabilities, torts, covenants, contracts, consequential, punitive and treble damages, or causes of action of any kind whatsoever, at law or in equity or based on any statute, known or unknown, suspected or unsuspected, from the beginning of time to the date hereof, including but not limited to the claims and allegations raised in the Lawsuits or that could have been raised in the Lawsuits, and/or in any way relating to the events giving rise to the Lawsuits and/or any other relationship between the Parties (collectively, “Released Claims”). The Released Claims do not include the general enforcement of the Lakewood City Code or other City requirements not specifically addressed in this Agreement, the Amended Site Plan, the Amended Resolution or the Development and Maintenance Agreement and Declaration of Restrictive Covenants.

2. The Parties agree to voluntarily and knowingly assume the risk of any mistake of fact, either mutual or unilateral, with respect to its losses, claims, costs, expenses, damages and fees, and shall not, under any circumstances, seek to present, directly or indirectly, further claims against the other Parties, arising out of or any way relating to the Released Claims.

3. The Parties recognize that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement and the Released Claims, which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, the Parties hereby waive any rights, claims or causes of action that might arise as a result of such different or additional claim or facts.
4. Other than the promises and terms set forth herein, the Parties are not relying on any statements made by any other Party in deciding to enter into this Agreement.

5. Notwithstanding anything to the contrary contained in this Agreement, the releases set forth above do not apply to any claims relating to the enforcement, interpretation or performance under this Agreement.

III. MISCELLANEOUS TERMS AND CONDITIONS.

A. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the matters addressed herein and supersedes all prior representations, understandings and agreements of the Parties with respect thereto. There are no other promises, understandings, representations, warranties, covenants or agreements, verbal or otherwise, relating to the resolution of this matter, other than what is contained in this Agreement. Notwithstanding any course or dealing to the contrary, this Agreement may not be modified, nor may any of its provisions be waived, except by written instrument signed by all the Parties and approved by their respective attorneys.

B. Agreement Binds Successors and Assigns. The Parties agree that this Agreement, and the terms thereof, shall be binding on their current and former employees, agents, servants, attorneys, employers, principals, insurers, successors, assigns, subrogees and any and all other persons or entities which may have had or may have any claim on behalf of themselves (including any derivative claims), or be entitled to share in any settlement thereof. Notwithstanding the foregoing and except for the obligations set forth in this Agreement, nothing in this Agreement is intended to bind or obligate the City Council as to any decision it may make or discretion it may exercise.

C. All Parties Drafted Agreement. This Agreement shall be considered as drafted jointly by the Parties, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against any Party based on an attribution of drafting to another Party. The Parties agree, represent, and warrant that they have read this Agreement, had the opportunity to discuss it with legal counsel, and know and understand its contents fully; and they voluntarily execute this Agreement, without being pressured or influenced by any statement or representation of any person acting on behalf of any other party, including any other party’s officers, directors, employees, agents, and attorneys.

D. Adequacy of Consideration. Each of the Parties acknowledge that the consideration it has given and received hereunder is fair and adequate consideration for the payments, covenants, undertakings, forbearances, promises and releases contained herein.

E. No Third-Party Beneficiaries. The Parties agree that there are no intended or incidental third-party beneficiaries of this Agreement, other than those specifically contemplated herein.

F. Governing Law. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Colorado.
G.  **Disputes.** Parties may seek all remedies available in law or equity for any breach or anticipated breach of this Agreement.

H.  **Attorneys’ Fees.** In any action, suit or proceeding brought to enforce, construe or interpret this Agreement or any of its terms or conditions, the prevailing Party shall be awarded its reasonable attorneys’ fees and costs incurred in connection therewith.

I.  **Severability.** In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Agreement, the remainder of this Agreement shall be fully enforceable.

J.  **Counterpart Execution.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document or DocuSign, and, upon receipt, shall be deemed originals and binding upon the Parties hereto. Signature pages may be detached and reattached to physically form one document. The Parties further agree that this Agreement may be executed by electronic copies of signatures, and that any electronic copies of signatures shall be binding upon the Party providing such electronic copy of signature as if it were the Party’s original signature.

K.  **Integration.** This Agreement and its exhibits constitute the entire agreement of the Parties and a complete merger of all prior negotiations and agreements.

L.  **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation hereof.

M.  **Gender and Number.** Whenever applicable, the pronouns designating the feminine, masculine, and neuter will equally apply to the feminine, masculine, and neuter genders; the singular will include the plural and the plural will include the singular.

N.  **Subsequent Instruments.** The Parties agree that, upon the reasonable request of any other Party, they will execute, acknowledge, and deliver any additional instruments or documents that may be required to carry out the intentions of this Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, which may affect the property rights of the Parties as between them or others with respect to the rights and obligations created by this Agreement.

O.  **Responsibility for Expenses.** Each Party shall be responsible for and pay all of its own attorneys’ fees, costs, and expenses incurred, or to be incurred, with regard to the negotiation and execution of this Agreement and, as of the Effective Date, all issues contained herein and all claims relating hereto.

P.  **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement except by written instruments signed by the Party charged with the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated
therein, and the written waiver shall operate only as to the specific term or condition
waived, and not for the future or to any act other than that which was specifically waived.

Q. Warranty of Capacity to Execute Agreement. Each signatory warrants and
represents that he or she has the authority to execute this Agreement and to bind the Party
for whom he or she is acting to the terms and provisions hereof.

R. Governmental Immunity. Nothing in this Agreement is intended to constitute a
waiver of the immunity or other protections and provisions of the City under the Colorado
Governmental Immunity Act, or under common law immunity.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

**The City of Lakewood**, a Colorado home rule municipality, as approved by **The Lakewood City Council**, the governing body of the City of Lakewood, Colorado.

By: ______________________
Name: _____________________
Title: ______________________
Date: ______________________

**UNIFIED Under the Wilson Property ODP**, a Colorado nonprofit corporation.

By: ______________________
Name: _____________________
Title: ______________________
Date: ______________________

**The Wild Flower Patio Homes @ White Fence Homeowners Association**, a Colorado nonprofit corporation.

By: ______________________
Name: _____________________
Title: ______________________
Date: ______________________
Crescent Communities LLC, a Delaware limited liability company.

By: _______________________
Name: _____________________
Title: ______________________
Date: ______________________

C&P Properties, LLC, a Colorado limited liability company.

By: _______________________
Name: _____________________
Title: ______________________
Date: ______________________
EXHIBIT A
PROJECT HEIGHT
DEVELOPMENT AND MAINTENANCE AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Development and Maintenance Agreement and Declaration of Restrictive Covenants ("Agreement") is entered by and among the CITY OF LAKEWOOD, a political subdivision and home rule municipality of the State of Colorado (the "City"), UNIFIED UNDER THE WILSON PROPERTY ODP, a Colorado nonprofit corporation ("UNIFIED"), THE WILD FLOWER PATIO HOMES @ WHITE FENCE HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation (the "HOA"), CRESCENT COMMUNITIES, LLC, a Colorado limited liability company ("Crescent"), and C&P PROPERTIES, LLC, a Colorado limited liability company ("C&P"), effective as of _______________, 202__, (the "Effective Date"). The City, UNIFIED, the HOA, Crescent, and C&P may sometimes be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. C&P is the owner of certain real property located at 6263 W. Jewell Ave., Lakewood, Colorado 80232, commonly known as White Fence Farm, depicted and legally described on Exhibit 1 attached hereto and made a part hereof (the "Property"). The Property is generally bounded by W. Jewell Avenue to the south, S. Harlan Circle to the west, and Sanderson Gulch to the north and east. Crescent is the major site plan applicant to redevelop the Property as a 202-unit multifamily residential project (the "Project").

B. Several disputes had arisen between the Parties regarding the Property, the Project, and the surrounding parcels that are subject to this Agreement. In order to resolve these disputes, the Parties now desire to set forth the agreements with respect to the Project and the Property reached with and for the benefit of the Parties, and to ensure that the Project will be developed and the Property will be used in accordance with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the terms, covenants, and conditions contained in this Agreement, including the Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

I. TERMS AND CONDITIONS.

A. RESTRICTIONS ON THE PROJECT AND THE PROPERTY.

1. LEED Certification. The Project shall obtain LEED Gold Certification or higher.

2. Construction Traffic. Construction traffic associated with the Project must adhere to the following conditions:

   a) Construction traffic shall use the W. Jewell Avenue access point as the primary means to enter and exit the Property. The S. Harlan Circle
entrance may be used as an alternative if the W. Jewell Avenue entrance is infeasible due to construction activities, utility work, vehicle size, or otherwise.

b) Construction traffic is prohibited from using S. Manor Lane and is prohibited from entering S. Harlan Circle at the W. Iliff Dr. intersection.

c) Construction traffic may enter S. Harlan Circle at the S. Lake Road intersection, when necessary, but is prohibited from travelling north on S. Harlan Circle past the Property. Construction traffic may exit the Property on S. Harlan Circle, when necessary, but is prohibited from travelling north on S. Harlan Circle.


e) Violations of the restrictions set forth in this Paragraph I.A.2(a)-(d) are subject to a $200 fine per violation payable by Crescent to the HOA upon notice from the HOA.

3. **Property and Project Uses.** The Property and the Project are restricted to multifamily residential use and shall not contain more than 202 dwelling units. Any development at the Property must include at least 299 individual (i.e., non-tandem) parking spaces. While the Property owner may charge a reasonable fee for its tenants to lease garage parking spaces, the Property owner shall not charge tenants to use non-garage parking spaces. No other uses shall be allowed at the Property, including but not limited to any and all retail or other commercial uses. All residential leases associated with any portion of the Property shall prohibit any non-residential uses by tenants and/or guests. If construction on the Project has not commenced within 18 months of the Effective Date, any development or redevelopment of the Property shall be subject to architectural approval by the HOA.

4. **Fencing.** The Property owner shall construct and maintain a white fence of at least 48 inches in height along the S. Harlan Circle frontage on the west side of the Property, the design of which shall be comparable to the existing fence on the Property and the HOA fence to the north of the Sanderson Gulch Area.

5. **Alcohol and Marijuana Licenses.** No one may apply for or obtain any licenses or permits to sell alcohol or marijuana at the Property.

6. **Traffic Restrictions.** Any vehicular access to or from the Property via S. Harlan Circle shall be permanently restricted to emergency use only by a controlled-access gate, the design of which is to be approved by West Metro Fire
Protection District. The controlled-access gate shall be maintained by and be the responsibility of the Property owner. The only non-emergency access to or from the Property shall be via W. Jewell Avenue. Any and all residential leases associated with any portion of the Property shall require tenants and their guests to utilize the W. Jewell Avenue entrance for all vehicular traffic.

7. **Parking Restrictions.** Any and all residential leases associated with the Property shall:

   a) Require tenants and their guests to park only on the Property;

   b) Prohibit storage, including but not limited to storage of recreational vehicles (RVs), trailers, boats, and non-vehicle personal items, at, on, or within the Property’s parking lots and garages; and

   c) Prohibit tenants and their guests from parking on S. Harlan Circle, S. Lamar Court, S. Kendall Court, S. Jay Way, S. Jay Court, S. Ingalls Court, S. Manor Lane, W. Colorado Lane, W. Utah Lane, S. Lake Rd, S. Ingalls Street, W. Pacific Circle, S. Ingalls Court, W. Atlantic Drive, S. Jay Court, S. Jay Way, S. Harlan Court, W. Iliff Drive, S. Gray Drive, S. Ingalls Way, W. Evans Place and S. Marshall Circle and notify tenants that any tenant or guest vehicles parked on these streets will be subject to ticketing and/or towing.

If a residential parking permit program is established in the future by the City, the owner of the Property shall notify all tenants of the program, its effective date, restrictions, and penalties, and shall provide notice to the HOA that it has done the same.

8. **Pet Requirements.** Any and all residential leases associated with any portion of the Property shall require tenants to collect and submit the DNA of all dogs and require tenants to adhere to pet rules and regulations that include, among other things, a prohibition on dogs defecating on the property of any home, sidewalks, or streets governed by the HOA.

9. **Noise.** Any and all residential leases associated with any portion of the Property shall require tenants and their guests to adhere to applicable City noise standards, as they may be amended or modified in the future.

10. **Investigation of Violations and Enforcement of Lease Restrictions.** The Property owner shall cooperate with the HOA to investigate all alleged violations of the required lease restrictions set forth herein, and the Property owner shall enforce all of the required lease restrictions set forth herein. The Property owner shall provide the HOA with a sample copy of its current standard residential lease for the Property upon request.
B. CITY RESPONSIBILITIES CONCERNING TRAFFIC, PARKING, AND USE OF THE WILSON FAMILY PARK.

1. Beginning after June 1, 2022, but no later than June 1, 2023, the City shall conduct an annual traffic study for three years for the S. Harlan Circle/W. Jewell Avenue (S. Lake Road) intersection and the S. Harlan Circle/W. Jewell Avenue (W. Iliff Drive) intersection to determine whether the traffic volume and/or accidents at either intersection satisfies traffic signal warrants.

2. Within six (6) months of the Effective Date, the City shall erect and maintain the parking restrictions depicted in Exhibit 2 (“No Parking Anytime” and “No Overnight Parking – 2-Hr. Max. Parking Permitted Between 7am and 10pm”) along S. Harlan Circle to the west of the Property. Upon a request from the HOA and the owner of Block 1, Lot 79 of the White Fence Farm Subdivision (currently owned by Carmel Oaks LLC) based on parking impacts from the Project or the Property, the City shall erect and maintain additional parking signs and/or restrictions as may be agreed upon by the HOA, the owner of Block 1, Lot 79 of the White Fence Farm Subdivision, and the City.

3. Within six (6) months of the Effective Date, the City shall erect and maintain the parking restrictions depicted in Exhibit 3 (“No Parking Anytime” and “No Parking Anytime – Residents and Guests of this Block Excepted”) within the HOA’s neighborhood and enforce the same. The “No Parking Anytime” signs will be located on the sides of the streets with red lines as shown on Exhibit 3. The “No Parking Anytime – Residents and Guests of this Block Excepted” signs will be located on the sides of the streets with yellow lines as shown on Exhibit 3. Prior to installation of the signs, a representative from the City’s Traffic Engineering Division will work with HOA representatives regarding the placement of the signs within the neighborhood. The HOA may make minor modifications to the yellow and red lines on Exhibit 3 prior to the installation of the signs as long as such changes allow for emergency vehicle access. Upon a request from Emerald Estates Homeowners Association, Inc. and/or UNIFIED based on parking impacts from the Project or the Property, the City shall erect similar signage (“No Parking Anytime” and “No Parking – Residents and Guests Excepted”) on S. Marshall Circle and enforce the same. Upon a request from Lakewood Estates Homeowners Association, Inc. and/or UNIFIED based on parking impacts from the Project or the Property, the City shall erect similar signage (“No Parking Anytime” and “No Parking – Residents and Guests Excepted”) on the public streets within Lakewood Estates Filing No. 1 and enforce the same. The obligations contained in Paragraphs I.B.1, I.B.2, and I.B.3 requiring the expenditure of public funds are subject to annual appropriations by the Lakewood City Council (the “City Council”).

4. The owner of the Property shall express support for additional neighborhood parking and traffic improvements for S. Harlan Circle, the S. Harlan Circle/W. Jewell Avenue (i.e., S. Lake Road) intersection, and the S. Harlan Circle/W. Jewell Avenue (i.e., W. Iliff Drive) intersection, upon the HOA’s request.
5. The City hereby represents and affirms that the Wilson Family Park (Block 1, Lot 80 of the White Fence Farm Subdivision) is held as park and open space purposes and is protected from change of use or conveyance as provided for in Section 14.3(b) of the Lakewood City Charter. Because this land was acquired in part with Jefferson County Open Space funding, any change of use or conveyance would require approval by the Jefferson County Open Space Advisory Board and the Board of County Commissioners of Jefferson County, Colorado.

C. SANDERSON GULCH AREA MAINTENANCE

1. Allocation of Responsibilities. The Parties agree to the following maintenance responsibilities for the Sanderson Gulch area as depicted on Exhibit 4 (the “Sanderson Gulch Area”), including but not limited to the maintenance responsibilities associated with “Pool #1,” “Pool #2,” and “Pool #3” as also shown on Exhibit 4.

   a) Subject to annual appropriations by City Council, the City shall, with the exception of the maintenance items set forth in Paragraphs I.C.1(b) and (c) below and the exceptions set forth in Paragraph I.C.2 below, be responsible for maintaining the Sanderson Gulch Area to City standards in accordance with its regular maintenance schedules including but not limited to the following requirements that the City shall specifically:

   (1) Maintain public crossing structures, including without limitation the cleaning and repair of the box culverts, wingwalls, headwalls and rock facing materials.
   (2) Maintain vegetation commensurate with the City’s standard levels of maintenance.
   (3) Mow at least twice each year the strips of lawn on the sides of both the northern and southern Sanderson Gulch Area concrete pathways.
   (4) Remove snow from and maintain the northern and southern Sanderson Gulch Area concrete pathways.
   (5) Perform weed control commensurate with the City’s standard levels of maintenance.
   (6) Remove dead, distressed, and fallen trees and limbs.
   (7) Provide long term maintenance of open channel areas, flat bottom channel areas, all drop structures, and the outlet weir structure and repair or reconstruct major drainage structures, including box culverts, boulder drop structures, and weirs.
   (8) Repair severe erosion in the low flow channel or channel banks.
   (9) Remove large debris piles blocking channel or structures.
   (10) Remove all large trash, including for example, shopping carts and mattresses.
   (11) Pick-up litter and small trash removal.
(12) Ensure that Sanderson Gulch Area, including Pools #1-3, remain compliant and consistent with the City’s Municipal Separate Storm Sewer System (MS4) permit and any applicable drainage plans.

b) The HOA shall:

(1) Mow twice each year the native landscaping in the Sanderson Gulch Area from the HOA’s fence to the Sanderson Gulch north pedestrian pathway (and up to three feet beyond such pathway where practicable).

c) The owner of the Property shall:

(1) Mow at least twice each year all lawn areas between the Property and the Sanderson Gulch south pedestrian pathway.

(2) Dredge Pools #1-3 upon the City’s notification that the wetlands encircling Pools #1-3 are being adversely affected by sedimentation of Ponds #1-3, subject to the following conditions:

(a) The U.S. Army Corps of Engineers issues to the Property owner, based upon the Property owner’s reasonable efforts, a Clean Water Act Section 404 permit authorizing such dredging without compensatory mitigation, or written confirmation that no 404 permit is required.

(b) The City determines that dredging Pools #1-3 would be compliant and consistent with the City’s Municipal Separate Storm Sewer System (MS4) permit and any applicable drainage plans.

(c) The Water Commissioner does not order Pools #1-3 to be drained.

(d) The City, the HOA, and UNIFIED releases the Property owner from any and all liability associated with or arising from any of the following:

   (i) Design or construction deficiencies associated with Pools #1-3.

   (ii) Damages to persons or property caused by water being impounded by Pools #1-3.

   (iii) Obtaining water rights sufficient to offset depletions associated with Pools #1-3.
2. **Limitations on Maintenance Activities.**

   a) This Agreement does not obligate the City to prevent sedimentation of Pools #1-3, except as necessary to meet the City’s obligation to provide long term maintenance of open channel areas and/or to enforce the Property owner’s obligation under Paragraph I.C.1(c)(2).

   b) This Agreement does not obligate the Property owner to prevent sedimentation of Pools #1-3, except pursuant to Paragraph I.C.1(c)(2).

   c) The HOA and Property owner are prohibited from applying pesticides and herbicides to Sanderson Gulch Area, including Pools #1-3.

   d) Except as expressly provided for herein, nothing in this Agreement shall require the City to perform any maintenance or repair obligations on the Property or on property within the HOA.

3. Notwithstanding any previous agreement or documentation to the contrary, the City affirms that from the Effective Date of this Agreement, the only responsibility of the HOA related to the Sanderson Gulch Area is the maintenance item set forth in Paragraph I.C.1(b) and the only responsibility of Summer Field Town Homes @ White Fence Farm Homeowners Association ("Summer Field") related to the Sanderson Gulch Area is to mow and maintain the irrigated lawn area between Summer Field’s property line and the Sanderson Gulch pedestrian pathways and to mow twice per year the native landscaping up to three feet beyond the pedestrian pathways where practicable.

D. **COVENANTS RUNNING WITH LAND.** Each of the restrictions, requirements, and/or responsibilities set forth in this Paragraph I of this Agreement shall constitute a covenant that burdens, attaches to, and runs with the Property and the Sanderson Gulch Area for the benefit of Crescent, C&P, UNIFIED, the HOA, and/or the City (as appropriate) and shall be binding upon Crescent, C&P, UNIFIED, the HOA, and the City (subject to annual appropriations by City Council), and their heirs, successors, and assigns and any other persons or entities which may acquire a real property interest in all or any part of the Property or the Sanderson Gulch Area as covenants running with the land. These covenants may be enforced by each Party or by any person or entity having an ownership interest in the Property or the Sanderson Gulch Area, in any action at law or in equity.

II. **MISCELLANEOUS TERMS AND CONDITIONS.**

A. **Entire Agreement.** This Agreement contains the entire understanding and agreement of the Parties with respect to the matters addressed herein and supersedes all prior representations, understandings and agreements of the Parties with respect thereto. There are no other promises, understandings, representations, warranties, covenants or agreements, verbal or otherwise, relating to the resolution of this matter, other than what is contained in this Agreement. Notwithstanding any course or dealing to the contrary, this Agreement may not be modified or terminated, nor may any of its provisions be waived,
except by written instrument signed by all the Parties and approved by their respective attorneys.

B. **All Parties Drafted Agreement.** This Agreement shall be considered as drafted jointly by the Parties, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against any Party based on an attribution of drafting to another Party. The Parties agree, represent, and warrant that they have read this Agreement, had the opportunity to discuss it with legal counsel, and know and understand its contents fully; and they voluntarily execute this Agreement, without being pressured or influenced by any statement or representation of any person acting on behalf of any other party, including any other party’s officers, directors, employees, agents, and attorneys.

C. **Adequacy of Consideration.** Each of the Parties acknowledge that the consideration it has given and received hereunder is fair and adequate consideration for the payments, covenants, undertakings, forbearances, promises and releases contained herein.

D. **No Third-Party Beneficiaries.** The Parties agree that there are no intended or incidental third-party beneficiaries of this Agreement, other than those specifically contemplated herein.

E. **Governing Law.** This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Colorado.

F. **Disputes.**

1. **Negotiation Before Arbitration.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation. Any Party may give the other party written notice of any dispute not resolved in the normal course of business. Within twenty-one (21) days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party’s position and a summary of arguments supporting that position, and (b) the name and title of the individual(s) who will represent that Party. Within thirty-five (35) days after delivery of the notice, the Parties shall meet, remotely or in-person, at a mutually acceptable time and place. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting described above (“**First Meeting**”). Such closure shall not preclude continuing or later negotiations, if desired. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the Parties, their agents, employees, experts, and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation. At no time prior to the First Meeting shall either side initiate arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by arbitration rules or by agreement of the Parties and except
if a Party refuses to engage in negotiation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures in this Paragraph are pending and for twenty-one (21) calendar days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

2. **Arbitration.** If any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, is not resolved by negotiation pursuant to Paragraph II.F.1 above, then the matter shall be determined by arbitration in Denver, Colorado before an arbitrator with at least ten (10) years of experience in land use matters. The arbitration shall be administered pursuant to American Arbitration Association’s Commercial Arbitration and Mediation Procedures and shall proceed under in accordance with the expedited procedures set forth therein. The prevailing Party shall be awarded its reasonable attorney’s fees and costs, in addition to any other relief to which it may be entitled from the non-prevailing Party (“Award”). Judgment on the Award may be entered in any court having jurisdiction.

G. **Attorneys’ Fees.** In any action, suit or proceeding brought to enforce, construe or interpret this Agreement or any of its terms or conditions, the prevailing Party shall be awarded its reasonable attorneys’ fees and costs incurred in connection therewith.

H. **Severability.** In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Agreement, the remainder of this Agreement shall be fully enforceable.

I. **Counterpart Execution.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document or DocuSign, and, upon receipt, shall be deemed originals and binding upon the Parties hereto. Signature pages may be detached and reattached to physically form one document. The Parties further agree that this Agreement may be executed by electronic copies of signatures, and that any electronic copies of signatures shall be binding upon the Party providing such electronic copy of signature as if it were the Party’s original signature.

J. **Integration.** This Agreement and its exhibits constitute the entire agreement of the Parties and a complete merger of all prior negotiations and agreements.

K. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation hereof.

L. **Gender and Number.** Whenever applicable, the pronouns designating the feminine, masculine, and neuter will equally apply to the feminine, masculine, and neuter genders; the singular will include the plural and the plural will include the singular.

M. **Subsequent Instruments.** The Parties agree that, upon the reasonable request of any other Party, they will execute, acknowledge, and deliver any additional instruments or
documents that may be required to carry out the intentions of this Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, which may affect the property rights of the Parties as between them or others with respect to the rights and obligations created by this Agreement.

N. **Responsibility for Expenses.** Each Party shall be responsible for and pay all of its own attorneys’ fees, costs, and expenses incurred, or to be incurred, with regard to the negotiation and execution of this Agreement and, as of the Effective Date, all issues contained herein and all claims relating hereto.

O. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement except by written instruments signed by the Party charged with the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or to any act other than that which was specifically waived.

P. **Warranty of Capacity to Execute Agreement.** Each signatory warrants and represents that he or she has the authority to execute this Agreement and to bind the Party for whom he or she is acting to the terms and provisions hereof.

Q. **Governmental Immunity.** Nothing in this Agreement is intended to constitute a waiver of the immunity or other protections and provisions of the City under the Colorado Governmental Immunity Act, or under common law immunity.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

The City of Lakewood, a Colorado home rule municipality, as approved by The Lakewood City Council, the governing body of the City of Lakewood, Colorado.

By: ______________________
Name: ______________________
Title: ______________________
Date: ______________________

UNIFIED Under the Wilson Property ODP, a Colorado nonprofit corporation.

By: ______________________
Name: ______________________
Title: ______________________
Date: ______________________

The Wild Flower Patio Homes @ White Fence Homeowners Association, a Colorado nonprofit corporation.

By: ______________________
Name: ______________________
Title: ______________________
Date: ______________________
**Crescent Communities LLC**, a Delaware limited liability company.

By: ______________________

Name: _____________________

Title: _______________________

Date: ______________________

**C&P Properties, LLC**, a Colorado limited liability company.

By: ______________________

Name: _____________________

Title: _______________________

Date: ______________________
EXHIBIT 1
LEGAL DESCRIPTION

That part of the Southeast ¼ of the Southwest ¼ of Section 24, Township 4 South, Range 69 West of the 6th P.M., County of Jefferson, State of Colorado, described as:

Commencing at the South ¼ corner of said Section 24, whence the Southeast corner of said Section bears North 89 Degrees 18 Minutes 30 Seconds East, a distance of 2645.50 feet and the Southwest corner of said Section bears South 89 Degrees 18 Minutes 54 Seconds West, a distance of 2644.92 feet;
Running thence North 00 Degrees 31 Minutes 21 Seconds West, a distance of 30.00 feet, more or less, to a point on the North right-of-way line of West Jewell Avenue;
Thence South 89 Degrees 18 Minutes 54 Seconds West, a distance of 377.24 feet to the True Point of Beginning;
Thence, continuing along said right-of-way line, South 89 Degrees 18 Minutes 54 Seconds West, a distance of 655.09 feet;
Thence, leaving said right-of-way line, North 02 Degrees 40 Minutes 53 Seconds West, a distance of 294.04 feet to the point of curvature of a curve to the right with a 400.00 foot radius and a 43 Degrees 00 Minutes central angle;
Thence along said curve, a distance of 300.20 feet to its point of tangency;
Thence North 40 Degrees 19 Minutes 07 Seconds East, a distance of 103.97 feet;
Thence South 70 Degrees 55 Minutes East, a distance of 110.03 feet;
Thence North 77 Degrees 48 Minutes East, a distance of 75.71 feet;
Thence South 38 Degrees 59 Minutes East, a distance of 54.04 feet;
Thence South 01 Degree 24 Minutes East, a distance of 82.02 feet;
Thence South 64 Degrees 55 Minutes East, a distance of 468.81 feet;
Thence South 79 Degrees 27 Minutes East, a distance of 105.18 feet;
Thence South 33 Degrees 23 Minutes West, a distance of 52.70 feet;
Thence South 69 Degrees 30 Minutes West, a distance of 131.32 feet;
Thence South 50 Degrees 10 Minutes West, a distance of 110.09 feet;
Thence South 00 Degrees 41 Minutes 06 Seconds East, a distance of 119.81 feet, more or less, to the True Point of Beginning.

Also known as:

Lot 24, Block 2, White Fence Farm Subdivision, County of Jefferson, State of Colorado. Recorded with the Jefferson County Clerk and Recorder at Reception Number F1217305.
EXHIBIT 2
S. HARLAN CIRCLE PARKING SIGNAGE PLAN

[Exhibit Follows]
EXHIBIT 4
SANDERSON GULCH AREA

[Exhibit Follows]
City Park Property In the Whelite Fence Farm Subdivision
November 13, 2020

VIA E-MAIL

Lakewood City Council
480 S. Allison Parkway
Lakewood, Colorado 80226

Travis Parker
Planning Director, City of Lakewood
470 S. Allison Parkway
Lakewood, Colorado 80226

RE: Letter of Support for Crescent Communities’ Redevelopment Project at White Fence Farm

Dear Council Members and Planning Director Parker:

As you may know, The Wild Flower Patio Homes @ White Fence Homeowners Association ("HOA") and UNIFIED Under the Wilson Property ODP ("UNIFIED") have opposed Crescent Communities, LLC ("Crescent’s") proposed redevelopment project located at 6263 W. Jewell Ave., Lakewood, Colorado 80232, commonly known as White Fence Farm (the "Project"). The HOA and UNIFIED appealed certain decisions of the Lakewood Planning Director and the Board of Adjustment concerning the Project, culminating in an appeal pending in Jefferson County District Court, Case No. 20CV30255 ("BOA Lawsuit"). It is our understanding that based in part on the HOA’s and UNIFIED’s opposition, the Lakewood City Council included language in Resolution 2020-8 denying application of the “Authority to Continue Provision” (Lakewood Municipal Code § 14.27.160) to Crescent’s Project, thereby requiring Crescent to apply for and be granted future “Allocations” under the Lakewood Residential Growth Limitation Ordinance. Crescent has challenged that City Council Resolution before the Jefferson County District Court, which is now pending in Case No. 20CV30295 ("City Council Lawsuit").

Since the filing of the BOA Lawsuit and the City Council Lawsuit, the HOA, UNIFIED, Crescent, and City Staff (collectively, the "Parties") have conducted extensive negotiations, including a 9-hour mediation session on August 14, 2020 and a series of subsequent mediation sessions and settlement meetings on August 20, August 24, September 3, September 11, September 16, September 24, and October 20 involving the parties and their counsel. As a result of these negotiations, the Parties have drafted a Settlement Agreement to resolve their underlying disputes. The HOA, UNIFIED, and Crescent have signed the Settlement Agreement. It now only awaits action by the City Council.

As set forth in more detail in the Settlement Agreement, Crescent has agreed to redesign the Project and submit an amended site plan application that includes the following features, among others: 202 or fewer units; a height limit of 3 stories for the North Building and 3-4 stories for the West Building; 299 or more individual parking spots; and an access point on S. Harlan Circle restricted to emergency uses only (the "Redesigned Project").
We write today for three reasons. First, we express our unqualified support for the Settlement Agreement, including Crescent’s Redesigned Project and the Amended Site Plan (as defined in the Settlement Agreement), all of which reflect good faith negotiations by all of the Parties. We urge City Council to approve the Settlement Agreement at its next scheduled meeting on November 23, 2020.

Second, if the City Council approves the Settlement Agreement and consistent with the City’s obligations thereunder, we write to request that the Lakewood City Council promptly adopt a resolution that: (1) modifies or amends Resolution 2020-8 pertaining to Crescent’s Project, (2) authorizes the issuance of building permits for the Project under the Authority to Continue Provision, Lakewood Municipal Code § 14.27.160, and (3) confirms that the Project does not require Allocations under Section 14.27 of the Lakewood Municipal Code. Doing so is an essential component of the comprehensive Settlement Agreement and is necessary to resolve the BOA Lawsuit and City Council Lawsuit.

Finally, subsequent to City Council’s approval of the Settlement Agreement and adoption of the aforementioned resolution, we recommend that Lakewood Planning Staff promptly review and approve the Amended Site Plan for the Redesigned Project.

Thank you for your attention to this matter and for your consideration of these requests. Please let us know if you have any questions.

Sincerely,

The Wild Flower Patio Homes @ White Fence Homeowners Association

UNIFIED Under the Wilson Property ODP

cc: Lakewood Board of Adjustment and Lakewood Planning Commission (Cathy Kentner, Alex Bartlett, Johann Cohn, Alan Heald, Dale Miller, Rhonda Peters, and Theresa Stone)
Kathy Hodgson, Lakewood City Manager
Tim Cox, Lakewood City Attorney
Pat Wilson, Counsel to City of Lakewood
Bill Tuthill, Special Counsel to the Lakewood Board of Adjustment
Ben Krasnow, Crescent Communities
Blaine Kneeshaw, Crescent Communities
James Silvestro, Ireland Stapleton Pryor & Pascoe, PC
Carolyne White, Brownstein Hyatt Farber Schreck, LLP
Wayne Forman, Brownstein Hyatt Farber Schreck, LLP
Michael Smith, Brownstein Hyatt Farber Schreck, LLP
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 13

To: Mayor and City Council

From: Travis Parker, Director of Planning, 303-987-7908

Subject: 533 VAN GORDON STREET – ALLOCATION REQUEST

SUMMARY STATEMENT: The applicant, Brian Bulatovic, with Consolidated Investment Group, has submitted applications for review requesting 232 residential allocations and a 3-year banking plan for a multifamily residential project located at 533 Van Gordon Street. The property is zoned Mixed Use Residential Suburban (M-R-S) and approximately 3.6 acres in size.

BACKGROUND INFORMATION: On July 12, 2019, with voter approval, an ordinance went into effect to limit residential growth in the City of Lakewood. The ordinance, chapter 14.27 of the Municipal Code, is attached. In December of 2019, staff began implementation of this ordinance to manage issuance of residential building permits. Any development request of over 40 residential units must submit an allocation request to the City Council for review and approval.

On March 21, 2019, Consolidated Investment Group submitted a site plan application to the City for site and civil review. This site plan application, SP-19-008, received one round of review comments from City staff. Due to uncertainty with the proposed residential growth limitation ordinance in the first quarter of 2019, the applicant chose to suspend the city development review process.

On September 28, 2020, the applicant presented a 309-unit allocation and 5-year banking plan request to the City Council for review and consideration. This allocation and banking plan request were reviewed and denied by City Council by a vote of 7 to 4.

On October 19, 2020, the applicant submitted to the Planning Department a formal request to withdraw from further review site plan case SP-19-008 which proposed to develop 309 multifamily residential units at 533 Van Gordon Street. This planning case status has been changed to “void/withdrawn” and no further reviews will be conducted by city staff for this site plan case.

The applicant has now submitted to City Council an allocation request for 232 units and a 3-year banking plan. The applicant is requesting that City Council review and make a determination on both the allocation and banking plan application requests.

The applicant has submitted applications for an over 40 residential allocation project and a banking plan with a duration of 3 years. Section 14.27.040.B (Maximum Allocations) outlines the review measures to be met when requesting more than 40 allocations.
17.27.040.B Maximum Allocations. The city shall not grant more than forty (40) allocations to a development in a calendar year except upon a finding after hearings held upon reasonable notice to the public - pursuant to the provisions of Lakewood municipal code 17.2.2.3 applicable to initial zoning and rezoning - that such accumulation of allocations will not prejudice the allocation process; and:

1. That there is an unmet community need for such development; or
2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

Project will not prejudice the allocation process

As part of their allocation and banking plan request, the applicant is requesting 232 allocations from the 2020 surplus pool to not prejudice the allocation process. This proposal allows the allocation request to be fulfilled from the 2020 surplus and provides a 3-year banking to begin and complete both the site/civil review process as well as the building permit review process.

The applicant’s request for 232 allocations in 2020 will not require additional allocations beyond 2020 so therefore there is no possibility of this application prejudicing the future process in any way. No other projects are requesting these allocations, so no other projects will be affected by this approval in any way.

That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

In January of 2020 City Council set the number of allocations for the calendar year at 413 allocations. As of November 1, 2020, only 181 allocations have been requested for residential projects, 232 remain in the surplus pool. No other projects are requesting allocations from the surplus pool. If this request is not approved, all 232 of these allocations are expected to expire unused on December 31, 2020.

Based upon the applicant request of 232 allocations for the calendar year 2020, and that 232 allocations remain for the calendar year 2020, staff finds that the measures in the Residential Growth Limitations Ordinance have been met and that:

1. The accumulation of allocations shall not prejudice the allocation process; and
2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

BUDGETARY IMPACTS: All required public improvements will be constructed with the project, at the expense of the developer.

STAFF RECOMMENDATIONS: Staff recommends approval because the proposed allocation and banking plan requests satisfy the review criteria.

ALTERNATIVES: The City Council may approve or deny the allocation and banking plan requests. More specifically, the City Council may approve the allocation and banking plan requests because the Council agrees with the findings of the provided in this staff report. Also, the City Council may have additional reasons why the application satisfies the review criteria.

Or, the City Council may deny the allocation and banking plan requests based on a determination that the requests do not satisfy the review criteria. More specifically, the City Council may find evidence that the
allocation and banking plan requests exhaust allocations available for distribution in the current calendar year.

PUBLIC OUTREACH: As required by the Zoning Ordinance, a public hearing has been scheduled before the City Council on November 23, 2020. Notice was provided to meet the standards of Section 17.2.2.3 of the zoning ordinance including letters mailed to property owners within 500 feet and to neighborhood organizations within ½ mile of the subject property.

NEXT STEPS: If the allocation request is approved, the applicant may submit applications for site/civil review and building permit review. These reviews must be completed and building permits issued within a 3-year time frame concluding on December 31, 2023. Once allocations have been acquired and all reviews completed the applicant may be issued an approved building permit.

ATTACHMENTS:  Resolution 2020-45
                Lakewood Municipal Code 14.27
                SP-19-008 withdrawal request

REVIEWED BY:  Kathleen E. Hodgson, City Manager
               Benjamin B. Goldstein, Deputy City Manager
               Timothy P. Cox, City Attorney
A RESOLUTION

AUTHORIZING ALLOCATIONS FOR 533 VAN GORDON STREET, LAKEWOOD, CO

WHEREAS, Van Gordon Associates LLC, a limited liability company (the “Owner”) owns the property known as 533 Van Gordon, Lakewood, CO (the “Property”), and Consolidated Investment Group (the “Developer”) is seeking to develop the Property, approximately 3.6-acres, more or less;

WHEREAS, the Property is currently zoned Mixed Use Residential Suburban (M-R-S);

WHEREAS, the Developer is requesting approval of 232 residential allocations and a 3-year banking plan;

WHEREAS, Lakewood Municipal Code (“LMC”) section 14.27.040.B specifies that any proposed development in excess of 40 residential units requires a hearing pursuant to LMC section 17.2.2.3 before City Council may approve allocations and a banking plan;

WHEREAS, the Developer desires to ensure that the proposed project is built and desires to develop the Property according to the present zoning; and

WHEREAS, the City Council hereby finds and determines that approving 232 allocations and a 3-year banking plan for the Property will not prejudice the allocation process..

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The allocation request of 232 allocations and a 3-year banking plan for 355 Van Gordon Street, Lakewood, Colorado 80228, is hereby approved.

SECTION 2. The City shall record the allocation and banking plan request.

SECTION 3. The banking plan shall expire on December 31, 2023.

SECTION 4. This Resolution shall become effective immediately upon adoption.
INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a virtual regular meeting of the Lakewood City Council held on November 23, 2020, at 7 o'clock p.m.

__________________________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

__________________________________________
Timothy P. Cox, City Attorney
Chapter 14.27

RESIDENTIAL GROWTH LIMITATIONS

Sections:
14.27.010 Purpose/Intent.
14.27.020 Implementation/Exceptions.
14.27.030 Administration of this Chapter.
14.27.040 General Provisions.
14.27.050 Available Allocations.
14.27.060 Establishment of Allocation Pools.
14.27.070 Schedule of Allocation Periods.
14.27.080 Applications.
14.27.090 Issuance of Allocations.
14.27.100 Banking of Allocations.
14.27.110 Excess and Unused Allocations.
14.27.120 Failure to Use Allocations; Penalties.
14.27.130 Building Permit Approvals.
14.27.140 Mandatory Review.
14.27.150 Severability Clause.
14.27.160 Authority to Continue.
14.27.170 Definitions.

14.27.010 Purpose/Intent.
A. Establish a building permit management system that limits residential growth in the City of Lakewood to no greater than one (1) percent per annum, which will assure the preservation of its unique environment and exceptional quality of life;
B. Encourage redevelopment of blighted and distressed areas;
C. Encourage preservation of larger open space parcels;
D. Assure that such growth proceeds in an orderly and timely manner and does not exceed the availability of public facilities and urban services;
E. Avoid degradation in air and water quality;
F. Avoid increases in crime and urban decay associated with unmanaged growth;
G. To allow mitigation of the effects of past and future growth on infrastructure and schools.
   (Citizen Initiative-Special Election 07-02-2019).

14.27.020 Implementation/Exceptions.
The provisions of this chapter shall apply to the issuance of building permits for all new dwelling units within the City of Lakewood except:
A. Structures located, or to be located, upon land that is designated “blighted.”
B. Structures located, or to be located, upon land located on a campus owned by a college or university, including, but not limited to, Colorado Christian University and Rocky Mountain College of Art and Design, and which are used to house only college or university students, staff, or faculty.
C. A dwelling unit may be replaced with another dwelling unit without obtaining an allocation, provided that the replacement unit is located on the same parcel, tract, or lot.
D. Mobile homes in operating mobile home parks may be removed and replaced with another mobile home without obtaining an allocation.
E. Industrial or commercial construction, unless such industrial or commercial construction includes structures which, in whole or in part, are to be occupied as a dwelling. (Citizen Initiative-Special Election 07-02-2019).

14.27.030 Administration of this Chapter.
A. Planning Commission may recommend and City Council may adopt rules as necessary to administer this chapter.
B. Calculations performed in the administration of this chapter shall be rounded downward for all partial numbers. (Citizen Initiative-Special Election 07-02-2019).

14.27.040 General Provisions.
A system of managing the issuance of residential building permits in the city is established with the following general provisions:
A. Allocation Required for a Building Permit. Except as otherwise provided in this chapter, an allocation is required as a condition precedent to the issuance of a building permit which will result in the creation of a new dwelling unit. For structures containing more than one dwelling unit, one allocation for each dwelling unit in the structure is required as a condition precedent to issuance of a building permit for such structure.
B. Maximum Allocations. The city shall not grant more than forty (40) allocations to a development in a calendar year except upon a finding after hearings held upon reasonable notice to the public pursuant to the provisions of Lakewood municipal code 17.2.2.3 applicable to initial zoning and rezoning that such accumulation of allocations will not prejudice the allocation process; and:
1. That there is an unmet community need for such development; or
2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.
C. Residential development projects may be specifically exempted from this chapter according to either of the following procedures:
1. Residential developments may be exempted by the adoption by the electors of the City of Lakewood at a regular or special election of an initiated or referred ordinance enacting such an exemption. Such election shall be held according to the applicable provisions of the Lakewood City Charter, with any expenses covered by the applicant requesting the exemption.
2. City Council may upon a finding of compliance with the below-listed criteria grant an exemption from the specific provisions of this chapter for a residential development within the city. City Council's action shall be by ordinance, shall include two public hearings, and shall occur following public hearing and recommendation by Planning Commission. Planning Commission's hearing and recommendation, and City Council's hearing and decision on the requested exemption shall follow the hearing and notice procedures in section 17.2.2.3 of Lakewood municipal code. City Council may grant an exemption from the provisions of this chapter upon a finding that all of the following criteria, as may be applicable, are met:
a. That the residential project requesting an exemption is a multifamily "senior housing project" which is and will remain housing for individuals over the age of 55; and
b. That the project requesting an exemption demonstrates compliance with Lakewood Comprehensive Plan and any applicable neighborhood plan(s); and
c. A senior housing project developed based upon an exemption granted shall not be converted to another residential use without first having secured an allocation for each dwelling to be so converted, according to the provisions of this chapter.

D. Period of Validity. Allocations are only valid and can be used only from the date of issue through the last day of the allocation period for which they are issued, at which time they expire, unless a part of an approved banking plan.

E. Use of Allocations. An allocation is used by applying for and being issued a building permit or setting up a mobile home, as applicable. Unused allocations are those for which a building permit has not been issued, or a mobile home not set up, during the period for which the allocation is valid.

F. Surrender of Allocations. Allocations which a recipient does not expect to use during the period for which they are valid may be voluntarily surrendered without penalty at any time up until 30 days prior to the end of that allocation period. Allocations which are surrendered at least 30 days prior to the expiration of the allocation period shall be added to the number of available allocations for the next allocation period in the same calendar year for the same allocation pool, or to the year-end pool, as appropriate. Allocations in the year end pool may not be surrendered.

G. Transferability. Allocations are site specific and not transferable to other developments. Allocations are issued to a specific building lot, and may only be transferred within a development to other lots which are under the same ownership as the holder of the allocation. Allocations may be transferred with the conveyance of a lot. (Citizen Initiative-Special Election 07-02-2019).

14.27.050 Available Allocations.

A. In January of each year City Council shall determine by resolution the number of allocations which will be available for issuance and use during that year. The annual resolution shall assign a sufficient number of allocations directly for satisfaction of a previously exempted project(s) whose banking plan(s) included a Planning Commission recommendation for commitment of future allocations, if City Council approves such commitment. The resolution shall then assign those remaining available allocations to the “open pool,” “hardship pool,” “affordable/low income pool,” and “surplus pool,” and determine the number of allocations within each such pool as will be available for the respective allocation periods.

B. The total number of allocations available for issuance and use during each calendar year shall be equal to one percent of the number of dwelling units which are estimated to exist in the city on December 31 of the prior calendar year. The number of allocations available for issuance for 2018 will be based on figures from the City of Lakewood and the US Census statistics (152,590 residents divided by 2.27 = 67,220) and thus 672 allocations for new dwelling units will be available in 2018.

C. The number of dwelling units which exist in the city on December 31 of the prior year shall be estimated as follows:
1. Begin with the number of dwelling units in the city which existed at the beginning of the previous calendar year.
2. Add the number of new dwelling units for which building permits were issued during the previous calendar year which required an allocation for issuance.
3. Add the number of allocations secured by, or assigned to, previously exempted projects or dwellings during the previous calendar year.
4. Add the number of dwelling units added to the city by reason of annexations during the previous calendar year. (Citizen Initiative-Special Election 07-02-2019).

5. Subtract the number of dwelling units which were destroyed (and not replaced within 12 months), abandoned or otherwise ceased to be used as such during the prior calendar year.

6. Subtract the number of dwelling units for which building permits had previously been issued, but which expired in the previous year without issuance of a certificate of occupancy. (Citizen Initiative-Special Election 07-02-2019).

14.27.060 Establishment of Allocation Pools.

   For the purpose of administration of this chapter City Council hereby creates the following described allocation pools:

   A. Open Pool. The open pool is created for all developments within the city that do not otherwise qualify to request allocations.

   B. Hardship Pool. The hardship pool is created for distribution of allocations by City Council upon a finding that a hardship or unusual circumstance exists which merits relief. All developments otherwise eligible to apply for allocation in general may participate in the hardship pool. Allocations are awarded as requests are granted by City Council, and not as of a specified allocation date.

   C. Affordable/Low Income Housing Pool. The affordable/low income housing pool is created for distribution of allocations for residential projects creating dwelling units for households earning up to 120 percent of area median income.

   D. Surplus Pool. The year-end pool is created for the purpose of distributing unused and excess allocations which are available as of November 1 of each calendar year. All developments otherwise eligible to apply for allocation in general may participate in the surplus pool. (Citizen Initiative-Special Election 07-02-2019).

14.27.070 Schedule of Allocation Periods.

   A. For all calendar years, the open pool will have two allocation periods which occur from January 1 through May 31, and from June 1 through October 31.

   B. For all calendar years, the hardship pool will have an allocation period from January 1 to October 31.

   C. For all calendar years, the affordable/low income housing pool will have one allocation period from January 1 through May 31. Excess allocations in the pool at the conclusion of the allocation period will be transferred to the open pool for the allocation period beginning on June 1.

   D. The surplus pool allocation period will occur from November 1 through December 31. (Citizen Initiative-Special Election 07-02-2019).

14.27.080 Applications.

   A. Applications for allocations shall be on a form provided by the city. A separate application submitted by the property owner is required for each allocation period. Except as provided otherwise, complete applications must be submitted to the city at least seven calendar days prior to the beginning of the allocation period for which the application is made. Applications may not be submitted more than 210 days before the beginning of the applicable allocation period. Applications for excess allocations may be made at any time that excess allocations are available, but prior to the last 30 calendar days of any allocation period.

   B. Eligibility. To apply for allocations, a development must have completed all steps otherwise necessary to apply for and receive a building permit including the requisite zoning
and subdivision approval, but not including the preparation of building construction plans. Site development review, if necessary, need not be complete prior to applying for allocations, although a pre-submittal conference and review of the site plan by staff must be completed, with an indication that approval of the concept may be achieved.

C. Allocation requests within a development under common ownership shall be combined and treated as a single application. Lots in such developments which are held in separate ownership shall be treated as separate applications.

D. No applicant shall request allocations in excess of the lesser of: The available number of allocations in the appropriate pool in that allocation period, or the available number of lots or units in the subject development. (Citizen Initiative-Special Election 07-02-2019).

14.27.090 Issue of Allocations.
A. Open Pool. For each respective allocation period in the open pool, one allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro-rata basis to applicants based upon their requested number.

B. Hardship Pool. Hardship pool allocations are distributed by the City Council at their discretion upon request from an applicant, and subject to a finding that all of the following conditions exist:
   1. That the issuance of an allocation is necessary to prevent undue hardship on the applicant; and
   2. That the issuance of an allocation(s) will not adversely affect the public interest or the purposes of this chapter; and
   3. Allocations are available in the hardship pool; and
   4. That the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Lakewood, excepting the provisions of this chapter.

C. Affordable/Low Income Housing Pool. Allocations assigned to the “affordable/low income” housing pool shall only be available for use by qualifying projects in the initial allocation period of each year. Any excess allocations in the affordable/low income housing pool at the end of the initial allocation period of the year will be transferred to the open pool for distribution pursuant to subsection (A) above.
   1. In addition to the application requirements, allocations from the affordable/low income housing pool will contain documentation in a form acceptable to the city attorney of the provisions that will be put in place to assure that rental units created by affordable/low income housing pool allocations will remain available to households making up to 120 percent of area median income for a period of at least 15 years after completion of construction, or assurances that the initial sale of the dwelling units created by the affordable/low income housing pool allocations will be by a bona fide, “arms-length sale” to individual households making no more than 120 percent of area median income, and at an initial sales price that is reasonably calculated to allow an otherwise qualified buyer to obtain a loan for the purchase of the dwelling unit with a down payment of no more than 20 percent of the sale price.
   2. If the number of affordable/low income housing pool allocations requested does not exceed the number assigned by City Council, the allocations will be distributed in the same manner as the open pool. However, if the number of allocations requested exceeds the number of allocations available in the affordable/low income housing pool, the applications will be presented to Planning Commission for review. The Planning Commission will award the affordable/low income housing pool allocations to those proposed dwelling units serving the households with the lowest area median income. In such circumstances, no building permit
shall be issued based upon any preference pool allocations until 16 days after the Planning Commission has issued a decision. Any aggrieved party may appeal the Planning Commission decision to City Council. Applicants for allocations from the affordable/low income housing pool may amend the application submitted to change from the affordable/low housing pool to the open pool, at any time prior to the beginning of the allocation period.

D. Surplus Pool. All unused open pool and hardship pool allocations which remain on November 1 of each year will be available in the surplus allocation pool. One allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro rata basis to applicants based upon their requested number. Allocations which are unclaimed during the surplus pool or which are due to expire will be assigned by the City Council. Acquisition of the final remaining allocation by a banking plan for a specific project during the surplus pool shall trigger the expiration of the banking plan at the end of the first allocation period in the following year.

E. Insufficient Allocations. Except as noted above, if there are insufficient allocations available to issue at least one allocation to each applicant for a particular allocation period due to demand, a lottery shall be held to determine the recipients of the allocations. Those applicants who are unable to obtain an allocation during that particular allocation period will be given first preference to receive an allocation in the following allocation period in the same pool if a timely application is filed.

F. Following the issuance of allocations, staff shall present a report to Planning Commission and City Council summarizing the results of the allocation period. (Citizen Initiative-Special Election 07-02-2019).

14.27.100 Banking of Allocations.
Notwithstanding any other provisions of this chapter, the period of validity of an allocation may be extended through, and the allocation may be used in subsequent allocation periods upon approval by the city as provided in this section. The process of extending the period of validity of allocations in this section is as follows:

A. Banking of allocations will be permitted in the following circumstances only:

1. The Director of Planning shall approve an application for banking of allocations for residential projects of forty (40) units or fewer if the number of units to be banked corresponds to that found in an entire building or buildings in the project, and if the allocations are proposed to be used within the same calendar year as the initial award of allocation.

2. The Planning Commission may approve a banking plan for multifamily projects of forty (40) units or fewer for the purpose of banking beyond the end of a calendar year, upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.

3. The Planning Commission may approve a banking plan for residential projects of forty (40) units or fewer upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.

B. Application for banking of allocations for projects over forty (40) units shall be made at the time of the allocation application. The application shall set forth a banking plan which includes the total number of dwelling units in the project, the number of allocations sought to be banked, the time period during which the validity of allocations is proposed for extension, and the reason therefore.
C. For applications submitted under subsection (A)(2) or (A)(3) of this section, the Planning Commission shall determine at a hearing upon reasonable notice to the public has been posted, whether the requested banking is appropriate as provided in this section.

D. A nonrefundable fee shall be assessed in conjunction with each approved multiyear banking plan to cover the city’s cost of the administering banking plans. The fee shall be set by City Council by resolution and shall be based upon the number of dwelling units in the approved banking plan. The fee shall be payable on a pro rata (per unit) basis at the time of distribution of allocations to the banking plan. Failure to pay any installment of the fee within 30 days of distribution of allocations to the banking plan shall cause a forfeiture of such allocations.

E. A decision of the Planning Commission or the Director of Planning with respect to an application to bank allocations may be appealed to the City Council.

F. Requests for banking of allocations beyond the end of the calendar year of the application shall be subject to the following conditions:
   1. The maximum number of years in which allocations may be acquired pursuant to any banking plan of allocations shall be five. All allocations acquired within the banking period must be used during this time period.
   2. The maximum number of allocations that may be in the bank at any one time during the banking program shall not exceed the total number of allocations available in the city in the first year of approval of said banking.
   3. Banking plans will be approved only for a number of units which correspond to that found in an entire building or buildings in the project.
   4. Subject to City Council’s annual distribution of allocations, Planning Commission may recommend a commitment of future allocations to an approved banking plan project. Such commitment shall not bind City Council’s action, but shall serve to be an indication of support for a specific project.

G. Surrendered or forfeited allocations distributed to an approved banking plan from calendar years prior to the year during which they are surrendered or forfeited shall be deemed to have expired and shall not be available for distribution. Surrendered or forfeited allocations distributed to an approved banking plan in the same calendar year in which they are surrendered or forfeited shall be made available for redistribution in accordance with the applicable provisions of this chapter.

H. The Planning Commission, may, upon a show of good cause, approve an extension of up to one year to an existing banking plan, to allow use of the banked allocations. The holder of the allocations may not acquire further allocations during the period of such extension.

I. For the purpose of defining the total number of available allocations, the total number of dwelling units in the city shall not include banked allocations which have not received building permits.

J. An applicant banking allocations within the same calendar year, shall notify the Director of Planning in writing within ten days after the allocations are granted of the number of allocations being banked and the reasons therefore.

K. The annual reports to Planning Commission and City Council pertaining to the administration of this chapter shall include information regarding the number of banked allocations approved in the current year, used in the current year, and the total number of banked allocations by individual project.

L. Approval of a “banking plan” shall not constitute a “vested right” to develop the project.

(Citizen Initiative-Special Election 07-02-2019)
**14.27.110** Excess and Unused Allocations.
A. Excess allocations in the open pools will be used to supplement other approved banking plans.
B. Excess allocations which have not been issued at the end of the allocation period and unused allocations will be added to the available number of allocations for the next allocation period in the same calendar year for the same pool, or to the surplus pool, as appropriate. (Citizen Initiative-Special Election 07-02-2019).

**14.27.120** Failure to Use Allocations; Penalties.
A. Failure to use an allocation which is not part of an approved banking plan during the period for which it is issued, without surrendering it at least 30 days prior to the expiration of the allocation period for which it has been issued, shall cause the holder of such allocation to be ineligible to receive allocations for a period of one year from the last day that the unused allocation is valid. This penalty may be waived by the Planning Commission for good cause.
B. Failure to use an allocation which is part of an approved banking plan during the period of the banking plan, without surrendering it at least 60 days prior to the expiration of the period of the banking plan, shall cause the holder of such allocation to be ineligible to receive allocations for a period of two years from the last day that the unused allocation is valid. This penalty may be waived by the Planning Commission for good cause.
C. Use of an dwelling unit constructed by reason of an allocation from the affordable/low income housing pool in a manner inconsistent with the affordability criteria listed in this chapter, or contrary to the assurances provided pursuant to such section, including, without limitation the initial sale of a dwelling unit at a price that exceeds the maximum price contemplated in such section, shall cause the holder of such allocation to be ineligible to receive further allocations for a period of three years from the date of the violation. This penalty may be waived by the Planning Commission for good cause. (Citizen Initiative-Special Election 07-02-2019).

**14.27.130** Building Permit Approvals.
All building permit applications will be reviewed within fifteen working days after submission of a complete application. At the end of the building permit review period, either a building permit will be made available for issuance or reasons will be given to the grantee why the permit cannot be issued, in which case the grantee has twenty work days in which to submit all required corrections. If the corrections are not completed in the time and manner required, the building permit application and related allocation are void unless reinstated by the city manager upon a finding that a longer increment of time would be reasonable. (Citizen Initiative-Special Election 07-02-2019).

**14.27.140** Mandatory Review.
City Council shall review this chapter once every five years or as needed. City Council may temporarily reduce the 1% limit at will. Should City Council determine an increase in allocations is needed, Council must send such requested increase to the voters of Lakewood. (Citizen Initiative-Special Election 07-02-2019).

**14.27.150** Severability Clause.
If any part, section, sentence or clause of this chapter shall for any reason be questioned in any court and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this chapter. Any such part, section, sentence
or clause shall not be taken to affect or prejudice in any way the remaining part or parts of this chapter. (Citizen Initiative-Special Election 07-02-2019).

14.27.160 Authority to Continue.
Any building permit that has gone through the processes necessary to secure a building permit, including, but not limited to, rezoning and subdivision, and was legally and formally applied for prior to adoption of this chapter, may be continued without obtaining an allocation. (Citizen Initiative-Special Election 07-02-2019).

14.27.170 Definitions.
The following terms are defined for purposes of this chapter:
A. Allocation. “Allocation” means a right, granted by the city pursuant to this chapter, to make application for a building permit to build one dwelling unit. An allocation is not a guarantee of receiving approval for a building permit. Approval of the building permit itself will occur through the established building permit review process.

B. Allocation Pools. “Allocation pools” mean separate categories of developments as described in this chapter which are created for the purpose of distributing available allocations.

C. Area Median Income. “Area median income” (AMI) means the median annual household income for Jefferson County, as adjusted by household size, and published annually by the United States Department of Housing and Urban Development.


E. Building permits shall be allocated in accordance with the provisions of this chapter such that those issued shall result in no more than a one-percent annual increase in the number of dwelling units.

F. Development. “Development” means the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, but not limited to, a subdivision approval, a planned unit development, and a mobile home park.

G. Dwelling Unit. One or more habitable rooms constituting a unit for permanent occupancy, with facilities for eating, sleeping, bathing, that occupies a structure or a portion of a structure.

H. Excess Allocations. “Excess allocations” means allocations which are available for issuance from a particular allocation pool and period, but which have not been issued by reason of lack of demand.

I. Good Cause. “Good cause,” when used as a basis for relief from timely compliance with specifically referenced provisions of this chapter, means the existence of unanticipated circumstances which are beyond the control of the property owner and which prevented timely compliance with the referenced provisions of this chapter. “Good cause” shall not include delays which are reasonably expected in the development process, including, but not limited to, preparation of plans or a securing of financing. The existence of “good cause”, and availability of relief by reason thereof, shall be determined after a public hearing conducted by the Planning Commission. A party aggrieved by the decision of the Planning Commission on such issue may, within 15 days of the date of the decision thereon by the Planning Commission, apply to the City Council for a review of said decision by filing a request for review with the city clerk. The City Council shall, within 30 days of receipt of the review request, and based upon the record alone as certified to Council by the Planning Commission, decide to uphold, deny, or modify the decision of the Planning Commission.
I. **Lottery.** “Lottery” shall mean a drawing held by the city to select applicants which will receive an allocation through a process based upon random chance. Each applicant in a lottery shall be treated equally regardless of the number of allocation requests.

J. **Pro-rata.** “Pro-rata” means the issuing of allocations to applicants in the same proportion that the total number of available allocations bears to the total number of requested allocations, as modified and elaborated in this chapter. For example, if applications for twice the number of allocations were received than the number available, each applicant would be granted approximately one-half the number requested.

K. **Set-up.** “Set-up”, when used in connection with mobile homes, means the process of setting up a mobile home for the purpose of occupancy as a residence including by way of example, connection to utilities and installation tie-downs.

L. **Unused Allocation.** “Unused allocation” means an allocation which has been issued but for which a building permit has not been issued or a mobile home set-up, as applicable, during the period for which the allocation is valid. (Citizen Initiative-Special Election 07-02-2019).
October 19, 2020

Lakewood Planning
480 South Allison Parkway
Lakewood, CO 80226

RE: SP-19-008 - 533 Van Gordon St Site Plan

Dear Mr. Rice,

Consolidated Investment Group (manager of Van Gordon Associates LLC, the owner of 533 Van Gordon Street) would like to withdraw the formal site plan application SP-19-008. The site plan was submitted prior to the growth initiative approval and it appears it may take years before a project will be approved for allocations.

Thank you,

Brian Bulatovic
Development Manager
Consolidated Investment Group
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 14 & 15

To: Mayor and City Council

From: Travis Parker, Director of Planning, 303-987-7908

Subject: SETTLEMENT AGREEMENT FOR WHITE FENCE FARM LAWSUITS

SUMMARY STATEMENT:
Two lawsuits have been filed against the City regarding potential development at 6263 W. Jewell, the former site of the White Fence Farm Restaurant. City staff has been working with both parties, Crescent Communities LLC and UNIFIED Under the Wilson Property ODP, for a number of months to reach a negotiated settlement agreement acceptable to all sides. All parties have accepted the attached agreement and recommend approval of the two associated resolutions approving the settlement agreement and granting Authority to Continue under Section 14.27 to the project.

BACKGROUND INFORMATION:
In March of 2019, Crescent Communities submitted a site plan to develop the property at 6263 W. Jewell as an apartment complex. In May of 2019 the neighboring Wild Flower Patio Homes HOA requested and received the City’s interpretation of certain provisions of the zoning ordinance and official development plan as they applied to the proposal. Those interpretations were appealed by the HOA. In January of 2020, the Board of Adjustment met on the appeal and did not overturn the City’s interpretations. The HOA and neighboring HOAs filed suit against the City based on these actions.
Also in January of 2020 the City Council met to establish housing allocations for the year under Article 14.27 and to choose whether to grant Authority to Continue without allocations to projects submitted prior to the July 2019 election. The Council chose not to grant Authority to Continue to this project in resolution 2020-08 and Crescent subsequently filed suit against the City based on this action.
Beginning in August of this year both plaintiffs began formal mediation with each other and the City to find a mutually acceptable negotiated agreement. Over the past three months, the parties have worked diligently and in good faith to reach agreement. The attached settlement agreement is the result of that work and is acceptable to all parties subject to City Council approval.
Highlights of the agreement include, but are not limited to:
1. Lawsuits will be dismissed by both plaintiffs
2. Residential unit count will be lowered from 235 to 202
3. The fourth story will be removed from the proposed east building and half of the west building
4. A minimum of 299 parking spaces will be provided
5. Access to and from Harlan Circle will be limited to emergency vehicles only
6. Developer will consult with the HOA on building architecture
7. Parties have agreed to new maintenance responsibilities in Sanderson Gulch
8. Lakewood will conduct additional future traffic studies at the Jewell & Illif intersection
9. Lakewood will install parking signs agreed to by the HOA along S. Harlan Circle and attached cul-de-sacs
10. Lakewood will grant Authority to Continue under 14.27 to the project

BUDGETARY IMPACTS:
There are no budgetary impacts beyond legal fees already incurred if the agreement is approved. Any future expenditures of City funds are subject to appropriation by Council. Rejection of the agreement would likely result in the resumption of the two lawsuits. The claims brought by the HOA plaintiffs are limited to declaratory and injunctive relief and, if plaintiffs were to be successful, would not expose the City to any financial liability. The claims brought by Crescent also seek declaratory and injunctive relief, but contain an additional claim for damages for alleged violations of Crescent’s constitutional and property rights resulting from the adoption of resolution 2020-8. The City would also incur legal fees and expenses if the litigation were to resume.

STAFF RECOMMENDATIONS:
City staff joins both plaintiffs in recommending approval of the settlement agreement and granting Authority to Continue to this project. A letter from the Wild Flower Patio Homes HOA and UNIFIED Under the Wilson Property ODP recommending approval is attached.

ALTERNATIVES:
Should Council choose to reject the proposed agreement, the litigation will likely resume. Due to the parties’s good faith efforts to reach the proposed settlement agreement, little progress has been made in the litigation. In fact, the cases are currently stayed due to the possibility of a full resolution. If litigation were to resume, the HOA claims might result in the questions of the City’s interpretations being remanded to the Board of Adjustment. Crescent’s claims against the City relating to the Authority to Continue and resolution 2020-8 would also resume. Due to settlement efforts, insufficient progress has been made to fully assess the merits of those claims. As noted above, there is a claim for damages asserted against the City that, if successful, could present significant potential liability.

PUBLIC OUTREACH:
The mediation process including draft agreements have been legally confidential until this time. Only parties to the lawsuits have been involved.

NEXT STEPS:
If this agreement is approved by Council, Crescent will submit a revised site plan conforming with the terms of this agreement. Such site plan and associated building plans would be processed administratively by City staff.

ATTACHMENTS:  Resolution 2020-47
Proposed Settlement Agreement and exhibits
Letter of support for the settlement agreement and Authority to Continue from the Wild Flower Patio Homes HOA and UNIFIED Under the Wilson Property ODP

REVIEWED BY:  Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
2020-47

A RESOLUTION

AMENDING RESOLUTION 2020-8 AND GRANTING AUTHORITY TO CONTINUE UNDER CITY CODE SECTION 14.27 FOR DEVELOPMENT PROJECT AT 6263 W. JEWELL AVE.

WHEREAS, on January 27, 2020, the City adopted Resolution 2020-8 by which “Authority to Continue” under Code Section 14.27.160 was withheld for a proposed development (the “Project”) of property located at 6263 W. Jewell Ave. (the “Property”);

WHEREAS, Authority to Continue was originally withheld for the Project because, under resolution 2020-8, the Project was subject to on-going litigation and other issues at the time;

WHEREAS, the parties to the litigation have now resolved all matters in dispute and have reached a settlement agreement relating to the proposed Project (the “Settlement Agreement”);

WHEREAS, the basis for withholding the Authority to Continue has now been resolved to the satisfaction of the Property owner, the developer/applicant, the neighborhood groups and the City;

WHEREAS, the parties have finalized the Settlement Agreement, the effectiveness of which is contingent upon the City now granting Authority to Continue to the Project;

WHEREAS, City staff has recommended granting Authority to Continue for the Project;

WHEREAS, the Property owner, the developer, the neighborhood group and the homeowners association also support the City granting Authority to Continue for the Project;

WHEREAS, to now grant Authority to Continue for the Project, the City Council must amend Resolution 2020-8; and

WHEREAS, the City Council hereby finds and determines that amending Resolution 2020-8 to grant Authority to Continue for the Project is and shall be in the best interest of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The City Council hereby amends Resolution 2020-8 as follows:

a) The fifth (5th) “Whereas” clause is deleted in its entirety.
b) Section 3 is amended to replace the phrase “except for” with the word “including” and to replace the date of December 31, 2020, with the date of December 31, 2022, such that Section 3 shall read in its entirety as follows:

SECTION 3. City Council hereby directs staff to proceed, including 6263 W. Jewell, without allocations on all building permit applications received prior to July 12, 2019 that receive building permits no later than December 31, 2022, after which time they will require allocations and be subject to the provisions of Chapter 14.27.

SECTION 2. All other provisions in resolution 2020-8 shall remain in effect, except as modified above.

SECTION 3. The building permit application for 6263 W. Jewell Ave. received prior to July 12, 2019 is granted Authority to Continue under Code Section 14.27 and may be processed without allocations.

SECTION 4. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a virtual regular meeting of the Lakewood City Council held on November 23, 2020, at 7 o’clock p.m.

______________________________
Adam Paul, Mayor

ATTEST:

______________________________
Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney
DATE OF COUNCIL MEETING: OCTOBER 26, 2020 / AGENDA ITEM NO. 6
NOVEMBER 23, 2020 / AGENDA ITEM NO. 16

To: Mayor and City Council

From: Benjamin B. Goldstein, Deputy City Manager, 303-987-7050

Subject: AN ORDINANCE SETTING THE SALARIES OF MUNICIPAL COURT JUDGES

This ordinance was approved on 1st Reading by a vote of 11 ayes 0 nays.

SUMMARY STATEMENT: Though the Judges Salary Committee normally meets during the first quarter of each year, COVID-19 delayed that meeting until September 1, 2020. The Committee recommended an increase to the Judges salaries of 2.00%, which is commensurate with the average increase received by general city employees. In order to take effect, the recommendation of the Committee must be approved by ordinance and requires a vote of the entire City Council.

BACKGROUND INFORMATION: Each year the Judges Salary Committee meets to review, and provide recommendations to City Council for, the compensation to be paid to the City's Municipal Court Judges. The Committee met on September 1, 2020, and recommended the following compensation amounts:

- Presiding Municipal Judge: $172,062 annually
- Municipal Judges: $153,647 annually
- Regular Part-Time Associate Municipal Judges: $57.46 per hour
- Variable Part-Time Associate Municipal Judges: $84.93 per hour

BUDGETARY IMPACTS: The 2.0% increase in salaries will result in an annual budget impact of approximately $7,000, this was previously accounted for as part of the 2019 budget process. If approved, the increase will be retroactively applied, effective March 22, 2020, this is the effective date of salary adjustments for general employees.

STAFF RECOMMENDATIONS: Staff does not have a recommendation regarding the recommended increase.

ALTERNATIVES: City Council may either approve, deny or make changes to the Committee’s recommended increase.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before City Council for consideration.

NEXT STEPS: The next steps will be to implement the recommended increase should City Council vote to do so.

ATTACHMENTS: Ordinance O-2020-27
AN ORDINANCE

SETTING THE SALARIES OF MUNICIPAL COURT JUDGES

WHEREAS, Sections 5.6 and 5.8 of the City of Lakewood (the “City”) home rule charter (the “Charter”) and Section 2.20.050(A) of the Lakewood Municipal Code (“LMC”) provide that compensation for Municipal Court Judges shall be established by ordinance;

WHEREAS, the City of Lakewood’s Judges Salary Committee has recommended the 2020-2021 annual salaries for the Presiding Judge and the Municipal Judge, as well as the hourly rates for part-time Associate Municipal Judges, as set forth herein;

WHEREAS, the City Council wishes to adopt the recommendations of the Judges’ Salary Committee and to set the 2020-2021 salaries accordingly; and

WHEREAS, approval of this ordinance on first reading is intended to confirm only that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Commencing March 22, 2020, Lakewood Municipal Court Judges shall receive the following compensation:

A. The annual salary of the Presiding Municipal Judge shall be One Hundred Seventy-two Thousand Sixty-two Dollars ($172,062.00);

B. The annual salary of Municipal Judges shall be One Hundred Fifty-three Thousand Six Hundred Forty-seven dollars ($153,647.00);

C. The hourly rate for Regular Part-Time Associate Municipal Judges shall be Fifty-seven and 46/100 dollars ($57.46); and

D. The hourly rate for Variable Part-Time Associate Municipal Judges shall be Eighty-four and 93/100 dollars ($84.93).

SECTION 2. This Ordinance shall take effect thirty (30) days after final publication.
I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 26th day of August, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 29th day of October, 2020; set for public hearing to be held on the 23rd day of November, 2020; read, finally passed and adopted by the City Council on the _____ day of November, 2020; and signed by the Mayor on the _____ day of November, 2020.

Adam Paul, Mayor

ATTEST:

Ben Goldstein, Interim City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney